

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Anturaż Agnieszka Kawęcka

Case No. D2023-0988

1. The Parties

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

The Respondent is Anturaż Agnieszka Kawęcka, Poland.

2. The Domain Name and Registrar

The disputed domain name <homemichelin.com> (the “Domain Name”) is registered with NetArt Registrar Sp. z o.o. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 6, 2023. On March 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 7, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Whois Data Protection Sp. z o.o.) and contact information in the Complaint. The Center sent an email communication to the Parties on March 8, 2023, 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 in English on March 9, 2023.

The Registrar also indicated that the language of the Registration Agreement is Polish. On March 8, 2023, the Center sent an email communication to the Parties in both Polish and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English; or submit the Complaint translated into Polish; or submit a request for English to be the language of the administrative proceedings. The Respondent was also invited to comment on the language of the proceeding. The Complainant requested in its Complaint that English be the language of the proceeding, and reiterated its request on March 9, 2023 and April 6, 2023. The Respondent did not comment on the language of the proceeding. On April 5, 2023, Whois Data Protection Sp. z o.o. (“Whois Data Protection”) requested that the language of the proceeding be Polish.

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 in English and Polish of the Complaint, and the proceedings commenced on March 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2023. The Response was filed with the Center in English by Whois Data Protection, represented by Forystek & Partnerzy, Poland on April 5, 2023. The Center received the Complainant's Supplemental Filing on April 6, 2023. The Center informed the Parties that the Center would proceed with panel appointment on April 14, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on April 21, 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 a French multinational tyre manufacturing company. In addition, the Complainant is notable for its travel guides, roadmaps and the Michelin stars, which are awarded to the restaurants for their cuisine.

Currently, the Complainant is present in 170 countries, including Poland. It has more than 124,000 employees and operates 117 tire manufacturing facilities and sales agencies in 26 countries.

The Complainant is the owner of numerous MICHELIN trademark registrations, including:

- the Polish Trademark Registration MICHELIN (word) No. R.056136 registered on July 18, 1978;
- the European Union Trademark Registration MICHELIN (word) No. 001791243 registered on October 24, 2001;
- the International Trademark Registration MICHELIN (word) No. 771031 registered on June 11, 2001.

Moreover, the Complainant is the owner of numerous domain names incorporating its MICHELIN trademark, such as <michelin.com> and <michelin.pl>.

The Domain Name was registered on November 9, 2022.

On November 21, 2022, November 29, 2022, December 7, 2022, and December 16, 2022, the Complainant sent cease-and-desist letters to the Respondent's email address available in the Whois database, requesting the transfer of the Domain Name to the Complainant. However, no reply was received by the Complainant.

At the time of submitting the Complaint and as of the date of this Decision, the Domain Name has resolved to the hosting company's default page.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

On April 5, 2023, the Response was filed with the Center by Whois Data Protection.

Whois Data Protection submits that it is not a holder of the Domain Name. Whois Data Protection only provided domain privacy services with respect to the Domain Name, which falls within its business activities. According to Whois Data Protection, only the underlying registrant, *i.e.*, Anturaż Agnieszka Kawęcka, shall be recorded as the named Respondent. Accordingly, Whois Data Protection requests that the Panel decides that it is not a party to this proceeding.

C. Complainant's Supplemental Filing

Further to the Response of Whois Data Protection, in the Supplemental Filing the Complainant acknowledges that Anturaż Agnieszka Kawęcka is the Domain Name holder and the actual Respondent in this case. The Complainant explains that the amended Complaint was filed also against Whois Data Protection, as section 4.4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") provides the option of either adding the disclosed underlying registrant as a co-respondent or replacing the originally named privacy or proxy service with the disclosed underlying registrant. Therefore, the Complainant submits that the decision to determine the Respondent against which this case should proceed should be left to the Panel's discretion.

6. Discussion and Findings

6.1. Preliminary Matters

A. Supplemental Filing

On April 6, 2023, the Center received the Supplemental Filing submitted by the Complainant.

The Panel notes that the Rules provide for the submission of the Complaint by the Complainant and the Response by the Respondent. No express provision is made for supplemental filings by either Party, except in response to a deficiency notification or if requested by the Center or the Administrative Panel.

Paragraphs 10 and 12 of the Rules in effect grant the Panel discretion to determine the admissibility of supplemental filings (including further statements or documents) received from either Party. Thus, it is in the discretion of the Panel to determine whether to consider and/or admit any supplemental filing in rendering its decision.

UDRP panels have repeatedly affirmed that the party's submission of supplemental filing or its request to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (*e.g.*, owing to some "exceptional" circumstance). See section 4.6 of the [WIPO Overview 3.0](#).

The Panel considers that the subject matter of the Complainant's Supplemental Filing relates to the circumstances which occurred after the filing of the Complaint, *i.e.*, submission of the Response by Whois Data Protection on April 5, 2023. At the same time, the Complainant's Supplemental Filing relates explicitly to the procedural matters of this dispute and is relevant for its resolution.

Accordingly, the Panel determines that the Complainant's Supplemental Filing is admitted and considered in rendering this Decision.

