

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

Leehee Feldman, Chairperson  
Brian Negin  
Dr. Yuval Karniel

In the matter between

**“Bekol – Organization of Hard of Hearing and Deafened People”  
(the Petitioner)**

vs.

**Mr. Yaniv Pivo (the Respondent)**

**Regarding the Domain Name “BEKOL.ORG.IL”**

## **I. Procedure**

The Complaint in this matter was filed by the Petitioner on January 19, 2003. This Advisory Committee Panel was established by ISOC-IL at the end of February, in accordance with section E of the Rules for Allocation of Domain Names under the .il (Israel) Top Level Domain. The Respondent filed a Statement of Response on April 9, to which the Petitioner responded on May 5<sup>th</sup>. The Parties were requested to submit additional clarifications, and these were received only from the Petitioner, on June 1<sup>st</sup>, 2003.

## **II. Factual Background**

The Petitioner is a non-profit organization, founded on September 29, 1997. Its mission is to advocate the needs of the deafened and hard of hearing population in Israel, and act for the improvement of their well-being. It claims to be well known today by the government, the media, various organizations and the public, as a representative and spokesman of the hard of hearing population in Israel.

The Respondent himself is a member of this population, and joined the Petitioner as a member since December 1999. He claims to have been an active volunteer in various activities, both in this organization and others. The Respondent describes a long list of activities and interactions with the Petitioner, which are irrelevant to the case at hand.

In July 2000, the Respondent registered the disputed Domain through the services of Interspace Ltd, a domain registration and web hosting service. The respondent also registered an additional domain, hoh.org.il, which is of no interest to the Petitioner under this appeal. For both domains he also obtained “domain parking” services from InterNic Ltd., which allows maintaining a web page without need for a web hosting account.

Following the aforementioned registration, the Respondent informed the Petitioner of his actions, and offered to sell the domain to the Petitioner. The actual amounts, offers and what they were intended for, are not completely agreed upon by the Parties, according to the documentation as was submitted to the Panel.

It is agreed by the Parties that the Petitioner did not ask, nor authorize, the Respondent to execute the registration.

### **III. The Parties’ Claims**

The Petitioner claims that:

- a. The Petitioner is the rightful owner of the name and housemark “Bekol”.
- b. The disputed Domain is Bekol’s natural and appropriate Domain.
- c. The Holder registered the domain in bad faith, his behavior constitutes cybersquatting, and the Domain should therefore be transferred to its rightful owner.
- d. The cost of registration of a domain name should be \$70, and the Petitioner is willing to pay that amount, or even \$110, including renewal fees, for the disputed domain.

The respondent claims that:

- a. He registered the names only for the benefit of the Petitioner, in attempt to prevent any “opportunists” from snatching the name and posing difficulties later on for the petitioner.
- b. He supports his claims by providing a very long list of his various activities for the benefit of the Hard of Hearing population, claiming that such activity disproves any claims of bad faith.
- c. The English name “Bekol” is not the proper transliteration of the Hebrew name, and therefore the domain should not belong to the Petitioner. The appropriate domain should be “B-qol” or “Bqol”.
- d. The total cost of domain registration and parking for both domains is \$300, and anything less will not cover out-of-pocket expenses.

#### IV. Discussion

Though no formal rules apply to the analysis conducted by the ACP, it appears beneficial to follow the guidelines established by WIPO, in the Uniform Domain Name Dispute Resolution Policy (UDRP), as adopted by ICANN. Section 4a of the policy outlines the questions that need to be addressed in the event of a third party dispute, namely: (1) the said domain being similar to a trademark or service mark of the petitioner (2) does the holder have legitimate interest in the domain (3) has the domain been registered and used in bad faith.

##### 1. Does the Petitioner have legitimate interests in the domain name “Bekol.org.il”?

The question here is twofold – pertaining both to the right of the organization to the domain bearing its name as a recognized housemark, and to the question of proper transliteration of this name to English.

The Petitioner claims that its organization is very well known today as a leading advocator of the needs and rights of deafened and hard of hearing people in Israel, and as such has become the owner of the housemark “bekol”. The Israeli law does not directly or specifically grant protection to housemarks, which are unregistered trademarks. However, since this Panel is not limited to any specific body of law in reaching its decisions<sup>1</sup>, we base our analysis on several claims.

First, we examine the connection between the Petitioner and the disputed domain. An accessible means of checking this is by conducting an internet search consisting of the term “bekol”, which immediately refers the searcher to various web sites – almost all of which have some affiliation with the hearing-impaired population of Israel. “Bekol” is listed second on the web site for “Organizations in Israel for the Deaf and Hard of Hearing” (<http://www.hearing.org.il/eng/eassoc.htm> ). Though not amounting to a protected trademark, there is clearly a strong affiliation between the Petitioner and the disputed domain.

