

# Interactive Brokers LLC v. [Domain Name Holder]

## IL-DRP Panel Decision

### 1. The Parties

The Complainant, Interactive Brokers LLC (hereinafter: "**Complainant**"), is a company incorporated under the laws of Connecticut, USA with the address at One Pickwick Plaza, Greenwich, CT 06830, USA, represented by Herzog, Fox, Neeman & Co. Law Office.

The Respondent is a private individual (hereinafter: "**Respondent**").

### 2. The Domain Name and Registrar

The disputed domain name <ibkr.co.il> (hereinafter: "**Disputed Domain Name**") is registered with LiveDNS Ltd.

### 3. Procedural History

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

On February 5<sup>th</sup>, 2020 the IL-DRP appointed Adi Barkan-Lev as the Sole Panelist.

In accordance with the Rules, on February 5<sup>th</sup>, 2020, 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.

The Respondent submitted no answer to the complaint on due date.

### 4. Factual Background

The Disputed Domain Name <ibkr.co.il> was assigned to the Respondent on January 12<sup>th</sup>, 2017.

According to annexes 1-2 to the Complaint, the Complainant, Interactive Brokers LLC, is a brokerage company operating under the company Interactive Brokers Group, Inc., an international and worldwide brokerage group. The Complainant operates in various worldwide Stock Exchanges as well as in the Tel Aviv Stock Exchange and provide investment and ecommerce services through a wide range of financial instruments.

According to annexes 4-6 to the Complaint, the Complainant is using the mark IBKR for its businesses and as a trade name and trade symbol on Stock Exchanges. The mark IBKR is a registered trademark in the USA and was filed for registration as a trademark in Israel (ILTM application No. 324418).

According to annexes 7-16 to the Complaint, the Complainant is using the mark IBKR since 2007 in its website, commercial activities, social media, reports, mobile applications etc. The Complainant is the owner of several IBKR domain names such as: <ibkr.com>; <ibkr.info>; <ibkr.co.uk> and <ibkr.com.cn> (annex 8 to the Complaint).

According to the Complaint (sections 19-22, annexes 20-24), the Respondent provided fake addresses when purchasing the Disputed Domain Name. According to the Complaint (sections 23-28, annexes 26-28), the Respondent registered several famous domain names that does not serve active websites. The Disputed Domain Name also does not serve an active website (see annexe 25).

On July 2<sup>nd</sup>, 2019 the Complainant issued a Cease & Desist letter to the Respondent via e-mail and on July 18<sup>th</sup>, 2019 a reminder was sent. No response was issued on behalf of the Respondent (annex 29 to the Complaint).

The Respondent filed no Response to the current Complaint.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant claim that the Disputed Domain Name <ibkr.co.il> is identical and confusingly similar to the IBKR mark with the suffix <.co.il> according to clause 3.1 to the Rules.

The Complainant claim that it is the rightful owner of the IBKR Mark since, among other things, it is using the IBKR mark as its trade name/ company name/ legal entity, according to clause 3.2 to the Rules.

The Complainant claim that the Respondent has no rights in the name IBKR according to clause 3.3 to the Rules since there are no evidence that the Respondent has a business name or a registered mark that consist of, or contain, the IBKR mark and since the Respondent did not obtain any consent or authorization from Complainant to use the IBKR mark.

The Complainant claim that the allocation and the use of the Disputed Domain Name by the Respondent were made in bad faith according to clause 3.4 to the Rules. This claim is based on the following main arguments:

- a. Respondent's failure to provide a correct and genuine address contrary to the Rules;
- b. The Respondent's passive use of the Disputed Domain Name;
- c. The Respondent's failure to respond to the Complainant's letters.

The Complainant also refer to clause 4.1(d) to the Rules while arguing that the Respondent has a pattern of registering domain names which include registered and well-known trademarks in order to prevent the rightful owners from reflecting their marks in a corresponding domain name.

