

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Carolina Rodrigues,
Fundacion Comercio Electronico
Case No. D2022-3448

1. The Parties

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

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Names and Registrar

The disputed domain names <emichelintweel.com> and <michelintwel.com> (collectively, the “Disputed Domain Names”, and each a “Disputed Domain Name”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On September 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing the underlying registrant and contact information for the Disputed Domain Names, which differed from the named respondent (Domains By Proxy, LLC, United States of America) (the “Named Respondent”) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 20, 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 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2022.

The Center appointed Rosita Li as the sole panelist in this matter on November 3, 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.

In the present case, the Panel determines that the Complaint should proceed solely against the underlying registrant, Carolina Rodrigues, Fundacion Comercio Electronico (the "Respondent"), since it is the actual holder of the registrations for the Disputed Domain Names as disclosed by the Registrar and against which the Complaint was initiated. The Disputed Domain Names were originally registered through the Named Respondent, a privacy service.

4. Factual Background

The Complainant is a tire company headquartered in Clermont-Ferrand, France.

The Complainant submits that:

- the Complainant's Michelin brand is present in 170 countries, the Complainant has more than 124,000 employees and operates 117 tire manufacturing facilities and sales agencies in 26 countries;
- the Complainant is the top-selling tire brand worldwide and is the No. 1 source of innovation in the global tire industry. It also offers unique mobility experiences through road maps, travel itineraries, hotel and restaurant guides and award-winning lifestyle products, and in particular, the Michelin Guide; and
- the Complainant has strong presence in Latin America with its largest manufacturing facilities located in Leon, Guanajuato State, Mexico, producing 4 to 5 million tires every year, destined for the Latin American market.

The Complainant is the owner of numerous trade marks for or incorporating the term "Michelin" or "Tweel" (collectively, the "Complainant's Marks"), including:

- United States of America trade mark No. 4126565 for MICHELIN, registered on April 10, 2012, covering classes 36, 37 and 39;
- United States of America trade mark No. 1399361 for MICHELIN, registered on July 1, 1986, covering classes 16, and 25;
- International trade mark No. 771031 for MICHELIN, registered on June 11, 2001 and designating, amongst others, China, Egypt, Morocco, the Russian Federation and Singapore, covering classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42;
- International trade mark No. 824400 for TWEEL, registered on March 31, 2004 and designating, amongst others, Australia, China, the Russian Federation, Switzerland and Singapore, covering class 12;
- Panama trade mark No. 39677 for MICHELIN, filed on September 30, 1985, covering class 12;
- Panama trade mark No. 115414 for MICHELIN, filed on June 22, 2001, covering class 39; and
- Panama trade mark No. 39675 for MICHELIN, filed on September 30, 1985, covering class 16.

The Complainant is the owner of the domain name <michelin.com> registered since December 1, 1993. The Complainant is also the owner of the domain name <michelintweel.com> (the "Complainant's Official Domain Name") registered since January 28, 2005.

The Disputed Domain Names were both registered on March 2, 2022. According to the evidence provided by the Complainant, the Disputed Domain Name <emichelintweel.com> resolve to "parking" pages displaying pay-per-click ("PPC") links while the Disputed Domain Name <michelintwel.com> dynamically redirect to various random websites, including websites displaying PPC links or fraudulent pages or random third-party websites.

The Complainant sent a cease-and-desist letter to the Respondent via email to the Registrar and the Registrar's online form asserting its trade mark rights and requesting the Respondent to transfer the Disputed Domain Names to the Complainant free of charge. The Respondent did not provide any response to the Complainant's correspondences.

5. Parties' Contentions

A. Complainant

The Complainant submitted that the three elements set out under paragraph 4(a) of the Policy in relation to the Disputed Domain Names have been satisfied. A summary of the Complainant's submissions is as follows.

The Complainant submits that the Disputed Domain Names are identical or confusingly similar to a trade mark or service mark in which the Complainant has right. The Complainant contends that:

- the Disputed Domain Names are identical, or at least confusingly similar to the Complainant's Marks in that they reproduce the Complainant's MICHELIN and TWEEL trade marks in their entirety;
- previous UDRP panels have considered the Complainant's Marks to be "well-known" or "famous";
- the Disputed Domain Name <michelintwel.com> reproduces the Complainant's TWEEL trade mark with the mere deletion of the letter "e". This deletion does not significantly affect the appearance or pronunciation of the Disputed Domain Name. The Complainant contends that such practice constitutes typosquatting and creates virtually identical and/or confusingly similar domain name to the Complainant's Marks;
- the Disputed Domain Name <emichelintweel.com> adds a letter "e" to the Complainant's Marks. The Complainant submits that prior UDRP panels have highlighted that minor variations such as adding a short letter to a mark when forming a domain name is usually insufficient in and of itself to confer requisite and sufficient distinctiveness to avoid user confusion;
- the full inclusion of both the Complainant's MICHELIN and TWEEL trade marks heightened the likelihood of confusion as they could mislead Internet users into believing that the Disputed Domain Names are registered by the Complainant, in order to promote its products and services;
- the likelihood of confusion is more prominent given the existence of the Complainant's Official Domain Name; and
- the Complainant has used the Complainant's Marks in connection with a wide variety of products and services around the world, including tires, and that the public has learnt to perceive the goods and services offered under these Marks as being those of the Complainant. Accordingly, the public would reasonably assume that the Disputed Domain Names are owned by or related to the Complainant.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The Complainant contends that:

