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ARBITRATION AWARD IN REGISTRY

(C/o National Internet Exchange of India)
Before the Sole Arbitrator, Binny Kalra
Disputed domain name: WWW.MICHELINSTARSCEF.IN

In the matter of:

INDRP Case No. 1537

Compagnie Générale des Établissements Michelin
Vs.

...Complainant

Bindhya Basini Mishra

...Respondent

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Binny Kalra

ARBITRATION AWARD

.IN REGISTRY

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Before the Sole Arbitrator, Binny Kalra

Disputed domain name: **<WWW.MICHELINSTARSCHEF.IN>**

In the matter of:

Compagnie Générale des Établissements Michelin

23 Place Des Carmes Dechaux

Clermont-Ferrand - 63000

France

Complainant

v.

Bindhya Basini Mishra

Plot 18, Flat 301, 3rd Floor,

Jakkasandra – 560034

Bangalore, Karnataka

Respondent

INDRP Case No: 1537

1. The Parties:

The Complainant in the proceedings is Compagnie Générale des Établissements Michelin (thereafter "MICHELIN"), a multinational company incorporated under the laws of France, who is represented in these proceedings by TMARK CONSEILS, 9 Avenue Percier, Paris-75008, France. The Respondent is Bindhya Basini Mishra, who is the registrant of the disputed domain name. The Respondent is not represented in these proceedings.

2. The domain name, Registrar, and Policy:



The domain name complained of is <**micheelinstarschef.in**> (hereinafter referred to as the "**Disputed Domain Name**"). The sponsoring Registrar with whom the disputed domain name is registered is indicated as GoDaddy.com LLC, IANA ID:146, URL: <www.godaddy.com>. The present arbitration is being conducted in accordance with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy ("**Policy**") and the INDRP Rules of Procedure ("**Rules**").

3. Procedural history:

- 4 April 2022: The Complainant submitted the complaint as well as schedule list of annexures along with the relevant annexures.
- 22 April 2022: The .IN Registry transmitted information of appointment of the arbitrator and circulated the complaint and its annexures to the parties.
- 25 April 2022: The panel notified the parties regarding commencement of proceedings and a period of 21 days, until 16 May 2022, was given to the Respondent to submit a statement of defence.
- 17 May 2022: No statement of defence was received from the Respondent and it was deemed to have forfeited its right in this regard. The award was reserved.

Complainant's case:

The exhaustive submissions of the Complainant in its complaint are paraphrased and summarized below. The Complainant claims the following:

- i. The Complainant was established in 1955 while its predecessor Michelin et Cie was created in the late 19th century, in Clermont-Ferrand, France. The trademark 'MICHELIN' is derived from its company name.
- ii. The activities of the Complainant include the design, manufacture, and sale of tyres for a wide variety of vehicles, as well as the publication of maps, guides, and atlases.
- iii. Its publications include the well-known Michelin Guide to restaurants which, since 1926, has used a star system when grading the top tiers of the restaurants it



reviews. The acquisition or loss of a star typically has a great impact on the success of a restaurant.

- iv. The Michelin Guide is widely available in several parts of the world, such as North America, South America (Brazil), some countries in the Asia Pacific region, and Europe. Currently, it rates over 30,000 establishments in more than 30 territories. Over 30 million copies of the guide have been sold to date and it is also available online.
- v. The association of terms "chef(s)" and "star" with the mark MICHELIN is common. The recurring association of these words can even be found on the Official Website of the Complainant <<https://guide.michelin.com>>. A search of the terms "Michelinstar" on Google <www.google.com> displays results, all of which relates to the Complainant. The copy of the display can be found at Annexure 10.
- vi. The Complainant is the registered proprietor in India of the trademark MICHELIN in classes 1, 4, 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 24, 25, 27, 35, 37, 39, 41 and 42, in relation to a diverse range of goods and services. A copy of the tabulated list of its trademark registrations in India is at Annexure 5 and Annexure 6.
- vii. The Complainant owns international registrations for the trademark MICHELIN designating India. Details of the international registrations can be found in Annexure 6.
- viii. It is the registrant of the domain name containing the MICHELIN mark as <**michelin.in**>. A copy of the same can be found in Annexure 8.
- ix. The Complainant has successfully defended its trademark rights in various cases before INDRP and WIPO regarding registrations of domain names similar to the domain registered in the present case. Numerous WIPO panels have held that the Complainant is well-known. The disputes have resulted in the disputed domain names being cancelled or transferred to the Complainant.
 - The domain names that have been transferred to the Complainant include <michelinstar.in> <michelinstar.kitchen>, <themichelinstar.club>, <themichelinstar.com>, <themichelinstar.kitchen>, <michelinstar.guide>, <michelinstar.com.au>, <michelin-guide.com>, <michelinstar.com>,

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<michelin-star.com>, <michelinstars.com>, <michelin-stars.com>, <michelinstarchefs.shop> and <michelinstarchefs.store>.