The Complainant also refer to clause 4.1(b) to the Rules while arguing that the Respondent has requested the allocation of the Disputed Domain Name mainly in order to interfere with the Complainant's business.

## **B. Respondent**

As noted above, the Respondent did not reply to the Complainant's contentions.

## **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. The Respondent submitted to this process and Rules when he applied for and registered the Disputed Domain Name with LiveDNS Ltd. registration agreement that oblige the applicant for the domain name to accept the ISOC-IL rules.

The ISOC-IL registration rules provide that "*the [domain name] holder agrees to the jurisdiction of the IL-DRP*" (See section 12.3). The Respondent, therefore, by applying for and registering the Disputed Domain Name, agreed to the IL-DRP and to the Rules.

It is also noted that the Rules 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.

The Rules (section 3) provide that disputes regarding the allocation of a domain name by a Holder may be brought by a Complainant on the following grounds:

- a. the disputed domain name is the same or confusingly similar to a trademark, trade name, registered company name or legal entity registration ("Name") of the Complainant; and
- b. the Complainant has rights in the Name; and
- c. the holder has no rights in the Name; and

- d. the application for allocation of the disputed domain name was made or the disputed domain name was used in bad faith.

#### **A. Same or Confusingly Similar**

It is up to the Complainant to show that the Disputed Domain Name is the same or confusingly similar to a trademark, trade name, registered company name or legal entity registration of the complainant.

The Complainant does not own a registered trademark in Israel but own a registered trademark in the USA and a pending Israeli trademark application.

To establish unregistered trademark rights for purposes of DRP procedures, the Complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services (see *Uitgeverij Crux v. W. Frederic Isler*, WIPO Case No. [D2000-0575](#); *Australian Trade Commission v. Matthew Reader*, WIPO Case No. [D2002-0786](#) ; *Robin Hanger v. RPM Truck & Trailer Sales - Samantha Holcomb*, WIPO Case No. [D2013-1092](#)).

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) may include the following factors: (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public recognition, and (v) consumer surveys.

The Complainant is part of an international brokerage group and operates in various worldwide Stock Exchanges as well as in the Tel Aviv Stock Exchange. The Complainant provided substantial evidence to support its claim that it provides investment and ecommerce services through a wide range of financial instruments and that it uses the mark IBKR for its businesses and as a trade name and symbol on multiple Stock Exchanges. The Complainant is using the mark IBKR since 2007 in its website, commercial activities, social media, reports, mobile applications etc. The Complainant is the owner of several registered domain names under the mark IBKR.

The Disputed Domain Name is also identical and/or confusingly similar to the Complainant's Trade Name Rights (see *Fit!Vak v. Edoco LTD.* Case No. DNL2010-0064).

The Disputed Domain Name <ibkr.co.il> comprises of the Mark and Complainant's trade name – the word "IBKR" and the suffix ".co.il". The suffix ".co.il" is ignored for the purpose of determination of the similarity between the Disputed Domain Name since it is a common suffix showing that the domain name is part of the .il domain and associated with commercial activities (.co suffix). This issue was considered for example in *Rollerblade, Inc. v. Chris McCarty*, WIPO case no. D2000-0429; *Arthur Guinness Son & Co. (Dublin) Limited v. Dejan Macesic*, case No. D2000-1698.

The fact that the Respondent is shown to have been targeting the Complainant's mark (among others) also support the Complainant's argument that its mark has achieved significance as a source identifier.

Since the mark "IBKR" of the Disputed Domain Name is identical to the Complainant's tradename and mark and thus confusingly similar, the Panel concludes that the first requirement under the Rules, is fulfilled.

## **B. Rights in the Name**

Next, it is up to the Complainant to show that the Complainant has rights in the IBKR mark and trade name and that the Respondent has no rights in the Mark.

The Complainant provided sufficient evidence showing it has rights in the IBKR mark and trade name, as detailed above.

