

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Mishchenko Tetiana Mykhailivna / Міщенко Тетяна Михайлівна
Case No. DUA2023-0007

1. The Parties

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

The Respondent is Mishchenko Tetiana Mykhailivna / Міщенко Тетяна Михайлівна, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <michelin.kiev.ua> is registered with PP RULEZ / Приватне підприємство "Рулєз" (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on October 20, 2023. On October 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and its contact details.

The Registrar also indicated that the language of the registration agreement is Ukrainian. On October 25, 2023, the Center sent an email communication to the Parties in both Ukrainian and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Ukrainian; or submit a request for English to be the language of the administrative proceedings. On October 30, 2023, the Complainant confirmed its request for English to be the language of the proceedings. The Respondent did not submit any comments on the Complainant's language of the proceeding's submissions.

The Center verified that the Complaint satisfied the formal requirements of .UA Domain Name Dispute Resolution Policy (the ".UA Policy"), the Rules for .UA Domain Name Dispute Resolution Policy (the ".UA Rules"), and the WIPO Supplemental Rules for .UA Domain Name Dispute Resolution Policy (the "WIPO Supplemental Rules").

In accordance with the .UA Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint in both English and Ukrainian, and the proceedings commenced on November 13, 2023. In accordance with the .UA Rules, paragraph 5(a), the due date for Response was December 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 6, 2023.

The Center appointed Anton Polikarpov as the sole panelist in this matter on December 20, 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 .UA Rules, paragraph 7.

4. Factual Background

The Complainant is commonly known as "Michelin", a multinational tire manufacturing company. Headquartered in Clermont-Ferrand, France, Michelin is present in 171 countries, has more than 114,000 employees and operates 69 tire manufacturing facilities and sales agencies in 17 countries.

The Complainant is the owner of the following trademarks MICHELIN:

- International trademark MICHELIN No. 348615, registered on July 24, 1968, duly renewed and covering goods in classes 1, 6, 7, 8, 9, 12, 16, 17 and 20, and designated among others Ukraine;
- International trademark MICHELIN No. 771031, registered on June 11, 2001, duly renewed and covering goods and services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42, and designated among others Ukraine.

Additionally, the Complainant owns several domain names comprising the MICHELIN mark, including <michelin.com> registered on December 1st, 1993; <michelin.com.ua> registered on January 10, 2010.

On June 28, 2023, the Complainant sent a cease-and-desist letter to the Respondent requesting transfer of the disputed domain name free of charge to the Complainant. However, no reply was received despite several reminders via email.

The trademark registrations above, including registrations in Ukraine, obtained protection prior to the registration date of the disputed domain name, which was registered on December 6, 2022.

At the date when the Complaint was filed, the disputed domain name resolved to a Registrar's parking page. At the date of this Decision, the disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that all three cumulative requirements as provided for in paragraph 4(a) of the .UA Policy are satisfied in this case.

B. Respondent

The Respondent has not replied to the Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Ukrainian. Paragraph 11(a) of the .UA Rules provides that unless otherwise agreed by the Parties, the language of the administrative proceeding shall be the language of the Registration Agreement (which shall be in English, Russian or Ukrainian), subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In particular, it is established practice to take paragraphs 10(b) and (c) of the .UA Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of a cost-effective and swift avenue for resolving domain name disputes.

The Panel notes the following from *Alticor Inc. v. Alex Istreamco*, WIPO Case No. [DUA2021-0026](#):

“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.”

The Complainant filed the Complaint in English and requested English to be the language of this proceeding referring to encouraging fair and expeditious resolution of this dispute, and to undue delay and substantial costs the Complainant would have incurred if it had to submit the Complaint in Ukrainian. The Complainant argued also that the disputed domain name includes only Latin characters, which strongly suggests that the Respondent has knowledge of languages other than Russian or Ukrainian. According to the Complainant, it can thus be assumed the Respondent has knowledge of English (See *Giorgio Armani S.p.A. Milan Swiss Branch Mendrisio v. Lin jinqing*, WIPO Case No. [D2012-1412](#)).