- the Respondent is not affiliated with the Complainant in any way nor have they been authorized by the Complainant to use and register the Complainant's Marks, or to seek registration of any domain name incorporating the Complainant's Marks;
- the registration of the Complainant's Marks has preceded the registration of the Disputed Domain Names for years and the Respondent has no prior rights or legitimate interests in the Disputed Domain Names;
- the Disputed Domain Names are so identical to the famous Complainant's Marks and the Complainant's Official Domain Name, that the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the Disputed Domain Names;
- the Respondent cannot assert that, before any notice of the Complaint, it was using, or had made demonstrable preparations to use, the Disputed Domain Names in connection with a *bona fide* offering of goods and services;

- the Disputed Domain Names resolve to websites with links which redirect to various fraudulent pages, including parking pages with commercial links that are likely to generate revenues;
- the Disputed Domain Names (even with typing errors) are virtually identical to the Complainant's Official Domain Name, which would result in Internet users being diverted from the website associated with the Complainant's Official Domain Name to the websites associated with the Disputed Domain Names;
- the Respondent registered the Disputed Domain Names with a privacy service to hide its identity and prevent the Complainant from contacting it;
- in light of the Respondent's failure to respond to the Complainant's cease-and-desist letter and subsequent reminders, it can be assumed that the Respondent has no rights or legitimate interests in the Disputed Domain Names; and
- given the Complainant's goodwill and renown worldwide, the virtually identical nature of the Disputed Domain Names to the Complainant's Marks, it is not plausible that the Respondent could legitimately use the Disputed Domain Names.

The Complainant submits that the Disputed Domain Names were registered and are being used in bad faith. The Complainant contends that:

- the Complainant is well known worldwide and the Complainant's Marks predate the registration of the Disputed Domain Names;
- the composition of the Disputed Domain Names being virtually identical to the well-known Complainant's Marks clearly demonstrates that the Respondent registered the Disputed Domain Names based on the attractiveness of the Complainant's Marks, in order to divert Internet traffic to the Disputed Domain Names;
- a simple search on any search engine with the keywords "Michelin" and "Tweel" would have demonstrated that all first results relate to the Complainant and revealed to the Respondent of the existence of the Complainant and the Complainant's Marks;
- the Respondent chose the Disputed Domain Names to deliberately cause confusion amongst Internet users as to its source in order to take unfair advantage of the Complainant's goodwill and reputation;
- the Respondent registered the Disputed Domain Names through a privacy shield service to hide its identity and contact details to prevent the Complainant from contacting it;
- the Respondent is a well-known cybersquatter that has been the subject of more than 200 UDRP proceedings for registering domain names reproducing well-known trade marks; and
- email servers have been configured on the Disputed Domain Names and there is a risk that the Respondent is engaged in a phishing scheme.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), generic Top-Level Domains such as ".com" in a disputed domain name do not typically form part of the relevant assessment in the test of confusing similarity. The Panel will accordingly consider the second level part of the Disputed Domain Names (*i.e.*, "emichelintweel" and "michelintwel").

The Complainant demonstrated that it is the proprietor of the Complainant's Marks, and that the Complainant's Marks were registered significantly earlier than the Disputed Domain Names.

According to section 1.7 of the [WIPO Overview 3.0](#), "where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark". Further, section 1.8 of the [WIPO Overview 3.0](#) provides that, "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". The Disputed Domain Name <emichelintweel.com> incorporates both the Complainant's MICHELIN and TWEEL trade marks in their entirety. The additional letter "e" at the front of this Disputed Domain Name does not prevent a finding of confusing similarity between this Disputed Domain Name and the Complainant's Marks.

Further, section 1.9 of the [WIPO Overview 3.0](#) provides that, "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the first element". The Disputed Domain Name <michelintwel.com> incorporates the Complainant's MICHELIN trade mark in its entirety. The apparent misspelling of the Complainant's TWEEL trade mark as "twel" in this Disputed Domain Name does not prevent a finding of confusing similarity between this Disputed Domain Name and the Complainant's Marks.

Accordingly, the Panel is of the view that the Disputed Domain Names are confusingly similar to the Complainant's Marks and the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

According to section 2.1 of the [WIPO Overview 3.0](#), "where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element".

The Panel accepts the Complainant's submissions that the Respondent does not appear to be commonly known by the Disputed Domain Names. The Panel notes that the Respondent is not affiliated with the Complainant nor has the Complainant licensed or authorized the Respondent to use the Complainant's Marks, or to register any domain names incorporating the Complainant's Marks. The Disputed Domain Names resolve to "parked" pages, which consist of links directing to what appears to be PPC third-party websites. According to section 2.9 of the [WIPO Overview 3.0](#), "panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users".

