

# **Dispute Resolution Panel**

for the Israel Internet Association (ISOC-IL)

Brian Negin  
Sole Panelist

In the matter between

Jajah, Inc. ("the Complainant")  
Represented by Adv. Daniel Freimann  
and/or Adv. Assaf Joseph Naim

and

1. Lee Vallerius ("the Holder")
2. Gal Vallerius ("the Administrative Contact")  
(jointly - "the Respondents")

Regarding the domain name

jajah.co.il

("the Domain Name")

## **DECISION**

### **PROCEDURAL BACKGROUND**

On January 4, 2009, the Complainant submitted to the Israel Internet Association ("ISOC-IL") a petition for re-allocation of the Domain Name in accordance the ISOC-IL "[Procedures for Alternative Dispute Resolution under the .IL ccTLD by Dispute Resolution Panels \("IL-DRP"\)](#)".

ISOC-IL appointed the undersigned as sole panelist ("the Panel") to resolve the dispute.

On January 7, 2009, the Panel sent the petition and cover letter by email to the Respondents in accordance with Section 9.1 of the IL-DRP, to the email addresses provided by the Holder as listed in the ISOC-IL WHOIS database for the Domain Name. The cover letter informed the Respondents, inter alia, of their right to respond within 15 days, by January 23, 2009.

The email to the Holder was returned as undeliverable, with a message stating that this is a permanent error (550). Subsequent attempts at contacting the Holder at the email address listed with ISOC-IL, have resulted in the same response. On the other hand, the email to the Administrative Contact was not returned.

At the Panel's discretion according to Section 9.2 of the IL-DRP, subsequent to the non-delivery of the petition and cover letter by email to the Holder, the petition and cover letter were sent by registered mail to the Holder on January 9, 2009, according to the contact information provided by the Holder as listed in the ISOC-IL WHOIS database for the Domain Name. The registered mail was delivered on January 15, 2009, according to notification by the Israel Post via cell phone text message (which noted that the delivery was to the addressee's representative). Delivery was also verified using the mail tracking function on the Israel Post website (<http://www.israelpost.co.il>).

Neither of the Respondents submitted a response within two weeks or thereafter. Thus, on March 3, 2009, the Complainant submitted a request for an ex-parte decision.

On March 8, 2009, the Complainant's ex-parte decision request was sent, with a cover letter, by email to the Respondents, to allow them to respond within 7 days. The ex-parte request and cover letter were also sent by registered mail to the Holder. The email to the Holder was returned, as before, as undeliverable. The registered mail, on the other hand, was delivered to on March 11, 2009, according to notification by the Israel Post via cell phone text message. Delivery was also verified using the mail tracking function on the Israel Post website.

To allay all doubt as to the delivery by email of the above material to the Administrative Contact (the second respondent), both the original petition and the Complainant's request for an ex-parte decision, along with a cover letter allowing a response within 7 days, were sent by email and by registered mail to the Administrative Contact. The registered mail was delivered to the Administrative Contact on March 13, 2009, according to notification by the Israel Post via cell phone text message (which noted the delivery was to the addressees representative) and by the mail tracking function on the Israel Post website.

A copy of the cover letter to the Administrative Contact was also sent to the Holder by registered mail. It was delivered to the Holder on March 12, 2009, according to notification by the Israel Post via cell phone text message. Delivery was also verified using the mail tracking function on the Israel Post website

Section 9 of the IL-DRP states:

9. Notification to and Response of Holder

9.1. Upon the appointment of the Panelist/Panel a copy of the Petition and all submitted materials shall be sent, via e-mail, to the Holder by the Panelist/Chair, according to the contact information provided by the Holder.

9.2. The Panelist/Chair may, at his discretion, notify the Holder by means other than email.

9.3. The Holder may submit a response and any relevant materials to the Panelist/Panel within fifteen (15) days from the date the Petition is sent to the Holder.

Section 17 of the IL-DRP states:

17. Ex-Parte Decisions

17.1. Where one party fails or refuses to respond to or provide information or additional material to the Panelist/Panel, after being duly notified of the Petition, or where attempts to notify the Holder based on the information provided by the Holder to ISOC-IL do not succeed, the Panelist/Panel may make its determination on the material provided by one party alone or on the material before it.

