



الهيئة الوطنية الفلسطينية لتسميات الإنترنت  
PALESTINIAN NATIONAL INTERNET  
NAMING AUTHORITY

## Palestinian National Internet Naming Authority, PNINA

### ADMINISTRATIVE PANEL DECISION

**Wataniya Palestine Mobile Telecommunication Private Shareholding Company**

**Versus**

**Mr. Iyad Assad**

**Case No. D2007-001**

#### **1. The Parties**

The Complainant is Wataniya Palestine Mobile Telecommunication Private Shareholding Company of Al-Bireh, Ramallah, Palestine, represented by Mr. Samer Fares, Legal Counsel

The Respondent is Mr. Iyad Assad from Birzeit, West Bank, Palestine.

#### **2. The Domain Name and Registrar**

The disputed domain name <ALWATANIYA.PS> is registered with Hadara Technologies of Ramallah, Palestine, which is a certified registrar with the .ps ccTLD registry (PNINA).

#### **3. Procedural History**

The Complaint was filed with the Palestinian National Internet Naming Authority (PNINA) on November 29<sup>th</sup>, 2007. A request for registrar verification in connection with the domain name at issue was forwarded to PNINA and on the same day, PNINA transmitted by email its verification response confirming that the Respondent is listed as the registrant and providing the contact details of the listed domain name. On December 2<sup>nd</sup>, 2007 and within the 3-day time frame set in PNINA's Dispute Resolution Procedures available at (<http://www.pnina.ps/pics/DRP-Chart.jpg>) the Complainant was notified by PNINA of the acceptance of the complaint and that the complaint is administratively adequate to initiate a dispute resolution process and the official case number (D2007-001) was assigned. PNINA verified that the Complaint satisfied the formal requirements of the “.ps” Domain Registration Policy (the “Policy”), the adopted Rules for “.ps” Dispute Resolution Policy (the “Rules”), and the ICANN's Uniform Domain Name Dispute Resolution Policy and Rules available at <http://www.icann.org/udrp/udrp-policy-24oct99.htm> (the UDRP Policy and Rules).

In accordance with the UDRP Rules, paragraphs 2(a) and 4(a), PNINA formally notified the Respondent of the Complaint, and the proceedings commenced on

December 12<sup>th</sup>, 2007. In accordance with the .ps procedures, the due date for Response was December 19<sup>th</sup>, 2007. The Response was filed with PNINA on December 19<sup>th</sup>, 2007.

PNINA appointed Mr. Marwan M. Radwan, PNINA Executive Manager as the sole panelist in this matter on December 6<sup>th</sup>, 2007 after receiving written approval from both parties to this appointment. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to PNINA, as required by the Policy to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a Palestinian Private Shareholding company officially registered in Palestine under registration number (562499541) and the Respondent is a Palestinian individual living in Birzeit, Ramallah, Palestine.

The Complainant was registered with the Palestinian Companies Registrar at the Ministry of Economy and commenced business on January 27<sup>th</sup>, 2007 after winning the second mobile telecommunication operator bid in Palestine.

The Complainant has registered several trademarks in Sudan, Kuwait, Bahrain, Morocco, Tunisia, Algiers, Jordan, Yemen and other countries around the world. The trademarks registered particularly in Palestine are as follows:

- (a) Trademark Registered Numbers 13018/class 9,13021/class 37 and 13022/class 42 , registered with the Palestinian Ministry of National Economy on January 22<sup>nd</sup>, 2007, for "الوطنية" Alwataniya (in Arabic) and was published officially on March 21<sup>st</sup>, 2007 in the official Gazette number 41;
- (b) Trademark Registered Number 13017, class 38 registered with the Palestinian Ministry of National Economy on March 21<sup>st</sup>, 2007 for "الوطنية الفلسطينية للاتصالات" which consists of the term "Alwataniya Alfalastenia Lel-Etisalal" and the company logo; and
- (c) Trademark Registered Number 13017 class 38 registered with the Palestinian Ministry of National Economy on March 21<sup>st</sup>, 2007 for "Wataniya Palestine Telecom" and the company official logo.

