

## **ADMINISTRATIVE PANEL DECISION**

Jakob Ruben van Gelder v. Tech Ops, SyncPoint, Inc.  
Case No. D2024-3893

### **1. The Parties**

The Complainant is Jakob Ruben van Gelder, Netherlands (Kingdom of the) (“Netherlands”), represented by Bird & Bird (Netherlands) LLP, Netherlands.

The Respondent is Tech Ops, SyncPoint, Inc., United States of America (“United States”).

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

The disputed domain name <diamondpoint.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 24, 2024. On September 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 2024, 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 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 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. The Response was filed with the Center on October 12, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on October 22, 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.

#### 4. Factual Background

The Complainant is a private individual based in the Netherlands. The Complainant is also the sole share owner of a company named "Diamond Point B.V.", via an intermediate company, Jack van Gelder Holding B.V., incorporated on December 16, 1968, and claiming a company start date of June 1, 1919, of which it is also the sole shareholder and director. For present purposes, the two corporate entities may be considered as synonymous with the Complainant, given that the Complainant is the controlling mind behind each of these.

The Complainant is the operator of a Dutch luxury jewelry brand named "Diamond Point". According to the Complainant's own website, not corroborated directly from other sources on the present record, the said brand's origins date from 1904. The Complainant claims to be one of the leading (luxury) jewelry brands in the European Union, more specifically in the Benelux region. The Complainant states that its website uses the domain name <diamondpoint.net>. A historic Whois record for this domain name provided by the Respondent, dated March 24, 2015, shows that as of that date it was placed for sale via a broker. This suggests that the Complainant acquired and used the disputed domain name at some point after that date.

The Complainant claims that since 1987 it has also sold its products via "shops-in-shops" within "De Bijenkorf" stores, which the Complainant describes as Dutch luxury department stores with branches in prominent locations in the Netherlands. The Complainant adds that there is such a "shop-in-shop" in every such store. The Complainant backs up its claim with Chamber of Commerce extracts for Diamond Point B.V. showing the establishment of relevant branches of such company dating from at least July 15, 1987, in respect of Rotterdam, and September 1, 1987, in respect of The Hague, both in the Netherlands. The Complainant adds that it also sells such products via the "De Bijenkorf" official website. The Complainant provides evidence in the form of a press release dating from 2020, taken from the website at "www.debijenkorf.nl", reporting that, in 2019, the said stores received 26 million visitors and that the said website received 116 million visitors online, including international online visitors from countries such as Germany.

The Complainant is the owner of three registered trademarks for DIAMOND POINT figurative marks, the earliest of which is Benelux Registered Trademark Number 471140 for a figurative mark consisting of the capitalized words DIAMOND POINT in a white typeface superimposed on a black background under which is a monochrome design depicting the faces of a cut diamond, registered on August 1, 1990, in Classes 14, 35, and 42. The Complainant's later registered trademarks are each for the same DIAMOND POINT device consisting of capitalized letters set out so that the letter "D" surrounds the letter "P", both of these being in a grey colored stylized typeface, above the capitalized words DIAMOND POINT, each in a purple colored stylized typeface. Said trademarks are Benelux Registered Trademark Number 998674, registered on September 12, 2016, in Classes 14, 35, and 42, and European Union Registered Trademark Number 1329910, registered on October 3, 2016, in Classes 14 and 35.

According to the relative Whois record, the disputed domain name was registered on March 14, 2001. As implied in the Response, and in the absence of evidence to the contrary, the Panel assumes that the Respondent (or a closely connected predecessor entity or individual) is the original registrant of the disputed domain name. The Respondent is a corporation with a place of business in California, United States, represented by Mr. Dave Lahoti. As of August 22, 2024, the website associated with the disputed domain name consists of a page offering the disputed domain name for sale at an asking price of USD243,700, and inviting Internet users to connect with the Respondent's representative in order to discuss further. The page also states, "89+ Public Site Names Start With: DiamondPoint", under which the Complainant's <diamondpoint.net> domain name is listed among some 22 others. As of September 12, 2024, the website associated with the disputed domain name shows a static page with text stating, "DiamondPoint Ideas For The Future".

