

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Pokey Tool, ValueTire LLC

Case No. D2022-2937

1. The Parties

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

The Respondent is Pokey Tool, ValueTire LLC, United States of America (“U.S.”).

2. The Domain Name and Registrar

The disputed domain name <michelinflorida.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2022. On August 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 10, 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 August 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 5, 2022. However, informal communication emails were received from the Respondent on September 7, 2022 and September 8, 2022, respectively, stating “We cancelled this domain about a month ago” and “We do not have this domain or own this domain”.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on September 12, 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.

4. Factual Background

The Complainant is Compagnie Générale des Etablissements Michelin (“Michelin”), a leading tire company, which is dedicated to enhancing its clients’ mobility, sustainably, designing and distributing the most suitable tires, services and solutions, providing digital services, maps and guides to help enrich trips and developing high technology materials that serve the mobility industry.

The Complainant is present in 170 countries, has more than 124,000 employees and operates 117 tire manufacturing facilities and sales agencies in 26 countries, including United States.

The Complainant is the owner of the following trademark registrations that comprise the trademark MICHELIN.

- U.S. trademark MICHELIN No. 4126565, registered April 10, 2012, duly renewed, and covering services in International classes 36, 37, and 39;
- U.S. trademark MICHELIN No. 3329924, registered November 6, 2007, duly renewed and covering services in International class 39;
- International MICHELIN Trademark No. 771031, registered June 11, 2001, duly renewed, designating *inter alia* Iceland, Norway, Germany and the Russian Federation, and covering goods and services in International classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, and 42.

Moreover, in addition, the Complainant is the owner, among others, of the following domain names reflecting its trademarks in order to promote its services:

- <michelin.com> registered on December 1, 1993;
- <michelin.us> registered on April 19, 2002.

The disputed domain name was registered on June 8, 2022, and resolved to a parked default page. Currently, the disputed domain name resolves to an inactive web page.

5. Parties’ Contentions

A. Complainant

The Complainant argues that the disputed domain name is almost identical to the Complainant’s trademark MICHELIN which has become a distinctive identifier of its service offerings.

The Complainant argues that the disputed domain name is identical and/or confusingly similar to its well-known MICHELIN trademarks with the addition of the geographic term “florida” in the disputed domain name.

It is well established that the Top Level Domain (“TLD”) “.com”, being a necessary component of a domain name, may be disregarded for the purpose of comparison under this ground.

The Complainant sent on June 13, 2022, a cease-and-desist letter to the registrant, asserting its trademark rights and requesting them to transfer the domain name <michelinflorida.com> to the Complainant free of charge. Having sent several reminders, no response was received from the registrant.

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests.

The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name including its trademarks.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In its informal communications of September 7 and 8, 2022 (replicated above), the Respondent claimed to have deleted the disputed domain name and was no longer the owner.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (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 was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

In the present case, the disputed domain name incorporates the word "michelin", which is identical to the Complainant's registered well-known trademark MICHELIN.

It is clear that the disputed domain name incorporates in its entirety the MICHELIN trademark to which the term "florida" has been added.

The addition of term "florida" does not prevent confusing similarity between the disputed domain name and the trademark.

Moreover, the Panel considers that the disputed domain name which incorporates a term with a registered trademark may be considered identical or confusingly similar to the trademark for the purpose of the Policy (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

The Panel finds the first element of the Policy has, therefore, been met.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

There is nothing in the available case file to suggest that the Respondent is in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating its trademarks.

The Respondent has not made any submissions or any demonstrations that it has rights or legitimate interests in the disputed domain name.

In *Guerlain S.A. v. Peikang*, WIPO Case No. [D2000-0055](#), the panel stated that: “in the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated *bona fide* or legitimate use of the domain name could be claimed by Respondent.”

Considering the composition of the disputed domain name, which consists of the Complainant’s distinctive MICHELIN trademark along with the geographic term “Florida”, the nature of the disputed domain name is such to carry a risk of implied affiliation that cannot constitute fair use since it effectively suggests association or endorsement by the Complainant, contrary to the fact. [WIPO Overview 3.0](#), section 2.5.1.

The fact that the disputed domain name does not currently resolve to an active website does not obviate the Panel’s finding of lack of rights or legitimate interests. Rather, the Respondent’s indication of an intent to delete the disputed domain name further reinforces the finding that the Respondent has no rights or legitimate interests in the confusingly similar disputed domain name.

The Panel finds no evidence that the Respondent has used, or undertake any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Panel concludes, noting that the Respondent lacks any rights or legitimate interests in the disputed domain name, that the second element of the Policy has, therefore, been met.

C. Registered and Used in Bad Faith

The disputed domain name consists of the Complainant’s trademark along with a geographic term descriptive of one of the many locations in which the Complainant operates. Accordingly, the Panel finds it unlikely that the Respondent was unaware of the Complainant when it registered the disputed domain name. The Panel’s finding is reinforced given the notoriety of the Complainant’s mark, especially in the tire industry in which the Respondent allegedly operates.

While the disputed domain name may not be actively used, the passive holding of a domain name does not necessarily prevent a finding of bad faith further to *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Here, considering the notoriety of the Complainant’s mark, the Respondent’s likely awareness of the Complainant given the Respondent’s competing service of the tire industry, and the Respondent’s failure to provide any good faith explanation for its registration, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#). Moreover, the Complainant has provided evidence that the disputed domain name is connected to active mail exchange records, which represents an implied ongoing threat to the Complainant that the disputed domain name may be used in furtherance of a fraudulent email scheme.

On this basis the Panel finds that the Complainant has satisfied the third and last point of the Policy, paragraph 4(a)(iii).

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 <michelinflorida.com> be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: September 26, 2022