

**ICANN'S NEWEST SERVICE PROVIDER:
THE ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE**

© 2002 M. Scott Donahey
Tomlinson Zisko Morosoli & Maser LLP
200 Page Mill Road, Second Floor
Palo Alto, California 94306
Telephone: (650) 325-8666
Facsimile: (650) 324-1808
email: msd@tzmm.com
World Wide Web: www.tzmm.com

The Internet Corporation for Assigned Names and Numbers (ICANN) recently certified a new provider of dispute resolution services under the Uniform Domain Name Dispute Resolution Process (the "UDRP") for dealing with alleged cybersquatting. The new provider, the Asian Domain Name Dispute Resolution Centre (the "ADNDRC"), is a joint project of the China International Economic and Trade Arbitration Commission ("CIETAC") and the Hong Kong International Arbitration Centre ("HKIAC"), with offices in Beijing and Hong Kong. The Supplemental Rules adopted by the ADNDRC contain features which are different from those offered by other UDRP providers. Some of these features go a long way to satisfying critics of the UDRP process who believe that the process tends to favor the trademark holders over the domain name registrants.

A complainant who wishes to use the ADNDRC has the option of filing its complaint with and having its matter administered by either CIETAC in Beijing or HKIAC in Hong Kong. The addresses for electronic filing are cietac@adndrc.org and hkiac@adndrc.org for Beijing and Hong Kong respectively. Complaints and responses can be filed electronically by completing forms available at www.adndrc.org.

Under the UDRP, the complainant initially has the option of selecting either a one person panel or a three person panel, the latter being generally at least twice as expensive as the former. Under the ADNDRC Supplemental Rules, where the complainant has elected a three-person panel, and where the respondent has failed to appear and file its response, the complainant is given the option to proceed under the more expensive three-person panel or to proceed with a one member panel and to have the difference in cost returned to the complainant. ADNDRC Supplemental Rules, Art. 8(2) and (3).

Under the rules of all of the other UDRP providers, where a complainant elects a one person panel and the respondent does not elect a three person panel, the provider will appoint the sole panelist who is to decide the case. This has led to some accusations of unfairness. Because the complainant is the one who chooses the provider, it has been

argued that it selects a provider who tends to appoint panelists with a possible "pro-complainant" mind set. However under the ADNDRC Supplemental Rules, where the Respondent appears and answers the complaint, both parties will be given an identical list of five candidates and asked to rank those candidates in order of preference. The sole panelist to be appointed will be that panelist who receives the highest mutual ranking. ADNDRC Supplemental Rules, Art. 8(4). Where the complainant has elected a sole panelist and where the respondent does not appear and does not respond to the complaint, the ADNDRC will appoint the sole panelist. ADNDRC Supplemental Rules, Art. 8(5).

Thus, a respondent who appears and contests the complaint will have a say in the selection of the sole panelist. This should answer the critics who say the sole panelist appointments have demonstrated a pro-complainant bias.

The supplemental rules allow for a party, following the issuance of a decision, to request by written notice that the panel correct clerical or typographical errors "or any errors of a similar nature. ADNDRC Supplemental Rules, Art. 11(1). The Panel may correct such errors on its own motion within seven days of the rendering of the decision. ADNDRC Supplemental Rules, Art. 11(2).

The supplemental rules limit the parties' written statements to 3,000 words each. ADNDRC Supplemental Rules, Art. 13(1). Should a party exceed 3,000 words, the Panel has the discretion to ignore all words over the stated limit. *Id.*

The online forms for complaints and responses are available in English and Chinese, as are the supplemental rules. The forms are well thought out and are easy to complete. The complaint form requires the complainant to attach a copy of the database search for the domain name in question which identifies the domain name registrant and gives the contact details of the registrant/respondent. Where the complainant is relying on registered trademarks or service marks, the complainant is asked to attach copies of all registration certificates of such marks. Section 8 of the complaint form asks the complainant to briefly summarize the factual and legal grounds on which the complaint is

made and reminds the complainant of the 3,000 word limit applicable to this section. Where the complainant elects a three person panel, the complainant is asked to list three candidates for one of the panel members in order of preference on the complaint form itself. The complainant is asked to furnish documentary verification of service of the complaint and the complaint transmittal cover sheet on the respondent(s) and the concerned registrar(s). Curiously, the form includes a section 14 entitled "Other Relevant Details," with no suggestion as to what type of information should or could be included in that section. Theoretically, the section could be used to circumvent the 3,000 word limit applicable to section 8 of the form.

The response form is very similar to the complaint form. Section 7 of the response form corresponds to section 8 of the complaint form and asks the respondent to briefly summarize the fact and legal grounds on which the respondent believes the complaint to be unfounded. Respondent is also reminded that this section is limited to 3,000 words. The respondent may also elect a three person panel, and if respondent makes such a selection, respondent is asked to list in order of preference the names of three candidates for one of the three panel positions. The respondent is asked to attach to the response a copy of the registration agreement that incorporates the UDRP. Respondent must also attach documentary verification of service of the response on the complainant. Once again, a section is included entitled "Other Relevant Details" without any explanation as to what should be included therein. The danger again exists that this section may be used to circumvent the word limitations imposed elsewhere in the form and by the supplemental rules.

Currently the ADNDRC has a list of 48 domain name panelists from thirteen countries in addition to those from mainland China, Taiwan, and Hong Kong. Non-Asian countries from which ADNDRC panelists have been selected include Australia, Austria, Bermuda, Canada, England, the Netherlands, New Zealand, Spain, and the United States. While centered in Asia, the ADNDRC is truly an international provider, whose roster of

panelists is almost as international in nature as that of the World Intellectual Property Organization

The ADNDRC Supplemental Rules have several innovative provisions. They give the complainant the ability to elect the less expensive single person panel, where the complainant had initially elected a three person panel, but where the respondent has failed to appear and contest the allegations in the complaint. The rules allow the respondent to participate in the selection of the sole panelist, through the ranking of five listed candidates for the single panel position. The ADNDRC Supplemental Rules allow either party to request, following issuance of the award, that the Panel correct clerical or typographical errors or "any errors of a similar nature." It shall be interesting to see how such power shall be used (and/or abused).

The Chinese speaking Asian countries now have an alternative to the three providers currently located in Geneva, New York, and Minneapolis. And all countries of the world have the opportunity to select from a small, carefully selected list of panelists from both inside and outside Asia.