

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Carolina Rodrigues,
Fundacion Comercio Electronico
Case No. D2023-1402

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 Name and Registrar

The disputed domain name <themichelinmen.com> (the Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 31, 2023, 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 April 4, 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 on April 5, 2023.

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 May 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 8, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on May 11, 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 incorporated in France. It is a leading tyre manufacturing company and operates on a worldwide basis. Headquartered in Clermont-Ferrand, France, the Complainant is present in 170 countries, has 124,000 employees and operates 117 tyre manufacturing facilities worldwide. Further the Complainant provides a range of maps, guides and digital services under the name MICHELIN.

The Complainant owns a large number of registered trademarks for the word MICHELIN or which include that word – see for example United States Registration No. 5,775,734, registered on June 11, 2019, and European Union Trade Mark No. 013558366, registered on April 17, 2015. These trademarks are referred to in this decision as “the MICHELIN trademark”.

The Complainant owns various domain names including the word “Michelin”, including <michelin.com>, registered on December 1, 1993.

The Disputed Domain Name was registered on January 24, 2023 and, at the time of filing the Complaint, resolved to a parking page with commercial pay-per-click (“PPC”) links which appear to link to third party websites.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

The Complainant cites a number of previous UDRP decisions concerning the MICHELIN trademark. For present purposes its contentions can be summarized as follows.

The Disputed Domain Name is identical or confusingly similar to the Complainant’s famous trademark MICHELIN. It consists of the MICHELIN trademark combined with the word “the” and the term “men”. The Complainant uses an official “Michelin” mascot, which is extremely well known as “The Michelin Man” which reinforces the confusing similarity.

The Respondent has no rights or legitimate interests in the terms “michelin” or “themichelinmen”.

The Disputed Domain Name was registered and is being used in bad faith. It is being used for a PPC website which attracts traffic because the Disputed Domain Name has adopted the Complainant’s well-known and famous trademark. The fame of the MICHELIN trademark is such that the Respondent must have had it in mind when it registered the Disputed Domain Name. The Complainant says there is no credible explanation as to why the Respondent selected the Disputed Domain Name other than to exploit the Complainant’s goodwill in the MICHELIN trademark. The Complainant cites various previous UDRP decisions related to PPC websites. The Complainant also says that the Respondent is a serial cybersquatter (see further below).

B. Respondent

The Respondent did not reply to the Complainant’s contentions

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, "the" and "men" may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Disputed Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Disputed Domain Name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel concludes that Paragraph 4(b)(iv) of the Policy applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's mark, and the Respondent derives commercial gain as a result. The website linked to the Disputed Domain Name comprises a series of PPC links to other third-party websites. The Panel infers that some consumers, once at this website will follow the provided links and "click through" to other sites which offer products some of which may compete with those of the Complainant. The Respondent presumably earns "click through" linking revenue as a result. The Panel infers the website is automatically generated. This does not however matter. It is well established that where a domain name is used to generate revenue in respect of "click through" traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald's Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

In the present circumstances, the Panel agrees with the Complainant that there was no reason for the Respondent to have registered the Disputed Domain Name other than to trade off of the reputation and goodwill of the Complainant's MICHELIN trademark. As such, the nature of the Disputed Domain Name itself evidences bad faith registration and use. See *Charles Jordan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#) finding that the domain name in question is "so obviously connected with the Complainant and its products that its very use by someone with no connection with the Complainant suggests opportunistic bad faith".

The Panel also agrees with the Complainant that the Respondent is a serial cyber squatter. See for example the following cases - *Accor v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1861](#); *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com/ Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1810](#); *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC/ Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1809](#); *CVS Pharmacy, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1741](#); *Asurion, LLC v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1650](#); *VUR Village Trading No. 1 Limited t/a Village Hotels v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1596](#); *Government Employees Insurance Company v. Domains By Proxy, LLC / Fundacion Comercio Electronico*, WIPO Case No. [D2019-1595](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO

Case No. [D2019-1409](#); and *Baillie Gifford & Co. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1312](#). There are over 140 cases filed through the Center involving the Respondent, ranging from 2012 to the present. The Panel agrees that the Respondent is clearly in the business of registering domain names that include the trademarks of others. Following this pattern, the Respondent has registered the Disputed Domain Name using the Complainant's MICHELIN trademark. This pattern also constitutes evidence of registration and use in bad faith. The Panel also notes that the Respondent has not filed a Response and hence has not availed herself of the opportunity to present any case of good faith that she might have. The Panel infers that none exists.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <themichelinmen.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: May 25, 2023