

**Dispute Resolution Panel**

**For the Internet Society of Israel**

**Ellen B. Shankman, Adv.**

**In the matter between**

**Pelephone Communications Ltd.**

**(The "Petitioner")**

**Represented by Adv. Renana Israeli et al.**

**And**

**Sivan Langer**

**(The "Respondent")**

**Represented by Adv. Nimi Langer**

**Regarding the Domain Name**

**ןיפא79.co.il**

**(The "Domain Name")**

**DECISION**

**Procedural Background:**

The panel was established on 7 March 2011, in accordance with the Procedures for Alternative Dispute Resolution under the .IL ccTLD by Dispute Resolution Panels ("IL-DRP Procedures"), ([http://www.isoc.org.il/domains/ildrp\\_rules.html](http://www.isoc.org.il/domains/ildrp_rules.html))\_ (in English) and [http://www.isoc.org.il/domain\\_heb/ildrp\\_rules.html](http://www.isoc.org.il/domain_heb/ildrp_rules.html)\_ (in Hebrew), in order to address the Petitioner's request to cancel the allocation of the Domain Name (ןיפא79.co.il) to Respondent and to reallocate the Domain Name to the Petitioner.

Respondent was notified that a petition had been filed and both parties notified of the appointment of the Panelist and that all further communications directed to

me or in response to the Petition, be posted to the e-mail list. I reiterated my strong encouragement that a response or any other questions, objections or concerns be filed by the deadline.

Per Section 8.2 of the IL-DRP Procedures, either party may request that the dispute be reviewed by an extended panel within 7 days of the notification. Further, per Section 8.4 of the IL-DRP Procedures, either party may request exclusion of the appointed Panelist on the grounds of any potential conflict of interests. No such requests were made.

Further, per Section H of the IL-DRP Procedures, either party may request Court Review.

**“Section H. Right To Seek Court Review**

20. Petition to the IL-DRP in no way precludes access or petition to an Israel Court of Law.
21. Notwithstanding, should a party, in parallel, institute Court proceedings regarding a Domain Name during the proceedings of the IL-DRP, such petition to the Court shall not affect or stay the IL-DRP proceedings under these Rules, unless a court order regarding such be served on ISOC-IL.”

No such review was made that would affect or stay these IL-DRP proceedings.

The Panelist confirmed that the Petition and all correspondence thereto was posted by ISOC and e-mail sent to the address of the Holder in the records. Respondent filed a response on the last day of the deadline by which to file.

**Petitioner’s Arguments:**

**The domain name is the same or confusingly similar to a trademark, trade name, registered company name or legal entity registration of the Petitioner and the Petitioner has rights in the Name.**

(Rules, section 3.1, 3.2)

1. The Petitioner is a telecommunications company in Israel, established on 1986 and was the first mobile network operator in Israel. The Complainant

is currently one of three major Mobile Network Operator in Israel, with over 2.8 million subscribers.

2. The name of Petitioner – "פֶּלֶפּוֹן" (the word "Pelephone" in Hebrew characters, hereinafter: "**PELEPHONE**") is a registered trademark in Israel (Trademark no. 60716), owned by the Petitioner **for twenty five years**, since 1986. A printout of the Trade Mark Extract is attached hereto as Annex B [omitted by Panelist].
3. In addition, the Petitioner is the owner of multiple trademark registrations for the mark PELEPHONE (both in Hebrew and English characters) in Israel. For example: Israeli trademark registration no. 60713 – PELEPHONE and design, in Hebrew characters (with the registration date of 29.1.87); Israeli trademark registration no. 203439 – PELEPHONE, in Hebrew and English characters (with the registration date of 22.1.09); Israeli trademark registration no. 203437 – PELEPHONE (in Hebrew characters) with the registration date of 22.1.09; and many others. A printout of the Trade Marks Extracts are attached hereto as Annex C [omitted by Panelist].
4. The disputed domain name consists of a repetition of the PELEPHONE trademark in its entirety. The dominant element in the disputed domain name is the Petitioner's PELEPHONE trademark, which is incorporated in its entirety.
5. In accordance with *Sao Paulo Alpargatas S.A v. Ilan Omer* (9.7.09): "*the registration of a trademark under a dispute domain name has been held by many WIPO panels sufficient evidence to show that the Complainant has sufficient rights in the name (See Consorzio del Formaggio Permigliano Reggiano v. La Cassa del Lattedi Bibulic Adriano, WIPO case no.D2003-0661)*".
6. Moreover, The Petitioner expended significant resources throughout the years in promotion and advertisement in and throughout Israel. As a result of extensive use and publicity, the PELEPHONE trademark became widely-known and is solely associated with the Petitioner. The PELEPHONE trademark also became well-known and well-recognized by the general public, and has generated significant goodwill.
7. The Petitioner is the registered owner of the domains: [pelephone.net.il](http://pelephone.net.il), [pelephone.moby](http://pelephone.moby) [sic], [pelephone.co.il](http://pelephone.co.il) [sic] and [Pelephone.tel](http://Pelephone.tel). There are no other telecommunications companies in Israel whose name includes the prefix "פֶּלֶ" ("Pele" in Hebrew characters) or which have similar name. Moreover, the Petitioner is not aware of any telecommunication operator elsewhere in the world with the Petitioner's name.

