

ADMINISTRATIVE PANEL DECISION

ELO v. fei na

Case No. D2023-0922

1. The Parties

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

The Respondent is fei na, Samoa.

2. The Domain Name and Registrar

The disputed domain name <groupeauchan.store> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 1, 2023. On March 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 9, 2023.

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 March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2023.

The Center appointed Ezgi Baklacı Güلكokar as the sole panelist in this matter on April 24, 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 formerly known as Auchan Holding SA is a multinational retail group headquartered in Croix, France. Founded in 1960, the Complainant is 11th largest food retailer in the world, operating in 12 countries with 163,098 employees worldwide.

The Complainant is the owner of the “AUCHAN” trademark registrations before World Intellectual Property Organization (“WIPO”), French National Institute of Industrial Property (“France-INPI”) and European Union Intellectual Property Office (“EUIPO”). The relevant AUCHAN trademarks are WIPO Registration no. 284616 registered on June 05, 1964, WIPO Registration no. 332854 registered on January 24, 1967, WIPO Registration no. 625533 registered on October 19, 1994, WIPO Registration no. 1011777 registered on February 19, 2009, INPI Registration no. 124726 registered on September 9, 1983, EUIPO Registration no. 000283101 registered on August 19, 2005 and EUIPO Registration no. 004510707 registered on January 19, 2007 covering the goods and services between the classes 01 through 45 according to the evidence provided at Annex 1.

The Complainant holds and uses over 600 domain names, incorporating the term “Auchan” as their main element. The Complainant’s primary domain names <auchan.fr> and <auchan-retail.com> were registered on February 11, 1997 and October 27, 2015 respectively according to the extract provided at Annex 4 of the Complainant.

Further, the Complainant also owns domain names in combination with the term “groupe” and according to Annex 4.2 provided by the Complainant an exemplary list of these domain names are as follows: <auchan-groupe.com>, <groupe-auchan.com>, <groupe-auchan.fr>, <groupe-auchan.pro>, <groupeauchan.com>, <groupeauchan.pro>.

The disputed domain name was registered on August 17, 2022. The Respondent in this matter was initially masked by a privacy service but then was revealed to be Fei Na. The contested domain name is not being used and the Respondent has not responded to the demands regarding the transferal of the same to the Complainant.

5. Parties’ Contentions

A. Complainant

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

Identical or confusingly similar

The Complainant argues that the disputed domain name is confusingly similar to AUCHAN trademarks, for which the Complainant holds registration. Further, the Complainant argues that it is standard practice that the extension is not to be taken into account when comparing a disputed domain name to the Complainant’s trademarks.

The Complainant also argues that the addition of term “groupe”, which means “group” in French to the Complainant’s AUCHAN trademarks further renders the disputed domain name confusingly similar to the Complainant’s trademark. The Complainant also asserts that, the Complainant is a French multinational retail group and the term “groupe” is often used in conjunction with the Complainant’s marks, for example the Complainant also operates from the website “www.groupe-elo.com”.

Rights or legitimate interests

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name and the Complainant has not given the Respondent permission to use Complainant's trademarks in any manner.

Further, the Complainant argues that the fact that the Respondent was using a privacy Whois service equates to a lack of legitimate interest, which was also found to be the case by past panels.

In addition, the Complainant argues that the Respondent is not known by the disputed domain name and the Complainant submits that the Respondent is not authorized to use the Complainant's trademark, nor the Respondent is the licensee of the mark.

Furthermore, the Respondent has neither made use of the domain name nor engaged in any demonstrable preparations to use it in connection with a *bona fide* offering of goods or services, as the domain name redirects Internet users to a generic registrar holding page.

The disputed domain name was registered and used in bad faith

The Complainant argues that the disputed domain name was registered in bad-faith as the disputed domain name entirely incorporates the Complainant's AUCHAN trademarks. The Complainant further argues that the addition of the French generic term "groupe" to the term AUCHAN, which holds no secondary meaning beyond its association to the Complainant reflects that the Respondent has a knowledge of and familiarity with the Complainant's marks and business. The Complainant further asserts that the disputed domain name can only be taken as intending to cause confusion among Internet users as to the source of the same, especially considering the above facts and it is indicative of an intention to hold the disputed domain name for some future active use in a way which would be competitive with or otherwise detrimental to Complainant, constituting "cybersquatting".

