

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Alex Gutierrez,
POP CREATIVE
Case No. D2022-1905

1. The Parties

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

The Respondent is Alex Gutierrez, POP CREATIVE, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <michelinmiami.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 26, 2022. On May 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 31, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 June 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 22, 2022.

The Center appointed Mariya Koval as the sole panelist in this matter on June 24, 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, being founded in 1889, is a French multinational tire manufacturing company with presence in 170 countries. Currently, the Complainant has more than 124,000 employees, operates 117 tire manufacturing facilities and sales agencies in 26 countries, including United States. Since 1889, the Complainant has constantly innovated to facilitate the mobility of people and goods: today the Complainant is the leader in tire technology for every type of vehicle, leveraging its expertise in high-tech materials to deliver services and solutions that increase travel efficiency and products that enable customers to enjoy unique mobility experiences.

The Complainant is the owner of a number of MICHELIN trademark (the "MICHELIN Trademark") registrations throughout the world, among which are:

- International Trademark No. 348615, registered on July 24, 1968, in respect of goods and services in classes 1, 6, 7, 8, 9, 12, 16, 17, 20;
- International Trademark No. 771031, registered on June 11, 2001, in respect of goods and services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, 42;
- United States Trademark Registration No. 3329924, registered on November 6, 2007, in respect of services in class 39;
- United States Trademark Registration No. 4126565, registered on April 10, 2012, in respect of services in classes 36, 37, 39.

The Complainant operates, among others, the domain names <michelin.com> (registered on December 1, 1993) and <michelin.us> (registered on April 19, 2002) reflecting its MICHELIN Trademark in order to promote its goods and services.

The Disputed Domain Name was registered on November 5, 2021. The Disputed Domain Name resolves to a Registrar parking webpage displaying commercial links related to tires, including those related to the Complainant's competitors' trademarks, targeting directly Complainant's field of activity.

On November 25, 2021, the Complainant sent a notification to the Respondent via the Registrar and online form, asserting its Trademark rights and requesting them to transfer the Disputed Domain Name to the Complainant free of charge. Having sent several reminders, no responses were received.

5. Parties' Contentions

A. Complainant

The Complainant asserts that its MICHELIN Trademark is the top-selling tire brand worldwide and it is the No. 1 source of innovation in the global tire industry. The Complainant and its MICHELIN Trademark enjoy a worldwide reputation. The Complainant owns numerous MICHELIN Trademark registrations around the world.

The Complainant claims that the Disputed Domain Name is identical or at least confusingly similar to the Complainant's MICHELIN Trademark. Indeed, the Disputed Domain Name reproduces the Complainant's Trademark in its entirety which previous panels have considered to be "well-known" or "famous". The Disputed Domain Name associates the Complainant's Trademark to the geographical term "Miami". Accordingly, by registering the Disputed Domain Name, the Respondent created a likelihood of confusion with the Complainant's Trademark. It is likely that the Disputed Domain Name could mislead the Internet users into thinking that it is, in some way, associated with the Complainant.

The Complainant further alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name in view of the following:

- the Respondent is not affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register its Trademark, or to seek registration of any domain name incorporating the Trademark;
- the Respondent has no prior rights or legitimate interest in the Disputed Domain Name;
- the registration of the MICHELIN Trademark preceded the registration of the Disputed Domain Name for years;
- the Disputed Domain Name is so identical to the famous Complainant's MICHELIN Trademark and the Complainant's official domain name, that the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the Disputed Domain Name;
- the Respondent did not demonstrate use of, or demonstrable preparations to use, the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Indeed, the Disputed Domain Name resolves to a parking page displaying commercial links, and some of them are related to tires, notably those of the Complainant's competitors;
- the Complainant attempted to contact the Respondent by sending a notification, asserting its Trademark rights and requesting to transfer the Disputed Domain Name to the Complainant free of charge. The Respondent has never replied despite of several reminders;
- given the Complainant's goodwill and renown worldwide, and the nature of the Disputed Domain Name, which is virtually identical to the Complainant's Trademark, it is not possible to conceive a plausible circumstance in which the Respondent could legitimately use the Disputed Domain Name, as it would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights.

The Complainant further claims that the Respondent both registered and is using the Disputed Domain Name in bad faith. Firstly, the Complainant is well known throughout the world including the United States where the Respondent seems to be located and, respectively, it is implausible that the Respondent was unaware of the Complainant when he registered the Disputed Domain Name.

Secondly, the composition of the Disputed Domain Name being virtually identical to the Complainant's well-known Trademark, and the fact that the Disputed Domain Name incorporates the Complainant's Trademark MICHELIN and associates it to the geographical term "Miami", confirms that the Respondent was aware of the Complainant and its Trademark, and that the Disputed Domain Name was registered based on the attractiveness of the Complainant's Trademark, in order to divert Internet traffic to its illegitimate Disputed Domain Name.

Thirdly, the Complainant's Trademark rights predate the registration date of the Disputed Domain Name. A quick MICHELIN Trademark search would have revealed to the Respondent the existence of the Complainant and its Trademark. The Respondent's failure to do so is a contributory factor to its bad faith. Supposing that the Respondent was not aware of the possibility of searching trademarks online before registering the Disputed Domain Name, a simple search via Google or any other search engine using the keyword "Michelin" demonstrates that all first results relate to the Complainant's products or news. In light of the reputation of the Complainant's MICHELIN Trademark, it is implausible that the Respondent was unaware that the Complainant owns rights in the MICHELIN Trademark.

