

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. PrivacyGuardian.org Ilc Case No. D2023-5029

1. The Parties

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

The Respondent is PrivacyGuardian.org Ilc, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <michelin.plus> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 4, 2023. On December 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 December 6, 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 December 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 28, 2023.

The Center appointed Roger Staub as the sole panelist in this matter on January 9, 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 the leading tire company worldwide and runs its business under the brand name MICHELIN. According to the Complainant's website "www.michelin.com", the Complainant is present in 170 countries, where it has more than 124,000 employees. It operates 117 tire manufacturing facilities and sales agencies in 26 countries. The Complainant entered the tire market back in 1889. In addition, the Complainant launched in 1920 the MICHELIN Guide in order to help motorists planning their trips. In 1926, the MICHELIN Guide began to award stars for fine dining establishments. According to the Complainant's website, the MICHELIN Guides have become bestsellers and now rate over 30,000 establishments in over 30 countries across three continents. More than 30 million MICHELIN Guides have been sold worldwide.

The Complainant owns various trademark registrations consisting of the word "michelin" in many jurisdictions worldwide. The Complainant's portfolio of MICHELIN trademark registrations includes, *inter alia*, the following trademark registrations:

- International trademark No. 771031 for MICHELIN, registered on June 11, 2001, in Classes 5, 7-12, 16-18, 20, 21, 24, 25, 39, and 42, covering the following jurisdictions: Albania, Algeria, Armenia, Austria, Azerbaijan, Belarus, Benelux, Bosnia and Herzegovina, Bulgaria, China, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iceland, Italy, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Monaco, Montenegro, Morocco, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Singapore, Slovakia, Slovenia, Spain, Switzerland, Tajikistan, Türkiye, Turkmenistan, Ukraine, United Kingdom, Uzbekistan, and Viet Nam;
- International trademark No. 1713161 for MICHELIN, registered on June 13, 2022, in Classes 6, 7, 9, 12, 16, 20, 35, 37, 39, 41, and 42, covering, *inter alia*, the following jurisdictions: Australia, Russian Federation, Switzerland, Türkiye, United Kingdom, Indonesia, Norway, Republic of Korea, Thailand, United Arab Emirates, and Viet Nam;
- United States trademark No. 3684424 for MICHELIN, registered on September 15, 2009, in Classes 3, 5, 7-9, 11, 12, 16, 20, 25, 27 and 28.

Further, the Complainant has submitted evidence that it owns the domain names <michelin.com> (registered on December 1, 1993) and <michelin.us> (registered on April 19, 2002). The domain name <michelin.com> redirects to the Complainant's main website.

On September 26, 2023, the Complainant sent a notification to the Registrar, requesting the blocking of the disputed domain name. The registrar failed to comply with the request. On October 16, 2023, the Complainant requested the Respondent to transfer the disputed domain name free of charge to the Complainant. The Complainant submits that the Respondent did not respond.

The disputed domain name was registered on September 25, 2023.

The disputed domain name resolves to an inactive page.

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.

First, the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The disputed domain name substantially reproduces the Complainant's trademark in its entirety, which previous panels have considered to be "well-known" or "famous".

The structure of the disputed domain name that reproduces entirely the Complainant's trademark MICHELIN with the mere adjunction of the general Top-Level Domain ("gTLD") ".plus" is likely to confuse Internet users. The disputed domain name is virtually identical to the Complainant's domain name <michelin.com> differing only in the extension easing eventual typing error by Internet users. The gTLD ".plus" is not to be taken into consideration when examining the identity or similarity between the Complainant's trademark and the disputed domain name.

Second, the Respondent has no rights or legitimate interest in respect of the disputed domain name. The Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said mark. The Respondent has no prior rights or legitimate interest in the disputed domain name. The registration of the MICHELIN trademarks preceded the registration of the disputed domain name for years. Since the Complainant's MICHELIN trademark is famous, the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name. The disputed domain name directs to an inactive page, what cannot be considered as a use of the disputed domain name in connection with a *bona fide* offering of goods and services. The Complainant attempted to contact the Respondent by sending a cease-and-desist letter by registered letters and emails, but the Respondent has never replied despite of several reminders.

Third, the disputed domain name was registered and is being used in bad faith. It is implausible that the Respondent was unaware of the Complainant when it registered the disputed domain name. The Complainant is well-known throughout the world, including in the United States, where the Respondent is located. As the disputed domain name entirely reproduces the Complainant's trademark MICHELIN, differing from the Complainant's official domain name only by the gTLD, it cannot be inferred that the Respondent was unaware of the Complainant when it registered the disputed domain name. Further, the Complainant's MICHELIN trademark registrations significantly predate the registration date of the disputed domain name. It was the Respondent's duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering it. Furthermore, the Respondent registered the disputed domain name through a privacy shield service to hide its identity and contact details. Some elements also support a finding that the Respondent uses the disputed domain name in bad faith. This includes the absence of any license or permission from the Complainant and the fact that the disputed domain name is confusingly similar to the Complainant's trademark and its official domain name. The passive holding of the disputed domain name does not preclude a finding of bad faith. The reproduction of the famous trademark in the disputed domain name in order to attract Internet users to an inactive website cannot be regarded as fair use or use in good faith. Finally, email servers have been configured on the disputed domain name and thus, there might be a risk that the Respondent is engaged in a phishing scheme.

B. Respondent

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

6. Discussion and Findings

According to the Policy, to qualify for a cancellation or transfer, the Complainant must prove each of the following:

First, the disputed domain name is identical or confusingly similar to a trademark or service mark to which the Complainant has rights.

Second, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Third, the disputed domain name has been registered and is being used in bad faith.

Since the Respondent did not submit a reply, the Panel may choose to accept the reasonable contentions of the Complainant as true. This Panel will determine whether those facts constitute a violation of the Policy that is sufficient to order the transfer of the disputed domain name (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 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 disputed domain name such as those enumerated in the Policy or otherwise.

The identical composition of the disputed domain name to the Complainant's well-known trademark carries a high risk of implied affiliation with the Complainant and thus, such composition cannot confer rights or legitimate interests on behalf of the Respondent since it effectively impersonates or suggests sponsorship on the part of the Complainant. [WIPO overview 2.5.1](#).

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 disputed domain name resolves to an inactive page and that the Respondent registered the disputed domain name through a privacy shield service. Further, the Panel accepts the Complainant's contention that its mark MICHELIN, which is entirely reproduced in the disputed domain name, is famous and also well known in the United States, where the Respondent is reportedly located.

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.

Panels have found that the non-use of a domain name 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 and reputation of the Complainant's trademark, the composition of the disputed domain name, the absence of a Response by the Respondent, and the Respondent's use of a privacy service, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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 name <michelin.plus> be transferred to the Complainant.

/Roger Staub/

Roger Staub

Sole Panelist

Date: January 23, 2024