

## ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. 北京澳美新投资咨询中心

Case No. DCN2024-0029

### 1. The Parties

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

The Respondent is 北京澳美新投资咨询中心, China.

### 2. The Domain Name and Registrar

The disputed domain name <michlin.cn> is registered with 山东开创集团股份有限公司 (the “Registrar”).

### 3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 3, 2024. On July 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on July 11, 2024, providing the registrant and contact information disclosed by the Registrar, and indicating that the Center should proceed to notify the Complainant.

The Center verified that the Complaint satisfied the formal requirements of the China ccTLD Dispute Resolution Policy (the “Policy”), the China ccTLD Dispute Resolution Policy Rules (the “Rules”), and the WIPO Supplemental Rules for China ccTLD Dispute Resolution Policy and China ccTLD Dispute Resolution Policy Rules (the “WIPO Supplemental Rules”).

In accordance with the Rules, Articles 5 and 6, and Articles 14 to 16, and the WIPO Supplemental Rules, Paragraph 4(d), the Center formally notified the Respondent in Chinese and English of the Complaint, and the proceedings commenced on July 15, 2024. In accordance with the Rules, Articles 17 and 49, the due date for Response was August 5, 2024. On July 15, 2024, the Complainant filed an amended Complaint in English, copying to the Respondent. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 6, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on August 20, 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, Article 29.

#### **4. Factual Background**

The Complainant is a global tire company headquartered in Clermont-Ferrand, France. It is present in 171 countries, has more than 124,000 employees and operates 117 tire manufacturing facilities and sales agencies in 26 countries, and is also active in the Respondent's location, China, through several of its subsidiaries. For China particularly, the Complainant opened its first representative office in Beijing in 1989. Since 1995, the Complainant has set up its first manufacturing company in China, Michelin Shenyang Tire Co., Ltd., then it has relocated and built a new factory with a total investment of nearly USD 1.5 billion in 2013. The Complainant also has a Research and Development (R&D) company and many manufacturing and investment service companies located in Shanghai. The total investment of the Complainant in China is currently estimated exceeding USD 2 billion, with around 7,000 employees.

The Complainant owns an extensive international trademark portfolio for the mark MICHELIN, including the following registrations: Chinese trademark registration number 6167649 for MICHELIN, registered on January 7, 2010; Chinese trademark registration number 15961294 for MICHELIN, registered on March 7, 2016; and International trademark registration number 771031 for MICHELIN, registered on June 11, 2001, designating, among others, China, Singapore, Spain, and Viet Nam. The Complainant and its affiliated company(ies) also own a number of domain names which contain its trademark MICHELIN, including <michelin.com> registered on December 1, 1993, and <michelin.com.cn> registered on June 16, 2001.

The Respondent is a company located in China, whose name may be translated as Beijing Aomei New Investment Consulting Center. The disputed domain name was registered on March 25, 2024, and is therefore of a later date than the above trademark registrations of the Complainant. The Complainant submits evidence that the disputed domain name resolves to a login page in Chinese and English, displaying an online form requiring users' credentials to access, indicating that the disputed domain name is currently used by "My Private Website" and offering it for sale through a brokerage company on WeChat. The Complainant also provides evidence that an email server is configured on the disputed domain name.

The Panel also notes that the Complainant has attempted to settle this matter amicably by sending a cease-and-desist letter to the Respondent on May 28, 2024. The Respondent answered via email, in English, on May 29, 2024 and offered the disputed domain name for sale for USD 300, which was subsequently lowered to USD 200 in the Respondent's second email on June 6, 2024.

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

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

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for MICHELIN, that the 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.

