

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Aditya Gowda, Michelin
Moto Sports
Case No. D2023-3437

1. The Parties

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

The Respondent is Aditya Gowda, Michelin Moto Sports, India.

2. The Domain Name and Registrar

The disputed domain name <michelinmotosport.com> (the “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 August 11, 2023. On August 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 14, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 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 August 16, 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 August 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 8, 2023.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on September 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 tire company, incorporated in 1899 and headquartered in Clermont-Ferrand, France, with more than 124,000 employees and operating 117 tire manufacturing facilities and sales agencies in 26 countries, including in the USA.

In 1920, the “Michelin” Guide was launched in order to help motorists plan their trips, thereby boosting car sales and in turn tire purchases. In 1926, the guide began to award stars for fine dining establishments and in 1936 for the first time included a list of hotels in Paris and lists of restaurants to the guide according to specific categories. The guide now rates over 30,000 establishments in over 30 territories across three continents, and a total of more than 30 million “Michelin” Guides have been sold worldwide.

The Complainant’s North American tire subsidiary employs 22,000 people and operates 19 plants in 16 locations, *inter alia* in Alabama, Indiana, Ohio, Oklahoma, North Carolina and South Carolina, USA.

The Complainant holds a number of trade mark registrations for MICHELIN, including the following (the “Trade Marks”):

- French trade mark MICHELIN registered on June 11, 2001 under No. 771031;
- International trade mark MICHELIN registered on August 25, 2010 under No. 1049371;
- United States trade mark MICHELIN registered on November 6, 2007 under No. 3329924;
- United States device mark  **MICHELIN** registered on September 15, 2009 under No. 3684424.

The Complainant and affiliates operate, among others, domain names reflecting its Trade Mark in order to promote its services, including:

- <michelin.com> registered on December 1, 1993;
- <michelinmotorsport.com> registered on May 16, 2012.

The Domain Name was registered on April 3, 2023, and currently redirects Internet users to the Complainant’s website under “www.michelinmotorsport.com”, with e-mail servers configured on it.

On April 6, 2023, the Complainant sent a cease-and-desist letter to the Respondent directly requesting the transfer of the Domain Name, with several reminders, to which no response was received.

5. Parties’ Contentions

A. Complainant

In support of its claim for transfer of the Domain Name, the Complainant brings forward several arguments which are summarized in this section.

The Domain Name is identical or at least confusingly similar to the Trade Marks, as it includes MICHELIN, and the word “motosport”, with the deletion of the letter “r”, thereby aiming at typing errors and increasing a likelihood of confusion among Internet users that can be led to believe the Domain Name will direct them to the official website of the Complainant. Such “typosquatting”, does not significantly affect the appearance or pronunciation of the Domain Name which thereby is virtually identical and/or confusingly similar to the Trade Marks. The generic Top-Level Domain (“gTLD”) “.com” is not to be taken into consideration when examining the identity or similarity between the Trade Marks and the Domain Name as it is insufficient to avoid a finding of confusing similarity.

For all of the above-mentioned reasons, the Domain Name is identical or confusingly similar to the Trade Marks in which the Complainant has rights, and therefore the condition of Paragraph 4(a)(i) is fulfilled.

The Respondent is not affiliated with the Complainant in any way nor has he been authorized by the Complainant to seek registration of any domain name incorporating the Trade Marks. The Domain Name, which constitutes typo squatting, is confusingly similar to the Trade Marks by definition because the sole attraction is its confusing similarity to the Trade Marks. In addition, the Domain Name is virtually identical to the Complainant's domain name <michelinmotorsport.com>, easing eventual typing errors by Internet users and resulting in diversion from the Complainant's website to that of the Respondent.

Furthermore, the Respondent cannot claim prior rights or legitimate interest in the Domain Name, as the Trade Marks precede the registration of the Domain Name for many years. In addition, there is no evidence that the Respondent is commonly known under the Domain Name or under the name "michelin". Also, the Respondent has registered the Domain Name with a privacy shield service, presumably to hide his identity and prevent the Complainant from contacting him, which highlights the fact that the Respondent has no rights or legitimate interests in respect of the Domain Name.

For all of the above-cited reasons, it is undoubtedly established that the Respondent has no rights or legitimate interests in respect to the Domain Name in dispute under Paragraph 4(a)(ii) of the Policy.

Bad faith can be found where the Respondent "knew or should have known" of the Trade Marks and, nevertheless registered the Domain Name in which he had no rights or legitimate interest.

