

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. 卢家亮
Case No. D2022-5039

1. The Parties

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

The Respondent is 卢家亮, China.

2. The Domain Name and Registrar

The disputed domain name <米其林.网址> (<xn--g6q625cxxo.xn--ses554g>) (the “Disputed Domain Name”) is registered with Knet Registrar Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 30, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 4, 2023, 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 (Not Disclosed / Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 4, 2023 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 January 5, 2023.

On January 4, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 5, 2023, the Complainant confirmed its 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 January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 31, 2023.

The Center appointed Kar Liang Soh as the sole panelist in this matter on February 17, 2023. 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 global tire company headquartered in France with a history of over 130 years. The Complainant is present in over 170 countries and has been operating under the MICHELIN trademark since 1889. Previous UDRP panels have held the MICHELIN trademark to be a well-known trademark (e.g., *Compagnie Générale des Etablissements Michelin v. Xujing*, WIPO Case No. [DCC2017-0002](#); *Compagnie Générale des Etablissements Michelin v. Oncu, Ibrahim Gonullu*, WIPO Case No. [D2014-1240](#); *Compagnie Générale des Etablissements Michelin v. Zhichao Yang*, WIPO Case No. [D2013-1418](#)).

The Complainant set up its first representative office in China in Beijing in 1989. The Complainant's investment in China is estimated to exceed USD 2 billion. It has a research and development facility, manufacturing factory, and numerous manufacturing and investment entities employing over 7,000 people in China. The Complainant uses the Chinese characters 米其林 as the Chinese version of the MICHELIN trademark (the "MICHELIN Chinese Trademark"). The Complainant owns various trademark registrations in China for the MICHELIN Chinese Trademark. These registrations include:

Trademark No.	Registration Date
519749	May 20, 1990
519641	May 20, 1990
10574976	December 14, 2013
6167650	February 28, 2011

The Complainant holds the domain names <michelin.com>, <michelin.com.cn> and <michelingroup.com>. The domain name <michelin.com> was registered in 1993. A Google search of the word MICHELIN or 米其林 on or before the date of the Complaint produced pages of hits associated with the Complainant and the Complainant's activities. The Complainant's websites under these domain names are among the first hits on such Google Searches. The Complainant's website under the domain name <michelin.com.cn> associates the MICHELIN trademark with the MICHELIN Chinese Trademark.

The Respondent appears to be an individual. Very little information about the Respondent is available beyond the information on the Whois record of the Disputed Domain Name and the Registrar verification pursuant to this proceeding.

The Disputed Domain Name was registered on September 11, 2021 and did not resolve to any website at the time of filing of the Complaint.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

- (a) The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights. The Disputed Domain Name is strictly identical to the MICHELIN Chinese Trademark. The generic Top-Level Domain (“gTLD”) “.网址” (“.xn-ses554g”) means “website” or “url” in Chinese and should be disregarded when examining the similarity between the MICHELIN Chinese Trademark and the Disputed Domain Name;
- (b) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent is neither affiliated with the Complainant nor authorized by the Complainant to use and register its trademarks, or seek registration of any domain name incorporating its trademarks. The Respondent has no prior rights or legitimate interest in the Disputed Domain Name. The Respondent is not commonly known by the MICHELIN Chinese Trademark or MICHELIN trademark. The Respondent is taking unfair advantage of the Complainant’s goodwill and reputation for the Respondent’s own gain. The Respondent cannot claim to be using or had made demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services; and
- (c) The Respondent registered and is using the Disputed Domain Name in bad faith. It is implausible that the Respondent was unaware of the Complainant and the Complainant’s trademarks. Further, a quick trademark search or search on Google or other search engine of 米其林 would have revealed the existence of the Complainant and the MICHELIN Chinese Trademark. The Respondent is not making any use of the Disputed Domain Name. The passive holding of a domain name incorporating a famous trademark amounts to bad faith registration and use.

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 in this proceeding is Chinese. The default language of the proceeding is accordingly Chinese subject to the Panel’s authority under paragraph 11(a) of the Rules to determine otherwise having regard to the circumstances of the proceeding.

