

## **ADMINISTRATIVE PANEL DECISION**

### **Compagnie Générale des Etablissements Michelin v. John Murphy Case No. D2023-1205**

#### **1. The Parties**

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

The Respondent is John Murphy, United States of America (“United States” or “US”)

#### **2. The Domain Name and Registrar**

The disputed domain name <michelinus.com> is registered with Wild West Domains, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2023. On March 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 27, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on May 10, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

The Complainant is a tire manufacturing company with headquarters in Clermont-Ferrand, France. The Complainant also publishes travel guides, hotel and restaurant guides, maps, and road atlases.

The Complainant, who is present in more than 170 countries, has been using the MICHELIN trademark throughout the world for more than a century.

The Complainant owns numerous trademark registrations for MICHELIN including for example European Union trademark MICHELIN No. 004836359, registered on March 13, 2008, covering goods and services in classes 1, 3, 5, 6, 7, 8, 9, 11, 12, 14, 16, 17, 18, 20, 21, 24, 25, 26, 28, 34, and 39, US trademark MICHELIN (figurative) No. 3684424, registered on September 15, 2009, covering goods in classes 3, 5, 7, 8, 9, 11, 12, 16, 17, 20, 21, 24, 25, 27 and 28, and US trademark MICHELIN, No. 3329924, registered on November 6, 2007, and covering services in class 39.

In addition, the Complainant owns several domain names that reflect its trademarks, including <michelin.com>.

The disputed domain name was registered on February 15, 2023. The disputed domain name does not resolve to an active webpage but has been used as email address to send emails to third parties in which the Respondent impersonated the Complainant.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant's assertions may be summarized as follows:

(i) Identical or confusingly similar

The Complainant states that the disputed domain name is confusingly similar to the Complainant's MICHELIN trademark, since they contain the mark in its entirety with the addition of the country code for the United States "us" as suffix.

(ii) Rights or legitimate interests

The Complainant further asserts that the Respondent is not affiliated with the Complainant in any way, nor has he been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said mark. Furthermore, the Respondent has no prior rights or legitimate interest in the disputed domain name, nor can the Respondent assert that it has made, or that is currently making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain and in order to misleadingly divert consumers, or to tarnish the trademark at issue, in accordance with paragraph 4(c)(iii) of the Policy. On the contrary, the Respondent has used the disputed domain name in order to fraudulently contact third parties by impersonating the Complainant, and by *inter alia* asking them to pay attached invoices.

(iii) Registration and use in bad faith

According to the Complainant, the disputed domain name was registered and is being used in bad faith. The Complainant is well-known throughout the world making it implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name.

The Complainant further argues that the Respondent has used the disputed domain name in bad faith to send emails that *inter alia* by impersonating an employee of the Complainant has requested the recipient to pay allegedly outstanding invoices.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademark because it contains the Complainant's registered trademark MICHELIN in its entirety as well as the country code for the United States "us". The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See Section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

### **B. Rights or Legitimate Interests**

According to the Complaint, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark.

Further, given the circumstances of this case, the Panel is of the opinion that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this, and the way the Respondent has been and is using the disputed domain name (see below in the Section 6.C) does not support a finding of rights or legitimate interests.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

### **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has 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 the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the extent of use and reputation of the Complainant's trademark MICHELIN, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's marks. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name he chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

Also, the Respondent has used the disputed domain name actively to send emails that purported to be from the Complainant, and in which at least in one case the recipient was requested to pay an allegedly outstanding invoice. Such use clearly evidences that the Respondent has been using the disputed domain name for a phishing scheme to deceive third parties by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's activities. This constitutes bad faith use under the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Noting that the disputed domain name incorporates a well-known trademark, that no response has been filed, that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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, <michelinus.com>, be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: May 31, 2023