

TO: ICANN, c/o Dan Halloran, John Jeffery
CC: Tim Cole
From: Kristine Dorrain, Internet Legal Counsel, National Arbitration Forum
Date: September 21, 2007
RE: Changes to National Arbitration Forum UDRP Supplemental Rules

Dear Mr. Halloran and Mr. Jeffery:


Since being accredited as a dispute resolution provider in 1999, the National Arbitration Forum has continually striven to offer neutral, quality, dispute resolution within the parameters of the Uniform Domain Name Dispute Resolution Policy. We have to date handled over 9,000 domain name cases. As we continue to handle more and more cases, and as the domain name industry evolves, we are constantly working to provide the most effective dispute resolution process we can while maintaining strict standards and quality controls.

In the process of continual innovation and improvement, we have changed a few of our Supplemental Rules. Please find attached our proposed updated Supplemental Rules for the UDRP.

The substantive changes in this version of our Supplemental Rules includes a provision that the Panel, not the Forum, will address any allegations of Respondent aliases (Supplemental Rules 1(d)(i), 4(f), and 17(a)(i)), an increase in the page limits for both the complaint and the response (Supplemental Rules 4(a) and 5(a)), and a definition of the word "Submit" as it has appeared in our Supplemental Rules without definition (Supplemental Rule 1(f)).

We intend for these Rules to have an effective date of November 1, 2007.

Sincerely,


Kristine Dorrain
Internet Legal Counsel
National Arbitration Forum

Dispute Resolution for Domain Names

Supplemental Rules

THE NATIONAL ARBITRATION FORUM'S SUPPLEMENTAL RULES TO ICANN'S UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY

1. Definitions

- (a) **The Rules** means the Rules for the Uniform Domain Name Dispute Resolution Policy, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999.
- (b) **The Policy** means the Uniform Domain Name Dispute Resolution Policy approved by ICANN on October 24, 1999.
- (c) **The Forum** means the National Arbitration Forum.
- (d) **“The Holder of a Domain Name Registration,”** as used in The Rules (Rule 1), means the single person or entity listed in the WHOIS registration information at the time of the filing of the Complaint with the Forum; and once the registrar has verified registration, is limited to the single person or entity as verified by the registrar.
 - (i) A Complainant wishing to make an argument for a single Respondent having multiple aliases must comply with Supplemental Rules 4(f) and 17(a)(i).
- (e) **“The Party Initiating a Complaint Concerning a Domain Name Registration,”** as used in The Rules (Rule 1), means the single person or entity claiming to have rights in the domain name, or multiple persons or entities who have a sufficient nexus who can each claim to have rights to all domain names listed in the Complaint.
- (f) **Submit.** In these Supplemental Rules or in a FORUM or Panel Order, documents are deemed Submitted under the following circumstances. Documents necessary to be Submitted in hard copy and electronic copy are deemed Submitted when both the hard copy and the electronic copy are received by the Forum.
 - (i) Electronic Mail will be deemed Submitted when received by the Forum’s mail server;
 - (ii) Facsimile transmissions will be deemed Submitted when the entire fax is received by the Forum; and

- (iii) Postal mail will be deemed Submitted when received by the Forum

(g) **Calendar Days** means that all days, including weekends and international and national holidays, shall be counted in determining all deadlines and due dates.

Exceptions-Deadlines:

(i) In the event that a deadline falls on a United States federal holiday, as defined by 5 U.S.C. §6103, the deadline shall be extended to the following Calendar Day.

(ii) In the event that a Calendar Day deadline falls on a Saturday or Sunday, the deadline shall be extended to the following Calendar Day.

2. Scope

The Forum will apply the Rules, the Policy and the Forum's Supplemental Rules in effect at the time a Complaint is Submitted. The Forum's Supplemental Rules may be amended by the Forum in its sole discretion.

3. Communications

All communications must be directed to the Forum and not to the Panel.

4. The Complaint

- (a) The Complaint must include all elements listed in Paragraph 3(b) of the Rules; and may not exceed fifteen (15) pages.
- (b) The Complainant must Submit three (3) hard copies of the Complaint to the Forum if the Complainant requests a single-member Panel. The Complainant must Submit five (5) hard copies of the Complaint if the Complainant requests a three (3) member Panel. If the Respondent requests a three-member Panel, the Complainant may be asked to Submit additional copies of the Complaint.
- (c) In accordance with Paragraph 3(b)(xii) of the Rules, the Complainant must send or transmit its Complaint to the Respondent under cover of the Complaint Transmittal Cover Sheet posted on the Forum's web site.
- (d) The Complaint must be sent to the Forum by e-mail (domaindispute@adrforum.com), and either by fax or by mail.
- (e) Notification to Registrar and certification thereof.
 - (i) The Complainant must provide a copy of the Complaint to the registrar of the disputed domain name at the same time the Complaint is sent to the Forum.
 - (ii) The Complainant must certify in the Complaint that Complainant has complied with Supp. Rule 4(e)(i).

