

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
SUMMARY DISMISSAL OF RECONSIDERATION REQUEST 22-3
26 JULY 2022

I. Introduction and Summary

The Requestor, Zydus Lifesciences Ltd., seeks reconsideration of a decision in a Uniform Domain Name Dispute Resolution Policy (UDRP) proceeding to which the Requestor was a party (UDRP Decision).¹ The Requestor alleges that the UDRP Decision was “not in adherence with the ICANN Rules and contradicts ICANN’s Mission, Commitments, Core Values and established ICANN policies.”² Specifically, the Requestor asserts that the World Intellectual Property Organization’s (WIPO) UDRP Administrative Panel (UDRP Panel) “exhibited extreme bias” and “erred” in its decision because it relied on “misleading arguments made by [Zydus’s opponent in the proceeding] that are devoid of merits (sic) and are factually incorrect.”³ The Requestor further alleges that the UDRP Panel “acted in a biased and discriminatory manner especially because [Zydus] is from a developing nation and [Zydus’s opponent in the proceeding] is from a developed country.”⁴ The Requestor asks that the Board reverse the UDRP Decision and that the “Panelists be forever barred.”⁵

Article 4, Section 4.2(k) of the ICANN Bylaws provides that upon receipt of a reconsideration request, ICANN’s Board Accountability Mechanisms Committee (BAMC) is to review the request “to determine if it is sufficiently stated.”⁶ A request that is not sufficiently stated cannot withstand reconsideration and will be summarily dismissed.⁷ As discussed below,

¹ Request for Reconsideration 22-3, 10 July 2022, <https://www.icann.org/resources/pages/reconsideration-22-3-zydus-lifesciences-request-2022-07-15-en>, Exhibit A, Administrative Panel Decision, Case No. D2022-0880, § 4 at Pg. 2, <https://www.wipo.int/amc/en/domains/decisions/pdf/2022/d2022-0880.pdf>.

² *Id.* § 3, 6 at Pg. 2-4.

³ *Id.* § 6 at Pg. 3.

⁴ *Id.* § 7 at Pg. 4.

⁵ *Id.* § 9 at Pg. 18.

⁶ ICANN Bylaws, 2 June 2022, Art. 4, § 4.2(k).

⁷ *Id.*

the BAMC concludes that Request 22-3 does not meet the sufficiently stated standard because the action challenged by the Requestor is not an action by the ICANN Board or Staff. Rather, the challenged action is that of an independent third party. The BAMC therefore summarily dismisses Request 22-3.⁸

II. Factual Background

The Requestor owns numerous trademarks which comprise or include the word “zydus.”⁹

On 14 March 2022, the Requestor filed a Complaint under the UDRP.¹⁰ Under the express terms of the UDRP, ICANN will not participate in any way in any dispute subject to the UDRP.¹¹ Trademark owners who allege that a domain name was abusively registered can file a complaint with an ICANN-approved dispute-resolution service provider.¹² The Requestor chose to file its complaint with WIPO,¹³ one of six providers currently approved for handling UDRP disputes.¹⁴ WIPO has been an approved UDRP Provider since November 1999.¹⁵

The UDRP proceeding at issue focused on a single disputed domain name: <zydus.com>.¹⁶ To succeed under the UDRP, the Requestor had to establish that: (i) the <zydus.com> domain name is “identical or confusingly similar to a trademark or service mark in which the complainant has rights;” (ii) that the registrant had “no rights or legitimate interests in respect of the domain name;” and (iii) that the “domain name has been registered and is being

⁸ A substantive review of the merits of the Requestor’s claims is beyond the scope of the BAMC’s procedural evaluation. The BAMC’s conclusion is limited to the preliminary procedural assessment of whether the Requestor has sufficiently stated a reconsideration request.

⁹ Request 22-3 Exhibit A, Administrative Panel Decision, Case No. D2022-0880, § 4 at Pg. 2, <https://www.wipo.int/amc/en/domains/decisions/pdf/2022/d2022-0880.pdf>;

¹⁰ *Id.* § 3 at Pg. 1.

¹¹ *Id.* § 6.

¹² *Id.* § 4(d).

