

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. 杨智超 (Zhichao Yang)
Case No. D2022-2649

1. The Parties

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

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <michelinma.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 19, 2022. On July 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 22, 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 July 22, 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 in English on July 22, 2022.

On July 22, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on July 22, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on July 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 18, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on August 25, 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, Compagnie Générale des Etablissements Michelin, is a leading tire company which manufactures and markets tires for every type of vehicle, including airplanes, automobiles, bicycles/motorcycles, earthmovers, farm equipment, and trucks. It also offers electronic mobility support services on "www.viamichelin.com" and publishes travel guides, hotel and restaurant guides, maps and road atlases. The Complainant is headquartered in France and is present in more than 170 countries, has 112,300 employees and operates 68 production plants in 17 different countries. The Complainant also established a presence in China since 1989.

The Complainant owns numerous trademark registrations around the world, including in China, for the following:

- Chinese Trademark Registration No. 136402 for MICHELIN, registered on April 5, 1980;
- Chinese Trademark Registration No. 27012430A for MICHELIN, registered on November 28, 2018;
- Chinese Trademark Registration No. 10580190 for  MICHELIN, registered on December 20, 2013; and
- International Trademark Registration No. 771031 for MICHELIN, designating *inter alia* China, registered on June 11, 2001.

The Complainant also states that it owns the domain names <michelin.com> and <michelin.com.cn> which were registered on December 1, 1993, and June 16, 2001, respectively.

The disputed domain name was registered on December 17, 2021 and resolved to a parking page displaying sponsored Pay-Per-Click ("PPC") links targeting the Complainant's brand and its main field of activity, namely, tires.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered MICHELIN mark as the disputed domain name comprises of the Complainant's MICHELIN mark and the addition of the suffix "ma" which is the two letter International Organization for Standardization ("ISO") country code and the two-letter country code top level domain ("ccTLD") abbreviation corresponding to Morocco and generic Top-Level Domain ("gTLD") ".com".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name. The Respondent is not using the disputed domain name in connection

with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith as the Respondent was well aware of the Complainant and its MICHELIN mark at the time of registration of the disputed domain name and there is no plausible good faith use to which the disputed domain name can be put to.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: "(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

"Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the Complainant is unable to communicate in Chinese and may be unduly disadvantaged by having to conduct the proceeding in the Chinese language;
- (ii) the disputed domain name consists of Latin characters;
- (iii) the website under the disputed domain name uses words in the English language; and
- (iv) the Respondent did not object to the request that the language of the proceeding be English.

The Respondent's failure to respond to a request for change of the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint". See *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#).

Upon considering the above, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the MICHELIN mark.

The disputed domain name comprises the Complainant's MICHELIN trademark in its entirety with adding the suffix "ma". It is well established that where the trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8). In the present case, the suffix "ma" can be meaningless or geographical or be considered as Chinese language particle. It is further established that the applicable gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1).

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the disputed domain name. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name ([WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant provided evidence that it owns trademark registrations of the MICHELIN mark long before the date that the disputed domain name was registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademarks (see *LEGO Juris A/S v. DomainPark Ltd*, *David Smith*, *Above.com Domain Privacy*, *Transure Enterprise Ltd*, *Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3). The Complainant also submitted evidence that its registrations and use of the MICHELIN mark predate the registration of the disputed domain name by many years, and that the disputed domain name is a typosquatted version of the Complainant's own domain name which is further proof that the Respondent has no rights or legitimate interests under the Policy (see *JCDecaux SA v. Pascal Ijeoma*, *Billcoin Company*, WIPO Case No. [DCO2018-0040](#); *Redbox Automated Retail, LLC d/b/a Redbox v. Milen Radumilo*, WIPO Case No. [D2019-1600](#); *River Light V, L.P.*, *Tory Burch LLC v. Kung Chen Chang*, *PRIVATE*, WIPO Case No. [D2018-0046](#)).

The Complainant further submitted evidence that the disputed domain name resolves to parking pages with PPC links which past UDRP panels have found is not a *bona fide* offering of goods or services or legitimate

noncommercial or fair use of the disputed domain name (see *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe*, WIPO Case No. [D2007-1695](#)).

The Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name sufficient to rebut the Complainant's *prima facie* case. In the particular circumstances of the present case, the Respondent's use of the disputed domain name to host parked pages comprising PPC links which appear to generate click-through commissions does not represent a *bona fide* offering of goods or services.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name resolved to parked pages comprising PPC links which appear to generate click-through commissions. The links on the parked pages, namely, "Michelin Tire Rebate", "Michelin Logo", and "Michelin Tires Near Me" appear related to the Complainant's business industry. Further, the disputed domain name appears to be a typosquatted version of the Complainant's MICHELIN mark and domain name.

The evidence shows that the Complainant's marks have attained significant goodwill and reputation. The significant goodwill and reputation of the Complainant's marks is evidence that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's marks and it is implausible that there is any good faith use to which the (typo) disputed domain name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's marks as the Respondent's name has no connection with the Complainant's MICHELIN marks which were registered long ago. This is another indication of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Complainant also provided evidence that it issued a cease-and-desist letter to the Registrar and the Respondent prior to the proceedings however, it never received a response.

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

In the particular circumstances of the present case and based on the fact that the disputed domain name's website displayed the Complainant and/or its MICHELIN mark, including in relation to "Michelin Tire Rebate", "Michelin Logo", and "Michelin Tires Near Me", it is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain name to divert Internet traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

Based on the evidence presented to the Panel, including the confusing similarities between the disputed domain name and the Complainant's marks, the fact that the disputed domain name was used to host parked pages comprising PPC links to generate click-through commissions, the fact that no Response was submitted by the Respondent in response to the Complaint, the fact that the Respondent did not respond to the Complainant's cease and desist letter sent prior to the proceedings, and the fact that the Respondent has a long history of abusive domain name disputes against third-party trademark owners, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

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 <micelinma.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: September 8, 2022