The Center has afforded both Parties the chance to comment on the language of the proceeding by sending both Parties a Language of Proceedings notification, as well as Notification of Complaint and all other communications in both Ukrainian and English.

The Panel further notes that the Complainant has provided submissions regarding the proper language of proceedings, while no objection was made by the Respondent to the proceeding being conducted in English nor any request made that the proceedings be conducted in Ukrainian, which is the language of the Registration Agreement. This was despite the Center notifying the Respondent in Ukrainian and English that (1) the Respondent was invited to present her objection to the request that the proceedings being held in English and (2) if the Center did not hear from the Respondent by a certain date, the Center would proceed on the basis that the Respondent had no objection to the Complainant’s request that English be the language of the proceedings. The Respondent had the opportunity to raise objections or make known her preference but did not do so. (See *Crocs, Inc. v. Matveeva Angela*, WIPO Case No. [DUA2020-0015](#)).

The Complainant communicates in English and would be prejudiced, should it be required to translate the Complaint and participate in this proceeding in Ukrainian. Requiring the Complainant to translate the Complaint and all documents into Ukrainian would cause delay in contravention to paragraph 10(c) of the .UA Rules, which requires that the Panel shall ensure that the administrative proceeding takes place with due expedition. (See *Michael Kors (Switzerland) International GmbH. v. Minakova Maria*, WIPO Case No. [DUA2020-0002](#) finding that the registration agreement was in Russian, but that the proceeding should be conducted in English since the Panel has to balance the language requirement against the other considerations of ensuring that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their case. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay).

Given that both Parties have had sufficient opportunities to present their arguments, and noting the Respondent's opportunity to raise concerns about conducting the proceedings in English, the Panel concludes that, in the specific circumstances of this case, it is most appropriate to proceed in English, in line with the Complainant's request. This decision aligns with the objective of paragraph 11(a) of the .UA Rules.

In light of the considerations mentioned above, the Panel hereby determines, in accordance with paragraph 11(a) of the .UA Rules, that the language for the proceeding shall be English.

6.2 Further Procedural Considerations

Under paragraph 10 of the .UA Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the .UA Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Center has sent the Notification of Complaint by email to the Respondent at her email address as registered with the Registrar and to a postmaster email address as specified by the Rules. There is no evidence that the case notification email to the first email address was not successfully delivered.

Postal notification is reported to have arrived in Ukraine on November 30, 2023 and to have reached its collection point on December 4, 2023.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark. The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

6.3. Substantive Elements of the .UA Policy

The Panel will now proceed to evaluate this matter in light of the Complaint, the absence of a Response, the .UA Policy, the .UA Rules, the WIPO Supplemental Rules, and other relevant legal authorities, as outlined in accordance with paragraph 15(a) of the .UA Rules.

Paragraph 15(a) of the .UA Rules anchors the Panel as to the principles the Panel is to use in determining the dispute: the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the .UA Policy, .UA Rules and any rules and principles of law that it deems applicable.

Given that the Respondent did not respond to the Complainant's arguments, the Panel, in its assessment of whether the Complainant has fulfilled its obligations under paragraph 4(a) of the .UA Policy, relies on the information and materials provided in accordance with the .UA Policy and the .UA Rules. Under paragraph 14(b) of the .UA Rules, where a Party does not comply with any provision of the .UA Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

Paragraph 4(a) of the .UA Policy directs that the Complainant must prove each of the following: (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 or is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant holds legitimate rights in the MICHELIN mark, which are substantiated through its registered trademarks and unregistered trademark rights that have been acquired through extensive and long-term usage.

