

ADMINISTRATIVE PANEL DECISION

Compagnie Generale des Etablissements Michelin v. Zackary Hargett Case No. D2024-2785

1. The Parties

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

The Respondent is Zackary Hargett, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <zichelin.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 9, 2024. On July 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 9, 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 (UNKOWN) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 July 10, 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 July 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 12, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 19, 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 long-standing and widely known French company that is specialized in tire manufacturing for the automotive industry. It also provides an internationally well-known guide that ranks fine dining establishments worldwide.

The Complainant is the owner of the widely known trademark MICHELIN, which is registered in a large number of jurisdictions, including in the United States, where the Respondent is reportedly located. Among others, the Complainant is the registered owner of the International Trademark No. 1254506, registered on December 10, 2014, and the United States Trademark Registration No. 5775734, registered on July 30, 2014, both for MICHELIN and covering protection for various goods and services, including services related to travel, tourism and gastronomy (Annex 3.1 to the Complaint).

Furthermore, the Complainant holds and operates its main company website at “www.michelin.com”.

The disputed domain name was registered on January 19, 2024.

The disputed domain name resolves to a website that relates to gastronomic topics. It prominently and literally asserts to be the “MICHELIN GUIDE FOR STARTUPS”. Based on the provided screenshots within the Complaint, the website associated to the disputed domain name is used for a star rating system for start-up restaurants, without any visible disclaimer describing the (lack of) relationship between the Parties (Annex 8 to the Complaint).

In addition, the Respondent configured an MX email server for the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name (Annex 9 to the Complaint).

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.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights;
- (ii) the 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

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 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 Panel finds the MICHELIN mark is recognizable within the disputed domain name. As stated at section 1.9 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, misspellings do not prevent a finding of confusing similarity. In the present case, the Panel notes that the disputed domain name incorporates an apparent misspelling of the Complainant's MICHELIN trademark by simply replacing the first letter "m" by "z", which actually has no meaning and, in view of the Panel, still makes the Complainant's MICHELIN trademark recognizable within the disputed domain name.

The Panel concludes that the disputed domain name is confusingly similar to the MICHELIN trademark for the purposes of the Policy.

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.

Even more, the Panel notes that the website associated to the disputed domain name clearly establishes a link to the Complainant's MICHELIN trademark and its gastronomy guide, particularly by using food pictures

and explicitly indicating that the Respondent's services shall be understood as the "MICHELIN GUIDE FOR STARTUPS". In the Panel's view, this effectively suggests sponsorship or endorsement by the Complainant. Noting the confusingly similar nature of the dispute domain name, the Panel has no doubt that the Respondent's intent is to create confusion with the Complainant and to direct Internet users to its website, presumably for commercial gain, which in view of the Panel cannot constitute a bona fide commercial use or a legitimate noncommercial or fair use of the disputed domain name and can, hence, not confer rights or legitimate interests upon the Respondent.

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.

In the present case, the Panel notes that the Respondent must have had the Complainant and its MICHELIN trademark in mind, when registering the disputed domain name. Noting the confusing similarity of the disputed domain name with the well-known MICHELIN trademark and the explicit reference to the Complainant's services on the website associated to the disputed domain name, it is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent uses the disputed domain name in order to generate traffic to its own website by deliberately misleading third parties in a false belief that the associated website is either operated or at least authorized by the Complainant. The prominent reference to the Complainant's MICHELIN mark and its well-known gastronomic guide as well as the confusingly similar nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, presumably for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its MICHELIN trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

In addition, the Panel finds that the failure of the Respondent to submit a response to the Complainant's contentions further affirms the Panel's conclusion on the Respondent's bad faith.

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 <zichelin.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: September 2, 2024