The petition and request for ex-parte decision were delivered to the Respondents: to the Holder by registered mail and to the Administrative Contact, both by email and by registered mail – according to the contact information provided by the Holder to

ISOC-IL and listed in the ISOC-IL WHOIS database for the Domain Name. Neither of the Respondents has submitted a response to the petition or to the request for an ex-parte decision. Therefore, in accordance with Section 17.1, "the Panelist/Panel may make its determination on the material provided by one party alone or on the material before it."

### **THE COMPLAINANT**

According to the Complainant, the Complainant is a United States of America corporation, incorporated under the laws of the state of Delaware. It is the owner of the name, title and goodwill associated with the term Jajah relating to telecommunications and related areas of business. Founded in 2005, the Complainant is mainly an internet-operated telecommunications service provider and hence holds an uncompromising policy of protecting its intellectual property rights and the Jajah brand, especially on the Internet.

The Complainant is the owner of Israel trademark, No. 205170. for JAJAH (block letters), Class 38 ("telecommunications services, namely, telephone communication services; internet telephony services; video teleconferencing services; all included in class 38"). According to the certificate of registration attached to the petition as appendix A, application for the trademark was made on October 30, 2007. Publication date was March 31 2008. The trade mark was entered into the registry on August 6, 2008.

The Complainant states that it holds several trademark applications and registrations worldwide, including in Israel. It also notes its tremendous success, expanding its clientele to over ten million users worldwide within three years of being founded. The Complainant adds that it operates branches worldwide, including one in Europe and a Research and Development Center in Ra'anana, Israel, employing about sixty workers. And finally, the Complainant notes that it owns, through a subsidiary company, the domain name [jajah.com](http://jajah.com).

**THE RESPONDENTS**

Lee Vallerius, the Holder, is an individual with an address in Israel, according to the contact information provided to ISOC-IL and recorded in the ISOC-IL WHOIS database for the Domain Name.

Gal Vallerius, the Administrative Contact, is an individual with an address in Israel, according to the contact information provided to ISOC-IL and recorded in the ISOC-IL WHOIS database for the Domain Name. Gal Vallerius is also listed in the WHOIS database as the Technical Contact for the Domain Name.

The mailing address, telephone number and fax number for both the Holder and the Administrative Contact as listed in the ISOC-IL WHOIS database for the Domain Name, are identical.

According to the ISOC-IL WHOIS database information for the Domain Name, attached as Appendix C to the petition, the Domain Name was assigned to the Holder on February 16, 2006. The assignment is valid until February 16, 2010.

According to the Complainant, the Holder holds five additional domain names: anonymous.co.il; clothes.co.il; novell.co.il; paparazzi.co.il and shit.co.il.

According to the Complainant, the Administrative Contact holds no fewer than 145 domain names, such as: clal.us; hamosad.com; gamers.co.il.

**THE FACTS**

The Complainant states that it recently discovered that the Respondents have registered and have been using the Domain Name. It attached to its petition, as Appendix E, a print out (dated November 2, 2008) of a screen shot of the website once associated with the Domain name at <http://jajah.co.il>. The Complainant notes that the site offered links services in the telecommunications business in general, and Voice over Internet Protocol, in particular, for businesses other than the Complainant itself.

At the very top of the web page (Appendix E), appears a banner. To the left of center of the banner it says: "ja jah!", and to the right of center it says: "king of kings – lord of lords".

At the bottom of the banner, there is the following statement: "Please note that this domain is not connected by any way to the "Jajah" software/team/media or website!"

Below the banner, the following statement appears: "Enquire about this domain jajah.co.il".

The Complainant states that the slogan "king of kings – lord of lords" is a reference to the Rastafarian saying "Jah Rastafari". To the best of the Complainant's knowledge, this has no relevance to the field of telecommunications, the subject-matter of the above site's content. The Complainant adds that it appears that according to the Rastafari movement, JAHJAH can be considered a term for god. However, the Respondents knowingly omitted the letter **H**.

And finally, the Complainant notes that the term Jajah is associated in the telecommunications industry exclusively with the Complainant.

The Complainant states that it sent the Holder a cease and desist letter on January 30, 2008, both by email and by registered mail. The email was not bounced or returned, but the registered mail letter was returned to sender as "unclaimed."

