

ADMINISTRATIVE PANEL DECISION

Compagnie Générale des Etablissements Michelin v. Nguyen Phuoc, Phuoc Case No. D2023-0204

1. The Parties

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

The Respondent is Nguyen Phuoc, Phuoc, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <tuicuuho-michelin.shop> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 17, 2023. On January 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 18, 2023, 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 (Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 18, 2023 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 in English on January 19, 2023.

On January 18, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On January 19, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 paragraphs 2 and 4 of the Rules, the Center formally notified the Respondent in English and Japanese of the Complaint, and the proceedings commenced on January 24, 2023. In accordance with paragraph 5 of the Rules, the due date for Response was February 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 14, 2023.

The Center appointed Yuji Yamaguchi as the sole panelist in this matter on March 7, 2023. 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 paragraph 7 of the Rules.

4. Factual Background

The Complainant is a leading tire company which operates 117 tire manufacturing facilities in 26 countries and has a commercial presence in 170 countries and more than 124,000 employees worldwide. The Michelin brand is the top-selling tire brand worldwide and it is one of the most famous sources of innovation in the global tire industry.

The MICHELIN Guide was first launched in 1920 in order to help motorists plan their trips and began to award stars for fine dining establishments in 1926. The Complainant announced Hanoi and Ho Chi Minh City as the latest destinations joining the international selection of the MICHELIN Guide. For the first time in the Guide's history, the MICHELIN inspectors will evaluate quality restaurants in Viet Nam's two largest cities and present their first selection of restaurants in June 2023.

The Complainant is the owner of registered MICHELIN trademarks (the "MICHELIN Trademarks" or "MICHELIN Trademark") including International trademark No. 771031 (registered on June 11, 2001) and Vietnamese trademark Nos. 40260507000 (registered on March 28, 2016) and 40302024000 (registered on June 18, 2018).

The Complainant and its affiliates operate the domain names <michelin.com> (registered on December 1, 1993) and <michelin.vn> (registered on June 12, 2006), reflecting its MICHELIN Trademarks in order to promote its services.

The disputed domain name was registered on July 13, 2022. The disputed domain name directed to a webpage in Vietnamese advising to use the Complainant's emergency car rescue kit when encountering car problems on the road and currently resolves to a webpage in Vietnamese indicating that the current web store has expired.

5. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The addition of the term "tuicuuho" heightens the likelihood of confusion because it makes direct reference to the Complainant's field of activity. Internet users are likely to believe that the disputed domain name is endorsed by the Complainant, or that the disputed domain name will direct Internet users to the official website containing information about the Complainant and its products and services. The Respondent created a likelihood of confusion with the Complainant's MICHELIN Trademarks by registering the disputed domain name. It is likely that the disputed domain name could mislead Internet users into thinking that it is, in some way, associated with the Complainant.

The Respondent is not affiliated with the Complainant in any way, nor has the Respondent been authorized by the Complainant to use and register its MICHELIN Trademarks, or to seek registration of any domain

name incorporating the MICHELIN Trademarks. Furthermore, the Respondent has no prior rights or legitimate interest in the disputed domain name. The registration of the MICHELIN Trademarks preceded the registration of the disputed domain name for years. The disputed domain name is so confusingly similar to the Complainant's famous MICHELIN Trademarks, that the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name. The Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy.

The Complainant is well-known throughout the world including Viet Nam where the Respondent seems to be located. The Complainant's worldwide reputation makes it unlikely that the Respondent was not aware of the Complainant's proprietary rights in the MICHELIN Trademarks. The composition of the disputed domain name reproducing the Complainant's MICHELIN Trademark associated to generic term "tuicuuho" making direct reference to the Complainant's field of activity confirms that the Respondent was aware of the Complainant and its MICHELIN Trademarks and that the Respondent registered the disputed domain name based on the attractiveness of the Complainant's MICHELIN Trademarks. In this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks transcends national borders. Taking into account the worldwide reputation of the Complainant and its MICHELIN Trademarks, as well as the high level of notoriety of the Complainant, it is hard to believe that the Respondent was unaware of the existence of the Complainant and its MICHELIN Trademarks at the time of registration of the disputed domain name. It is more likely than not, that the Respondent's primary motive in registering and using the disputed domain name was to capitalize on or otherwise take advantage of the Complainants' trademark rights, through the creation of initial interest of confusion.

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 paragraph 11(a) of the Rules, in the absence of an agreement between the Parties, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. According to the Registrar, the language of the Registration Agreement for the disputed domain name is Japanese.

