

ADMINISTRATIVE PANEL DECISION

Compagnie Generale des Etablissements Michelin v. Jason Chin
Case No. D2022-4184

1. The Parties

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

The Respondent is Jason Chin, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 4, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 8, 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 November 15, 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 November 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2022. The Respondent submitted an informal email communication on November 18, 2022 but no Response was filed. On November 21, 2022, the Center sent a communication to the Parties regarding a possible settlement procedure, but the Parties did not proceed to settle the matter. Accordingly, the Center notified the Commencement of Panel Appointment

on December 7, 2022.

The Center appointed Gardner, Nick J. as the sole panelist in this matter on December 20, 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 incorporated in France. It is a leading tyre manufacturing company and operates on a worldwide basis. Headquartered in Clermont-Ferrand, France, the Complainant is present in 170 countries, has 125,000 employees and operates 69 tyre manufacturing facilities worldwide. Further the Complainant provides a range of maps, guides and digital services under the name MICHELIN. To this end, the Complainant launched the Michelin Guide in 1900 to help motorists plan their trips, and in 1926 the Michelin Guide began to award stars for fine dining establishments. The filed evidence establishes the Michelin Guide is extremely famous and well known and inclusion in the Michelin Guide is a prestigious form of recognition for a restaurant. The Michelin Guide now rates over 30,000 establishments in over 30 territories across the world and more than 30 million Michelin Guides have been sold worldwide. There is no evidence that the word MICHELIN has any meaning apart from in relation to the Complainant and its products and services.

The Complainant owns a large number of registered trademarks for the word MICHELIN or which include that word – see for example United States Registration No. 5775734, registered on June 11, 2019, and European Union trademark No. 013558366, registered on April 17, 2015. These trademarks are referred to in this decision as “the MICHELIN trademark”.

The Complainant owns various domain names including the word Michelin, including <michelin.com>, registered on December 1, 1993.

The Disputed Domain Name was registered on June 9, 2022 and, at the time of filing the Complaint, resolved to a parking page with commercial pay-per-click (“PPC”) links which appear to link to third party websites which include sites offering products or services which compete with the Complainant’s businesses.

5. Parties’ Contentions

A. Complainant

The Complainant cites a number of previous UDRP decisions concerning the MICHELIN trademark. For present purposes its contentions can be summarized as follows:

The Disputed Domain Name is identical or confusingly similar to the Complainant’s famous trademark MICHELIN. It consists of a typographic variation of the MICHELIN trademark combined with the descriptive term “leads”. The Complainant cites various previous UDRP decisions related to “typosquatting”. It also says the term “lead’ is commonly used to refer to a chef running a restaurant and provides various examples of such usage.

The Respondent has no rights or legitimate interests in the terms “MICHELIN” or “MICHELLIN” or “MICHELLINLEADS”.

The Disputed Domain Name was registered and is being used in bad faith. It is being used for a PPC website which attracts traffic because the Disputed Domain Name has adopted the Complainant’s well-known and famous trademark. The fame of the MICHELIN trademark is such that the Respondent must have had it in mind when he registered the Disputed Domain Name. The Complainant says there is no

credible explanation as to why the Respondent selected the Disputed Domain Name other than to exploit the Complainant's goodwill in the MICHELIN trademark. The Complainant cites various previous UDRP decisions related to PPC websites. The Complainant also says that the Disputed Domain Name can be used for email communication, which is evidenced by the fact that mail exchanger records (MX records) have been set up for the Disputed Domain Name, so the Respondent might be using the disputed domain name for spamming or phishing attacks and this is a further indication of bad faith registration and use.

A. Respondent

The Respondent did not reply to the Complainant's contentions. However, on November 18, 2022 he sent to the Center an email which read as follows:

"This is in response to the Complaint filed for domain name "michellinleads.com".

