

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Contact Privacy Inc. /
Alex Wareing, AIWmedia
Case No. D2022-1111

1. The Parties

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

The Respondent is Contact Privacy Inc., Canada / Alex Wareing, AIWmedia, United Kingdom.

2. The Domain Names and Registrar

The disputed domain names <michelincrapper.com> and <michelincrappers.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 April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 2, 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 8, 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 14, 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 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Response was filed with the Center on May 8, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on May 25, 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.

On May 24, 2022, the Complainant submitted an unsolicited supplemental filing as a result of the filing of the Response.

On May 25, 2022, the Center received an email from the Respondent¹ stating that he had not received a copy of the Complainant's supplemental filing and objecting to its admission without an opportunity to review it and make a response if required.

The Center forwarded a copy of the Complainant's unsolicited supplemental filing to the Respondent on May 27, 2022.

As the Complainant's unsolicited supplemental filing could be seen at least in part as responding to a proposal made in the Response, it seemed likely that the Panel would admit it into the record. In light of the Respondent's objection and apparent failure to have received a copy of the unsolicited supplemental filing, the Panel issued Procedural Order No. 1 on May 30, 2022:

- (a) inviting the Respondent to submit by June 4, 2022 any supplemental filing setting out the Respondent's objections to receipt of the Complainant's unsolicited supplemental filing and any matters arising from that unsolicited supplemental filing; and
- (b) extending the due date for the Panel's decision to June 16, 2022.

On June 3, 2022, the Respondent submitted a supplemental filing in accordance with Panel Order No 1, copying it in accordance with the Rules to the Complainant's representative.

4. Factual Background

According to the Complaint, the Complainant was incorporated in France in 1889. It and other members of the Michelin corporate group manufacture and distribute tyres for cars, trucks, motorcycles and planes around the world.

The Complainant (or a member of its corporate group) began publishing an annual guide, the Michelin Guide, in 1900 directed to travel and gastronomy (at that time throughout Europe) to encourage drivers to take road trips. The annual Michelin Guides included, amongst other things, anonymous restaurant reviews. In 1926, the Complainant began awarding a single star in its Michelin Guides to restaurants of particular quality. In 1931, the rating system was expanded to a hierarchy of zero, one, two and three stars. The criteria for ranking have been published since 1936 with one star indicating "a very good restaurant", two stars "excellent cooking that is worth a detour" and three stars "exceptional cuisine that is worth a special journey".

The Complainant says the Michelin Guide now rates over 30,000 establishments in over 30 different territories across the world. More than 30 million Michelin Guides have been sold.

The Complainant registered the domain name <michelin.com> in 1993 which it uses to host its main website. It uses the sub-domain <guide.michelin.com> to promote its Michelin Guide or, in French, Guide Michelin.

In 2019, the Complainant's corporate group had annual revenues of EUR 24.1 billion.

¹ As the first-named Respondent is the privacy service used by the second-named Respondent, the Panel will refer to the second-named Respondent as the Respondent for simplicity unless the contrary is required.

The Complainant has the expected social media accounts including 1.2 million subscribers to its Instagram account, 409,000 followers on Facebook, 342,000 followers on Twitter and 418,000 followers on Wechat and Weibo.

In 2019, “the Michelin brand” was ranked 8th among the world’s 100 most reputable brands in the 2019 *GlobalRepTrack* survey, being ranked No. 1 in the automotive industry.

The Complaint includes evidence that the Complainant has many registered trademarks around the world. For the purposes of this Complaint, it relies particularly on:

- (a) European Union Trademark No. 013558366, MICHELIN, which has been registered with effect from December 2014 in respect of a range of goods and services in International Classes 9, 35, 38, 39, 41 and 42 including in particular the publication of newspapers, magazines, books, journals, guidebooks and geographical maps; and
- (b) The corresponding United Kingdom registration, UK00913558366.

The Respondent registered both disputed domain names on November 6, 2021.

The disputed domain name <michelincrappers.com> resolves to a website which appears to provide reviews or ratings of the toilets or bathrooms at restaurants. The landing page features a “logo” of a gold toilet next to the words “Michelin Crappers” in large gold type. There is also a headline “The UK’s finest restaurant toilets. Rated.” The rating system accords the bathrooms a rating of One Golden Crapper, Two Golden Crappers, Three Golden Crappers or The Steaming Turd. According to the Respondent’s website, a bathroom awarded the last rating should be avoided.

