

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. YangZhiChao,
YangZhiChao
Case No. D2022-1833

1. The Parties

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

The Respondent is YangZhiChao, YangZhiChao, China.

2. The Domain Names and Registrar

The disputed domain names <michelinan.com>, <michelinmn.com>, and <michelnman.com> are registered with 22net, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 24, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 May 31, 2022.

On May 27, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 31, 2022, the Complainant submitted a request that English be the language of the proceeding. 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 June 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 23, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on July 7, 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 dedicated to sustainably improving the mobility of goods and people by manufacturing and marketing tires for every type of vehicle, including airplanes, automobiles, bicycles, motorcycles, earthmovers, farm equipment and trucks. The Complainant also offers electronic mobility support services on "ViaMichelin.com" and publishes travel guides, hotel and restaurant guides, maps, and road atlases.

The Michelin Group is headquartered in Clermont-Ferrand, France, with nine research and development centers around the world, 123 production sites in 26 countries, a commercial presence in 170 countries, and 125,000 employees worldwide. The Michelin Group has a Technology Center in charge of research, development and process engineering, with operations in Europe, North America, and Asia.

The Complainant has been present in China since 1988 and currently employs more than 6,000 people in China, with four industrial sites (three in Shanghai and one in Shenyang) producing passenger car tires and truck tires. Its retail network comprises more than 4,000 sales outlets.

The Complainant states that the "Michelin Man" also known as "BIBENDUM" has become one of the most well-known brand logos in the world. The Complainant owns numerous MICHELIN trademark registrations around the world, including the following:

- International Trademark Registration No. 771031 for MICHELIN, registered on June 11, 2001, with various territorial designations including of China; and
- European Union Trade Mark Registration No. 009914731 for MICHELIN, registered on September 27, 2011.

The Complainant states that it operates, among others, the domain name <michelin.com>, which was registered on December 1, 1993.

The disputed domain names <michelinan.com>, <michelinmn.com>, and <michelinman.com> were registered on March 13, 2022, and resolve to parking pages displaying commercial links mostly related to competing automotive products and/or automotive services.

A cease-and-desist letter was sent to the Respondent on March 14, 2022. No response was received.

5. Parties' Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainant's MICHELIN trade mark in which it has rights. The MICHELIN trade mark, which has been considered "well-known" or "famous" by UDRP panels in previous panel decisions, is reproduced in its entirety in the disputed domain names. The incorporation of a well-known trade mark in its entirety is sufficient to establish that a domain name is

identical or confusingly similar to a complainant's trade mark. The disputed domain names respectively associate the Complainant's MICHELIN trade mark with the term "man" or its imitation. It is well established that where the relevant trade mark is recognizable within the disputed domain names, the addition of descriptive, geographical, pejorative, meaningless, or other terms would not prevent a finding of confusing similarity. As the dominant feature of the disputed domain names consists of the Complainant's MICHELIN trade mark, the addition of the term "man" is insufficient to avoid confusing similarity between the disputed domain names and the Complainant's trade mark. On the contrary, the full inclusion of the Complainant's MICHELIN trade mark in combination with misspelled term "man" enhances the false impression that the disputed domain names are somehow officially related to the Complainant. The disputed domain names are therefore likely to confuse Internet users into believing that the disputed domain names will direct them to an official website promoting the Complainant's products and services. The generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and is not taken into consideration when examining the identity or similarity between the Complainant's trade mark and the disputed domain names.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has not licensed or otherwise authorized the Respondent to use or register the MICHELIN trade mark or to seek registration of any domain name incorporating the said trade mark. The Respondent cannot claim prior rights or legitimate interests in the disputed domain names as the registration of the Complainant's MICHELIN trade mark long precedes the registration date of the disputed domain names. The Respondent is not commonly known by the disputed domain names or the name "Michelin". The Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain names or a name corresponding to the domain names in connection with a *bona fide* offering of goods or services. The disputed domain names resolve to parking pages displaying commercial links, mostly related to competing automotive products such as tires and/or automotive services. The Respondent is therefore not making a legitimate noncommercial or fair use of the disputed domain names.

The disputed domain names associate the Complainant's MICHELIN trade mark with the term "man" or its imitation. This constitutes clear evidence that the Respondent wishes to give an overall impression that the disputed domain names are endorsed by the Complainant. This does not constitute fair use. Given the Complainant's goodwill and renown worldwide, and the nature of the disputed domain names which are confusingly similar to the Complainant's MICHELIN trade mark, it is not possible to conceive a plausible circumstance in which the Respondent could legitimately use the disputed domain names, as it would result in misleading diversion and taking unfair advantage of the Complainant's rights.

The disputed domain names were registered and are being used in bad faith. It is implausible that the Respondent was unaware of the Complainant when it registered the disputed domain names. The disputed domain names entirely reproduce the Complainant's MICHELIN trade mark and the misspelled term, "man". The "Michelin Man" has been the face of and mascot for the MICHELIN brand. A quick trademark or Internet search for "Michelin" would have revealed to the Respondent the existence of the Complainant and its trade mark. Moreover, the Respondent never responded to the Complainant's cease-and-desist letter issued prior to the proceedings and did not file a Response. In addition, the Respondent is a well-known cybersquatter who has been the respondent in numerous UDRP proceedings.

