

## Amazon Technologies, Inc. v. Yonathan Cohen

### IL-DRP Panel Decision

#### 1. The Parties

The Complainant is Amazon Technologies, Inc, of Nevada, USA, represented by Ellen B. Shankman, Adv.

The Respondent is Yonatan Cohen., of Jerusalem, Israel.

#### 2. The Domain Name and Registrar

The disputed domain name <kindlefire.co.il> is registered with Domain The Net Technologies Ltd.

#### 3. Procedural History

The Complaint was filed with ISOC-IL on February 10, 2013. The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL ("**IL-DRP**") under the IL-DRP Rules ("**Rules**").

On February 18, 2013 the IL-DRP appointed Jonathan Agmon to head a three member Panel, alongside Leehee Feldman and Yoram Lichtenstein.

In accordance with the Rules, on February 18, 2013, 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 March 5, 2013, the Respondent submitted his Response.

#### 4. Factual Background

The disputed domain name <kindlefire.co.il> was registered by the Respondent on October 2, 2011.

The Complainant, Amazon Technologies, Inc and Seesaw LLC, are subsidiaries of Amazon.com, Inc ([www.amazon.com](http://www.amazon.com)). Amazon Technologies, Inc., Seesaw LLC and Amazon.com are referenced collectively as the Complainant.

The Complainant is an American multinational electronic commerce company and the world's largest online retailer. The Complainant also produces consumer electronics e-book reader devices known worldwide as KINDLE and KINDLE FIRE. The Complainant has sold millions of KINDLE and KINDLE FIRE devices worldwide, including in Israel.

The KINDLE platform, developed by the Complainant, introduced in 2007, as a single device and now comprises a range of devices, including KINDLE FIRE, announced in September 2011.

The Complainant is the owner of numerous trademarks registrations of the trademarks KINDLE and KINDLE FIRE around the world, for example: CTM Trademark No. 010299113 – KINDLE FIRE, filed on September 28, 2011; US Trademark Application No. 85801903 – KINDLE, filed December 13, 2012.

Among the Complainant's worldwide registered trademarks, are numerous Israeli trademark registrations, for example: Israeli trademark registration No. 224027 – KINDLE, with the registration date of December 5, 2010; Israeli trademark registration No. 224022 – KINDLE, with the registration date of December 5, 2010; Israeli trademark registration No. 224018 – KINDLE, with the registration date of December 5, 2010, and Israeli trademark application No. 242291 – KINDLE FIRE, filed on November 23, 2011.

The Complainant also is the owner of numerous domain names worldwide, consisting of the mark KINDLE and KINDLE FIRE. For example: <kindle.com>, <Kindlefire.con>, <קינדל.co.il>, <קינדלפייר.co.il> and many more. These domain names resolve to the Complainant's website – amazon.com and enable customers to receive accurate information from the Complainant and buy the Complainant's KINDLE and KINDLE FIRE devices.

The disputed domain name is used to resolve to a "parking page" including sponsored listings links.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant argues it has the rights in the trademarks KINDLE and KINDLE FIRE.

The Complainant argues that the KINDLE and KINDLE FIRE Marks have been widely promoted among the public and are exclusively identified with the Complainant.

The Complainant argues that the disputed domain Name is identical or confusingly similar to the Complainant's well-known and registered trademark KINDLE and KINDLE FIRE, as it contains in it the entire trademark.

The Complainant further argues that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant further argues that the Respondent was aware of the Complainant when registering the disputed domain name, and that the disputed domain name was registered to divert Internet traffic from the Complainant's website for commercial gain.

The Complainant further argues that the Respondent registered and used the disputed domain name in bad faith.

The Complainant further argues that the Respondent registered the disputed domain name after the Complainant used and acquired rights in the KINDLE and KIDLE FIRE trademarks.

The Complainant further argues that the Respondent acted in bad faith by registering the disputed domain name knowing that the KINDLE FIRE trademarks is associated with the Complainant, in order to draw customers to the disputed domain name in order to aggregate advertising revenue through the use of the sponsored links.

