

## **Dispute Resolution Service Procedure**

### **1. Definitions**

**Complainant** means a third party who asserts to us the elements set out in paragraph 2 according to this Policy and the Procedure;

**Contract** means the contract between us and the Respondent, made up of our Terms and Conditions, the Rules for .uk domain and sub-domains, this Policy and the Procedure;

**Days** means unless otherwise stated any day other than Saturday, Sunday or any Bank or public holiday in England and Wales;

**Decision** means the decision reached by the Expert;

**Dispute Resolution Service** means the service provided by us according to this Policy and the Procedure;

**Domain Name** means any domain name registered in the .uk domain and all sub-domains of .uk;

**Expert** means the expert(s) we appoint under paragraphs 8 or 18 of the Procedure and references to Expert where applicable also refer to the Experts appointed under paragraph 18;

**Informal Mediation** means impartial mediation which we conduct to facilitate an acceptable resolution to the dispute;

**ISP** means the internet service provider which has registered or hosts the Domain Name in dispute;

**Jurisdiction** means the jurisdiction of the courts of England and Wales, Scotland and Northern Ireland;

**Party** means a Complainant or Respondent and 'Parties' has a corresponding meaning;

**Policy** means Nominet's Dispute Resolution Policy

**Respondent** means the person (including a legal person) in whose name or on whose behalf a Domain Name is registered and against whom the Complainant makes a complaint;

**we** means Nominet UK (company no. 3203859) whose registered office is at Sandford Gate, Sandy Lane West, Littlemore, Oxford, OX4 6LB and us and our have corresponding meanings;

## 2. Communication

- a. We will send a complaint (see paragraph 3) to the Respondent by using, in our discretion, any of the following means:
  - i. sending the complaint by first class post, fax or e-mail to the Respondent at the contact details shown as the organisation or administrative contacts in our Domain Name register database entry for the Domain Name in dispute;
- b. sending the complaint in electronic form (including attachments to the extent available in that form) by e-mail to:
  - A. postmaster@<the Domain Name in dispute> and
  - B. if the Domain Name resolves to an active web page (other than a generic page which we conclude is maintained by an ISP for parking Domain Names), to any e-mail address shown or e-mail links on that web page so far as this is practical; and
- c. sending the complaint, to any addresses provided to us by the Complainant under paragraph 3(b)(iii) so far as this is practical.
- d. Except as set out in paragraph 2(a) above, all written communication to a Party or a Party's representative under the Policy or this Procedure shall be made by fax, first class post or e-mail.
- e. Communication shall be made in English. E-mail communications should be sent in plain text so far as this is practical.
- f. During the course of proceedings under the Dispute Resolution Service, if either Party wishes to change its contact details it must notify us of all changes.
- g. Except as otherwise provided in this Procedure or as otherwise decided by us or if appointed, the Expert, all communications provided for under this Procedure shall be deemed to have been received;
  - . if sent by facsimile, on the date transmitted; or
  - i. if sent by first class post, on the second Day after posting; or
  - ii. if sent via the Internet, on the date that the communication was transmitted;

and, unless otherwise provided in this Procedure, the time periods provided for under the Policy and this Procedure shall be calculated accordingly.

- h. Any communication (except for communications relating to Informal Mediation) by:
  - . us to any Party shall be copied by us to the other Party and if appointed, the Expert; and
  - i. a Party to another Party shall be copied by the sender to us and we will copy such correspondence to the Expert, if appointed.

## 3. The Complaint

- a. Any person or entity may submit a complaint to us in accordance with the Policy and this Procedure. At times we may have to suspend our

ability to accept complaints. If so, we will refuse the submission and indicate to the Complainant when the suspension is likely to be lifted.

- b. The Complainant must send the complaint to us in hard copy and (except to the extent not available for attachments) in electronic form.

