

**RESOLUTION INSTITUTE DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL**

**Case No < auDRP2302>**

**Single Member Panel Decision**

**General Motors LLC**

v.

**Phillip Joseph Thomson**

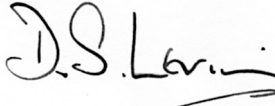

**<chevrolet.net.au>**

**FINAL DECISION**

Further to the Interim Decision in this matter issued on April 3, 2023, the Panel has received a Further Statement dated April 17, 2023 on behalf of the Complainant. It did not receive any further submission from the Respondent.

The Panel's interim decision, that this domain name licence can be allocated to the Claimant, a company incorporated in Delaware, U.S.A, as that company can establish that it falls within the eligibility requirements of the Eligibility Rules<sup>1</sup>, is confirmed. On the evidence the Claimant is the owner of a number of Australian Registered Trade Marks and the Domain Name is an exact match to the word *Chevrolet* which is the subject of the Australian Trade Marks. The Claimant therefore complies with the requirements of the .au Domain Administration Rules: Licensing, August 17 2021 (**auDA Licensing Rules**)<sup>2</sup>.

The Panel orders that the licence to the Domain Name be transferred to the Complainant.

**David Levin K.C.**

Date: April 19 2023

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<sup>1</sup> Rules applicable to eligibility and allocation for net.au 2LD  
<sup>2</sup> Paragraph 2.4.5

## RESOLUTION INSTITUTE DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL

Case No < auDRP2302>

### Single Member Panel Decision

**General Motors LLC**

v.

**Phillip Joseph Thomson**

<chevrolet.net.au>

### INTERIM DECISION

#### 1. The Parties

The Complainant is **General Motors LLC** of 300 Renaissance Centre, Detroit, Michigan 48265-3000, U.S.A. , represented by Baker McKenzie, Tower One -International Towers, Level 46, 100 Barangaroo Avenue, Sydney NSW 2000.

The Respondent is Phillip Joseph Thomson of 16A Drovers Lane, Somerville Victoria 3912. He is apparently unrepresented.

#### 2. The Domain Name and Registrar

The disputed domain name < chevrolet.net.au > (**Domain Name**) is registered with Web Address Registration Pty Ltd (**Registrar**).

#### 3. Procedural History

The Complaint was filed by email with Resolution Institute (**RI**) on February 14, 2023. It was reviewed for administrative compliance by RI on February 15, 2023. A copy of the Complaint was emailed to the Registrar on February 16, 2023. On that day, February 16, 2023 the Registrar confirmed via email that the Domain Name had been locked. RI advised auDA of the Complaint on February 22, 2023 via e-mail.

Pursuant to Paragraph 4(a) of the Rules for the auDRP (**auDRP Rules**), on February 22, 2023 RI sent the Respondent an email and written notification of the Complaint and annexures lodged against it, apparently to an address at 8 Beach St., Frankston, VIC 3199. The email apparently was received by the Respondent thereby achieving actual notice of the Complaint as prescribed by Paragraph 2(a) of the

auDRP Rules. This Complaint therefore commenced on that date in accordance with Paragraph 4(d) of the auDRP Rules.

The due date for the response to the Complaint was confirmed to be March 14, 2023.

On March 14, 2023 a response was received by RI in accordance with the requirements of Paragraph 5(a) of the auDRP Rules under cover of an email of that date from the Respondent. He provided an address at PO Box 226, Goorambat VIC 3725, together with a mobile phone number and an email address of phil@chevrolet.net.au. He attached the response to the email, stating that it was ‘our response’, although he was and is the sole Respondent.<sup>1</sup> The Panel notes that the respondent did not set out in the email any Australian Business Number.

On March 17, 2023 RI approached the proposed Panellist. The Panellist confirmed his availability, informed RI that he had no conflict issues with the named parties by signing a Statement of Impartiality and Independence and accepted the matter on March 18, 2023. The single member panel of David Levin K.C. was duly appointed on March 20, 2023 and the case file and relevant correspondence was forwarded to him on that day. The parties to the dispute were notified of the case allocation to the Panel on March 20, 2023. The Panel is satisfied that it was properly constituted.

The Panel is satisfied that the licence for this Domain Name falls within the definition of *Namespace* in the .au Dispute Resolution Policy (**auDRP**) and has at all times been subject to a mandatory administrative proceeding as prescribed in Schedule A paragraph 4(a) of the auDRP. This dispute is therefore conducted in accordance with the auDRP, the auDRP Rules and the RI’s Supplemental Rules (auDRP 2016-01) (“the Supplemental Rules”).

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

The Complainant is incorporated in Delaware in U.S.A. It is part of the group of companies owned by General Motors Corporation (**GMC**). The Complainant (including through its authorised user, General Motors Australia and New Zealand Pty Ltd, (**GMA&NZ**) and licensees) is actively involved in business in Australia under the *Chevrolet* brand.

