

IL-DRP PANEL

For the Internet Society of Israel

Before

Yoram Lichtenstein, Adv. Sole Panelist (the "Panelist")

In the matter of

the domain name "www.discoveryplus.co.il" (the "Domain Name")

between

Discovery, Inc.

8403 Colesville Road, Silver Spring, Maryland 20910

The United States of America (the "Complainant")

Represented by their legal counsels - Dr. Shlomo Cohen & Co.

B. S. R Tower 3, 5 Kineret St., Bnei Brak, 5126237, Israel

Tel: 03-5271919; Fax: 03-5272666, E-mail: cohens@shlomocohen.co.il

against

Wang Liqun

308 Ningxia Road, Qingdao Shandong 266071, China

Tel: +86-532-55822008

E-mail: corporatedomains@163.com (the "Respondent")

DECISION

I. The Parties

1. The Complainant is a company incorporated in the USA.
2. The Respondent is a private individual.

II. Procedural Background

3. This panel was established on January 10, 2021, in accordance with the Procedures for Alternative Dispute Resolution under the .IL ccTLD by Dispute Resolution Panel (https://www.isoc.org.il/domain-name-registry/dispute_resolution/ildrp-rules in Hebrew and http://en.isoc.org.il/domains/ildrp_rules.html in English) (the "**Rules**"), in order to address the Complainant's request to cancel the registration of the Domain Name.
4. The Respondent (who is the registered holder of the Domain Name) was notified that a petition had been filed on January 10, 2021 and both parties had been notified of the appointment of this Panelist. Petition and all its annexes were submitted to Respondent at same date.
5. Respondent had not filed a response to the complaint within 15 days from receipt nor until the publication nor until this day.
6. Hence, this decision is decided based on the Petition and its annexes filed herein.

III. Complainant's claims

7. Complainant claims that -
 - 7.1. Complainant filed the Petition on its and its affiliates (including Discovery Communications, LLC.) behalf. Complainant is a world-wide corporation dedicated to real-life entertainment, is running over 200 television networks worldwide and has almost 4 billion subscribers and viewers.
 - 7.2. Complainant is actively promoting the various DISCOVERY marks since 1985.
 - 7.3. Complainant had registered in Israeli and abroad, a wide range of "Discovery" and "Discovery +" stylized and character trademarks. In Israel it had registered such marks and many similar marks world-wide (see pages 2-5 to the Petition).
 - 7.4. The marks use the DISCOVERY word and some include certain additions (such as "+").
 - 7.5. Complainant had registered 6 such marks in Israel. For example – No. 318120 "Discovery" (stylized) mark or No. 330054 "Discovery+" (character) Mark (see page 2 to the Petition). ("DISCOVERY" hereby – "**the Mark**").

- 7.6. Complainant further acquired rights to the Mark due to extensive use and advertising efforts for decades.
- 7.7. The Mark is recognized by consumers world-wide.
- 7.8. Among its services, Complainant had launched a premium DISCOVERY+ streaming service globally and invested significant sums of money in developing and marketing said mark, including using various other domain names such as <discoveryplus.com>.
- 7.9. The domain name "DISCOVERYPLUS" deviates from the Mark solely by the addition of the generic term "PLUS", which is common in the entertainment and media industry and not descriptive, with the generic TLD ".co.il".
- 7.10. Such difference is insufficient to avoid confusing similarities between the Mark and the current Domain Name.
- 7.11. Various UDRP panels in the USA had already recognized the rights and interests complainant has in the Mark and similar domain names.
- 7.12. Various panels had also recognized that adding the TLD or the word "plus" does not heal the inherent confusing nature of the domain name.
- 7.13. Complainant claims that respondent has no rights or legitimate interests in the Mark or the Domain Name.
- 7.14. Complainant had never allowed or licensed the use of the Mark to Respondent.
- 7.15. Respondent does not make any legitimate non-commercial use of the /domain Name but uses the Marks' strength to divert Internet users searching the Mark to third-party websites.
- 7.16. Complainant also claims that bad-faith is inherent as Respondent had placed the Domain Name for sale, for 9,500 USD. Such activity was regarded as demonstrating Respondent's lack of rights in the Mark and Domain Name.
- 7.17. Complainant claims that Domain Name was registered in bad-faith, also as Respondent had knowledge of the Mark and of Complainant's rights thereto. Knowledge is evident from the world-wide extensive use of the Mark.
- 7.18. Bad faith is further apparent from the fact that the domain Name totally incorporates the Mark with insignificant additions.
- 7.19. Respondent's bad faith is also exemplified by many other domain names which he registered with no rights in such names, such as: <discoveryplus.kr>, <discoveryplus.hk>, <discoveryplus.ae>, and <discoveryplus.asia>.
- 7.20. Respondent's only apparent reason for using the Mark within the Domain Name was to achieve financial gain from using the Complainant's reputation, attracting internet users to the relevant domain or for later selling the Domain Name for profit.

- 7.21. Respondent had capitalized on the Mark by collecting click-through fees from the links embedded on the website or generally as "parking space" for online advertising.
- 7.22. Such registration further prohibits Complainant from using its own Mark for its benefit.
- 7.23. Therefore Complainant requests the Domain Name be transferred to it.