In the review of Moor Hall included in the Complaint, the Respondent has awarded the bathroom one golden crapper. This rating appears alongside the two star rating awarded by the Michelin Guide and the five rosettes awarded by the Automobile Association.

The disputed domain name <michelincrapper.com> redirects to the website to which the other disputed domain name resolves. According to the Response, in the 30 days up to May 4, 2022, there were 84 visitors to the website.

The Respondent also operates an Instagram account in get-up similar to the website. At the time the Complaint was filed, there were 7 posts and 8 followers. The various reviews on the Instagram account include a link back to the original review on the website and a number of hashtags including #michelinstar, #toiletreview and #michelincrappers.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain names, the Complainant must demonstrate each of the following:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Complainant's unsolicited supplemental filing

As noted above, the Complainant has submitted an unsolicited supplemental filing.

Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case.

Where unsolicited supplemental filings are admitted, it is usually because the material corrects some error or addresses something raised in a Response which could not reasonably have been anticipated or which was not otherwise appropriate to deal with until a respondent's position on a particular point was clear.

In his Response, the Respondent advanced a positive defence of legitimate satire (or parody) and offered as a gesture of goodwill to amend the website to which the disputed domain names resolved by:

- (1) removing the reference to "Michelin Guide" and the star shaped logos in the reviews; and
- (2) including a prominent disclaimer in the footer stating that the site is not affiliated with or endorsed by the Complainant.

The Respondent objects to the admission of the Complainant's unsolicited supplemental filing as contrary to the Rules and also clearly designed to subvert due process through the failure to copy the supplemental filing to the Respondent. Even at this time, the Complainant has not offered an explanation for its failure to serve the unsolicited supplemental filing on the Respondent.

Nonetheless, the Panel considers it appropriate to admit the Complainant's unsolicited supplemental filing as it responds to both the gesture of goodwill offer and the positive defence advanced by the Respondent. The Panel shares the Respondent's concern with the Complainant's failure to serve the unsolicited supplemental filing on the Respondent. However, the Respondent has been given an opportunity to respond and has exercised that right.

The Panel therefore admits both the Complainant's unsolicited supplemental filing and the Respondent's supplemental filing into the record of the proceeding.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain names are identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain names must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks for MICHELIN referred to in section 4 above. It does not appear to be seriously in dispute that the Complainant's trademark is very well-known, although the Respondent claims that the Complainant's Michelin Guides are well-known for food and restaurant reviews only, not toilet reviews.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain names to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant,

may fall for consideration under the other elements of the Policy. *E.g.* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, both disputed domain names consist of the Complainant’s registered trademark and the terms “crapper” or “crappers”. As the Respondent contends, the word “crapper” is at the least slang in English for toilet or, perhaps, bathroom. As this requirement under the Policy is essentially a standing requirement, therefore, the addition of such terms to the Complainant’s trademark does not preclude a finding of confusing similarity. See *e.g.* [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains clearly recognisable, both visually and aurally, within both disputed domain names.

Accordingly, the Panel finds that the Complainant has established that both disputed domain names are confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain names:

- (i) before any notice to the Respondent of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain names, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the Respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the Respondent under this head and an evidential burden will shift to the Respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See *e.g.* [WIPO Overview 3.0](#), section 2.1.

The Respondent registered both disputed domain names long after the Complainant began using its trademark and at least several years after the Complainant had registered the trademarks it particularly relies on in this proceeding.

It is not in dispute between the parties that the Complainant has not authorised the Respondent to use the disputed domain names. Nor is the Respondent affiliated with it.

The disputed domain names are not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain names could be derived.

These matters go a long way towards establishing the required *prima facie* case under the Policy. The Respondent contends however that, owning many copies of the Complainant's guides and regularly using the Complainant's digital products including enjoying eating at restaurants recommended in the Michelin Guide, he and his wife came up with the idea of a satirical website rating the bathrooms at high-end restaurants as a personal project:

"Such establishments are often overly earnest and therefore ripe for satire. The site was to be a tongue-in-cheek homage to fancy restaurant toilets for our friends to read."

The Respondent further explains:

"The word Michelin was not selected to "exploit goodwill" or "mislead users" but instead because the word Michelin has become a genericised trademark or proprietary eponym and has become a generic term synonymous with high-end food and dining. If someone describes a meal as "Michelin standard" they are remarking on a high quality or memorable food, not necessarily suggesting it should be reviewed and included in the complainant's travel guide."

