

S.H.A'.AL Peace Now for Israel – Educational Enterprises v. Mr. Ariel Rofeh:

IL-DRP Panel Decision

1. The Parties

The Complainant is S.H.A'.AL Peace Now for Israel – Educational Enterprises of Tel Aviv, Israel represented by D. Mirkin & Co.

The Respondent is Mr. Ariel Rofeh.

2. The Domain Name and Registrar

The disputed Domain Name < peacenow.co.il > is registered with the Israel Internet Association ("**ISOC-IL**").

3. Procedural History

The complaint was filed with the ISOC-IL on December 9, 2010; The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL ("**IL-DRP**") under the IL-DRP Rules ("**Rules**").

On December 30, 2010, the IL-DRP appointed Dr. Yuval Karniel as the sole panelist.

In accordance with the Rules, on December 30, 2010, the Panel transmitted to the Respondent by e-mail a copy of the complaint with documentation attached, providing the Respondent 15 days to respond to the complaint. The Respondent has not submitted a response to the complaint in the allotted time frame.

4. Factual Background

On June 7, 2010, the Disputed Domain Name was assigned to the Respondent.

The registered Name of the Complainant at the Israeli Registrar of Association (the "**Registrar** ") is "S.H.A'.AL Peace Now for Israel – Educational Enterprises".

On December 7, 2000, the Complainant was assigned the Domain www.peacenow.org.il. Since the abovementioned date the Complainant operated its activities under this domain Name.

On December 1, 2010, the following advertisement was shown at <http://www.peacenow.co.il/>:

"This Domain name is now for sale please contact shemhamyefet@gmail.com with your offer"

When the Complainant checked again the above URL on December 6, 2010, it contained a re-direction to <http://rabbikahane.org> which presents a memorial website for Rabbi Kahane.

On December 1, 2010, the Complainant's attorney approached the Respondent and demanded the transfer of rights in the disputed Domain Name.

On December 7, 2010, the Respondent's attorney responded to the letter, in which he claimed that his client's operation of the website, while using the disputed Domain Name, did not infringe on any of the Complainant's rights. He further claimed that the Complainant has no rights to the disputed Domain Name.

5. Parties' Contentions

A. Complainant

The Complainant argues that the Domain Name is identical to the Name in which the Complainant has rights. The Complainant's rights stem from the following claims:

The Complainant has been an active and well-known Non-Profit Association in Israel since 1978.

The registered Name of the Complainant at the Registrar testifies to its rights in the Disputed Domain.

The Complainant argues that "Peace Now" is a "Well-Known Mark" as the term is defined in Article 1 of the Israeli Trade Mark Act (1972) ("**the Trade Mark Act**").

As testimony supporting this claim, the Complainant presents an example of an attempt in 2008, by a third party to register the Name "Peace Now" at the Registrar. In the 2008 example, although the Complainant's registered name did not include the words "Peace Now", the Registrar rejected the request. The Complainant believes that this attests to it being well identified with this Domain Name, already back in 2008 and points out some of the Registrar's reasoning behind its decision:

- (a) The Name "Peace Now" is a well-known Name among the Israeli public.
- (b) There is a certainty that the registration of another Association under the Name will mislead the public.
- (c) The attempt to register the new Association under the Name "Peace Now" was done in bad faith.

The Complainant further argues that the Respondent holds no rights to the disputed Domain Name and registered the disputed Name in bad faith for, among others, the following reasons:

- (a) The Respondent tried to register the disputed Name, for purposes of selling the Domain Name (as it recently advertised on the Disputed Domain).
- (b) The Respondent is misleading internet users, as it automatically diverts them to a website with totally different content.
- (c) The Respondent is using the Domain to spread a philosophy that is completely opposite to the ideology of the Complainant

B. Respondent

The Respondent has not submitted a response to the Complaint in the allotted time. This Panel will consider the Respondent's claims as reflected from a letter of response to the Complainant (which the Complainant attached as to the official Complaint).

The Respondent claims that the Complainant has no rights of any kind in the disputed Domain Name, and the Respondent's operation of the site does not infringe on any of the Complainant's rights.

The Respondent further argues that the Complainant changed its Name to include the words "Peace Now" only in 2008 and until that point was misleading the Registrar and the public.

6. Discussions and Findings

The IL-DRP is an alternative dispute resolution procedure intended to provide expedited resolutions to disputes regarding the allocation of domain names in accordance with the Rules. The Respondent submitted to this Procedure and Rules when it applied for and registered the disputed Domain Name.

The Rules provide that disputes regarding the registration of a Domain Name by a Holder may be brought by a Complainant on the following grounds:

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, among others, a trademark, a trade name or a registered company name.

The common suffix co.il is ignored for the purpose of determining the similarity between the disputed Name and the words "PEACE NOW". The relevant parts of the disputed Domain Name are the words "PEACE NOW".

The Complainant incorporated the words "PEACE NOW" in its registered name ("S.H.A'.AL Peace Now for Israel – Educational Enterprises").

The words "PEACE NOW" fit the definition of a "well-known mark" as set forth in the Trade Mark Act.

It is therefore the findings of the Panel that the disputed Domain is the same or confusingly similar to the commonly known name of the Association and the Association's Name at the Registrar.

B. Rights in the Name

Next, it is up to the Complainant to show that the Complainant has rights in the "PEACE NOW" mark; and that the Respondent has no rights in the said "PEACE NOW" mark.

