

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Regan Finch,
Georgiana Blankenship
Case No. D2023-4672

1. The Parties

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

The Respondents are Regan Finch, United States of America, and Georgiana Blankenship, United States of America (“Unites States”).

2. The Domain Names and Registrar

The disputed domain names <pneumichelinparaguai.onl> and <pneumichelinparaguai.online> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2023. On November 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 13, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on November 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 Respondents of the Complaint, and the proceedings commenced on November 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on December 15, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on December 19, 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 Compagnie Générale des Etablissements Michelin, a world-leading tire company. Headquartered in Clermont-Ferrand, France, Michelin 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 has numerous registrations for the MICHELIN trademark around the world. The Complainant is, *inter alia*, the owner of the following:

United States trademark registration number 3684424 for the MICHELIN (device) trademark registered on September 15, 2009, covering goods in classes 3, 5, 7, 8, 9, 11, 12, 16, 17, 20, 21, 24, 25, 27, and 28;

International trademark registration number 771031 for the MICHELIN trademark registered on June 11, 2001, covering goods and services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, and 42;

International trademark registration number 1049371 for the MICHELIN trademark registered on August 25, 2010, covering goods in classes 7, 9, and 27.

In addition, the Complainant operates, among others, the domain name <michelin.com>, registered on December 1, 1993.

The Complainant's representatives sent a cease and desist letters and reminders to the Respondent, which remain unanswered.

The disputed domain names were both registered on August 15, 2023, and are currently inactive. From the submissions provided by the Complainant, it appears that email servers linked to the disputed domain names have been configured.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the MICHELIN trademark, that the Respondents have no rights or legitimate interests in respect of the disputed domain names, and particularly that it is implausible that the Respondents were unaware of the Complainant's renowned trademark when they registered the disputed domain names.

In addition, the Complainant affirms that owing to the fact that there are email servers linked to the disputed domain names which have been configured, there is a risk of potential phishing actions.

Regarding the Respondents' identity, the Complainant has requested a consolidation of multiple disputed domain names and the Respondents. In support of the above request, the Complainant claims that:

1. both Respondents are related, to the extent that a sufficient unity of interest exists such that they may essentially be treated as a single domain name holder for the purposes of Policy paragraph 3(c) of the Rules;
2. both disputed domain names were registered on the same day and in the same hour;
3. the registrants of the disputed domain names are located in the same street;
4. the disputed domain names are set up with the same DNS and the email servers configured on the domain names are hosted by the same company and at the same IP address;
5. the composition of the disputed domain names is almost identical;
6. consolidation of proceedings would be fair and equitable to all parties.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation of Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel, owing to the fact that the registrants of the disputed domain names are located in the same street, the fact that the disputed domain names are set up with the same DNS and the email servers configured on the domain names are hosted by the same company and at the same IP address, the fact that the composition of the disputed domain names is identical, and the fact that both were registered on the same day and in the same hour, finds that the disputed domain names identified in the Complaint, on the balance of probability, are registered by the same domain name holder or are at least under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.2. Substantive Issues

In order for the Complainant to obtain a transfer of the disputed domain names, paragraph 4(a) of the Policy requires that the Complainant must demonstrate to the Panel that:

- (i) the disputed domain names are identical or confusingly similar to a trademark 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 names; and
- (iii) the disputed domain names have been registered and are 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 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 mark is incorporated entirely and recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the other terms here, "pneu" and "paraguai", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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 disputed domain names. 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 disputed domain names such as those enumerated in the Policy or otherwise.

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.

In the present case, the Panel notes that the Respondent was aware of the Complainant's trademark registrations and rights to the MICHELIN trademark when it registered the disputed domain names.

MICHELIN is not a common or descriptive term, but a renowned trademark. The disputed domain names contain in its entirety, without any authorization or approval, the Complainant's registered MICHELIN trademarks, and this is the only distinctive component of the disputed domain names. Moreover, the Respondent has combined said distinctive trademark with the word "pneu" ("tire" in French) which is directly associated with the Complainant's main product.

The disputed domain names were registered many years after the Complainant's renowned trademark was registered. In addition, owing to the substantial presence established worldwide and on the Internet by the Complainant, it is at the least very unlikely that the Respondent was not aware of the existence of the Complainant's trademarks when registering the disputed domain names.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain names, had knowledge of the Complainant's earlier rights to the MICHELIN trademark and trade name and targeted those.

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 bad faith registration and use of the disputed domain names are also affirmed by the fact that the Respondent did not respond to the Complainant's cease and desist letters and reminders, nor has it denied the assertions of bad faith made by the Complainant in this proceeding. This is further evidence of bad faith in accordance with paragraph 4(b)(i) of the Policy.

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. 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 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, 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 the distinctiveness or reputation of the Complainant's trademark, the composition of the disputed domain names, the Respondent's failure to respond to the contentions therein contained, the Respondent's concealing its identity when registering the disputed domain names, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

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 disputed domain names <pneumichelinparaguai.onl> and <pneumichelinparaguai.online> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: January 2, 2024