

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. xuxu
Case No. D2023-5374

1. The Parties

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

The Respondent is xuxu, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <michelinvip.net> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 28, 2023. On December 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 2, 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 January 11, 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 on January 12, 2024.

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 of the Complaint, and the proceedings commenced on January 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 9, 2024.

The Center appointed Mireille Buydens as the sole panelist in this matter on February 16, 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 is a well-known corporation created in 1889, incorporated in France and operating in many countries in the field of tire manufacturing for cars, trucks, motorcycles and planes. The Complainant is also engaged in other activities, i.e., travel publications (maps, guides, atlases, computerized products), vehicle racing (Formula One and Motorcycle Grand Prix, Superbike), and rallies. The Complainant publishes its annual “Michelin Guide”, whereby it started publishing the travel/gastronomy guide in Europe in 1900 to encourage new drivers to take road trips to local attractions. The Complainant also started to use the “MICHELIN STAR” rating system since 1926 in order to grade the quality of restaurants.

The Complainant is also known in Hong Kong, China where 95 restaurants are recognized with MICHELIN stars.

The Complainant is the holder of many trademark registrations on MICHELIN (“the Trademark”) including the following trademark registrations covering various products and services relating to tires as well as tourism, hospitality, restaurant, and gastronomy, or for services of editing and publication of guides:

- International Trademark Registration No. 771031, registered on June 11, 2001, and designating inter alia China
- International trademark registration No. 1713161, registered on June 13, 2022
- International trademark registration No. 1254506 registered on December 10, 2014;
- Hong Kong, China trademark registration No. 302941939, registered on September 5, 2014, covering goods in class 12.

The Complainant is the owner of domain names, including <michelin.com> (registered on December 1, 1993) and <michelinvip.com> (registered on April 6, 2016).

The disputed domain name was registered on November 1, 2023.

According to the Complaint, the disputed domain name initially redirected to a fake online gambling site reproducing the Complainant’s logo, in particular its official mascot, the Michelin Man (or “Bibendum”), and displaying an identification interface that collects personal data. Currently, the disputed domain name directs to an inactive page (with an error message).

On November 2, 2023, the Complainant sent notifications to the registrar and hosting provider, asserting its trademark rights and requesting the blocking of the disputed domain name and the deactivation of the website. Both providers failed to comply with the Complainant’s requests.

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.

First, the Complainant asserts that it owns registrations for the Trademark. The Complainant further explains that the disputed domain name is confusingly similar to the Complainant’s Trademark as it reproduces it in its entirety, together with the acronym “vip” as a suffix. This is insufficient to avoid any likelihood of confusion as

this generic term suggests that the website will provide information relating to the Complainant's business and its special vip products. Similarly, the disputed domain name is virtually identical to the Complainant's domain name <michelinvip.com>, which increases the risk of confusion for Internet users, who could believe that the disputed domain name will direct them to a website related to the Complainant's activities and/or products offered to the VIP club's members. The ".net" generic Top-Level Domain ("gTLD") in the disputed domain name does not affect the likelihood of confusion.

Second, the Complainant asserts that the Respondent lacks a right or a legitimate interest in the disputed domain name. The Respondent is neither affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register the Trademark, or to seek registration of any domain name incorporating said Trademark. Furthermore, the Respondent has no prior rights or legitimate interests in the disputed domain name. The registration of the Trademark preceded the registration of the disputed domain name for years. Besides, the disputed domain name, which incorporates the Complainant's Trademark in its entirety, redirected to a fake gambling site reproducing the Complainant's Trademark, logo, and visuals, creating a false affiliation with the Complainant, in addition to displaying an identification interface that collects personal data. This cannot be considered as a use of the disputed domain name in connection with a bona fide offering of goods and services.

