

National Arbitration Forum URS Suggestions and Thoughts

October 18, 2012

Presented By Kristine Dorrain
National Arbitration Forum



Overview

- Problems with URS as currently proposed
- Key components of FORUM's Proposal
- Demonstration of how FORUM could use a portal system like it uses for RES to save costs
- Questions still remaining in the URS (that could affect administrative burdens and costs)



Problems with URS as currently proposed

- Too many administrative touchpoints require hiring additional staff
- Sending cases to an "Expert Examiner" during default (or prior to receipt of a late response) increases efficiencies.
 - Response cases with fees ~\$300-500USD will not allow Provider to cover costs.
 - Not paying for a Determination on defaults allows recovery of costs



- Communications (other than commencement, aka "service") to be provided electronically; this can include through automated emails directing users to a portal.
- Commencement still includes service via email as well as notice via email, fax and mail.



- Currently, for each domain name in dispute, the complainant has to upload the registration and proof of use (proof can be validated by TMCH)
- A direct connect to TMCH (or a way for the complainant to transmit the data directly) would be helpful (though cost to provider could affect cost of URS process).



- "Default" cases proceed to a "prima facie" check by an attorney. If they pass, Registry is directed to change resolution of the domain name.
- There is no public "Determination" for Defaults.
- Case that doesn't pass does not qualify for inclusion as "bad faith complaint."
- Default cure period is still 30 days for free, up to six months, paid.
- There is no six month extension.



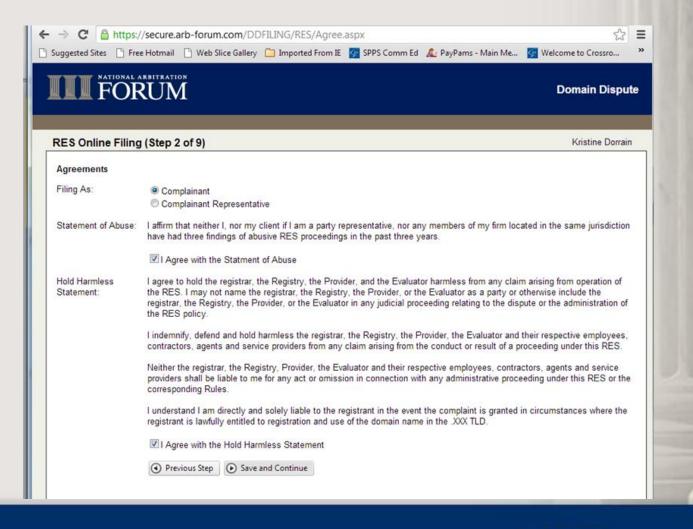
■ Change "24 hour" designations to "one Business Day" with Business Day as a defined term. This accounts for weekends and holidays.



- No deficiency check for Response
- Except if a fee is due from Respondent, submissions not considered a "Response" (that is, case remains a "default") until the fee is paid.



Log in as a party or representative. Agree to terms outlined in RES.





Once a party is in the system, profile information will fill in, but may be updated.

Domain Dispute Online	Fili ×	
	//secure.arb-forum.com/DDFILING/RES/Complainant.aspx	\$2
	te Hotmail 🖰 Web Slice Gallery 🗀 Imported From JE 🥳 SPPS Comm Ed 🧘 PayPams - Main Me	~
Suggested Sites Fi	re Hourian Web Since Gailery Imported From 12 Sa SPFS Comm Ed 22 Payrams - Main Me	welcome to crossio
FOI	RUM	Domain Dispute
RES Online Filin	g (Step 3 of 9)	Kristine Dorrain
Complainant Inforr		
Full Name: *	Kristine Middle Dorrain	
Business: *	Nistine Portain	
Address 1: *	123 Test Way	
Address 2:		
Address 3:		
City: *	Golden Valley	
State:	Marshall Islands (MH)	
Postal Code: *	4546464	
Country: *	▼	
Primary Phone: *	952-516-456	
Alternate Phone:		
Fax:		
Email: *	kdorrain@adrforum.com	
	Complainant has a Representative	
	Previous Step Save and Continue	
	©2012 National Arbitration Forum	



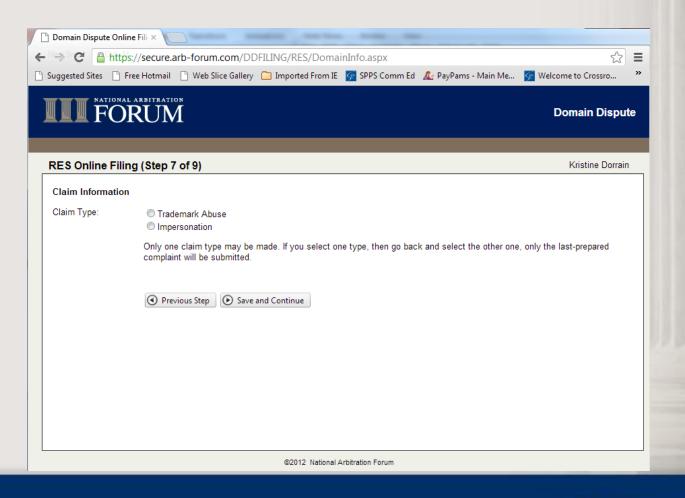
Enter the domain name.