- (f) Any arguments alleging Respondent aliases must be included in the Complaint for Panel consideration.
 - (i) All Complaints alleging multiple aliases will be subject to an increased filing fee (see Supp. Rule 17 (a)(i)).
 - (ii) If the Panel determines that insufficient evidence is presented to link the alleged aliases, the domain names held by the unrelated registrants will not be subject to further consideration by that Panel; no portion of the filing fee will be refunded.

5. The Response

- (a) The Response must include all elements listed in Paragraph 5(b) of the Rules and may not exceed fifteen (15) pages. If no Response is Submitted or if the Response fails to designate a preferred method of communication as required under Paragraph 5(b)(iii) of the Rules, the method used by the Forum to communicate to the Respondent will be:
 - (i) the e-mail address Respondent provided in the Response;
 - (ii) if no Response is Submitted or if no e-mail address is provided in the Response, the e-mail address of the Respondent in the WHOIS on the date the Complaint was filed;
 - (iii) if there is no e-mail address in the WHOIS, the facsimile address the Respondent provided in the Response or the e-mail address provided for the Respondent in the Complaint;
 - (iv) if none of these addresses are provided, the facsimile address provided for the Respondent in the Complaint; or
 - (v) if none of these addresses are provided, the mail address provided for the Respondent in the Complaint.
- (b) The Respondent must Submit three (3) hard copies of the Response to the Forum if the Complainant requested a single-member Panel. If the Complainant or Respondent requested a three-member Panel, the Respondent must Submit (5) hard copies of the Response to the Forum.
- (c) The Response must be sent to the Forum by e-mail (domaindispute@adrforum.com), and by either fax or by mail.

6. Extensions and Stays

- (a) Extensions for Filing a Response

- (i) Paragraph 5(d) of the Rules provides that the Respondent may request additional time to Submit a Response, or may be given additional time if the parties stipulate to an extension and the Forum approves. Any request by the Respondent for an extension or any joint request by the parties for an extension must:
 - (A) be Submitted after the parties have first conferred with each other to see if they could reach an agreement concerning the requested extension;
 - (B) be Submitted in writing to the Forum and the parties within the time for the Response to be Submitted;
 - (C) state the exceptional circumstances warranting the request for an extension;
 - (D) state the length of the extension being requested (no more than twenty (20) additional Calendar Days); and
 - (E) be Submitted with an extension fee of \$100.
- (ii) The Forum may exercise its discretion in determining whether exceptional circumstances exist warranting an extension and if so, the length of the extension. No request for an extension will be approved if any of the conditions set forth in Paragraph 6(a) have not been performed.

(b) Stays of the Administrative Proceeding

- (i) If a Panel has not been appointed by the Forum, parties may jointly request a stay for a one-time period of forty-five Calendar Days, provided that both parties have agreed to the stay in writing and that the parties Submit the signed agreement to the Forum. A Model Form is available on the Forum's website: <http://domains.adrforum.com>.
- (ii) Prior to expiration of the Stay, at least one party must request in writing that the case be reinstated. Absent this written request, the Forum will automatically dismiss the case without prejudice.
- (iii) If a Panel has been appointed by the Forum, a request that the administrative proceeding be stayed shall be granted at the discretion of the appointed Panel.

**7. Submission of other Written Statements and Documents;
No Amendment to the Complaint**

- (a) A party may Submit additional written statements and documents to the Forum and the opposing party(s) within five (5) Calendar Days after the date the Response was received by the Forum, or, if no Response has been filed, the last date the Response was due to be received by the Forum.
- (b) Each additional submission pursuant to Supplemental Rule 7(a) must:
 - (i) be timely received by the Forum;
 - (ii) be accompanied by an additional submission fee of \$400;
 - (iii) include proof of service of these submissions upon the opposing party(s); and
 - (iv) be Submitted in either hard copy or electronic form.
- (c) The party(s) not filing the original additional submission under 7(a) may file additional written statements and documents to the Forum within five (5) Calendar Days after the date the original additional submission was received by the Forum.
- (d) Each additional submission pursuant to Supplemental Rule 7(c) must:
 - (i) be timely received by the Forum;
 - (ii) include proof of service of these submissions upon the opposing party(s); and
 - (iii) be Submitted in either hard copy or electronic form.
- (e) Each party is limited to one additional submission under either 7(a) or 7(c), but not both.
- (f) Additional submissions must not amend the Complaint or Response.

