

## **DISPUTE RESOLUTION SERVICE**

**D00018479**

### **Decision of Independent Expert**

**Compagnie Générale des Etablissements Michelin**

and

**James Powell**

#### **1. The Parties**

Complainant: Compagnie Générale des Etablissements Michelin  
12 cours Sablon  
Clermont-Ferrand  
63000  
France

Respondent: James Powell  
B5 Brymau One Estate  
Chester  
Cheshire  
CH4 8RG  
United Kingdom

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

<michelinmotorcyclercyclingtyres.co.uk> (“the Domain Name”)

#### **3. Expert Declaration**

The Expert has confirmed that he is independent of each of the parties and that to the best of his knowledge and belief there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as

they might be of a such a nature as to call in to question his independence in the eyes of one or both of the parties.

#### **4. Procedural History**

03 February 2017 14:33 Dispute received  
06 February 2017 16:29 Complaint validated  
06 February 2017 16:33 Notification of complaint sent to parties  
23 February 2017 01:30 Response reminder sent  
28 February 2017 11:28 No Response Received  
28 February 2017 11:28 Notification of no response sent to parties  
10 March 2017 01:30 Summary/full fee reminder sent  
13 March 2017 10:15 Expert decision payment received  
21 March 2017 13:50 Expert appointed

#### **5. Factual Background**

The Complainant is a company headquartered in France. It is a tyre manufacturer supplying products for a wide range of vehicles including motorcycles.

The Complainant is the owner of numerous registrations for the trade mark MICHELIN in various territories throughout the world. Those registrations include European Union Trade Mark number 004836359 for MICHELIN registered on 13 March 2008 for goods and services in numerous classes.

The Domain Name was registered on 6 September 2013.

According to a screenshot exhibited by the Complainant, on 17 January 2017 the Domain Name resolved to a 123Reg parking page which included sponsored links to websites relating to tyres including “Michelin Tyres”, “Pirelly Tyres” [sic] and “Dunlop Tyres”.

#### **6. Parties’ Contentions**

##### **Complainant**

The Complainant submits that it is one of the world’s leading tyre companies, with a presence in 170 countries. It states that it has been in operation for over 100 years and is heavily committed to motor sport. The Complainant submits that its MICHELIN mark is widely perceived by the public to refer to the Complainant’s goods and services and that the mark has been found in another case under the Nominet DRS Policy (“the Policy”) to have the status of a well-known trade mark in the fields of automobiles and tyre manufacturing (*Compagnie Générale des Etablissements Michelin v. Mr Neil Harvey*, Nominet Case No. D00009108). The Complainant states that it operates active websites

providing information about its products at URLs including “www.michelin.com” and “www.michelin.co.uk”.

The Complainant contends that it has Rights in respect of a name or mark which is identical or similar to the Domain Name. The Complainant relies on its MICHELIN trade mark and states that the Domain Name comprises the mark in its entirety together with the addition of generic terms. It submits that these generic terms do not prevent the likelihood of confusion with its trade mark and indeed enhance that likelihood in this case, as they are directly linked with the Complainant’s activities. The Complainant contends that Internet users will reasonably assume that the Domain Name is linked with or endorsed by the Complainant.

The Complainant contends that the Domain Name, in the hands of the Respondent, is an Abusive Registration. The Complainant says that the Respondent is not known by the name “Michelin”, that he is not affiliated with the Complainant in any way and that the Complainant has not authorised him to use its trade mark. The Complainant submits that it is implausible that the Respondent was unaware of the Complainant’s well-known MICHELIN trade mark at the time he registered the Domain Name and that the Respondent has used the Domain Name to benefit from the Complainant’s goodwill, namely, by using the Domain Name for a parking page offering sponsored links, including links to the Complainant’s competitors’ products. The Complainant submits that the misleading use of the Domain Name to attract Internet users to the Respondent’s website is in itself abusive, even if the business carried on at that website may be genuine.

The Complainant also exhibits correspondence with the Respondent in August 2016 from which it appears that the Respondent agreed to transfer the Domain Name to the Complainant. The Complainant states that, despite this indication and various reminders, the Respondent failed to transfer the Domain Name and in fact subsequently renewed his registration.

The Complainant seeks a transfer of the Domain Name.

### **Respondent**

No Response has been submitted by the Respondent in these proceedings.

## **7. Discussions and Findings**

The Complaint falls to be determined according to the Policy. Under paragraph 2 of the Policy:

*“2.1 A Respondent must submit to proceedings under the DRS if a Complainant asserts to us, according to the Policy, that:*

2.1.1 *The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*

2.1.2 *The Domain Name, in the hands of the Respondent, is an Abusive Registration*

2.2 *The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities."*

Under paragraph 1 of the Policy the term "Rights":

*"... means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning."*

Also under paragraph 1 of the Policy, the term "Abusive Registration" means a domain name which either:

- "i. was registered or otherwise acquired in a manner which, 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. is being or has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights."*

Paragraph 5 of the Policy sets out a non-exhaustive list of factors that may be evidence that a domain name is an Abusive Registration. Paragraph 8 of the Policy sets out a non-exhaustive list of factors that may be evidence that it is not an Abusive Registration. However, all such matters are subsidiary to the overriding test for an Abusive Registration as set out as in paragraph 1 of the Policy.

### **Rights**

The Complainant has established that it is the owner of registered trade mark rights in the name and mark MICHELIN. The Expert also accepts the Complainant's submission that its MICHELIN mark is well known by the public in the areas of automobile tyres and motor sport.

The Domain Name is <michelinmotorcyclerracingtyres.co.uk>. The Expert agrees that the name comprises the Complainant's mark in its entirety together with generic or descriptive terms, namely "motorcycle", "racing" and "tyres", which are suggestive of the Complainant's business activities. In the circumstances, the Expert finds that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name.

### **Abusive Registration**

The Complainant has produced evidence, which the Respondent has not contested, that the Domain Name has been used for the purposes of a parking page which includes sponsored links to websites relating to tyres offered by competitors of the Complainant.

Under the Policy:

*“8.5 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) is not of itself objectionable under this Policy. However, the Expert will take into account:*

*8.5.1 the nature of the Domain Name;*

*8.5.2 the nature of the advertising links on any parking page associated with the Domain Name; and*

*8.5.3 that the use of the Domain Name is ultimately the Respondent’s responsibility.”*

The Expert accepts the Complainant’s submission that, given the nature of the Domain Name, Internet users are liable to assume that it is operated by or connected with the Complainant. The Expert also notes that the Respondent’s website includes links to the products of the Complainant’s competitors. In these circumstances, the Respondent’s use of the Domain Name to attract Internet users to its website takes unfair advantage of the Complainant’s rights and is objectionable under the Policy. Specifically, the Expert finds that 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 (paragraph 3(a)(ii) of the Policy).

The Expert also accepts the Complainant’s uncontradicted evidence that the Respondent agreed in correspondence to transfer the Domain Name to the Complainant but failed to do so.

The Expert concludes in all the circumstances that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

## **8. Decision**

The Complainant has established that it has Rights in respect of a name or mark that is identical or similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Complaint therefore succeeds and the Expert directs that the Domain Name <michelinmotorcyclerracingtyres.co.uk> be transferred to the Complainant.

[Signed]

**Steven A. Maier**  
Independent Expert

27 March 2017