

Geovision Inc. v. Mr. Benny Meringer:

IL-DRP Panel Decision

1. The Parties

Geovision Inc. represented by Ono Security (1996) Ltd.

The Respondent is Mr. Benny Meringer.

2. The Domain Name and Registrar

The disputed domain name < geovision.co.il > is registered with the Israel Internet Association ("**ISOC-IL**") (shall be referred to hereinafter and alternatively as "**Disputed Domain Name**" or "**Disputed Name**" or "**Disputed Domain**").

3. Procedural History

The Complaint was filed with the ISOC-IL on July 20, 2011; The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL ("**IL-DRP**") under the IL-DRP Rules ("**Rules**").

On July 20, 2011, the IL-DRP appointed Dr. Yuval Karniel as the sole panelist ("**Panel**").

In accordance with the Rules, the Panel transmitted to the Respondent by e-mail on July 25, 2011, a copy of the Complaint with documentation attached and provided the Respondent 15 days to respond to the Complaint.

The Respondent submitted his response to the Complaint on August 8, 2011 (within the allotted time frame), however due to a technical failure the response wasn't recorded, and the Panel issued a Decision on September 7, 2011.

On that same day, the Respondent applied for the Decision to be cancelled, and the application was approved by the Panel.

4. Factual Background

On January 11, 2001, the Respondent made first contact with the Complainant, for the purpose of marketing the Complainant's products in Israel.

On June 1, 2001, the Complainant and the Respondent signed an exclusive distribution agreement for the Complainant's products in Israel. The Respondent purchased the Complainant's products directly from the Complainant until the end of 2004. On 2005, Ono Security (1996) Ltd., the owner of the domain <geovision-israel.co.il> ("**Ono**") was

granted exclusivity for purchasing the Complainant's products for distribution in Israel, while the Respondent continued to market the products. The respondent purchased the products from other distributors, at first from Ono and later from another distributor abroad.

On October 14, 2001, the Disputed Domain Name was assigned to the Respondent.

The Complainant is a Taiwan-based digital video surveillance company founded in 1998, it is listed on the Taiwan Stock Exchange (TSWE) as of March 2005, and has five regional subsidiaries around the world. The Complainant's clientele includes distributors, system integrators and installers from around the globe. The Complainant markets its services under the "GEOVISION" mark.

As of the date of filing of the Complaint, a website promoting a variety of surveillance products has been displayed at the Disputed Domain. Some of the products which are promoted are Geovision made, while others are produced by other companies.

On June 10, 2009, the Complainant sent the Respondent a Cease and Desist letter in which it demanded that the Respondent cease using the Disputed Domain and that it instantly transfer the Disputed Name to the Complainant. On June 16, 2009, the Responded replied to the letter and claimed he has used the domain since 2001 with the Complainant's knowledge and approval.

5. Parties' Contentions

A. Complainant

The Complainant argues that the Disputed Domain Name is identical to the Name in which the Complainant has rights.

The Complainant further argues that it has rights in the Disputed Domain Name, which are based amongst others on the fact that the Complainant owns registration rights containing or comprised of the Disputed Name in jurisdictions around the world, including a registered trademark in Israel (filed: May 1st 2008, published: June 2008). Additionally, the Complainant claims that the Disputed Name constitutes a well-known mark which is associated solely with Complainant in the field of video surveillance.

The Complainant further argues that the Respondent holds no rights to the Disputed Domain Name and registered the Disputed Name in bad faith, amongst others due to the fact that the Respondent has no relationship whatsoever with the Complainant and has ignored the Complainants past requests to cease and refrain from any further usage of the Disputed Name.

The Complainant further argues that by promoting products not Geovision-made and moreover products of the Complainant's competitors, the Respondent is thus being unjustly enriched and at the same time causing substantial damage to the Complainant's commercial activity.

B. Respondent

The Respondent argues the Complainant has no absolute rights in the domain, as several domains which are related to the name "Geovision" (for example, geovision.com) are not registered by the Complainant.

The Respondent further argues he has rights in the domain, as he was an exclusive distributor of the Complainant in 2001, continued to purchase products directly from the Complainant until 2004, and still distributes original product. In addition, the Complainant was aware of the use the Respondent was making the domain since 2001.