8. The disputed domain name is identical to the Petitioner's trademark and identical to the Petitioner's company name.
9. The disputed domain name is a unique name, which has no secondary meaning in Hebrew, English or any other language, to the best of the Petitioner's knowledge. It is important to mention, that a claim according to which "pelephone" is a generic name was not accepted by WIPO: *"The Respondent alleged that he has legitimate interest in the disputed domain name as the word "pelephone" has become a commonly used word for cell-phones, irrespective of the brand of the cell-phone or of the service provider.*

*The panel sites the following decision with approval:*

*"We believe that the courts or regulatory authorities are better able to grapple with the question of the generic nature of words and phrases, and the acquisition of secondary meaning. In addition, the summary nature of the procedures under the Rules is not adequate to develop the proof necessary to make an informed decision on these issues. Therefore, the majority here accepts the registered trademark as prima facie evidence of the existence of the mark without analysis of Respondent's assertions that the TRASHY LINGERIE mark is descriptive or generic and without analyzing secondary meaning" (402 Shoes, Inc. dba Trashy Lingerie v. Jack Weinstock and Whispers Lingerie, WIPO Case No. D2000-1223).*

*Accordingly, the Panel finds that the existence of a valid registration of a trademark is sufficient proof that the trademark is not of a generic nature." (see Pelephone Communication Ltd v. Golan Thomas, WIPO case no.D2010-0187)".*

**The Holder has no rights in the Name.**

(Rules, section 3.3)

10. The Respondent does not have a first name or surname identical or similar to the disputed domain name.
11. The Petitioner has no relationship whatsoever with the Respondent and has not authorized the Respondent to use the disputed domain name.
12. There are, therefore, no legitimate reasons for the use of the name "פלאפון" or for the acquisition of the domain name www.פלאפון.co.il by the Respondent.

**The application for allocation of the Domain Name was made or the Domain Name was used in bad faith.**

(Rules, section 3.4, 4)

13. According to the WHOIS query, the disputed domain name was assigned within one day of commencement of registration for the Hebrew domain name, which began on 26.12.10. Although the Respondent hastily registered the domain, two months have passed since the date of the assignment and the Respondent has yet to create a site for the registered domain.
14. The Petitioner has a reason to believe that the Respondent knows of the existence of the Petitioner's business, and that his attempt to acquire a domain name identical to Petitioner's trademark, stems from his intention to obtain illegitimate financial benefit from this domain name, such as selling the domain name to the Petitioner at an exorbitant price or attracting Internet traffic on the basis of Petitioner's well-known name and unlawfully benefiting from such traffic.
15. The Respondent is a serial domain name holder. The Respondent holds several names of domains that belong to well known companies in the Israeli industry. To the best of the Petitioner's knowledge, the Respondent has no rights in those names. For example: [www.תפוז.co.il](http://www.תפוז.co.il) (Tapuz); [www.ידיעות.co.il](http://www.ידיעות.co.il) (Yedi'ot); [www.מעריב.co.il](http://www.מעריב.co.il) ; (Ma'ariv); [www.לאומי.co.il](http://www.לאומי.co.il) (Leumi).
16. It should be noted, that before applying to the IL-DRP, the Petitioner sent a letter to the Respondent (by Registered Mail and Email) which explains the Petitioner's main objections and asks the Respondent to re-assign the domain name to the Petitioner. Despite of a delivery confirmation of the registered letter, the Respondent did not respond to the letter. A copy of the letter and its delivery confirmation are attached hereto as Annex D.

