

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Adam Lee
Case No. D2022-0596

1. The Parties

The Complainant is Compagnie Générale des Etablissements Michelin, France, represented by Dreyfus & associés, France.

The Respondent is Adam Lee, United States of America (“USA”), self-represented.

2. The Domain Name and Registrar

The disputed domain name <michelinft.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2022. On February 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 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 February 24, 2022, 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 February 25, 2022.

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 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 11, 2022. On the same day, the Respondent sent a communication to the Center requesting an extension to reply. The Center acknowledged receipt of the communication.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on April 14, 2022. 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.

Following the appointment of the Panel, on April 22, 2022, the Respondent filed with the Center a Response, out of time. The Panel has considered the Response and has decided to exceptionally admit it and to take it into account in reaching its decision. However, a substantial part of the Response consists of procedural submissions to the effect that in bringing its Complaint the Complainant failed to follow the Rules and Policy. The Panel considers that it is unnecessary for it to consider these procedural submissions since it has agreed to admit the Response in which, on the substantive issues under paragraphs 4(a)(i)-(iii) of the Policy, the Respondent has had the opportunity to counter the Complainant's submissions. Moreover, the Respondent's procedural submissions misconstrue the obligations of the Complainant under the Rules. The Panel notes the Center has complied with paragraph 2(a) of the Rules, and met its obligation to employ reasonably available means to achieve actual notice to the Respondent, and in fact the Respondent did receive actual notice of the present dispute.

4. Factual Background

The Complainant which is incorporated in France is a leading worldwide tyre manufacturing company. It is headquartered in Clermont-Ferrand, France. It has a presence in 170 countries, has more than 124,000 employees, and operates 117 tyre manufacturing facilities and sales agencies in 26 countries, including the USA. This can be seen from the extracts from the Complainant's website exhibited at Annex 3 to the Complaint. The website shows that Michelin has been ranked in Forbes magazine as No. 1 of "America's Best Large Employers" in 2018.

As shown in Annex 3, the Complainant was created in 1889 and has since become the leader in tyre technology for every type of vehicle. It is the top-selling tyre brand worldwide and is the first source of innovation in the global tyre industry.

In 1920 it launched the Michelin Guide to help motorists plan their trips, thereby boosting car purchases and tyre sales. In 1926 it began to award stars to fine dining establishments, followed by a hierarchy of zero, one, two, and three star ratings. The Michelin Guides have become best-sellers rating over 30,000 establishments in over 30 territories across three continents. More than 30 million Michelin Guides have been sold.

The Complainant and its trade marks MICHELIN enjoy a worldwide reputation. The Complainant owns numerous trade marks for MICHELIN around the world.

In particular the Complainant relies upon two USA trade mark registrations for MICHELIN;

- No. 892045, registered on June 2, 1970 in Class 12.

- No. 4126565, registered on April 10, 2012 in Classes 36, 37, and 39.

These marks have been duly renewed. Evidence of their registration and renewal is contained in Annex 4 to the Complaint.

These trade marks predate registration of the disputed domain name registered on July 11, 2021, which resolves to a parking page displaying sponsored links related to the Complainant's field of activity.

In addition the Complainant and its affiliates operate, amongst others, the domain name <michelin.com> registered on December 1, 2003, for the purpose of promoting its services.

The Panel finds the above evidence adduced by the Complainant to be true. It is not contested in the Response.

In its Response the Respondent, Adam Lee, about whom little is known, states that his use of the disputed domain name is “Michel In NFT”. However he does not refer to Annex 1 to the Complaint, which is a print-out of a parking page displaying commercial links directly related to the Complainant’s field of activity and in which, for example, it states “Pneus Michelin”, a reference in French to Michelin tyres.

5. Parties’ Contentions

A. Complainant

The Complainant submits:

- i. The disputed domain name is identical to or at least confusingly similar to the trade mark MICHELIN in which it has registered rights.
- ii. There is no evidence showing that the Respondent has any rights or legitimate interests in the disputed domain name.
- iii. On the Complainant’s evidence the disputed domain name was registered and is being used in bad faith by the Respondent.

Accordingly, the Complainant requests the disputed domain name be cancelled.

B. Respondent

The Respondent submits:

- i. The disputed domain name contains a reference to “Michel In NFT” which would not be confused with “Michelin NFT”.
- ii. The Respondent has not used the disputed domain name in a way that would confuse the Complainant’s trade mark.
- iii. There have been no actions taken by the Respondent that have shown bad faith.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant submits that the disputed domain name is identical to or at least confusingly similar to the Complainant’s trade marks MICHELIN. Based upon the evidence of the USA trade marks MICHELIN set out in section 4 above, the Panel finds that the Complainant owns registered rights in the trade marks MICHELIN.

The disputed domain name incorporates the mark MICHELIN in its entirety together with the letters “nft” which the Complainant suggests could refer to “non-fungible token”. Whether or not that reference is so, the Panel finds that the addition of another term to the trade mark does not prevent a finding of confusing similarity. The domain name consists of “michelin” and “nft”. The mark MICHELIN is being reproduced in its entirety, and is clearly recognizable in the disputed domain name.

The Complainant, based upon established authority, rightly submits that the Panel should not take into account the generic Top-Level Domain (“gTLD”) “.com” in considering identity or confusing similarity.

