

Delta Air Lines Inc. v. Unilever Israel Home and Personal Care Ltd

IL-DRP Panel Decision

1. The Parties

The Complainant Delta Air Lines, Inc., US based company, represented by Ms. Kelly O. Wallace, Esq, of Wellborn & Wallace, LLC, Atlanta, Georgia.

The Respondent is Unilever Israel Home and Personal Care Ltd. c/o Hanoach Cohen., of Haifa, Israel.

2. The Domain Name and Registrar

The disputed domain name <deltaairlines.co.il> is registered with Interspace, Ltd.

3. Procedural History

The Complaint was filed with ISOC-IL on September 21, 2017. The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL ("**IL-DRP**") under the IL-DRP Rules ("**Rules**").

On September 26, 2017, the IL-DRP appointed Jonathan Agmon as the sole panelist.

In accordance with the Rules, on September 27, 2016, the Panel transmitted to the Respondent by e-mail a copy of the Complaint and attached materials, providing the Respondent 15 days to respond to the Complaint.

The Respondent did not response to the complaint.

4. Factual Background

The disputed domain name <deltaairlines.co.il> was created on July 10, 2017.

The Complainant is one of the world's largest commercial airlines, generating over 36 billion dollars in annual revenue and offering carrier service to 330 destinations in 65 countries on six continents. The Complainant serves more than 160 million customers each year.

The Complainant is the owner of numerous trademark registrations for the mark DELTA and other DELTA-related trademarks worldwide. For example: US trademark registration No. 0523611 – DELTA AIR LINES, with the registration date of April 4, 1950; US trademark registration No. 0654915 - DELTA, with the registration date of November 19, 1957; US trademark registration no. 0970418 – DELTA AIR LINES, with the registration date of October 9, 1973, and many others.

The Complainant advertises and sells its travel and transportation-related services through the Internet. The Complainant developed its presence on the internet and is operating mainly through its domain name <delta.com>.

The disputed domain name <deltaairlines.co.il> is currently inactive.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the multiple trademark in which the Complainant has rights.

The Complainant further argues that the use of the Respondent in the term "Delta Airlines" in the disputed domain name is confusing in that it causes the public to believe that the Respondent is acting on behalf of Complainant, and it also violates the Complainant's trademark rights in the DELTA and DELTA AIR LINES trademarks.

The Complainant further argues that the Respondent is using the disputed domain name to send and/or receive e-mail messages to others as part of the operations of this scheme.

The Complainant further argues that it has exclusive rights in the names DELTA and DELTA AIR LINES.

The Complainant further argues that the Respondent has no right in the names DELTA or DELTA AIR LINES.

The Complainant further argues that the Respondent current use of the disputed domain name is in bad faith.

The Complainant further argues that the Respondent is using the disputed domain name as part of his illegal scheme to pose as an employee or authorized agent of the Complainant for his own personal benefit and to the injury of the Complainant and its customers.

The Complainant further argues that the Respondent behavior constitutes intentional attempt to create, for commercial gain, a likelihood of confusion with the Complainant as to the sponsorship, affiliation, or endorsement of Respondent's business operations.

For all of the above reasons, the Complainant requests the transfer of the disputed domain name to the Complainant.

B. Respondent

The Respondent did not response.

6. Discussion and Findings

The IL-DRP is an alternative dispute resolution procedure intended to provide expedited resolution to disputes regarding the allocation of domain names under the .IL ccTLD in accordance with the Rules. The Respondent submitted to this process and Rules when he applied for and registered the disputed domain name with Interspace, Ltd. registration agreement provides that the applicant for the domain name accepts the ISOC-IL registration rules (see <http://ng.interspace.net/knowledgebase.php?action=displayarticle&id=141>).

The ISOC-IL registration rules provide that "the [domain name] holder agrees to the jurisdiction of the IL-DRP." (See section 12.3). The Respondent, therefore, by applying for and registering the disputed domain name agreed to the IL-DRP and the Rules.

