

DECISION

Date of decision	: 18 March 2011
Case number	: 2011/01
Appellant	: Internetaannemer
Respondent	: Foundation for Internet Domain Registration in the Netherlands
Appeal against	: Decision by the Foundation for Internet Domain Registration in the Netherlands dated 16 December 2010
Subject	: Summary processing, as provided for in Article 5.2 Complaints and Appeals Regulations, of an appeal against a decision to cancel the appellant's registrarship contract

Introduction

- 1.1 In an e-mail dated 18 January 2011 and received by the Complaints & Appeals Board (C&AB) on 18 January 2011, and in a letter dated 14 January 2011 and received on 19 January 2011, the Appellant appealed to the C&AB appeal against a decision made by SIDN on 16 December 2010.
- 1.2 The documents made available to the C&AB by the Appellant included a copy of the notice issued by SIDN regarding the decision against which the appeal was made. The decision entailed the cancellation with immediate effect, as provided for in Article 8, clause 3, of the General Terms and Conditions for Registrars (General Terms and Conditions), of the registrarship contract between SIDN and the company Internetaannemer. In the said notice, SIDN referred the Appellant to Article 8, clause 6, of the General Terms and Conditions, which states that appeal may be made to the C&AB against a cancellation decision within thirty days of the date of the decision. The thirty-day appeal period is consistent with the provisions of Article 4, clause 2, of the Regulations on the Composition, Working Methods and Procedures of the Complaints & Appeals Board (Complaints and Appeals Regulations).
- 1.3 In accordance with Article 5.8 of the Complaints and Appeals Regulations, on 8 February 2011 the C&AB asked the Appellant to explain within fourteen days why it had not complied with the stipulation of Article 4.2 of the Complaints and Appeals Regulations (and Article 8.6 of the General Terms and Conditions), namely that any appeal against a decision by SIDN should be submitted within thirty days of the decision's publication.
- 1.4 The Appellant provided the requested explanation in a letter received by the C&AB on 25 February 2011. The Appellant explained that the appeal had in fact been submitted within the thirty days. The Appellant said that the reason for the delay was unclear, but was possibly due to the postal strikes that took place at around that time. Furthermore, there had been a four-day delay in the communication of SIDN's decision of 16 December 2010 to the Appellant. The Appellant added that its lawyer had written to SIDN on 3 January 2011, and that the lawyer's communication should also be seen as an objection to termination of the registrarship contract.

2 Abbreviated consideration

- 2.1 Before considering the substance of the appeal, the C&AB needed to establish that the Appellant had appealed against SIDN's decision of 16 December 2010 within the permitted period.
- 2.2 The Appellant's appeal was received by the C&AB on 18 January 2011 by e-mail and on 19 January 2011 by post. Neither of those communications was therefore received within thirty days of the date of the relevant decision, as required by Article 8, clause 6,

of the General Terms and Conditions, and Article 4, clause 2, of the Complaints and Appeals Regulations.

- 2.3 With regard to the Appellant's claim – made in the explanation of the delay in the submission of the appeal – that there was a delay in the communication of SIDN's decision of 16 December 2010, the C&AB points out that any such delay which might have occurred has no bearing on the deadline for submission of an appeal to the C&AB. The General Terms and Conditions and the Complaints and Appeals Regulations both explicitly state that appeal must be made within thirty days of the date of the decision itself.
- 2.4 The Appellant's assertion that a letter sent to SIDN by the Appellant's lawyer on 3 January 2011 should be regarded as an objection to termination of the registrarship contract, as referred to in the Complaints and Appeals Regulations, is also irrelevant in this context. The Complaints and Appeals Regulations include a detailed procedural description, which stipulates that an appeal must be submitted to the C&AB. It is reasonable to expect a lawyer to submit an appeal to the correct body. In this context, the C&AB emphasises that it is entirely independent from SIDN.
- 2.5 In view of the points outlined above, the C&AB takes the view that the Appellant has failed to provide an adequate explanation for the apparent failure to submit an appeal within the period specified in the Complaints and Appeals Regulations and General Terms and Conditions. The Appellant failed to provide such an explanation despite being asked for one by the C&AB again on 8 February 2011.
- 2.6 The Chairman of the C&AB is of opinion that no appeal was made against SIDN's decision of 16 December 2010 within the permitted period. Because the appeal is not therefore admissible, the Chairman has decided to summarily process the appeal and to issue an immediate decision, as provided for in Article 5.2 of the Complaints and Appeals Regulations.
- 2.7 Because the Appellant's appeal is inadmissible for the reasons explained above, the C&AB has not considered the substance of the appeal, i.e. the legitimacy of SIDN's decision of 16 December 2010.

3 **Decision**

The Complaints & Appeals Board of the Foundation for Internet Domain Registration in the Netherlands hereby declares that the Appellant's appeal of 18 and 19 January 2011 is inadmissible.

This decision has been taken by

The Chairman of the Complaints & Appeals Board

The Chairman

The Secretary

Meester AJ van der Meer

Meester HJM Gardeniers