The Complainant has also registered about 20 domain names under the .ps ccTLD of the terms Wataniya and Telecom and their abbreviations.

The Respondent registered the disputed domain name on May 31<sup>st</sup>, 2005 through Hadara Technologies which is a certified registrar with the .ps ccTLD registry (PNINA). The Respondent has no company or running a business with the disputed domain name. The domain name ALWATANIYA.PS points to an under-construction web page with a composed image of some national products and carries the name "الحملة الشعبية لدعم المنتجات الوطنية" with an Arabic slogan and an email to submit comments and suggestions and a copyright notice.

#### **5. Parties' Contentions**

## **A. Complainant**

The Complainant alleges that the domain name <ALWATANIYA.PS> should no longer be registered with the Respondent but that it should be transferred to the Complainant.

It contends that this should be done because, within the meaning of paragraph 4 of the Policy, the domain name is identical or confusingly similar to the Complainant's company name (Wataniya Mobile Telecom), trading name and trademarks, both registered and unregistered, that the Respondent has no rights or legitimate interests in the domain name and that the domain name has been registered or subsequently used in bad faith. The Complainant maintains that it can prove all three of these requirements and that the appropriate remedy is to transfer the domain name to the Complainant.

In support of its case, and on the first of these three elements, the Complainant relies on the three registered trademarks of "الوطنية", "Wataniya Mobile Telecom" and "الوطنية الفلسطينية للاتصالات" which reference has already been made. It then says that its registered trademarks comprise the word "wataniya" and that it has also established common law trademark rights to the word "wataniya" in respect of goods in class 9, class 37, class 38 and class 42. It also maintains that its various domain names include the word "wataniya". Thus it contends that as the disputed domain name consists entirely of the word "wataniya", it is identical or confusingly similar to some or its entire company name, trading name and trademarks in which the Complainant has registered in Palestine and neighboring Arab and foreign countries and attached many certificates that show the actual registration of these trademarks.

The Complaint then contends, to establish the second element that the Respondent has failed in his reply to prove or even express his rights or legitimate interests in respect of the domain name as required in Clause 4(c) of the Uniform Domain Name Dispute Resolution Policy. The complainant claims that there is no evidence that the Respondent is using the domain name, or that it is connected to any goods or services that the Respondent is providing. Moreover, He claims that the Respondent has failed to prove that it has been commonly known by the domain name.

Finally, the Complainant contends that the domain name was registered and is subsequently being used in bad faith. It contends that this is evident because the Respondent has been passively holding the domain name, and has registered the domain name (ALWATANIYA.PS) for the reason of selling it to the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name. To prove his point, the Complainant provided an "unsigned" letter from the Respondent asking for \$15,000 (Fifteen Thousand US Dollars) to sell the domain to the Complainant. The letter was sent to the Complainant by email from the Respondent official email based on a formal request for a price offer for that domain.

## **B. Respondent**

The Respondent contends first that the Complainant has no trademark rights, either registered or common law, sufficient to support its Complaint specifically for the complete term "ALWATANIYA". Even if it does, the domain name is not, as a matter of proper interpretation, identical or confusingly similar to any such

trademark since it is one translation of the term "الوطنية" in Arabic and there are so many other translations to this term other than the one used by the Respondent. The Respondent uses the fact that the term "ALWATANIYA" has not been registered as a trademark or domain name for the Complainant in any country or under the general Tads or the .ps ccTLD.

The Respondent then contends that it has rights and legitimate interests in the domain name because, prior to receiving notice of the dispute, it used the domain name to display a poster for a non-commercial use to support the national products and promote a popular effort to support those national products.

The Respondent claims that he purchased the domain for this non-commercial use and plans to publish a complete site for this sole purpose but failed to do that, so far, because he is so busy and has been in an external training trip for a while. To support this point, he also purchased other domains such as "raqeem.net" and will put a dedicated web site for that domain and plans for other purchases for other non-commercial initiatives he want to pursue.

The Respondent claims that he is not violating any of the PNINA policy articles on which the complaint is based (articles 3.9.4 - 3.9.6 of the "Policy").

