

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. 1&1 Internet Inc /
Richard Geist
Case No. D2022-3278

1. The Parties

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

The Respondent is 1&1 Internet Inc, United States of America (“United States” or “US”) / Richard Geist, United States.

2. The Domain Name and Registrar

The disputed domain name <themichelinclub.com> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 2, 2022. On September 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 6, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 13, 2022 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 September 14, 2022.

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 September 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 7, 2022.

The Center appointed Leon Trakman as the sole panelist in this matter on October 20, 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 owns the following trademark registrations, among others:

- MICHELIN, U.S. Registration No. 892045, filed on June 5, 1969, registered on June 2, 1970, renewed and covering goods in Class 12;

- MICHELIN, U.S. Registration No. 4126565, filed on January 19, 2011, registered on April 10, 2012, and covering services in Classes 36, 37, and 39.

The Complainant and its affiliates also operate the domain name <michelin.com> registered on December 1, 1993.

The disputed domain name was registered on August 7, 2020, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, contrary to the requirements of Policy, paragraph 4(a)(i), and the Rules, paragraphs 3(b)(viii), (b)(ix)(1).

The Respondent has no rights or legitimate interests in respect of the disputed domain name, contrary to the requirements of Policy, paragraph 4(a)(ii), and the Rules, paragraph 3(b)(ix)(2).

The disputed domain name was registered and is being used in bad faith, contrary to the requirements of Policy, paragraphs 4(a)(iii) and 4(b), and the Rules, paragraph 3(b)(ix)(3).

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the trademark MICHELIN. The disputed domain name reproduces the Complainant's well-known and famous trademark in its entirety. Prior panels have repeatedly held that disputed domain names are identical or confusingly similar to the Complainant's trademark where they incorporate the entirety of the Complainant's trademark. See *Compagnie Générale des Etablissements Michelin v. Shuitu Chen*, WIPO Case No. [D2016-1924](#); *Compagnie Générale des Etablissements Michelin v. Isaac Goldstein, Hulmiho Ukolen, Poste restante/Domain Admin, Whois protection, this company does not own this domain name s.r.o.*, WIPO Case No. [D2015-1787](#); *Compagnie Générale des Etablissements Michelin v. Oncu, Ibrahim Gonullu*, WIPO Case No. [D2014-1240](#); *Compagnie*

Générale des Etablissements Michelin (Michelin) v. Zhichao Yang, WIPO Case No. [D2013-1418](#); *Compagnie Générale des Etablissements Michelin v. Milan Kovac/Privacy--Protect.org*, WIPO Case No. [D2012-0634](#); *Compagnie Générale des Etablissements Michelin v. Vyacheslav Nechaev*, WIPO Case No. [D2012-0384](#); and *Compagnie Générale des Etablissements Michelin v. Transure Enterprise Ltd, Host Master / Above.com Domain Privacy*, WIPO Case No. [D2012-0045](#)).

In support of these determinations, a domain name that incorporates a trademark in its entirety will normally be considered identical or confusingly similar to the trademark. See *L'Oréal, Lancôme Parfums Et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); *RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#); and *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc*, WIPO Case No. [D2000-0113](#).

The disputed domain name adds the term, “theclub”, to the Complainant’s trademark. A domain name that adds other terms (whether descriptive or otherwise) to a complainant’s trademark, does not prevent a finding of confusing similarity between it and that mark. See *Eurodrive Services and Distribution N.V v. Transure Enterprise Ltd, Host Master and Above.com Domain Privacy*, WIPO Case No. [D2012-1453](#); *Swarovski Aktiengesellschaft v. Luo Li*, WIPO Case No. [D2012-1604](#).

The addition of a generic Top-Level Domain (“gTLD”), such as “.com” also does not prevent the finding of confusing similarity. Prior panels have repeatedly held that a gTLD is viewed as a standard registration requirement and as such is typically disregarded when determining the confusing similarity to a complainant’s trademark. See *L'Oréal v Tina Smith*, WIPO Case No. [D2013-0820](#); *Titoni AG v Runxin Wang*, WIPO Case No. [D2008-0820](#); *Alstom v. Itete Peru S.A.*, WIPO Case No. [D2009-0877](#); *Accor v. Noldc Inc.*, WIPO Case No. [D2005-0016](#).

