

## **Dispute Resolution Service**

**DRS 20122**

### **Decision of an Independent Expert**

**Compagnie Générale des Etablissements Michelin**

and

**Jack Kozanecki**

#### **1. Parties**

Complainant: Compagnie Générale des Etablissements Michelin  
12, Cours Sablon  
Clermont-Ferrand  
Centre  
63000  
France

Respondent: Jack Kozanecki  
Mount Park Crescent 34  
London  
W5 2RR  
United Kingdom

#### **2. Domain Name**

michelinpossible.co.uk (the "Domain Name")

### **3. Procedural Background**

On 24<sup>th</sup> April 2018 the Complaint was lodged with Nominet UK Limited (“Nominet”) and it was validated on 25<sup>th</sup> April 2018. On 25<sup>th</sup> April 2018 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint, and giving him 15 business days within which to lodge a Response on or before 17<sup>th</sup> May 2018. On 15<sup>th</sup> May Nominet sent the Respondent a Response reminder. No Response was received by 17<sup>th</sup> May 2018. On 18<sup>th</sup> May 2018 Nominet sent the notification of no response to the parties. On 25<sup>th</sup> May 2018, the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 31<sup>st</sup> May 2018 Mr. Niall Lawless (“the Expert”) was appointed to act as Expert in this dispute. He is required to give his Decision by 21<sup>st</sup> June 2018. The Expert has confirmed that he knows of no reason why he could not properly accept the appointment, and knows of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence.

### **4. Outstanding Formal or Procedural Issues**

In Nominet’s 25<sup>th</sup> April 2018 Notification of Complaint letter, the Registrant is cited as 1&1 Internet Limited. In Nominet’s 18<sup>th</sup> May 2018 No Response Received letter the Registrant is cited as Mr. Jack Kozanecki. 1&1 Internet Limited were providing a WHOIS Privacy service to their customer Mr. Kozanecki, and had recorded themselves as the Registrant of the Domain Name.

The DRS Policy, section 6.1 states:-

*“Where the Domain Name is registered in the name of a privacy service that we recognise we shall notify the privacy service and in our discretion allow the WHOIS details of record to be updated.”*

As a result of the DRS Complaint 1&1 Internet Limited lifted the privacy service to reveal their customer's details. Accordingly, Mr. Kozanecki is recognised as the Registrant of the Domain Name.

### **5. Factual background**

The Complainant, Compagnie Générale des Etablissements Michelin, is a leading tyre company with its headquarters in Clermont-Ferrand, France. The Complainant operates 68 production facilities globally, and in 2016 it produced about 187 million tyres. It sells its products and services in 170 countries, and has over 110,000 employees.

The Respondent registered the Domain Name on 4<sup>th</sup> October 2017.

## **6. The Parties' contentions**

### The Complainant

The Complainant seeks transfer of the Domain Name. The Complainant says that the Respondent is not affiliated with it, or authorised by it in any way, and that the Domain Name is an abusive registration under Nominet's DRS Policy because:-

- The Respondent's use of the Domain Name creates a likelihood of confusion with the Complainant's trademarks, and could mislead Internet users into thinking that he is associated with the Complainant in some way.
- The Domain Name is confusingly similar or identical to the Complainant's trademarks and consequently, the mere existence of the Domain Name will inevitably result in the diversion of Internet traffic from the Complainant's website to the Respondent's website.
- The Domain Name is so obviously connected with the Complainant's well-known trademark that its use by the Respondent could not reasonably be for the development of legitimate activity, and suggests opportunistic bad faith.
- The Respondent has previously used the Domain Name to direct Internet users to a parking page with pay-per-clicks which are likely to generate revenues, and it cannot be inferred that the Respondent is making a legitimate non-commercial or fair use of the Domain Name.
- The Respondent has used the Domain Names to configure an e-mail server which could be used for phishing.

### The Respondent

The Respondent has not responded to the Complaint.

## **7. Discussions and Findings**

### 7.1 General

Nominet's DRS Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

- i. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or
- ii. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

## 7.2 Complainant's Rights

The Complainant is the registered proprietor of a variety of European trademarks using the term "MICHELIN" in relation to the automobile and tyre manufacturing industries. The Complainant has registered and operates websites using the "MICHELIN" trademark, for example, <michelin.com> registered on 1<sup>st</sup> December 1993 and <michelin.co.uk> registered on 22<sup>nd</sup> April 1997.

