

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. General IT Case No. D2024-0214

1. The Parties

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

The Respondent is General IT, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <michelin-inc.com> is registered with Squarespace Domains LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 18, 2024. On January 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 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 (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2024, 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 January 30, 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 the Respondent of the Complaint, and the proceedings commenced on February 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2024.

The Center appointed Catherine Slater as the sole panelist in this matter on March 6, 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 French company founded in 1889. It is one of the world's largest tyre companies and is today active in more than 170 countries, has more than 124,000 employees, and operates 117 tyre manufacturing facilities and sales agencies in 26 countries worldwide, including the United States.

The Complainant is the owner of the following trade mark registrations:

- International trade mark 771031 for MICHELIN (plain word mark), dated June 11, 2001, in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, and 42, and designating among others: China, Russian Federation, Spain, Ukraine, Singapore and Viet Nam;
- International trade mark 1049371 for MICHELIN (plain word mark) dated August 25, 2010, in classes 7, 9 and 27, designating inter alia Australia, Egypt, Republic of Korea, and Russian Federation;
- United States trade mark 97178446 for MICHELIN (plain word mark) dated December 12, 2023, in classes 6, 7, 9, 16, 35, 37, 41, and 42; and
- United States trade mark 3329924 for MICHELIN (stylized word mark), dated November 6, 2007, in class 39.

The Complainant operates, inter alia, the domain name <michelin.com> which was registered on December 1, 1993.

The disputed domain name was registered on November 8, 2023. At the time this Complaint was submitted the disputed domain name resolved to an inactive page upon which appeared the wording "dhpacecompany.com" and "We're under construction. Please check back for an update soon."

On November 30, 2023, and before filing this Complaint, the Complainant sent a cease-and-desist letter (via a contact form on the Registrar's website) to the Respondent. There was no response.

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.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to its MICHELIN trade mark and that:

- the disputed domain name is virtually identical or at least confusingly similar to MICHELIN;
- the disputed domain name reproduces MICHELIN which previous panels have considered to be "well-known" or "famous"; and
- the addition of the generic and descriptive term "inc" to MICHELIN does not affect the similarity.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and relies on the following:

- the Respondent is not affiliated with the Complainant in any way nor been authorized by the Complainant to use its trade mark, or to seek registration of any domain name incorporating this mark;

- the disputed domain name is so confusingly similar to the famous MICHELIN trade mark that the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name;
- the Respondent cannot claim prior rights or legitimate interests in the domain name as the MICHELIN trade marks precede the registration of the disputed domain name;
- the Respondent is not commonly known under the disputed domain name or under the name MICHELIN;
- no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed where the trade mark is so widely known;
- the Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- the Respondent fails to show any intention of noncommercial or fair use of the disputed domain name.
- the Respondent is “free-riding” on the Complainant’s renown;
- the Respondent has not responded to the Complainant’s correspondence from which the inference may be drawn that the Respondent has no rights or legitimate interests in the disputed domain name; and
- two e-mail 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.

The Complainant contends that the disputed domain name was registered in bad faith because:

- it is implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name because the Complainant and its MICHELIN trade mark is well-known throughout the world;
- the composition of the disputed domain name, which identically reproduces the Complainant’s trade mark MICHELIN associated only with the term “inc”, which is the abbreviation of “incorporated”, confirms that the Respondent was aware of the Complainant and its trade marks and that it registered the disputed domain name based on the attractiveness of the Complainant’s trade marks;
- the disputed domain name is so obviously connected with the well-known trade mark MICHELIN that bad faith can be inferred;
- the Complainant’s MICHELIN trade mark registrations significantly predate the registration date of the disputed domain name;
- the Respondent has failed to undertake a trade mark or Internet search which would have revealed the existence of the Complainant and its trade mark;
- in light of the reputation of the Complainant’s MICHELIN trade mark the Respondent likely intended to divert Internet traffic to its website; and
- the Respondent has neither tried to defend its rights nor justify the registration of the disputed domain name and it does not use the disputed domain name which demonstrates a lack of legitimate interests.

The Complainant contends that the disputed domain name is being used in bad faith because:

- in the absence of any license or permission from the Complainant to use such widely known trade mark, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed;
- as the disputed domain name is confusingly similar to the Complainant’s trade mark, “a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant’s site to the Respondent’s site”;
- passive holding does not preclude a finding of bad faith and in such cases there must be consideration of the surrounding circumstances and behaviour of the Respondent;
- reproducing famous trade marks in a domain name to attract Internet users to an inactive website cannot be regarded as fair use or use in good faith;
- it is likely that the Respondent registered the disputed domain name to prevent the Complainant from using their trade marks in the disputed domain name;

- the Respondent has not replied to any cease-and-desist letters or subsequent reminders which supports an inference of bad faith;
- e-mail 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 where the Respondent could aim at stealing valuable information such as credit cards from the Complainant's clients or employees; and
- it is likely that the Respondent's primary motive in registering and using the disputed domain name was to take advantage of the Complainant's trade mark rights through the creation of initial interest of confusion.

B. Respondent

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

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 trade mark 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 trade mark 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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "-inc" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

The Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. In this regard, there is no evidence that the Respondent has made preparations to use the disputed domain name in connection with a bona fide offering of goods or services, or been commonly known by the disputed domain name or is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark. The Respondent is not authorized to use the Complainant's trade mark and has no relationship with the Complainant.

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 Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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.

Given the Complainant's numerous trade mark registrations for, and its worldwide reputation in, the word MICHELIN it is impossible to conceive of a plausible circumstance in which the Respondent could legitimately use the disputed domain name consisting as it does of the word "michelin" with the addition of "-inc" which would be understood merely to refer to an incorporated company. It is also impossible to conceive of a plausible circumstance in which the Respondent would have been unaware of this fact at the time of registration. The Respondent can only have registered the disputed domain name with the intention of benefiting from the reputation of the MICHELIN trade mark. These findings lead the Panel to determine that the disputed domain name was registered in bad faith.

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) and (iv) the implausibility of any good faith to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes that the Complainant's trade mark is distinctive, has a strong reputation and is widely known, that the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use and, indeed, that it is impossible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would be legitimate.

Considering these circumstances, and although there is no evidence that the Respondent has concealed its identity or used false contact details, the Panel concludes that the Respondent's passive holding of the disputed domain name in this case satisfies the requirement of paragraph 4(a)(iii) that the disputed domain name is used in bad faith by the Respondent.

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 <micelin-inc.com> be transferred to the Complainant.

/Catherine Slater/

Catherine Slater

Sole Panelist

Date: March 20, 2024