

Rules for Sunrise Challenge Policy

Administrative proceedings for the resolution of disputes pursuant to the Sunrise Challenge Policy for the .mobi Top-Level Domain (“TLD”) adopted by Mobile Top Level Domain, Ltd (“mTLD”) shall be governed by these Rules.

1. Definitions

In these Rules:

Center refers to the World Intellectual Property Organization Arbitration and Mediation Center.

Challenger means a party which is challenging a domain name registration under the Sunrise Challenge Policy for a .mobi TLD.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

Party means a Challenger or a Respondent.

Policy means the Sunrise Challenge Policy for the .mobi TLD that is incorporated by reference and made a part of the Registration Agreement.

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

Registration Agreement means the agreement between a Registrar and a holder of a domain name that was originally registered during the Sunrise Registration Period.

Registry means mTLD, the registry operator for the .mobi TLD.

Registry Challenge refers to a challenge initiated by the Registry after the conclusion of the Sunrise Challenge Period in connection with Sunrise registrations appearing to be made in violation of the Sunrise Registration Conditions.

Respondent means the holder of a domain name originally registered during the Sunrise Registration Period against which a challenge is initiated under the Policy and these Rules.

Sunrise Registration Conditions refers to the conditions set forth in the Registration Agreement and reproduced in Paragraph 4(c) of the Policy which must be met as a precondition for the registration of a domain name during the Sunrise Registration Period.

Sunrise Registration Period refers to the period specified by the Registry, during which trademark owners could register domain names before the general public subject to the Sunrise Registration Conditions.

Sunrise Challenge Period refers to the period between Monday August 28, 2006 at 12.00 noon, GMT, and Friday December 15, 2006 at 12.00 noon, GMT, during which Sunrise Challenges can be filed pursuant to the Policy and these Rules.

2. Communications

(a) Except as otherwise provided in these Rules, any communication required under these Rules shall be made by electronic mail via the Internet.

(b) For the purposes of any communications to the Center, the following addresses should be used:

(i) electronic mail: sunrise.mobi@wipo.int

(ii) facsimile transmission: +41 22 740 3700

(iii) postal or courier service:

WIPO Arbitration and Mediation Center
34 chemin des Colombettes
1211 Geneva 20
Switzerland

(c) All communications shall be made in the language prescribed in Paragraph 6.

(d) Either Party may update its contact details by notifying all of the following: the other Party, the Center, the Registrar and the Registry.

(e) Except as otherwise provided in these Rules, 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

(ii) if delivered by facsimile transmission, on the date shown on the confirmation of transmission; or

(iii) if by postal or courier service, on the date of mailing marked on the receipt.

(f) Except as otherwise provided in these Rules, all time periods calculated under these Rules shall commence on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(e).

(g) Except as otherwise provided in these Rules, following the commencement of an administrative proceeding pursuant to Paragraph 4(c), any communication by

(i) the Center to any Party shall be copied to the other Party; and

(ii) a Party, shall be copied to the other Party and the Center.

(h) 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.

(i) In the event that a Party sending a communication receives notification of non-delivery of the communication, that Party shall promptly notify the Center of the circumstances of the notification.

(j) When a paper submission is to be made to the Center by a Party, it shall be submitted in three (3) sets, including the original of such submission.

3. The Challenge

- (a) Any person or entity may initiate an administrative proceeding by submitting a challenge to the Center in accordance with the Policy and Rules.
- (b) The challenge shall be submitted in electronic form via the Internet using the Challenge Form posted by the Center and in accordance with the Center's submission instructions posted therewith. The Challenger is not required to send the challenge to the Respondent.
- (c) The Challenger shall:
- (i) Request that the challenge be submitted for decision in accordance with the Policy and Rules and describe why the Domain Name registration should be considered subject to the Policy;
 - (ii) Provide the full name, postal and e-mail addresses, and the telephone and telefax numbers of the Challenger and of any representative authorized to act for the Challenger in the administrative proceeding;
 - (iii) Provide the full name of the Respondent and, if different from the contact details available in the Whois database for the Domain Name, provide all information known to the Challenger regarding how to contact the Respondent or any representative of the Respondent, including contact information based on pre-challenge dealings;
 - (iv) Specify the Domain Name that is the subject of the challenge;
 - (v) Identify the Registrar with whom the Domain Name is registered at the time the challenge is filed;
 - (vi) Describe, in accordance with the Policy, the grounds on which the challenge is made including, in particular, why the Domain Name that is the subject of the dispute should be considered to have been registered in violation of the Sunrise Registration Conditions set forth in the Registration Agreement with specific reference to Policy, Paragraph 4(c) (including footnotes):
 - (1) at the time of the Respondent's registration of the Domain Name, no current (non-expired) trademark or service mark registration was registered in the Respondent's name; or
 - (2) the Domain Name is not identical to the textual or word elements of the trademark or service mark registration on which the registration of the Respondent's Domain Name is based; or
 - (3) the trademark or service mark registration on which the registration of the Respondent's Domain Name is based is not of national effect; or
 - (4) the trademark or service mark on which the registration of the Respondent's Domain Name was based was not registered or applied for, prior to July 11, 2005, with the trademark authority with which the mark is registered.

