

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. Cassie Buchner, Cassie LLC

Case No. D2023-3322

### **1. The Parties**

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

The Respondent is Cassie Buchner, Cassie LLC, United States of America (“United States” or “USA”).

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

The disputed domain name <michhelin.com> (the “Domain Name”) is registered with Squarespace Domains II LLC (the “Registrar”).<sup>1</sup>

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251), and contact information in the Complaint. The Center sent an email communication to the Complainant on August 7, 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 August 10, 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”).

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<sup>1</sup> The Complaint was filed identifying the Registrar as Google LLC. On October 2, 2023, Google LLC confirmed that the disputed domain name is registered with Squarespace Domains II LLC following a purchase agreement. Google LLC has confirmed both Registrars’ compliance with the UDRP and the implementation of the decision by either Registrar.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 5, 2023.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on September 14, 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 leading tire company, incorporated in 1899 and headquartered in Clermont-Ferrand, France, with more than 124,000 employees and operating 117 tire manufacturing facilities and sales agencies in 26 countries, including in the USA.

In 1920, the "Michelin" Guide was launched in order to help motorists plan their trips - thereby boosting car sales and in turn, tyre purchases. In 1926, the guide began to award stars for fine dining establishments and in 1936 for the first time included a list of hotels in Paris and lists of restaurants according to specific categories. The guide now rates over 30,000 establishments in over 30 territories across three continents, and a total of more than 30 million "Michelin" Guides have been sold worldwide.

The Complainant's North American tire subsidiary employs 22,000 people and operates 19 plants in 16 locations, *inter alia* in Alabama, Indiana, Ohio, Oklahoma, North Carolina, and South Carolina, USA.

The Complainant holds a number of trade mark registrations for MICHELIN, including the following (the "Trade Marks"):

- United States trade mark MICHELIN registered on November 6, 2007 under No. 3329924;
- Canadian trade mark MICHELIN registered on dated January 4, 2005 under No. TMA629284; and
- International trade mark MICHELIN registered on June 11, 2001 under No. 771031.

The Domain Name was registered on June 13, 2023, and currently resolves to an inactive page, with about ten email servers configured on it.

On June 19, 2023, the Complainant sent a cease-and-desist letter to the Respondent directly requesting the transfer of the Domain Name, with several reminders, to which no response was received.

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

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

In support of its claim for transfer of the Domain Name, the Complainant brings forward several arguments which are summarized in this section.

The Domain Name is identical or at least confusingly similar to the Trade Marks, as it includes MICHELIN, with the addition of a second letter "h", thereby aiming at typing errors and increasing a likelihood of confusion among Internet users that can be led to believe the Domain Name will direct them to the official website of the Complainant. The additional letter "h", which is commonly referred to as "typo squatting", does not significantly affect the appearance or pronunciation of the Domain Name which thereby is virtually identical and/or confusingly similar to the Trade Marks. The extension ".com" is not to be taken into consideration when examining the identity or similarity between the Trade Marks and the Domain Name as it is insufficient to avoid a finding of confusing similarity.

For all of the above-mentioned reasons, the Domain Name is identical or confusingly similar to the Trade Marks in which the Complainant has rights, and therefore the condition of paragraph 4(a)(i) is fulfilled.

The Respondent is not affiliated with the Complainant in any way nor has he been authorized by the Complainant to seek registration of any domain name incorporating the Trade Marks. Additionally, the Domain Name is so confusingly similar to the Trade Marks that the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the Domain Name. Furthermore, the Respondent cannot claim prior rights or legitimate interests in the Domain Name, as the Trade Marks precede the registration of the Domain Name for many years. In addition, there is no evidence that the Respondent is commonly known under the Domain Name or under the name "Michelin". Also, the Respondent has registered the Domain Name with a privacy shield service, presumably to hide his identity and prevent the Complainant from contacting him, which highlights the fact that the Respondent has no rights or legitimate interests in respect of the Domain Name.

For all of the above-cited reasons, it is undoubtedly established that the Respondent has no rights or legitimate interests in respect to the Domain Name under paragraph 4(a)(ii) of the Policy.

Bad faith can be found where the Respondent "knew or should have known" the Trade Marks and, nevertheless registered the Domain Name in which he had no rights or legitimate interests.

