

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Kiều Công Anh
Case No. D2024-4906

1. The Parties

The Complainant is Compagnie Générale des Etablissements Michelin, France, represented by Tmark Conseils, France.

The Respondent is Kiều Công Anh, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <michelinstreetfoodtour.com> is registered with Nhan Hoa Software Company Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2024. On November 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 (UNKNOWN) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 December 9, 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 December 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 30, 2024. The Respondent sent email communications to the Center on December 9, 2024 and December 29, 2024 respectively.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on January 17, 2025. 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 corporation organized under the laws of France that operates a business with a presence in many countries selling tires, and which publishes the authoritative “Guide Michelin” (often referred to as the “Michelin Guide”) that ranks fine dining establishments by awarding “Michelin Stars”. The Complainant’s origins date from 1889 and the Guide Michelin was first published in 1900. Michelin Stars date from 1926. In 1997, the Complainant introduced the designation “Bib Gourmand” for best value for money restaurants offering complete meals of simple and accessible cuisine at reasonable prices. The Guide Michelin also features a street food category.

The Complainant maintains a global portfolio of registered trademarks for the word mark MICHELIN, dating back to at least 1985, covering products and services relating to tourism, hospitality, restaurant and gastronomy, and services of editing and publication of guides. For example, the Complainant is the owner of International Registered Trademark Number 1713161 for the word mark MICHELIN, registered on June 13, 2022 in Classes 6, 7, 9, 12, 16, 20, 35, 37, 39, 41, and 42, designated in respect of a variety of jurisdictions including Viet Nam, where the Respondent is based.

The Complainant also operates certain domain names reflecting its trademarks including <michelin.com>, registered on December 1, 1993, which is used in connection with a sub-domain <guide.michelin.com>. Numerous previous panels under the Policy have held the Complainant’s MICHELIN mark to be globally well-known or famous.

The disputed domain name was registered on August 22, 2023. The website associated with the disputed domain name is entitled “Hanoi Michelin Street Food Tour”. It appears to offer a variety of tours, such as “Hanoi train street tour” and “Hanoi train day tour”, some of which have a dining experience included.

On October 12, 2023, the Complainant’s representatives wrote to the Respondent setting out the Complainant’s interests and rights and requesting that the Respondent voluntarily relinquish the disputed domain name. On October 13, 2023, the Respondent wrote to the Complainant’s representatives stating that it is a travel company in Viet Nam, and that it has the right to take the disputed domain name for its business, adding that it takes tourists to stalls awarded a “like street food” award by the Complainant. On July 15, 2024, the Complainant’s representatives wrote to the Respondent making a request that the disputed domain name be relinquished and that the Respondent sign an undertaking not to register similar domain names in the future. On July 23, 2024, the Respondent replied, asserting that it did not use any of the Complainant’s intellectual property. The Complainant’s representative replied on July 30, 2024 disagreeing on this point, and noting that the Complainant intended to use legal means to preserve its rights and interests. On August 8, 2024, the Respondent replied, noting that it did not agree with the Complainant’s point of view and stating that it intended to use the disputed domain name for its business.

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.

Notably, the Complainant contends that the disputed domain name reproduces the Complainant's MICHELIN trademark in its entirety as its most prominent and essential character, adding that this is sufficient to establish confusing similarity for the purposes of the Policy, and that the descriptive terms "street food tour" do not serve to dispel such confusing similarity.

The Complainant notes that it is the sole legitimate owner of the trademark, corporate name, and domain name "Michelin", adding that no third party has been authorized to identify itself to the public via the disputed domain name, and that the Respondent seeks to take a commercial advantage from the Complainant's prior rights, having impermissibly registered the disputed domain name because of its connection to the Complainant, its trademark and goods and services in gastronomy. The Complainant asserts that the use of such trademark will generate a larger audience than would have been the case had the Respondent chosen a domain name that was not confusingly similar to a famous mark.