- a. ALWATANIYA is neither a trademark nor a name of company nor a well known abbreviation, and thus he is not violating article 3.9.4 of PNINA domain registration policy.
- b. He is using the website without any intention to make use of the claimed similarity between the domain name and the trademark of the company (Wataniya), and so his registration does not interfere with the company's rights, thus his registration complies with article 3.9.5 of the said policy.
- c. He has registered the domain and is using it for lawful purposes and in a manner accepted by PNINA domain registration policy articles, in particular, article 3.3 and 3.9.2. Thus, the domain registration complies with article 3.9.6 of the said policy.

The Respondent also claims that the complainant does not fulfill ALL the basic conditions described in article (3)(ix) of the Rules for Uniform Domain Name Dispute Resolution Policy and particularly the following points:

- 1- The domain name is not identical nor is it *confusingly* similar to the company name or any of its trademarks. What assures his claims is that Wataniya Mobile Telecom Company does not mention ALWATANIYA as a trademark in any legal notice on its main website and it has not registered any ALWATANIYA domain although it has more than 17 domains with the word WATANIYA! Moreover, his registered domain is not confusing with the company name (Wataniya Mobile Telecom Company) or its trademarks (Wataniya, Wataniya-Telecom, the W device).
- 2- He is making a legitimate noncommercial and fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue, and this demonstrates his rights in the domain name in accordance with article 4(c)(iii) of the Uniform Domain Name Dispute Resolution Policy.
- 3- The domain name was not registered nor is it used in BAD FAITH. He has not registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, and all the negotiations and evidences provided by the complainant took

part after the complainant's desire and formal request to provide a price offer.

The Respondent also asks the Panel to make a decision in his favor and keep the domain name "ALWATANIYA.PS" under his custody.

### **C. Due Process**

PNINA forwarded a copy of this Complaint to the Respondent by e-mail and sent the Respondent a Notification of Respondent Default by e-mail based on his written approval to accept the arbitration of PNINA as the PROVIDER for this dispute and his preferable method of communication which is email.

In light of these facts, the Panel is convinced that the Respondent has been duly notified of this proceeding and that the Respondent has suffered no denial of due process. All subsequent communications with the parties were forwarded to the other party and the certified registrar of the domain to make sure all parties are duly aware of any additions or supplemental evidences submitted to the Panel.

## **6. Discussion and Findings**

In accordance with Paragraph 15(a) of the Rules, the Panel is instructed to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Pursuant to paragraphs 4(a)(i) through (iii) of the Policy, the Complainant may prevail in these proceedings and be awarded the disputed domain names if the Complainant can prove the following:

- The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- The Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- The disputed domain names were registered and are being used in bad faith

### **A. Identical or Confusingly Similar**

The Complainant has submitted sufficient evidence to establish that the Complainant owns a registration of the trade marks "الوطنية", "Wataniya Mobile Telecom" and "الوطنية الفلسطينية للاتصالات" with the Palestinian Ministry of National Economy (i.e., Palestine Registration No.13017, 13018, 13021 and 13022, dated March 21<sup>st</sup> 2007 (Annex 4 to the Complaint). The Complainant has operated a telecommunication company inside and outside Palestine where the term Wataniya and the Arabic term "الوطنية" are its registered trademarks and has been known with that name locally and internationally. Clearly the Complainant's rights in those trademarks pre-date the Respondent's registration of the disputed domain names.

The disputed domain name, <ALWATANIYA.PS>, varies from the Complainant's trademark, "WATANIYA", only as to the addition of the "AL"



which is part of its name in Arabic "الوطنية" and is commonly known with that name. It has been well established in prior Policy panel decisions that such de minimis variations between trademarks and domain names fail to prevent a finding of identity or confusing similarity.

***In accordance with the foregoing, the Panel determines that the disputed domain name is identical or confusingly similar to a service mark or trademark in which the Complainant has rights.***

## **B. Rights or Legitimate Interests**

The Complainant bears the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain names. However, since the Complainant has proven its rights in a confusingly similar trademark and there is nothing in the record to show that the Complainant has licensed, authorized or permitted the Respondent to use that service mark, the burden shifts to the Respondent to produce evidence that he possesses such rights or interests.

