

**IL-DRP PANEL
FOR THE INTERNET SOCIETY OF ISRAEL**

Leehee Feldman, Adv.

In the matter of the **Domain <androidstore.co.il>**

between

Google, Inc.

Represented by Adv. Ellen Shankman

(The "Petitioner")

and

Mr. Lior Livay

Y.L.I Ltd.

Represented by himself and/or Adv. Eli Bar-Oz
(The "Respondent" or "Holder")

DECISION

I. Procedural Facts

1. ISOC-IL received a Petition on behalf of the Petitioner, requesting that the Domain Name "androidstore.co.il" be reallocated to the Petitioner.
A Panelist was appointed in accordance with the Procedures for Alternative Dispute Resolution under the .ILccTLD IL-DRP Rules, in order to address the Petitioner's above request (http://www.isoc.org.il/domains/ildrp_rules.html) (hereinafter – "the Rules").
2. Notification of the pending Petition, including copies of all submitted material, and notification of appointment of the Panel under the Rules, was sent on February 2nd, 2014, to the Respondent's email address as recorded in the ISOC Domain Name Registry, as well as to the registered Technical Contact under same Registry . In accordance with section 9.3 of the Rules, the Respondent was allotted 15 days, concluding on February 17th, 2014, to submit a Statement of Response or any other relevant information to the Panel.
3. A reminder of the final date for submission of a Statement of Response was sent to the Respondent on February 16th, 2014.

4. On February 17th (the date on which the Response was due), the Respondent submitted a letter (in Hebrew, contrary to the Letter by the Panel and to the ISOC IL-DRP Rules), according to which he only that night received notice of the Complaint and therefore requires an extension of time in which to properly reply.
5. Though the Complaint Documents were properly forwarded to the Respondent in accordance with the Rules, the Panel agreed to allow the Respondent an extension of one week to submit his letter of Response, until February 24th, 2014.
6. On February 23rd, the Respondent's Attorney, Mr. Bar-Oz, submitted a letter (again in Hebrew), addressed to ISOC and to the Panel, requesting an extension of 60 days (!) in order to provide a Response to the Complainant's claims, and generally challenging the authority, jurisdiction and procedure of the ISOC IL-DRP Panel as conducted herein.
7. In response, a letter was sent on behalf of ISOC, explaining the grounds and basis for the IL-DRP Procedure. The Panel replied with a similar explanation and granted a final extension of 24 additional hours, requiring final Statement of Response to be submitted by February 25th.
8. On February 25th, Respondent submitted an additional letter, stating that his Attorney just gave notice that he will not be able to represent the Respondent in this case, and therefore requests an additional week for submission of his response. Panel denied this request, due to the expedited nature of these proceedings (as elaborated below).
9. On February 25th, as required, the Respondent submitted his Statement of Response and Appendices thereto.
10. On March 7th, Respondent sent a letter to ISOC and to the Panel (allegedly sent 2 days earlier, but not received), requesting suspension of all IL-DRP procedures in the matter of the Disputed Domain, due to a parallel procedure currently before the Trade Name Registrar in the Ministry of Justice.
11. ISOC and the Panel referred the Respondent to the relevant sections of the Rules, regarding jurisdiction and access to Court of Law (sections 20-21 of the Rules), and explained that IL-DRP procedure will not be stayed due to the existence of additional proceedings, unless otherwise instructed by a court of law.
12. Let it be noted that it has been brought to the attention of the Panel, though not a named Party in the Proceedings, that the Respondent has filed a motion against ISOC and the Complainant, to stay all relevant IL-DRP proceedings until decision will be reached by the Trade Mark Registrar regarding current requests for Trade mark registration of the name "androidstore". Current status of this procedure is unknown to panel.

