

THE UDRP MODEL APPLIED TO ONLINE CONSUMER TRANSACTIONS

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Despite the general downturn in the world economy, online merchandising continues to set new records. On December 17, 2002, it was reported that while retail sales had increased 3 per cent at most over the same period in 2001, online sales were estimated to be up from 25 percent to 50 percent compared to the 2001 holiday shopping period.¹ When the boxes and wrapping paper had been thrown away and the tinsel packed up for another year, final holiday shopping figures showed that online sales had increased 24 percent over the previous year and that consumers had spent nearly \$13.7 billion dollars on the Internet at a time when traditional retailers were experiencing their worst holiday sales in decades.² While most online merchants were undoubtedly eager to resolve consumer complaints in order to ensure repeat business, what about consumers whose complaints fell on deaf ears? What real recourse was available to them?

While consumers in the United States could file suits in small claims court, the costs of even such a streamlined procedure might be as much or more than the value of the item purchased online. If the online retailer was located in another state, or possibly in another country, the costs involved in attempting to enforce any court judgment obtained would be prohibitive in almost all cases. A disgruntled consumer with no place to turn for redress would be likely to turn away from further transactions on the Internet, perhaps for years.³ Yet what

¹ *San Jose Mercury News*, Business Section, page 1, col. 4, "Online shopping surges," Tuesday, December 17, 2002. **Mary Anne Ostrom.**

² *San Jose Mercury News*, Business Section, page 1, col. 1, "Holiday online sales up 24% from last year," Tuesday, January 7, 2003. **Mercury News Staff, Cox News Services, Dow Jones..**

³ This was noted in a speech by David Byrne, European Commissioner for Health and Consumer Protection, at the Conference on the e-Economy in Europe, held at the European Parliament, Brussels, on March 2, 2001, available at http://europa.eu.int/cmm/dgs/health_consumer/library/speeches/speech86_en.html. Indeed, Consumers International issued a press release entitled *International Survey Shows Internet Shopping Still a Minefield*, citing non-delivery, late delivery, and the lack of readily available means to resolve disputes.

kind of online consumer justice system can be established to satisfy consumer concerns and requirements?

Recently the World Intellectual Property Organization (WIPO) conducted a survey on issues involving the use of intellectual property on the Internet.⁴ In a section of that survey entitled “The Role of Private International Law and Alternative Dispute Resolution,” WIPO looked at consumer protection issues.⁵ Noting that in the past consumers rarely entered into direct relationships with foreign vendors, the report stated that the Internet had changed that dramatically. The increasing number of international consumer transactions raised questions of jurisdiction and applicable law. Should the country of the consumer, of the vendor, or both countries have jurisdiction over a consumer dispute? Which law should be applicable? The survey noted that these questions had proven difficult to resolve, especially because consumer protection is regarded as a matter of public policy in many countries.

The report also examined the role of alternative dispute resolution (ADR) in e-commerce.⁶ It noted that online methods of ADR could render procedures more efficient⁷ and provide a single international forum at which such disputes could be resolved. The study noted that unlike national court systems, participation in ADR required consent.⁸ However, the requirement of individual consent has been eased where groups of e-commerce vendors

Consumers International Press Release, dated September 19, 2001, available at www.consumersinternational.org/news/arc_display.asp?regionid+135+X&id=...

⁴ World Intellectual Property Organization (WIPO) Intellectual Property on the Internet: A Survey of Issues, available at <http://ecommerce.wipo.int/survey/html/index.html>.

⁵ *Id.*, ¶¶ 268 - 269.

⁶ *Id.*, ¶¶ 325 - 374.

⁷ *Id.*, ¶¶ 325 - 327.

