

Mrs. Hanada Assal v. Itai Ayalon

IL-DRP Panel Decision

1. The Parties

The Complainant is Mrs. Hanada Assal, Nazerat Illit, Israel, represented by Ariel Dubinsky, Adv. & Joy Kreisler, Adv.

The Respondent is Itay Ayalon, Hazamir 1, Kiryat Ono 55507, Israel.

2. The Domain Name and Registrar

The disputed domain name <regalo.co.il> (hereinafter: "**the Disputed Domain**") is registered with Itay Ayalon.

3. Procedural History

The Complaint was filed with ISOC-IL on June 11th, 2018. The Complaint was transmitted to the Israeli Dispute Resolution Panel of ISOC-IL ("**IL-DRP**") under the IL-DRP Rules ("**Rules**").

On June 24th, 2018 the IL-DRP appointed Naomi Assia as the sole panelist.

In accordance with the Rules, on July 2nd, 2018, the Panel transmitted to the Respondent a copy of the Complaint by e-mail and attached materials, providing the Respondent 15 days to respond to the Complaint.

The Response to the complaint was forwarded to the Panel on July 9th, 2018. Due to technical issues with respect to the mailing list, the Complainant has not

received the Response. On July 24th, 2018 the Panel resent a copy of the Complaint along with the Response to all parties, allowing them to submit additional arguments by August 1st, 2018. Both parties decided not to submit any additional materials.

4. Factual Background

The Disputed Domain name < regalo.co.il > was assigned to the Respondent on October 11th, 2017.

The Complainant, Mrs. Hanada Assal, is the owner of a gift store branded REGALO, featuring luxury accessories comprising of jewelry, watches, pens, leather bags, wallets, purses etc.

The Complainant has been operating under the name REGALO since 2012.

In view of annex D of the Complaint, the Complainant purchased the Disputed Domain name <regalo.co.il> back in 2013.

The Complainant did not mention whether she currently owns a domain name through which she operates a web site. A Google Search conducted by the Panel revealed no active website connected to the Complainant. The Panel further revealed that the Complainant's store is currently located in OFER MALLS in its Nazerat Illit branch.

The Complainant's uses the following stylized mark REGALO (hereinafter: "**the REGALO Mark**"):



On May 21st, 2018 the Complainant filed a trademark application no. 305564 for the mark REGALO in Israel in classes 14 and 16 (hereinafter: “**the Application**”). On May 23rd, 2018 the Registrar issued an examination report in which he rejected the registration of the Application as being merely descriptive. On June 20th, 2018 the Complainant submitted a response with the ILTMO, however in his examination report of July 2nd, 2018 the Registrar stated that he found the Complainant’s arguments unpersuasive, and therefore the rejection is still pending. At the time of signing this decision the Complainant has not acquired registered trademark rights with respect to the name “regalo”.

On May 22nd, 2018 the Complainant sent to the Respondent a cease and desist letter demanding him to cease using the Disputed Domain (Annex E of the Complainant) (hereinafter: “**the Letter**”). The Respondent did not respond to the Letter.

In his Response the Respondent did not elaborate as to the nature of his activities and scope of business under the Disputed Domain, however he indicated that his business is not in the field of jewelry.

The Disputed Domain name <regalo.co.il> is currently inactive.

5. Parties' Contentions

A. Complainant

The Complainant argues that she has invested vast amounts and efforts in marketing under the REGALO Mark. Due to that investment, the REGALO Mark has become a well-known brand in Israel, and is identified by the consumers as a sign of high quality and unique products and services.

The Complainant further argues that the Disputed Domain is identical to the Complainant's REGALO Mark as they both share the word "regalo".

The Complainant further argues that the Respondent offers products and services that compete with the products and services offered by the Complainant. As a consequence, consumers might be mistakenly led to believe that there is a connection or association between the products at Respondent's domain, and products being sold by the Complainant.

The Complainant further argues that the Respondent intentionally chose a domain name that is identical to the Complainant's REGALO Mark, so as to redirect consumers seeking the Complainant's website to his competing website through confusion and passing-off.

