

**IN THE MATTER OF A COMPLAINT PURSUANT TO
THE CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

Dispute Number: DCA-1980-CIRA
Domain Name: <deltanine.ca>.
Complainant: Delta9 Bio-Tech Inc.
Registrant: DELTA NINE, a sole proprietorship
Registrar: Go Daddy Domains Canada, Inc.
Panel: The Honourable Neil Anthony Brown QC
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

OVERVIEW

1. This matter concerns a dispute between the Complainant and the Registrant regarding the registration and use of the domain name <deltanine.ca> (“the disputed domain name”).
2. The British Columbia International Commercial Arbitration Centre (“BCICAC”) is a recognized service provider to the CIRA Domain Name Dispute Resolution Policy (“the Policy”) of the Canadian Internet Registration Authority (“CIRA”).
3. This is a proceeding under the CIRA Domain Name Dispute Resolution Policy (the “Policy”), in accordance with the CIRA Dispute Resolution Rules (the “Rules”).
4. The Complainant claims that the Registrant registered the disputed domain name in breach of the Policy. The Registrant has not filed a Response in this proceeding.

THE PARTIES

1. The Complainant in this proceeding is Delta9 Bio-Tech Inc., PO Box 68096 Osborne Village, Winnipeg, Manitoba, R3L 2 V9, Canada and marshall@delta9.ca. (“the Complainant”).
2. The Registrant in this proceeding is DELTA NINE, a sole proprietorship, 303 James St North, Hamilton, Ontario, Canada, L8R 2L4 and info@deltanine.ca (“the Registrant”).

REGISTRATION OF THE DISPUTED DOMAIN NAME

1. The disputed domain name <deltanine.ca> was registered by the Registrant on June 22, 2016.
2. The Registrar of the disputed domain name is Go Daddy Domains Canada, Inc.

PROCEDURAL HISTORY

According to the information provided by the BCICAC:

- (a) The Complainant filed a Complaint with respect to the disputed domain name in accordance with the Policy on April 27, 2018.
- (b) The Complaint was reviewed and found to be administratively compliant. By letter dated April 30, 2018, the BCICAC as service provider confirmed administrative compliance of the Complaint and, as Notice in accordance with Rules 2.1 and 4.3, forwarded a copy of the Complaint to the Registrant together with its Schedules, by email on May 1, 2018, as the Complaint with attachments had been filed exclusively by email. By the same communication the BCICAC informed the parties that in

accordance with Rule 4.4 the date of commencement of the Proceeding was May 1, 2018, and that any Response had to be filed by May 22, 2018.

- (c) The Registrant did not file a Response in this proceeding with the BCICAC by May 22, 2018 or at all.
- (d) On or about May 22, 2018 the BCICAC by email to the Complainant and the Registrant gave notice that the time to submit a Response had expired and that accordingly under Rule 6.5, the Complainant might elect to convert from a three-person tribunal to a single arbitrator within 5 days of receipt of, which the Complainant did.
- (e) On May 29, 2018, BCICAC appointed The Honourable Neil Anthony Brown QC as sole arbitrator in this proceeding. The sole arbitrator has signed and forwarded to the BCICAC an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.
- (f) The Panel has reviewed all of the material submitted by the Complainant and is satisfied on that material that the Complainant is an eligible Complainant under the Policy and the Rules by virtue of its ownership of the trademark applications referred to hereafter and the use made since December 2013 of the DELTA 9 marks referred to hereafter.

FACTS

The facts set out below are taken from the Complaint, together with related exhibits.

The Complainant is a Canadian company incorporated in the Province of Manitoba on July 31, 2012 and it has been operating since then. Since December, 2013 or thereabouts, the Complainant has been operating in Canada by performing services relating to the scientific research, laboratory testing and analysis of marijuana, cannabis seeds, and live cannabis plants and cultivation, breeding, production, processing, distribution, transportation and retail sale of cannabis and marijuana and the provision of related goods and services.

