

PANEL DECISION

ELO v. Bum Lup

Case No. DEU2024-0011

1. The Parties

The Complainant is ELO, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Bum Lup, France.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <auchan-fr.eu> (the “Disputed Domain Name”) is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the Disputed Domain Name is PDR Ltd.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2024. On April 29, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the Disputed Domain Name. On April 30, 2024, the Registry transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 2024, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 2, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 8, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was May 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 29, 2024.

The Center appointed Isabelle Leroux as the sole panelist in this matter on June 5, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant, formerly known as Auchan Holding SA, is a holding company. With over 160,000 employees, it operates in 14 countries, in Europe, Asia and Africa and the company is ranked as the 11th largest food retailing group in the world.

For the needs and purposes of its activities, the Complainant is the owner of numerous trademarks, including the following:

- European Union Trademark AUCHAN No. 283101 registered on August 19, 2005, in classes 01 to 42, duly renewed;
- European Union Trademark AUCHAN No. 4510707 registered on January 19, 2007, in classes 35 and 38, duly renewed;
- French Trademark AUCHAN No. 1244726 registered on September 09, 1983, in classes 01 to 45, duly renewed.

Hereafter the “Trademarks” or “Trademark”.

The Complainant also owns several domain names containing the sign AUCHAN, including the following: <auchan.fr> registered on February 11, 1997, duly renewed.

The Disputed Domain Name <auchan-fr.eu> was registered on January 22, 2024, and reverts to an unreachable website. According to the unrebutted evidence submitted by the Complainant, the Disputed Domain Name was used to send emails to the Complainant’s customers impersonating two of the Complainant’s employees. The identity of the Respondent as disclosed by the Registrar is “Bum Lup”.

5. Parties’ Contentions

A. Complainant

The Complainant claims that:

a) The Disputed Domain Name is identical or at least confusingly similar to the Complainant’s Trademarks since the Disputed Domain Name is composed of the Complainant’s Trademarks.

b) The Respondent has no rights or legitimate interests in the Disputed Domain Name since:

- No license or authorization has been granted by the Complainant to the Respondent;
- The Respondent is not known under the Disputed Domain Name, nor does it has any trademark rights in such name;
- There is no indication of any potential rights or legitimate interests that the Respondent may have in the Disputed Domain Name.

c) The Respondent registered and used the Disputed Domain Name in bad faith given the following factors:

- The Disputed Domain Name revolves to an unreachable website;
- The Respondent is using the Disputed Domain Name to impersonate the Complainant in a fraudulent email scheme.

Finally, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

First of all, the Panel finds that the Complainant has provided evidence that it has prior rights in the AUCHAN Trademarks registered in the European Union and in France. .

The Panel notices that the Disputed Domain Name is composed of the identical reproduction of the AUCHAN Trademarks, to which has been added (i) the letters "-fr" (ii) as well as the country-code Top-Level Domain ("ccTLD") ".eu".

The addition of the letters "-fr" which revolves to the official French extension "fr", does not avoid a finding of confusing similarity since the Complainant's Trademark is clearly recognizable in the Disputed Domain Name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"¹.

Furthermore, the TLD ".eu" is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Consequently, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark. The first element of Paragraph B(11)(d)(1) of the ADR Rules is thus fulfilled.

B. Rights or Legitimate Interests

Even though the Complainant bears the general burden of proof under Paragraph B(11)(d)(1)(ii) of the ADR Rules, the burden of production shifts to the Respondent once the Complainant makes a prima facie showing that the Respondent lacks rights or legitimate interests. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Hence, after the Complainant has made a prima facie showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name, it will be deemed to have satisfied Paragraph B(11)(d)(1)(ii) of the ADR Rules when the Respondent fails to rebut the Complainant's prima facie case.

In this case, the Complainant brings forward the following elements:

- No license or authorization has been granted by the Complainant to the Respondent;
- The Respondent is not known under the Disputed Domain Name, nor does it have any trademark rights in such name;
- The Respondent is using the Disputed Domain Name to impersonate the Complainant in a fraudulent email scheme.

¹Noting the similarities between the Uniform Domain Name Dispute Resolution Policy (the "UDRP") and the ADR Rules, the Panel has referred to prior UDRP cases and the [WIPO Overview 3.0](#), where appropriate.

The Respondent has not come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name. Moreover, the addition of “fr” in the composition of the Disputed Domain Name could be interpreted as a reference to France, the Complainant’s location, and thus carries a risk of implied affiliation to the Complainant, contrary to the fact, which the Respondent has clearly sought to capitalize upon via the use of the Disputed Domain Name for a fraudulent email scheme. The use of the Disputed Domain Name for illegal activity (i.e., fraud) can never confer rights or legitimate interests upon a respondent. See [WIPO Overview 3.0](#), section 2.13.

Given these circumstances, the Panel finds that the second element of Paragraph B(11)(d)(1) of the ADR Rules is satisfied.

C. Registered or Used in Bad Faith

Paragraph B(11)(d)(1)(iii) of the ADR Rules requires that the Complainant prove that the Disputed Domain Name was registered or is being used by the Respondent in bad faith.

It is commonly admitted that the use of a domain name to send emails impersonating the Complainant to target its customers using a fraudulent scheme constitutes bad faith (See *Minerva S.A. v. Whoisguard Protected, Whoisguard, Inc., / Greyhat Services*, WIPO Case No. [D2016-0385](#)).

It is established that the Respondent impersonated the Complainant by sending emails allegedly signed by the Complainant’s employees.

The Panel considers that this was a clear attempt to target the Complainant’s customers using a fraudulent scheme. This behavior clearly indicates that the Disputed Domain Name was registered and is being used in bad faith, especially as the Disputed Domain Name reverts to an inactive website.

Consequently, the Panel finds that the Disputed Domain Name was registered and used in bad faith, so that the third and final element of Paragraph B(11)(d)(1) of the ADR Rules is met.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the Disputed Domain Name, <auchan-fr.eu> be transferred to the Complainant². The Complainant is a French company located in France, and satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517.

/Isabelle Leroux/

Isabelle Leroux

Sole Panelist

Date: June 19, 2024

² The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.