It is also noted that the Rules now adopted by ISOC-IL follow closely those of the Uniform Dispute Resolution Policy (UDRP) and therefore the WIPO Arbitration and Mediation Center case law (and others interpreting the UDRP) can be used as examples of how previous panels have adopted and interpreted provisions similar to the Rules and UDRP.

The Rules provide that disputes regarding the allocation of a domain name by a Holder may be brought by a Complainant on the following grounds:

- 3.1. the disputed domain name is the same or confusingly similar to a trademark, trade name, registered company name or legal entity registration ("Name") of the Complainant; and
- 3.2. the Complainant has rights in the Name; and
- 3.3. the holder has no rights in the Name; and
- 3.4. the application for allocation of the disputed domain name was made or the disputed domain name was used in bad faith.

A. Same or Confusingly Similar

It is up to the Complainant to show that the disputed domain names are the same or confusingly similar to a trademark, trade name, registered company name or legal entity registration of the complainant.

The Complainant is the owner of many trademark registrations, which consist of the mark DELTA-related trademarks. For example: US trademark registration No. 0523611 – DELTA AIR LINES, with the registration date of April 4, 1950; US trademark registration No. 0654915 - DELTA, with the registration date of November 19, 1957; US trademark registration no. 0970418 – DELTA AIR LINES, with the registration date of October 9, 1973, and many others.

The disputed domain name <deltaairlines.co.il> comprises of the Complainant's DELTA AIR LINES trademark completely with the suffix ".co.il".

The suffix ".co.il" is ignored for the purpose of determination of the similarity between the disputed domain name since it is a common suffix showing that the domain name is part of the .il domain and associated with commercial activities (.co suffix).

Previous UDRP panels have ruled that the mere addition of a non-significant element does not sufficiently differentiate the domain name from the registered trademark: "The incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark" (See *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. D2001-0505).

Also, "[t]he Panel has compared the domain name at issue with the Complainant's trademarks INFOSPACE in their entireties, and concludes that the mere addition of the word "India" at the front of the Respondent's domain name is not sufficient to distinguish it from the trademarks of the Complainant. The Panel notes that such addition appears to be made most likely with a[n] intent to induce Internet users to believe that they are connecting their computers with a site pertaining to an Indian affiliate of the Complainant, or to some kind of "Indian operation" of the Complainant (See *InfoSpace.com, Inc. v. Hari Prakash*, WIPO Case No. D2000-0076).

It is therefore, the finding of the Panel that the disputed domain name is confusingly similar to a trademark owned by the Complainant.

B. Rights in the Name

Next, it is up to the Complainant to show that the Complainant has rights in the DELTA AIR LINES trademark, and that the Respondent has no rights in the DELTA AIR LINES trademark.

The Complainant showed sufficient evidence showing it has rights in the DELTA AIR LINES trademark.

The evidence shows that the Complainant's DELTA AIR LINES trademark has gained significant goodwill, especially in Israel.

It is also up to the Complainant to show that the Respondent has no rights in the Name. The Complainant has provided that it has not approved or permitted for the Respondent to use its trademark or Name.

While the Complainant bears the "general burden of proof" under Rule 3.3, this burden shifts to the Respondent once the Complainant makes a *prima facie* showing that the Respondent lacks rights or legitimate interests. (See: Neusiedler Aktiengesellschaft v. Kulkarni, WIPO Case No. D2000-1769; see also Dow Jones & Company and Dow Jones LP v. The Hephzibah Intro-Net Project Limited, WIPO Case No. D2000-0704.)

In the present case, the Complainant alleged that the Respondent has no rights or legitimate interests in respect of the disputed domain names and the Respondent failed to assert any such rights, or legitimate interests.

The Panel finds that the Complainant established such a *prima facie* case inter alia due to the evidence provided to the Panel and due to the fact that the Complainant has not licensed or otherwise permitted the Respondent to use its DELTA AIR LINES trademark or a variation of it. The Respondent did not submit a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain names. Thus, the Respondent did not rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Application and Use in Bad Faith

Finally, it is up to the Complainant to show that the Respondent applied for allocation of the disputed domain name or the disputed domain name was used in bad faith.

