

SUPPLEMENTARY ADR PROCEDURE

Ver3 (November 2018)

*.ZA ALTERNATIVE DISPUTE RESOLUTION REGULATIONS
(GG41237)*



South African Institute of Intellectual Property Law

Table of Contents

1. Scope	3
2. Definitions	3
3. Communications and Archive	3
4. Commencement of Dispute	4
5. Formalities Compliance Review	4
6. Appointment of Case Administrator	4
7. Adjudicator Appointment Procedure and Policy	5
8. Fees	5
9. Word Limits	5
10. Resubmissions	6
11. Extensions.....	6
12. Suspension of Dispute	6
13. Summary Decision	6
14. Informal Mediation	6
15. Appeals	7
16. Amendments	7
17. Exclusion of Liability	7

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 terms of the Government Gazette 29405, as amended on the 10th of November 2017 in terms of Government Gazette 41237 (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 Procedure, together with the following additional definitions:

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

3. Communications and Archive

- (a) Subject to the provisions of Regulations 15 and 22(2), except where otherwise agreed beforehand with SAIPL, 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 SAIPL;
 - ii. by electronic mail (e-mail) using the address specified by SAIPL; or
 - iii. by registered post using the address specified by SAIPL.
- (b) Email Address: For the purposes of any communications by electronic mail to SAIPL, including those required under Regulation 15, the following address should be used: admin@DomainDisputes.co.za.
- (c) Fax Number: For the purposes of any communications by fax transmission to SAIPL, including those required under Regulation 15, the following number should be used: +27 (0)12 803 4697.
- (d) Postal Address: For the purposes of any communications by post to SAIPL, including those required under Regulation 15, the following address should be used:

PO Box 11272
Hatfield
0028
Pretoria, South Africa.
- (e) Physical Address: For the purposes of any communications by courier to SAIPL, including those required under Regulation 15, the following address should be used:

Attention: The Administrator DomainDisputes.co.za

COZA House
Gazelle Close
Corporate Park, Midrand, RSA

- (f) Copies: When a paper submission is to be made to SAIPL, it shall be submitted in triplicate, one version being the signed original.
- (g) Archive: 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 Regulation 17(2), SAIPL shall send or transmit to the Registrant a copy of the Complaint, together with an Explanatory Coversheet (Annexure A) and a Notification of Commencement of the Dispute (Annexure B).
- (b) 2nd Level Domain Administrator Notification: In accordance with the provisions of Regulation 17(6), 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 (Annexure B).

5. Formalities Compliance Review

- (a) Deficiency Notification: Subject to the provisions of Regulation 17, 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 SAIPL within the time period provided for in Regulations 17(4) or 17(5) (*ie* five (5) or ten (10) days, as the case may be), SAIPL shall notify the Complainant, the Respondent and the relevant 2nd Level Domain Administrator of the deemed withdrawal of the Complaint.
- (c) Fee Refunds where Withdrawn: Unless the Complainant confirms its intention to re-submit a Complaint to SAIPL following a deemed withdrawal, SAIPL shall refund the fee paid by the Complainant, less an administration fee of R1500, pursuant to the provisions of Regulation 31, to the Complainant.

6. Appointment of Case Administrator

- (a) Notification: 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.

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- (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: SAIPL's panel of Adjudicators, together with their qualifications, is available on SAIPL's ADR website (www.DomainDisputes.co.za).
- (b) Senior Adjudicator in the event of a 3 (three) person Adjudicator panel: The first Panellist appointed in accordance with Regulations 20(4) and 20(6) shall be the Senior Adjudicator, who shall preside over the Complaint.
- (c) Further to the provisions of Regulation 21, no Adjudicator will be appointed to preside over a complaint where the appointment may lead to conflict of interest. SAIPL will only appoint neutral and impartial Adjudicators to preside over a particular Complaint, and will in this regard adhere to paragraph 7 of SAIPL's Code of Ethics (<http://saiipl.co.za/wp-content/uploads/2016/11/Constitution-Code-of-Conduct-and-Exam-Regulations-2014-FINAL-Nov-2014.doc>).

8. Fees

- (a) The applicable fees for SAIPL's administration of a Domain Name Dispute, in accordance with Regulation 34, will be published on SAIPL's ADR website from time-to-time.
- (b) An administration fee of R1500, which is included in the fees stipulated in Regulation 34, shall be retained by SAIPL in all Complaints, regardless of such being settled, withdrawn or decided in terms of the Regulations.
- (c) Subject to the provisions of Regulations 18(3) to 18(5) and 34(1), 50% of the applicable fees shall be refunded to the Complainant in the case of a Summary Decision. The Adjudicators' fees shall also be 50% of the usual fees in such instances.
- (d) In the case where a dispute is settled in any manner, including settlement in terms of Regulation 19A, SAIPL shall refund the fees paid by the Complainant, less an administration fee of R1500.

9. Word Limits

- (a) The word limit for the submission of a Complaint or a Response, as regulated by the provision of Regulation 16(2)(o), shall be 5000 (five thousand) words.
- (b) The word limit for the submission of an Appeal or an Appeal Response, as regulated by the provisions of Regulations 32(3) and 32(6), shall be 3000 (three thousand) 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 Regulations 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

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. Summary Decision

- (a) Subject to the provisions of Regulations 18(3) to 18(5), where no response is received from the Registrant, the Case Administrator shall appoint an Adjudicator (or Adjudicators) and inform such to decide the Complaint as a Summary Decision.
- (b) In this instance, subject to the provisions of Regulation 34(1), 50% of the applicable fees shall apply and the Adjudicator(s) shall only be entitled to 50% of the Adjudicators' fees.
- (c) Where a Summary Decision is required, and where the provisions of Regulation 19(3) applies, the Adjudicator (or Adjudicators) is required to provide brief reasons for an alternative remedy provided in terms of Regulation 9(3).

14. Informal Mediation

- (a) Subject to the provisions of Regulation 19, where the period for a reply to be submitted has passed, the Complaint shall be referred for Informal Mediation in terms of Regulation 19A.

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- (b) Should the Informal Mediation not succeed within the provided time (*ie* within 5 (five) days), and Adjudicator (or Adjudicators) must be appointed within 2 (two) days in terms of Regulation 20.
 - (c) Should Informal Mediation in terms of Regulation 19A succeed (*ie* the Parties settle), Subject to the provisions of Regulation 34(1)(c), SAIPL shall refund the fees paid by the Complainant, less an administration fee of R1500.

15. Appeals

- (a) Subject to the provisions of Regulations 30(2) and 32(2), a Party wishing to appeal against the Decision of a single Adjudicator, may do so by providing 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 Regulation 32(1) 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 SAIPL.

16. Amendments

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

17. Exclusion of Liability

Except in respect of deliberate wrongdoing, an Adjudicator or 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.