



सत्यमेव जयते

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Purchased by : SAJAL KOSER
Description of Document : Article 12 Award
Property Description : Not Applicable
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ARBITRATION AWARD

BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH

INDRP CASE NO. 1471 OF 2021

DISPUTED DOMAIN NAME: <WWW.DELTAATC.IN>

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KC 0012759115

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Delta Air Lines, Inc. 1030 Delta Boulevard, Atlanta, Georgia 30354-1989
United States of America.

...Complainant

Versus

Anastasios Taxides, Tambakou, Athens Attica-13671, Greece

...Respondent

1. **INTRODUCTION:**

The above titled complaint was submitted to the undersigned for Arbitration in accordance with the .IN Domain name Dispute Resolution Policy (the INDRP), adopted by the National Internet Exchange of India (the NIXI), and the INDRP rules and Procedure (the Rules of Procedure).

2. **THE PARTIES:**

A. **Complainant:**

As per the Complaint, the Complainant is Delta Air Lines, Inc. having its address at 1030 Delta Boulevard, Atlanta, Georgia 30354-1989, United States of America (the "Complainant") and are being represented by its attorneys, ANA Law Group, 303 Madhava Premises, Bandra Kurla Complex, Bandra East, Mumbai — 400051 India. Email: mailbox@anaassociates.com.



B. Respondent:

As per the Complaint, the Registrant's name and contact details are concealed/hidden in the .IN Registry's Whois database as on the date of filing this complaint and therefore, Complainant had requested and obtained the domain name registrant's complete contact details from the National Internet Exchange of India (NIXI) on 18.08.2021. A copy of the .IN Registry's Whois database search in respect of the domain name www.deltaact.in and a printout of the complete Whois details provided by NIXI on 18.08.2021 has been annexed with the Complaint as **Annexure A**. As per the information available on record, the details of the Respondent are as under:-

The Registrant's contact details are as follows:

Registrant:	Anastasios Taxides
Address:	Tambakou, Athens, Attica- 13671, Greece
Email:	an.taxides@gmail.com
Phone:	+30 6908922912

3. THE DISPUTED DOMAIN NAME AND REGISTRAR WITH WHICH THE DOMAIN NAME IS REGISTERED:

As per the complaint, the details of Disputed Domain name and the Registrar with which the disputed Domain name is registered are given as under:-

This dispute concerns the domain name identified below:

<WWW.DELTAATC.IN>

Date of domain name registration: 07.12.2016

The Registrar with which the domain name is registered is as follows:

Registrar: Instra Corporation Pty Ltd,
IANA ID: 1376
Address: GPO Box 988
Melbourne Victoria
Australia 3001
Email: legal@instra.com; support@instra.com and
abuse@instra.com

4. **PROCEDURAL HISTORY:**

- i) Vide mail dated 09.12.2021, the undersigned was appointed as an Arbitrator by National Internet Exchange of India (NIXI) to adjudicate and decide upon the dispute relating to the Domain name **WWW.DELTAATC.IN**.
- ii) On the next date i.e. 10.12.2021, undersigned also received copy of the Complaint with Annexures which copies were also sent to various persons/authorities including the Complainant as well as the Respondent.
- iii) As required, the undersigned vide mail dated 09.12.2021, sent Statement of Acceptance and Declaration of impartiality and independence as an Arbitrator in the present Dispute.
- iv) Thereafter, vide mail dated 16.12.2021, Notice to the Respondent as prescribed in the INDRP Rules of Procedure was

issued, giving 15 days time to the Respondent to file reply to the complaint.

- v) Subsequently, undersigned received mail dated 21.12.2021 from the Complainant qua service of both hard as well as soft copies of the Complaint with Annexures upon the Respondent.
- vi) As the Respondent did not file any response or reply to the complaint within the stipulated period of 15 days from the date of issuance of notice dated 16.12.2021, and even after lapse of 3 more days since, no reply was filed by the Respondent, vide mail/order dated 03.01.2022, the right of the Respondent to file reply/response was closed by order and was proceeded against ex-parte and the dispute was reserved for passing award on the basis of pleadings and documents on record.

