



INTERNATIONAL
OLYMPIC
COMMITTEE

Legal Affairs Department

Ref. No. ICA/2014/HMS/mlb
By e-mail only

To:
ICANN Board Governance
Committee
Members of the Board Governance
Committee

Lausanne, 30 April 2014

Request for Reconsideration 14-10 dot Sport Limited

Dear Members of the Board Governance Committee,

On April 2, 2014, dot Sport Limited, a division of Famous Four Media, filed with ICANN a Request for Reconsideration (“RFR”) concerning the International Chamber of Commerce (“ICC”) panel’s decision denying dot Sport Limited’s application for the .SPORT gTLD.¹ The International Olympic Committee (“IOC”), in support of SportAccord, respectfully requests that the Board Governance Committee recommend that dot Sport’s RFR be denied.

I. INTRODUCTION

In October 2013, SportAccord, a non-profit entity charged with overseeing multiple sports federations, prevailed in a Community Objection over competing commercial applicant Famous Four for the .SPORT gTLD.² The decision is well-reasoned, and followed the standards provided by ICANN for such determinations.³

Now, nearly six months after the decision, and having already been denied in a related RFR,⁴ Famous Four again seeks to undermine that decision. Famous Four cannot substantively appeal the decision through a RFR, so it has spent the ensuing months devising an argument alleging that the expert panelist who rendered the decision was not “impartial” and therefore that his decision cannot stand. Famous Four’s RFR should be denied for the following reasons.

¹ See Request 14-10: dot Sport Limited, *available at* <http://www.icann.org/en/groups/board/governance/reconsideration/14-10>.

² See SportAccord v. dot Sport Limited, ICC Case No. EXP/471/ICANN/88 (Oct. 23, 2013), *available at* <http://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-1174-59954-en.pdf>.

³ See *id.*

⁴ See Request 13-16: dot Sport Limited.

II. REASONS THE REQUEST FOR RECONSIDERATION SHOULD BE DENIED

A. *The Objection Should Have Been Raised Earlier In The Proper Forum, But Was Not, And Is Waived*

The ICC has impartiality rules in place, as required by the Applicant Guidebook. In particular, Article 7 of the ICC’s Rules of Expertise, requires all potential experts to “sign a statement of independence and disclose in writing . . . any facts or circumstances which might be of such a nature as to call into question the expert’s independence in the eyes of the parties.”⁵ From there, the ICC’s rules give the parties an opportunity to comment on, or object to, the selected expert based on potential conflicts of interest.⁶

Here, as Famous Four acknowledges, the Panelist signed a statement of independence in compliance with Article 7 of the ICC’s Rules of Expertise.⁷ Famous Four was provided with the Panelist’s curriculum vitae when he was assigned to the case.⁸ Famous Four had previously objected to the appointment of another Panelist – demonstrating that it understood how and when to do so under ICC rules.⁹ In this case, even though it had the information necessary and a demonstrated ability and opportunity to raise its concerns, Famous Four did not object to the Expert based on any potential conflict of interest. Only now, after a decision unfavorable to it, and long after it has waived its ability to object under ICC rules, does Famous Four object to the appointed Panelist’s ability to impartially render a decision. This untimely objection has been waived under ICC Rules, as reinforced by ICANN New gTLD Dispute Resolution Procedure, Article 13(d) (“The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.”).

B. *The Objection Lacks Sufficient Substantive Grounds*

Even if Famous Four had properly raised its objection, the objection would not be well-taken. As in Request 14-8, where the Requestor challenged the

⁵ See ICC Rules of Expertise, available at http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-rules-of-arbitration/#article_11.

⁶ See *id.*

⁷ See Request 14-10, pp. 8-10.

⁸ See ICC Case No. EXP/471/ICANN/88, p. 4 (“On July 30, 2013, the ICC Centre notified the Parties of the Expert’s appointment. **It further sent the Parties the Expert’s curriculum vitae** as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.”) (emphasis added).

⁹ See *id.*, pp. 3-4 (“On June 21, 2013, the ICC Centre appointed Mr. Jonathan P. Taylor as expert in accordance with Article 13 of the Rules of Procedure and Article 9(5)(d) of the Rules for Expertise. On July 16, 2013, the ICC Centre acknowledged receipt of Applicant’s objection to Mr. Taylor’s appointment. On July 25, 2013, the ICC Centre informed the Parties that it had decided not to confirm the appointment of Mr. Taylor as Expert in the present case and, therefore that it would proceed with the appointment of another Expert.”).

impartiality of the Expert Panelist assigned to the underlying Community Objection, any relationship between the Panelist and the prevailing Objector in this case is tenuous at best. In Request 14-8, the Requester claimed that the Expert had a “potential appearance of bias” because he “worked for Samsung,” which is a “strategic business partner” of Google, one of the Requestor’s competing applicants for .MUSIC.¹⁰

The BGC noted as follows:

[T]he Expert was retained by Samsung as an expert in an International Trade Commission investigation involving Samsung and Ericsson Inc. relating to electronic devices. The fact that Samsung and Google may have an agreement relating to the licensing of patents – which was entered into on January 26, 2014, six months after this matter was assigned to the Expert and a mere three-weeks before the Expert Determinations were issued simply fails to suggest that the Expert had a bias in favor of Google or against Requester.¹¹

In this case, according to Famous Four: the Expert Panelist works for a law firm that has a client that entered into an agreement with the IOC involving television broadcasting rights. Consequently, the Panelist is, at least, four times removed from any indirect connection:

Panelist → Law Firm → DirecTV → IOC → SportAccord.

The Panelist had no direct connection to or interest in SportAccord or the IOC, and Famous Four does not allege such a connection; rather, it alleges an indirect connection between the Panelist and the IOC, which is not a party to the underlying Community Objection. Further, the .SPORT Community Objection decision does not have any material effect on DirecTV.

The causal connection claimed by Famous Four is thus far too speculative and attenuated. If this little was sufficient to undermine a well-reasoned decision on the merits, almost all civil attorneys would be disqualified from practicing as expert panelists.

C. *Granting This Objection Would Undermine The Finality Of New gTLD Dispute Resolution Decisions*

In addition, the finality of all decisions would be threatened if losing parties like Famous Four were permitted to raise such tenuous RFRs long after a decision was rendered. Reconsideration is not a mechanism for direct, *de novo* appeal of

¹⁰ Request 14-8, p. 11.

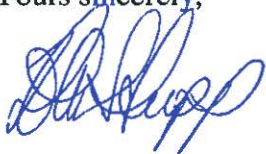
¹¹ *Id.*, p. 12.

panel decisions with which the requester disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN.¹²

III. CONCLUSION

For these reasons, the IOC respectfully requests that the Board Governance Committee recommend that the RFR be denied. Should the BGC require any additional information or submissions from the IOC regarding this matter, please contact the undersigned.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'H. Stupp', is written over the typed name.

Howard M. Stupp
Director of Legal Affairs

¹² See, e.g., Request 13-7: DISH DBS Corp.