

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Julie Schultz
Case No. D2022-4187

1. The Parties

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

The Respondent is Julie Schultz, United States of America (“United States or US”).

2. The Domain Name and Registrar

The disputed domain name <michelin-usa.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 8, 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 November 9, 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 November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Brigitte Joppich as the sole panelist in this matter on January 17, 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 one of the world's largest tire companies. Founded in 1889, it is today active in more than 170 countries, has more than 124,000 employees, and operates 117 tire manufacturing facilities and sales agencies in 26 countries worldwide, including the United States, where the Respondent is located.

The Complainant is *inter alia* registered owner of US trademark registration No. 3329924 MICHELIN, which was registered on November 6, 2007 and enjoys protection for services in class 39, US trademark registration No. 5775734 MICHELIN, which was registered on June 11, 2019 and enjoys protection for goods and services in classes 9, 39 and 42, and International trademark registration No. 771031 MICHELIN, which was registered on June 11, 2001 and enjoys protection for various goods and services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, and 42 (the "MICHELIN Mark"). Previous panels have considered the MICHELIN Mark to be "well-known" or "famous" (see *Compagnie Générale des Etablissements Michelin v. Way Su*, WIPO Case No. [D2016-2221](#); *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](#); *Compagnie Générale des Etablissements Michelin v. Transure Enterprise Ltd, Host Master / Above.com Domain Privacy*, WIPO Case No. [D2012-0045](#)).

The Complainant operates, *inter alia*, the domain names <michelin.com>, registered on December 1, 1993, and <michelinusa.com>, registered on September 20, 1999.

The disputed domain name was registered on August 29, 2022 and resolves to an inactive page. However, an email server has been set up that is linked to the disputed domain name.

Before filing the Complaint in the present proceedings, the Complainant sent a cease and desist letter to the Respondent on August 31, 2022, and a notification to the hosting provider, requesting the deactivation of the email server linked to the disputed domain name on October 6, 2022. Despite numerous reminders neither letter was answered.

5. Parties' Contentions

A. Complainant

With regard to the three elements specified in the Policy, paragraph 4(a), the Complainant contends that each of the three conditions is given in the present case.

- (i) The disputed domain name is confusingly similar to the MICHELIN Mark, as it is recognizable in the disputed domain name and as the addition of descriptive, geographical, pejorative, meaningless, or other terms do not prevent a finding of confusing similarity.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. It states that the Respondent is not affiliated with the Complainant in any way, that it has neither been authorized by the Complainant to use and register the Respondent's trademarks nor to seek registration of any domain name incorporating said

trademarks, that the Respondent has no prior rights or legitimate interests in the disputed domain name, and that the registration of the MICHELIN Mark preceded the registration of the disputed domain name by many years.

- (iii) The Complainant claims that the disputed domain name was registered and is being used in bad faith. The Complainant argues that it is implausible that the Respondent was unaware of the Complainant when she registered the disputed domain name, as the Complainant is well known throughout the world, including the United States, where the Respondent is allegedly located. It further states that the Respondent registered the disputed domain name through a privacy shield service to hide her identity and contact details and that a deliberate concealment of identity and contact information may in itself indicate registration in bad faith. As to bad faith use, the Complainant argues that the Respondent's passive holding of the disputed domain name does not preclude a finding of bad faith as the Complainant's trademark has a strong reputation and is widely known, as the Respondent did not provide any evidence of any actual or contemplated good faith use of the disputed domain name, as the Respondent took active steps to conceal her true identity by operating under a name that is not a registered business name, and as the Respondent actively provided and failed to correct false contact details, in breach of her registration agreement. In addition, the Complainant contends that an email server was configured and is linked to the disputed domain name, resulting in 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

Under the Policy, paragraph 4(a), the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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

The disputed domain name is confusingly similar to the MICHELIN Mark as it contains such trademark in its entirety, merely adding the term "usa" preceded by a hyphen, while the MICHELIN Mark is easily recognizable within the disputed domain name.

The Panel finds that the Complainant satisfied the requirements of the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Even though the Policy requires the complainant to prove that the respondent has no rights or legitimate interests in the disputed domain name, it is the consensus view among UDRP panels that a complainant has to make only a *prima facie* case to fulfill the requirements of the Policy, paragraph 4(a)(ii). As a result, once a *prima facie* case is made, the burden of coming forward with evidence of the respondent's rights or legitimate interests in the disputed domain name will then shift to the respondent.

The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has made a *prima facie* case that the Respondent has

no rights or legitimate interests in the disputed domain name and that the burden of production has been shifted to the Respondent.

The Respondent did not deny these assertions in any way and failed to come forward with any allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. The Panel notes that the nature of the disputed domain name, incorporating the Complainant's well-known trademark with a geographical term, carries a risk of implied affiliation (see section 2.5.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Based on the evidence before the Panel and as the disputed domain name is not actively used, the Panel cannot find any rights or legitimate interests of the Respondent either.

Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under the Policy, paragraphs 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent registered and is using the disputed domain name in bad faith.

As to bad faith registration, it is hardly conceivable that the Respondent registered the disputed domain name without knowledge of the MICHELIN Mark, as the MICHELIN Mark is very well established and has been used extensively for more than one century. In addition, the disputed domain name corresponds to the Complainant's domain name <michelinusa.com>, which has been used by the Complainant for decades. The Panel is therefore satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant's marks and thus in bad faith under the Policy, paragraph 4(a)(iii).

As the domain name is not actively used by the Respondent, the Panel has to decide whether such passive holding is to be considered as use in bad faith under the Policy. The Respondent's nonuse of the disputed domain name could equal to bad faith use under the passive holding doctrine, first set out in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and confirmed ever since. Under this doctrine, the Panel must examine all circumstances of a case to determine whether a respondent is acting in bad faith. Examples of circumstances that may indicate bad faith use include the existence of a well-known trademark, the lack of a response to the complaint, concealment of identity and the impossibility of conceiving good faith use of a domain name.

In the present case, the Respondent did not reply to the Complaint and therefore did not provide any argument supporting an actual or contemplated good faith use of the disputed domain name. Furthermore, the disputed domain name fully incorporates the well-known MICHELIN Mark. The facts of this case do not support any plausible actual or contemplated active use in good faith of the disputed domain name by the Respondent. The Panel is therefore convinced that, even though the disputed domain name is not being used in connection with an active website at the moment, the Respondent's passive holding of the disputed domain name meets the requirement of bad faith use. In all likelihood, the Respondent registered the disputed domain name to take advantage of the Complainant's MICHELIN Mark. This finding is supported by the fact that the Respondent configured an email server linked to the disputed domain name, which suggests that the Respondent might be using the disputed domain name for email correspondence without any plausible reason or justification.

Consequently, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith and that the Complainant satisfied the requirements of the Policy, paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, in accordance with the Policy, paragraph 4(i), and the Rules, paragraph 15, the Panel orders that the disputed domain name, <micelin-usa.com>, be transferred to the Complainant.

/Brigitte Joppich/

Brigitte Joppich

Sole Panelist

Date: January 30, 2023