



# **usTLD Rapid Suspension Dispute Policy**

2021 Registry Services, LLC

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# 1 Complaint

## 1.1 Filing the Complaint

1.1.1 Proceedings are initiated by electronically filing with a usRS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.

1.1.2 Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees are non-refundable.

1.1.3 One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related.

## 1.2 Contents of the Complaint

The Complaint will be submitted using a form made available by the Provider. The Form Complaint shall include space for the following:

1.2.1 Name, email address and other contact information for the Complaining Party (Parties).

1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.

1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).

1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.

1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.

1.2.6 An indication of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the usRS complaint is filed.

a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce– was submitted to, and validated by, the Trademark Clearinghouse)

b. Proof of use may also be submitted directly with the usRS Complaint. and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name;

and

1.2.6.3. that the domain was registered or is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or

b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or

c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or

d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

## 2 Fees

2.1 Fees as set for in the Provider's fee schedule shall be submitted with the filed Complaint.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

## 3 Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the usRS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a prima facie case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the usRS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

## 4 Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the usRS Provider must immediately notify the usTLD Administrator (via email) after the Complaint has been deemed compliant with the filing requirements. usTLD Administrator notice shall include a copy of the Complaint. Within 24 hours of receipt of the Notice of Complaint from the usRS Provider, the usTLD Administrator shall “lock” the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve.

The usTLD Administrator will notify the usRS Provider immediately upon locking the domain name (“Notice of Lock”).

4.2 Within 24 hours after receiving Notice of Lock from the usTLD Administrator, the usRS Provider shall notify the Registrant of the Complaint (“Notice of Complaint”), sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential effects if the Registrant fails to respond and defend against the Complaint. The Notice of Complaint shall be in English.

4.3 The Notice of Complaint to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.

4.4 The usRS Provider shall also electronically notify the Registrar of record for the domain name at issue.

## 5 The Response

5.1 A Registrant will have 14 Calendar Days from the date the usRS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the usRS Provider.

Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.

5.2 Respondent shall pay a Response Fee as set forth in section 2.2 above if the Complaint lists fifteen (15) or more disputed domain names against the same Registrant. In the case of fifteen (15) or more disputed domain names, the Response Fee will be refundable to the prevailing party. No additional filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) Calendar Days following a Default Determination. For Responses filed more than thirty (30) Calendar Days after a Default Determination, regardless of the number of domain names in the Complaint, shall pay a reasonable non-refundable fee set forth in the Provider Supplemental Rules for re-examination (in addition to any applicable Response Fee required in usRS Procedure 2.2).

5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the usRS Provider if there is a good faith basis for doing so and if the request is received during the Response period, after Default, or not more than thirty (30) Calendar Days after Determination. In no event shall the extension be for more than seven (7) Calendar Days.

5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:

5.4.1 Confirmation of Registrant data.

5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.

5.4.3 Any defense which contradicts the Complainant's claims.

5.4.4 A statement that the contents are true and accurate.

5.5 In keeping with the intended expedited nature of the usRS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.

5.6 Once the Response is filed, and the usRS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day), the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the usRS Provider, for review and Determination. All materials submitted are considered by the Examiner.



5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:

5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or

5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:

5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.

5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.

5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.

5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.

5.9 Other factors for the Examiner to consider:

5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the usRS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.

5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click- per-view revenue) does not in and of itself constitute bad faith under the usRS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

## 6 Default

6.1 If at the expiration of the 14 Calendar Day Response period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.

6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.

6.3 All Default cases proceed to Examination for review on the merits of the claim.

6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.

6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.

6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the usTLD Administrator to unlock the name and return full control of the domain name registration to the Registrant.

## 7 Examiners

7.1 One Examiner selected by the Provider will preside over a usRS proceeding.

7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in usRS proceedings. Specifically, Examiners shall be provided with instructions on the usRS elements and defenses and how to conduct the examination of a usRS proceeding.

7.3 Examiners used by any given usRS Provider shall be rotated to the extent feasible to avoid forum or examiner shopping. usRS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as non- performance, or malfeasance) to be determined on a case by case analysis.

## 8 Examination Standards and Burden of Proof

8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:

8.1.1 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the usRS Complaint is filed; and

8.1.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.

