

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Établissements Michelin v. Contact Privacy Inc.
Customer 12411421195 and 12411421196 / Jack Richardson, OnGenre
Case No. D2022-1108

1. The Parties

The Complainant is Compagnie Générale des Établissements Michelin, France, represented by Tmark Conseils, France.

The Respondent is Contact Privacy Inc. Customer 12411421195 and 12411421196, Canada / Jack Richardson, OnGenre, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain names <michelingirl.com>, and <themichelingirl.com> are registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2022. On March 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 31, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 5, 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 April 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2022. On April 30, 2022, the Respondent requested the automatic four calendar day extension for response under paragraph 5(b) of the Rules, which was granted by the

Center on May 2, 2022. The extended due date for Response was May 6, 2022. The Response was filed with the Center on May 6, 2022. The Complainant filed a supplemental filing on May 25, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on May 23, 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.

4. Factual Background

The Complainant is a corporation organized under the laws of France that operates a business with a presence in many countries selling tires, and the authoritative “Guide Michelin” that ranks fine dining establishments by awarding “Michelin Stars”.

The Complainant maintains a global portfolio of registered trademarks for the word mark MICHELIN covering products and services relating to tourism, hospitality, restaurants and gastronomy, including online multimedia publications in the fields of travel, tourism and gastronomy, and for services of editing and publication of guides. For example, the Complainant is the owner of United States Registered Trademark No. 1399361 for said word mark, registered on July 1, 1986 in Classes 16 and 25. The Complainant also operates certain domain names reflecting its trademarks including <michelin.com>, registered on December 1, 1993, which is used in connection with a sub-domain <guide.michelin.com>. Numerous previous panels under the Policy have held the Complainant’s MICHELIN mark to be globally well-known or famous.

The Complainant’s MICHELIN mark is linked to its well-known mascot, created in 1898 (see *Compagnie Générale des Etablissements Michelin v. Joyce Klabbers, TruckParts1919.com BV*, WIPO Case No. [D2018-0911](#)). Named “Bibendum” or, in English, “Michelin Man”, the mascot is a humanoid figure made of white tires of various sizes.

The disputed domain names were registered on November 1, 2021. The disputed domain name <themichelingirl.com> automatically links to the disputed domain name <michelingirl.com> which points to a blog-style website entitled “the michelin girl” in a stylized script prefixed by a chef’s hat motif. Beneath this is a disclaimer added after the Complaint was filed stating “This is a non-commercial personal blog where I keep a record of the meals I’ve had at restaurants featured in the Michelin Guide. I am not in any way affiliated with the Michelin Guide.”

The subject of said website is restaurant reviews of certain MICHELIN starred restaurants, which the Respondent’s wife has visited. Said site mentions the Complainant’s MICHELIN mark, uses the term “Michelin Girl Guide” and originally reproduced the star logo of the reward system instituted by the MICHELIN Guide, although when the Panel visited said website these stars had been replaced with an alternative non-similar star logo. Three restaurant reviews are listed on said site, being, first, Alinea, Chicago, United States, secondly, Le Manoir aux Quat’Saisons, United Kingdom, and thirdly, Caviar Russe, Manhattan, United States.

The entry for Alinea (September 1, 2021 entry, meal date also September 1, 2021) appears to contain a review for Caviar Russe, stated to be for a meal on November 20, 2021. There is an incomplete “course-by-course breakdown” containing “Lorem ipsum” dummy text and “Lisa’s tip: Order the xx [sic] as it’s incredible!” The entry for Le Manoir aux Quat’Saisons, United Kingdom, (October 20, 2021 entry, meal date December 22, 2019) also contains the same review for Caviar Russe, the same incomplete “course by course breakdown” and “Lisa’s tip”. The entry for Caviar Russe (February 19, 2022 entry, meal date November 20, 2021) contains the same review, the same incomplete “course by course breakdown” and the same “Lisa’s tip”.

5. Parties' Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant has used and promoted its MICHELIN trademark for more than a century and owns numerous corresponding trademark registrations worldwide. It has acquired a significant and indisputable reputation. The Complainant began to publish its travel and gastronomy guide in 1900 to encourage new drivers to take road trips to local attractions. "Stars" were first awarded in 1926, and a hierarchy of one, two and three stars was introduced in 1931. The listing is updated annually and covers major restaurants globally. The Complainant has acquired notoriety for its full range of travel publications. The Complainant's mark is linked to the visual identity of the "Michelin Man".