⁸ *Id.*, ¶ 348.

unilaterally pledge to submit to ADR if their customers wish to do so.⁹ The problem in the consumer context is that consumer protection laws are generally designed to protect the right of consumers to take their grievance to court, a position which is antagonistic to pre-dispute submissions to binding ADR procedures.¹⁰

All of these needs and concerns suggest that a modified version of the Uniform Domain Name Dispute Resolution Policy (the “UDRP”) might prove an ideal system through which online merchants could offer consumers a dispute resolution mechanism that could instill confidence in the transaction of online commerce. The UDRP offers one international forum for the resolution of cybersquatting disputes. Trademark owners can, but are not required to, submit their disputes to the UDRP. Trademark owners are also free to take those disputes to court. The policy sets out the general principles that must be established to prevail in a UDRP matter, and these are relatively simple and straightforward. In most UDRP cases, decisions are made without the necessity to refer to a body of national law. Proceedings are conducted without hearings and based only on documents so that the cost of resolving disputes is minimized. The system is transparent in that all decisions are publicly available online. The UDRP has a self-enforcement mechanism, so that the prevailing party need not incur additional costs in order to obtain the benefits of the decision. Parties dissatisfied with a UDRP decision may take the matter to a court of law. All of these factors seem to meet both the needs and concerns of consumers and consumer advocates and of online merchants who wish to create a business environment that is consumer friendly.¹¹

⁹ *Id.*, ¶ 349.

¹⁰ *Id.*, ¶ 354.

¹¹ Indeed, the UDRP generally seems to contain principles such as independence, transparency, efficiency and the respect of law outlined in the European Commission Recommendation 98/257/EC, for “Out-of court

With this in mind, I have undertaken to modify the Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy to provide for a system that addresses the most basic, and only the most basic, types of consumer complaints: that the goods or services received were not as they were represented to be; that the goods or services were not delivered within a reasonable time; or that the goods or services ordered were never delivered. In that regard I have prepared and attached as Annex A, an example of an ‘Online Consumer Dispute Resolution Policy’ (the OCDRP), and have attached as Annex B, an example of ‘Rules for Online Consumer Dispute Resolution Policy’ (OCDRP Rules). These are not copyrighted documents, and I would be delighted if an organization saw fit to use them as is or in some modified form.

The OCDRP is meant for adoption by a merchants association, identified in the OCDRP as the fictitious “Certified Online Merchants Association” (COMA).¹² Any merchant wishing to belong to COMA must agree to submit to dispute resolution under the OCDRP when a proceeding is initiated by an Online Consumer.¹³ The Online Merchant is required to maintain a bond or a deposit account in the amount of US\$5,000, from which any Administrative Panel decision may be automatically satisfied.¹⁴ For each Online Transaction in which an Online Merchant is engaged, the Online Merchant is required to collect a fee of US\$0.25, which is to be forwarded to COMA. The aggregate fees thus collected will fund the administration of the

bodies responsible for the settlement of consumer disputes.”

¹² Annex A, ¶ 1.

¹³ *Id.* An Online Consumer is defined as “a natural person who purchases or leases goods or services in an Online Transaction from an Online Merchant, which goods or services are purchased or leased primarily for personal, family, or household purposes.” Annex B, ¶ 1.

¹⁴ Annex A, ¶¶ 2 and 4.

program and the payment of the panelists.¹⁵

Under the OCDRP, every Online Merchant would undertake a good faith delivery obligation.¹⁶ The Online Merchant would be liable for failing to meet this obligation if the Online Consumer could prove any of the following:

- (i) the Online Merchant misrepresented the identity, quality, or condition of the goods or services;
- (ii) unless otherwise agreed,¹⁷ the Online Merchant did not deliver the goods or services ordered in an Online Transaction¹⁸ within a reasonable time considering the nature of the goods and/or services ordered;
or
- (iii) the Online Merchant never delivered to the Online Consumer the goods or services ordered.¹⁹

In turn, the Online Merchant can establish that it has met its good faith delivery obligations if it can show (in response to particular allegations):

- (i) that at the time that the goods were actually delivered to the consumer, the goods or services were as represented to the Online Consumer as to their identity, quality, quantity or condition; or

¹⁵ Annex A, ¶ 5(f).

¹⁶ Annex A, ¶ 3.

¹⁷ The parties are free to agree on a delivery date. Annex A, ¶ 3.

¹⁸ An Online Transaction is defined as a “transaction in which goods or services are offered for sale or lease over the Internet, whether on a proprietary web site, in an auction environment, or otherwise, and the offer therefor is accepted.” Annex B, ¶ 1.

¹⁹ Annex A, ¶ 5(a).