8.1.1.2 Proof of use may also be submitted directly with the usRS Complaint.

8.1.2 The Registrant has no legitimate right or interest to the domain name; and

8.1.3 The domain was registered or is being used in a bad faith.

8.2 The burden of proof shall be clear and convincing evidence.

8.3 For a usRS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered or is being used in bad faith in violation of the usRS).

8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the usRS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.

8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the usRS proceeding will be terminated without prejudice, e.g., a usRS Appeal, .usDRP, or a court proceeding may be

utilized. The usRS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the usRS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the .usDRP.

## 9 Determination

9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.

9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the usRS Provider's website. However, there should be no other preclusive effect of the Determination other than the usRS proceeding to which it is rendered.

9.3 If the Complainant does not satisfy the burden of proof, the usRS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.

9.4 Determinations resulting from usRS proceedings will be published by the usRS Provider on the Provider's website in accordance with the Rules.

9.5 Determinations shall also be emailed by the usRS Provider to the Registrant, the Complainant, the Registrar, and the usTLD Administrator, and shall specify the remedy and required actions of the usTLD Administrator to comply with the Determination.

9.6 To conduct usRS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) Business Days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed.

## 10 Remedy

10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the usTLD Administrator, the Complainant, the Respondent and the Registrar.

10.2 Immediately upon receipt of the Determination, the usTLD Administrator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The usTLD Administrator shall cause the nameservers to redirect to an informational web page provided by the usRS Provider about the usRS. The usRS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the usTLD Administrator shall cause the Whois to reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.

10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.

10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

10.5 If the Examiner rules in favor of Respondent, the Provider shall notify the usTLD Administrator to unlock the name and return full control of the domain name registration to the Registrant.



# 11 Abusive Complaints

11.1 The usRS shall incorporate penalties for abuse of the process by trademark holders.

11.2 A Complaint may be deemed abusive if the Examiner determines:

11.2.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and

11.2.2 (i) the claims or other assertions were not warranted by any existing law or the usRS standards; or (ii) the factual contentions lacked any evidentiary support

11.3 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the usRS proceeding.

11.4 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the usRS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.

11.5 Two findings of “deliberate material falsehood” shall permanently bar the Complainant from utilizing the usRS.

11.6 usRS Providers shall identify and track barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.

11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

## 12 Appeal

12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the usRS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.

12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.

12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the usRS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.

12.4 An Appeal must be filed within fourteen (14) days after a Default or Final Determination is issued and any Response must be filed fourteen (14) days after an appeal is filed.

12.5 Notice of Appeal and findings by the Appeals Panel shall be sent by the usRS Provider electronically to the Registrant, the Complainant, the Registrar, and the usTLD Administrator.

12.6 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

## 13 Other Available Remedies

The usRS Determination shall not preclude any other remedies available to the appellant, such as usDRP (if appellant is the Complainant), or other remedies as may be available in a court of competent jurisdiction. A usRS Determination for or against a party shall not prejudice the party in usDRP or any other proceedings.

# usRS Rules

These Rules are in effect for all usRS proceedings.

usRS proceedings shall be governed by these Rules and the Supplemental Rules of the Provider administering the proceedings, as posted on its web site. To the extent that the Supplemental Rules of any Provider conflict with these Rules, these Rules supersede.

## 1. Definitions

In these Rules:

*Business Day* means a working day as defined by the Provider in its Supplemental Rules.

*Calendar Day* means that all days, including weekends and international and national holidays, shall be counted in determining deadlines and due dates. Provider Supplemental Rules may further define this term.

*Complainant* means the party initiating a usRS complaint concerning a domain name registration.

*Determination* means a written outcome of a usRS proceeding. Determinations may be made at the point of default, after a response, or after an appeal and may be referred to as Default Determination, Final Determination, or Appeal Determination.

*Examiner* means an individual appointed by a Provider to make a Determination.

*Mutual Jurisdiction* means a court jurisdiction in the United States at the location of either (a) the principal office of the Registrar of the domain name in question, or (b) the domain name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time a complaint is submitted to a Provider. If neither (a) or (b) are located within the United States, then Mutual Jurisdiction shall lie in solely in the Commonwealth of Virginia.

*Provider* means a dispute resolution service provider approved by the usTLD administrator for handling usRS cases. Official usRS service providers can be found at <https://www.about.us/policies/suspension-service-providers>.