The disputed domain names reproduce the Complainant's MICHELIN mark identically. Where a domain name wholly incorporates a complainant's mark, this can be sufficient to establish confusing similarity for the purposes of the Policy. The addition of the generic Top-Level Domain ("gTLD") (.com) does not eliminate the identity or confusing similarity, having no distinguishing capacity and serving as a standard registration requirement. When the relevant trademark is recognizable in the disputed domain name, the addition of other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise, does not preclude a finding of confusing similarity under paragraph 4(a)(i) of the Policy. This includes the word "girl" and the definite article as found in the disputed domain names. The public will recognize the disputed domain names as registered for the Complainant's activities notably with the MICHELIN Guide or a declination of the well-known "Michelin Man" mascot.

Rights or legitimate interests

It is sufficient for the Complainant to show a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names and the evidentiary burden then shifts to the Respondent to show such rights or legitimate interests by concrete evidence. The Complainant's trademark is well-known and has been used and promoted worldwide for decades. The Complainant has not authorized any third party to identify itself to the public as MICHELIN or "[the] michelin girl" in domain names, or otherwise to use the Complainant's MICHELIN mark. The Respondent is not commonly known by the name "[the] michelin girl" apart from the disputed domain names. MICHELIN is not a generic term but is a distinctive and famous trademark. The Respondent must have been aware of the MICHELIN mark and its use as the most internationally recognized marker of restaurant quality.

The Respondent has impermissibly taken advantage of the Complainant's commercial interest in said mark and its use of the disputed domain names will illegitimately generate a larger audience than would likely have been the case if the Respondent chose a domain name that was not confusingly similar to a famous mark. The Respondent uses MICHELIN to identify the website linked to the disputed domain names, and such use cannot be considered merely informative and therefore fair. The Respondent is perfectly free to express its views about the quality or characteristics of Michelin-star restaurants but that does not translate into a right to identify itself as MICHELIN. Such use suggests that the website content originates from or is affiliated, endorsed or validated by the Complainant, which is not the case.

The Respondent registered the disputed domain names because of its connection to the Complainant and its use will generate a larger audience, at least initially, than would likely have been the case if the Respondent chose a domain name that was not confusingly similar to a famous mark.

Registered and used in bad faith

The overwhelming inference is that the Respondent registered and is using the disputed domain names purposefully and in bad faith. There is no chance of the disputed domain names being registered by coincidence. Given the attractiveness of the MICHELIN name, the disputed domain names were inevitably registered in bad faith and in the knowledge of the Complainant's prior rights. The Respondent uses the disputed domain names precisely in relation to the activities for which the Complainant is reputed (the assessment of restaurants) and displays the design of the Michelin stars. When registering the disputed domain names the Respondent will have represented to the Registrar that the registrations will not infringe the rights of any third party. Even if the Respondent did not conduct clearance searches, the Complainant's MICHELIN mark benefits from a high notoriety around the world. It may be argued that the Respondent had the "Michelin Man" in mind when registering the disputed domain names due to the declination effect of "Michelin Girl" and "Michelin Man". The only reasonable explanation is that the Respondent selected the disputed domain names to exploit the Complainant's goodwill in its MICHELIN marks and mislead Internet users.

The disputed domain names are used in bad faith to forward to a blog website mentioning the Complainant's MICHELIN mark and its star-shaped logo as used in the MICHELIN Guide. The website, featuring a listing of MICHELIN starred restaurants with evaluations and opinions, is intended to mislead and attract Internet users to a competitive website, effectively developing the Respondent's own MICHELIN Guide using the Complainant's mark. The website presents as sponsored, endorsed or approved by the Complainant and takes advantage of the notoriety and prestige of the Complainant's mark to draw Internet users to such site for the Respondent's own monetary benefit, contrary to paragraph 4(b)(iv) of the Policy. A substantial proportion of Internet users visiting the site will be doing so in the expectation of reaching a site of, or authorized by, the Complainant. When they reach the site, they may realize that they have been mistaken, but the objective of bringing them there will have already been achieved. There are many ways in which the Respondent could develop a blog to evaluate MICHELIN starred restaurants without taking advantage of the Complainant's mark and notably without using it in the disputed domain names. The right of speech does not justify the deception of Internet users.

