

IL-DRP PANEL
FOR THE INTERNET SOCIETY OF ISRAEL

In the matter of the **Domain <deezer.co.il>**

between

Blogmusik SAS.
12 Rue D'Athenes
Paris, 75009, France

(The "Petitioner")

and

Mr. Barak Gill
18 Michael Ne'eman St.,
Tel Aviv, 69581, Israel

(The "Respondent" or "Holder")

DECISION

I. Procedure

1. ISOC-IL received a Petition on behalf of the Petitioner, requesting that the Domain Name "deezer.co.il" be reallocated to the Petitioner.
A Panelist was appointed in accordance with the Procedures for Alternative Dispute Resolution under the .ILccTLD IL-DRP Rules, in order to address the Petitioner's above request (http://www.isoc.org.il/domains/ildrp_rules.html) (hereinafter – "the Rules").
2. Notification of the pending Petition, including copies of all submitted material, and notification of appointment of the Panel under the Rules, was sent on April 22nd, 2013, to the Respondent's email address as recorded in the ISOC Domain Name Registry. In accordance with section 9.3 of the Rules, the Respondent was allotted 15 days, concluding on May 7th, 2013, to submit a Statement of Response or any other relevant information to the Panel.
3. A reminder of the final date for submission of a Statement of Response was sent to the Respondent on May 6th, 2013.
4. The Respondent did not provide any Response to this Petition.

II. Factual Background

1. The Petitioner is a French Company, trading internationally under the name of "Deezer", which offers international online music-on-demand services. The Petitioner has been operating the Deezer music Services since 2007, at first in France and then internationally.
2. The Respondent registered the Disputed Domain on September 5th, 2011.
3. The Disputed Domain currently refers to a web hosting page, including various registration-related as well as commercial links.
4. On Feb. 8th the Petitioner sent a Cease and Desist letter to the Holder, informing him that he was in violation of the Petitioner's rights, requesting him to refrain from doing so and to transfer the Domain to the Petitioner. The Respondent did not reply.

III. The Parties' Claims

A. The Petitioner

1. The Petitioner claims to be a leading International Music Streaming Service.
2. The Petitioner owns many domain names consisting of the term "deezer", in many countries, including "deezer.com", "deezer.fr", "deezer.es", "deezer.be" and many more.
3. The Petitioner emphasizes that its Domain is not only a display window of its services, but serves as the actual platform from which these music streaming services are to be provided. Therefore, access to the various domains consisting of the name of the service, "Deezer", is crucial to its international existence.
4. The Petitioner started by offering its services locally in France, and becoming a local leader in the field. Over the past few years it has been expanding its geographical presence worldwide, launching its services in over 130 countries.
5. Petitioner claims that in accordance with the requirements of the Rules, all elements indicating that the Domain should be transferred to the Petitioner, can be found as follows:
 - a. Disputed Domain is identical with Petitioner's trademark;
 - b. Petitioner has rights in the name;
 - c. Holder has no rights in the name; and
 - d. Registration and/or use of the Domain are in bad faith.

5. The Respondent

The Respondent failed to submit any Response to the Petition.

IV. Discussion

1. The IL-DRP is an alternative dispute resolution procedure intended to provide expedited resolution to disputes regarding the allocation of Domain Names, in accordance with the Rules for Allocation of Domain Names under the .IL country code. By registering a Domain, any Holder agrees to abide by these Rules.
2. In order for a case to be brought before an Il-DRP Panel, the Petitioner must show that certain grounds exist.
3. Let it be noted that without Response on behalf of the Respondent, the Panel will not refute any insufficient claims stated by the Petitioner, but will instead proceed to review whether the information present is in itself sufficient to establish grounds for re-allocation of the Disputed Domains, based on the aforementioned Rules.
4. Therefore we will proceed to review existence of the grounds for the request, as follows:

According to section 3 of the IL-DRP Rules, Disputes regarding allocation of a Domain Name by a Holder may be brought by a third party 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.
4. Each of the claims above needs to be well established by Petitioner. In the following discussion we will address each claim, based on the Materials of the Petition and any other material available to the Panel.

a. Name is Same or Confusingly Similar

The requirement in the Rules is that "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".

The Disputed Domain consists of the term "deezer" and of the suffix "co.il".

It has been previously ruled that the suffix "co.il" is to be disregarded for the purpose of determining similarity of a Domain to a Registered Mark, since it is a common suffix indicating that the domain is registered as a commercial Israeli website (see for example ISOC Il-DRP case in the matter of <Crayola.co.il>). Therefore, the suffix should be ignored, and the question remains whether the term "deezer" is the same or confusingly similar to a name of the Petitioner.

