

**Advisory Committee Panel
For the Internet Society of Israel**

Brian Negin, Chair
Dr. Michael Birnhack
Leehee Feldman

In the matter between

Microsoft Corporation
Represented by Adv. Nahman Cohen-Zedek
of Eitan, Pearl Latzer & Cohen-Zedek
(“the petitioner”)

vs.

The Levi Family
Represented by Mr. Oren Levi
(“the respondent”)

Regarding the domain name
“windows.co.il”
(“the domain name”)

DECISION

PROCEDURE

1. This Advisory Committee Panel (ACP) was established on September 27, 2004, to hear the petitioner’s request of September 23, 2004 to have the domain name transferred to the petitioner. The respondent, who agreed to have the dispute resolved before an ACP, submitted his response on December 22, 2004. The petitioner’s counter-response was received on January 16, 2005, at which time the proceedings were declared closed. By agreement of the parties, this dispute is being resolved in accordance with section E of the Rules for Allocation of Domain Names under the il. (Israel) Top Level Domain (“the Rules”), effective as of December 1998 (<http://www.isoc.org.il/domains/il-domain-rules.html>), even though the domain name was allocated to the respondent in February 1998, before the Rules came into force.

FACTUAL BACKGROUND

2. The petitioner is a corporation registered in the state of Washington, USA. It holds registered trademarks in Israel, including the following:
 - “Windows”, class 9 (“Computer programs; computer; computer components; computer peripherals; information stored in or on electronic magnetic, optical and other media; holograms, display devices for controlling menu selections and images on a display screen, all included in class 9”), application date July 7, 1992, registration date January 4, 1995.
 - “Windows”, class 16 (“Books; documentation for computer programs, computers, computer components, computer peripherals and display devices for controlling menu selections and images on a display screen; user manuals, reference manuals and technical manuals, data sheets, reference cards and templates; periodicals, magazines and newsletters; labels and holographic labels; all included in class 16.”), application date July 1, 1992, registration date January 4, 1995.
 - “Windows Warehouse”, class 9 (“Computer hardware including modems and computer memory hard drives and computer software; all included in class 9”), application date July 14, 1992, registration date September 7, 1995.
 - “Windows NT”, class 9 (“Computer programs pre-recorded on disks, diskettes, cartridges, optical disks, computer chips and compact disk read-only memories; computers; computer components; computer peripherals; information stored in or on electronic magnetic, optical or other media; holograms; display devices for controlling menu selections and images on a display screen; all included in class 9.”), application date June 9, 1993, registration date June 11, 1995.
3. The petitioner is also the holder of the registered trademark name “windows”, in class 9 and 16, in many countries throughout the world.
4. According to the domain name registration information (available using the WHOIS function on the ISOC-IL web site at <http://www.isoc.org.il>), the Levi Family is the holder of the domain name. The domain name was assigned to the Levi Family on February 23, 1998. Mr. Oren Levi is listed as the administrative and technical contact for the holder.
5. The Levi Family is also registered as the holder of the of the keshet.co.il domain name. However, the administrative and technical contact for the keshet domain is

not Mr. Oren Levi, but Mr. Ilan Levi. In addition, the address of the holder of the keshet domain is a post office box in Savyon, while the address of the holder of the windows domain is a house number on HaKeshet Street in Savyon. Despite these differences, the telephone numbers for the administrative and technical contacts of both domains (Mr. Oren Levi and Mr. Ilan Levi) are identical. From similarities in the domain name registration information (identical holder names, identical family names of the administrative and technical contacts, Savyon address for the holders of both domains, identical phone numbers for the administrative and technical contacts of both domains), we conclude that the same Levi Family holds both domain names, but that each domain is administered by a different member of the family. In this decision, reference to "the respondent" shall mean the Levi family as holder of the domain name windows.co.il, administered by Mr. Oren Levi.

6. The domain name windows.co.il is used for an active web site at <http://www.windows.co.il>. The domain name keshet.co.il is used for an active web site at <http://www.keshet.co.il>. A description of the these sites and the connection between them, will follow in the discussion of the parties' claims.
7. The petitioner approached the respondent on June 3, 2004, demanding that the respondent cease and desist from using the domain name windows.co.il and to arrange for the transfer of the domain name to the petitioner. The respondent replied on June 13, 2004, asserting that the domain name is his property, having acquired it legally, and rejected the petitioner's demand. On August 1, 2004, the respondent expressed his agreement to the petitioner's initiative to have the matter resolved before an ACP.