The Complainant has request that English be adopted as the language of proceeding instead. Having considered the circumstances, the Panel grants the Complainant’s request. In doing so, the Panel has taken the following factors into consideration:

- (a) The Complainant is located in France and has no knowledge of Chinese. The Complainant would have to incur a significant burden should the language of the proceeding be Chinese;
- (b) English is the primary language for international relations;
- (c) The Complaint has already been submitted in English;
- (d) The Panel is bilingual and would be competent to deal with submissions from both Parties in English and/or Chinese;
- (e) Although the Respondent has been notified in English and Chinese of the language of the proceeding and the commencement of the proceeding, the Respondent has neither objected to the Complainant’s request nor participated in the proceeding by filing a Response in either Chinese or English; and

- (f) No procedural benefit would be achieved by maintaining the default language of the proceeding. On the other hand, doing so would cause undue delay to the proceeding.

6.2 Substantive Issues

To succeed in this proceeding, the Complainant is required to establish all three limbs of paragraph 4(a) of the Policy, namely that:

- (a) the Disputed Domain Name is identical or confusingly similar to a trademark 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.

A. Identical or Confusingly Similar

Based on the Complainant's registrations for the MICHELIN Chinese Trademark, the Panel is satisfied that the Complainant has rights in it. It is also clear to the Panel that the Disputed Domain Name incorporates the MICHELIN Chinese Trademark in its entirety. As outlined in section 1.11.1 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the gTLD ".网址" (".xn-ses554g") should be disregarded in the analysis of the similarity between a domain name and a trademark. The Panel does not see any special circumstances in the proceeding which warrant a departure from this consensus view. As such, the Panel holds that the first limb of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Complainant has stated categorically that the Respondent is neither affiliated nor authorized to use the MICHELIN Chinese Trademark or register the Disputed Domain Name. There is no evidence before the Panel to suggest that the Respondent is commonly known by the Disputed Domain Name or that there were any preparations by the Respondent to use the Disputed Domain Name at all, let alone any use that could be considered *bona fide*, legitimate, noncommercial or fair. The Panel is thus satisfied that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The burden of production is then shifted to the Respondent to show otherwise. In the absence of any Response in this proceeding, the *prima facie* case stands.

Moreover, the Disputed Domain Name consists of the MICHELIN Chinese Trademark and effectively impersonates or suggests sponsorship or endorsement by the Complainant. It is a consensus view of past UDRP panels that such a domain name cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel concludes that the second limb of paragraph 4(a) of the Policy is made out on the facts.

C. Registered and Used in Bad Faith

The evidence in the proceeding unequivocally shows that the Disputed Domain Name does not resolve to any website. There is no other evidence in the proceeding that could suggest that the Disputed Domain Name is being used for any other purpose that domain names are expected to be used for. The Panel finds that the Disputed Domain Name is not being used in any manner by the Respondent.

It is a consensus understanding of past UDRP panels that the situations of bad faith registration and use highlighted in paragraph 4(b) of the Policy are not exhaustive. The case of *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("*Telstra case*") is often cited as representing a class of bad faith registration and use not specifically outlined in paragraph 4(b) of the Policy, that is, bad faith by "passive holding". In that case, there was no evidence of any positive action by the respondent (*i.e.*, website

or other online presence using the domain name, promotion to the public of the domain name, or transfer of the domain name to anyone). The panel insightfully observed that the situations in paragraph 4(b)(i), (ii) and (iii) could contemplate both positive action or inaction, and developed this reasoning:

“The question that then arises is what circumstances of inaction (passive holding) other than those identified in paragraphs 4(b)(i), (ii) and (iii) can constitute a domain name being used in bad faith? This question cannot be answered in the abstract; the question can only be answered in respect of the particular facts of a specific case. That is to say, in considering whether the passive holding of a domain name [...] satisfies the requirements of paragraph 4(a)(iii), [...] the Administrative Panel must give close attention to all the circumstances of the Respondent’s behaviour.”