*In accordance with Sao Paulo Alpargatas S.A v. Ilan Omer (9.7.09): "Further the Complainant provided as evidence a cease and desist letter addressed to Respondent, which the Complaints asserted was never responded. As decided in Gaggia S.P.A Yokngshen Kiang, WIPO case no. D2003-0982: "[W]hen receiving such notice, good faith requires a response. Instead, The respondent's inaction shows lack of legitimate interest in the disputed domain name and lack of good faith in the registration and use thereof (See CarreFour and*

**Respondent's Arguments:**

1. The Respondent in this proceeding is Sivan Langer ("Sivan"), an entrepreneur from Gesher Haziv. Sivan's occupation is in the area of the Internet and Sivan holds a Bachelor's [sic] degree in Science and a second degree from Tel Aviv University from Coen Institute of History and Philosophy of Science and Ideas.
2. The respondent is the legal holder and the registered domain name holder of the domain דומיין.co.il ("domain").
3. Factual and legal grounds
  - 3.1 Sivan's occupation is developing new Internet concepts that are focused on public empowerment. This endeavourer taken by Sivan is not for commercial gain.
  - 3.2 To realize his entrepreneurial and occupational aspirations and to support his beliefs, Sivan has both commenced industrial ties with Internet experts and also took a course in entrepreneurship. Proof of participation in the course is attached hereto as Annex A [omitted by Panelist].
  - 3.3 Sivan purchased lawfully with his own money the domain. Sivan has purchased in good faith the domain as part of his occupation.
  - 3.4 Sivan purchased the domain after the period of time provided by the registration office established to provide companies such as the complainant the opportunity to purchase relevant domains.
  - 3.5 The complainant has not found the domain attractive. It is unlikely to assume that as one of the country biggest internet providers company, the complainant has not been aware of the Hebrew domains distributions. If so, there is no lawful justification that Sivan will be made for undertaking financial lost caused by a third party, in this case, the complainant, that have been caused by the complainant acts of negligence.

#### 4. Generic name

In addition to Sivan's legal right to purchase the domain, Sivan does not agree with the Petitioner's argument that the name is the company's trademark, therefore, he is not entitled to own the name as his domain.

The word פלאפון in Hebrew is a generic name for mobile phones in general. The fact that פלאפון is a generic name is supported by strong evidence. Evidence for the generic name are attached hereto as Annex B [omitted by Panelist] and include:

- A statement made by the VP Pelephone stating the limitation of the company since the name פלאפון is generic.
- Translation of the word in Google translates to - פלאפון meaning mobile phone.
- Examples of generic names in Wikipedia where פלאפון is used as an example.
- The domain pelephon.com does not belong to the company nor is the company registered as פלאפון בע"מ (Pelephone Ltd.).

This short list of evidence is representative of and expresses the fact that the word פלאפון is a generic word and has a generic meaning to mobile phones in general, thus does not provide the company the exclusivity of using it.

Even though a Trademark was registered, the fact that the word is generic diminishes the company's argument for ownership over the use of the word, and even if there were a trademark for פלאפון, it has been made generic, as it has become generic in meaning.

#### 5. The basic right for occupation

In addition, preventing Sivan from using the domain or unlawfully taking what he purchased in good faith will erode his basic right to occupation.

The Israel Constitutional Basic Law – Freedom of occupation was written to secure that every Israeli national or resident has the right to engage in any occupation, profession or trade.

By taking his domain that was legally purchased and with relation to Sivan's occupation, this will erode Sivan's basic right to engage in his chosen occupation and profession.

6. Company's act in bad faith

Sivan claims that the company has acted in bad faith by using its position as a powerful company to threaten him and to question his basic rights as written in the Israeli and International law by ink and spirit, specifically: Spirit of Restrictive Trade Practices Law, 1988 and it's intended correction from 2010, both in order to maintain a fair economical competition and prevent exploitation by large powerful economical bodies , and the Basic Law: Human Dignity and Liberty, 1992 clauses 1-5, and Basic Law: Freedom of Occupation, 1994, clauses 1-5. The threatening letter received by Sivan is attached hereto as Annex C.