The Panel notes that the Complainant included screenshots in the Complaint, which show the website of the Disputed Domain Name <emichelintweel.com> displaying links titled "Software Point Sale Restaurant", "Point of Sale Software Restaurant", "Restaurant Home Delivery Service", "Software for Route Planning", "Cruise Vacation" and "Restaurant Staffing". Similarly, the Complainant included screenshots in the Complaint, which show the website of the Disputed Domain Name <michelintwel.com> displaying three links: "Road Map Planning", "Geolocalisation" and "Goôgle Ads". The Panel notes that as of the date of this decision, the Disputed Domain Names resolve to different websites that change at each visit and sometimes

redirect Internet users to inappropriate and explicit websites.

Considering that the Disputed Domain Names resolve to either parked pages with PPC links or redirects Internet users to third-party websites, the Panel is prepared to find that the Respondent did not use the Disputed Domain Names in connection with a *bona fide* offering of goods or services. The Panel finds it apparent that the Respondent had the intention to divert consumers seeking to find the Complainant, or to tarnish the Complainant's Marks. It is clear that the use of the Disputed Domain Names, which are virtually identical to the Complainant's Marks (either with an addition or a deletion of the letter "e"), by the Respondent was an attempt to capitalize on the reputation and goodwill of the Complainant's Marks and mislead Internet users. As such, the Panel does not find that the use of the websites associated with the Disputed Domain Names is for a legitimate noncommercial or fair use.

In the present case, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests.

The Panel notes that the Respondent has failed to provide any evidence or submit any arguments to demonstrate that it had any rights or legitimate interests in the Disputed Domain Names. The Panel also notes that the Respondent has failed to respond to the Complainant's prior correspondence (including its cease-and-desist letter) to defend its rights or legitimate interests in the Disputed Domain Names. Moreover, given the composition of the Disputed Domain Name <emichelintweel.com>, the Panel finds that there is a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel is of the view that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#), 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".

The Panel finds that at the time of registration of the Disputed Domain Names in 2022, the Complainant's Marks were already registered in various parts of the world, including Panama, where the Respondent is located. The Panel agrees that the Complainant's Marks are well known and reputable amongst the general public. The Panel agrees that the Complainant's well-known reputation has been considered and acknowledged by earlier UDRP decisions as provided by the Complainant to the Panel in its submissions.

Considering the reputation of the Complainant and the Complainant's Marks, it would not be plausible for the Respondent to claim that it was unaware of the Complainant and the Complainant's Marks. The Panel is prepared to infer that the Respondent knew or should have known that its registration of the Disputed Domain Names would be confusingly similar to the Complainant's Marks ([WIPO Overview 3.0](#), section 3.2.2). Accordingly, the Panel finds that the Respondent registering the Disputed Domain Names, which are confusingly similar to the Complainant's Marks, which are well known and registered earlier, is a clear indicator of bad faith.

Moreover, factors such domain names incorporating a trade mark in its entirety with typos, and a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain names are all indicators of bad faith (section 3.2.1 of the [WIPO Overview 3.0](#)). The Panel accordingly considers its findings in the above sections 6.A. and 6.B., coupled with the fact that the Respondent failed to explain its choice of the Disputed Domain Names to be indicators of the Respondent's bad faith.

Regarding "automatically" generated PPC links, UDRP panels have found that "a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links

are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith" (section 3.5 of the [WIPO Overview 3.0](#)).

In the absence of the Respondent's positive efforts to mitigate and avoid links which target the Complainant's Marks, the Panel is prepared to find that the Respondent's use of the Disputed Domain Names as parked pages with PPC links constitute bad faith.

As aforementioned, the Complainant's Marks are distinctive and widely known. Yet, the Respondent has failed to provide a response or evidence of actual or contemplated use of the Disputed Domain Names in good faith. Further, the Panel observes that the Respondent attempted to conceal its identity using a proxy service. The Panel is of the view that the Respondent's use of a proxy service and provision of false contact information are indicators of bad faith. Considering the above, the Panel finds it implausible that there could be any good-faith use of the Disputed Domain Names.

The Panel notes from the screenshots of database searches of the Disputed Domain Names included in the Complaint that email servers have been configured on the Disputed Domain Names. The Panel agrees with the Complainant's submission that there is a risk that the Respondent might be engaged in a phishing scheme, which is an indicator of bad faith.

Considering that the Respondent has a track record of being named as a respondent in more than 200 cases decided under the Policy, the Panel finds it reasonable to infer that the Respondent has engaged in a pattern of cybersquatting, such as the conduct in this case. Such conduct constitutes evidence of registration and use in bad faith.

In view of the foregoing, the Panel is of the view 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 Names <emichelintweel.com> and <michelintwel.com> be transferred to the Complainant.

/Rosita Li/

Rosita Li

Sole Panelist

Date: November 17, 2022