5. CASE OF THE COMPLAINANT:

- i) In the present complaint, the Complainant in order to render itself entitled for the relief claimed has mentioned various factual as well as legal grounds supported with documents. It is the case of the Complainant that it is one of the world's largest airline carriers and the United States' global airline leader in products, services, innovation, reliability and customer 4 experiences. The Complainant is one of the most valuable airline brands in the world. As of December 2019 (prior to the global pandemic), the Complainant had transported nearly 200 million travelers annually to over 300 destinations in more than 50 countries around the world, including in India. Complainant

further submits that founded in 1925, the Complainant ranked second among the world's largest airlines by number of scheduled passengers carried, revenue passenger-kilometers flown, and fleet size, and was the world's no. 1 airline by total revenues before the global pandemic. As of December 2019 (before the global pandemic), the Complainant offered more than 5,000 daily departures and nearly 15,000 affiliated departures. The Complainant and its alliance partners have collectively offered travel services in over 140 countries, covering more than 900 destinations around the world.

- ii) It is also the case of the Complainant that the Complainant provides air transportation and related services, including storage, transportation and delivery of goods for others by air; transportation of passengers, property, cargo and freight by air; storage of mail and cargo; cargo handling; unloading cargo; a frequent flier bonus program; airport baggage and passenger check-in services; arranging travel as a bonus program for credit card users; delivery of goods by air and land; providing an online computer database in the field of travel information services and travel ticket reservations; providing flight arrival and departure information; online reservation and booking of seats for travel; providing travel information via the internet; transit lounge facilities, specialized priority airline service with reservation services, providing automated check-in and ticketing services for air travelers, enhanced airport ticketing processing, enhanced booking of seats for travel, priority airport passenger check-in



services, priority airport lobby check-in services, enhanced and expedited customer service responses for elite passengers, etc., under the "DELTA" trade mark. Complainant further mentioned that it also offers premium travel and hospitality products and services under the "DELTA" brand, including, Delta One, Delta Premium Select, Delta Comfort+, etc., in selected markets around the world. Further, the Complainant is also renowned for its direct and personalized services to its customers through digital channels, including the Complainant's website <www.delta.com> and the Fly Delta mobile application, available globally.

- iii) It is also the case of the Complainant that the Complainant has over 96 years of operational excellence and best-in-class services, and the "DELTA" brand carries the reputation of one of the most prestigious and top consumer brands in the world. The Complainant is the world's most-awarded airline and was recognized as No. 1 in customer satisfaction among airlines in the J.D. Power 2021 North America Airline Satisfaction Study – a prestigious honour that underscores Delta's professionalism, care, and superior service and that further, in 2021, Delta has been recognized as one of Fortune magazine's top 50 Most Admired Companies in addition to being named the most admired airline for the tenth (10th) time in eleven (11) years. Fortune also named the Complainant as No. 1 on its Most Admired Airline List, also, additionally, the Complainant has been ranked No. 1 in the Business Travel News Annual Airline survey

for an unprecedented ten (10) consecutive years and named one of Fast Company's Most Innovative Companies Worldwide for the 3rd time in four (4) years.

- iv) Further, it is also mentioned by the Complainant that the Complainant has been continuously honoured with many prestigious awards/accolades and the details of the awards, appreciations, honours etc. received by the Complainant since 1979 has been detailed out in tabular form in para 5 of the Complaint.
- v) The Complainant further submits that the Complainant is the owner of the well-known "DELTA" trade mark all over the world including in India and the Complainant has extensively advertised and promoted its DELTA brand and its services there under through online and print media, which has resulted in wide awareness of the Complainant's brand globally as well as in India.

In addition to above, the Complainant states that the "DELTA" trade mark has a strong and significant internet presence through millions of followers on the Complainant's social media profiles. As of 30 Sept, 2021, the Complainant has over 3.2 million followers on Face book and Complainant's Instagram account has over 1.1 million followers. This is evident from the printouts of the Social Websites as placed on record by the Complainant.

