

DISPUTE RESOLUTION SERVICE

D00019973

Decision of Independent Expert

Compagnie Générale des Etablissements Michelin

and

Restaurant Network

1. The Parties:

Complainant: Compagnie Générale des Etablissements Michelin
Compagnie Générale des Etablissements Michelin
12 cours Sablon
Clermont-Ferrand
Centre
63000
France, Metropolitan

Respondent: Restaurant Network
Garden Flat
272 Elgin Avenue
London
W9 1JR
United Kingdom

2. The Domain Name(s):

michelinlinen.co.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

15 March 2018 16:51 Dispute received
19 March 2018 17:32 Complaint validated
19 March 2018 17:34 Notification of complaint sent to parties
09 April 2018 02:30 Response reminder sent
12 April 2018 11:12 No Response Received
12 April 2018 11:12 Notification of no response sent to parties
24 April 2018 02:30 Summary/full fee reminder sent
24 April 2018 14:28 Expert decision payment received

4. Factual Background

I find the following facts as proved on the basis of the documents and submissions made by the Complainant and they form the basis of my decision below.

- a. The Complainant is a well-known business active across the world in many locations and specialising in the research, design and manufacture of tyres for both general and industrial use.
- b. The Complainant has also become well-known in more general travel related activities, such as the publication of travel guides, hotel and restaurant guides, maps and road atlases.
- c. The Complainant is owner of a number of trade marks for “MICHELIN” including EU trade marks 001791243 and 005670872, and international trade marks 816915 and 1116032.
- d. The Complainant also operates a number of websites including michelin.com (registered 1 December 1993) and michelin.co.uk (registered 22 April 1997).
- e. The Domain Name was registered on 6 April 2017: the Complainant included a screen shot showing that the webpage to which the Domain Name resolved was simply a holding page whereas at the time of my writing my draft of this Decision (8 May 2018) there was nothing at all displayed, simply white space.

5. Parties' Contentions

- a. Complainant's Submissions

The Complainant makes the following submissions:

- i. The Complainant is a well-known and substantial business, present in 170 countries with over 112,000 employees, operating 68 production plants in 17 different countries.
- ii. The Complainant also operates a research and development centre in France.
- iii. The Complainant's UK subsidiary was established in the UK in 1905 and is active across the fields of tyre manufacture, training and publishing.
- iv. Since "MICHELIN" has no English meaning, it is apt to refer in particular to the Complainant and its trade marks.
- v. The Domain Name is simply a combination of the Complainant's trade mark and the generic word "linen", potentially confusing internet users into thinking that the Domain Name is endorsed by the Complainant.
- vi. The addition of a generic term to a well-known trade mark does not prevent the likelihood of confusion, while the ".co.uk" suffix may be excluded from consideration, but could be confused with the Complainant's UK branch.
- vii. The Complainant has used the "MICHELIN" trade mark in connection with a wide variety of goods and services and so the public will think the Domain Name is owned by the Complainant or at least that it is related to the Complainant.
- viii. The Respondent is not known under "MICHELIN" or any other similar term.
- ix. The Respondent is not authorised to use its trade mark.
- x. The Respondent cannot point to prior use of or legitimate interest in the Domain Name.
- xi. The Complainant's trade marks were registered years before the Domain Name's registration.
- xii. It is implausible that the Respondent was unaware of the Complainant at the time of registration of the Domain Name, as the Complainant and its trade mark are so well known.
- xiii. The Respondent can have no reason to choose the Domain Name other than to benefit from the Complainant's reputation.
- xiv. The Respondent is not making any legitimate non-commercial or fair use of the Domain Name, as the webpage to which the Domain Name resolves is inactive.
- xv. The existence of the Domain Name will divert traffic from the Complainant or will disrupt the Complainant's business.
- xvi. There is a risk of phishing given the configuration of an email server on the Domain Name.

b. Respondent's Submissions

The Respondent made no submissions and provided no evidence. Accordingly, there is no Reply from the Complainant.

6. Discussions and Findings

a. Rights

- i. According to paragraph 2.1.1 of the DRS Policy, the Complainant must show that it has "Rights in respect of a name or mark which is identical or similar to the Domain Name". "Rights" is defined in paragraph 1 of the DRS Policy as "rights enforceable by the Complainant, whether under English law or otherwise ...".
- ii. It is clear that registered trade mark rights fall within the definition of "Rights" and I am satisfied that the Complainant has produced evidence of four registered trade mark rights in "MICHELIN". That part of the definition is therefore satisfied.
- iii. The next question is whether those Rights are in a name or mark "identical or similar to the Domain Name". As the Complainant has observed, the "co.uk" suffix can be ignored for this purpose. The Domain Name consists of two elements combined directly together: the first element is the Complainant's business name, "MICHELIN" and the second element is the descriptive word, "LINEN".
- iv. I accept the Complainant's submission that there is no other use of "MICHELIN" in the English language and so the normal, perhaps inevitable, inference is that the Domain Name is describing linen in some way provided or manufactured by the Complainant. Being the first element of the Domain Name, the Complainant's business name takes a dominant position. While not identical, I am satisfied that the Domain Name is sufficiently similar to the Complainant's Rights.
- v. The Complainant has therefore shown that it has "Rights in respect of a name or mark which is identical or similar to the Domain Name".

