

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Jana King Case No. D2023-4552

1. The Parties

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

The Respondent is Jana King, United States of America (“U.S.”).

2. The Domain Name and Registrar

The disputed domain name <michetlin.com> (“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 November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 2, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 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 November 10, 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 November 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2023.

The Center appointed Enrique Bardales Mendoza as the sole panelist in this matter on January 2, 2024. 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, dedicated to enhance its clients' mobility, sustainably, designing and distributing the most suitable tires, services and solutions for its clients' needs, providing digital services, maps and guides to help enrich trips and travels and make them unique experiences, and developing high technology materials that serve the mobility industry. In addition, the Complainant uses the following website "www.michelin.com".

The Complainant is the owner of numerous MICHELIN trademarks, including:

- U.S. trademark MICHELIN registered under registration no. 3684424 on September 15, 2009, for goods in international classes 3, 5, 7, 8, 9, 11, 12, 16, 20, 25, 27, and 28.
- U.S. trademark MICHELIN registered under registration no. 3329924 on November 6, 2007, for services in international class 39.
- U.S. trademark MICHELIN registered under registration no. 5775734 on June 11, 2019, for goods and services in international classes 9, 39, and 42.

The Complainant is also the owner of various domain names incorporating the MICHELIN trademark, such as <michelin.com>, registered on December 1, 1993.

Finally, the Domain Name was registered on May 19, 2019, and redirects to a blank website at the time of filing of the Complaint and drafting this Decision. According to the evidence submitted by the Complainant, the Domain Name previously resolved to the Registrar's parking page with pay-per-click ("PPC") links.

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 Domain Name.

B. Respondent

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

6. Discussion and Findings

In an UDRP procedure, according to paragraph 4(a) of the Policy, the Complainant must establish the following elements:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no right or legitimate interests in respect of the Domain Name; and
- (iii) the 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 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 Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the letter "t" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the 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 Domain Name such as those enumerated in the Policy or otherwise.

- (i) First of all, the Respondent has not submitted any response and has not claimed any rights or legitimate interests with respect to the Domain Name. As per the Complaint, the Respondent was not authorized to register the Domain Name.
- (ii) Secondly, the Respondent did not demonstrate, prior to the notice of the dispute, any use of the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.
- (iii) Thirdly, the Domain Name constitutes a total transcription of the Complainant's trademark with the letter "t" added in the middle of the sign, which reflects the Respondent's intent to create a direct inference with the Complainant.
- (iv) There is no evidence on record giving rise to any rights or legitimate interests in the Domain Name on the part of the Respondent within the meaning of paragraph 4(c) of the Policy.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel concludes that the Respondent has registered and used the Domain Name in bad faith for the following reasons:

- (i) MICHELIN trademark had been widely used and registered by the Complainant before the Domain Name's registration.
- (ii) The Respondent had sufficient tools to verify that the Complainant is the owner of the MICHELIN trademarks. For instance, the Respondent could have used a search engine for this purpose before registering the Domain Name.
- (iii) The Complainant and its trademarks are widely known and may suffer bad reputation because the Domain Name incorporates the MICHELIN trademark in its entirety. Although there is an additional letter "t" in the Domain Name, Internet users may not notice such subtle difference and may consider that the Domain Name is somehow endorsed by or connected with the Complainant.
- (iv) The Domain Name previously resolved to the Registrar's parking page with PPC links, and is currently blank.

The Panel have found that the non-use of a domain name (including a blank page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panels 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

Further, the Panel finds that the lack of Response may be taken as an inference of bad faith.

Based on the available record, the Panel finds that the Complainant has established the third 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 Domain Name <michetlin.com> be transferred to the Complainant.

/Enrique Bardales Mendoza/

Enrique Bardales Mendoza

Sole Panelist

Date: January 16, 2024