The Complainant states that only after it submitted its motion for the re-assignment of the Domain Name did the Respondents remove the website that had been associated with the Domain Name. However, subsequent to this removal, Complainant states that the Respondents put the Domain Name up for auction on the [domainer.co.il](http://domainer.co.il) website. Examination of this site reveals the following additional information. It is stated on the site that the owner of the domain is "catchAname", and that "catchAname" is [www.catchAname.com](http://www.catchAname.com). A WHOIS database search of this domain name shows that the registrant is none other than Gal Vallerius, the second Respondent and the Administrative Contact for the Domain Name (jajah.co.il).

## **THE COMPLAINANT'S CLAIMS**

The Complainant claims that all four elements of Section 3 of the IL-DRP have been met. Section 3 states as follows:

3. Disputes regarding allocation of a Domain Name by a Holder may be brought by a third party ("Complainant") on the following grounds:
  - 3.1. the 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
  - 3.2. the Complainant has rights in the Name; and
  - 3.3. the Holder has no rights in the Name; and
  - 3.4. the application for allocation of the Domain Name was made or the Domain Name was used in bad faith.

The Complainant claims that the Domain Name is the same or confusingly similar to its trademark.

The Complainant claims it has rights in the Name. It is a world wide VoIP company and holds trademarks registered in Israel, the U.S.A. and the European Union.

The Complainant claims that the Holder has no rights in the name. While it has proved its rights in the Name, Respondents have not even responded.

The Complainant claims that the Domain Name was used in bad faith – in that the website pointed visitors to the Complainant's competition and that now the Respondents are attempting to sell the Domain Name for profit.

## **DISCUSSION**

### **Introductory remarks**

The Respondents have not responded to, and have not disputed the facts and claims in, the petition and ex-parte request for a decision. From this it can be inferred that the Respondent's do not contest these facts and claims. Nonetheless, this Panel has the responsibility to ensure that there is a basis to both the factual and legal claims asserted by the Complainant, as summed up in WIPO Arbitration and Mediation Center Administrative Panel Decision [Reuters Limited v. Global Net 2000, Inc. \(D2000-0441\)](#):

This Administrative Panel draws from this failure the following two inferences: (i) the Respondent does not deny the facts which the Complainant asserts, and (ii) the Respondent does not deny the conclusions which the Complainant asserts can be drawn from these facts. Nevertheless, this Administrative Panel still has the responsibility of determining which of the Complainant's assertions are established as facts, and whether the conclusions asserted by the Complainant can be drawn from the established facts.

While formally the Petition should be aimed only at the Holder (the first Respondent), and the discussion should only relate to the Holder, the Administrative Contact has held himself out as the owner of the Domain Name on the domainer.co.il site. The Panel does not know the relationship between the Holder and the Administrative Contact, and therefore shall refer jointly to the Respondents as responsible parties in this matter, unless otherwise stated or implied.

### **Sections 3.1 and 3.2 of the IL-DRP**

The Complainant has based its claim on its rights to a trademark registered in Israel for the name "jajah". An application for this trademark was made on October 30, 2007, over one year **after** the Respondents were assigned the Domain Name on February 16, 2006. The trademark was entered into the trade mark registry only on August 6, 2008. Therefore, at the time of application for the Domain Name, the Complainant had no Israeli trademark rights in the name "jajah".

However, as noted in the IL-DRP case regarding the domain name [rakevet.co.il](http://rakevet.co.il), the IL-DRP extends its protection to registered company names, trade names, and registered legal entity names, in addition to trademarks. Thus the IL-DRP has embraced a secondary purpose of the UDRP, as expressed in Section 174 of the Final Report of the [WIPO Internet Domain Name Process](#) (April 30, 1999) – protection against unfair competition.

Therefore, the IL-DRP extends its protection to the Complainant even prior to its application for its Israeli trademark, from the time it began its international internet telecommunications business in the year 2005 under the trade name and foreign registered trademark "jajah". While this may be relevant regarding the intention of the Respondents at the time of requesting allocation of the Domain Name, as well as



regarding the question of their rights in the Domain Name, it will be noted that much, perhaps most, of the Respondents' bad faith usage of the Domain Name described by the Complainant, has taken place since the registration of Complainant's Israeli trademark.

