



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-1500902

Complainant: COMPAGNIE GENERALE DES ETABLISSEMENTS MICHELIN

Respondent: Naoshi Tsunematsu

Domain Name: monsieurmichelin.com

Registrar: WILD WEST DOMAINS, LLC

1. Procedural History

On 3 August 2015, the Complainant submitted a Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules) approved by the ADNDRC.

On 5 August 2015, , the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, WILD WEST DOMAINS, LLC, a request for registrar verification in connection with the disputed domain name.

On 6 August 2015, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. The Registrar confirmed that the language of the proceeding should be English. The ADNDRC Beijing Office requested the Complainant to submit a revised Complaint in the English language. On 7 September 2015, the Complainant submitted a revised Complaint.

On 18 September 2015, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written

Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, WILD WEST DOMAINS, LLC, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. The ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed and render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. ZHAO Yun, the ADNDRC Beijing Office notified the parties on 14 October 2015 that the Panel in this case had been selected, with Mr. ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 14 October 2015, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 28 October 2015.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

For the Complainant

The Complainant in this case is COMPAGNIE GENERALE DES ETABLISSEMENTS MICHELIN. The registered address is 12, COURS SABLON 63000 CLERMONT-FERRAND FRANCE. The authorized representative in this case is NI Shujun from Wan Hui Da Intellectual Property Agency.

For the Respondent

The Respondent in this case is Naoshi Tsunematsu. The registered address is Room

2702, Shanghai International Trade Center, West Yan'an Rd.2201, Shanghai.

The Respondent is the current registrant of the disputed domain name "monsieurmichelin.com" which was registered on 17 September 2014 according to the Whois information. The registrar of the disputed domain name is WILD WEST DOMAINS, LLC.

3. Parties' Contentions

The Complainant

(1) The domain name registered by the Respondent is confusingly similar to the trademark of the Complainant and easily leads to the public's confusion.

The disputed domain name is composed of two parts, i.e. "monsieur" and "Michelin". First, "monsieur" is a general French word with meaning of sir. "michelin" as the main and distinct part of the domain name, uses the same letters of the Complainant's registered trademark "MICHELIN". Second, the domain name is composed of "monsieur" and "michelin", and its meaning is "Michelin Sir", which also shows "michelin" used mainly and distinctly in this meaning. Third, as stated above, the Complainant registered a series of domain names composed of English words and "Michelin", such as viamichelin.com, michelinchina.com. Thus, the disputed domain name is similar to the trademark of the Complainant and easily confused the public.

Besides, the Complainant registered trademark "MICHELIN" in class 43. Registration No. 9155688, the designed goods and services including hotels and restaurants. The website linked to the disputed domain name "monsieurmichelin.com", is about catering field and good. The disputed domain name is composed of "monsieur" and "michelin" with meaning of "Michelin Sir", which makes the public think that there might be some relationships between the website of the disputed domain name and the Complainant, which further proving that the disputed domain name is confusingly similar to the Complainant's registered trademark "MICHELIN".

(2) The Respondent does not enjoy any legitimate rights or interests in the disputed domain name.

As stated above, the Complainant enjoys exclusive right of trademark of MICHELIN. The Complainant never authorizes or licenses the Respondent to use "MICHELIN" as its trademark or domain name, also, the Complainant never transfers "MICHELIN" trademark or domain to the Respondent as well as never authorizes them to register the disputed domain name. As far as the Complainant knows, the Respondent has no other ways to obtain the authorization and license.

Upon investigation, the registrant of the disputed domain is neither the employee of the Complainant's company nor are there any other relations e.g. delegation, cooperation between the Complainant and the Respondent.

In conclusion, it can be proved that the Respondent does not enjoy any legitimate rights or interests in the domain name.

(3) The Respondent registers and uses the domain name in bad faith.

① Without any rights or interests of trademark "MICHELIN" and authorization, the Respondent registered the disputed domain name, which hinders the Complainant obtaining the disputed domain name and its normal business activity.

MICHELIN is a short name of Michelin Company known by the public all over the world, and it is also a name that condensed Michelin reputation. Michelin Company and trademark "MICHELIN" enjoy high reputation in China as well as in the world, which shall be known by the Respondent. The Respondent knew the above information but still registered the disputed domain name on 17 September 2014, which hinders the Complainant's normal registration, use of the disputed domain name and legitimate rights and interests of the Complainant, influences and destroys the Complainant's normal business activities. The Respondent is in bad faith obviously.

When the Complainant found the Respondent's above action, he notarized the website linked to the disputed domain name, sent the Cease & Desist Letter to the registrant and wished the registrant to stop using the disputed domain name and transfer the disputed domain name to the Complainant freely. When the registrant received the C&D Letter, he disclosed the real registrant of the disputed domain name, i.e. Naoshi Tsunematsu. Then the Complainant sent the Cease & Desist Letter to the Respondent, i.e. Naoshi Tsunematsu requesting him to stop infringement. But Naoshi Tsunematsu never gave any response but deleted the website. Upon confirmation, click the website of monsieurmichelin.com, indicating "URL not found". Therefore, the Complainant can conclude that the Respondent has been aware of his acts constituted infringement, proving that the Respondent registers and uses the domain name in bad faith.

