

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Domain Privacy Service
FBO Registrant / Ciro Sarra, Saras Childersn Boutique
Case No. D2022-0924

1. The Parties

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

The Respondents are Domain Privacy Service FBO Registrant, United States of America (“United States”) / Ciro Sarra, Saras Childersn Boutique, United States.

2. The Domain Names and Registrar

The disputed domain names <michelinabimbi.com> and <michelinabimbi.net> are registered with Domain.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2022. On March 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named (first) Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 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 March 28, 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 Respondents of the Complaint, and the proceedings commenced on April 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2022. On April 4, 2022, the Respondents sent an email to the Center but did not submit any formal response. On April 26, 2022, the Center informed the Parties of the Commencement of Panel Appointment Process.

The Center appointed Theda König Horowicz as the sole panelist in this matter on May 11, 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 headquartered in France. The Complainant is active and commercially present worldwide. It notably has sales agencies in the United States.

The Michelin Group manufactures and sells tires for every type of vehicle, leveraging its expertise in high-tech materials to deliver services and solutions that increase travel efficiency and products. The Michelin brand is a top-selling tire brand and was qualified as No. 1 Best Large Employer in America on Forbes 2018 "America's Best Employer" list. The Michelin Group is also known for the Michelin Guide which rates hotels and restaurants all over the world. The Michelin Group also set up ViaMichelin to develop digital services for travel assistance.

The Complainant holds many trademark registrations for MICHELIN in several countries, including in the United States, such as U.S. Trademark MICHELIN No. 5088515, filed on July 14, 2014, registered on November 22, 2016 and covering goods and services in classes 35, 36, 40, 41, and 44.

The Complainant also holds a large number of domain names comprising MICHELIN, including <michelin.com> registered on December 1, 1993, which resolves to the Complainant's official website promoting its services.

The disputed domain names were registered on July 2, 2021. They resolve towards parking pages displaying different commercial links related to the Complainant's products and its main field of activity.

The Complainant sent a cease and desist letter to the first named Respondent on December 3, 2021, which did not resolve in an amicable settlement.

5. Parties' Contentions

A. Complainant

Confusing similarity

The Complainant alleges to be the owner of trademark registrations (including in the United States) and domain names comprising MICHELIN. It alleges that the disputed domain names are confusingly similar to the Complainant's trademarks. Indeed, the disputed domain names reproduce the Complainant's well-known MICHELIN trademark in entirety. The association of the Complainant's trademark MICHELIN with the terms "a" and "Bimbi" is insufficient to avoid confusing similarity. On the contrary, the Complainant maintains that the full inclusion of MICHELIN in combination with these terms enhances the false impression that the disputed domain names are officially related to the Complainant. Finally, the extensions ".com" and ".net" are not to be taken into consideration.

Legitimate interests

The Complainant further states that the Respondents are neither affiliated with the Complainant nor have been authorized by the Complainant to use and register its trademark or to seek registration of any domain name incorporating said trademark.

Furthermore, the Respondents cannot claim prior rights or legitimate interests in the disputed domain names as the MICHELIN trademark precedes registration of the disputed domain names for years.

The Respondents are not commonly known by the disputed domain names or MICHELIN. The fact that the disputed domain names resolve towards parking pages with pay-per-click ("PPC") links which are likely to generate revenue indicates the Respondents' intent to use the disputed domain names for commercial gain. These pages are displaying different commercial links related to the Complainant's products and its main field of activity, which does not constitute a fair use of the disputed domain names.

According to the Complainant, the Respondents are making a non-legitimate use of the disputed domain names, with intent of diverting consumers from the Complainant's official website. The structure of the disputed domain names ("Michelin à Bimbi" referring in French language to a city of the Democratic Republic of Congo) also gives the impression that the disputed domain names are endorsed by the Complainant which cannot either constitute fair use.

The use of a privacy for registering the disputed domain names, the absence of response to the warning letter sent by the Complainant and the fact that email servers have been configured on the disputed domain names are further indications of lack of rights or legitimate interests by the Respondents.

Given the Complainant's goodwill and renown worldwide, it is not possible to conceive a plausible circumstance in which the Respondents could legitimately use the disputed domain names.

