

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. Sean Keane  
Case No. D2023-5366

### **1. The Parties**

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

Respondent is Sean Keane, Canada.

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

The disputed domain name <theroadtomichelin.com> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 27, 2023. On December 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 27, 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 Complainant on January 4, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on the same day.

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 Respondent of the Complaint, and the proceedings commenced on January 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2024. Respondent sent an email communication to the Center on January 4, 2024. Accordingly, the Center informed the Parties of its commencement of Panel appointment process on February 5, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on February 7, 2024. 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**

Complainant is a company organized under the laws of France that is active in the tire industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand MICHELIN, including, but not limited, to the following with protection for Canada:

- word mark MICHELIN, Canadian Intellectual Property Office (“CIPO”), registration number: TMA629284, registration date: January 4, 2005, status: active.

Also, Complainant has demonstrated to own various domain names relating to its MICHELIN trademark, inter alia, since 1993 the domain name <michelin.com> as well as since 2000 the domain name <michelinroad.com>, of which the first resolves to Complainant’s main website at “www.michelin.com”, used to promote Complainant’s tires and related products and services internationally.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Canada. The disputed domain name was registered on August 29, 2022. By the time of rendering this Decision, the disputed domain name does not resolve to any relevant content on the Internet, but to a “blank page”. Moreover, Complainant has shown that by the time of filing the Complaint, the disputed domain name resolved to the Registrar’s default page.

A cease-and desist letter of September 7, 2022, sent by Complainant to Respondent through the Registrar’s online form in order to settle this matter amicably, remained unanswered.

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

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, Complainant contends to be the “number 1” company worldwide for tires, with presences in 171 countries, more than 124,000 employees as well as 117 tire manufacturing facilities and sales agencies in 26 countries, including in Canada. Since 2001, Complainant has developed digital services for travel assistance. Following its presence in the market for maps and tourist guides with the Michelin Guide and Michelin maps, the Michelin Group decided to offer under the name “ViaMichelin” a wide range of services to both the general public and the business sector including mapping, route plans, online hotel booking, Michelin Guide hotel, restaurant and seven tourist recommendations, as well as weather and traffic reports. Complainant’s main website for its “ViaMichelin” services is available at “www.viamichelin.com”.

Complainant submits that the disputed domain name is confusingly similar to its MICHELIN trademark, as it reproduces the latter in its entirety, associated with the generic terms “the road to”. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is neither affiliated with Complainant in any way nor has it been authorized by Complainant to use and register its MICHELIN trademark, or to seek registration of any domain name incorporating said trademark, (2) Complainant’s registration of its MICHELIN trademark precedes the registration of the disputed domain name for years, (3) the disputed domain name resolves to a blank page and Respondent has failed to show any intention of noncommercial or fair use of the disputed domain name. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith

because (1) it is implausible that Respondent was unaware of Complainant when it registered the disputed domain name, as (a) Complainant's MICHELIN trademark significantly predates the registration of the disputed domain name, (b) Complainant is well-known across the world, including in Canada, where Respondent is located, and (c) the disputed domain name is composed of Complainant's entire MICHELIN trademark and the terms "theroadto" which directly target Complainant's official domain name, (2) the disputed domain name is passively held by Respondent, but reproducing a famous trademark therein such as MICHELIN in order to attract Internet users to an inactive website cannot be regarded as fair use or use in good faith, and finally (3) it is more likely than not, that Respondent's primary motive in registering and using the disputed domain name was to capitalize on or otherwise take advantage of Complainant's trademark rights, through the creation of initial confusion.

## **B. Respondent**

Respondent did not formally reply to Complainant's contentions but sent an informal email correspondence to the Center on January 4, 2024, wondering why personal information was being shared to a third party and why the Notice of Registrant Information provided by the Registrar was being sent to Respondent. No further contentions on the substance of the matter were submitted.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's formal default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

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

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

Complainant has shown rights in respect of the MICHELIN trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of Complainant's MICHELIN trademark is reproduced within the disputed domain name, added by the terms "the", "road" and "to". Accordingly, the disputed domain name is confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, "the", "road" and "to") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and Complainant's MICHELIN mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel, therefore, finds the first element of the Policy has been established.

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

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

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. In this context, the Panel has well noted that Respondent so far obviously has neither used the disputed domain name for a bona fide offering of goods or services nor for a legitimate noncommercial or fair purpose, but rather passively held it instead. UDRP panels, however, have found that the mere registration of a domain name, even one that is comprised of a confirmed dictionary word or phrase, does not by itself automatically confer rights or legitimate interests therein. [WIPO Overview 3.0](#), section 2.10.1.

The Panel, therefore, finds the second element of the Policy has been established.

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

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

Also, panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of Complainant’s MICHELIN trademark and the composition of the disputed domain name (which reproduces such trademark entirely, simply added by the terms “theroadto” pointing somehow at Complainant’s business sector of travel assistance (maps and guides)) rounded up by Respondent’s keeping silent on Complainant’s cease-and-desist-notice, as well as on the Complaint, and so concludes that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel, therefore, finds that Complainant has established the third element of the Policy, too.

## **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, <theroadtomichelin.com>, be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: February 13, 2024