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March 12, 2013

Nancy Volesky, Governmental Advisory Committee  
Representative of Bermuda  
Bermuda Ministry of Telecommunications and E-  
Commerce  
Director of E-Commerce

**Object:** Regulatory concerns regarding the following TIRES applications:

- TIRES applied for by Bridgestone Americas Tire Operations, LLC (Application number 1-2123-56973)
- TIRES applied for by The Goodyear Tire & Rubber Company LLC (Application number 1-1884-1217)
- TIRES applied for by Dog Edge, LLC, a subsidiary of Donuts, Inc. (Application number 1-1645-45928)

Dear Ms. Nancy Volesky,

We represent the French company Compagnie Générale des Etablissements Michelin (hereinafter referred to as Michelin) whose registered office is located at 12, Cours Sablon, 63000 Clermont-Ferrand, France.

Michelin would like to express its concerns to the GAC about the applications for the TLDs TIRES applied for by the companies Bridgestone Americas Tire Operations, LLC, The Goodyear Tire & Rubber Company LLC and Donuts, Inc., the two first ones on a closed registry model, the last one on an open-registry model.

### ***The dangers of the applications from Bridgestone and Goodyear***

Michelin noted in the application of by Bridgestone and Goodyear the intention to use the generic term TIRES for their exclusive benefits. Both applications are structured in a way that the registration of domain names will be completely controlled by the applicant and used to ensure the promotion of the products and services of the applicant only.

This raises the issue of monopoly and unfair competition.

- The delegation of a generic term describing an economic sector to one of its key players will lead to establishing a monopoly by excluding de facto other stakeholders of the tire manufacturing industry, including direct and indirect competitors;
- This monopoly will lead to a distortion of competition between stakeholders and will eliminate any competition in the online tire market. Consumers will be directed straight away to a single tire manufacturer's offers, eliminating de facto offers from competing tire manufacturers.

- Delegation of the generic term TIRES will have the opposite effect to that sought by ICANN (e.g. promotion of competition, differentiation and innovation).
- The use of a generic name by the Applicant for its own benefit may lead to consumers' confusion at best, misappropriation of clients at worst.

On a legal point of view, such applications may be viewed as infringing international treaties and national anti-trust laws, and in particular:

- Article 10bis of the Paris Convention for the Protection of Industrial Property which states:
  - (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
  - (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.
  - (3) The following in particular shall be prohibited:
    - (i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
    - (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
    - (iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.
- Article 102 of the Treaty on the Functioning of the European Union which states: "Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States."
- The Sherman Act which outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize". The Federal Trade Commission Act which bans "unfair methods of competition" and "unfair or deceptive acts or practices."

### ***The dangers of Donuts' application***

On the opposite side, Donuts' application is based on an open-registry model.

As previously indicated, the online sale of tires has exploded these last year allowing customers to benefit from lower prices and broader choice of products and services. At the same time, the counterfeiting of tires has also exploded, hosted by cybersquatted domains (the automotive/tires industry represents almost 4% of UDRP cases published by WIPO). Counterfeiting generates disappointment and frustration for customers. Beyond the economic damage, the sale of counterfeit tires leads to the endangerment of the lives of motorists.

From this point of view, Michelin is concerned by Donut's application because of the bad track-record / history of its officers and affiliates. Donuts, Inc. and its back-end registry, Demand Media, are the subject of a letter to ICANN (McCarter & English, LP – 28 July 2012 - <http://domainincite.com/docs/Ltr-re-gTLD-Applications-2012-07-28-c.pdf>). This letter blames the Applicant, Demand Media and their management for favoring cybersquatting practices.

The Demand Media has been involved in many cybersquatting activities and distributing of malwares. Indeed, UDRP panels have rendered about 40 decisions against the Demand Media Group. In these decisions, the words “typosquatting” and “cybersquatting” are used quite often. Being considered as acting in bad faith in about 40 different decisions is quite significant. Since Demand Media Group and Donuts are a single entity, the applicant of the .architect Donuts should also be considered as having acted in bad faith in these 40 decisions.

Another concern is the US Patent 7539774: “Method for domain name registration and a corresponding apparatus” assigned to Demand Media. This patent provides a way for Demand Media Group and Donuts to register numerous domain names automatically and to insert parking pages on these domain names. This patent could be used to register numerous .tires domain names and it is likely that many of these names will reproduce/imitate third parties trademark.

Michelin is extremely concerned by the potential delegation of the TLD TIRES to Donuts, Inc. The lack of suitable rules for the registration and use of domain names in the TIRES TLD may disrupt the tire economic sector, encourage the emergence of a market for counterfeit tires and ultimately put clients lives at risk.

For all the reasons listed below, we urge the GAC to recommend the ICANN Board to reject these applications.

Best regards,

A handwritten signature in black ink, consisting of a series of connected loops and a long horizontal stroke extending to the right.

Nathalie Dreyfus