

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Registration Private,
Domains By Proxy, LLC / Julie Schultz
Case No. D2022-3499

1. The Parties

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America (“United States”) / Julie Schultz, United States.

2. The Domain Name and Registrar

The disputed domain name <michelir.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 September 21, 2022. On September 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 23, 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 September 23, 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 September 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on October 21, 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 dedicated to enhancing its clients' needs in terms of mobility and sustainably, designing and distributing the most suitable tires, services and solutions and providing digital services, maps and guides to help enrich travelling.

The Complainant owns numerous trademark registrations for the MICHELIN mark across the world, including in the United States, the European Union and numerous other countries, in particular:

- United States trademark MICHELIN No. 0892045, registered on June 2, 1970 and covering goods in class 12;
- United States trademark MICHELIN No. 4126565, registered on April 10, 2012 and covering services in classes 36, 37 and 39;
- International trademark MICHELIN No. 771031 registered on June 11, 2001 and covering goods and services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42.

In addition, the Complainant operates, among others, the domain name reflecting its trademark in order to promote its services <michelin.com> registered on December 1, 1993.

This disputed domain name was registered on July 15, 2022, and does not resolve to an active website. Moreover, an email server has been configured on the disputed domain name, through which numerous emails were sent requesting the update of payments information.

5. Parties' Contentions

A. Complainant

The Complainant is a leading tire company, dedicated to improving the mobility of goods and people by manufacturing and marketing tires for every type of vehicle, including airplanes, automobiles, bicycles/motorcycles, earthmovers, farm equipment, and trucks. It also offers electronic mobility support services and publishes travel guides, hotel and restaurant guides, maps, and road atlases.

The Complainant contends as follows:

(1) The Complainant and its trademark MICHELIN enjoy a worldwide reputation. The Complainant owns numerous MICHELIN trademark registrations around the world. The disputed domain name represents a "typosquatting" of its registered trademark MICHELIN by replacing the letter "n" by the letter "r" which does not prevent a likelihood of confusion.

(2) The Respondent is neither affiliated with the Complainant in any way, nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark. The Respondent cannot claim prior rights or legitimate interest in the disputed domain name as the MICHELIN trademark precedes the registration of the disputed domain name for years. The Respondent has not made any reasonable and demonstrable preparations to use the disputed domain name.

(3) Taking into account the worldwide reputation of the Complainant and its trademarks, the composition of the disputed domain name which imitates the Complainant's trademark MICHELIN, as well as the fact that the mentioned trademark significantly predates the registration date of the disputed domain name, it is likely

to be believed that the Respondent registered the disputed domain name based on the notoriety and attractiveness of the Complainant's trademark to divert Internet traffic to its website. Passive holding does not preclude a finding of bad faith in the circumstances of the case. The Respondent is engaged in a phishing scheme, since email server was configured on the disputed domain name.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

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

(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. The onus of proving these elements is on the Complainant. 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.

The Respondent failed to submit a response in accordance with paragraph 5(a) of the Rules. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, the Panel's decision shall be based upon the Complaint.

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.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Complainant has provided evidence of its rights in the MICHELIN trademarks. Therefore, the Panel is satisfied that the Complainant has registered trademark rights in the MICHELIN marks. See [WIPO Overview 3.0](#), section 1.2.1.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of [WIPO Overview 3.0](#), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Here the disputed domain name imitates the trademark MICHELIN by replacing the letter “n” by the letter “r” which does not significantly affect the appearance or pronunciation of the domain name. This practice is commonly referred to as “typosquatting” which is insufficient to avoid a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9).

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domains (“gTLDs”). See [WIPO Overview 3.0](#), section 1.11.

For all of the above-mentioned reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark MICHELIN and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name. Also, there is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark. Furthermore, the Respondent cannot claim prior rights or legitimate interest in the domain name as the MICHELIN trademark precedes the registration of the disputed domain name for years.

Moreover, the Respondent is engaged in a phishing scheme, a practice intended to defraud consumers into revealing sensitive information. The fraudulent emails that were sent from the latter imitates a payment order and requests all payments be made via ACH and to update customers’ records with the new ACH information attached by the latter.

The Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

With the evidence on file, it is undoubtedly established that the Respondent has no rights or legitimate interests in respect to the disputed domain name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

To fulfill the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the un rebutted assertions of the Complainant, its MICHELIN trademarks were widely used in commerce well before the registration of the disputed domain name in July 2022 and are well-known. The Respondent provided no explanations for why it registered the disputed domain name. Under these circumstances, it is most likely that the Respondent was aware of the Complainant’s trademark at the registration date of the disputed domain name. The typosquatting nature of the disputed domain name

further supports this inference.

Furthermore, the disputed domain name has been clearly used for fraudulent practices. The Respondent has sent fraudulent e-mails under the name of the alleged Accounting manager at Michelin North America Inc., via email address: [redacted]@michelir.com. This clearly demonstrates that the Respondent was aware of the Complainant's trademarks and businesses.

Consequently, it is established by the Panel that the Respondent registered the disputed domain name in bad faith.

As regards to the use, the disputed domain name, it is being used to send fraudulent emails.

The Panel finds that the phishing activities carried out by the Respondent are clear evidence of registration and use of the disputed domain name in bad faith. According to the case file, the Respondent is engaged in a phishing scheme using the disputed domain name via said e-mail addresses such as [redacted]@michelir.com. Numerous e-mails were sent via the said e-mail address. This shows a pattern on the part of the Respondent that could obviously continue the fraudulent activities unless they are stopped. Such use of the disputed domain name demonstrates the Respondent's intention to abusively benefit from the Complainant's reputation and to obtain commercial gains. This cannot be considered use in good faith.

The case file also shows that the Respondent uses the disputed domain name to create revenue through fraudulent behavior and illicit practices by impersonating the Complainant and requesting to proceed with a payment, which has to be made via ACH.

Therefore, it becomes clear for the Panel that the Respondent specifically targeted the Complainant when registering the disputed domain name almost identical to the Complainant's mark (conveniently altered by a slight typo) so that the Respondent could engage in these fraudulent practices.

Previous panels have held that the use of a domain name for purposes such as sending email, phishing, identity theft, or to send deceptive emails, *e.g.*, to obtain sensitive or confidential personal information to solicit payment of fraudulent invoices by the complainant's actual or prospective customers is evidence of registration and use of the domain name in bad faith (WIPO Overview of 3.0, section 3.4).

The Panel also finds the following factors supporting a bad faith registration and use of the disputed domain name: (i) the Complainant's widely used MICHELIN mark and its registration in numerous countries around the world predating the registration date of the disputed domain name, (ii) the nature of the disputed domain name *i.e.*, a typo of the MICHELIN widely-known mark, (iii) the Respondent's failure to submit a response or to provide any evidence of actual or contemplated good-faith use, (iv) the Respondent concealing its identity, and (v) the implausibility of any good faith use to which the domain name may be put. (WIPO Overview of 3.0, section 3.3).

Finally, given the Complainant's goodwill and renown worldwide, and the nature of the disputed domain name which is confusingly similar to the Complainant's trademarks, it is not possible to conceive a plausible circumstance in which the Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights.

For the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 <micheIir.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: October 29, 2022