SEX
TMCH SUNRISE
DISPUTE RESOLUTION POLICY
(SDRP)
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This TMCH Sunrise Dispute Resolution Policy (the “SDRP”) is incorporated by reference into the Registry-Registrar Agreement. This SDRP shall become effective as of October 5, 2015 and shall apply to registration of a second level domain name under the TMCH Sunrise provisions in a new gTLD operated by ICM Registry LLC and/or its subsidiaries and affiliated entities (“ICM gTLD”).

1. Purpose

Domain names in ICM gTLDs can be registered by third parties or reserved by the Registry. This SDRP describes standards that will be applied to resolve challenges to names registered during the ICM gTLD TMCH Sunrise Registration Period on the basis of (a) improper application of the TMCH Sunrise Registration criteria to the ICM gTLD and/or (b) speculative registrations of otherwise non-exclusive and generic terms obtained under a pretextual claim of formal trade or service mark rights unsupported by substantial use of the subject trade or service mark.

2. Applicable Disputes

A registered domain name in an ICM gTLD will be subject to an administrative proceeding upon submission of a complaint that the TMCH Sunrise Registration was improper under one or more of the following circumstances:

a. Improper TMCH Sunrise Registration - Formal Ineligibility

A complaint under this section shall be required to show by reasonable evidence that a registered domain name in the ICM gTLD does not comply with the provisions of the Registry’s TMCH Sunrise Program. The complaint must prove one or more of the following elements:

i. At time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or

ii. The domain name is not identical to the mark on which the registrant based its TMCH Sunrise registration in accordance with the TMCH “identical match” rules;

1 For the purposes of analysis of this element, neither the ICM gTLD itself, nor the “dot,” shall be considered.
b. Improper TMCH Sunrise Registration - Substantive Ineligibility

A complaint under this section shall be required to show by reasonable evidence that a registered domain name in the ICM gTLD does not satisfy the “in-use” standard. The complaint must prove any one of the following elements:

i. Token use or Non-use: The trademark registration on which the domain name registrant based its TMCH Sunrise registration is not the subject of the actual and substantial use in commerce in the issuing jurisdiction on which the TMCH entry is based, or has been unused in such jurisdiction for a sufficient period to constitute abandonment thereof in such jurisdiction; or

ii. Pretextual TMCH Sunrise Registration: The domain name is otherwise a non-exclusivve and generically applicable term having a primary meaning in relation to goods or services other than those for which the trade or service mark was obtained; and the domain name is not used by the registrant in connection with the goods and/or services on which the subject trademark registration is based. The following circumstances in particular shall, without limitation, constitute evidence of Pretextual TMCH Sunrise Registration:

(a) The registrant’s use, licensing or offer of licensing of use of the domain name for the primary purpose of exploiting such non-trademark primary meaning; or

(b) Circumstances indicating a pattern by the Registrant or in concert with others, of TMCH Sunrise Registrations based on formal claims of trade or service mark rights in alleged marks which are otherwise non-exclusive and generically applicable terms having a primary meaning in relation to goods or services other than those for which the trade or service mark was obtained; and

(c) As an aggravating factor in connection with any of the circumstances above, whether the term in question is particularly generically applicable in connection with the ICM gTLD in which the TMCH Sunrise Registration was made.
c. SDRP Effective Dates

Any SDRP claim brought under this Policy for domain names registered in ICM TLDs shall be brought before October 5, 2016.

3. Evidence and Defenses - [Intentionally Left Blank]

4. Remedies

The remedies available to a complainant for a proceeding under this SDRP shall be limited to:

a. Improper Sunrise Registration - Formal Ineligibility

If the Panelist finds that the domain name was improperly registered during the TMCH Sunrise period, the sole remedy for a Complaint filed under SDRP 2(a) shall be cancellation of the registration and return of the cancelled domain name to the pool of available names available for registration in the TLD. If the Complainant independently qualifies to register the domain name as a Registrant during the ICM gTLD General Availability period, such Application may be made to the Registry, or to Registrar, as applicable.

b. Improper Sunrise Registration - Substantive Ineligibility

If the Panelist finds that the domain name was improperly registered during the TMCH Sunrise period, the sole remedy for a Complaint filed under SDRP 2(b) shall be (i) suspension of the domain name for the remaining term of registration, (ii) cancellation and return of the domain name to the pool of names available for registration in the ICM gTLD, or (iii) reservation by Registry and subsequent offer of registration under such terms as the Registry may determine, in its sole discretion, including on a first-refusal basis to the party filing the Complaint.

