

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. 陈新枝

Case No. D2023-3435

1. The Parties

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

The Respondent is 陈新枝, China, self-represented.

2. The Domain Name and Registrar

The disputed domain name <米其林.公司> (<xn--g6q625cxxo.xn--55qx5d>) is registered with Xiamen ChinaSource Internet Service Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 14, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on August 15, 2023, providing further 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 August 16, 2023.

On August 15, 2023, the Center sent an email communication to the Parties in Chinese and English regarding the language of the proceeding. On August 16, 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 Chinese and English of the Complaint, and the proceedings commenced on August 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2023. The Response was filed with the Center in Chinese on August 28, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 25, 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 tire company. It also provides digital services, maps, and guides, and develops high-technology materials that serve the mobility industry. Founded in 1889 in France, the Complainant's group is now present in 170 countries and operates 117 tire manufacturing facilities and sales agencies in 26 countries. In China, it established its first representative office in 1989 in Beijing and its first tire manufacturing company in 1995 in Shenyang. It also has a research and development company and various manufacturing and investment service companies in Shanghai. Its name is phonetically transcribed in Chinese as “米其林” (pronounced “Mǐqílín”). The Complainant owns multiple trademark registrations, including the following Chinese trademark registrations for 米其林:

- Numbers 519641 and 519749, both registered on May 20, 1990, specifying goods in classes 9 and 12, respectively;
- Number 6167650, registered on February 28, 2011, specifying goods in class 12; and
- Number 10574976, registered on December 14, 2013, specifying goods in class 12.

The above trademark registrations remain current. The Complainant has also registered various domain names, including <michelin.com>, registered on December 1, 1993, that it uses in connection with a website where it provides information about itself and its products.

The Respondent is an individual resident in China.

The disputed domain name was registered on November 25, 2019 and resolves to a webpage where it is offered for sale. No price is specified. The contact person is named “陈生” (which may be transcribed as “Chen Sheng”) and the contact telephone number is that of the Respondent.

The Complainant sent a cease-and-desist letter to the Respondent in English via email on June 26, 2023 and follow-up reminders on July 4, July 12, and July 20, 2023.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical to the Complainant's 米其林 trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is neither affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said trademarks. The Respondent is not commonly known by the name “米其林” or “Michelin” or the disputed domain name, given the notoriety surrounding the Complainant's trademarks and the fact that it is exclusively associated with the Complainant. The disputed domain name directs to a Chinese website

selling the disputed domain name and displaying contact details, which cannot be considered a *bona fide* offering of goods or services as the Respondent is taking unfair advantage of the Complainant's goodwill and reputation for the Respondent's own gain.

The disputed domain name was registered and is being used in bad faith. It is implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name because the Complainant is well known throughout the world, including in China. The Respondent's imitation of the Complainant's trademark in the disputed domain name clearly proves that the Respondent was aware of the existence of that trademark. The Respondent configured a website in Chinese in order to sell the disputed domain name. Hence, the Respondent's use of the disputed domain name with the purpose of capitalizing on the notoriety of the Complainant's trademark 米其林/MICHELIN cannot constitute good faith.

B. Respondent

The Complainant does not own or have the sole right to use the Chinese characters “米其林”. Many companies and individuals in China own trademark registrations for 米其林 in different categories of goods and services, such as number 10552252, registered in 2013 in respect of trees and other plants in class 31. Further, these are universal Chinese characters, and many people (11 in total) are named “米其林”.

The Respondent enjoys legal ownership of the disputed domain name. In 2017, China's State Administration of Taxation listed domain names as intangible assets subject to a 6% value-added tax. The Respondent registered the disputed domain name on November 25, 2019 and enjoys legitimate rights and interests in respect of it, as it is protected as a personal intangible asset under China's Civil Code.

The disputed domain name registration is more than two years old and therefore the arbitration procedure provided for in the China Internet Network Information Center (“CNNIC”) dispute resolution policy does not apply to it.

The disputed domain name registered by the Respondent is in the preparation and application stage, and there is no conduct that harms the interests of the Complainant.

6. Discussion and Findings

6.1. Procedural Issues

A. Applicability of the UDRP

The disputed domain name is registered in the “.公司” (“xn--55qx5d”) generic Top-Level Domain (“gTLD”). The Respondent claims that disputes regarding this gTLD are within the scope of the CNNIC Domain Name Dispute Resolution Policy (中国互联网络信息中心域名争议解决办法) implemented on June 28, 2012, which applied not only to the “.CN” and “.中国” country and territory code Top-Level Domains (“ccTLDs”) but also to “.公司” and “.网络”. That policy provided for a limitation period of two years to file a dispute.