- (ii) that there was an attempt to deliver the goods or services on time, but that the Online Consumer wrongfully and without justification, refused to accept delivery;
or
- (iii) that the consumer failed or refused to pay the agreed upon consideration for the goods or services.²⁰

Panelists shall be chosen from providers of ADR services certified by COMA²¹ and the Online Consumer chooses a provider by submitting the complaint to a given provider.²² However, the Online Consumer can select a panelist for one of the three panelist positions from the lists of panelists of any of the approved providers.²³

As under the UDRP, recourse to the courts is available before a proceeding is commenced or after it is concluded and either party may appeal a decision to the courts.²⁴ All OCDRP decisions will be published on a publicly accessible web site.²⁵

Procedures closely follow those under the UDRP. The form of the complaint and the response are similar to those under the UDRP, although they of course follow the OCDRP requirements.²⁶ A significant difference is that the OCDRP provides for a Reply to be filed by the Online Consumer, so that the Online Consumer has an opportunity to meet any assertions

²⁰ Annex A, ¶5(b).

²¹ Annex A, ¶ 5(c).

²² *Id.*

²³ Annex B, ¶ 3(b)(iv). Unlike under the UDRP, all panels under the OCDRP will consist of three persons, one nominated by the Online Consumer, one selected by the Online Merchant, and the third selected by the Provider as the highest mutually ranked panelist from a list of five candidates furnished to each of the parties. Annex B, ¶¶ 3(b)(iv), 5(b)(iv), and 7(b).

²⁴ Annex A, ¶ 5(j).

²⁵ Annex A, ¶ 5(i).

²⁶ Annex B, ¶¶ 3 and 5.

made by the Online Merchant.²⁷

While the powers of the panel are generally the same as under the UDRP,²⁸ if the panel finds that the Online Merchant has unreasonably delayed the resolution of the matter, the panel is entitled to award simple interest at the rate of ten percent per annum from the date of the transaction on the consideration to be returned to the Online Consumer.²⁹ As under the UDRP, when confronted with knowledge of a concurrent court proceeding, the panel has the discretion to continue or to suspend or terminate the administrative proceedings.³⁰ All panel decisions must be by a majority.³¹

The author believes that the proposed dispute resolution system is a vital first step toward the ultimate adoption of an international, fair and transparent system for resolving online consumer disputes. It is hoped that, at the very least, this proposal will stimulate discussion of the problem of providing online consumers with a realistic dispute resolution mechanism. Until consumers can be sure that they can resolve their grievances in an expeditious, cost effective manner, electronic commerce will not realize its full potential.

²⁷ Annex B, ¶ 6.

²⁸ See Annex B, ¶ 11

²⁹ Annex B, ¶16(e).

³⁰ Annex B, ¶ 19(a).

³¹ Annex B, ¶ 16(c).

ANNEX A

ONLINE CONSUMER DISPUTE

RESOLUTION POLICY

Online Consumer Dispute Resolution Policy (the "Policy")

- 1. Purpose.** This Online Consumer Dispute Resolution Policy (the "Policy") is mandatory for all merchants doing business under the Certified Online Merchants Seal and sets forth the terms and conditions in connection with a dispute between you and any Online Consumer concerning any Online Transaction between you and the Online Consumer. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Online Consumer Dispute Resolution Policy (the "Rules of Procedure") and the selected administrative-dispute-resolution service provider's supplemental rules.
- 2. Your Representations.** By applying to conduct business under the Certified Online Merchants Seal, you hereby represent and warrant to us that (a) the statements that you made in your Application to the Certified Online Merchants Association are complete and accurate (b) that you will abide by the Certified Online Merchants' Code of Ethics, (c) that you agree to be bound by any Administrative Panel decisions issued in accordance with this Policy, and (d) that you will maintain a callable bond or a deposit account in the amount of US\$5,000 from which any Administrative Panel decisions against you may be satisfied.
- 3. The Good Faith Delivery Obligation.** Every Online Merchant who operates under the seal of the Certified Online Merchants Association has an obligation to deliver to the Online Consumer goods or services as represented by the Online Merchant. Unless

otherwise agreed between the Online Consumer and the Online Merchant, the goods or services must be delivered within a reasonable time considering the nature of the goods or services. So long as reasonable notice has been given by the Online Merchant to the Online Consumer, the actual cost of shipping and insurance and the reasonable cost of handling may be passed on to the Online Consumer.

4. **Transfers From the Bond or Account.** We will transfer funds from your bond or account to an Online Consumer under the following circumstances:
 - a. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;
 - b. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
 - c. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by the Certified Online Merchants Association.

