

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Jennifer Naranjo,
SportsFoot
Case No. D2024-2968

1. The Parties

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

The Respondent is Jennifer Naranjo, SportsFoot, Colombia.

2. The Domain Name and Registrar

The disputed domain name <michelinfwcol.com> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 22, 2024. On July 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 23, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 July 26, 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 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 21, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on August 27, 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 that owns the trademark MICHELIN which is largely protected in the world in connection with the automobile and tire manufacturing industries, as well as in connection with travel, hotel and restaurant guides, maps and road atlases.

In addition to the domain name <michelin.com>, registered on December 1, 1993, the Complainant is the owner, amongst several others, of the International trademark registration No. 771031, for MICHELIN, registered on June 11, 2001, successively renewed, covering goods and services in classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, and 42.

The disputed domain name <michelinfwcol.com> was registered on March 30, 2024, and presently does not resolve to an active webpage. The Complainant has provided evidence showing that the disputed domain name had previously resolved to seemingly a template website in Spanish designed for an online shop. Most of the sections on the website were not completed.

5. Parties' Contentions

A. Complainant

The Complainant, founded in 1889, asserts that it presently employs 124,000 people and is present in more than 171 countries in the world, having become the leader in tire technology for every type of vehicle, also offering unique mobility experiences through road maps, travel itineraries, hotel and restaurant guides and award-winning lifestyle products.

The Complainant further states that before starting the present proceeding, it made efforts to resolve this matter amicably, having sent on April 24, 2024, a cease-and-desist letter to the Respondent via the privacy service asserting its trademark rights and requesting the transfer of the disputed domain name free of charge. Despite several reminders, no response was received (Annex 6 to the Amended Complaint).

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

According to the Complainant, the disputed domain name reproduces the Complainant's trademark MICHELIN in its entirety, which previous panels have considered to be "well known" or "famous" (*Compagnie Générale des Etablissements Michelin v. World Industrial, LNQ*, WIPO Case No. [D2019-0553](#); *Compagnie Générale des Etablissements Michelin v. Kanoksak Puangkham*, WIPO Case No. [D2018-2331](#); *Compagnie Générale des Etablissements Michelin v. WhoisGuard, Inc., WhoisGuard Protected / Saad Zaeem, Caramel Tech Studios*, WIPO Case No. [D2017-0234](#); *Compagnie Générale des Etablissements Michelin v. Oncu, Ibrahim Gonullu*, WIPO Case No. [D2014-1240](#); *Compagnie Générale des Etablissements Michelin (Michelin) v. Zhichao Yang*, WIPO Case No. [D2013-1418](#); *Compagnie Générale des Etablissements Michelin v. Milan Kovac/Privacy--Protect.org*, WIPO Case No. [D2012-0634](#); *Compagnie Générale des Etablissements Michelin v. Vyacheslav Nechaev*, WIPO Case No. [D2012-0384](#), and *Compagnie Générale des Etablissements Michelin v. Transure Enterprise Ltd, Host Master / Above.com Domain Privacy, Compagnie Générale des Etablissements Michelin v. Cameron David Jackson*, WIPO Case No. [D2015-1671](#)).

Thus, also according to the Complainant, the disputed domain name is confusingly similar to the Complainant's famous trademark MICHELIN, reproducing it in its entirety with the addition of the term "fwcol", which is not sufficient to prevent a finding of confusing similarity.

Furthermore, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

a) the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating the MICHELIN trademark;

b) the Respondent is not commonly known by the disputed domain name or the name "MICHELIN", in accordance with paragraph 4(c)(ii) of the Policy;

c) the Respondent cannot assert that, before any notice of this dispute, it was using, or had made 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, in accordance with paragraph 4(c)(i) of the Policy;

d) the Respondent is making a non-legitimate use of the disputed domain name, with intent for commercial gain to misleadingly divert consumers from the Complainant's official websites; and

e) given the Complainant's goodwill and renown worldwide, and the composition of the disputed domain name, which is confusingly similar to the Complainant's trademark, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights.

As to the registration of the disputed domain name in bad faith, the Complainant asserts that it is implausible that the Respondent was unaware of the Complainant at the time of registration of the disputed domain name given the fame of its MICHELIN trademark. Furthermore, the Respondent's registration of the disputed domain name through a privacy shield service to hide its identity and contact details, seeking to prevent the Complainant from contacting it, has already been found by prior panels to be a further indication of bad faith (*Schering Corporation v. Name Redacted*, WIPO Case No. [D2012-0729](#), and *TTT Moneycorp Limited. v. Diverse Communications*, WIPO Case No. [D2001-0725](#)).

Moreover, the website that used to resolve from the disputed domain name contained an e-commerce page selling sport shoes in an attempt to look official and create a strong likelihood of confusion for MICHELIN consumers who could believe that the website would be an official website offering authentic services online, which was not the case; such use of the disputed domain name cannot be considered a bona fide or legitimate use. In addition to that, email servers were configured on the disputed domain name, suggesting that there might be a risk of the Respondent engaging in a phishing scheme.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (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.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

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 ("fwcol") 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 Respondent, by not formally responding to the Complaint, has failed to invoke any of the circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to and/or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden is still on the Complainant to first make a prima facie case against the Respondent.

In that sense, the Complainant states that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use its trademark, or to seek registration of any domain name incorporating the MICHELIN trademark.

Also, the absence of any indication that the Respondent has rights in a term corresponding to the disputed domain name, or of any possible link between the Respondent and the disputed domain name that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate with the Panel's finding of the absence of rights or legitimate interests.

Another element to consider is the fact that there is no present active use of the disputed domain name and the use made of the disputed domain name previously does not seem consistent with a true online market place but rather an incomplete template with missing information (Annex 1 to the Amended Complaint). In any case, the Panel considers that there is no evidence of any rights or legitimate interests the Respondent could have in the disputed domain name, also noting that it reproduces in its entirety the Complainant's famous trademark.

Thus, 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.

Past UDRP panels have already dealt with the question of whether the "passive holding" of a domain name could constitute bad faith. Section 3.3 of the already quoted [WIPO Overview 3.0](#) states that "[f]rom the inception of the UDRP, panelists 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. While 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, (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 use to which the domain name may be put".

In the present case, the current passive holding of the disputed domain name by the Respondent amounts to the Respondent acting in bad faith, given that the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name and noting especially the previous use of the disputed domain name for a template website designed for an online shop. The Panel further notes that the Respondent did not provide any reasonable explanation as to its actual intention towards the disputed domain name, or why there was a template for an online shop.

The registration and use of the disputed domain name in bad faith are further corroborated in the present case in view of the following circumstances:

- (i) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name;
- (ii) the Respondent's choice to retain a privacy protection service so as to conceal its true identity;
- (iii) the Respondent's potential use of the disputed domain name in connection with email addresses; and
- (iv) the use of a false or incomplete contact details in the Whois data, as a result of which the Center has not been able to have its written communications delivered to it.

For the reasons stated above, the Respondent's conduct amounts, in this Panel's view, to bad faith registration and use of the disputed domain name.

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 <michelinfwcol.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: September 10, 2024