

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Liviu Cortac Case No. DMD2024-0004

1. The Parties

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

The Respondent is Liviu Cortac, Republic of Moldova (“Moldova”).

2. The Domain Name and Registrar

The disputed domain name <michelinorhei.md> (the “Disputed Domain Name”) is registered with InovarePrim SRL (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2024. On September 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 17, 2024, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 17, 2024, 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 September 18, 2024.

On September 17, 2024 the Center informed the parties in Romanian and English, that the language of the registration agreement for the Disputed Domain Name is Romanian. On September 18, 2024 the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the 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 the Respondent in English and Romanian of the Complaint, and the proceedings commenced on October 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2024. Except for several emails exchanged between the Respondent and the Registry Information Technology and Cyber Security Service on September 16, 2024, the Respondent did not submit a formal response. Accordingly, the Center notified the Parties on October 23, 2024 that it would proceed to Panel Appointment.

The Center appointed Marilena Comanescu as the sole panelist in this matter on October 28, 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

The Complainant, established in 1889 in France, is currently a worldwide leading tire company, and also provides electronic mobility support services on its website at <ViaMichelin.com> and publishes travel guides, hotel and restaurant guides, map and road atlases. The Complainant is present in 171 countries worldwide, has 107,800 employees and operates 68 production facilities in 17 countries, including in North America, Europe, and Asia.

The Complainant is present in Europe with a 45 percent production capacity, operating 46 production facilities, 3,000 dealerships and counting around 67,000 employees.

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

- the International trademark registration number 492879 for MICHELIN (word), registered on May 10, 1985, covering goods in Nice Class 12, designating, inter alia, Moldova; and
- the International trademark registration number 517586 for MICHELIN (word), registered on September 24, 1987, covering goods and services in Nice Classes 9, 35, and 38, designating, inter alia, Moldova.

The Complainant holds and operates numerous domain names comprising MICHELIN such as <michelin.com> registered on December 1, 1993.

The Disputed Domain Name was registered on May 27, 2024, and, at the time of filing of the Complaint, according to evidence in the Complaint, it resolved towards a page in Romanian, which displayed the Complainant's trademark and visuals and offered MICHELIN products for sale.

Before commencing the present proceeding, on June 12, 2024, the Complainant sent a letter to the Respondent via the email available on the website under the Disputed Domain Name, requesting the transfer of the Disputed Domain Name to it. No response was received to this letter and its several reminders.

According to evidence in the Complaint, email servers have been configured at the Disputed Domain Name and thus, there may be a risk that the Respondent is engaged in a phishing scheme.

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 Disputed Domain Name is virtually identical or at least confusingly similar to its internationally well-known trademark and its domain names, adding to the MICHELIN trademark the geographical term “Orhei” – which is a city in Moldova, in the country code Top-Level Domain for Moldova, “.md”; 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, since, due to the presence of MICHELIN visuals and logos on the website, Internet users are likely to wrongly believe this is an official website of the Complainant intended for the Moldovan market. Furthermore, the Respondent did not react to the Complainant’s letters before the commencement of the present proceeding; and the Disputed Domain Name is configured with multiple email servers, thus increasing the risk of phishing.

B. Respondent

The Respondent did not substantially reply to the Complainant’s contentions.

The Respondent exchanged several emails with the Registry Information Technology and Cyber Security Service on September 16, 2024, claiming in particular, that it “has rights to use the ‘Michelin’ images and logo” on its website and physical location, without providing any supporting evidence.

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. Preliminary Issue: Language of Proceeding

The language of the Registration Agreement for the Disputed Domain Name is Romanian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English.

The Complainant requested that the language of the proceeding be English for the main following reasons:

- (i) English is the primary language for international relations;
- (ii) the location of the Complainant; and
- (iii) the principle of equity of the parties and expedited proceedings excluding the unnecessary burden of the Complainant ordering translations, and also causing unduly delay to the proceeding.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1).

The Complainant and its representative are French companies. Accordingly, neither the Complainant nor its representative are able to understand and to communicate in Romanian.

The Panel further notes that the Center notified the Parties in Romanian and English of the language of the proceeding, as well as of the commencement of the proceeding.

The Respondent did not file any objections regarding the language of this proceeding. Moreover, in one of its email communications with the Registry Information Technology and Cyber Security Service, of September 16, 2024, the Respondent also uses English language.

The Panel is familiar with both Romanian and English.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

B. 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 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 terms, here "orhei", 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.

The Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exhaustive 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 given that the Complainant's distinctive trademark has been combined with the geographical term "orhei", thus suggesting an affiliation with the Complainant. UDRP panels have largely held that such composition

cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. Furthermore, on the website under the Disputed Domain Name the Respondent displays the Complainant's logo and trademark, without any disclaimer; and the Respondent is not a licensee of the Complainant. [WIPO Overview 3.0](#), sections 2.5.1 and 2.8.

According to the evidence provided in the Complaint, active MX records are associated with the Disputed Domain Name. In the event emails were to be sent using the Disputed Domain Name, it is recalled that panels have held that the use of a domain name for illegal activity (such as phishing or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

D. 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 registered the Disputed Domain Name in bad faith since the MICHELIN mark is registered since at least 1985 and it is well-known worldwide, and further, the use of the Disputed Domain Name enhances this finding.

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.

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] web site 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] web site or location or of a product or service on [the respondent's] web site or location" is evidence of registration and use in bad faith.

The Disputed Domain Name incorporates the Complainant's trademark with a non-distinctive term, the website operated under the Disputed Domain Name displayed the Complainant's trademark and visuals and promoted similar goods/services to those of the Complainant without any disclaimer or information regarding the relation (in fact the lack thereof) between the Respondent and the Complainant, and therefore, 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 is held, or controlled by the Complainant, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain.

Further evidence of bad faith are the following facts: the Respondent's failure to submit a substantive response in the present proceeding and to the Complainant's letters, the distinctiveness and reputation of the Complainant's mark, and the use of the Disputed Domain Name for illegitimate activity (here, at least impersonation/passing off, and claimed risk of phishing activities). [WIPO Overview 3.0](#), sections 3.1.1. and 3.4.

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 < Michelinorhei.md > be transferred to the Complainant.

/Marilena Comanescu /

Marilena Comanescu

Sole Panelist

Date: November 11, 2024