

May 9, 2001

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Case number D2001-0558. <AFM.COM>

Dear Ms. Cruickshank:

I hereby request that WIPO recuse itself from this Domain Dispute regarding my domain name AFM.COM. The Complainant, the AFMA, failed to disclose in their filing of the Complaint, that they have a prior and ongoing relationship with WIPO, and that they have worked with WIPO on several occasions. As the ICANN UDRP Rules for filing a Complaint are used by all four officially selected arbitration organizations, it will require minimal effort by all parties to have one of the other three arbitration organizations, eResolutions, CPR, or the NAF, hear this case.

The Complainant, the AFMA, who is itself very experienced at arbitration, should have disclosed its relationship with WIPO, specifically, that

The AFMA is the only U.S. accredited NGO member (one of only seven worldwide) of WIPO. The AFMA specifically confirms this on their website site: "The Association is an accredited Non-Governmental Organization (NGO) member of the World Intellectual Property Organization (WIPO) and is active in WIPO discussions on proposed international copyright and performing rights treaties."

http://www.afma.com/Advocacy/advocacy_home.asp

The AFMA is a member of the IIPA, the International Intellectual Property Alliance, and as such, has submitted to WIPO comments on the Internet Domain Name Process.

http://wipo2.wipo.int/dns_comments/rfc3/0130.html

WIPO and the AFMA have shared arbiters, and have done so since 1996. For example, Brian Eagles, Senior Entertainment Partner at the United Kingdom firm Hammond Suddards, has acted as an American Film Marketing Association (AFMA) arbitrator for years and is a panel arbitrator and mediator for the World Intellectual Property Organization (WIPO).

<http://hollywoodnetwork.com/AFM/afmday2.html>

Martin Perlberger, is a member of both the AFMA International Arbitration Panel, and the WIPO mediation/arbitration panel.
<http://www.inc.com/users/mpesq-history.html>

Board and other Members of the AFMA have taken part in WIPO's conferences, for several years:
<http://ecommerce.wipo.int/meetings/1999/speakers/safir.html>
http://www.wipo.org/eng/meetings/2000/iavp/iavp_pm4.htm

Searches with popular search engines reveal several hundred webpages which connect the AFMA in some way with WIPO. Searches for any of the other three arbiters and the AFMA reveal that there are no obvious professional relationships between those arbiters and the AFMA.

The most serious causes for concern are 1. that the AFMA is one of only seven NGO's which is a member of WIPO and; 2. that the AFMA admits that it is active in WIPO discussions on intellectual property issues. Given that a third party would mostly likely suggest that a conflict of interest exists, I recommend that WIPO excuse itself from the possible controversy that may occur as a result of the professional relations between WIPO and the AFMA.

To restate: since there is a likelihood, however slight or significant, that the arbiter(s) chosen by WIPO to hear this case could be influenced both by the long-term relationship the AFMA has had with WIPO and, the active role that the AFMA played in the formulation of WIPO's domain dispute policy, WIPO should recuse itself from this case. As many authorities on conflict of interest (e.g. Andrew Stark) have pointed out, a conflict of interest exists when actions or decisions occur that an independent observer might reasonably question. Therefore, since it will take minimal resources to have another official domain dispute arbitration organization hear this case, I request that WIPO request that the Complainant, AFMA, act accordingly and choose one of the three other arbitration organizations to hear this case.

Sincerely,

Andy Hasse
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Owner, AFM.COM

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