In determining whether or not a domain name is identical to a trademark or trade name, one factors out country codes such as "il", and generic domains, such as "co". As noted previous ISOC-IL domain name decisions, such as [skype.co.il](http://skype.co.il) and [marlboro.co.il](http://marlboro.co.il), these suffixes have no distinguishing characteristics in this context. Therefore, one refers to the distinguishing name -- in our case the name "jajah".

The Panel holds that the Domain Name, [jajah.co.il](http://jajah.co.il) (where the relevant term is the name "jajah") is identical to the Complainant's trade name and registered trademark, "jajah", and that the Complainant's rights in the name "jajah" extend from the time the Respondents applied for allocation of the Domain Name in the year 2006 until today -- thus fulfilling Sections 3.1 and 3.2 of the IL-DRP.

### **Section 3.3 of the IL-DRP**

The Respondents have no rights in the trade name or trademark "jajah". They have not responded to the Petition and request for ex-parte decision and have not offered an explanation of what their legitimate interest in the name might be. Nothing in the record indicates that the Respondents are doing business under the name "jajah".

The Panel notes that the "jajah" is a fanciful name with a high degree of distinctiveness. It is a coined term with no special meaning. A web definition search for the term "jajah" yields only results corresponding to the Complainant and its business. The name is used in the field of telecommunications by the Complainant -- the same field as the Respondents earmarked for their now defunct website. These facts alone would allow one to deduce that the Respondents intentionally chose the Domain Name because it was identical to the Complainant's trade name and international domain name, [jajah.com](http://jajah.com), and not for any legitimate business interest of their own.

This line of reasoning, albeit regarding a trademark rather than a trade name, was expressed in WIPO Administrative Panel Decision [Effems AG v. Weitner AG, Case No. D2000-1433](#)

This trademark is an invented word and has no special meaning. It is thus likely that Respondent did not choose this word by coincidence, but rather intentionally registered a domain name identical to Complainant's trademark.

Additional circumstances turn the "likelihood" that the Domain Name was chosen intentionally because it was identical to the Complainant's trade name and international domain name, to a certainty. The Respondents tied their website that was associated with the Domain Name to the Rastafarian movement as described by the Complainant, in an attempt to legitimize its use of the name "jajah". The Panel agrees with the Complainant that there is no connection between the content of that website and the Rastafarian movement, and that the dropping of the letter "h" from the Rastafarian "Jah" was not coincidental. And finally, the Respondents stated clearly on the website that the site had no connection with the Complainant or its activities.

The Panel concludes, therefore, that the Respondents chose the Domain Name intentionally, with full knowledge that it was identical to the Complainant's trade name, "jajah", and its international domain name, jajah.com, while they themselves had no legitimate business connection to, or right in, the name.

The Respondents cannot argue that sale of the Domain Name is a legitimate commercial activity and therefore they have a right and legitimate interest in the name "jajah". The name "jajah" is not generic, but a coined term which is highly distinctive and fanciful, associated with the field of telecommunications. Its sole value lies with the Complainant or with a competitor of the Complainant. Requesting allocation of the Domain Name, or using it, for the purpose of selling it for a profit to either to the Complainant or a competitor, would be considered an act of bad faith according to Section 4.1 c of the IL-DRP.

The Complainant has not claimed that the name "jajah" is a famous/well known name. Therefore, in theory, one might argue that legal use could be made of the Domain

Name outside of the class of telecommunications in which it is registered in Israel. One might then argue that offering the Domain Name for sale for non-infringing use would constitute a legitimate interest in the Domain Name, satisfying Section 3.3 of the IL-DRP.

While in theory this might be possible, in practice, it would not. The highly distinctive and fanciful nature of the coined name "jajah" and its singular association with the field of telecommunication make it valuable only in that context. In addition, the Respondent's clearly intended that sale of the Domain Name be aimed at either the Complainant or a Competitor by offering it for sale on its now defunct jajah.co.il website, which used the Domain Name to intentionally attempt to attract Internet users searching for the Complainant's online services.

One cannot dismiss the possibility that the trademark "jajah" has attained famous/well known status, extending its protection beyond the telecommunications category in which it is registered. In light of the conclusion in the above paragraph, this question need not be resolved in this dispute.

