

Complaints and Appeals Board

FOUNDATION FOR INTERNET DOMAIN REGISTRATION IN THE NETHERLANDS

DECISION

Place and date of decision : Arnhem, 31 May 2004

Case number : 2004/12

Complainant : Mr C.R.C.B. Moesman, on behalf of First Class Sports
VOF of Rijswijk

Registrant of the domain name to
which the complaint relates : Mr N.P. Franken

Domain name to which the
complaint relates : *firstclassrijswijkfailliet.nl*

1 **Introduction**

- 1.1 Article 20 of the Regulations on the Registration of '.nl' Domain Names (referred to below as 'the Regulations') states that anyone who believes that a particular domain name or third-level domain name is inconsistent with public order or decency may submit a reasoned complaint to the Complaints & Appeals Board (also referred to below as 'the C&AB') about the name's registration.
- 1.2 By e-mail dated 16 January 2004, Mr C.R.C.B. Moesman, acting on behalf of First Class Sports VOF of Rijswijk (also referred to below as 'the Complainant'), submitted a complaint to the C&AB concerning the domain name *firstclassrijswijkfailliet.nl*. Supporting information was submitted by e-mail dated 6 February 2004 and by post (received 9 February 2004).
- 1.3 The letter stated that the business First Class Sports VOF of Rijswijk was not insolvent or about to become insolvent. The Complainant contended that domain name at the centre of the case (*firstclassrijswijkfailliet.nl* meaning 'firstclassrijswijkinsolvent.nl') was intended to harm the business. It was suggested that the name's Registrant, Mr N.P. Franken (referred to below as 'the Registrant') was motivated by a financial dispute with the business. The Complainant accordingly asked the C&AB to order the domain name's immediate removal from the Domain Name Register and the denial of further registrations in a similar vein by the Registrant.
- 1.4 In accordance with Article 10 of the Regulations Governing the Composition, Working Methods and Procedures of the Complaints & Appeals Board (referred to below as the 'Complaints and Appeals Regulations'), the C&AB informed the Registrant of the complaint. The Registrant did not take advantage of the opportunity afforded to him to submit a defence statement or otherwise respond to the C&AB's communication.
- 1.5 The complaint was considered at the C&AB session on 31 March 2004. The Complainant had indicated in advance that he did not wish to avail himself of the opportunity to be heard in person by the Board at the session.

2 **Judgement**

- 2.1 The C&AB has interpreted the complaint made against the domain name *firstclassrijswijkfailliet.nl* as a complaint of the kind referred to in Article 20 of the Regulations. The complaint satisfied the conditions set out in Article 9 of the Complaints and Appeals Regulations. Furthermore, the Complainant made prompt payment to SIDN of the fee due in accordance with Article 9, clause 3, of the Complaints and Appeals Regulations and the C&AB Costs Order.

- 2.2 The question to be decided by the C&AB was whether the domain name *firstclassrijswijkfailliet.nl* was inconsistent with public order or decency.
- 2.3 The C&AB observed that the domain name *firstclassrijswijkfailliet.nl* was predominantly descriptive. The C&AB considered it likely that the Registrant intentionally sought to register a name that communicated an untruth. Furthermore, the C&AB observed that the domain name in question was not additionally offensive, e.g. to the Complainant.
- 2.4 Although the consideration of a complaint, as provided for in Article 20 of the Regulations, is essentially concerned with the relevant domain name itself, this does not preclude the C&AB from taking account of the content of any related website when assessing whether the name is inconsistent with public order or decency. In this context, the C&AB observed that, although the domain name had been linked to a website when the complaint was made, the site in question could no longer be accessed using the name by the time of the C&AB's decision.
- 2.5 The C&AB rules that, although the domain name describes a situation that does not apparently reflect reality, it does not follow that the domain name is therefore inconsistent with public order or decency. The C&AB does not consider the arguments presented by the Complainant to be sufficiently compelling to support any other decision.
- 2.6 The C&AB has not been able to consider the Complainant's request that the C&AB should order the denial of further registrations in a similar vein by the Registrant. If the C&AB considers a complaint to be justified, the C&AB has the authority under Article 12, clause 3, of the Complaints and Appeals Regulations only to deny the Registrant use of the domain name in question, and to order its removal from the Domain Name Register.
- 2.7 The C&AB rules that its authority is limited by the constitution of SIDN, by the Regulations and by the Complaints and Appeals Regulations. The C&AB notes that, in accordance with the provisions of Article 4, clause 3, of the Complaints and Appeals Regulations, the C&AB is obliged to base its ruling primarily on the current Regulations. The Board may additionally take account of jurisprudence regarding the application of the Regulations, general legal principles and its own interpretations. The C&AB is not permitted or able to take account of legal considerations that lie outside the terms of reference described above.

3 **Decision**

The Complaints & Appeals Board of the Foundation for Internet Domain Registration in the Netherlands rules the complaint made on 16 January 2004 by Mr C.R.C.B.

Moesman, on behalf of First Class Sports VOF of Rijswijk, concerning the domain name *firstclassrijswijkfailliet.nl* to be unfounded.

This decision has been issued by Meester A. Oskamp (chairman), in the presence of Meester A.P. Meijboom and Meester R. Eissens, members, and Meester H.J.M. Gardeniers, member of and secretary to the Complaints & Appeals Board.

The chairman

The secretary

Meester A. Oskamp

Meester H.J.M. Gardeniers