

## ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. 佛山市迪奥比家具有限公司

Case No. D2023-5109

### 1. The Parties

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

Respondent is 佛山市迪奥比家具有限公司 (Foshan Diobi Furniture Co., Ltd.), China.

### 2. The Domain Name and Registrar

The disputed domain name <michellin.net> (the “Domain Name”) is registered with Xiamen 35.Com Technology Co., Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2023. On December 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 8, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Not disclosed) and contact information in the Complaint. The Center sent an email communication to Complainant on December 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 11, 2023.

On December 8, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On December 11, 2023, Complainant confirmed its request that English be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

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 Respondent of the Complaint, and the proceedings commenced on December 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 18, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on January 23, 2024. 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**

Complainant is a tire company headquartered in France, which designs, develops and distributes tires, provides digital services, maps and guides for trips and travels and develops materials for the travel industry. Complainant is present in 170 countries, with over 124,000 employees and operates 117 tire manufacturing facilities and sales agencies in 26 countries, including in the United States of America ("United States").

In 1989, Complainant set up its first Representative office in Beijing. In 1995, Complainant set up its first manufacturing company in China, Michelin Shenyang Tire Co., Ltd. and in 2013, it built and relocated to a new factory with a total investment of nearly USD 1.5 billion. Complainant also has a Research and Development company and many manufacturing and investment service companies in Shanghai. The total investment of Complainant in China is currently estimated to be over USD 2 billion, with around 7,000 employees.

Complainant owns numerous registered MICHELIN trademarks around the world, including:

- United States of America ("United States") registered trademark No. 0892045, for MICHELIN, registered on June 2, 1970;
- United States registered trademark No. 4126565, for MICHELIN, registered on April 10, 2012;
- International Trademark No. 771031, for MICHELIN word mark, designating, among others, China, where Respondent is located, registered on June 11, 2001; and
- Chinese Trademark No. 3849509 for MICHELIN word and design mark, registered on October 14, 2006.

Complainant and its affiliates also operate several domain names including <michelin.com>, registered on December 1, 1993 and <michelin.net>, registered on March 8, 2000 to promote its services.

The Domain Name was registered on September 24, 2008 and at the time of the filing of the Complaint, the Domain Name resolved to an inactive page. At the time of the Decision, the Domain Name resolves to an error page.

On September 9, 2022, Complainant sent a cease-and-desist letter to the registrant via email, to attempt to resolve the current matter. Several reminders followed, but, according to Complainant, no response was received. Complainant then proceeded to file the Complaint.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for MICHELIN, and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known MICHELIN products and services.

Complainant notes that it has no affiliation with Respondent. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights. In addition, Complainant notes that by registering the Domain Name which is confusingly similar to Complainant's domain name is a form of typo squatting, which is in itself evidence of bad faith.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its original Complaint in English. In its email dated December 11, 2023, and amended Complaint, Complainant submitted its request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submits that it is located in France and has no knowledge of Chinese and the retention of a translator would add considerable costs to Complainant cause undue burden on Complainant and result in delay to the proceedings. Complainant also noted English is the primary language for international relations and is one of the working languages of the Center.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel also notes that the Domain Name does not have any specific meaning in the Chinese language, and that the Domain Name contains Complainant's MICHELIN trademark in its entirety, and the addition of the English letter "l" to Complainant's trademark in the Domain Name, all of which indicate that Respondent has knowledge of English. The Panel further notes that the Center notified the Parties by email in Chinese and English of the language of the proceeding as well as notified Respondent by email in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding, nor did Respondent choose to file a Response in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

## 6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the MICHELIN trademarks, as noted above under section 4. Complainant has also submitted evidence which supports that the MICHELIN trademarks are widely known and a distinctive identifier of Complainant’s products and services. Complainant has therefore proven that it has the requisite rights in the MICHELIN trademarks.

With Complainant’s rights in the MICHELIN trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case is, “.net”), is identical or confusingly similar to Complainant’s trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant’s MICHELIN trademarks. The use of Complainant’s trademark in its entirety, with the addition of the letter “l” between “l” and “i” in the Domain Name, does not prevent a finding of confusing similarity between the Domain Name and the MICHELIN trademark as it is recognizable in the Domain Name.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its MICHELIN trademarks, and does not have any rights or legitimate interests in the Domain Name.

In addition, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the MICHELIN trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of the filing of the Complaint, the Domain Name reverted to an inactive page. At the time of the Decision, the Domain Name reverted to an error page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Furthermore, Respondent, by registering a domain name that differed from Complainant's official domain name by only one letter, appeared to seek to take advantage of the use of the incidence of Internet users' typographical errors by engaging in "typosquatting". Indeed, the Domain Name, which is predominantly constituted by Complainant's well known mark, is "confusingly similar" to Complainant's mark, differing in only the addition of a single letter "i" in the Domain Name. In *Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager*, WIPO Case No. [D2011-1951](#), the Panel noted that "the disputed domain name is virtually identical to Complainant's domain name. As a result, a predictable and easily made typing error could result in an Internet user being diverted from Complainant's site to that of Respondent". Similarly, the Domain Name is nearly identical to Complainant's trademarks and domain name, so that typing errors by Internet users likely result in diversion from Complainant's site to that of Respondent. Previous panels have also found that "typosquatting" does not constitute a legitimate use of a trademark (*FragranceX.com, Inc. v. Argosweb Corp a/k/a Oleg Techino [...]*, WIPO Case No. [D2010-1237](#)).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name, reinforcing the notion that Respondent was not using the Domain Name in connection with a *bona fide* offering.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name, and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The Panel finds that Complainant has provided ample evidence to show that registration and use of the MICHELIN trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant’s MICHELIN trademarks and related products and services are widely known and recognized. In addition, the addition of the letter “l” to Complainant’s trademark in the Domain Name is directly illustrates reliance on the dominant part of the Domain Name to Complainant’s trademark, industry and business activities. Therefore, Respondent was aware of the MICHELIN trademarks when it registered the Domain Name, knew, or should have known that the Domain Name was confusingly similar to Complainant’s trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent’s awareness of Complainant’s trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant’s MICHELIN trademark in its entirety, with the addition of the letter “l” between “i” and “i”, suggests Respondent’s actual knowledge of Complainant’s rights in the MICHELIN trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

Additionally, registering the Domain Name which is confusingly similar to Complainant’s trademark MICHELIN and Complainant’s official domain name by adding a single letter “l” is a form of typosquatting and that is in itself evidence of bad faith (*ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#); *WestJet Airlines Ltd. v. Taranga Services Pty Ltd*, WIPO Case No. [D2010-1814](#), and *Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager*, WIPO Case No. [D2011-1951](#)).

Moreover, at the time of the filing of the Complaint, the Domain Name reverted to an inactive site. At the time of the Decision, the Domain Name resolves to an error or inactive page. Such use does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. In addition, all these actions may result in tarnishing Complainant’s reputation and good will in the industry.

Further, the Panel also notes the failure of Respondent to respond to the cease and desist letters, submit a Response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and used the Domain Name in bad faith and Complainant succeeds under the third element 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 Domain Name <michellin.net> be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: January 30, 2024