¹³ Request 22-3 Exhibit A, Administrative Panel Decision, Case No. D2022-0880, § 3 at Pg. 1, <https://www.wipo.int/amc/en/domains/decisions/pdf/2022/d2022-0880.pdf>;

¹⁴ <https://www.icann.org/resources/pages/providers-6d-2012-02-25-en>.

¹⁵ <https://www.icann.org/resources/pages/schedule-2012-02-25-en>.

¹⁶ Request 22-3 Exhibit A, Administrative Panel Decision, Case No. D2022-0880, § 3 at Pg. 1, <https://www.wipo.int/amc/en/domains/decisions/pdf/2022/d2022-0880.pdf>.

used in bad faith.”¹⁷ In a 24 June 2022 decision, the UDRP Panel determined that the Requestor had satisfied just one of these elements, but had not met its burden to establish the other two. Accordingly, the UDRP Panel denied the Requestor’s Complaint.¹⁸ The UDRP Panel further determined that the Complaint was filed in bad faith and constituted an abuse of the administrative proceeding.¹⁹

On 10 July 2022, the Requestor submitted a request for reconsideration of the UDRP Decision, asserting that it contradicts ICANN’s Bylaws concerning non-discriminatory treatment and openness and transparency, and that the Requestor is harmed because the decision allows the registrant to maintain its registration of <zydus.com>.²⁰

III. Standard of Review

Article 4, Sections 4.2(a) and (c) of ICANN’s Bylaws provide, in relevant part, that “any person or entity materially affected by an action or inaction of the ICANN Board or Staff . . . may submit a request for reconsideration or review of an ICANN action or inaction . . . to the extent the Requestor has been adversely affected by:

- (i) One or more Board or Staff actions or inactions that contradict ICANN’s Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board’s or Staff’s consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board’s or Staff’s reliance on false or inaccurate relevant information.”²¹

¹⁷ UDRP § 4(a), <https://www.icann.org/resources/pages/policy-2012-02-25-en>.

¹⁸ *Id.* § 8 at Pg. 7.

¹⁹ *Id.*

²⁰ Request 22-3 at Pg. 24.

²¹ ICANN Bylaws, 2 June 2022, Art. 4, §§ 4.2(a) and (c).

The BAMC reviews each reconsideration request upon its receipt to determine if it is sufficiently stated.²² The BAMC may summarily dismiss a reconsideration request if the BAMC determines the request: (i) does not meet the requirements for filing reconsideration requests under the Bylaws; or (ii) it is frivolous.²³

IV. Analysis

In evaluating whether a reconsideration request is sufficiently stated, the following factors are considered: (1) is the reconsideration request timely; and (2) has the requestor met the requirements for bringing a reconsideration request? The BAMC concludes that Request 22-3 is not sufficiently stated. Although it was timely filed, Request 22-3 does not identify any ICANN Staff or Board action that allegedly violated a Bylaws provision or established ICANN policy. Therefore, the Requestor has not sufficiently alleged and cannot allege that it has been adversely affected by Board or Staff action or inaction.

A. Request 22-3 Is Timely.

A reconsideration request must be filed “within 30 days after the date on which the Requestor became aware or, or reasonably should have become aware of,” the challenged Staff or Board action or inaction.²⁴ The Requestor states that the challenged action, namely the decision of the UDRP Panel, was published on 24 June 2022, and that the Requestor became aware of the decision on 1 July 2022. The Requestor timely filed Request 22-3 within 30 days, on 10 July 2022.²⁵

²² *Id.* § 4.2(k).

²³ *Id.*

²⁴ *Id.* § 4.2(g)(i)(B).

²⁵ Request 22-3 seeks reconsideration only of the UDRP Panel’s decision. To the extent the Requestor suggested in an email to ICANN org that it wishes to challenge ICANN’s approval of WIPO as an administrative dispute resolution provider under the UDRP, that action was not included in Request 22-3 and has not been properly raised for reconsideration. In any event, such a request would be untimely. WIPO was approved on 29 November 1999, more than two decades prior to the filing of Request 22-3.

B. The Requestor Does Not Meet the Requirements Set Forth Under Article 4, Section 4.2(c) of the ICANN Bylaws for Bringing a Reconsideration Request.