And finally, the Respondents cannot claim that use of the Domain Name to attract Internet users to a revenue producing site, such as a Pay Per Click landing/parking site, by creating confusion with the Claimant's trade name or trademark, is legitimate use that confers upon them rights in the Domain Name. As stated in the WIPO decision, [Adobe Systems Incorporated v. Domains OZ, WIPO Case No D2000-0057](#):

... mere use of the disputed domain names to attract customers, for commercial gain, to Respondent's website by creating consumer confusion with Complainant's trademarks would not, if such use were demonstrated, establish rights or legitimate interests in the domain names on the part of Respondent.

The Panel holds, therefore, that the Respondents have no legitimate rights in the Complainant's trade name or trademark, "jajah".

### **Section 3.4 of the IL-DRP**

Section 3.4 of the IL-DRP requires that the application for allocation of the Domain Name was made, or the Domain Name was used, in bad faith. Section 4 of the IL-DRP describes circumstances that, if found, shall be evidence of such bad faith behavior.

#### **4. Evidence of Allocation or Use in Bad Faith**

4.1. For the purposes of Paragraph 3.4 above, the following circumstances, in particular but without limitation, if found to be present, shall be evidence of the allocation or use of a domain name in bad faith:

- 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 website 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 website or location or of a product or service on its website or location.

The circumstances of this case provide evidence that the allocation or use of the Domain Name was/is in bad faith, according to Paragraphs c and e of Section 4.1, as described below.

#### **Section 4.1 c**

The Respondents today are offering the Domain Name for sale on an auction site. As stated above, the only possible customers for the Domain Name would be either the Complainant or a competitor, due to the highly distinctive and fanciful nature and the

name "jajah" and its singular association with the field of telecommunication. The solicitation for sale of the Domain Name by the Respondents on the website previously associated with the Domain Name, indicates that the target audience was that in the telecommunications industry.

The Respondents are serial domain name holders. According to the Complainant, the Administrative Contact holds no fewer than 145 domain names. The Holder holds five domain names in addition to the Domain Name – [anonymous.co.il](http://anonymous.co.il); [novell.co.il](http://novell.co.il); [clothes.co.il](http://clothes.co.il); [paparazzi.co.il](http://paparazzi.co.il); and [shit.co.il](http://shit.co.il). Examination of these five sites reveals that four of them (anonymous, clothes, paparazzi and shit) have a prominent statement (which also serves as a link) at the top of the page: "Enquire about this domain". Clicking on the link brings up a new web page at [namedrive.com](http://namedrive.com), specific to the domain associated with each site, through which the user can make an offer for purchasing the domain name. The screen shot of the website once associated with the Domain Name shows a link identical in phrasing and placement as on these other four sites.

Even without inquiring how much money the Respondents would request for any one of their domain names offered for sale, including the Domain Name (jajah.co.il), one may reasonably assume that the intention is to sell the names for valuable consideration in excess of out-of-pocket costs directly related to these domain names in general, and to the Domain Name in particular.

In light of the above, the Panel holds that the Respondents requested allocation of the Domain Name and hold it for the purpose of selling, renting, or otherwise transferring it to the Complainant or to a competitor, for valuable consideration in excess of documented out-of-pocket costs directly related to the Domain Name.

#### **Section 4.1 e**

The association of the Domain Name to a website was intended to attract, for commercial gain, users to the site by creating confusion with the Complainant's trade name and trademark ("jajah") as to the source or affiliation of the website.

The disclaimer at the bottom of the banner of the website ("Please note that this domain is not connected in any way to the "Jajah" software/team/media/ or website!") cannot provide a defense against the creation of such confusion. Regarding such a disclaimer, the ISOC-IL Advisory Committee Panel in the [snapple.co.il](http://snapple.co.il) domain name dispute stated:

It is our finding that many consumers are likely to be misled when searching for Snapple Beverages website. They are likely to venture into Vidal's website operating under the Domain Name. Moreover, we find that most consumers would associate Vidal's website and the Domain Name itself with Snapple Beverages. It is reasonable to expect that the allocation of the Domain Name is likely to cause confusion by associating Vidal and/or the Domain Name with Snapple Beverages. Such an outcome stands contrary both to Israeli law and the Sections. Vidal argues that the disclaimers and the looks of his website could not mislead consumers. It is however extremely likely that most consumers will associate the Domain Name with Snapple Beverages and not Vidal. Moreover, by the time consumers would have arrived at Vidal's website confusion and association of Vidal's website or the Domain Name with Snapple Beverages already took place. Such was also the opinion of the Cellcom court.

