

## **ADMINISTRATIVE PANEL DECISION**

Delta Dental Plans Association v. Domains By Proxy, LLC / Kwangpyo Kim  
Case No. D2022-0566

### **1. The Parties**

The Complainant is Delta Dental Plans Association, United States of America (“United States”), represented by Neal, Gerber & Eisenberg, United States.

The Respondent is Domains By Proxy, LLC, United States / Kwangpyo Kim, Republic of Korea (“Korea”), represented by ESQwire.com PC, United States.

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

The disputed domain name <deltalife.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 17, 2022. On February 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 22, 2022, 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 amendment to the Complaint on February 23, 2022.

The Center verified that the Complaint together with the amendment to the 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 March 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 1, 2022. The Response was filed with the Center on April 1, 2022. On April 20, 2022, the Complainant filed a Reply to the Respondent’s Response and on May 3, 2022, the Respondent filed a Reply to the Complainant’s additional submission.

The Center appointed Antony Gold, Larry Nodine, and Jeffrey Neuman as panelists in this matter on May 5, 2022. The Panel finds that it was properly constituted. Each member of 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**

The Complainant is a provider of dental and related services in the United States. Many of its services are provided under its brand DELTA DENTAL, but the Complainant also uses other brands incorporating the term “delta” which are protected by trade mark registrations. These include DELTALIFE, which is protected by a United States Service Mark in class 36, registered on May 11, 2021, with a first use in commerce date claimed of January 1, 2021. The Complainant has produced, as the sole evidence of use of this mark, an image of a hard copy flyer produced by its branch in Kentucky, United States, promoting a product called “DeltaLife”, which offers Term Life insurance and Short-Term Disability plans.

The disputed domain name was first registered on January 16, 1995. Since that date, it has been owned by many previous parties, including Delta Life & Annuity Company. It was acquired by the Respondent at auction, on December 21, 2021, for USD 3,555.

For a period in January 2022, the disputed domain name was listed for sale on a third party website. No price was listed, but interested parties were invited to request a sale price from the seller via the website. Through an anonymous broker, the Complainant enquired about the sale price. The first response on behalf of the Respondent stated that the disputed domain name was not for sale. In response to a further email from the broker, asking if an offer for the disputed domain name in the range of USD 1,500 to USD 2,000 might be acceptable, a further email was sent on behalf of the Respondent stating that the asking price was USD 700,000.

As at late January 2022, the disputed domain name resolved to a landing page containing pay-per-click (“PPC”) links, including for “Term Life Insurance Quotes”, “Whole Life Insurance Quotes”, and “Life Policy”. Following receipt by the Respondent of the Complaint, the PPC links on the landing page were changed so that they were travel-related.

#### **5. Parties’ Contentions**

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

The Complainant says that the disputed domain name is identical to its DELTALIFE service mark and confusingly similar to its other DELTA marks. The addition of the generic Top-Level Domain (“gTLD”) “.com” does not avoid the likelihood of confusion.

The Complainant says also that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has no relationship with the Complainant, nor has it consented to its registration of the disputed domain name. The Respondent is not commonly known by the disputed domain name, nor does he own any trade mark applications or registrations for DELTA or DELTALIFE. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, nor is he using it in connection with a *bona fide* offering of goods and services. Rather, he is using it to host a generic website that contains PPC links to third-party websites advertising or offering insurance services. Such use is not considered legitimate under the Policy even if the links had been placed by an automated relevance-matching system; see *Balglow Finance S.A., Fortuna Comércio e Franquias Ltda. v. Name Administration Inc. (BVI)*, WIPO Case No. [D2008-1216](#). Moreover, the price at which the Respondent offered to sell the disputed domain name is well in excess of its cost of acquisition and indicative of the Respondent’s expectation that the Complainant would become interested in the disputed domain name at some point in time.

Lastly, the Complainant says that the Respondent has registered and is using the disputed domain name in bad faith and with full knowledge of the Complainant's family of DELTA marks. Given the fame of those marks it is implausible that the Respondent innocently registered the disputed domain name without an intention to exploit its similarity to them. Moreover, the Respondent had constructive knowledge of its marks by virtue of the Complainant's trade mark registration for DELTALIFE; see *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#). The only reasonable conclusion to draw is that the Respondent registered and used the disputed domain name in order intentionally to attempt to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion between the Complainant's mark and the disputed domain name. In particular, registering the disputed domain name in order to resolve to a website that contains links to third party websites providing services similar to those of the Complainant amounts to bad faith use. The Respondent's bad faith is additionally demonstrated by the Respondent's offer to sell the disputed domain name to the Complainant for an amount in excess of its out-of-pocket costs.

