

ADMINISTRATIVE PANEL DECISION

Delta Plus v. Domain Admin

Case No. D2023-2698

1. The Parties

The Complainant is Delta Plus, France, represented by Cabinet Beau de Lomenie, France.

The Respondent is Domain Admin, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <deltaplus.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 June 23, 2023. On June 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint 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 July 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2023.

The Center appointed John Swinson as the sole panelist in this matter on August 23, 2023. 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.

4. Factual Background

The Complainant is a French société par actions simplifiée, registered on March 24, 1977, whose principal place of business is in France.

The Complainant is part of the Delta Plus Group of companies, being active in the design, manufacture, and distribution of Personal Protective Equipment, often called PPE.

The Complainant owns a French semi-figurative trademark registration for DELTA PLUS No. 1418110 filed on January 16, 1986. The Complainant owns trademark registrations in other countries, including for DELTA PLUS in word format.

The Respondent did not file a Response, so little information is known about the Respondent.

According to the Registrar's records, the Respondent is a person called "Domain Admin" from an unknown organization, and with an address in Monterey, California.

The disputed domain name was registered on May 14, 1995. Whois records for the disputed domain name do not indicate any change in ownership of the disputed domain name from that time.

At the present time, the disputed domain name redirects to a website at "www.romaarc.com", which promotes a business called Roma Architecture located in Albuquerque, New Mexico, United States. The website states that this business is located on a street called "Roma Ave NW". The website states: "ROMA Architecture (formerly Jon Anderson Architecture) is an award-winning architectural firm specializing in contemporary regionally-influenced design. ROMA is one of New Mexico's premier boutique architectural practices built upon over 30 years of exceptional service and quality design."

The website to which the disputed domain name redirects does not appear to use DELTA PLUS in any way.

Worldwide trademark searches, conducted by the Complainant, do not show any trademarks owned by Roma Architecture for DELTA PLUS.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that DELTA PLUS is a long-standing and well-known trademark, and that "it is impossible for any other entity, including the Respondent, to have rights or legitimate interests in the Complainant's trademark."

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. 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.

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

C. 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.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The Complainant carries the burden of proof. An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants or respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any *bona fide* documentary or other credible evidence.

Professor Nelson Rose v. Domain Manager, Star Enterprises LTD S.A, WIPO Case No. [D2021-2918](#).

The Complainant provided little evidence to demonstrate that a United States entity, in the position of the Respondent, would likely have been aware of the Complainant and would likely have registered the disputed domain name because of the Complainant's reputation in 1995 when the disputed domain name was registered. No evidence of the Complainant's reputation in 1995 was provided in the Complaint.

The Complaint includes references to the Complainant's website located at the domain name <deltaplusgroup.com>. This website, in the "Our organization" page, shows that the Complainant has a small presence in the United States at the present time. This is an "intermediate warehouse" in Shelton, Connecticut. The Complaint has no evidence of its presence or operations in the United States in 1995 when the disputed domain name was registered. The Complainant had no United States trademark registrations in 1995.

In fact, the only evidence before the Panel of the Complainant's existence in 1995 are two French trademark registrations.

The Complainant states:

"Considering that the Complainant's trademark is a well-known trademark that has been registered and used for many years and thus long predates the disputed domain name's registration, the Respondent knew of the Complainant's products and trademarks and deliberately intended to create an association with the Complainant and its business."

This assertion by the Complainant is a supposition, not evidence or proof.

The Complainant did not provide evidence to show how the disputed domain name had been used since 1995 to the present date. The Panel has reviewed records of the Wayback Machine for the disputed domain name¹. In 2004, the disputed domain name resolved to a website for the Delta Plus Financial Services, Inc. In 2006, the disputed domain name resolved to a similar looking website for the Delta Plus Commercial Mortgage Company, located in Florida, United States. According to Florida government records reviewed by the Panel, this company existed until 2010.

The Complainant apparently did not write to Roma Architecture about Roma Architecture's current use of the disputed domain name.

¹ Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 4.8.

While it is unclear to what extent the Respondent and the Roma Architecture website relate to the prior Delta Plus Commercial Mortgage Company website and use, there is no evidence before the Panel demonstrating a new registration of the disputed domain name that would help support the notion that the Respondent was aware of the Complainant and registered the disputed domain name with the aim to attract Internet users searching for the Complainant.

The Complainant included evidence to attempt to prove that the address of the Respondent in the Registrar's records was inaccurate. This evidence shows that the address provided by the Respondent is a residential address, and does not prove bad faith.

In short, there is no evidence that in 1995, when the disputed domain name was registered by the Respondent, that the Respondent was likely aware of the Complainant or registered the disputed domain name because of the Complainant. Also, there is no evidence that there has been a change of registrant of the disputed domain name after 1995.

Based on the available record, the Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: September 6, 2023