8. The Record of the Administrative Proceeding.

The Complaint, Response, and additional written statements and documents provided in Paragraph 12 of the Rules and Paragraph 7 of the Supplemental Rules constitute the complete record to be considered by the Panel.

9. Appointment of the Panel and Timing of Decision

- (a) The Forum will maintain and publish a list of Panelists and their qualifications to which any party will be directed on the Forum's web site, <http://domains.adrforum.com>. the Forum will appoint a Panelist from this list to serve as a single-member Panel.
- (b) In cases involving a three-member Panel, the Forum will select a Chair for the three-member Panel and will endeavor to select a Chair who was not from the list of Panelist candidates provided by the parties pursuant to Paragraph 6(e) of the Rules. The Chair will sign all Orders and the Decision, coordinate and preside over the proceeding, and forward to the Forum the Panel's decision, including any concurring or dissenting opinion as required by Paragraph 15 of the Rules.
- (c) In cases where the Complainant requested a three-member Panel and no Response was Submitted as required by Rule 5(a), the Complainant may be given the option of converting the three-member Panel to a single-member Panel:
 - (i) After the time for the Response has expired, the Forum will notify the Complainant that no response was Submitted and that the Complainant may convert its three-member Panel request to a single-member Panel request;
 - (ii) Within five (5) Calendar Days of this notification, the Complainant, by e-mail to the Forum (domaindispute@adrforum.com), may request that the three-member Panel be converted to a single-member Panel;
 - (iii) If a single-member Panel is requested, the Forum will select a Panelist from its list of Panelists, not on the list of Panelists Submitted by the Complainant; and
 - (iv) If a single-member Panel is appointed to decide the case, the Complainant will be reimbursed \$1,000 of its fee.
- (d) If the Complainant fails to request that the three-member Panel be converted to a single-member Panel as provided in paragraph 9(c)(ii) above, the selection of the three-member Panel will be as follows:
 - (i) The Complainant must provide a list of three candidates and the Forum will endeavor to select a Panelist from that list as provided in Rule 6(e);

- (ii) The Forum will select a Panelist from its list of Panel members; and
 - (ii) The Forum will supply to the parties a list of five candidates and will select a Panelist as provided in Rule 6(e).
- (e) In cases where the Respondent requested a three-member Panel and the Complaint is withdrawn prior to the appointment of a Panel, the Respondent will be reimbursed \$1,000 of its fee.

10. Impartiality and Independence

- (a) All Forum Panelists will take an oath to be neutral and independent.
- (b) A Panelist will be disqualified if circumstances exist that create a conflict of interest or cause the Panelist to be unfair and biased, including but not limited to the following:
 - (i) The Panelist has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
 - (ii) The Panelist has served as an attorney to any party or the Panelist has been associated with an attorney who has represented a party during that association;
 - (iii) The Panelist, individually or as a fiduciary, or the Panelist's spouse or minor child residing in the Panelist's household, has a direct financial interest in a matter before the Panelist;
 - (iv) The Panelist or the Panelist's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (1) Is a party to the proceeding, or an officer, director, or trustee of a Party; or
 - (2) Is acting as a lawyer or representative in the proceeding.
- (c) A party may challenge the selection of a Panelist, provided that a decision has not already been published, by filing with the Forum a written request stating the circumstances and specific reasons for the disqualification.
- (d) A request to challenge must be filed in writing with the Director of Arbitration within five (5) Calendar Days of the date of receipt of the notice of the selection.

- (e) Provided a decision has not already been published by the selected Panelist, the Forum will promptly review the challenge and determine whether circumstances exist requiring Panelist disqualification in accord with this rule.

11. Communications Between Parties and the Panel

- (a) No party may directly communicate with a Panelist.
- (b) The parties may communicate with the Case Coordinator assigned to their proceeding by phone, fax, e-mail, or mail through the United States Postal Service.
- (c) Any request by a party for any type of action by the Forum or Panel must be communicated in writing to the Forum and the opposing party(s).

