

CALA FASHION LTD & Adi Galler v. Kfir Eyal

IL-DRP Panel Decision

1. The Parties

The Complainant are Cala Fashion Ltd. And Mr. Adi Galler from Israel, represented by Guy Ophir, Adv.

The Respondent is Kfir Eyal., of California, USA.

2. The Domain Name and Registrar

The disputed domain name <cala.co.il> is registered with Domain The InterSpace Ltd.

3. Procedural History

The Complaint was filed with ISOC-IL on May 21, 2015. The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL ("**IL-DRP**") under the IL-DRP Rules ("**Rules**"). The IL-DRP appointed Jonathan Agmon as the sole panelist.

In accordance with the Rules, on May 21, 2015, 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 June 4, 2015, the Respondent submitted his Response.

4. Factual Background

The disputed domain name <cala.co.il> was registered by the Respondent on January 10, 2014.

The Complainant, Cala Fashion Ltd., is an Israeli company who has several fashion shops in Israel and operated the website www.calafashion.co.il.

The Complainant is the owner of numerous trademarks registrations of the trademark CALA in Israel: Israel Trademark No. 189996 – Cala, registered from May 8, 2006; Israeli Trademark No. 189995 – קאלה, registered from May 8, 2006; Israel Trademark No. 189996 – Cala (designed), registered from May 8, 2006.

The Complainant also is the owner of the domain name www.calafashion.co.il. These domain name resolves to the Complainant's website which sells different kinds of clothes, shoes and accessories.

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 trademark CALA.

The Complainant argues that the disputed domain Name is identical or confusingly similar to the Complainant's well-known and registered trademark CALA 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 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 CALA trademark.

The Complainant further argues that the Respondent acted in bad faith by registering the disputed domain name 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 the Respondent offered to transfer the disputed domain name in exchange for 100,000 NIS. This clearly indicates the Respondent's bad faith.

The Complainant further argues that the Respondent registered more than 100 domain names that belongs to well-known companies and services and which are not active. 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 he registered the disputed domain long before the Complainant registered its trademarks.

The Respondent argues that he registered the disputed domain names in order to use it for an interactive website for finding a wife – Cala in Hebrew.

The Respondent further argues that on 2007 he founded and incorporated a company called Medi-Click, and bought the domain medi-click.co.il right after. This company is legally registered in Israel and is basically an Internet company that amongst other things is generating "leads" for different service providers.

The Respondent further argues that the entire disputed domain names were purchased at the request of its clients.

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, 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 "cala" 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 "cala" 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 "cala".

The Complainant is the owner of numerous registered trademarks, covering the mark Cala in Israel: Israel Trademark No. 189996 – Cala, registered from May 8, 2006; Israeli Trademark No. 189995 – קאלה, registered from May 8, 2006; Israel Trademark No. 189996 – Cala (designed), registered from May 8, 2006.

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 Cala trademark; and that the Respondent has no rights in the Cala trademark.

As noted above the Complainant showed sufficient evidence showing it has rights in the Cala trademark at least since the year 2006.

The Complainant also provided evidence showing a use in the Cala trademark. The Complainant has several fashion shops in Israel and operated the website www.calafashion.co.il in which it sells fashion items, clothes and accessories.

It is also up to the Complainants to show that the Respondent has no rights in the Name - Cala. 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 make 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 disputed domain name is used to resolve to a one "parking page" including sponsored listings links to other websites offering services for brides.

Respondent contends that he does have a legitimate interest in the disputed domain name because, he asserts, he has registered the disputed domain name before the Complainant registered its trademarks – Cala.

The Respondent claims that the term Cala means "bride" in Hebrew and that he registered the domain name in order to find a bride.

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 Name.

There is no indication in the file that the Respondent is known under the disputed domain name or using it. The Respondent has not supported his claims with evidence. The Response did not include any explanation or documentation with respect to the

alleged Cala procedure. While not necessary, 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 Cala – Bride in Hebrew. The Respondent failed to support his contentions that he is known or is associated with the term Cala term.

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.

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)

It is therefore the finding of the Panel that the Complainants have rights in the Cala trademark and that the Respondent has no rights in the Cala 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. 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 Cala trademark. To this end, 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). Such would also be the case under the ILDRP.

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). This Panel adopts these rulings and recognize that under the ILDRP such practices would generally constitute abusive bad faith cyber squatting.

In addition, the fact that the Respondent has registered more than 100 domain names relating or confusingly similar to other well-known marks and uses them a "parking page" for sponsored links, also indicates the Respondent's bad faith as it may show a patent of abusive behavior designed to trade off the value of domain names under third parties' trademarks. Such behavior shows that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant's trademark 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 contrary to Rule 4.1(d).

Given these circumstances the Panel finds that 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, <cala.co.il> be transferred to the Complainant.



Jonathan Agmon
Panelist

Date: June 17, 2015.