5. **Mandatory Administrative Proceeding.** This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers.

- a. **Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that an Online Consumer submits a Complaint to the applicable Provider, in compliance with the Rules of Procedure, that
- (i) you misrepresented the identity, quality, quantity, or condition of the goods or services in an Online Transaction; or
 - (ii) unless otherwise agreed, you did not deliver the goods or services ordered in an Online Transaction within a reasonable time considering the nature of the goods and/or services ordered; or
 - (iii) you never delivered to the Online Consumer the goods or services ordered.

In the administrative proceeding, the Online Consumer must prove that an Online Transaction was completed and that the elements necessary to establish (i), above, are met. When the Online Consumer asserts late delivery or non-delivery, you, as the Online Merchant, must prove timely or actual delivery.

- b. **How to Demonstrate That You Have Met Your Good Faith Delivery Obligations in Responding to a Complaint.** When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Depending on the allegations to which you are responding, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all

evidence presented, may demonstrate that you have met your good faith delivery obligations:

- (i) that at the time that the goods were actually delivered to the consumer, the goods or services were as represented to the Online Consumer as to their identity, quality, quantity or condition; or
- (ii) that delivery of the goods or services was timely attempted, but that the Online Consumer wrongfully and without justification, refused to accept delivery thereof; or
- (iii) that the consumer failed or refused to pay the agreed upon consideration for the goods or services.

c. **Selection of Provider.** The Online Consumer shall select the Provider from among those approved by the Certified Online Merchants Association by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).

d. **Initiation of Proceeding and Process and Appointment of Administrative Panel.** The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

e. **Consolidation.** In the event of multiple disputes between you and an Online Consumer, either you or the Online Consumer may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the

first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by the Certified Online Merchants Association.

f. **Fees and Costs of Panel Proceedings.** For each Online Transaction engaged in, the Online Merchant shall charge a fee of US\$.25 and shall forward the amounts so collected to the Certified Online Merchants Association for the funding of this dispute resolution program. All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid out of this fund.

g. **Our Involvement in Administrative Proceedings.** We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.

h. **Remedies.** The remedies available to an Online Consumer pursuant to any proceeding before an Administrative Panel shall be limited to the rescission of the transaction and the mutual return of the agreed upon consideration, and, in appropriate circumstances as described in Paragraph 16(e) of the Rules, interest on the amount paid by the consumer at the rate of ten per cent per annum.

i. **Notification and Publication.** The Provider shall notify us of any decision made

by an Administrative Panel with respect to a complaint filed against you by an Online Consumer. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

j. **Availability of Court Proceedings.** The mandatory administrative proceeding requirements set forth in Paragraph 5 shall not prevent either you or the Online Consumer from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. Once an Administrative Panel issues a decision, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you or from the Online Consumer during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped, which has been filed in the jurisdiction in which the Online Consumer resides). If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive

- (i) evidence satisfactory to us of a resolution between the parties;
- (ii) evidence satisfactory to us that the lawsuit has been dismissed or withdrawn; or

(iii) a copy of an order from such court dismissing the lawsuit or otherwise disposing of the issues therein.

6. **All Other Disputes and Litigation.** All other disputes between you and any party other than us regarding an Online Transaction that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 5 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.
7. **Our Involvement in Disputes.** We will not participate in any way in any dispute between you and any party other than us regarding your involvement in an online transaction. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.
8. **Policy Modifications.** We reserve the right to modify this Policy at any time. We will post our revised Policy at <URL> at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any Online Consumer dispute, whether the dispute arose before, on, or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your membership in the Certified Online Merchants Association,

provided that you will not be entitled to a refund of any fees you have paid to us. The revised Policy will apply to you until you cancel your membership.

ANNEX B

RULES FOR ONLINE CONSUMER DISPUTE RESOLUTION POLICY

**Rules for Online Consumer Dispute Resolution Policy
(the "Rules")**

Administrative proceedings for the resolution of disputes under the Online Consumer Dispute Resolution Policy adopted by the Certified Online Merchants Association shall be governed by these Rules and also the Supplemental Rules of the Provider administering the proceedings, as posted on its web site.

1. Definitions

In these Rules:

Agreed Jurisdiction means a court jurisdiction at the location of the Online Consumer's address as shown in the Complaint.

