

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1100447

Complainant: COMPAGNIE GENERALE DES ETABLISSEMENTS MICHELIN

Respondent: ChinaDNS, Inc.

Domain Name: michelinlifestyle.com

Registrar: ENOM, INC.

1. Procedural History

On March 25, 2011, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (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”) on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”).

On March 31, 2011, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a request for verification of registration information to ICANN and the Registrar of the domain name in dispute, ENOM, INC.

On April 1, 2011, the ADNDRC Beijing Office received the Registrar’s confirmation of registration information of the domain name in dispute.

On May 19, 2011, the ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On May 25, 2011, the ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties, ICANN and Registrar by email that the captioned case was formally commenced. The ADNDRC Beijing Office also requested the

Respondent to file a Response within 20 calendar days scheduled time.

On June 17, 2011, the ADNDRC Beijing Office confirmed that No Response was received from the Respondent and notified both parties that the panelist would be shortly appointed and the case would be heard by default.

On June 23, 2011, the ADNDRC Beijing Office gave notice to the candidate of the Panelist Mr. Gao Lulin, requesting him to confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

On June 23, 2011, the ADNDRC Beijing Office received a declaration of impartiality and independence and a statement of acceptance from Mr. Gao Lulin.

On June 29, 2011, the ADNDRC Beijing Office informed by email the Parties that Mr. Gao Lulin would be the sole Panelist who would form the one-member Panel for this case and transferred the files of this case to the Panel formally on the same day. The Panel should render the Decision within 14 days, i.e. on or before July 12, 2011.

2. Factual Background

For the Complainant

The Complainant is COMPAGNIE GENERALE DES ETABLISSEMENTS MICHELIN. Its address is 12, Cours Sablon 63000 Clrmont-ferrand France. The authorized representative of the Complainant is ZHU Zhigang.

For the Respondent

The Respondent is ChinaDNS, Inc.. Its address is Shuyangxian, Tanggou town, Suqian Jiangsu, 223661, CN. The Respondent registered the disputed domain name on April 10, 2010.

3. Parties' Contentions

The Complainant

The Complainant's contentions are as follows:

(1) the trademarks on which the Complaint is based

①The Complainant enjoys the exclusive right to use the registered trademarks

“MICHELIN”, “MICHELIN (in Chinese)” which are protected in China.

The Complainant Michelin is one of the world top tire manufacturers, which was established in CLERMONT-FERRAND of France more than one hundred years ago, and is one of the Fortune Global 500. So far, 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 its organizations of sales and market located in more than 170 countries.

In 1989, Michelin came into Mainland China market. With the spirit of innovation that lasts for more than one hundred years, Michelin brought advanced science and technology and high-quality products for China. By the end of 1995, it has 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 registered the trademark “MICHELIN” in respects of commodities of wheels, tires, etc. as early as 1980. Besides, the Complainant also applied for the registration of trademarks “MICHELIN (in Chinese)” and “MICHELIN & tire man device”, which have been protected. The relative registration information is as follows:

Trademark	Registration Date	Registration No.	Class	Designated Commodities	Validity
MICHELIN	April 15, 1980	136402	12	Tire, inner tube, inflation valve, antiskid burr, wheel, rim, pump	April 14, 2020
米其林	May 20, 1990	519749	12	Wheel, rim, tire, inner tube, antiskid burr for tires, filling valve for tires, air pump	May 19, 2020
	October 14, 2002	1922872	12	Tire, inner tube, treads for retreading tires, wheel, vehicles, vehicles for locomotion by land, air, and rail, rims of	October 13, 2012

				wheels, tire inflator, pneumatic tires	
	September 21, 2008	4950340	12	Windscreen wiper, luggage carriers for vehicles, transmission chains for land vehicles, wheel cover, vehicle rims, bicycle handlebars, shading device for vehicles, hood, repair outfits for inner tubes, jumper for vehicles	September 20, 2018

At present, the above-mentioned trademarks are valid.