The complaint shall;

- . not exceed 2000 words;
- i. specify whether the Complainant wishes to be contacted direct or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used.
- ii. set out any of the Respondent's contact details which are known to the Complainant;
- iii. specify the Domain Name which is the subject of the dispute and the name or mark which is identical or similar to the Domain Name and in which the Complainant asserts it has rights;
- iv. describe in accordance with the Policy the grounds on which the complaint is made including in particular: what rights the Complainant asserts in the name or mark; and why the Respondent should be considered to have registered and/or be using the Domain Name in bad faith, and discuss any applicable aspects of paragraph 3 of the Policy, as well as any other grounds which support the Complainant's assertion.
- v. specify whether the Complainant is seeking to have the Domain Name transferred, suspended, cancelled or otherwise amended;
- vi. tell us whether any other legal proceedings have been commenced or terminated in connection with the Domain Name which is the subject of the complaint;
- vii. state that the Complainant will submit to the Jurisdiction with respect to any legal proceedings seeking to reverse the effect of a Decision requiring the suspension, cancellation, transfer or other amendment to a Domain Name registration.
- viii. conclude with the following statement followed by the signature of the Complainant or its authorised representative; "The Complainant agrees that its claims and remedies concerning the registration of the Domain Name, the dispute, or the dispute's resolution shall be solely against the Respondent and waives all such claims and remedies against Nominet UK, and its directors, officers, employees and the Expert, except in the case of deliberate wrong doing".  
"The information contained in this complaint is to the best of the Complainant's knowledge true and complete. This complaint is not being presented in bad faith and the matters stated in this complaint comply with the Procedure and applicable law."; and
- ix. attach any documentary or other evidence upon which the Complainant relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark, together with an index of the material attached.

- c. The complaint may relate to more than one Domain Name, provided that those Domain Names are registered in the name of the Respondent.

#### **4. Notification of Complaint**

- a. We will check that the complaint complies with the Policy and this Procedure and, if so, we will forward it to the Respondent together with our explanatory coversheet within three (3) Days of our receipt of the complaint.
- b. If we find that the complaint does not comply with the Policy and this Procedure, we will promptly notify the Complainant of the deficiencies we have identified. The Complainant shall have three (3) Days from receipt of notification within which to correct the deficiencies and return the complaint to us, failing which we will deem the complaint to be withdrawn. This will not prevent the Complainant submitting a different complaint to us.
- c. Proceedings under the Dispute Resolution Service will commence on the date upon which we forward the complaint to the Respondent. We will promptly notify the Parties of the date of commencement of such proceedings.

#### **5. The Response**

- a. Within fifteen (15) Days of the date of commencement of proceedings under the Dispute Resolution Service, the Respondent shall submit a response to us.
- b. Within three (3) Days following our receipt of the response, we will forward the response, and Form A for completion by the Complainant if it does not intend to submit to us a reply to the response, to the Complainant.
- c. The Respondent must send the response to us in hard copy and (except to the extent not available for attachments) in electronic form to us at the addresses set out in our explanatory coversheet. The response shall;
  - . not exceed 2000 words;
  - i. include any grounds the Respondent wishes to rely upon to rebut the Complainant's assertions under 3(b)(v) above including any relevant factors set out in paragraph 4 of the Policy;
  - ii. specify whether the Respondent wishes to be contacted direct or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used;
  - iii. tell us whether any other legal proceedings have been commenced or terminated in connection with the Domain Name which is the subject of the complaint;

- iv. conclude with the following statement followed by the signature of the Respondent or its authorised representative; "The information contained in this response is to the best of the Respondent's knowledge true and complete and the matters stated in this response comply with the Procedure and applicable law."; and
  - v. attach any documentary or other evidence upon which the Respondent relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark together with an index of the material attached.
- d. If the Respondent does not submit a response, we will notify the Parties that we will appoint the Expert upon our actual receipt from the Complainant of the applicable fees according to paragraph 21 and in the absence of exceptional circumstances.

