

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1000358

Complainant: COMPAGNIE GENERALE DES ETABLISSEMENTS MICHELIN

Respondent: novacek martin

Domain Name: michelin2b2.com

**Registrar: DIRECTI INTERNET SOLUTIONS PVT. LTD. D/B/A
PUBLICDOMAINREGISTRY.COM**

1. Procedural History

On June 28, 2010, the Complainant submitted a Complaint in English version to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "ADNDRC Beijing Office"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

Then, the ADNDRC Beijing Office transmitted emails to ICANN and the Registrar of the domain name--DIRECTI INTERNET SOLUTIONS PVT. LTD. D/B/A PUBLICDOMAINREGISTRY.COM, requesting for registrar verification in connection with the domain name at issue.

On July 6, 2010, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response confirming that, the domain name at issue was registered under its domain registry, and the Respondent is listed as the registrant. The status of the domain name is OK.

The ADNDRC Beijing Office verified that the Complaint satisfied the formal requirements of the Policy, the Rules, and the Supplemental Rules. In accordance with the Rules, paragraphs 2(a) and 4(a), the ADNDRC Beijing Office transmitted the complaint to the Respondent on July 29, 2010.

On August 6, 2010, the Notifications of Commencement of proceedings were notified to the Parties, ICANN and the Registrar.

Till September 7, 2010, the last day of the fixed period of Response, no submission came from the Respondent. The ADNDRC Beijing Office noticed the Parties that, as there's no response from the Respondent, the case would be decided by default.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, the ADNDRC Beijing Office appointed Tang

Guangliang as the sole panelist in this matter on September 14, 2010. Then the ADNDRC Beijing Office transferred all the case materials to the panel on the day, and asked the panel to submit a decision before September 28, 2010.

2. Factual Background

For the Complainant

The Complainant is COMPAGNIE GENERALE DES ETABLISSEMENTS MICHELIN, Joint stock limited liability partnership, whose address is 12, COURS SABLON 63000 CLERMONT-FERRAND FRANCE. The Complainant applied to the Center, asking the Panel to decide that the domain name at issue transferred to it. In this case, the Complainant empowered ZHU Zhigang as agent.

For the Respondent

The Respondent is novacek martin, a citizen of Czech Republic, whose address is Poste restante Nadrazni 418/3 Brno Jihomoravskykraj, 60200 CZ. The Respondent registered the disputed domain name on August 21, 2009 through the Registrar. The Respondent made no response in the fixed period of time, and no agent or representative empowered thereof in this case.

3. Parties' Contentions

The Complainant

According to the Complaint, the assertion of the Complainant includes—

(I) The Complainant enjoys the exclusive rights to use the trademark “MICHELIN” which is protected in China.

The Complainant Michelin is one of the world top manufacturers of tires, which was established in CLERMONT-FERRAND of France more than one hundred years ago, and is one of the world top 500 enterprises. Now, Michelin has established 75 factories and 6 rubber plantations in five continents; it has also established experiment and research centers in France, Japan, America, Thailand and China, and organizations of sales and market in more than 170 countries.

In 1989, Michelin came into China. With the creative spirit for more than one hundred years, Michelin brought advanced science and technology and high-quality products to China. In the end of 1995, it set up the first joint-venture in Shenyang. In 2001, Michelin made joint efforts with Shanghai Tire & Rubber Co., Ltd. to establish Shanghai Michelin Warrior Tire Co., Ltd. At present, Michelin has more than 4,900 employees in China, who devote themselves to the development of Michelin in China.

In China, the Complainant had obtained the extension and protection of the international registration of trademark “MICHELIN” as early as June 11, 2001 in respect of commodities in Classes 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 39 and 42. Besides, the Complainant applied with CTO directly for registration of “MICHELIN” in respect of various goods, which had been protected.

(II) Trademark “MICHELIN” is well-known trademark recognized by CTO and Tianjin Second Intermediate People’s Court.