In addition, Challengers requesting transfer of the disputed Domain Name shall also specify any and all bases for such transfer with specific reference to Policy, Paragraph 4(c) (including footnotes).

The above description should not exceed 2,000 words;

- (vii) Specify, in accordance with the Policy, the remedies sought, i.e. transfer or cancellation of the Domain Name registration;
- (viii) Identify any other proceedings that have been commenced or terminated in connection with or relating to the Domain Name that is the subject of the challenge;
- (ix) Include the following statement (for Challengers seeking transfer of the Domain Name):

“Challenger certifies that the trademark or service mark registration forming the basis of this challenge and potential registration of the domain name in question was current (non-expired) at the time of the registration of the domain name, and was already registered or applied for, prior to July 11, 2005, with the trademark authority with which the mark is registered”;

- (x) Include the following statement (for all Challengers):

“Challenger 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 Center, (b) the Registrar, (c) the Registry, and (d) ICANN, as well as their directors, officers, employees, and agents.

Challenger certifies that the information contained in this challenge is to the best of Challenger’s knowledge complete and accurate, that this challenge is not being presented for any improper purpose, such as to harass, and that the assertions in this challenge are warranted under the Sunrise Challenge Policy, the Rules for Sunrise Challenge Policy and under applicable law, as it now exists or as it may be extended by good-faith and reasonable argument.”

- (xi) Specify the credit card (American Express, Visa or MasterCard), together with the name of the cardholder as it appears on the card, the card number and the card expiration date for purposes of payment of the Challenger’s fee in accordance with Paragraph 13.

(d) The challenge may not relate to more than one Domain Name.

(e) Challengers seeking transfer of the Domain Name shall submit to the Center the originals, or copies certified by the issuing trademark authority, of any trademark or service mark certificates required to be submitted under Paragraph 4(c) of the Policy within forty-five (45) days of the commencement of the administrative proceeding.

4. Notification of Challenge

(a) The Center shall review the challenge for formal compliance with the Policy and the Rules. If the challenge is found to be in formal compliance with the Policy and the Rules and the Center is satisfied that the Challenger’s fee has been paid in accordance with Paragraph 13, the Center shall notify the challenge to the Respondent by sending it to the e-mail addresses of the registrant and the administrative contact for the Domain Name, as shown in the mTLD Whois database at the time of the notification of the challenge by the Center to the Respondent. In addition, the Center shall notify the challenge to the e-mail addresses of the Respondent, or of any representative of the Respondent, as provided by the Challenger in accordance with Paragraph 3(c)(iii).

(b) If the Center finds the challenge to be formally deficient, it shall notify the Challenger of the nature of the formal deficiencies identified. The Challenger shall have ten (10) days after such notification within which to correct any such formal deficiencies, failing which the administrative proceeding will be deemed terminated without prejudice to the submission of another challenge by the Challenger. In such an event, the Center shall notify the Challenger, and the Registry of the deemed termination of the challenge and the fee paid by the Challenger pursuant to Paragraph 13 shall be deemed forfeited.

(c) The date of commencement of the administrative proceeding shall be the date on which the Center notifies the challenge to the Respondent.

(d) The Center shall notify the Challenger, the Respondent, and the Registry of the date of commencement of the administrative proceeding.

5. The Response

(a) Within forty-five (45) days of the date of commencement of the administrative proceeding, the Respondent shall submit a response to the Center.