Last but not the least, the Complainant states that by virtue of longstanding use, extensive publicity, and superior

quality of goods/services, the trade mark "DELTA" has acquired immense global popularity, and is exclusively identified with the Complainant.

In support of the above submissions of the Complainant, the Complainant has placed on record, Copies of the relevant documents demonstrating the Complainant's and DELTA's extensive popularity which are annexed as **Annexure C** with the Complaint.

- vii) It is also the case of the Complainant that the Complainant has been continuously and uninterruptedly using the "DELTA" trade mark globally since 1920s. The Complainant has registered its "DELTA" trade mark in various international classes in many jurisdictions worldwide. The Complainant has registered the "DELTA" trade mark in classes 16 and 39 since 1992 and 2003, respectively in India and the details of the registration certificates of the "DELTA" trade mark in India are annexed with the Complaint as **Annexure D**.
- viii) Finally, the Complainant submits that in particular, the Complainant has a long history of service within India under the DELTA trademarks. In 1991, Delta acquired routes into India, serving guests with access to Mumbai and Delhi. Further, Complainant states that in addition to its non-stop flights, Delta offered guests direct flights from the U.S. to India from 2006-2009 and started offering direct flights again in 2019 until COVID-19 caused Delta to temporarily halt service on those direct routes. It was significant that Delta reinstituted the route

from the U.S. to India as it was the only U.S. carrier to offer non-stop service between New York-JFK and Mumbai. The return to flights servicing India in 2019 was made possible by enforcement of Open Skies trade deals with the United Arab Emirates and Qatar. It is also submitted by the Complainant that Delta has invested significantly in its onboard comfort, technology, airport innovation and sustainability to improve the travel experience for long-haul routes between India and the U.S. For example, Delta offers hundreds of movies, including Bollywood favorites, on its Delta Studio in-flight entertainment, available at every customer's seat. In addition, Delta's \$1.4 billion, state-of-the-art international gateway at JFK's Terminal 4 was expanded with an additional 11 gates in 2015, offering greater convenience when it comes to connecting to and from Mumbai. 11 While passenger service was disrupted worldwide by the global pandemic, Delta expanded its significant business within India by introducing cargo flights between the US and India, which provided much-needed transport of pharmaceutical supplies from India to areas of need during the height of the COVID-19 pandemic. Selections of Schedule of Complainants daily flights from December 1991 are showing service to India and also the copies of news releases relating to Delta's non-stop and cargo flights to and from India have been annexed as **Annexure E** to the Complaint. Therefore, according to the Complainant, in wake of the above facts and documents and as a result of Delta's longstanding history of

passenger travel and cargo services to India, the trade mark "DELTA" has become well-known in India.

6. **GRIEVANCE OF THE COMPLAINANT RESULTING INTO THE PRESENT DISPUTE:**

The Complainant submits that it has recently come to know that the Respondent has registered a domain name <www.deltaatc.in>, the second level domain name which is (i) nearly identical to the Complainant's domain name under .com Top Level Domain Name (TLD) <www.delta.com>; and (ii) contains the Complainant's registered trade mark "DELTA". Thereafter, the Complainant had approached the Respondent in September 2020 requesting to cancel the conflicting domain name www.deltaatc.in. However, the Respondent had refused to comply with the Complainant's requests. Therefore, aggrieved by the above act of the Respondent, the Complainant has filed this complaint based on the following grounds:

A) **GROUND TAKEN BY THE COMPLAINANT IN THE PRESENT DISPUTE**

The domain name is identical or confusingly similar to a name or trade mark in which the Complainant has rights:

- i) The Complainant submits that it has been extensively, continuously, and uninterruptedly using the trade mark "DELTA" globally since 1920s. The Complainant's trade mark "DELTA" is inherently distinctive. As a result of the Complainant's trade

mark's widespread use, publicity, and superior quality of services thereunder, both the consumers and the general public identify the "DELTA" trade mark exclusively with the Complainant and the Complainant's services. Therefore, the Complainant's trade mark "DELTA" has acquired a secondary meaning in respect of its airline services.