II. Factual Background

1. The Complainant, Google Inc., is a Delaware corporation founded in 1997. It is renowned for its search engine services offered under the GOOGLE trademark, and also offers a broad variety of related technological and mobile products and services.
2. In 2005, Google acquired Android Inc., a California company, and in 2007 started offering, under the name ANDROID, a software platform and operating system (hereafter referred to as “the Android platform”). The Android platform is an open source development platform that allows third-party developers to create applications for a variety of computing environments. First ANDROID products were offered on the market in 2007.
3. In 2008 the Complainant launched its "ANDROID Market" as an online marketplace for selling applications to be used with the ANDROID platform. These products have proved very successful and at the end of 2013, ANDROID based devices comprised approximately 80% of all mobile device shipments (<http://techcrunch.com/2014/01/29/android-79-ios-16-wp-4/>).
4. The Complainant owns many International registrations for the trademark ANDROID throughout the world, dating from at least as early as 2007. As of January 2013, GOOGLE has over 300 worldwide registrations for the mark ANDROID, with many more pending.
5. The ANDROID trademark was first filed in the Israel Trademark Office in 2007, in class 9 for computer hardware and computer software, and registered shortly thereafter.
6. The disputed domain name was registered on February 24th, 2010.
7. The Disputed Domain currently serves the Holder as an online store for selling ANDROID based devices and compatible accessories. The website uses the ANDROID Trademark in its banner and in various locations on the page. The site includes reference to GOOGLE being the owner of the ANDROID TM.
8. The Parties have conducted some communication in the past regarding request of Petitioner to transfer the Disputed Domain to his possession. Description of such interaction is presented by each of the Parties hereinafter.

III. The Parties' Claims

- **The Petitioner**

- The Petitioner is a well-known search engine, which also offers an open source platform.
- ANDROID is very well re-known international mark, very popular, highly ranked and well covered by the press.
- Petitioner claims that in accordance with the ISOC II-DRP Rules, all the required elements exist, indicating that the Domain should be transferred to the Petitioner, as follows: Disputed Domain is identical or confusingly similar with Petitioner's trademark; Petitioner has rights in the name; Holder has no rights in the name; and Registration and/or use of the Domain are in bad faith. These are all allegedly demonstrated below.
- The Petitioner owns the rights in the name ANDROID. It owns registered Trademarks of ANDROID worldwide, dating as early as 2007.
- The term Androidstore is confusingly similar to the Petitioner's mark ANDROID, and contains it in its entirety.
- The addition of the term "store" following the Registered Trademark, only misleads and confuses users to assume that the Domain Name is connected to the Petitioner, in particular in light of the fact that the Petitioner also has an ANDROID Market.
- Confusion is not avoided in the event that a descriptive or non-distinctive term is added to another's mark.
- The Petitioner has rights in the name. This is clearly supported even by the Respondent, who acknowledges, on his website, the Petitioner's rights to name ANDROID .
- The fact that ANDROID is an open source platform does not allow any unrestricted use. There are clear, published guidelines for proper use of this term.
- Respondent has no rights in the name. Respondent cannot assert that he is commonly known by the Domain Name.
- The Respondent is not an authorized dealer, distributor or licensee of the Petitioner, and Petitioner has in no way authorized him to use ANDROID in its Domain Name.
- Respondent has registered and has been using the Domain in Bad Faith. This is evidenced both by Respondent's attempt to sell the Domain to the Petitioner for unreasonable amounts, and by his clear attempt to attract, for

commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's Name.

- Once the Petitioner became aware that the Respondent has applied for Trademark registration of "androidstore", as well as holds the Domain of the same Name, Petitioner offered to settle the matter amicably and offered reimburse Respondent for his out-of-pocket expenses in return for forfeiting both the Trademark application and the Domain. Respondent was willing to do so for an unreasonable sum of \$120,000. Petitioner claims (without providing support thereof) that Respondent even suggested he will search for another purchaser for the Domain, in the event that Google doesn't agree to the proposed terms.
- Users typing "androidstore" would expect to find a legitimate GOOGLE ANDROID website.
- In addition, Respondent makes use in his website of the ANDROID logo, as well as includes a notice that "Android is a trademark of Google". These disclaimers only serve to indicate that the Respondent is well aware of the Petitioner's rights, and the disclaimer itself will not cure bad faith on his behalf. Once users are attracted to the Respondents web site, damage has been done ("initial interest confusion"), and they might stay in this site, even though confusion was created with the Petitioner's Trademark.
- Petitioner reiterates that 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 its rights.

