

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. Privacy Protection /  
Liuqingru

Case No. D2022-1148

### **1. The Parties**

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

The Respondent is Privacy Protection, United States of America (“United States”) / Liuqingru, China.

### **2. The Domain Name and Registrar**

The disputed domain name <michelintyres.xyz> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 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 April 6, 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 7, 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 April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on May 12, 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 multinational tyre manufacturing company, which was founded in 1889 and is based in France.

The Complainant is the owner of a number of trade mark registrations for MICHELIN (the “Mark”) around the world, including:

- United States trade mark registration number 3684424, registered on September 15, 2009; and
- International trade mark registration number 771031, registered on June 11, 2001.

The disputed domain name was registered on December 30, 2021. It currently redirects Internet users to a webpage at “www.dan.com”, which appears to offer the disputed domain name for sale.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the Mark (which is recognisable within the disputed domain name) with the addition of the descriptive term “tyres”, under the generic Top-Level Domain (“gTLD”) “.xyz”.

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent has been using the disputed domain name to direct Internet users to the webpage at “www.dan.com” where the disputed domain name is being offered for sale.

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate noncommercial or fair use of it or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that, due to the worldwide reputation of the Complainant, the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name. Further, the Complainant states that it has had a presence in China, where the Respondent purports to be located, since 1988, and that the Mark, according to the Complainant, has acquired distinctiveness and a secondary meaning and is recognised and identified as being connected to the Complainant, making a coincidental adoption of the disputed domain name by the Respondent virtually impossible. In addition, the composition of the disputed domain name (namely the use of the Mark together with “tyres”) confirms that the Respondent was aware of the Complainant’s business and use the Mark for tyres when it registered the disputed domain name and that it registered it and is using it in bad faith.

Finally, the Complainant argues that the Respondent has used the disputed domain name to attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Mark, contrary to the Policy. The Complainant notes too it tried to resolve this matter with the Respondent amicably, however, there was no response from the Respondent and further that the Respondent has used a privacy service to conceal its identity for as long as possible.

Together, the Complainant submits that the Respondent is using the disputed domain name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

### **A. Identical or Confusingly Similar**

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)) provides that: "[I]n 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 for purposes of UDRP standing".

Section 1.8 of the [WIPO Overview 3.0](#) further provides that: "Where the relevant 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".

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the disputed domain name incorporates the Mark in its entirety with the addition of "tyres", which does not prevent a finding of confusing similarity, nor does the use of the gTLD ".xyz".

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Mark is neither generic nor descriptive but is distinctive of the Complainant that makes a coincidental adoption by the Respondent highly unlikely. The Complainant states that it has not given the Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent

has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or has chosen to use the Mark in the disputed domain name in any descriptive manner, or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), “a panel’s assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed”. Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

### **C. Registered and Used in Bad Faith**

The Panel notes that the Mark has already been found by previous UDRP panels to be distinctive and to have a reputation, rather than being a descriptive or generic term.

The Panel also notes that the disputed domain name was registered twenty years after the Mark was registered, and over a hundred years since the company was founded, and accepts that the disputed domain name was chosen by reference to the Mark.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Mark is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when it registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name is also being used in bad faith as it is being used for a commercial purpose that involves redirecting Internet users to a webpage which offers the disputed domain name for sale.

The Respondent has not sought to explain its registration and use of the disputed domain name, has attempted to conceal its identity, and has not participated in these proceedings. There is also no conceivable use of the disputed domain name by the Respondent that would not be illegitimate and therefore there is no basis for the Panel to conclude that the Respondent's use of the disputed domain name is justified.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent's use of the disputed domain name is without justification and is inconsistent with the Complainant's exclusive rights in the Mark. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name 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 <micheelintyres.xyz> be transferred to the Complainant.

*/Gareth Dickson/*

**Gareth Dickson**

Sole Panelist

Date: May 25, 2022