② The service scope of the disputed domain name covers the designated products of trademark "MICHELIN", hindering the Complainant's normal business.

The website of the disputed domain name is a website of catering field. The Complainant registered and used trademark "MICHELIN" in class 43, Registration No. 9155688, the designated goods and services including hotels and restaurants. Thus, the service scope of the disputed domain name covers the designated products of

trademark “MICHELIN”.

③ The Respondent uses the disputed domain name similar to trademark “MICHELIN”, confuses the relationship with MICHELIN in order to attract more visitors to his website and obtains unfair competition interests.

The disputed domain name is composed of “monsieur” and “michelin”. As the distinct part of the disputed domain name, “michelin” uses the same letter to trademark of “MICHELIN”, which constitutes confusing similarity. Meantime, the website linked to the disputed domain name is about catering filed, the service scope of which was involved in the designated products of trademark “MICHELIN”, enough to make the public consider the connected relationship between the website and the Complainant.

The Respondent’s registration action is aiming to use the brand influence of MICHELIN, and made the public confused about the relationship with MICHELIN in order to attract more visitors, which strengthens the advertising and influence of the goods and service on the website and obtains unfair commercial interests.

In conclusion, without any rights or interests of trademark “MICHELIN” and authorization, the Respondent registered the disputed domain name with “michelin” as the main part for unfair commercial interests, which easily confuses the public about the distinction with the Complainant and hinders the Complainant obtaining the disputed domain name and normal business. The Respondent’s above acts are in obvious bad faith, totally conforming to the circumstances of bad faith in Article 4 of the Policy.

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

The Respondent

The Respondent failed to submit a Response within the specified time period.

(4) Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an award that a domain name should be cancelled or transferred:

(1) The domain name registered by the Respondent is identical or confusingly similar

- to a trademark or service mark in which the Complainant has rights; and
- (2) The Respondent has no rights or legitimate interests in respect of the domain name; and
 - (3) The domain name has been registered and is being used in bad faith.

Identity or Confusing Similarity

The evidence shows that the trademark “MICHELIN” has been registered in mainland China as early as 2000, much earlier than the registration date of the disputed domain name (i.e. September 2014). The trademark is still within the trademark protection period. The Panel has no problem in finding that the Complainant enjoys the prior rights in the trademark “MICHELIN”.

The disputed domain name is “monsieurmichelin.com”. As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the main part of the disputed domain name consists of two sub-parts (“monsieur” and “michelin”). The second sub-part is the same as the Complainant’s trademark. The first sub-part is a simple/common French word, meaning “sir”. The Panel finds that the addition of a common word to a trademark does not alter the underlying mark to which it is added. It is also noted that the Complainant has also registered another Chinese trademark “米其林轮胎先生” in 2009 (a date also earlier than the registration date of the disputed domain name), meaning “Mr. Michelin Tyre”, combining “Mr.” (in French “monsieur”) and the trademark “MICHELIN” in one trademark in Chinese. As such, the assition of “monsieur” to “michelin” does not differentiate the main part of the disputed domain name from the Complainant’s trademark; on the contrary, such a combination strengthens the connection between the disputed domain name and the Complainant’s trademark. Therefore, the main part of the disputed domain name “monsieurmichelin.com” is confusingly similar to the Complainant’s trademark “MICHELIN”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to use the trademark or the disputed domain name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

Under Paragraph 4(c) of the Policy, the following are relevant examples a Panel may take as evidence of the Respondent’s rights or legitimate interests to the disputed domain name:

- (i) Before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in

- connection with a bona fide offering of goods or services; or
- (ii) You (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
 - (iii) You are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Obviously, the above circumstances do not exist in the current case. The evidence shows that the Respondent has not carried out the business in good faith. The Respondent has not been commonly known by the disputed domain name. The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The act of registering the disputed domain name does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4(b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

- (i) Circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) You have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Complainant, established in France in 1889, is the biggest tire manufacturer around the world. It is also one of the top 500 enterprises in the world and established factories all over the world. Evidence shows that the Complainant's trademark "MICHELIN" has achieved a strong reputation of the brand name through extensive use, promotion and advertisement. The Complainant has achieved great success in the business and won many awards. As such, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other. The Complainant's trademark, recognized as a "Well-known Mark" in China in

2000, has been well known by the consumers in China (but also outside China). Various judgments in Chinese courts have further confirmed the renowned status of the trademark “MICHELIN”. The Complainant establishes marketing offices in several cities in mainland China, including Shanghai. The efforts in both developing new energy and new technology, and protecting environment, have been widely publicized and obtained widespread recognition. The trademark “MICHELIN”, not a common word, is created by the Complainant. The above facts serve to prove that the Respondent, with the registered address in Shanghai, is aware of the existence of the Complainant and its trademark. This deduction can be further substantiated by the fact that the Respondent deleted the website of the disputed domain name after receiving the Cease and Desist Letter from the Complainant. The action of registering the disputed domain name per se has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate.

The Panel concludes that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

5. Decision

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the domain name “monsieurmichelin.com” should be TRANSFERRED to the Complainant, COMPAGNIE GENERALE DES ETABLISSEMENTS MICHELIN.

A handwritten signature in Chinese characters, appearing to be '赵云' (Zhao Yun), written in black ink on a light background.

Dated: 28 October 2015