The Panel therefore finds that the disputed domain name is confusingly similar to the trade mark MICHELIN in which the Complainant has registered rights within Paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant submits that the Respondent is neither affiliated with the Complainant in any way, nor has he been authorized by the Complainant to use and register its trade mark MICHELIN, or to seek registration of any domain name incorporating the trade mark.

Moreover, the Respondent cannot claim prior rights or a legitimate interest in the domain name as the MICHELIN trade marks precede by many years the registration of the disputed domain name in 2021.

The Respondent submits that it has not registered the disputed domain name to disrupt the Complainant’s business and that he is not competing with the Complainant in any way. He asserts that he has a right to use the domain name as a legitimate noncommercial or fair use by using the domain name for a fair use that does not have anything to do with any of the Complainant’s trade marks, businesses or services.

The difficulty with that submission is the parking page exhibited by the Complainant as Annex 1 in which the disputed domain name contains sponsored links with a clear connection to the Complainant and its activities. The Respondent attempts to explain the parking page by stating that: “he did not know that Godaddy websites default to a parking page and did not initiate the parking page to be placed on the disputed domain and did not collect any revenue or make any agreements that would confuse the Complainant’s trade mark.” However, his alleged lack of knowledge of the parking page does not alter the fact that the links on such page compete with or capitalize on the reputation and goodwill of the Complainant’s well-known MICHELIN trade marks or otherwise mislead Internet users, and so do not constitute a *bona fide* offering in these circumstances. Moreover, the Respondent has not provided any evidence, or indeed any clear explanation, of the Respondent’s use of, or demonstrable preparations to use, the disputed domain name in connection to a *bona fide* offering of goods or services other than the current parked page.

The Respondent submits that he has a right to use the disputed domain name in a way (sic) that is not confusing or similar to the Complainant’s trade mark. The problem with that submission is that the Panel has found that his disputed domain name is confusingly similar to the Complainant’s trade mark. In summary, there is no evidence adduced by the Respondent or any satisfactory explanation as to why he has any rights or legitimate interests in respect of the disputed domain name.

Accordingly the Panel finds that the Respondent has no rights or legitimate interests in respect of the domain name within Paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant relying upon established authority, such as *Research in Motion Limited v Privacy Locked LLC/Nat Collicot*, WIPO Case No. [D2009-0320](#) which it cites, points out that bad faith can be found where the Respondent “knew or should have known” of the Complainant’s trade mark rights and nevertheless registered a domain name in which he had no rights or legitimate interests.

It submits that it is “implausible” that the Respondent was unaware of the Complainant when he registered the disputed domain name. It relies upon the following:

i. The fact that the Complainant is well-known throughout the world including in the USA. Previous UDRP panels have acknowledged the Complainant’s worldwide reputation. This is also evidenced by the contents of Annexes 3 and 4 to the Complaint.

ii. The fact that the disputed domain name consists of MICHELIN associated with the letters “nft” which makes it “impossible” that the Respondent did not have the Complainant and its trade mark in mind at the time of registration.

iii. The Complainant’s trade mark registrations MICHELIN significantly pre-date the disputed domain name.

In summary given the worldwide reputation of the Complainant and its trade marks it is “hard to believe” that the Respondent was unaware of the existence of the Complainant and its marks at the date of registration.

In response the Respondent, without any supporting evidence, merely denies that the domain name was registered in bad faith and does not deal with the Complainant’s above submissions or deny having knowledge of the Complainant’s well-known trade marks.

Noting the above, the Panel finds that the disputed domain name was registered by the Respondent in bad faith.

The Complainant submits that the Respondent probably registered the disputed domain name based on the “notoriety and attractiveness of the Complainant’s trade mark to divert internet traffic to its website and generate clicks, in turn generating revenue”. This use is supported by the evidence and in particular the reference to “Pneus Michelin” in the parking page exhibited at Annex 1.

The Complainant also refers to the fact that the Respondent registered the domain name and hid his identity on the Whois database. Previous UDRP panels have accepted that a deliberate concealment of identity may support a finding of bad faith in certain circumstances.

Further evidence of use in bad faith is the fact referred to by the Complainant that having considered the parking page, which displayed sponsored links to the Complainant’s field of activity, it instructed its lawyers to send a cease and desist letter to the Respondent. A copy of the letter dated August 18, 2021 is exhibited as Annex 6 to the Complaint. Despite several follow up reminders the Respondent failed to respond. In the Panel’s view a deliberate decision not to respond to such correspondence tends to support a finding of bad faith.

In its Response the Respondent simply states that there have been no actions taken by him which constitute bad faith. He has not used the domain name in a confusing way and has not tried to sell or rent the domain name to the Complainant. In the Panel’s view that response is insufficient to deal with the Complainant’s submissions as to use in bad faith and its supporting evidence. Moreover, the Panel does not consider the Respondent’s claims that the disputed domain name was registered for its connection to the terms “Michel In NFT”, rather than the Complainant’s trade marks, to be convincing, noting, *inter alia*, the fame of the Complainant’s trade marks, the nature of the disputed domain name, and the lack of any supporting evidence from the Respondent.

In particular, the Respondent fails to deal with the fact that the disputed domain name resolves to a parking page with commercial links related to the Complainant’s field of activity. Neither the fact that the parked page may have been automatically generated, nor that the Respondent may not have directly profited from such page, prevent a finding of bad faith in the circumstances of this case.

The Panel therefore finds that the Respondent both registered and used the disputed domain name in bad faith within Paragraph 4(a)(iii) 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 <michelinft.com> be cancelled.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: April 28, 2022