

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Privacy Protection Case No. D2022-1162

1. The Parties

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

The Respondent is Privacy Protection, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <themichelin.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 April 19, 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 April 21, 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 April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022.

On May 16, 2022, the Complainant requested the suspension of the proceeding to negotiate a settlement. On May 16, 2022, the Center suspended the proceeding. On June 16, 2022, not having received a response from the Respondent, the Complainant requested to reinstitute the proceeding. On June 17, 2022, the Center reinstated the proceeding, and since the deadline for the Response had passed, notified the commencement of the panel appointment process.

The Center appointed Shwetaree Majumder as the sole panelist in this matter on June 23, 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 the registered owner and proprietor of the mark MICHELIN. The Complainant owns an International Trademark Registration No. 771031 for the mark MICHELIN, registered June 11, 2001, which designates several countries including Iceland, Germany, and the Russian Federation. The Complainant also owns two US registrations for the mark MICHELIN (Reg. No. 3329924) and MICHELIN figurative mark (Reg. No. 3684424), dated November 6, 2007, and September 15, 2009, respectively. The Complainant also owns the domain names <michelin.com> and <michelin.us>, registered on December 1, 1993, and April 19, 2002, respectively.

The disputed domain name <themichelin.com> was registered on November 11, 2021. The disputed domain name <themichelin.com> resolves into a webpage offering the disputed domain name for sale for USD 280.

5. Parties' Contentions

A. Complainant

The Complainant states that it is a leading tire company, focused on its clients' mobility, sustainably design and distribution of tires, services, and solutions for its clients. The Complainant states that its mark MICHELIN enjoys worldwide reputation and is the top-selling tire brand in the world.

The Complainant asserts that its mark MICHELIN has been considered as well known by past UDRP panels. The Complainant has listed several such WIPO cases in its favour. Some such decisions are *Compagnie Générale des Etablissements Michelin v. World Industrial, LNQ*, WIPO Case No. [D2019-0553](#), *Compagnie Générale des Etablissements Michelin v. Kanoksak Puangkham*, WIPO Case No. [D2018-2331](#), *Compagnie Générale des Etablissements Michelin v. WhoisGuard, Inc., WhoisGuard Protected / Saad Zaeem, Caramel Tech Studios*, WIPO Case No. [D2017-0234](#).

The Complainant had sent a cease and desist letter to the Respondent via the Registrar on November 24, 2021, but claims to have received no response from the Respondent.

The Complainant's main contentions can be summarised as follows:

- i. That the disputed domain name incorporates the Complainant's registered mark MICHELIN in its entirety, and hence is confusingly similar to the Complainant's mark.
- ii. That the Respondent's use of the trademark MICHELIN in the disputed domain name, leads to an impression that it is related to or associated with the Complainant and the same can induce internet users into believing the disputed domain name is owned by the Complainant for promotion of its products and services.
- iii. That the Complainant's mark MICHELIN was registered much prior to the disputed domain name. Hence, the

Respondent does not have prior rights or legitimate interests in the disputed domain name.

iv. The fact that Respondent is offering the disputed domain name for sale shows that the Respondent's use has no connection with a *bona fide* offering of goods and services.

v. That the email servers that are configured on the disputed domain name poses a security risk for Complainant's customers *i.e.*, a risk of phishing, and hence the disputed domain name is not used in any type of legitimate business.

vi. That the Respondent registered and used the disputed domain name in bad faith, as the Respondent knew of or should have known of the Complainant's trademark registrations.

B. Respondent

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

6. Discussion and Findings

As per paragraph 5(e) of the Rules, where a respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the panel may draw such inferences as it considers appropriate. It remains incumbent upon the Complainant to make out its case in all respects under paragraph 4(a) of the Policy.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence;

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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has produced trademark registration and domain name registration documents, in respect of its mark MICHELIN. The disputed domain name <themichelin.com> incorporates the Complainant's mark MICHELIN in its entirety, together with another word "the". Referring to the [WIPO Overview 3.0](#), sections 1.7 and 1.8, the Panel finds that the relevant trademark is recognizable within the disputed domain name and that the addition does not prevent a finding of confusing similarity (see *Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#)).

The generic Top-Level Domain ("gTLD"), here being ".com", is generally disregarded for the purposes of comparison under this element (see [WIPO Overview 3.0](#), section 1.11).

In view of the above-mentioned findings, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark and that the requirement of paragraph 4(a)(i) of the Policy stands satisfied.

B. Rights or Legitimate Interests

The consensus view of the second element under paragraph 4(a) of the Policy requires the Complainant to establish on a *prima facie* basis that the Respondent lacks rights or legitimate interests in the disputed domain name. As previously stated above, that the Complainant has exclusive rights in the mark MICHELIN, which predates the registration of the disputed domain name.

The view of previous UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy has been summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: “While the overall burden of proof in UDRP proceedings is on the complainant, [...] 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 to demonstrate its rights or legitimate interest 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.”

The Complainant has not permitted the Respondent to use its mark MICHELIN or to apply for or use any domain name incorporating the same. The Complainant has established that its mark MICHELIN is a widely popular mark. In fact, past WIPO Panels have considered the Complainant’s mark as a well-known or famous mark. This Panel is of the view that that no legitimate entity would choose to use the Complainant’s popular mark unless it is seeking to create an impression of an association with the Complainant. Additionally, the disputed domain name resolves into a webpage that offers the disputed domain name for sale. The Respondent’s such use of the disputed domain name is not in connection with a *bona fide* offering of its goods or services. The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. (see *Wal-Mart Stores, Inc. v. Walmart Careers, Inc.*, WIPO Case No. [D2012-0285](#))

The Respondent has also failed to file a response to rebut the Complainant’s *prima facie* case or to advance any claims as to rights or legitimate interests in the disputed domain names (particularly, in accordance with paragraph 4(c) of the Policy).

Accordingly, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. Bad faith is understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see section 3.1 of the [WIPO Overview 3.0](#)).

Based on the Complainant’s contentions and the Annexes submitted, the Panel finds that the Complainant’s mark MICHELIN is a popular mark. It is worth noting that the Complainant’s trademark rights in MICHELIN have been upheld by past UDRP panels as well. It is clear that the Respondent knew or should have known of the Complainant’s trademark rights in its mark MICHELIN. As set out in the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Here, there is no doubt that the Complainant’s mark MICHELIN is a recognised and popular mark. Moreover, the Respondent has parked the disputed domain name for sale, illustrating the Respondent’s intent to profit from the resale of the confusingly similar disputed domain name. The Panel finds that the Complainant has been able to show to that the registration and use of the disputed domain name <themichelin.com>, by the Respondent is in bad faith (see [WIPO Overview 3.0](#), section 3.1.2).

The Respondent has not availed itself of the opportunity to present any case of good faith that it might have had, and, in view of the circumstances, the Panel cannot conceive of any. The Panel finds that on the balance of probabilities, the Respondent's conduct in registering and using the disputed domain name constitutes opportunistic bad faith under the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of Policy.

7. Decision

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and Rule 15 of the Rules, the Panel orders that the disputed domain name, <themichelin.com>, be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: July 7, 2022