The first and dominant element of the Domain Name is "MICHELIN", which is the same as the distinctive component of the Complainant's name, and the same as the Complainant's "MICHELIN" trademarks. The addition of the generic term "possible" which although unusual does not detract from the obvious similarity with the distinctive element "MICHELIN". Because of this, based on the evaluation of all evidence presented, the Expert decides that, ignoring the ".co.uk" suffix for this purpose, the Complainant has Rights in respect of a name or mark that is very similar to the Domain Name.

## 7.3 Abusive Registration

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy. Under paragraph 5 "Evidence of Abusive Registration" guidance is given as to what factors may be evidence that the Domain Name is an Abusive Registration.

*"A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows :-*

*5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*

*5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the*

*Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;*

*5.1.1.2 as a blocking registration against a name or mark in which the Complainant has Rights; or  
5.1.1.3 for the purpose of unfairly disrupting the business of the Complainant;*

*5.1.2 Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant."*

### Confusion

In the UK, the Michelin Tyre Company Ltd was incorporated on 11<sup>th</sup> May 1905. Today it has a comprehensive sales and technical support team supporting thousands of tyre distributors in the UK and the Republic of Ireland. Over the last 100 years it has moved beyond the manufacture of tyres to economic development and publishing

The Complainant is the registered proprietor of a variety of European trademarks using the term "MICHELIN", for example UK trademark MICHELIN Reg. No. 00000691700 registered on 23<sup>rd</sup> August 1950 and covering goods in class 12; European trademark MICHELIN Reg. No. 001791243 filed on 3<sup>rd</sup> August 2000 and registered on 24<sup>th</sup> October 2001 and covering goods in classes 6, 7, 12, 17, and 28; and European trademark MICHELIN Reg. No. 005670872 filed on 23<sup>rd</sup> January 2007 and registered on 15<sup>th</sup> February 2008 and covering goods in classes 3, 4, 7, 9, 11, 12, 20, and 28.

The Complainant says that the Domain Name is confusingly similar or identical to Complainant's trademark which creates a likelihood of confusion, and could mislead Internet users into thinking that the Respondent is associated with the Complainant in some way. The Complainant says that the mere existence of the Domain Name will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site. The Complainant says that the Respondent has previously used the Domain Name to direct Internet users to a parking page with pay-per-clicks which are likely to generate revenues.

The Respondent has not responded to the Complaint.

On the date of this Expert Decision the Domain Name is not resolving to a website. However in the Complaint, the Complainant says that the Respondent has previously used the Domain Name to direct Internet users to a parking page with pay-per-clicks which are likely to generate revenues, and it cannot be inferred that the Respondent is making a legitimate non-commercial or fair use of the Domain Name. The Complainant alleges two different “parking page” abuses: the first is that the Respondent used the Domain Name to provide links to miscellaneous websites; and the second is that the Respondent used the Domain Name to point to a parking page with sponsored links related to Complainant’s field of activities. The Complainant says that on 12<sup>th</sup> December 2017 the parking page with sponsored links was disabled.

By way of supporting evidence, at Appendix 1 the Complainant provides a copy of a screenshot dated 22<sup>nd</sup> November 2017 which demonstrates links to miscellaneous websites under the headings: “Data Backup & Recovery”; “Islamic Holidays”, “Fish & Seafood”, “Fantasy Sports”, “Coatings & Adhesives”, “Thyroid Conditions”, and “Offbeat”.

In the Complainant’s bundle of documents at Appendix 3 Dreyfus & Associates in their 11<sup>th</sup> December 2017 letter to the Respondent state on the Complainant’s behalf that the Domain Name “*resolves to a parking page with sponsored links in our client’s field of activities.*” Although tenuous, this letter is evidence that the Respondent used the Domain Name to point to a parking page with sponsored links related to Complainant’s field of activities.

Under the Policy paragraph 5, one factor that may be evidence that the Domain Name is an Abusive Registration is “*Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant ...*”.

Confusion would arise where the Internet user incorrectly assumes that the website the Domain Names resolves to, and the Complainant’s other official websites are either both authorised by or belong to the Complainant.

The Expert therefore considers that it is likely that an internet user arriving at the website linked to the Domain Name would assume that it relates to goods or services provided by the Complainant, and be confused into believing that it is a domain and site owned and provided by the Complainant.

Accordingly, the Expert concludes that the Respondent's use of the Domain Name is abusive under paragraph 5.1.2 of the Policy.

#### 7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

#### 8. **Decision**

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

*Niall Lawless.*

**Niall Lawless, Nominet Expert**

**31<sup>st</sup> May 2018**