Third, the Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Complainant submits that it is implausible that the Respondent was unaware of the Complainant when it registered the disputed domain name. The Complainant is well-known throughout the world, including Hong Kong, China, where the Respondent is allegedly located. The composition of the disputed domain name entirely reproduces the Complainant's Trademark while the additional term "vip" directly targets the Complainant's official domain name <michelinvip.com>, which implies that the Respondent was well-aware of the Complainant when he registered the disputed domain name. In any event, a quick "MICHELIN" trademark search, or even a Google search, would have revealed to the Respondent the existence of the Complainant and its Trademark. The Respondent's failure to do so is a contributory factor to its bad faith. Given the Complainant's goodwill and renown, and the nature of the disputed domain name, the Respondent could simply not have chosen the disputed domain name for any reason other than to deliberately cause confusion amongst Internet users in order to take unfair advantage of the Complainant's goodwill and reputation, which clearly constitutes bad faith. The Complainant further asserts that it is likely that the Respondent registered the disputed domain name to prevent the Complainant from using their trademarks in the disputed domain name.

The Complainant contends that the Respondent is also using the disputed domain name in bad faith as it initially resolved to a fake gambling website reproducing the Complainant's trademark, logo and official mascot, usurping Michelin's identity, and displayed an identification interface collecting personal data, misleading in that way Internet users into believing it is operated by the Complainant.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Dealing with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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 in bad faith.

A. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, the addition of the descriptive acronym "vip") 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.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a 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.

Panels have held that the use of a domain name for illegal activity, here initially a fake gambling website requesting the Internet users to provide personal information and their password (probably in a phishing attempt) while reproducing elements of the Complainant's official website (logo, mascot, and pictures), can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Besides, the Respondent is not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondent would be commonly known under the disputed domain name, nor is there any evidence of use or demonstrable plans to use the disputed domain name for a bona fide offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the disputed domain name, either.

The Panel further notes that the composition of the disputed domain name, adding the term “vip” (acronym for “very important person” and used by the Complainant for certain premium customers) to the Trademark, affirms the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and the Complainant’s reputed Trademark and to mislead the Internet users. This is the more so that the disputed domain name is almost identical to the domain name of the Complainant <michelinvip.com> (the only difference being the gTLD). This confirms that there is no use, nor preparations to use of the disputed domain name in connection with a bona fide offering of goods or services.

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

C. 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.

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. This includes notably the fact that the disputed domain name incorporates the complainant’s trademark plus an additional descriptive term and a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that, given that the disputed domain name contains the Complainant’s well-known Trademark which predates the registration of the disputed domain name, with the addition of the descriptive term “vip” (acronym for “very important person” and used by the Complainant for certain premium customers), the Respondent was more likely than not aware of the Complainant’s Trademark at the time of the registration of the disputed domain name ([WIPO Overview 3.0](#), section 3.1.4). Furthermore, the Complainant owns and uses a domain name (<michelinvip.net>) which is identical to the disputed domain name (the only difference being the gTLD). It is implausible that the Respondent didn’t know about the Complainant’s rights. In any event, a quick MICHELIN trademark search, or even a Google search, would have revealed to the Respondent the existence of the Complainant and its Trademark. This the more so that the Complainant owns a Trademark registration in Hong Kong, China, where the Respondent is allegedly located.

Besides, the Panel notes that the disputed domain name initially resolved to a fake gambling website, reproducing visual elements belonging to the Complainant (MICHELIN logo, mascot, pictures). The use of the well-known Bibendum mascot and logo of the Complainant confirms that the Respondent was well aware of the existence of the Complainant and intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s trademark. This constitutes bad faith under the Policy.

The disputed domain name currently resolves to an inactive website (an error page). Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to provide any evidence of actual or contemplated good-faith use.

[WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the

Complainant's Trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Finally, the Panel finds that this is not the first time that the Respondent registered a domain name in bad faith, construing a pattern of bad faith registration that further reinforces the overall impression of bad faith. See e.g., *Automobili Lamborghini S.p.A. v. xuxu*, WIPO Case No. [D2023-4998](#), *L'Oréal v. xuxu*, WIPO Case No. [D2023-4134](#), *Amgen, Inc. v. xuxu*, WIPO Case No. [D2023-3397](#), *Halliburton Energy Services, Inc. v. xuxu, xuxu*, WIPO Case No. [DCC2023-0012](#)). Although each case must be judged on its own merits, this circumstance can be taken into account in determining whether the Respondent registered or used the disputed domain name in bad faith.

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 <michelinvip.net> be transferred to the Complainant.

/Mireille Buydens/

Mireille Buydens

Sole Panelist

Date: March 1, 2024