

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DOT SPORT LIMITED,) ICDR CASE NO. 01-15-0002-9483
)
Claimant,)
)
and)
)
INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS,)
)
)
Respondent.)
_____)

**ICANN'S OPPOSITION TO CLAIMANT'S RENEWED REQUEST FOR AN IN-
PERSON HEARING**

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For Assigned Names and Numbers

3 February 2016

The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby submits its opposition to the 1 February 2016 submission by dot Sport Limited (“dot Sport”) renewing its request for an in-person hearing. This Panel has already considered dot Sport’s request for an in-person hearing and correctly determined that a telephonic hearing would be the most efficient way to proceed. dot Sport provides no reason for the Panel to reconsider that determination.

1. ICANN is devoted to – and the Independent Review Process (“IRP”) is intended to facilitate – the timely, fair and efficient resolution of IRP claims through the use of technology and other means. Specifically, the rules that govern these proceedings explicitly aim to “keep the costs and burdens of independent review as low as possible.” Bylaws, Art. IV, § 3.12. As such, IRP panels are encouraged to “conduct [] proceedings by electronic means to the extent possible,” and in-person hearings are to occur only “[i]n the extraordinary event that [such] hearing is deemed necessary by [the panel].” Supplementary Procedures ¶ 4; *see also*, Bylaws, Art. IV, § 3.12.

2. The Panel members, dot Sport, and dot Sport’s counsel reside in various countries across Europe, and ICANN and its counsel reside in California. Given this, the Panel properly exercised its discretion in concluding that there would be a significant expense involved in holding an in-person hearing in this matter, including, but not limited to, travel costs for Panel members, counsel, and party representatives.¹

3. In addition, it is likely that not all Panel members, counsel, and party representatives are available to undertake international travel in a little over two weeks,

¹ See 26 January 2016 email from Chairperson Miles to the parties on behalf of the Panel (“The Applicant had previously indicated a preference for an in-person hearing. However the applicable By-Laws and procedures do encourage the parties and Panel to be as efficient as possible. Given the distance between parties and Panel members, and the nature of this case, it is our current view that the most efficient way to proceed is with a hearing by telephone.”).

which may delay this matter to the detriment of dot Sport, ICANN, ICANN's community and the overall independent review process.

4. Most importantly, dot Sport has offered no justification for the increased costs and likely delay associated with an in-person hearing.

5. dot Sport claims that an in-person hearing is necessary for it to fully respond to ICANN's legal and factual arguments, including ICANN's arguments regarding recent declarations by other IRP panels. Yet dot Sport offers no explanation why it cannot respond to ICANN's arguments during a telephonic conference, as have the parties in the majority of IRP hearings held to date.

6. dot Sport also argues that an in-person hearing is necessary so that the hearing may be transcribed. But other than an insinuation regarding the potential for "mischaracterizations" of facts and law, dot Sport provides no reason why this Panel, which has read the parties' submissions and is familiar with the issues in this case, requires an in-person hearing with a transcript to reach its final declaration. And in any event, a telephonic hearing may be transcribed if the Panel believes a transcript is important.

7. Finally, dot Sport notes that this is an important matter resulting from an expensive application process. There is no question as to both of these points. All IRPs are important matters resulting from an expensive application process. But dot Sport has presented no reason why resolution of this particular matter should come with increased costs and expenses, on both sides.²

² dot Sport's misleading implication that ICANN is making millions of dollars off the New gLTD Program and auctions for certain strings is false, as dot Sport should know. ICANN is a non-profit public benefit corporation, and has committed that all auction proceeds will be reserved and earmarked until the Board determines a plan for the appropriate use of the funds through consultation with the community.

8. dot Sport – and ICANN – will have every opportunity to present their cases during a telephonic hearing. Neither party obtains any sort of advantage over the other with a telephonic hearing. This is not an issue of fairness, as dot Sport claims. This is an issue of economics and efficiency. Containing the costs associated with IRPs is not intended to limit claimants’ ability to present their claims. Minimizing costs is instead intended to ensure that claimants with less resources than dot Sport remain able to present their claims in an efficient manner.

Respectfully submitted,

JONES DAY

Dated: 3 February 2016

By: /s/Eric P. Enson
Eric P. Enson
Counsel for Respondent ICANN

Guidebook § 4.3. As such, auction proceeds are segregated and are not applied to ICANN’s operating expenses. See New gTLD Auction Proceeds Discussion Paper at 5, *available at* <https://www.icann.org/public-comments/new-gtld-auction-proceeds-2015-09-08-en>.