

SUPPLEMENTARY PROCEDURE

Ver2 (April 2007)

.ZA ALTERNATE DISPUTE RESOLUTION REGULATIONS (GG29405)



South African Institute of Intellectual Property Law

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1 Scope

(a) Relationship to Regulations. This Supplementary Procedure is to be read and used in connection with the .ZA Alternate Dispute Resolution Regulations, promulgated by the Department of Communications on the 22nd of November 2006 in term of Government Gazette 29405 (the "Regulations").

(b) Version of Supplementary Procedure. The version of the Supplementary Procedure as in effect on the date of the submission of the Complaint shall apply to the administrative proceedings commenced thereby.

2 Definitions

Any term defined in the Regulations shall have the same meaning in this Supplementary Procure, together with the following additional definitions:

"SAIIPL" means the South African Institute of Intellectual Property Law.

3 Communications and Archive

(a) Subject to the provisions of paragraphs 15 and 22(2) of the Regulations, except where otherwise agreed beforehand with the SAIIP, any submission that may or is required to be made to a Provider or to an Adjudicator may be made:

- (i) by fax transmission using the fax number specified by the SAIIP;
- (ii) by electronic mail (e-mail) using the address specified by the SAIIP; or
- (iii) by registered post using the address specified by the SAIIP.

(b) E-Mail Address. For the purposes of any communications by electronic mail to the SAIPL, including those required under paragraph 15 of the Regulations, the following address should be used: admin@DomainDisputes.co.za

(c) Fax Number. For the purposes of any communications by fax transmission to the SAIPL, including those required under paragraph 15 of the Regulations, the following number should be used: **+27 (0)12 803 4697**

(d) Postal Address: For the purposes of any communications by post to the SAIPL, including those required under paragraph 15 of the Regulations, the following address should be used: **P O Box 11272, Hatfield, 0028, Pretoria, South Africa**

(e) Physical Address: For the purposes of any communications by courier to the SAIPL, including those required under paragraph 15 of the Regulations, the following address should be used:

Attention: The Administrator DomainDisputes.co.za

Signio Building

The Boardwalk Office Park

Phase 5, Block C,

107 Haymeadow Street

Faerie Glen, Gauteng

South Africa

(f) Copies. When a paper submission is to be made to the SAIPL, it shall be submitted in triplicate, one version being the signed original.

(g) Archive. The SAIPL shall maintain an archive of all communications received or required to be made under the Regulations.

4 Commencement of Dispute

(a) Explanatory Coversheet. In accordance with the provisions of paragraph 17(2) of the Regulations, the SAIPL shall send or transmit to the Registrant a copy of the Complaint together with an Explanatory Coversheet (see Annex A) and a Notification of Commencement of the Dispute (Annex B).

(b) 2nd Level Domain Administrator Notification. In accordance with the provisions of paragraph 17(6), the SAIPL shall notify the relevant 2nd level domain administrator of the commencement of the Complaint and will request that further transfers for the domain name concerned be suspended. Such Notification shall form part of the Notification of Commencement of the Dispute (Annex B).

5 Formalities Compliance Review

(a) Deficiency Notification. Subject to the provisions of paragraph 17, the SAIPL shall, within five (5) days of receiving the Dispute, review the Dispute for compliance with the formal requirements of the Regulations and this Supplementary Procedure and will notify the Complainant of any deficiencies therein.

(b) Withdrawal. If the Complainant fails to remedy any deficiencies identified by the SAIPL within the time period provided for in paragraph 17(4) or 17(5) of the Regulations (i.e. five (5) or ten (10) days as the case may be), the SAIPL shall notify the Complainant, the Respondent and the relevant 2nd Level Domain Administrator of the deemed withdrawal of the complaint.

(c) Fee Refunds. Unless the Complainant confirms its intention to re-submit a Complaint to the SAIPL following a deemed withdrawal, the SAIPL shall refund the fee paid by the Complainant pursuant to the provisions of paragraph 31 of the Regulations.

