

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. Domain Administrator,  
Fundacion Privacy Services LTD  
Case No. D2022-2886

### **1. The Parties**

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

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

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

The disputed domain name <wwwmichelinwiper.com> (the “Disputed Domain Name”) is registered with Media Elite Holdings Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 5, 2022. On August 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 9, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 August 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 13, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on November 8, 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 leading tire company worldwide dedicated to enhancing its clients' mobility, and sustainability, designing and distributing the most suitable tires, services and solutions for its clients' needs. Since 1889, the Complainant has innovated constantly to facilitate the mobility of people and goods. Further the Complainant provides digital services, maps and guides to help enrich trips and travel and make them unique experiences. To this end, the Complainant launched the Michelin Guide in 1920 to help motorists plan their trips, and in 1926 the Michelin Guide began to award stars for fine dining establishments. Headquartered in Clermont-Ferrand, France, the Complainant is present in 171 countries, has 114,000 employees and operates 69 tire manufacturing facilities worldwide.

The Complainant and its MICHELIN trademark enjoy a worldwide reputation. The Complainant owns the following registered trademarks, including, but not limited to: MICHELIN (stylized), United States of America Registration No. 3,684,424, registered on September 15, 2009, in international classes 3, 5, 7, 8, 9, 11, 12, 16, 17, 20, 21, 24, 25, 27 and 28. In addition, the Complainant owns numerous trademark registrations in jurisdictions worldwide, including, but not limited to: MICHELIN, Panamanian Trademark No. 39677, registered on August 4, 1986, in international class 12; MICHELIN, European Union Trade Mark No. 013558366, registered on April 17, 2015, in international classes 9, 35, 38, 39, 41 and 42; MICHELIN, International Trademark No. 771031, registered on November 6, 2001, in international classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42 (designating, *inter alia*, The Russia Federation, Spain, China, Egypt and Vietnam), (hereinafter collectively referred to as the "MICHELIN Mark").

The Disputed Domain Name was registered on May 13, 2022, and initially resolved to a landing page with pay-per-click (PPC) third party sponsored hyperlinks, some of which are related to the Complainant's services.<sup>1</sup> Further, the Complainant noticed that an email server is configured on the Disputed Domain Name, representing a security risk to the Complainant's customers.

In an effort to resolve this matter amicably, the Complainant sent on May 17, 2022, a cease-and-desist letters to the Respondent, asserting its trademark rights, asking the Respondent to cease the use of the Disputed Domain Name, and to transfer it to the Complainant. The Respondent replied to the letters by stating that it had not infringed the Complainant's MICHELIN Mark, and therefore refused to comply with the Complainant's request.

#### 5. Parties' Contentions

##### A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's MICHELIN Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name was registered and is being used in bad faith.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

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<sup>1</sup> As of the writing of this Decision, however, the Disputed Domain Name resolves to a landing page which states that it is a dangerous scam page.

## B. Respondent

The Respondent did not submit a formal response, although the Respondent sent informal email communications to the Complainant in response to the Complainant's cease-and-desist letters, denying trademark infringement.

## 6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)(i-iii)):

- (i) the Disputed Domain Name is 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 Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the MICHELIN Mark.

It is uncontroverted that the Complainant has established rights in the MICHELIN Mark based on its years of use as well as its registered trademarks for the MICHELIN Mark in the United States of America and numerous jurisdictions worldwide. The consensus view is that the registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. Thus, the Panel concludes that the Complainant has rights in the MICHELIN Mark.

The Disputed Domain Name consists of the MICHELIN Mark in its entirety, preceded by the letters "www",<sup>2</sup> followed by the term "wiper", and then followed by the generic Top-Level Domain ("gTLD") ".com". Where the trademark is recognizable in the Disputed Domain Name, the addition of the letters "www" and the term "wiper" does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8 ("where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element").

Finally, the addition of a gTLD such as ".com" in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Disputed Domain Name is confusingly similar to the Complainant's MICHELIN Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

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<sup>2</sup> The term "www" is the subdomain, called the "world wide web" of the domain name and is followed by a dot, which is not the case here. Thus, it could be said that the Disputed Domain Name has been subject to typosquatting, where such conduct seeks to wrongfully take advantage of errors by users in typing domain names into their web browser's location bar.

## B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

There is no evidence in the record suggesting that the Respondent has rights or legitimate interests in the Disputed Domain Name. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use the Complainant's MICHELIN Mark. The Complainant does not have any business relationship with the Respondent, nor is the Respondent making a legitimate noncommercial or fair use of the Disputed Domain Name. Although the Respondent in response to the Complainant's cease-and-desist letters denied "trademark infringement", based on the use made of the Disputed Domain Name to initially resolve to a landing page with PPC hyperlinks, and later to resolve to a landing page on which an email server is configured on the Disputed Domain Name, representing a security risk to the Complainant's customers, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name. Therefore, the Panel finds that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

## C. Registered and Used in Bad Faith

This Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be sufficient evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#). While the Respondent in response to the Complainant's cease-and-desist letters denied "trademark infringement", based on the circumstances here, the Panel finds that the Respondent registered and used the Disputed Domain Name in bad faith to target the Complainant's MICHELIN Mark for commercial gain.

Second, the Panel finds that the Respondent had actual knowledge of the Complainant's MICHELIN Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. Based on the widespread use of the MICHELIN Mark worldwide, it strains credulity to believe that the Respondent had not known of the Complainant or its MICHELIN Mark when registering the Disputed Domain Name. The Respondent's awareness of the Complainant and its MICHELIN Mark additionally suggests that the Respondent's decision to register the Disputed Domain Name was intended to cause confusion with the Complainant's MICHELIN Mark and to disrupt the Complainant's business. Such conduct indicates that the Respondent registered and used the Disputed Domain Name in bad faith.

Third, the Respondent attracts users for commercial gain by displaying third party PPC links on the landing page to which the Disputed Domain Name initially resolved. The use of a confusingly similar domain name to display third party sponsored hyperlinks and allegedly collect click-through fees is evidence of bad faith under paragraph 4(b)(iv) of the Policy. Thus, as here, the Panel concludes that such conduct constitutes bad faith. See *Fox News Network, LLC v. Warren Reid*, WIPO Case No. [D2002-1085](#); *Volvo Trademark Holding AB v. Unasi, Inc.*, WIPO Case No. [D2005-0556](#); *Lewis Black v. Burke Advertising, LLC*, WIPO Case No. [D2006-1128](#).

Finally, the fact that an email server has been configured on the Disputed Domain Name indicates that the Respondent may be engaged in a phishing scheme, a practice intended to defraud consumers into revealing personal and financial information. Consequently, given the overall circumstances of the case, the Panel finds that the Disputed Domain Name is not used in any type of legitimate business or services. Therefore, the use of an email address using the Disputed Domain Name presents a significant risk that the Respondent could attempt to steal valuable information, such as credit cards, from the Complainant's customers or employees, indicating bad faith.

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

## **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 <www.michelinwiper.com> be transferred to the Complainant

*/Lynda M. Braun/*

**Lynda M. Braun**

Sole Panelist

Date: November 15, 2022