- ii) The Complainant also submits that it has registered the "DELTA" trade mark and its variants in many countries including India. The details of the "DELTA" trade mark's worldwide registrations and the copies of the registration certificates of the "DELTA" trade mark in a few major jurisdictions and the documents in support of this contention are annexed with the complaint and marked as **Annexure F**.
- iii) It is also the case of the Complainant that "DELTA" has acquired immense goodwill and tremendous popularity across the globe and in India, and has become extremely well-known. By virtue of global registrations, extensive and continuous use of the trade mark since 1920s, the Complainant has the legal, vested and exclusive statutory right to use the registered trade mark "DELTA", and is entitled to protection from any kind of misuse by third parties and that the Complainant's <WWW.DELTA.COM> domain name containing the "DELTA" trade mark is registered since 1993. Copy of the relevant Whois database extract is annexed with the Complaint and marked as **Annexure G**.
- iv) The Complainant submits that the second level domain name of the Respondent's domain name www.deltaatc.in contains the

Complainant's registered and well-known trade mark "DELTA", and is nearly identical to the Complainant's domain name. As such, Respondent's domain name will create consumer confusion and dilution of the Complainant's well-known trade mark and also the domain name.

- v) According to the Complainant, in view of the foregoing, it is highly likely that the consumers, the traders and the general public intending to visit the Complainant's website will mistakenly be redirected to the Respondent's website which contains the Complainant's "DELTA" trade mark, believing that it belongs to the Complainant. This will not only result in dilution of the Complainant's well-known brand, but will also cause serious and irreparable damage to the Complainant's goodwill and reputation. The likelihood of consumer confusion is especially high in the present case, because the Respondent has been using the conflicting domain name containing the Complainant's "DELTA" trade mark in respect of aviation training services, which directly overlaps with the Complainant's aviation related services.

On the above basis, the Complainant submits that the Respondent's conflicting domain name should be immediately cancelled.



**B) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN
RESPECT OF THE DOMAIN NAME:**

The Complainant further makes out the case that the Respondent does not have any right or legitimate interest in respect of the domain name <www.deltaatc.in> due to the following reasons:

- i) The Complainant has registered the "DELTA" trade mark since 1992 in India, and its domain name www.delta.com containing the "DELTA" trade mark since 1993. Whereas, the Respondent does not own a trade mark registration for "DELTA" and has registered the infringing domain name <www.deltaatc.in> on 7 December 2016, much later than the Complainant had registered its "DELTA" trade mark and the domain name.
- ii) The Respondent clearly appears to have registered the infringing domain name for aviation related services with prior knowledge of the Complainant's brand and the domain names. Further, the Respondent does not have any bona fide reason to incorporate the Complainant's registered and well-known trade mark in its domain name. The Respondent's conduct of registering the infringing domain name in 2016, much later in time than the Complainant's rights, and for use with its aviation training services, which are highly similar to the Complainant's services, demonstrates that the Respondent is attempting to take undue advantage of the Complainant's international goodwill and reputation which it has acquired in its trade mark for several decades.



- iii) The Complainant has neither authorized the Respondent to register or use the domain name containing its registered trade mark "DELTA", nor has granted any license to the Respondent to use any of the Complainant's trade mark for any trade purposes.

In view of the foregoing, and based on Rule 6 of the Policy, the Complainant claims that the Respondent (i) has not only blatantly copied the Complainant's "DELTA" trade mark and incorporated it in its domain name www.deltaatc.in, but also, has been using the domain name www.deltaatc.in in respect of offering aviation training services, which directly overlaps with the Complainant's aviation services under the well-known "DELTA" trade mark; and (ii) is not making any legitimate and fair use of the domain name containing Complainant's well-known "DELTA" trade mark and the above clearly demonstrates that the Respondent does not have any legal right or legitimate interest over the name/trade mark "DELTA" and the domain name [<www.deltaatc.in>](http://www.deltaatc.in).