The Complainant is the owner of various Australian Registered Trade Marks (the *Chevrolet* Marks) [see Annexure 9] including:

- (iii) Registered Trade Mark No. 65550 for *Chevrolet* (“the trade mark”) in Class 12 for “automobiles” since the registration date of 6 March 1935;

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<sup>1</sup> See further paragraph 5B below

- (iv) Registered Trade Mark No. 327821 for *Chevrolet* (“the trade mark”) in Class 37 covering "Structural and component parts and accessories for automobiles and chasses being goods included in Class 12" since the registration date of 1 February 1979;
- (v) Registered Trade Mark No. 905174 for *Chevrolet* (“the trade mark”) in various classes covering various goods in classes 6, 9, 20, 21, 22 and 25, including "metal hardware, pipes, piping, and tubing all for motor vehicle use; screws, nuts, bolts, washers and fasteners" in class 6 and "measuring, checking, testing, gauging, and signalling apparatus and instruments" in class 9 since the registration date of 4 March 2002.

The Complainant has owned registered trade mark rights in its *Chevrolet* mark for over 98 years in the US and approximately 88 years in Australia.

The Complainant owns registered rights in Australia to the *Chevrolet* “bowtie” designs depicted below and hereinafter referred to as “Chevrolet Bowtie Logo Marks”, detailed in Annexure 11. It is also the registered owner of Chevrolet “bowtie” designs in many countries around the world other than Australia, which are set out in Annexure 12.



The Complainant licenses the domain name <chevrolet.com>, which was created on 20 December 1994. The domain name <chevrolet.com.au> has been licensed since 27 October 1997 by General Motors Australia And New Zealand Pty Ltd (ABN 84 006 893 232) (**GMA&NZ**), claimed to be a wholly owned subsidiary of GMC and a part of the GM group of companies.

The *Chevrolet* mark has been used in Australia since at least 1918 in respect of vehicles, their parts and accessories.

The Complainant is the registered owner of other trade marks in many countries around the world other than Australia, which are set out in Annexure 10. The Claimant also contends that as a result of GM’s use of the *Chevrolet* mark over several decades, the trade mark has acquired a strong reputation in Australia and it is associated only with GM by members of the public. Accordingly, the public has long recognized *Chevrolet* as identifying and distinguishing products and services of GM and its authorised representatives alone.

The Respondent is Phillip Joseph Thomson who according to the Whois and Australian Business Register extracts obtained by the Complainant and exhibited to this application had at some time and

currently has an ABN of 92 587 177 975 and various addresses including as licensee of the Domain Name an address at 16A Drovers Lane, Somerville VIC 3912 and as the registered owner of the business name *Chevrolet Network Australia* (from 13 December 2022) at 21 Trewin Rd., Goorambat VIC 3725.

The Domain Name was registered with the Registrar on 18 June 2003 (**Creation Date**)<sup>2</sup> by the Respondent. According to the ASIC records exhibited by the Claimant (Annexure 17 Schedule B) a company by the name *Chevrolet Network Australia Pty Ltd* was first registered on 27 September 2007 and deregistered on 24 February 2014. The name recorded by ASIC as the ‘Previous Director’ is Joanne Paula Thomson of 16A Drovers Lane, Somerville Victoria 3912 (the same surname and the identical address to that of the Respondent). The record reveals that the company shares were equally divided between Joanne Paula Thomson and the Respondent.

In about late 2022 the Complainant discovered that the Respondent had filed a priority application for the domain name <chevrolet.au> and was the licensee of the Domain Name.

By a letter from the Complainant's solicitors (Baker McKenzie) to the Respondent dated 23 November 2022, (**cease and desist letter**)<sup>3</sup> the Claimant expressed concerns that ‘any unauthorised use of its trade marks, including as part of a domain name registrations, is likely to mislead consumers and cause confusion. It also concerned the Claimant that use of its trade marks in connection with workshop tools, accessories and hardware goods, including for automotive use, may infringe its registered trade mark rights. It claimed that the Respondent had used one or more of the Chevrolet Marks in [his] business, including by:

- trading under the name *Chevrolet Network Australia*;
- registering the domain name <chevrolet.net.au> and using that domain name to retail non-Chevrolet goods;
- using the cross device in his logo to promote and advertise his retail business involving industrial and workshops machinery and tools; and
- on his websites at [www.chevrolet.net.au](http://www.chevrolet.net.au) and [www.bowtiegarage.com.au](http://www.bowtiegarage.com.au), and that such use was without the Claimant’s authorisation or consent. It further alleged that unauthorised use of the marks would be likely to mislead or deceive consumers in the course of trade, by conveying falsely that his business, services and products are approved, endorsed, sponsored or licensed by GM. Such conduct may involve misleading and deceptive conduct contrary to the Australian Consumer Law (ACL) and the common law tort of passing off.