The Complainant's activities are and always have been lawful, being conducted under a production license from Health Canada under the Marijuana for Medical Purposes Regulations, granted in December 2013 and a license to distribute medical cannabis granted in March 2014. It is therefore a licensed producer of medical cannabis with a lawful production facility in Winnipeg.

The Complainant is the owner of the domain name <delta9.ca> which was registered on January 9, 2012 and which the Complainant uses to promote its business.

It has come to the notice of the Complainant that the Registrant is operating an illegal marijuana dispensary in Ontario under the name Delta Nine. To that end the Registrant registered the disputed domain name on June 22, 2016. The Complainant has never given the Registrant permission or authority to operate a business under the name Delta Nine or to register a domain name incorporating the name and trademark DELTA 9 or any variation thereof.

The Registrant's business has been robbed, raided by the Police and shut down several times for operating an illegal marijuana dispensary which it clearly is. While its website at the disputed domain name was active, it was clearly being used as an attempt to pass itself off as the Complainant's website and as relating to the Complainant's business. To that end it carried similar logos to those of the Complainant and portrayed itself as the Delta Nine Medical Marijuana Dispensary. All such implications that the Registrant's activities were in any way associated with the Complainant were and are entirely false.

The Complainant has tried to stop the Registrant's conduct and to have the disputed domain name transferred to the Complainant but the Registrant has not even replied to the two cease and desist letters sent to it on behalf of the Complainant. Nor has the Registrant replied to the submissions of the Complainant in this proceeding.

The Complainant is particularly concerned that the conduct of the Registrant will induce internet users to believe that the Registrant's business, domain name, website and general conduct are associated in some way with the Complainant and its entirely lawful business, which is not the case. It is also concerned that the Registrant's conduct will damage the Complainant's goodwill and reputation

It therefore seeks the transfer to it of the disputed domain name.

In support of its case, the Complainant submits that it has made several applications for registered trademarks for DELTA 9 BIO-TECH & DESIGN , DELTA 9 CANNABIS & DESIGN and DELTA 9 and that it has also acquired common law trademark rights to DELTA 9.

CONTENTIONS OF THE PARTIES

A. THE COMPLAINANT

The Complainant submits as follows:

1. CANADIAN PRESENCE REQUIREMENTS

The Complainant submits that it satisfies the Canadian presence requirement of paragraph 1.4 the Policy in view of the fact that, as the Complainant is a company that was incorporated in the Province of Manitoba on July 31, 2012, it is “A corporation under the laws of Canada or any province or territory of Canada.”

2. THE REGISTRATION OF THE DISPUTED DOMAIN NAME

The disputed domain name <<deltanine.ca>> was registered by the Registrant on June 22, 2016.

The Registrar of the disputed domain name is Go Daddy Domains Canada, Inc.

3. THE COMPLAINANT'S RELEVANT TRADEMARK RIGHTS AND THEIR USE BY THE COMPLAINANT IN ITS BUSINESS

The Complainant submits that it does not have any registered trademarks on which it may rely in this proceeding. However, it also submits that it has unregistered or common law trademarks for DELTA 9 BIO-TECH & DESIGN, DELTA 9 CANNABIS & DESIGN and DELTA 9 (“the DELTA 9 marks”). That claim is made, first, by virtue of the fact that Complainant has filed three registered trademark applications for the above mentioned trademarks with the Canadian Intellectual Property Office (“CIPO”), namely:

- (a) the trademark for DELTA 9 BIO-TECH & DESIGN with the application number 1844451, filed with CIPO on June 29, 2017;
- (b) the trademark for DELTA 9 CANNABIS & DESIGN with the application number 1844452, filed with CIPO on June 29, 2017; and
- (c) the trademark for DELTA 9 with the application number 1885607, filed with CIPO on March 1, 2018,

(hereinafter referred to collectively as “the DELTA 9 trademark applications”). Copy of the three relevant trademark applications are adduced by the Complainant in evidence and are annexed to the Complaint as Schedule B.

