

Reconsideration Request Form

1. Requestor Information

Name: Rahul Goel, Representative of Zydus Lifesciences Ltd.

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information Redacted

2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

The Requestor seeks reconsideration of the Board Accountability Mechanisms Committee's Summary Dismissal of Reconsideration Request **22 – 3**.

4. Date of action/inaction:

The dismissal of the Reconsideration Request by the Board Accountability Committee was published on 26 July 2022 (and emailed to us on 28 July 2022).

5. On what date did you become aware of the action or that action would not be taken?

The dismissal of the Reconsideration Request by the Board Accountability Committee was conveyed to us and received by us via email dated 28 July 2022.

6. Describe how you believe you are materially and adversely affected by the action or inaction:

The Board Accountability Mechanism Committee (**'BAMC'**) of the ICANN Forum has not exhibited a clear understanding and interpreting the Reconsideration Request (**'Request'**), dated 11 July 2022 filed by the Requestor against the Respondent, to the extent that they were limited to the preliminary procedural assessment and dismissed the Request upon the same. In doing so, the BAMC lacked the ability to understand and comprehend the facts of the aforementioned Request.

The Request was filed to seek reconsideration of the biased Administrative Panel Decision, *Zydus Lifesciences Ltd. (formerly known as Cadila Healthcare Ltd.) v. Jewlla Privacy LLC/DNS, Domain privacy LTD* **WIPO UDRP Case No. D2022-0880**, granted by the ICANN Staff Panelists **Nick J. Gardner, Pablo A. Palazzi, and Alan L. Limbury.**

The Panelists have erred while deciding on the issue by relying on the misleading arguments made by the Respondents that are devoid of merits and are factually incorrect. The Respondents has attempted to deceive the proceedings by falsifying the facts which the Panelists have based their decision on and have held that the

Respondent has brought the Complaint in bad faith and constitutes an abuse of the administrative proceedings.

The dismissal of the Request by BAMC is based on misunderstanding the Request, resulting in overall failure of ICANN's Policies and Mission, Commitments, and Core Values. The implementation of the Panel's decision along with the dismissed Request, would be a proposed '*inaction*' by the ICANN's Board, which will be covered in '*inaction by a Staff/Board*'.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The BAMC's decision has been in violation of the established ICANN Rules, Bylaws, Mechanisms and Policies as the dismissal of the Request was based on the *preliminary procedural assessment* of whether the Requestor has sufficiently stated a Reconsideration Request.¹

Zydus Lifesciences Ltd. ('**Zydus**'), is a leading player in the pharmaceutical sector (globally) and has a strong presence in the regulated markets of the US, Europe and in the high profile markets of Latin America and South Africa. Zydus has been dedicated to the welfare of the people since 1950s, and continues to innovate with an unswerving focus to address the unmet healthcare needs creating healthier, happier communities across the globe.

¹ BAMC Summary Dismissal of Reconsideration Request 22-3 dated 26 July 2022, available at <https://www.icann.org/en/system/files/files/reconsideration-22-3-zydus-lifesciences-board-accountability-request-23jul22-en.pdf>

The implementation of the Panel's decision would have demonstrable harm to the consumers and public at large, specially patients as the disputed domain name <zydus.com> is identical and confusingly similar to the corporate identity of Zydus, from selling spurious, illegal, and unauthorized drugs, which general public may perceived to be manufactured, sourced and supplied by Zydus itself.

As Zydus is a pharmaceutical company, a deceptive domain name, identical to the corporate identity of the Zydus, is most likely to misguide and mislead the patients/consumers. Additionally, Zydus will suffer substantial financial losses in actual costs involved in the business setup and marketing along with intrinsic value of its branding and reliance on international community recognition.

Therefore, this amounts to bad legal practice, which if comes to become a precedent shall amount to grave injustice to the corporations as well as the consumers.