The Respondent impersonates the mark owner in a confusing manner in order to expand coverage of the Respondent's views. The audience is targeted by suggesting that the content of the blog has been validated or awarded by MICHELIN. It is easily assumed that the Respondent's intention was to attract visitors who were searching for the Complainant and lure them to its own blog to increase the number of Internet users. This act is conclusive evidence of registration and use of the disputed domain names in bad faith.

There is no evidence as yet of the Respondent engaging in commercial use but given all the facts and circumstances of the case, whether the Respondent's motives were for commercially exploiting the Complainant's mark or not, the registration and use of the disputed domain names were made in bad faith to seek unjust benefit from the notoriety of the Complainant's mark.

B. Respondent

In summary, the Respondent contends as follows:

General

The Complaint should be denied.

The Respondent is a provider of online video infrastructure for the arts and non-profits. The Respondent registered the disputed domain names for his wife's personal blogging at MICHELIN starred restaurants, where she has enjoyed dining for many years. The Respondent and his wife are fans of the MICHELIN Guide and MICHELIN starred restaurants. One of the Respondent's and his wife's first such dining experiences was in the United Kingdom in 2017, followed by the Respondent and his wife selecting that establishment to be the venue of their wedding.

Identical or confusingly similar

The Respondent does not deny that MICHELIN is featured in the disputed domain names but it is present in an unusual composition where the “gir” addition comes from a casual comment made by a family member to refer to the Respondent’s wife as a “Michelin Girl” due to her fondness for dining at such starred restaurants. This is sufficient to distinguish the disputed domain names from the mark.

Rights or legitimate interests

The Complainant’s assertions are refuted. The disputed domain names result from the affectionate reference to the Respondent’s wife and have no association with the “Michelin Man”. The Respondent is making legitimate noncommercial and fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish any trademark at issue. The associated website consists of a diary journal of visits to MICHELIN starred restaurants with corresponding photos over a period of years. A schedule of receipts and credit card payments of the Respondent’s wife’s dining experiences at MICHELIN starred restaurants is produced. In view of this, the Respondent has not used the disputed domain names to market goods or services to the detriment of the Complainant.

Registered and used in bad faith

The Respondent knew of MICHELIN starred restaurants but did not register the disputed domain names to target or trade-off the Complainant’s reputation, or otherwise to confuse or divert Internet users. The Complainant fails to produce any evidence in support of the Respondent seeking to take commercial advantage of the Complainant’s rights. The Respondent denies the Complainant’s allegation that the Respondent is trying to develop its own MICHELIN Guide. The disputed domain names are entirely noncommercial and the Respondent has a track record of making such sites for his wife (example given of “www.travelandlisa.com”). Such blog posts are used to collect personal memories. The website associated with the disputed domain names is merely a noncommercial personal diary and review of the Respondent’s wife’s experiences in dining at MICHELIN starred restaurants. The text and photos appearing on the site are original and created by the Respondent and his wife and are completely different in appearance to those on the Complainant’s website. The disputed domain names have not been used to market goods and services to the Complainant’s detriment and the Complainant has produced no evidence of actual confusion.

The Respondent and his wife are upset that the Complainant and its legal representatives did not write or call them before filing the Complaint and presuppose that the Complainant did this because it knew its position was weak. As a lover of the brand, the Respondent would have been pleased to co-operate with it. In an attempt to resolve the issue at an early stage, the Respondent added a confirmatory disclaimer message to highlight and reaffirm an already self-evident position that the website is a noncommercial blog and review site with no affiliation to the Complainant. The case has caused the Respondent and his wife stress and anxiety. The Respondent submits that the Complainant engages in overzealous policing, referencing the currently pending complaint under the Policy in respect of the domain names <michelincrappers.com> and <michelincrappier.com>, which the Respondent asserts relates to a website featuring reviews of toilets at MICHELIN starred restaurants. The Respondent submits that the Complainant’s underlying purpose is to bully and unfairly pursue all third party users of the MICHELIN mark, irrespective of use and whether they are used by customers or fans of the brand.

6. Discussion and Findings

To succeed in respect of each disputed domain name, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Preliminary Matter: Complainant's supplemental filing

Paragraph 12 of the Rules provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Supplemental filings are generally discouraged unless specifically requested by the panel. Panels have repeatedly affirmed that the party submitting or requesting to submit a supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response.