The Panel determines, based on the foregoing, that the disputed domain name is confusingly similar to the Complainant’s trademark as required under the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

There is no evidence that the Respondent has any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, nor authorized to use that disputed domain name by the Complainant, its agents, or affiliates. The disputed domain name does not resolve to an active website; and the Respondent has not demonstrated any intention to use the disputed domain name for noncommercial or other fair use, or to make a *bona fide* offering of goods or services. The Complainant provides evidence confirming that it did not extend any rights to the Respondent to use the Complainant’s trademark, in a domain name or otherwise. Moreover, the Complainant sent a registered cease-and-desist letter and follow up emails regarding the Respondent’s claimed unauthorized use of the Complainant’s trademark. The Respondent did not reply to any of these communications, or to the Complaint in the present dispute.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which have not been rebutted by the Respondent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Accordingly, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name, as required under the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove that the Respondent registered and used the disputed domain name in bad faith.

This Decision will consider bad faith registration and use in order.

Bad faith registration is ordinarily determined when the respondent “knew or should have known” of the complainant’s trademark rights, but registered a domain name in which he had no rights or legitimate interest (*Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*, WIPO Case No. [D2009-0320](#); *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)).

It is most likely that the Respondent was aware of the Complainant’s rights and interests on registering the disputed domain name, for these reasons.

Firstly, the Complainant is well-known globally, including in the United States, where the record indicates that the Respondent is located. It is unlikely that the Respondent was unaware of the Complainant’s trademark and reputation as an international corporation.

Secondly, the Respondent’s bad faith registration is reasonably demonstrated in that the disputed domain name reproduces the Complainant’s trademark in its entirety. Moreover, the inclusion of the term “club” in the disputed domain name affirms that the Respondent was reasonably aware of the Complainant’s programs established for the benefit of its members, such as the Complainant’s “CLUB PRO by Michelin” program that grants member benefits at participating restaurants. Even if the Respondent has no connection to the industry in which the Complainant is engaged, its registration constitutes evidence, albeit not conclusive, of opportunistic bad faith (*LEGO Juris A/S v. store24hour*, WIPO Case No. [D2013-0091](#); *LANCÔME PARFUMS ET BEAUTE & CIE, L’OREAL v. 10 Selling*, WIPO Case No. [D2008-0226](#); *Caixa D’Estalvis I Pensions de Barcelona (“La Caixa”) v. Eric Adam*, WIPO Case No. [D2006-0464](#)).

Thirdly, the Complainant’s trademark significantly predates the registration of the disputed domain name. Previous panels have held that a respondent’s reasonable knowledge of the complainant’s intellectual property rights, including trademarks, at the time of registering the domain name constitutes strong evidence of bad faith registration. See *Alstom v. Domain Investments LLC*, WIPO Case No. [D2008-0287](#); *NBC Universal Inc. v. Szk.com/ Michele Dinoia*, WIPO Case No. [D2007-0077](#).

Accordingly, the Panel determines that the Respondent registered the disputed domain name in bad faith.

The Panel holds further that the Respondent is using the disputed domain name in bad faith.

Prior panels have held that, if the Respondent’s use of the disputed domain name is passive, its bad faith use is to be determined in light of all the known or reasonably inferred circumstances surrounding its registration and use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Explicitly so stated: “A principle widely adopted by panels since shortly after the inception of the UDRP has been to examine all the surrounding circumstances in which a disputed domain name may appear to be, or is claimed to be, held passively without any evident usage or purpose” (*Cleveland Browns Football Company LLC v. Andrea Denise Dinoia*, WIPO Case No. [D2011-0421](#)).

The record in the instant case is replete with such circumstantial evidence of bad faith use. The disputed domain is not only confusingly similar to Complainant’s well-known trademark, but suggests an affiliation with the Complainant such that Internet users interacting with the disputed domain name are likely to believe that they are accessing the Complainant’s website, or that of its agent or affiliate. Moreover, as discussed above the Complainant and its trademark are well-known internationally, including in the United States. In this context, the Panel is unable to determine any plausible good faith use to which the disputed domain name could be put by the Respondent.

The Respondent has not used the disputed domain name actively to date. The absence of evidence of the Respondent’s good faith use of the disputed domain name, also carries an inference, although not a determination, of bad faith use. See *Alstom, Bouygues v. Webmaster*, WIPO Case No. [D2008-0281](#); *Guerlain S.A. v. Peikang*, WIPO Case No. [D2000-0055](#). However, the Respondent’s bad faith use is evident in his failure to reply to the cease-and-desist correspondence from the Complainant. *Bayerische Motoren Werke AG v. (This Domain Is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

The Panel concludes that the Respondent has registered and is using the disputed domain name at variance with the requirements of 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 <themichelinclub.com> be transferred to the Complainant.

/Leon Trakman/

Leon Trakman

Sole Panelist

Date: October 31, 2022