

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Generale des Etablissements Michelin v. JonLuca DeCaro, Alta  
Case No. D2024-2754

### **1. The Parties**

The Complainant is Compagnie Generale des Etablissements Michelin, France, represented by Tmark Conseils, France.

The Respondent is JonLuca DeCaro, Alta, United States of America (“United States”).

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

The disputed domain name <michelintracker.com> (the “Disputed Domain Name”) is registered with CloudFlare, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2024. On July 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 9, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 9, 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 July 16, 2024.

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 July 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 7, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on August 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 incorporated in France. It is a leading tyre manufacturing company and operates on a worldwide basis. Headquartered in Clermont-Ferrand, France, the Complainant is present in 171 countries, has 114,000 employees and operates 69 tyre manufacturing facilities worldwide. Further the Complainant provides a range of maps, guides, and digital services under the name MICHELIN. To this end, the Complainant launched the Michelin Guide in 1900 to help motorists plan their trips, and in 1926 the Michelin Guide began to award stars for fine dining establishments. The filed evidence establishes the Michelin Guide is extremely famous and well known and inclusion in the Michelin Guide is a prestigious form of recognition for a restaurant. The Michelin Guide now rates over 30,000 establishments in over 30 territories across the world and more than 30 million Michelin Guides have been sold worldwide. There is no evidence that the word “Michelin” has any meaning apart from in relation to the Complainant and its products and services.

The Complainant owns a large number of registered trademarks for the word MICHELIN or which include that word – see for example United States Registration No. 5775734, registered on June 11, 2019, and European Union Trade Mark No. 013558366, registered on April 17, 2015. These trademarks are referred to in this decision as “the MICHELIN trademark”.

The Complainant owns various domain names including the word “Michelin”, including <michelin.com>, registered on December 1, 1993.

The Disputed Domain Name was registered on December 4, 2022. It does not currently resolve to an active website but the filed evidence shows it has previously resolved to a website (the “Respondent’s Website”) containing listings of restaurants.

#### **5. Parties’ Contentions**

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

The Complainant cites a number of previous UDRP decisions concerning the MICHELIN trademark. For present purposes its contentions can be summarized as follows:

The Disputed Domain Name is identical or confusingly similar to the Complainant’s famous trademark MICHELIN. It consists of the MICHELIN trademark combined with the descriptive term “tracker”.

The Respondent has no rights or legitimate interests in the terms “Michelin” or “Michelintracker”.

The Disputed Domain Name was registered and is being used in bad faith. It is being used to attract traffic because the Disputed Domain Name has adopted the Complainant’s well-known and famous trademark. The fame of the MICHELIN trademark is such that the Respondent must have had it in mind when he registered the Disputed Domain Name. The Complainant says there is no credible explanation as to why the Respondent selected the Disputed Domain Name other than to exploit the Complainant’s goodwill in the MICHELIN trademark. The Complainant cites various previous UDRP decisions.

##### **A. Respondent**

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

## 6. Discussion and Findings

### 6.1 Preliminary Matters – No Response

The Panel notes that no Response has been filed. However, given that the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

### 6.2 Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

#### A. Identical or Confusingly Similar

The Complainant has rights in the MICHELIN trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. The Disputed Domain Name comprises the MICHELIN trademark combined with the word “tracker”.

So far as the addition of the word “tracker” is concerned it is established that the addition of a descriptive, geographical, pejorative, meaningless, or other term to the disputed domain name does not prevent a finding of the confusing similarity between the disputed domain name and the mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.8)).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

#### B. Rights or Legitimate Interests

The Panel finds the MICHELIN trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use MICHELIN trademark. The Complainant has prior rights in the MICHELIN trademark which precede the registration of the Disputed Domain Name. The Complainant has therefore established a prima facie case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

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

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present case, the Panel concludes that it is inconceivable that the Respondent selected the Disputed Domain Name independently and without knowledge of the Complainant or its products. The website operated by the Respondent at the Disputed Domain Name was at one point directed at some sort of listing of Michelin-starred restaurants and the Panel considers it possible that the Respondent was by use of the Disputed Domain Name seeking to suggest it had a connection with the Complainant in the course of trade, by suggesting that it was the Complainant's business, or was authorised by the Complainant. It is neither. As such, and given that there is no current site nor any Response, its behaviour likely amounts to that specified in paragraph 4(b)(iv) of the Policy as being evidence of registration and use in bad faith, namely "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location". The only question in the Panel's mind is whether the Respondent's Website was operated for commercial gain. The evidence is not clear as to how that website behaved and whether it had

any facilities that was likely to generate revenue (even if indirect) for the Respondent. The evidence suggests the website has some sort of search facility but does not show that the website contained any advertising or pay-per-click (“PPC”) links. The Panel is therefore unclear as to whether commercial gain was intended.

However the Panel notes that in any event the list paragraph 4(b) of the Policy is non exhaustive and takes the view that the registration of the Disputed Domain Name with knowledge of the Complainant’s well-known trademark (which the Respondent must have had) is itself evidence of bad faith – see *The Channel Tunnel Group Ltd. v. John Powell*, WIPO Case No. [D2000-0038](#). The Panel also notes the Respondent has not provided any explanation for his conduct.

The Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly, the third condition of paragraph 4(a) of the Policy has been fulfilled

## **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 < MichelinTracker.com > be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: August 26, 2024