

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Yasin Yürür
Case No. D2023-5376

1. The Parties

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

The Respondent is Yasin Yürür, Türkiye, self-represented.

2. The Domain Name and Registrar

The disputed domain name <michelinuptis.com> is registered with Isimtescil Bilişim A.Ş. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 28, 2023. On December 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 29, 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 (Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 14, 2024.

On January 2, 2024, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On January 3, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 both in English and Turkish, and the proceedings commenced on February 15, 2024.

In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2024. The Respondent sent email communications to the Center on January 3, 2024, as well as on February 5 and 16, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on March 12, 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

The Complainant is a long-standing and widely known French company that is specialized in tire manufacturing for the automotive industry. The Complainant's group of companies is active globally in more than 170 countries with more than 124,000 employees (Annex 3 to the Complaint).

The Complainant has developed a puncture-proof tire system, which is promoted by the Complainant under the term "Uptis", which stands for "Unique Puncture-Proof Tire System".

The Complainant is the owner of the trademark MICHELIN, which is registered in a large number of jurisdictions, including in Türkiye, where the Respondent is reportedly located. Among others, the Complainant is the registered owner of the International Trademark No. 771031, registered on June 11, 2001, for MICHELIN, covering protection for various goods and services (Annex 4 to the Complaint).

Furthermore, the Complainant holds and operates its main company website at "www.michelin.com" (Annex 5 to the Complaint).

The disputed domain name was registered on March 26, 2022.

Based on the case file, the disputed domain name previously resolved to an online market website offering the disputed domain name for sale to an instant purchase price of USD 25,000 (Annex 1 to the Complaint). At the time of the Decision, the disputed domain name resolves to a landing page indicating that the disputed domain name has yet not been properly configured.

On September 19, 2022, the Complainant sent a cease-and-desist letter to the Respondent (followed by various reminders) and tried to solve the dispute amicably by requesting a transfer of the disputed domain name (Annex 6 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, the Center received email communications from the Respondent on January 3, 2024, as well as on February 5 and 16, 2024.

In his email communications, the Respondent indicated that the disputed domain name is passively held, so there is no bad faith. Also, the Respondent blames the Complainant for not having registered the disputed domain name itself. In addition, the Respondent alleges that the disputed domain name can also be understood as "michel in upthis" or "michel in uptis" (the Respondent included two different versions of this deconstruction in its email communications of February 5 and 16, 2024, respectively).

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Turkish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Complainant has no knowledge of Turkish and that requested translation would be time and costs intensive.

The Respondent did not make any submissions with respect to the language of the proceeding, even though communicated by the Center in Turkish and in English. In addition, the Respondent provided email communications to the Center on January 3, 2024, and on February 5, 2024 in English language only, while the communication of February 16, 2024, was communicated in both Turkish and English, all of which indicates that the Respondent has knowledge of English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel believes that the Respondent will not be prejudiced by a decision being rendered in English, and determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Issues

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.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

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 the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The 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 the MICHELIN mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here the term "uptis", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the 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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant statement or evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, the Respondent's allegation that the disputed domain name may also be used descriptive in the meaning of "michel in upthis" or "michel in uptis" lacks any reasonable basis. Such composition of terms is not common, bears no ordinary or dictionary meaning when read together, and there is no use of the disputed domain name in association with such words so as to give any credibility of such claim. On the contrary, the Panel also notes that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. Here, the nature of the disputed domain name (consisting of the entirety of the Complainant's trademark in addition with a fanciful term referring to one of the Complainant's products) effectively suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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

C. Registered and Used in Bad Faith

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its MICHELIN trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name, which is comprising the Complainant's MICHELIN trademark entirely in addition with the term "uptis", an abbreviation of the name of one of the Complainant's products, to target the Complainant. Even when entering the deconstructed versions alleged by the Respondent (namely, "michel in upthis" or "michel in uptis") in an Internet search engine, the first results provided are in connection with the Complainant and its product. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

As regards bad faith use of domain names, which have yet not been actively used, panels have found that the non-use of a domain name 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 panels 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.

In this regard, the Panel notes the reputation of the Complainant's MICHELIN trademark, and the inherently misleading composition of the disputed domain name, which comprises the entirety of the Complainant's MICHELIN trademark plus the term "uptis", which is a fanciful name used by the Complainant for its developed puncture-proof tire system, and finds 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.

Particularly, the Panel finds the Respondent's allegation that the disputed domain name shall be understood as "michel in upthis", which obviously lacks any reasonable meaning, as not convincing and unfounded. Rather, the fact that the Respondent offered for sale the disputed domain name to an instant purchase price of USD 25,000, which most likely far exceeds the Respondent's out-of-pocket costs directly related to the disputed domain name, clearly demonstrates the Respondent's opportunistic bad faith to utilize the disputed domain name for illegitimate commercial purpose.

As regards the Respondent's contention regarding the availability of the disputed domain name and the Complainant's responsibility to register the disputed domain name, the mere availability of a domain name does not vest rights or legitimate interests in a registrant, particularly under the circumstances of this proceeding where the Respondent has evidently sought to profit from the resale of the confusingly similar disputed domain name. Moreover, paragraph 2 of the UDRP sets forth an affirmative duty on registrants of domain names that such registration will not violate the rights of any third party. See, for example, *Valvoline Licensing and Intellectual Property LLC v. Jim Lineberger*, WIPO Case No. [D2023-2589](#), and *PrideStaff, Inc. v. Caleb Burke, Burke Construction*, WIPO Case No. [D2021-4363](#).

Taking all facts of the case into consideration, the Panel is convinced that this is a typical cybersquatting case, which the UDRP was designed to stop.

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

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <michelinuptis.com>, be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: March 26, 2024