

Grammatical and Substantive Clarification of Section 1.2.1

Module 1, Section 1.2.1 “Eligibility” refers to evaluation of the applicant’s “history of cybersquatting behavior” or lack thereof, and suggests at item “k” a determination of whether the applicant:

“k. has been involved in of [sic] a pattern of decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the UDRP, ACPA, or other equivalent legislation. Three or more such decisions... will generally be considered to constitute a pattern.”

This section contains an obvious grammatical error - “in of” - which should be corrected.

First, it should be clarified that the decisions of concern are **adverse** decisions. The phrase “involved in” is unclear as to the nature of such “involvement” in a decision. The literal language is less than clear as to whether (a) being “involved”, in indefinite some way, in a pattern of decisions is an indication that the applicant was engaged in cybersquatting, or whether (b) such decisions of interest are “indicating” cybersquatting. An applicant or individual named in the application may have been “involved” in a “pattern of decisions” such as the registry of the TLD in which the subject domain name was registered. Also, a favorable decision might “indicate” cybersquatting, such as in the recitation of the complainant’s allegations in the otherwise favorable decision. Finally, parties to a dispute will sometimes stipulate to a result, without a substantive adverse finding of any kind in favor of either party.

Secondly, such decisions of interest should be **final** decisions. The Nominet Dispute Resolution Service (DRS), for example, includes an appeal mechanism under which an initial decision may be reversed. Likewise, the UDRP, by its own terms, is subordinate to further court proceedings, and an ACPA proceeding in court may generate a variety of decisions at stages of preliminary motions, trial, and appeal. One example of such further proceedings is WIPO D2000-0505 <Barcelona.com> in which, under UDRP Section 4(k), after a trial-level decision that was appealed to the relevant court of appeal.

Both of these problems can be resolved using the phrasing “adverse, final decisions”.

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