However, the Complainant requests that English be the language of the proceeding with the reasons that the Complainant is located in France and has no knowledge of Japanese and would have to retain specialized translation services at a cost that is likely to be higher than the overall cost for the present proceedings to proceed in Japanese, the disputed domain name includes only Latin characters, which strongly suggests that the Respondent has knowledge of languages other than Japanese, and English is the primary language for international relations and one of the working languages of the Center.

Although the Respondent does not expressly agree with the Complainant on the language of the proceeding, the Respondent did not submit any objection to the Complainant's request that English be the language of the proceeding when the Center had sent a notification regarding the language of the proceeding to the Parties by email both in English and Japanese. Considering that the Respondent is located in Viet Nam, where English is quite popular, and even assuming that the Respondent is conversant in Japanese, the necessity for conducting the proceeding in Japanese will not be so critical to justify the costs of translation because the webpage which is now redirected from the disputed domain name is displayed in Vietnamese, but not in Japanese.

In view of these circumstances of the administrative proceeding, the Panel decides that English should be the language of the proceeding in the spirit of fairness and justice intended by the Policy.

6.2 Substantive Elements of the Policy

According to paragraph 4(a) of the Policy, the Complainant must assert and prove the following three elements are present:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name consists of the term “tuicuuho” (*i.e.* túi cứu hộ, meaning rescue bag in Vietnamese) and the Complainant’s MICHELIN Trademark in its entirety, which are connected by a hyphen, along with the generic Top-Level Domain (“gTLD”) “.shop”.

The addition of the Vietnamese descriptive words to the Complainant’s distinctive MICHELIN Trademark in the disputed domain name does not eliminate the confusing similarity between the disputed domain name and the Complainant’s MICHELIN Trademark (see *Shell Brands International AG v. Phu Dan Nguyen*, WIPO Case No. [D2014-1559](#); *Shell Brands International AG v. Cuong Nguyen, Nguyen Van Cuong*, WIPO Case No. [D2016-2463](#); *Innisfree Corporation v. Domain Administrator, See PrivacyGuardian.org / Phan Ky*, WIPO Case No. [D2020-2161](#); see also section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The gTLD is usually disregarded under the first requirement of confusing similarity test as a standard registration requirement of the domain name (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain name is identical or confusingly similar to the MICHELIN Trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The disputed domain name resolved to the webpage in Vietnamese advising to use an emergency car rescue kit with the MICHELIN sign when encountering car problems on the road, directly targeting the Complainant’s field of activity and its MICHELIN Trademarks. Currently, the disputed domain name resolves to the webpage in Vietnamese indicating that the current web store has expired.

As the Complainant asserted, however, the Respondent has not been authorized by the Complainant to register and use its MICHELIN Trademarks, or to seek registration of any domain name incorporating the MICHELIN Trademarks. There is also no evidence to show that the Respondent is commonly known by the disputed domain name, has used or is preparing to use the disputed domain name in connection with a *bona fide* offering of goods and services, or is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Respondent never replied to the Complainant’s cease and desist letters sent via the Registrar several times before the filing of this Complaint.

Therefore, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and then the burden of production is shifted to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

Since no response was submitted by the Respondent and no evidence of any rights or legitimate interests is presented before the Panel, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant has built a strong reputation in the MICHELIN Trademarks during its long history and becomes known by the MICHELIN Guide also in Viet Nam. Thus, it is difficult to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's MICHELIN Trademarks at the time of the registration of the disputed domain name (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). The Respondent seems to have attempted by the registration of the disputed domain name to confuse and/or mislead Internet users especially in Viet Nam seeking or expecting to find the Complainant's website. Under this circumstance, a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's website to the Respondent's website (see *Compagnie Générale des Etablissements Michelin v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2022-4945](#)).

Moreover, bad faith can be found where the disputed domain name is so obviously connected with the well-known MICHELIN Trademark that its very use by someone with no connection to the MICHELIN Trademark suggests opportunistic bad faith (see *Compagnie Générale des Etablissements Michelin v. Vyacheslav Nechaev*, WIPO Case No. [D2012-0384](#)).

Additionally, the Respondent neither tried to defend its rights nor stated any valid arguments to justify the registration and use of the disputed domain name in response to the Complainant's cease-and-desist letter and in this proceeding. These facts are considered to be further indicators of the Respondent's bad faith registration and use (see *Compagnie Générale des Etablissements Michelin v. 杨智超 (Zhichao Yang)*, *supra*).

Consequently, the Panel concludes that the Respondent both registered and is using the disputed domain name in bad faith.

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 <tuicuuho-michelin.shop> be transferred to the Complainant.

/Yuji Yamaguchi/

Yuji Yamaguchi

Sole Panelist

Date: March 21, 2023