- The disputed domain names that have been cancelled are <michelinstarrecipes.com>, <michelinstars.info> and <michelinstarred.com>.

- x. One of the WIPO Arbitration and Mediation Centre decisions favouring the Complainant is Compagnie Générale des Etablissements MICHELIN-MICHELIN & Cie v. Mr Kristian Marjin van Wezel (WIPO Case No. D2001-0598, WIPO, June 2001), wherein it was held with respect to domain names <michelin-guide.com>, <michelinstar.com>, <michelin-star.com>, <michelinstars.com> and <michelin-stars.com>, that “the Complainant is the well-known tyre manufacturer. It is also the proprietor of the famous Guide Michelin. Restaurants featured in the guide are assessed and categorized by reference to a star rating known as Michelin Stars” and that “The Respondent has no rights or legitimate interests in respect of the Domain Name and that the Domain Name has been registered in bad faith and is being used in bad faith.”
- xi. Respondent is the registrant of the Disputed Domain Name which was registered on 9 February 2022 through Godaddy.com LLC. A Whois Lookup suggests the Respondent’s email to be bindhyabasinimishraa@gmail.com and that the disputed domain name was last updated on 5 April 2022.
- xii. The Disputed Domain Name used by Respondent directly refers to the activities of the mark MICHELIN in the context of the famous Guide Michelin. The likelihood of confusion is reinforced, given that these terms are broadly used in combination with the mark for decades – such as a “Chef star Michelin/Michelin Chef” being a Chef awarded by the Guide MICHELIN.
- xiii. The Respondent makes commercial use of the disputed domain name by directing the disputed domain to a Parking page of commercial links relating to the Complainant’s business in the restaurant/gastronomy sector. A copy of the same can be found in Annexure 9.
- xiv. Further, it was found on an MX Lookup that email servers <smtp.secureserver.net> and <mailstore1.secureserver.net> have been

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configured on the disputed domain name. A copy of the same can be found at Annexure 11.

4. Respondent's case:

Despite being served with a notice of commencement of Arbitration Proceedings in respect of the Disputed Domain Name by the Panel and thereafter being granted adequate time to respond, the Respondent has failed to submit any response, communication or evidence to the Panel in this matter.

5. Legal grounds:

Under Paragraph 4 of the Policy, the Complainant must establish the following three elements to succeed:

- a) the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- c) the Disputed Domain Name has been registered or is being used in bad faith.

6. Discussion and findings:

The Panel has gone through the complaint and annexures submitted by the Complainant. The three elements that the Complainant must satisfy to succeed in the Domain Name Dispute are discussed below.

A. Whether the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights

The Disputed Domain Name is <www.michelinstarschef.in>. The Complainant has shown that it has rights in the MICHELIN Marks by virtue of:

- i. prior adoption and continuous use of the distinctive trademark MICHELIN;
- ii. around 25 trademark registrations of the trademark MICHELIN in India listed at Annexure 5, including an international registration designating India;



- iii. Proprietary rights in the well-known Guide Michelin featuring a grading system for quality of restaurants known as Michelin Stars arising from decades of continuous worldwide usage of words "stars" and "chef" in combination with the trademark MICHELIN;
- iv. a successful track record of transfer or cancellation of domain names similar to the Disputed Domain Name, i.e., domain names comprising of the mark MICHELIN in conjunction with words like "stars", "chef", "kitchen", "guide" and "recipe".
- v. Aside from the <.in> TLD, the Complainant's entire mark is included in the disputed domain name which is indistinguishable from the said trademark. The addition of the words "stars" and "chef" targets the core business of Complainant in the context of the famous Guide Michelin, which ranks restaurants and their chefs through a star rating system – such as, a 'Chef star Michelin' or 'Michelin Chef'.

The Panel accepts Complainant's claim that the trademark MICHELIN is an invented term and highly distinctive in relation to the goods and services that it designates. Any use of the said trademark whether by itself or in combination with any other word/s, including "stars" and "chef", would be associated with the Complainant and its goods or services. Trademark jurisprudence laid down over the years is clear that invented words are inherently distinctive and deserve a higher degree of protection. In *The Timken Company vs Timken Services Private Ltd.* [(2013) 15 PTC 568] the Hon'ble High Court of Delhi held:

"8.12. The defendant has not offered any plausible explanation for adopting the mark "Timken". The name "Timken" is neither parental name of defendant nor in any way connected with them. The word "Timken" does not appear in the dictionary. It cannot be a mere co-incidence that the defendant had adopted the same mark for their products which was registered in the name of the plaintiff, and which have a worldwide market. As noticed earlier, the mark "Timken" is attributable to the surname of plaintiff's founder, Henry Timken. The trademark and trade name "Timken" has become distinctive of the plaintiff's goods as a result of substantially exclusive and continuous use in commerce since 1899. It appears that defendant's desire to market their goods under the name of mark



“Timken” is to trade upon and encash on the name, fame, reputation, image and goodwill acquired by the plaintiff.”