- **The Respondent**

Following requests for extensions and stay of proceedings, Respondent submitted a Response with the following contentions. Let it be noted that respondent did not directly address Petitioner's claims, nor did he follow the grounds for a Petition as set forth in the rules, and therefore some answers may seem partial:

- Respondent runs a legitimate business of selling smartphones and accessories for phones with the Android Operating System.
- This business has been ongoing since 2010, and has a reputation for selling phones, accessories and lab services, but not software.
- The term "Android" has many uses worldwide, based on a generic name for a robot with human abilities. It is a generic term adopted by Google only in the specific category of operating systems, and not for anything else.

- Under the web site, Respondent sells smartphones based on the Android operating system, as well as other smartphones.
- The term "android" is used by the Respondent only in conjunction with the word "store", and not independently. Respondent claims that no one should have the sole right for use of the word "Android". There have been many Trademark registrations using the word "Android", so that Google should not be entitled to exclusivity.
- The fact that the Respondent has been running his website uninterrupted for years clearly proves, according to claims, that he has rights in the name.
- Respondent claims that Petitioner did not reveal the existence of a proceeding before the Trademark Registrar, and therefore the Petition was submitted in bad faith.
- Respondent claims that it was the Petitioner who first offered to purchase the Domain from the Respondent, and not the Respondent offering to sell it.

IV. Discussion – Procedural Issues

A. General

1. In response to this Petition, Respondent and his lawyer submitted several letters challenging the authority, legitimacy and jurisdiction of the ISOC IL-DRP procedures. In addition challenges were presented referring to the concurrence of various legal and administrative procedures. These are all addressed below.
2. The IL-DRP is a completely independent procedure, established by ISOC (similar to the UDRP procedure established by ICANN – the Internet Corporation for Assigned Name and Numbers). It is meant to provide an expedited procedure regarding the use of Domain Names and their allocation. That is the entire extent of the authority of the IL-DRP panel, as is all provided for in the IL-DRP Rules (https://www.isoc.org.il/domains/ildrp_rules.html).

B. Rules of Procedure

3. As part of the nature of an expedited procedure, the Rules lay out time frames for submission of relevant documents. These time frames (15 days, 21 days) are intended to be brief. The IL-DRP framework is not bound by classic civil law rules of procedure and evidence. The entire procedure is conducted online. There is no place for lengthy communications, no hearings, interrogations nor meetings. As stated in section 11 of the Rules:

"11. Subject to the Rules, the Panelist/Panel may conduct proceedings in such a manner as it deems appropriate while giving due consideration to the speedy resolution of the Dispute and the technologies available."

4. Respondent requested opportunity to present his case and additional claims in person. It must be clarified that the procedure before the IL-DRP is a distinctly different procedure from that of a court of law. It is clearly defined by the Rules, and is aimed at obtaining expedited decision regarding Domain Name allocation, based on the tools, analysis and experience before the Panel. Hearings and lengthy presentations of evidence are not relevant. As stated in the preamble to the rules: "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 ". For this reason precisely, the outcome of the Panel Decision is always subject to court review, and the Parties always maintain the right to seek full court relief.

C. Acceptance of Jurisdiction

5. When applying for Registration of any Domain Name (as did the Respondent when registering the Disputed Domain in 2010), the ISOC Registration rules apply. Section 5.4 of these Rules states as follows:

"5.4. Acceptance of the Rules

These Rules and the procedures thereunder ("Rules") shall bind the Applicant upon submission of the Application and throughout the entire time that the Domain Name is allocated to the Holder. These Rules prevail over any other representations made by ISOC-IL whether prior to, or after such allocation."

