

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE
CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

Domain Name: *gmcdealer.ca*

Complainant: General Motors LLC

Registrant: Oliver Twist

Registrar: Internic.ca Inc.

Service Provider: Resolution Canada Inc.

Panel: Timothy C. Bourne

A. The Parties

1. The Complainant is General Motors LLC. The Registrant is Oliver Twist.

B. Disputed Domain Name and Registrar

2. The disputed domain name is *gmcdealer.ca* (the "Domain Name"). The registrar with which the Domain Name is registered is Internic.ca Inc. (the "Registrar"). The Domain Name was registered by the Registrant on March 20, 2019.

C. Procedural History

3. This is an administrative dispute resolution proceeding pursuant to the *CIRA Domain Name Dispute Resolution Policy*, version 1.3 dated August 22, 2011

(the "*Policy*") and the *CIRA Domain Name Dispute Resolution Rules*, version 1.5 dated July 28, 2014 (the "*Rules*").

4. The Complainant filed the Complaint with Resolution Canada Inc. (the "Provider") on November 20, 2019. The Provider sent by e-mail to the Registrant English and French versions of the Notice of Complaint filed by the Complainant, along with electronic versions of the Complaint and annexes thereto. The Notice of Complaint explained that the Registrant had twenty (20) days from November 25, 2019 to file a Response to the Complaint with the Provider. No Response was filed by the deadline.
5. On January 15, 2020, the Provider appointed the Panel.
6. Based on the information forwarded by the Provider, the Panel holds that all technical requirements for the commencement and maintenance of this proceeding have been established.
7. The Panel is not aware of any other legal proceeding or other arbitration in relation to the Domain Name that would create a need to alter the progress of the proceeding pursuant to paragraph 13.2 of the *Rules*.

D. Panellist Impartiality and Independence

8. As required by paragraph 7 of the *Rules*, the Panel, Timothy C. Bourne, has submitted to the Provider a declaration of impartiality and independence for this dispute.

E. Effect of Failure of Registrant to File a Response

9. Paragraph 5.8 of the *Rules* provides that "[i]f a Registrant does not submit a Response within the period for submission of a Response or any period

extended ... the Panel shall decide the Proceeding on the basis of the Complaint ...". Accordingly, the Panel will decide this matter based on the arguments submitted by the Complainant.

F. Remedy Sought

10. In accordance with paragraph 4.3 of the *Policy*, the Complainant has requested that the registration for the Domain Name be transferred to the Complainant.

G. Applicable Law

11. In accordance with paragraph 12.1 of the *Rules*, the Panel shall apply the laws of Ontario and the laws of Canada applicable within Ontario. Also, as stated in paragraph 4.2 of the *Policy* and paragraph 3.2(m) of the *Rules*, the Panel will render its decision in accordance with the *Policy* and the *Rules*.

H. Eligibility of the Complainant

12. Under paragraph 1.4 of the *Policy*, a complainant must satisfy CIRA's *Canadian Presence Requirements for Registrants* (the "CPR") unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office ("CIPO") and the complainant owns the trademark.
13. The Complainant owns four Canadian registrations for the trademark GMC and thus is an eligible complainant under the *Policy*.

I. Facts

14. The Complainant make a number of unchallenged assertions, including the following:

- the Complainant is an American corporation headquartered in Detroit, Michigan that designs, manufactures, markets and distributes vehicles and vehicle parts and provides financial services multinationally;
- General Motors Company is a division of the Complainant and primarily focuses on trucks and utility vehicles. Its websites are located at the URLs <http://www.gmc.com> and <http://www.gmccanada.ca>;
- the trademark GMC has been used in Canada since at least as early as 1912 and was first registered in Canada on November 8, 1957. Since that date, three other registrations for the trademark GMC have issued in Canada;
- the Domain Name was registered on March 20, 2019. Initially, the Domain Name resolved to a survey website promising users a free phone if they completed the survey. The website re-directed users to another website where they were required to enter credit card information to claim a prize. Subsequently, the Domain Name resolved to a pay-per-click website displaying links to the Complainant's competitors' websites;
- the Complainant issued a cease and desist letter dated September 25, 2019 to the Registrant through CIRA's Messenger Service. No response was received; and
- the Complainant received from CIRA a copy of the Registrant's portfolio of .CA domain names. The portfolio is comprised of 1,598 domain name registrations, which includes at least 65 domain names comprised of, or confusing with, third party trademarks.

J. Complainant's Contentions**i. Domain Name is Confusingly Similar to a Mark in Which the Complainant Had Rights Prior to the Domain Name Registration Date and Continues to Have Such Rights**

15. The Complainant owns Canadian registrations for the trademark GMC, each of which predate the registration of the Domain Name. The Domain Name is confusingly similar with the trademark GMC since the Domain Name fully incorporates that trademark.

ii. The Registrant Has No Legitimate Interest in the Domain Name

16. The Complainant submits that none of the enumerated circumstances constituting a legitimate interest from paragraph 3.4 of the *Policy* exist with respect to the Registrant and Domain Name.

iii. The Domain Name Was Registered in Bad Faith

17. The Complainant submits that each of the circumstances enumerated in subparagraphs 3.5(b) and 3.5(d) of the *Policy* exist. The Complainant has provided detailed arguments in support of both bad faith grounds.

K. Discussion and Finding

18. Paragraph 4.1 of the *Policy* provides that, to succeed, the Complainant must prove, on a balance of probabilities, that:

- (a) the Domain Name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the Domain Name and continues to have such Rights; and

- (b) the Registrant has registered the Domain Name in bad faith as described in paragraph 3.5.

Paragraph 4.1(c) of the *Policy* also states that the Complainant must provide some evidence that:

- (c) the Registrant has no legitimate interest in the Domain Name as described in paragraph 3.4.