*Registrar* means the entity with which the Respondent has registered a domain name that is the subject of a usRS complaint.

*Registrant* means the holder of a domain name.

*Respondent* means the holder of a domain name registration against which a usRS complaint is initiated.

*Supplemental Rules* means the rules adopted by the Provider administering a usRS proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the usRS text or these Rules and shall cover such topics as fees, word and page limits and guidelines, file size and format modalities, the means for communicating with the Provider and the Examiner, and the form of cover sheets.

*usRS Procedure* refers to the .us Uniform Rapid Suspension System Procedure (currently found at <https://www.about.us/policies>), which these Rules and the Provider's Supplemental Rules enhance and explain.

*usTLD Administrator* means the entity responsible for operating the .us top level domain in which a disputed domain name is registered.

## **2. Communications**

(a) When forwarding a Complaint, including any annexes, electronically to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending the Notice of Complaint to all email, postal-mail and facsimile addresses shown in the domain name's registration data in the Whois database for the registered domain-name holder, the technical contact, and the administrative contact, as well as to any email addresses for the Respondent provided by the Complainant; and

(ii) providing the Complaint, including any annexes, in electronic form, either via email to the email addresses mentioned in (i) above, or via an email link to an online platform requiring users to create an account.

(b) Except as provided in Rule 2(a), any written communication to Complainant or Respondent provided for under these Rules shall be made electronically via the Internet (a record of its transmission being available).

(c) Any communication to the Provider or the Examiner shall be made by the means and in the manner (including, where applicable, the number of copies) stated in the Provider's Supplemental Rules.

(d) Communications shall be made in English.

(e) Either Party may update its contact details by notifying the Provider, the usTLD Administrator, and the Registrar.

(f) Except as otherwise provided in these Rules, or decided by an Examiner, all communications provided for under these Rules shall be deemed to have been made:

- (i) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or, where applicable
- (ii) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or:
- (iii) if by postal or courier service, on the date marked on the receipt.
- (g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Rule 2(f).
- (h) Any communication subsequent to the Notice of Complaint as defined in Rule 2(a) by (i) an Examiner via the Provider to any Party shall be copied by the Provider to the other Party; (ii) the Provider to any Party shall be copied to the other Party; and (iii) a Party shall be copied to the other Party, to the Provider and by the Provider to the Examiner, as the case may be.
- (i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes. This includes the Provider in sending Notice of Complaint to the Respondent by post and/or facsimile under Rule 2(a)(i).
- (j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Provider of the circumstances. Further proceedings concerning the communication and any response shall be as directed by the Provider.

### **3. The Complaint**

- (a) Any person or entity may initiate a usRS proceeding by submitting a Complaint in accordance with the usRS Procedure, these Rules and the approved Supplemental Rules of the Provider administering the proceeding.
- (b) The Complaint, including any annexes, shall be submitted using an electronic form made available by the Provider and shall:
  - (i) Request that the Complaint be submitted for determination in accordance with the usRS Procedure, these Rules and the Provider's Supplemental Rules;
  - (ii) Provide the name, contact person, postal and email addresses, and the telephone and telefax numbers of the Complainant and of any representative authorized to act for the Complainant in the usRS proceeding;
  - (iii) Provide the name of the Respondent and all other relevant contact information from the Whois record as well as all information known to Complainant regarding how to contact

Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to notify the Respondent of the complaint as described in Rule 2(a);

(iv) Specify the domain name(s) that is/are the subject of the Complaint. The Complainant shall include a copy of the currently available Whois information and a copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the complaint;

(v) Specify the trademark(s) or service mark(s) on which the complaint is based and the goods or services with which the mark is used including evidence of use – which can be a declaration and a specimen of current use in commerce - submitted directly or by including a relevant SMD (Signed Mark Data) from the Trademark Clearinghouse;

(vi) Identify which usRS Procedure elements (usRS 1.2.6) the Complainant contends are being violated by Respondent's use of the domain name. This will be done by selecting the elements from usRS Procedure section 1.2.6 that apply from the list provided on the Provider's Complaint form;

(vii) An optional explanatory statement of no more than 500 words in a separate free form text box;

(viii) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the Complaint;

(ix) State that Complainant will submit, with respect to any challenges to a determination in the usRS proceeding, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;

(x) Conclude with agreement to the following statement:

"Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the Provider and Examiner, except in the case of deliberate wrongdoing, (b) the Registrar, (c) the usTLD Administrator, and (d) the United States Department of Commerce, as well as their directors, officers, employees, and agents.

Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.";

(c) The Complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

(d) The Complaint shall be accompanied by the filing fee, as set forth in the Provider's Supplemental Rules. If fees are not paid within one (1) Business Day of filing, as determined at the location of the Provider, the Complaint shall be automatically dismissed.

(e) The Complaint will not be accepted if the Provider's check of the Repository (see Rule 17) finds the Complainant has exceeded its quota of Abusive Complaints.

(f) usRS Complaints may only be filed against domain names registered in the usTLD.

(g) A usRS Complaint may not be filed against a domain name that is part of an open and active usRS, usDRP, or usNDP case.

(h) The Provider's Supplemental Rules will specify how the Respondent shall be identified in cases where the domain name is registered with a privacy/proxy service.

#### **4. Notice of Complaint and Locking of Domain**

(a) The Provider shall include a copy of the Complaint in its notice to the usTLD Administrator.

(b) The Notice of Complaint to the Respondent shall be transmitted in English.

(c) The electronic copy of the Notice of Complaint may be provided via email or an emailed link to an online platform requiring users to create an account.

#### **5. The Response**

(a) The Response shall:

(i) Provide the name, postal and email addresses, and the telephone and telefax numbers of the Respondent and of any representative authorized to act for the Respondent in the usRS proceeding;

(ii) Respond specifically to each of the grounds upon which the Complaint is based and include any defense which contradicts the Complainant's claims;

(iii) Respondent may request a finding that the Complaint was brought in abuse of the proceedings per usRS Procedure Paragraph(s) 11.2 and/or 11.3;

(iv) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the Complaint;

(v) Conclude with the following statement followed by the signature (in any electronic format) of the Respondent or its authorized representative:

"Respondent agrees that its claims and remedies concerning the dispute, or the dispute's resolution, shall be solely against the Complainant and waives all such claims and remedies against (a) the Provider and Examiner, except in the case of deliberate wrongdoing, (b) the



Registrar, (c) the usTLD Administrator, and (d) the United States Department of Commerce, as well as their directors, officers, employees, and agents.

Respondent certifies that the information contained in this Response is, to the best of Respondent's knowledge, complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(vi) Annex any documentary or other evidence upon which the Respondent relies.

(e) At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider. Requests for an extension of time shall comply with the Provider's Supplemental Rules.

(f) No affirmative claims for relief by the Respondent will be permitted except for an allegation that the Complainant has filed an abusive Complaint.

(g) The Provider's compliance check for a Response shall at least consist of: (1) ascertaining the Response has been filed in a language acceptable under the Rules for that case; and (2) checking for payment of required fees.

(h) The Response must be accompanied by payment of the Response fee or Reexamination fee, as appropriate in relevant cases. If a required fee is not paid within one (1) Business Day, the Response will not be considered and the case may proceed as a Default.

(i) If the Response is determined to be non-compliant for reasons other than non-payment, the Examiner is permitted to make any reasonable inferences from the inadequacy of the Response.

(j) If a Respondent does not submit a response, in the absence of exceptional circumstances, the Complaint shall proceed to a Default Determination.

(k) The Provider should normally not accept a late Response submitted after the domain name registration has expired, even if submitted before the closing date of the late Response window. The provider may in its Supplemental Rules define justified exceptions from this rule.

## **6. Examiner**

(a) Each Provider shall maintain and publish a publicly available list of Examiners and their qualifications.

(b) An Examiner shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Examiner's impartiality or independence. If, at any stage during the usRS proceeding, new

circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Examiner, the Examiner shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Examiner.

#### **7. Communication Between Parties and the Examiner**

No Party or anyone acting on its behalf may have any unilateral communication with the Examiner. All communications between a Party and the Examiner or the Provider shall be made to the Provider in the manner prescribed in the Provider's Supplemental Rules.