7. The respondent acts in good faith

7.1 Sivan denies the claims that he acted in bad faith. Sivan is an honest person that never entered into any legal or social dispute in the past. This fact cannot be stated by the company that visits the courtroom on a monthly basis and exploits its commercial and economic power to greedily infringe on people's basic rights.

7.2 According to clause B.4 the respondent does not stand in bad faith:

Sivan did not request allocation of the domain name primarily for the purpose of disrupting the business of a competitor; nor does he hold the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name allocation to the Petitioner who is the owner of the trademark or service mark or to a competitor of that Petitioner for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; nor does the holder 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; nor by using the domain name, Sivan has not intentionally attempted to attract, for commercial gain, Internet users to its web site or any other on-line location, by creating a likelihood of confusion with the Petitioner's Name as to the source, sponsorship, affiliation, or endorsement of its website or location of a product or service on its website or location.



**Discussion:**

**Procedural Issue:**

Respondent was specifically directed by the Panelist to the Rules for Allocation of Domain Names, and more specifically to the IL-DRP.

Sections C and F of the Rules for Allocation of Domain Names provide (emphasis in the original and italicized here for quoted emphasis):

***“C. Application & Allocation Process***

***5. The Application***

***5.1. Applicant***

*An application for allocation of a Domain Name may be made by the party who will hold the Domain Name (“Holder”) or by a third party, including by way of an ISOC-IL Accredited Registrar (“AR”), on behalf of the Holder (collectively “Applicant”).*

...

***5.3. Application Form and Fees***

*The allocation process will be initiated by submission to ISOC-IL of the completed application form according to the procedures set by ISOC-IL (“Application”). The Applicant will pay the initial allocation fee together with filing the Application. All details in the Application should be full and correct.*

***5.4. Application Incorporates the Rules***

*These Rules and procedures thereunder (hereinafter “Rules”) are binding the Applicant and the Holder upon submission of the Application and prevail over any other representations made by ISOC-IL. {Emphasis added}.*

***F. Disputes and the IL-DRP***

***24. ISOC-IL Not Arbiter of Disputes***

...

24.3. As a service to the Internet Community, ISOC-IL has established an alternative expedited dispute resolution mechanism, namely, the IL-DRP. The procedures and rules regarding dispute resolution under the IL-DRP are available at [http://www.isoc.org.il/domains/ildrp\\_rules.html](http://www.isoc.org.il/domains/ildrp_rules.html), and are an integral part of these Rules.

**24.4. Holder agrees to submit to a procedure and a decision made under the IL-DRP. This section does not abrogate any individual's right to go to court or arbitration to resolve disputes regarding a Domain Name. {Emphasis added}.**

24.5. Section F does not apply to Domain Names allocated under the Rules prior to January 1, 1999, unless the Holder so agrees.”

Accordingly, I find that Respondent, by submission of his application to obtain the Domain Name, agreed to the Rules and the IL-DRP procedures.

Further, I reject Respondent's position that he "owns" the Domain Name because he paid good money for it.

Section A.2. of the Rules states:

**"A. Introduction**

- *A Domain Name is a name registered on the ISOC-IL Registry database and in the global Domain Name System ("DNS"). The allocation of a Domain Name to a holder, grants the holder with a right-of-use for the allocation period, as part of the Domain Name resolution service provided by the Registry. **A Domain Name is not subject to proprietary rights and accordingly, the aforementioned right-of-use does not constitute ownership or bestow property rights.**[Emphasis added]*

Further, by submission of his application Respondent warranted and conditioned his obtaining the Domain Name as follows in Section C of the Rules:

**“5.2. Holder's Representations and Warranties**

*A submission of an Application by an Applicant constitutes the Holder's representation and warranty that the Holder is a legal entity and that the allocation or use of the Domain Name by the Holder does not infringe the legal rights of a third party. Further, it constitutes the Holder's agreement that ISOC-IL will not bear liability for any allocation and use of any Domain Name.”*

That the allocation of a Domain Name is not a guarantee of the validity of the use of the Domain Name by the Holder is further emphasized in Section C of the Rules:

**“9. Allocation No Guarantee of Validity of Use**

*The examination of the Application and the allocation of the Domain Name shall not be a guarantee that the Domain Name is valid for use by the Holder under Israel law, and ISOC-IL or its employees shall bear no responsibility whatsoever because the Domain Name was allocated.”*

Accordingly, this Panelist has the authority to make a determination regarding the Domain Name, and these proceedings are appropriate for such determination. Further, under the Procedures, the parties retain the right to go to court, should they wish to challenge the decision of this Panelist.

