

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Rich Seeley Case No. D2023-1366

1. The Parties

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

The Respondent is Rich Seeley, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <michelininc.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 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 April 6, 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 April 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 8, 2023.

The Center appointed C. K. Kwong as the sole panelist in this matter on May 24, 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 the owner of trademarks consisting of or embodying the word “michelin” which include international trademark registration for the mark MICHELIN under registration no. 771031 registered on June 11, 2001 in respect of goods and services under International Classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42 (Annex 4 to the Complaint).

The Complainant has also registered the domain name <michelin.com> on December 1, 1993 (Annex 5 to the Complaint) which it operates the website to promote its services.

The uncontradicted evidence produced by the Complainant shows that the use and registration of its aforesaid MICHELIN mark occurred well over 20 years before the registration of the disputed domain name <michelininc.com> on March 17, 2021. The disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant has made the following contentions:

The Complainant is a leading tire company in the world. It is present in 170 countries with more than 124,000 employees operating 117 tire manufacturing facilities and sales agencies in 26 countries including the United States. The MICHELIN brand is the top selling tire brand worldwide.

The MICHELIN Guide was first launched in 1920 to help motorists plan their trips. Later, the MICHELIN Guide expanded to include a list of hotels and restaurants according to specific categories, which guide now rates over 30,000 establishments in over 30 territories across three Continents. More than 30 million MICHELIN Guides have been sold worldwide.

Michelin also operates in the United States, Canada and Mexico with headquarter operations and plants in each country known as Michelin North America.

Michelin North America is operating 19 plants in 16 locations and employs 22,000 people. It manufactures and sells tires for airplanes, automobiles, farm equipment, heavy duty trucks, motorcycles and bicycles.

The disputed domain name <michelininc.com> reproduces the Complainant's trademark in its entirety. It is identical or confusingly similar to the Complainant's trademark.

The abbreviation “inc” in the disputed domain name stands for incorporated and refers to a legal corporation. It doesn't distinguish the disputed domain name from the Complainant's trademark but increased the likelihood of confusion by misleading the Internet users into believing that the disputed domain name is endorsed by the Complainant or that it will direct them to the Complainant's official website.

The Respondent is neither affiliated with the Complainant in any way nor has been authorized to use and register the Complainant's MICHELIN trademark or to register any domain name incorporating such trademark.

The disputed domain name resolves to an inactive page. There is no evidence to show any intention of non-commercial or fair use of the disputed domain name by the Respondent. The Respondent has no legitimate interest or rights in the disputed domain name.

The Complainant and its trademark MICHELIN are well-known throughout the world, including in the United States where the Respondent is located. As the disputed domain name entirely reproduces the Complainant's trademark MICHELIN and combines it with the abbreviation “inc”, the Respondent must have the Complainant's trademark and company name in mind when it registered the disputed domain name.

The Complainant's MICHELIN trademark registrations significantly predate the registration date of the disputed domain name.

The Registrant has a duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering it.

A quick MICHELIN trademark search would have revealed to the Respondent the existence of the Complainant and its trademark MICHELIN. A simple search via Google or any other search engine using the keyword "michelin" will show that all first results relate to the Complainant's products or news.

The Respondent tried to hide his identity, by using a name privacy service and has not replied to the Complainant's cease and desist letter and reminders (Annex 6 of the Complaint). Email servers have been configured on the disputed domain name. The use of an email address with the disputed domain name presents a significant risk of its use to steal valuable information such as credit cards from the Complainant's clients or employees.

All circumstances confirm that the disputed domain name was registered and used in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Notice of Proceedings

Having considered the records in the case file, the Panel is satisfied that the Center has discharged its responsibility under paragraph 2(a) of the Rules to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint. It is further noted that records of Electronic Proof of Delivery of the Notification of Complaint and Commencement of Administrative Proceedings and the Written Notice to the Respondent and the original registrant of the disputed domain name at their respective email addresses and postal addresses by DHL under Waybill Nos. 8266262605 and 8266264031 are shown in the case file.

B. The Three Elements

In rendering its decision, the Panel must adjudicate the dispute in accordance with paragraph 15(a) of the Rules which provides that, "[t]he Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 14(b) of the Rules further provides that, "[i]f a Party, in the absence of exceptional circumstances, does not comply with any provisions of, or requirement under these Rules or any requests from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate".