5. In addition, section 24 of the Registration Rules already introduces the IL-DRP alternative mechanism, by which the Parties are bound:

24.3. As a service to the public and the Internet Community, ISOC-IL has established the IL-DRP - an alternative expedited dispute resolution mechanism regarding the allocation of Domain Names. The procedures and rules regarding dispute resolution under the IL-DRP are available at http://www.isoc.org.il/domains/ildrp_rules.html , and are an integral part of these Rules.

24.4. Holder irrevocably agrees to submit to a procedure and a decision made under the IL-DRP.

6. Therefore, the Respondent is bound by the ISOC Rules, as well as by the Authority of the expedited IL-DRP proceedings. Any claims by Respondent and/or his lawyers questioning the actual legitimacy of these proceedings are hereby refuted, based on the Rules established by ISOC for these particular proceedings, and by which the Respondent himself is bound, based on his own agreement, emanating from his own application for Registration.

D. Parallel Procedures

7. Another contention raised by the Respondent is that due to the existence of a Trademark Procedure regarding the name "Androidstore", all other proceedings must be stayed.
8. The Rules address this issue very clearly and explicitly. The Registration Rules state:

"24.4 This section does not abrogate of any individual's right to appeal to any competent judicial authority for resolving disputes regarding a Domain Name allocation."

And the DRP Rules state:

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.
9. Therefore, unless such Court Order will be issued directing the Panel to stay or refrain from these proceedings – they shall be conducted, based on the grounds set forth in the Rules. The Parties may at any time seek court relief.
 10. Having cleared the basis for these proceedings, and addressed all various procedural claims as expressed by the Parties, (the answers to which are all quite clearly exemplified in the Rules and only required careful reading), we may now proceed to discuss the merits of this conflict.

V. Discussion – Parties' Contentions

1. The IL-DRP, as an alternative dispute resolution procedure, includes a set of guidelines by which conflicts must be analyzed.
2. In order for a case to be brought before a IL-DRP Panel, the Petitioner must show that certain grounds exist. As described above – the IL-DRP is a separate entity. It is not bound by the rules and procedures of other legal instances.
3. Therefore, we will proceed to review existence of the grounds for the request. According to section 3 of the IL-DRP Rules, Disputes regarding allocation of a Domain Name by a Holder may be brought by a third party 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. Each of the claims above needs to be well established by Petitioner. In the following discussion we will address each claim, based on the Materials of the Petition and any other material available to the Panel.

a. Name is Same or Confusingly Similar

- The requirement in the Rules is that "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".
- The Disputed Domain consists of the term "androidstore" and of the suffix "co.il".
- It has been previously ruled that the suffix "co.il" is to be disregarded for the purpose of determining similarity of a Domain to a Registered Mark, since it is a common suffix indicating that the domain is registered as a commercial Israeli website (see for example ISOC II-DRP case in the matter of <Crayola.co.il>).
- Therefore the question remains whether the term "androidstore" is the same or confusingly similar to a name or mark of the Petitioner.
- The Petitioner holds Registered Trademarks in Israel for ANDROID. For example: -
 - Mark 216644 in class 9 for mobile devices and peripherals (date of application – 2008)
 - Mark 205362, for Computer hardware; computer software; also included in Class 9 (date – 2007)
- The Disputed Domain Name incorporates the Name ANDROID in its entirety. It has been ruled many times before that when a registered name is fully incorporated in a domain, it may be sufficient for demonstrating similarity. In such case, potential users may be confused as to the owner or authority behind a website bearing the entire name of a registered mark. For example, in a WIPO case regarding the name "samsungsupplies.com" (**Case No. D2007-1365**), Panel found that:

*"The mere addition of the generic word "supplies" following the trademark does not eliminate the similarity between the Complainant's marks and the domain name. It is **well established that a domain name that wholly incorporates a trademark may be confusingly similar to such trademark***

for purposes of the Policy despite the addition of common or generic words (cf. *Dr. Grandel GmbH v. Drg Randel Inc.*, WIPO Case No. D2005-0829; *Microsoft Corporation v. J. Holiday Co.*, WIPO Case No. D2000-1493; *Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. D2000-0253; *RRI Financial, Inc. v. Ray Chen*, WIPO Case No. D2001-1242)."