In regard to Annex 8, the parking page is put on by our domain registrar NameCheap, and can be removed after this proceeding concludes. I did not instruct NameCheap to specially put that on and thus, have not acted in bad faith.

As for Annex 9, the MX records are also default records assigned by NameCheap, and can be removed after this proceeding concludes. I did not instruct NameCheap to specifically put in these records and thus, have not acted in bad faith.

I no longer intend to use the domain and intend to let it expire.

I am also willing to suspend the present dispute to explore settlement talks".

6. Discussion and Findings

Preliminary Matters

Preliminary Matters – Respondent Identity

The Panel notes this is a case where one of the Respondents (Domain Admin, Privacy service provided by Withheld for Privacy ehf) appears to be a privacy or proxy registration service while the other Respondent (Jason Chin) appears to be the substantive Respondent. The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.4.5, as follows:

"Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, e.g., where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent."

In the present case the Panel considers the substantive Respondent to be Jason Chin and references to the Respondent are to that person.

Preliminary Matters – No Response

The Panel notes that no Response has been filed. However, given that the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)). It is in any event clear from the email correspondence received from the Respondent (see above) that the Respondent is aware of the present proceeding.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

A. Identical or Confusingly Similar

The Complainant has rights in the MICHELIN trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. The Disputed Domain Name comprises a misspelling of the MICHELIN trademark combined with the dictionary word “leads”. So far as the misspelling is concerned the Panel agrees in this regard with the approach set out in [WIPO Overview 3.0](#), section 1.9, namely:

“Is a domain name consisting of a misspelling of the complainant’s trademark (i.e., typosquatting) confusingly similar to the complainant’s mark?”

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

So far as the addition of the word “leads” is concerned it is established that the addition of a descriptive term to the disputed domain name has little, if any, effect on a determination of legal identity between the domain name and the mark (*Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#)); furthermore, mere addition of a generic or descriptive term does not exclude the likelihood of confusion (*PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. [D2006-0189](#)).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is identical to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the MICHELIN trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use MICHELIN trademark. The Complainant has prior rights in the MICHELIN trademark which precede the registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Panel concludes that (iv) applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's mark. The website linked to the Disputed Domain Name comprises a series of PPC links to other third-party websites. The Panel infers that some consumers, once at this website will follow the provided links and "click through" to other sites which offer products or services some of which may compete with those of the Complainant. The Panel infers the website is automatically generated and notes that the Respondent has said that it was created by the Registrar without his

knowledge. This does not matter. It is well established that where a domain name is used to generate revenue in respect of “click-through” traffic, and that traffic has been attracted because of the name’s association with the Complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald’s Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

See also [WIPO Overview 3.0](#) section 3.5: “Can third-party generated material ‘automatically’ appearing on the website associated with a domain name form a basis for finding bad faith?”

Particularly with respect to ‘automatically’ generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links *ipso facto* vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.”

Further although the Respondent has said the website was created without his knowledge he has conspicuously failed to provide any explanation at all as to why he registered the Disputed Domain Name in the first place. It seems to the Panel that the MICHELIN trademark is so well known that the Disputed Domain Name must have been intended to take advantage of that trademark in some manner. The Panel also notes that in his informal correspondence the Respondent indicated he was prepared “to explore settlement talks” which seems to imply he was suggesting he would be prepared to surrender the Disputed Domain Name in return for some form of payment. These factors in the Panel’s view provide additional grounds for concluding that the Respondent has registered and used the Disputed Domain Name in bad faith.

In view of these findings the Panel does not need to address the issue that the Disputed Domain Name was configured with MX records, beyond noting the Respondent’s statement that this was done without his knowledge.

Accordingly, the Panel finds the Respondent has registered and used the Disputed Domain Name in bad faith and the third condition of paragraph 4(a) of the Policy has been 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 disputed domain name <michellinleads.com> be transferred to the Complainant.

/Gardner, Nick J./

Gardner, Nick J.

Sole Panelist

Date: January 3, 2023