

February 28, 2005

**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 letter is written in response to InternetNZ's paper "Establishing a Dispute Resolution Process for the .nz Domain Name Space".

**Background**

2. Over the last 5-6 years, Team New Zealand Limited has encountered considerable difficulties with unauthorised registrants of domain names. Team New Zealand's experience has arisen in two capacities. The first has been in its own capacity as operating Team New Zealand. The second arose during the course of the 2000 and 2003 America's Cup held in New Zealand. At that time, as holder of the America's Cup, Team New Zealand managed and operated America's Cup Properties, Inc, the entity which owns all AMERICA'S CUP trade marks and intellectual property.
3. During the course of both the 2000 and 2003 America's Cup events, both Team New Zealand and ACPI were obliged to take action in respect of some 19 different bad faith registrations of domain names incorporating the trade marks AMERICA'S CUP, TEAM NEW ZEALAND and THE AULD MUG. A number of these were top level domain names i.e. .com, .org and .net. However several were .net.nz and .co.nz registrations.
4. The fact that InternetNZ does not have a dispute resolution process proved to be a significant problem for us. The particular issues we encountered were:

*(a) Need to threaten or commence proceedings*

Instead of there being a low cost way of resolving issues, our lawyers were forced to commence or threaten proceedings for passing off, breach of the Fair Trading Act 1986 and in some cases, trade mark infringement.



*(b) High costs of High Court filing fees*

As you can appreciate, where proceedings are necessary to restrain use of a domain name, this involves considerable expense. Not only are there legal fees incurred but also the Government filing fees in the High Court are considerable. Our legal adviser now tells us that there is now a \$1,100 filing fee with a further \$400 if an injunction is sought. We are advised that if it is necessary to sue for trade mark infringement under the Trade Marks Act, these proceedings must be filed in the High Court.

*(c) Delays*

The particular difficulty which we found was that if we encountered an obstinate or difficult registrant who wanted to make commercial use of our trade marks as part of a domain name, that the whole process could be strung along for months. This certainly occurred with .nz domain name disputes.

### **Support for a dispute resolution process**

5. Team New Zealand therefore strongly supports the introduction of a dispute resolution process.
6. Having reviewed the two alternatives, we would prefer the introduction of a Nominet type system as is used in the UK. This seems to have advantages in that:
  - (a) It is local;
  - (b) The use of an initial mediation system provides the opportunity for a low cost resolution before the dispute process itself is embarked on;
  - (c) It seems likely that costs will be lower than under the WIPO system and can be managed more sensibly. The fact that one full time employee is likely to be able to manage the Nominet type system, must surely have considerable costs savings over the centralized WIPO system.
7. The problem with bad faith domain name registrations is an ever-present one. During the last two America's Cups, Team New Zealand Limited found it impossible to prevent such registrations – even by owning a number of key domain name registrations itself (and through ACPI). By registering small typographical variations or using hyphens, additional descriptors on abbreviations, registrants were still able to register and make use of variations of our TEAM NEW ZEALAND and (then) AMERICA'S CUP trade marks.



8. We therefore strongly urge the introduction of a dispute resolution policy. We do not see the maintenance of the status quo as being a sensible or desirable option:

Yours faithfully  
EMIRATES TEAM NEW ZEALAND

A handwritten signature in black ink, appearing to read "Grant Dalton", written over a light grey rectangular background.

**Grant Dalton**  
Managing Director

A small, faint rectangular mark or stamp located in the lower right quadrant of the page.