Similar conclusion was reached by the Panel in the II-DRP case regarding the Domain "skypeisrael.co.il", where Panel found that:

"Previous UDRP panels have ruled that the mere addition of a non-significant element does not sufficiently differentiate the domain name from the registered trademark: "The incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark" (Britannia Building Society v. Britannia Fraud Prevention, WIPO Case No. D2001-0505)".

- In our case, the Respondent incorporated the entire Mark ANDROID, and added a descriptive suffix "store". Based on the above, it is evident that this addition does not decrease the similarity between the Disputed Domain and the Registered Mark or the likelihood for confusion.
- It is also important to note that the general term "store" was added after the Trademark ANDROID. This may lead users to increased confusion, since the first term they encounter is the protected mark, and not the general descriptive word.

A similar conclusion was reached by the Panel in a WIPO decision regarding the domain "androidappsstore.co.au", between Google Inc. and Q. Interactive Pty Ltd, (Case No. DAU2012-0026), as follows:

"Significant in coming to this view is the fact that the trademark part of the disputed domain name appears at the beginning of the domain name. In this Panel's opinion, the location of the trademark part at the beginning of the disputed domain name in this case emphasizes its trademark function over its nominative function, and so makes it more likely that the trademark part is read as a trademark rather than as a descriptive name. This is because, in this Panel's opinion, the word string that most evokes the meaning of an Android-brand apps store is "androidappsstore", whereas the word string that most evokes the meaning of an apps store for the Android platform would be "appsstoreforandroid".

- Finally, a general search engine search for the term "androidstore" raises explicit questions by potential users, wondering over the net if this specific site is actually endorsed by Google, who owns the Android Trademark, or is it just an independent, non-sponsored site (<http://www.fxp.co.il/showthread.php?t=11472029>). This reaction is exactly the type of confusion from which the Rules are aiming to protect.

Thus, the Panel finds that the Domain is confusingly similar to the Trademark that is fully incorporated in it, and therefore the first requirement under the rules is fulfilled.

b. Complainant has Rights in Name

The following claims describe Petitioner's Rights in the Disputed Domain:

- Petitioner owns several registered Trademarks of the Name ANDROID in Israel, as specified above. This mark is fully incorporated in the Disputed Domain, followed by a generic, descriptive term. Therefore, under common IL-DRP procedures, Petitioner has indicated prima facie rights in the Name.

- On his website, Respondent directly acknowledges Petitioner's rights in the ANDROID mark. This indicates his awareness of Petitioner's rights.

- Respondent claimed in his letter of response that there are many Trademarks including the term "android", that are not owned by Google – therefore attempting to claim that Google does not necessarily have rights in the name.

This claim is neither relevant nor precise, and no conclusions can be reached based on such a generalization.

This is not the place to analyze and review each international registered Mark. Let it only be said that brief review indicates that some Marks may be dated prior to inception of Google's ANDROID platform, some might refer to a completely different class of goods, and some were actually eventually obtained by Google itself, despite previous conflicting registration.

For the purpose of this case, the current situation in Israel is that to date, the Petitioner holds several registered Trademarks for the Term ANDROID, which constitutes the main, definitive part of the Disputed Domain.

