



ADR guide

Introduction

The Alternative Dispute Resolution (ADR) Regulations were promulgated by the Minister of Communications, Dr. Ivy Matsepe-Casaburri, in November 2006, in terms of section 69 of the Electronic Communications and Transactions (ECT) Act. The Regulations are intended to resolve disputes over domain names registered under the co.za sub-domain. This sub-domain primarily registers domain names of commercial (profit-making) entities.

Domain names

You may wonder what a domain name is exactly. Well, a domain name is a string of letters provided by the domain name system (DNS) to allow people to find their way around the Internet using names instead of the numeric IP addresses. When you register a domain name, the DNS allocates a string of numbers (such as 258.3.22.334) called an Internet Protocol (IP) address. Because the IP address will practically be difficult to remember, the DNS then allocates a name to the IP address for the Internet users to easily remember the address.

Top level domains

Domain names are registered under top level domains (TLDs). There basically 2 kinds of TLDs: country code TLDs (ccTLDs) such as .za (for South Africa) and .us (for the United States), and generic TLDs such as .com and .org. It is up to the person wanting to register a domain name to choose a TLD in which they want to register, but they must first satisfy the eligibility criteria of that TLD.

Sub-domains

There is also what is called “sub-domains”. These are domain registered under a TLD. For example, co.za and org.za are sub-domains of the .za ccTLD, and these serve different sectors of the society. The sub-domains are primarily divided into open sub-domains and closed sub-domains. For example, co.za is an open sub-domain which primarily caters for commercial users, while ac.za is a sub-domain which caters only for academic institutions, and is therefore closed to persons who are not academic institutions.

Disputes over domain names

So what causes disputes over domain names? Well, there are different causes. Some Internet users act in bad faith in registering domain names. There is a problem of “cybersquatting”, for example, which arises when a third party makes a pre-emptive

registration of a trademark owned by another person. Cybersquatters take unfair advantage of the “first-come, first-served” basis for registering domain names.

There are different reasons for cybersquatting, but the main one is that the “bad faith” registrant wants to re-sell that domain name to the trademark holder or its competitor at a much higher price. This bad practice effectively means that the trademark holder can no longer register a name to which the trademark holder is entitled, unless that trademark holder pays an inflated price to the cybersquatter.

There are also other instances where the registrant’s intention is not cybersquatting, but they register a domain name which another person believes they are entitled to.

ADR Regulations

Up to now, persons interested in lodging domain name disputes have had to go to court to have their disputes resolved. This has proven not only to be a lengthy process, but also a much costly one with exorbitant lawyers’ costs.

The ADR Regulations were promulgated to provide a much quicker yet less costly avenue for resolving domain name disputes. The dispute resolution provided by the Regulations is a simple process involving the following key administrative steps:

- Lodging a dispute with an accredited ADR provider;
- Payment of the ADR fees (which are more affordable than high court fees)
- Resolution of the dispute by an adjudicator/adjudicators within 8 weeks (on average)

Grounds for domain name disputes

The Regulations require that the party lodging a dispute proves that the registrant, in registering the domain name, took an unfair advantage of the applicant, and/or the existing registration of the dispute domain name amounts to an abusive registration.

Example:

A company called “Live Like Us” has a competitor called “Still Living”. Still Living then decides to register a domain name called “livelikeus.co.za”. By doing this, Still Living is taking an unfair advantage of Live Like Us’ trademark, and Live Like Us can lodge a dispute based on an abusive registration.

The applicant can also base its dispute on the grounds of offensive registration (that is, the registered domain name is offensive on the grounds of religion, ethnicity, race, gender or incitement to cause harm).

Example:

“World For Women”, an organization advocating women’s rights, registers a domain name called “all-men-are-dogs.co.za”. This domain name can be disputed by an interested party on the basis of it being an offensive registration in that it discriminates and/or advocates bias against a certain gender.

Declaring a dispute

The Regulations stipulate the administrative process which should be followed in lodging a co.za dispute. This can be briefly outlined as follows:

- Select an ADR provider accredited by the Authority to resolve co.za domain name disputes. A party wishing to declare a co.za domain name dispute can do so by using one of the accredited ADR providers. Currently, the Authority has accredited AFSA (<http://www.domaindisputes.co.za/>) and SAIPL (<http://www.domaindisputes.co.za/>).
- Lodge the dispute with the accredited provider according to the administrative procedures prescribed in the Regulations. In addition, the applicant should take into consideration the supplementary requirements of the selected provider.
- Indicate in the lodgment whether you choose a single adjudicator or a 3 adjudicator panel to resolve the dispute.
- Pay the stipulated ADR fees. These depend on which panel you choose to resolve the dispute. If you choose a single adjudicator, the required fee is R10, 000. If you choose a 3 adjudicator panel, the fee is R24, 000 with each of the 2 parties paying 50% of the fee.

Once the ADR fees are paid, the selected provider will appoint adjudicators from its roll of accredited adjudicators. There is no stipulated deadline for resolving co.za domain disputes, but the entire dispute resolution process is expected, on average, to take 8 weeks.