

## ADMINISTRATIVE PANEL DECISION

ELO v. Name Redacted

Case No. D2022-4268

### 1. The Parties

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

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <hypermarches-auchan.com> (“Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2022. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 11, 2022, the Registrar 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 November 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

The Registrar also indicated that the language of the registration agreement is Russian. On November 15, 2022, the Center sent an email communication to the Parties in both Russian and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Russian; or submit a request for English to be the language of the administrative proceedings.

---

<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

The Complainant filed an amended Complaint on November 18, 2022, in which it requested that English be the language of the proceedings and also requested for Respondent details to be redacted. The Respondent did not comment on the language of the proceedings.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on January 5, 2023. 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 Rules, paragraph 7.

#### **4. Factual Background**

The Complainant, previously known as Auchan Holding SA, is a multinational retail group. Founded in 1960, the Complainant has grown exponentially throughout its history and is now operating in 12 countries across Europe and Africa, with 163,098 employees worldwide. As of December 2021, the Complainant’s consolidated revenue, excluding taxes, was of EUR 30 billion.

The Complainant is the owner of a number of trademark registrations that consist of or contain the word “auchan” (the “AUCHAN Trademark”) for a variety of products and services in many countries, including but not limited to:

- International Trademark Registration No. 284616, for AUCHAN, registered on June 5, 1964;
- International Trademark Registration No. 332854, for AUCHAN, registered on January 24, 1967;
- International Trademark Registration No. 625533, for AUCHAN, registered on October 19, 1994;
- International Trademark Registration No. 1011777, for AUCHAN and Device, registered on February 19, 2009.

In addition, the Complainant registers over 600 different domain names reflecting its AUCHAN Trademark for sale and promotion of its goods and services, notably <auchan.fr> and <auchan-retail.com>, registered on February 11, 1997 and October 27, 2015, respectively.

The Disputed Domain Name was registered on September 17, 2022. As of the date of this Decision, the Disputed Domain Name does not resolve to an active website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First, the Complainant submits that the Complainant is the owner of AUCHAN Trademark in numerous jurisdictions.

Second, the Complainant argues that the addition of the generic Top-Level Domain (“gTLD”) “.com” should not be taken into account under the first element.

Finally, the Complainant asserts that the Disputed Domain Name is confusingly similar to the AUCHAN Trademark owned by the Complainant since the Disputed Domain Name incorporates the Complainant’s AUCHAN Trademark in its entirety. The addition of generic, descriptive term “hypermarches” – plural form of the French word for “hypermarket”, as well as a hyphen are insufficient to diminish the confusing similarity between the Disputed Domain Name and the Complainant’s AUCHAN Trademark. Instead, the Complainant submits that such term “hypermarches” is closely linked and associated with the Complainant’s brand and trademark only serves to underscore and increase the confusing similarity between the Disputed Domain Name and the Complainant’s trademark.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant submits that the Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not licensed, authorized, or permitted the Respondent to register a domain name incorporating the Complainant’s trademark.

Second, the Complainant argues that the Respondent is not commonly known by the Disputed Domain Name, which evidences a lack of rights or legitimate interests.

Third, the Complainant contends that the Respondent’s use of the Disputed Domain Name does not constitute a *bona fide* offering of goods or services. According to the Complainant, the Respondent was previously using the Disputed Domain Name for the sole purpose of sending emails, which had the appearance of coming from one of the Complainant’s employees. More specifically, the Respondent has set up the email address to impersonate one of the Complainant’s employees, and send phishing emails to the Complainant’s unsuspecting customers, seeking to confuse them into entering supply partnerships with the Respondent, presumably for its own benefit. Further, in order to support this impression, the Respondent has included the Complainant’s French commercial registration number and their VAT number. By sending emails from the Disputed Domain Name, the Respondent was attempting to impersonate the Complainant as part of a fraudulent email phishing scheme.

Furthermore, the Respondent is currently using the Disputed Domain Name to direct Internet users to an inactive website. The Respondent has failed to make use of the Disputed Domain Name’s website and has not demonstrated any attempt to make legitimate use of the Disputed Domain Name and website, which evinces a lack of rights or legitimate interests in the Disputed Domain Name.