## **B. Respondent**

The Respondent has provided a declaration in which he says that he has been investing in domain names since the year 2000 and that he regularly reviews the expired domain name auction sites to find domain names for sale. He purchased the disputed domain name because of its inherent value, in that it is a combination of two dictionary words and has been subject to significant third party use. He believed that anyone was entitled to register such common word domain names and had noted that there were other previously registered domain names with the same combination of words, including <deltalife.org>, <deltalife.tv> and <deltalife.ch>. The Respondent registers many common word or "brandable" domain names because they are easy to remember, serve well as online identities and, as a result, are commercially valuable. The Respondent seeks either to develop such domain names or to resell them. The Respondent has registered many other domain names which include the words "delta" or "life", including <deltasun.com>, <deltagolf.com>, <goldlife.com>, and <storylife.com>. The Respondent's ownership of the disputed domain name as an investment because of its increasing commercial value satisfies the second element of the Policy; see *X6D Limited v. Telepathy, Inc.*, WIPO Case No. [D2010-1519](#).

As at the date of registration of the disputed domain name, the Respondent had no awareness of the Complainant or of its use of DELTA LIFE as a mark. Accordingly, the Respondent did not register the disputed domain name with the Complainant's trade mark in mind, nor with intent either to sell it to the Complainant, nor to disrupt the Complainant's business or confuse consumers seeking the Complainant's website. The Respondent was not intending to sell the disputed domain name and his initial reply to the Complainant's broker was that the disputed domain name was not for sale. The high price quoted to the Complainant's broker when it made a follow-up enquiry was because the Respondent was offended by the low offer made to him and hoped, by his response, either to end the repeated enquiries or make a nice profit. Once the Respondent became aware of the Complainant from the Complaint, he changed the settings to the landing page of the disputed domain name so that it displayed unrelated links, having earned only nominal income whilst the potentially/allegedly infringing links were active.

The Respondent accepts that the disputed domain name is identical or similar to the Complainant's DELTA LIFE mark. However, the Respondent has rights and a legitimate interest in the disputed domain name. Where a domain name consists of generic or descriptive words, it is necessary to consider whether a respondent registered and is using the domain name to profit from the generic value of the word without taking advantage of the complainant's rights in that word; see *Bacchus Gate Corporation d/b/a International Wine Accessories v. CKV and Port Media, Inc.*, WIPO Case No. [D2008-0321](#). That the Respondent intended to profit from the generic value of the disputed domain name is evident from the other domain names he has registered which include the words "delta" or "life". Where the words in a domain name are used by many businesses extending across a range of business activities and geographical locations, a panel should find that a respondent has a legitimate interest in the domain name; see *First American Funds, Inc. v. Ult.Search, Inc.*, WIPO Case No. [D2000-1840](#).

The Respondent says also that the disputed domain name was not registered or used in bad faith. The more descriptive a mark, the harder the Complainant's burden of proof to establish registration and use with

the Complainant's mark as a target. Irrespective of whether a domain name is purchased directly from the prior owner or purchased at auction after it has expired, in the absence of specific proof of intent to profit from a complainant's mark, bad faith registration cannot be established.

The term "delta life" has been in use long prior to the Complainant's rights and domain names incorporating this term which are in active use include <delta-life.com>, <deltalife.org>, and <deltalifefitness.com>. The United States Patent and Trademark Office ("USPTO") shows 19 current or expired trade mark registrations for "Delta Life", with most pre-dating the Complaint. A Google search for "Delta Life" yields 11,400,00 results with no results relating to the Complainant on, at least, the first 3 pages of the results. In fact, the Respondent has been unable to locate any evidence of online use by the Complainant of its DELTA LIFE mark. The significant evidence of global third party use of the term "Delta Life" and the absence of any reference to the Complainant's use of it online support the Respondent's good faith purchase of the disputed domain name. Furthermore, there is no evidence of any targeting intention to benefit from the Complainant's trade mark, or those of others, and therefore no proof of cybersquatting conduct; see *Edward Don & Company v. Black Bayou LLC / Domain Administrator*, WIPO Case No. [D2008-1373](#).

In the lack of any evidence showing that the Complainant's DELTALIFE mark had any online presence, the Complainant can assert only that the Respondent should have had knowledge of the Complainant's rights. Where a panel has found constructive knowledge, it has often been because the circumstances suggest actual knowledge on the part of the Respondent. In the present case, the Complainant's use of DELTALIFE is conspicuously absent from Internet searches and so the Respondent could not have known of its use and it is not obliged to locate the Complainant's foreign trade mark registration. The significant third party use of "Delta Life" which predates the Complaint and the *de minimis* or non-existent online use by the Complainant of its mark strongly favors a finding that the Respondent could not have had the Complainant in mind when purchasing the disputed domain name. Moreover, even if the Respondent had searched the USPTO database, the results would only have confirmed that "Delta Life" is subject to multiple uses globally. The Complainant does not have superior rights to any of the many third party users of DELTALIFE whose rights predate those of the Complainant. To accede to the Complaint and remove the requirement of targeting when considering the question of bad faith registration would be to give the Complainant priority over all other potential claimants and prevent new entrants from using these words, even in different fields. Such a result is inconsistent with the language and scope of the Policy.