According to a dictionary definition from the Merriam-Webster Dictionary produced by the Respondent in respect of the phrase "diamond point", this term in noun form means "an instrument (such as a stylus or cutting tool) with a diamond tip", or "a diamond-shaped figure formed by intersecting rails at a railroad

diamond crossing, and one of the acute angles formed at this crossing”, and in adjective form, hyphenated as “diamond-point” means “having a point that is diamond-shaped or rhombus-shaped”. The Respondent provides a list of some 70 domain names using the term “diamondpoint” with other words, indicating that the term is used commercially for a wide variety of businesses unrelated to the Complainant’s line of business, covering goods and services from furniture to real estate. One of these domain names, <diamondpointcommunitychurch.com>, is indicative of the fact that the term “Diamond Point” also represents a geographic term.<sup>1</sup>

The Complainant produces a screenshot of the website associated with the disputed domain name from the Internet Archive “Wayback Machine” bearing to be captured on February 10, 2005 (said page itself containing an alternative date of September 5, 2007) showing a single page collection of links featuring a search facility and “Popular Categories” covering diamonds and jewelry, real estate, finance, and “Lake George”. Among these links are four for “Bijenkorf Actie”, the only words on the page that are not in the English language, representing the department store in which the Complainant maintains shops-in-shops described above.<sup>2</sup> The Complainant asserts that the word “actie” means “promotion” or “special offer” in Dutch but does not independently evidence this.

## **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 the disputed domain name is identical to the verbal element of the Complainant’s marks, and reproduces all aspects of the Complainant’s marks that are capable of being included in a domain name, adding nothing else.

The Complainant asserts that it has not authorized, licensed, approved or otherwise permitted the use of its marks by the Respondent in a domain name, adding that the website associated with the disputed domain name has offered the disputed domain name for sale, having done so for many years with an ever-increasing price, and that the page includes supposedly unregistered alternative domain names, which include the Complainant’s domain name <diamondpoint.net>. The Complainant states that such use excludes any legitimate noncommercial or fair use, is a textbook example of cybersquatting, and cannot constitute a bona fide use, noting also that the Respondent has been found in a previous decision under the Policy to have registered over 400 other domain names that include the trademarks of other companies. The Complainant asserts that the most recent use of the disputed domain name with the “Ideas For The Future” tag does not disclose a legitimate interest on the Respondent’s part.

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<sup>1</sup> The Panel identified from the related website and from the Diamond Point “Wikipedia” page that Diamond Point, New York, United States, is a community on the western shore of Lake George, and that the term also represents a geographic location in Washington, United States. With reference to the Panel conducting independent research of publicly available sources, see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8. The Panel considered putting its findings to the Parties and decided not to do so on the basis that the geographic association of the term was already identifiable to both of the Parties from the Complainant’s screenshot of the website associated with the disputed domain name dated February 10, 2005, which specifically references Lake George.

<sup>2</sup>The Panel identified from the same Internet Archive “Wayback Machine” multiple entries for the website associated with the disputed domain name predating said entry (for example, those dated September 24, 2001, May 23, 2002, July 20, 2002, and August 9, 2002) which featured similar search/links pages that make no mention of the Complainant or said department store. The Complainant did not refer to these in its evidence. The Panel determined that it was not necessary to put these to the Parties as the Complainant had produced evidence from the Internet Archive itself, and the issue of historic website entries was already live. The Complainant could be presumed to have searched earlier entries than that for February 10, 2005 when researching the past use of the disputed domain name.

The Complainant asserts that the Respondent is not commonly known by the disputed domain name, and that to the best of the Complainant's knowledge, the Respondent has no related trademark rights.

The Complainant asserts that using a domain name for cybersquatting is manifestly considered evidence of bad faith, adding that there is an absence of any conceivable good faith use on the website associated with the disputed domain name, which has offered the disputed domain name for sale for many consecutive years, suggesting that the Respondent registered the disputed domain name primarily for the purpose of selling it to a party who actually holds rights and legitimate interests therein. The Complainant points out, under reference to its own website, that it has been a well-known luxury jewelry brand in the Netherlands since 1904, has operated through De Bijenkorf stores since 1987, and has owned corresponding registered trademark rights since 1989. The Complainant asserts that it has made a tremendous investment in the promotion and protection of its marks, adding that these are exposed to millions of visitors in stores and online, and have thus become well-known trademarks. The Complainant submits that the greatest value in the disputed domain name resides in the Complainant as owner of said trademarks, adding that the screenshot of February 10, 2005 shows that the Respondent actually targeted the Complainant's business, in a clear reference to a promotion by the Complainant or at the Bijenkorf department stores.

