

## **ADMINISTRATIVE PANEL DECISION**

### **Compagnie Générale des Etablissements Michelin v. Damaris Rohrer Case No. D2023-3867**

#### **1. The Parties**

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

The Respondent is Damaris Rohrer, United States of America ("United States" or "U.S.").

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

The disputed domain name <micherlin.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 September 15, 2023. On September 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 September 19, 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 September 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 18, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on October 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 headquartered in Clermont-Ferrand, France and is a leading worldwide tire company, also supplying digital services, maps and guides for travelers as well as mobility-related technology. The Complainant is present in 170 countries, has more than 124,000 employees and operates 117 tire manufacturing facilities and sales agencies in 26 countries, including in the United States.

The Complainant is the registered owner of U.S. trademark MICHELIN No. 3684424, dated September 15, 2009, duly renewed and covering goods in classes 3, 5, 7, 8, 9, 11, 12, 16, 20, 25, 27 and 28; U.S. trademark MICHELIN No. 3329924, dated November 6, 2007, duly renewed and covering services in class 39; and International MICHELIN Trademark No. 771031, dated June 11, 2001, duly renewed, designating *inter alia* Iceland, Norway, Germany and Russian Federation, and covering goods and services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 35, 39 and 42.

The Complainant operates its official website at the domain name <michelin.com> which was first registered on December 1st, 1993.

The disputed domain name was registered on April 12, 2023 and resolves to an error page.

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

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

The Complainant points out that its Michelin brand is the top-selling tire brand worldwide. Further, it says that its MICHELIN guides have become best-sellers, rating over 30,000 establishments in over 30 territories across three continents. More than 30 million MICHELIN guides have been sold worldwide since.

The Complainant points out that the disputed domain name reproduces the Complainant's registered trademark MICHELIN entirely, associated with the letter "r", which does not prevent likelihood of confusion. On the contrary, the Complainant says, that composition increases the likelihood of such confusion by leading Internet users to believe that the disputed domain name resolves to its official website, or that it is endorsed by or in some way connected to the Complainant.

The Complainant says that it sent a cease-and-desist letter to the Registrar asserting its trademark rights and requesting that the disputed domain name <micherlin.com> be deactivated. The same day, the Complainant sent a cease-and-desist letter to the Respondent, requesting the deactivation of the email servers set up for the disputed domain name <micherlin.com> and/or any other email service linked to that disputed domain name. However, no reply was obtained from the Respondent despite several reminders.

The Complainant asserts that the disputed domain name is virtually identical to its MICHELIN registered trademark. Indeed, the disputed domain name reproduces the trademark in its entirety and the Complainant points to previous panel decisions that have considered the MICHELIN mark to be "well-known" or "famous".

The Complainant further points out that where a trademark is included in its entirety or at the very least as its dominant feature, the resulting disputed domain name will normally be considered confusingly similar. A minor variation is said to be insufficient to confer the distinctiveness required to avoid consumer confusion. The Complainant says that consumers would assume the disputed domain name to be associated with it, given the very minor variation on its MICHELIN trademark, and how extensive the goodwill attaching to that mark is around the world.

The Complainant asserts that it has no affiliation with the Respondent, nor has the latter been authorized to use its trademark, or to seek registration of any domain name incorporating it. Furthermore, the Complainant says, the Respondent cannot claim prior rights or legitimate interests in the disputed domain name, as the MICHELIN trademarks precedes the registration of the disputed domain name by many years. The Respondent is also not commonly known under the disputed domain name nor under the name "michelin", in accordance with paragraph 4(c)(ii) of the Policy. The Complainant points out that there is simply no evidence that the Respondent may be commonly known by the name MICHELIN. In the absence of any license or permission from the Complainant to use what it refers to as the widely-known MICHELIN trademarks, no actual or contemplated *bona fide* or legitimate use could reasonably be claimed. The Complainant also says that the Respondent has not made any reasonable and demonstrable preparations to use the disputed domain name. Consequently, the Respondent fails to show any intention of noncommercial or fair use of the disputed domain name, and in any case, the Complainant maintains, it is very likely that the Respondent has no legitimate interests or rights in the disputed domain name.

The Respondent did not reply to the communications of the Complainant and in the circumstances the latter argues that this can be taken to indicate an absence of rights or legitimate interests in the disputed domain name.

