

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Générale des Etablissements Michelin v. room7 data  
Case No. D2023-2098

### **1. The Parties**

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

Respondent is room7 data, Indonesia.

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

The disputed domain name <banmichelin.xyz> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2023. On May 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on May 19, 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 May 22, 2023.

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 May 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 21, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on June 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**

Complainant is Compagnie Générale des Etablissements Michelin (“Michelin”), 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”).

The Michelin Guide was first launched in 1920 to help motorists plan their trips. In 1926, the guide began to award stars for fine dining establishments and later, the Michelin Guide included a list of hotels in Paris, lists of restaurants according to specific categories, without paid-for advertisements in the guide. The guide now rates over 30,000 establishments across three continents, with over 30 million Michelin Guides sold worldwide. The commercial office of PT Michelin Indonesia was opened in Jakarta, Indonesia on April 2, 2011 offering transportation products, such as tires for passenger cars, light trucks and trucks, and buses.

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

- International trademark No. 771031, designating among others, China, Egypt, Morocco, the Russian Federation, Singapore, and Romania, registered on June 11, 2001;
- International trademark No. 1713161, designating among others, Australia, Canada, Indonesia, India, and Singapore, registered on June 13, 2022;
- United States trademark No. 3684424, registered on September 15, 2009; and
- Indonesian trademark No. IDM000242879, registered on March 31, 2010.

Complainant owns and operates several domain names including <michelin.com>, registered on December 1, 1993, to promote its products and services.

The Domain Name was registered on January 15, 2023 and resolves to a webpage in Indonesian offering online gambling and betting.

On February 9, 2023, Complainant sent a cease-and-desist letter to Respondent via the Registrar. Along with a notification to the Registrar, to attempt to resolve the current matter. Several reminders followed, but no response was received, except for the Registrar’s message referring among others Complainant to contact the hosting provider company. Complainant subsequently sent a request and notification to the hosting provider, requesting deactivation of the infringing website on April 4, 2023. Despite several reminders, 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, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, 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.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

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 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 Complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden of proof remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

### **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. Complainant has also submitted evidence, which supports that the MICHELIN trademarks are widely known and a source 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, ".xyz"), 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. These trademarks are recognizable in the Domain Name. In particular, the Domain Name includes Complainant's trademark MICHELIN in its entirety, with an addition of the word "ban", which does not prevent a finding of confusing similarity between the Domain Name and the MICHELIN trademarks. See [WIPO Overview 3.0](#), section 1.8.

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 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. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the MICHELIN trademarks or to seek registration of any domain name incorporating the trademarks. 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, the Domain Name resolves to a webpage offering online gambling and betting. The record shows that the Domain Name is also configured with email servers, which indicates an interest by Respondent to establish communication with Internet users and possibly to conduct phishing activities. Moreover, the term “ban” means “tire” in Indonesian, directly evoking association with Complainant’s field of business, therefore the nature of the Domain Name carries a risk of implied affiliation. 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](#).

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. 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 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. Therefore, Respondent was likely aware of the MICHELIN trademarks when it registered the Domain Name, particularly noting the additional term "ban" ("tire" in Indonesian) is related to Complainant's field of business,. See [WIPO Overview 3.0](#), section 3.2.2.

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](#); *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 suggests Respondent's actual knowledge of Complainant's rights in the MICHELIN trademark at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known MICHELIN products and services of Complainant or authorized partners of Complainant. The use of the MICHELIN mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services.

Moreover, the Domain Name diverts users to a webpage related to online gambling and betting. The Domain Name is also configured with email servers, which indicates Respondent's interest in establishing communication with Internet users, and possibly in conducting phishing activities. The use of Complainant's MICHELIN trademark in its entirety, along with the addition of the term "ban" ("tire" in Indonesian) in the Domain Name, could result in causing confusion with and disruption of Complainant's business activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case. In addition, it may confuse Internet users into think that Complainant is involved or associated with third parties as featured on the web links on the site diverted by the Domain Name, which is also not the case.

Finally, the Panel also notes the reputation of the MICHELIN trademarks, Respondent's use of a privacy shield service, the failure of Respondent to 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 has registered and is using 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 <banmichelin.xyz> be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: July 2, 2023