Besides the above-mentioned trademarks, the Complainant registered trademarks “MICHELIN”, “MICHELIN (in Chinese)” and “MICHELIN & tire man device” etc. in respects of commodities in Classes 4, 5, 7, 8, 9, 10, 11, 16, 17, 18, 20, 21, 24, 25, 39 and 42.

② Trademark “MICHELIN”, “MICHELIN (in Chinese)” and “tire man device” are well-known trademarks recognized by the Trademark Office of The State Administration For Industry and Commerce (“Trademark Office”), Tianjin Second Intermediate People’s Court and Guangzhou Intermediate People’s Court.

In December 2005, the Trademark Office recognized that the trademarks “MICHELIN in Chinese”, “MICHELIN” and “tire man device” registered and used by Michelin are 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 & tire man device”, “tire man device”, and “MICHELIN (in Chinese)” registered and used by Michelin are well-known trademarks in Civil Judgment of (2008) Er Zhong Min San Chu Zi No. 3. In October 2010, Guangzhou Intermediate People’s Court recognized the above-mentioned three trademarks as widely known trademarks by the common public in China and recognized them as well-know trademarks in Civil Judgment of (2008) Sui Zhong Fa Min San Chu Zi No. 465. In November 2010, Guangzhou Intermediate People’s Court recognized the trademark “MICHELIN & tire man device” as well-known trademark in Civil

Judgment of (2008) Sui Zhong Fa Min San Chu Zi No. 387.

③The Complainant enjoys the right to use the enterprise name of “MICHELIN”, “MICHELIN (in Chinese)”, and “MICHELIN LIFESTYLE”.

The full name of the Complainant Michelin is COMPAGNIE GENERALE DES ESTABLISSEMENTS MICHELIN. “Michelin” and “Michelin in Chinese” are short names of the company. “Michelin Lifestyle Limited” is a subsidiary under Michelin Group, which was established in 2000 and operates business of innovative, stylish, desirable Michelin products. Therefore, the Complainant enjoys the enterprise name right of “MICHELIN (in Chinese)”, “MICHELIN” and “MICHELIN LIFESTYLE”.

④The Complainant enjoys various domain names and internet keywords with “MICHELIN” as the main body.

In China and even the whole world, the Complainant has registered a series of domain names with “michelin” as the main body, such as www.michelin.com, www.michelin.cn, www.michelin.com.cn, www.michelin.com.hk, www.michelin.com.tw, www.michelin.com.au, www.michelin.at, www.michelin.be, www.michelin.dk, www.michelin.de, www.michelin.pl, www.michelin.es, www.michelin.fr, www.michelin.com.hr, www.michelin.ie, www.michelin.it, www.michelin.hu, www.michelin.hl, www.michelin.no, www.michelin.pt, www.michelin.ro, www.michelin.ch, www.michelin.si, www.michelin.sk, www.michelin.rs, www.michelin.fi, www.michelin.se, www.michelin.co.uk, www.michelin.is, www.michelin.cz, www.michelin.gr, www.michelin.bg, www.michelin.kz, www.michelin.kg, www.michelin.am, www.michelin.ru, www.michelin.by, www.michelin.md, www.michelin.uz, www.michelin.ru, www.michelin.tj, www.michelin.tm, www.michelin.az, www.michelin.ua, www.michelin.com.au, www.michelin.in, www.michelin.com.id, www.michelin.com.my, www.michelin.co.nz, www.michelin.com.ph, www.michelin.com.sg, www.michelin.vn, www.michelin.com.th, www.michelin.co.jp, www.michelin.co.kr, www.michelin.com.mt, www.michelin.mu, zma.michelin.com, www.michelin.co.za, www.michelin.com.tr, www.michelin.co.il, www.michelin.ae, www.michelin.com.sa, www.michelin.com.kw, www.michelin.com.qa, www.michelin.com.om, www.michelin.com.bh,

www.michelin.ca, www.michelin.com.mx, www.michelin-us.com,
www.michelin.com.ar, www.michelin.com.br, www.michelin.cl,
www.michelin.com.co. CNNIC internet keywords, such as “Michelin in
Chinese” and “Michelin” .