In the present case, the Complainant has submitted a supplemental filing on May 25, 2022. This was not accompanied by any discussion of its relevance to the case and/or any explanation as to why the Complainant had been unable to provide the information in the Complaint, other than that it is expressed to be a reply to the terms of the Response. The substance of such filing appeared in part to repeat arguments already raised by the Complainant. This is not entirely surprising as the Complaint largely anticipated the nature of the Response, namely the Respondent's allegation that the website associated with the disputed domain names is a noncommercial blog site.

In the above circumstances, the Panel does not consider it either appropriate or necessary to admit the Complainant's supplemental filing. Most matters raised therein have already been anticipated in the Complaint and no explanation was offered to support their inclusion in a supplemental filing. In the circumstances of this case, the Panel is satisfied that in terms of paragraph 10(b) of the Rules each Party has already received a fair opportunity to present its case. The Panel therefore declines to admit the Complainant's supplemental filing and will proceed to a Decision on the basis of the Complaint and Response.

B. Identical or Confusingly Similar

The first element analysis is usually conducted in two parts. In the first place, the Complainant must demonstrate that it possesses UDRP-relevant rights in a trademark. In the second place, the Panel undertakes a comparison exercise in which said trademark is compared to the disputed domain names, typically on a straightforward side-by-side basis, in order to assess identity or confusing similarity. In such comparison, the gTLD, for each disputed domain name, in this case ".com", is typically disregarded on the basis that this is a technical requirement only, and of no other significance. If the mark is noted to be identical to the disputed domain name concerned, identity will generally be found and if it is otherwise recognizable therein, confusing similarity will typically be found.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in its MICHELIN trademark. This mark is wholly reproduced in the disputed domain names, a matter admitted by the Respondent. Besides the Complainant's mark, the disputed domain names both feature an additional word "girl" and one of them also features the definite article. As is noted in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where the relevant trademark is recognizable within the disputed domain name, the addition of such other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element. In the present case, the Complainant's trademark is recognizable in both disputed domain names.

The Respondent alleges that the history of the "girl" addition comes from a casual comment made by a family member. This is not relevant to the first element analysis, which is an objective test serving as a standing requirement, although it may be relevant to and will be discussed in connection with the second and third element analyses. The Respondent goes on to argue that the presence of the "girl" element is sufficient to distinguish the disputed domain names from the mark. The Panel does not consider that this element alters the recognizability of the Complainant's mark in the disputed domain name. There is no reason why

the usual approach described in section 1.8 of the [WIPO Overview 3.0](#) should not be applied in the circumstances of this case.

Accordingly, the Panel finds that the disputed domain names are each confusingly similar to the Complainant's MICHELIN mark and that the Complainant has carried its burden in terms of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in each disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (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.”

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. Where such *prima facie* case is made out, the burden of production shifts to the Respondent to bring forward concrete evidence of any such rights or legitimate interests. “Concrete evidence’ constitutes more than mere personal assertions. Just as a Panel should require a complainant to establish by means other than mere bald assertions that it is the owner of registered marks, so should the panel require that a respondent come forward with concrete evidence that the assertions made in the response are true [...]” (*Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#)).

In the current proceeding, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submissions that the Complainant's trademark is distinctive, well-known and famous, and has been used and promoted worldwide for decades, that the Complainant has not authorized any person to identify itself as “[the] Michelin Girl” in domain names or otherwise, that the Respondent is not commonly known by that name apart from the disputed domain names, that the Respondent was aware of the Complainant's mark when registering the disputed domain names, and that the Respondent uses the Complainant's mark to identify the website linked to the disputed domain names beyond merely informative fair use. The Complainant also asserts that the disputed domain names will generate a larger audience for the Respondent than would have been the case had the disputed domain names not been confusingly similar to a famous mark.

The Complainant having made out the requisite *prima facie* case, the burden of production shifts to the Respondent to bring forth concrete evidence of any rights or legitimate interests which it might have in the disputed domain names. The essence of the Respondent's case is that the disputed domain names are an affectionate family reference to the Complainant's wife and that the associated website constitutes legitimate noncommercial and fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or tarnish the trademark at issue. This is effectively a case in terms of paragraph 4(c)(iii) of the Policy. The Panel notes in passing that paragraphs 4(c)(i) and 4(c)(ii) of the Policy may be discounted because the Respondent is not using the disputed domain names to make an offering of goods and services and no concrete evidence has been produced (beyond the disputed domain names

themselves) that the Respondent is commonly known as “[the] Michelin Girl”. The latter is purely the subject of an assertion in the Response relating to the Respondent’s wife.