**Grounds for Decision:**

The IL-DRP Rules state:

**“B. Grounds for IL-DRP**

*3. Disputes regarding allocation of a Domain Name by a Holder may be brought by a third party (“Petitioner”) 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. Evidence of Allocation or Use in Bad Faith**

4.1. 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
- c. 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
- d. 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
- e. 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."

Thus, in order to prevail, the Petitioner must establish all four elements: confusing similarity to the Domain Name, rights in the Domain Name, that the Holder has no rights in the Domain Name, and an element of bad faith.

### **Confusingly Similar**

The first question is: Is the Domain Name the same or confusingly similar to a trademark, trade name, registered company name or legal entity registration ("Name") of the Petitioner?

I find the answer to this "yes". The Domain Name  $\mu\text{פלאפון.co.il}$  is confusingly similar to the registered trademarks and key element of the company name of the company. Petitioner has established that it has registered the trademarks "PELEPHONE" and "פלאפון" in Hebrew and in English in Israel.

### **Petitioner's Rights in the Name**

The second question is: Has Petitioner established that it has rights in the name?

I find the answer to this "yes". Petitioner has provided evidence of registration of, as well as use of, the trademark "פלאפון" in Israel.

It should not be incumbent upon a party to acquire all possible variations of its mark in domain name strings in order not to forfeit any rights or prevent allocation of such domain names to others. I specifically reject Respondent's arguments that since Respondent "purchased" the domain name after the sunrise period and that "[t]he complainant has not found the domain attractive. It is unlikely to assume that as one of the country biggest internet providers company, the complainant has not been aware of the Hebrew domains distributions", means that the Petitioner has forfeited any rights in the name.

Further, I find the third level Hebrew "פלאפון" of the Domain Name to be identical to the registered trademark "פלאפון". I find that the Petitioner is widely known in both Hebrew and English in Israel, and thus also has rights to the mark in Hebrew characters.

Further, with regard to Respondent's claim that the term  $\mu\text{פלאפון}$  is generic, or has become generic, I find that Respondent has not adduced sufficient evidence to prove the mark has become generic. In light of the registered trademark for the

term ןפלאן which, on its face (*prima facie*), is evidence that the mark is sufficiently distinctive to obtain protection, and without sufficient evidence to rebut this assumption, I find that Petitioner has rights in the name. If the Respondent wants to challenge that the mark has become generic with a showing of sufficient evidence to support this claim and challenge, then the appropriate venue for Respondent is Court.

### **Respondent's Rights in the Name**

The third question is: Does the Respondent have rights in the Name?

I find the answer to this "no". Respondent has demonstrated no "rights" in the Name "ןפלאן" and that there appears to be no legitimate business reason for Respondent to be holding the Domain Name. I specifically reject Respondent's claim that Freedom of Occupation permits registration of a Domain Name that contains the trademark of another. Further, the below statement by Respondent does not persuade me that the Respondent has a legitimate business reason for holding the subject Domain Name:

"Sivan's occupation is developing new Internet concepts that are focused on public empowerment. This endeavour taken by Sivan is not for commercial gain.

To realize his entrepreneurial and occupational aspirations and to support his beliefs, Sivan has both commenced industrial ties with Internet experts and also took a course in entrepreneurship. Proof of participation in the course is attached hereto as Annex A." [omitted by Panelist]

### **Bad Faith**

The fourth question is whether there appears to be any evidence of bad faith in the allocation or use of the Domain Name. I find that there is evidence of bad faith.

In a non-exclusive list of possible evidence of bad faith, Sections 4.1. (d) and (e) of the IL-DRP Rules state:

- d. *"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*
- e. *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 use of a registered trademark in a domain name allows the entity registering the domain name to capture traffic and point or divert it to another website. Courts have recognized that consumers expect to find a company on the Internet at a domain name address comprised of the company's name or trademark. See **Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316 (9th Cir. 1998)** ("A customer who is unsure about a company's domain name will often guess that the domain name is also the company's name." . . . "[A] domain name mirroring a corporate name may be a valuable corporate asset, as it facilitates communication with a customer base.").