C) THE DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH:

The next ground of challenge by the Complainant is that the Respondent has no bona fides in using the trade mark "DELTA" as part of its domain name. In support of its case and claim, the Complainant has made following additional submissions in the Complaint:-

- i) The Policy specifies certain circumstances which demonstrate bad faith in registering a domain name. One of the circumstances is that if by using the domain name, the

Respondent has intentionally attempted to attract internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or 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. (Rule 7 (c) of the Policy) In the present case, the Respondent has been using the domain name www.deltaatc.in and the "DELTA" trade mark on its website in respect of offering aviation training services, which directly overlaps with the Complainant's well-known "DELTA" trade mark and the services there under. Further, the Respondent has been using the DELTA trade mark on its website in similar color scheme and font style as that of the Complainant's DELTA trade marks

- ii) Additionally, the Respondent is a former pilot of an Indian airline operator, Kingfisher Airlines. Therefore, being from the aviation industry, the Respondent is bound to have prior knowledge of the Complainant's well-known "DELTA" trade mark, brand and domain name.
- iii) This clearly demonstrates that the Respondent has registered the domain name www.deltaatc.in and has adopted the "DELTA" trade mark, with prior knowledge of the Complainant's "DELTA" trade mark, brand, and the domain name, solely with a mala fide intention to redirect the consumers (who are intending to visit the Complainant's website) to the Respondent's website and to cause them mistakenly believe that the Respondent's domain

name belongs to the Complainant or that the Respondent's services are endorsed, sponsored, or affiliated with the Complainant, which is not true.

- iv) Therefore, the Respondent has registered the domain name www.deltaatc.in to derive undue advantage from the Complainant and not for any genuine or legitimate use. It also shows that the Respondent had no bona fide interest in registering the domain name www.deltaatc.in, and the Respondent had done so in absolute bad faith.
- v) The Respondent has adopted and registered a domain name which contains the Complainant's registered trade mark, and is nearly identical to the Complainant's domain name, thereby wrongfully, illegally and dishonestly trading upon the Complainant's valuable reputation and goodwill. The Respondent has registered the domain name www.deltaatc.in in absolute bad faith to derive illegal pecuniary benefit from the unauthorized use of the Complainant's trade mark.

Finally, the Complainant submits that Complainant's trade mark "DELTA" is an inherently distinctive and unique trade mark, and it is quite unlikely that any other traders would choose to use the same word as a trade mark or include in a domain name in respect of aviation related goods or services. Therefore, the Respondent could not have created the domain name www.deltaatc.in independently, without prior knowledge of the Complainant's well known "DELTA" brand and the Respondent's foregoing unlawful act is not only likely to

blur and erode the distinctiveness of the Complainant's "DELTA" trade mark, and will tarnish the reputation of the Complainant and its well-known "DELTA" trade mark and its services but so also has caused, and will continue to cause irreparable harm to the Complainant and its "DELTA" trade mark and to the business, and substantial goodwill represented thereunder, unless the Respondent's domain name www.deltaatc.in is disabled and transferred to the Complainant immediately.

At the end of the submissions, the Complainant concluded that the Complainant has not granted any right to the Respondent to use its registered trade mark "DELTA" in any form. Further, the Respondent does not have any bona fides in adopting a domain name which contains the Complainant's registered and internationally well-known "DELTA" trade mark. As the Respondent does not have any legal right or legitimate interest over the trade mark "DELTA", its adoption was with clear and absolute bad faith. Further, upon information and belief, the Complainant states that the Respondent has a bad faith intent to profit from the registration and use of the domain name www.deltaatc.in, by creating a false association with the Complainant's well-known "DELTA" trade mark as to source or sponsorship and therefore, if the Respondent is allowed to maintain its registration of the domain name www.deltaatc.in, it will cause irreparable loss and damage to the Complainant and its goodwill and reputation. Further, there is strong likelihood of confusion among the consumers and general public that the Respondent's domain name is

sourced, sponsored, affiliated, approved, authorized, or endorsed by the Complainant, which is not true.

