

HAGIT SHAVIT ET AL

v.

MORE THAN FRIENDS LTD.

IL-DRP Panel Decision

tevabari.co.il

1. THE PARTIES

The Complainants are Ms. Hagit Shavit (the “**1st Complainant**”), Mr. Rami Shavit (the “**2nd Complainant**”), Mr. Yanir Shavit (the “**3rd Complainant**”), Osmat Distribution Ltd. (the “**4th Complainant**”), represented by Ariel Dubinsky Law Office (all herein the “**Complainants**”); and

The Respondent is More than friends Ltd., Raul Valenberg 14, Tel Aviv, Israel (the “**Respondent**”).

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <tevabari.co.il> is registered with LiveDNS Ltd.

3. PROCEDURAL HISTORY

The Complaint was filed with ISOC-IL on September 14, 2020. The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL (“**IL-DRP**”) under the IL-DRP Rules (“**Rules**”).

On September 15, 2020, the IL-DRP appointed Jonathan Agmon as the sole panelist.

On September 22, 2020, in accordance with the Rules, 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 October 7, 2020, the Panel did not receive a response from the Respondent.

On October 22, 2020 the Panel issued an Order instructing the Complainant, Ms. Hagit Shavit, to amend the Complaint. On the same day, the Complaint was amended.

4. FACTUAL BACKGROUND

The disputed domain name is <tevabari.co.il> (the “**Disputed Domain Names**”).

The Respondent created the Disputed Domain Name on 24.3.2011, and for a short time was the owner of an e-commerce business offering natural products for sale under the name "טבע בריא" (Teva Bari) (the "Business"). In late 2012, the Complainants purchased the Business, including the Disputed Domain Name from the Respondent and have been running the Business since then. The Complainants have been using the Disputed Domain Name and requested the Respondent to complete the transfer of the Disputed Domain Name but the latter has not completed the transfer.

The Respondent has not filed a response.

5. PARTIES' CONTENTIONS

A. Complainants

The Complainants argued that the Respondent created the Domain on 24.3.2011, and for a short time was the owner of an e-commerce business offering natural products for sale under the name "טבע בריא" (TEVA BARI) (the "**Name**") under the Disputed Domain Name.

The Complainants stated that in 2012 the 1st Complainant purchased the Disputed Domain Name as part of purchasing the Business owning the Disputed Domain Name. On 2.12.2012 the Disputed Domain Name was transferred to the 1st Complainant and from 2012 through 2017 the 1st, 2nd and 3rd Complainants were running the Business relating to the Name.

Since 2017, Complainant argued the Business under the Name has been operated by the 4th Complainant, owned by 3rd Complainant. The Complainants argued they invested significant amounts of money in promoting and advertising the Name under the Disputed Domain Name.

During 2018, the Respondent signed a transfer deed to the 4th Complainant (the "**Deed**"), however, the Deed was incomplete since there was no certification showing that the person who signed the Deed on behalf of the Respondent was duly authorized to execute the same. The Complainants stated that Respondent has refused to provide the necessary certification and therefore the Petition before me was filed.

The Complainants also argued that the Name is identical to the Disputed Domain Name, that the Complainants have the rights to the Disputed Domain Name and that the Respondent acted in bad faith and therefore that the Disputed Domain Name should be transferred to the Complainants.

B. Respondent

The Respondent did not reply to the Complainant's contentions and did not file any response.

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 Respondents submitted to this process and Rules when they applied for and registered the disputed domain name with LiveDNS Ltd. registration agreement provides that the applicant for the domain name accepts the ISOC-IL registration rules (see <https://domains.livedns.co.il/Terms.aspx>).

The ISOC-IL registration rules provide that "the [domain name] holder agrees to the jurisdiction of the IL-DRP." (See section 12.3). The Respondents, 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), therefore the WIPO Arbitration and Mediation Center extensive jurisprudence (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 provide that disputes regarding the allocation of a domain name by a Holder may be brought by a Complainant on the following grounds:

3.1. 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

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 disputed domain name was made or the disputed domain name was used in bad faith.

A. Preliminary Issue

The Complaint was filed by Ms. Hagit Shavit. The Complaint stated that the Complainants are Ms. Shavit, Mr. Rami Shavit, Mr. Yanir Shavit and Osmat Distribution Ltd. However, only Ms. Shavit was named as the Complainant. On 22nd October 2020, the Panel issued an order for the Complainant to amend the Complaint

to reflect the parties in interest (the “**Order**”). On 22nd of October 2020 an amended Complaint was filed.

B. Identical or Confusingly Similar

It is up to the complainant to show that the disputed domain name is identical or confusingly similar to a trademark, trade name, registered company name or legal entity registration of the complainant.

Ordinarily a complainant would provide a registered trademark to show that the rights in the mark shown on the trademark certificate belong to its respective owner. While such registered trademark rights would serve as clear indication that a complainant has trademark rights in the disputed domain name, under the Rules a showing of rights in a name can be made without a registered trademark. See Section 3.1 of the Rules; *Bamarom Hafakot 2004 Ltd v. Arie Sheffer*, ISOC-IL Case, 12.03.2019.