As explained above, Article 4, Section 4.2(c) sets forth three grounds for bringing a reconsideration request. Each of these grounds requires that the reconsideration request pertain to either ICANN Board or Staff action.²⁶ “Staff,” as defined in the ICANN Bylaws, “includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.”²⁷ Request 22-3 does not seek reconsideration of any action of the ICANN Board or ICANN Staff. The sole action the Requestor seeks to have reconsidered is the “Administrative Panel Decision” in WIPO UDRP Case No. D2022-0880.²⁸ Neither the ICANN Board nor the ICANN Staff was involved in that decision. UDRP proceedings are administered by independent administrative dispute resolution providers, in this case WIPO. ICANN approves UDRP providers in accordance with the Approval Process for Dispute-Resolution Service Providers.²⁹ ICANN does not pay UDRP providers or maintain any formal contractual relationship with them.³⁰ UDRP providers therefore are not long-term paid contractors. Under the UDRP, ICANN org “do[es] not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel.”³¹

Consistent with these policies, the panel for the UDRP proceeding that led to the challenged decision was appointed by WIPO³² and the case coordinator and staff for the

²⁶ ICANN Bylaws, 2 June 2022, Art. 4, §§ 4.2(a) and (c).

²⁷ *Id.* § 4.2(a).

²⁸ Request 22-3 § 3 at Pg. 1.

²⁹ Information Concerning Approval Process for Dispute-Resolution Service Providers, <https://www.icann.org/resources/pages/provider-approval-process-2012-02-25-en>.

³⁰ UDRP Providers and Uniformity of Process – Status Report July 2013, <https://www.icann.org/en/system/files/files/uniformity-process-19jul13-en.pdf>.

³¹ UDRP, § 4(k), <https://www.icann.org/resources/pages/policy-2012-02-25-en>.

³² UDRP Panel Decision, Case No. D2022-0880, at Pg. 2, <https://www.wipo.int/amc/en/domains/decisions/pdf/2022/d2022-0880.pdf>.

proceeding were associated with WIPO. WIPO's staff members are not ICANN employees and are not long-term paid contractors of ICANN. They therefore do not qualify as ICANN Staff. The challenged decision was rendered by a panel consisting of three individuals who are not ICANN staff members.³³ Because the UDRP Decision was not an action by the ICANN Staff or ICANN Board, it cannot serve as a basis for a reconsideration request.

In its Request, the Requestor cites the Independent Review Process (IRP) proceeding *Corn Lake LLC v. ICANN* filed by (.CHARITY), ICDR Case No. 01-15-0002-9938 (*Corn Lake IRP*), as a “[s]imilar” case and a basis for its Request.³⁴ Unlike Request 22-3, the *Corn Lake IRP* did challenge a Board action. Specifically, the *Corn Lake IRP* challenged actions taken by the ICANN Board in adopting certain resolutions approving a review mechanism for expert determinations concerning specifically designated string confusion objections during the 2012 new gTLD round.³⁵

In sum, because ICANN played no role in the UDRP proceeding at issue in Request 22-3, there is no action or inaction that was taken by the ICANN Board or Staff to reconsider. Accordingly, the Requestor's request for review of the UDRP Decision does not meet the requirements for bringing a request for reconsideration.

If the Requestor is dissatisfied with the UDRP Decision, the UDRP provides mechanisms for parties to resolve disputes after an administrative proceeding has concluded.³⁶ Such mechanisms do not involve ICANN.

³³ Request 22-3 § 3 at Pg. 1.

³⁴ *Id.* § 8 at Pg. 16.

³⁵ Final Declaration ¶¶ 1.1, 1.2, *Corn Lake LLC v. ICANN* filed by (.CHARITY), ICDR Case No. 01-15-0002-9938, <https://www.icann.org/en/system/files/files/irp-corn-lake-final-declaration-17oct16-en.pdf>.

³⁶ UDRP, § 4(k), <https://www.icann.org/resources/pages/policy-2012-02-25-en>.

V. Conclusion

A substantive review of the merits of the Requestor's claims is beyond the scope of this procedural evaluation. The BAMC's conclusion is limited to the preliminary procedural assessment of whether the Requestor has sufficiently stated a reconsideration request. For the foregoing reasons, the BAMC concludes that Request 22-3 does not meet the requirements for bringing a reconsideration request and therefore it is summarily dismissed.