

## **ADMINISTRATIVE PANEL DECISION**

### **Compagnie Generale Des Etablissements Michelin v. MINH HOAI NGUYEN Case No. D2023-4045**

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

The Complainant is Compagnie Generale Des Etablissements Michelin, France, represented by Tmark Conseils, France.

The Respondent is MINH HOAI NGUYEN, Viet Nam.

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

The disputed domain name <michelinvietnam.guide> is registered with NameCheap, Inc. (the “Registrar”).

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 27, 2023. On September 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 2023, 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 (REDACTED FOR PRIVACY, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 28, 2023, 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 on October 4, 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 sent notification to the Respondent of the Complaint, and the proceedings commenced on October 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2023. The Respondent did not submit any response. Accordingly, the Center sent notification of the Respondent’s default on October 31, 2023.

The Center appointed Petra Pecar as the sole panelist in this matter on November 2, 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 is a tire company, established in 1889, that designs and distributes tires, maps, and various guide publications in the field of restaurants. The Complainant is also known for the Michelin Guide, which rates restaurants using the MICHELIN STAR system since 1926.

The Complainant owns numerous MICHELIN mark registrations around the world. The Complainant is the owner among others of the following MICHELIN mark registrations:

- International mark Registration MICHELIN No. 1713161 of June 13, 2022, designating among other Viet Nam;
- United States of America mark Registration MICHELIN No. 5775734 of June 11, 2019; and
- European Union mark Registration MICHELIN No. 013558366 of April 17, 2015;

covering products and services relating to tourism, hospitality, restaurants, and gastronomy and in particular multimedia publications in electronic form available online from databases in the field of travel, tourism and gastronomy or for services of editing and publication of guides.

The Complainant registered and is using various domain names incorporating the famous mark MICHELIN such as, among others <michelin.com> registered on December 1, 1993 and sub-domain <guide.michelin.com>.

The disputed domain name was registered on March 15, 2023, and resolves to a website featuring content directly taken from the official website of the Complainant.

The Respondent is reportedly an individual from Viet Nam.

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

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

The Complainant asserts that the disputed domain name consists of its well-known MICHELIN mark. The Complainant is globally recognized and well known for its tires, travel publications, and the prestigious Michelin Guide, which rates restaurants using the MICHELIN STAR system. The Complainant has a strong reputation in various industries, including tire manufacturing and gastronomy. Numerous UDRP cases have upheld the fame of the MICHELIN mark, making it clear that the Respondent could not reasonably claim a legitimate connection to the mark. The disputed domain name is closely associated with the Complainant's renowned "Michelin Guide" and its "Michelin Star" rating system, reinforcing the well-known status of the MICHELIN mark.

The Complainant argues that the addition of the ".guide" Top-Level Domain ("TLD") fails to remove the confusion, as prior UDRP panels have consistently upheld the principle that domain names fully incorporating a registered mark can create confusion, regardless of the inclusion of additional words.

Furthermore, the Complainant argues that combining "michelin" with geographic term "vietnam" does not eliminate confusion; instead, it amplifies the association with the Complainant. This is particularly significant given the worldwide renown of the MICHELIN brand. Prior UDRP panels have consistently ruled in favor of

complainants in similar cases, highlighting that the public naturally anticipates that the owner of the domain would have some affiliation with the Complainant due to the extensive reputation of the mark.

The Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain name. This assertion is based on the ownership of the MICHELIN mark by the Complainant, the absence of authorization for the Respondent's use of the mark in the disputed domain name, the distinctiveness of the mark, the apparent impersonation of the Complainant's website by the Respondent's website, and the deceptive purpose of the Respondent's website to attract users by leveraging the reputation of the MICHELIN mark.

The Complainant argues that the disputed domain name was registered and is being used in bad faith. Given the Complainant's strong use of the mark MICHELIN it's unlikely that the Respondent registered the domain by coincidence. The deliberate use of the mark in the disputed domain name suggests an attempt to exploit the Complainant's reputation.

The Respondent should have known about the Complainant's rights to MICHELIN through a basic online search, which should have deterred them from registering the disputed domain name to avoid infringing the Complainant's rights.

The Complainant asserts that the current use of the disputed domain name involves resolving users to a website that mimics the Complainant's official site, causing confusion about its source, which suggests an intent to profit from the Complainant's reputation.

Furthermore, the inclusion of symbols related to social networks (Whatsapp, Messenger and Telegram) on the website may indicate an attempt to collect contact information from Internet users seeking the Complainant's products and services, potentially for deceptive purposes.

