

## **ADMINISTRATIVE PANEL DECISION**

ELO v. Allain Dewien  
Case No. D2023-0438

### **1. The Parties**

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

The Respondent is Allain Dewien, France.

### **2. The Domain Name and Registrar**

The disputed domain name <auchan-corporate.com> is registered with Register SPA (the "Registrar").

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 31, 2023. On January 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 2023 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 French. On February 8, 2023, the Center sent an email communication to the Parties in both French 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 French; or submit a request for English to be the language of the administrative proceedings.

The Complainant filed a first amended Complaint on February 9, 2023 in which it requested that English be the language of the proceedings. The Respondent did not comment on the language of the proceedings. In response to the Center's invitation to add certain information to the Complaint, the Complainant filed a second amended Complaint on February 17, 2023.

The Center verified that the Complaint together with the second 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 February 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 13, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on March 23, 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 is a French company, founded in 1960 by Mr. Gérard Mulliez, which has grown internationally to become the 11<sup>th</sup> largest food retailer in the world, with over 163,000 employees operating in 12 countries, and a turnover in 2021 of more than EUR 30 billion.

The disputed domain name <auchan-corporate.com> does not resolve to an active website at the time of this decision.

The identity of the Respondent was disclosed by the Registrar in response to the Center’s request for registrar verification in connection with the disputed domain name.

The Complainant has submitted evidence that the Respondent sent fraudulent emails to a third party in view of having that party’s truck deliver products, thus engaging in a phishing scheme.

The Complainant owns a large portfolio of registered trademarks containing the trademark AUCHAN, including, *inter alia*, the International trademark registration No. 284616, registered on June 5, 1964, and the European Union Trademarks No. 000283101, registered on August 19, 2005, and No. 004510707, registered on January 19, 2007 (together hereinafter referred to as “the Mark”).

It also owns over 600 domain names, including the <auchan.fr> domain name, registered on February 10, 1997 and the <auchan-retail.com> domain name, registered on October 27, 2015.

The disputed domain name, <auchan-corporate.com>, was created on September 30, 2022.

#### **5. Parties’ Contentions**

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

- (i) The Complainant alleges that it was previously known as Auchan Holding SA, and submits that the disputed domain name reproduces the Mark, in which Auchan Holding has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the distinctive element “auchan” in its entirety, and that the addition of a hyphen and the element “corporate” is not capable of dispelling the confusing similarity.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.

- (iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith. The Complainant alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.
- (iv) The Complainant submits that the Respondent is using the disputed domain name in bad faith.
- (v) 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**

### **6.1. Procedural Aspects**

#### **A. Language of the Proceeding**

Paragraph 11(a) of the Rules provides that “[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative 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”.

The Registrar of the disputed domain name, Register SPA, confirmed that the language of the Registration Agreement of the disputed domain name is French.

The Complainant formally requested that the language of the proceeding be English, to which the Respondent failed to comment or to object.

In the light of the above circumstances, particularly the fact that the phishing e-mail sent by the Respondent, using the disputed domain name, is in the English language, thus evidencing that the Respondent understands English, and having to ensure pursuant to paragraph 10(c) of the Rules that the administrative proceeding takes place with due expedition, the Panel, who is conversant in both English and French, considering the time and cost for the Complainant of translating and submitting the Complaint in French, determines pursuant to paragraph 11(a) of the Rules that the appropriate language of the proceeding is English.

#### **B. Complainant's standing to file a UDRP complaint**

The Complainant has provided limited documentation supporting its allegation that it was previously known as Auchan Holding, or its implied allegation that the Mark's owner, Auchan Holding, and itself are one and the same corporate entity.

The Respondent, as aforesaid, has not rebutted such allegations.

The Panel, further to accessing publicly available corporate information (see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)), has ascertained that Minutes dated March 11, 2021 have been filed, relating to a resolution to change the corporate name of Auchan Holding to Elo and to modify accordingly the company's by-laws.

The Panel therefore accepts that the Complainant has standing to file a UDRP complaint, based on the ownership of trademark rights.

### **C. Failure to respond**

As aforementioned, no response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

### **6.2. Requirements of paragraph 4(a) of the Policy**

#### **A. Identical or Confusingly Similar**

In comparing the Mark with the disputed domain name <auchan-corporate.com>, it is evident that the latter consists of the Mark, followed by a hyphen, the element "corporate" and the generic Top-Level Domain ("gTLD") ".com".

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the disputed domain name <auchan-corporate.com> is confusingly similar to the Mark, which is incorporated in its entirety, and that the addition of a hyphen and the "corporate" element in the disputed domain name does not prevent a finding of confusing similarity, the Mark remaining recognizable within the disputed domain name.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

#### **B. Rights or Legitimate Interests**

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#) and section 2.1 of the [WIPO Overview 3.0](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name.

There is no evidence that the Respondent is known by the disputed domain name or uses (or has made *bona fide* preparations to use) the disputed domain name in a business. The disputed domain name does not direct the public to any active website.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain name.

In addition, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety in combination with the additional term "corporate" and the gTLD ".com", carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#). Moreover, the use of the disputed domain name affirms such risk.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

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

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Second, it is well established that the mere passive holding of a domain name may in appropriate circumstances be evidence not only of bad faith registration, but also of bad faith use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#); *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques.*, WIPO Case No. [D2000-0004](#); and *Alitalia –Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Third, it is established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, considering the fact that the Mark is well known, as prior UDRP panels have confirmed (See for instance *Auchan Holding v. Alvaro Romon Sancho*, WIPO Case No. [D2016-0187](#) and *Elo v. Chao Yue*, WIPO Case No. [D2021-1180](#)), the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *Sembcorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

Furthermore, section 3.1.4 of the [WIPO Overview 3.0](#), states that evidence that a disputed domain name has been used for phishing purposes may be considered evidence of bad faith use. The Complainant provided evidence that phishing emails using the disputed domain name were sent, purportedly signed by an

employee of the Complainant. The Panel draws from these circumstances an inference of bad faith use of the disputed domain name by the Respondent.

Besides, the Panel notes that many UDRP panels have held that bad faith use of a domain name by a respondent may result from the fact its good faith use is in no way plausible (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)), considering the specificity of the activity. The Panel notes that the Respondent has submitted no evidence of any good faith use of the disputed domain name and finds it is not possible to imagine any plausible future active use of the disputed domain name that would not be illegitimate.

Finally, prior UDRP panels have held that in certain circumstances, registrants of domain names would have a duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party. See Holding Le Duff “HLD” v. Charlotte Campigna, WIPO Case No. [D2022-4166](#). See also Policy, paragraph 2(b); *Nike, Inc. v. Ben de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

## 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, <auchan-corporate.com>, be transferred to the Complainant.

*/Louis-Bernard Buchman/*

**Louis-Bernard Buchman**

Sole Panelist

Date: April 3, 2023