The Complainant also submits in support of its claim to the DELTA 9 marks that they have each been used since December 2013 for services relating to scientific research, laboratory testing, and analysis of marijuana, cannabis seed, and live cannabis plants and cultivation, breeding, production, processing, distribution, transportation and retail sale of cannabis and marijuana as claimed in the trademark applications.

The Complainant also points to a press release, a magazine article and its website as evidence of its use of the DELTA 9 marks.

4. THE GROUNDS ON WHICH THE COMPLAINT IS MADE

Basis for the Complaint.

Confusingly Similar

Complainant's Marks.

The Disputed domain name is confusingly similar to the DELTA 9 marks, which are "Marks" within the meaning of subsection 3.2(a) of the CIRA Domain Name Dispute Resolution Policy (the "Policy"), and in which Complainant had rights prior to the date of registration of the disputed domain name, and in which it continues to have rights.

The domain name <deltanine.ca> is confusingly similar to the DELTA 9 marks because it contains the entirety of the trademark and an internet user would construe the word "nine" as being the same as the number "9" and would hence conclude that the domain name was virtually identical to the trademark.

The disputed domain name is therefore confusingly similar to the Complainant's DELTA 9 marks.

No Legitimate Interest

The Registrant does not have any legitimate interest in the disputed domain name within the meaning of section 3.4 of the Policy.

The Complainant has prior rights to the use of its DELTA 9 marks, registered its own <delta9.ca> domain name almost 4 years prior to the Registrant registering the disputed domain name and the Complainant has been carrying on business under that name since December 2013 for the operation as a licensed producer of medical cannabis. The Registrant is using the domain name to compete with the Complainant and is trying to ride on the goodwill and reputation built up by the Complainant.

Bad Faith

The Complainant has registered the disputed domain name in bad faith. The fact that it has ignored the Complainant's contacts over the use of the domain name and given rise to the confusion in the market place suggest that the Registrant is aware it is engaging in passing itself off as the owner of the Complainant's common law trademarks in using the domain name.

The Registrant is using the domain name to carry on a business which is illegal and creating confusion in the marketplace.

The Registrant's use of the domain name could damage the Complainant's reputation and/or disrupt its business should the public perceive any association with the Registrant.

There is potential for great damage to be done to the Complainant and its business, especially as it is publicly traded on the Stock Exchange, giving rise to greater scrutiny and the public may be aware of the Registrant's criminal activities.

There is no association at all between the Complainant and the Registrant and the Complainant has never given the Registrant any permission or authority to use the DELTA 9 marks or to operate an identical business.

B. THE REGISTRANT

The Registrant did not file a Response to this proceeding.

DISCUSSION OF THE ISSUES AND FINDINGS

1. CANADIAN PRESENCE REQUIREMENTS

Paragraph 1.4 of the Policy provides that a complainant initiating a complaint must satisfy the Canadian Presence Requirements for Registrants in respect of the domain name that is the subject of the proceeding.

Paragraph 2 (d) of the Canadian Presence Requirements for Registrants establishes that requirement if the entity concerned is "A corporation under the laws of Canada or any province or territory of Canada;..."

As the evidence is that Complainant is a company that was incorporated in the Province of Manitoba on July 31, 2012, it is "A corporation under the laws of Canada or any province or territory of Canada."

The Complainant has therefore satisfied CIRA's Canadian Presence Requirement for Registrants in respect of the disputed domain name.

2. REGISTRATION OF THE DISPUTED DOMAIN NAME

- (a) The disputed domain name <deltanine.ca> was registered by the Registrant on June 22, 2016.
- (b) The Complainant submits that the Registrant of the domain name is DELTA NINE, a sole proprietorship.
- (c) The above matters have been asserted on behalf of the Complainant and the Panel accepts their veracity. It appears that the domain name was subject to a privacy registration. The evidence is that the Complainant followed the only course open in such cases and used the Interested Party Contact Procedure requesting the Registrant to contact the Complainant's authorized Representative, but no response was received. The Panel is satisfied that the history of the matter justifies the assertion by the Complainant that the Registrant and its contact details are as alleged in the Complaint.
- (d) The Panel will therefore proceed with this matter on the basis that the Complainant has made out its standing to file the Complaint and that the Registrant is the proper party against whom the proceeding should be brought.