THE PARTIES' CLAIMS

8. The petitioner claims that not only does it own the registration of the "windows" trademark in Israel, but that the name "windows," in the realm of computers, has acquired secondary meaning and is a well-known trademark in Israel and abroad. The petitioner vigorously protects this trademark around the world. The petitioner has not authorized use by the respondent of its trademark. The respondent has no right or legitimate interest in or to the trademark "windows" (registered or well-known) in the context of computers. The respondent's site, <http://www.windows.co.il>, redirected users to the Keshet web hosting site (<http://www.keshet.co.il>), until June 2004, when the petitioner approached the respondent and demanded that he cease and desist from use of the domain name. Since then, the site prominently advertises (and links to) the Keshet web hosting site. The site (before and after the Keshet site diversion) contains ads for commercial entities, such as Amazon.com, DaveCentral shareware archives, a dating service web site and a web site that offers "Best deals on the net on electronics computers" as well as a search capability that enables searches for Microsoft Windows products and services. As a result, the prima facie commercial nature of the site, as well as a prominent connection to computer related services, creates a clear risk of confusion as to the use of the domain name on the respondent's site. In addition, the use of the "windows" trademark in the domain name will misleadingly

divert customers and will tarnish the “windows” mark. As regards the length of time it took the petitioner to act against the respondent (the domain was registered in February 1998, and the petitioner first contacted the respondent in June, 2004), the petitioner states that it acted as soon as it became aware that the respondent was holding the domain name.

9. The respondent attacks the trademark “windows” as being a generic term, and therefore not deserving of registration or of recognition as being a famous mark. In addition, he contends that the trademark “windows” is losing its status in the world. He states that his web site does not offer any products or services in the classes (9 and 16) under which “windows” is registered, and therefore his site does not infringe the “windows” trademark. In addition, he argues that there is no possibility of confusion by using the generic name “windows” on his site. He states that he created the site “to build a family site that will in a sense open windows to our world. I have always used the site to put out family pictures, though they were not publicly accessible(i.e. from the front page or search engines).” As for the diversion of the <http://www.windows.co.il> site to the <http://www.keshet.co.il> site, he states that “unfortunately a couple of months ago while transferring all clients to a new server a glitch occurred and the windows main page was directed to a “PARKED” mode. Very common in the domain world. Unfortunately it was also done by mistake. I actually rarely go to my main windows.co.il URL, but to [a] sub folder within, so I did not notice the problem. Also my email services were not affected.” And finally the respondent questions the motive of the petitioner in this matter, having waited 6 years to demand the domain.

DISCUSSION

10. Following the precedent established in previous ACP decisions (disney.co.il; habitat.co.il; bekol.org.il – available at the Israel Internet Society site at http://www.isoc.org.il/fr_reload.html?domains/acp.3), we shall examine the claims of the parties in light of substantive Israeli law: good faith behavior (Articles 39 and 61 (b) of the Contracts Law (General Section), 1973; passing off (Article 59 of the Torts Ordinance [New Version] and subsequently Article 1(a) of the Commercial Torts Law, 1999; and trademark infringement (Articles 46 and 46a of the Trademarks Ordinance [New Version], 1972.

Good faith

11. The general principle of "good faith" is a fundamental tenet of the Israeli legal system. It is reflected in articles 39 and 61(b) of the Contracts Law (General Section), 1973, which require good faith behavior in carrying out contractual obligations or legal obligations that are not in their nature contractual or do not derive from contract. A standard for good faith behavior regarding domain name registration and use, as set out in the abovementioned ACP precedents, is the objective international standard established under the ICANN Uniform Domain Name Dispute Resolution Policy (UDRP) for settling domain name disputes. According to Article 4.a. of the UDRP, a domain name can be transferred from a holder if the following three elements are

present: 1) the domain name “is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and” 2) the holder has “no rights or legitimate interests in respect of the domain name; and” 3) the “domain name has been registered and is being used in bad faith.”

12. The UDRP sets out in Article 4.b. four circumstances in particular, but without limitation, that “if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.” A holder can establish a right or legitimate interest in the domain name by proving that it is making “a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” We shall proceed to examine the claims of the parties in light of the above criterion.

