

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Emergency Arbitrator

In the matter of Arbitration between:

ICDR Case No. 01-14-0000-1579

Donuts Inc.,

and

Internet Corporation for Assigned Names and Numbers (ICANN)

PROCEDURAL ORDER NO. 2

In reflecting on the conference call with the parties last Thursday, I think that it would be most expeditious to proceed as follows:

1. Let's discuss first Article 12 of the Supplementary Rules which says that Article 37 (emergency relief) does not apply. I do not know who agreed to Article 12 or whether anyone has the power to go around Article 12. We need some paperwork and declarations, if necessary, on this.
2. Let's discuss second the effect of the replacement of Article 37 with Article 6 in the current ICDR Rules. The language of Article 6 is different from the language of Article 37. If Article 12 of the Supplementary Rules was part of a compact between or among the various interests, is that compact still in effect? In other words, what is the effect of a change in the underlying ICDR Rules? Is it like a guarantee of a debt evidenced by a note, where the guarantor is entitled to stick to the exact terms of the underlying note and if any term is changed, the guarantor is not obligated on its guarantee?
3. In looking through the paperwork again after the hearing on Thursday, it seems to me that the third question for the emergency arbitrator is whether there is a duly constituted independent review panel in existence. If so, isn't the emergency arbitrator's function to enter an order staying all action by ICANN until the matter can be reviewed by the IRP?
4. In rereading the request for independent review, the request appears to raise issues on the merits which would require an extensive hearing and consideration by the decider. Aren't the questions for the emergency arbitrator (a) whether the "request for independent review process" raises questions for decision which are not frivolous and (2) whether there has been careful compliance by ICANN with the requirements of the review process to date and (3) whether there are any obstacles to completing the review process in a timely manner in the future?

5. In other words, a deal is a deal. If claimant is entitled to a prompt, efficacious and thorough independent review process, why has it had to file the present request for emergency relief and the accompanying request for an independent review process?

5. Finally, would there be prejudice to claimant by failure to grant a stay until the procedural issues are resolved and the IRP is in a position to consider the merits and enter a final decision? How would this prejudice, if it exists, be quantified? Could it be remedied at some point?

6. At our hearing, I want to focus on my jurisdiction (or lack thereof) under Article 12.

7. I obviously cannot decide the merits, but I can determine if I have jurisdiction and what is the best method of maintaining the status quo until a duly constituted IRP can perform its function.

8. I request claimant to provide a chronology of events which led up to its request, including any prior request, et cetera, date by date (can be by month and year). The chronology should be in chart form, with the date on the left, the event in the middle under "description," and any comments or explanation at the right hand side, under "comments." I request claimant, at the end of the chronology, to explain why it did not file its request for independent review process earlier.

9. For respondent, do we have any issue of the statute of limitations or laches?

10. Claimant to serve and file its chronology by noon, Pacific Time, Wednesday, November 12. Respondent to file a separate chart, showing any disagreement with claimant's chart, by noon, Thursday, November 13.

Order:

A. Schedule:

1. By 5:00 p.m., Wednesday, November 12, Pacific Time, ICDR shall provide a call in number to the Emergency Arbitrator and to the parties for a conference call by the Emergency Arbitrator with the parties on Thursday, November 13, at 2:00 p.m., Pacific Time.
2. By 5:00 p.m., Wednesday, November 12, Pacific Time, each side shall deliver to the arbitrator in hard copy a complete set of all documents, including any declarations and (or) written evidence upon which it intends to rely for its claim or defense to the request for emergency relief, including any applicable court or administrative decisions. I already have received documents in electronic form, but for internal efficiency in my office I wish hard copies with a list of all documents provided. Claimant should make sure that I have all the documents, and should confer with respondent as to completeness before sending them to me.
3. On Thursday, November 13, at 2:00 p.m., Pacific Time, there will be a conference call with the parties to hear arguments on the request for emergency relief. Each side will have up to 45 minutes for its principal arguments; each side will then have up to 15 minutes for a rebuttal; after the rebuttals are completed, each side will have 15 minutes for a surrebuttal.

3. By 10:00 p.m., Monday evening, November 17, the Emergency Arbitrator will provide his written decision on the request for emergency relief, with a statement of reasons.

B. **Stay:**

1. Pending a final ruling by the Emergency Arbitrator, and for fourteen (14) calendar days thereafter, ICANN is to place on hold the status of all applications for .SPORTS, .SKI and RUGBY pending before ICANN, or filed with ICANN, from any source.
2. Pending a final ruling by the Emergency Arbitrator, and for fourteen (14) calendar days thereafter, the Board is ordered to stay all contracting and delegation processes pertaining to any of the above mentioned applications.

Date: November 10, 2014

/s/ Thomas J. Klitgaard

Thomas J. Klitgaard
Emergency Arbitrator