

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Wu Yu
Case No. D2022-2271

1. The Parties

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

Respondent is Wu Yu, China.

2. The Domain Name and Registrar

The disputed domain name <michelin.rest> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2022. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on June 24, 2022, 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 June 27, 2022.

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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 25, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on August 3, 2022. 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

Without contest by Respondent, Complainant asserts in its Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Headquartered in Clermont-Ferrand, France, Complainant, Compagnie Générale des Etablissements Michelin (“Michelin”), operates 69 tire manufacturing facilities with 114,000 employees in 171 countries developing high technology tires and materials that serve the mobility industry, as well as providing digital services, maps and guides, all under the trademark MICHELIN (the “MICHELIN Mark”).

Complainant owns numerous registrations protecting the MICHELIN Mark, including:

United States Registration No. 3329924, MICHELIN, registered on November 6, 2007, for “travel information services, namely, providing driving directions and addresses” in International Class 39 and claiming a first use date as early as January 26, 2007;

International Registration No. 771031, MICHELIN, registered on June 11, 2001, covering goods and services in International Classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42, designating among others, China;

Chinese Trademark Registration No. 27012430A, MICHELIN, registered November 28, 2018, covering goods in International Class 12.

Complainant has also registered domain names that incorporate the MICHELIN Mark used to access and operate its official MICHELIN websites, including <michelin.com>, registered on December 1, 1993, and <michelin.us> registered on April 19, 2002, providing information to the public about Complainant’s offline and online services.

The disputed domain name was registered on February 8, 2022, and initially pointed to an error page stating, “The content of the page cannot be displayed”. After investigation, Complainant determined Respondent’s email servers relating to the disputed domain name are configured on the domain name <michelin.icu>, which represents a security risk to its customers for phishing and distribution of malware. In March 2022, following cease and desist letters delivered by Complainant to the Registrar, the disputed domain name redirected to different pages of various content, including fraudulent ones, as well as to a parking page displaying commercial links targeting Complainant’s field of activity and offering the disputed domain name for sale. The fraudulent content was subsequently deactivated, and the disputed domain name now resolves again to a blank page, but the email server remains configured as before which places Complainant and its customers at risk for phishing from Respondent’s infringing disputed domain name.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s well-known trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint as amended, notwithstanding the failure of Respondent to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied. The Panel will address its findings on each of these requirements in more detail below.

The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.2.

A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the MICHELIN Mark for its tire, mobility, and travel guide related goods and services dating back historically to 1889, and its registrations above for the MICHELIN Mark dating back to 2001. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant and therefore, Complainant has demonstrated it has rights in the MICHELIN Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant’s rights in the MICHELIN Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s MICHELIN Mark. It is well accepted that the first element functions primarily as a standing requirement and that the 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.

Prior UDRP panels have also held “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. See, *L’Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

A side-by-side comparison between the disputed domain name and Complainant’s Mark shows the disputed domain name is identical to the MICHELIN Mark. The Mark is incorporated in its entirety into the disputed domain name followed only by the Top-Level Domain (“TLD”) “.rest”. Prior UDRP panels have found the TLD, being viewed as a standard registration requirement, may typically be disregarded under the paragraph 4(a)(i) analysis. See, [WIPO Overview 3.0](#), section 1.11; see also *L’Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

Based on the above, this Panel finds that the TLD “.rest” does not prevent a finding of confusing similarity between the disputed domain name and Complainant’s well-known MICHELIN Mark, which is identical as incorporated in its entirety into the disputed domain name. Accordingly, the Panel finds the disputed domain name confusingly similar or identical to the MICHELIN Mark in which Complainant has rights and Complainant has satisfied its burden under Paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, the complainant has to make out a *prima facie* case that the respondent does not have rights to or legitimate interests in the disputed domain name, upon which the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the dispute domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also *The American Automobile Association, Inc. v. Privacy--Protect.org et al.*, WIPO Case No. [D2011-2069](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under paragraph 4(c)(i), is where “before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services”.