Paragraph 4(c) of the Policy states three ways in which the Respondent might meet this burden, but there is no strong indication in the record that he has succeeded along any of those lines. Clearly, neither the Respondent's name nor the names of his companies or business appearing on the domain name registration record show any connection to the word "Alwataniya" (Paragraph 4(c)(ii)). Moreover, there is nothing in the record to support a finding that the Respondent has used or prepared to use the disputed domain names in a *bona fide* offering of services or goods (Paragraph 4(c)(i),) or **is engaged** in a legitimate noncommercial or fair use of this name (Paragraph 4(c)(iii)).

While the listings in Paragraph 4(c) of the Policy are not intended to be exhaustive of the ways of demonstrating rights and legitimate interests in domain names, the lack of a concrete evidence or any affiliation or real efforts by the Respondent in relation to the posted image on the web site and the fact that it resides there for more than 7 months without any development fatally hampers the Panel in finding any other avenue by which the Respondent might prevail on this issue. There is no evidence that the Respondent **is actually engaged** in a legitimate noncommercial or fair use of this name. The claim from the Respondent that it is using or "will" use the domain for noncommercial issues has not been proved. Posting an image with no affiliation to the initiative on that image is very weak evidence that can't be relied on in determining that the Respondent has rights or legitimate interests in that domain.

***Thus, the Panel concludes that the in spite of the expressed "will" and future planned programs of the Respondent, the Complainant has carried its burden in establishing that the Respondent has no rights or legitimate interests in the disputed domain name and the Respondent has failed to prove such legitimate interests and rights to the disputed domain name.***

## **C. Registered and Used in Bad Faith**

The Policy states that the Evidence of Registration and Use in Bad Faith and for the purposes of [Paragraph 4\(a\)\(iii\)](#), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: "(i) circumstances indicating that you have registered or you have acquired the domain name

*primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your documented out-of-pocket costs directly related to the domain name; or ..."*

The Complainant asserts that the Respondent registered and is using the disputed domain names in bad faith. In furtherance of its assertion, the Complainant has submitted to the Panel substantiated statement, and a very strong tangible evidence that has not been denied by the Respondent, to support a finding that Respondent's actions fall under any of the four specific circumstances indicative of bad faith that are listed in Paragraph 4(b) of the Policy. The negotiations that have been going on between the parties and the price offer submitted by the Respondent shows clearly that the Respondent is willing to sell the domain for valuable consideration in excess of his documented out-of-pocket costs directly related to the domain name. The Panel is not concerned in how the money is planned to be used by the Respondent and if he will use it for commercial or noncommercial purposes since these actions are beyond the Panel's control or jurisdiction. The listed amount of (15,000 US Dollars) asked by the Respondent to transfer the domain name to the Complainant is far beyond any expected or estimated cost of the domain registration and maintenance and clearly it is in excess of the documented or expected reasonable out-of-pocket costs directly related to the domain name.

***Thus, the Panel concludes that the Respondent clearly acted in bad faith in registering and using the disputed domain names.***

## **7. Decision**

The Panel finds the disputed domain name <ALWATANIYA.PS> is confusingly similar to the Complainant's "WATANIYA" trademark mark. The Panel also finds that the Respondent has no rights or legitimate interests in the disputed domain names. Finally, the Panel finds that the Respondent registered and is using the disputed domain names in bad faith because he was undoubtedly aware that the Complainant's mark was a famous one and offered to sell the domain for valuable consideration in excess of the documented or expected reasonable out-of-pocket costs directly related to the domain name.

**Therefore, in accordance with Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders that the disputed domain name, <ALWATANIYA.PS> be transferred from the Respondent, Mr. Iyad Assad, to the Complainant, Wataniya Palestine Mobile Telecommunication Private Shareholding Company.**

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Marwan M. Radwan  
Sole Panelist

Date: January 17<sup>th</sup>, 2008