

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. chenxu
Case No. DCC2023-0020

1. The Parties

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

The Respondent is chenxu, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <m1chelinvp.cc> (the “Domain Name”) 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 Domain Name. On January 2, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 2, 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 3, 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 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 6, 2024.

The Center appointed Olga Zalomiy as the sole panelist in this matter on February 9, 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 leading tire company headquartered in France. The Complainant, that is present in 170 countries, has more than 124,000 employees and operated 117 manufacturing facilities and sales agencies in 26 countries. The Complainant owns multiple trademark registrations for its well-known MICHELIN trademark, such as:

- International registration No. 771031 for the MICHELIN trademark, registered on June 11, 2001 and duly renewed.
- International registration No. 1713161 for the MICHELIN trademark, registered on June 13, 2022.
- Hong Kong trademark registration No. 302941939 for the MICHELIN mark, registered on March 28, 2014.

The Complainant owns, among others, domain names reflecting its trademark: <michelin.com>, <michelin.cc>, and <michelinvip.com>.

The Domain Name was registered on November 10, 2023. Initially, the Domain Name directed to a gambling website reproducing the Complainant's trademark and logo and displayed identification interface that collected personal data. Currently, the Domain Name does not direct to any active websites.

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 Domain Name.

Notably, the Complainant contends that the Domain Name is confusingly similar to the Complainant's trademarks and domain names because it reproduced the Complainant's trademark MICHELIN in its entirety replacing only the letter "i" with number "1". The Complainant alleges that the addition of the term "vip" to its trademark in the Domain Name is insufficient to avoid confusing similarity between the Domain Name and the mark. The Complainant states that the Domain Name is virtually identical to its <michelinvip.com> domain name. The Complainant asserts that the addition of the country code Top-Level domain ("ccTLD") does not affect the confusing similarity between the Domain Name and the Complainant's mark.

The Complainant contends that the Respondent has no rights or legitimate interests in the Domain Name because the Respondent is not affiliated with the Complainant and was not authorized to register the Domain Name incorporating the Complainant's mark; and the Complainant has not been using the Domain Name in connection with a bona fide offering of goods or services because the Domain Name used to direct to a gambling website reproducing the Complainant's mark and logo. The Complainant alleges that the website under the Domain Name did not disclose its relationship with the trademark owner. The Complainant asserts that the Respondent does not use the Domain Name for noncommercial or fair use purposes.

The Complainant contends that the Respondent registered the Domain Name in bad faith for several reasons. First, given the well-established reputation of the MICHELIN trademark throughout the world and in Hong Kong, where the Respondent resides, it is likely that the Respondent knew about the Complainant's trademark at the time of the Domain Name registration. Second, the composition of the Domain Name, which contains an intentional misspelling of the Complainant's mark is typosquatting. Third, the Complainant's trademark registrations predate the registration date for the Domain Name. The Complainant

contends that the Respondent's use of the Domain Name constitutes bad faith, because in absence of authorization or permission from the Complainant to use its widely known mark, the use of the Domain Name lacks legitimacy. The Complainant asserts that the structure of the Domain Name indicates the Respondent's intention to deceptively redirect consumers to its website, by exploiting the reputation and goodwill associated with the Complainant's well-known trademark. The Complainant argues that in setting up a fraudulent website under the Domain Name, the Respondent's goal was to steal personal information from the Complainant's customers. The Complainant alleges that passive holding of the Domain Name does not prevent finding of bad faith use in this case based. The Complainant contends that the Respondent registered the Domain Name to prevent the Complainant from using its trademarks in the Domain Name.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the 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 Domain Name; and
- (iii) the 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 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 or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. It is well-established that "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element" [WIPO Overview 3.0](#), section 1.9. Here, the Domain Name includes the Complainant's MICHELIN trademark with the first letter "i" replaced with number "1". The inclusion of the ccTLD ".cc" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.

Although the addition of other terms, here, "vlp", 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 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.

The evidence on file shows that the Complainant has not licensed or permitted the Respondent to use the Complainant’s MICHELIN trademark in domain names, or for any other purpose. The Respondent is not commonly known by the Domain Name. Nor is the Respondent making a legitimate noncommercial or fair use of the Domain Name, because the Domain Name does not direct to any active website. The Respondent did not use the Domain Name in connection with a bona fide offering of goods or services because the Domain Name used to direct to a gambling website reproducing the Complainant’s mark and logo, which did not disclose lack of any relationship between the Complainant and the Respondent.

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 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 Domain Name such as those enumerated in the Policy or otherwise.

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 used the Domain Name containing a misspelling of the Complainant’s well-known trademark along with the term “vlp,” leading users to a gambling website featuring the Complainant’s trademark and logo. Consequently, the Respondent registered and is using the 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 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, which constitutes bade faith registration and use of a domain name for purposes of paragraph 4(a)(iii). See Policy, paragraph 4(b)(iv).

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. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent mostly likely registered the Domain Name with the Complainant’s well-known trademark in mind given that the Domain Name includes a typo of the Complainant’s distinctive mark and the term “vlp”, which makes the Domain Name confusingly similar to the Complainant’s <michelinvip.com>, the well-known character of the Complainant’s mark and the fact that the Domain Name was registered many years after the Complainant registered its trademark. Such registration indicates that the Domain Name was registered in bad faith.

Currently the Domain Name does not resolve to an active website. Panels have found that the non-use of a domain name (including a blank or “coming soon” page) 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

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 submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the well-known character of the Complainant's trademark, and the composition of the Domain Name, the prior use of the Domain Name for a gambling website displaying the Complainant's mark and logo, the Respondent's failure to submit a response, and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under 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 Domain Name <m1chelinvlp.cc> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: February 20, 2024