IV. Respondent's Arguments

8. As previously stated, Respondent had not filed a response, so I issue this decision based on the facts submitted to me solely by Complainant.

V. Discussion and Findings

9. The IL-DRP is an alternative dispute resolution procedure devised to allow expedited dispute resolution regarding the allocation of online domain names.
10. Upon registering a domain name with the suffix co.il, the Respondent had agreed to abide by the Rules, and this procedure is conducted by the said Rules.
11. According to article 3 of the Rules -

"Disputes regarding allocation of a Domain Name by a Respondent 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 Respondent 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."

12. Those grounds are cumulative and must be established sufficiently by Complainant and shall be reviewed hereunder.

V.1. Is Domain Name is the same or confusingly similar to the Mark?

13. The Rules require that the Domain Name will be the same or confusingly similar to the Mark.
14. The disputed Domain Name comprises of the name DISCOVERY (same as the Mark) with an additional common word – "Plus", and the suffix .co.il.
15. It has been consistently ruled that the TLD suffix is to be ignored for the review whether the Domain Name and a trademark are the same or similar (for example see the cases of **L'Oreal v. La Belle Cosmetics Ltd.** over the domain name "essie.co.il" under the IL-DRP, hereby – "**the L'Oreal Decision**" and **Arthur Guinness Son & Co. (Dublin) Limited v. Dejan Macesic**, case No. D2000-1698 over the domain name "guinness.com" under the UDRP). Further more see IL-DRP cases such as the **Mrs. Hanada Assal v. Itai Ayalon** (Domain name – "regalo", August 5th, 2018, Panelist: Naomi Assia), **Namaste technologies v. Elad Peretz** (Domain name - "vaporiza", June 19th, 2018, Panelist: Leehee Feldman) and others.
16. The addition of the generic and glorifying term such as "PLUS" does not diminish the inherent (confusing) similarity.
17. For example see **WhatsApp, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Mohammed Alkalbani, Ops Alkalbani, M. Rashid Alkalbani**, Case No. D2016-2299. It is clear that the word "PLUS" has insignificantly differentiating authority, as this is a current and common term used as an additive to many marks, including those in the telecommunication and media industries.
18. "DiscoveryPlus" is confusingly similar to the Mark.
- 19. Therefore, my decision is that the Domain Name (discoveryplus.co.il) is confusingly similar to the Mark (Discovery, and Discovery+).**

V.2. Does Complainant hold rights in the Mark?

20. Complainant had shown it holds a registered numerous trademarks under the Mark ("DISCOVERY" and its variations, including "Discovery+") in Israel and worldwide.
21. Complainant had further shown that it operates under the Mark for a considerable period of time and accumulated significant goodwill due to extensive investments and use of said Mark.
- 22. Thus, it has been proven to my satisfaction that Complainant holds rights in the Mark in Israel.**

V.3. Does Respondent hold rights in the Domain Name?

23. Complainant claims that Respondent has no rights in the Domain Name (or Mark).
 24. Complainant further claims that Respondent uses the Domain in order to "park" links on the site, links that benefit himself using Complainant's goodwill.
 25. Complainant also claims that Respondent tries to benefit from selling the Domain Name (hopefully for 9,500 USD).
 26. Respondent had filed no response to counter those claims.
- 27. Therefore, it is my decision that the Respondent does not hold any legal right in the Mark or the Domain Name.**

V.4. Was the application for allocation of the Domain Name made or the Domain Name was used in bad faith?

28. Article 3.4 to the Rules requires that "the application for allocation of the Domain Name was made **or** the Domain Name was used in bad faith. Those conditions are alternative and Complainant may prove only one of them to meet the requirements set by the Rules.
29. Article 4.1 of the Rules supplies not exhaustive examples of what should be considered bad faith use of the name, and those are -
 - a. the Respondent 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 Respondent has requested allocation of the domain name primarily for the purpose of disrupting the business of a competitor; or
 - c. circumstances indicating that the **Respondent 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 Respondent 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 **Respondent 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.

- 30. The Mark was registered and has accumulated significant goodwill in Israel and abroad, and even though the "Discoveryplus" trademark was registered only shortly after the registration of the Domain Name, the "Discovery" main mark was predominant upon such registration.
- 31. Based on its worldwide accumulated goodwill, it is clear that the Mark was reasonably known to Respondent (or should have been easily known), and as Respondent had shown no interest or right in said mark, it is clear that the Domain Name was registered in bad faith.
- 32. Due to the scope of use and the veterancy of the Mark, it is reasonable to assume that the Domain Name was registered in an attempt to gain certain, limited, online-traffic by using a well-known Mark.
- 33. Using the Domain Name as an "advertisements parking place" is attempting to attract Internet users to its website for commercial gain.
- 34. It had not been proven to me that Respondent holds any right or interest in the Domain Name.
- 35. That, in addition to the efforts to sell the Domain Name prove that the use (and possibly the registration) of the Domain Name is in bad faith.
- 36. So I conclude that the registration and the current use of the Domain Name are made in a manner that corresponds with the IL-DRP bad-faith terms.**

VI. Decision

37. Therefore, based on all of the above, this Panel concludes that in accordance with the Rules, the registration of the Domain Name to its current Respondent is to be TRANSFERRED to Complainant as requested.

Yoram Lichtenstein, Adv.

Sole Panelist

Date: February 9, 2021