

Wikimedia Foundation Inc. v. Adam Yohanan

IL-DRP Panel Decision

1. The Parties

The Complainant is Wikimedia Foundation Inc., of California, USA represented by Douglas M. Isenberg, USA.

The Respondent is Adam Yohanan, of Jerusalem, Israel.

2. The Domain Name and Registrar

The disputed domain name <Wikipedia.org.il> is registered with LiveDns Ltd.

3. Procedural History

The Complaint was filed with ISOC-IL on November 17, 2010. The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL ("**IL-DRP**") under the IL-DRP Rules ("**Rules**").

On November 24, 2010 the IL-DRP appointed Jonathan Agmon as the sole panelist.

In accordance with the Rules, on December 5, 2010, the Panel transmitted to the Respondent by e-mail a copy of the Complaint and attached materials, providing the Respondent 15 days to respond to the Complaint.

On December 19, 2010, the Respondent submitted an announcement, stating that he is currently abroad, and therefore will Reply upon his return. On the same day, the Panel responded to the Respondent announcement, notifying him that the deadline for the Respondent to file his Response is near, and if he wishes to obtain an extension, he should file a proper request.

On December 21, 2010, the Respondent submitted his Response to the Complaint.

4. Factual Background

The disputed domain name was registered by the Respondent on November 27, 2005

The Complainant is a nonprofit organization dedicated to the distribution of free multilingual content. Among others, the Complainant operates the renowned Wikipedia website under the domain name <Wikipedia.org>, which is the fourth most visited website in the world ("**Wikipedia website**"). Wikipedia is a web-based collaborative multilingual encyclopedia project, which currently contains over 17 million articles

written in various languages, among them, over 110,000 articles in the Hebrew language.

The Complainant was established by Jimmy Wales in 2003, two years after creating the Wikipedia website.

The Complainant has been using the mark WIKIPEDIA since the establishment of the Wikipedia website in 2001.

The Complainant is the owner of numerous trademark registrations for the mark WIKIPEDIA worldwide. For example: International trademark registration No. 839132, with the registration date of September 16, 2004, designated to the European Union and Japan; United States trademark registration No. 3505429 – WIKIPEDIA, with the registration date of September 23, 2008, and United States trademark registration No. 3040722 – WIKIPEDIA logo, with the registration date of January 10, 2006.

The Complainant is also the owner of Israeli trademark registration No. 203988 – WIKIPEDIA, with the Registration date of September 7, 2009, and Israeli trademark registration No. 203992 – WIKIPEDIA, with the registration date of September 7, 2009.

In addition, the Complainant owns a considerable number of domain names bearing the mark WIKIPEDIA. For example: <wikipedia.com> and <wikipedia.net> that were registered by the Complainant on January 12, 2001; <wikipedia.org>, which was registered by the Complainant on January 13, 2001; and many others.

The disputed domain name currently resolves to a website which is similar in appearance to the Hebrew version of the Complainant's Wikipedia website and contains a search engine directing to articles on the Complainant's Wikipedia website and to a resume distribution website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical to its registered WIKIPEDIA trademark.

The Complainant further argues that it has gained rights in its WIKIPEDIA trademark due to registration of the WIKIPEDIA trademark worldwide, among them in Israel, and by the Complainant's use of the WIKIPEDIA mark since the year 2001.

The Complainant further argues that WIPO Panels had recognized its right in the WIKIPEDIA trademark.

The Complainant further argues that it did not license, sold, transferred or in any way authorize the Respondent to use its WIKIPEDIA trademark.

The Complainant further argues that the Respondent did not make any preparation to use the disputed domain name in connection with a *bona fide* offering of goods or

services. The Complainant claims that using the disputed domain name to direct users to a resume distribution website does not constitute a *bona fide* offering of goods or services and does not give the Respondent any rights in the Complainant trademark.

The Complainant further argues that the Respondent is not known by the name "Wikipedia" and did not acquire any rights of any kind in the WIKIPEDIA trademark.