The website that was associated with the Domain Name was not only offered for sale, but the circumstances describe below support a conclusion that it was also "parked" on a Pay Per Click (PPC) parking page, intended to earn commercial revenue from users clicking through sponsored advertising links on the site.

Such PPC landing pages provide commercial income to the domain name holders, based on users clicking on the paid-for advertising links – as explained in the WIPO decision in [Asian World of Martial Arts Inc. v. Texas International Property Associates Case No. D2007-1415](#):

Within the last two years, the incidence of PPC landing pages on the Internet has exploded. Internet users cannot help but notice the increasing proliferation of these landing pages, which typically purport to offer a list of links relevant to the domain name and a "search function". The listed links and the search function, though, generally do not operate as a true search engine. A true search engine, like Yahoo! or Google, would provide a list of links to those web pages that appear to be most relevant to the user's search. In contrast, Respondent's PPC landing pages, like virtually all other PPC landing pages on the Internet, list only those links keyed to search terms for which advertisers have paid. Thus, in most cases, what might be highly relevant websites and

information is not provided on the landing page or in response to searches entered through the landing page because no one has paid for those pages to be listed; instead, the only links provided are those for which some advertiser was willing to pay for placement. The reason these pages are structured in this way is that, each time an Internet user clicks on a listed link, it creates an opportunity for the owner of the PPC landing page to receive a small (typically automated) payment from the advertiser in consideration for having delivered the Internet user to the advertiser's web page.

The above Panel noted that this practice does not inherently violate the UDRP:

With the proliferation of PPC landing pages has come a proliferation of UDRP challenges to the registered domain names. Although PPC landing pages appear to provide little societal benefit, *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, [WIPO Case No. D2007-1141](#), that does not mean that they automatically violate the Policy.

Thus each case must be decided on its merits. While resolution of generic domain names to PPC landing pages might not violate IL-DRP policy, this may not be the case when the domain name used is identical or confusingly similar to a trade name or trademark belonging to someone other than the domain name holder.

Four of the additional domain names currently held by the Holder -- [anonymous.co.il](#); [novell.co.il](#); [clothes.co.il](#); [paparazzi.co.il](#); and [shit.co.il](#), are "parked" via a service called NameDrive, with a site at [namedrive.com](#) site. Domain name parking is described on the NameDrive site, in an answer to the FAQ: "[What is NameDrive Parking?](#)",

NameDrive parking is a service whereby you can park your domain free of charge. NameDrive places targeted advertising on your parked domains and you earn money whenever visitors to your domain click on the ads.

An additional [FAQ answer](#) explains that in order to park a domain name with NameDrive Parking, one must point it to the NameDrive site either by changing the DNS or by using URL forwarding:

In order for your domains to resolve ND parking pages you must first point them to ND using DNS server change or URL forwarding.

All domains should be directed to DNS Nameservers:

- ns1.fastpark.net (206.130.11.197)
- ns2.fastpark.net (216.8.177.29)

or you can URL forward your domains to:

<http://www.ndparking.com/domainname.com>

A WHOIS search of each of the above four domain names shows that each of them is directed to the DNS Nameservers ns1.fastpark.net and ns2.fastpark.net, as required by NameDrive.

Entering the URL of any of these four domain names into a web browser brings up generic web pages with links. However, only two of these sites actually contain functional links: clothes.co.il and anonymous.co.il. As mentioned in the previously, each of these sites also contains a link, "Enquire about this domain" that leads to a NameDrive page for making an offer to purchase the domain name.

A search on the [WaybackMachine](#) at the Internet Archive for the Domain Name, jajah.co.il shows that a web page associated with the Domain Name existed at least from March 2006. The most up-to-date search result information on the WaybackMachine regarding the Domain Name is only as current as January 16, 2008. This is because, [according the Internet Archive](#), "it generally takes 6 months or more for pages to appear in the Wayback Machine after they are collected, because of delays in transferring material to long-term storage and indexing." This time lag regarding the Domain Name is consistent with search results on the WaybackMachine for other Israeli websites.

