

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. divide Jimmy
Case No. D2022-1831

1. The Parties

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

The Respondent is divide Jimmy, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <michelni.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 May 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 20, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on June 28, 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 language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to the un rebutted information in the Complaint, the Complainant is a leading tire company, dedicated to improving the mobility of goods and people by manufacturing and marketing tires for every type of vehicle, including airplanes, automobiles, bicycles/motorcycles, earthmovers, farm equipment, and trucks. It also offers electronic mobility support services on <viamichelein.com> and publishes travel guides, hotel and restaurant guides, maps, and road atlases. The Complainant is present in Africa since the 1940s, offering a wide variety of products and services from bicycle tyres right up to mining tyres.

The Complainant has registered several trademarks consisting of MICHELIN including the International trademark Registration No. 771031 registered on June 11, 2001, and the European Union Trade Mark Registration No. 004836359 registered on March 13, 2008.

The Complainant owns and operates various domain names reflecting its trademark in order to promote its services, including <michelin.com> registered on December 1, 1993, and <michelin.ng> registered on June 11, 2013.

The disputed domain name was registered on February 9, 2022, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name represents a misspelling of its registered trademark MICHELIN, the last two letters in the trademark, "I" and "N", being inverted, which does not prevent a likelihood of confusion. On the contrary, such composition increases the likelihood of confusion as it may lead Internet users into believing that the disputed domain name will direct them to the Complainant's official website.

As regards the second element, the Complainant argues that the Respondent is neither affiliated with the Complainant in any way, nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark. In addition, the Complainant argues that the disputed domain name directed to a privacy error page, indicating that malicious individuals may be trying to steal personal information of the Internet users, which is extremely dangerous for the Complainant and its customers. The Respondent has not made any reasonable and demonstrable preparations to use the disputed domain name. The Complainant also points to additional factors, including the fact that the email servers were configured on the disputed domain name and that the Respondent never answered to the Complainant's cease-and-desist letter despite the Complainant's reminders.

In what concerns the third element, the Complainant argues that taking into account the worldwide reputation of the Complainant and its trademarks, the composition of the disputed domain name which imitates the Complainant's trademark MICHELIN, as well as the fact that the mentioned trademark significantly predates the registration date of the disputed domain name, it is most likely to be believed that the Respondent registered the disputed domain name based on the notoriety and attractiveness of the Complainant's trademark to divert internet traffic to its website. As regards the use, the Complainant argues that the disputed domain name directed to a privacy error page, indicating that malicious individuals may be trying to steal personal information of the Internet users, which is extremely dangerous for the Complainant and its customers. Moreover, email servers were configured on the disputed domain name. Therefore, the Respondent is probably engaged in a phishing scheme. Passive holding does not preclude a finding of bad faith in the circumstances of the case.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that notice of the Complaint was sent to the relevant address disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response.

6.2 Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the MICHELIN trademarks.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "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".

Here the disputed domain name <michelni.com> consists of the obvious misspelling of the MICHELIN trademark of the Complainant. This misspelling in the disputed domain name, also referred to as typosquatting, is insufficient to avoid a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9).

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark MICHELIN and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name. Also, there is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

To fulfill the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the un rebutted assertions of the Complainant, its MICHELIN trademarks were widely used in commerce well before the registration of the disputed domain name in February 2022 and are well-known. The Respondent provided no explanations for why he registered the disputed domain name. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The typosquatting nature of the disputed domain name further supports this inference.

As regards the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "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."

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. An additional element is the DNS setup of the disputed domain name (with active MX records). Considering all the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the disputed domain name by the Respondent.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and 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, <michelni.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: July 8, 2022