The Complainant further argues that the Respondent intentionally chose the Disputed Domain in order to benefit the success and good will acquired by the REGALO Mark and by doing so he infringers the Complainant's trademark.

The Complainant further argues that the Respondent has no rights or legitimate interests in the Disputed Domain since the Respondent made an unauthorized use of the Complainant's trademark REGALO in order to mislead Internet consumer to his website, where competing products and services are offered. In

this context, the Complainant cited *WIPO's decision no. D2005-0508, Microsoft Corporation v. Source One Management Services, Inc.* (Annex F).

The Complainant further argues that the Respondent has no rights or legitimate interests in the Disputed Domain additionally since the name REGALO is distinctive and has no meaning in the eyes of the Israeli consumers.

The Complainant further argues that the Respondent has no right or legitimate interest in the Disputed Domain since he registered and used the Disputed Domain in bad faith and with full knowledge of Complainant's REGALO Mark.

For all of the above reasons, the Complainant requests the following: (a) the transfer of the Disputed Domain name to complainant; (b) to prevent the Respondent to file in the future a domain name containing the trademark REGALO; (c) to order the Respondent to cover all the Complainant expenses occurred with this procedure.

B. Respondent

The Respondent argues that the Spanish word "REGALO" is a universal word and its meaning is a GIFT.

The Respondent further argues that the Complainant does not own any trademark rights. The Respondent cited the examination reports of the IL TM Registrar, in which the Registrar refuses the registration of the mark REGALO as being merely descriptive and therefore is not qualified to be registered as a trademark, resulting that the word REGALO should remain in the public domain for everyone's use. The Panel addresses the factual particulars in the above paragraph titled Factual Background.

The Respondent further argues that the Complainant submitted the Application on May 22nd, 2018, after he has already acquired the Disputed Domain.

The Respondent further argues that the Complainant did not approach him by phone after sending the cease and desist Letter. The Respondent mentioned that in the Letter, the Complainant demanded, among others, to receive payment in the amount of 1500NIS for negotiation purposes only. Such demands reflect, as contended by the Respondent, the Complainant's bad intentions to unjustifiably take over the Disputed Domain.

The Respondent further argues that the Disputed Domain was never active. Only back in 2016 the website included content related to "Vanaga". The Respondent did not present any further information regarding this content except for a poor-quality screenshot from 2016 showing a link titled "Vanaga" (Annex C). As above mentioned, according to the WHOIS records the Disputed Domain was assigned to the Respondent in October 11th, 2017. The Respondent did not present any additional supporting document showing his ownership as from 2016.

The Respondent further argues that there is another website <laregalo.co.il> that the Complainant may also consider infringing as it contains the word "regalo" and it offers to sell jewelry under the mark REGALO in a different figurative format. The Respondent enclosed a screenshot from that website (Annex D).

The Respondent has provided hardly any information about himself or his business. He lastly argues that his business is not in the field of jewelry.

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 with Domain The Net Technologies Ltd. registration agreement provides that the applicant for the domain name accepts the ISOC-IL registration rules (see https://www.domainthenet.com/he/domain_il.aspx).

The ISOC-IL registration rules provide that "the [domain name] holder agrees to the jurisdiction of the IL-DRP." (See section 12.3). 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.

Paragraph 3 of the IL-DRP Rules provides 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. Name is Same or Confusingly Similar

The Complainant is required 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 Complainant is the owner of an Israeli trademark application no. 305564 for a block letters mark “REGALO” in classes 14 and 16 (“**the Application**”). The Application was filed on May 21st, 2018. However, while writing this decision, the Panel monitored the ILTMO database and found that the Application has not yet matured into registration.

The Disputed Domain name <regalo.co.il> comprises of the term “regalo” and the suffix “.co.il” which uses a reference to the country code top level domains (ccTLD). It is well established that where the specific top-level of the Disputed Domain name (in this case “.co.il”) serves no purpose other than a purely technical one, it may be disregarded for the purpose of determining whether the Disputed Domain name is identical or confusingly similar. This issue was considered for example in *Rollerblade, Inc. v. Chris McCarty*, WIPO case no. D2000-0429, *UNIKS APP, S.L. v. Privacydotink Customer 588010/Blue Nova, Inc.*, WIPO case no. D2016-0534, etc.

