



Office of the Associate General Counsel,
Trademarks & Licensing
Intellectual Property Law

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April 1, 2010

Internet Corporation for Assigned Names and Numbers
International Square
1875 I Street, NW, Suite 501
Washington D.C., 20006

Via electronic mail to : ppdrp-15feb10@icann.org

Attention: Karla Valente

Re: International Business Machines Comments on the Post-Delegation
Dispute Resolution Procedure ("PDDRP"), revised February 2010

International Business Machines ("IBM") appreciates the opportunity to submit comments to the Internet Corporation for Assigned Names and Numbers ("ICANN") on the published Post-Delegation Dispute Resolution Procedure ("PDDRP"), revised February 2010.

IBM recognizes that the standard for holding registry operators liable for infringing conduct under the PDDRP is high, namely "clear and convincing evidence" and understands the grave consequences of registry operators found liable, namely loss of livelihood. IBM submits, however, that the combination of the "clear and convincing" standard with the proof of "bad faith intent" requirement with respect to infringement at the Second Level found on page 4 is a nearly insurmountable burden of proof and recommends that infringement at the Second Level eliminate the "bad faith intent" requirement. For purposes of clarity, IBM recommends the following changes to page 4.

"Complainants are required to prove, by clear and convincing evidence that, through the registry operator's affirmative conduct:

(a) there is a substantial pattern ~~or practice~~ of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent ~~to profits~~ from the systematic registration of domain names

within the gTLD that are identical or confusingly similar to the complainant's mark, which:

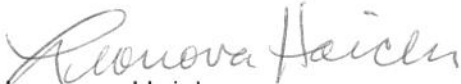
(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) unjustifiably impairs the distinctive character or the reputation of the complainant's mark, or

iii) creates an impermissible likelihood of confusion with the complainant's mark."

Moreover, IBM recommends that the filing fee associated with the PDDRP should be capped by ICANN, and the Provider estimated administrative fees and Panel fees should be limited to operational costs of the provided services.

Respectfully Submitted,



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