

May 17, 2001

Sonia Cruickshank,  
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**Case number D2001-0558. <AFM.COM>**

Dear Ms. Cruickshank:

Thank you and WIPO for considering the request for recusement.

Contrary to the Complainant's speculations, I assure you that my request, of May 9th, for recusement was presented sincerely. Given the extraordinary circumstances of previous and ongoing relationships between WIPO and the AFMA, and the AFMA and ICANN, I feel that my action was appropriate.

I concur with your stipulation in your email that WIPO is acting in an administrative manner per the UDRP. Yet, I would also offer that even administrative functions could be influenced by professional and private relationships. For example, the act of choosing a panelist or panelists, or the role of fielding of requests relating to the filing of documents, can be done with bias. Also to be considered in this instance, is that unlike most arbitration proceedings, both parties did not have a say in the choosing of an administrator.

It is my perception, that WIPO's senior legal advisors and you, as case manager, were concerned about a possible conflict of interest and thus made the request to the Complainant for comments. Even if this issue is not currently covered in the UDRP, requests for recusement should be seriously addressed if obvious relationships between an arbitration center ("Provider") and a party to a Dispute are found. Without exercising such caution, the legitimacy of the entire UDRP could be adversely affected.

I have been surprised by the Complainant's "dynamic" approach to this matter since their initial inquiry into my six-year-old domain name property a few months ago. Therefore, I sincerely request that the Complainant proceed in a more cordial and diplomatic fashion, and exhibit more respect for Due Process.

To briefly address a few comments of the Complainant's letter and email of May 12, 2001:

-As for the Complainant's charge that WIPO and or the Respondent caused an improper delay. Because WIPO's response to a request by the Respondent was delayed, then WIPO was correct to "stop the clock" on the Response time until a decision was made. The Respondent has not to date made a request for a delay to the UDRP's allotted 20 days Response time.

-The UDRP does not, as the Complainant holds "specifically [apply] to this situation" for it only addresses the "impartiality and independence" disclosure required of a Panelist [UDRP Section 7]. In this case, it is not only the panelist(s) but also the Provider (e.g. WIPO) who chooses the panelist(s) who may have a conflict of interest.

-The Complainant alleges that a delay has been unduly imposed. Yet, logically, if a recusement is made after the Response is received, and a new Provider (e.g. NAF, eResolution) is then chosen, the process would take longer than if a recusement was made prior to the commencement of the various administrative functions of the Provider.

-The Complainant's request that you, the WIPO case manager, contradict your previous brief suspension of the set time for Response was, at best, unprofessional.

-With respect to the Complainant's impatience regarding a domain dispute over a domain which has been registered for six years. The Complainant will, perhaps, be comforted to know that there it is not feasible for an individual to adequately respond to their five inch thick Complaint in twenty (20) calendar days.

-The Complainant holds that the "purpose of this procedure is to resolve these disputes expeditiously and inexpensively". Indeed, while that idea may be seen as a benefit of the UDRP, I suggest that a fair judgment is more important than haste. As you most appropriately pointed out: "Rule 10(b) of the UDRP requires that the parties be treated with equality and given a fair opportunity to present its case".

Sincerely,

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