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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1418

[Signature]

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.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)
.IN Domain Name Dispute Resolution Policy (INDRP)

Disputed Domain Name: www.michelinstar.in

Dated: 14th September, 2021

IN THE MATTER OF:

Compagnie Générale des Établissements Michelin
23 PLACE DES CARMES DECHAUX
63000 CLERMONT- FERRAND
FRANCE
FR106855200887

.....Complainant

Vs.

Raji
Tamil Nadu, India

.....Respondent

1. Parties

1.1 The Complainant in this arbitration proceeding is Compagnie Générale des Établissements Michelin (thereafter “Michelin”), having address at 23 PLACE DES CARMES DECHSUX 63000 CLERMONT-FERRAND, FRANCE. The Complainant is represented by TMARK CONSEILS.

1.2 The Respondent in this arbitration proceeding as per ‘Whois’ record is Raji in Tamil Nadu, India (as per the **Annexure 1** of the complaint).



Upon enquiry from NIXI made by the Complainant, the email address of the Respondent was found to be craji07@gmail.com. In response to notice to file reply, the Respondent stated via email dated 21st Aug 2021, that he registered domain name for a customer, S. Sundar Raman who intended to use it for food truck business. Later vide email dated 6th September, 2021 he informed that his customer is not interested to hold the disputed domain name and is willing to transfer it to the complainant.

2. **The Dispute-** The domain name in dispute is “www.michelinstar.in” registered by the Respondent on 3rd February, 2021. According to the .IN ‘Whois’ search, the Registrar of the disputed domain name is Endurance Domains Technology LLP.

3. Important Dates

S. No.	Particulars	Dates (All communication in electronic mode)
1.	Date on which NIXI’s email was received seeking consent for appointment as Arbitrator.	Aug 6, 2021
2.	Date on which consent was given to act as an Arbitrator in the case.	Aug 6, 2021
3.	Date of Appointment as Arbitrator.	Aug 6, 2021
4.	Soft Copy of complaint and annexures were received from NIXI through email.	Aug 6, 2021



5.	Date on which notice was issued to the Respondent	Aug 6, 2021
6.	Date on which Complaint filed proof of completed service of complaint on Respondent	Aug 23, 2021
7.	Date on which Award passed	Sept 14, 2021

4. Procedural History

- 4.1 This is mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. The updated rules are available on <https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the dispute pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as a sole arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.
- 4.3 The complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution.



- 4.4 The Arbitrator issued notice to the Respondent on 6th Aug., 2021 at the email address craji07@gmail.com calling upon the respondent to submit his reply to the complaint within fifteen (15) days of receipt of the Arbitrator's email. The Complainant also filed proof of completed service of the complaint upon Respondent on 23rd Aug., 2021.
- 4.5 The Respondent replied via email dated 21st Aug., 2021, that he registered domain name for a customer, S. Sundar Raman who intended to use it for food truck business. Later, vide email dated 6th September, 2021, he informed that his customer is not interested to hold the disputed domain name and is willing to transfer it to the complainant.

5. Factual Background

- 5.1 The Complainant, trading as Michelin is a well-known French multinational incorporated in 1955. The Complainant is engaged in design, manufacture and sale of tyres for a wide variety of vehicles. The Complainant also publishes maps, guides and atlases and publishes well-known Michelin Guide, since 1926. The guide reviews the top tier restaurants by reference to a star system and it is alleged that till date it has rated over 30,000 establishments in more than 30 territories.
- 5.2 The Complainant using his trademark "MICHELIN" has sold several copies of the Michelin Guide and the Guide is also available online on the official website www.guidemichelin.com/en throughout the world such as North America, South America (Brazil), Asia Pacific Region including mainland China, Japan, Macau, Seoul, Singapore, Taipei & Taichung, Thailand and Europe. The Complainant through its 'Michelin Guides' award stars to restaurants for excellency in service which has great impact on the success of a restaurant.