The rest of the data fills in from Whois, but may be updated.

Suggested Sites 🕒 Free	secure.arb-forum.com/DDFILING/RES/Respondent.aspx Hotmail Web Slice Gallery Imported From IE SPPS Comm Ed PayPams - Main Me	☆ :
	Hotmail 🕒 Web Slice Gallery 🧀 Imported From IE 🦅 SPPS Comm Ed 🧘 PayPams - Main Me	
NATIONAL A		✓ Welcome to Crossro ²
III FOR	UM	Domain Dispute
RES Online Filing	(Step 5 of 9)	Kristine Dorrain
Domain/Registrar Inf	ormation	
Domain Name: *	sex.xxx	
Registrar: *	GoDaddy.com, Inc. (R3218-XXX)	
-	and a state of the	
Registrant Information	n	
Full Name: *	ICM Middle Registry	
Business: *	ICM Registry, LLC	
Address 1: *	PO BOX 30129	
Address 2:		
Address 3:		
City: *	Palm Beach Gardens	
State:	•	
Postal Code: *	33420	
Country: *	United States of America (US)	
Primary Phone: * Alternate Phone:	+1.8778093182	
Fax:		
Email: *		
Liliali.	pat@dotxx.com Registrant has a Representative	
	Previous Step Save and Continue	
	©2012 National Arbitration Forum	



Choose type of filing.





Substantive complaint entry.

Recommended that filers have this prepared in a doc and just copy/paste it in.

Domain Disp	pute Online	Fili ×		-				
← ⇒ G	https://	//secure.a	arb-forum.com	/DDFILING/RES/Do	mainInfo.aspx			☆ =
🖺 Suggested Sit	es 🖺 Free	e Hotmail	Web Slice Gal	lery 📋 Imported Fron	IE 🤦 SPPS Comm Ed	🔬 PayPams - Main Me.	🤦 Welcome to Crossro	»
Claim Info	rmation							
Claim Type	9:		emark Abuse ersonation					
			e claim type may submitted.	be made. If you selec	t one type, then go bac	k and select the other o	ne, only the last-prepared compla	int
Trademark Details:	Abuse	* To	tal word Count : 0 / 3	trademark registration			rements for RES Policy <u>Section</u>	
		Legitima Section * To	ate Rights and Int 2(a)(ii). tal word Count : 0 / 3	Select erests. In 300 words o			the requirements for RES Policy	



RES has "additional factors" and clicking on one will expand that option and allow more text.

	nsideration: nherent distinctiveness, exclusivity, or scope of the mark at issue, and whether there is no conceivable good faith or mate use of the domain name(s) in the .XXX TLD * Total word Count: 0 / 300
	extent of presumptive effect afforded by the national registration(s) shown by the Complainant in the relevant diction(s)
the s	cope and extent of actual use of the mark by the Complainant
	her the domain name in the .XXX TLD consists of common word(s) used primarily in association with their primary ning by the respondent for sale or advertising of goods or services related to such primary meaning
	ations concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of Is or of rendering of the service, or other characteristics of goods or services offered or advertised by the respondent
	of the mark to the extent necessary to indicate the intended purpose of a product or service, provided it is used in ordance with honest practices in industrial or commercial matters
Com	her the domain name in the .XXX TLD was registered or acquired prior to the acquisition of rights in the mark by the plainant, or whether circumstances indicate the domain name in the .XXX TLD was likely registered in willful ipation of the acquisition of such rights
	easonability of available time in which to develop or demonstrate plans to develop a corresponding web site for the ain name in the .XXX TLD at issue
resp	her the Complainant offers its goods or services under the same or similar domain name in another TLD, and the ondent's use of the domain name in the .XXX TLD manifests a clear predatory intent with respect to the same or ar goods or services.
Previous :	Step Save and Continue

Email service to parties.

DomainDispute From:

CMSMSG; CMSMSG; CMSMSG; CMSMSG To:

Dorrain, Kristine

Notice of Commencement and Evaluator Appointment for National Arbitration Forum Case Subject:

Message 20121012-1129527055kaf.doc (96 KB)

📆 OnlineFiling__2012-10-12_10-57-17-806__ComplaintFA1210001325911.pdf (69 KB)

FA1210001325911

Kristine F Dorrain v. ICM Registry, LLC ICM Registry

Attached is the Complaint and Notice of Commencement and Appointment for the above case.