3. GENERAL

The purpose of the Policy, as stated in paragraph 1.1, is to provide a forum in which cases of bad faith registration of .CA domain names can be dealt with relatively inexpensively and quickly.

In accordance with paragraph 4.1 of the Policy, to succeed in the Proceeding, the Complainant must prove, on the balance of probabilities, that:

- (a) the Registrant's dot-ca domain name is "Confusingly Similar" to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights; and
- (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.5 or generally; and the Complainant must provide some evidence that:
- (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

The Panel will now deal with each of the three elements.

CONFUSINGLY SIMILAR

As the Complainant correctly submits, it is required to prove that the disputed domain name is confusingly similar to a Mark in which the Complainant had rights prior to the date of registration of the disputed domain name and continues to have such Rights. The Complainant must therefore show that it has rights to a mark, that it had those rights before the domain name was registered, that it still has them and that the disputed domain name is confusingly similar to the marks on which it relies to establish that proposition. The Complainant submits that it can meet those requirements.

The Mark

The first question that arises is whether the Complainant has a trademark on which it can rely for the purpose of this proceeding.

The Complainant submits that it does not have any registered trademarks on which it may rely in this proceeding. However, it also submits that it has unregistered or common law trademarks for DELTA 9 BIO-TECH & DESIGN, DELTA 9 CANNABIS & DESIGN and DELTA 9 ("the DELTA 9 marks"). That claim is made by virtue of the fact, first, that Complainant has filed three registered trademark applications for the above mentioned trademarks with the Canadian Intellectual Property Office ("CIPO"), namely:

- (a) the trademark for DELTA 9 BIO-TECH & DESIGN with the application number 1844451, filed with CIPOI on June 29, 2017;
- (b) the trademark for DELTA 9 CANNABIS & DESIGN with the application number 1844452, filed with CIPO on June 29, 2017; and
- (c) the trademark for DELTA 9 with the application number 1885607, filed with CIPO on March 1, 2018,

(hereinafter referred to collectively as “the DELTA 9 trademark applications”). Copy of the three relevant trademark applications are adduced by the Complainant in evidence and are annexed to the Complaint as Schedule B.

The Complainant also submits in support of its claim to the DELTA 9 marks that they have each been used since December 2013 for services relating to scientific research, laboratory testing, and analysis of marijuana, cannabis seed, and live cannabis plants and cultivation, breeding, production, processing, distribution, transportation and retail sale of cannabis and marijuana as claimed in the trademark applications.

Application number 1844451 asserts that the mark has been used in Canada on services since at least December 2013 and Application number 1885607 also asserts that the mark has been used in Canada on services since December 2013. Application number 1844452 asserts that the mark has been used on goods in Canada since February 2017. The Panel therefore finds that the trademark applications 1844451 and 1885607 support the proposition that the Complainant adopted DELTA 9 BIO-TECH & DESIGN and DELTA 9 as its trademarks in the trade and industry in question from at least December 2013, which was of course prior to the disputed domain name being registered.

The Panel also finds that since at least December 2013 the Complainant has used the DELTA 9 marks for services relating to scientific research, laboratory testing, and analysis of marijuana, cannabis seed, and live cannabis plants and cultivation, breeding, production, processing, distribution, transportation and retail sale of cannabis and marijuana as claimed in the trademark applications.