COMA refers to the Certified Online Merchants Association.

Date of the Online Transaction means the date on which the Online Consumer communicates his or her acceptance of the offer made by the Online Merchant.

Online Consumer means a natural person who purchases or leases goods or services in an Online Transaction from an Online Merchant, which goods or services are purchased or leased primarily for personal, family, or household purposes.

Online Merchant means a member of COMA who offers goods or services for sale or lease over the Internet.

Online Transaction means a transaction in which goods or services are offered for sale or lease over the Internet, whether on a proprietary web site, in an auction environment, or otherwise, and the offer therefore is accepted

Panel means an administrative panel appointed by a Provider to decide a complaint

submitted by an Online Consumer.

Panelist means an individual appointed by a Provider to be a member of a Panel.

Party means the Online Consumer or the Online Merchant.

Policy means the Online Consumer Dispute Resolution Policy to which every Certified Online Merchant agrees to be bound.

Provider means a dispute-resolution service provider approved by COMA.

A list of such Providers appears at <URL>.

Supplemental Rules means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets.

2. Communications

(a) When forwarding a complaint to the Online Merchant, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to the Online Merchant. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending the complaint to all postal-mail and facsimile addresses shown in COMA's membership roster, updated versions of which will be furnished to the provider by COMA for that purpose; and

(ii) sending the complaint in electronic form (including annexes to the extent available in that form) by e-mail to the e-mail address shown in COMA's

membership roster; and

(iii) sending the complaint to any address the Online Merchant has notified the Provider it prefers and, to the extent practicable, to all other addresses provided to the Provider by the Online Consumer under Paragraph 3(b)(v).

(b) Except as provided in Paragraph 2(a), any written communication to the Online Consumer or Online Merchant provided for under these Rules shall be made by the preferred means stated by the Online Consumer or Online Merchant, respectively (see Paragraphs 3(b)(iii) and 5(b)(iii)), or in the absence of such specification

(i) by telecopy or facsimile transmission, with a confirmation of transmission; or

(ii) by postal or courier service, postage pre-paid and return receipt requested; or

(iii) electronically via the Internet, provided a record of its transmission is available.

(c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including number of copies) stated in the Provider's Supplemental Rules.

(d) Communications shall be made in the language prescribed in Paragraph

12. E-mail communications should, if practicable, be sent in plaintext.

(e) Either Party may update its contact details by notifying the Provider and COMA.

(f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

(i) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or

(ii) if by postal or courier service, on the date marked on the receipt; or

(iii) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.

(g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(f).

(h) Any communication by

(i) a Panel to any Party shall be copied to the Provider and to the other Party;

(ii) the Provider to any Party shall be copied to the other Party; and

(iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.

(i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes.

(j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the notification. Further proceedings concerning the communication and any response shall be as directed by the

Panel (or the Provider).

3. The Complaint

(a) Any Online Consumer may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider approved by COMA. (Due to capacity constraints or for other reasons, a Provider's ability to accept complaints may be suspended at times. In that event, the Provider shall refuse the submission. The person or entity may submit the complaint to another Provider.)

(b) The complaint shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:

(i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Online Consumer and of any representative authorized to act for the Online Consumer in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Online Consumer in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;

(iv) Provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any COMA-approved Provider's list of panelists);

(v) Provide the name of the Online Merchant and all information

(including any postal and e-mail addresses and telephone and telefax numbers) known to the Online Consumer regarding how to contact the Online Merchant or any representative of the Online Merchant, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a);

(vi) Specify the goods or services that is/are the subject of the complaint and the consideration that the Online Consumer paid for same;

(vii) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular, (1) the manner in which the goods or services were misrepresented to you or your agent as to their identity, quality, quantity or condition; or (2) why the goods or services were not delivered within a reasonable time, considering the nature of the goods or services involved; or (3) the fact that the goods or services were never delivered. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.

(viii) Specify, in accordance with the Policy, the remedies sought;

(ix) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the goods or services that are the subject of the complaint;

(x) State that a copy of the complaint, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Online Merchant, in accordance with Paragraph 2(b);

(xi) Certify that the Complainant is a natural person and that the goods or services that were purchased or leased were purchased or leased for personal, family, or household purposes.