Further, the Complainant says that it is implausible that the Respondent was unaware of the Michelin company when he registered the disputed domain name. The Complainant maintains that it is well-known throughout the world, including in the United States. Considering that the composition of the disputed domain name entirely reproduces the Complainant's trademark MICHELIN associated with the letter "r", it is impossible that the Respondent did not have the Complainant's trademark and company name in mind when registering the disputed domain name. The very use of a domain name so closely resembling a trademark suggests opportunistic bad faith. The Complainant points out that since registering a domain name entails warranting that the domain name does not infringe other parties' rights, the Respondent had a duty to verify that no rights were indeed infringed. This could easily have done by a search either via Google or of any of a number of trademark registers. The results would have pointed to the Complainant. The lack of real use of the disputed domain name also indicates bad faith as does the use of a privacy shield, the Complainant contends.

Further, the Complainant maintains that in the absence of any license or permission to use such a widely known trademark, no actual or contemplated *bona fide* or fair use of the disputed domain name by the Respondent can reasonably be claimed.

The Complainant points out that previous panels have held that that passive holding of a disputed domain name can satisfy the requirements of paragraph 4(a)(iii) of the Policy, and that in such cases the Panel must give close attention to all the circumstances of the Respondent's behavior. Similarly, reproducing what the Complainant refers to as a famous trademark in a domain name in order to attract Internet users to an inactive website cannot be regarded as fair use or use in good faith.

Finally, the Complainant maintains that it is likely that the Respondent registered the disputed domain name to prevent the Complainant from using its trademarks in the disputed domain name. According to former panels, this type of conduct constitutes evidence of a Respondent's bad faith, it also generates initial interest confusion and prevents a complainant from itself reflecting its trademark in the domain name concerned.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The disputed domain name is not strictly speaking identical to the MICHELIN registered mark of which the Complainant is the owner in many jurisdictions. However, it is only different in the smallest of details, that being the addition of the 'r', which does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy.. Nonetheless the issue is ultimately one of confusing similarity, and there the question is whether the registered trademark of the Complainant is visible and recognizable in the disputed domain name. About that there can be no doubt as the difference between the mark and the disputed domain name in its relevant parts is miniscule and in the nature of a minor trademark squatting variation. A domain name which consists of a misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)))

Therefore, the Panel holds that the disputed domain name is confusingly similar to the MICHELIN registered trademark of the Complainant.

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

The Respondent has not replied to any contentions advanced in the Complaint, nor has he replied to any of the communications from the Complainant. The Respondent has thus not availed himself of clear opportunities to make a case about rights and legitimate interests in its own behalf. The Complainant notes that the Respondent has not received its authorization to use the distinctive and widely recognized MICHELIN mark. Nor is there any indication that the Respondent had acquired, before the date of registration, any rights or interests through legitimate use of the term Michelin. It is in any case, because of the long standing, wide renown, and broad scope of goods and services for which the Complainant's mark is used, difficult to imagine what form legitimate use by an unrelated party could possibly take. Be that as it may, there is no evidence of such use, nor does the disputed domain name resolve to a website wherein might lie some hypothetical legitimation of the Respondent's registration of the disputed domain name. Nothing inherent in the disputed domain name makes an intended legitimate use inherently likely, the character of the registration being more in the realm of disputed domain name squatting on another party's registered mark.

Therefore, the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

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

The trademark MICHELIN is both distinctive and very widely known in many jurisdictions. It has been in use not only for tires but also in gastronomy for many years. It is difficult to imagine that the Respondent might have chosen the disputed domain name, with its slight and apparently deliberate variation on the MICHELIN mark, without any knowledge of that mark or the goodwill and reputation that attends it. In any case, it behooves the Respondent to make some simple searches, either via the Google search engine or of a trademark register, which would have immediately revealed the Complainant's trademark. The slight variation which might be in the manner of an attempt at trademark squatting, or alternatively for the sake of configuring email servers so as to be able to acquire legitimate looking email addresses, is thus very likely done in bad faith. The fact that the disputed domain name does not resolve to a website which manifests a bad faith purpose is no bar to a finding to that effect, as has been long established in domain name jurisprudence. It is in this case, given the notoriety and distinctiveness of the MICHELIN trademark, very difficult to imagine a good faith use of the particular disputed domain name the Respondent chose here to register. The fact that the Respondent used a privacy service also does not speak in his favor.

Therefore, the Panel holds that the disputed domain name was 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 <michelin.com> be transferred to the Complainant.

*/William A. Van Caenegem/*

**William A. Van Caenegem**

Sole Panelist

Date: November 9, 2023.