



European Communities Trade Mark Association

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

By Email to tereza.bartoskova@adr.eu

Antwerp, 7 March 2008

Dear Sirs,

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

This constitutes the response of the European Communities Trade Mark Association (ECTA) to the Public Consultation of The Czech Arbitration Court inviting comments from interested parties to the proposed amendments to both the .eu ADR Rules and Supplemental Rules which seek (i) to implement a new procedure within .eu ADR which would enable multiple Complainants to join in a single Complaint against a suspected cybersquatter; and (ii) to implement further stage of electronic-only ADR which would not depend on the advanced electronic signatures.

“Class Complaints”

ECTA welcomes the proposal to introduce class complaints and makes the following observations.

“Class Complaint” is to be defined as

“Class Complaint” means a single Complaint filed against a single domain-name holder in regard to multiple disputed domain names with the same language of proceeding filed by a single person acting on behalf of two or more Complainants and requesting separate relief for each Complainant for different disputed domain names than for the other Complainants joined in the Class Complaint.”

Is it the intention that (a) two or more complainants, (each having one or more domain names that differ one from the other) acting in concert, can file a single complaint in respect of the same domain name registered to the respondent; or is it the intention that (b) two or more complainants, (each having one or more domain names that differ one from the other) acting in concert, can file a single complaint in respect of a multiplicity of domain names (that differ one from the other) registered to the same respondent?

The definition refers to such proceedings being filed by a “single person”.

Is it intended that all the Complainants may be represented by a single complainant; or it is intended that they all must be represented by the same single authorized representative? Other definitions in the .eu ADR Rules makes use of use of the expression “single person” unclear. By way of example, the definition of “Complainant” is “Complainant means the Party initiating a Complaint [...]”.(added emphasis), and the corresponding definition of “Party” defines the term as “Party means a Complainant [...]”(added emphasis). Considering these definitions the “single person” should be regarded as the Party initiating a Complaint and therefore, the “Complainant”.

Thirdly, inserting the definition “Class Complaint” under Par A1 appears to distinguish between the terms “Complaint” and “Class Complaint”. Therefore, this distinction should be taken into account in the further wording of .eu ADR Rules. By way of example, the definition of “Date of Commencement of an ADR Proceeding”, states that the ADR Proceeding is commenced on the date the administratively compliant Complaint is filed. The definition refers to “Complaint”, not to “Class Complaint”, which by definition is a different matter. Therefore the logical conclusion must be that the “Date of Commencement of an ADR Proceeding” cannot be established for the “Class Complaint”.

As to the proposal to permit a Complainant to file a new complaint if the Class Complaint is rejected, in a situation where the Class Complaint has been rejected on any grounds other than procedural grounds allowing a new complaint on the same grounds may lead to different decisions in the identical matter. The solution appears to be to limit the filing of independent actions only when the prior class action was rejected on the basis of procedural rules that were not respected by complainants.

Strong Authentication,

ECTA would prefer to see a more simplified, and “user friendly” approach adopted for the problem. It appears that the proposed system is geared towards frequent and regular users rather than the occasional user. It is feared that the system is likely to prove unduly cumbersome and unwieldy in practice.

Any Party wishing to use this “Electronic-only” system must be registered or register and then wait for the necessary grid or “Bingo” card before lodging a complaint. It seems unlikely that this procedure will be relied upon where urgent action is needed or where a deadline must be met, except by those who have already registered and obtained the required card in anticipation of filing ADR complaints.

The required card, and the password must be kept safe, and staff trained in the method of uploading the documents.

According to the proposed procedure:

The receipt by the CAC of every document filed by a Party using Strong Authentication will be automatically acknowledged by e-mail (i.e., a communication channel other than the on-line platform), requesting the Party to check his documents

stored on the on-line platform and to confirm, using Strong Authentication through the on-line platform, whether:

- the documents stored conforms fully with those he submitted (verification of integrity);
- he approves of the contents of the document; and
- he intends to be bound by the document.

If the Party does not submit his verification within 48 hours of notification, the electronic submission will be considered as withdrawn and nullified.

A number of issues arise. First, the documents to be filed must be reviewed before they are uploaded, and again following posting by the CAC. This significantly increases the work needed to file or to respond to a complaint. Second, the party posting the document is to be given 48 hours from receipt of the email acknowledging the filing to check and verify the documents. There is no indication when or how that automatic acknowledgement will be triggered, or that any provision has been made to allow for email acknowledgements going astray or being blocked by filters or technical problems, nor does it appear that specific provision has been made to allow for non-business days following the automatic generation of the email acknowledgement.

Other Comments based on the interaction of the proposed amendments with existing .eu ADR Rules and ADR Supplemental Rules.

Par. A3 (b)(7) indicates *“In case the Complainant files the Complaint within thirty (30) Working days from receiving the decision under (b)(6) above, the Time of Filing of the request to change the language of the ADR Proceeding shall apply [...]”*.

In the event of a Class Complaint that requires, for instance, filing of several requests to change the language of the proceeding in order to meet the language-unity requirement in the Class Complaint, how is the thirty working day deadline calculated? Is it calculated from the first or last decision received, or any other method is going to be applied?

In this connection it might be appropriate to allow a Class Complaint covering different domain names filed by a single domain-name holder, where the languages of the proceeding are different to be filed in a single language, (being one of the languages of the disputed domain names).

Par. A6

There is no indication of the fees for the “Class Complaint” nor whether these are to differ in the case of “Electronic-only Complaints”.

Par. B1 (b)(17) and Par. B3 (b)(9)

These provisions require the “word limit” to the forms. Considering that the “Class Complaint” and the response to it are more voluminous, is the established “word limit” sufficient for the Class Complaints and to the responses?

Par. B11 (d)

It is unclear what the decision should be in case of a “Class Complaint” in respect of which for some disputed domain names the circumstances are proved by the Complainant and for other domain names are not. In such case is it envisaged that the “Class Complaint” is to be rejected entirely? If considering the proposed amendment of Par. A4(c), which states that “a Class Complaint is rejected in an ADR Proceeding”, it could be concluded that the “Class Complaint” is rejected in whole even if the circumstances are proved for one or more domain names included in the Class Complaint.

Par. B12

Par. B12 (a) indicates that “*[T]he decisions of the Panelists will be final, not subject to appeal, and compulsory for the Parties, [...]*”. However, the proposed amendment to Par A4 (c), provides that an individual Complaint may be brought in a situation where a Class Complaint has been rejected.

Par. B12 (g) indicates that the Panel shall issue an interim decision and shall suspend the proceedings until a date six months after the Time of Filing. Again this appears inconsistent with the perceived position of Class Complaints. In circumstances where the provisions of Par B12 (g) apply only in respect of some disputed domain name(s), but the requested remedies can be applied for the other disputed domain names it does not seem appropriate that the proceedings shall be suspended for the whole Class Complaint.

Existing .eu ADR Supplemental Rules

Par. A3

There is no indication of the amount to be paid in case of Class Complaints.

Par. B1 (b)

There is no indication of the Class Complaint Form.

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 of ECTA

Eric Ramage
Chair of the Internet Committee