Bad Faith Registration and Use

The Complainant is of the opinion that the disputed domain names were registered in bad faith as the Respondents could not ignore the well-known MICHELIN trademark. The composition of the disputed domain names confirms that the Respondents were aware of the Complainant and its well-known trademark which was registered well before the disputed domain names. Furthermore, even supposing the Respondents were not aware of MICHELIN, a quick Internet search would have revealed to the Respondents the existence of the Complainant and its trademark. The use of a privacy service is a further indication of bad faith.

The bad faith use of the disputed domain names is supported by several findings, notably the absence of any license or permission from the Complainant to use its well-known trademark. The fact that the disputed domain names point to parking pages displaying commercial links associated with the Complainant's field of activity is another indication. The absence of response to the Complainant's warning letter, the configuration of email servers on the disputed domain names potentially for engaging in a phishing scheme and the well-known character of the MICHELIN brand are other elements evidencing bad faith use.

B. Respondents

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

6. Discussion and Findings

Under the Policy, in order to prevail, a complainant must prove the following three elements for obtaining the transfer of a domain name:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) that the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant showed to have trademark rights in MICHELIN through several registrations worldwide, including in the United States, the location of the Respondents.

According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. 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. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Furthermore, according to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms, including geographical terms, does not prevent a finding of confusing similarity.

The disputed domain names contain the MICHELIN trademark in entirety. The addition in the disputed domain names of the terms "a" and "Bimbi" which might have been chosen to refer to a city of the Democratic Republic of Congo, does not prevent confusing similarity, as the MICHELIN trademark remains clearly recognizable in the disputed domain names.

Under these circumstances, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in the use of a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services;
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondents under this ground, the burden of production shifts to the Respondents to rebut it. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made some submissions in order to demonstrate that the Respondents would have no rights or legitimate interests in the disputed domain names which registration was not authorized by the Complainant and which are pointing towards parking pages displaying different commercial links related to the Complainant's products and its main field of activity.

Based on the above, the Panel considers that the Complainant has made a *prima facie* case and the burden of production shifts to the Respondents who has chosen not to reply.

Furthermore, the Panel notes that the case file does not show that the Respondents would be known by the disputed domain names or MICHELIN.

Given the structure of the disputed domain names which fully incorporate the Complainant's well-known MICHELIN trademark along with the terms "a" and "Bimbi" (Bimbi being a location in the Democratic Republic of Congo), the disputed domain names can be read as "Michelin à Bimbi", in English "Michelin in Bimbi". The false impression can thus be given that the Respondents would be operating a legitimate MICHELIN business in the Republic of Congo particularly as the disputed domain names were redirecting to a parking page containing links relating to the Complainant and its services. Such composition of the disputed domain names cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See section 2.5.1 of the [WIPO Overview 3.0](#).

Additionally, the Panel notes that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark. See section 2.9 of the [WIPO Overview 3.0](#). Considering the well-known character of the MICHELIN brand and the worldwide presence of the Complainant, it is more than likely that the Respondents were planning to surf on the Complainant's notoriety.

Consequently, the Panel finds that the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel agrees that the trademark MICHELIN has been widely used by the Complainant in many countries for several decades in the tire industry and that it can be considered as a well-known trademark, based on the evidence provided in the case file.

There can be no doubt that the Respondents knew about the MICHELIN trademark when registering the disputed domain names. See section 3.2.2 of the [WIPO Overview 3.0](#).

The Panel agrees with the Complainant that the bad faith use of the disputed domain names is supported by several findings, notably:

- the absence of any license or permission from the Complainant to use its well-known trademark,
- the fact that the disputed domain names point to parking pages displaying commercial links associated with the Complainant's field of activity,
- the absence of response to the Complainant's warning letter.

The absence of response in the present proceedings and the fact that the Respondent 2 has hidden its identity by using a privacy service when registering the disputed domain names are additional elements evidencing bad faith use.

All these circumstances indicate that the Respondents' intent in registering and using the disputed domain names was in fact to profit in some fashion from or otherwise exploit the Complainant's well-known MICHELIN trademark. See section 3.1.4 of the [WIPO Overview 3.0](#).

In light of the above, the Panel finds that the Respondents have registered and are using the disputed domain names in bad faith and that the Complainant has established its case under 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 names, <michelinabimbi.com> and <michelinabimbi.net>, be transferred to the Complainant.

/Theda König Horowicz

Theda König Horowicz

Sole Panelist

Date: June 8, 2022