5. Procedure

a. Dispute Resolution Provider / Selection of Procedure

A Complaint under this SDRP shall be submitted to the National Arbitration Forum (“Forum”) by submitting the complaint directly to the Forum. The Forum will administer the proceeding and select a qualified and eligible Panelist (“Panelist”). The Forum has established Rules for National Arbitration Forum’s Sunrise Dispute Resolution Policy ("Rules"), setting forth a fee schedule and other technical and process requirements for handling a dispute under this SDRP. The proceedings under this SDRP will be conducted according to this SDRP and the applicable Rules of the Forum.
b. Registry’s or Registrar’s Involvement

Neither the Registry nor Registrar will participate in the administration or conduct of any proceeding before a Panelist. In any event, neither the Registry nor the Registrar is or will be liable as a result of any decisions rendered by the Panelist. Any TMCH Sunrise-registered domain names in the ICM gTLD involved in a SDRP proceeding will be locked against transfer to another domain name holder or another Registrar during the course of a proceeding. The contact details of the holder of a registered domain name in the ICM gTLD, against which a complaint has been filed, will be as shown in the Registrar’s publicly available Whois database record for the relevant Registrant. The Registry and the applicable Registrar will comply with any Panelist decision and make all appropriate changes to the status of the domain name registration(s) in their Whois databases.

c. Parties

The Registrant of a registered domain name in the ICM gTLD shall be promptly notified by the Forum of the commencement of a dispute under this SDRP, and may contest the allegations of the complaint or show other cause why the remedy requested in the complaint should not be granted in accordance with this SDRP. In all cases, the burden of proof shall be on the complainant, and default or other failure of the holder of the registered domain name shall not constitute an admission to any allegation of the complaint. The Forum shall promptly notify all named parties in the dispute, as well as the registrar and the Registry of any decision made by a Panelist.

d. Decisions

(i) The Panelist may state the basis on which the decision is issued in summary format and may include such commentary or guidance as the Panelist deems appropriate;
(ii) The decision shall state whether a registered domain name in the ICM gTLD is to be cancelled or the status quo maintained; and
(iii) Decisions made under this SDRP will be publicly published by the Forum on its website.

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2 The Registry may, though its agreement with Registrars, instead require the Registrar to perform the lock and/or implementation steps.
e. Implementation of a Lock and the Decision

If a Panelist’s decision requires a change to the status of a registered domain name, the Registry will wait ten (10) business days after communication of the decision before implementing that decision, unless the registrant submits to the Registry (with a copy to the Forum) during that ten (10) day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that the registrant has commenced a lawsuit to preserve its claimed rights in a court of competent jurisdiction over the parties and the registered domain name. If such documentation is received no further action shall be taken until the Registry receives (i) evidence satisfactory to the Registry of an agreed resolution between the parties; (ii) evidence satisfactory to Registry that registrant’s lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing such lawsuit or otherwise directing disposition of the registered domain name.

f. Representations and Warranties

Parties to a dispute under this SDRP shall warrant that all factual allegations made in the course thereof are true and correct to the best of their knowledge, shall remain subject to all representations and warranties made in the course of registration of a disputed domain name.

6. Maintaining the Status Quo

During a proceeding under the SDRP, the registered domain name shall be locked against transfers between registrants and/or registrars and against deletion by registrants.

7. Indemnification / Hold Harmless

The parties shall hold the Registrar, the Registry, the Forum, and the Panelist harmless from any claim arising from operation of the SDRP. Neither party may name the Registrar, the Registry, the Forum, or the Panelist as a party or otherwise include the Registrar, the Registry, the Forum, or the Panelist in any judicial proceeding relating to the dispute or the administration of the SDRP policy. The parties shall indemnify, defend and hold harmless the Registrar, the Registry, the Forum, the Panelist and their respective employees, contractors, agents and service providers from any claim arising from the conduct or result of a proceeding under this SDRP. Neither the Registrar, the Registry, Forum, the Panelist and their respective employees, contractors, agents and service providers shall be liable to a party for any act or omission in connection with any administrative proceeding under this SDRP or the corresponding Rules. The complainant shall be directly and

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3 The Registry may, though its agreement with Registrars, instead require the registrar to perform the lock and implementation steps.
solely liable to the registrant in the event the complaint is granted in circumstances where the registrant is lawfully entitled to registration and use of the registered domain name(s) in the ICM gTLD.

8. Relation To Other Dispute Resolution Policies

This SDRP is in addition to and complementary with the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Uniform Rapid Suspension System ("URS") and any charter, nexus, or eligibility dispute policies adopted by ICANN or the Registry.

9. Effect of Other Proceedings

The administrative proceeding under the SDRP shall not prevent either party from submitting a dispute concerning the registered domain name in the ICM gTLD to concurrent administrative proceedings or to a court of competent jurisdiction for independent resolution during a pending SDRP administrative proceeding or after such proceeding is concluded. Upon notice of such other proceeding, the SDRP proceeding may be terminated (in the sole discretion of the Panelist) in deference to the outcome of such other proceeding.

10. SDRP Modifications

The Forum reserves the right to modify this SDRP at any time subject to the terms of its MOU with the Registry. Such revised SDRP shall be posted on the Forum Website at least thirty (30) calendar days before it becomes effective; unless this SDRP has already been invoked by the submission of a complaint, in which event the version of the SDRP in effect at the time it was invoked will apply until the dispute is concluded. In the event that registrant objects to a change in this SDRP, the sole remedy is to cancel the registration, provided that registrant will not be entitled to a refund of any fees paid in connection with such registration.

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4 The Forum may correct typographical errors without notice.