Upon clicking on any one of the links in the WaybackMachine search results, one expects to retrieve an archived copy of the website or web page. However, when this is done any of the links on the search result page, one of three responses comes up: a message, "This IP has been banned" (from March 7,2006, till August 10, 2006); an archived copy is retrieved of a web page full of what appears to be sponsored links (from August 11, 2006, till the end of August 2006); or a message, "Not in Archive", with an additional message advising the searcher to search for the pages on: **ndparking.com** (from October 4, 2006 ). This is the same ndparking.com referred to in the NameDrive FAQ quoted above for the purpose of URL forwarding of a domain to the NameDrive parking page.



The Internet Archive explains the meaning of "Not in Archive" on its [FAQ](#) page as follows:

Not in Archive: Generally this means that the site archived has a redirect on it and the site you are redirected to is not in the archive or cannot be found on the live web.

In other words, the search results on the WaybackMachine suggest that the Domain Name was resolved to a parking page operated by NameDrive, apparently by forwarding the Domain Name to <http://www.ndparking.com/domainname.com> in accordance with the instructions on the NameDrive site cited above. It shall be noted that according to a WHOIS search, the domain names [ndparking.com](http://ndparking.com) and [namedrive.com](http://namedrive.com) are registered to one and the same person: Gregory Manriquez, and that the URL [ndparking.com](http://ndparking.com) resolves to a web page associating it with NameDrive LLC, CEO Gregory Manriquez.

The Complainant's screen shot from November 2, 2008, of the web page that was once associated with the Domain Name, shows that it was similar in structure and design (including some identical graphics and pictures), to the page of one of the five domain names mentioned above – [paparazzi.co.il](http://paparazzi.co.il). While the links on the [paparazzi](http://paparazzi.co.il) page appear to be non-functional (except for the functional link for enquiring about purchasing the domain name that leads to the NameDrive site), at least three links seen on the screen shot of the [jajah.co.il](http://jajah.co.il) page contain links to three functional URL's: [www.greenfieldtech.net](http://www.greenfieldtech.net) (a telecommunications site); [www.voicespin.com](http://www.voicespin.com) (a VoIP site); and [www.rebtel.com](http://www.rebtel.com) (a telecommunication site). These live links appear on the page in a manner that is similar to the live links on the [clothes.co.il](http://clothes.co.il) and the [anonymous.co.il](http://anonymous.co.il) sites.

From all of the above, the Panel concludes that the Domain Name was associated with a website or web page that contained sponsored links to external sites. This was done by “parking” the Domain Name with a PPC service, NameDriver. Commercial revenue was supposed to be generated from Internet users clicking on the sponsored links.

Of primary importance to this intent, Internet users were supposed to be lured to the site by the creation of a likelihood of confusion between the Domain Name of the site and the Complainant's trade name and trademark, jajah. It is this element, the creation of a likelihood of confusion with the Complainant's trade name and trademark, that constitutes the essence of bad faith usage of the Domain Name in this case.

In conclusion, the Holder has used the Domain Name to intentionally attempt to attract for commercial gain Internet users to a web page associated with the Domain Name, by creating a likelihood of confusion with the Complainant's trade name and trademark (jajah) as to the source, sponsorship, affiliation or endorsement of said web page. This constitutes bad faith usage of the Domain Name, as stated in Section 4.1 e of the IL-DRP. It shall be noted that this result is consistent with the recent IL-DRP decision regarding the domain name [marlboro.co.il](http://marlboro.co.il).

### **Decision**

In consideration of all of the above, the Panel holds that all of the conditions of Section 3 of the IL-DRP have been met.

1. The Domain Name is identical to the Complainant's trademark and/or trade name – "jajah" ("the Name").
2. The Complainant has rights in the Name.
3. The Respondent's have no rights in the Name.
4. The Respondents requested allocation of the Domain Name and made use of it in bad faith.

The Panel therefore holds that the Domain Name be re-assigned to the Complainant.

As stated in Section 22 of the IL-DRP, ISOC-IL will inform the Respondents of the impending re-assignment of the Domain Name no less than 30 days before making the change.