In December 2005, CTO recognized that the trademarks “MICHELIN in Chinese”, “MICHELIN” and “tire man device” registered and used by Michelin were well-known trademarks in Trademark Opposition of (2005) Shang Biao Yi Zi No. 02708. In October 2008, Tianjin Second Intermediate People’s Court recognized that the trademarks “MICHELIN and tire man device”, “tire man device”, and “MICHELIN in Chinese” registered and used by Michelin in Civil Judgment of (2008) Er Zhong Min San Chu Zi No. 3.

(III) The Complainant enjoys the right to use the enterprise name of “MICHELIN”.

The total name of the Complainant Michelin is COMPAGNIE GENERALE ESTABLISSEMENTS MICHELIN. Michelin is the short name of the company and this short name has been well-known for the public in the world. Therefore, the Complainant enjoys the name right of “MICHELIN”.

(IV) The Complainant enjoys various domain names and internet key words with “MICHELIN” as the main part.

In China and even the whole world, the Complainant registered a series of domain names with “michelin” as the main part, such as michelin.com, michelin.com.cn, michelin.cn, michelin.me, michelin.mobi, michelin.net, michelin.org, michelin.tel, michelin.asia, michelintyre.com.cn, michelin.cn. CNNIC internet key words, such as “michelin”, “michelinchina” etc.

(v) The Complainant’s trademark “MICHELIN” enjoys high reputation in China and even in the World.

As stated above, Michelin was established in CLERMONT-FERRAND of France in 1889, and now has employed nearly 130,000 people. Michelin has established 75 factories and 6 rubber plantations in five continents; it has also established experiment and research centers in France, Japan, America, Thailand and China, and established sales and market organizations in more than 170 countries.

The history of Michelin is a history of providing special service for customers for more than one hundred years, knowing the need of customers and innovating new products, hence to satisfy the need of customers. During the passed century, Michelin created innumerable achievements: the first car tire, train tire and lorry car, and first replaceable tire invented in 1906; making inner tire together with outer tire, which becomes the pioneer of non-inner tire design and inventing the radial tire in 1946 and manufacturing the first snow tire with the automatic grinding of flower wheel track; the first radial tire of plane and auto motor. It can be said that the history of Michelin is an innovating history and every innovation of the company makes indelible contribution for the development of tires in the world.

Michelin makes efforts for the development of tires in the world, and also creates a commercial miracle. Michelin is one of world top 500 enterprises, and also the mistress of the global tires. Michelin’s sales income of tires usually ranks No. 1 among the global tires companies.

At the same time, Michelin takes part in sports competition positively. MICHELIN tires are tires for competition of many teams of F1. F1 is the platform of attracting public, and also a good advertising platform for Michelin. At the same time, F1, as a world top-class automatic racing game, can also prove the strength of Michelin.

In 1989, Michelin came into China. With the creative spirit more than one hundred years, Michelin brought advanced science and technology and high-quality products to China. In the end of 1995, it set up the first joint-venture in Shenyang. In 2001, Michelin made joint efforts with Shanghai Tire & Rubber Co., Ltd. to establish Shanghai Michelin Warrior Tire Co., Ltd. At present, Michelin has more than 4,900 employees in China, who devote themselves to the development of Michelin in China.

In China, besides developing market, Michelin also joins environment-protecting and education, and performs great social responsibility. In order to face environmental crisis, Michelin designs a new style of tire of fuel saving and emissions reduction, and popularizes this kind of tires. In order to advertise the idea of carbon-emission reduction and environmental protection, Michelin establishes environment-protecting class for children all over the country, and develops an environment-protecting speaking tour named “Green Your Journey”. After 5.12 earthquake, Michelin ever gave aid gratis for the construction of Jiangyou Special Education School. Michelin carries on activity for public benefit, which has produced positive effect in society and gets wild praise of society.

In order to advertise its brand continually and develop market, MICHELIN Company invests a lot in the marketing and advertisement of its products. With various ways of advertisements, it makes a lot of advertisements.

In sum, the trademark “MICHELIN” is well-known trademark of Michelin, which should be protected by laws in China. At the same time, MICHELIN is also the short name of Michelin, which is known by public in the world and owns the honour of Michelin. Michelin and the trademark “MICHELIN” own a high reputation in China and even in the world, so they should be protected widely.