8. Detail of Board or Staff Action/Inaction – Required Information

It is submitted that this Request for Reconsideration is valid and is based upon concrete grounds. It is in accordance with the Section 4.2(c)(i), 4.2(c)(ii) and 4.2(c)(iii) of the ICANN Bylaws, which allows filing of a Reconsideration request for actions and inactions of the Board and Staff of the ICANN.

The WIPO Centre and the WIPO Domain Name Panelists are both ICANN accredited and approved. This information about WIPO's accreditation with ICANN is mentioned in multiple WIPO and ICANN documents that are mentioned herein:

WIPO Website – WIPO Domain Name Panelists – “*some of these panelists also appear on the list of other ICANN-accredited dispute resolution service providers.*”²

ICANN Website – List of Approved Dispute Resolution Service Providers – “*...Complaints under the Uniform Dispute Resolution Policy (UDRP) may be submitted to any approved dispute-resolution service provider listed below – WIPO (World Intellectual Property Organization).*”³

Rules for uniform Domain Name Dispute Resolution Policy – Rule 6(d) – “*... These candidates may be drawn from any ICANN (Internet Corporation for Assigned Names and Numbers) approved Provider’s list of Panelists.*”

WIPO – Frequently Asked Questions: Internet Domain Names – *how did WIPO get involved in the resolution of disputes?* – “*... under the UDRP, WIPO is the leading ICANN – accredited domain dispute resolution service provider.*”⁴

Further, the definition of **Staff** as per Section 4.2(a) of the ICANN Bylaws states that, “*staff included employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.*”

In cases of domain disputes, administrative proceedings are mandatory. Moreover, UDRP proceedings cannot be initiated with ICANN directly. They must be filed with ICANN-approved Dispute Resolution Providers only.⁵ And since

² <https://www.wipo.int/amc/en/domains/panel.html>

³ <https://www.icann.org/resources/pages/providers-6d-2012-02-25-en>

⁴ <https://www.wipo.int/amc/en/domains/guide/#:~:text=The%20WIPO%20Center%20was%20the,t he%20UDRP%20Policy%20and%20Rules.>

⁵ <https://icannportal.force.com/compliance/s/udrp>

ICANN Rules, Bylaws and Policies contain no mechanism for employing Panelists and hold Administrative Panel Proceedings, ICANN approves and accredits Panelists and dispute resolution service provider to carry this task.

Pursuant to Section 4.2(a) of ICANN Bylaws, these ICANN accredited and approved dispute resolution service providers and Panelists must fall under the purview of 'Staff' as they function as per the guidelines of ICANN which does not have a mechanism to employ such personnel directly.

The Reconsideration request 22-3, which was dismissed on the ground '*UDPR proceeding are administered by independent administrative dispute resolution providers, in this case WIPO. ICANN approved UDRP providers in accordance with the approval process for dispute resolution service providers*', in other words, WIPO is not '*Staff*' and ICANN merely accredits it.

This argument, according to our knowledge, falls short because 'accreditation', as defined by 2013 Registrar Accreditation Agreement means the following:

'1.2 "Accredited" or "Accreditation" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.

Even in general terms and as defined by Black's law dictionary, 'accreditation' means

'To give official authorization or status. To recognize as having sufficient

*academic standards to qualify graduates for higher education or for professional practice. In international law: (1) To acknowledge; to receive as an envoy in his public character, and give him credit and rank accordingly. (2) To send with credentials as an envoy. This latter use is now the accepted one.*⁶

Hence, it is understood that when a dispute resolution service provider is accredited by ICANN to conduct mandatory administrative policy, as prescribed by the UDRP adopted by ICANN, such service providers are extension of ICANN itself.

Therefore, if the Panel is in violation of core values of ICANN provided under Article 3, Section 4.3 (a) and (b) must allow parties for reconsideration requests to be filed based upon the grounds that the core values of ICANN have been violated and there has been no just, fair and transparent resolution of the dispute to the ICANN BAMC.