The Respondent points out that there is no advertising or commercialisation on the website and contends that he has no intention ever to generate income or be commercial in any way. The Panel accepts these matters and rejects the Complainant's speculations about what use might be made in the future. If there were a change in the nature of the use of the disputed domain names in the future that could reasonably be expected to provide a legitimate basis for refiling. See e.g. [WIPO Overview 3.0](#), section 4.18.

The Panel understands, therefore, that the Respondent is essentially claiming to be making a legitimate fair use of the disputed domain names without intent for commercial gain to misleadingly divert consumers or tarnish the Complainant's trademark.

Numerous panels have accepted that use of a domain name for purposes of a genuine and noncommercial parody can qualify as a right or legitimate interest under paragraph 4(c)(iii). See e.g. recently *Johnson & Johnson v. Domain Protection Services, Inc., c/o Whois Agent / Danielle Baskin, Danielle Baskin*, WIPO Case No. [D2021-0947](#) (<brandedbandaids.com>) and *Scrum Alliance, LLC v. Contact Privacy Inc. Customer 1247644697 / Matthew Barcomb* WIPO Case No. [D2021-2932](#) (<scrumsalliance.org>) and the decisions referred to in those cases. In the latter case, the clear and strong parodic content of the website, which was plainly highly critical of the complainant, was found to outweigh the risk of impersonation through the close similarity of the domain name to the complainant's trademark.

Although the Respondent has claimed a satirical purpose rather than a parodic purpose, the Panel considers much the same considerations apply.² To qualify as a satirical purpose like a parody, the use must convey two contradictory messages simultaneously – the use must evoke or call to mind the original but at the same time communicate that it is not the original but instead a parody or satire.

It is important to bear in mind also that the use must be "fair" which involves a qualitative assessment.

² In the United States of America, the Supreme Court distinguished parody from other forms of criticism such as satire in *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 560 (1994) in the context of the fair use defence under that country's copyright law. In cases where both parties were operating in the United States, Panels have similarly required the parodic purpose to target the goods or services offered by the trademark owner by reference to the trademark. See e.g. *A & F Trademark, Inc. and Abercrombie & Fitch Stores, Inc. v. Justin Jorgenson*, WIPO Case No. [D2001-0900](#). It is less clear that, outside the United States, ordinary usage or even literary / artistic criticism through domain names (and its corresponding websites) draws such precise distinctions for the purposes of the Policy.

In a number of earlier decisions, panels have applied a two-step approach. First, the disputed domain name must itself convey this dual contradictory meaning. If so, the second stage is to consider whether the parodic or, here, satiric, purpose is conveyed by the content of the website to which the disputed domain name resolves. The first decision propounding the test appears to have been *A & F Trademark, Inc. and Abercrombie & Fitch Stores, Inc. v. Justin Jorgenson*, WIPO Case No. [D2001-0900](#). In other decisions, such as the *Scrum Alliance* decision, above, however, the defence has been successfully invoked even though the first step is not satisfied.

The Respondent contends that the inclusion of “crapper” as the slang word for toilet clearly indicates that the website is satirical and humorous in nature. The Panel cannot exclude the possibility that some English-language speakers might realise that the juxtaposition of the slang term with the valuable MICHELIN trademark is an unlikely combination for a brand owner to adopt and so question the purpose of the linked website. On the other hand and bearing in mind the international accessibility of the website, many people may very well not make that connection. At the very least, many people are likely to wonder whether and if so what connection there is with the Complainant.

(The Respondent has pointed out the limited number of visits to the site and, as many of the visits in the month before the Complaint was filed were from France or Europe, speculated that many of those were associated with the Complainant. Nonetheless, the website remains accessible to anyone with Internet access so the issue is not who or how many people have actually accessed the website but who might potentially do so.)

Going to the website, as the Respondent contends, there is no obvious commercial intent such as advertising links. There is, however, no clear and prominent disclaimer of association with the Complainant. Apart from the subject matter, toilet reviews, there is nothing obviously parodic or satirical about the website. In a post-modern world, it cannot be said that a website purporting to rate toilets and bathrooms is not something likely to be a legitimate candidate for a review site. For example, there are, or have been, mobile apps for such purposes as well as locator applications.

Nor is there anything particular about the subject matter which would be clearly and immediately understood by an Internet user as obviously not associated with the Complainant and so intended as a parody or satirical comment. Confusion about the association or relationship with the Complainant is all the more likely since, as noted above, at least some of the reviews include the Respondent’s bathroom rating alongside the Complainant’s Michelin Guide rating and the Automobile Association’s rating.