⑤The Complainant’s registered trademarks “MICHELIN” and “MICHELIN in
Chinese” enjoys high reputation in China and the whole World.

As stated above, Michelin was established in CLERMONT-FERRAND of
France in 1889, and has nearly 130,000 employees 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 established sales and market organizations in more than 170
countries.

The history of Michelin is a history of offering specialized and personalized
services for various customers, caring the need of its customers, and
continuously innovation. During the past one century, Michelin created
innumerable achievements: the first car tire, first train tire, first lorry car tire, and
first replaceable tire invented in 1906; combining the inner tire with the outer
one, which became the pioneer of non-inner tire design; inventing the radial tire
in 1946; manufacturing the first snow tire with automatic grinding of flower
wheel track; and the first radial tire of plane and auto motor. The history of
Michelin is a history of innovating, and every innovation it makes contributes to
the development of tires.

Michelin also builds up a commercial miracle. Michelin is one of Fortune
Global 500, as well as the leader of the global tire industry. Michelin’s sales
income of tires is always the first rank of the global tire manufactures.

Meanwhile, Michelin takes part in sports competition positively. Michelin
provides tires for many teams in Formula One. Formula One provides a platform
for Michelin to attract attention from the public, and to become well-known.
Formula One, as the highest level of international car racing, proves the
company strength of Michelin.

In 1989, Michelin came into Mainland China market. With the spirit of
innovation that lasts for more than one hundred years, Michelin brought

advanced science and technology and high-quality products for China. By the end of 1995, it has 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 the market, Michelin takes part in environment-protecting and education, which shows Michelin's sense of social responsibility.

In order to advertise its brand and develop market, Michelin invests a lot in marketing and advertising. Various market channels and ways of advertising are applied by the company.

To sum up, trademarks "MICHELIN" and "MICHELIN (in Chinese)" are well-known trademarks owned by Michelin, which should be protected by laws in China. "Michelin" and "Michelin (in Chinese)", as short name for "COMPAGNIE GENERALE DES ESTABLISSEMENTS MICHELIN", is widely known by common public and condensates Michelin's good reputation. Moreover, Michelin and its registered trademarks "MICHELIN" and "MICHELIN (in Chinese)" have obtained well-deserved reputations in China and the world. Hence, they shall be adequately protected.

(2) The domain name registered by the Respondent is similar to the registered trademark owned by the Complainant.

The disputed domain name is "michelinlifestyle.com". The part "michelin" is identical with the Complainant's registered trademark "MICHELIN" while the part "lifestyle" is an English word meaning "the way of life". In consideration of the worldwide influence of the trademark and enterprise name "MICHELIN" owned by the Complainant, Michelin has enjoyed significant distinctiveness and directivity. Moreover, Michelin Group has subsidiary named "Michelin Lifestyle", the usage of the disputed domain name will easily cause confusion and misidentification among the public.

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

①The Respondent does not enjoy the exclusive right to use the trademark “MICHELIN” or “MICHELIN in Chinese”.

②The Complainant has never authorized or licensed the Respondent to use the trademarks “MICHELIN” and “MICHELIN in Chinese”, and never assigned the above-mentioned trademarks to the Respondent. As far as the Complainant knows, the Respondent has never obtains authorization or license to use the above-mentioned trademarks from any channel.

③The Complainant has never authorized the Respondent to register the disputed domain name, and has no connection with the Respondent in any form such as authorization, cooperation, etc.

To sum up, the Respondent does not enjoy any legitimate rights or interests on the disputed domain name “michelinlifestyle.com”.

