ANDREW BROWN
QUEEN'S COUNSEL

Andrew Brown QC, LLB(Hons)(Auckland), BCL(Oxon)
6th Floor, 9 Princes Street, Auckland
P.O. Box 2815, Shortland Street, Auckland 1, New Zealand
Telephone: 64-9-366 6139. Facsimile: 64-9-366 6140
Email: andrew@andrewbrown.co.nz
Website: www.andrewbrown.co.nz

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The Domain Name Commissioner
InternetNZ
Facsimile: (04) 495 2115
WELLINGTON

Dear Domain Name Commissioner

DISPUTE RESOLUTION POLICY FOR THE .nz DOMAIN NAME SPACE

1. This is a submission in response to the DNC's paper *"Establishing a Dispute Resolution Process for the .nz Domain Name Space"*.

2. I strongly support the introduction of a dispute resolution process based on the UK Nominet process (Option 1).

Reasons for such support

3. Over the past 6-7 years I have been involved as counsel in one High Court domain name case and a considerable number of other disputes involving .nz domain names which have not reached Court. I have also been a WIPO panelist under the UDRP for some five years and I am therefore very familiar with the WIPO procedures.

4. The absence of a low-cost administrative dispute resolution policy for .nz domain names has been a source of frustration to clients and counsel in New Zealand over a number of years. The particular reasons for this frustration are:

   (a) In a number of bad faith registrations, the respondent is in the position where he/she has to do very little and has minimum outlay. The trade mark owner or party having prior rights to a mark (the rights holder) has to make all the running by employing a lawyer and obtaining advice. If letters of demand produce no outcome, the rights holder is then obliged to spend serious money in drafting and filing High Court proceedings. In addition to legal fees involved for the proceedings themselves, the filing fees for the High Court are now $1,100 plus a further $400 if an interim injunction is sought;

   (b) Rights holders find it intensively frustrating that a bad faith registrant can register a domain name at a small cost and then force the rights holder to spend money. In my experience, some such registrants see the process as "worth a go" and are simply prepared to sit back and see how far the rights holder is prepared to take matters;

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(c) A further difficulty is where a registrant simply registers a domain name in bad faith but sits tight and does nothing with it (as an interim strategy). In such cases it is not always easy to fashion a remedy. Where the rights holder has a famous mark, reliance can be placed on remarks made by Anderson J in the *Qantas* case or on the principles established by the UK Court of Appeal in the *One in a Million* case. But the facts do not always fit the criteria of those cases.

5. All of these are issues which have been well discussed many times before in other forums. These reasons are what led to the introduction of the UDRP for top level domain names in the first place. They equally justify a dispute resolution policy for .nz domain names.

Option 1 preferred over Option 2

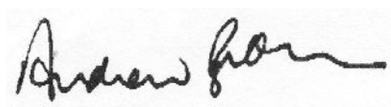
6. My support for Option 1 as the preferred option is because I believe it will be more cost-effective and more responsive to New Zealand's needs.

7. My experience is that even now a number of New Zealand rights holders think twice about having to pay WIPO's charges where they encounter bad faith registrations in top level domain names. Their reaction will be no different if .nz domain names are included within the WIPO regime. As the paper rightly points out, WIPO's charges are likely to be increased and InternetNZ will have little or no say in such price rises. InternetNZ's ability to run a Nominet-type dispute resolution process with a minimum bureaucracy means overheads will be lower and costs more appropriate to New Zealand conditions.

8. I therefore strongly support the introduction of a dispute resolution policy along the lines of Option 1. A local and more responsive dispute resolution policy would, I believe, be preferred by counsel and New Zealand rights holders – certainly most of those that I have represented in the past.

9. If I can provide any additional information, please let me know.

Yours sincerely



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