L. Confusingly Similar – Paragraph 3.3 of the *Policy*

19. To satisfy this branch of the test, the Complainant must demonstrate that it had Rights in a Mark that predates the registration of the Domain Name. Also, the Complainant must demonstrate that the Domain Name is confusingly similar with the Mark.
20. The Complainant evidenced four Canadian trademark registrations for the trademark GMC, each of which issued prior to the date on which the Domain Name was registered. Thus, the Complainant's registered trademarks predate the Domain Name registration date and the registered trademarks are a proper basis for finding that the Complainant had rights in a mark prior to the date on which the Domain Name was registered.
21. The Domain Name is confusingly similar with the Complainant's trademark GMC. The Domain Name wholly incorporates the trademark GMC and adds the term "dealer". The inclusion of this term enhances the likelihood of confusion since it will suggest to consumers that the associated website derives from an authorized GMC dealer.
22. Accordingly, the Domain Name is confusingly similar with the Complainant's

trademark GMC, which was registered by the Complainant in Canada prior to the Domain Name registration date.

M. Bad Faith – Paragraph 3.5 of the *Policy*

23. The Complainant need only to demonstrate bad faith under one of the grounds provided in paragraph 3.5 of the *Policy*. Thus the Panel will address only whether bad faith exists under paragraph 3.5(b) of the *Policy*. That provision provides that the following circumstance constitutes evidence that a registrant has registered a domain name in bad faith:

the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names.

24. As few as two domain name registrations is sufficient to establish that a registrant has engaged in a "pattern" of abusive domain name registrations (see *Great Pacific Industries Inc. v. Ghalib Dhalla*, BCICAC Case No. 00009; *Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon*, *supra*; *Allergan Inc. v. Hiebert Net Inc.*, BCICAC Case No. 00058).
25. The information obtained by the Complainant from CIRA demonstrates that the Registrant has registered many more than two domain names corresponding with third party trademarks, typographical variations of such trademarks or trademarks confusing with third party trademarks, such as the domain names *addidas.ca*, *fordmotorcompany.ca*, *greyhoundcanada.ca* and

harryrosen.ca.

26. The Panel agrees that, by registering at least 65 domain names corresponding with third party trademarks, the Registrant has engaged in a pattern of registering domain names without the authority of the corresponding trademark owner. Additionally, by registering the Domain Name, the Complainant has been prevented from registering it. The Panel thus concludes that the Registrant registered the Domain Name in bad faith pursuant to paragraph 3.5(b) of the *Policy*.
27. The Panel also is persuaded by the Registrant's failure to respond to a cease and desist letter sent by counsel for the Complainant and that the Registrant has not made any submissions to the Panel, including submissions asserting that the Domain Name was not registered in bad faith.

N. Legitimate Interest – Paragraph 3.4 of the *Policy*

28. Paragraph 3.4 of the *Policy* provides that:

For the purposes of paragraphs 3.1(b) and 4.1(c), any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate that the Registrant has a legitimate interest in a domain name:

- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- (b) the Registrant registered the domain name in Canada in good faith in association with any wares, services or

business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;

- (c) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- (d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
- (e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
- (f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

In paragraph 3.4(d) "use" by the Registrants includes, but is not limited to, use to identify a web site.

29. The Complainant's unchallenged allegation is that there has never been a relationship between the Complainant and the Registrant and that the

Registrant has never been licensed or otherwise authorized to register or use the trademark GMC, including within a domain name. Based on the evidence, the Panel agrees with the Complainant's submission that the Registrant is a serial cyber squatter that owns numerous registrations for domain names that incorporate third party trademarks. Additionally, the Complainant has evidenced the Registrant's use of the Domain Name to obtain consumers' credit card information under what seems to be false pretenses. The Domain Name is clearly not used in good faith. Additionally, the Domain Name does not clearly describe any aspect of the Registrant's goods, services or business nor is there any evidence before the Panel that the Domain Name is understood to be the generic name of any goods, services or business in any language. Accordingly, the Registrant has no legitimate interest in the Domain Name under subparagraphs 3.4(a), 3.4(b) or 3.4(c) of the *Policy*.

30. Also, there is no evidence before the Panel that the Registrant has used the Domain Name for a non-commercial activity. Indeed, according to the evidence, the Domain Name likely generates pay-per-click revenue. The Registrant used the Domain Name for profit and thus the Registrant has no legitimate interest under subparagraph 3.4(d) of the *Policy*.
31. The Domain Name is not the legal name of the Registrant Oliver Twist. Nor is there any evidence or suggestion that the Domain Name is a name, surname, or other reference by which the Registrant is commonly identified. Thus, the Registrant has no legitimate interest under paragraph 3.4(e) of the *Policy*.
32. Finally, there is no evidence before the Panel that the Domain Name is a geographical name and it thus cannot constitute the geographical name of the Registrant's place of business. Accordingly, the Registrant has no legitimate interest under paragraph 3.4(f) of the *Policy*.

33. The Panel thus concludes that the Complainant has provided some evidence that the Registrant has no legitimate interest in the Domain Name. The onus thus shifts to the Registrant to prove, on a balance of probabilities, that it has a legitimate interest in the Domain Name. The Registrant has not filed any submissions disputing the Complainant's submissions or justifying its registration or use of the Domain Name and thus has failed to meet its onus.

O. Conclusion and Decision

34. For the reasons set forth above, the Panel concludes that the Complainant has established the three elements of the basis for the Complaint in accordance with their respective onuses. Thus, the Panel orders the transfer of the registration for the Domain Name to the Complainant.

January 30, 2020

A handwritten signature in black ink, appearing to be 'T.C. Bourne', written over a horizontal line.

Timothy C. Bourne
Sole Panellist