The Panel recalls that “.公司” and “.网络” were relaunched as new gTLDs in 2014. Although CNNIC operates the “.公司” and “.网络” gTLD registries, it implemented a new version of its dispute resolution policy on November 21, 2014, which only applied to disputes resulting from the registration or usage of domain names in the “.CN” and “.中国” ccTLDs (see Articles 1 and 2). That remains the position under the current version of the China ccTLD Dispute Resolution Policy (国家顶级域名争议解决办法), implemented by CNNIC on June 18, 2019, prior to the registration of the disputed domain name (see Articles 1 and 2). See also Article 1 of the China ccTLD Dispute Resolution Policy Rules (国家顶级域名争议解决程序规则).

The UDRP applies to disputes regarding all new gTLDs, including “.公司” (“xn--55qx5d”). Therefore, the Panel finds that this dispute is properly within the scope of the UDRP and that the Panel has jurisdiction to decide this dispute. It can be noted that the UDRP contains no limitation period to file a dispute.

B. 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 Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that it has no knowledge of Chinese and to proceed in that language would require it to retain specialized translation services at a cost that is likely to be higher than the overall cost for the present proceeding.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and amended Complaint were filed in English while the Response was filed in Chinese. Despite the Center having sent an email communication regarding the language of the proceeding in both Chinese and English, the Respondent has not objected to the use of English nor otherwise commented on the issue of language. The detailed Response indicates that the Respondent has understood the Complaint and availed himself of the opportunity to present his case. Therefore, the Panel considers that requiring the Complainant to translate the Complaint, as amended, would create an undue burden and delay, whereas accepting it as filed without translation will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but the Panel will accept all Parties' submissions in their original version, without translation.

6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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 is being used in bad faith.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the 米其林 mark.

The disputed domain name wholly incorporates the 米其林 mark. Its only additional element is the gTLD “公司”, meaning “company” in Chinese. As a standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the 米其林 mark for the purposes of the first element in paragraph 4(a) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent has] acquired no trademark or service mark rights; or
- (iii) [the Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

With respect to the first and third circumstances set out above, the disputed domain name resolves to a webpage where it is offered for sale. The Panel does not consider this to be a use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use, that would create rights or legitimate interests for the purposes of the Policy.

With respect to the second circumstance set out above, the Respondent's name is listed in the Registrar's Whois database as 陈新枝 (which may be transcribed as "Chen Xinzhi"), and the contact person on the webpage to which the disputed domain name resolves is listed as 陈生 (which may be transcribed as "Chen Sheng"), not the disputed domain name. Nothing indicates that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent, he argues that he enjoys legal ownership of the disputed domain name, which is protected under Chinese law as a personal intangible asset and subject to value-added tax. However, the Panel notes that the mere registration of a disputed domain name does not suffice to establish rights and legitimate interests for the purposes of the UDRP, otherwise no Complaint could ever succeed, which would be an illogical result. See, for example, *Pharmacia & Upjohn Company v. Moreonline*, WIPO Case No. [D2000-0134](#). The Respondent also argues that third parties have registered 米其林 as trademarks or have used these characters as their names. However, third party rights in the term 米其林 does not confer any rights or legitimate interests on the Respondent. The Respondent further argues that the disputed domain name is in the preparation and application stage, but provides no evidence that would demonstrate any preparations to use it in any way other than to offer it for sale. Accordingly, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive.

With respect to registration, the disputed domain name is identical to the Complainant's 米其林 mark, adding only a gTLD. The disputed domain name was registered long after the registration of the Complainant's trademark, including in China where the Respondent is resident. The Complainant's 米其林 trademark is a string of three characters with no inherent meaning; it enjoys a strong reputation in China, including in the

tire sector, due to its widespread use in that country for over 30 years. The Respondent argues that the same string of characters has been registered in China by various third parties as trademarks for other types of goods. The Respondent also provides a search result showing that a total of 11 individuals throughout China are named “米其林”. In the Panel’s view, this demonstrates that the name is highly unusual, even if not unique and, in any case, the Respondent does not indicate whether he had ever heard of these individuals before he registered the disputed domain name. However, neither would prove that the Respondent did not target the Complainant when registering the disputed domain name. Rather, noting the Complainant’s 米其林 trademark is widely known in China, and based on the record of this proceeding, the Panel considers it unlikely that the Respondent independently composed the disputed domain name without knowledge of the Complainant’s mark. Rather, the Panel finds it more likely than not that the Respondent had the Complainant and its trademark in mind at the time when he registered the disputed domain name.

With respect to use, the disputed domain name resolves to a webpage that merely offers the disputed domain name for sale, without specifying a price. The mark has a strong reputation in China, including in the tire sector. The disputed domain name is identical to the Complainant’s 米其林 mark, which creates a strong risk of implied affiliation. The Respondent has apparently made no use of the disputed domain name in almost four years other than to offer it for sale. Given all these circumstances, the Panel finds that the Complainant has discharged its burden of demonstrating that the disputed domain name is being used in bad faith.

The Respondent argues that there has been no conduct that harms the interests of the Complainant. However, the Complainant cannot control the disputed domain name and, as long as that is the case, it remains exposed to the risk that the use of the disputed domain name by another party will harm its interests.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in 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.公司> (<xn--g6q625cxxo.xn--55qx5d>) be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: October 9, 2023