12. Withdrawal

- (a) Prior to Commencement
 - (i) Before the five (5) Calendar Day deficiency period described in Rule 4(b) expires, the Complainant may withdraw the Complaint without prejudice. A withdrawal request must be Submitted to the Forum in writing and signed by the Complainant. Upon the Forum's receipt of the withdrawal request, the Complaint will be withdrawn without prejudice and the administrative proceeding will be terminated.
 - (ii) The Complainant may re-initiate a proceeding, which was properly with drawn pursuant to Supplemental Rule 12(a)(i), within thirty (30) Calendar Days. A re-initiation fee of \$100 must accompany the request to re-initiate the proceeding.
 - (iii) If the Complaint was withdrawn pursuant to Supplemental Rule 12(a)(i) and if the Complainant does not re-initiate the Complaint at the end of thirty (30) Calendar Days, a subsequent Complaint will be treated as a new Complaint and must be accompanied by payment of the appropriate fees.
- (b) After Commencement and Prior to Response:
 - (i) After commencement, but before the Forum has received a Response that complies with Supplemental Rule 5, the Complaint may be withdrawn by the Complainant. A withdrawal request must be Submitted to the Forum in writing and signed by the

Complainant. A Complaint dismissed by the Forum pursuant to Supplemental Rule 12(b)(i) will be dismissed without prejudice.

(ii) After commencement, but before the Forum has received a Response that complies with Supplemental Rule 5, the Complaint may be withdrawn pursuant to a joint request made by both parties. A withdrawal request must be Submitted to the Forum in writing and signed by both Parties. A Complaint dismissed by the Forum pursuant to Supplemental Rule 12(b)(ii) will be dismissed with prejudice.

(c) After Response is Received: After a Response that complies with Supplemental Rule 5 has been received by the Forum, but before a Panel decision is published, the Complaint may be withdrawn if both parties agree to the withdrawal. A withdrawal request must be Submitted to the Forum in writing and signed by both parties. A Complaint dismissed by the Forum pursuant to Supplemental Rule 12(b)(iii) will be dismissed with prejudice.

(d) The Complaint cannot be withdrawn after a Panel decision is published.

13. Panel Decisions

Panel decisions will meet the requirements set forth in Paragraph 15 of the Rules and will be of a length that the Panel deems appropriate.

14. Correction of Clerical Mistakes.

Clerical mistakes or clerical errors in the Panel's decision arising from oversight or omission by the Panel may be corrected by the Director of Arbitration for the Forum.

15. Communication of Decision to Parties; Publication of Decision.

- (a) The Forum will publish the decision by Submitting the Panel's decision to the parties, ICANN, and the Registrar as required by the Rules, and by publishing the full decision on a publicly accessible web site.
- (b) All requests pursuant to Policy paragraph 4(j) and Rule 16(b) to have a portion of the decision redacted, must be made in the Complaint, the Response, or an Additional Submission that is Submitted before the Panel's decision is published.

16. Conclusion of the Proceedings.

Once the Panel's decision is issued, the case is closed with the Forum. No further submissions or requests will be considered.

17. Fees (U.S. Dollars)

(a) Fees:

Number of Disputed Domain Names	Single-Member Panel	Three-Member Panel
1 – 2	\$1,300	\$2,600
3 – 5	\$1,450	\$2,900
6 – 10	\$1,800	\$3,600
11 – 15	\$2,250	\$5,000
16 or more	Please contact the Forum for a fee quote.	Please contact the Forum for a fee quote.

- (i) If a Complainant alleges that a single Respondent is using multiple aliases and makes such arguments in the Complaint for Panel consideration per Supplemental Rule 4(f), the filing fee shall be increased proportionately to the number of aliases involved. Please contact the Forum at domaindispute@adrforum.com with the number of domain names and the number of aliases to obtain a fee quote.

(b) Participatory hearings:

As stated in the Rules, in exceptional circumstances (for example, in the event an in-person hearing is held), the Forum may require the Parties to pay additional fees, which will be established by agreement of the Parties and the Director of Arbitration for the Forum prior to the appointment of the Panel.

(c) Non-refundable fees:

Fees to be paid to the Forum as provided in these Supplemental Rules must be paid in U.S. Dollars and are non-refundable, except as provided in Supplemental Rule 9(c)(iv) and 9(e).

(d) Forms of payment

Payment shall be made in one of the following forms:

- (i) Credit card;
- (ii) Certified check; or

(iii) Personal/business check.

(e) If any form of payment is cancelled, stopped, returned unpaid or dishonored, without prior written authorization from the Forum, the Forum reserves the right to charge a service fee of \$50 for each cancelled, stopped, returned or dishonored payment.

18. Effective Date

These Supplemental Rules apply to all cases filed on or after November 1, 2007.