The Complainant notes that due to the protection and constant use of the MICHELIN trademark by the Complainant, there is no chance that the disputed domain name was registered by coincidence. The Complainant notes that the Respondent was inevitably aware of the Complainant's interests at the time when it registered the disputed domain name, as a simple Internet check via Google would disclose this, and furthermore, that the Respondent demonstrated its awareness of the Complainant's rights in prior correspondence between the Parties. The Complainant notes that the Respondent stated that it chose to integrate the MICHELIN trademark into its website to refer to food stalls to which the Complainant had awarded the "like street food" prize, to which it intends to bring tourists. The Complainant notes that this was an intentional exploitation of the Complainant's goodwill in order to mislead Internet users.

The Complainant further notes that the disputed domain name has been used to point to a website offering various activities including those relating to food in Viet Nam and linking this to the MICHELIN mark. The Complainant contends that such use is intended to mislead and attract Internet users to its competitive website, believing that such website was approved or accredited by the Complainant. The Complainant asserts that this creates a likelihood of confusion that will attract Internet users to the Respondent's commercial website in the expectation that they will be reaching a site authorized by the Complainant and adding that even if such users realize that they are mistaken on reaching said website, the objective of bringing them there will already have been achieved. The Complainant points out that the Respondent can develop a website organizing tours for tourists without taking advantage of the Complainant's mark. The Complainant concludes that the disputed domain name is enabled for email communication, which the Respondent might use for spamming or phishing attacks.

B. Respondent

The Respondent did not file a formal Response to the Complainant's contentions. However, in an informal email dated December 29, 2024, the Respondent stated that the disputed domain name was registered and is being used exclusively for promoting the Respondent's street food walking tours in Viet Nam, featuring food stalls recommended by the Guide Michelin, asserting that such use in no way infringes the Complainant's intellectual property. The Respondent asserts that the disputed domain name is intended to provide an accurate and descriptive name for its business, adding that the MICHELIN mark is used solely to refer to the Guide Michelin's recognition of the food stalls on its tour, and is not intended to confuse the public into believing that there is any affiliation present. The Respondent asserts that it is engaged in a lawful activity and is not carrying out any unfair competition or trademark infringement.

6. Discussion and Findings

6.1 Preliminary Issue – Language of Proceeding

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the

language of the registration agreement. The Registrar has confirmed to the Center that the language of the Registration Agreement is Vietnamese.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English because the Respondent's replies to the Complainant's emails show that it is familiar with the English language, as does its use of English words alongside the Complainant's mark in the disputed domain name. The Complainant also notes that the content of the website associated with the disputed domain name is in English. Finally, the Complainant states that there is no obstacle to defining English as the language of proceedings, adding that this is the best way for two parties of different nationalities to converse.

The Respondent did not make any specific submissions with respect to the language of the proceeding, although it communicated clearly in the English language on a number of occasions, including by way of its informal Response. This suggests to the Panel that the Respondent would in no way be prejudiced by a decision that English be the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 3.0](#), section 1.7.

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

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

Although the addition of other terms, here, "streetfoodtour", 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 that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name based upon its submissions that it is the sole legitimate owner of the trademark, corporate name, and domain name MICHELIN, that it has authorized no third party to identify itself to the public via the disputed domain name, that the Respondent seeks to take a commercial advantage from the Complainant's prior rights, and that the use of the Complainant's trademark in the disputed domain name will generate a larger audience than would have been the case had the Respondent chosen a domain name that was not confusingly similar to a famous mark.

The Panel therefore turns to the Respondent's case in rebuttal. The Respondent asserts that it is making a descriptive use of the Complainant's mark to refer to its tours of street food venues previously accredited by the Complainant, and that such descriptive use is therefore fair. In this context, a panel will typically consider the nature of the disputed domain name, [WIPO Overview 3.0](#), section 2.5.1, circumstances beyond the disputed domain name itself, [WIPO Overview 3.0](#), section 2.5.2, and issues surrounding commercial activity, [WIPO Overview 3.0](#), section 2.5.3.

