

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Carolina Rodrigues,
Fundacion Comercio Electronico
Case No. D2023-5400

1. The Parties

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

Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <michelinv.com> 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 December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 2, 2024, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on January 3, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 4, 2024.

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 Respondent of the Complaint, and the proceedings commenced on January 9, 2024. In accordance with the Rules, paragraph 5, the due date for response was January 29, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 30, 2024.

The Center appointed Bradley A. Slutsky as the sole panelist in this matter on February 5, 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

Complainant is a leading tire company and publishes the MICHELIN Guide that rates restaurants. Complainant's tire business has been active since 1889, and its guide was launched in 1920.

Complainant has multiple MICHELIN trademarks, including:

- United States of America ("U.S.") trademark No. 3684424, dated September 15, 2009;
- U.S. trademark No. 3329924, dated November 6, 2007; and
- U.S. trademark No. 5775734, dated June 11, 2019.

Complainant also operates a website at the domain name <michelin.com>, which was registered on December 1, 1993.

The disputed domain name was registered on October 2, 2023, and resolves to a page with pay-per-click links.

Complainant sent a cease and desist letter on October 18, 2023, requesting that Domains By Proxy, LLC identify the registrant of the disputed domain name, cease use of the disputed domain name, transfer the disputed domain name to Complainant, and agree not to use the MICHELIN trademark without authorization. The Registrar responded to the cease and desist letter with information about the relationship among the Registrar, the registrant, and the hosting provider, information about how to contact the registrant and obtain non-public registration data, and information about the UDRP process. None of this correspondence resolved the matter, and as a result Complainant filed the instant Complaint.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. In particular, Complainant contends that the disputed domain name "imitates [Complainant's] trademark MICHELIN by adding the additional letter 'V', and therefore, increasing the likelihood of confusion among Internet users that can be distracted by making a common typing mistake, and led to believe the domain name will direct them to the official website promoting Complainant's products and services". Complainant thus asserts that Respondent is engaging in "typosquatting". Complainant also notes that the disputed domain name leads to a parking page displaying sponsored links, and contains a configured email server thereby "increasing the risk of phishing activities". Complainant asserts that "Respondent is neither affiliated with Complainant in any way nor has it been authorized by Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark", that Respondent is not commonly known by the disputed domain name or the name "Michelin", and that Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. Thus, Complainant alleges that Respondent has no rights or legitimate interests in the disputed domain name. Complainant also asserts that Respondent registered and is using the disputed domain name in bad faith because Respondent must have been aware of Complainant's MICHELIN trademark when Respondent registered the disputed domain name, and Respondent allegedly is engaging in typosquatting.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 15(a) of the Rules, a panel in UDRP proceedings "shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Under paragraph 4(a) of the Policy, Complainant must prove the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed 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 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.

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 confusingly similar to the mark for the purposes of the Policy. "[WIPO Overview 3.0](#)", section 1.7. The disputed domain name consists of Complainant's MICHELIN mark, followed by the letter "v", followed by the generic Top-Level Domain ".com". The Panel notes that the letter "v" is near the letter "n" on the typical keyboard, and thus could mistakenly be typed when an Internet user was trying to type the domain name <michelin.com>. "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [...] Examples of such typos include (i) adjacent keyboard letters [...]." "[WIPO Overview 3.0](#)", section 1.9. Further, "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." "[WIPO Overview 3.0](#)", section 1.11.1.

Accordingly, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name. "Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [Respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [Respondent] of the dispute, [Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [Respondent] (as an individual, business, or other organization) ha[s] been commonly known by the [disputed] domain name, even if [Respondent has] acquired no trademark or service mark rights; or

(iii) [Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue". Policy, paragraph 4(c).

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving 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 Respondent. As such, where Complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. "[WIPO Overview 3.0](#)", section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. There is no evidence that Respondent was making a bona fide use of the disputed domain name before receiving notice of this dispute, or that Respondent has been commonly known by the disputed domain name, or that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. Respondent has not rebutted 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 disputed domain name is being used for "typosquatting", in order to lead Internet users to a page with sponsored links. Registration of a domain name for typosquatting and a pay-per-click website is not *bona fide* and does not give rise to rights or legitimate interests. *Compagnie Générale des Etablissements Michelin v. Registration Private, Domains By Proxy, LLC/Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-2318](#) ("the registration appears to be 'typosquatting'. The use is not bona fide, but rather suggests bad faith."). Further, "[t]he use of a domain name (that is identical or confusingly similar to a trademark) as a parking page that generates click through revenue typically does not give rise to rights or legitimate interests." *MAACO Enterprises, Inc. v. IP Admin / DNAV ASSOCS*, WIPO Case No. [D2008-0009](#).

Accordingly, 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. Specifically, "the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to [C]omplainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [Respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [Respondent has] engaged in a pattern of such conduct; or

(iii) [Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [Respondent's] website or location or of a product or service on [Respondent's] website or location." Policy, paragraph 4(b).

"Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to Complainant's trademark would also satisfy Complainant's burden." [WIPO Overview 3.0](#), section 3.1.

A number of panels have noted that Complainant's MICHELIN trademark is famous. See, e.g., *Compagnie Générale des Etablissements Michelin v. World Industrial, LNQ*, WIPO Case No. [D2019-0553](#) ("The Panel accepts that the Disputed Domain Name reproduces Complainant's trademark MICHELIN in its entirety, which previous panels have considered to be 'well-known' or 'famous'.") Given that Respondent registered and is using the disputed domain name that entirely contains Complainant's prior registered MICHELIN trademark followed by a letter that is close on a keyboard to the final letter in that trademark ("n"), Respondent knew or should have known of Complainant's trademark at the time of registration of the disputed domain name. This is evidence of bad faith. *Compagnie Générale des Etablissements Michelin v. 王先生 (Wang Xian Sheng)*, WIPO Case No. [D2021-2583](#) ("Respondent knew or should have known Complainant and its MICHELIN marks at the time of registration of the disputed domain name. The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith."). Respondent's typosquatting and use of sponsored links on the website at the disputed domain name also are evidence of bad faith. *Compagnie Générale des Etablissements Michelin v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2023-2314](#) ("Respondent uses the disputed domain name to direct Internet users to a webpage displaying various commercial links. In this latter case, numerous Panels have previously considered that this behavior was an additional proof of bad faith."); *Compagnie Générale des Etablissements Michelin v. anhui anhui, anhui*, WIPO Case No. [D2022-4716](#) ("Earlier panels have found typosquatting itself evidence of bad faith").

The Panel also notes that Complainant asserts that Respondent has been involved in many UDRP proceedings in which panels have found Respondent's bad faith in registering and using domain names that incorporate third party trademarks. See, e.g., *Starbucks Corporation v. Registration Private, Domains by Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1991](#) and *The British United Provident Association Limited ("Bupa") v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2018-1117](#).

Accordingly, the Panel finds that 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 <michelinv.com> be transferred to Complainant.

/Bradley A. Slutsky/

Bradley A. Slutsky

Sole Panelist

Date: February 18, 2024