Finally, the Complainant argues that the Respondent registered the Disputed Domain Name on September 17, 2022, which is significantly after the Complainant filed for registration of its AUCHAN Trademark, and also significantly after the Complainant’s first use in commerce of its Trademark in 1961. Therefore, the Disputed Domain Name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the Disputed Domain Name.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant contends that by registering the Disputed Domain Name that incorporates the entirety of the Complainant’s AUCHAN Trademark along with the related term “hypermarches” and a hyphen, the Respondent has created the Disputed Domain Name that is confusingly similar to the Complainant’s Trademark. Besides, the Respondent has used the Disputed Domain Name to send phishing emails to the

Complainant's unsuspecting customers. As such, the Respondent has demonstrated a knowledge of and familiarity with the Complainant's brand and business.

Second, the Complainant argues that the Respondent registered and used the Disputed Domain Name with the primary aim of launching a phishing attack, which is clear evidence of bad faith registration and use. After first creating a strong likelihood of confusion by misappropriating the Complainant's Trademark in the Disputed Domain Name, the Respondent used the Disputed Domain Name to send fraudulent emails, which had the appearance of originating from the Complainant, to the Complainant's customers. The Respondent's efforts to masquerade as the Complainant certainly constitutes fraud, which must be considered bad faith registration and use of the Disputed Domain Name.

Moreover, the Disputed Domain Name currently resolves to an inactive website. The Complainant asserts that passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to the Policy.

With said arguments, 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. Procedural issues**

#### **(i) The Respondent and Redaction of the Respondent's Identity**

The Panel notes that at the time the Complaint was filed on November 9, 2022, the Respondent was identified as "Registrant Information Redacted". On November 11, 2022, the Registrar revealed the underlying registrant. The Center sent a Notice of Registrant Information to the Complainant on November 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant sent an email requesting for an amendment of the Complaint on November 18, 2022, regarding the newly identified registrant. The Complainant also informed the Center, in its amended Complaint, that the individual behind the identified registrant is the victim of identity theft. As such, the Disputed Domain Name was registered on his name without his approval or knowledge.

Pursuant to paragraph 4(j) of the Policy, the Panel has the power to determine to redact portions of its decision in exceptional circumstances. Therefore, in the current case, the Panel decides to refer to the name of the registrant of the Disputed Domain Name as Name Redacted, and to the individual or entity which has registered and used the Disputed Domain Name as the Respondent (see *Accenture Global Services Limited v. Domains by Proxy, LLC / Name Redacted*, WIPO Case No. [D2013-2099](#); *Ingenico Group v. Contact Privacy Inc. Customer 1245626487 / Name Redacted*, WIPO Case No. [D2019-2899](#); *Siemens AG, Siemens Trademark GmbH & Co. KG v. NAME REDACTED*, WIPO Case No. [D2022-1632](#); and *SOLVAY Société Anonyme v. Privacy Service Provided by Withheld for Privacy ehf / Name Redacted*, WIPO Case No. [D2022-3465](#)).

#### **(ii) Language of the Proceeding**

The Complaint was filed in English on November 9, 2022. On November 11, 2022, the Registrar confirmed that the language of the Registration Agreement is Russian. As the Complaint was filed in English, the Center, in its notification dated November 15, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding

should be in English, or (ii) the Complaint translated into Russian, or (iii) a substantiated request for English to be the language of the proceeding by November 18, 2022.

On November 18, 2022, the Complainant responded to the Center, confirming its request that English be the language of the proceeding as indicated in section IV of the amended Complaint. The Respondent did not give any comment on this issue.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, e.g., *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

(i) the fact that the Complainant, a French business entity, does not appear to be able to communicate in Russian, and therefore, if the Complainant was required to have the documents translated into Russian, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;

(ii) the Disputed Domain Name was used to send out fraudulent emails in English; this suggests that the Respondent has knowledge of the English language and will be able to communicate in English;

(iii) the Respondent did not object for English to be the language of the proceeding, and did not submit a Response in either English or Russian.

Therefore, for the purpose of easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding takes place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

### **(iii) The Respondent's Failure to Respond**

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

## **B. Identical or Confusingly Similar**

The Complainant is required to establish the two following elements: (i) that it has trademark rights, and, if so, (ii) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel finds that the Complainant has evidenced that it has rights in and to the AUCHAN Trademark, which was registered in a number of countries well before the registration of the Disputed Domain Name.

