

- d/b/a For Sale* WIPO D2000-0662 (14 Jul 2000).
- 54 *McLane Company, Inc. v. Fred Craig* WIPO D2000-1455 (16 Nov 2000); *Bridgestone Firestone, Inc., Bridgestone/Firestone Research, Inc., and Bridgestone Corporation v. Jack Myers* WIPO D2000-0190 (28 Mar 2000).
- 55 *Lockheed Martin Corp. v. Parisi*, D2000-1015 (Jan. 26, 2001). (The Panel relied on two US court cases for its decision.)
- 56 Rules for UDRP para 15a.
- 57 *Westfield Corporation, Inc and Westfield Limited v. Graeme Michael Hobbs (Dynamic Marketing Consultants)* WIPO D2000-0227 (7 Apr 2000).
- 58 Rules for UDRP para 18.
- 59 *Computer Futures Recruitment Consultants v. Keith Phillips and Computerfutures Ltd.*, Dec. AF-106 (16 Feb 2000); and *Weber-Stephen Products Co. v. Armitage Hardware*, Case No. D2000-0187 (22 Mar 2000).
- 60 *Innersense International Inc. v. Keith Manegre*, DeC AF-0278 (20 Jul 2000).
- 61 UDRP para 4(k).
- 62 *Weber-Stephen Products Co., v. Armitage Hardware and Building Supply, Inc.*, 54 U.S.P.Q.2d 1766, 2000 WL 562470 at 2 (N.D. Ill. May 3, 2000).
- 63 *Referee Enterprises Inc v Planet Ref Inc.*, No.00-C-1391 (E.D. Wisc. Jan 24, 2001).
- 64 Steward, D., & James, A., " 'Right of review' under UDRP may be illusory" 30 April 2001, *National Law Journal* pC23.
- 65 *Ibid.*
- 66 Rules for UDRP para 1
- 67 *Ibid.*
- 68 <<http://www.icann.org/registrars/accredited-list.html>>.
- 69 Court of 'Mutual jurisdiction' includes where the registrar is located: UDRP para 4(k).
- 70 *Weber-Stephen Products Co. v. Armitage Hardware and Building Supply Inc.*, 54 U.S.P.Q.2d 1766, 2000 WL 562470, at 2 (N.D. Ill. May 3, 2000).
- 71 Similarly in Australia, under the *International Arbitration Act 1974* (Cth) s8(5)(f) courts can refuse to enforce non-binding arbitration agreements on the parties.
- 72 *Corinthians Licenciamentos LTDA v. David Allen*, WIPO Case No. D2000-0461 (30 May 2000).
- Sallen v. Corinthians Licenciamentos LTDA*, No. 00-11555, 2000 U.S. Dist. Lexis 19976 (D. Mass. 2000).
- 73 Levy, note 16
- 74 Thornburg, E., "Going Private: Technology, Due Process and Internet Dispute Resolution", (Fall 2000) 34 U.C. *Davis L. Rev* 151.
- 75 Mueller, note 2; <<http://www.icann.org/udrp/proceedings-stat.htm>>.
- 76 Elder, J., "Naming Rights", May 2001, Issue 2 *elawpractice.com.au* at p20.
- 77 Such as .biz, .aero, .name, .coop, .pro, .info and .museum.
- 78 See: <<http://www.auda.org.au/policy/wg-dr-2001/>>, accessed 13 March 2002.
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Domain name dispute – Germany

Intellectual Property News, Linklaters and Alliance

Germany: "For the first time, the Federal Supreme Court held that there was no remedy of transfer of disputed domain name to the claimant."

On 11 November 2001, in a precedent-setting decision, the Federal Supreme Court ruled on the prohibitory action taken by Deutsche Shell GmbH regarding the domain "shell.de". The court ruled against the defendant, Andreas Shell, who owned the domain "shell.de". Andreas Shell had acquired the domain name from a domain-broker and had originally been using it for promoting translation and press services. Subsequently he only used it for private purposes.

The Federal Supreme Court confirmed the first and second instance judgments of the Regional Court and the Higher Regional Court of Munich. Its decision is primarily based on the fame of the name and trade mark "Shell" and the outstanding level of awareness of the mark. The Court

ruled that the claimant had interests worthy of protection in that potential clients should not be led to the website of the defendant, and that the public had an interest in not being misled. Further, the court held that it could reasonably be expected of Mr. Shell that he differentiate himself from the claimant, rather than vice versa. The Federal Supreme Court confirmed the general principle of priority with regard to time and did not recognise any general priority of commercial over private interests, but held that this case was an exception for reasons of respect and practicability. People wishing to contact Andreas Shell could more easily be informed about an alternative domain name than people interested in the website of Deutsche Shell GmbH.

For the first time, the Federal Supreme Court held that there was no remedy of transfer of the disputed domain name to the claimant. In this respect, it found for the defendant. Third parties could have the same or even a better right. In practice, an automatic transfer can usually be achieved by filing a "dispute" application with the DENIC (the central registry for domain names under the top level domain ".de"). In this case, a domain name cancelled with DENIC will be automatically transferred to the person who filed the "dispute".

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