The Panel finds it can be determined that the IBKR mark and trade name should be regarded as associated with the Complainant.

## **C. The holder has no rights in the Name**

It is also up to the Complainant to show that the Respondent has no rights in the Disputed Domain Name. The Complainant has convinced the Panel that it has not approved or permitted for the Respondent to use its IBKR mark and trade name.

While the Complainant bears the "general burden of proof" under Rule 3.3, this burden shifts to the Respondent once the Complainant makes a prima facie showing that the Respondent lacks rights or legitimate interests (See *Neusiedler Aktiengesellschaft v. Kulkarni*, WIPO Case No. D2000-1769; *Dow Jones & Company and Dow Jones LP v. The Hephzibah Intro-Net Project Limited*, WIPO Case No. D2000-0704).

In the present case, the Respondent did not provide any explanations.

The Panel therefore concludes that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

## **C. Application and Use in Bad Faith**

Finally, it is up to the Complainant to show that the Respondent applied for the allocation of the Disputed Domain Name in bad faith or that the Disputed Domain Name was used in bad faith.

WIPO and IL-DRP Panels, relying on Rule 4.1 of the Rules, often rule that the bad faith clause provides a non-exclusive list of circumstances which can be helpful in showing that the Respondent acted in bad faith when he or she applied for or used the disputed domain name in the following manner:

- a. *the Holder continues to hold the domain name during or after termination of employment or work for hire contract where the domain name allegedly should have been allocated to the employing/contracting party; or*
- b. *the Holder has requested allocation of the domain name primarily for the purpose of disrupting the business of a competitor; or*
- c. *circumstances indicating that the Holder has requested allocation or holds the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name allocation to the complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or*
- d. *the Holder has requested allocation of the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that there is evidence of having engaged in a pattern of such conduct; or*
- e. *by using the domain name, the Holder has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's Name as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location".*

The Complainant claim that the Respondent acted in bad faith according to clauses 4.1 (b) and (d) of the IL-DRP rules.

The Complainant claim that the long list of domain names that were registered by the Respondent in the last decade suggest that the Respondent has a pattern of registering domain names that include registered and well-known marks in order to prevent its lawful owners from reflecting the mark in a corresponding domain name or to otherwise gain profit from such domain names (article 40 to the Complaint). The Complainant claim that such systematic behavior is an indication of bad faith.

The Complainant further claim that the Respondent has requested the allocation of the Disputed Domain Name mainly in order to interfere with the Complainant's business.

The concept of a domain name being used in bad faith is not limited to positive action. Inaction is within the concept (See *Cho Yong Pil v. Kee Dooseok*, WIPO Case No. D2000-0754).

The evidence provided by the Complainant support its claims. As detailed above, the Respondent registered almost 30 domain names, which include well known trademarks such as <alfa-romeo.co.il>. As detailed above, as of today, it seems that most of those domain names are inactive. Bulk registration of domain names is one of the hallmarks of

cybersquatting and is accordingly listed as one of the enumerated circumstances evidencing bad faith under the UDRP.

This Panel also consider the fact that the Respondent has, apparently, provided inaccurate addresses and details to the domain name Registrar, ignored the Complainant's Cease & Desist letter and failed to respond to the current Complaint.

The evidence provided by the Complainant support its claim that the Respondent had no legitimate prior interest in the Disputed Domain Name that is being used by the Complainant from 2007 and it seems that he is holding it in a passive manner.

These facts all lead to the conclusion that the Disputed Domain Name was purchased by the Respondent in bad faith.

## **7. Decision**

For all the foregoing reasons, in accordance with the Rules, the Panel accepts the Complaint. Accordingly, I hereby order that the disputed domain name <ibkr.co.il> shall be transferred to the Complainant within 30 days of the date of this decision.

*Adi Barkan - Lev*

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Adi Barkan-Lev, Advocate  
Sole Panelist  
Date: February 24, 2020