The Complainant contends that the Respondent is an experienced domain name squatter, and that the new homepage on the website associated with the disputed domain name does not change the fact that the Respondent has registered and extensively used the disputed domain name primarily to sell it at a premium to a legitimate domain name holder.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent contends that it registered the disputed domain name in 2001 with the intent of ownership due to its inherently descriptive nature, denying any knowledge of the Complainant's trademarks or business operations at that time. The Respondent asserts that the term is a common phrase in widespread use across multiple industries and refers descriptively to an instrument with a diamond tip. The Respondent submits that numerous business and trademark registrations around the world, unrelated to the Complainant, use this term, adding that it is not exclusive to the Complainant's brand.

The Respondent notes that it owns numerous domain names containing the word "point", demonstrating a consistent pattern in naming, and providing examples, such as <countrypoint.com> and <matrixpoint.com>. The Respondent states that its interest in the disputed domain name is consistent with a business strategy of owning descriptive and memorable domain names that align with its naming conventions.

The Respondent asserts that the disputed domain name was registered before the Respondent had any knowledge of the Complainant's business or trademarks, which were primarily known in the Netherlands, adding that any pay-per-click ("PPC") advertisements that appeared on the website associated with the disputed domain name in the past were automatically generated by third party advertising services and that the Respondent had no control over the content or any potential references to the Complainant. The Respondent adds that the references to it having registered 400 domain names lack any evidential foundation and should be dismissed as hearsay.

The Respondent submits that the Complainant's mark is not famous, adding that over the years the Respondent has received several offers for the disputed domain name from various interested parties, demonstrating the cross-industry market appeal, and noting that its decision to list the disputed domain name for sale occasionally was a standard business practice to address cashflow needs, rather than an attempt to exploit the Complainant's brand.

The Respondent states that the Complainant waited over two decades to file the Complaint despite claiming rights dating back to 1989, adding that the doctrine of laches should be applied, as such delay demonstrates

a lack of legitimate urgency or interest on the Complainant's part. Excessive delay should preclude any claim of bad faith. The Respondent notes that the Complainant only acquired <diamondpoint.net> after 2015, long after the Respondent's registration of the disputed domain name, adding that this further undermines the Complainant's position.

The Respondent provides additional context on previous cases relating to domain names in which the Respondent has been involved, noting that while it lost some cases, it won and settled others, and asserting that even if cybersquatting allegations in such cases were valid, they bear no relevance to the present Complaint as the facts are distinct. The Respondent adds that it was a sole proprietor at the time of the previous cases and has incorporated since then, noting that it has a history of successfully defending its domain name registrations in nearly a dozen cases under the Policy over the past 15 or more years, which "victories" demonstrate its good faith in domain name acquisitions.

The Respondent asserts that a finding of Reverse Domain Name Hijacking should be made, due to the clear lack of merit in the Complainant's case. The Respondent adds that the Complainant's counsel should have anticipated the weakness of such case, given the Parties' geographical separation, the descriptive nature of "diamond point", and the fact that the Complainant apparently did not have a website until acquiring <diamondpoint.net> in around 2016.

## **6. Discussion and Findings**

### **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 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 Panel finds the mark is recognizable 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.

To the extent that the Complainant's mark is figurative in nature, the graphical element of the mark (being a stylized rendering of the capitalized words "DIAMOND POINT" in a sans serif typeface, superimposed on a black square with white cut diamond motif) is readily severable from the textual element for comparison purposes. [WIPO Overview 3.0](#), section 1.10.

The Respondent's allegations that the term "diamond point" is a common phrase in widespread use across multiple industries and has a dictionary meaning are not relevant to the first element assessment, although they may be relevant to the second and third element assessments.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's findings in connection with the third element under the Policy, no good purpose would be served by addressing the issue of the Respondent's rights or legitimate interests in the disputed domain name.