(xii) Conclude with the following statement followed by the signature of the Complainant or its authorized representative:

"The Online Consumer agrees that its claims and remedies concerning the goods or services listed, the dispute, or the dispute's resolution shall be solely against the Online Merchant and waives all such claims and remedies against (a) the dispute-resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the Certified Online Merchants Association, as well as its directors, officers, employees, and agents;" and

(xiii) Annex any documentary or other evidence upon which the complaint relies.

(c) The complaint may relate to more than one good or service, provided that the goods or services were offered by the same Online Merchant.

4. Notification of Complaint

(a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall forward the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Online Merchant, in the manner prescribed by Paragraph 2(a), within three (3) calendar days following receipt of the fees.

(b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Online Consumer and the Online Merchant of the nature of the deficiencies identified. The Online Consumer shall have ten (10) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be

deemed withdrawn without prejudice to submission of a different complaint by the Online Consumer.

(c) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) in connection with forwarding the Complaint to the Online Merchant.

(d) The Provider shall immediately notify the Online Consumer, the Online Merchant, and COMA of the date of commencement of the administrative proceeding.

5. The Response

(a) Within twenty (20) days of the date of commencement of the administrative proceeding the Online Merchant shall submit a response to the Provider.

(b) The response shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:

(i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Online Merchant to retain the consideration given by the Online Consumer (this portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Online Merchant and of any representative authorized to act for the Online Merchant in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Online Merchant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B)

material including hard copy;

(iv) Provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any COMA-approved Provider's list of panelists);

(v) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the goods or services that are the subject of the complaint;

(vi) State that a copy of the response has been sent or transmitted to the Online Consumer, in accordance with Paragraph 2(b); and

(vii) Annex any documentary or other evidence upon which the Online Merchant relies.

(c) At the request of the Online Merchant, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

(d) If the Online Merchant does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

6. The Reply

Within ten (10) days of the receipt of a response filed by an Online Merchant, the Online Consumer may file a reply. The reply may address any new matter raised by the Online Merchant in the response and annex any documentary evidence necessary to rebut any new matter raised.

7. Appointment of the Panel and Timing of Decision

(a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

(b) The Provider shall endeavor to appoint one Panelist from the lists provided by the Complainant and the Respondent. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as specified to the Provider within five (5) calendar days of the Provider's submission of the five-candidate list to the Parties.

(c) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision regarding the complaint to the Provider.

8. Impartiality and Independence

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such an event, the Provider shall have the discretion to

appoint a substitute Panelist.

9. Communication Between Parties and the Panel

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

10. Transmission of the File to the Panel

The Provider shall forward the file to the Panel as soon as the last Panelist is appointed.

11. General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such a manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) A Panel shall decide a request by a Party to consolidate multiple

disputes in accordance with the Policy and these Rules.

12. Language of Proceedings

(a) Unless otherwise agreed by the Parties, the language of the administrative proceeding shall be the language of the online offer that was accepted by the Online Consumer, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

13. Further Statements

In addition to the complaint, the response, and the reply, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

14. In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

15. Default

(a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the

Panel shall proceed to a decision on the complaint.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences as it considers appropriate.

16. Panel Decisions

(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

(b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to Paragraph 7.

(c) The Panel's decision shall be made by a majority.

(d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the names of the Panelists.

(e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the scope of Paragraph 5(a) of the Policy, it shall so state. If after considering the submissions, the Panel finds that the Online Merchant has unreasonably delayed the resolution of the matter, the Panel may award simple interest at the rate of ten (10) per cent per annum from the date of the Online Transaction on the consideration to be returned to the Online Consumer.

17. Communication of Decision to Parties

(a) Within three (3) calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, and to COMA. COMA shall immediately communicate to each Party and the Provider, the date for the implementation of the decision in accordance with the Policy.

(b) Except if the Panel determines otherwise (see Paragraph 5(i) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining that an Online Merchant has unreasonably delayed the resolution of the matter (see Paragraph 16(e) of these Rules) shall be published.

18. Settlement or Other Grounds for Termination

(a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding, and no record shall be made thereof.

(b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

19. Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect to a dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the

administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings while the administrative proceeding are pending in respect to a dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See Paragraph 9 above.

20. Exceptional Circumstances

In exceptional circumstances, for example, in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

21. Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

22. Amendments

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written approval of COMA.