



ARBITRATION COURT

attached to the Economic Chamber of the Czech Republic
and Agricultural Chamber of Czech Republic

JUDr. Bohuslav Klein

President of the Arbitration Court

Mr. John Jeffrey
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Dear Mr. Jeffrey,

I am pleased to summarize in this letter the current status of the discussions regarding the proposal of the Czech Arbitration Court (CAC) to become a new UDRP provider. As you are aware, CAC's proposal was filed in January of this year. The proposal was published for public comment from 25 May to 25 June. Six comments were received and a very fruitful discussion regarding our proposal took place with participants of the San Juan ICANN meeting. Based on the comments received, CAC revised its draft Supplemental Rules and incorporated most of the comments. After the public consultation period, WIPO sent a letter to you and Mr. Paul Twomey with a number of comments to our proposal as well.

During subsequent discussions between you and your team and our team, the following select issues were identified where CAC's revised draft of the Supplemental Rules may still be inconsistent with the UDRP Rules and Policy. These issues include:

- Electronic-only UDRP;
- New panel procedure to decide change of language of UDRP proceeding;
- New procedure of so-called Class Complaint; and
- New appeal procedure against CAC's rejection of a Complaint on the grounds of administrative deficiency.

We discussed these four issues further with your team and we came to the following views:

Electronic-only UDRP

CAC accepts ICANN's comments regarding the electronic-only filings and has amended its draft Supplemental Rules accordingly. CAC acknowledges that the discussion regarding the e-UDRP proposal of CAC revealed that the UDRP Rules do not enable electronic-only filings because signed hardcopies are expressly required by the UDRP Rules. CAC would like to

continue discussion with ICANN and other interested parties about this issue. Since the adoption of the UDRP Rules many countries worldwide accepted in their laws a modern legal concept of equality of electronic and hardcopy communication.

New panel procedure to decide change of language of UDRP proceeding

CAC accepts ICANN's comments regarding the possible incompatibility of the proposed procedure to decide change of language of UDRP proceedings and has amended its draft Supplemental Rules accordingly. CAC acknowledges that there is a material doubt whether the UDRP Rules enable structuring a procedure to decide change of language of UDRP proceedings before the filing of the Complaint. CAC notes that prospectively it may be useful for ICANN to initiate discussion about this procedural issue which may lead to a clarification of the UDRP Rules; since in our view the existing procedures related to the power of the Panel to decide change of language of the UDRP proceedings are not suitable for multiple language UDRP which we believe will be forthcoming in the near future.

New procedure of so-called Class Complaint

We believe that the UDRP Rules and Policy differentiate between (i) a single Complaint filed in relation to more than one domain name (Par. 3(c) of the Rules) and (ii) the consolidation of multiple filed Complaints (Par. (f) of the Policy). The Rules in Par. 3(c) specify expressly only one condition regarding a single Complaint filed in relation to multiple disputed domain names – that all such domain names must be registered by the same domain name holder. The proposed Class Complaint procedure does not envisage a consolidation of multiple Complaints, but rather a single Complaint filed on behalf of multiple Complainants against a single domain name holder –the Respondent. As such, we firmly believe that the proposed procedure is consistent with Par. 3 (c) of the Rules and is not inconsistent with the Policy because the Policy is silent about the issue.

Even the current UDRP providers allow several Complainants from several separate entities-albeit within the same corporate group - to join in a single Complaint – see e.g. UDRP decisions D2000-0227, D2000-0980, D2001-1236, D2004-0097, D2005-0623, D2005-1052, or D2006-0437. Our suggested new procedure enables multiple Complainants to join forces in a streamlined UDRP proceeding. We understand that your team has considered our arguments favorably.

A new appeal procedure against the rejection by the CAC of a Complaint on the grounds of its administrative deficiency

The CAC has accepted the comments by ICANN regarding the CAC proposed new appeal procedure for a Complainant against rejections by the CAC of Complaints on the grounds of their administrative deficiency. The CAC has amended its draft Supplemental Rules accordingly, and the revised procedure will form a part of the CAC's quality-control mechanism only and not work as an appeal from UDRP.

Upon the request of a Complainant whose Complaint was rejected on the grounds of its administrative deficiency, the CAC would ask an independent panelist to review the decision to terminate the Complaint. Should it be found that the action was unjustified or incorrect, the Complainant will receive a full refund of its UDRP fees. We would like to make clear that

there is no consequence other than the return of UDRP fees. As mentioned above, CAC will utilize the results of such reviews for its internal quality control processes.

We understand that your team has considered this revision favorably.

Please find attached a revised CAC Proposal which includes new draft of CAC's Supplemental Rules, incorporating the issues mentioned above. We truly appreciate the cooperation we have enjoyed with you, and the members of your team, throughout the entire process; and, we look forward to continuing to work together in the next stages.

Annex 1: Revised CAC Proposal

Best regards,



JUDr. Bohuslav Klein

President of the Czech Arbitration Court