- Petitioner claims that ANDROID is a generic term that was adopted by Google, but that Google has no rights therein. This claim has no basis, in light of the specific Trademark Registration that the Petitioner obtained for the Mark ANDROID in Israel. To the contrary – the term Android has been used in connection with mobile devices (rather than robotic droids) since 2005, and to an increasing degree. The meaning assigned to it not only by Trademark, but also by public recognition – is that which identifies it as the Petitioner's platform for mobile devices.
- It is very clear from publications, ads, research, market share, etc, that the ANDROID mark is well known, in relation with phone devices and peripherals, and is associated directly with the Petitioner, and as

mentioned above - this is sufficient to indicate the Petitioner's rights in the name.

From all of the above it is evident that the Petitioner has established rights in the Disputed Domain.

c. Respondent has no Rights in Name

- Respondent operates a web-based and a physical store for the sale of smartphones that are based on the ANDROID operating system, registered by the petitioner. This is a commercial site, providing directly for the Respondent's profit.
- The Respondent is in no way a recognized or authorized dealer, distributor or licensee of the Petitioner, and was in no way authorized by the Petitioner to make use of its Mark ANDROID. In and of himself, Mr. Livay has no connection to the Name ANDROID, other than by selling devices whose sole identifier is that they have been developed using the Petitioner's trademarked operating system. Which is precisely the exact system after which they have been named. And the same name after which he has named his own domain.
- Respondent attempts to claim that in registering the Disputed Domain several years ago, and having used it since – he has gained clear and proven rights in the name. However - this claim has no legal basis. The Domain Name Registration process is run on a first-come first-serve basis, and registration does not constitute legitimacy of rights or use. Please note all the following Registration Rules:

"2. 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.

9. Allocation of a Domain Name is No Guarantee of Lawful Use. The examination of the Application and the allocation of the Domain Name is not a guarantee nor a confirmation that the Domain Name is being lawfully used by the Holder. "

Therefore the fact that the Holder registered a domain can only indicate that he was the first to request said Domain, and bears no indication as to Holders actual rights in name.

- In addition, it has been stated by previous panels that owners of Registered or Famous marks cannot be expected to register all possible domains in order to protect their rights. As states by the Panel in the IL-DRP Case of 24.2.2009 regarding dell-israel.co.il :

"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."

- Petitioner claims to be using the term "android" only in connection with the word "store", and this only "for selling Android items", claiming that this is a "word that its professional, technical connotation was created way before Android operating system was created, and therefore no one should have a sole right for the use of the word android".

However - this seems to be non relevant and inaccurate information. The items that the Respondent is selling are Android based items. They all (or mostly) use the Petitioner's trademarked operating system, ANDROID. Google's right in the name has been established herein: it is a registered Mark, it is well re-known, and is associated with the Petitioner. The fact that the word Android existed previously, and might have had a different, general meaning (ie- in relation to humanistic robots) does not renounce its current, distinctive meaning. The Respondent's claim that "actually no one should have sole right for the use of the word Android" is in direct contradiction to the essence of Trademark protection.

- The conclusion of the WIPO Panel regarding the domain "androidappsstore.com.au" can be directly applied to our case as well, as follows:

"By adopting the string "androidappsstore" as its domain name, the Respondent is using the Complainant's trademark ANDROID in its trademark sense, not in its descriptive sense. It follows that the Respondent's use of the disputed domain name is not a descriptive use – and, so, it cannot constitute a descriptive fair use of the type that gives rise to a right or legitimate interest in the disputed domain name. Accordingly, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. "Google Inc. and Q. Interactive Pty Ltd, (Case No. DAU2012-0026)

Based on all of the above, I find that the Respondent has no legitimate rights in the Name.

d. Registration or Holding in Bad Faith

Section 3.4 of the Rules requires that *"the application for allocation of the Domain Name was made or the Domain Name was used in bad faith"*. The rules proceed to provide:

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:

.....

- e. 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 Respondent uses the web site to attract customers who are looking for ANDROID products. Since the term "android" appears at the beginning of the Name, users may easily assume that they have reached a formal site of ANDROID, belonging to the Petitioner, thereby creating a strong likelihood of confusion.
- Respondent could have easily used a different name to describe his site. Lesson can be learned by analogy from the Android Developer Brand Guidelines at :
<http://developer.android.com/distribute/googleplay/promote/brand.html>
These rules set forth guidelines for proper use of the open source platform, in reference to Google's rights. For example -

"Android™ should have a trademark symbol the first time it appears in a creative."