Turning first to the composition of the disputed domain name, the Panel notes that the Complainant's well-known and arguably famous MICHELIN trademark is the initial element, and is thus extremely prominent, accompanied by descriptive words which may be separated into "street food tour". The Panel takes the view that this particular composition strongly suggests an affiliation with the Complainant, as everything which follows the MICHELIN mark is qualified by it. The Respondent would have the Panel believe that Internet users will understand from the disputed domain name that it is an unaffiliated entity promoting tours of MICHELIN-accredited street food stalls but that is not what the disputed domain name signals. On the contrary, it suggests to the Panel either that the Complainant is providing tours of street food venues or is specifically endorsing the provider of such tours.

Turning to the website associated with the disputed domain name, the Panel finds that this does nothing to clarify the non-affiliation of the Parties. For example, there is no clear and prominent disclaimer confirming that the tours promoted by the Respondent are independent of and not endorsed by the Complainant. Indeed, there is very little, if anything, in the content that sets out or demonstrates the Respondent's alleged descriptive use of the Complainant's mark other than the heading "Hanoi Michelin Street Food Tour," itself somewhat ambiguous. The tours described do not mention the fact that tourists will be visiting MICHELIN-accredited street food venues specifically, and a number of the tours are not focused on gastronomy at all (or leave this as a potential optional extra only). Accordingly, the Panel finds that the Respondent's alleged descriptive use is not supported by the website content, and, furthermore, that the Respondent appears to be using the Complainant's mark as a form of endorsement for tours that are either not concerned with, or only peripherally concerned with street food venues, far less those that have been specifically accredited by the Complainant. Such use of the disputed domain name does not make a referential use of the Complainant's mark and cannot confer rights and legitimate interests upon the Respondent.

As far as commercial activity is concerned, the website associated with the disputed domain name is evidently operating on a commercial basis, selling guided tours of Ha Noi, Viet Nam. The fact that the Complainant's business and well-known/famous mark are globally associated with touring renders this an inherently confusing use both as far as the website content is concerned (where the mark appears only peripherally) and in the disputed domain name on its own. Crucially, for the Respondent's case, the Panel has already noted that the corresponding website content does not prima facie support the claimed purpose for referential use as none is evident to the Panel.

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.

In the present case, the Panel notes that the Respondent has registered and used the disputed domain name in connection with its promotion of tours in Ha Noi, Viet Nam. There is no suggestion that the Respondent was unaware of the Complainant or the fame of its mark prior to its registration of the disputed domain name. The Respondent's prior awareness is evident from the Parties' pre-complaint correspondence, and according to the Respondent a referential use relating to said mark is allegedly the purpose behind its incorporation by the Respondent in the disputed domain name.

The Panel considers that despite the Respondent's protestations of good faith intent according to its alleged referential use of the Complainant's mark, it cannot have escaped the Respondent's awareness that the disputed domain name itself would confuse Internet users and would suggest to them that the Respondent's tours were in some way officially endorsed by the Complainant, if not actually provided by the Complainant itself. The Complainant is a provider of guides and information relating to tours for tourists under the well-known MICHELIN mark which the Respondent seeks to adopt. In any event, the content of the website associated with the disputed domain name does not follow through on the Respondent's alleged good faith intent as no descriptive uses are evident, and the Respondent must have known this when it developed the website associated with the disputed domain name.

As noted in the preceding section, the alleged descriptive use is not obvious from the composition of the disputed domain name and is not present on the associated website, while on the contrary there are tours promoted there which have no obvious connection whatsoever to the MICHELIN mark. Given this analysis, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website, conform to paragraph 4(b)(iv) of the Policy.

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 <michelinstreetfoodtour.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: January 29, 2025