

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Osazuwa Etinosa Case No. D2023-1203

1. The Parties

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

The Respondent is Osazuwa Etinosa, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <obillomichelininternational.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2023. On March 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 20, 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 (Privacy service provided by Withheld for Privacy ehf), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 21, 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 on March 23, 2023.

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 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any formal response. A third-party communication was filed on March 24, 2023. Accordingly, the Center sent the Commencement of Panel Appointment Process email on April 26, 2023.

The Center appointed John Swinson as the sole panelist in this matter on May 12, 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 leading tyre company, headquartered in France but selling tires worldwide. The Complainant designs and commercializes tires, and provides related services, as well as various digital services, maps, and guides to help travellers. The Complainant is present in 170 countries, including in Africa, has 114,000 employees, and operates 69 tyre manufacturing facilities and sales agencies in 17 countries.

The Complainant owns numerous registered trademarks for the MICHELIN brand, including Nigerian trademark number 18584 for the word mark MICHELIN, registered on April 21, 1967, in International Class 12.

The disputed domain name was registered on November 5, 2022.

The Respondent did not submit a formal response. It appears that the Respondent is a former distributor for the Complainant.

The Center received an email from a person who has the same name and email address as the person listed in the Registrar's records as the owner of the disputed domain, which stated:

"Am so sorry about the late reply, I have contacted the owner of the company here in Nigeria. Am just the Website developer who helped to register the domain name and build the website. The owner company has promised to visit Michelin Head office here in Nigeria to get the required Documents."

At the time of drafting this decision, the disputed domain resolves to a website that states that it is operated by Obillo Investment Nigeria Ltd (and in other places by Obillo Unique Investment Nigeria Ltd). This website advertises a Michelin Tyre Service Centre in Nigeria that offers Michelin tyres for sale. The branding on this website includes a logo of a tyre with the words "OBILLOMICHELIN INTERNATIONAL". The website also includes the business name "Obillo Michelin Tyre Service Centre", photographs of a service centre that has Michelin branding, and photographs of staff with what appear to be Michelin shirts.

The Complainant sent a letter to the Respondent on December 28, 2022, along with follow-up correspondence, but no response was received.

In a previous dispute under the Policy concerning the domain name <obillomichelin.com> and the same parties, the Panelist found for the Complainant. See *Compagnie Générale des Etablissements Michelin v. Privacy service provided by Withheld for Privacy ehf / Osazuwa Etinosa, Jumon Shop Ventures*, WIPO Case No. [D2021-1147](#).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent is a former distributor of the Complainant but is not currently affiliated with the Complainant. The Respondent has not been authorized nor licensed by the Complainant to use and register MICHELIN, or to seek registration of any domain name incorporating the

MICHELIN mark. The Respondent did everything to make the website at the disputed domain name look like an official website of the Complainant and therefore created a strong likelihood of confusion for Michelin consumers who could believe that this website is the official website offering authentic services online.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and are being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "obillo" and "international") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible

task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

While the Complainant does not directly address the well-known “Oki Data” criteria in this case, the Panel finds, on the basis that of the Complainant’s evidence that the Respondent is not, or is no longer, an authorized distributor of the Complainant’s goods.

Panels have consistently found that when a distribution arrangement terminates, any express or implied permission to use a domain name which incorporates a complainant’s trade mark expires. See, e.g., *Progeo Monitoring GmbH v. Clark Gunness*, WIPO Case No. [D2015-2163](#) and the cases cited therein.

In the longstanding case of *Jerome Stevens Pharmaceuticals, Inc. v. Watson Pharmaceuticals*, WIPO Case No. [D2003-1029](#), the panel stated:

"There is no statement in the Policy that Respondent must have no legitimate interest both at the time of registration and thereafter. Thus, if one had legitimate use at one point, yet no longer is legitimately using the domain name, the Policy doesn't prohibit a finding of no legitimate use pursuant to paragraph 4(a)(ii)."

The website is not fully functional and has some broken links, but in one non-prominent place states: “We’re proud to be a TIA-certified tire dealer with leading tire brands of MICHELIN.” It is unclear to the Panel whether the Respondent offers only the Complainant’s goods. The Respondent’s website refers to “Michelin Tyres with Popular Brands”, and while it does not conclusively follow from this statement that the Respondent supplies other brands, the Panel finds the position unacceptably ambiguous in the absence of any evidence from the Respondent. Additionally, the Respondent provides other services unrelated to the Complainant, such as a “full service oil change”. Thus, even if the Respondent was an authorized distributor of the Complainant, the website at the disputed domain name does not meet the *Oki Data* criteria.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site or location or of a product or service on the Respondent’s web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel notes that the Respondent was clearly aware of the Complainant and the Complainant’s trademark rights. The Respondent – stated to be “Obillo Unique Investment Nigeria Limited” on its website – is a former distributor of the Complainant’s tyres; the use of the Complainant’s mark in the disputed domain name to direct to the Respondent’s website (where it is known by a corporate name that does not include the Complainant’s mark) gives the misimpression that the Respondent is officially linked to

the Complainant. Moreover, the Respondent was unsuccessful in another case under the Policy that was decided before the Respondent registered the disputed domain name. The Respondent repeats its bad faith conduct in respect of the disputed domain name, knowing from the earlier decision that it was wrong to do so.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <obillomichelininternational.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: May 26, 2023