The Complainant claims that its trademarks are intensively used and well known and provides evidence of search engine results for its trademark MICHELIN. The Complainant also refers to a number of prior UDRP decisions in which earlier panels have recognized the Complainant's rights in the MICHELIN marks and considered such marks are internationally well-known trademarks, see for instance *Compagnie Générale des Etablissements Michelin (Michelin) v. Zhichao Yang*, WIPO Case No. [D2013-1418](#). The Complainant particularly contends that the disputed domain name consists of a typosquatted version of the Complainant's famous MICHELIN trademark and that the Respondent cannot be considered to be conducting legitimate

noncommercial or fair use of the disputed domain name due to its clear intention for commercial gain. Indeed, considering the exchanges with the Respondent the Complainant argues that it appears that the only reason why the Respondent has registered the disputed domain name is for the purpose of selling it to the Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name. The Complainant also argues that given the international fame of its trademarks, the Respondent cannot have been unaware of them at the time of registration of the disputed domain name. Moreover, the Complainant contends that it is likely that the Respondent registered the disputed domain name to capitalize on or otherwise take advantage of the Complainant's trademark rights, through the creation of initial interest of confusion. Furthermore, the Complainant contends that the Respondent's offer to sell the disputed domain name in excess of the out-of-pocket expenses constitutes compelling evidence of bad faith registration and use. Finally, the Complainant also states that an email server has been configured on the disputed domain name and thus, there might be a risk that the Respondent is engaged in a phishing scheme. The Complainant essentially concludes that there are no justifications for such registration and use of its trademarks in the disputed domain name and that such registration and use are made in bad faith.

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

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

Pursuant to Article 6 of the Policy, Article 8 of the Rules and Paragraph 18 of the WIPO Supplemental Rules, unless otherwise agreed by the Parties, or determined by the Panel under exceptional circumstances, the language of the administrative proceeding shall be Chinese.

The Complainant filed its Complaint and amended Complaint in English, including a request that the language of the proceeding be English. The Center formally notified the Respondent in Chinese and English of the Complaint and of the commencement of the proceeding, including that the Complaint was filed in English. The Center also notified the Respondent in Chinese and English of its right to file a Response in either Chinese or English, and to comment on the language of the proceeding in its Response. Nevertheless, the Respondent did not submit any response or comment on the language of proceeding in this proceeding.

The present Panel, which is familiar with both English and Chinese, has carefully considered all elements of this case, in particular, the Complainant's request that the language of the proceeding be English, the lack of comment on the language of the proceeding and the lack of Response on the merits from the Respondent (the Panel notes that the Respondent was duly invited to respond in either Chinese or English but chose not to respond); the fact that the disputed domain name is written in Latin letters and contains the entirety of the Complainant's trademark MICHELIN (except that one letter "e" is omitted); the fact that the website linked to the disputed domain name contains some text and phrases in English (such as "If you want this domain name, please contact WeChat [...]"); the fact that the prior communications between both Parties following the Complainant's cease-and-desist letter took place in English; and the fact that Chinese as the language of the proceeding could lead to unwarranted delays and additional costs for the Complainant.

In view of these exceptional circumstances, the Panel grants the Complainant's request, and decides that the language of this administrative proceeding shall be English.

## 6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements under Article 8:

- (a) the disputed domain name is identical or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;
- (b) the Respondent has no right or legitimate interest in respect of the disputed domain name or major part of the disputed domain name; and
- (c) the Respondent has registered or has been using the disputed domain name in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

### **A. Identical or Confusingly Similar to the Complainant's Name or Mark in which the Complainant has Civil Rights or Interests**

The Panel finds that the Complainant has shown that it has valid civil rights in the trademark MICHELIN based on its registration of the same as a trademark in several jurisdictions, including in China, as set out above.

Moreover, as to whether the disputed domain name is identical or confusingly similar to the Complainant's aforementioned trademark, the Panel finds that the disputed domain name consists of only the Complainant's registered trademark MICHELIN except that one letter "e" is omitted. It is the common understanding of panels applying the Policy that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element. Finally, the applicable country code Top-Level Domain ("ccTLD"), here ".cn", may be disregarded by the Panel under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark in which the Complainant has civil rights or interests and the first element required by the Policy is fulfilled.