The Complainant further argues that at the same time the Respondent registered the disputed domain name he also registered in his name additional domain names relating or confusingly similar to other marks and products of the Complainant, such as: <amazonsilk.us> and <amazonskil.com>. The <amazonskil.com> is also used as a page for sponsored links. This is further support of the Complainant's claim that the Respondent has obtained and is using the disputed domain name in bad faith.

For all of the above reasons, the Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent argues that the Complainant has no rights in the mark KINDLE FIRE since the US trademarks applications filed by Seesaw LLC and not by the Complainant and Seesaw LLC merged with the Complainant only on February 7, 2012.

Seesaw LLC is also the applicant in the Israeli Trademark Application no. 242291 – KINDLE FIRE.

The Respondent further argues that he has been using the terms KINDLE FIRE and KINDLE for decades.

The Respondent further argues that he is a licensed Veterinary Surgeon and that the term KINDLE is a veterinary medicine term.

The Respondent further argues he did not know about the Complainant's press conference in which the KINDLE FIRE was launched when he registered the disputed domain name.

The Respondent further argues that the Complainant's is acting in bad faith since it opposed his US Trademark Application for the mark AMAZONSILK No. 85476329, filed November 18, 2011.

For all of the above reasons, the Respondent requests the denial of the Complaint.

## 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 Respondent submitted to this process and Rules when he applied for and registered the disputed domain name. The InterSpace domain name registration agreement provides that the applicant for the domain name accepts the ISOC-IL registration rules (see section B(1) on [http://www.internic.co.il/domain\\_agreement.htm](http://www.internic.co.il/domain_agreement.htm), which also provides a link to the ISOC-IL registration rules). The ISOC-IL registration rules provide that "the [domain name] holder agrees to the jurisdiction of the IL-DRP." (See section 24.4). The Respondent, 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) and therefore the WIPO Arbitration and Mediation Center case law (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. Same or Confusingly Similar

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

The disputed domain name comprises of the word "kindlefire" and the suffix .co.il. The suffix .co.il is ignored for the purpose of determination the similarity between the disputed domain name and the word "kindlefire" 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 "kindlefire".

The Complainant is the owner of numerous registered trademarks, covering the mark KINDLE and KINDLE FIRE. For example: CTM Trademark No. 010299113 –

KINDLE FIRE, filed on September 28, 2011; US Trademark Application No. 85801903 – KINDLE, filed December 13, 2012.

The Complainant is also the owner of Israeli trademark registrations, for example: Israeli trademark registration No. 224027 – KINDLE, with the registration date of December 5, 2010; Israeli trademark registration No. 224022 – KINDLE, with the registration date of December 5, 2010; Israeli trademark registration No. 224018 – KINDLE, with the registration date of December 5, 2010, and Israeli trademark application No. 242291 – KINDLE FIRE, filed on November 23, 2011.

Further, due to the Complainant's world wide use the KINDLE FIRE and KINDLE trademarks have become a well-known and famous trademark associated with the Complainant.

It is therefore the finding of the Panel that the disputed domain name is identical to a trademark owned by the Complainant.

## **B. Rights in the Name**

Next, it is up to the Complainants to show that the Complainants have rights in the KINDLE FIRE and KINDLE trademark; and that the Respondent has no rights in the KINDLE FIRE trademark.

As noted above the Complainant showed sufficient evidence showing it has rights in the KINDLE trademark at least since the year 2007.

The Complainant also provided evidence showing that it launched an ebook reader under the KINDLE FIRE mark on September 2011 and through a one of its now subsidiaries, filed trademark applications for the mark KINDLE FIRE as during October and November 2011.

The Complainant also provided evidence showing sales of the KINDLE FIRE ebook in Israel. A search conducted on Internet search engines show that the terms KINDLE FIRE are associated with the Complainant's ebook device.

It is also up to the Complainants to show that the Respondent has no rights in the Name. The Complainants have provided that they did not approve for the Respondent to use their trademark or Name.