The Complainant further argues that the Respondent is using the disputed domain name in connection with a website that directly competes with the Complainant.

The Complainant further argues that the Respondent acts in bad faith, trying to attract for commercial gain Internet users by creating a likelihood of confusion with the Complainant's WIKIPEDIA trademark as to the source, sponsorship, affiliation or endorsement of its website.

The Complainant further argues that the Respondent is using the disputed domain name in connection with a website that directly competes with the Complainant.

The Complainant further argues that the Respondent makes unauthorized use of the Complainant's logo on the website operating under the disputed domain name.

Finally, the Complainant argues that in light of the fame of the Complainant's trademark, it is likely that the Respondent registered the disputed domain name with knowledge of the Complainant, in order to gain commercial benefit.

For all of the above reasons, the Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent states in his Response that he has been holding the disputed domain name for more than 5 years and had invested a lot of money on it.

The Respondent claims that the website operating under the disputed domain name helped endless of Israeli surfers to access the Wikipedia website more easily.

Having stated the above, the Respondent declares that he decided that the Complainant's interest in the disputed domain name is greater than his, and therefore consents to transfer the disputed domain name to The Complainant.

6. Discussion and Findings

The IL-DRP is an alternative dispute resolution procedure intended to provide expedited resolution to disputes regarding the allocation of Domain Names under the .IL ccTLD in accordance with the Rules. Respondent submitted to this process and Rules when he applied for and registered the disputed domain name. The LiveDNS Domain Name Registration Agreement provides that "the [domain name] holder agrees to the jurisdiction of the IL-DRP." (See Section 12.3; see also section 13 - <https://domains.livedns.co.il/Terms.aspx>). Respondent, therefore, by applying for and registering the disputed domain name agreed to the IL-DRP and the Rules.

It is also noted that the Rules now adopted by ISOC-IL follow closely those of the Uniform Dispute Resolution Policy (UDRP) and therefore the WIPO Arbitration and Mediation Center case law (and others interpreting the UDRP) can be used as examples of how previous panels have adopted and interpreted provisions similar to the Rules and UDRP.

As stated above, the Respondent had consented to the transfer of the disputed domain name to the Complainant. Previous WIPO Panels stated that “A genuine unilateral consent to transfer by the Respondent provides a basis for an immediate order for transfer without consideration of the paragraph 4(a) elements. Where the Complainant has sought transfer of a disputed domain name, and the Respondent consents to transfer, then pursuant to paragraph 10 of the Rules the Panel can proceed immediately to make an order for transfer. This is clearly the most expeditious course (see Williams-Sonoma, Inc. v. EZ-Port, WIPO Case No. D2000-0207).” (See The Cartoon Network LP, LLLP v. Mike Morgan, WIPO Case No. D2005-1132).

Similarly, in our case, the Respondent's Consent to transfer the disputed domain name makes it unnecessary to proceed and examine whether the Complainant had sufficiently established the elements of section 3 of the Rules.

Although there may be some circumstances that would require considering the merits of the case (See, for example: Brownells, Inc. v. Texas International Property Associates, WIPO Case No. D2007-1211 and Messe Frankfurt GmbH v. Texas International Property Associates, WIPO Case No. D2008-0375), in the present case, the Panel does not find it necessary to address the merits of the Complaint. This finding is based on the Panel's impression that the Respondent's consent is genuine.

The Respondent mentioned in his Response that he appreciates the Complainant's service, and believes that the Complainant interest in the disputed domain name is greater than his. The Panel agrees with this statement and finds no evidence to the contrary in materials filed in this case.

Accordingly, the Panel orders the transfer of the disputed domain name to the Complainant.

7. Decision

For all the foregoing reasons, in accordance with the Rules, the Panel orders that the domain name, <wikipedia.org.il> be transferred to the Complainant.



Jonathan Agmon
Sole Panelist

Date: January 9, 2011.