There is little doubt that the Respondent was unaware of the Complainant's substantial reputation which exists across the world, including in China, where the Respondent seems to be based. The Respondent has used the disputed domain names to direct Internet users to landing pages displaying Pay-Per-Click ("PPC") links which are likely to generate revenue. The Respondent is taking undue advantage of the Complainant's well-known MICHELIN trade mark to generate profits. The Respondent's primary motive in registering and using the disputed domain names was to capitalize or take advantage of the Complainant's registered trademark rights by causing confusion.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese. The Complainant requested that the language of the proceeding be English. The reasons are that:

- (i) The Complainant is located in France and has no knowledge of Chinese. The Complainant would have to retain specialized translation services at a cost that is likely to be than the overall cost of the proceedings. If the proceedings are to proceed in Chinese, this would impose a significant financial burden on the Complainant.
- (ii) The disputed domain names comprise only Latin characters, which strongly suggests that the Respondent has knowledge of languages other than Chinese. It can be assumed that the Respondent has knowledge of English.
- (iii) English is the primary language for international relations and it is one of the working languages of the Center.

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

Paragraph 11(a) of the Rules provides that:

“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 intention of paragraph 11(a) is to allow panels some measure of flexibility and discretion to consider the entire circumstances of each case, to ensure fairness between the parties, while at the same time not undermining the mandate for the proceeding to be administered in an expeditious manner. The relevant circumstances for consideration would include considerations of the parties' comfort level with the respective languages, the expenses to be incurred, possibility of delay in the proceeding if translations are required, as well as the language of the domain names in dispute and of the resolving websites.

Having considered the relevant factors and interests of the respective parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent is more likely than not familiar with the English language, taking into account his or her selection of the disputed domain names which comprise English words (and moreover, typographical errors thereof) and letters of the English alphabet. The landing pages to which the disputed domain names resolve are all in English. The Panel also notes that the Respondent has registered other domain names in which he or she was a respondent, many of which comprise English words and/or misspellings thereof (e.g., <johnhancockinsurance.com>, <cdeditkarma.com>, and <creditkqrma.com>). The Respondent was, moreover, notified by the Center, in both Chinese and English languages, of the commencement of the proceedings, the language of the Registration Agreement, and deadline for filing a Response. He or she therefore had ample opportunity to raise any objection or propose to submit his or her Response in Chinese but did not do so. In the absence of any objection and justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant has established it has rights in the MICHELIN trade mark. The Panel agrees that the addition of the misspelled term “man” in the disputed domain names does not prevent a finding of confusing similarity with the Complainant’s trade mark. The distinctive MICHELIN trade mark is the first word which appears in the disputed domain names. Even though “MICHELIN” is misspelled in the disputed domain name <michelnman.com>, in the context of the series of domain names registered on the same day by the Respondent, the Respondent’s intention to refer to the MICHELIN trade mark is obvious. The Complainant’s trade mark MICHELIN is identifiable and stands out in the disputed domain names. The gTLD “.com” is a technical requirement for domain name registrations and does not have any impact on the issue of the identity or confusing similarity between the disputed domain names and the Complainant’s trade mark.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant’s long and extensive use and registrations of the MICHELIN trade mark long predate the registration date of the disputed domain names. The Complainant did not license nor authorize the Respondent to use the word MICHELIN as a trade mark or in a domain name. Neither is there any evidence that the Respondent is commonly known by the name “Michelin”, “Michelinan”, “Michelinmn”, or “Michelnman”. The use of the disputed domain names which incorporate the Complainant’s well-known MICHELIN trade mark and the term “man” for parked pages with PPC links to competing goods and/or services does not constitute a legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraph 4(c)(iii) of the Policy. The Respondent’s choice of a famous trade mark and incorporation of the word “man” in the disputed domain names show a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that he or she has rights or legitimate interests in the disputed domain names. The Respondent did not file a Response in the present case to rebut the Complainant’s assertions and evidence.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

The Panel is persuaded in the circumstances of this case that the Respondent targeted the Complainant and its well-known MICHELIN trade mark and the “MICHELIN Man” brand. There is no other reason for the Respondent to have registered the disputed domain names except for the sole purpose of riding off the reputation and goodwill in the Complainant’s MICHELIN trade mark and to create confusion with the Complainant’s MICHELIN trade mark and business associated with the trade mark and the “MICHELIN Man” brand. The *“mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith”* (see section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

Applying the relevant factors set out in Section 3.3 of the [WIPO Overview 3.0](#), the Panel finds that there has been bad faith registration and use. The said factors include:

- (i) the degree of distinctiveness or reputation of the Complainant’s mark;

- (ii) the failure of the Respondent to submit a Response or provide any evidence of actual or contemplated good-faith use;
- (iii) the implausibility of any good faith use to which the disputed domain name may be put.

Additionally, taking into account the Respondent's absence of rights or legitimate interests in the disputed domain names as well as the Respondent's apparent pattern of conduct in having registered other domain names which incorporate a well known mark (e.g., JOHN HANCOCK INSURANCE), the Panel can only conclude that the Respondent has registered and is using the disputed domain names in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

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 names, <michelinan.com>, <michelinmn.com> and <michelinman.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: July 21, 2022