The petitioner is the owner of several Trademark rights in the term "deezer".

Among these are International Trademark #1024994, Community Trademark #008650079, US Trademarks #3803079 and 3803078, as well as several French Trademarks, including #073520218, inter alia.

The Disputed Domain Name, disregarding the standard "co.il" suffix, consists of the term "deezer" in its entirety, and is therefore identical to the trademark "deezer".

Thus, the Panel finds that the Domain is the same as a trademark and service name of the Petitioner, and therefore the first requirement under the rules, is fulfilled.

b. Complainant has Rights in Name

The following are clear indications of the Petitioner's Rights in the Disputed Domains:

- Petitioner launched "Deezer" services in 2007 and has been operating under the same Trade Name since that time.
- The petitioner holds several registered domain names, all encompassing the name "deezer", including deezer.com, deezer.fr, deezer.es, deezer.be, deezer.ch, deezer.de, deezer.me, deezer.pt, etc.
- The Petitioner holds numerous Registered Trademarks around the world, which are identical to the name – including:
 - International Trademark 1024994, registered 9.10.2009
 - EU Community Trademark 008650079, registered 29.10.2009
 - US Trademarks 3803079 and 3803078, registered 15.6.2010
 - French Trademarks, including 073520218, registered 20.8.2007
- The term "Deezer" has become well known around the world and is associated with the Petitioner's music services in many countries, as has been expressed in extensive media coverage, depicting the Petitioner's expansion into additional countries beyond France, where it was initially deployed. Let it be noted also that the first Trademarks in the Name "Deezer" were registered in France, yet along with international expansion of the Deezer services, the Petitioner also increased its International Trademark coverage.
- Petitioner's rights to the name can also be gathered from a previous WIPO case, in which the Panel recognized the Petitioner's rights in the term "deezer", and agreed to transfer the name "deezer.ch" to the Petitioner (Decision DCH2011-0038 *Blogmusik v. Bachta Peter*).

All of the above clearly indicates that to date, the Petitioner has clear rights in the name "Deezer", as a well-known mark, registered Trademark and Trade Name.

From all of the above it is evident that the Petitioner has established rights in the Disputed Domain.

c. Respondent has no Rights in Name

Respondent has no known association whatsoever with the Petitioner or its services, and is in no way an authorized dealer, distributor or licensee of the Petitioner.

According to the information before the Panel, the Holder has never registered or applied for registration of any Trademark rights in the term "Deezer" or with the Petitioner.

The website under the Disputed Domain is parked on a web-hosting page, consisting of reference to various commercial and registration-related links. It is not being put to any actual use by the Holder, and has apparent connection to the Holder or to the term Deezer.

The Holder failed to provide a Statement of Response to this Petition.

In addition, as mentioned above, the Holder has a past record of cybersquatting, as can be gathered both from Il-DRP in the matter of *Marriott International vs. Barak Gill*, and from the isoc.org.il whois database indicating a long list of non-related domain names held by the Respondent for no apparent reason (see further discussion below regarding Bad Faith).

Therefore, in light of all the above, the Panel finds sufficient grounds to establish that the Holder has no rights in the name.

d. Registration or Holding in Bad Faith

Section 3.4 requires that "the application for allocation of the Domain Name was made or the Domain Name was used in bad faith". Though the Rule requires that either the registration or the use be in bad faith, it appears that in this case, there are multiple acts on behalf of the respondent which are indicative of bad faith both in registration and in use, as follows:

Bad Faith in Registration of the Domain:

- An isoc.org.il whois database search conducted by request of this Panel indicates that the Respondent holds in excess of **at least 20 nonrelated domain names**, most of which seem to have no prima facie connection with the Respondent, but have been registered under his name over the past few years. Moreover, a previous Il-DRP Panel has already ruled against the same Respondent regarding his registration of the domain מרייט.co.il [see Il-DRP decision in the matter of *Marriott Worldwide vs. Barak Gill*, from April 10, 2012]. These behaviors are clearly indicative of a pattern of registering domain names in which the Holder has no legitimate interest, typical of cybersquatting, and clearly indicating bad faith.
- The Deezer music service has been offered since 2007. The Respondent registered the domain on September 5th 2011. During the

week prior to said registration, several press releases described the upcoming introduction of the Deezer services in the UK¹ as a new competitor in the field. Only after the press releases did the Respondent register the Name. It is difficult to dis-associate the two events, based also on their adjacency in time, indicating that the Respondent more than likely was aware of the existence of the Petitioner at the time of Registration.