6 Appointment of Case Administrator

(a) Notification. The SAIPL shall advise the Parties of the name and contact details of a member of its staff who shall be the Case Administrator and who shall be responsible for all administrative matters relating to the Complaint and communications with the Adjudicator.

(b) Responsibilities. The Case Administrator may provide administrative assistance to the Adjudicator, but shall have no authority to decide matters of a substantive nature concerning the Dispute.

7 Adjudicator Appointment Procedure and Policy

(a) Panel of Adjudicators: The SAIPL's panel of Adjudicator's, together with their qualifications, is available on the SAIPL's ADR website (www.DomainDisputes.co.za).

(b) Senior Adjudicator in the event of a 3 (three) person Adjudicator panel: The first Panelist appointed in accordance with paragraph 20(4) and 20(6) of the Regulations shall be the Senior Adjudicator, who shall preside over the Complaint.

(c) Further to the provisions of paragraph 21 of the Regulations, no Adjudicator will be appointed to preside over a complaint where the appointment will potentially lead to a conflict. The SAIPL will only appoint neutral and impartial Adjudicator's to preside over a particular complaint, and will in this regard adhere to paragraph 7 of the SAIPL's code of ethics (https://www.DomainDisputes.co.za/downloads/code_of_ethics.pdf).

8 Fees

The applicable fees for the SAIPL's administration of a domain name dispute in accordance with the Regulations will be posted on the SAIPL's ADR Zone web site from time-to-time.

9 Word Limits

(a) The word limit for the submission of a Complaint or a Response, as regulated by the provision of paragraph 16(2)(o) of the Regulations, shall be 5,000 words.

(b) The word limit for the submission of an Appeal or an Appeal Response, as regulated by the provisions of paragraph 32(3) and 32(6) of the Regulations, shall be 3,000 words.

10 Resubmissions

(a) Any allegation that a Dispute constitutes a resubmission shall not prevent the Dispute from being referred to an Adjudicator for adjudication, the Case Administrator having no right to dismiss a Dispute on this basis alone.

(b) An Adjudicator will, subject to the provisions of Regulation 11(5) and 11(6), consider whether or not a Dispute constitutes a resubmission and will disclose his/her finding in the Decision.

11 Extensions

(a) The Case Administrator may, in his/her discretion, allow limited extensions of time periods on good cause shown by the requesting party.

(b) The Case Administrator shall act strictly in granting any extensions, and will remain mindful of the fact that the Regulations are intended to provide an efficient and expeditious means to resolving domain name disputes.

12 Suspension of Dispute

(a) Subject to the provisions of Regulation 31, the Case Administrator or Adjudicator (as the case may be) may suspend a Dispute if both parties have requested a suspension in writing.

13 Appeals

(a) Subject to the provisions of paragraph 30(2) and 32(2) of the Regulations, a Party wishing to appeal against the decision of a single Adjudicator, may do so by providing the SAIPL with written notice of its intention to appeal within 4 (four) Days of receiving the decision notification. The effect of such notification will be to 'freeze' the decision implementation process, pending receipt of the appeal notice.

(b) Subject to the provisions of paragraph 32(1) of the Regulations and the provisions of this Supplementary Procedure, a Party who has given notice of its intention to appeal must lodge an appeal notice, containing detailed grounds and reasons for the appeal, with the SAIPL.

14 Amendments

Subject to the provisions of the Regulations, the SAIPL may amend this Supplementary Procedure in its sole discretion, and shall post any such amendment on its site from time-to-time.

15 Exclusion of Liability

Except in respect of deliberate wrongdoing, an Adjudicator or the SAIPL shall not be liable to a party for any act or omission in connection with the administration of a Complaint in accordance with the provisions of the Regulations.

ANNEXURE 'A' – EXPLANATORY COVERSHEET

IMPORTANT: DOMAIN NAME DISPUTE

Dear Registrant

Attached is a Dispute that has been filed against you with the South African Institute of Intellectual Property Law (the SAIPL) pursuant to the .ZA Alternate Dispute Resolution Regulations, published in terms of Government Gazette GG29405 (the Regulations), by the South African Department of Communications (the DOC) together with the .ZA Domain Name Authority (ZADNA) on 22 November 2006.