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

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a prima facie case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a bona fide provider of goods or services under the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent, see in this regard also earlier decisions such as *OLT and Olympia Le-Tan IP S.à r.l. v. 何荣财 (herong cai)*, WIPO Case No. [DCN2021-0044](#). However, no relevant evidence or arguments have been submitted by the Respondent.

Upon review of the facts, the Panel notes that there are no elements in this case that point to the Respondent having made any reasonable and demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. The disputed domain name resolves to a login page in Chinese and English, displaying an online form requiring users' credentials to access, indicating that the disputed domain name is currently used by "My Private Website" and offering it for sale through a brokerage company on WeChat. In addition, in response to the Complainant's cease-and-desist letter prior to the proceeding, the Respondent initially offered the disputed domain name for sale for USD 300, which was subsequently lowered to USD 200. Therefore, the Panel finds that it is more likely than not that the Respondent's intention to register the disputed domain name, containing a typosquatted version of the Complainant's famous MICHELIN mark, is to sell it back to the Complainant or a competitor for commercial

gain. Moreover, the record shows that an active email server has been configured on the disputed domain name. Hence, it is possible that the disputed domain name may be used for phishing activities.

The Panel therefore considers that none of the circumstances of rights or legitimate interests envisaged by Article 10 of the Policy apply. The Panel also notes that no evidence or arguments have been submitted by the Respondent. The Panel therefore finds that the Complainant has satisfied the requirements for the second element under the Policy.

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

The registration of the disputed domain name, which is almost identical to the Complainant's famous trademarks, demonstrates the Respondent's intention to mislead and divert consumers away from the Complainant's official websites hosted at its official domain names, to the disputed domain name. Moreover, the Panel considers the disputed domain name to be closely linked and connected to the Complainant and its famous trademarks that the Respondent's registration of this disputed domain name points towards the Respondent's bad faith. Furthermore, given the distinctiveness and fame of the Complainant's trademarks, including in China through the Complainant's ongoing business operations in China, and the disputed domain name contains a misspelling of the Complainant's trademarks, the Panel finds that the registration of the disputed domain name targeted such trademarks, and that the Respondent therefore knew of the existence of the Complainant's trademarks when registering the disputed domain name. In the Panel's view, the preceding elements establish the bad faith of the Respondent in registering the disputed domain name.

As to use of the disputed domain name in bad faith by the Respondent, upon review of the facts, the Panel notes that the disputed domain name resolves to a login page in Chinese and English, displaying an online form requiring users' credentials to access, indicating that the disputed domain name is currently used by "My Private Website" and offering it for sale through a brokerage company on WeChat. The Panel also notes that, based on the communications between the Parties, the Respondent has offered the disputed domain name for sale for a price of first USD 300 and subsequently for a price of USD 200, which the Panel considers may be a price in excess of the Respondent's out-of-pocket costs related to the disputed domain name. This leads the Panel to conclude that the Respondent is using the disputed domain name to try to sell it to the Complainant, who is the owner of the trademark for MICHELIN, or to a competitor of the Complainant, and to obtain unjustified benefits through such sale. The Panel notes that this constitutes direct evidence of the bad faith under Article 9(a) of the Policy. Finally, the Panel also finds that there is a grave risk of phishing or misrepresentation by the Respondent in this case, due to the fact that an active email server has been configured on the disputed domain name. In the Panel's view, the preceding elements establish the bad faith of the Respondent in using the disputed domain name.

Further, the Respondent has failed to provide any relevant response or evidence to establish its good faith or absence of bad faith.

Considering the above, the Panel finds that the Complainant has satisfied the requirements of the third element under the Policy.

### **7. Decision**

For the foregoing reasons, in accordance with Articles 14 of the Policy and 40 of the Rules, the Panel orders that the disputed domain name, <michlin.cn>, be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: August 29, 2024