

## **ADMINISTRATIVE PANEL DECISION**

### **Compagnie Générale des Etablissements Michelin v. Mathew James Case No. D2024-0232**

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

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

The Respondent is Mathew James, United States of America (“United States” or “U.S.”).

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

The disputed domain name <michelinamerica.com> is registered with Wild West Domains, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2024. On January 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 22, 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 the Complainant on January 23, 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 24, 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 January 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 19, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on February 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 tyre manufacturing company with headquarters in Clermont-Ferrand, France. The Complainant also publishes travel guides, hotel and restaurant guides, maps, and road atlases.

The Complainant, who is present in 170 countries, has been using the MICHELIN trademark throughout the world for more than a century.

The Complainant owns numerous trademark registrations for MICHELIN including, for example:

- U.S. trademark No. 4126565, registered April 10, 2012, duly renewed and covering goods and services in classes 36, 37 and 39;
- U.S. trademark No. 0892045, registered June 2, 1970, duly renewed and covering goods in class 12; and
- International trademark No. 771031, dated June 11, 2001, duly renewed and covering goods et services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42, and designating among others: China, Russia, Viet Nam and Singapore.

In addition, the Complainant owns several domain names that reflect its trademarks, including <michelin.com> and <michelinnorthamerica.com>.

The disputed domain name was registered on November 15, 2023. At the time of the filing of the dispute, the disputed domain name resolved to an inactive webpage.

#### **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 confusingly similar to the Complainant's MICHELIN trademark, since it contains the marks in its entirety with the addition of the geographical term "america". In addition, the disputed domain name <michelinamerica.com> is virtually identical to the Complainant's domain name <michelinnorthamerica.com>, and the disputed domain name is thus likely to confuse Internet users into believing that the disputed domain name will direct them to a website related to the Complainant's activities and/or products intended for the American market.

The Complainant further contends that the Respondent is not affiliated with the Complainant in any way nor has the Respondent been authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said trademarks. Furthermore, the Respondent has no prior rights or legitimate interests in the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant is well known throughout the world making it unlikely that the Respondent was unaware of the Complainant's proprietary rights in the trademark, when the Respondent registered the disputed domain name. The fact that the Respondent registered the domain name through a privacy shield service to hide his identity and contact details is also an indication of the Respondent's bad faith.

## **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 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 Panel finds that the disputed domain name <michelinamerica.com> is confusingly similar to the Complainant's registered trademark MICHELIN because it contains the mark in its entirety. The addition of the geographical term "america" does not dispel a finding of confusing similarity in the present case. The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test.

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

### **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. Moreover, the Panel finds that the composition of the disputed domain name effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

### **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.

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 circumstances of the case, including the evidence on record of the use of the Complainant's trademark MICHELIN, and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that it chose a domain name, which could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name does not resolve to an active webpage, but this does 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, taking into account (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.

Noting that the disputed domain name incorporates the Complainant's distinctive trademark MICHELIN, that no Response has been filed, and that there does not appear to be any conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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 <michelinamerica.com> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: March 8, 2024