Based on the facts listed above, the Complainant holds that,

i) The domain name registered by the Respondent is confusingly similar to the trademark of the Complainant.

The disputed domain name is michelin2b2.com. The Respondent registered the domain name with our well-known trademark “MICHELIN” as the main part, so the domain name is enough to make the public to misunderstand that there is some relation between the website and Michelin.

ii) The Respondent does not enjoy any legitimate rights or interests of the domain name.

Michelin never authorizes the Respondent to use its trademark or register the domain name involving its trademark.

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

1) The Respondent’s registration of the domain name “michelin2b2.com” with Michelin’s trademark “MICHELIN” as the main part prevents Michelin from registering the domain

name and enjoying its legitimate rights of using its trademark as domain name on internet. The Respondent's activity falls into the circumstance of registration and use of a domain name in bad faith provided in No. (ii) of Item (b) of Article 4 of Uniform Domain Name Dispute Resolution Policy, "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".

2) The Respondent ever advertised and sold tires of Michelin's opponent on the website of "michelin2b2.com". The activity of the Respondent falls into the circumstance of registration and use of a domain name in bad faith provided in No. (iii) of Item (b) of Article 4 of Uniform Domain Name Dispute Resolution Policy, "you have registered the domain name primarily for the purpose of disrupting the business of a competitor".

3) The domain name "michelin2b2.com" points to a sales website which is also an adult website. MICHELIN is a well-known tire brand in the world. The purpose of the Respondent registering the domain name is to use the influence of MICHELIN, establish the relation between the Respondent and Michelin, attract customers and rise the visiting rate of the website, and hence to sell the goods (including the main product of MICHELIN: tires) and service on the website. The activity of the Respondent falls into the circumstances of registration and use of a domain name in bad faith provided in No. (iv) of Item (b) of Article 4 of Uniform Domain Name Dispute Resolution Policy, "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 web site or location or of a product or service on your web site or location".

4) The domain name "michelin2b2.com" points to an adult website involving indelicate and vulgar contents, which does not agree with the positive social image of Michelin. The misunderstanding caused by the domain name will reduce the social evaluation of Michelin and damage its honour.

5) According to the searching result from whois database of www.net.cn, the Respondent used to be simultaneously the registrant of "michelin2b2.com" and "michelin4me.com". After online investigation, it is found that "michelin4me.com" also points to a business website, and mainly advertises tires of Michelin's opponent. The Respondent registers other's legitimate name and mark as its domain name twice, which further reflect the bad faith of its "hitch-hike".

In sum, the Respondent's registration of the domain name is not by chance but in evident bad faith, which falls into the circumstances of registration and use of a domain name in bad faith provided in Nos. (i), (iii), (iv) of Item (b) of Article 4 of the Policy.

Then, the Complainant requests the Panel to cancel the complained domain name.

The Respondent

There's no Response came from the Respondent.

4. Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name

registered by another, the Complainant must prove each of the following:

- (i) That the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) That the domain name has been registered and used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, to make the Claim to be supported by the Panel, the Complainant needs to satisfy each of the afore-said prerequisites.

With regard to the current dispute, a fundamental fact is that the Respondent did not submit a defense or a response of any sort in the fixed period to show any intention to RETAIN the disputed domain name, or to show any defense against the claim and assertion of the Complainant.

As stipulated in Paragraph 5(e) of the Rules, "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint". In light of this stipulation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and the accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or any other enforceable decisions.

Identity or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant has right.

According to the Complainant's assertion and evidences presented therewith, the Complainant has registered a number of trademarks with the sign of "MICHELIN" since 1995. Accordingly, the Panel agreed with the Complainant that before the registration of the disputed domain name, the Complainant had already got the legitimate right.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the questioned domain name with that of the registered trademark. In this case, the disputed domain name is "michelin2b2.com", where the identifying part is "michelin2b2", which is not identical with the trademark. But according to the Complainant's view, "michelin" is the "main part" of the domain name which is identical with its well-known mark "MICHELIN", and which "is enough to make the public to misunderstand that there is some relation between the website and Michelin".