While the Complainants bear the "general burden of proof" under Rule 3.3, this burden shifts to the Respondent once the Complainants makes a *prima facie* showing that the Respondent lacks rights or legitimate interests. (See: *Skype Limited. v. Ronen Legativi*, ILDRP Case No. 39, 27 June 2011; see also *Google, Inc. v. Shlomi Kakon*, ILDRP Case No. 38, 30 May 2011)

In this case the Panel finds that the Complainants have made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of Rule 3.3. This finding is based on the following, non-disputed facts brought forward by the Complainants:

The Complainant has no relationship whatsoever with the Respondent and did not authorize the Respondent to use the disputed domain name;

The Complainant provided sufficient evidence to prove that its trademark is well known. The Complainant's KINDLE and KINDLE FIRE trademarks are used for the Complainants' products in numerous countries around the world, among them, in Israel;

It is very difficult to believe that the Respondent was unaware of the vast goodwill of the Complainant's trademarks, when he requested the disputed domain name or thereafter, this also in view of the fact that the Respondent requested and was allocated other domain names at least one of them comprising the Complainant's corporate name; and

The Complainant owns numerous worldwide trademarks registrations, including multiple Israeli trademark registrations. Some of these trademark registrations were registered before the Respondent requested and received the allocation of the disputed domain name.

Respondent contends that he does have a legitimate interest in the disputed domain name because, he asserts, he has been using the term KINDLE FIRE and KINDLE for decades and because the terms KINDLE relates to bear young, giving birth and the term KINDLEFIRE is well known in Veterinary medicine.

The Panel has carefully considered each of Respondent's arguments and exhibits, but concludes that none of them is sufficient to rebut Complainant's showing that Respondent lacks any rights or legitimate interests in the Disputed Domain Names. There is no indication in the file that the Respondent is known under the disputed domain name or using it. The Respondent claims that he has been using the marks KINDLE FIRE and KINDLE for decades but has not supported this claim with evidence. The Response did not include any explanation or documentation with respect to the alleged KINDLEFIRE procedure. A search conducted by the panel as to the Respondent's allegations failed to find support for the Respondent's contentions.

Contrary to the Respondent's contention the term KINDLE may also refer to starting a fire. The term KINDLE FIRE as a whole may refer to setting fire and not necessarily to bringing forth young. The Respondent failed to support his contentions that he is known or is associated with the term KINDLE FIRE. The Respondent also failed to show evidence supporting his claim that the term KINDLE FIRE is well known in the Veterinary medicine.

The Respondent has not shown that he has made any legitimate offering of good or services under the disputed domain name at present or in the past. Instead he diverts Internet users to a landing page that offers goods competitive with the Complainant's goods under the KINDLE trademark and other non-related services. The Respondent failed to show that he has any legitimate use of the disputed domain name. The use of the disputed domain name by the Respondent as a landing page does not *of itself* confer rights or legitimate interests arising from a *bona fide* offering of good or services or from a legitimate noncommercial or fair use of the disputed domain name, especially when the use of the landing page is in connection with goods competitive with those of the Complainant, as is the case here. (See for example, *Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright*, WIPO Case No. D2007-0267)

Finally, the content of the website currently under the disputed domain name defeats any defense that the marks KINDLE or KINDLE FIRE are used mainly for their descriptive meaning. Rightfully so, some panels have determined that if the links in a landing page are based on the generic value of the domain name the use is legitimate.

(See also *National Trust for Historic Preservation v. Barry Preston*, WIPO Case No. D2005-0424) Here however, the links refer to KINDLE MANUAL, TECH SUPPORT KINDLE, PURCHASE KINDLE, AMAZON KINDLE and KINDLE EBOOK to cite a few. Such links on the Respondent's website use the trademark value of the KINDLE trademark which belongs to the Respondent. The links do not refer to Veterinary medicine, to Veterinary procedures or to the rearing of young, to any such services or related goods. There is no reference in the website under the disputed domain name to the meanings suggested by the Respondent, rather the word KINDLE is used in its trademark sense and is associated with the Complainant's ebook device or related goods.

It is therefore the finding of the Panel that the Complainants have rights in the KINDLE and KINDLE FIRE trademarks and that the Respondent has no rights in the KINDLE FIRE trademark.