- 5.3 The Complainant has invented and adopted the trademark MICHELIN in relation to tyres and tourism. The Complainant owns numerous trademark registrations using the word MICHELIN in many countries including India (as per **Annexure 5** of the Complaint). The Complainant owns exclusive rights in the 'Michelin' trademark in various countries including India. The Complainant has provided a list of the 'Michelin' trademarks registered in India in class 12 under registration no. 307972 (as per **Annexure 7** of complaint) and international registration no. 1245891, designating India in class 10 (registered on 25.8.1975 as per **Annexure 6** of the complaint) amongst other trademark registrations.
- 5.4 The trademark "MICHELIN" by virtue of its long use throughout the world is exclusively associated with the Complainant and has earned significant goodwill and international recognition (as per **annexure 4, 5, 8, 9 and 15** of the complaint).
- 5.5 The Complainant has been using the "MICHELIN" trademark distinctively for use in connection with its corporate name Compagnie Générale des Établissements Michelin, products and services and also maintains the registered domain name www.michelin.in since February 15th, 2005 in India (as per **Annexure 8** of the complaint). The disputed domain name "Michelin Star" when searched online on search engines like www.google.com and www.google.co.in shows "MICHELIN STAR" in search results referred to the Complainant (as per **Annexure 15** of complaint).
- 5.6 The Respondent in this administrative proceeding as per 'Whois' database is Raji in Tamil Nadu, India. The email address of the

Respondent is craji07@gmail.com (as per the **Annexure 1** of the complaint).

6. Parties Contention

6.1 Complainant's Submissions

- 6.1.1 Complainant operates its business using the trademark "MICHELIN" and is engaged in design, manufacture and sale of tyres of a wide variety since 1955 as well as publication of Michelin guide for more than a century. It has been reviewing services of Restaurants and awarding stars to restaurants for excellence in services as early as 1926. The Complainant claims that it has been using its mark MICHELIN continuously for its goods and services, not only in India but across other countries including France. Due to its established reputation across various countries including India, the word "MICHELIN" has been exclusively associated with the Complainant and no one else. The Complainant claims to have gained popularity, reputation and is widely known through use of its trademark "Michelin".
- 6.1.2 The Complainant states that the trademark MICHELIN is registered in India in India in class 12 under registration no. 307972 (as per **Annexure 7** of complaint) and international registration no. 1245891, designating India in class 10 (as per **Annexure 6** of the complaint). A list of trademarks owned by the complainant that designate India are annexed with the complaint (as per **Annexures 5** of the complaint).
- 6.1.3 The Complainant submitted it is the owner and proprietor of registered domain name www.michelin.in which features information about the goods and services of the Complainant using the mark MICHELIN (as per **Annexure 8** of the complaint). Due to the popularity and well-



known reputation worldwide, the Complainant's trademark when searched online on search engine like www.google.com shows Michelin in search results pertaining to only the Complainant (as per **Annexure 15** of the Complaint).

6.1.4 The Complainant submitted that the disputed domain name www.michelinstar.in is identical to and is clear imitation of the 'MICHELIN' trademark and has been used with an intention to deceive and mislead consumers at large. The Respondent has no legitimate interest or right in the domain name and has registered it to mislead consumers and capitalize on the Complainant's reputation and goodwill. The Complainant further submitted that the Respondent's domain name has never resolved to an active website, the webpage to which the domain name resolves is a parking page that only displays a work-in-progress illustration and mentions "Website under Construction" (as per the **Annexure 12** of the complaint). The Complainant also states that the disputed domain name was registered by the Respondent on 3rd Feb., 2021 but has not been used for any bonafide purpose (as per the **Annexure 11** of the complaint).

6.1.5 Further, the Complainant submitted that it has conducted a thorough search on WIPO Global Brand Database (<https://www3.wipo.int/branddb/en/>) (as per **Annexure 13 and 14** of complaint) and also on the Indian trademark database (<https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx>) (as per **Annexure 21** of the complaint) and no trademarks or service mark rights containing the word "MICHELIN" are owned by the Respondent.

6.1.6 The Complainant has never granted any authorization, license or any right to the Respondent to use the trademark. However, to make unfair commercial gain and to tarnish the trademark of the Complainant, the Respondent registered the disputed domain name www.michelinstar.in using the trademark "MICHELIN" in its entirety. The Respondent has not shown any use or demonstrable preparations to use the domain name <www.michelinstar.in> nor has a name corresponding to the domain name in connection with the bona fide offering of goods and services.