On the basis of above facts and documents and in accordance with INDRP Policy, the Complainant has prayed for the following reliefs:

- (i) Cancel the disputed domain name www.deltaatc.in; and
- (ii) Award cost of the proceedings to the Complainant, as deemed fit.

7. FINDING:

Since, the case of the Complainant as made out in the Complaint has gone uncontroverted as the Respondent did not file any Response/Reply and was proceeded against ex-parte, the present complaint is to be decided on the basis of the pleadings and documents on record which are unchallenged and as such undisputed. However, as per the settled dictum of law, the Complainant has to stand on his own legs and to prove his case by leading cogent and reliable evidence. In the present case, the Complainant has placed on record requisite documents to support its claim and from the contents of the Complaint and the documents annexed, it is evident that the disputed domain name www.deltaatc.in consist of the mark "DELTA", which is the registered trademark owned by the complainant. DELTA is a mark registered which has been established by the Complainant over a period of time by its use. The Complainant has used it world over and owns registered trademark, "DELTA", in support of which, the Complainant has placed on record copies of the registration certificates as Annexure D and details of DELTA trademarks worldwide

registrations and the copies of Registration Certificates of the DELTA Trademark in few major jurisdictions including India and many other countries as Annexure F. Also the Complainant has placed on record WHOIs database extract, showing Complainant's <www.delta.com> domain name containing the Delta trademark being registered since 1993 as evident from Annexure G. All the above documents support the Complainant's exclusive right over the name DELTA. Therefore, the Complainant's claim that it has a right over the disputed name stands proved.

I am of the view that the Registrant's Domain name, "DELTAATC" is nearly similar and also confusingly similar to the trademark, "DELTA" in which Complainant has rights. Also, from above, it is proved that as the Respondent's action to register the said domain name is not bonafide, therefore, the said registration is done in bad faith. From the averments of the Complaint and the documents annexed, it is evident that neither the Respondent is associated as an individual, business nor has organization with the name "DELTA" not the complainant authorized Respondent in anyway to use of trademark "DELTA". It is also evident from record that the Complainant has no relation with Respondent commercially or otherwise. So therefore, the use of trademark "DELTA" by the Respondent is not legal as the Respondent has no legitimate right over the said domain name.

Also the Complainant has registered website consisting the word "DELTA", for which it has ownership having strong internet presence and can be accessed from anywhere in the world and the Complainant also owns countries specific domain names, therefore, this in itself

becomes a good ground for the Complainant to seek cancellation of the disputed domain name, www.deltaatc.in.

8. **CONCLUSION:**

In view of the above discussion, based upon the pleadings and documents on record, it is that the Complainant has undisputed proprietary right over the mark "DELTA" and the Respondent's domain is nearly identical and also confusingly similar to the trademark in which Complainant has rights and further the Respondent has no rights or legitimate interests in respect of the domain name and also Respondent's domain name has been registered a bad faith to be used to attract internet users to the Respondent's website or other online/offline location by creating a likelihood of confusion with the Complainant's name or trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Therefore, the complainant has proprietary right over the mark, "DELTA" and is legally entitled to get the cancellation of the domain name i.e. www.deltaatc.in. Also, the Respondent is legally barred from using the disputed domain name. The Complaint is allowed on these terms.

9. **AWARD:**

In view of above, it is ordered that the disputed domain name www.deltaatc.in registered by the Respondent is cancelled. It is further ordered that the Respondent is barred from using the mark

<www.deltaatc.in> and therefore shall immediately cease to use the said domain name. The Award is passed on these terms.

10. **COST:**

In view of the facts and circumstances of the case as the Complainant has been uncalled for an unnecessarily dragged into the present dispute, therefore, the costs of the proceedings as provided in INDRP Rules of Procedure is also awarded in favour of the Complainant and against the Respondent.

Signed on this 29th January 2022.



(Sajal Koser)
Arbitrator