It requested an undertaking from the Respondent to take all necessary steps to:

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<sup>2</sup> Claim paragraph 2.15 and the documents in Annexure 6

<sup>3</sup> Set out in full in Annexure 17

- 1(a) transfer the domain name <chevrolet.net.au> to GMA&NZ; and
- 1(b) withdraw [the] priority application for the domain name <chevrolet.au>.
2. cease and forever desist from all unauthorised use of the Chevrolet Marks or any marks which are substantially identical or deceptively similar to the Chevrolet Marks, including trading under the name Chevrolet Network Australia;
3. not in future in any jurisdiction:
  - (c) to use or to apply to register:
    - (i) any Chevrolet Mark; or
    - (ii) any mark which is the subject of a Chevrolet Registration; or
    - (iii) any name, mark or brand incorporating any Chevrolet Mark or mark which is the subject of a Chevrolet Registration; or
    - (iv) any name, mark or brand which is substantially identical or deceptively similar to any Chevrolet Mark or mark which is the subject of a Chevrolet Registration, in relation to the goods or services for which the Chevrolet Registrations are registered, whether as a trade mark, business name, corporate name, domain name or any other business, service or product sign or identifier;
  - (d) to falsely represent in trade or commerce that any business, products or services have any connection, affiliation, sponsorship or association with GM or its business, services or products; and
  - (e) to aid, abet, counsel, procure or authorise any other person or entity to do any act contrary to these undertakings and representations.

There was no response to the cease and desist letter.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the domain names <chevrolet.com> and <chevrolet.com.au> and the Chevrolet Marks, which have acquired an extensive reputation in Australia and worldwide and in which the Complainant has rights, contrary to Paragraph 4(a)(i) of the auDRP.
- (ii) that the Respondent has no rights or legitimate interests in respect of the Domain Name, contrary to Paragraph 4(a)(ii) of the auDRP;
- (iii) that the Domain Name has been registered or has been subsequently being used in bad faith, contrary to Paragraph 4(a)(iii) of the auDRP.

The Complainant maintains that it has substantial global goodwill and reputation in the name and service mark ‘Chevrolet’. The Respondent has not sought to dispute this contention. The Complainant has produced evidence of the trade marks and registered designs of which it is the owner which incorporates the word ‘Chevrolet’, and which comprises the Domain Name.

The Complainant contends that the Domain Name is confusingly similar to the Complainant’s name, the trade marks and licensed domain names.

The Claimant maintains that it has given no right or interest to the Respondent which authorises the Respondent’s use of the word which comprises the Domain Name. The Respondent has not been licensed or authorised by the Complainant to register the Domain Name. The Respondent does not have any other apparent rights in the Domain Name, nor does it appear to be commonly known by the Domain Name.

The Claimant has produced documents in Annexure 17 which appear to establish that the Respondent has provided ABN 92 587 177 975 as his eligibility basis to hold the Domain Name. At that time (in 2003) the Respondent had no company or business name comprised of or including the word ‘Chevrolet’. That ABN was cancelled on 24 May 2019. After the Complainant’s representatives communicated with the Respondent by letter dated 23 November 2022 requesting the transfer of the Disputed Domain Name to the Complainant, the Respondent has since registered as a sole trader on 28 November 2022 and registered the business name Chevrolet Network Australia under ABN 92 587 177 975 on 13 December 2022

## **B. Respondent**

The Respondent has replied to the Complaint. He intersperses his contentions into a reproduction of the original Claim, which he heads ‘The Response to Proceedings’ and ‘CHEVROLET.NETwork.Australia’ (**Response**). Throughout the Response he makes his contentions under the rubric of ‘We’ although he never identifies any other party for whom he acts. The Panel interprets references to ‘we’ in the Response as an irrelevant rhetorical device.

It is important to note the issues which the Respondent does not dispute. He does not dispute the Claimant’s prior use and registrations of the trade marks detailed in Annexures 9 and 10 of the Complaint, the Chevrolet Bowtie Logo Marks detailed in Annexures 11 and 12 of the Complaint nor the rights in the domain names detailed in Annexure 13 of the Complaint. Nor does he contest the contention advanced by the Claimant that it has acquired a substantial reputation in the Chevrolet Marks and Chevrolet Bowtie Logo Marks as a result of use of the marks in Australia and worldwide