### C. Registered and Used in Bad Faith

The Complainant's case is focused on an alleged primary intention on the Respondent's part to register the disputed domain name in order to sell it to the Complainant for valuable consideration in excess of its documented out-of-pocket costs, conform to paragraph 4(b)(i) of the Policy. In order for the Complainant to prove such a case, it must demonstrate at least that the Respondent registered the disputed domain name with knowledge of the Complainant and its rights, and with intent to target these.

For its part, the Respondent asserts that it had no such knowledge or intent, and that it invests in domain names consisting of dictionary words or phrases (including other examples of those ending in the word "point") for resale and future exploitation. Meanwhile, the history of the website associated with the disputed domain name shows that it was used for the publication of advertising links from 2001, with specific links referencing the Complainant's department store partner appearing on one occasion in 2005, and later, that said website offered the disputed domain name for sale and invited interested parties to make contact with the Respondent's principal.

The evidence that the Complainant puts forward of the Respondent's likely knowledge of the Complainant or its rights focuses on an assertion that the Complainant has been trading since 1904, and that its mark is famous due to its prominent collaboration with the "De Bijenkorf" luxury department stores since 1987. A problem for the Complainant's case is that the evidence that it has brought forward regarding the length of its trading history is mostly self-generated and/or of recent date. It does not independently establish the fame of the Complainant's mark at the date of registration of the disputed domain name in 2001. For example, the Complainant shows the substantial notoriety of the "De Bijenkorf" stores in 2019, in which year they received 26 million visitors and their related website received 116 million online visitors. This does not translate into notoriety of the Complainant or its mark in 2001 that might have come to the Respondent's attention. Furthermore, the Respondent shows that the Complainant's own website at <diamondpoint.net> is unlikely to have been in operation prior to 2015, as a corresponding historic Whois entry shows that the said domain name was apparently being offered for sale by a third party at that time. Such website could not therefore have come to the Respondent's attention in 2001. While it has been evidenced that the Complainant's store collaborations began in 1987, there is no evidence as to when the "De Bijenkorf" stores' own website went live and as to the date on which this first featured the Complainant's products and brand. Consequently, there is no evidence that the Respondent (being based in the United States) would have been aware of the Complainant or its rights by virtue of, for example, a prominent website of the Complainant or a prominent website operated by the department store concerned.

The Complainant does however show that the Respondent directly referred to the Complainant's department store partner on one occasion in 2005 via the website associated with the disputed domain name. This is sufficient to suggest the Respondent's likely knowledge of the Complainant's rights as of that date, albeit some four years after the Respondent registered the disputed domain name. Importantly, the earlier historic screenshots of the said website make no such reference to said department store, nor any reference to the Complainant.

What the Complainant would have the Panel believe, therefore, is that the Respondent registered the disputed domain name in 2001 with the intent of targeting the Complainant's rights (which it knew of by some manner that is not sufficiently evidenced) and then waited four years before beginning to target it by way of a specific reference to its store partner, meanwhile using the disputed domain name for advertising links that did not reference or otherwise target the Complainant directly. The Panel cannot give this suggestion any credence, notably because there is sufficient evidence before it that the term "diamond point" is a term which the Respondent might reasonably have chosen independently of the Complainant or its rights. The evidence shows it to be a noun and adjective, and a term in widespread use across a variety of industries, as well as being a geographic term relevant to two locations in the United States. The Respondent's desire to monetize this term for advertising, and ultimately to sell the disputed domain name for its value as a dictionary term, does not give rise to a bad faith intent provided there is no evidence that it intended, at the date when it registered the disputed domain name, to exploit any trademark value of the term. No such evidence is present here.

Besides denying knowledge of the Complainant's mark at the date of registration and referring to a dictionary value of the phrase "diamond point", the Respondent's case in answer falls into two parts. First, the Respondent asserts that the February 2005 advertisements were automatically generated and that the Respondent had no control over them. The problem for the Respondent here is that with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5.

Consequently, had the links concerned been present on the website in 2001, the Panel considers that the requisite degree of knowledge and targeting may well have been present. As matters stand, however, the links appear some four years later, and the advertisements prior to that date (together with the bulk of those also appearing on the same page in 2005) appear to the Panel to be consistent with dictionary and geographic meanings of the phrase "diamond point" or to be unrelated either to the trademark use or the dictionary use. When placed in context, the apparent targeting in 2005 appears to have been inadvertent on the Respondent's part (albeit that the Respondent is responsible therefor), but, in any event, it does not demonstrate registration in bad faith in 2001.