Further, contrary to the Respondent’s view, the word “Michelin” is not a genericised term meaning something like rating system. Nor is it a generic term for high-end food and dining. The Panel notes that use of the term “Michelin” for such an alleged generic purpose would fall outside the narrow definition of “parody” apparently accepted in the United States. Further still, MICHELIN is a registered trademark with a very strong reputation. A proceeding under the Policy is generally not the appropriate place to challenge that. Nor does the material advanced by the Respondent come close to establishing the claim. It may also be noted that, while the award of one or more Michelin Star/s may indicate that the establishment has achieved a certain level of quality (according to the Complainant’s assessors) and the public may well accept those rankings as reliable indicators, the Michelin Guide also includes many establishments which have a “zero” rating.

The Respondent’s argument that the Complainant’s reputation is with food and dining and not bathrooms and toilets is also unavailing. As the Respondent’s claim that the term MICHELIN is a genericised term indicates, the Respondent is using the term because of the reputation the Complainant has established through its Michelin Guides as reliably indicating quality. The Respondent is seeking to take advantage of that reputation for his own purposes.

The noncommercial nature of the website is a strong factor in the Respondent’s favour. However, the Complainant as the trademark owner can legitimately consider the use of its trademark in connection with

toilet or bathroom reviews is unwarranted and tarnishes its trademark³ especially as the Complainant has played no role in setting the criteria the Respondent uses for his rankings. Moreover, tolerating such use potentially leads to the genericide of the Complainant's trademark.

Having regard to the nature of the disputed domain names and the content of the website, therefore, the Panel considers the Respondent has failed to rebut the *prima facie* case that he has no rights or legitimate interests in the disputed domain names under the Policy. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

D. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain names have been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

There is no doubt that the Respondent was well aware of the Complainant's trademark when he registered the disputed domain names. Apart from anything else, the Respondent has frankly admitted owning and using the Complainant's Michelin Guide products before registering the disputed domain names.

In *Bayer AG v. FlokiNET Ltd WhoisProtection, FlokiNET Ltd*, WIPO Case No. [D2020-2907](#), the panelist found registration and use in bad faith even accepting that the respondent had genuinely registered the domain name for the purposes of a parody/criticism website. The panelist explained:

"even if the Panel were to accept that the Respondent genuinely registered the disputed domain name for the purposes of a parody / criticism website, the Respondent has nonetheless used for its website a domain name that is likely to make a misrepresentation to users that any associated website is connected with the Complainant. As the panel put it in *Compagnie Generale des Matieres Nucleaires v. Greenpeace International*, WIPO Case No. [D2001-0376](#), the disputed domain name would "catch by surprise" visitors intending to reach the Complainant's website. In the Panel's view, this constitutes registration and use in bad faith."

A considerable factor in the panelist reaching that conclusion was the close resemblance of the domain name in that case, <cropsciencebayer.com> to the complainant's trading name, Bayer Crop Science. As a result, the panelist considered that the right to legitimate criticism yielded to the impermissible risk of user confusion through impersonation.

The present case is not on all fours with that decision. Nonetheless, the reasons leading to the rejection of the Respondent's reliance on the "fair use" defence in this proceeding lead to the same conclusion.

Indeed, it appears from the Response that the Respondent registered the disputed domain names in the mistaken belief that MICHELIN is a generic term for some sort of rating system or high-end food and dining. That is, the Respondent registered the disputed domain names seeking to take advantage of the reputation the Complainant has built up in its trademark MICHELIN, particularly through its Michelin Guides, as a reliable indicator or rating of quality. The Panel finds that registration, in circumstances where the defence of rights or legitimate interests through fair use has failed, constitutes registration in bad faith under the Policy.

³ One definition of "tarnishment" is a use of the mark so as to damage its value as an identifier, i.e. to reduce the economic value of the mark's good will. See e.g. *CFA Properties, Inc. v. Domains By Proxy, LLC and John Selvig*, WIPO Case No. [D2012-1618](#).

The subsequent use of the disputed domain names in the manner indicated and where the “fair use” defence has been found not to apply constitutes use in bad faith under the Policy.

For completeness, the Panel does not find the Respondent’s offer to remove the Michelin Star ratings from his reviews an admission of bad faith. In context, the Respondent’s proposal was plainly made without admission of liability or wrongdoing.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <michelincrapper.com> and <michelincrappers.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: June 16, 2022