Kristine Dorrain

Domain Dispute Case Coordinator



Email sent to Respondent.

Contains explanation and link.

 From:
 DomainDispute
 Sent:
 Fri 10/12/2012 11:30 AM

 To:
 CMSMSG

Cc: Dorrain, Kristine

Subject: Response Filing Information for National Arbitration Forum Case FA1210001325911

FA1210001325911

Kristine F Dorrain v. ICM Registry, LLC ICM Registry

Domain Name: <sex.xxx>

Current Status: Pending Preliminary Hearing Until 10/16/2012

Pending Response Until 10/26/2012

The domain name listed above is the subject of a domain name dispute with the National Arbitration Forum and a new case has been created on the Portal. The complaint has been emailed to you. Please click on the encrypted link below to file a Response; if the link doesn't work, the path is located at the bottom of this email, please copy and paste it into your browser. Case timelines are very short so please review these documents promptly. You have ten business days from the date of this email to file your Response. If you would like an extension to respond please use the username and link from the email with the subject "Welcome to the National Arbitration Forum domain name dispute case portal", sent at the same time as this email, to submit your request and pay the \$100 fee.

Click Here to File a Response

Please contact me at the email address below if you have any difficulties accessing the online response filing system. If you are not currently set up on the Portal, clicking the link will take you to a page to get set up. If you wish to have access to the Portal without immediately filing a Response, please contact me to get set up. If you are set up but your user id is not yet linked to this case, please email me with that information and I will link your user profile to this case.

Sincerely,

Kristine Dorrain

Domain Dispute Case Coordinator



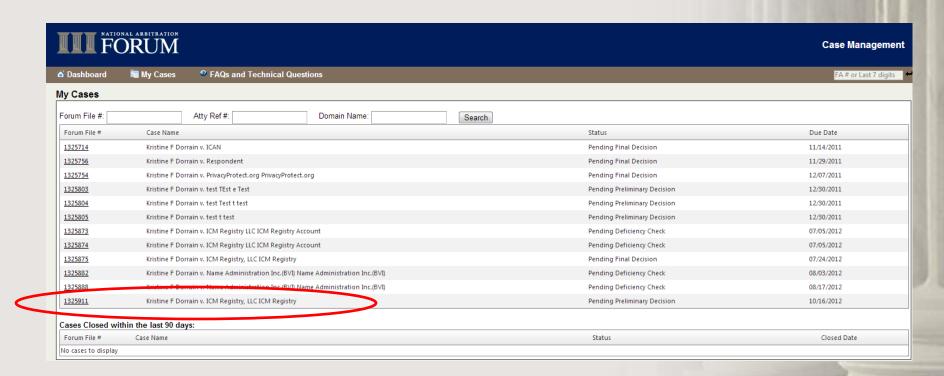
- Entry screens are the same for Respondent.
- Respondent can update contact information.
- Respondent is presented with the Policy and Complainant's Assertions.
- Respondent has equal space to respond.
- Respondent can check additional boxes for applicable defenses (unique to RES).

sponse Informati	ion	
u may provide a re	esponse of 300 words or less to each of the following claims made by the Complainant.	
aim Type:	Trademark Abuse	
	O Impersonation	
ademark Abuse tails:	Identical or Confusing Similarity. Response to Complainant's assertion of how claimant's mark meets the requirements for RES Policy. Section 2(a)(i) Complainant's Assertion * Total word Count: 1/300	
	Legitimate Rights and Interests. Response to Complainant's assertion of how you do not meet the requirements for RES Policy. Section 2(a)(ii) Complainant's Assertion. * Total word Count: 1 / 300	Ш
	You may upload one responsive document. Select	
	Registration and Use in Bad Faith. Response to Complainant's assertion of how you have registered and used the domain name in bad faith under RES Policy. Section 2(a)(iii) Complainant's Assertion * Total word Count: 1 / 300	
	The following were selected for consideration by the Complainant: whether the Complainant offers its goods or services under the same or similar domain name in another TLD, and the respondent's use of the domain name in the .XXX TLD manifests a clear predatory intent with respect to the same or similar goods or services. Complainant's Assertion	
	The following were not selected for consideration by the Complainant, but may be selected by you: the inherent distinctiveness, exclusivity, or scope of the mark at issue, and whether there is no conceivable good faith or legitimate use of the domain name(s) in the .XXX TLD.	
	 the extent of presumptive effect afforded by the national registration(s) shown by the Complainant in the relevant jurisdiction(s). the scope and extent of actual use of the mark by the Complainant. 	



