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ICANN
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REC'D APR 25 2011

Leudelange, April 21, 2011

Re. Notice of breach of registrar accreditation agreement

Dear Mrs. Burnette,

We hereby acknowledge receipt of your official letter dated from April 20th of 2011 baring the above-mentioned subject and displayed on the "correspondence" section of the ICANN.org web site.

Let me start by saying that we are rather unpleasantly surprised by this form of communication. As you mention in your own letter we have had communications on the issue and were still awaiting a proper answer from your department. ICANN – and yourself in particular – have worked for years with representatives of our company. Surely there was a better way to follow-up on the email from your colleague Mr Rasheed – the last we ever received from ICANN on the subject? In lieu of which, EuroDNS' name and reputation was put under question very publicly in a number of industry blogs and publications due to your one-sided letter. We reserve the right to seek reparation on that point.

As for the core of the matter, please rest assured that EuroDNS take the duties and responsibilities of its ICANN Accreditation Agreement – of which we were one of the first Registrar to sign the new version – with the uttermost seriousness and that we have and always will comply with any and all obligations arising from this contractual relationship. Specifically, EuroDNS' track record with diligently implementing Uniform Domain Name Dispute Resolution decisions is undisputable.

Regarding the arbitration case referenced D2010-1247 pertaining to the domain name in question, it regrettably appears that your team disregarded several crucial pieces of information pursuant to what forced EuroDNS to delay the implementation of this decision. Indeed, despite the fact that your colleague Mr Rasheed did acknowledge the supporting documents we sent and told us – in an email dated March 31st –that he would "have the documents translated and reviewed for compliance with priority", that was the last we heard from your department before yesterday.

Nevertheless and in order for you to have a better understanding of EuroDNS' behavior in this arbitration case, please allow me to itemize the actual facts in a chronological order.

On the 28th of July 2010, EuroDNS Legal Department did receive a standard notification from WIPO requesting that we verify the data stored in the whois database for this domain name.

On the 29th of July 2010, EuroDNS legal department:

- replied to this verification request;

- complied with its obligations under the UDRP policies by putting this domain name under the “lock” status and also informed each party as well as the UDRP provider of that fact; and
- notified the respondent identified in this case of the initiation of a procedure against their domain name registration, as well as their breach of EuroDNS’ Terms and Conditions.

On the 17th of September 2010 (a Friday late afternoon Luxembourg time) EuroDNS, as well as all the parties to the UDRP proceedings were notified of the arbitration panel decision by the UDRP provider.

On the 20th of September 2010 (the next Monday), EuroDNS informed each party that a decision was awarded in this arbitration case.

On the very same day, EuroDNS provided the complainant with the “authorization code” for this domain name. Per standard policies the lock status preventing the use of this code would only be removed on the 27th of September 2010, in application of the 10 days delay foreseen by the UDRP policies.

On the 22nd of September 2010, EuroDNS received an email from the company *Facebok.com Inc.* stating that the domain name *facebok.com* had been stolen from them by the Respondent to the arbitration case, and demanding that EuroDNS do not implement the UDRP decision.

Obviously we immediately responded to this company that we were bound by the UDRP policies to implement this decision on the 27th of September and that this request would therefore be disregarded.

On the 24th of September 2010, EuroDNS along with both parties to the arbitration case (Complainant and Respondent) were summoned before the Civil Courts of Luxembourg – our country of establishment, in accordance with UDRP policies – by *Facebok.com Inc.* regarding an alleged fraud and impersonation offense related to this domain name.

As part of this Lawsuit, the plaintiff demands a ruling barring EuroDNS from transferring the domain name. Since ICANN’s compliance department – Mr Rasheed – was provided with a whole copy of this summons, I am sure you would agree that - irrespective of the identity of the plaintiff in this civil case - such a demand was enough to give us pause or, at the very least, force us to wait until the actual lawsuit had progressed.

On the 1st of October 2010, the complainant legal representatives requested that EuroDNS unlock the domain name *facebok.com* so that they would be able to use the authorization code they were earlier provided by our legal department. Unfortunately we had to remind them that litigation regarding the transfer – of which the Complainant itself was a party – was still pending in front of the Luxembourg Court of Law and that as such no action could be taken.

Since then, each party has hired a local counsel to represent them to this case, and all of us are currently communicating their pleadings to the Court so that a ruling be taken.

On the 4th of April 2011, the WIPO’s manager assigned to this case phoned EuroDNS in order to get further information on the reason why the panel’s decision was not yet implemented. We explained the above and were told that our behavior was acceptable and understood. We have not heard from WIPO since then.

On the 31st of March 2011, your department contacted us regarding a potential compliance matter due to the fact that we had yet to implement the UDRP decision.

Less than one hour after the reception of this email, EuroDNS replied to ICANN Compliance with a full and detailed explanation of the above and a copy of the complete summons that each party to the UDRP proceedings had been served with.

We never heard back from your department, which did not ask us to elaborate on the facts of the case, nor did you request an English translation of the court papers, both of which we would happily provided since we were – and still are – eager to get a clearer view on this matter from ICANN’s point of view.

Since yesterday’s letter is the first communication from your department since then, allow us to respond to the two components of the alleged “breach”.

Regarding UDRP Rule 16.a “Communication of Decision to Parties”

The UDRP policies are quite clear in that the Registrar has no leeway as to the ten-days delay set forth by this document. If no appeal of the panel decision is lodged against the applicable court of law, the Registrar of record must proceed to the implementation. As such and as clearly stated on the decision that was sent to each party, EuroDNS was to implement the panel’s decision and to inform the relevant parties on September 27th and not sooner. Which we would have done, had not we been summoned.

Regarding UDRP paragraph 4.K

As you have duly noticed, the plaintiff in the pending lawsuit against EuroDNS is not the respondent to the UDRP proceedings but a third party claiming that the domain name facebook.com was stolen from them. However, that does not make him a stranger to this case as it is a legally represented person which claims to be the rightful owner of the domain name.

Without regard to the Intellectual Property rights in balance here, I am sure ICANN would agree that such claim before a judiciary court of law regarding a domain name theft, the impersonation of a third party and more generally an Internet fraud, are severe offenses that EuroDNS could not choose to disregard.

In closing, I must stress that we are more than willing to implement the UDRP decision forthwith, and have been saying so repeatedly to the Complainant for months. However, we must also face the facts that, in doing so, we would violate the process a pending legal action that we cannot ignore.

Should the local case prosper and EuroDNS be found liable for this transfer we would have no other choice than to seek indemnification from ICANN for the loss and damages we may suffer due to the application of the ICANN’ decision.

Nevertheless should ICANN Compliance Department – now that the facts are duly established – continue on asking that we do implement the decision and transfer the domain name, we are prepared to do so. We will then go to court armed and comforted by ICANN’s guidance in the pending Lawsuit before the “Tribunal d’Arrondissement de Luxembourg” opposing Facebook.com Inc. to EuroDNS and Facebook Inc.

Hoping that this clarifies and seeking one more time your department’s guidance in this rather complicated issue, I remain at your disposal for any further information.

Yours sincerely,

Xavier Buck
CEO