It has been further argued by the Complainant that the disputed domain name resolves to a generic registrar holding page and is not being used and it has been held by the past panels that holding a domain name passively can constitute bad faith registration and use pursuant to paragraph 4(a)(iii) of the Policy.

The Complainant additionally argues that at the time of initial filing, the Respondent has employed a privacy service to hide its identity, which was held by past panels as indicating bad faith registration and use. Furthermore, the Respondent ignoring the Complainant's cease-and-desist letters is also argued to indicate bad faith registration and use of a domain name and this is also accepted by past panels.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

(i) the disputed domain name is identical or confusingly similar to the trademarks or service marks in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(ii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it has well-established rights in AUCHAN trademarks. Further, the Complainant holds the trademarks bearing AUCHAN as well as the primary domains <auchan.fr> and <auchan-retail.com> along with <auchan-groupe.com>, <groupe-auchan.com>, <groupe-auchan.fr>, <groupe-auchan.pro>, <groupeauchan.com>, <groupeauchan.pro> according to the extracts submitted within Annexes 4, 5 and 7.

The disputed domain name <groupeauchan.store> consists of the registered trademark AUCHAN with an additional element “groupe” at the beginning, which means “group” in French. Although the disputed domain name is not identical to the trademarks of the Complainant, the aforementioned addition does not prevent the finding of similarity as the Complainant’s trademark is clearly recognizable within the disputed domain name ([WIPO Overview 3.0](#), section 1.8). (See *DHL Operations B.V. v. DHL Packers*, WIPO Case No. [D2008-1694](#)).

The Panel agrees that the TLD “.store” is disregarded in the confusing similarity test, as it does not form part of the comparison as it is a standard registration requirement for technical reasons ([WIPO Overview 3.0](#), section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks and that the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. While the overall burden of proof in UDRP proceedings is on the Complainant, previous UDRP panels have recognized that proving a respondent that it lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the Respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1) (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel notes that there is no evidence showing that the Respondent holds any rights for the term “AUCHAN”. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant’s trademark AUCHAN.

The case file also does not contain any evidence that the Respondent has been commonly known by the disputed domain name as an individual, business, or other organization. Further, the Panel notes that there is no evidence of the Respondent’s use of, or preparation to use the disputed domain name; and there is also no evidence that the Respondent is making a legitimate noncommercial or fair use under the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or any legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that a complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith. Bad faith under the UDRP is broadly understood

to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's trademark ([WIPO Overview 3.0](#), section 3.1).

The Panel finds that at the time the disputed domain name was registered the Respondent was aware of the trademark AUCHAN as the Complainant's trademark registrations significantly predate the registration date of the disputed domain name and apart from the identical use of the Complainant's "AUCHAN" trademark, the inclusion of the French term "groupe" shows clear knowledge of the Complainant's basis country and company structure. The Panel finds that the Respondent knew about the Complainant's rights, as such information can also be reached by a quick online search (see *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

In addition, the Panel notes that the Respondent used privacy services to hide his identity or avoid being notified of a UDRP proceeding, which supports an inference of bad faith. While the use of a privacy service does not in and of itself constitute bad faith under the Policy, the manner in which such service is used in the present case is deemed to contribute to a finding of bad faith ([WIPO Overview 3.0](#), section 3.6).

In light of these particular circumstances, and the passive holding of the disputed domain name ([WIPO Overview 3.0](#), section 3.3), the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the disputed domain name has been registered and is being used in bad faith by the Respondent.

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, <groupeauchan.store> be transferred to the Complainant.

/Ezgi Baklaci Gülkökar/

Ezgi Baklaci Gülkökar

Sole Panelist

Date: May 8, 2023