The Respondent further argues he has registered the domain in good faith, and for the sole purpose of marketing the Complainant's products in Israel. Furthermore, the Respondent argues the complaint was submitted in bad faith.

Let it be noted, that the Panel has taken into account only arguments which are necessary in order to reach a conclusion based upon and in accordance with the IL-DRP Rules and the discussion framework they set forth.

6. Discussions and Findings

The IL-DRP is an alternative dispute resolution procedure intended to provide expedited resolutions to disputes regarding the allocation of domain names in accordance with the Rules. The Respondent submitted to this Procedure and Rules when he applied for and registered the Disputed Domain Name.

The Rules provide that disputes regarding the registration of a Domain Name by a Holder may be brought by a Complainant on the following grounds:

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, amongst others, a trademark, a trade name or a registered company name.

The common suffix co.il is ignored for the purpose of determining the similarity between the Disputed Name and the word "GEOVISION" since it is a common suffix showing that the domain name is part of the .il domain and associated with commercial activities (.co suffix). The relevant part of the Disputed Domain Name is the word "GEOVISION".

The Complainant is the owner of the "GEOVISION" trademark rights in several countries around the world. In Israel, the Complainant submitted an application for the registration of the "GEOVISION" Trademark which was filed on May 1st 2008, and published in June 2008.

It is therefore the findings of the Panel that the Disputed Domain is the same as the name in which the Complainant has rights.

B. Rights in the Name

Next, it is up to the Complainant to show that the Complainant has rights in the Disputed Domain Name; and that the Respondent does not have rights in the Disputed Name.

The following attest to the rights of the Complainant has in the Disputed Domain Name:

- a. The Complainant applied to register the "GEOVISION" Trademark in Israel. The Israeli Ministry of Justice filed the application on May 1st 2008 and published it in June 2008.
- b. The Complainant owns trademark applications and registration rights in the Disputed Name in several countries.
- c. The Complainant sells high-end video surveillance products and solutions with a clientele that includes distributors, system integrators and installers based in over 70 countries. As of March 2010, the Complainant employees 282 employees and is listed in the Taiwan Stock Exchange (TWSE). The Complainant is known by and promotes itself under the Disputed Name.
- d. The Complainant is the registrant of several domains worldwide which include the Disputed Domain or related names.

It is also up to the Complainant to show that the Respondent has no rights to the Name. :

The following attest that the Respondent has no rights to the Name:

- a. The Complainant sent the Respondent a Cease and Desist letter in which it demanded to cease using the Disputed Name immediately followed by its transfer thereof.
- b. The Respondent promotes a company with a name that is substantially different than the Disputed Name.

However, this evidence is not sufficient to raise the burden of proof, as the following attest the Respondent does have some rights in the Disputed Name:

- a. The Respondent has been marketing the Complainant's product for over 10 years, some of them as an official distributor the Complainant.
- b. The Complainant was aware of the Disputed Domain's registration by the Respondent.

C. Application and Use in Bad Faith

WIPO Panels, while relying on Rule 4.1 of the UDRP, have ruled that the bad faith clause provides a non-exclusive list of circumstances which can be helpful in showing that a respondent acted in bad faith when he or she applied for a domain name.

Rule 4.1(d) provides that this Panel may find that the Respondent acted in bad faith if there are circumstances showing that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of

confusion with the Complainant's Name as to the source sponsorship, affiliation or endorsement of its website or location of a product or service on its website or location.

The Respondent registered the Name while he was an official distributor of the Complainant's products in Israel, as part of his marketing efforts and with the Respondent's awareness. The Respondent continues to market the same products today.

It is true the Respondent used the Disputed Domain to sell products other than the Complainant's. However, the same technique is used by Ono. Therefore, it is presumable that this practice is acceptable on the Complainant, and cannot be considered bad faith.

7. Decision

For all the foregoing reasons, in accordance with the Rules, the Panel orders that the Domain Name < geovision.co.il > remain the Respondent's.

Yuval Karniel
Sole Panelist

Dated: September 22th 2011