

DECISION

Date of decision	: 3 June 2013
Case number	: 2013/03
Appellant	: LUXiTUDE
Appellant	: Foundation for Internet Domain Registration in the Netherlands
Appeal against	: Decision by the Foundation for Internet Domain Registration in the Netherlands to cancel the Appellant's registrarship contract
Subject	: Summary processing, as provided for in Article 5.2 of the Complaints and Appeals Regulations

Introduction

- 1.1 In an e-mail dated 27 April 2013, the Appellant submitted an appeal to the Complaints & Appeals Board for .nl Domain Names (referred to below as 'the C&AB'), against a decision made by the Foundation for Internet Domain Registration in the Netherlands (referred to below as 'SIDN') regarding the termination of the appellant's registrarship (referred to below as 'the Decision').
- 1.2 In the e-mail to the C&AB, Mr I Smits, writing on behalf of LUXiTUDE, indicated that he wished to make three complaints. The first complaint was against a decision by SIDN to terminate the Appellant's registrarship. According to the Appellant, the latter decision was based solely on SIDN's assertion that an invoice had not been paid. The Appellant disputed that the invoice was unpaid, arguing that he had been entitled to offset the amount payable against a sum that he claimed he was owed. According to the Appellant, SIDN had indicated when giving notice of its decision that the Appellant had until 28 April 2013 to appeal against the decision. The Appellant's second complaint was against SIDN's refusal to provide information required for the collection of amounts payable by third parties in the interests of LUXiTUDE. The third complaint was linked to the second, being against the way that SIDN had handled the Appellant's request to provide the information in question. By way of supporting documentation, the Appellant referred to the correspondence known to SIDN. Finally, the Appellant asked for details of the documentation that the C&AB believed was missing.
- 1.3 On 1 May 2013, the C&AB sent the Appellant confirmation of the receipt of his e-mail. The confirmation was sent initially by e-mail and subsequently by registered post. In the confirmation message, the C&AB stated that it was provisionally treating the Appellant's e-mail as an appeal against a decision by SIDN, as provided for in Article 8.3 of the General Terms and Conditions for Registrars (referred to below as the 'General Terms and Conditions'). That article provides for the immediate cancellation of a registrarship contract between SIDN and a registrar. Article 4, clause 2, of the Regulations on the Composition, Working Methods and Procedures of the Complaints & Appeals Board (referred to below as the 'Complaints and Appeals Regulations') allows for appeal against a decision made pursuant to Article 8.3 of the General Terms and Conditions to be made to the C&AB within thirty days of the decision in question.
- 1.4 In its confirmation message of 1 May 2013, the C&AB informed the Appellant that, as submitted, the appeal document did not satisfy the conditions set out in the Complaints and Appeals Regulations. Article 4.3 of the Complaints and Appeals Regulations lists a number of items that an appeal must include. The appeal as submitted did not include all the listed items; in particular, the Appellant had not provided a copy of the document informing him of the decision against which the appeal was made. In his appeal, the Appellant referred explicitly to the content of that decision. The Appellant was accordingly asked to supplement his appeal within the period specified in the Complaints and Appeals Regulations.

- 1.5 The required appeal fee was received on 14 May 2013. In the period between 2 May and 14 May 2013, the C&AB also received a great deal of material relating to the complaints by e-mail. However, that material did not include the information explicitly requested in the C&AB's confirmation message of 1 May 2013, which is required for the consideration of an appeal. The C&AB accordingly contacted the Appellant by e-mail and by post on 23 May 2013, giving him until 30 May to provide the missing information. The C&AB has not, however, received the requested information.

2 Abbreviated consideration

- 2.1 Before considering the substance of the appeal, the C&AB needed to establish that the appeal against SIDN's decision to cancel the Appellant's registrarship contract satisfied the applicable requirements, as set out in the Complaints and Appeals Regulations.
- 2.2 Article 4.3 of the Complaints and Appeals Regulations sets out certain criteria regarding the contents of an appeal. Although the C&AB explicitly asked the Appellant to supplement the original appeal document, the material required to satisfy the criteria set out in the Complaints and Appeals Regulations was not provided. For example, the appeal was not accompanied by a copy of the notice of the decision to which the appeal related. The absence of a copy of the notice meant, for example, that the C&AB could not ascertain whether the appeal had been submitted within the time period allowed by Article 8, clause 6, of the General Terms and Conditions and by Article 4, clause 2, of the Complaints and Appeal Regulations (i.e. within thirty days of the date of the decision to which the appeal related). It also meant that the C&AB could not ascertain the grounds on which SIDN had arrived at its decision, or what matters it had taken into account. In that context, the C&AB stresses that it is independent of SIDN and does not have access to information regarding SIDN's internal decisions.
- 2.3 The Chairman of the C&AB is of opinion that the appeal made against SIDN's decision, does not satisfy the applicable criteria, as set out in the Complaints and Appeals Regulations and General Terms and Conditions. That conclusion takes account of the fact that the Appellant was explicitly informed by the C&AB of the shortcomings in the appeal documentation and was given the opportunity to supplement the appeal. Because the appeal is therefore inadmissible, 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.
- 2.4 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.

3 **Decision**

The Complaints & Appeals Board of the Foundation for Internet Domain Registration in the Netherlands hereby declares that the Appellant's appeal of 27 April 2013 is inadmissible.

This decision has been taken by the Chairman of the Complaints & Appeals Board.

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Meester AJ van der Meer
Chairman

Meester HJM Gardeniers
Secretary