itself and by its authorised users and licensees. He does not dispute that he first obtained a licence to the Domain Name on the Creation Date. He does not dispute that he first registered the business name of Chevrolet Network Australia on 15 September 2003<sup>4</sup> and re-registered it on 13 December 2022<sup>5</sup>. The Panel infers that re-registration was probably necessary because the business name would have been cancelled when the Respondent's ABN was cancelled from 14 May 2019<sup>6</sup> although the Respondent maintains that he used this business name 'since 2003'. He does not dispute the fact that he (apparently with a Joanne Paula Thomson as director and 50% shareholder) incorporated a company under the name Chevrolet Network Australia Pty Ltd with effect from 27 September 2007 which company was subsequently deregistered on 24 February 2014<sup>7</sup>. He does not claim to hold rights in relation to trade marks in the Chevrolet mark which would give him any right or legitimate interest in the Domain Name, nor that he has never been known by a name corresponding to the Domain Name. He does not dispute that he has never been licensed or permitted by the Complainant to use the Chevrolet name or mark in a domain name or business or company name, he has never been or been connected with an authorised distributor of Chevrolet vehicles, parts or related tools and equipment; he has not acquired any trade mark rights in or to the Chevrolet name or mark and has no reputation in Australia or elsewhere in respect of it.

The Respondent's initial substantive response appears after Claim paragraph 6.3 purporting to rebut any breach of the auDRP paragraph 4(a)(i):

*"We submit that the [Domain Name] does not breach trademark, nor can there be any confusion between the two when they represent entirely different products in the marketplace. Today, they simply share similarities by name and have co-existed in the domain space as such for two decades without concern to the Complainant. In the Respondent's case, he has had a number of businesses traded under the Chevrolet Network Australia banner since 2003 and he has a right to trade under this name as per his registered Australian Business Number and ASIC Business Registration."*

He then after Claim paragraph 6.5 purports to rebut any breach of the auDRP paragraph 4(a)(ii) by contending (correctly in the Panel's view):

*"We submit that there is no requirement for a person to hold Trade Mark rights over any domain name, or name contained therein in order to register and use that domain name."*

After Claim paragraph 6.6 he submits:

*"... the Respondent has a registered Australian Business Name and Number, namely, Chevrolet Network Australia, ABN 92 587 177 975, and has used this name in his business affairs since 2003. The Complainant has submitted this fact previously. The*

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<sup>4</sup> Claim paragraph 6.9(c) and the documents in Annexure 17

<sup>5</sup> Claim paragraph 6.9 and the documents in Annexure 17

<sup>6</sup> Claim paragraph 6.9

<sup>7</sup> Claim paragraph 6.11 and the documents in Annexure 18



*[Domain Name] is in fact derived from the business name CHEVROLET NETWORK Australia.”*

The Panel observes that this submission appears to reverse the factual timeline, whereby the Domain Name was licensed to the Respondent slightly less than three months before the first registration of the business name *Chevrolet Network Australia*.

Following Claim paragraph 6.7 he further submits:

*“... the Respondent’s services do not resemble those of the Complainant in any way. The Respondent neither represents, distributes or trades in products or services related to the Complainant.”*

The Panel observes that this part of the Response appears to contradict what follows after paragraphs 6.8, 6.8(c) and 6.19, for example.

In response to paragraph 6.8, alleging that Domain Name does not appear to have been used in connection with a bona fide offering of goods or services, the Respondent submits:

*“... the Respondent did in fact legitimately register the chevrolet.net.au domain in 2003 to support a growing number of Australian based Chevrolet motor vehicle interest groups in which he is involved, including the Chevrolet Car Club of Australia, the Chevrolet Car Club of Victoria and the 55,56,57 Chevrolet Car Club of Victoria. These were early days for internet-based businesses and internet based interest groups and the subsequent ‘shopfront’ took time to develop, the email servers have been used for the Respondents business purposes since the domain was first registered. Chevrolet had few branded vehicles, merchandise, parts or services on offer to the Australian market in 2003. In fact, while Holden was the leading GM brand in the country, it was a GM decision not to sell the competing Chevrolet vehicles in Australia until the closure of the Holden brand in 2017. From 2003 until 2017, Chevrolet branded merchandise and restoration parts were only available from resellers such as Chevrolet Network Australia who sourced their products directly from the USA or via direct international mail order.”*

Responding to the Claimant’s contention in paragraph 6.8(b) that “[d]uring the period from 2006 to 2014, the ... Domain Name appears to have either hosted a website, or redirected to a website ([www.bowtiegarage.com.au](http://www.bowtiegarage.com.au)), which contained a range of unauthorised references to *Chevrolet* and other indicia associated with the Complainant’s business and marks, and expressly refers to trade in goods other than *Chevrolet* branded goods (including competitor products, Ford and Mopar)’ he states:

*“The word NETWORK in itself is defined as “a group or system of interconnected people or things”, not necessarily all things “Chevrolet”.”*

He continues, responding to the Claimant’s contentions in paragraph 6.8(c) that as a result of the Complainant’s reputation in the Chevrolet Marks, use of the Domain Name in relation to parts, accessories and tools for vehicles and related services is likely to amount to misleading and deceptive conduct in contravention of the Australian Consumer Law and could also amount to trade mark

infringement, both of which would prevent the Respondent from using the Disputed Domain Name in connection with any bona fide sale of relevant goods and/or services:

*“We submit that the Respondent respectfully registered his Sole Trader business “Chevrolet Network Australia” as a Pty Ltd Company with ASIC in 2007 when the business opened a bricks and mortar shopfront. Prior to that, trade was conducted via internet-based platforms such as eBay. The Bow-Tie Garage was an ABN registered to this Company and traded as such until 2014. The business legitimately sold Chevrolet branded merchandise and Chevrolet reproduction parts imported from large US manufacturers such as Pilot Automotive and Classic Industries. Chevrolet merchandise was also purchased through Australian wholesale distributors such as Australian Automotive Accessories. The Complainant has not carried out due diligence and identified the legitimacy of the business and submitted factual information accordingly. Instead, they have opted to rely on a very outdated and incomplete internet archive pages which do not reflect the extent of the Respondents earlier business dealings.”*

The Claimant in Claim paragraph 6.10 maintains that ownership of a business name registration for *Chevrolet Network Australia* does not, of itself, establish that the Respondent has rights or legitimate interests in the Domain Name. It argues that the critical issue<sup>8</sup> is "whether the respondent has traded under the business name or company name in good faith". The Claimant maintains that the Respondent has not traded in good faith under the business name *Chevrolet Network Australia*. It claims that the Respondent's actions upon receipt of the cease and desist letter of registering as a sole trader on 28 November 2022 and registering the business name *Chevrolet Network Australia* on 13 December 2022 is a sham attempt to create a legitimate interest or right to the Domain Name. To these allegations the Respondent submits:

*“ there is no “Sham” as the Complainant would have us believe. The Respondent had previously carried out a legitimate business and had previously used his legitimate business domain name to market that business accordingly. The word NETWORK in itself is defined as “a group or system of interconnected people or things”, not necessarily all things “Chevrolet”. The Respondent worked with an extensive number of Chevrolet enthusiast organisations, he owns a collection of Chevrolet automobiles and shares a passion for all things Chevrolet. So why wouldn’t a reference be made to something he is passionate about.”*

In responding to paragraph 6.19(a) the Respondent submits:

*“... this has no relevance to the Complainant's motives on this occasion. The business Chevrolet Network Australia and it's (sic) domain <chevrolet.net.au> has co-existed with the Complainant's interests for twenty years without concern. Even when the business operated in the related “Automotive” space, the Complainant would have us believe that the business was “illegitimate” and yet it did purchase and sell licensed Chevrolet branded products in GOOD FAITH. The Respondent is an Australian Veteran who’s business interests today are simply that of a Personnel Agency assisting Veterans with their transition from the Australian Defence Forces into other employment, not Chevrolet trademarked products. The Complainant disregards the words NETWORK AUSTRALIA in all their aforementioned points.*

<sup>8</sup>

As set out in the auDA Overview of Panel Views on Selected auDRP Questions First Edition

Further, to paragraph 6.19(b) the Respondent submits

*“... this historical detail of a (sic) what was a legitimate business has no relevance to the matter being considered today. The Bow-Tie Garage ceased trading in 2014 when the Chevrolet Network Australia Pty Ltd Company was dissolved. The Respondent continues to operate as a Sole Trader today.”*

Responding to paragraph 6.20, where the Complainant sets out its contentions as to the elements contained in paragraph 4(b)(iv) of auDRP which it claims to have established, the Respondent maintains as to 6.20(b):

*“We submit that this is nonsense. The Word Network is a group or system of interconnected people or things. In the Respondents case, it is now personnel from the Australian Defence Forces, not automotive parts or services. The Respondent has operated his business under this name for twenty years and relied on the attached email servers accordingly.”*

Further, in relation to Claim paragraph 6.20(c) the Respondent avers:

*“As already detailed, the Respondent did previously sell many Licensed Chevrolet items. As a reseller of legitimate Chevrolet merchandise and products, the Respondent had every right to include the Chevrolet brand in signwriting and advertising in his business and via his registered domain.*

To the claim in paragraph 6.21 that passive retention of the disputed domain name may constitute bad faith the Respondent submits:

*“... the Respondent has not passively held his domain at any time. The domain has been actively hosted since it was registered in 2003 to facilitate the movement of critical business-related email traffic. There was a period when internet traffic was diverted to another of its domains to make the processing of orders and correspondence more manageable.”*

To the claims made in paragraph 6.22(a) that the Domain Name does not meet the eligibility requirements set out in auDA Policy ‘2012-04 – Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs, the Respondent claims that:

*“... the domain is an acronym of the Respondents registered business and was selected for that reason. As follows: **Chevrolet.Network.Australia**”*