The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights

13. The domain name “windows.co.il” is identical with the “windows” trademark registered in Israel and held by the petitioner. The registration of this trademark was performed in accordance with Israeli law, and it is legally binding on the respondent, regardless of his views about the generic nature of the mark. We take notice of the fact that the generic term “windows” has taken on secondary meaning in the computer world, and that it has also attained a “well-known” status in Israel and abroad, notwithstanding the respondent’s contentions to the contrary.

The holder has no rights or legitimate interests in respect of the domain name

14. The holder is using the domain name for a commercial web site. The holder is not authorized by the petitioner to use the trademark “windows” in its domain name. The holder is not doing business under the name “windows.” The holder’s name is not “windows.” The web site using the domain name is not legitimately offering for sale goods or services related to the generic sense of the word “windows” – ie, the site is not a legitimate business that sells glass windows and related products or services.
15. The respondent attempts to justify the choice of the domain name, in its generic context, by stating that he created the web site “to build a family site that will in a sense open windows to our world. I have always used the site to put out family pictures, though they were not publicly accessible (i.e. from the front page or search engines).”
16. This is a spurious claim. The site at <http://www.windows.co.il> is a commercial site, using the commercial suffix “co.il”. The home page is strictly commercial in nature, with advertising links to commercial sites, including the commercial web-hosting site

whose domain name is owned by the respondent as well as search facilities for computer software and hardware. The site is aimed at the general public, who will have no means of knowing about, or accessing, the Levi family pictures held within.

17. We therefore find that the respondent does not have a legitimate interest in respect of the domain name.

The domain name has been registered and is being used in bad faith

18. We believe that the domain name was registered and is being used in "bad faith", in the objective meaning of this term, as evidenced by circumstances described in Article 4b (iv) of the UDRP as follows: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location."
19. The domain name is being used for commercial purposes. Today's home page interface is headed by an advertisement: "Hosted by Keshet," that also serves as a link to the commercial web site Keshet at <http://www.keshet.co.il>. The Keshet site offers several web related services: domain name registration, web site design and web mail. As explained above in paragraph 5, the domain name of the Keshet site, keshet.co.il, is closely associated with the respondent.
20. Following the Keshet advertisement is the following advertisement: "For the best deals on the net on electronics computers and more – deals4us.com."
21. Following this ad/link is a search engine/ad for amazon.com. Searches through this engine that result in a book purchase from amazon.com could entitle the respondent to income according to the Amazon.com associate plan (details at <http://www.amazon.com>, on the home page, under the topic "Make Money").
22. Scrolling down on the web page, we find interfaces for 17 web search engines: Alta Vista, Yahoo, HotBot, Excite, Lycos, Infoseek and Webcrawler, Walla, Golden Pages, Tapuz, iGuide, Seeknet, 144 Telephone Information, the Golden Pages, Highway61, Metacrawler and Profusion. Most of these interfaces are useless: either the search site has ceased to exist, or the entry of a search term into the search field does not yield a search result, but simply links to the home page of a given search engine (if it still exists). Clearly this part of the web site is not maintained or used. Nonetheless, the search engine interfaces give the site the look and feel of a web service oriented site.
23. The above interfaces are followed by a TUCOWS Quick Search engine, consisting of two search windows: a larger one for entering a search term, and a smaller one to its right for software categories according to a pre-determined list in a drop-down menu. The first item shown by default in this drop-down menu is "Win95/98." The drop-down menu has not been updated to include Windows 2000 products or Windows XP

products, though the search engine does actually work for the product categories indicated.

