

## **ADMINISTRATIVE PANEL DECISION**

### **Compagnie Générale des Etablissements Michelin v. Olivier Kollmannsberger Case No. D2023-5165**

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

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

The Respondent is Olivier Kollmannsberger, France.

#### **2. The disputed domain name and Registrar**

The disputed domain name <guidemichemin.com> is registered with IONOS SE (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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date 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, 2024.

The Center verified that the Complaint together with amended Complaint satisfied the formal requirements of the Uniform disputed domain name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform disputed domain name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform disputed 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 email communications to the Center on December 18, 2023, and January 2, 8, and 10, 2024.

The Center appointed Elise Dufour as the sole panelist in this matter on January 17, 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, headquartered in Clermont-Ferrand, France, was founded in 1889.

The Complainant is a leading tire company worldwide in the field of tire manufacturing for cars, trucks, motorcycles, and planes. Further the Complainant is involved in travel publications (maps, guides, atlases, computerized products) and vehicle racing (Formula One and Motorcycle Grand Prix, Superbike) and rallies. To this end, the Complainant launched the Michelin Guide in 1900 to help motorists plan their trips, and in 1926 the Michelin Guide began to award stars for fine dining establishments.

The Complainant owns the following registered trademarks, including, but not limited to:

- International Trademark MICHELIN No. 1713161 registered on June 13, 2022;
- United States Trademark MICHELIN No. 5775734 registered on June 11, 2019;
- European Union Trademark MICHELIN No.013558366 registered on April 17, 2015.

Moreover, the Complainant owns the domain name <michelin.com> registered on December 1, 1993, and the sub-domain <guide.michelin.com> which incorporate the Complainant's trademark MICHELIN.

Besides the trademarks and the domain names above mentioned, the Complainant is the owner of the corporate name Compagnie Generale Des Etablissements Michelin - including "michelin" - registered in the Commerce Register in France since July 1, 1955, under the No. 855 200 887.

The disputed domain name was registered on June 6, 2022.

The disputed domain name resolves to a Registrar parking 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.

The Complainant submits that the disputed domain name consists of an obvious typosquatting variation of the Complainant's distinctive mark MICHELIN, by replacing the letter "l" with the letter "m" and adding the generic Top-Level Domain ("gTLD") ".com" neither of which prevent said confusing similarity.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never authorized the registration of the disputed domain name. In addition, the Complainant stresses that its trademark MICHELIN is distinctive and famous, and assumes that Respondent chose the disputed domain name in order to take advantage of the Complainant's reputation.

According to the Complainant, the disputed domain name was registered and is being used in bad faith. The Complainant asserts that although the Respondent has made no active use of the disputed domain name. For the Complainant, this non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding, inasmuch: (i) The Complainant's trademark MICHELIN is well-known; (ii) the contact details provided by the Respondent are not disclosed; (iii) having regard to the repute of the Complainant's MICHELIN mark, it is impossible to think of any good faith use to which the disputed domain name could be put by the Respondent; (iv) the Respondent did not reply to the Complainant's cease-and-desist letter and its reminder; (v) the MX server has been configured on the disputed domain name.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions, however sent informal email communications indicating that it never received the Complainant's cease and desist letter, it did not intend to infringe the Complainant's rights, and that it is willing to discuss an amicable settlement.

## **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.

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

The Panel considers that the disputed domain name is a clear case of typosquatting. It is well established that typosquatting can constitute confusing similarity. See, for example, *The Citco Group Limited v. Contact Privacy / ". "*, WIPO Case No. [D2020-0941](#) and the cases cited therein. See also [WIPO Overview 3.0](#), section 1.9.

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 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 composition of the disputed domain name, which constitutes of a misspelling of the Complainant's MICHELIN mark added by the word "guide", which directly relates to one of the Complainant's activities, signals an intention on the part of Respondent to confuse Internet users seeking or expecting the Complainant.

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 likely knew of the Complainant and the Complainant's trademark when registering the disputed domain name. Given the well-known status of the Complainant's mark, and that the disputed domain name reproduces the typosquatted version of the Complainant's mark with the additional word "guide", it is difficult to conceive of a situation in which the Respondent registered the disputed domain name simply by chance. Further, a simple Internet search would have yielded numerous results on the Complainant. Besides, the Respondent has not provided any explanation for having registered the disputed domain name, and with no response to claim otherwise, the Panel finds that it is more probable that the Respondent learned of the availability of the disputed domain name and registered it in order to take unfair advantage of the similarity with the Complainant's mark and subdomain <guide.michelin.com>, creating a likelihood of confusion with the Complainant's mark.

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 record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, 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.

This is a clear case of typosquatting having regard to the minor difference between the disputed domain name and the Complainant's trademark. In the circumstances, the Panel considers it likely that the Respondent registered the disputed domain name, as a misspelling of the Complainant's trademark, to trade off the reputation in the Complainant's trademark.

It is well settled that the practice of typosquatting constitutes evidence of bad faith registration of a domain name. See, for example, *Cyden Limited v. Jorge G Lopez Gonzalez*, WIPO Case No. [D2021-0905](#) and the cases cited therein.

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 <guidemichemin.com> be transferred to the Complainant.

*/Elise Dufour/*

**Elise Dufour**

Sole Panelist

Date: February 1, 2024