

## **ADMINISTRATIVE PANEL DECISION**

### **Compagnie Générale des Etablissements Michelin v. Qi Jiao to Case No. D2023-3862**

#### **1. The Parties**

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

The Respondent is Qi Jiao to, United States of America (the “United States”).

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

The disputed domain name <michelinnga.com> is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 15, 2023. On September 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and its contact details.

The Center verified that the 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 September 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 23, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on November 23, 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, established in 1889 in France, is currently a worldwide leading tire company, providing as well digital services, maps and guides to help enrich trips and travels and make them unique experiences, and developing high technology materials that serve the mobility industry. The Complainant is present in 170 countries worldwide, has more than 124,000 employees and operates 117 tire manufacturing facilities and sales agencies in 26 countries, including in North America.

The Complainant received numerous recognitions and accolades in its industry and as an employer.

The Complainant owns worldwide trademark registrations for MICHELIN, such as the following:

- the International trademark registration number 771031 for the word MICHELIN, registered on June 11, 2001, covering goods and services in Nice classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39, and 42 and designating numerous jurisdictions worldwide; and
- the United States trademark registration number 3329924 for the stylized word MICHELIN, filed on April 29, 2004, and registered on November 6, 2007, covering services in Nice class 39.

The Complainant holds and operates the domain name <michelin.com> registered on December 1, 1993.

The disputed domain name was registered on August 21, 2023 and, at the time of filing of the Complaint, it did not resolve to an active website.

Before commencing the present procedure, on August 23, 2023, the Complainant sent a letter to the Registrar requesting to deactivate the disputed domain name. No response was received but the content on the webpage under the disputed domain name has been taken down.

According to Annex 1 to the Complaint, before the above said letter, the disputed domain name resolved to a login page which displayed the Complainant's trademark and logo and where Internet users were required to introduce their phone numbers and passwords for registration.

#### **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 to it.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its worldwide well-known trademark, adding to the MICHELIN trademark the term "nga"; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith for a website creating a false affiliation with the Complainant due to the presence of the MICHELIN logo; the website under the disputed domain name was probably used to sell fake items under the Complainant's name by attempting to pass itself off as being connected to the Complainant, and by requesting users to enter their phone numbers and passwords in order to login/register, such action presenting a high risk of phishing.

##### **B. Respondent**

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

## 6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (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 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

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term here, "nga", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the composition of the disputed domain name itself carries a risk of implied affiliation. According to the evidence provided in the Complaint, the Respondent has used the disputed domain name in connection with a website reproducing the Complainant's logo and trademark without authorisation and requesting Internet users to enter their phone number and password for login/registration. Panels have held that the use of a domain name for illegal activity (e.g., phishing, impersonation/passing off, or other types of

fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. 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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

At the time of filing the Complaint, and following the receipt of the Complainant's letter to the Registrar, the content on the website was removed and the website displayed an error page.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark; the composition of the disputed domain name; the timing of changing the content on the website under the disputed domain name; the Respondent's failure to respond in the present proceeding; the fact that the Respondent provided inaccurate or incomplete contact details in the WhoIs, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

According to Annex 1 to the Complaint, the disputed domain name was used in relation to a website displaying the Complainant's trademark and logo, and requesting Internet users to insert their details, such as phone and password, for registering/logging.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's well-known trademark registered since at least 2001, it is similar to the Complainant's website registered and used since 1993, and the website operated under the disputed domain name displayed the Complainant's trademark and logo, and had no disclaimer, indeed in this Panel's view, the Respondent has intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website was held, controlled by, or somehow affiliated with or related to the Complainant, presumably for the Respondent's commercial gain.

Further, Panels have held that the use of a domain name for illegal activity (here, claimed phishing activities and impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <micelinnga.com> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: December 4, 2023