The composition of the Disputed Domain Name evidences an intent to misleadingly divert consumers by taking unfair advantage of the goodwill and reputation of the Complainant's MICHELIN Trademark. The clear inference to be drawn from the Respondent's operations is that he is trying to benefit from the fame of the Complainant's Trademark. It is more likely than not, that the Respondent's primary motive in registering

and using the Disputed Domain Name was to capitalize on or otherwise take advantage of the Complainant's Trademark rights, through the creation of initial interest of confusion. Also, it is likely that the Respondent registered the Disputed Domain Name to prevent the Complainant from using its Trademark in the Disputed Domain Name.

The Complainant also submits that given the Complainant's goodwill and renown worldwide and the nature of the Disputed Domain Name, which reproduces the Complainant's famous MICHELIN Trademark, there simply cannot be any actual or contemplated good faith use of the Disputed Domain Name by the Respondent or any third party, as any use would result in misleading diversion and unfairly taking advantage of the Complainant's rights.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has properly asserted its rights in the MICHELIN Trademark due to the long use and number of registrations globally. The Panel notes that the registration of the Complainant's Trademark significantly predates the registration of the Disputed Domain Name. The Panel finds that the Complainant has established that the MICHELIN Trademark is well known.

The Disputed Domain Name completely reproduces the Complainant's MICHELIN Trademark in combination with the geographical term "miami" and the generic Top-Level-Domain ("gTLD") ".com". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. In this case, the addition of the geographical term "miami" to the MICHELIN Trademark does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD 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.

Pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark pursuant to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent is not affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register its Trademark, or to seek registration of any domain name incorporating the Trademark.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is always on the Complainant, once the Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name, the burden of production of evidence shifts to the Respondent.

The Panel finds that the Complainant has made a *prima facie* case. The Respondent registered the Disputed Domain Name many years after the MICHELIN Trademark had been registered. The Complainant's Trademark is well known throughout the world.

According to the section 2.5.1 of the [WIPO Overview 3.0](#), where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In this case, the Disputed Domain Name contains the Complainant's Trademark in its entirety and the addition of geographical term "miami" which enhances an impression of the Respondent's relation with the Complainant (that is not consistent with the reality), that, correspondingly, cannot constitute fair use of the Disputed Domain Name.

There is no evidence that the Respondent appears to own any MICHELIN trademark, nor is the Respondent commonly known by the Disputed Domain Name. Furthermore, the Panel concludes that in view of the MICHELIN Trademark being highly distinctive, it is highly unlikely that anybody could legitimately adopt the Disputed Domain Name for commercial use other than for an intent to create confusion with the Complainant.

Also, taking into consideration the long use of the Complainant's Trademark, it is impossible to assume that the Respondent was unaware of the Complainant's Trademark at the time of registration of the Disputed Domain Name.

Furthermore, there is no evidence that the Respondent is using the Disputed Domain Name to offer *bona fide* goods and services or making a legitimate noncommercial or fair use of the Disputed Domain Name. On the contrary, the Disputed Domain Name resolves to a parking page containing only sponsored links which resolve to the Complainant's competitors' websites. According to the section 2.9 of the [WIPO Overview 3.0](#), panels have found that the use of a domain name to host a parked page comprising pay-per-click ("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 or otherwise mislead Internet users. The Panel cannot consider the Respondent's commercial use of the Disputed Domain Name as *bona fide* offering goods or services, or a legitimate noncommercial or fair use.

The Respondent did not respond to the Complainant's cease and desist letter nor to the Complaint and did not participate in this proceeding, accordingly, the Respondent has failed to present any evidence to support any rights or legitimate interests in the Disputed Domain Name.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore, the second element in paragraph 4(a) of the Policy has been satisfied by the Complainant.

C. Registered and Used in Bad Faith

Taking into consideration that the MICHELIN Trademark has been in use more than 50 years and that the Complainant has spent huge amounts and efforts for promotion of its Trademark, which is undoubtedly well

known, the Panel considers it is obvious that the Respondent was well aware of the Complainant and its Trademark at the time of registration of the Disputed Domain Name. Moreover, the Disputed Domain Name, incorporating the Complainant's MICHELIN Trademark in its entirety, is clearly deceptive for the Internet users with respect to the person producing the goods and rendering the services.

The website operated by the Respondent under the Disputed Domain Name comprises a series of "click through" links to the Complainant's competitors' websites. The Panel infers that some visitors, once at the Respondent's website will follow the provided links and "click through" to other sites which offer products or services unrelated to the Complainant and where all websites offer products or services which compete with those of the Complainant. Such use of the Disputed Domain Name cannot be considered as use in good faith.

Furthermore, the Disputed Domain Name, reproducing the Complainant's Trademark in its entirety is evidently deceptive for consumers. The Respondent obviously chose to register the Disputed Domain Name, which is confusingly similar to the Complainant's MICHELIN Trademark, for the only purpose of attracting Internet users to the competing websites by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and of the products sold on it.

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the well-known Complainant's Trademark, primarily intended to disrupt the Complainant's business. In view of the absence of any evidence to the contrary and that the Respondent did not file any statement, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

Finally, the Respondent did not respond to the Complainant's cease and desist letter, nor to the Complaint and did not participate in this proceeding at all. Previous UDRP panels have considered that the respondent's failure to respond to the complaint supports an inference of bad faith, see *e.g.*, *Champagne Louis Roederer (CLR) v. Global Web Development, LLC*, WIPO Case No. [D2004-1073](#): "The fact that the Respondent failed to respond to the Complaint, in the Panel's view, adds to the arguments in favour of the Respondent's bad faith."

In view of the foregoing, the Panel finds that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant

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 <michelinmiami.com> be transferred to the Complainant.

/Mariya Koval/

Mariya Koval

Sole Panelist

Date: July 8, 2022