The core factors typically considered by panels under the Policy on the topic of legitimate fair use of domain names for noncommercial purposes (i) are the nature of the disputed domain names, (ii) any relevant circumstances beyond the disputed domain names themselves, and (iii) the nature of any commercial activity for which they may be being used (see section 2.5 of the [WIPO Overview 3.0](#)). For completeness, the Panel will also consider the Respondent’s claims in the context of whether it is operating a fan site for the Complainant’s brand, and, if so, whether such fan site supports the Respondent’s claim to rights and legitimate interests in the disputed domain names (see section 2.7 of the [WIPO Overview 3.0](#)).

Starting with the disputed domain names themselves, the key part of both of these are the terms “Michelin Girl”. The Respondent puts forward an explanation for this choice of name as effectively being a family nickname for his wife. However, as previously noted, the Respondent offers no concrete evidence supporting that assertion. In any event, the Respondent’s background explanation would not be apparent to any observer of the disputed domain names themselves, and the Panel considers that, given the fame of the Complainant’s MICHELIN mark, most people looking at the disputed domain names in isolation or as entries in a search engine would expect them to lead to an official site of the Complainant.

The focus in the disputed domain names is firmly on the Complainant’s distinctive MICHELIN mark, which is reproduced in its entirety, functioning in both examples as an adjective to describe the noun “girl”. Even if one allows that some focus falls upon the noun itself, it is of particular significance that the Complainant has a mascot, itself well-known (*Compagnie Générale des Etablissements Michelin v. Joyce Klabbers, TruckParts1919.com BV, supra*) which in English goes by the name “[the] Michelin Man”. The Panel considers it all the more likely therefore that the public would see “[the] Michelin Girl” as in some way associated with “[the] Michelin Man”. For these reasons, the Panel considers that the disputed domain names carry an extremely high risk of implied affiliation. To adopt the words of section 2.5.1 of the [WIPO Overview 3.0](#), the disputed domain names effectively impersonate or suggest sponsorship or endorsement by the trademark owner. This does not suggest that the Respondent’s use of the disputed domain names could be regarded as legitimate or fair within the meaning of paragraph 4(c)(iii) of the Policy, given that the Respondent has received no permission, sponsorship or endorsement from the trademark owner concerned. Accordingly, in the Panel’s opinion, the review of the disputed domain names themselves favors the Complainant’s case.

Looking beyond the disputed domain names, the Panel turns to consider the website content. The Respondent asserts that this is a diary journal of visits to MICHELIN starred restaurants with corresponding photos over a period of years, the intention of which is to collect personal memories. At present, the period covered by the posts on the website is at most December 2019 to November 2021. There are only three posts, which are incomplete, and it appears to the Panel that in fact only one restaurant has been reviewed, in part with dummy text still present, while this review has been copied to all three posts. The Panel has noted in verifying the restaurants concerned from publicly available sources that one of the Respondent’s photographs appears to have been taken from the official website of one of the restaurants (Le Manoir aux Quat’Saisons, United Kingdom)¹. The Panel acknowledges that it is possible that this restaurant is using the Respondent’s photograph rather than the other way around, although that is very unlikely. The Panel therefore doubts the credibility of the Respondent’s submission that all of the photos on its site are original and created by the Respondent and his wife. In short, when weighed in the balance, there is little material available from the website itself which supports the Respondent’s claims in concrete terms. The incomplete nature of the website and the apparent use of a third party image contrary to the Respondent’s assertion, raises the possibility with the Panel that the content may be pretextual.

The Panel notes that the Respondent has produced evidence indicating that the Respondent and his wife have dined at Le Manoir aux Quat’Saisons, United Kingdom. Correspondence from that establishment

¹ With regard to the Panel conducting limited factual research into matters of public record, such as consulting relevant publicly available websites including the website associated with the disputed domain name, see section 4.8 of the [WIPO Overview 3.0](#).

dated “May 5th” (no year is provided) and June 27, 2017 refer to a reservation and arrangements for an overnight stay. This is accompanied by credit card statements dating from October 2021 to April 2022 featuring twelve highlighted items which the Respondent states are visits to Michelin starred restaurants, one of which is listed as Caviar Russe, mentioned on the website associated with the disputed domain names.