Here, the annex to the Complaint shows the disputed domain name does not resolve to an active website, but to a blank page. The disputed domain name has pointed to different sites, including fraudulent ones and a parking page targeting Complainant's field of activity. Complainant contends these links were created to trick Internet users into believing that the disputed domain name would direct them to an official website offering Complainant's products and services. Combining these facts with the presence of the email servers as configured, there is a risk that Respondent is prepared to engage in a phishing scheme, a practice intended to defraud consumers into revealing personal and financial information. Such use of a domain name neither a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii). [WIPO Overview 3.0](#), section 2.13; See also *Apple Computer, Inc. v. PrivacyProtect.org / PrivateRegistrations Aktien Gesellschaft*, WIPO Case No. [D2012-0879](#).

Prior UDRP panels have generally held that absence of use does not confer any rights or legitimate interests on a respondent. See, e.g., *Indiamart Intermesh Ltd. v. Yi Zhi Ge, Ge Yi Zhi*, WIPO Case No. [D2019-0930](#). Similarly, prior UDRP panels have also specifically found use of a disputed domain name to resolve to a parking page competing with or capitalizing on Complainant's trademark does not represent a *bona fide* use of the disputed domain name pursuant to paragraph 4(c)(i) nor a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii). See *Microsoft Corporation v. Charilaos Chrisochou*, WIPO Case No. [D2004-0186](#); [WIPO Overview 3.0](#), section 2.9.

Complainant's submitted evidence currently shows nonuse of the disputed domain name. Based on the foregoing decisions this Panel finds the disputed domain name is not being used in connection with a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use sufficient to demonstrate Respondent has any rights or legitimate interests in the disputed domain name under the factors specified by paragraphs 4(c)(i) or (c)(iii) of the Policy.

Complainant's evidence of use in the Complaint as amended, also supports Complainant's contention that Respondent cannot claim prior rights or legitimate interest in the disputed domain name as the MICHELIN Mark precedes the registration of the disputed domain name by decades.

The second example, under paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. Complainant states that Respondent is not related in any way with Complainant, does not carry out any activity for, nor have any business with Respondent. Neither has Complainant granted any license or authorization to Respondent to make any use of Complainant's MICHELIN Mark or apply for registration of the disputed domain name. Complainant has never authorized Respondent to use the MICHELIN Mark, or any marks confusingly similar thereto for any purpose, including as a domain name. Prior UDRP panels have found a lack of rights or legitimate interests under the second element of the Policy

based on such circumstances. See, e.g., *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX*, WIPO Case No. [D2005-0179](#); *Guerlain S.A. v. H I Investments*, WIPO Case No. [D2000-0494](#).

Complainant also shows that Respondent is not commonly known by the disputed domain name because the Registrar identified the underlying registrant information in its verification process as “Wu Yu.”, of China, which name and email address Complainant named as Respondent in its amended Complaint. Respondent does not bear any resemblance to the disputed domain name whatsoever. Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use Complainant’s trademark, or that it has acquired any trademark rights relevant thereto. As such, the Panel finds this sub-section of the Policy is of no help to Respondent and the facts presented here support a lack of rights or legitimate interests in the disputed domain name. See *Confédération nationale du crédit mutuel v. Yu Ke Rong*, WIPO Case No. [D2018-0948](#); *Expedia, Inc. v. Dot Liban, Hanna El Hinn*, WIPO Case No. [D2002-0433](#).

Respondent did not try to answer to Complainant’s cease and desist letter in order to defend its rights. Prior UDRP panels have repeatedly stated that when respondents do not avail themselves of their rights to respond to complainants, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interest in a disputed domain name. See *AREVA v. St James Robyn*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

Moreover, the nature of the disputed domain name, being identical to Complainant’s MICHELIN Mark, carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

In light of the above, and with no Response or other submission in this case to rebut Complainant’s assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends and has shown in the annexes to its Complaint that Complainant is well-known throughout the world and has an undisputable reputation in the automotive industry and in French and foreign gastronomy. Many UDRP panels have previously acknowledged Complainant’s reputation and the MICHELIN Mark to be “well-known” or “famous” worldwide, making it unlikely that Respondent was not aware of Complainant’s rights. See, e.g., *Compagnie Générale des Etablissements Michelin v. World Industrial, LNQ*, WIPO Case No. [D2019-0553](#), *Compagnie Générale des Etablissements Michelin v. Kanoksak Puangkham*, WIPO Case No. [D2018-2331](#).

