

DECISION

:
Date of decision 21 December 2012
Case number 2012/02
Appellant : Nettune BV
Respondent : Foundation for Internet Domain Registration in the Netherlands
Appeal against : Decision by the Foundation for Internet Domain Registration in the Netherlands
Call number 301510
Subject : Summary processing, as provided for in Article 5.2 of the Complaints and Appeals Regulations, of an appeal against a decision to cancel the Appellant's registrarship contract

Introduction

1.1 In an e-mail to the Complaints & Appeals Board for .nl Domain Names (C&AB) dated 23 October 2012, the Appellant appealed to the C&AB against a decision to cancel the Appellant's registrarship contract, made by the Foundation for Internet Domain Registration in the Netherlands (SIDN) and registered under Call number 301510 (referred to below as 'the Decision').

1.2 In the appeal e-mailed to the C&AB, Mr J Beukers, writing on behalf of Nettune BV, claimed that SIDN had previously informed the Appellant that SIDN considered the Appellant not to have fulfilled its financial obligations. The Appellant, however, claimed that Nettune BV had provided SIDN with a direct debit mandate, on the basis of which SIDN could have automatically collected the sums due. According to the Appellant, SIDN had from the very start of the Appellant's registrarship failed to collect the sums due via the direct debit system. According to the Appellant, SIDN was in possession of the mandate form, but had failed to process it. The Appellant additionally contended that the charge made by SIDN each time a suspended registrarship account is reactivated was so high that the Appellant wanted the situation resolved before making further manual payments. The Appellant concluded by saying that the appeal fee would be paid as required.

1.3 On 25 October 2012, the C&AB acknowledged receipt of the appeal to the Appellant. In the acknowledgement, the C&AB indicated that it would provisionally regard the Appellant's submission as an appeal against a decision by SIDN, as provided for in Article 8.3b of the General Terms and Conditions for Registrars (referred to below as 'the General Terms and Conditions'). The relevant passage of the General Terms and Conditions deals with 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 (Complaints and Appeals Regulations) allows the affected registrar to appeal to the C&AB against such a decision within thirty days of the date of the decision. Article 4.3 of the Complaints and Appeals Regulations sets out certain criteria regarding the contents of such an appeal. The C&AB drew the Appellant's attention to the fact that, in its current form, the appeal did not satisfy the criteria set out in the Complaints and Appeals Regulations. The Appellant was explicitly asked to supplement the appeal within the period specified in the Complaints and Appeals Regulations in order to bring it into line with the criteria.

1.4 The required appeal fee was received on 9 November 2012. However, the C&AB did not receive from the Appellant any material to supplement the appeal.

2 Abbreviated consideration

2.1 2.1 Before considering the substance of the appeal, the C&AB needed to establish that the appeal 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, no further material was received and the appeal did not therefore satisfy the criteria set out in the Complaints and Appeals Regulations. For example, the appeal was not accompanied by a copy of the notice of the decision to which the appeal related. Nor did it include the Appellant's contact details or a statement as to whether the Appellant wished to be heard in person. The absence of a copy of the notice of the decision to which the appeal related 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). 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, as registered under Call number 301510, 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 of the scope for supplementing the said documentation. Because the appeal is not 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.

2.4 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, as registered under Call number 301510.

3 Decision

The Complaints & Appeals Board of the Foundation for Internet Domain Registration in the Netherlands hereby declares that the Appellant's appeal of 23 October 2012 is inadmissible.

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

[Chairman's signature]

[Secretary's signature]

Meester AJ van der Meer

Meester HJM Gardeniers