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

As everyone knows, the registered domain name could achieve its function and value only after having been connected to specific website. The Complainant’s trademarks “MICHELIN” and “MICHELIN (in Chinese)” have become very popular among consumers through long-term use, promotion and registration in the whole world and MICHELIN products can be seen in any place of the world. At the same time, “MICHELIN/MICHELIN (in Chinese)” is also the core part of enterprise name of the Complainant, which owns strong significance. The Complainant has subsidiary named “Michelin Lifestyle”, which develops and sells various kinds of innovative, stylish, and desirable Michelin products to promote and increase the attractiveness of Michelin brand. In fact, many of the world’s leading companies are using the general vocabulary “Lifestyle” when they expand relative products and increase the attractiveness of their brands. The Respondent should know clearly about these facts. However, knowing the fact that “MICHELIN” and “MICHELIN (in Chinese)” are trademarks owned by the Complainant, the Respondent still preemptively registered the disputed domain name that using “michelin” as main part and combining the general vocabulary “Lifestyle”, which preempts the domain name resource, intentionally prevents the Complainant from reflecting its trademark in a corresponding domain name and is evidently in bad faith.

The Respondent does not enjoy any legitimate rights or interests for the disputed domain name or its main part. Obviously, the Respondent registering the disputed domain name is to illegally use the popularity of Michelin and its trademarks and the confusion and misidentification of consumers, thus obtain profiteering from such misleading activity. To Michelin's clients and common public, "michelin" used in the disputed domain name is enough to lead them to connect the disputed domain name with the Complainant's trademark "MICHELIN" and "MICHELIN (in Chinese)", and thus they would assume that there is some connection between the disputed domain name and Michelin Company, and confuse the Respondent with Michelin. The Respondent's activity misleads the public and obtains illegitimate profits. Such "free rider" activity violates the principle of good faith, and with obvious bad faith.

From the content of the website corresponding to the disputed domain name, it provides links involved in various business information, which not only includes group purchase, travel, sale and purchase of house, but also includes tire related business, such as Tire Recycling Machinery, Tire Tread Analysis, Used Aircraft Tires. The Respondent clearly knows the Complainant's reputation in the field of tire manufacturer, intentionally uses such reputation to mislead public to enter websites through links provided by it, thus to achieve its wrongful business purpose, and disrupts the Complainant's business and with obvious bad faith.

In order to prevent further damage caused by the Respondent's activity, the Complainant entrusted lawyer to send a Cease & Desist Letter to the recorded registrant of the disputed domain name Han Jing on December 17, 2010. After receiving the C&D Letter, Han Jing, as an agent, and Anewlook claiming himself as the registrar separately replied to the Complainant's lawyer that they disagreed to cancel the disputed domain name or to transfer it to the Complainant for free. They only accepted transfer with compensation, and offered a high price. Based on the above, the Respondent registering the disputed domain name is to obtain unjustified benefits, and intentionally prevent the Complainant from reflecting its mark in a corresponding domain name, disrupt the Complainant's business with obvious bad faith.

To sum up, the Respondent's registration of the disputed 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), (ii), (iii), (iv) of Item(b) of Article 4 of Uniform Domain Name Dispute Resolution Policy “the purpose for registering or acquiring the domain name is to sell, rent or otherwise transfer the domain name registration to the complainant who is the owner of the name or mark or to a competitor of that complainant, and to obtain unjustified benefits”; “the purpose for registering the domain name is to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name”; “the purpose for registering the domain name is to disrupt the business of a competitor”; and “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”. Based on aforementioned, according to regulations of the Policy, the Complainant requests the Panel to cancel the disputed domain name.

The Respondent

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

4. Panel’s Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming a domain name registered by the Respondent, the Complainant must prove each of the followings:

- (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 to; and
- (ii) that the Respondent has no rights to or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the afore-said prerequisites. If the answer is yes, the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; otherwise,

the Complainant's claims shall be rejected.