As to paragraph 6.22(b) the Respondent contends that:

*“... the Respondent is, and has been for many decades, a member of the Chevrolet Car Club of Australia, 55,56,57 Chevrolet Car Club of Victoria and the Chevrolet Car Club of Victoria. The Respondent owns a collection of no less than five Chevrolet motor vehicles, and his business has previously sponsored many classic car-related clubs and activities. The Complainant has not done due diligence in this regard.”*

As to paragraph 6.22 (c) he continues:

*“... the Respondent does not use the “mark” Chevrolet, simply the descriptive name of Chevrolet, as in the family name Chevrolet. There is nothing to indicate that the Respondent is currently using the disputed domain name to trade off, and benefit from, the trade mark value of the term.”*

To the claim in paragraph 6.23 that the Respondent breached the warranty in paragraph 2 of the auDA Rules [check\*\*] for failing to meet the eligibility requirements, the Respondent, without explanation, makes a bare denial:

*“Given circumstances, we submit that the Respondent has not breached the warranty and has absolutely met the applicable eligibility requirements.”*

In response to the claims in paragraph 6.24 the Respondent states as to (a):

*“... after 20 years of doing business alongside his (sic) domain and subsequent email correspondence, this domain is particularly important to the Respondent's ongoing livelihood.”*

And as to paragraph 6.24(b)

*“... this is a misrepresentation of the facts. The Respondent was simply addressing a question put to him in relation to his intentions. The matter of sale was never addressed in this context, it was simply a general discussion about the Complainant's options from that point, no offer was solicited.”*

To the allegation of the absence of any response to the cease and desist letter, save for the re-registering of the business name *Chevrolet Network Australia*, the Respondent makes the submission::

*“... the Complainant used intimidating and bullish tactics to simply try and take what they wanted. Had they approached the matter respectfully and personally, there may have been some discussion and resolution concerning the chevrolet.au domain. Instead, they would have us believe that a small Australian business, which has not traded in automotive products and services for 5 years was a threat to the mighty Chevrolet brand. The Respondent has a right to continue using his chosen name for his business, one that meets with the approval of ASIC. The words Network and Australia, differentiate the business from that of the USA based giant Chevrolet. There are many examples of domains that use the word Chevrolet in their name, many thousands of clubs and associations across the globe, made up of members that pay homage to the great American brand. So why should the Respondent not continue to use a name that captured his high regard for the Chevrolet family, something he still shares a mighty passion for?”*

To the Claimant’s rebuttal of any claim of laches or delay, and the authority there set out in support, the Respondent maintains:

*“We submit that the Complainant was happy to allow Chevrolet Network Australia to trade for twenty years alongside its chevrolet.com.au domain, and it now only opposes this because it is challenged for the rights to the chevrolet.au domain. It is relevant to note that the doctrine of laches can also apply under the auDRP if the Panel should concur.”*

Finally the Respondent rebuts any contention as to bad faith registration and/or use of the Domain Name by stating:

*“The Respondent submits that for the reasons we have outlined above, the registration of the domain name <chevrolet.net.au> has been done in GOOD FAITH at all times.”*

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining this dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

The Respondent was granted the licence for the Domain Name on the Creation Date according to the undisputed email evidence from the Registrar dated 9 November 2022 contained in Annexure 6. At that date on the evidence the Respondent had no registered business or company name which included the word *Chevrolet*. On 13 September 2003 he first registered a business name incorporating the Claimant's trade mark, namely *Chevrolet Network Australia*. That registration, three months or so after the Creation Date, did not establish the Respondent's entitlement to licence the Domain Name. The first time that he registered a relevant company was 27 September 2007 when he registered a company under the name *Chevrolet Network Australia Pty Ltd (ACN: 127 753 815)* (see Annexure 18)..

At the time of registration of the Domain Name, the Respondent did not satisfy the eligibility and allocation rules for .net.au registration as set out in Schedule E of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* in that he did not have a company, business, trading, association or statutory body name with which the disputed domain name could match exactly, for which it could be an acronym or with which it could otherwise be substantially connected. He did not acquire any entitlement to the Domain Name by becoming a shareholder in a company, the name of which included the trademarked word registered to the Complainant.<sup>9</sup>

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

The test of confusing similarity under the Policy is confined to a comparison of the disputed domain name and the name or trademark alone, independent of the other marketing and use factors usually considered in trademark infringement or unfair competition cases.<sup>10</sup> It is well established that the

<sup>9</sup> Oki Data Americas, Inc. v. ASD, Inc [WIPO Case No. D2001-0903](#)

<sup>10</sup> See BWT Brands, Inc. and British Am. Tobacco (Brands), Inc v. NABR, [WIPO Case No. D2001-1480](#) (March 26, 2002); Koninklijke Philips Elecs. N.V. v. In Seo Kim, [WIPO Case No. D2001-1195](#)

ccTLD *.net.au* is to be disregarded when determining identity or confusing similarity, and that identity or confusing similarity should be determined simply by comparing the domain name with the trade mark.

