

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Kobi Perry
Case No. D2023-2621

1. The Parties

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

The Respondent is Kobi Perry, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <micchelin.com> is registered with Wild West Domains, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 19, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 21, 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 June 23, 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 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2023. On June 28, and June 29, 2023, a third party claiming to be the employer of the Respondent contacted the Center. On June 29, 2023, the Respondent sent an email communication to the Center. On July 19, 2023, the Center informed the parties that it will proceed to panel appointment.

The Center appointed Kaya Köklü as the sole panelist in this matter on July 25, 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 long-standing French company that is specialized in tire manufacturing for the automotive industry. The Complainant's group of companies is active globally in more than 170 countries with more than 120,000 employees.

The Complainant is the owner of the trademark MICHELIN, which is registered in a large number of jurisdictions, including in the United States, where the Respondent is reportedly located. Among others, the Complainant is the registered owner of the International Trademark No. 771031, registered on June 11, 2011, and the United States Trademark Registration No. 77977654, registered on September 15, 2009, both for MICHELIN and covering protection for various goods and services (Annex 4 to the Complaint).

Furthermore, the Complainant holds and operates its main company website at "www.michelin.com".

The disputed domain name <micchelin.com> was created on February 23, 2023.

The disputed domain name does not resolve to an active website. However, the Respondent configured an MX email server for the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name (Annex 1 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for the requested transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Center only received an informal email communication from the Respondent on June 29, 2023. In its short email communication to the Center, the Respondent merely asked for "more information" about the case.

6. Discussion and Findings

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the MICHELIN trademark by virtue of various trademark registrations. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel further finds the mark is recognizable within the disputed domain name. As stated at section 1.9 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, misspellings do not prevent a finding of confusing similarity. In the present case, the Panel notes that the disputed domain name incorporates an apparent misspelling of the Complainant's MICHELIN trademark by simply adding an additional letter "c", which in view of the Panel, still makes the Complainant's MICHELIN trademark recognizable within the disputed domain name.

The Panel concludes that the disputed domain name is confusingly similar to the MICHELIN trademark for the purposes of the Policy.

Accordingly, 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. In the absence of a substantive Response, the Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

On the contrary and bearing in mind that the Respondent has configured an MX email server for the disputed domain name, the Panel cannot exclude that the disputed domain name may already have been used or will be used in connection with possibly fraudulent or illegitimate activities by the Respondent. Noting that the

disputed domain name is confusingly similar to the Complainant's MICHELIN trademark, the Panel has no doubt that the Respondent's intent is to create confusion with the Complainant, which in view of the Panel results in an illegitimate use that can never confer rights or legitimate interests upon the Respondent.

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

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its MICHELIN trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name in bad faith, as already indicated before, the disputed domain name has apparently yet not been linked to an active website.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine 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 contact 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. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the distinctiveness and the reputation of the Complainant's MICHELIN trademark, and the inherently misleading composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

In particular, the Panel believes that the active MX email server for the disputed domain name creates a real or implied ongoing threat to the Complainant, since the disputed domain name, even if not associated to an active website, may be used by the Respondent to mislead customers looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, likely for fraudulent activities. Furthermore, the Panel accepts the failure of the Respondent to submit a substantive response to the Complainant's contentions as an additional indication for bad faith.

In fact, the Panel is convinced that this is rather a typical typosquatting case.

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

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 <micchelin.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: August 7, 2023