Second, the Panel finds that the Disputed Domain Name reproduces the Complainant's AUCHAN Trademark in its entirety with the addition of a term "hypermarches" (a French translation of "hypermarket") and a hyphen. In this regard, the Panel finds that the said addition does not prevent a finding of confusing similarity between the Complainant's AUCHAN Trademark and Disputed Domain Name. See *ELO v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Patrice Joubert*, WIPO Case No. [D2022-1029](#); *ELO v. PHILIPPE FERRANDO*, WIPO Case No. [D2022-2379](#).

Third, the Panel finds, similarly to the other UDRP panels, that the addition of the generic Top-Level Domain ("gTLD") ".com" to the Disputed Domain Name can be disregarded for the purposes of the Policy (see, e.g., *LEGO Juris A/S v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-4146](#); *The Coca-Cola Company v. David Jurkiewicz*, WIPO Case No. [DME2010-0008](#); *Telecom Personal, S.A., v. NAMEZERO.COM, Inc.*, WIPO Case No. [D2001-0015](#); *F. Hoffmann La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's AUCHAN Trademark, and the first element of the Policy is established.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

Noting the facts and arguments set out above, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The consensus of previous UDRP panels is that while the overall burden of proof in UDRP proceedings is on the Complainant, once a *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating his rights or legitimate interests in the disputed domain name (see e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. [D2001-0121](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant's asserted facts, that no license, permission, or authorization of any kind to use the Complainant's trademarks has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction. Thus, the Panel finds that the Respondent has no rights in the AUCHAN Trademark.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Disputed Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make legitimate, noncommercial, or fair use of the Disputed Domain Name without intent for commercial gain. On the contrary, according to the submitted evidence of the Complainant, the Respondent previously used the Disputed Domain Name for the purpose of impersonating the Complainant and sending phishing emails to external companies cooperating with the Complainant in relation to the purchase orders supposedly placed by the Complainant. Such use of the Disputed Domain Name certainly does not confer rights or legitimate interests on the Respondent. Hence, in absence of this evidence, the Panel is of the view that paragraph 4(c)(i) is not met.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the Disputed Domain Name, or that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, by incorporating the Complainant's distinctive trademark in its entirety within the Disputed Domain Name, the composition of the Disputed Domain Name is such to carry a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy is established.

#### **D. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The above four circumstances are not exhaustive and bad faith may be found by the Panel alternatively.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The Panel has considered the Complainant's assertions and evidence with regard to the Respondent's registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's AUCHAN Trademark has been registered and used in many jurisdictions. Given the extensive use of the AUCHAN Trademark by the Complainant, which predated the registration date of the Disputed Domain Name, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, the Panel finds that the Disputed Domain Name incorporates the AUCHAN Trademark in its entirety, which

creates a strong likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name.

Moreover, the Complainant has established that an email server has been configured on the Disputed Domain Name, and that the Respondent did use the same to send phishing emails, from an address "[...][@hypermarches-auchan.com](mailto:hypermarches-auchan.com)", featuring the Complainant's VAT and commercial registration numbers, where the Respondent sought to deceive the Complainant's customers into believing it sought to establish supply partnerships with them, presumably for its own benefit. Taking into account the aforesaid Respondent's use of the Disputed Domain Name for impersonating the Complainant, the Panel finds that such Respondent's behavior cannot be in any way considered as good faith.

See section 3.1.4 of [WIPO Overview 3.0](#) "the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith". See also *B&B Hotels v. WhoisGuard Protected, WhoisGuard, Inc / Penelope Giguere*, WIPO Case No. [D2020-2727](#); *Auchan Holding SA v. WhoisGuard Protected, WhoisGuard, Inc. / Name Redacted*, WIPO Case No. [D2021-0986](#).

It is further noted that at the time of submitting the Complaint, as well as at the date issuing this Decision, the Disputed Domain Name resolves to an inactive website. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of [WIPO Overview 3.0](#)). Given the Respondent's failure to participate in this proceeding, as well as implausible good faith use to which the Disputed Domain Name could be put, the Panel agrees with the above.

Taking into account all of the above and the available record, the Panel finds that the Disputed Domain Name was registered and used by the Respondent in bad faith and the third element under paragraph 4(a)(iii) of the Policy is established.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <[hypermarches-auchan.com](mailto:hypermarches-auchan.com)> be transferred to the Complainant.

*/Pham Nghiem Xuan Bac/*

**Pham Nghiem Xuan Bac**

Sole Panelist

Date: January 19, 2023