Complainant further contends that there is no other explanation to register the disputed domain name other than to target Complainant. Given its MICHELIN Mark is well-known worldwide, and the disputed domain name incorporates its identical term in its entirety, the Panel finds bad faith registration based on Respondent’s actual knowledge of the MICHELIN Mark given its widespread recognition, including China where Respondent is located, and where the mark has been in use and registered for many years before Respondent registered the disputed domain name. Prior UDRP panels have found that where it would be implausible to believe that Respondent selected and was using the disputed domain name for any purpose

other than to trade on Complainant's trademark rights and reputation, establishes a fact pattern that repeatedly has been held to constitute bad faith registration. See *Alstom v. Domain Investments LLC*, WIPO Case No. [D2008-0287](#); see also *Houghton Mifflin Co. v. Weathermen, Inc.*, WIPO Case No. [D2001-0211](#).

Given the widespread recognition of Complainant's MICHELIN Mark in China, where Respondent is located, and decades of use of the MICHELIN Mark prior to Respondent's registration of the disputed domain name on February 8, 2022, the ultimate effect of any use of the disputed domain name will be to cause confusion with Complainant and therefore, the use and registration of the disputed domain name must be considered to be in bad faith. See *Empresa Brasileira de Telecomunicações S.A. Embratel v. Kevin McCarthy*, WIPO Case No. [D2000-0164](#).

Prior UDRP panels have also held that a respondent's selection of a disputed domain name that comprises the complainant's mark in its entirety demonstrates a respondent's actual knowledge to support a finding of bad faith in registering and using the domain. See, e.g., *Lloyds Bank Plc v. Marc Wiese*, WIPO Case No. [D2015-0914](#); see also, *Heineken Brouwerijen B.V. v Mark Lott*, WIPO Case No. [D2000-1487](#). Moreover, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

As found by prior UDRP panels, use of the disputed domain name for a parking page competing with or capitalizing on Complainant's trademark demonstrates an indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its disputed domain name, by creating a likelihood of confusion with Complainant's MICHELIN Mark as to the source, sponsorship, affiliation or endorsement of Respondent, and, therefore is evidence of registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy. See *Association des Centres Distributeurs E. Leclerc - A.C.D Lec v. Milen Radumilo*, WIPO Case No. [D2017-2003](#).

Complainant also submits even though the disputed domain name does not currently resolve to an active website, the disputed domain name is nonetheless being "used" in bad faith under the doctrine of passive holding. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3. It is the consensus of UDRP panels that the key points in determining bad faith use under 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), *supra*.

Based on factors already considered, the Panel finds the disputed domain name which being passively held does not prevent a finding of bad faith use, because: (1) the renown and well-recognized nature of the MICHELIN Mark for tires and travel guide services; (2) that Respondent submitted no response, nor any evidence of actual or contemplated good faith use; (3) the implausibility of any good faith use to which the disputed domain name, identical to Complainant's MICHELIN Mark, may be put. See *Confédération Nationale du Crédit Mutuel v. Andrea Quan*, WIPO Case No. [D2022-0094](#); see also *Cloudflare, Inc. v. Anson Network Limited*, WIPO Case No. [D2019-2435](#).

Complainant also contends that although Respondent's website is inactive, the disputed domain name has been configured by Respondent with MX and SPF records making it capable of email communication, settings which combined with an inactive site are often characteristic of phishing schemes. Since the disputed domain name reproduces identically the well-known MICHELIN Mark, a third party receiving an email from the disputed domain name could reasonably assume that it was sent from Complainant.

Complainant points out that this combination of facts has been held by prior UDRP panels as supporting a finding of bad faith use. See *Accenture Global Services Limited v. Registration Private, Domains by Proxy, LLC / Thomas Clark*, WIPO Case No. [D2019-1465](#); see also *Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records*, WIPO Case No.

[D2017-2533](#).

Finally, Complainant has shown that Respondent is a serial cybersquatter and has engaged in a pattern of bad faith use as found by prior UDRP panels. See, e.g., *Indeed Inc. v. Wu Yu*, WIPO Case No. [DQA2019-0002](#); *Fendi S.r.l. v. Super Privacy Service LTD c/o Dynadot / Wu Yu*, WIPO Case No. [D2021-2043](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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 <michelin.rest> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: August 16, 2022