Accordingly, it is possible that the Respondent and/or his wife have visited these establishments, that the website is a work in progress and that the Respondent has yet to post the reviews from eleven restaurants. That said, given that the putative reviews are intended to include photographs, menu details and items consumed, the Respondent has produced to the Panel none of the multiple other materials for website content it would be expected to have compiled. All that the Panel has to go on is the credit card statements, and besides these, the Respondent chooses merely to rely upon such partial content as is presently published on the website. In these circumstances, the credit card statements provide little support for the Respondent’s position on their own. The Respondent also produces an image of another blog site, “www.travelandlisa.com” which provides some support, albeit limited, for the notion that the Respondent’s alleged creation of a noncommercial blog in the present case is consistent with a pattern of *bona fide* activity. The substantive difference between the two websites, however, is the absence of a famous trademark associated with “www.travelandlisa.com”, which places it in a very different category from the website under review. On balance, therefore, the Panel finds that the Respondent’s evidence is insufficient to favor its case on this topic.

Even if the website associated with the disputed domain names were regarded as genuine and not pretextual, it would not immediately be clear to visitors that such site is not associated in some way with the Complainant. For example, in one instance, it uses the term “Michelin Girl Guide”, which is highly suggestive of the Complainant’s well-known Guide Michelin. The site purports to provide restaurant reviews, which is exactly what the Complainant itself does in the Guide Michelin, and originally the site even reproduced the Complainant’s rosette-style logo for MICHELIN stars. The Panel can well imagine some Internet users believing that the website for “[the] Michelin Girl” is a creation of the Complainant, for example, a sub-brand introducing an informal and personalized dimension to the Complainant’s well-known guides or reviews, or even the female version of its “Michelin Man”. The potential for a high level of confusion or association can reasonably be expected from the use of such a well-known mark in the context of this particular website.

While the present, incomplete offering may not necessarily be confused with an official site of the Complainant upon careful scrutiny, as the Panel surmises that the Complainant is not in the habit of publishing incomplete and repetitious review sites, the Panel finds that it would be extremely likely to confuse the more casual visitor, even if expressly stated to be noncommercial. In that context, the Panel notes that the Respondent has published a disclaimer, described in the factual background section above. This is in a reasonably prominent position on the site itself, although it appears in grey text and does not provide any link to the official MICHELIN Guide. Of greater importance, though, is the fact that it was only added after the Complaint was filed, presumably at the same time as the stars for the MICHELIN rosette-style logo were replaced with ordinary stars. These amendments are *ex post facto* and cannot be accorded much evidential weight. In all of these circumstances, the Panel finds that those matters arising beyond the nature of the disputed domain names themselves favor the Complainant’s case.

The Panel next turns to the question of commercial use of the website. As section 2.5.3 of the [WIPO Overview 3.0](#) notes, judging whether a respondent’s use of a domain name constitutes a legitimate fair use will often hinge on whether the corresponding website content *prima facie* supports the claimed purpose (e.g., for referential use, commentary, criticism, praise, or parody), is not misleading as to source or sponsorship, and is not a pretext for tarnishment or commercial gain. In the present case, the Parties are agreed that there is no evidence of any active commercial exploitation on the website associated with the disputed domain name. However, as noted above, the Panel considers that there is considerable potential for people to be misled by the nature of the disputed domain names themselves, the title of the website, the presence of restaurant reviews and apparent recommendations, and confusing references to the Complainant’s mark in the content including “Michelin Girl Guide” which do not suggest mere referential use. The Respondent’s disclaimer and removal of MICHELIN logo stars comes too late in the day, and in any

event these aspects are insufficient on their own to dispel the potential for confusion or the risk of implied affiliation arising from the composition of the disputed domain name.

Section 2.5.3 of the [WIPO Overview 3.0](#) goes on to note that commercial gain can include the Respondent gaining or seeking reputational and/or bargaining advantage, even if not readily quantified. The Panel has not identified actual evidence of the Respondent seeking such advantage in the present case. However, the Panel accepts the Complainant's position that such advantage will inevitably inhere to the Respondent's benefit, no matter that the Respondent insists that it does not seek this. The use of the Complainant's well-known mark in association with a creation named "[the] Michelin Girl" is bound to lead to considerable volumes of traffic to the Respondent's blog site arising principally from the notoriety of such mark, and the notoriety of the Complainant's "Michelin Man" mascot. This in itself is likely to lead to notoriety for the Respondent's website that is capable of exploitation in numerous ways. The Panel considers that the possibility of such benefit cannot reasonably have escaped the Respondent's contemplation.