Second, we may take reference from the American Anticybersquatting Consumer Protection Act of 1999, which states that registration of a domain that is identical to “the legal name of the person or a name that is otherwise commonly used to identify that person”, can be an indicator of cybersquatting under the law. This shows that even “common use” may be enough to link an organization to its name.

Finally, we may mention that the laws of equitable estoppel prevent the Respondent from denying the strong connection between the name and the organization, since he himself used this name when registering the domain for the Petitioner itself.

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<sup>1</sup> See discussion in the matter of Waltdisney.co.il, in which the ACP concludes that ISOC-IL has granted it broad discretion as to rules used for resolution of domain name disputes.

Given Jan. 28, 2000, <http://www.isoc.org.il/docs/2000-01-disney.pdf>

As for the Respondent's claim regarding the transliteration issue – we find there is no need for such learned analysis of the rules of transliteration, for several reasons.

First, it was again the Respondent himself who chose the disputed spelling when registering the domain he intended to pass to the organization, so that the rules of equitable estoppel would prevent him from raising claims against this spelling as well.

Second, the whole concept underlying the Domain Name System is to constitute a user-friendly naming system that will replace the IP addresses. As such – common spellings are equally acceptable, since they are aimed at the public's general instincts (as confirmed by the Respondent himself, who claims that Israeli instinct leads to the disputed domain when searching for the organization).

To conclude the discussion regarding the interests of the Petitioner in the name, let it be noted that even without the above specifications, the case speaks for itself: the Holder himself claims to have registered the domain for the Petitioner, only to prevent others from “cybersquatting” it. This can only be the case if he believes the Domain should rightfully belong to the Petitioner. He also mentions that emails keep reaching this domain by people who believe they are addressing the Petitioner (as a side comment it may be noted that the very fact that the Holder took the liberty to “become a silent partner” to emails addressed to the Petitioner, implies less than bona fide behavior and raises questions as to the sincerity of the registration). The Holder himself states that when addressing the Petitioner, people will “follow their instincts”, whereby reaching “bekol.org.il”.

We therefore find that the above constitutes sufficient findings to indicate the association of the name “bekol” with the organization bearing the same name.

## **2. Does the holder have legitimate interest in the domain?**

It is agreed by both parties that at the time of registration of the domain, the respondent was in no way authorized by the Petitioner to register the domain (regardless of possible intentions). The first acknowledgement to the Petitioner came only **after** the registration, but not beforehand. Though the petitioner claims that he did so in order to avoid external cybersquatters, we are not convinced of the existence of such a degree of urgency in registration so as to have prevented him from contacting a representative of the Petitioner and notifying of his intentions prior to taking any actions. In the Statements by the Holder, he himself claims to have no actual interest in maintaining the domain itself, but is concerned only with receiving appropriate compensation.

### 3. Was the disputed domain registered or held in bad faith?

The main question in dispute was whether or not the Holder's behavior amounts to bad faith, justifying a transfer of the Domain to its rightful owner.

The concept of bad faith is intrinsic to the question of rightful ownership. Though there are no specific Israeli laws and rules defining what constitutes "registration in bad faith", the general Civil Law makes broad use of this concept, which can be applied here. In such analysis, it is necessary to examine both subjective and objective standards of behavior (see reference in the matter of Habitat<sup>2</sup>). Following are several components that can be used as indicators of the existence of bad faith.

- a. **Bad Faith** - In order to establish bad faith, the different components of the Respondent's behavior can be reviewed under the Israeli Contract Law (General Section), 1973. This substantive law refers to the requirement of good faith not only in contracts (section 39 - which might apply to the relations between ISOC-IL and the Holder), but also in pre-contract negotiations (section 12 – which applies to the relationship between the Petitioner and the Respondent), as well as to any other legal activity (section 61b – which applies to all the above situations).

The behavior of the Respondent can be separated into two stages – the initial registration of the Domain, and the continued holding of it later on.

As for the first stage – it is possible that though he was not authorized to register the name on behalf of the Petitioner, the Holder intended to do just that. Insufficient evidence was provided on this matter by the parties (see also discussion of misrepresentation below).

As for the second stage – we shall examine the factual chain of events: the Respondent registered the domain without prior authorization by the Petitioner. Following registration – he offered to sell the two domains he had purchased, for a sum of \$300 (registration and parking of two domains), while the cost of registration of a single domain through ISOC-IL would have been only \$70. The Petitioner offered to pay \$70 for the registration, and later offered \$110 to include renewal fees (or \$140, according to the letter attached by the Respondent). However, the Respondent refused either offer, and insisted on a total of \$300.