The Panel has also examined the press release, magazine article and the evidence of the Complainant’s website as at December 2013 and finds that:

- (c) The press release of March 26, 2014 shows that the Complainant had prior to that date been engaged in the business of medical marijuana under the name and trademark Delta 9 and that it had obtained the necessary licenses;
- (d) The magazine article shows that at least by early 2014 and presumably earlier the Complainant was engaged in the production of medical marijuana and related activities and was using the name Delta 9 in its business as a trademark; and
- (e) The Complainant’s website by December 2013 was using DELTA 9 as a trademark.

The Panel finds that all of this evidence shows that by at least December 2013 the Complainant had acquired common law trademark rights to the DELTA 9 marks and had been using them in its business described above.

The next question that arises is whether the DELTA 9 mark are in each case a “mark(s)” in which the Complainant had rights prior to the date of registration of the disputed domain name and continues to have such rights.

Bearing in mind that the Registrant registered the disputed domain name <deltanine.ca> on June 22, 2016 (“the due date”) the Panel finds that the Complainant had rights in the DELTA 9 marks from at least December 2013 which was of course prior to the due date.

The Panel also finds that the Complainant continues to have such rights.

The Panel finds that the DELTA 9 marks are marks as defined by Paragraph 3.2 of the Policy and that they come within the meaning of “mark” in Paragraph 3.2 (a), as the unchallenged evidence shows that they are

- (a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person's predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person;..."

The Panel therefore finds that the DELTA 9 marks are marks in which the Complainant had rights before the Disputed domain name was registered and in which it still has rights.

Confusingly similar

Pursuant to paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if it so nearly resembles the same in appearance, sound or in the ideas suggested so as to be likely to be mistaken for the mark. The test to be applied when considering "confusingly similar" is one of first impression and imperfect recollection and the "dot-ca" suffix should be excluded from consideration (see *Coca-Cola Ltd. v. Amos B. Hennis*, BCICAC Case No. 00014).

Having regard to those principles, the Panel finds that the disputed domain name is confusingly similar to the DELTA 9 marks.

The Panel finds that the Domain Name <deltanine.ca> is confusingly similar to the DELTA 9 marks because it contains the entirety of the trademark in the domain name and an internet user would construe the word "nine" as being the same as the number "9" and would hence conclude that the domain name was virtually identical to the trademark.

Moreover, an internet user would also conclude that the idea suggested by the domain name was that it was an official domain name that would lead to a website dealing with the Complainant's medical marijuana business conducted under the respective DELTA 9 marks.

Accordingly, the disputed domain name is, for the purposes of the Policy, confusingly similar to the DELTA 9 marks as it so nearly resembles the marks in appearance, sound and in the ideas suggested as to be likely to be mistaken for the DELTA 9 marks within the meaning of Paragraph 3.3 of the Policy.

The Panel therefore concludes that the disputed domain name is confusingly similar to the DELTA 9 trademarks in which the Complainant had Rights prior to the registration date of the disputed domain name and in which it continues to have such Rights.

The Complainant has thus made out the first of the three elements that it must prove.

NO LEGITIMATE INTEREST IN THE DOMAIN NAME

The Complainant's case on this issue is that the Registrant does not have any legitimate interest in the disputed domain name within the meaning of section 3.4 of the Policy. The reasons advanced by the Complainant are that the Complainant has prior rights to the use of its DELTA 9 marks, it registered its own <delta9.ca> domain name almost 4 years prior to the Registrant registering the disputed domain name and the Complainant has been carrying on business under that name since December 2013 for the operation as a licensed producer of medical cannabis. Moreover, the Complainant submits that the Registrant is using the domain name to compete with it and is trying to ride on the goodwill and reputation built up by the Complainant.

The Panel agrees with those submissions and finds accordingly that the Registrant has no legitimate interest in the disputed domain name.