### **C. Application and Use in Bad Faith**

Finally, it is up to the Complainant to show that the Respondent applied for allocation of the disputed domain name or the disputed domain name was used in bad faith.

WIPO panels, relying on Rule 4.1 of the UDRP Rules, ruled that the bad faith clause provides a non-exclusive list of circumstances which can be helpful in showing that the Respondent acted in bad faith when he or she applied for or used the disputed domain name:

"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 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
- c. 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
- d. 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, 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".

The Complainant provided evidence showing that the disputed domain name is confusingly similar to the Complainant's trademark. Previous WIPO panels ruled that "a likelihood of confusion is presumed, and such confusion will inevitably result in the

diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. D2006-1095). The Complainant also provided evidence showing that the Respondent is using the disputed domain name under a landing page using the Complainant's KINDLE trademark. To this end, prior WIPO Panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark is evidence of bad faith under paragraph 4(b)(iv) of the UDRP (see *Edmunds.com v. Ultimate Search, Inc.*, WIPO Case No. D2001-1319).

Rule 4.1(d) provides that this Panel can 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 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.

As shown by the Complainant, the website under the disputed domain name is used as a landing page. As previously detailed the landing page makes use of the Complainant's trademarks for links to website associated with goods competitive to those of the Complainant. WIPO panels have asserted that the Respondent's bad faith can be illustrated by the domain name's resolution to a "parking page" with links to websites selling products. For example: One WIPO panel held that: "[i]f though, the links are based on the trademark value of the domain names, the trend in UDRP decisions is to recognize that such practices generally do constitute abusive cyber squatting (see e.g. *Champagne Lanson v. Development Services/MailPlanet.com Inc.*, WIPO Case No. D2006-0006 [pay per click landing page not legitimate where ads are keyed to the trademark value of the domain name]);

Another WIPO panel held that: "*Respondent registered and has used Complainant's DEVELOPMENT CREDIT BANK LTD trademark in the disputed domain name to direct Internet users to a pay-per-click parking page that includes links to competitors of Complainant. Internet users entering Complainant's trademark in a web browser and expecting to be directed to a commercial website operated by Complainant are instead directed to competitors of Complainant. Respondent has intentionally used Complainant's trademark in the disputed domain name for commercial gain to create Internet user confusion regarding Complainant as source, sponsor, affiliate or endorser of Respondent's website (WIPO CASE No. D2011-0786, Development Credit Bank Limited v. Direct Privacy ID ED191).*

See also *The Knot, Inc v. In Knot We Trust, LTD.*, WIPO Case No. D2006-0340 (same); *Brink's Network Inc v. Asproductions*, WIPO Case No. D2007-0353 (same)." (See also to similar effect *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. D2007-1415 and *Alpine Entertainment Group, Inc. v. Walter Alvarez*, WIPO Case No. D2007-1082).

In addition, the fact that the Respondent has registered another domain names relating or confusingly similar to other marks of the Complainant and uses them a "parking page" for sponsored links, also indicates the Respondent's bad faith.

While the Respondent's contention that he registered the disputed domain name without knowledge of the KINDLE FIRE launch may be correct it is unlikely that he registered the disputed domain name without knowledge of the KINDLE trademark, which by September 2011 was already well known. Irrespective, of the registration process, the

continued use of the disputed domain name under the Complainant's trademarks is evidence of bad faith under Rules 4.1(b) and 4.1(d).

Given these circumstances the Panel finds that there are circumstances showing that the Respondent acted in bad faith as provided in Rule 4.1(b) and 4.1(d) thus, it is the finding of the Panel that the Complainant met the burden of showing that the Respondent registered or used the disputed domain name in bad faith in accordance with Rule 3.4 of the Rules.

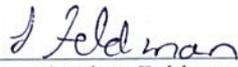
7. **Decision**

For all the foregoing reasons, in accordance with the Rules, the Panel orders that the domain name, <kindlefire.co.il> be transferred to the Complainant.



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Jonathan Agmon  
Presiding Panelist



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Leehee Feldman  
Panelist



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Yoram Lichtenstein  
Panelist

Date: April 3<sup>rd</sup>, 2013.