For the purposes of auDRP the Claimant must establish that the "name ... in which the complainant has rights" refers to the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority. By definition (17) of Australian presence in auDA Rules, the applicant or owner of an Australian Trade Mark can rely upon that application or registration to establish an Australian presence, but only in respect of a domain name that is an exact match of the words which are the subject of the Australian Trade Mark application or registration.<sup>11</sup> The Panel determines that the Domain Name is an exact match with the Trade Marks.

The Panel concludes that as the holder of numerous trade marks and registered designs in the name of Chevrolet or featuring the word Chevrolet outlined with a "bowtie" drawing, the Claimant has established that it had rights to the name *Chevrolet* when the Respondent registered the Domain Name on the Creation Date. The Panel rejects the contentions now made that the Domain Name is a derivation from or created from elements of the company or business name owned at different times by the Respondent. He claims that the Panel should read 'chevrolet. net.au' as a shortened name derived from *Chevrolet Network Australia*. However at the time of initial registration neither the company nor the business name were in existence. Excluding the suffix 'net.au' the Domain Name is identical to the registered trade marks and designs owned by the Claimant. They are a 'Match' under the .auDA Rules<sup>12</sup>.

Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

To succeed on this element, a Complainant may make out a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name. If such a prima facie case is made out, then the evidentiary burden shifts to the Respondent to demonstrate any such claimed rights or legitimate interests. On the evidence a prima facie case has been established that the Respondent lacks rights or legitimate interests in the Domain Name. At the Creation Date the Respondent had no business or

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(November 12, 2001); *Energy Source Inc. v. Your Energy Source*, NAF Case No. FA 96364; *Vivendi Universal v. Mr. Jay David Sallen and GO247.COM, Inc.*, [WIPO Case No. D2001-1121](#) (November 7, 2001) and the cases there cited.

<sup>11</sup> .auDA Rules paragraph 2.4.5

<sup>12</sup> 'Match' under the auDA Rules means that the domain name being applied for is identical to one, some or all of words or numbers used in the Person's legal name, business name or Australian Trade Mark.

company incorporating the word Chevrolet. When subsequently he did register any business or company name he did so without any express or implied consent or approval from the Claimant. The existence of either the business name or the company name at any date when the Domain Name was renewed does not legitimise the licence to the Domain Name. In any event the Respondent does not contend that at any time he was authorised or licensed by the Claimant to hold, license or use the Domain Name.

The Respondent did not reply to the cease and desist letter at all. Nor in response to the Complaint did he contend for or provide evidence in support of activities which might come within Paragraph 4(a)(ii) of the auDRP and demonstrate rights or legitimate interests in the Domain Name. The Panel is satisfied that the Respondent is not affiliated with the Complainant in any way. He has not been authorised by the Complainant to register or use the Domain Name nor to seek the registration of any domain name incorporating the trade mark or any design registered by the Claimant in connection with the Chevrolet brand. There is no evidence that the Respondent was commonly known by the Domain Name at the time of registration of it. There is no evidence that the Respondent has used the Domain Name in connection with a legitimate non-commercial use. The evidence discloses and the Panel accepts that from the Creation Date until about 2005 and from about October 2015 until the date of this Claim the Domain Name resolved to parking or landing pages on the Internet, leading to the presumption that the Respondent did not have rights or legitimate interests in the Domain Name<sup>13</sup> at the very least during those periods. During the period from 2006 to 2014, according to the undisputed evidence of the Claimant<sup>14</sup>, the Domain Name appears to have either hosted a website, or redirected to a website <[www.bowtiegarage.com.au](http://www.bowtiegarage.com.au)>, which contained a range of unauthorised references to *Chevrolet* and other indicia associated with the Complainant's business and marks, and expressly refers to trade in goods other than *Chevrolet* branded goods (including competitor products, Ford and Mopar). On its web page the connection is expressly made between the Bow-Tie Garage and the Claimant's Chevrolet brand, trade marks and design marks, without disclaimer or clarification of the absence of connection with the Complainant.<sup>15</sup>

The Panel determines that the Respondent has no rights or legitimate interests in the Domain Name.

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<sup>13</sup> General Motors LLC v. Hent Online LLC [WIPO Case No. D2012-2291](#)

<sup>14</sup> Claim paragraph 6.8(b) and documents in Annexure I6

<sup>15</sup> Cf GM Holden Ltd. v. Bradley John Lawless [WIPO Case No. DAU2010-0010](#)

### **C. Registered or Subsequently Used in Bad Faith**

For the purposes of paragraph 4(a)(iii) of the auDRP, if the Panel finds that

- (iii) you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location; or
- (v) if any of your representations or warranties as to eligibility or third party rights given on application or renewal are, or subsequently become, false or misleading in any manner.

it shall be evidence of the registration and use of a domain name in bad faith: see Paragraph 4(a)(iii) of the auDRP.