The panel then proceeded to identify the particular circumstances of that case that led to a finding of bad faith, namely:

(i) the Complainant’s trademark has a strong reputation and is widely known, as evidenced by its substantial use in Australia and in other countries,

(ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,

(iii) the Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name,

(iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and

(v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate [...].”

More than 20 years have passed since the wisdom of the *Telstra* case was bestowed upon us. It has since been recorded in section 3.3 of the [WIPO Overview 3.0](#) and the same sound reasoning has been adopted and applied by panels in numerous disputes under the Policy in contending with cybersquatters of the passive holding variety.

In the intervening years since the year 2000, the domain name system has also evolved. In particular, the domain name registration industry has become a much more competitive market. The number of gTLDs have exploded from the original handful. The global rise of data protection laws, especially the European General Data Protection Regulation (“GDPR”), have led to privacy services becoming a staple add-on service for domain name registration. Registrant details obtainable via public online Whois search facilities have thus become less transparent. The outcome is that the fact that a registrant’s true identity and contact particulars may be shielded by a privacy service *per se* can no longer be readily indicative of bad faith. The registrant’s identity and contact particulars typically come to light only after proceedings under the Policy arise. Unsurprisingly, the Respondent’s identity and contact particulars were redacted for privacy due to GDPR and were only revealed in the course of this proceeding by the Registrar’s verification.

As the concealment of registrant identity and contact particulars have become endemic to the domain name registration process, a question may arise as to the relevance of this factor within the passive holding analysis (reflected in the *Telstra* case). The Panel finds the exhortation of the panel in the *Telstra* to give close attention to all the circumstances of the respondent’s behaviour remains relevant and highly instructive to this day. To see the *Telstra* case as one merely offering a formulaic confluence of exact particular circumstances would be missing the woods for the trees. What the *Telstra* case really presents is an overarching approach to considering the question of bad faith in each particular case. As such, the Panel has to consider the question of bad faith with reference to the particular circumstances of the present proceeding.

Certain particular circumstances of the respondent's behaviour in the *Telstra* case are invariably found by past UDRP panels when establishing passive holding, *i.e.*, incorporating a well-known mark in the domain name, no evidence of actual or contemplated good faith use of the domain name, inconceivability of any plausible legitimate use, and failure of the respondent to respond or participate in proceedings. The Panel is of the view that the existence of these particular circumstances bear significant weight in relation to the question of bad faith and whether identity and contact particulars were concealed only serves a corroborative function.

Turning to the particular circumstances of the proceeding, The Panel has already established that the Respondent has incorporated the MICHELIN Chinese Trademark in the Disputed Domain Name. The Panel is satisfied from the evidence that the MICHELIN Chinese Trademark is well known. There are countless other obvious combinations of Chinese characters which the Respondent could have adopted to produce a meaningless (even identical-sounding) outcome as 米其林, but the Respondent chose to adopt the exact combination of 米其林 in the Disputed Domain Name. Had the Respondent resolved the Disputed Domain Name to a website, a bad faith scenario as outlined in paragraph 4(b)(iv) of the Policy would have arisen. Be that as it may, there is no evidence that the Respondent is using or contemplating any good faith use of the Disputed Domain Name and the Respondent is passively holding onto the Disputed Domain Name. It is not possible from the evidence available in the proceeding to conceive of any plausible use of the Disputed Domain Name by the Respondent that would be legitimate. There is no doubt that the Respondent has received and is aware of the Complaint, its nature and its consequences. The Panel is acutely aware that the Respondent has chosen to remain silent in this proceeding despite the severe allegations leveled against the Respondent by the Complainant. The Respondent's inaction, not just in respect of the Disputed Domain Name, but also in respect of this proceeding, propels the Panel to draw an adverse inference that the Complainant's allegations are justified and could not be refuted by the Respondent.

Taking into consideration all the particular circumstances of this proceeding, the Panel concludes that the Disputed Domain Name has been registered and is being used in bad faith within the meaning of the third limb of paragraph 4(a) of the Policy.

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, <米其林.网址> (<xn--g6q625cxo.xn--ses554g>), be transferred to the Complainant.

/Kar Liang Soh/

Kar Liang Soh

Sole Panelist

Date: March 24, 2023