Based on above, it may be concluded that the Disputed Domain is identical to the Application, however this conclusion does not yet constitute the required similarity within the meaning of the ILDRP.

The Panel notes that in association with her commercial activities, the Complainant uses the REGALO Mark, which is a stylized mark consisting of literal element REGALO along with visual elements, a form of the letter “O” that resemble a gift ribbon.

Having concluded that the Disputed Domain is identical to the Application, there are two issues that should be addressed in order to ascertain similarity under the first element of Rule 3 of the IL-DRP: (i) the Complainant has not yet acquired registered trademark rights and (ii) the Complainant uses a stylized mark.

As to the second issue, according to paragraph 1.10 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0 Edition*, the consensus view is that:

*“Identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, **these elements are largely disregarded** for purposes of assessing identity or confusing similarity under the first element.”* (Emphasis added – NA).

On this basis, the Disputed Domain is identical or confusingly similar to the REGALO mark of the Complainant as they both share the word REGALO, and the stylized elements as well the suffix “.co.il” should be disregarded.

Now, the question remains is whether the Complainant owns a “trademark” or a “trade name” as required under the IL-DRP Rules. This question leads us to the discussion of the second element of Rule 3 of the IL-DRP.

B. Complainant Has Rights in the Name

The Complainant is required to show that it has rights in the name “regalo” and that the Respondent has no rights in the same.

According to paragraph 1.1 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0 Edition*, the consensus view in this issue is that:

*“A pending trademark application **would not by itself** establish trademark rights within the meaning of UDRP”. (Emphasis added – NA).*

Relevant reference can also be observed in a similar domain name petition, *Intellect Design Arena Limited v. Moniker Privacy Services / David Wieland, iEstates.com, LLC, WIPO Case no. D2016-1349*, in which the complainant did not have registered trademark rights but only pending trademark applications, the panels have concluded that:

*“Turning first to the Complainant’s applications for registered trademarks, the Panel agrees with the Respondent that it is the preponderant view of panels under the Policy that **unless such applications have proceeded to grant they do not constitute trademarks in which a complainant has UDRP-relevant rights**. As the Panel noted recently in *The Coca-Cola Company v. Whois Privacy Protection Service, Inc. / Thien Le Trieu, Le Trieu Thien*, WIPO Case No. D2015-2078, this topic has received comprehensive treatment in *Fashiontv.com GmbH v. Mr. Chris Olic*, WIPO Case No. D2005-0994 and the more recent cases of *Tiger Media, Inc. v. Leconte Pierre*, WIPO Case No. D2011-0670 and *Jetgo Australia Holdings Pty Limited v. Name Administration Inc. (BVI)*, WIPO Case No. D2013-1339. In these circumstances, the Panel finds that the Complainant does not have UDRP-relevant rights in respect of its various applications for registered trademarks.” (Emphasis added – NA).*

The same applies to the present case. The Complainant does not have a registered trademark, and her trademark application does not constitute IL-DRP relevant right.

Paragraph 4(a)(i) of the UDRP, which is parallel to section 3.1 of the IL-UDRP reads:

“(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; ...”

The UDRP uses the terms “*trademark or **service mark***” whereas the IL-DRP uses the terms “*trademark or **trade name***”. The purpose of using the latter wording is to make clear that the DRP Rules encompasses both **registered** and **unregistered** marks. *The WIPO Overview 3.0* reflects that interpretation indicating that:

“The term “trademark or service mark” as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.”

Unregistered marks rights derived from common law thereby the common law distinguishes between trademarks and trade names.

The Panel therefore turns to the question of whether the REGALO Mark may be considered to be a common law trademark of the Complainant. Paragraph 1.3 of the *WIPO Overview 3.0* addresses the question of what needs to be shown for a complainant to successfully assert unregistered or common law trademark rights and provides the following consensus view:

*“To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant **must** show that its mark has become a distinctive*

identifier which consumers associate with the complainant's goods and/or services.

*Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) **the duration and nature of use of the mark**, (ii) **the amount of sales under the mark**, (iii) **the nature and extent of advertising using the mark**, (iv) **the degree of actual public (e.g., consumer, industry, media) recognition**, and (v) **consumer surveys....***

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint;** conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law **marks that are comprised solely of descriptive terms** which are not inherently distinctive, **there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning. (Emphasis added – NA).

The Complainant provided information of the filing particulars of her Application, filed on May 21st, 2018. However, the Complainant did not represent to the Panel that the Application was rejected by the Registrar in his examination report of May 23rd, 2018 as being merely descriptive. On June 20th, 2018, nine (9) days after launching this Complaint, the Complainant submitted a response with the ILTMO, arguing that only a small part of the Israeli population is familiar with the Spanish language and therefore the word “regalo” is distinctive. The Registrar in his second examination report of July 2nd, 2018, found that the Complainant's arguments unpersuasive, and therefore the rejection was maintained. The Respondent broadly addressed this issue in his Response. The Panel studies that not only the Respondent argues that the word “regalo” is descriptive but also

the Israeli Registrar holds the same opinion. As oppose to the Application, the REGALO Mark, which is in a stylized form, is clearly not descriptive as the visual elements are sufficiently distinctive at least in the eyes of the Panel. However, since the REGALO Mark is neither a registered trademark nor a pending application, the burden of proof on the complainant to present evidence of acquired distinctiveness in respect to either mark (the Application or the REGALO Mark) is still standing.

In the present case, the Complainant argues that name “regalo” is distinctive and has no meaning in the eyes of the Israeli consumers. That argument was rejected by the Registrar and the Panel agrees with that view. The Complainant further argues that she has invested vast amounts and efforts in marketing under the REGALO Mark. Due to that investment the REGALO Mark became a well-known brand in Israel and is identified by the consumers as a sign of high quality and unique products and services.

Apart of providing a general statement concerning the good will the REGALO Mark has acquired, the Complainant did not provide any information along the lines anticipated by the consensus view. The Complainant did mention that the Disputed Domain name <regalo.co.il> was assigned to her on March 8th, 2013 (see Annex D of the Complaint), however she did not explain what were the circumstances that led her not to keep renewing this registration or re-purchase it after it was expired. Absent any explanation, this material is irrelevant at best and at worst it could point out that the Complainant did not really need the Disputed Domain at the time for her business. The Disputed Domain has remained inactive since 2016, although the evidence for that argument is unclear and therefore questionable. At the latest the Respondent purchased the Disputed Name in 2017. The Panel must wonder why the Complainant did not try to re-purchase the Disputed Domain between the years 2014 to 2016.

A Google search under the word “regalo” that the Panel performed revealed that the Complainant recently started to operate a NEW gift shop in association with OFER MALL in its branch in Nazerat Ilit. According to the information published by OFER MALLS, the store opened only recently in June 2018. The Panel further revealed that the Complainant operates a Facebook business page at <https://he-il.facebook.com/Regalo.castro/> , which was created on March 7th, 2013 having about 18,000 followers. Also revealed is an Instagram page of the Complainant named “@regalo_castro” which was created on February 2018 and has about 500 followers. It is noted that the Complainant provided with only minimal information and zero supporting materials and the Panel initiated his own Internet searches so as to better understand the extent of the Complainant’s business activities.

The Complainant argues that it has been operating under the name REGALO since 2012. Referring to this statement, coupled with the additional material from the Internet, it appears that the Complainant’s products and services have been in the market under the REGALO Mark since 2012 or March 2013 at the latest, a period of about 5 to 6 years. This is a particularly long period of time to establish distinctiveness however this information has not been supplemented with evidence such as the amount of sales, extent of advertising, consumer surveys and the like.

To summarize, the Complainant did not succeed to show sufficient evidence proving it has rights in the REGALO Mark. The lack of evidence leads to the conclusion that the Complainant's REGALO Mark has not gained significant goodwill in Israel. The sole fact that the REGALO Mark is being commercially used for 5 to 6 years is not sufficient. This conclusion is further strengthened by the low number of followers of both the Facebook and Instagram pages, along

with google search results for “regalo” that show Complainant business but other businesses as well that are using the same name with respect to the same field.

