

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. ciaran feeney, natalytic  
Case No. D2023-5163

### **1. The Parties**

The Complainant is Compagnie Générale des Etablissements Michelin, France, represented by Tmark Conseils, France.

The Respondent is ciaran feeney, natalytic, Ireland.

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

The disputed domain name <michelinpubs.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 December 12, 2023. On December 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 12, 2023, 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 (UNKNOWN) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 14, 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 18, 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 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2024. The Respondent sent an email communication to the Center on December 19, 2023. Accordingly, the Center sent a possible settlement email to the Parties on December 20, 2023. The Complainant did not request for a suspension of the proceedings. The Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on January 12, 2024.

The Center appointed Jacques de Werra as the sole panelist in this matter on January 22, 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 corporation which was created in 1889 and which is organized under the laws of France that operates in many countries in the field of tire manufacturing for cars, trucks, motorcycles and planes.

The Complainant is also engaged in other activities, i.e., travel publications (maps, guides, atlases, computerized products) and vehicle racing (Formula One and Motorcycle Grand Prix, Superbike) and rallies. The Complainant publishes its annual "Michelin Guide", whereby it started publishing the travel/gastronomy guide in Europe in 1900 to encourage new drivers to take road trips to local attractions. Among other things, the guide included anonymous European restaurant reviews that focused on the quality and flavor of food served, as well as mastery of culinary technique and personality of the dishes. The Complainant also started to use the "MICHELIN STAR" rating system since 1926 in order to grade the quality of restaurants.

The Complainant is the holder of many trademarks on MICHELIN including the following trademarks ("the Trademark") which cover various products and services relating to tourism, hospitality, restaurant and gastronomy and in particular "multimedia publications in electronic form available online from databases in the field of travel, tourism and gastronomy or for services of editing and publication of guides":

- International Trademark Registrations No. 1713161 of June 13, 2022 and No. 1254506 of December 10, 2014;
- United States of America Trademark Registration No. 5775734 of June 11, 2019;
- European Trademark Registration No. 013558366 of December 12, 2014.

The disputed domain name was registered on September 10, 2022. It pointed to a website rating and ranking pubs in Ireland by stars which features the title "MICHELÍN PUBS".

#### **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.

The Complainant contends in essence that the Trademark is well-known (by reference to previous panel decisions), that the disputed domain name incorporates the Trademark which constitutes the prominent and essential character of the disputed domain name. The Complainant claims in this respect that the inclusion of the term "pubs" does nothing to detract from the immediate association with the Complainant aroused in the public mind by the word "MICHELIN" which reflects the Trademark. On the contrary, it reinforces the association with the Complainant considering that "pubs" is used to designate bars serving alcoholic beverage and food. That term could erroneously lead the Internet user to believe that the website associated with the disputed domain name is linked to pubs awarded by the famous "Guide Michelin" as users can find pubs on the guide Michelin official website.

The Complainant further contends that it has not authorized any third-party to identify itself to the public as MICHELIN or MICHELIN pubs in a domain name. It also contends that "MICHELIN" is not a generic term but

a registered distinctive and famous trademark owned by the Complainant. There appears to be no legitimate reason why the Respondent would incorporate the Complainant's well-known mark in the disputed domain name so that the Respondent must have been aware of the Trademark when registering the disputed domain name.

The Respondent has impermissibly taken advantage of the Complainant's commercial interest in The Trademark. The Respondent registered the disputed domain name because of its connection to the Complainant, to the Trademark and to goods and services in the restaurant/gastronomy industry. The Respondent's use of the disputed domain name linked to the Complainant's Trademark will generate a larger audience than would likely have been the case if the Respondent had chosen a domain name that was not confusingly similar to the Trademark.

The Complainant further contends that the Respondent registered and is using the disputed domain name in bad faith. Taking into consideration the protection and constant use by the Complainant of the Trademark worldwide, there is no chance of it having been registered by the Respondent by simple co-incidence. Considering the attractiveness of the name "MICHELIN" in relation with tires, with the restaurant guide, the registration of the disputed domain name was inevitably done in bad faith by the Respondent. Indeed, the Respondent was aware of the existence of the Complainant's prior rights when the disputed domain name was registered. Therefore, the Complainant believes that the reproduction of the Complainant's Trademark in combination notably with the word « pubs » in the disputed domain name proves the Respondent was aware of the existence of the Complainant's Trademark. No explanation may be reasonably submitted to understand why the Respondent selected the disputed domain name other than to exploit the Complainant's goodwill in the Trademark marks and mislead Internet users.

Bad faith of the Respondent is also fully reflected by its use of the disputed domain name which points to a website rating and ranking pubs in Ireland and which bears the title "MICHELIN Pubs". The website uses a star system to rank the pubs which is similar to the one used to rank restaurants by the Complainant. On this basis, the Respondent uses the disputed domain name in connection with a website which impersonates the Complainant and which is being used as part of some form of dishonest and fraudulent scheme in order to make the Internet users believe that they are in the presence of a website created by the Complainant or approved/awarded by it. This is creating the likelihood that a website visitor would be led to the Respondent's website, based on a mistaken belief that the Complainant is the source of the website or that the Complainant has sponsored, is affiliated with or has endorsed the website which constitutes bad faith under paragraph 4(b)(iv) of the Policy. If the Respondent had wished to develop a blog to evaluate and rank Irish pubs, the Respondent could have done it in any number ways without taking advantage of the Complainant's Trademark, and notably without using the Trademark in the disputed domain name.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. However, on December 19, 2023, the Respondent expressed its wish for the disputed domain name to be transferred to the Complainant.

## **6. Discussion and Findings**

### **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 the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trademark is reproduced within the disputed domain name to which the term “pubs” has been added at the end of the disputed domain name. The Panel finds that the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Accordingly, the disputed domain name is confusingly similar to the Trademark 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 Complainant has particularly contended that it has not authorized any third party (and thus not the Respondent) to use the Trademark in the disputed domain name and that there is no apparent reason justifying the use of the Trademark 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.

Furthermore, the Panel notes the composition of the disputed domain name, wholly incorporating the Complainant’s MICHELIN trademark with a term related to the Complainant’s business, carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 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 Respondent has used the disputed domain name for a website that ranks pubs in Ireland under the title “MICHELÍN PUBS” and that uses a system of stars to rank the pubs. By doing so, the Panel considers that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s Trademark under paragraph 4(b)(iv) of 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 <michelinpubs.com> be transferred to the Complainant.

*/Jacques de Werra/*

**Jacques de Werra**

Sole Panelist

Date: February 5, 2024