Section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))¹ makes clear that, where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

Previous UDRP panels have already established that the MICHELIN mark is inherently distinctive and well known in connection with the Complainant’s goods and services. See *Compagnie Générale des Etablissements Michelin v. World Industrial, LNQ*, WIPO Case No. [D2018-2331](#):

“The Complainant has established that the disputed domain name is confusingly similar with its well-known MICHELIN trademark.”.

See also *Compagnie Générale des Etablissements Michelin v. Kanoksak Puangkham*, WIPO Case No. [D2017-0234](#): “The word “Michelin” has no independent meaning save in relation to the Complainant and its products. It is also, as the factual background above shows, a well-known trademark.”

The disputed domain name combines the Complainant’s MICHELIN mark with the country-code Top-Level Domain (“ccTLD”) “.kiev.ua”.

The Panel notes the following from the [WIPO Overview 3.0](#), the applicable TLD in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see section 1.11. of [WIPO Overview 3.0](#)).

Given the circumstances of this case the Panel finds that the Complainant’s MICHELIN mark is clearly identifiable within the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is identical to a mark in which the Complainant has rights for the purpose the .UA Policy. Consequently, the first requirement of paragraph 4(a) of the .UA Policy has been met.

B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent failed to produce such evidence, the complainant is deemed to have satisfied the second element.

First, the Respondent is neither affiliated with the Complainant in any way nor have been authorized by the Complainant to use its trademark or to seek registration of any domain name incorporating said trademark. Furthermore, the Respondent cannot claim prior rights or legitimate interests in the disputed domain name. The MICHELIN trademark precedes the registration of the disputed domain name for years.

Second, the Respondent is not commonly known by the disputed domain name or the name MICHELIN, in accordance with paragraph 4(c)(ii) of the Policy. There is no evidence that the Respondent may be commonly known by name “Michelin”.

¹ In view of the similarities between the .UA Policy and the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Panel may refer to the [WIPO Overview 3.0](#) and UDRP decisions when relevant.

Third, the Respondent is not in any way affiliated with the Complainant.

Paragraph 4(c) of the .UA Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

At the same time, the Respondent has not provided any legitimate reason why she should be able to use the Complainant's trademark in this way. As such, the Panel finds that the Complainant has established that the Respondent lacks rights or legitimate interests in the disputed domain name and that the Complainant has satisfied the second limb of the paragraph 4(a) of the .UA Policy.

C. Registered or Used in Bad Faith

The concept of bad faith is recognized when it appears that the Respondent was, or should have been, aware of the Complainant's trademark rights yet chose to register a domain name without any rights or legitimate interests in it (See *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*, WIPO Case No. [D2009-0320](#)).

The likelihood that the Respondent was unaware of the Complainant at the time of registering the disputed domain name seems highly improbable.

To begin with, the Complainant's global renown, including its presence in Ukraine where the Respondent is based, is undeniable. This notoriety implies a broad awareness of the Complainant's trademark within the relevant sectors and the general public.

Further, the specific choice of the disputed domain name <michelin.kiev.ua>, which directly incorporates the Complainant's trademark MICHELIN in its entirety followed by a ccTLD, ".kiev.ua", indicates a clear awareness of the Complainant's trademark.

Additionally, the registration of the Complainant's MICHELIN trademark significantly predates the registration of the disputed domain name. This timeline reinforces the argument that the Respondent would have, or should have, known about the Complainant's trademark rights.

Given these circumstances, it seems highly unlikely that the Respondent was unaware of the Complainant's trademark at the time she registered the disputed domain name. The evidence points towards a registration carried out in full knowledge of the Complainant's rights, thereby indicating bad faith.

With respect to the use of the disputed domain name, it resolves to a parking page, and passive holding does not prevent a finding of bad faith use.

Thereby the Panel believes that the third element of paragraph 4(a) of the .UA Policy is therefore satisfied.

7. Decision

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

/Anton Polikarpov/

Anton Polikarpov

Sole Panelist

Date: December 30, 2023