In addition, Respondent's alleged failure to develop a website evidences that Respondent is holding the Domain Name to obtain benefit from or on the coattails of the Petitioner and/or is not utilizing the Domain Name for any primary purpose other than to re-direct such traffic away from the Petitioner.

Further, in addition to the other Domain Names cited by the Petitioner, in my investigation, I determined that Respondent has registered other Domain Names containing the Hebrew language transliterations or equivalents of other recognized trademarks. This appears to be additional evidence pointing to a practice of registering names containing marks of others to suggest a connection with those companies, and thus supports this interpretation of Respondent's "bad faith" use and registration of the subject Domain Name.

**Discussion:**

Although I find the above sufficient grounds on which to make my determination, since the roll-out of the allocation of Hebrew character Internationalized Domain Names ("IDNs") third level domains in the .IL ccTLD space is in its nascent stages, I wish to add additional considerations that inform and support my determination, in order to meet the "spirit" as well as the "letter" of the Rules.

The purpose of the expansion of the domain name space in Israel to include Hebrew IDNs, and the expansion of the domain name space world-wide for IDNs in general, is to make the Internet more accessible to more people. In the .IL ccTLD space, the idea is to enable the offering of domain names to users in Hebrew characters rather than only in Latin characters.

"The objective of IDNs is to enable users to easily type domain names in familiar, non-ASCII scripts (while preserving universal uniqueness and resolvability)". *ICANN IDN Committee's Discussion Paper on Non-ASCII TLD Policy Issues.*"

As also quoted in ISOC-IL's own FAQs in explaining this expansion:

"The Hebrew Domain Names are an expansion of the Israeli name space. IDNs expand Internet accessibility to new and additional audiences, and provide easier access to the name space:

'Over half the Internet users around the world don't use a Latin-based script as their native language. IDNs are about making the Internet more global and accessible for everyone.' (Rod Beckstrom, ICANN's President and CEO, 16.11.2009, IDN ccTLD Fast Track Process Launch)."

In addition to allowing for the expansion of the name space, an additional goal is to keep it a "unified" space. As quoting from the ISOC-IL FAQs:

**"Is there a connection between the Hebrew Domain Names offered for registration in IL and the Hebrew Top Level Domain for Israel (once selected)?**

When ISOC-IL operates Israel's Hebrew Top Level Domain registry, the Hebrew Top Level Domain and IL will be aliases. This means they will be different names having the same name space ("Unified Name Space").

All the Domain Names registered in IL, Latin and Hebrew alike, will automatically operate under both Top Level Domains without any additional action or cost.



ISOC-IL believes that the Unified Name Space approach will best serve the interests of the local Internet community. In addition, it will save unnecessary expenses for the holders of existing Domain Names, since they will not be required to register these names separately in the Hebrew Top Level Domain.”

Accordingly, it is critical that a balance between these two worthy goals be struck, and the user trust in, as well as the security and stability of, this expanded unified space not be abused. Thus, the expansion of the name space for Hebrew IDNs is to expand and enhance necessary use by holders with Hebrew characters and to offer availability of uniquely Hebrew words – **not to have the confusingly similar equivalent transliterated names in Hebrew and (English) Latin characters be captured by different entities.** As additional anticipated expansion of the Hebrew IDN of the Top Level Domain (TLD) takes place, identical and/or equivalent transliterated alternatives will need to resolve to the same space.

There must be protection against cybersquatting and other forms of abuse in the Hebrew IDN name space version that do not differ from the protections already afforded – and carefully balanced – in the existing ccTLD space. For example, there is confusion and possibly significant danger for the consumer if different owners can hold different versions of confusingly similar equivalent transliterated domain names in Hebrew and in English.

**Decision:**

In light of the above, I find that the Domain Name is confusingly similar to the Petitioner’s registered trademarks, that the Petitioner has rights in the trademark, that the Respondent has no legitimate interest in the domain name, and that the allocation or use of the Domain Name by the Respondent is in bad faith. Therefore, I hold that the Domain Name shall be reallocated to the Petitioner within 45 days of the date of this decision.

Ellen B. Shankman, Adv.

Date: 23 March 2011