They also accord with the following analysis of this issue that the Panel has had occasion to make in several prior cases. Under the Policy, the question whether the Registrant has a legitimate interest in the disputed domain name is to be decided in the following framework. First, there must be an assertion that the Registrant has no legitimate interest in the domain name. That criterion has been satisfied because the Complainant has made such an assertion in the Complaint. Secondly, the Complainant must provide some evidence that "... (c) the Registrant has no legitimate interest in the domain name *as described in paragraph 3.4 (emphasis added)*." Each of the sub-paragraphs of paragraph 3.4 describes a situation which, if made out, would give the Registrant a legitimate interest in the domain name. The obligation on the Complainant is therefore to show that the Registrant cannot make out any of the successive tests in the sub-paragraphs of 3.4. Thirdly, the Panel has to

decide whether the evidence as a whole shows on the balance of probabilities that the Registrant has a legitimate interest in the domain name. Fourthly, the Registrant is not confined to the criteria set out in that paragraph, for those criteria are “without limitation”. In other words, a registrant may try to bring itself within any of the specified criteria, but it may also rely on any other fact or argument it wishes to rely on to show that it has a legitimate interest. If it does do this, the role of the Panel is to decide if the registrant has made out its case and to make that decision on the balance of probabilities. The Registrant, however, has waived that right by not filing a Response.

The first task of the Panel is therefore to see if the Complainant has provided “some evidence” that the Registrant has not brought itself within any of the specific criteria in paragraph 3.4.

Applying that test, the Panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the disputed domain name. In particular, the Complainant has shown by the evidence that, as the Complainant submitted and as the Panel agrees:

The Registrant cannot have used the Domain Name in good faith under section 3.4(a).

The Registrant cannot have used the Domain Name in good faith under section 3.4(b).

The Registrant cannot have used the Domain Name in good faith under section 3.4(c).

The Registrant cannot have used the Domain Name in good faith under section 3.4(d).

Moreover, in each of the criteria mentioned above, the facts as they are known simply cannot be accommodated in any of those provisions.

The Registrant also cannot have used the domain name under section 3.4(e) as it is not the legal name of the Registrant.

The Registrant also cannot have used the Domain Name under section 3.4(f) as it is not the geographical location of the Registrant as defined.

The Complainant has shown very persuasively that on the available evidence and inferences that can be drawn from it, that the Registrant has no legitimate interest in the disputed domain name.

The Panel has also examined each of the circumstances set out in the various sub-paragraphs of paragraph 3.4 of the Policy. It is apparent to the Panel that the Registrant could not conceivably bring itself within any of the circumstances in those sub-paragraphs. In this regard it must be remembered that the Registrant has in effect taken the Complainant’s trademark, set itself up as a direct competitor of the Complainant, caused the domain name to resolve to the Registrant as a direct competitor of the Complainant and caused or allowed it to be used for soliciting business that is clearly illegal and designed to damage the Complainant’s lawful business.

These facts have two effects. First, they show that the Complainant has shown some persuasive evidence that the Registrant has no legitimate interest in the domain name, so that the Complainant has met its obligations under this section of the Policy. Accordingly, the Complainant has provided evidence that the Registrant cannot bring itself within any of the specified criteria in paragraph 3.4 that would show a legitimate interest in the domain name and the Panel so finds.

They also show that the Registrant has in fact no such legitimate interest, for such conduct described above and elsewhere could never give rise to a legitimate interest in a domain name. It is illegal and unprincipled in every respect and cannot possibly justify the registration or use of the domain name.

Finally, and underlying all of these considerations is the fact that the Registrant had an unlimited opportunity of presenting its case, but has forfeited that opportunity by not filing a Response and has not tried in any way to show it has a legitimate interest in the domain name.

The Complainant has thus established the second of the three elements that it must prove.

REGISTRATION IN BAD FAITH

The Panel now turns to consider whether the disputed domain name was registered in bad faith. In that regard, the Panel notes that, consistent with the decision in *Canadian Broadcasting Corporation? Societes Radio-Vanada v. William Quon*, CIRA Dispute Number 00006(April 8, 2003), pp.13-14, surrounding circumstances may be considered in assessing whether the disputed domain name has been registered in bad faith.