B. Respondent's Identity

Whois Data Protection requests the Panel in its Response to determine that only the underlying registrant of the Domain Name, *i.e.*, Anturaż Agnieszka Kawęcka, is the Respondent against which the present case should proceed. Accordingly, Whois Data Protection requests that it is not considered a party to the proceeding. In the Supplemental Filing, the Complainant submits that the decision on determination of the Respondent against which this case should proceed should be left to the Panel's discretion.

The term "respondent" is defined in paragraph 1 of the Rules as the holder of a domain-name registration against which a complaint is initiated. In many cases however, such as in the present case, the named respondent listed in the public Whois database is merely a "privacy" or "proxy" registration service. Paragraph 4(b) of the Rules provides that any updates to the respondent's data, such as through the result of a request by a privacy or proxy provider to reveal the underlying customer data, must be made before the two (2) business day period concludes or before the registrar verifies the information requested and confirms the Lock to the UDRP provider, whichever occurs first. Any modification(s) of the Respondent's data following the two (2) business day period may be addressed by the Panel in its decision.

In cases involving a privacy or proxy registration service initially named as the respondent, on timely receipt from the registrar (or privacy or proxy service) of information relating to an underlying or beneficial registrant, further to its compliance review and case notification responsibilities, the Center will (a) provide any disclosed underlying registrant information to the complainant, and (b) invite the complainant to amend the complaint to reflect such information. See section 4.4.1, [WIPO Overview 3.0](#).

When provided with the underlying registrant information which differs from the respondent named in the complaint, a complainant may either add the disclosed underlying registrant as a co-respondent, or replace the originally named privacy or proxy service with the disclosed underlying registrant. See section 4.4.2, [WIPO Overview 3.0](#).

Irrespective of the entity or entities ultimately recorded by the panel as the respondent(s) in a particular case, in satisfying its notification obligations, the Center practice provides notice of the complaint to all available registrant contacts including the privacy or proxy service and any underlying registrant. See section 4.4.4, [WIPO Overview 3.0](#).

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed. See section 4.4.5, [WIPO Overview 3.0](#).

Depending on the facts and circumstances of a particular case, *e.g.*, where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, *e.g.*, where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent. See section 4.4.5, [WIPO Overview 3.0](#).

In the present case, the Panel considers that the timely disclosure regarding the underlying registrant of the Domain Name has been made. Moreover, the Panel does not find any indication of a relationship between

the underlying registrant, *i.e.*, Anturaż Agnieszka Kawęcka, and Whois Data Protection beyond the provision of privacy services provided by the latter.

Accordingly, the Panel finds that it is appropriate to exercise its discretion and determine that Anturaż Agnieszka Kawęcka is the only Respondent against which the case should proceed. Thus, the Panel refers hereafter in this Decision to Anturaż Agnieszka Kawęcka as the “Respondent”.

C. Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Polish. Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, *e.g.*, *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English. The Complainant mainly argues that it is located in France and has no knowledge of Polish. In order to proceed in the Polish language, the Complainant would have to retain specialized translation services. This would impose an undue financial burden on the Complainant. Moreover, the Complainant notes that today English is the primary language for international relations.

Although Whois Data Protection requests in its Response that the language of the proceeding be Polish, being the language of the Registration Agreement, the Panel notes that the Respondent, Anturaż Agnieszka Kawęcka, has not commented on the language of the proceeding. Further, Whois Data Protection has submitted the Response in English.

In addition, the Panel considers that substantial additional expenses and delay would likely be incurred if the Complaint had to be translated into Polish.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English. The Panel further finds that such determination is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case.

6.2. Substantive Matters – Three Elements

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2, [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

The first element requires that the Complainant must establish is that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid MICHELIN trademark registrations. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to that trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the term “home” in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s MICHELIN trademark. UDRP panels have consistently held 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. See section 1.8, [WIPO Overview 3.0](#).

The Top-Level Domain (“TLD”) “.com” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant’s MICHELIN trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant’s MICHELIN trademark registrations predate the Respondent’s registration of the Domain Name. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the MICHELIN trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence on record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Name. On the contrary, at the time of submitting the Complaint and as of the date of this Decision, the Domain Name has resolved to the hosting company’s default page. In fact, it does not result from the case evidence that the Domain Name has been used in any active way to date.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under the third element, the Complainant must prove that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the MICHELIN trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration, as it has been proven to the Panel's satisfaction that the Complainant's MICHELIN trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's MICHELIN trademark.

Furthermore, as of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Name has resolved to the hosting company's default page. Considering the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, would not prevent a finding of bad faith under the Policy. See section 3.3, [WIPO Overview 3.0](#). Here, given the well-known nature of the Complainant's trademark, the Respondent's failure to participate in the proceeding, and the implausible good faith use to which the Domain Name may be put, the Panel agrees with the above.

In addition, the Respondent's use of a privacy service that concealed the registrant information in this case is a further evidence of bad faith.

Finally, the Respondent failed to respond to the cease-and-desist letters sent by the Complainant. This circumstance constitutes further evidence of the Respondent's bad faith.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under 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 Domain Name <homemichelin.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: May 5, 2023