

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Artiom Ciulcov Case No. DMD2022-0003

1. The Parties

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

The Respondent is Artiom Ciulcov, Republic of Moldova.

2. The Domain Name and Registrar

The disputed domain name <michelinmoldova.md> is registered with Information Technology and Cyber Security Service (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 25, 2022. On February 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 4, 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 the Complainant on March 4, 2022, 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 March 9, 2022.

The Center sent an email communication to the Complainant on March 4, 2022, in both English and Romanian, indicating that the language of the registration agreement was Romanian. The Complainant filed a request for English to be the language of the proceedings on March 8, 2022. The Respondent did not reply.

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 in both English and Romanian, and the proceedings commenced on March 11, 2022. In

accordance with the Rules, paragraph 5, the due date for Response was June 4, 2022. The Respondent sent informal email communications to the Center on March 16, 2022 and March 22, 2022.

On March 11, 2022, the Complainant requested the suspension of the procedures for potential amicable settlement. The Respondent did not react to Complainant's email communications and therefore the procedures were reinstated on May 17, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on June 8, 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

The Complainant is a global leading tire company, manufacturing and marketing tires of every type of vehicle, including airplanes, automobiles, bicycles/motorcycles, earthmovers, farm equipment and trucks.

With a history dating back to 1889 and headquartered in France, the Complainant is currently present in more than 171 countries, has 107,800 employees and operates 68 production facilities in 17 different countries.

In addition to tires, the Complainant offers mobility experiences through road maps, travel itineraries, hotel and restaurant guides and award-winning lifestyle products.

The Complaint holds trademark registrations for MICHELIN such as the following:

- International Trademark Registration No. 492879 registered on May 10, 1985, designating various jurisdictions worldwide including Moldova, Ukraine, Romania and claiming goods and services in class 12; and
- Moldovan Trademark Registration No. 024423, filed on October 15, 2008 and registered on October 23, 2009, and claiming goods in classes 1, 3, 4, 8, 9, 11, 12 and 21.

The Complainant's main website is available at "www.michelin.com" and it was registered on December 1, 1993.

The disputed domain name <michelinmoldova.md> was registered on June 18, 2020 and at the time of filing the Complaint, it was used in connection with a website in Russian, "Michelin trendy drivers", reproducing Complainant's trademark and visuals, and offering for sale tires, under MICHELIN, as well as under third parties' trademarks.

On September 21, 2021, before commencing the present proceedings, the Complainant sent a cease-and-desist letter to the Respondent, followed by a reminder. No response was received.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to its well-known trademark MICHELIN as it includes it together with an additional geographical term "moldova", the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the

disputed domain name to it.

B. Respondent

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

In one of his email communications transmitted in the course of the proceeding, on March 16, 2022, the Respondent claims he was not using the disputed domain name with bad intentions and that he was ready to delete the website or to transfer the disputed domain name to the Complainant.

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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.

The Panel will further analyze the potential concurrence of the above circumstances.

6.1. Preliminary Matter: Language of the Proceeding

The Complaint was filed in English.

The language of the Registration Agreement is Romanian.

The Respondent used English for his communications sent to the Center.

Under paragraph 11 of the Rules, the language of the proceeding is the language of the registration agreement of the disputed domain name, unless both parties agree otherwise, or the Panel determines otherwise based on one party's request. A panel may decide that the proceeding should be conducted in another language than that the registration agreement when it is necessary due to the specific circumstances of the case, such as for example when the complainant does not understand the language of the registration agreement and it would therefore be unfairly disadvantaged by the fact that it must translate all the documents involved in such proceeding.

In the present proceeding, the Complainant does not understand Romanian and requested that English be the language of the proceeding. Also, the Respondent, having been notified of the present proceeding in both English and Romanian, submitted its communications in English and did not comment with regard to the language of the proceeding.

The Panel is familiar with both languages and therefore is able to understand the submissions made by the parties in either of these two languages.

Noting the aim of conducting the proceeding with due expedition, paragraph 10 of the UDRP Rules vests the Panel with authority to conduct the proceeding in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

The Panel considers that the Complainant will only be disadvantaged if required to translate the Complaint into Romanian and the proceeding will be unduly delayed. See section 4.5.1. of the WIPO Overview of

WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

For all the above, the Panel decides that English is the language of the proceeding.

6.2. Substantive Matters:

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the MICHELIN trademark.