The Panel, facing the fact that the Respondent did not submit any response, found that the identifying part of the disputed domain name is composed of at least two sections, "michelin" and "2b2". While "michelin" is undoubtedly identical with the Complainant's registered trademark, "2b2" is a confusing composite which is something similar to "b2b" in the Internet context. When putting the two sections together as a domain name, a user of the Internet is

likely to think that is a “b2b” website of the Complainant. Therefore, the Panel holds that, the Complainant satisfies the first prerequisite as set forth in the Policy. That is, the domain name in dispute is confusingly similar to the trademark in which the Complainant has right.

Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the disputed domain name, as an argument against the Complainant’s claim.

In this respect, the Complainant’s claims that it never authorizes the Respondent to use its trademark or register the domain name involving its trademark. As the Respondent didn’t reply, or otherwise let the Panel know his reasonable interest therewith, the Panel holds that the Complainant satisfies the second prerequisite as set forth in the Policy—the Respondent has no rights or legitimate interests in respect of the domain name.

Bad Faith

The Complainant also needs to establish the Respondent’s bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name 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 web site 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 web site or location or of a product or service on your web site or location."

The Complainant claims that the disputed domain name was registered and is being used by the Respondent in bad faith, the grounds of which include:

(a) The Respondent’s registration of the domain name “michelin2b2.com” with Michelin’s trademark “MICHELIN” as the main part prevents Michelin from registering the domain name and enjoying its legitimate rights of using its trademark as domain name on internet. The Respondent’s activity falls into the circumstance of registration and use of a domain name in bad faith provided in Article 4(b) (ii) of Uniform Domain Name Dispute Resolution Policy.

(b) The Respondent ever advertised and sold tires of Michelin's opponent on the website of "michelin2b2.com". The activity of the Respondent falls into the circumstance of registration and use of a domain name in bad faith provided in Article 4 (b) (iii) of Uniform Domain Name Dispute Resolution Policy.

(c) The domain name "michelin2b2.com" points to a sales website which is also an adult website. MICHELIN is a well-known tire brand in the world. The purpose of the Respondent registering the domain name is to use the influence of MICHELIN, establish the relation between the Respondent and Michelin, attract customers and rise the visiting rate of the website, and hence to sell the goods (including the main product of MICHELIN: tires) and service on the website. The activity of the Respondent falls into the circumstances of registration and use of a domain name in bad faith provided in Article 4(b)(iv) of Uniform Domain Name Dispute Resolution Policy.

(d) The domain name michelin2b2.com points to an adult website involving indelicate and vulgar contents, which does not agree with the positive social image of Michelin. The misunderstanding caused by the domain name will reduce the social evaluation of Michelin and damage its honour.

(e) According to the searching result from whois database of www.net.cn, the Respondent used to be simultaneously the registrant of "michelin2b2.com" and "michelin4me.com". After online investigation, it is found that "michelin4me.com" also points to a business website, and mainly advertises tires of Michelin's opponent. The Respondent registers other's legitimate name and mark as its domain name twice, which further reflect the bad faith of its "hitch-hike".

In sum, the Respondent's registration of the domain name is not by chance but in evident bad faith, which falls into the circumstances of registration and use of a domain name in bad faith provided in Article 4(i), (iii) and (iv) of the Policy.

There's no argument came from the Respondent.

The Panel found that, according to the Complainant's assertion and evidence provided, the acts of the Respondent fall under the circumstances in Paragraph 4(b)(ii) and (iii), and shall be considered as evidence of the registration and use of the disputed domain name in bad faith, and thus the Complainant satisfies the third prerequisite under the relevant articles of the Policy.

Based on all the above findings and comments, the Panel rules that the Complainant satisfies all the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be supported.

5. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the identifying part of the disputed domain name "michelin2b2.com" is confusingly similar to the Complainant's registered trademark "MICHELIN"; and
- b) That the Respondent has no right or legitimate interest with regard to the identifying part of

the disputed domain name; and

c) That the domain name was registered and subsequently used in bad faith.

As the final decision, the Panel order the domain name “michelin2b2.com” be cancelled.

Panelist:

A handwritten signature in black ink on a light gray grid background. The signature is stylized and appears to consist of several connected loops and lines, possibly representing the initials 'J. G.' or similar.

September 28, 2010