

**From:** JCristall <jcristall@AFMA.com>  
**To:** "'Domain.Disputes@wipo.int'" <Domain.Disputes@wipo.int>  
**Date:** Sat, May 12, 2001 1:03 AM  
**Subject:** ATTN: Ms. Sonia Cruickshank-- Case No. D2001-0558 <AFM.COM>

Dear Ms. Cruickshank:

Please allow this correspondence to serve as a response to your e-mail dated May 11, 2001.

The allegations of Mr. Hasse that there might be a "conflict of interest" are patently absurd. A simple review of the ICANN Rules ("Rules") and the WIPO Supplemental Rules ("Supplemental Rules") clearly show that Mr. Hasse's request is out of line--and clearly made to delay this proceeding. Frankly, we are surprised that it is even necessary for us to provide our input when the answer lies so clearly and unambiguously in the Rules and the Supplemental Rules. Additionally, we are dismayed that you extended the due date for the response without first requesting our comments.

Mr. Hasse has cited no authority for his request that WIPO recuse itself from this dispute. Similarly, Mr. Hasse claims that AFMA "failed to disclose" and "should have disclosed" their "relationship" with WIPO, yet does not cite any rule that would have required AFMA to do so, assuming for the sake of argument that such a "relationship" exists. Mr. Hasse did not cite any applicable rules in his letter because there are no rules supporting his claim that there may be a conflict of interest.

As Mr. Hasse is well aware and has conveniently ignored, a Provider's decision making authority is limited to those issues addressed in the Rules and the Supplemental Rules. Nothing in the Rules or Supplemental Rules supports Mr. Hasse's request to have WIPO recuse themselves. To the contrary, the Rules and the Supplemental Rules support our contention that WIPO should not recuse themselves and the only person or entity whose impartiality is relevant is the Panelists.

Rule 7, entitled "Impartiality and Independence" specifically applies to this situation and states that it is up to the Panelist to disclose any "circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence." Thus, it is for the Panelist to determine if there is any conflict of interest. This makes complete sense because it is the Panelist who decides the case-- not the Provider. Mr. Hasse should be required to file a timely response and if he chooses, resubmit his claim of a potential conflict of interest to the Panelist. It is the Panelist who is the best, and only person or entity allowed under the Rules, to determine if he is unable to be impartial based on the claims made by Mr. Hasse relating to the "relationship" of AFMA and WIPO.

Furthermore, Rule 8 of the Supplemental Rules requires the Panelist to submit a Declaration of Independence and Impartiality to WIPO. If the Panelist accepts Mr. Hasse's arguments and believes that there is a conflict, then he or she will not submit the required Declaration.

Finally, Rule 6(b) of the Supplemental Rules state that the Case Administrator may provide administrative assistance only. Substantive matters are reserved for the Panelist. Mr. Hasse's request is clearly substantive in nature in that it calls for you to decide that none of the WIPO arbitrators are capable of being fair and impartial.

In sum, it must be remembered that the purpose of this procedure is to resolve these disputes expeditiously and inexpensively. Mr. Hasse's request is clearly calculated to delay this proceeding in any way possible. Further, Mr. Hasse provides no authority for his arguments and does not even allege that there is an actual conflict. Instead, Mr. Hasse would like WIPO to recuse itself simply because there has been some limited and tenuous involvement between WIPO and AFMA. Once again, the only person qualified and permitted to make a determination if this involvement creates a conflict of interest is the Panelist.

Accordingly, we respectfully request that you immediately reinstate the May 20 due date for the response and simply refer Mr. Hasse's request for recusal to the Panelist.

Very truly yours,

Jonathan Cristall