#### **8. General Powers of the Examiner**

- (a) The Examiner shall conduct the usRS proceeding in a manner it considers appropriate in accordance with the usRS Procedure and these Rules.
- (b) In all cases, the Examiner shall ensure that the Parties are treated with equality to the extent feasible.
- (c) The Examiner shall determine the admissibility, relevance, materiality and weight of the evidence.
- (d) If one or more domain names are registered with a privacy or proxy service, or the nominal registrant changes after the complaint is filed, it shall be the sole discretion of the Examiner to determine if the respondents are sufficiently related and to dismiss the Complaint with respect to any unrelated domain names. The Examiner may rely on information submitted by the Complainant and/or the Respondent(s) in making its finding.

#### **9. Language of Proceedings**

The language of the proceedings shall be English.

#### **10. Further Statements**

In order to ensure expedience of the proceeding, the Examiner may not request further statements or documents from either of the Parties.

#### **11. In-Person Hearings**

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference).

#### **12. Default**

- (a) If at the expiration of the 14-day Response period (or extended period if granted), the Respondent does not submit an answer, the Complaint proceeds to Default. In case of Default,

the Provider shall appoint an Examiner to review the Complaint for a prima facie case, including complete and appropriate evidence.

(b) When a case enters Default, the Provider shall notify the usTLD Administrator that the Registrant is prohibited from changing content found on the site and that the Registrant is prohibited from changing the Whois information. See usRS Procedure Paragraph 6.2.

(c) The Examiner shall prepare a written Default Determination

(d) If the Examiner finds that the Complainant has made a prima facie case according to the usRS Procedure Paragraph 1.2.6 for any of the domain names in the Complaint, the Default Determination shall so state, including any additional written reasoning the Examiner wishes to append. The Examiner shall order suspension of the domain names for which a prima facie case has been established.

(e) If the Examiner finds that the Complainant has not made a prima facie case according to the usRS Procedure Paragraph 1.2.6, the Default Determination shall so state including any additional written reasoning the Examiner wishes to append. The Provider shall dismiss the Complaint as to the domain names for which a prima facie case is lacking.

(f) If a Response is filed within six (6) months after a Default Determination (or within any extension period granted under usRS Procedure Paragraph 6.4), the Provider shall notify the usTLD Administrator. The usTLD Administrator shall modify the nameservers so that the domain name(s) resolve to the relevant IP address(es) for the domain name(s) as soon as practical, but remain locked as if the Response had been filed in a timely manner before Default.

(g) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules, the usRS Procedure or the Provider's Supplemental Rules, the Examiner shall draw such inferences there from as it considers appropriate.

### **13. Examiner Determination**

(a) An Examiner shall make a Determination (Default, Final or Appeal) of a Complaint in accordance with the usRS Procedure, these Rules and any rules and principles of law that it deems applicable.

(b) The Examiner's Determination shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the Examiner.

(c) Examiner Determinations shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. If the Examiner concludes that the dispute is not within the scope of the usRS Provider, it shall so state.

(d) If after considering the submissions the Examiner finds that the Complaint was brought in bad faith or was brought primarily to harass the domain name holder, the Examiner shall

declare in its Determination that the Complaint was brought in bad faith and constitutes an abuse of the usRS proceeding.

#### **14. Remedies**

(a) The sole remedy available to Complainant pursuant to any usRS proceeding before an Examiner shall be limited to suspension of the domain name for the balance of the registration period.

#### **15. Determinations and Publication**

(a) The Provider shall publish all Determinations and the dates of implementation on a publicly accessible web site, subject to the considerations in Rule 15 (c) and (d) below. See usRS Procedure Paragraphs 9.2 and 9.4. The portion of any Determination that a Complaint was brought in bad faith (see Rule 17) shall be published.

(b) Determinations are subject to change only to correct typographical and clerical errors and shall not be subject to substantive change at the request of any party.

(c) A Final Determination that changes a Default Determination outcome for the same case, shall replace the Default Determination on the Provider's website, unless the Examiner determines both shall be made available and so states in its Final Determination.

(d) A Final Determination that upholds a Default Determination outcome for the same case may be published together on the Provider's website, or the Final Determination may replace the Default Determination, at the Examiner's discretion.

(e) An Appeal Determination that changes a Default or Final Determination, either the outcome or a finding of abuse, shall replace the Default or Final Determination on the Provider's website, unless the Examiner or Panel determines both shall be made available and so states in its Appeal Determination.