By clause 3.1 of the Policy, the Complainant is obliged to prove that:

“(c) the Registrant has registered the domain name in bad faith as described in paragraph 3.5.”

Section 3.5 provides that “(f) or the purposes of paragraphs 3.1(c) ... any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:...” and then goes on to provide four such circumstances, two of which are in effect relied on by the Complainant, namely:

“(a)...;

(b)...;

(c) the Registrant registered the domain name or acquired the registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant’s licensor or licensee of the Mark, who is a competitor of the Registrant;

(d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s website or other on-line location, by creating a likelihood of confusion with the Complainant’s Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s website or location or of a product or service on the Registrant’s website or location.”

It is to be noted that the criteria for bad faith are not exclusive, but that complainants may rely on circumstances other than those enumerated to show bad faith registration.

The Panel will first examine the above two criteria which are particularly important in this case.

3.5 (c) Disrupting the business of the Complainant

The disputed domain name includes the Complainant’s trademark and the Registrant has used it to redirect internet users to the website of itself in its role as a competitor of the Complainant and the services offered are in competition to those of the Complainant, albeit illegally so. In any event, it cannot but disrupt a complainant’s business when a competitor takes its trademark and starts to advertise competing services, for the disruption comes from the potential loss of business.

The Panel therefore finds that the Respondent, as a competitor, registered the domain name in bad faith by disrupting the Complainant’s business.

Intentionally Attract Traffic For Commercial Gain –Paragraph 3(5)(d)

The Complainant submits that the Registrant registered the domain name in bad faith inter alia because it is using the domain name to carry on an illegal business, giving rise to confusion in the market place. The Panel agrees.

The Panel finds that the Registrant intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the DELTA 9 trademarks as to the source, sponsorship, affiliation or endorsement of the contents of Registrant’s website. If the domain name remains with Respondent, further disruption and the further loss of potential business because of the inevitable confusion is probable. That is because the Respondent has taken the Complainant’s trademark, used it in its domain name and sought by that means to divert some of the Complainant’s business to itself and its illegal business. The confusion created is as to whether the internet user has arrived at the Complainant’s site or not and whether the services being offered are those of the Complainant or not.

The Complainant also submits that the Registrant's conduct puts the Complainant's business at risk, particularly because it is a listed business and there is a real danger to the goodwill of the business. The Panel agrees and so finds.

The Panel therefore finds that the Respondent has registered the domain name in bad faith by committing a breach of Paragraph 3.5(d).

Bad Faith in general

Bad faith registration may also be shown by conduct other than the conduct specified in the various criteria mentioned above. This is made clear by Section 3.5 providing as it does, that "(f) or the purposes of paragraphs 3.1(c) ... any of the following circumstances, *in particular but without limitation*, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:..." (emphasis added). This provision is included, as bad faith conduct may take many forms and it is frequently used to find bad faith registration and (under the Uniform Domain Name Dispute Resolution Policy) bad faith use.

The Panel has examined all of the evidence carefully and has concluded that it shows that the Registrant registered the domain name in circumstances that can fairly be described as bad faith within the generally accepted meaning of that expression. Indeed there is no other interpretation that can be placed on the evidence.

The Panel finds that the intention of the Registrant was to register the domain name because it reflected the Complainant's established trademark in the medical cannabis business and to use it for an illegal purpose to further its own interests and for a purpose that would benefit the Registrant financially by taking away some of the Complainant's potential business. That conduct constitutes bad faith registration on any test.

The Complainant has thus made out the third of the three elements that it must establish.

CONCLUSION AND DECISION

The Panel finds that the constituent elements of the Policy have all been made out and that the Complainant is entitled to the relief it seeks. The Panel will therefore order that the disputed domain name be transferred to the Complainant.

ORDER

The Panel directs that the registration of the disputed domain name <deltanine.ca> be transferred from the Registrant to the Complainant Delta9 Bio-Tech Inc.

Date: May 30, 2018



The Honourable Neil Anthony Brown QC