Secondly, the Respondent argues that it should benefit from the doctrine of "laches" concerning the Complainant's allegedly prejudicial (to the Respondent) delay in bringing the Complaint. This doctrine is an equitable principle in Anglo-American law. Certain other legal systems operate according to broadly similar principles. As far as the Policy is concerned, Panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. Panels have declined to specifically adopt concepts such as laches or its equivalent in UDRP cases. [WIPO Overview 3.0](#), section 4.17. Nevertheless, as this section goes on to note, certain delays in filing a UDRP complaint may make it more difficult for a complainant to establish its case on the merits, particularly where the respondent can show detrimental reliance on the delay.

Here, the only significance which the Panel takes from the Complainant's delay in filing the Complaint is the fact that the Complainant requires to rely on the notoriety of its trademark as of the date of registration of the disputed domain name, and despite arguing that its mark is famous, it has not been able to demonstrate such fame in 2001, or that any such alleged notoriety would likely have come to the attention of the Respondent. In the absence of such evidence, the Respondent's case in rebuttal, namely, that it registered the disputed domain name because it corresponded to a dictionary phrase with descriptive appeal is reasonably plausible and corresponds to such intent at the point of registration.

The Complainant asserts that the Respondent is a prolific cybersquatter based upon its involvement in previous disputes relating to domain names, while the Respondent seeks to argue that there are reasons why it was unsuccessful in certain court cases, while insisting that it was successful in others, and in cases brought under the Policy. The Panel considers that there is nothing in the evidence showing any kind of pattern of cybersquatting, moreover of which the disputed domain name itself forms part, such that this would be relevant to the present administrative proceeding. On the contrary, the fact that the Respondent may have registered other two-word phrases as domain names incorporating the word "point" as the second word might be seen as a pattern of registrations that is supportive of its case. As both Parties appear to recognize, each case under the Policy must be taken on its own merits, and the Panel here does not make any finding on the strength of the Respondent's past history with domain name disputes.

The Panel finds the third element of the Policy has not been established, and the Complaint fails.

#### **D. Reverse Domain Name Hijacking**

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 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 lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The Respondent seeks a finding of Reverse Domain Name Hijacking on the basis that the Complaint was without merit from the outset and that the Complainant, or its representatives were aware of this. Given the age of the disputed domain name, amounting to over two decades, the Panel is troubled by the Complainant's selective use of the available entries from the Internet Archive "Wayback Machine" to those that it believed favored its case, with no reference to others which it must surely have reviewed, and which would have tended to indicate to it that the Respondent may not have been targeting the Complainant or its trademark directly between at least 2001 and 2005. The Complainant does not seem to have anticipated and did not address the fact that its mark is also a phrase in widespread use, both commercial and noncommercial. The Complainant might also have identified the apparent geographic use of the term "Diamond Point" in the historic page capture from February 10, 2005.

Nevertheless, the Panel considers that the Complainant was entitled to see the said historic page capture as potential evidence of Respondent targeting at the material date. The entry contained four links referring in the Dutch language to the stores in which the Complainant does business, while the rest of the site was in English. However inadvertent the Respondent might claim are the inclusion of these links, the Respondent must nevertheless be held accountable for the content of its site, even if allegedly generated automatically. Consequently, the Panel finds that the presence of those links was reasonably indicative to the Complainant of the Respondent using the disputed domain name in bad faith as of 2005. Having identified such apparent bad faith use, the Complainant sought to put the Respondent to the proof as to whether an alleged intent to target the Complainant in 2005 was consistent with a similar intent in 2001, with a view to demonstrating registration of the disputed domain name in bad faith. The fact that the Complainant could not prove the Respondent's intent in 2001 on the balance of probabilities is largely a failure of the evidence which it was able to bring to bear, not least due to passage of time.

The Panel is satisfied on the above basis that the Complaint was not brought in bad faith.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*  
**Andrew D. S. Lothian**  
Sole Panelist  
Date: November 4, 2024