In this context, and in light of the reputation of the Trade Marks, it is implausible that the Respondent was unaware of the Complainant when he registered the Domain Name, as the Complainant is well known worldwide and the Trade Marks significantly predate the registration date of the Domain Name. Furthermore, registering the Domain Name which is confusingly similar to the Trade Marks and adding one letter, the Respondent has engaged in typosquatting which is in itself evidence of bad faith. In addition, under Section 2 of the ICANN Policy, a person registering a domain name, represents and warrants to the registrar that, to his knowledge, the registration of the domain name will not infringe the rights of any third party. This means that it was the Respondent's duty to verify that the registration of the Domain Name would not infringe the rights of any third party and a quick trademark search for MICHELIN would have revealed to the Respondent the existence of the Complainant and the Trade Marks. The Respondent's failure to do so is a contributory factor to its bad faith. Even supposing that the Respondent was not aware of the possibility of searching trademarks online before registering a domain name, a simple search via Google or any other search engine using the keyword "michelin" would have demonstrated to the Respondent that all first results relate to the Complainant's products and the Trade Marks. Given the goodwill and renown of the Complainant, its Trade Marks, and the nature of the Domain Name, the Respondent could not have chosen the Domain Name for any reason other than to deliberately cause confusion amongst Internet users as to its source, in order to take unfair advantage of the Complainant's goodwill and reputation.

The Respondent also uses the Domain Name in bad faith in the absence of any license or permission from the Complainant to use the Trade Marks. As previously indicated, there is little doubt in this case that, at all times, the Respondent was aware that the Complainant and the Trade Marks enjoy a substantial reputation worldwide. The Domain Name clearly constitutes a typosquatting variant of the Trade Marks and redirects to the Complainant's official website, without authorization from the Complainant.

Finally, as email servers have been configured on the Domain Name there might be a risk that the Respondent is engaged in a phishing scheme and the use of an email address with the Domain Name presents a significant risk where the Respondent could aim at stealing valuable information such as credit cards from the Complainant's clients or employees.

In conclusion, it is more likely than not, that the Respondent's primary motive in registering and using the Domain Name was to capitalize on or otherwise take advantage of the Trade Marks through the creation of initial interest of confusion.

Consequently, it is established that the Respondent both registered and used the Domain Name in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

In accordance with paragraph 4(a) of the Policy, the Complainant has to show that the Domain Name is identical or confusingly similar with the Trade Marks, in which it has rights.

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates MICHELIN, of which the Trade Marks consist, in its entirety. The addition of the term "motosport", be it with a misspelling consisting of a missing "r", does not prevent a confusing similarity between the Domain Name and the Trade Marks for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; and, *inter alia*, *Allianz SE v. WhoisGuard Protected, WhoisGuard, Inc. / Azir Malik*, WIPO Case No. [D2019-2511](#)). The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11.1). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This 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. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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 [WIPO Overview 3.0](#), section 2.1).

Based on the present evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant's consent to use or register the Trade Marks as part of the Domain Name, is not commonly known by the Domain Name and has not acquired trade mark rights in the Domain Name. Furthermore, the Domain Name redirects to the Complainant's website under "www.michelinmotosport.com", thereby enhancing the false suggestion of a relationship with the Complainant. The fact that email servers have been connected to the Domain Name increases the risk that the Domain name will be used for phishing or other illicit practices, trading on the confusing similarity of the Domain Name and the Trade Marks and on the suggested relationship with the Complainant. This shows that the Domain Name is not (likely to be) used for a *bona fide* offering of goods or services, nor that its use constitutes a legitimate noncommercial or fair use.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name, the Respondent was or should have been aware of the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred over twenty-two years after registration of the earliest of the Trade Marks;
- the MICHELIN mark is not a dictionary term, nor a term of which it is likely that a registrant would spontaneously think at the time of registration of the Domain Name;
- the fact that the Respondent has added the term "motosport" in the Domain Name and that the Domain Name is redirected to the Complainant's website under <michelinmotosport.com>;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name in its name would have informed the Respondent of the existence of the Trade Marks.

In view of these circumstances, taken together, the Panel finds that the Domain Name has been registered in bad faith.

The Panel further finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the inclusion in the Domain Name of the term "motosport" in addition to the MICHELIN mark with a misspelling consisting of a missing "r" and its redirection to the Complainant's website under <michelinmotosport.com>, thereby increasing the likelihood of confusion for Internet users that visit the website;
- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the non-dictionary nature of the mark MICHELIN incorporated in the Domain Name, such that the Respondent cannot claim to have "accidentally" registered a domain name that happens to correspond to the Trade Marks;
- the hiding by the Respondent of its identity through the use of a privacy shield upon the initial registration of the Domain Name; and
- the lack of a response to the cease-and-desist-letters from the Complainant and the lack of a formal Response of the Respondent.

Therefore, the Panel concludes that the Domain Name has been registered and is being used in bad faith.

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 <michelinmotosport.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: October 4, 2023