

DISPUTE RESOLUTION SERVICE

D00022125

Decision of Independent Expert

Compagnie Générale des Etablissements Michelin

and

TITAN

1. The Parties:

Complainant: Compagnie Générale des Etablissements Michelin
23 PLACE DES CARMES-DÉCHAUX
Clermont-Ferrand
Puy-de-Dôme
63000
France

Respondent: TITAN
16 Gillshill Road
Hull
East Riding of Yorkshire
HU8 0LE
United Kingdom

2. The Domain Names:

<michelintyre.co.uk>
<rikentyres.co.uk>

3. Procedural History:

02 December 2019 15:16 Dispute received
03 December 2019 15:41 Complaint validated
03 December 2019 15:47 Notification of Complaint sent to parties
24 December 2019 01:30 Response reminder sent
31 December 2019 09:53 No Response Received
31 December 2019 09:53 Notification of no Response sent to parties
10 January 2020 15:41 Expert decision payment received

I, the undersigned Expert, confirm that I am independent of each of the parties. To the best of my 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 such a nature as to call into question my independence in the eyes of either of the parties.

4. Factual Background

The Complainant is one of the world's leading tyre companies. Its brands include MICHELIN and RIKEN, both of which are subject to extensive trade mark protection. For present purposes it is sufficient to mention two such registrations, namely:

European Union registration No. 001791243 MICHELIN (word) dated 3 August 2000 for a variety of goods and services in classes 6, 7, 12, 17 and 28.

International registration No. 622981 RIKEN (word) dated 11 July 1994 for goods in class 12.

The Domain Names were both registered on 14 April 2018 and are connected to what appear to be drafts of websites featuring the Complainant's products. At all events, the home webpage connected to the <michelintyre.co.uk> domain name features prominently the Complainant's MICHELIN trade mark and the home webpage connected to the <rikentyres.co.uk> website features prominently the Complainant's RIKEN trade mark. A banner headline at the top of each homepage contains the name and address "TYREX Ltd. [Tyres and Exhausts], 21-22 Caroline Place, Hull, HU2 8DN". At the date of the Complaint the Domain Names redirected to error pages.

On 23 August 2018 the Complainant's representative sent a cease and desist letter to Domain Privacy Protector, the privacy service in whose name the Domain Names were

then registered. The letter sought transfer of the Domain Names and the name and address of the underlying registrant. No reply was received.

On 18 June 2019 the Complainant's representative wrote in substantially similar terms "To the Registrant of the Domain Names <michelintyre.co.uk> and <rikentyres.co.uk> >" care of LCN.COM Ltd. ("LCN"), the company then listed as the registrar for the Domain Names. No reply having been received, a 'chaser' was sent on 25 June 2019.

LCN responded on 2 July 2019 stating that they were not in a position to help and recommended that the Complainant's representative approach Nominet with a view to invoking the Nominet DRS process.

The Complainant's representative followed up with a further letter to LCN drawing LCN's attention to European and UK legislation relating to the disabling of access to illegal online content and potential adverse consequences for LCN if they failed to act as requested. The correspondence appears to have ended there.

5. Parties' Contentions

The Complainant contends that its MICHELIN trade mark is identical or similar to the <michelintyre.co.uk> Domain Name and that its RIKEN trade mark is identical or similar to the <rikentyres.co.uk> Domain Name. The Complainant asserts that the Domain Names are Abusive Registrations on the following basis:

- (1) The Respondent has no connection with the Complainant. The Complainant has not authorized the Respondent to use its trade marks in this or any other way.
- (2) Any use of the Domain Names by the Respondent will infringe the Complainant's trade mark rights and will inevitably lead to confusion. Internet users will believe the websites connected to the Domain Names to be websites of the Complainant.
- (3) The websites connected to the Domain Names are error pages. Visitors will believe that there is a problem with the Complainant's websites and will go to the Complainant's competitors instead.
- (4) The nature of the Domain Names (i.e. famous tyre brand owned by the Complainant combined with the word "tyre(s)") is such that the Respondent clearly knew when it registered the Domain Names that MICHELIN and RIKEN were trade marks of a third party, the Complainant.
- (5) The Respondent therefore knew when it registered the Domain Names that it was infringing the Complainant's trade mark rights.
- (6) Such an activity cannot constitute a *bona fide* offering of goods or services such as to give rise to rights or legitimate interests in respect of the Domain Names in the hands of the Respondent.