The following attests to the rights of the Complainant in the disputed Domain:

- a. The Complainant is one of the largest and most known Non-Profit Associations in Israel. It has been active in the political sphere since 1978. The Complainant's activity, both in the national and in the international arena, is well-known due to, among others, extensive news coverage.
- b. The Complainant incorporated the words "PEACE NOW" in its registered Name ("S.H.A'.AL Peace Now for Israel – Educational Enterprises").
- c. The Trade Mark Act constitutes the term "a well-known mark" which is a designated mark (which includes word/s) that is well-known in the area in which it is used usually both in Israel and abroad. When a mark reaches a certain extent of public exposure, it shall be protected without taking into consideration if it is a registered trademark or not. The abovementioned circumstances testify to the fundamental connection between the Complainant and the disputed Name. This connection is reflected when examining the Complainant's course of action, but is further magnified when examining how the public (both in Israel and abroad) perceive this connection. When considering both internal and external circumstances, this Panel believes the Complainant is the owner of the well-known mark (PEACE NOW). This solidifies the Complainant's rights in the disputed Domain Name regardless of the claim the Respondent raised, that the Complainant did not include the words "PEACE NOW" in its registered Name until 2008.

It is also up to the Complainant to show that the Respondent has no rights to the Name. While the Complainant bears the "general burden of proof" under Rule 3.3, this burden shifts to the Respondent who must show that it has rights or legitimate interests in the Domain Name at issue by providing concrete evidence. (See: Neusiedler Aktiengesellschaft v. Kulkarni, WIPO Case No. D2000-17699).

In this case the Panel finds that the Complainant made a prima facie showing that the Respondent has no rights to the disputed Domain Name within the meaning of Rule 3.3 and the Respondent has not lifted shifted burden. This finding is based on the following:

- a. The words "PEACE NOW" are a well-known mark which is associated **solely** with the Complainant, as based on the abovementioned circumstances. Not only is the Respondent not associated with the disputed Name but on the contrary, represents an adverse philosophy.
- b. The Complainant incorporated the Disputed Name in its Company name while the Respondent's Name is lacking any such connection.
- c. The Complainant is known by the general public, under the disputed Name, whereas the Respondent is known by the public under a different name. This carries a heavy weight, as both Parties are political movements which image is shaped by and for the public. The Respondent, on the other hand, has failed to assert a substantial and specific connection to the "PEACE NOW" Domain Name.
- d. The Respondent's course of action, as presented before this Panel, demonstrated a fundamental detachment from the "PEACE NOW" Domain Name.

It is therefore the finding of the Panel that the Complainant has rights in the "PEACE NOW" Name and the Respondent has no rights to the "PEACE NOW" Name.

C. Application and Use in Bad Faith

Finally it is up to the Complainant to show that the Respondent applied for the allocation of the disputed Domain Name in bad faith.

WIPO Panels, while relying on Rule 4.1 of the UDRP, have 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.

Rule 4.1(b) provides, that this Panel can find that the Respondent acted in bad faith if there are circumstances showing that the Respondent has requested allocation of the disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or circumstances indicating that the Respondent has requested allocation or holds the disputed Domain primarily for the purpose of selling, renting or otherwise transferring the disputed Domain Name to the Complainant who is the owner of the registered trademark or service or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the Domain Name.

While applying the rules above we shall distinguish from the commercial wording, as the issue at hand concerns parties of ideological-political nature whom are not driven by commercial interests.

As mentioned above, there seems to be no affiliation of any sort between the Respondent and the disputed Domain. It is thus hard to find a sincere motive behind the Respondent's actions when acquiring the Domain Name of a political movement of the opposite ideology. In trying bridge the gap, this Panel finds that there the circumstances only leave a couple of options, all of which entail that the Respondent acted in bad faith.

Firstly, one way to bridge the above mentioned gap is that the Respondent intentionally wanted to disrupt the "business" of the "competitor". When a person types in the disputed Domain there is a certainty that they want to arrive at the Complainant's site, surely this person did not intend to arrive at the Respondent's site. The Complaint has shown the Court that as of December 6, 2010, the Respondent was using the site to spread a philosophy that opposes the ideology of the Complainant. Therefore the spreading of the contrary philosophy, linked through the Domain of the Complainant, surely disrupts the Complainant's activity. Neither the Respondent nor his actions have demonstrated any indications as to a different motive other than the intent to disrupt.

Secondly, the latter part of Rule 4(b) applies, as it is apparent from the evidence presented before this Panel that the Respondent was set out to sell the disputed Domain, to the highest bidder. The Respondent has not hidden the fact that he was trying to sell the disputed Domain, as the following words were posted at the Domain:

"This domain name is now for sale! Please contact shemhamyest@gmail.com with your offer"

It is therefore evident that the Respondent tried to acquire the Domain Name with the sole purpose to sell it for considerable profit.

Rule 4.1(d) provides, among others, that this Panel can find that the Respondent acted in bad faith if there are circumstances showing that the Respondent intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's Name as to the source or affiliation or endorsement of its website.

The disputed Domain Name is identical to the Complainant's well-known mark. Previous WIPO Panels ruled that a likelihood of confusion is presumed and that 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).

As concluded from the abovementioned, when a person types in the disputed Domain they feel certain that they shall arrive at the Complainant's site, and surely not at the Respondent's site. The Complaint has demonstrated to this Panel that as of December 6, 2010, the Respondent was using the site to spread a philosophy that opposes the ideology of the Complainant. When taking these elements into consideration, one may assume that the course of action was meant, among others, to divert internet traffic while confusing the general public in order to spread adverse political philosophy.

It may also very well be the case, that abovementioned examples of bad faith are accumulative and represented different facets of the bad faith which predominantly characterized the Respondent's course of action.

Given these circumstances the Panel finds that the Complainant sufficiently met the burden of showing that the Respondent used the disputed Name in bad faith, in accordance with the Rules.

7. Decision

For all the foregoing reasons, in accordance with the Rules, the Panel orders that the Domain Name <peacenow.co.il> be transferred to the Complainant.