The Complainant argues, that the presence of mail exchanger records (MX records) for the disputed domain name indicates a potential intent for spamming or phishing attacks.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1). The Panel finds that the Complainant has established its rights in the MICHELIN mark, based on its numerous mark registrations in several countries worldwide.

The disputed domain name incorporates the MICHELIN mark in its entirety, with addition of the geographical term Viet Nam (albeit, “vietnam”) and TLD “.guide”. The fact that a domain name incorporates a complainant’s mark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of another term to such mark. An additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity in accordance with section 1.8 of the [WIPO Overview 3.0](#).

It is well accepted practice by UDRP panels that a TLD, such as “. guide”, is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark (see section 1.11.1 of the [WIPO Overview 3.0](#)). Accordingly, the Panel determines that the disputed domain name is confusingly similar to the Complainant’s MICHELIN mark.

In accordance with the above, the Panel finds that the disputed domain name is confusingly similar to a mark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the respondent’s rights or legitimate interests in the disputed domain name:

- (i) before any notice to it of the dispute, the respondent’s 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; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: “[...] 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that the Complainant has made a *prima facie* case showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that it has never authorized the Respondent to use its MICHELIN mark as part of the disputed domain name and that the Respondent is not commonly known by the disputed domain name.

The Respondent has failed to submit a response to the Complaint and therefore has not provided any evidence of circumstances specified in paragraph 4(c) of the Policy, or of any other circumstances, that would give rise to rights or legitimate interests in the disputed domain name. Rather, the disputed domain name incorporates the Complainant’s distinctive mark along with a geographic term that will likely convey to Internet users the false notion that the disputed domain name is connected to the Complainant’s services in such geographic area. Such risk of implied affiliation, compounded by the impersonating nature of the content found at the website to which the disputed domain name resolves, cannot constitute fair use.

Accordingly, the Panel finds that the Complainant has made a *prima facie* case showing the Respondent’s lack of rights or legitimate interests in respect of the disputed domain name, which has not been rebutted by the Respondent.

The Panel therefore finds that the Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii) of the Policy.

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

The third element of paragraph 4(a) of the Policy requires the Complainant to demonstrate that the Respondent registered and is using the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1, states that “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”.

Further, paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or 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 the respondent’s documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 its website or location.

Numerous previous UDRP panels have found that the Complainant’s MICHELIN mark is well known (see for example *Compagnie Générale des Etablissements Michelin v. WhoisGuard, Inc., WhoisGuard Protected / Saad Zaeem, Caramel Tech Studios*, WIPO Case No. [D2017-0234](#)), and the Panel also holds that the MICHELIN mark certainly enjoys reputation throughout the world. Having in mind the well-known status of the Complainant’s mark, the Panel finds that it is indeed difficult to conceive a plausible circumstance in which the Respondent could register the disputed domain name without awareness of the Complainant.

Based on the evidence provided by the Complainant, there is no doubt that the Respondent was aware of the Complainant and its well-known MICHELIN mark at the time of the registration of the disputed domain name. The Respondent seems to have targeted the Complainant when it registered the disputed domain name.

The Panel finds that the Respondent registered the disputed domain name, which incorporates the Complainant’s well-known MICHELIN mark in its entirety, along with the geographic term Viet Nam and TLD “.guide” which is used by the Complainant’s in its sub-domain <guide.michelin.com> for digital travel assistance products and services. Given the fame of the MICHELIN mark and the fact that the disputed domain name is obviously connected with the Complainant’s mark and its brand “Michelin Guide”, the Panel holds that the disputed domain name was registered in bad faith.

Further, the disputed domain name resolves to a webpage which resembles the Complainant’s official website on the domain name <guide.michelin.com>, featuring content directly taken from the official website of the Complainant (similar layout of the webpage, same color codes, reproduction of the bib gourmand logo, which is a distinction aimed at restaurants, offering the best value for money). The Panel finds that the Respondent intentionally created a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website.

The Respondent has failed to provide any response to the Complaint and consequently to provide any relevant evidence of use in good faith of the disputed domain name. The Panel finds that it seems rather implausible that there could be any good faith use of the disputed domain name having in mind that the disputed domain name contains the well-known MICHELIN mark in its entirety and that the disputed domain name is structured in a manner mimicking the Complainant's brand and its domain name <guide.michelin.com>.

Accordingly, the Complainant has satisfied the third element of the Policy in accordance with 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 <michelinvietnam.guide> be transferred to the Complainant.

*/Petra Pecar/*

**Petra Pecar**

Sole Panelist

Date: November 16, 2023