- The term "Deezer" is not a generic or commonly used term, has no inherent meaning of its own and has no direct relevance to the Respondent himself or any activity conducted by him, and it is therefore highly likely that the Respondent was aware of the existence of the petitioner and of his rights in the Name at the time of registration.

Bad Faith in Use of the Domain:

- Since the date of registration and to this present date, the Domain directs to a website consisting of a Parking Page by the service provider, referring to several registration-related links and some commercial links. There has been no active use of the Domain by the Respondent and no mention of the term "Deezer" or any use thereof. Inclusion of commercial links, by nature, is intended to create profit and gain for certain parties. According to Rule 4.1e, indication of Bad faith is seen when "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". Thereby, the Holder might be gaining profit from these links, thus indicating Bad Faith.
- As another clear indication of bad faith, let it be noted that in addition to the Disputed Domain which the Holder registered, he has over 20 Domain Names registered under his name, none of which have an active website associated with them, and none seem to have any prima facie connection to the holder itself. Many of these domains include an identical name containing a different suffix (as is the case regarding "deezer.co.il"). It is more than likely that in this pattern of behavior, the Holder registered the names hoping to be able to make future profit from these names.

According to Section 4.1 of the Rules, evidence of bad faith can be expressed as follows: " 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".

In this case, the Respondent, who did not present any claims in response to either the Cease and Desist Letter presented by the Petitioner, or to this herein Petition, clearly has no interest in holding

¹ It may also be noted that in other domains registered by the same Holder, as described herein, an identical Domain exists under the "co.uk" suffix, indicating that the Holder appears familiar with various developments in the UK market, as with the Press publications regarding expansion of the Deezer services into the UK market, immediately prior to registration of the Disputed Domain.

the Domain or using it for any purpose of its own, but is solely interested in gaining profit from some rightful owner who may present an attractive offer in return for the name.

- In addition, by holding the Domain, the Respondent is preventing the Petitioner from making use of a local website bearing its international trademark. As described above, the Petitioner has been incrementally expanding its service and launching it in new countries, through use of local domains, as it has done throughout Europe. By holding on to the Disputed Domain, the Holder is preventing the Petitioner from expanding its business in Israel in a manner identical to that used in other countries. As stated in Section 4.1 d of the Rules, evidence of Bad Faith is when: "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; ". Evidence of such a pattern of conduct can be found above, therefore supporting this claim.
- The Petitioner failed to reply to this Petition, as he did not reply to the Cease and Desist letter sent by the Petitioner. Thus all the above claims, as made by the Petitioner, remain unrebutted. In a previous IL-DRP ruling against the same Respondent, it has been stated as follows: "*...the Complainants provided as evidence a Cease and Desist letter addressed to the Respondent, which the Respondent failed to properly respond to. Previous Panels stated that "when receiving such notice, good faith requires a response." (Gaggia S.p.A. v. Yokngshen Kliang, WIPO Case No. 02003-0982) This Panel concurs with such reasoning and finds that Respondent's inaction shows lack of legitimate interest in the disputed domain name and lack of good faith in the registration or use thereof (See Carrefour and Carrefour Property v. MIC Domain Management, WIPO Case No. 02009-0489).*" [Marriot vs. Barak Gill re. <מריוט.co.il>].
- Lack of response does not automatically prove bad faith, but particularly in cases regarding use of a distinctive term, evidence must be provided to indicate Holder's interests in the Distinctive Term. Lack thereof provides stronger indication of bad faith (see similar circumstances in WIPO UDRP case D2007-1193 *Facebook Inc. v. Privacy Ltd* regarding the name face-book.com).

The combination of all of the above is a sufficient indication of bad faith. Similar decisions have been reached by ISOC Panels in the past, based on similar circumstances. See for example ISOC II-DRP Decisions regarding the Domain מריוט.co.il or the Domain havaianas.co.il

Therefore the Panel concludes that the Respondent has acted in bad faith both in application for registration of the Domain, and in use thereof.

V. Decision

In light of all of the above, Panel finds that the Disputed Domain is the same and identical to many Well Known and Registered Marks of the Petitioner, the Petitioner has established substantial circumstances supporting its rights to the Disputed Domain, the Respondent presented no rights in the Domain, and the Respondent has acted in bad faith in registering and in holding the Domain.

Therefore, the Panel concludes, in accordance with the Rules, that the Disputed Domain shall be re-assigned to the Petitioner, within 30 days of the date of this decision.

Leehee Feldman, Adv.
Sole Panelist

Date: June 6th, 2013