A prominent example is the website <laregalo.co.il>. The trader owns this website uses the name “regalo” in a different figurative format, operates an online retail store featuring luxury jewelry, watched etc. The Respondent referred to this website in Annex C of his Response.

The Panel finds that under the current circumstances, **the Complainant has not established the second element of Rule 3** of the ILDRP Rules.

C. Holder has no Rights in the Name

The Complainant is further required to show that the Respondent has no rights in the name “regalo”.

The requirements of Rule 3 of the IL-DRP are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Rule 3 will result in failure of the complaint in its entirety. Accordingly, in light of the Panel’s finding under the above element regarding lack of Complainant’s right in the name, it is unnecessary for the Panel to address the issue of the Respondent’s rights or legitimate interests in the disputed domain name in detail. Though not necessary, the Panel wishes to address to the claims presented by the Parties and discuss the applicability of the fourth requirements.

D. Registration and Use in Bad Faith

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

According to paragraph 3.1 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0 Edition*, the consensus view in this issue is that 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:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

As noted above, the Complainant argues that the Respondent acted in bad faith because the Respondent's use of the Disputed Domain is made primarily for the

purpose of trading on the goodwill of the Complainant's REGALO Mark, creating confusion and disrupting the business of the Complainant. Users then seeking the Complainant's website are redirected to the Respondent's website instead.

The Respondent's main arguments to the Complainant allegations, are that (i) the Disputed Domain name includes a universal word, regalo, which means "a gift" in Spanish; (ii) there are similar uses of that word in different websites, for instance the website <laregalo.co.il>; (iii) according to the Israeli Registrar the word "regalo" is descriptive and therefore should remain in the public domain for everyone's use; and (iv) the Respondent's business filed is not jewelry. The Respondent provided evidence to support arguments (i) to (iii), however did not provide any evidence regarding his actual field of business nor his intentions regarding the Disputed Domain.

The Respondent never indicated in his Response why he acquired the Disputed Domain. Moreover, the Respondent is passively holding the Disputed Domain without using it for any purpose, except for a number of links that refer to external websites. The Panel notes in this regard that the website at the Disputed Domain name does not utilize the Complainant's REGALO Mark, but, instead uses the word "regalo" in block letters.

On May 22nd, 2018 the Complainant delivered to the Respondent a cease and desist Letter demanding him to cease using the Disputed Domain (Annex E). The Letter was sent two days after applying for the registration of the word "regalo" as a trademark. Since the examination report of the Registrar was issued on May 23rd, 2018, it is clear that the Complainant asked for an accelerated examination of the Application due to alleged infringement of the mark. On June 11th, 2018, about two weeks after the filing date of the Application, and in view of the lack of response to the Letter, the Complainant submitted the present Complaint.

In view of the timeline of the events in this case, it appears to the Panel that the Complainant recently decided to establish a website under the Disputed Domain and when it realized that it was already taken, it decided to file a trademark application for the word “regalo” right away, so as to have a strong argument when sending a cease and desist letter and filing this Complaint. The Panel may cautiously say that the Complainant applied for a trademark registration solely for the purpose of handling legal proceedings against the Respondent. This view is strengthened by reference to the Letter, in which the Complainant demanded, among others, to receive payment in the amount of 1500NIS for negotiation purposes only.

In this context, it should be noted that the Respondent never responded to that Letter. Hence, the Panel finds that there are not sufficient evidences to hold whether or not the Respondent aimed to resell the Disputed Domain to the Complainant.

As of this day, the Registrar refused to register the Application, and it is doubtful the pending Application will ever be registered in the name of the Complainant. Legally, this outcome puts the Complainant in an inconvenient position. Now the Complainant has difficulty asserting she has legitimate rights in the name “regalo”, and that the Respondent has no such rights. Furthermore, the Complainant has difficulty asserting that the Respondent uses the Disputed Domain in bad faith.