The Panel accepts the evidence that at the Creation Date<sup>16</sup>, the Respondent had not registered any business name including the word 'Chevrolet'. He first registered a business name *Chevrolet Network Australia* on 15 September 2003. The Respondent claims to have had a number of businesses trading under the Chevrolet Network Australia banner since 2003 and thereby claims his entitlement to trade under that name, and by inference to retain the licence to the Domain Name. He produced no evidence of the trade being conducted by himself either under the business or company name associated with the Claimant.

The Respondent's rebuttals of the Claim are entirely inconsistent with good faith registration, given that at the Creation Date he must have been well aware of the reputation and marks of the Claimant. The Panel concludes that his substantial purpose in licensing the Domain Name was probably to trade as though he was in some way affiliated to, associated with or licensed by the Claimant so to do. To his knowledge this was false. The printouts of the website provided as evidence in this case<sup>17</sup> disclose that the Respondent at no time made clear in any way that he had no connection or association with the Claimant. Indeed he accentuated his connections. He thereby intentionally attempted to attract, for commercial gain, internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location and contravened paragraph 4(a)(iii) of the auDRP.

This conclusion is reinforced, in the Panel's view, by his conduct on and after receipt of the cease and desist letter. His failure to respond is explained in an entirely unconvincing manner, which the Panel rejects. Shortly after the receipt of the cease and desist letter he registered the business name

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<sup>16</sup> See Complaint paragraph 2.15 and documents in Annexure 6

<sup>17</sup> Claim paragraph 6.8(b) and Annexure 16



Chevrolet Network Australia and revived the ABN to which that name was tied, having allowed the company Chevrolet Network Australia Pty Ltd to be deregistered on 24 February 2014. This registration is, in the determination of the Panel, an attempt to clothe the Respondent's use of the Domain Name licence with an air of false respectability or justification.

The Panel is satisfied on the evidence that the registration and subsequent use of a domain name were both in bad faith contrary to Paragraph 4(a)(iii) of the auDRP.

## **7. Decision**

For all the foregoing reasons, the Complaint is upheld. However under the auDA Rules, this domain name licence may only be allocated to a registrant who is Australian, as defined under the Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2012-04) (Eligibility Rules) for net.au domain names<sup>18</sup>. The Claimant is a company incorporated in Dalaware, U.S.A. The Panel considers that the Complainant falls within paragraph 1(e) of Schedule E the Eligibility Rules<sup>19</sup>, on the evidence that it is the owner of a number of Australian Registered Trade Marks. The Domain Name appears to be an exact match to the word Chevrolet which is the subject of the Australian Trade Marks, and therefore complies with the requirements of the .au Domain Administration Rules: Licensing, August 17 2021 (**auDA Licensing Rules**)<sup>20</sup>. Subject to the matters set out in the next paragraph, the Panel orders that the licence to the Domain Name be transferred to the Complainant provided that the Registrar determines that the Complainant is eligible to hold the Domain Name under the relevant policy rules.

If, for any reason, the Registrar determines that the Complainant is ineligible to hold the Domain Name itself under the relevant policy rules, it may be within the auDA Rules for the Domain Name to be transferred to the Complainant to be held by it for GMA&NZ. The Panel notes that a company which does not itself meet the Australian presence requirement, may hold the Domain Name on behalf of another company in its corporate group (a 'related body corporate'), as long as that related company meets the Australian presence requirement. It appears on the evidence that GMA&NZ is within the corporate group and that it is plainly capable of meeting the Australian presence requirement. However the Complainant must 'record its corporate name as it appears on the register of companies under the Corporations Act 2001 (Cth) as the Registrant'<sup>21</sup>. There is no evidence in the material before the Panel that the Complainant is entered on the register of companies under the Corporations Act 2001 (Cth).

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<sup>18</sup> Paragraph 2 of Schedule A to the Eligibility Rules

<sup>19</sup> Rules applicable to eligibility and allocation for net.au 2LD

<sup>20</sup> Paragraph 2.4.5

<sup>21</sup> Paragraph 2.2.9 of the auDA Licensing Rules

The matters in the two preceding paragraphs as to eligibility or transfer to a related body corporate were not the subject of any submissions from either the Complainant or the Respondent. The Panel will reserve the right of either party to make further submissions, limited to two A4 pages, and any evidence referred to, addressing the topic of the appropriate order for the transfer of the Domain Name for 14 days from this date. Within 7 days after the expiry of that 14 day period, the Panel will issue a final determination.



**David Levin K.C.**

Date: April 3 2023