The Respondent has not targeted the Complainant's mark. The PPC links which appeared on its directory page, whilst active, were naturally associated with the third party results which appear when searching for "Delta Life" on Google which existed long prior to the Complainant's use. The fact that the links were auto-generated does not constitute bad faith by the Respondent if they are not specifically targeting the Complainant; see *Mariah Media Inc. v. First Place Internet Inc.*, WIPO Case No. [D2006-1275](#).

The Respondent's response to an offer to purchase is not evidence of bad faith as generic or descriptive words may be offered for sale, provided that the registration of the domain name was not undertaken with intent to profit from or otherwise abuse a complainant's trade mark rights. Moreover, seeking a high price for a domain name is not bad faith as it is reasonable to expect a registrant to seek the full price it believes to be achievable for the sale of that name.

Lastly, the Respondent requests that the Panel make a finding that the Complainant has engaged in Reverse Domain Name Hijacking. This was a calculated "Plan B" action calculated to take a valuable domain name from its rightful owner. The lack of evidence in the Complaint, coupled with the clear existence of extensive third party use and no apparent visibility of the Complainant online should have been ample warning that the Complainant's claim was without merit.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements in order to succeed in its Complaint:

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

#### **A. Supplemental Filings**

The Rules make no express provision for supplemental filings by the parties to a complaint. Paragraph 10 of the Rules provides that the Panel shall conduct the administrative proceeding in such manner as it considers appropriate, provided that the parties are treated with equality and that each party is given a fair opportunity to present its case. As explained at section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel".

The Panel has considered the Parties' supplemental filings for the purpose of deciding whether to admit them to the record. The Complainant's further filing comprises matters of argument rather than the provision of evidence responsive to factual assertions made by the Respondent, which it could not reasonably have anticipated at the date of filing its Complaint. There is no basis for admitting this filing into the record. The Respondent's further filing is responsive to the Complainant's additional submission and is therefore also not admitted.

#### **B. Identical or Confusingly Similar**

The Complainant has provided evidence of its trade mark registration for DELTALIFE, details of which are set out above.

The gTLD, that is ".com" in the case of the disputed domain name, is typically disregarded for the purposes of the comparison made under the first element, as it is a technical requirement of registration. The Panel accordingly finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

#### **C. Rights or Legitimate Interests**

In the light of the finding made by the Panel below in relation to bad faith registration, it is unnecessary for the Panel to consider the second element of the Policy.

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

The Respondent has provided evidence in the form of a statement made under penalty of perjury that he was not aware of the Complainant's DELTALIFE mark as at the date of registration of the disputed domain name. He acknowledges that he did not search any trade mark office or other database for details of any DELTALIFE trade marks nor, at that time, did he conduct a Google search to see what other users of DELTALIFE might thereby be revealed. However, he says that, prior to bidding for the disputed domain name, he had noted that there were many other domain names registered which comprised the term "delta life", including <deltalife.tv>, <deltalife.ch>, and <deltalife.com.br>.

For the purpose of considering bad faith registration, the Panel does not consider the Complainant's submissions in relation to its DELTA DENTAL mark to require further consideration as, whilst the Respondent concedes that DELTA DENTAL may be well-known, at least in the United States, it denies confusing similarity and targeting. The Panel finds DELTA DENTAL insufficiently similar to the disputed domain name for it to have been a mark which the Respondent was, on any analysis, required to consider.

The Complainant asserts that the Respondent should be deemed to have constructive knowledge of its recently registered DELTA LIFE mark. Constructive knowledge would typically be found where a complainant's mark is either very well-known or distinctive, to the extent that a respondent cannot credibly claim to have been unaware of it; see, for example, *eBay Inc. v. Renbu Bai*, WIPO Case No. [D2014-1693](#). See also section 3.2.2 of the [WIPO Overview 3.0](#) which explains that; "Application of this [constructive notice] concept may depend in part on the complainant's reputation and the strength or distinctiveness of its mark, or facts that corroborate an awareness of the complainant's mark." Having regard to the lack of any online presence of the Complainant's DELTALIFE mark, or other evidence that the Complainant's use of DELTALIFE was well known, the Panel is not prepared on these facts to impute constructive knowledge to the Respondent; see *Limited Stores, LLC v. Infinite Wireless*, WIPO Case No. [D2013-1269](#).

The Panel notes, however, that other panels have held that those in the business of buying and selling domain names have more positive obligations to avoid the registration and use of a domain name which could result in a violation of the Policy. Section 3.2.3 of the [WIPO Overview 3.0](#) explains that: "Noting registrant obligations under UDRP paragraph 2, panels have however found that respondents who (deliberately) fail to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations under the concept of willful blindness".