Further, considering that the eventual implementation of the Administration Panel's Decision is to be done by the Registrar ('Sea Wasps'), and since the said Registrar is also accredited by ICANN⁷, the implementation of a biased Administration Panel's Decision by the Registrar, as accredited by ICANN, would by a proposed '*inaction*' by the Board and Staff of ICANN.

This signifies that the present reconsideration request has standing not merely

⁶ Black's Law Dictionary, p20, 6th ed.

⁷<https://www.icann.org/en/accredited-registrars?filter-letter=s&page=4&sort-param=name&sort-direction=asc>

because of the Non-Discriminatory principle of ICANN Bylaws, but also because the core values of ICANN have been contradicted amounting to an unfair resolution of dispute.

9. What are you asking ICANN to do now?

The BAMC perpetrated extreme bias on the Requestor while considering the Request, therefore, we seek that:

- i. ICANN consider this Reconsideration Request on the basis of its merits and does not limit it to the preliminary procedural assessment;
- ii. The BAMC's Summary Dismissal of Reconsideration Request **22-3** dated **26 July 2022** be reversed;
- iii. The Administrative Panel's decision be reversed and Panelists be forever barred.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

While it is established that WIPO panel is part and parcel of ICANN as it is accredited by ICANN, it must also be stated that the Panel has committed a gross violation of Article 2.3 and 3.1 of ICANN Bylaws by relying on factually incorrect, misleading and inaccurate information put forth by the Respondents.

The Panelists have stated that the Complaint was brought in bad faith and

constitutes an abuse of the administrative proceedings without considering material facts and relying on the false and inaccurate information submitted by the Respondents.

There have been number of discussions⁸ regarding bias in case allocation for UDRP along with choosing the Panelists but ICANN has not taken any step in correcting the wrongs.⁹

It must be noted that it is mandatory for the ICANN and its constituent bodies to operate to the maximum extent in an open and transparent manner. ICANN and its constituent bodies must operate consistent with the procedures designed to ensure fairness. As per Section 4.3(a)(vii), the ICANN must secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.

In the present case, the Complainant has gravely suffered pursuant to the violation of ICANN's core values pertaining to transparency, consistency and fairness. The decision of the Administrative Panel is in grave violations of these core values of ICANN and ICANN has turned a blind eye to it.

⁸ Jay P. Kesan & Andres A. Gallo, The Market for Private Dispute Resolution Services—An Empirical Re-assessment of ICANN-UDRP Performance, 11 Mich. Telecomm. Tech. L. Rev. 285, 295–96 (2005); John Selby, Competitive Provider Selection Under the ICANN UDRP: Are ICANN's Goals Being Achieved?, AusWeb (2004), <http://ausweb.scu.edu.au/aw04/papers/refereed/selby/paper.html>; 3 Michael Geist, Fair.com?: An Examination of the Allegations of Systematic Unfairness in the ICANN UDRP, 27 Brook. J. Int'l L. 903, 922 (2002); The UDRP: Fundamentally Fair, But Far from Perfect, 6 Electronic Com. & L. Rep. (BNA) No. 34, at 937 (Aug. 29, 2001).

⁹ David A. Simon, An Empirical Analysis of Fair Use Decisions Under the Uniform Domain-Name Dispute Resolution Policy, 53 B.C. L. Rev. 65 (2012).

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

No

12a. If yes, please explain why matter is urgent for reconsideration.

13. Do you have any documents you want to provide to ICANN?

The Requestor understands that ICANN has complete access to all pertinent documents in **BAMC's Summary Dismissal of Reconsideration Request 22-3** and **WIPO UDRP Case No. D2022-0880**, the Requestor is further enclosing other necessary documents in the form of **Exhibits** for the reference of the Board.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN [Privacy Policy](#), and agree to abide by the website [Terms of Service](#).



06 August 2022

Signature

Date

Rahul Goel

Representative of Zydus Lifesciences Ltd.

Print Name