

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. Sidnei de Almeida Junior

Case No. D2024-2297

### **1. The Parties**

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

The Respondent is Sidnei de Almeida Junior, Brazil.

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

The disputed domain name <pesquisamichelin.fun> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 5, 2024. On June 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 7, 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 June 10, 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 June 11, 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 June 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2024.

The Center appointed Gonalo M. C. Da Cunha Ferreira as the sole panelist in this matter on July 11, 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 tire companies designing and distributing tires, services and solutions for its clients' needs, providing digital services, maps, and guides to help enrich trips and travels, and developing high technology materials that serve the mobility industry. The Complainant is present 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 Brazil where there are 4 Industrial Units: Campo Grande (RJ), Resende (RJ), Guarulhos (SP), and Manaus (AM); and a Brazilian headquarters located in Rio de Janeiro (RJ).

The Complainant is, among many others, the owner of the following trademark registrations:

- Brazilian trademark MICHELIN No. 824040686, registered on July 3, 2007, duly renewed and covering goods in class 12;
- International trademark MICHELIN No. 1780534, registered on October 20, 2023, covering goods and services in classes 9, 10, 11, 19, 20, 22, 35, 41, 42, and 43, and designating inter alia Brazil.

In addition, Complainant operates, among others; domain names reflecting its trademark in order to promote its services, including <michelin.com>, registered on December 1, 1993.

The disputed domain name was registered on April 30, 2024. At the time this Complaint was submitted the disputed domain name resolved to a WordPress sample page featuring an alleged architectural firm, "Études".

On May 23, 2024, 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:

1. the disputed domain name is identical or at least confusingly similar to the Complainant's trademark MICHELIN;
2. the disputed domain name substantially reproduces the Complainant's trademark in its entirety which previous panels have considered to be "well-known" or "famous";
3. the disputed domain name reproduces the trademark MICHELIN with the addition of the generic term "pesquisa" (i.e. "research" in Portuguese);
4. the addition of this element heightens the likelihood of confusion since Internet users may be led into believing that the domain name is endorsed by the Complainant or that it will direct them to an official website;
5. the public would reasonably assume that the disputed domain name would be owned by the Complainant or at least assume that it is related to the Complainant;

6. the Respondent is neither affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said mark;
7. the Respondent has no prior rights or legitimate interests in the disputed domain name;
8. the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name;
9. the Respondent fails to show any intention of noncommercial or fair use of the disputed domain name;
10. the disputed domain name is not used in any type of legitimate business or services;
11. the Respondent has no rights or legitimate interests in respect to the domain name in dispute;
12. it is implausible that Respondent was unaware of the Complainant when it registered the disputed domain name;
13. the Complainant's trademark are globally well-known, including in Brazil, and significantly predate the registration of the disputed domain name, and the composition of the disputed domain name suggests an awareness of the Complainant;
14. an email server has been configured on the disputed domain name, thus indicating a risk the Respondent is engaged in a phishing scheme;
15. the Respondent registered and used the disputed domain name in 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 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 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, "pesquisa" (i.e. "research" in Portuguese) 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.

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 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.

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 and well-known reputation of this mark, it is implausible 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.

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

The disputed domain name previously resolved to a WordPress sample page featuring an alleged architectural firm. Currently, the disputed domain name does not resolve to an active website. The Panel notes that the sample page does not appear to be a fully designed or completed website. Further, there is no clear explanation for the choice of disputed domain name incorporating the Complainant's mark with the Portuguese term for "research" ("pesquisa"), or the creation of email servers incorporating the Complainant's mark to this sample page. While the record contains no direct evidence of phishing emails, the Panel notes the Complainant's concerns and significant risk of abuse. Having reviewed the available record, the Panel finds that in the circumstances of this case neither the sample page, nor the current lack of an active website, prevent a finding of bad faith under the Policy.

Noting that the disputed domain name incorporates the Complainant's distinctive trademark MICHELIN, that the Respondent did not respond to the cease-and-desist letter sent by the Complainant on May 23, 2024, that no Response has been filed, the misleading nature 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.

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 <pesquisamichelin.fun> be transferred to the Complainant.

*/Gonçalo M. C. Da Cunha Ferreira/*

**Gonçalo M. C. Da Cunha Ferreira**

Sole Panelist

Date: July 20, 2024