In this case – the first instance the user encounters the Trademark is in the name, where no distinction is made as to the owner of the Mark.

This can serve as an indication of a likelihood of confusion with the Complainant's Name as the source.

- In the similar WIPO case regarding the name "androidappsstore.co.au" (see above), a similar conclusion was reached, as follows: *"Given the Panel's conclusions, above, that the disputed domain name is confusingly similar to the Complainant's trademark, and that the Respondent is using the Complainant's trademark in the disputed domain name in a trademark sense rather than in a descriptive sense, it follows that the Respondent is using the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of that website."*
- In his Statement of Response the Respondent states that he sells additional smartphones and products as well. Therefore not only is he relying on the Petitioner's mark to attract potential traffic to his website, on a potential pretense that he is affiliated with the Petitioner, but then he might even offer products which are not even ANDROID based, thus .
- The Respondent included a disclaimer on his web page indicating that ANDROID is a Trademark of Google. This of itself clearly indicates that the Respondent is aware of potential confusion that might arise from his use of the Disputed Domain, and he tried, unsuccessfully, to

abate it. As defined in the "WIPO Overview of WIPO Panel Views on Selected UDRP Questions (second Edition)":

"The existence of a disclaimer cannot cure bad faith, when bad faith has been established by other factors. A disclaimer can also show that the respondent had prior knowledge of the complainant's trademark."

- Respondent tries to claim that bad faith exists on the part of the Petitioner, due to the existence of a parallel process before the Trademark Registrar. As mentioned before, the Rules explicitly state that the existence of a Court proceeding will not stay or withhold the IL-DRP procedure, unless specifically so ordered by court.
- Petitioner claims that another instance of bad faith exists under section 4.1c of the Rules, by which:

"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."

Panel finds that this cause is not applicable in the current case. Indeed the sum of \$120,000 for transferal of the Domain and Trademark Application, as requested by the Respondent in response to Petitioner's offer to buy said rights, exceed by far any out of pocket expenses in purchasing these names. However, let it be noted that the Respondent is currently running an active business from the website, whether infringing or not. Any request to transfer this Domain will result in immediate expenses to him in shifting his business to a new Domain and creating new customer awareness. Therefore, such request may not seem unreasonable or indicative of bad faith.

The combination of all of the above is a sufficient indication of bad faith. Therefore the Panel concludes that the Respondent has acted in bad faith both in application for registration of the Domain, and in use thereof.

V. Decision

1. In light of all of the above, Panel finds that the Disputed Domain is confusingly similar to many well known and Registered Marks of the Petitioner, the Petitioner has established substantial circumstances supporting its rights to the Disputed Domain, the Respondent presented no rights in the Domain, and the Respondent has acted in bad faith in registering and in holding the Domain.
2. **Therefore, the Panel concludes, in accordance with the Rules, that the Disputed Domain shall be re-assigned to the Petitioner.**
3. It has been brought to the attention of the Panel that the Respondent has filed a motion to court against ISOC-IL and the Petitioner, requesting to stay these

proceedings until decision in the similar matter is given by the Trademark Registrar.

4. Panelist is not Party to this motion. The IL-DRP is independent of ISOC in making its decisions. Under the Rules, Panel is not authorized to delay or postpone proceedings, unless instructed so by court. Therefore, due to the expedited nature of the IL-DRP proceedings, and since no such order has been presented, a Decision is given herein.
5. The Disputed Domain **shall be re-assigned to Petitioner within 60 days** of this Decision. This period should provide ample time for the Respondent to establish his business under an alternative Domain.

Leehee Feldman , Adv.
Sole Panelist

Date: March 20th , 2014