6.1.7 In addition, the Complainant submitted that the Respondent has registered the mark in bad faith and is using its trademark illegally. Such use is to attract internet traffic by creating a likelihood of confusion with the complainant's name or mark and to make unjust monetary gain by falsely projecting an association or affiliation with the Complainant.

6.2 Respondent's Defence

6.2.1 The Respondent filed his reply by email on 6th Sept, 2021 contending that the domain was registered on the request of a customer who is not interested in holding the disputed domain anymore and that he is willing to transfer the domain name to the Complainant.

7. Discussions and Finding

7.1 The .IN Domain Name Dispute Resolution Policy in para 4 requires Complainant to establish the following three requisite conditions: -

- a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has right



- b) The Respondent has no rights or legitimate interest in the domain name and
- c) The Respondent's domain name has been registered or is being used in bad faith

7.2 The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))

The Complainant submitted that it owns various trademarks registrations using the word "MICHELIN" in many jurisdictions throughout the world including India and has filed documents of its registered trademark in India to prove its right in the trademark "MICHELIN" (as per the **Annexure 5, 6 and 7** of the complaint). Therefore, it is established that the Complainant has statutory protection in trademark in "MICHELIN" in India. The Complainant submitted that MICHELIN is a trademark well recognized amongst the consumers worldwide including in India (**as per Annexures 4, 5, 8, 9 and 15** of the complaint).

The Arbitrator finds that the disputed domain name www.michelinstar.in is clearly identical and deceptively similar to Complainant's trademark in which the Complainant has exclusive trademark rights and the Complainant has submitted enough documentary evidence to prove its rights and ownership in MICHELIN and MICHELIN formative marks. A cursory glance at the disputed domain name <Michelinstar.in> makes it obvious that the Respondent has exactly incorporated the essential elements of the Complainant's



MICHELIN mark and thus the disputed domain name is identical/deceptively similar to the Complainant's mark.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for the purposes of UDRP standing. (*Dell Inc. v George Dell & Dell Netsolutions*, case no. D2004-0512 (WIPO Aug 24, 2004), *Busybody Inc. v Fitness Outlet Inc.* D 2000-0127 (WIPO April 22, 2000).

The Disputed domain name consists of "MICHELIN", the Complainant's trademark in entirety and the ccTLD ".in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, particularly if the mark is internationally well recognized mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125(2010); *Viacom International Inc. v. MTV ALBUMS-Mega Top Video Albums Peter Miadshi*, WIPO case No. D2002-0196 (April 16, 2002); *Wal Mart Stores Inc. v. Kuchora Kal*, WIPO case no. D2006-0033 (March 10, 2006).

The Complainant has cited numerous decisions of WIPO panel regarding registration of domain names similar to the domain registered by the Respondent, wherein, all the disputed domains were either

cancelled or transferred to the Complainant. Also, the Complainant states that WIPO panels have held that the Complainant is well-known as holder of mark MICHELIN since as early as 2001. The Complainant has relied on *Compagnie Générale des Etablissements MICHELIN-MICHELIN & CIE v. Mr Kristian Marjin van Wezel* (WIPO case no. D2001-0598).

As the Respondent's disputed domain name incorporates important feature of Complainant's trademark MICHELIN, the Arbitrator finds that the Respondent's domain name is identical or confusingly similar to Complainant's registered trademark and is likely to deceive the customers.

7.3 The Registrant has no rights or legitimate interest in respect of the domain name (Para 4(b))

Under para 6 of the policy, a Respondent can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to 'MICHELIN' trademark, in which the Complainant enjoys substantial reputation and goodwill and registration of trademark in India (as per the **Annexures 5, 6 and 7** of the complaint) and other jurisdictions.

The Respondent has failed to prove any rights or legitimate interests in the disputed domain name/trademark 'MICHELIN.' Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name. Complainant has also submitted that it has not authorized nor licensed Respondent to use its MICHELIN mark. The Respondent's



website is only a parking page that displays "WEBSITE UNDER CONSTRUCTION" (as per **Annexure 12** of the Complaint). The Complainant submitted that the Respondent has registered the disputed domain name with a view to engage in unfair commercial use of the mark MICHELIN with the sole aim to make illegal monetary benefits from unauthorised use of the goodwill and reputation of the Complainant's mark MICHELIN. Further, the Complainant submitted that the Respondent does not have any rights or legitimate interest in the disputed domain name and it intends to make unjust and illicit commercial profits.