#### **6. Reply by the Complainant**

- a. Within five (5) Days of receiving the response from us, the Complainant shall submit to us either a reply to the Respondent's response, which shall not exceed 1000 words, or Form A if the Complainant does not intend to reply to the response. If the Complainant does not submit either a reply or Form A to us within five (5) Days we will deem the complaint to be withdrawn. This will not prevent the Complainant submitting a different complaint to us.

#### **7. Informal Mediation**

- a. Within three (3) Days of our receipt of the Complainant's reply or Form A indicating that the Complainant does not intend to file a response, we will begin to conduct Informal Mediation. Informal Mediation will be conducted in a manner which we, in our sole discretion, consider appropriate.
- b. If the Parties do not achieve an acceptable resolution through Informal Mediation within ten (10) Days, we will send notice to the Parties that we will appoint the Expert when the Complainant has paid the applicable fees set out under paragraph 21.

#### **8. Appointment of the Expert and Timing of Decision**

- a. We will maintain and publish a list of experts and their qualifications.
- b. Within five (5) Days of our actual receipt of the applicable fees from the Complainant, we will appoint the Expert on a rotational basis from our list of experts.
- c. Once we have appointed the Expert, we will notify the Parties of the name of the Expert appointed and the date by which, except in exceptional circumstances, the Expert will forward its Decision to us.

#### **9. Impartiality and Independence**

- a. The Expert shall be impartial and independent and both before accepting the appointment and during the proceedings will disclose to us any circumstances giving rise to justifiable doubt as to his or her impartiality or independence. We will have the discretion to appoint a substitute Expert if necessary in which case we will adjust the timetable accordingly.

#### **10. Communication Between Parties and the Expert**

- a. A Party and the Expert must not communicate directly. All communication between a Party and the Expert must be made through us.

#### **11. Transmission of the File to the Expert**

- a. We will forward the file except for documents relating to Informal Mediation to the Expert as soon as the Expert is appointed.

#### **12. General Powers of Nominet and the Expert**

- a. We, or the Expert if appointed, may in exceptional cases extend any period of time in proceedings under the Dispute Resolution Service..
- b. The Expert shall determine the admissibility, relevance, materiality and weight of the evidence.
- c. We shall decide a request by a Party to consolidate multiple Domain Name disputes in accordance with the Policy and this Procedure.

#### **13. Further Statement**

- a. In addition to the complaint, the response and if applicable the reply and any appeal, the Expert may request further statements or documents from the Parties. The Expert will not be obliged to consider any statements or documents from the Parties which he or she has not received according to the Policy or this Procedure or which he or she has not requested.

#### **14. In Person Hearings**

- a. No in person hearings (including hearings by conference call, video conference and web conference) will be held unless the Expert determines in his or her sole discretion and in exceptional cases, that such a hearing is necessary to enable him or her to come to a Decision.

## **15. Default**

- a. If a submission by a Party exceeds the word limit, we may return the submission to that Party who will within 3 Days return a submission to us which complies with the word limits. If we do not receive the submission back from:
  - . the Complainant, we will deem the complaint to be withdrawn, which will not stop the Complainant from submitting a different complaint; or
  - i. the Respondent, we will notify the Parties that we will appoint the Expert when the Complainant has paid the applicable fees set out in paragraph 21 and in the absence of exceptional circumstances. Once appointed the Expert will decide the dispute based upon the complaint and evidence attached to it.
- b. If, in the absence of exceptional circumstances, a Party does not comply with any time period laid down in the Policy or this Procedure, the Expert will proceed to a Decision on the complaint. If the Expert has not been appointed Nominet shall take any action which it deems appropriate in its sole discretion, unless prescribed by this Procedure.
- c. If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure or any request by us or the Expert, the Expert will draw such inferences from the Party's non compliance as he or she considers appropriate.