The issue as to whether the site is ultimately intended for commercial gain does not conclusively fall in the Respondent's favor. The Respondent submits that the website is intended for the collection of personal memories, yet the content is not expressed as such. Instead, the website addresses the public actively with reviews and recommendations, not least of which is the placeholder entries for "Lisa's Tip", and the provision of a "Michelin Girl Guide". Importantly, as the Complainant points out, a site which was merely seeking to collect such memories for personal use would not need to deploy the Complainant's mark in the associated domain name(s). Indeed, such a site would not be expected to deploy a famous mark in its title at all. As noted earlier, the use of the Complainant's famous mark in a non-descriptive and non-referential sense to create the persona of "[the] Michelin Girl" typically implies some form of (commercial) sponsorship or endorsement by the mark owner concerned. Accordingly, the fact that there is no overt commercial exploitation on the Respondent's website at present does not directly lead to a finding that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names in the circumstances of this case. The potential benefits which are highly likely to accrue to the Respondent from the confusion that will be generated suggest to the Panel that the use is unfair and not legitimate, even if currently expressed to be noncommercial.

Turning finally to the question of whether the Respondent is operating a fan site, section 2.7.1 of the [WIPO Overview 3.0](#) notes that a respondent's fan site must be active, genuinely noncommercial, and clearly distinct from any official complainant site, adding that there are cases where a respondent claims to have a true fan site but the panel finds that it is primarily a pretext for cybersquatting or commercial activity. Here, there is some doubt that the website is fully active or indeed that it is a fan site *per se*, even if the Respondent has expressed in the Response that he and his wife are fans of the Complainant's work. The website does not reference the Complainant's work in general, as a typical fan site would do. It is its own self-contained restaurant review site and guide, referencing the MICHELIN mark first in its title, secondly in the phrase "Michelin Girl Guide", thirdly in the original use of the MICHELIN rosette-style star logos, and finally in terms of reviews of various MICHELIN starred establishments. In these circumstances, it could not be described as clearly distinct from official complainant websites.

Sections 2.7.2 and 2.7.3 of the [WIPO Overview 3.0](#) deal with the situation of fan site domain names which are identical to a complainant's mark, or which are accompanied by descriptive terms respectively. Domain names not identical to a complainant's mark may give rise to a legitimate interest for use as a noncommercial fan site if such use is considered to be fair in all of the circumstances of the case. However, panels have tended to find that a general right to operate a fan site (even one that is supportive of the mark owner) does not necessarily extend to registering or using a domain name that is identical to the complainant's trademark, particularly as the domain name may be misunderstood by Internet users as being somehow sponsored or endorsed by the trademark owner. In the present case, the disputed domain names are not identical to the Complainant's mark. However, they are so closely linked to it that an affiliation will be inferred by most viewers. Adding the descriptive term "girl" to "[the] Michelin Girl" gives the disputed domain names the same appearance as "[the] Michelin Man", the Complainant's well-known mascot which has been in use for almost 125 years. This strong association with the Complainant's mark means that the disputed domain names may be misunderstood by Internet users as being somehow sponsored or endorsed by the

trademark owner even if not strictly identical to the mark. Accordingly, the Panel considers that even if the Respondent's website were to be treated as a fan site, the use of the term "[the] Michelin Girl" for such site could not be considered fair in all the circumstances of the case.

Ultimately, having reviewed the Respondent's case in rebuttal from multiple angles, the Panel requires to draw the individual strands together and reach a conclusion on the balance of probabilities as to whether the Respondent succeeds on the second element analysis. Having done so, the Panel finds that the Respondent has failed to make a convincing case in terms of paragraph 4(c)(iii) of the Policy. The Respondent's use of the Complainant's mark to identify the website linked to the disputed domain names does not withstand scrutiny and, in the Panel's opinion, goes well beyond merely informative fair use.