The disputed domain name <michelinmoldova.md> incorporates the Complainant’s trademark with an additional term, “moldova”, added. However, such alteration does not prevent a finding of confusing similarity as the Complainant’s trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether geographical wording, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Further, it is well established in decisions that the country code Top-Level Domain (“ccTLD”) (e.g., “.md”) may typically be disregarded for the purposes of consideration of identity or confusing similarity between a trademark and a domain name.

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark MICHELIN, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, “a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP”. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant’s contentions to advance a claim to any rights or legitimate interests in the disputed domain name. He simply resumed to assert that he is willing to cease the use of the website under the disputed domain name or to transfer the disputed domain name to the Complainant while, during the suspension period he did not respond to Complainant’s letters requesting the transfer of the disputed domain name to it.

Further, there is no evidence before the Panel to suggest that the Respondent has made a *bona fide* use of the disputed domain name, or has been known by this disputed domain name, or is making any legitimate noncommercial or fair use of the disputed domain name.

According to the evidence provided in Annex 1 to Complaint, the Respondent has used the disputed domain name in connection with a website selling MICHELIN branded goods as well as competing goods of third parties.

In certain cases, panels have recognized that resellers, distributors using a domain name containing a

complainant's trademark to undertake sales related to complainant's goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name. Accordingly, in this case, the key question under this element is whether the Respondent's use of the disputed domain name amounts to a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

The current state of UDRP panel consensus in relation to this issue is helpfully summarized in the section 2.8 of the [WIPO Overview 3.0](#), based on panel decisions such as *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). According to the "Oki Data test", several cumulative requirements will be applied in the specific conditions of a UDRP case, including the fact that the site must accurately and prominently disclose the registrant's relationship with the trademark holder (the complainant) and that the respondent must use the site to sell only the trademarked goods or services. In this case, according to the available record, on the website corresponding to the disputed domain name there was no indication regarding the relationship between the Parties and the Respondent is using the site to also sell third parties' competing goods.

This is definitely not an activity falling under the circumstances listed by paragraph 4(c) of the UDRP as demonstrating the Respondent's rights or legitimate interests in the disputed domain name.

In addition, and without prejudice to the above, the nature of the disputed domain name, comprising the Complainant's well-known trademark in its entirety in combination with a geographical term, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds trademark rights for MICHELIN since at least 1985. Due to its extensive use and marketing, the MICHELIN trademark enjoys significant reputation worldwide.

Previous UDRP panels have found that the Complainant's MICHELIN trademark is well-known and has a strong reputation internationally. See for example *Compagnie Générale des Établissements Michelin v. Perfect Privacy, LLC / Milen Radumilo*, WIPO Case No. [D2022-1105](#); or *Compagnie Générale des Établissements Michelin v. Jonathan Snead*, WIPO Case No. [D2022-0450](#).

The disputed domain name was registered in 2020 and reproduces the Complainant's trademark with an additional term. The website at the disputed domain name also features the Complainant's trademark, logo and hosts information about the Complainant's products.

For the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its MICHELIN trademark.

At the time of filing the Complaint the Respondent was using without permission the Complainant's distinctive trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant. This impression is created particularly by the incorporation of the Complainant's trademark in the disputed domain name, together with a geographical term, the content on the website provided thereunder, which includes the Complainant's trademark and visuals, and the lack of any disclaimer on this website.

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] 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 [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark and the website operated under the disputed domain name displays the Complainant's trademarks, visuals and official product images, indeed in this Panel's view, the Respondent 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, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

When the Panel visited the website under the disputed domain name, an error page was displayed. From the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" or other similar inactive page) would not prevent a finding of bad faith under the doctrine of passive holding. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be relevant circumstances found to be indicative of bad faith include the degree of distinctiveness or reputation of the complainant's mark and the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use. See section 3.3 of the [WIPO Overview 3.0](#).

As previously mentioned, the Complainant holds trademark registrations for MICHELIN worldwide for decades, uses a similar company name and domain name; the disputed domain name incorporates exactly the Complainant's trademark together with the geographical indicator for the Republic of Moldova, where the Complainant conducts business and the Respondent refused to provide any arguments for choosing the disputed domain name, to participate in this proceeding or to comply with its assertions made in the informal communications regarding the transfer of the disputed domain name to the Complainant.

Also, it has been consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <michelinmoldova.md> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: June 22, 2022