

Summary of .nz domain name dispute resolution procedure

JAMES & WELLS
**CHAMPIONS
OF INNOVATION.**

Introduction

Disputes involving .nz domain name registrations are resolved under the Dispute Resolution Service Policy and Procedure (DRSP), which are administered by the Domain Name Commission (DNC).

How the DRSP process works

The DRSP uses an online process for registering complaints, responses and replies, although if you are the complainant you will need to send a hard copy of the complaint, together with any supporting documentary evidence, to the DNC.

What a complainant must prove

If you are the “complainant” you must establish **two** factors on the balance of probabilities:

You have rights to a name which is **identical or similar** to the disputed domain name; **and**

The **registration** of the disputed domain name is **unfair**, meaning the domain name:

- (a) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to your rights; or
- (b) has been, or is likely to be, used in a manner which took unfair advantage of or was unfairly detrimental to your rights.

How a respondent can defend a complaint

If you are a “respondent” you can argue a range

of defences, which include that before being aware of the complainant’s objections, you had:

- (a) used or made demonstrable preparations to use the disputed domain name (or a domain name which is similar to the disputed domain name) genuinely in connection with goods or services; or
- (b) been commonly known by the disputed domain name or legitimately connected with a mark which is identical (or similar) to the disputed domain name; or
- (c) made legitimate non-commercial or fair use of the disputed domain name.

Alternatively, you could argue that the disputed domain name is generic or descriptive and you are making fair use of it in a way which is consistent with its generic or descriptive character.

Court proceedings

Proceedings under the DRSP do not prevent you (either as complainant or respondent) from submitting the dispute to a New Zealand court, the Disputes Tribunal or private mediation or arbitration for determination.

Court proceedings may be issued before, during or after the DRSP proceedings have been started. If proceedings are issued before or during the DRSP proceedings, the DNC will suspend those proceedings.

Costs

Under the .nz DRSP there is no fee to file a complaint and no filing fees for the respondent.

Fees are payable by the complainant if the proceedings are referred to an Expert. As at 1 July 2011, the fees are:

- For a complaint involving between 1 and 5 domain names and only one complainant: NZ\$2000 plus GST
- For a complaint involving between 6 or more domain names, and/or more than one complainant: the Domain Name Commission (DNC) will set a fee in consultation with the complainant.

If you wish to appeal the decision of the Expert, you must pay NZ\$7,200 plus GST. Neither party is entitled to an award of costs or damages.

Fees for legal advice are in addition to the above and are determined on a case-by-case basis.

Legal representation

Legal representation is not mandatory in proceedings under the DRSP. However, legal representation is encouraged by the DNC in order to maximise your chances of success either as the complainant or the respondent.

We are experienced in domain name dispute resolution under the DRSP and can help you with a complaint whether you are the complainant or the respondent.

Disclaimer

The above is provided for general information purposes only and does not take the place of specific legal advice. For more specific advice on

all aspects of intellectual property law please contact us.