

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v.
See PrivacyGuardian.org / Daniel Valverde
Case No. D2022-1163

1. The Parties

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

The Respondent is See PrivacyGuardian.org, United States of America (“United States”) / Daniel Valverde, United States.

2. The Domain Name and Registrar

The disputed domain name <michelin.monster> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 2022, 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 April 13, 2022.

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 May 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2022.

The Center appointed Gregor Vos as the sole panelist in this matter on June 2, 2022. 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 well-known French company active in the field of tires, tire technology, and mobility-related services. Also, the Complainant is known for its restaurant guide under the name MICHELIN Guide in which restaurants are awarded stars. The Complainant is present in 171 countries and has 114,000 employees worldwide.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as the "Trademarks"):

- International registration No. 771031 for MICHELIN registered on June 11, 2001, with designation of *inter alia* Denmark, United Kingdom, Singapore, and Turkey; and
- United States registration No. 3329924 for MICHELIN registered on November 6, 2007; and
- United States registration No. 3684424  for registered on September 15, 2009.

Further, it is undisputed that the Complainant is the holder of *inter alia* the following domain names:

- <michelin.com>; and
- <michelin.us>.

The Domain Name was registered on September 1, 2021 and is currently inactive.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to its well-known Trademarks. The Domain Name incorporates the Trademarks entirely with the mere addition of the generic Top-Level Domain ("gTLD") ".monster", which does not prevent a likelihood of confusion.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received a license or any other form of authorization from the Complainant to use the Trademarks and has no prior rights to the domain name. Also, the fact that the Domain Name is currently inactive shows that the Respondent has not made any reasonable and demonstrable preparations to use the Domain Name in a non-commercial and fair way. Further, the Respondent has never replied to communications from the Complainant and the Respondent is a well-known cyber-squatter.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character of the Complainant's Trademarks, it is inconceivable that the Respondent registered the Domain Name without knowledge of the Complainant and its Trademarks. Also, according to the Complainant, the Domain Name is being used in bad faith. The passive holding of the

Domain Name does not preclude a finding of bad faith. Further, in light of the strong reputation of the Complainant's Trademarks, it is inconceivable that the Domain Name is being used in good faith.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name. The addition of the gTLD ".monster" does not prevent a finding of confusing similarity with the Trademarks (see sections 1.7 and 1.11 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to

make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpres Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the well-known character and the strong worldwide reputation of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The well-known character of the Trademarks of the Complainant has been confirmed by earlier UDRP panels (see e.g. *Compagnie Générale des Etablissements Michelin v. Oncu, Ibrahim Gonullu*, WIPO Case No. [D2014-1240](#); and *Compagnie Générale des Etablissements Michelin (Michelin) v. Zhichao Yang*, WIPO Case No. [D2013-1418](#)).

Further, it is generally accepted by UDRP panels that the non-use of a domain name does not prevent a finding of bad faith (section 3.3 of the [WIPO Overview 3.0](#)). In light of the reputation of the Trademarks, the lack of any rights or legitimate interest in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks. This is reinforced by the strong reputation of the Complainant's Trademarks, as referenced above.

In addition, the Complainant has produced a list which contains cases in which the Respondent had registered a domain name and in which case a UPRP panel ordered the transfer of the domain name at issue. In the Panel's opinion, this list demonstrates that the Respondent has engaged in a pattern of registering domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, and that the registration and use of the disputed domain names was in bad faith.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 Domain Name <melin.monster> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: June 16, 2022