b. *Abusive Registration*

- i. Paragraph 2.1.2 of the DRS Policy requires, secondly, that the Complainant must show that the Domain Name in the hands of the Complainant is an Abusive Registration. This is in turn defined in paragraph 1 of the DRS Policy as being a Domain Name which either "(i) was registered

- or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or (ii) is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.”
- ii. There is no evidence (or allegation) of improper usage by the Respondent, and so I will concentrate on the first element in sub-paragraph (i).
 - iii. Paragraph 5 of the DRS Policy contains a list of non-exhaustive factors which may indicate Abusive Registration. Based on the evidence and the Complainant's submissions, the following sub-paragraphs from paragraph 5 seem relevant:
 - 1. paragraph 5.1.1.3 - for the purpose of unfairly disrupting the business of the Complainant; and
 - 2. paragraph 5.1.2 - Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;
 - iv. I have, of course, no direct evidence as to the Respondent's intentions or purpose when he registered the Domain Name: if there was an innocent explanation, the Respondent has not given it and I have to proceed as best I can on the basis of the evidence in front of me. In that context, paragraph 5.2 of the DRS Policy provides that the Respondent's failure to use the Domain Name for the purpose of email or a website is not in itself evidence that the Domain Name is an Abusive Registration.
 - v. The most direct evidence I have is that the Complainant's Rights are very distinctive: there is no ordinary usage of "MICHELIN" in the English language other than to refer to the Complainant. When considering the Complainant, I accept from the Complainant's evidence that it conducts its business in a wide variety of spheres: not only tyre design and manufacture for consumer and industrial applications, but also across various areas associated with travel, such as publishing books on travel and restaurants, maps and guides. Given this, is it hard to see what purpose the Respondent could have had when registering the Domain Name other than to associate himself in some way with the Complainant.
 - vi. While there is no evidence before suggesting that the Complainant is engaged in the production or supply of table (or other) linen, I accept that linen is closely

- associated with hotels and restaurants, areas in which the Complainant is active. That being so, and in the absence of any explanation to justify the Domain Name, I accept that the Domain Name was registered primarily unfairly to disrupt the business of the Complainant, and thereby satisfying paragraph 5.1.1.3 of the DRS Policy.
- vii. While there is no evidence of any actual use of the Domain Name, or of any “threat” to use the Domain Name, still less of any actual confusion by businesses or members of the public, the fact that the Respondent at one stage was indicating that a web site would be established using the Domain Name is sufficient to my mind to show a likelihood, in that eventuality, that businesses or people would be confused into thinking that there was some sort of connection between the Complainant and the Domain Name, whether by owning the Domain Name or in some way licensing or authorising use of it. The circumstance which is most important is, in my opinion, that there is no other conceivable reason for using “MICHELIN”, as it is so very distinctive of the Complainant and its business. It is not an English word or an English name. I therefore find that paragraph 5.1.2 of the DRS Policy is satisfied.
- viii. The matter does not end there as I have to consider whether there are any factors which, despite my above findings, nonetheless indicate that the Domain Name is not an Abusive Registration in the Respondent’s hands. There is a non-exhaustive list of such factors in paragraph 8 of the DRS Policy. I have considered them and I find as follows:
1. there is no evidence of any genuine offering of goods or services (paragraph 8.1.1.1);
 2. there is nothing to suggest prior use of any similar name or legitimate connection with a similar trade mark by the Respondent (paragraph 8.1.1.2);
 3. I cannot see what legitimate use the Respondent could propose for the Domain Name or what fair use he could make of it (paragraph 8.1.1.3); and
 4. the Domain Name is not generic or descriptive such that the Respondent could make fair use of it (paragraph 8.1.2).
- ix. Considering the matter in the round, I cannot see any other factors, whether specifically listed in paragraph 8 of the DRS Policy or otherwise, which would affect my decision that the Domain Name is an Abusive Registration.

7. Decision

I therefore find that the Complainant has Rights in a name or mark which is similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent and direct that it be transferred to the Complainant.

Signed Richard Stephens

Dated 9 May 2018