Complainant contends that Respondent has registered the domain name only to take unfair advantage of Complainant's global reputation and goodwill. Unlicensed and unauthorized use of domain name incorporating complainant's trademark proves respondent has no legitimate rights nor interest pursuant to ICANN Policy 4(b).

Further, the Arbitrator finds that the nature of the disputed domain name consisting of the trademark MICHELIN and the additional word "star" carries a high risk of implied affiliation, sponsorship or endorsement (WIPO Overview 3.0, Section 2.5) (*Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union*, WIPO Case No. D2013-1304 (September 19, 2012)).

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Since the Complainant's said website and trademarks

were in existence and extensively used when disputed domain was registered by the Respondent on 03.02.2021 (as per **Annexure 1** of the complaint), the Respondent has to prove whether he discharged this responsibility at the time of purchase of disputed domain name. The Respondent filed his reply via email dated 6th Sept, 2021 contending that he registered the domain on request of his customer who is not interested in holding the disputed domain anymore but failed to discharge the burden. The Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

7.4 The Registrant's domain name has been registered or is being used in bad faith (Para 4(c))

For the purpose of Para 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant submitted that 'MICHELIN' trademark has acquired considerable amount of goodwill worldwide including India in respect of designing, manufacturing and sale of the tyres for a wide variety of vehicles as well as publication of maps, guides and atlases. The Complainant's Michelin Guide reviewed services of restaurants and awarded stars to restaurants for excellence in services. The Complainant has secured registration of the mark "MICHELIN" in India in class 10 and 12. The Respondent has produced no evidence of authorization from Complainant or justification for registering the disputed domain name. In fact, the Complainant has filed evidence to show bad faith registration of disputed domain name by filing

screenshot of the web page www.michelinstar.in which mention "Website Under Construction" showing its unfair use by the Respondent (as per **Annexure 11 and 12** of the complaint). The Complainant also submitted that the Respondent has registered the domain name for the purpose of selling, renting or otherwise transferring the domain name to the Complainant or to a competitor of the Complainant for valuable consideration.

The Complainant also submits that it adopted its mark much prior to that of Respondent and that the Respondent has intentionally adopted disputed domain name www.michelinstar.in despite prior knowledge to make unfair gains. The Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case no. D2012-2395). The Complainant submitted that the Domain Name has otherwise been passively held since its registration (as per **Annexure 20** of complaint) and such passive holding of the Domain Name cannot constitute a bona fide offering of goods and services. As per WIPO Overview 3.0, section 3.3, previous UDRP panels have consistently found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive-holding "While 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in



breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put” (*Facebook, Inc. v. S. Demir Cilingir*, WIPO case no. D2018-2746, 28 Jan., 2019).

Thus, Arbitrator finds that Respondent’s disputed domain name is likely to mislead the consumers by creating a likelihood of confusion with the complainant’s name or mark. (*Yusuf A. Alghanism & sons WLL v Anees Salah Salahmeh* (WIPO case no. D2018-1231). The Arbitrator finds that the Respondent has registered the disputed domain name to prevent Complainant from registering or using the mark. It is evident from the evidence filed with the complaint that Respondent has no connection with trademark ‘MICHELIN’ and such use is likely to mislead the consumers of an affiliation with Complainant which amounts to bad faith registration under .IN policy.

Moreover, it is settled law that the incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith. (*Microsoft Corporation vs. Montrose Corporation*, (WIPO Case No. D2000-1568, January 25, 2001). It is also settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with the trademark is considered bad faith registration and use (*PepsiCo Ins. Vs. Wang Shaung*, INDRP case no.400, December 13, 2012).



For the aforesaid reasons, the Arbitrator finds the third ground is also established by the Complainant under the .IN Policy.

8. DECISION

On the basis of the abovesaid findings the Sole Arbitrator finds that:

- a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- b) Respondent has failed to rebut averments, contentions and submissions of the Complainant

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name www.michelinstar.in to the Complainant.

The Award is passed on this 14th September, 2021

Place: Noida



Dr. Karnika Seth
Sole Arbitrator