## **16. Expert Decision**

- a. The Expert will decide a complaint on the basis of the Parties' submissions, the Policy and the Procedure.
- b. Unless exceptional circumstances apply, an Expert shall forward its Decision to us within ten (10) Days of his or her appointment pursuant to paragraph 8.
- c. The Decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was made and identify the name of the Expert.
- d. If the Expert concludes that the dispute is not within the scope of paragraph 2 of the Policy he or she shall state that this is the case. If, after considering the submissions, the Expert finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking the Expert shall state this finding in the Decision. If the Complainant is found on three separate occasions to have brought a complaint in bad faith, Nominet will not accept any further complaints from that Complainant.

## **17. Communication of Decision to Parties**

- a. Within three (3) Days of our receipt of a Decision from the Expert, we will communicate the full text of the Decision to each Party and the

date for the implementation of the Decision in accordance with the Policy.

- b. Unless we decide otherwise (see paragraph 7 of the Policy), we will publish the full Decision and the date that any action which the Decision requires will be taken, on our website.

#### **18. Appeal**

- a. Either Party shall have the right to appeal a Decision by submitting written grounds for appeal to us not exceeding 2000 words together with the appropriate fees under paragraph 21(d) within 5 Days of the date that the Decision has been communicated to the Parties pursuant to paragraph 17 above. The appeal will be determined as soon as is practically possible by a panel of three Experts appointed by us at our sole discretion from our list of experts.

#### **19. Settlement or Other Grounds for Termination**

- a. If, before a Decision is made the Parties agree and notify us of a settlement which we approve, whether or not pursuant to Informal Mediation, we will terminate proceedings under the Dispute Resolution Service.
- b. If, before a Decision is made, it becomes unnecessary or impossible to continue proceedings under the Dispute Resolution Service for any reason, we will terminate proceedings under the Dispute Resolution Service unless a Party raises justifiable grounds for objection within a period of time which we determine.

#### **20. Effect of Court Proceedings**

- a. If legal proceedings in the Jurisdiction relating to a Domain Name which is the subject of the complaint are issued before or during the course of proceedings under the Dispute Resolution Service and are brought to our attention, we will decide whether or not to suspend or terminate the proceedings.
- b. A Party must promptly notify us if it initiates legal proceedings in the Jurisdiction relating to a Domain Name which is the subject of a complaint during the course of proceedings under the Dispute Resolution Service.

#### **21. Fees**

- a. The applicable fees in respect of the referral of proceedings under the Dispute Resolution Service to an Expert are 750 + VAT, which are payable by the Complainant only if an acceptable resolution has not

been reached and we notify the Parties that an Expert is to be appointed.

- b. If we have not received the fees from the Complainant as set out in paragraph 21(a) above within ten (10) Days of receipt by the Complainant of notice from us that an Expert is to be appointed under paragraphs 5(d),7(b) or 15(a)(ii) we will deem the complaint to be withdrawn.
- c. In exceptional circumstances, for example if a complaint involves more than one Domain Name or if an in person hearing is held, we will request that the Parties pay additional fees to be agreed between us, the Parties and the Expert.
- d. The applicable fees for the submission of an appeal are £3,000 + VAT.

## **22. Exclusion of Liability**

- a. Except in the case of deliberate wrongdoing, neither we nor our directors, officers, employees or servants nor any Expert shall be liable to a Party for any loss or damage suffered as a result of any act or omission in connection with any proceedings under the Dispute Resolution Service.

## **23. Amendments**

- a. We may, at any time, modify the Policy and/or this Procedure. We will post the revised Policy and/ or Procedure on our web site at least 30 calendar days before the revised Policy and/or Procedure become effective. Continued registration of the Domain Name after this date will constitute the Respondent's acceptance of any such modifications. If the Respondent does not agree with the modifications its sole remedy shall be to cancel the Contract. The Respondent will be bound by the Policy and Procedure which are current at the time that proceedings under the Dispute Resolution Service are commenced until they are over.