

## **ADMINISTRATIVE PANEL DECISION**

Compagnie Generale des Etablissements Michelin v. Andie Lahdo  
Case No. D2023-4224

### **1. The Parties**

The Complainant is Compagnie Generale des Etablissements Michelin, France, represented by Tmark Conseils, France.

The Respondent is Andie Lahdo, Sweden.

### **2. The Domain Name and Registrar**

The disputed domain name <kleber-pneumatici.com> is registered with Name SRS AB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Protected Protected, Shield Whois) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 16, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 13, 2023.

The Center appointed Gustavo Patricio Giay as the sole panelist in this matter on November 17, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

KLEBER is the creation of an American company – founded in 1870 by BF Goodrich – specialized in tyre manufacturing. In 1981, KLEBER was acquired by the Complainant.

Moreover, the Complainant claims that KLEBER has been the original equipment manufacturer since the 1990s for brands such as Peugeot, Suzuki, Opel, and Renault and to have established its reputation upon creating in 2002 the “Kléber Assistance” program which consists of a repair service operating 24 hour a day all across Europe.

Additionally, the Complainant has invented the “Dynaxer DR”, a water draining system applied to modern tread patterned tyres to serve the changing needs of farmers and in 2018 launched a new radial agricultural tyre for the North American Market.

As evidenced, the Complainant has become a major global actor in the tyre industry by offering solutions to its customers in all around the world.

The Complainant is the owner of the trademark KLEBER in many jurisdictions, including European Union Trade Mark (“EUTM”) Reg. No. 011369782, registered on April 12, 2013, in class 12; International trademark Reg. No. 725741, registered on January 5, 2000, in class 12; International trademark Reg. No. 414195, registered on February 28, 1975, in classes 7,12, and 17; and, International trademark Reg. No. 413023, registered on December 16, 1974, in classes 7,12, and 17.

Likewise, the Complainant asserts to have online presence through, among others, its primary website “www.kleber.fr” registered on 1998 and through the website “www.kleber-tyres.com” registered on January 11, 2018.

According to the evidence provided by the Complainant, the disputed domain name redirected Internet users to a commercial website “www.abswheels.se/friktionsdack/” owned by the Respondent (Annex 7). Currently, the disputed domain name resolves to an inactive website with active MX servers (Annex 8).

Lastly, the disputed domain name was registered on August 22, 2022.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is confusingly similar to its trademark KLEBER, and its domain names associated.

The Complainant contends that the Respondent has no rights or legitimate interest in respect of the disputed domain names, nor is he related in any way to the Complainant. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark KLEBER or apply for registration of the disputed domain names.

More specifically, the Complainant alleged that the Respondent has not used and/or has no demonstrable intention to use the disputed domain name except to create a likelihood of confusion with the Complainant's trademark. In fact, the Complainant claims that the Respondent has selected the disputed domain name only to intentionally lead Internet users to believe they are accessing the Complainant's website.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has trademark rights in the KLEBER mark by virtue of various trademark registrations.

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar to the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's KLEBER trademark since it incorporates the Complainant's trademark KLEBER in its entirety.

In addition, the term "pneumatici" does not prevent the Complainant's trademark from being recognizable in the disputed domain name. See section 1.8 of [WIPO Overview 3.0](#).

Moreover, the ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element of the confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Based on the above, the Panel finds that the disputed domain name is confusingly similar to the trademark KLEBER in which the Complainant has rights and considers that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

## B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interest in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name (section 2.1 of [WIPO Overview 3.0](#)). Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name and if the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); and *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Complainant has claimed not to have authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the trademark KLEBER nor is there any other evidence in the file suggesting that the Respondent has or could have rights or legitimate interests in the disputed domain name. Also, the Complainant has prior rights in the KLEBER trademark which clearly precede the Respondent's registration of the disputed domain name.

Likewise, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name. On the contrary, the Respondent's first use of the disputed domain name appeared to be merely intended to benefit from the Complainant's reputation by confusing Internet users and leading them to believe that a competing website, to which the disputed domain name redirected. Hence, as established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry."

Currently, the Panel has confirmed that disputed domain name resolves to an inactive website, which does not represent any *bona fide* offering of goods or services. Given the misleading nature of the composition of the disputed domain name, which combines the Complainant's trademark with a term descriptive of the goods provided thereunder, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Given these circumstances, the Panel finds that the Complainant has made out a *prima facie* case. Having made such *prima facie* case, the burden of production then shifted to the Respondent to refute the Complainant's assertion or to demonstrate *bona fide* use of the disputed domain name. The Respondent has not submitted a formal reply to the Complaint, and the Panel is unable to consider any reasonable basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (see *Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and considers that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy contains a non-exhaustive list of factors evidencing registration and use in bad faith. Among others, it states that it is sufficient to support a finding of bad faith the fact that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In such connection, the Complainant has submitted evidence to support that the trademark KLEBER is widely known and was registered and used many years before the Respondent registered the disputed domain name. The Respondent, when registering the disputed domain name, has targeted the Complainant's trademark KLEBER to generate confusion among the Internet users and to benefit from the Complainant's reputation.

Therefore, the Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademark KLEBER when it registered the disputed domain name. Consequently, and in accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's KLEBER trademark in the disputed domain name creates a presumption that the disputed domain name was registered on a bad faith basis.

Likewise, based on the evidence provided by the Complainant in Annex 7, the disputed domain name resolved to a competing commercial website which is associated with the Respondent (i.e. ABS Wheels Sweden AB), who is one of Sweden's leading rim and tire players online. Clearly, the Respondent should have known the existence of the Complainant when registering the disputed domain name.

The Panel finds therefore that the Respondent's use of the disputed domain name was intended to attract and mislead Internet users when searching for the Complainant's website and to redirect them to a website from which the Respondent most probably derives commercial revenue by creating a likelihood of confusion with the Complainant's trademark.

Additionally, the Panel has made some limited investigations on the use of the disputed domain name and currently the disputed domain name resolves to an inactive website. As per section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding. (See also *Telstra Corporation Limited v. Nuclear Marshmallows*, *supra*).

In view of the above given reasons, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <kleber-pneumatici.com>, be transferred to the Complainant.

*/Gustavo Patricio Giay/*

**Gustavo Patricio Giay**

Sole Panelist

Date: December 1, 2023