The Regulations have been promulgated as law by the DOC pursuant to the provisions of Chapter 10 of the Electronic Communications and Transactions (ECT) Act. In terms of paragraph 3 of the Regulations you are compelled to submit to this alternate dispute resolution process if a Complainant asserts, in accordance with the procedure, that -

- the Complainant has rights in respect of a name or mark which is identical or similar to the domain name and, in the hands of the Registrant the domain name is an abusive registration; or
- the domain name, in the hands of the Registrant, is an offensive registration.

The Dispute and Administrative Compliance: The Dispute attached to this Explanatory Coversheet includes the name and contact details of the Complainant, the domain name(s) that is/are the subject of the Dispute, and the Complainant's statements in support of the transfer or deletion of the domain name/s. The Dispute has passed a formalities compliance review in terms of the SAIPL's Supplementary Procedure and as a result the SAIPL believes the Dispute meets the minimum administrative requirements for the commencement of a Dispute in terms of the Regulations (paragraph 17 of the Regulations).

Suspension of Domain Name: A notification has also been sent to the applicable 2nd Level Domain Name Administrator, informing them that a Dispute has commenced and requesting them to suspend any further transfers or updates of the domain name/s concerned (paragraph 12 of the Regulations).

IMPORTANT - Your Response: You are required to submit a formal Response to the SAIPL, in accordance with the provisions of the Regulations and the Supplementary Procedure, within 20 days of the Commencement of the Dispute. You may represent yourself or seek the assistance of legal counsel to represent you in these proceedings.

The Regulations can be found at:

The Supplementary Procedure can be found at:

Further assistance and guidance, including a Response Template, can be obtained from the SAIPL's website available at www.saiipladr.co.za.

You are kindly requested to contact the SAIPL to provide the contact details to which you would like (a) a copy of the Complainant's Evidence Bundle (if applicable) and (b) other communications in these proceedings to be sent.

ANNEXURE 'B' – NOTIFICATION

NOTIFICATION OF COMMENCEMENT OF A DOMAIN NAME DISPUTE

[DOMAIN NAMES]
[COMMENCEMENT DATE]
[SAIPL REF]

TO: THE DOMAIN NAME REGISTRANT
THE COMPLAINANT
THE 2ND LEVEL DOMAIN NAME ADMINISTRATOR

Dear Sirs

NOTIFICATION IN TERMS OF PARAGRAPH 17(6) OF THE .ZA ALTERNATE DISPUTE RESOLUTION REGULATIONS, PUBLISHED IN TERMS OF GOVERNMENT GAZETTE GG29405 (THE REGULATIONS)

Please take note that a Dispute has commenced concerning the above domain names.

Your attention is kindly directed to paragraph 12 of the Regulations in terms of which:

- A registrant may not transfer, or delete, or refuse to renew a domain name registration whilst proceedings under these Regulations are ongoing, except as a result of a written settlement agreement that the parties reached and after a copy of the settlement agreement, signed by both parties, has been delivered to the provider who must issue relevant instructions to the second level domain administrator after he or she confirmed the validity of the written settlement agreement between the parties.
- A registrant may update technical information, such as name servers, for the domain name provided that such updates do not result in the transfer or deletion of a domain name subject to a dispute.
- Where an update of technical information results in the transfer or deletion of the domain name, the registrant shall be liable for any damages that may arise as a result of such transfer or deletion, if the registrant was aware of a dispute lodged under these Regulations in respect of such domain name.
- Where a second level domain administrator is informed of a domain name dispute, the second level domain administrator must take steps to ensure that the domain name is not transferred, or allowed to be deleted during the course of the dispute.

The next phase from here is the appointment of the Adjudicator/s and the rendering of a Decision in terms of paragraph 30 of the Regulations.

Please do not hesitate to contact us should you have any queries or require further information.