

ADMINISTRATIVE PANEL DECISION

Compagnie Generale Des Etablissements Michelin v. Erick Harve Case No. D2023-2479

1. The Parties

The Complainant is Compagnie Generale Des Etablissements Michelin, France, represented by Tmark Conseils, France.

The Respondent is Erick Harve, United States of America.

2. The Domain Name and Registrar

The disputed domain name <michelin-review.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2023. On June 7, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 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 20, 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 June 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on July 26, 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 company with its headquarters in Clermont-Ferrand, France, which manufactures and sells tyres for a wide range of vehicles as well as producing road maps and publishing restaurant guides. The Complainant's Michelin Guide and its use of stars to grade restaurants on their quality was first published in 1926 and it has now sold more than 30 million copies.

The Complainant's primary brand is MICHELIN and this mark has been protected by the Complainant through the registration of trade marks in multiple jurisdictions. The Complainant's marks relating to its restaurant guides include European Union Trade Mark, registration number 013558366, registered in classes 9, 35, 38, 39, 41, and 42, on April 17, 2015.

The disputed domain name was registered on April 23, 2023. It has previously resolved to a website which prominently featured one of the Complainant's stylized word and device MICHELIN marks positioned above a form headed "Application for Review Form" and next to a photograph of a plate of food, thereby appearing to invite Internet visitors to apply for a ranking in the Complainant's Michelin Guide. The disputed domain name does not presently resolve to an active website.

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. Notably, the Complainant contends that:

- the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. The Complainant says that the first portion of the disputed domain name is identical to its MICHELIN mark. The addition of the word "review" does not eliminate the risk of confusion with its mark, which is the prominent and essential component of the disputed domain name, not least because the word "review" is closely associated with the Complainant's Michelin Guide.
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized any third party to use its MICHELIN trade mark in a domain name and there is no legitimate reason why the Respondent would incorporate the Complainant's well-known mark in the disputed domain name. Nor has the Respondent been making a *bona fide* use of the disputed domain name in that it has used it to resolve to a website which has been intended to create a false association with the Complainant.
- the disputed domain name was registered and is being used in bad faith. Taking into account the worldwide fame of the Complainant's MICHELIN mark, there is no chance of the disputed domain name having been registered by the Respondent by simple coincidence. The only reasonable explanation for the Respondent's registration of it is that it was registered in order to exploit the Complainant's goodwill in its MICHELIN mark and to mislead Internet users. Moreover, the use made by the Respondent of the disputed domain name has been to direct it to a website which mimics the Complainant's website. The clone of the Complainant's website is likely a fraudulent scheme targeting the Complainant's users in an attempt to extract personal data or money or both. Furthermore, whilst the disputed domain name now resolves to an inactive webpage, under the doctrine of passive holding the Respondent's bad faith remains unchanged.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a Response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in order to succeed in its 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

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 trade mark and the disputed domain name; see the 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 its MICHELIN trade mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. The Complainant's MICHELIN mark is reproduced in its entirety within the disputed domain name and is clearly recognizable within it. In these circumstances neither the addition of a hyphen nor the word "review" prevents a finding of confusing similarity between the disputed domain name and the Complainant's mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that 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; see the [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 Complainant's *prima facie* showing and has not come forward with any relevant evidence

demonstrating rights or legitimate interests in the disputed domain name. In particular, 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; see paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2. Irrespective of the Respondent's specific motive for creating its website, the use of the disputed domain name to resolve to a webpage which masquerades as that of the Complainant does not comprise a *bona fide* use of it; see, for example, *Bytedance Ltd. v. Registration Private, Domains By Proxy, LLC / Kemal Aydin, Kemal*, WIPO Case No. [D2020-3433](#). Moreover, UDRP panels have held that the use of a domain name for illegal activity, including impersonation/passing off, can never confer rights or legitimate interests on a respondent; see the [WIPO Overview 3.0](#), section 2.13.1;
- there is no evidence in the record that the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name; see paragraph 4(c)(ii) of the Policy and the [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; see paragraph 4(c)(iii) of the Policy and the [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.

Additionally, the current inactive status of the disputed domain name self-evidently does not amount to use in connection with a *bona fide* offering of goods and services.

For the above reasons, 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 initial use of the disputed domain name by the Respondent has been to resolve to a website which purported to be operated by or on behalf of the Complainant and which invited relevant Internet users (that is restaurant owners and/or operators) to apply for a review of their restaurant by the Complainant. Having regard to the confusing similarity between the Complainant's MICHELIN mark and the disputed domain name, coupled with the use to which the disputed domain name has been put following registration, the Panel finds that the Respondent was aware of the Complainant as at the date of registration of the disputed domain name and registered it in order to take unfair advantage of the Complainant's mark. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and where the domain name is put to a misleading use establishes bad faith. The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

In addition to the inherently confusing nature of the Respondent's website, Internet users aware of the Complainant's MICHELIN brand who visited it will have been apt to assume from the confusing similarity between the disputed domain name and the Complainant's MICHELIN mark that it was owned by the Complainant or that it was operated with its authority.

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, 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 Respondent's use is in bad faith in that it 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; see paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4. So far as the current inactive status of the disputed domain name is concerned, prior UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine 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 and (iv) the implausibility of any good faith use to which the domain name may be put by the respondent; see [WIPO Overview 3.0](#), section 3.3 and, by way of example, *Compagnie Générale des Etablissements Michelin v. zhouhaotian*, WIPO Case No. [D2015-1728](#). Each of these factors, in the circumstances of these proceedings, coupled with the composition of the disputed domain name is supportive of a finding of bad faith passive holding on the part of the Respondent.

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain name is in bad faith and that 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 <michelin-review.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: August 9, 2023