In this context, and in light of the reputation of the Trade Marks, it is implausible that the Respondent was unaware of the Complainant when he registered the Domain Name, as the Complainant is well-known throughout the world, while the Trade Marks significantly predate the registration date of the Domain Name. Furthermore, registering the Domain Name which is confusingly similar to the Trade Marks and adding one letter, the Respondent has engaged in typosquatting which is in itself evidence of bad faith. In addition, under paragraph 2 of the Policy, a person registering a domain name represents and warrants to the registrar that, to his knowledge, the registration of the domain name will not infringe the rights of any third party. This means that it was the Respondent's duty to verify that the registration of the Domain Name would not infringe the rights of any third party and a quick trademark search for MICHELIN would have revealed to the Respondent the existence of the Complainant and the Trade Marks. The Respondent's failure to do so is a contributory factor to its bad faith. Even supposing that the Respondent was not aware of the possibility of searching trademarks online before registering a domain name, a simple search via Google or any other search engine using the keyword "Michelin" would have demonstrated to the Respondent that all first results relate to the Complainant's products and the Trade Marks.

The Respondent also uses the Domain Name in bad faith in the absence of any license or permission from the Complainant to use the Trade Marks. Although the Domain Name is currently inactive, such passive holding does not preclude a finding of bad faith, since (1) the Trade Marks have a strong reputation and are widely known; (2) the Respondent has provided no evidence of any actual or contemplated good faith use by it of the Domain Name; (3) the Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name and; (4) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement. Similarly, reproducing a famous trademark in a domain name in order to attract Internet users to an inactive website cannot be regarded as fair use or use in good faith.

Finally, it is likely that the Respondent registered the Domain Name to prevent the Complainant from using the Trade Marks in the Domain Name. Moreover, the Respondent has not replied to the cease-and-desist letter and reminders the Complainant has sent.

In conclusion, it is more likely than not, that the Respondent's primary motive in registering and using the Domain Name was to capitalize on or otherwise take advantage of the Trade Marks through the creation of initial interest of confusion. As email servers have been configured on the Domain Name there might be a risk that the Respondent is engaged in a phishing scheme and the use of an email address with the Domain Name presents a significant risk where the Respondent could aim at stealing valuable information such as credit cards from the Complainant's clients or employees.

Consequently, it is established that the Respondent both registered and used the Domain Name in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

In accordance with paragraph 4(a) of the Policy, the Complainant has to show that the Domain Name is identical or confusingly similar with the Trade Marks, in which it has rights.

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates MICHELIN, of which the Trade Marks consist, in its entirety, be it with a misspelling consisting of an additional "h". As the Domain Name consists of a common, obvious, or intentional misspelling of the Trade Marks, this does not prevent the confusing similarity of the Domain Name to the Trade Marks for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9; and, *inter alia*, *Allianz SE v. WhoisGuard Protected, WhoisGuard, Inc. / Azir Malik*, WIPO Case No. [D2019-2511](#)). The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11.1). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This 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. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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 [WIPO Overview 3.0](#), section 2.1).

Based on the present evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant's consent to use or register the Trade Marks as part of the Domain Name, is not commonly known by the Domain Name and has not acquired trade mark rights in the Domain Name. Furthermore, the Domain Name does not resolve to a website and there is no other evidence showing that the Domain Name is used for a *bona fide* offering of goods or services, nor that its use constitutes a legitimate noncommercial or fair use. Lastly, given the inherently misleading nature of the typo-squatting Domain Name, the Respondent cannot be said to have rights or legitimate interests therein.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

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

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred over 22 years after registration of the earliest of the Trade Marks;
- the MICHELIN mark is not a dictionary term, nor a term of which it is likely that a registrant would spontaneously think at the time of registration of the Domain Name;
- the typo in the Domain Name, adding the letter "h", is a likely mistake an Internet user would make when looking for "Michelin"; and,
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

In view of these circumstances, taken together, the Panel finds that the Domain Name has been registered in bad faith.

With regard to bad faith use, the fact that the Domain Name at this stage does not appear to resolve to an active website does not imply a lack of bad faith. As set out in [WIPO Overview 3.0](#), section 3.3, the consensus view is that the apparent lack of so-called active use (e.g., to resolve to a website) of a domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka*, WIPO Case No. [D2015-0640](#)). In accordance with this UDRP jurisprudence, a UDRP panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. The Panel further finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the non-dictionary nature of the mark MICHELIN incorporated in the Domain Name, such that the Respondent cannot claim to have "accidentally" registered a domain name that happens to correspond to the Trade Marks;
- the hiding by the Respondent of its identity through the use of a privacy shield upon the initial registration of the Domain Name;
- the lack of a response to the cease-and-desist-letters from the Complainant and the lack of a formal Response of the Respondent; and
- the implausibility of any good faith use to which the typo-squatting Domain Name may be put.

Therefore, the Panel concludes that the Domain Name has been registered and is being used in bad faith.

## 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, <michhelin.com>, be transferred to the Complainant.

*/Wolter Wefers Bettink/*

**Wolter Wefers Bettink**

Sole Panelist

Date: September 28, 2023