The UDRP Policy mentions, as evidence for registration in bad faith – any indication of intention to sell the domain "for valuable consideration in excess of documented out of pocket costs directly related to the domain". Though the respondent did show receipts for a total of \$300 spent out-of pocket, this sum pertains to the registration and parking of two domain names – one of which the Petitioner is not even interested

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<sup>2</sup> ACP Decision in the matter of Habitat.co.il, July 31, 2000 <http://www.isoc.org.il/docs/2000-07-Habitat.pdf>

in. It is not clear from the evidence whether the Respondent insisted on the sum for the two domains or for one, and what exactly each offer consisted of. It is not clear whether the Respondent requested reimbursement for renewal fees as well – and why or why not. However – it does appear that in either case, the Petitioner was required to pay considerably more than what it would have cost to register the one domain in which it is interested.

Under the subjective component of good faith (referring to the actual intent of the party), the registration itself might have been conducted in good faith, (ie – saving both the names for the organization and “parking” the domains on its behalf), even though the costs were higher than would have otherwise been necessary.

However, under the objective component of the term “good faith” (referring to accepted normative standards)– it appears that binding the two domain names together and refusing to sell the one domain in return for actual costs – indicates bad faith on behalf of the Respondent as far as holding on to the disputed domain.

Additional behavior by the Respondent indicating bad faith can be seen from reference by the respondent to the existence of a potential foreign purchaser for the domain name, and mention of the potential harm that may be caused to the Petitioner in the event that the name is transferred to a third party (exposure of sensitive outgoing email and loss of potential incoming email). All this amounts to less than reasonable behavior in maintaining the domain name and conducting negotiations for sale thereof.

Finally, in response to the Panel’s request for clarification as to the actual amounts offered or requested by each party for transfer of the name during previous negotiations, the Respondent provided no such clarification.

- b. **Misrepresentation** - Section 26 of the Rules for Allocation of Domain Names under the .il (Israel) Top Level Domain requires that the holder warrants that the allocation or use of the Domain Name by the Holder does not infringe the legal rights of a third party. As previously mentioned, the Respondent knew at the time of registration that he was not formally authorized to register the domain on behalf of the Organization. Questions arise as to the sincerity of the registration, since either one of two options is possible:

1. Holder’s statements to the registrar were true, and he was registering the domain for himself. In this case, his later claims of registration only for the benefit of the Petitioner are false; or
2. Holder claimed to be registering the domain on behalf of the Petitioner, when he was not an organ of the Petitioner, and was not authorized to do so. Therefore – he should not be holding it.

In either event, it is evident that at least some of the Holder’s statements are less than accurate.

- c. **Unreasonable interference** – Section 3 of the Israeli Commercial Torts Law, 1999, prohibits denying access of customers, employees or agents to a business, asset or service in an unfair manner. This tort is aimed primarily at the relations between two business entities, which may or may not be the case here. However, it is clear that the Respondent is currently attracting potential “customers” or members of the petitioner to his website and to the forwarded mail address, thereby preventing them from accessing the organization which they had tried to reach. As was decided by justice Zaft in both the case of Magnetics<sup>3</sup> and the case of Hapraklit<sup>4</sup> – using a domain name to attract potential customers constitutes access to a business as well, and interference thereof is prohibited.

Even if the Petitioner and Respondent are not conducting businesses in the sense of the Commercial Torts Law, the rationale of this tort can still be applied, since we are dealing with two entities appealing to the same type of audience, and competing over their attention (if not their commercial viability).

In conclusion –

We will leave undecided the question of the subjective good faith at the time of actual registration, and allow the benefit of the doubt that possibly the Holder’s intentions at the time were sincere, since the facts do not clearly point to either option.

However, good faith would have required the Holder to transfer the Domain to its rightful owner. In not doing so, and in posing unreasonable financial demands of the petitioner, we find that the Respondent is **holding** the domain **in bad faith**.

## V. Decision

We conclude that the Respondent acted in bad faith in holding on to the disputed domain and refusing to transfer it to the Petitioner for a reasonable sum, as was offered.

**In light of all of the above, we hold that the Domain Bekol.org.il be transferred to the Petitioner.**

In the matter of costs, we find that there are no special circumstances in this case that justify deviating from the default rule as set by ISOC-IL (<http://www.isoc.org.il/domains>), and therefore both parties will equally bear the administrative costs of this Panel, set at \$500.

**Given on June 12, 2003**

Leehee Feldman, Chairperson    Brian Negin, Member    Dr. Yuval Karniel, Member

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<sup>3</sup> Civil Action 1627/01 M.S. Magnetics Ltd. vs DiscoPy (Israel) Ltd. et al, (not yet published, 3/6/01, Tel Aviv District Court)

<sup>4</sup> Civil Misc. Claim 14377/01 Israeli Bar vs Ben David (not published, 11/11/01, Tel Aviv District Court)