

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Nikolay Nikolayev
Case No. D2024-3091

1. The Parties

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

The Respondent is Nikolay Nikolayev, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <michelindelivery.biz> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 29, 2024. On July 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 31, 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 31, 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 August 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on September 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. Further Procedural Considerations

Under paragraph 10 of the 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 (whether this is indeed accurate is not clear), 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 Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should, especially because the Panel does not believe the Respondent's purported mailing addresses in Ukraine to be genuine. The Panel notes in particular that the address as disclosed by the Registrar includes a supposed street name in Kiev (Bolnyackaya 8) which do not correspond with any genuine street name in that city. Moreover, the disputed domain name was registered in June 2024, during the ongoing international conflict, reflecting that the Respondent is able to access the Internet, still maintains control over the disputed domain name, and likely knew of this proceeding.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Namecheap, Inc., is in Arizona, United States of America.

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 and has used 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.

5. Factual Background

The Complainant is a leading tire company, a provider of digital services, and is developing high technology materials that serve the mobility industry; it is headquartered in France and is in business around the world since decades (Annex 3 and 7 to the Complaint).

The Complainant owns several registered trademarks containing the mark MICHELIN as well as "The Michelin Man", inter alia:

- International trademark registration for MICHELIN (word), Reg. No. 740073, registered August 8, 2000, and designated for several countries around the world;
- International trademark registration for MICHELIN (word), Reg. No. 771031, registered June 11, 2001, designated for several countries around the world; and
- United States of America trademark registration for  (figurative), Reg. No. 3684424, registered September 15, 2009, (Annex 4 to the Complaint).

Moreover, the Complainant is the owner of and uses the domain names < Michelin.com >, registered December 1, 1993, and < Michelin.ua >, registered February 17, 2005, (Annex 5 to the Complaint).

The disputed domain name was registered on June 17, 2024, (Annex 1 to the Complaint); at the time of filing the Complaint the disputed domain name resolved to a website which displayed "The Michelin Man" trademark, together with the Complainant's trademark MICHELIN and a cannabis leaf with a link to make an order (Annex 1 to the Complaint).

Further, the Respondent has established Mail Exchange ("MX") records for the disputed domain name (Annex 1 to the Complaint).

6. 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.

Notably, the Complainant contends that the MICHELIN trademark is well known and notes that the disputed domain name entirely incorporate such trademark.

The Complainant submits, that there is no legal relationship whatsoever between the Complainant and the Respondent. The disputed domain name is neither used in connection with a bona fide offering of goods or/and services nor constitutes a legitimate noncommercial fair use.

Further, the Complainant submits that the Respondent was aware of the Complainant's trademark when registering the disputed domain name, since the mark MICHELIN is well known and distinctive so that the reservation of the disputed domain name cannot be a coincidence.

Furthermore, the disputed domain name resolved to a website displaying the famous official mascot of the Complainant "The Michelin Man" together with the trademark MICHELIN and cannabis leaves with a link to make orders; this connects the Complainant with illegal activities, which is not the case.

Finally, the disputed domain name incorporates in an identical way the Complainant's trademarks so that Internet users may wrongly believe that the website to which it resolves is the Complainant's site or in some way connected to the Complainant.

The Respondent also set up MX servers on the disputed domain name which could be used for phishing purposes by sending fraudulent emails.

B. Respondent

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

7. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (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 with respect to 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

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the mark MICHELIN for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

In the present case, the disputed domain name is confusingly similar to the famous MICHELIN mark in which the Complainant has rights since it incorporates the entirety of the mark MICHELIN and only adds the descriptive term "delivery".

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms does not prevent a finding of confusing similarity under the first element of the Policy. This is the case at present. [WIPO Overview 3.0](#), section 1.8.

Finally, it has also long been held that generic Top-level Domains ("gTLDs") (in this case ".biz") are generally disregarded when evaluating the confusing similarity of a disputed domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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.

While 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 often impossible 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. 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 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, since it has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the MICHELIN trademark in any manner.

The Respondent is not known under the disputed domain name and the disputed domain name is not being used for a bona fide offering of goods or services – it is to the contrary: The fact that the disputed domain name resolved to a website displaying not only the Complainant's trademark MICHELIN and the famous mascot "The Michelin Man" but also cannabis leaves together with a link to make an order suggests an association of the Complainant with drug-related activities which cannot be considered fair use. Furthermore, the nature of the disputed domain name, incorporating the entirety of the famous mark MICHELIN with the descriptive term "delivery" even supports said association and hence falsely suggests an affiliation with the Complainant that does not exist. [WIPO Overview 3.0](#), section 2.5.

The Respondent did not reply and hence has not rebutted the Complainant's contentions.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy, both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith; and
- the disputed domain name is being used by the Respondent in bad faith.

The Complainant has established rights in the registered trademark MICHELIN, long before the registration of the disputed domain name. Furthermore, the trademark MICHELIN is well known around the world, used since decades in business and has a strong Internet presence.

Because of the fame of the MICHELIN mark, it is inconceivable for this Panel that the Respondent has registered the disputed domain name without knowledge of the Complainant's rights. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a distinctive and/or well-known trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Finally, a simple online search for MICHELIN would have shown the Complainant and its famous MICHELIN marks (see Annex 7 to the Complaint). [WIPO Overview 3.0](#), section 3.2.3

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

The disputed domain name is also being used in bad faith. The Complainant put forward evidence that the disputed domain name resolved to a website which contained the Complainant's registered trademark, and where the Respondent used the famous mascot "The Michelin Man".

Moreover, the website, addressed by the disputed domain name, displayed cannabis leaves and a link to make an order.

In doing so, the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith use of the disputed domain name.

Finally, the disputed domain name has active MX records, as shown in the MX records lookup, which indicates a possible use for email services. Given the Respondent's control of the disputed domain name, and thus the MX records, there is an implied ongoing threat that the Respondent may utilize the MX records to further impersonate the Complainant in email exchanges.

The evidence and documents produced and put forward by the Complainant together with the fact that the Respondent has failed to present any evidence of any good faith registration and use with regard to the disputed domain name further supports the finding of bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

8. 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 <michelindelivery.biz> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: September 26, 2024