WIPO Panels, relying on Rule 4.1 of the UDRP Rules, often hold that the bad faith clause provides a non-exclusive list of circumstances which can be helpful in showing that the Respondent acted in bad faith when he or she applied for or used the disputed domain name:

"For the purposes of [Paragraph 3.4 above], the following circumstances, in particular but without limitation, if found to be present, shall be evidence of the allocation or use of a domain name in bad faith:

- a. the Holder continues to hold the domain name during or after termination of employment or work for hire contract where the domain name allegedly should have been allocated to the employing/contracting party; or
- b. the Holder has requested allocation of the domain name primarily for the purpose of disrupting the business of a competitor; or circumstances indicating that the Holder has requested allocation or holds the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name allocation to the complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- c. the Holder has requested allocation of the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that there is evidence of having engaged in a pattern of such conduct; or
- d. by using the domain name, the Holder has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's Name as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location".

Rule 4.1(b) provides that this Panel can find that the Respondent acted in bad faith if there are circumstances showing that the Respondent requested allocation of the disputed domain name primarily for the purpose of disrupting the business of a competitor; or circumstances indicating that the Respondent requested allocation or holds the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name allocation to the Complainant, who is the owner of the trademark or the service mark, or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name.

The disputed domain name is confusingly similar to the Complainant's DELTA AIR LINES trademark. Previous Panels ruled that "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. D2006-1095). To this end, prior Panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark is evidence of bad faith under paragraph 4(b)(iv) of the UDRP (see *Humana Inc., op. cit. supra*; *Edmunds.com v. Ultimate Search, Inc.*, WIPO Case No. D2001-1319).

Rule 4.1(d) provides that this Panel can find that the Respondent acted in bad faith if there are circumstances showing that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's Name as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The website under the disputed domain name <deltaairlines.co.il> incorporates the Complainant's DELTA AIR LINES trademark in its entirety. There is no indication that the Respondent is associated with the Complainant's trademarks. When the Complainant's trademark is so clearly associated with the Complainant, it is suggestive that the registration of the Complainant's trademark as a domain name by the Respondent was done in bad faith.

It is also suggestive of the Respondent's bad faith when the trademark of the Complainant was registered before the allocation of the disputed domain name (See: Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735). The Complainant's DELTA AIR LINES trademark is registered in the US since the year 1950 and is well-known worldwide. The Complainant has been operating flights in and out of Israel since 1991 and now operates scheduled flights from Tel Aviv to New York. The Respondent registered the disputed domain name long after the Complainant registered its DELTA AIR LINES trademarks and after the Complainant began its services in Israel.

This Panel notes the currently there is no active use of the disputed domain name and cites with approval that "[t]he concept of a domain name being used in bad faith is not limited to positive action: inaction is within the concept" See Cho Yong Pil v. Kee Dooseok, WIPO Case No. D2000-0754. See also: "[t]he significance of the distinction is that the concept of a domain name 'being used in bad faith' is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith" (Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003).

The Panel also takes into consideration the Complainant's arguments regarding the Respondent activities, posing as an employee of the Complainant and doing business supposedly on behalf of the Complainant, the Panel notes the evidence provided by the Complainant (See annex C), and considers this behavior to be a clear indication of bad faith registration and use of the disputed domain name.

The facts established above are sufficient to establish that the Respondent had registered or is using the disputed domain name in bad faith, as provided in Rule 4.1(b) and 4.1(d).

Thus, it is the finding of the Panel that the Complainant met the burden of showing that the Respondent registered or used the disputed domain name in bad faith in accordance with Rule 3.4.

7. Decision

For all the foregoing reasons, in accordance with the Rules, the Panel orders that the domain name, <deltaairlines.co.il> be TRANSFERRED to the Complainant.



Jonathan Agmon

Sole Panelist

Date: October 23, 2017.