The Complainants provided evidence showing they were trading under the Name in the Hebrew language since the year 2012. The Complainants also provided evidence showing they have spent considerable sums on the website operating under the Name. The Respondent did not submit a response and did not challenge the evidence submitted by the Complainants, its sufficiency or extent. When reviewing the first element the Panel examination is limited to the identity between the name and the disputed domain name. This is a threshold requirement that the Complainants must meet irrespective of the other facts surrounding the case. See *Bamarom Hafakot*, at 5. In the present case, the Disputed Domain Name consists of the Name in its entirety without the addition of a single space character and the suffix “co.il”.

The addition of the suffix “co.il” and the use of the Name as a single word, does not escape the conclusion that the Disputed Domain Name is identical or confusingly similar to the Complainants’ Name. Accordingly, the panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainants’ Name.

C. Rights in the Name

Next, it is up to the Complainants to show that the Complainants have rights in the Name, and that the Respondent has no rights in the Name.

In the present case, the Complainants have demonstrated *prima facie* that the Respondent lack rights or legitimate interests in respect of the Disputed Domain Name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainants have showed that they own rights in the Name through continued use of the Name over a period of at least 8 years. The Respondent does not appear to be commonly known by the Disputed Domain Name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the Disputed Domain Name, which is sufficient to rebut the Complainants' *prima facie* case. The inquiry requires the Panel to balance between the Complainants' rights and those of the Respondent, in accordance with the evidence before it.

In the present case, the Complainants submitted evidence showing *prima facie* that the Respondent transferred its rights in the Disputed Domain Name to the 1st Complainant in 2012 and then again to the 4th Complainant in 2018. On its face, the evidence provided shows that the Respondent agreed to transfer the Disputed Domain Name to 4th Complainant and the relevant documents are signed by the person who appears to be the sole Director of the Respondent. In the view of the Panel, such evidence is clear indication that the Respondent does not have rights in the Name, at least as of August 2018.

Therefore, the Complainants' evidence of use of the Name, agreement by the Respondent to transfer the Disputed Domain Name and the lack of evidence by the Respondents weigh in favor of Complainants.

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

D. Application or Use in Bad Faith

The Complainants must show that the Respondent registered or is using the disputed domain name in bad faith (section 3.4 of the Rules). The burden placed on the Complainants is to bring evidence showing circumstances that indicate that the Respondent registered or used the disputed domain name in bad faith.

A Panel will look into the totality of the circumstances in each case, and these can include evidence of the degree of distinctiveness or reputation of the mark, the failure of the Respondent to file a response and the implausibility of any good faith use to which the domain name may be put.

Section 4 of the Rules provides circumstances that may prove bad faith under section 3.4 of the Rules. The circumstances listed in Section 4 of the Rules do not represent a closed list and additional circumstances may exist which raise to the level of bad faith registration or use of a disputed domain name. (See *Awesome Events Limited v. Ben Loyd Holmes*, WIPO Case No. D2017-0517; *IDR Solutions Ltd. v. Whois Privacy Corp.*,

WIPO Case No. D2016-2156 [applying the same principle to the UDRP which contains similar provisions.]

In the present case, the evidence shows that the Name is distinctive and associated with the Complainants since the year 2012. The evidence shows that the Name, comprising the words nature (Teva) and healthy (Barie), for selling vitamins, natural cosmetics, dietary supplements, health accessories and the like is also identified with the Complainants' website under the Disputed Domain Name. Complainants appear to also have a Facebook page under the Name. The Respondent on the other hand does not appear to use the Name and has not filed any evidence to suggest the contrary.

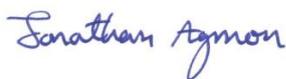
The evidence shows that in 2018, Respondent signed the necessary documents to transfer the Disputed Domain Name to the 4th Complainant, which the Panel views as the Respondent's approval that such transfer is proper and embodies the agreement relating to the Disputed Domain Name as between the parties. The Complainants stated that the Respondent refused to finalize the transfer of the Disputed Domain Name for unknown reasons. The Respondent failed to submit a response and give any explanation as to said refusal.

Given the totality of the evidence before the Panel and on the balance, the Panel finds that the Respondent's refusal to finalize the transfer of the Disputed Domain Name, which it had signed on 29.08.2018, coupled with the rights the Complainants have in the Name and their continued use thereof, and the Respondent's lack of use and the distinctiveness of the Name, clearly suggests bad faith use of the Disputed Domain Name by the Respondent.

Thus, it is the finding of the Panel that the Complainants met the burden of showing that the Respondent registered or used the disputed domain name in bad faith in accordance with Rule 3.4.

7. DECISION

For all the foregoing reasons, in accordance with the Rules, the Panel accepts the Complaint and orders the transfer of the Disputed Domain Name to the Complainants.



Jonathan Agmon

Sole Panelist

Date: October 24, 2020

