

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. 9 black epople on the plantation

Case No. D2023-2056

### **1. The Parties**

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

The Respondent is 9 black epople on the plantation, Canada.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 9, 2023. On May 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 2023 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 May 17, 2023.

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 June 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 29, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 4, 2023. 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 global leading tire company, manufacturing and marketing tires of every type of vehicle, including airplanes, automobiles, bicycles/motorcycles, earthmovers, farm equipment and trucks.

With a history dating back to 1889 and headquartered in France, the Complainant is currently present in 170 countries, has more than 124,000 employees and operates 117 tire manufacturing and sales agencies in 26 countries.

In addition to tires, the Complainant launched in 1920 the Michelin guide in order to help motorists plan their trips; during the rest of 20th century, thanks to its serious and unique approach, the Michelin guides have become best-sellers and the guide now rates over 30,000 establishments in over 30 territories across three continents, and more than 30 million Michelin guides have been sold worldwide since.

The Complaint holds trademark registrations for MICHELIN such as the following:

- the International Trademark Registration No. 771031 registered on June 11, 2001, designating various jurisdictions worldwide and claiming goods and services in the International Classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, and 42; and
- the International Trademark Registration No. 1049371 registered on August 25, 2010, designating various jurisdictions worldwide and claiming goods in the International Classes 7, 9 and 27.

The Complainant's main website is available at "www.michelin.com" and was registered on December 1, 1993.

The disputed domain name <michelin.bio> was registered on February 15, 2023 and, at the time of filing the Complaint, it resolved to an inactive page indicating "This Account has been suspended". According to Annex 1 to the Complaint, when the Complainant first detected the disputed domain name, it resolved to a Mindblown blog about philosophy.

On March 1, 2023 the Complainant send a cease-and-desist letter to the Respondent via the Registrar, followed by several reminders. No response was received.

#### **5. Parties' Contentions**

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

The Complainant contends that the disputed domain name is identical or at least confusingly similar to its well-known trademark and domain name; the Respondent has no rights or legitimate interests in the disputed domain name; and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

Also, e-mail servers have been initially configured on the disputed domain name and thus, there may be a risk that Respondent is engaged in a phishing scheme.

##### **B. Respondent**

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

## 6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the MICHELIN trademark.

The disputed domain name <michelin.bio> reproduces the Complainant's trademark exactly.

It is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".bio", ".org") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Given the above, the Panel finds that the disputed domain name is identical to the Complainant's trademark MICHELIN, pursuant to the Policy, paragraph 4(a)(i).

### B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

In line with the case law, "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". See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case. There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain name.

In fact, the disputed domain name is not actively used and this, along with the other circumstances in this case, does not amount to a *bona fide* or legitimate use.

Further, according to the Annex 1 to the Complaint, the disputed domain name was associated with available MX records. In this regard, previous panels have categorically held that the use of a domain name for illegal

activity (such as swindle, fraud, identity theft, phishing and impersonation) can never confer rights or legitimate interests in a respondent. See section 2.13 of the of the [WIPO Overview 3.0](#).

Moreover, the composition of the disputed domain name (reproducing identically the Complainant's trademark) cannot constitute fair use as they carry a risk of implied affiliation to the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

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

The Complainant holds trademarks rights since at least 2001, domain name since 1993 and its MICHELIN mark is well-known worldwide.

The disputed domain name was registered in February 2023, and incorporates the Complainant's trademark in its entirety.

For the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its trademark.

Further, the disputed domain name was connected to an error page and this amounts to inactive use.

From the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" or other similar inactive page) would not prevent a finding of bad faith under the doctrine of passive holding. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be relevant circumstances found to be indicative of bad faith include (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use; (iii) the respondent's concealing its identity or use of false contacted details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. See section 3.3 of the [WIPO Overview 3.0](#).

In the present proceeding, (i) the Complainant's trademark is well-known internationally; (ii) the disputed domain name reproduces the Complainant's trademark exactly; (iii) although properly notified, the Respondent failed to participate in this proceeding in order to put forward any argument in its favor, as well it failed to respond to the Complainant's letters sent before the commencement of the present proceeding; and (iv) the Respondent used a privacy service and provided inaccurate or false contact details in the WhoIs.

Furthermore, while the activation of the MX records in itself is not conclusive of a fraudulent attempt, according to evidence on the record, the e-mail servers have been configured on the disputed domain name and thus, there may be a risk that Respondent is engaged in a phishing scheme, particularly noting that the disputed domain name is identical to the Complainant's trademark. This entails that the Respondent can send emails through the email address "@michelin.bio". In any case, noting the composition of the disputed domain name, and that the Complainant's trademark is well-known, the Panel finds implausible that the Respondent can put the disputed domain name to any legitimate use.

Panels additionally view the provision of false contact information (or an additional privacy or proxy service) as an indication of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

As mentioned, the Respondent has not responded to the Complainants letters and has not participated in the present proceeding in order to put forward any arguments in its favor. Such facts, together with all the other elements in this case, supports, in the eyes of this Panel, a finding of bad faith behavior.

Moreover, it has been consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's famous or widely-known trademark can create, by itself, a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

## **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 <micelin.bio> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: July 14, 2023