

July 12, 2001

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

Dear Ms. Cruickshank:

With respect to the Complainant's further submissions to the Panel, and the Center's subsequent forwarding of such submissions to the Panel, I would like to direct your attention to the Rules for the UDRP, Section 12, which state that

In addition to the complaint and the response, the Panel may request, at its sole discretion, further statements or documents from either of the Parties.

Section 8 of the Rules clearly does prohibit unilateral communication by the Complainant or Respondent with the Panel; however, such a prohibition neither allows nor implies that any documents sent to the Provider (AKA "Center"; in this case, WIPO) should be forwarded to the Panel. Indeed, per Section 12; only the Panel may request such submissions"at its sole discretion."

Previous WIPO decisions have confirmed this aspect of the Rules, Section 12:

There can be no doubt that neither the Complainant nor the Respondent has a right to file supplementary submissions subsequent to the Complaint and the Response. Supplementary submissions can only be filed in response to a request for such from the Panel.

(WIPO Case No. Case No. D2000-0596
See Observations on the filing of Supplementary Submissions, Section 8.)
(A similar confirmation of Section 12 is found in Wipo Case No. DTV2001-0001 See Section 6.1 Discussion and Findings.)

WIPO Case D2000-0270 provides a "best practice" for the Rules, Section 12:

If a Party wishes to submit a further statement, the better practice under the Rules would be to first seek consent from the Panel, with an

explanation of why a further statement is warranted. Appropriate reasons may include the existence of new, pertinent facts that did not arise until after the submission of the complaint, or the desire to bring new, relevant legal authority to the attention of the Panel.

(WIPO Case No. D2000-0270: Document Technologies, Inc. v. International Electronic Communications Inc, See "Procedural History" Paragraph. 8. Also see Pet Warehouse v. Pets.Com, Inc., Case No. D2000-0105, WIPO Apr. 13, 2000.)

The Complainant disregarded the Section 12 of the Rules for the URDP with his June 7th post-Response submission request, which cited no reasoning for the request and Sections 8 & 12 of the Rules with his July 9th direct unilateral submission to the Panel. While I, the Respondent, have no objections the particular submissions to date of the Complainant, the legitimacy of the UDRP depends, in part, on a close following of the Rules.

As WIPO stated in their May 16, 2001 denial of recusal in this Dispute, "[t]he Center's role is administrative in nature as an ICANN approved provider under the UDRP." Thus, the Center (AKA "the Provider") is bound to follow the Rules for the UDRP.

Sincerely,

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