24. Scrolling down the page, there are links to others sites (some that work, some that don't), and afterwards search engine interfaces for MP3 music (once again, some work, some don't).
25. Considering the prominent non-functionality and outdated features of many of the elements on the site, one wonders why it exists at all. Except for the link to the Keshet site and the amazon.com link that could bring in income, much of the site simply appears to be useless.
26. The answer to the "why" of this site can be deduced from its history. As noted by the petitioner in its claims, for some time the site re-directed users to the Keshet web site. In other words, typing in the URL <http://www.windows.co.il> brought the user directly to the Keshet site at URL <http://www.keshet.co.il>. The respondent explained this "glitch" in his response: "... unfortunately a couple of months ago while transferring all clients to a new server a glitch occurred and the windows main page was directed to a "PARKED" mode. Very common in the domain world. Unfortunately it was also done by mistake. I actually rarely go to my main windows.co.il URL, but to [a] sub folder within, so I did not notice the problem. Also my email services were not affected."
27. We find this explanation unconvincing. In examining the archived web pages of the windows.co.il site on the WayBack Machine of the Internet Archive (<http://www.archive.org>), we find that the "glitch" did not occur "a couple of months ago," that is, a couple of months prior to the submission of the respondent's response in December of 2004. The re-direction started at least more than a year before submission of the response, at least from October 26, 2003. It continued till June 2004 according to the petitioner's claim, which was not denied by the respondent. The fact that the re-direction continued for at least seven months, that it was to a commercial site whose domain name is closely associated with the respondent, that the site re-directed to is prominently advertised and linked to on the <http://www.windows.site>, and that the respondent has tried to minimize these circumstances by claiming that the re-direction occurred "a couple of months ago" – lead us to conclude that the re-direction was intentional. The intent was that a user typing in the URL <http://www.windows.co.il> in search of Microsoft products would find himself redirected to the commercial Keshet web services site, whose domain name is closely associated with the respondent.
28. This conclusion is supported by the history of the home page prior to the re-direction of the URL <http://www.windows.co.il> to the Keshet site. Once again, by using the Internet Archive WayBack Machine, we see that the earliest archived home page of the windows.co.il site (November 28, 1999) contained a large banner ad for "Web Hosting." This ad linked to the Keshet site. Below that ad, under the banner saying "Welcome to my homepage" came an interface for searching for domain names, above which was written: "Check if a domain name is taken: (Just put in the name

without .com or .co.il)." This was the nature of the site up until the time the re-direction occurred, no later than October 26, 2003. In other words, the web site using the domain name was used primarily as a tool for either prominently advertising the Keshet site, or for re-directing users to that site, from at least November 28, 1999, until June 2004. After June 2004, the prominent banner ad for Keshet and the domain name search engine have been removed, apparently as a result of the petitioner's cease and desist demand.

29. From all of the above, we conclude that the domain name was registered and used in order to intentionally attract users to either the <http://www.windows.co.il> site where they would be urged on to the Keshet site by prominent advertising, or directly to the Keshet site by means of automatic re-direction.
30. Unauthorized use of a trademark in a domain name to intentionally attract users to a web site by creating confusion with the connection between the web site and the trademark, constitutes bad faith in accordance with the UDRP Article 4b(iv), as noted in at least two UDRP Administrative Panel Decisions given through the WIPO Arbitration and Mediation Center: **Royal Bank of Canada v. Personal**, Case No. D2001-0761 (<http://arbitrator.wipo.int/domains/decisions/html/2001/d2001-0761.html>) and **Ticketmaster Corporation v. Iskra Serivice**, Case No. D2002-0165 (<http://arbitrator.wipo.int/domains/decisions/html/2002/d2002-0165.html>). This was succinctly summed up in Paragraph 7.3.3 of the Royal Bank of Canada decision as follows: "Such confusion will exist as to the source, sponsorship, affiliation or endorsement of the web site. The fact that such confusion may be dispelled, and replaced by annoyance or disgust, once the nature of the site is revealed does not negate the fact of the initial confusion."
31. For the reasons set out above, we hold that the circumstances surrounding registration and use of the domain name are evidence of bad faith, in accordance with objective international standards established by the UDRP. We note, as discussed more fully in the ACP [disney.co.il](http://www.wipo.int/domains/decisions/html/2002/d2002-0165.html) decision, that these standards themselves are a codification of a normative consensus that existed prior to the time of their entry into force (October 24, 1999), and therefore we find them applicable to the registration of the domain name in February 1998, as well as to the continued use of the domain name by the respondent until today.

Passing Off

32. We find the circumstances in this case similar to those in the **Cellcom v. Aquanet** case (Opening Motion (Tel-Aviv-Jaffa District Court) 10909/99, given on September 8, 1999 <http://www.law.co.il/computer-law/cellcom1.htm>). In that case, according to the Court's finding, Aquanet, an Internet Service Provider, acquired the domain name [cellcom.net.il](http://www.law.co.il/computer-law/cellcom1.htm) to divert users looking for the Cellcom site to its own ISP service site. The court issued a temporary injunction against the use of the domain name by Aquanet, primarily based on the tort of "passing off," at that time Article 59 of the Torts Ordinance [New Version] and presently Article 1(a) of the Commercial Torts Law, 1999. Article 59 stated that "whoever causes, or attempts to cause, through

imitating a name, a description, a mark ..., that merchandise shall be mistakenly thought to belong to another person, to the extent that a normal purchaser might assume that he is purchasing the merchandise of that other person, shall be liable in tort vis a vis that other person.” Article 1(a) states today: “A business shall not cause that merchandise it sells or a service it offers, will be mistakenly thought to be merchandise or service of a different business or a service connected with a different business.”

