

ADMINISTRATIVE PANEL DECISION

ELO v. Blaise Dupont
Case No. D2023-4540

1. The Parties

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

The Respondent is Blaise Dupont, Côte d'Ivoire.

2. The Domain Name and Registrar

The disputed domain name <auchan-co.com> is registered with eNom, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 1, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 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 November 6, 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 November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 30, 2023.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on December 11, 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, ELO, formerly known as Auchan Retail International (“Auchan”) is a multinational retail group. Founded in 1960 by Gérard Mulliez, the company has grown exponentially throughout its history and now operates in 12 countries, across Europe and Africa.

The Complainant owns AUCHAN trademark registrations around the world and through ongoing use, including, but not limited to, the following:

- European Union Trademark AUCHAN and device n° 000283101 in classes 1 to 42 dated August 19, 2005;
- International Trademark AUCHAN n° 939832 in classes 1 to 45 dated February 27, 2007; and
- French Trademark AUCHAN n° 1258525 in classes 1 to 45 dated January 15, 1984.

The Complainant also operates the websites located at the domain name <auchan.fr>, registered on February 10, 1997.

The disputed domain name <auchan-co.com> was registered on September 12, 2023, and the disputed domain name currently resolves to a parked page with no active content, but it is being used to create email addresses impersonating one of the Complainant’s employee to contact the Complainant’s clients, in a fraudulent email scam.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that the disputed domain name <auchan-co.com> is similar to the trademarks AUCHAN (which are entirely reproduced) with the simply adding of the term “-co” (likely for “company”) and a hyphen to the end of the trademark.

The Complainant argues that the addition of this term creates a high risk of affiliation with the Complainant’s misleading the public into thinking that the disputed domain name is linked to the Complainant.

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name with legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

The Complainant contends that the Respondent has registered and used the disputed domain name for purposes of launching a phishing attack.

Since a few days after the disputed domain name was registered, the Respondent has been using email addresses connected to the disputed domain name to contact some sellers, has attempted to impersonate the Complainant in order to divert benefits for its own gain.

On December 18, 2023, the Complainant has requested the Panel to expedite the decision as the Respondent has initiated another phishing attempt.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term and element here, "-co" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Complainant asserted and provided evidence that the Respondent used the disputed domain name in connection with email addresses in order to impersonate the Complainant and fraudulently induce the Complainant's clients to make a payment to an account that was not the Complainant's account.

The Respondent's use of the disputed domain name as part of an email address to send out fraudulent emails to some sellers also falls under the concept of use of a domain name in bad faith under the Policy.

The Respondent has not contested the Complainant's allegations.

Panels have held that the use of a domain name for illegal activity here, claimed as phishing constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

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-co.com> be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: December 22, 2023