Thank you for the opportunity to comment on the DRS policy.

On the specific points raised (Clauses 3 and B20) I am generally in favour of adding a definition of Mediator if it will remove any ambiguity or potential ambiguity in the process and have no opinion on the increase of fees for Expert determinations or Appeals..

I would also like to address the following additional points in the current policy which I believe need to be revised.

* Pattern of registrations
* Advertising on domain names

Pattern of registrations

Clause 5.1.3 of the DRS policy refers to "a pattern of registrations where the Respondent is the registrant of domain names (under .nz or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern" as evidence of an unfair registration but in the decisions under the policy where a “pattern of registrations” has been advanced by the complainant I have not seen evidence advanced that the names as part of the alleged pattern are well known, they simply seem to be relying on there being a large number of registrations.

For example in the ruling on DRS dispute 615 the following appears “The Complainant did not provide evidence of the names associated with these domains or their renown so it cannot be established that the Respondent's activities fall within para 5.1.3 of the Policy. However the number of domains owned by the Respondent would seem consistent with the possibility that he is in the business of registering domain names similar or identical to well known names with a view to trafficking in those names.”

This seems to indicate that even in the absence of any evidence that the registrations are in any way unfair the Experts are open to considering the number of registrations as evidence of one of unfair registrations.

Taking a hypothetical extreme example, coca-cola.fr, coca-cola.de, coke.co.nz, fanta.pl and various other names are registered to either the Coca Cola company or CSC Corporate Domains (apparently on behalf of Coca Cola). It's reasonable to assume that the Coca Cola company has probably registered the relevant domain names in most country specific top level domains meaning it will have well over 200 domain names. This is clearly a “pattern of registrations” which given that the whole issue of the rights to the registered names seems to have fallen into abeyance could presumably be advanced against them in a domain name dispute.

The NZ DRS was originally modelled on the UK DRS and the current revision of that policy http://www.nominet.org.uk/disputes/drs/?contentId=5239 contains the following
“4. d. Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Expert will review each case on its merits.” (Emphasis mine)

I would like to propose that the policy be updated by
1. Including a clause similar to section 4.d of the UK DRS policy and
2. changing “pattern of registrations” to “pattern of unfair registrations” with a requirement on the complainant to provide evidence on both points thus reminding the Experts that there needs to be demonstarted unfairness in the registrations.

Advertising on domain names

Interestingly enough, and also in DRS dispute 615, another issue taken by the Expert as evidence of unfair registration was the presence of a “a Freeparking site with

‘eharmony.co.nz' displayed at the top of the page. That was followed by a number of hyperlinks labelled as ‘Popular Categories'. These categories included one entitled ‘dating' with subsidiary categories ‘mobile dating', ‘singles', ‘gay dating', ‘chat' and speed dating'. Clicking on ‘singles', for example, led to a further page which was also headed ‘eharmony.co.nz' and which was entitled ‘Sponsored listings'. It then gave a list of links to what appeared to be competing dating agencies including such sites as www.speeddate.com and www.passionssearch.com.”

It turns out that this is an accurate description of the default “parking page” that Freeparking, an authorised .nz domain registrar, puts on all domains registered through them that the registrant has neither created other content for nor changed the name servers of the domain name.

I believe that this practice places the registrant at risk as they may not even be aware that Freeparking places these adverts on their client's sites. I'm not a Freeparking customer and I could not find a description of this practice on their public pages, a friend of mine who is a client of theirs was surprised when he found this to be the case, although it is apparently documented on their pages for logged in customers. Apparently there is no revenue sharing with the registrant.

If registrars continue to be permitted to place ads they control on their customers' sites, then a clause should be added to the DRS excluding these pages from consideration.

Even where the ads are not placed by the registrar, I would like to recommend adopting a clause similar to this clause from the UK DRS to clarify the rules regarding the placing of adverts on domains.

“4. e. Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) is not of itself objectionable under the Policy. However, the Expert will take into account:

“i. the nature of the Domain Name;
“ii. the nature of the advertising links on any parking page associated with the Domain Name; and
“iii. that the use of the Domain Name is ultimately the Respondent’s responsibility.”

I believe this clause is fair to both sides of any dispute.

Yours Sincerely

Bruce Clement