33. The court in the Aquanet decision determined that Cellcom is not only a registered Israeli trademark, but also well-known name in Israel. It found that the use of the cellcom.net.il domain by Aquanet to offer ISP services was a source of confusion that might indicate that Cellcom had expanded its services into the ISP realm. The court also addressed Aquanet’s claim that such confusion would be quickly dispelled upon entering the site. The court rejected this argument, stating that the domain name itself could induce the user to assume that a connection existed between the site and Cellcom.
34. In light of the above precedent, we find that the registration and use of the domain name by the respondent constitutes passing off, either in relation to Article 59 of the Torts Ordinance (in force at the time of assignment of the domain name February 23, 1998) or in relation to Article 1(a) of the Commercial Torts Law, 1999 (in force from October 29, 1999).

Trademark Infringement

35. The legal analysis under trademark law partially overlaps the "good faith" and “passing off” analysis brought above, therefore we will not repeat it here in detail.
36. In order to prevail in a trademark infringement suit according to Article 46 of the Trademarks Ordinance, a plaintiff must prove that it owns a valid trademark, and that the defendant used a similar and/or identical mark, regarding the same class of goods, without authorization. Judicial precedent has made it clear, that the plaintiff must also prove that there was consumer confusion (see Supreme Court Civil Appeal Request 5454/02 **Ta'am Teva (1988) Tivoli Ltd. v. Ambrozia Sopharav Ltd.**, 57(2) P.D. 438; Supreme Court Civil Appeal 3559/02 **Mo'adon Menuey Toto Zahav Ltd. v. The Israeli Sports Betting Board** (yet unpublished, decided on Sep. 26, 2004, hereinafter: the Toto case)). However, the need to prove confusion applies only where the mark used by the defendant is similar to the plaintiff’s registered trademark. In cases where the mark used is identical to the registered trademark, there is no need to prove consumer confusion.
37. Applying these rules to the present case, the petitioner has proven that it owns a registered and valid trademark in the mark “windows,” and that the domain name used by respondent is identical to this registered trademark. Adding the URL's suffix (co.il) does not change this conclusion, as decided in the Cellcom case. However, for us to reach a finding of infringement, the goods or services offered under the allegedly infringing domain name must be of the same class as the class of goods or services of

the registered trademark. Here, the services offered by the respondent and the products offered by the petitioner are not of the same classes in which the trademark is registered (9 and 16, as mentioned above), despite the relative proximity thereof.

38. Accordingly, we conclude that a regular trademark infringement according to Article 46 of the Trademarks Ordinance, cannot be sustained in this case. However, the petitioner's trademark is also a well-known mark, as this term is now defined in the Trademarks Ordinance. Although the definitions and power of a "well-known trademark" ("WKT") were added to Israeli Law in 1999, to accommodate the commitments Israel undertook in joining the WTO (Article 16 of the TRIPS agreement), the legal concept of a WKT was recognized by the Supreme Court beforehand, for example in Civil Appeal 6181/96 **Kardi v. Bacardi**, 52(3) P.D. 276. In that case, Mr. Yigal Kardi requested the registration of the name BAKARDI regarding clothing. Bacardi Inc., which marketed only alcoholic beverages in Israel, objected. The Supreme Court recognized the doctrine of WKT even though it was not codified at the time. The 1999 amendments codify TRIPS, but they also reflect the ruling of the Kardi case.
39. According to Article 46a of the Trademarks Ordinance, the scope of protection awarded to the owner of a registered WKT is broader than that given to a trademark that is not well-known. The protection of a WKT extends beyond the class of goods or services under which the registered trademark is registered. Article 46a(b) states: "A well-known trademark that is also a registered trademark, shall entitle its owner to sole use of the mark as regards goods that are not within the class [in which it is also registered], if the use of the mark by someone other than the owner is likely to indicate a connection between the said goods and the owner of the registered mark, and the owner of the registered mark is likely to suffer damage as a result of said use. Article 46a was recently discussed by the Supreme Court in Civil Appeal 9191/03 **V&S Vin Spirt Aktiebolag v. Absolute Shoes Ltd.** (yet unpublished, decided on July 19, 2004). The Supreme Court addressed the two conditions necessary to prove infringement according to Article 46a.
40. The Supreme Court held (paragraph 12 of the Absolute Shoe decision) that the first condition necessary to establish infringement under Article 46a (the connection between goods marked by the defendant and the owner of the registered mark) does not require that the plaintiff prove the existence of confusion. The threshold of the "connection" requirement is lower than "confusion," but each case must be decided on its own merits. The Supreme Court held that such a connection did not exist between shoes marketed by the defendant/respondent under the name "Absolute Shoes" and the owner of the registered and famous trademark "Absolut," since the goods (the shoes) marketed by the defendant/respondent are substantially different from the goods marketed by the trademark owner (alcoholic beverages). Such is not the case in the present dispute regarding the domain name windows.co.il. In this dispute, the respondent offers or advertises computer goods and services using the petitioner's registered and well-known trademark used for the marketing of computer goods (computer programs, computer components, computer peripherals,