In these proceedings, the parties differ over whether a duty to search arises in circumstances where the composition of the disputed domain name, being a combination of two common words, is such as to have imposed a duty to search on the Respondent. The position is not as straightforward as the Respondent seeks to suggest as, whilst "delta" and "life" are themselves dictionary words, their combination has no obvious meaning and can therefore give rise to a duty to search; see, for example, *HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager*, WIPO Case No. [D2007-0062](#). Thus, the Panel believes that the Respondent, as a domain name investor, should have taken at least some steps to determine if its registration and use of the disputed domain name could result in a violation of the Policy. The fact that a search might have revealed that the disputed domain name was identical or confusingly similar to a third party's trade mark would not necessarily mean that its registration could not be undertaken or would automatically be considered to be in bad faith; see, for example, *Rolyn Companies Inc. v. Mediablue Inc.*, WIPO Case No. [D2018-0072](#). However, the discovery of third parties that may have rights in a mark to which a domain name is identical or confusingly similar, may, depending on the facts, trigger an obligation to investigate further.

The Respondent contends that, as a resident of Korea, it had no duty to conduct a search in all countries worldwide and, in particular, that it had no duty to conduct a search in the USPTO. But it could readily have conducted a search of widely available search engines such as Google or Naver (the most popular search engine in Korea). On the facts of this case and for the reasons set out below, the Panel does not consider that the Respondent was under an obligation to have undertaken a search of the USPTO database. The reason for this finding is because it is also material to have regard to what, the Respondent, as a resident of Korea, would have discovered if he had conducted an online search for "Delta Life", using Google or another comparable database.

The Panel has reviewed the three pages of the Google search provided by the Respondent for "delta" and "life". The Respondent says that it yields over 11,000,000 results for "delta life", but, in fact, a search for the combined term, rather than for the separate words, yields approximately 44,000 results. The search reveals that "Delta Life" is used as a domain name by an insurance company in the United States doing business under the domain name <delta-life.com>, a life insurance company in Bangladesh using <deltalife.org> and a fitness franchise using <deltalifefitness.com> as well as (by way of example) other variants used for a book about life in river delta regions around the world and by a Mississippi delta clothing company. Neither Party has identified any search result that identifies the Complainant or its use of "Delta Life" as a trade mark in any online search result. Indeed, the Complainant has failed to offer any evidence that its "Delta Life" mark is well-known anywhere.

It is ultimately the obligation of the Complainant to establish by a preponderance of the evidence that a reasonable online search would have put the Respondent, as a domain name investor, on notice of the



Complainant's rights. The Complainant has not done so here. Without deciding whether a respondent would ever have a duty to conduct a search of a specific country's online trade mark database, the Panel finds that, on these facts, the results of more general online (search engine) searches (such as via Google) would not have given rise to such a duty in this case. Based on the search result provided by the Respondent's counsel, the Panel finds that, had the Respondent conducted the above searches prior to its registration of the disputed domain name, it could reasonably have concluded that there were plausible non-abusive uses for the disputed domain name.

Rights in domain names would generally be considered as acquired on a first-come, first-served basis; see, for example, *Instrumentation Northwest, Inc. v. INW.COM c/o Telepathy, Inc.*, WIPO Case No. [D2012-0454](#). Accordingly, irrespective of the precise extent of the Respondent's obligation to search, the Panel considers that registration of the disputed domain name by the Respondent in the knowledge of the results referred to above, would not have been abusive. See, *Intocable, Ltd. v. Paytotake LLC*, WIPO Case No. [D2016-1048](#).

In these circumstances, the Panel finds that the Complainant has not established its burden of showing that the Respondent's registration of the disputed domain name was in bad faith. In the light of this finding, it is not necessary to consider the question of bad faith use.

### **E. Reverse Domain Name Hijacking**

Reverse Domain Name Hijacking ("RDNH") is defined under the Rules as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name". Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

The mere fact that the Complainant has not succeeded in its Complaint is insufficient to support a finding of RDNH. Section 4.16 of the [WIPO Overview 3.0](#) provides examples of reasons which have been articulated by prior UDRP panels for finding bad faith. Whilst the Complainant has not succeeded in its Complaint, the types of circumstances which prior UDRP panels have found as pointing towards bad faith, and consequently a basis for finding RDNH, are lacking in this case. The Panel therefore declines to make a finding of RDNH.

### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Antony Gold/*  
**Antony Gold**  
Presiding Panelist

*/Larry Nodine/*  
**Larry Nodine**  
Panelist

*/Jeffrey Neuman/*  
**Jeffrey Neuman**  
Panelist  
Date: May 25, 2022