Portal Case Management

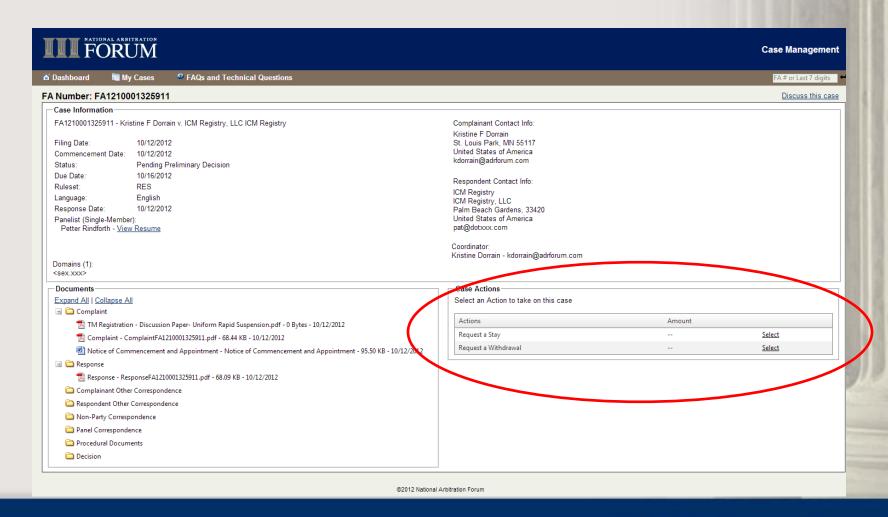
Cases shown at a glance.





Portal Case Management

Interact with case through portal.





Portal Case Management

Panel Determination in Response case made through Portal.

Case Actions	
Preliminary Deter	mination
Selected Action: *	Take down website at sex.xxx
	O Dismiss case
	No finding until Final Determination
Decision Type:*	O Upload Decision
	Build Decision
Build Decision:*	Section 2(a) of the Policy, regarding Trademark Abuse, requires Complainant to prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred. Section 3 highlights evidentiary standards and additional considerations.
	(i) the domain name in the .XXX TLD is identical or confusingly similar to a registered, textual trademark or service mark of national effect that the Complainant owns and uses in the relevant jurisdiction(s) where it is registered;
	Complainant has provided evidence of a registered, textual trademark. The domain name is identical or confusingly similar to the trademark.
	(ii) the respondent has no rights or legitimate interests in respect of the domain name in the .XXX TLD; and
	Complainant has established a prima facie case that Respondent has no rights or legitimate interests in the <sex.xxx> domain name.</sex.xxx>
	(iii) the domain name in the .XXX TLD has been registered and is being used in bad faith or, if unused, is not conceivably susceptible to use in good faith.
	Respondent has registered and used the <sex.xxx> domain name in bad faith, or the domain name is incapable of being used in good faith by Respondent.</sex.xxx>
	(iv) Any additional factors considered by the Panel.
	Complainant has set forth arguments for additional factors.
Submit	cel



- URS 1.1(c): Multiple Respondents are ok if "related."
 - Since proceedings are against the registrant in the Whois, what does that do for/about privacy services?
 - If we proceed against multiple domain names registered to a privacy service:
 - What happens if there are multiple Responses (in multiple languages?)?
 - What if they all filter in over a period of six months?
 - How many times is one Examiner expected to review a complaint?
 - How many Determinations could exist for a single Complaint?



- URS 1.2
 - URS 1.2.6 No word/page limit for three elements of complaint.
 - URS 1.2.7 allows Complainant 500 words of "explanatory text."
- URS 5.4 Allows Respondent 2500 words
- Must standardize word count for Complaint/Response



- URS 4.2 and language
 - Language of notice is English + language of Respondent's region
 - What language is the Complaint?
 - What language is the Response?
 - What language is the Determination?
 - What if multiple Responses in multiple languages?
- Administratively handling complaints/responses in every language will raise costs.
- Examiners are available in most/all languages (affect on Defaults?)



- URS 1.2.6.1(a) allows proof of use to be shown as validated by TMCH, but there is no provision for how that will happen.
 - No requirement that the Provider "go get it."
 - If that is added, that add cost and administrative steps, as well as puts the burden for getting accurate data on the Provider
 - Requirement is that the Complainant submit it.
 - How will Complainant tell TMCH to send specific validated proof of use data?



- URS 6 restricted the changing of content after the complaint defaulted.
 - This serves no purpose and creates issues with respect to:
 - Who polices this?
 - What happens if the content does change?
 - If there is a restriction on changing content, it needs to be placed at the time of lock.



- URS 6 If a Response is received after Default, the domain name shall again resolve to the original IP Address.
 - As this could be anywhere up to a year after the Default, under the current iteration, who keeps track of what that IP Address was?



■ URS 11

- Abusive complaints or material falsehoods: URS appears to hold these against the "party" not counsel. Confirm?
- What if there are multiple complainants/respondents?
- Privacy/proxy services?
- Party uses a fictitious name?
- Does the Providers' list of "bad actors" need to be public?

