



European Communities Trade Mark Association

Czech Arbitration Court
Dlouhá 13,
110 00 Prague 1,
Czech Republic

By Email to tereza.bartoskova@adr.eu

Antwerp, 16 June 2008

SECOND PUBLIC CONSULTATION ON PROPOSED CHANGES TO ADR RULES AND SUPPLEMENTAL RULES

Dear Sirs,

This constitutes the response of the European Communities Trade Mark Association (ECTA) to the Second Public Consultation of The Czech Arbitration Court inviting comments from interested parties to the proposed amendments to the .eu ADR Rules and Supplemental Rules which seek, inter alia, to implement a new procedure within .eu ADR which would enable multiple Complainants to join in a single Complaint against a suspected cybersquatter.

As already set out in the response to the First Public Consultation of The Czech Arbitration Court of 7 March 2008, ECTA welcomes the proposal to introduce class complaints. Below, please find our further comments to the amended proposal:

1.1. Definitions

The CAC has proposed to amend the current definitions for “Complaint”, “Complainant”, “Parties” and to insert new definition for “Class Complaint”. All these definitions shall be in correspondence with each other and with the other provided definitions, and with the wording of ADR Rules in its entirety.

a. “Complaint”

CAC has proposed to define the term “Complaint” as follows:

“Complaint” means the document including all annexes prepared by one or more Complainants to initiate a cause of action under the ADR Proceeding.”

From this wording it may be concluded that the submission of a Complaint in form of a Class Complaint is not compulsory in case the Complaint is filed in the name of different persons. Instead it may be concluded that the Complaint may be simply filed

in the name of several persons. Therefore, for the sake of clarity the wording could be amended as follows:

“Complaint” means the document including all annexes prepared by one Complainant or more Complainants in case of a Class Complaint to initiate a cause of action under the ADR Proceeding.”

b. “Party”, “Parties”

CAC has proposed to define the term “Parties” as follows:

“Parties” mean Complainants or Respondents or both.”

The proposed definition is not in correspondence with the wording of ADR Rules in its entirety. Instead, the following wording for the terms “Party” and “Parties” could be substituted:

“Party” means the Complainant(s) or a Respondent; “Parties” mean both of them.”

c. “Class Complaint”

CAC has proposed to define the term “Class Complaint” as follows:

“Class Complaint” means a single Complaint filed ...”

For the sake of clarity, the word “single” in the definition could be omitted:

“Class Complaint” means a Complaint filed ...”

The definitions and the whole wording of ADR Rules should be checked very carefully in order to establish a link between the definitions and the context of ADR Rules. The definitions shall correspond with the wording of the proposed Par. B1(c). Currently, the wording of the proposed Par. B1(c) may be understood in different ways (see proposed definition of “Parties”).

1.2. Par. A3(b)(7)

The fixed earliest Time of Filing and the publication of the first decision of requests to change the language of the ADR Proceeding have to be reasonable.

1.3. Par. B12(g)

From the proposed wording it may not be concluded directly that the decision is passed regarding the other disputed domain names with respect of which the interim decision is not taken.

2. More Comments Based on Valid .eu ADR Rules and ADR Supplemental Rules, and Based on the Proposed Amendments

2.1. Valid .eu ADR Rules

a. Par. A5 (c)

The provision states *“The Panel shall terminate the ADR Proceeding if it becomes aware that the dispute that is the subject of the Complaint has been finally decided by a court of competent jurisdiction or an alternative dispute resolution body.”*

In the case of Class Complaint wherein, for instance, only the decision is passed regarding one disputed domain name in the Class Complaint, is it going to mean that the Panel shall terminate the ADR proceeding in whole?

b. Par. B1(b)(4)

The provision defines that the Panel candidates elected by the Complainant should not have been involved in the past 3 years in any prior ADR Proceeding where the Complainant was a Party.

It is presumed that in case of Class Complaint the requirement shall be met with respect to all the Complainants, which in practice may be complicated to follow, but is still a reasonable requirement.

c. Par. B11 & Par. B1(f)

It is still not very clear which is the decision in case of “Class Complaint” in effect that for some disputed domain names the circumstances are proved by the Complainant and for other domain names are not? Are the requested remedies satisfied and the positive decision for the Complainant passed regarding the disputed domain names where the circumstances are proved, and for the others rejected?

Also Par. B1(f) states that *“[...] If in the ADR Proceeding the Panel rejects the Complaint, the Provider shall activate the Complaint next in time to the Time of Filing. [...]”*. Obviously in case of Class Complaint it is regarded that if in the ADR Proceeding the Panel rejects the Complaint in respect of the particular domain name, the Provider shall activate the Complaint next in time to the Time of Filing.

d. Par. B12(d)

Par. B12(d) states that *“If the Panel decides that the disputed domain name be revoked or transferred to the Complainant, it shall state that the decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction...”*

Does this mean that in case of Class Complaint the decision shall not be implemented even if the Respondent initiates a court proceeding only against one domain name subject of the Class Complaint?

And how is the Mutual Jurisdiction established in case of Class Complaint? Obviously it shall be taken into account the principal office of the Registrar of the particular disputed domain name and not the principal office of any Registrar covered with the Class Complaint.

2.2. Valid .eu ADR Supplemental Rules

Par. B1(b)

For the sake of clarity, the wording for “Complaint Form” could be amended as follows:

“[...] the Complainant shall be required to prepare its Complaint using the Complaint Form or Class Complaint Form included in the list of Forms [...].”

We hope you will find our comments useful.

If you have any questions in this regard or if we can assist you in any other way, please feel free to contact us.

Yours Sincerely,

Mireia Curell
President

Rainer Kaase
Vice-Chair of the Internet Committee