

May 8, 2001

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Case number D2001-0558. <AFM.COM>

Regarding the deadline for Response, and your email of May 7, 2001

Dear Ms. Cruickshank:

I have received your email regarding my letter and email of May 5, with respect to the Response date originally listed on the Notification of Complaint.

I must emphasize that my actual receipt of the Complaint was April 30th. And therefore, the official deadline for my Response should be May 20th. I base this finding on:

A) WIPO's Supplemental Rules and ICANN's Rules for the UDDP. *Detail Below.*

B) WIPO's Rules, specifically Annex B, and ICANN's Rules for the UDDP which state that the Complaint is not complete until the entire Complaint, including annexes, etc, are received in hard copy at the Provider [AKA "WIPO" or the "Center" heron the "Provider"]. Thus, the Respondent should not be understood to have received the Complaint until the entire Complaint, including annexes, are received by the Respondent in hard copy. *Detail Below.*

A) Detail:

I would like to direct your attention first to WIPO's Supplemental Rules Section 4(c) [Complaint Notification Instructions]: which states that

"In accordance with Paragraph 4(a) of the Rules...." Then, to ICANN's Rules for the UDDP Paragraph 4(a) where it is written that

4(a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall forward the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by Paragraph 2(a),

Thus, in Paragraph (2)(a) of ICANN's UDDP it is written [2(a)(i)] that Complaint should be sent to "all postal-mail" addresses; and in Section 2(a)(iii) is it stated that the Complaint sent to "the extent practicable, to all other addresses provided by to the Provider by the Complainant....."

The Complainant, on page 5: section 7 of their Complaint, provided three email addresses: info@afm.com, fta@sirius.com, and andy@hasse.com. Only one email of the Complaint was sent, per WIPO's documentation (Email transmission record included in your email of May 7) to info@afm.com

The Complainant has also identified three postal mail addresses for the Respondent, and the Provider did send the Complaint to all three postal mail addresses, and the Complaint was received at those three postal mail addresses on April 30th and May 2. [Fedex tracking # 7924-1139-7889 for the April 30th delivery].

Thus, the Provider [WIPO] had three (3) official email addresses for the Respondent provided by the Complaint and only sent the Complaint (sans annexes) to one (1) of those addresses.

Therefore, I suggest that ICANN's Rules for the UDDP [specifically Section 2. Communications] were not satisfied to establish an official Respondent Response deadline of May 14.

Here for reference is Section 2(a): [Communications] of ICANN's Rules:

[from ICANN's Rules for Uniform Domain Name Dispute Resolution Policy]

2(a). Communications

(a) When forwarding a complaint to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending the complaint to all postal-mail and facsimile addresses (A) shown in the domain name's registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and (B) supplied by Registrar to the Provider for the registration's billing contact; and

(ii) sending the complaint in electronic form (including annexes to the extent available in that form) by e-mail to:

(A) the e-mail addresses for those technical, administrative, and billing contacts;

(B) postmaster@< the contested domain name>; and

(C) if the domain name (or "www." followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain-names registered by multiple domain-name holders), any e-mail address shown or e-mail links on that web page; and

(iii) sending the complaint to any address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other addresses provided to the Provider by Complainant under Paragraph 3(b)(v).

B. Detail:

Section B. The above detail (in Section A) notwithstanding, since the Complaint must be submitted by the Complainant to the Provider, in hard copy and email [per ICANN's Rules for the UDDP, Section 3(b)], then, any official Date of Receipt of the Complaint by the Respondent should, in kind, be based on whether the Respondent received the Complaint in both hard copy and email.

Indeed, in my case [D2001-0558] the annexes that are part of the Complaint are over four inches thick and were not included in any email. Yet, regardless of my particular case, the official date of my receipt of the Complaint should be when I have actually received the entire Complaint including annexes.

This is to say, that a Complaint is not complete without its annexes. ICANN's Rules for the UDDP support this view. Specifically it is written in Section 3(xv) of ICANN's Rules for the UDDP [The Complaint] that the Complainant should "annex any documentary or other evidence".

Finally, in addition to the above two reasons [Sections A and B] for my request for a review of the May 14th Response date stated in your Notification. I would like to refer you to Section 5 of your Complaint Notification Instructions on your website at <http://arbiter.wipo.int/domains/respondent/3panel.doc> :

Deadlines. Within 20 calendar days from the day you receive this notification you must submit to the Complainant and to us a Response according to the requirements that are described in Rules, Paragraph 5 and the Supplemental Rules. The last day for sending your Response to the Complainant and to us is [Date + 20 days].

Thus if the Provider ["Center" or "WIPO"] decides that sending, what is in my view, only part of the Complaint (i.e. without annexes) to only one email address listed by the Complainant is sufficient to satisfy an official delivery date of the Complaint per ICANN's UDDP, then, at least one day should be added to the currently specified official deadline for the Response: i.e. April 25 + 20 days is May 15.

Thank you for your review of the above matter. And please excuse my misspelling of your name in my May 5, correspondence.

Sincerely,

Andy Hasse
Director, Hasse Inc,
Owner, AFM.COM