The said three elements are considered below.

1. Identical or Confusingly Similar

On the evidence available before the Panel, it has no hesitation in finding that the Complainant has rights in the trademark MICHELIN by reason of its trademark registration as recited in Section 4 above.

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.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name, see *Banconsumer Service, Inc. v. Mary Langthorne, Financial Advisor*, WIPO Case No. [D2001-1367](#). In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The disputed domain name in this case reproduces in the first eight letters “michelin”, being the Complainant’s trademark MICHELIN in its entirety. It is followed by the addition of the three letters “inc” which is then further followed by the generic Top-Level Domain (“gTLD”) “.com”.

It is well-established practice to disregard the gTLD “.com”, when assessing whether a domain name is identical or confusingly similar to the mark in issue. *Société Anonyme des Eaux Minérales d’Evian and Société des Eaux de Volvic v. Beroca Holdings B.V.I. Limited*, WIPO Case No. [D2008-0416](#). It is well recognized that for general consumers, the first syllables are generally more important. In this case, the first syllables of the disputed domain name are “michelin” being the eight letters comprising the Complainant’s MICHELIN trademark which is clearly recognizable.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark MICHELIN.

Accordingly, the first element of paragraph 4(a) of the Policy is established.

2. Rights or Legitimate Interests

The Complainant needs to establish a *prima facie* case showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). Once such *prima facie* case is made, the burden will shift to the Respondent to prove that it has rights or legitimate interests in the disputed domain name.

In the present case, there is *prima facie* evidence of the Complainant’s asserted registration and use of the registered trademark MICHELIN well before the Respondent’s registration of the disputed domain name <michelininc.com> on March 17, 2021. Further, the Panel notes that the name of the Respondent does not correspond in any way with the disputed domain name. From the evidence available to the Panel, the Respondent does not appear to be commonly known as <michelininc.com>. There is also no evidence available to demonstrate any legitimate noncommercial or fair use of the disputed domain name by the Respondent.

There is no legitimate explanation on the record as to why it was necessary for the Respondent to adopt the word “michelin” in its domain name.

The Complainant has also confirmed that it has not licensed the Respondent to use its trademark MICHELIN in any way.

The Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name and the second element of paragraph 4(a) of the Policy is established.

3. Registered and Used in Bad Faith

The Complainant has registered its MICHELIN trademark as detailed in Section 4 above and has been using it at least 20 years before the registration of the disputed domain name by the Respondent in 2021.

The incorporation of the MICHELIN trademark entirely letter by letter as part of the disputed domain name without any explanation and the prior substantial and extensive use of the Complainant’s MICHELIN mark worldwide including the United States where the Respondent resides, lead to the conclusion that the

Respondent must have been aware of the existence of the Complainant and its trademark MICHELIN at the time of the registration of the disputed domain name.

Prior panels have held that failure to respond to a cease and desist letter can be evidence of bad faith. In this regard, the Panel notes that the Respondent did not respond to the Complaint. Such bad faith is compounded when upon receipt notification of the Complaint that the disputed domain name is confusingly similar to a registered trademark and alleging phishing and impersonation of the Complainant, which is a serious allegation failed to respond. Such conduct is not consistent with what one would reasonably expect from a good faith registrant when accused of cybersquatting.

The Respondent's lack of response and the use of a privacy or proxy service when registering the disputed domain name, are further indications of the Respondent's bad faith registration and use of the disputed domain name in the circumstances of this case.

Although the disputed domain name resolves to an inactive website, as discussed in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 3.3, it does not prevent a finding of bad faith.

Based on the available record, the Panel cannot conceive of any use by the Respondent of the disputed domain name that would not be a bad faith use. Some degree of deception or confusion would seem to be inevitable in any use by the Respondent of the disputed domain name. The use of the term "michelin" in the disputed domain name is likely to create confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or of a product or service offered on the websites or online locations where the disputed domain name leads to.

The Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

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 <michelininc.com> be transferred to the Complainant.

/C. K. Kwong/

C. K. Kwong

Sole Panelist

Date: June 7, 2023