documentation for computer programs, periodicals, magazines etc...). The connection here is obvious.

41. As the Supreme Court in the Absolute Shoes decision held that the first condition of Article 46a(b) did not exist, it did not go on to discuss the boundaries of the second condition (possible damage to the trademark owner), which would include what is commonly known as trademark “dilution” or “tarnishing” of a trademark. We believe that such damage does exist in the present domain name dispute. The use of the word "windows" in the domain name held by the respondent is likely to create the wrong impression that the petitioner has extended its business into the area of registering domain names using the Israeli Keshet site, as well as other kinds of business advertised or promoted on the windows.co.il site, thus diluting or tarnishing the Microsoft Windows trademark and causing damage to the trademark owner. This is sufficient for establishing a case of trademark infringement under Article 46a of the Trademarks Ordinance, as well as under the pre-existing judicial precedent codified in Article 46a.
42. We note that the Supreme Court, in the V&S Vin Spirit case, urged a cautious application in the legal protection of WKTs, since too broad a protection might adversely affect free competition and freedom of professional occupation. Additional considerations might also be invoked to limit the scope of WKT protection. We do not believe that such limitations apply to the present domain name dispute: the name “windows” is not being used to market generic glass windows (products or services); it is not being used to market Microsoft Windows products under license; it is not the personal or business name of the respondent; nor is the use of the name “windows” in the domain name crucial to legitimate business carried out by the respondent.
43. We therefore conclude that use of the domain name constitutes trademark infringement of the registered and well-known mark “windows” owned by the petitioner.

ADDITIONAL CONSIDERATIONS

44. We do not find that the six years it took the petitioner to act on this matter, should prejudice its rights to the domain name based on the above analysis. The petitioner states that it acted as soon as it became aware that the holder was holding the domain name. We have no means to assess the veracity of this claim, even though it does strike us strange that the petitioner, who so arduously defends its trademarks around the world, should have failed to notice assignment of the domain name to the respondent for six years. Nonetheless, it is clear that the respondent did not rely on this six-year period to develop a viable commercial web site. The web site under the domain name is an undeveloped, semi-commercial home page, whose primary purpose is to promote a different commercial site (Keshet) whose domain name is closely associated with the respondent. No damage to a legitimate commercial interest will be caused to the respondent by revoking the assignment and transferring the domain name to the petitioner.

45. Due to the length of time it took the respondent to demand the domain name, we believe it would be fair to allow the respondent more than the minimum 30 day period (Rule 23 of the Rules) before revocation of the assignment of the domain name – 45 days would be an appropriate period. In addition, we find it appropriate under these circumstances to use our discretion under Rule 24 of the Rules, and require that the Petitioner bear all of the expenses related to this dispute.

CONCLUSION

46. In consideration of all of the above, the assignment to the respondent of the domain name, windows.co.il, shall be revoked, no sooner than 45 days from the date the parties are notified of this decision. The Israel Internet Society may thereafter assign the name to the petitioner, pursuant to the Rules. The petitioner shall bear all of the expenses of this dispute resolution.

Date: January 31, 2005

Brian Negin, Chair

Dr. Michael Birnhack

Leehee Feldman