

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. Gavin Harris, Traffic Management Supervisor

Case No. D2023-2442

### **1. The Parties**

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

The Respondent is Gavin Harris, Traffic Management Supervisor, United Kingdom

### **2. The Domain Name and Registrar**

The disputed domain name <michelinse.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 23, 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 June 28, 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 July 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 14, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on August 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 leading tyre company that also offers electronic mobility support services at "ViaMichelin.com" and publishes travel guides, hotel and restaurant guides, maps and road atlases. The Complainant has operations worldwide including in Europe, North America and Asia.

The Complainant owns numerous trade mark registrations worldwide for its MICHELIN mark including, in particular, United Kingdom trade mark registration UK00904836359 dated March 13, 2008. The Complainant also operates various websites to promote its goods and services including its website at <michelin.com>.

The disputed domain name was registered on March 29, 2023. It used to resolve to an inactive page, but that it now directs to an error page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits it owns registered trade mark rights for its MICHELIN mark as set out above and that the disputed domain name wholly incorporates its trade mark and is therefore confusingly similar to it. It says that the addition of "se" does not prevent finding of confusing similarity.

The Complainant further submits that the Respondent is not affiliated with the Complainant in any way, nor has he been authorised by the Complainant to use and register its trade mark, or to seek registration of any domain name incorporating that mark. Furthermore, the Complainant says that the Respondent has no prior rights or legitimate interests in the domain name. The Complainant also notes that the registration of its MICHELIN trade marks preceded the registration of the disputed domain name by many years.

The Complainant notes that the disputed domain name used to resolve to an inactive page but now directs to an error page. It says that the Respondent has made no demonstrable preparations to use the disputed domain name or to show any intention of noncommercial or fair use of the disputed domain name. The Complainant also notes that the Respondent used a privacy service to mask his identity and failed to respond to the Complainant's cease and desist letter, neither of which are consistent with the Respondent having rights or legitimate interests in the disputed domain name.

As far as registration in bad faith is concerned, the Complainant notes that the disputed domain name was registered recently and long after the Complainant's various trade mark registrations for MICHELIN. The Complainant notes that its mark is well known throughout the world and that its business under the MICHELIN mark has a very considerable Internet presence. On this basis and because the disputed domain name incorporates the whole of the mark, the Complainant says that it is most likely that the Respondent knew of its mark and business and that it registered the disputed domain name in opportunistic bad faith.

The Complainant submits further that its mark is so well known that its incorporation into the disputed domain name gives rise to a presumption of likelihood of confusion and that the Respondent registered the disputed domain name to take advantage of the Complainant's trade mark rights, or to prevent the Complainant from using its mark in the disputed domain name. It says that as the disputed domain name is currently inactive and that this amounts to a passive holding. It submits in this regard that the Complainant's trade mark has a strong reputation and is widely known, that the Respondent has provided no evidence of actual or contemplated good faith use of the disputed domain name, that the Respondent took active steps to conceal

its real identity and had not operated under its real name or a business name and that the Respondent had actively provided and failed to correct false contact details in breach of its registration agreement. The Complainant also notes that the Respondent failed to respond to its cease and desist letter which it says is a further indication of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated that it owns registered trade mark rights as set out above. The disputed domain name wholly incorporates the Complainant's MICHELIN mark and is therefore confusingly similar to it. The addition of the letters "se" does not prevent a finding of confusing similarity. As a result the Complaint succeeds under this element of the Policy.

### **B. Rights or Legitimate Interests**

The Complainant has submitted that the Respondent is not affiliated with Complainant in any way and neither has he been authorised by the Complainant to use and register its MICHELIN trade mark, or to seek the registration of any domain name incorporating that mark. The Complainant has also submitted that the Respondent has no prior rights or legitimate interests in the disputed domain name and that the registration of its MICHELIN trade marks preceded the registration of the disputed domain name by many years.

The Complainant has also submitted that the disputed domain name used to resolve to an inactive page, but that it now directs to an error page. The Complainant has further submitted that the Respondent has made no demonstrable preparations to use the disputed domain name or to show any intention of noncommercial or fair use of the disputed domain name and that the Respondent used a privacy service to mask his identity and failed to respond to the Complainant's pre-action cease and desist letter.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to, or to rebut the Complainant's case, or to respond to the Complainant's cease and desist letter to explain its registration of the disputed domain name. The Panel therefore finds that the Complaint also succeeds under this element of the Policy.

### **C. Registered and Used in Bad Faith**

The disputed domain name was registered recently and long after the Complainant's various trade mark registrations for MICHELIN. The Complainant's MICHELIN mark is very well reputed internationally and it appears that its business under the MICHELIN mark has a very considerable Internet presence. The Panel finds that it is most likely that the Respondent, based in the United Kingdom and apparently involved in the traffic management and roads sector, was well aware of the MICHELIN mark and of the Complainant's business when he registered the disputed domain name.

According to the Complainant, the disputed domain name formerly resolved to an inactive page but now resolves to an error page and therefore amounts to a passive holding in bad faith. Previous panels have found that factors that have been considered relevant in applying the passive holding in bad faith doctrine, where there is no apparent use of the disputed domain name, include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false

contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

The Complainant's MICHELIN mark is highly distinctive and extremely well reputed internationally, including in the United Kingdom where the Respondent appears to be based. The Respondent has failed to respond to these proceedings or to the Complainant's cease and desist letter or to explain its conduct in registering the disputed domain name. The Respondent also used a privacy service to conceal his true identity, and more likely than not, has provided false contact information when registering the disputed domain name since the courier sent out by the Center could not be delivered to his contact address. In the absence of explanation from the Respondent, it appears to the Panel that there is no plausible reason why the Respondent would choose to register the disputed domain name incorporating the Complainant's very well reputed MICHELIN mark. The Panel therefore finds that the Complainant's case that the Respondent has made a passive holding of the disputed domain name in bad faith has been made out and it is unnecessary to consider the other grounds of bad faith use asserted by the Complainant.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith and that the Complaint also succeeds under this element 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, <michelinse.com>, be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: September 4, 2023