(f) An Appeal Determination that upholds a Default or Final Determination, either the outcome or a finding of abuse, may be published together on the Provider's website, or the Appeal Determination may replace the Default or Final Determination, at the Examiner's discretion.

(g) Determinations related to the same domain names and/or parties, but not part of the same case, need not be linked in any way on the Provider's website.

#### **16. Settlement or Other Grounds for Termination**

(a) If, before the Examiner's Determination, the Parties agree on a settlement, the Examiner shall terminate the usRS proceeding.

(b) If, before the Examiner's Determination is made, it becomes unnecessary or impossible to continue the usRS proceeding for any reason, the Examiner shall terminate the proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Examiner.

### **17. Effect of Court Proceedings**

(a) In the event of any legal proceedings initiated prior to or during a usRS proceeding in respect to the domain-name that is the subject of the Complaint, the Examiner shall have the discretion to decide whether to suspend or terminate the usRS proceeding, or to proceed to a Determination.

(b) In the event that a Party initiates any legal proceedings during the pendency of a usRS proceeding in respect to the domain-name that is the subject of the Complaint, the Party shall promptly notify the Examiner and the Provider. See Rule 7 above.

### **18. Abusive Complaints**

(a) The Examiner may, of its own accord, find that a Complaint is abusive or contains deliberate material falsehoods.

(b) A Respondent may, in its Response, allege that a Complaint was brought in an abuse of the usRS process or contains deliberate material falsehoods.

(c) Any findings by an Examiner as to abusive Complaints or deliberate materials falsehoods shall be so stated in the Determination, along with sufficient rationale to justify the finding to any potential Appeal Panel.

(d) Any Provider registering a case of abuse as described in the usRS Procedure Paragraph 11 shall, within one (1) Business Day submit information of the abuse case to an abuse case database.

(e) The abuse case database shall be electronically accessible to all Providers.

(f) Upon receipt of a Complaint, the Provider shall verify the admissibility of the Complaint against the abuse case database in line with applicable usRS Procedure provisions and dismiss the Complaint if not admissible.

### **19. Appeal**

(a) The Provider is responsible for providing the entire record in the underlying proceeding to the Appeal Panel.

(b) Appellant shall have a limited right to introduce new admissible evidence that is material to the Determination subject to payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.

(c) Appellee shall not be charged any additional fee and shall have the right to file a Reply to the Appellant's additional statements within the time period identified in the Provider's Supplemental Rules.

(d) If the Respondent prevailed and the domain name is no longer under the usTLD Administrator's suspension or lock, the Provider shall notify the usTLD Administrator to re-lock the domain name subject to the outcome of the Appeals process, but the domain name shall continue to resolve per usRS Procedure Paragraph 12.3.

(e) If any domain name that is the subject of an Appeal is expired at the time of the filing of the Appeal, the Provider shall reject the Appeal for want of a remedy, unless the Appeal is only filed under usRS Procedure Paragraph 11.8.

(f) The remedies for an Appeal are limited to:

(i) Affirmation of the Final Determination and the Remedy ordered. If the domain name is suspended, it shall remain suspended. If the domain name is with the Registrant, the usTLD Administrator shall promptly unlock the domain name following receipt of the Appeal Determination.

(ii) Overruling of the Final Determination and the Remedy ordered. If the domain name is suspended, the usTLD Administrator shall unlock the name and return full control of the domain name registration to the Registrant. If the domain name is with the Registrant, the usTLD Administrator shall immediately follow the steps in usRS Procedure Paragraph 10.2 to suspend the domain name.

(iii) Overruling an Examiner's finding that a Complaint was abusive or contained a deliberate material falsehood. The Appeal Panel shall re-issue the Final Determination with changes the Appeal Panel deems appropriate.

(g) The Providers' Supplemental Rules for usRS Appeals, other than those stated above, shall apply.

## **20. Exclusion of Liability**

Except in the case of deliberate wrongdoing, neither the Provider nor an Examiner shall be liable to a Party for any act or omission in connection with any usRS proceeding under these Rules.

## **21. Amendments**

The version of these Rules in effect at the time of the submission of the Complaint to the Provider shall apply to the usRS proceeding commenced thereby. These Rules may not be amended without the express written approval of the United States Department of Commerce.

**Classification**

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