Several UDRP panels have found, in previous decisions, that when a domain name is registered before a trademark right is established, the domain name was most likely not registered in bad faith because the registrant could not have contemplated the complainant’s non-existent rights. Examples hereof are: *John Ode d/ba ODE and ODE - Optimum Digital Enterprises v. Intership*

Limited, WIPO Case No. D2001-0074, Digital Vision, Ltd. v. Advanced Chemill Systems, WIPO Case No. D2001-0827 and PrintForBusiness B.V v. LBS Horticulture, and WIPO Case No. D2001-1182.

In *Skype Limited v. Benjamin Decraene*, WIPO Case No. D2005-01112, the Panel further stated that:

"There are, however, certain situations when a respondent is clearly aware of a complainant, and it is clear that the aim of the registration was to take advantage of the confusion between the domain name and any of the complainant's potential rights. In these cases, bad faith can be found. This could occur when a respondent is aware of a complainant's potential rights and registers the domain name to take advantage of any rights that may arise from a complainant's enterprises."

The above does not apply to the present case for the following reasons:

As set out under previous headings, the Complainant failed to demonstrate he owns rights in the name "regalo": (i) the Complainant's mark consists of a generic term "regalo" in a stylized format; (ii) the name "regalo" is already used by various traders whether in figurative format or in block letters; (iii) the Complainant has no trademark registration for "regalo" with or without stylization; and (iv) the Complainant has failed to put forward any evidence to establish her claim that the word "regalo" with or without design, has become a source identifier for Complainant's goods and services.

Now, referring to the Respondent non-use of the Disputed Domain, previous UDPR panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Examples hereof are: *Revevol SARL v. Whoisguard Inc. / Australian Online Solutions, Domain Support*, WIPO Case No. D2015-0379, and *Virgin Enterprises Limited v. Cesar Alvarez*, WIPO Case No. D2016-2140. But again, a bad faith can be established,

in this context, only in the event the Complainant has demonstrated rights in the name “regalo”. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, *B Electrolux v. Super Privacy Service c/o Dynadot*, WIPO Case No. D2018- 1069. In this case, not only does the Complainant have no registered trademark rights in the name “regalo”, but he also has no unregistered rights therein.

Furthermore, another factor going to the *bona fides* of the registration of the Disputed Domain name is the fact that the Complainant did not show any supporting materials for her argument that Internet users are misled by the Respondent use of the name “regalo”. Not surprisingly, the Complainant did not show any evidence supporting actual confusion. In fact, when searching the website for the term “regalo”, the first and second results coming up are connected to <laregalo.co.il> which refers to an online retail gift’s shop featuring jewelry. The third result connected to the Complainant’s Facebook page. The Respondent’s website is not listed among the first results.

Finally, the Panel wishes to address WIPO’s decision no. D2005-0508, *Microsoft Corporation v. Source One Management Services, Inc.* (hereinafter: “**the Cited Decision**”) which was cited by the Complainant in support of this argument that the Respondent aimed to mislead Internet consumer to his website, where competing products and services are offered.

The Panel notes that the Cited Decision is irrelevant to this case.

In the Cited Decision the complainant owned several registered trademarks in several jurisdictions as from 1992 (the complaint filed in 2005). Thus, the panel in the Cited Decision held that the complainant, based on his registered trademarks has acquired rights or legitimate interests in respect of the disputed domain as opposed to the respondent. As such, the panel held the respondent acted in bad

faith while directing Internet users to respondent's website, and creating confusion as to the source of the offered services. Since the Complainant in this case, has not acquired rights or legitimate interests in respect of the Disputed Domain, the conclusion cannot be the same.

In conclusion, the Panel has not found any basis that supports Complainant's claim that it was the Respondent's intent to disrupt Complainant's business or to mislead Internet users for commercial gain, creating confusion as to source or affiliation and diverting Internet users to a website offering for sell jewelry.

The Panel finds, therefore, that the Complainant has not satisfied her burden on paragraph 4 of the Rules, and has not shown the Respondent had registered or is using the Disputed Domain, in bad faith.

7. **Decision**

For all the foregoing reasons, the Complaint is denied.

 Naomi Assia

Sole Panelist

Date: August 5th, 2018.