- vi. The Complainant’s trademark MICHELIN would be considered a well-known trademark, being not only inherently distinctive but having comprehensive statutory protection in India and enjoying a substantial reputation internationally and in India. The Complainant’s statutory and common law rights in the said trademark, read along with findings in preceding awards and decisions in the Complainant’s favour, persuade the Panel that the Complainant has strong and enforceable rights in the trademark. The Disputed Domain Name wholly contains the trademark MICHELIN, therefore there is a high likelihood of confusion being caused by its use.

For the above reasons, the Panel finds that the Disputed Domain Name is identical to the trademark MICHELIN in which the Complainant has rights.

B. Whether the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name

The Panel has earlier noted that the Respondent has not submitted a statement of defence to establish a bona fide offering of goods or services under the Policy. The Panel therefore takes into consideration the following facts:

- i. the Registrant does not appear to have any 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.
- ii. the Registrant does not appear to be making a legitimate non-commercial 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.
- iii. There is nothing to suggest that the Respondent, as per the details revealed by Whois Lookup, is commonly known by the Disputed Domain Name or a name corresponding to the Disputed Domain Name or that it has authorization, license or any rights to use the trademark of the Complainant.

- iv. Annexure 9 relied on by the Complainant shows that the Disputed Domain Name was being used to direct Internet users to a parking page displaying pay-per-click links which are likely to generate some commercial gains.

An attempt of the Respondent to affiliate with the Complainant is presumed considering paragraph 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") which states: "generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation".

The Respondent thus appears to have no defensible rights or any claim in respect of the Disputed Domain Name. Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

C. Whether the Disputed Domain Name has been registered or is being used in bad faith

For the purposes of Clause 4(c), in particular but without limitation, it shall be evidence of the registration and use of a domain name in bad faith if circumstances indicate that the Registrant has registered or acquired the disputed domain name –

(a) primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(b) in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) intentionally attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.



In the opinion of the Panel, it is highly unlikely that Registrant's choice of the Disputed Domain Name is accidental or coincidental given the inherently distinctive nature of the trademark MICHELIN and the Complainant's registrations that are a matter of public record. Moreover, there is a unique connection between the mark MICHELIN and the words "star" and "chef" as these connote a well-known and widely publicized aspect of the Complainant's services. The Respondent has sought to take undue advantage of the Complainant's trademark in an attempt to create a false impression that the Complainant is the source or sponsor of or affiliated with the Registrant in some manner. Such conduct gives rise to a presumption of bad faith. It is instructive to refer to paragraph 3.1.4. of the WIPO Overview which states:

"panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

The Complainant has shown at Annexure 9 that the Disputed Domain Name was being used to direct internet users to a web page displaying pay-per-click links which are likely to generate some commercial gains, which would also support a finding of bad faith. The liability of such commercial links would reside with the Respondent. Guidance in this regard is found in the WIPO Jurisprudential Overview 3.0, paragraph 3.5 which explains:

"Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name, nor would such links *ipso facto* vest a respondent with rights or legitimate interests. Neither the fact that such links are generated by a third party such as a registrar or auction platform, or their affiliate, nor the fact that the Respondent itself may not have directly profited, should by itself prevent a finding of bad faith".

In Patek Philippe S.A. v General Estates (WIPO Case No. D2008-1192), it was held that:



"A sound approach is to place liability squarely on the Respondent for such actions taken by the Registrar, inasmuch as the Respondent, being the registrant, continuously exerts control over the use of the domain name and by doing so can not only instruct the Registrar to cease use of any parking page or objectionable links thereon but also and even more importantly change a corresponding DNS (domain name system) record maintained by the Registrar"

The Panel notes that Annexure 11 shows that email servers have been configured on the Disputed Domain Name. The Complainant's apprehension that the Respondent may be engaged in a phishing scheme, and there is a risk of misuse of Complainant's valuable information through its clients or employees, or even visitors' personal data under an impression that they were dealing with the Complainant, cannot be disregarded. This apprehension may also be well founded because there is neither any evidence of actual or contemplated good faith use nor plausibility of any good faith use to which the Disputed Domain Name may be put.

In Accor v. Name Redacted (WIPO Case No. D2021-0445), the panel noted that:

"the DNS setup of the Domain Name (with active MX records), along with the composition of the Domain Name and the fact that the Respondent decided to deceptively register the Domain Name in the name of the Complainant, lead the Panel to consider that the Domain Name could be used to deceive Internet users. In these circumstances, the Domain Name constitutes a potential threat hanging over the head of the Complainant."

In view of the factors discussed above, the Panel finds that the Disputed Domain Name has been registered and is being passively held in bad faith.

Decision:

In conclusion, the Panel finds that the Complainant has succeeded in making a case for transfer of the Disputed Domain Name by meeting the criteria under paragraph 4 of the Policy.



The Panel directs that the disputed domain name <**MichelinStarsChef.in**> be transferred to the Complainant.

Signed:



(Binny Kalra)

Arbitrator

Date: 25 June 2022