

ADMINISTRATIVE PANEL DECISION

Masco Corporation and Delta Faucet Company v. Brock Jake Case No. D2024-3524

1. The Parties

The Complainants are Masco Corporation and Delta Faucet Company, United States of America (“United States”), represented by Demys Limited, United Kingdom.

The Respondent is Brock Jake, Afghanistan.

2. The Domain Name and Registrar

The disputed domain name <deltaprime.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2024. On August 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 30, 2024, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on September 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on September 5, 2024.

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

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 30, 2024.

The Center appointed Edoardo Fano as the sole panelist in this matter on October 4, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Panel has not received any requests from the Complainants or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules, and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainants are Masco Corporation and Delta Faucet Company, both of them United States companies, the second one being a wholly owned subsidiary of the first one, operating in the field of, among others, faucets, bath, and shower fixtures, and owning several trademark registrations for DELTA, among which the following ones:

- United Kingdom Trademark Registration No. UK0000312987B for DELTA, registered on May 11, 1909;
- United States Trademark Registration No. 668880 for DELTA, registered on October 28, 1958;
- United States Trademark Registration No. 2583761 for DELTA and design, registered on June 18, 2002; and
- European Union Trademark Registration No. 002901346 for DELTA, registered on July 11, 2006.

The Complainants also operate on the Internet, being "www.masco.com", "www.deltafaucet.com", and "www.deltafaucetcompany.com" their official websites.

The Complainants provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on January 25, 2024, and it resolves to an active website which appears to be a Chinese gambling website. However, when accessing the disputed domain name's subdirectories, such as "https://deltaprime.com/bathroom.html" and "https://deltaprime.com/kitchen.html", the resolving website appears to offer the Complainants' DELTA bathroom and kitchen products, prominently displaying the Complainants' trademark throughout the website, using the same colors and visual structure as the Complainants' website, as well as the Complainants' trademark hallmark and the Complainants' website address bar icon (favicon), and redirecting to the Complainants' official website at "www.deltafaucet.com".

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants state that the disputed domain name is confusingly similar to their trademark DELTA.

Moreover, the Complainants assert that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainants to register the disputed domain name or to use their trademark within the disputed domain name, it is not commonly known by the disputed domain name and it is not making either a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainants submit that the Respondent has registered the disputed domain name in bad faith, since the Complainants' trademark DELTA is distinctive and well known in the faucets, bath and shower fixtures field. Therefore, the Respondent targeted the Complainants' trademark at the time of registration of the disputed domain name and the Complainants contend that the use of the disputed domain name to impersonate the Complainants and attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainants' trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no reply to the Complainants' contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.3.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainants must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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. Consolidation of Multiple Complainants

The Complaint and the amended Complaint were filed by two Complainants, and the Complainants have requested consolidation of multiple complainants. No objection to this request was made by the Respondent.

Pursuant to the [WIPO Overview 3.0](#), section 4.11.1: "[a]ssessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation."

The Panel finds that there is sufficient evidence that the Complainants have common grievance against the Respondent, who has engaged in a conduct that has affected both of them, and that the consolidation would be procedurally efficient and equitable. The Panel further notes that the Respondent did not object to the consolidation request. The Panel therefore accepts the Complainants' consolidation request.

For the purpose of this decision, the “Complainant” will refer to both the Complainants.

B. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “primed”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a generic Top-Level Domain, in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The disputed domain name resolves to a website purportedly providing the same products as the Complainant and yet fails to disclaim its lack of relationship with the Complainant despite such prevalent use of the Complainant’s trademark and branded-goods. Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel therefore concludes that the disputed domain name is not being used in connection with a bona fide offering of goods or services.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

D. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark DELTA in the faucets, bath and shower fixtures field is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because, although the disputed domain name resolves to what appears to be a Chinese gambling website, when accessing the disputed domain name's subdirectories, such as "https://deltaprime.com/bathroom.html" and "https://deltaprime.com/kitchen.html", the resolving website appears to offer the Complainant's DELTA bathroom and kitchen products, prominently displaying the Complainant's trademark throughout the website, using the same colors and visual structure as the Complainant's website, as well as the Complainant's trademark hallmark and the Complainant's website address bar icon (favicon), and redirecting to the Complainant's official website at "www.deltafaucet.com".

The Panel further notes that the disputed domain name is also used in bad faith, since the Respondent is trying to impersonate the Complainant, likely in connection to a phishing scheme, with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation, or endorsement. Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), sections 3.1.4 and 3.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

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

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: October 8, 2024