

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. Robert Ksinke,  
Mi empresa  
Case No. D2022-3092

### **1. The Parties**

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

The Respondent is Robert Ksinke, Mi empresa, Peru.

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

The disputed domain name <grupomichellin.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 September 1, 2022. On September 1, 2022, the Center received an email communication from the Respondent in which the Respondent offered to settle the matter amicably. On September 2, 2022, the Center sent a Possible Settlement email to the Parties. The Complainant requested the suspension of the proceedings on September 9, 2022, and the Center suspended the proceedings on September 12, 2022 until October 12, 2022. The proceedings were reinstated upon the Complainant’s request on October 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondent did not submit any formal response.

The Center appointed Edoardo Fano as the sole panelist in this matter on October 26, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is Compagnie Générale des Etablissements Michelin, a French company operating in the fields of tires, mobility and gastronomy and owning several trademark registrations for MICHELIN, among which the following ones in the Respondent's country:

- Peruvian Trademark Registration No. S00003261 for MICHELIN, registered on December 29, 1994;
- Peruvian Trademark Registration No. S00003262 for MICHELIN, registered on December 29, 1994;
- Peruvian Trademark Registration No. S00003263 for MICHELIN, registered on December 29, 1994.

The Complainant operates on the Internet at several websites, among which "www.michelin.com" and "www.michelingroup.com".

The Complainant provided evidence in support of the above.

The disputed domain name was registered on March 21, 2022, according to the WhoIs records, and when the Complaint was filed the website at the disputed domain name was inactive.

On May 18, 2022 the Complainant sent a cease-and-desist letter to the Respondent, followed by several reminders, without receiving any reply.

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

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

The Complainant states that the disputed domain name is confusingly similar to its trademark MICHELIN, since the term "michellin" instead of the term "michelin" consists of a "classical" typo or misspelling of the trademark.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate

noncommercial or fair use of the disputed domain name.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark MICHELIN is distinctive and internationally known. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the passive holding of the disputed domain name qualifies as bad faith registration and use. Finally, the Complainant suspects that the Respondent might also use the disputed domain name in connection with phishing or fraudulent email communications, since the MX records attached to the disputed domain name have been activated.

## **B. Respondent**

Except for the email communications on September 1 and September 14, 2022 (which reiterates the same message), the Respondent has made no formal reply to the Complainant's contentions. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the absence of a reply to the Complainant's contentions have been put forward or are apparent from the record.

A respondent is not obliged to actively participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL INTERNATIONAL PLC v. MARK FREEMAN*, WIPO Case No. [D2000-1080](#); *ALTAVISTA COMPANY v. GRANDTOTAL FINANCES LIMITED et. al.*, WIPO Case No. [D2000-0848](#); *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

However, the Respondent submitted an informal email communication in Spanish on September 1, 2022, stating the following:

"Estimado Sr. No se quien sea, esta es la única vez que voy a responder a sus correos. He registrado un dominio (grupomichelin.com) porque estaba disponible y en ningún momento encontré trabas para hacerlo de parte del name.com en cualquier caso las restricciones deben hacerlas antes de que un usuario haga el registro no luego de que ha gastado su tiempo y dinero. La responsabilidad de poner restricciones debe ser de las compañías registradoras los usuarios comunes y corrientes no conocemos de leyes acerca de propiedad o lo que sea que quieran usar para amedrentar. En fin me están causando muchos problemas con esto que me hace perder tiempo y dinero así que si quieren el dominio pues les sugiero que lo compren de manera formal ofreciendo una suma aceptable que empiece por los 5000 USD o pidan a Name.com que me retire el dominio supongo que si están dentro de lo que marca la ley que estan usando name.com no se podrá negar a hacerlo. Saludos."

On September 9, 2022, the Complainant requested to suspend the proceedings in order to explore a settlement option with the Respondent and on October 10, 2022, it requested to lift the suspension and continue with the proceedings. The Panel finds it appropriate to proceed to a substantive decision on the merits, according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.10.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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.

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

The Panel finds that the Complainant is the owner of the trademark MICHELIN both by registration and acquired reputation and that the disputed domain name is confusingly similar to the MICHELIN trademark.

Regarding the use of the term “michellin” to replace the term “michelin” of the Complainant’s trademark, the Panel notes that this is a typical case of a deliberate misspelling of a mark (so-called “typosquatting”), by adding, deleting, substituting or reversing the order of letters in a mark, where numerous UDRP panels in the past have found confusing similarity to be present, see, *inter alia*, *Yurtici Kargo Servisi A.S. v. Yurticikargo Yurticikargo*, WIPO Case No. [D2003-0707](#); *CareerBuilder, LLC v. Azra Khan*, WIPO Case No. [D2003-0493](#); *The Sportsman’s Guide, Inc. v. Vipercom*, WIPO Case No. [D2003-0145](#); *Neuberger Berman Inc. v. Alfred Jacobsen*, WIPO Case No. [D2000-0323](#). The use of the term “michellin” to replace the term “michelin” does not therefore prevent the disputed domain name from being confusingly similar to the Complainant’s trademark and can be considered as a case of typosquatting. See [WIPO Overview 3.0](#), section 1.9.

Regarding the addition of the term “grupo” (meaning “group” in Spanish), the Panel notes that it is now well established that the addition of descriptive or geographical terms or letters to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark (see, e.g., *Aventis Pharma SA., Aventis Pharma Deutschland GmbH v. Jonathan Valicenti*, WIPO Case No. [D2005-0037](#); *Red Bull GmbH v. Chai Larbthanasub*, WIPO Case No. [D2003-0709](#); *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#)). The addition of the term “grupo” does not therefore prevent the disputed domain name from being confusingly similar to the Complainant’s trademark. See [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a generic Top-Level Domain (“gTLD”), in this case “.com”, is typically ignored when assessing the confusing similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is confusingly similar to the Complainant’s trademark, pursuant to the Policy, paragraph 4(a)(i).

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

The Respondent has failed to file a formal response in accordance with the Rules, paragraph 5.

The Complainant in its Complaint and as set out above has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that he has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests he may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

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

Paragraph 4(b) of the Policy provides that “for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of

the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark MICHELIN is clearly established and the Panel finds that the Respondent likely knew of the Complainant and its trademark and deliberately registered the disputed domain name in bad faith.

As regards the use in bad faith of the disputed domain name, which currently resolves to an inactive website, the Panel considers that bad faith may exist even in cases of so-called "passive holding", as found in the landmark UDRP decision *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the circumstances of this case, the Panel finds that such passive holding does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3.

Moreover, noting the disputed domain name is a typosquatted version of the Complainant's trademark MICHELIN, and the MX records attached to the disputed domain name have been activated, the Panel deems that there is a risk that the disputed domain name could be used for phishing activities.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## 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 <grupomichellin.com> be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: November 9, 2022