Accordingly, the Respondent having failed to rebut the Complainant's *prima facie* case, the Panel finds that it has no rights and legitimate interests in the disputed domain names and therefore that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(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 Complainant's case on this topic principally focuses upon paragraph 4(b)(iv) of the Policy. That paragraph contemplates deliberate diversion of Internet users due to confusion by a respondent for commercial gain. As discussed above, a commercial benefit arising from the use of the disputed domain names, such as increased traffic and notoriety, remains a distinct and indeed likely outcome even though the Respondent argues that the present use is noncommercial. In any event, the examples given in paragraph 4(b) of the Policy are expressed to be non-exclusive. Registration and use in bad faith may be found in the event that the evidence shows that the disputed domain names were registered both in the knowledge of the Complainant's rights and with intent to target these unfairly.

It is clear from the website content that the disputed domain names were registered in the full knowledge of the Complainant's rights. The Respondent does not deny this, although he argues that this was done for the purposes of a noncommercial blog site and to reflect the fact that his wife has a particular family nickname that happens to reference the Complainant's mark. As noted above, no concrete evidence was provided of the latter, apart from the disputed domain names themselves, and no weight can be given to what is a mere unsupported assertion in the Response. Even in the event that such evidence had been forthcoming, the Panel finds it inconceivable that the Respondent could have registered the disputed domain names without any contemplation of the potential confusion that would arise from the use of "[the] Michelin Girl", both on its own in the disputed domain names and when coupled with terms such as the "Michelin Girl Guide" and the

MICHELIN rosette-style star logos on the associated website. No fan of the brand, as the Respondent asserts to be, could reasonably have overlooked this, particularly in light of the Complainant's well-known "Michelin Man" mascot and the strong similarity in style of the name "[the] Michelin Girl". Accordingly, the Panel reasonably infers on the balance of probabilities that the Respondent was aware that the disputed domain names would inevitably target the Complainant's mark unfairly. In that sense, the registration and use of the disputed domain names cannot be considered to be a good faith activity in the circumstances of this particular case.

In addition, the Panel has identified some concerns regarding the credibility of the Respondent's account. According to the Respondent, the website associated with the disputed domain name is supposed to be intended merely for the collection of personal memories while in fact it appears to address the public with a "Michelin Girl Guide" and "Lisa's Tip". Equally, the content is partial and incomplete, and only a single restaurant review is provided across the entries for three restaurants, suggesting it may be pretextual. One of the photographs seems to originate from the restaurant's official website despite the Respondent arguing that all of its content is original. Although the credit card evidence suggests that some twelve restaurants have been visited in the past six or seven months, this is not meaningful on its own. For example, it has not led to any additional blog posts. No materials from the various visits in contemplation of such posts, such as, for example, photographs, tasting notes, menu details or similar were provided by the Respondent in evidence. While another allegedly noncommercial blog site was put forward, its character is wholly different from the website under consideration here. It has the appearance of a personal travel blog and unlike the present example is not referencing a famous mark. Accordingly, as there is a live possibility that the present use of the disputed domain name is merely pretextual, the Panel cannot find, on the balance of probabilities, that the evidence is reasonably consistent with the Respondent's claim of registration and use in good faith.

Finally, the Respondent argues that it has mitigated confusion by publishing a disclaimer on the website associated with the disputed domain names. This can lend support to circumstances suggesting good faith, particularly if a respondent appears to otherwise have a right or legitimate interest in a domain name - see section 3.7 of the [WIPO Overview 3.0](#). However, as indicated above, the circumstances here are altogether murkier and, as section 3.7 goes on to note, where the overall circumstances of a case point to bad faith on the Respondent's part, the mere existence of a disclaimer cannot cure this. In the present case, the Panel adds a further observation that the disclaimer appeared (and the MICHELIN star logos were removed) only after the Complaint was filed. It cannot be said that it was the Respondent's original intention to avoid any confusion which the disputed domain names and website content might reasonably have been expected to generate.

In conclusion, the Panel considers that the usurping of the Complainant's famous mark within the disputed domain names, and for the associated website, on the balance of probabilities and in all of the circumstances of the present case could not be considered to be a good faith activity. In the event that the Respondent wishes to provide a genuinely noncommercial website for the collection of personal memories of various restaurant visits, which does not create a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such site, it is free to do so under an alternative domain name (similar, for example to the descriptive domain name used for the Respondent's other website) *i.e.* one which does not reproduce a famous mark and therefore would not give rise to any unjust benefit due to the notoriety of such mark.

Accordingly, in all the circumstances of this case, the Panel finds that the disputed domain names were registered and are being used in bad faith and accordingly that the Complainant has carried its burden in terms of 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 names <michelingirl.com>, and <themichelingirl.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: June 6, 2022