- (7) The Respondent is not commonly known by the Domain Names and thus cannot claim rights or legitimate interests in respect of the Domain Names *via* that route.
- (8) There is evidence that “email servers have been configured on the disputed domain names and thus there might be a risk that Respondent is engaged in a phishing scheme”.

The Respondent has not responded to the Complaint.

6. Discussions and Findings

General

Pursuant to paragraph 2 of the Policy for the Complainant to succeed in this Complaint it must prove to the Expert on the balance of probabilities that:

- 2.1.1 *It 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*

“Abusive Registration” is defined in paragraph 1 of the Policy as 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.*

As noted above, the Respondent has not responded to the Complaint. Does this mean that the Complaint necessarily succeeds? No. For the Complaint to succeed the Complainant must still prove to the satisfaction of the Expert the matters set out in paragraphs 2.1.1 and 2.1.2 of the Policy and quoted above. However, pursuant to paragraph 24.8 of the Policy, the Expert will draw such inferences from the Respondent’s failure to file a Response as he considers appropriate.

Rights

Self-evidently the Complainant’s MICHELIN trade mark is similar to the <michelintyre.co.uk> Domain Name and the Complainant’s RIKEN trade mark is similar to the <rikentyres.co.uk> Domain Name and the Expert so finds.

Abusive Registration

The Expert accepts the Complainant's contention that it has no connection with the Respondent or the websites to which the Domain Names point and has given the Respondent no permission to use any of the Complainant's trade marks.

What was the Respondent's purpose in registering the Domain Name? The Respondent could have answered the question by responding to the Complaint, but elected not to do so. The Complainant contends that the Respondent's purpose was fraudulent, its intention being to impersonate the Complainant and/or one of its subsidiaries and to deceive or to defraud Internet users.

On a date unknown, but subsequent to the filing of the Complaint, the Respondent replaced the error pages connected to the Domain Names with what appear to be prototype webpages for sites promoting MICHELIN and RIKEN tyres. From the banner headline to those pages (see section 4 above), they appear to have been produced by or for a tyre company with an address in Hull, the home city of the Respondent. Thus, it would have been open to the Respondent to respond to the Complaint by arguing that its purpose in registering the Domain Names was a good faith purpose, namely to promote a business selling the Complainant's MICHELIN and RIKEN tyres. Whether or not that argument would have succeeded is another matter, but it would at least have represented a coherent response to the Complaint.

The fact that the Respondent elected not to put forward that argument or, indeed, any other argument in defence of its position, leads the Expert to infer on the balance of probabilities that the Respondent has no answer to the Complainant's contentions.

Even if the Expert were to conclude that domain names of this nature could be appropriate for use by unauthorised, but genuine, resellers of the Complainant's products, the prototype webpages to which the Domain Names are now connected would clearly render the Domain Names inappropriate. The prominent use of the Complainant's logos on those pages and the absence of any obvious disclaimer would highlight the risk present in the Domain Names that visitors to the websites would believe them to be websites of or authorised by the Complainant.

The Expert is satisfied on the evidence before it (and in the absence of any Response from the Respondent) that the Domain Names were registered in a manner which, at the time when the registrations took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

The Expert finds that the Domain Names, in the hands of the Respondent, are Abusive Registrations as defined in paragraph 1 of the Policy

7. Decision

The Expert directs that the Domain Names be transferred to the Complainant.

Signed TONY WILLOUGHBY.

Dated 18 JANUARY 2020