Identity or Confusing Similarity

In pursuant to Paragraph 4(a)(i) of the Policy, the Complainant must prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. The Complainant provided evidence of registered trademark certification of "MICHELIN" (Registration No. 136402, Registration Date April 15, 2000), "MICHELIN in Chinese" (Registration No. 519749, Registration Date May 20, 2000), and "MICHELIN & tire man device" (Registration No. 1922872, Registration Date October 14, 2002) in China. All trademarks remain valid at present, and were registered well before the registration date of the disputed domain name (April 10, 2010). Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to "MICHELIN", "MICHELIN in Chinese" and "MICHELIN & tire man device" in China.

As such, what the Panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant's registered trademark "MICHELIN" and the disputed domain name "michelinlifestyle.com". The Panel notices that, the identifying part of the disputed domain name consists of two words: "michelin" and "lifestyle." It is apparent that "michelin" is the same as the Complainant's registered trademark "MICHELIN," except for the lowercase/capital letters that nearly has no influence on distinguishing the differences. On the other hand, "lifestyle" is a general and common expression, which is not distinctive enough to differentiate the disputed domain name from the Complainant's registered trademark. As for the suffix ".com", it only indicates that the domain name is registered under this gTLD. Thus, "michelin" shall be considered as the most distinctive part of the disputed domain name.

Therefore, the Panel finds that the disputed domain name is identical or confusingly similar to the Complainant's registered trademark "MICHELIN", and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Panel makes the decision based on the evidence provided by both parties

and in case that either party fails to meet its burden of proof, such party shall undertake the risk of the possible unfavorable result against it. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Panel finds that the Complainant has already fulfilled the burden of proof required by the second condition under Paragraph 4(a) of the Policy, thus the burden of proof regarding “rights or legitimate interests” is generally reversed to the party making the defense in the dispute resolution of a domain name, the Respondent.

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.

To conclude, the Panel holds the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy; and the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad Faith

The Complainant also needs to establish the Respondent’s bad faith under 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.

Evidence shows that the Complainant's trademark/trade name of "MICHELIN" has enjoyed relatively high reputation among the public in China and around the world through extensive use, promotion, and advertisement. The Complainant has achieved great success in its business field. In particular, the Complainant's trademarks "MICHELIN", "MICHELIN in Chinese", and "MICHELIN & tire man device" have been recognized as well-known marks by the Trademark Office and courts. Therefore, the public has come to recognize and associate the Complainant's trademark/trade name of "MICHELIN" as originating from the Complainant and no other. As a result, the aforementioned facts have proved that the Respondent should have been aware of the existence of the Complainant and its trademark/trade name.

Furthermore, the evidence submitted by the Complainant shows that: (1) the Respondent used the disputed domain name to establish "michelinlifestyle.com", which contains the Complainant's trademark/trade name of "MICHELIN", especially appears the wording "Michelin Tire"; (2) the Respondent provides links involved in various business information, which not only includes group purchase, travel, sale and purchase of house, but also includes tire related business, such as tire recycling machinery, tire tread analysis, used aircraft tires; and (3) the Respondent has listed many advertising for other's goods and services.

According to the findings, the Respondent has no rights or legitimate interests in the disputed domain name, and should have known or has reasons to know that the Complainant and its trademark "MICHELIN". The use of the disputed domain name by the Respondent is obviously for obtaining unjustified commercial gain and to unjustly attract Internet users to its web site, which is likely to cause confusion in respect of the source, sponsorship, affiliation, or endorsement between the web site of the Respondent and the Complainant. This is exactly the circumstances set forth in Paragraph 4(b)(iv) of the Policy. To conclude, the Panel holds that the Complainant has satisfied the third

condition under Paragraph 4(a) of the policy; and the Respondent registered and uses the disputed domain name in bad faith.

5. Decision

For all the foregoing reasons, the Panel has decided that the Complainant has satisfied all three conditions under Paragraph 4(a) of the Policy. Accordingly, the Panel supports the Complainant's request that the disputed domain name "michelinlifestlye.com" should be canceled.

Panelist: 

Dated: July 12, 2011