

## **GUIDE FOR THE COMPLAINANT/ RESPONDENT**

The Complainant must show grounds A, B **and** C to succeed

### **A. The domain name[s] [is/are] identical or confusingly similar to a trademark or service mark in which the Complainant has rights;**

The Complainant has to show valid trademarks applicable to Guernsey, Great Britain and Europe or another part of the world where the website is targeted.

The Complainant should provide the trademarks that the Complainant is relying upon.

In normal circumstances the Complainant will need to file the face of the trademark registration including the Complainant's name (Note that, in line with trademark oppositions, only the owner of the trademark can normally make a complaint, not a licensee).

*The Respondent will in their Response set out any affirmative defences such as nominative fair use (saying that their use is fair and reasonable in the circumstances) or the doctrine of first sale (which prevents a trademark owner from controlling their trademarked goods once the trademarked goods have been released on the market.*

*In this section, the Respondent will also list any challenges to the trade or service mark rights asserted by the Complainant, any opposing arguments that the domain name(s) (is/are) allegedly identical or confusingly similar to the Claimants trademark or service marks or the Respondent could admit this area and argue only on other Grounds B & C]*

*Where the Complainant is legally represented and has been in touch with the Respondent, and at the time of filing by the Claimant, the Respondent is unrepresented then the Claimant*

### **B. The Respondent has rights or legitimate interests in respect of the domain name[s]**

• [In this section, list why the Respondent has rights or legitimate interests in respect of the domain name with relevant supporting evidence and set out examples of circumstances demonstrating the Respondent's rights to or legitimate interests in the domain name. – for example or evidence of the Respondent's use of, or demonstrable preparations to use, the domain name(s) or a name corresponding to the domain name(s) in connection with a bona fide offering of goods or services before the Complainant complained. If the domain name is claimed to have a generic use in local language of the Respondent, proof of this will be needed. If the Respondent (as an individual, business, or other organization) has been or is commonly known by the domain name(s) in issue, even if the Respondent has acquired no trademark or service mark rights or state why the Respondent is making a legitimate non-commercial or fair use of the domain name(s), without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark(s) or service mark(s) at issue.]

In this element, the Complainant will need to deal with any use of the domain / website that might be considered fair use.

### **C. The domain name[s] [has/have] been registered in bad faith**

**And/Or**

#### **The domain name[s] [is/are] being used in bad faith**

- [Say why the Complainant's argument that domain name(s) has been registered and used in bad faith is wrong. [Be aware of Bad Faith grounds in Domain Disputes].
- Was the domain name registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration(s) to the Complainant, as the alleged owner of the trademark or service mark, or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name(s)
- Was the domain name registered in order to prevent the Complainant from reflecting the mark in a corresponding domain name and, in connection therewith, was the Respondent engaged in a pattern of such conduct
- Are the Complainant and the Respondent competitors and was the domain name registered by the Respondent primarily to disrupt the Complainant's business or an intentional attempt to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, etc ]
- If appropriate and the allegation can be substantiated with evidence, the Rules provide that a Respondent may ask the Panel to make a finding of reverse domain name hijacking. ]

## **IV. List of Exhibits**

If not supplied in English, the Panel may require the Respondent to provide English Translations.

Please note the limitations on size within the standard fee.

## General Notes

1. Parties should avoid vast arrays of caselaw and should wherever possible have a single page of caselaw summary and an electronic link to the full case citation.
2. Parties are particularly cautioned against use of UDRP as “persuasive” from other UDRP forums and are reminded:
  - a) unargued cases (i.e. where the Respondent has not responded) are irrelevant and will not be considered by CIDD panellists;
  - b) many UDRP cases have greatly suspect conclusions, others fly in the face of decided caselaw in Courts, - unfortunately this is a result of the very nature of UDRPs, being a cheap solution for obvious cases;
  - c) Court caselaw is of persuasive value;
  - d) CIDD Panellists are required under CIDD laws to ignore decisions in UDRPs for the above reasons;
  - e) Complainants are wise to ensure that the exhibits are focussed on proving the elements set out above and not relying on similar cases based on previous UDRP decisions (which are often flawed) – REMEMBER there is a difference between Evidence and Law
    - most panellists in CIDD know the law
    - Evidence proves your case
    - Caselaw is designed to interpret the law
    - UDRP Prior Decisions are largely entirely irrelevant and is the equivalent of citing a district/county court decision as persuasive in front of the Supreme Court – something that would be “considered most unwise”.
  - f) There is, for example, no need to include previous CIDD complaints, site them by all means but CIDD has the full report.
  - g) Don’t provide a a whois report which does not even show the Registrant name – the Complainant will need to ask the registry for a copy of the full whois showing the registrants full details.
  - h) Limit the number of articles which are used to evidence a well-known status. The arbitrators are pretty savvy about checking Google for evidence about a well-known status claim.
  - i) If you are going to use an internet link, consider using tinyurl.com or bit.ly
  - j) In relation to trade mark registrations, complainants are advised that a summary of trademarks is most useful and that in many cases, only a handful of individual trademarks registrations need to be provided or where these are publicly accessible, the frontpage and class statement plus a short link (preferably as a tinyurl or similar shorturl link) to the online version will usually do.