(b) The response shall be submitted in hard copy (with annexes) by postal or courier service (postage pre-paid and return receipt requested) and in electronic form (without annexes) via the Internet using the Response Form posted by the Center and in accordance with the Center's submission instructions posted therewith.

(c) The response shall:

(i) Annex the originals or copies, certified by the trademark authority with which the mark is registered, of any trademark or service mark certificates required to be submitted by the Respondent under Paragraph 4(c) of the Policy;

(ii) Respond specifically to the statements and allegations contained in the challenge and include any and all bases for the Respondent to retain registration of the disputed Domain Name with specific reference to Policy, Paragraph 4(c). Such description should not exceed 2000 words;

(iii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Respondent and of any representative authorized to act for the Respondent in the administrative proceeding;

(iv) Identify any other proceedings that have been commenced or terminated in connection with or relating to the Domain Name that is the subject of the challenge;

(v) Include the following statement:

“Respondent certifies that the trademark or service mark registration forming the basis for the registration of the domain name was current (non-expired) at the time of the registration of the domain name, and was already registered or applied for, prior to July 11, 2005, with the trademark authority with which the mark is registered.”;

(vi) Include the following statement followed by the signature of the Respondent or its authorized representative:

“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 and that the assertions in this response are warranted under the Sunrise Challenge Policy, the Rules for Sunrise Challenge Policy and under applicable law, as it now exists or as it may be extended by good-faith and reasonable argument.”

(d) At the written request of the Respondent, the Center may, in exceptional cases, extend, in writing, the period of time for filing the response.

(e) If the Respondent does not submit a response, it shall be deemed to have defaulted and the remedy sought by the Challenger will be granted. If the Challenger has requested transfer, the transfer will be subject to a decision by the Center that the Challenger complies with the Sunrise Registration Conditions, failing which Policy, Paragraph 4(e)(iii) shall apply and the Center shall order that the Domain Name be cancelled.

6. Language of Proceedings

(a) Unless otherwise determined by the Center in exceptional circumstances, the language of the administrative proceeding shall be English.

(b) Any trademark or service mark certificates in a language other than English, submitted by the Challenger in accordance with Paragraph 3(e) or the Respondent in accordance with Paragraph 5(c)(i), must be accompanied by a certified translation into English.

7. Further Statements

Unless otherwise requested, or agreed, by the Center in exceptional circumstances, no further statements or documents from either of the Parties are to be submitted.

8. In-Person Hearings

There shall be no in-person hearings.

9. Default

(a) In the event that a Respondent does not comply with any of the time periods established by the Rules or the Center, the Center, unless it finds exceptional circumstances apply, shall proceed to a decision on the challenge.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Center, the Center may draw such inferences therefrom and may undertake such procedural steps as it considers appropriate.

10. Center Decisions

(a) The Center’s decision on whether the Sunrise Registration Conditions are met will be based on a prima facie examination of any trademark or service mark certificates submitted, in relation to the information contained in the relevant mTLD Whois database. The Center shall have the discretion to consult relevant intellectual property offices and their online databases in the context of reaching its determination.

(b) The Center's decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

(c) The Center will use reasonable efforts to decide upon a challenge within thirty (30) days of the receipt of all submissions to be made under the Policy and the Rules or of the expiry of the deadline for such submissions. The Center will also use reasonable efforts to decide any Registry Challenge as soon as possible under the circumstances.

11. Communication of Decision

(a) The Center shall communicate the decision to each Party and the Registry.

(b) The Center shall publish the outcome of the case together with the names of the Challenger and the Respondent on a publicly accessible web site, except as determined otherwise by mTLD with regard to Registry Challenges.

12. Termination of Administrative Proceeding

(a) If a Party notifies the Center that the Respondent has agreed to transfer the Domain Name to the Challenger by way of settlement, such transfer may be implemented and the administrative proceeding terminated, provided that the Center determines that the Challenger complies with the Sunrise Registration Conditions (Paragraph 5(a) of the Policy). Such settlement notification must be submitted in hard copy and signed by the Challenger and the Respondent.

(b) If it becomes unnecessary or impossible to continue the administrative proceeding for any other reason, the Center shall terminate the administrative proceeding.

(c) If the Challenger notifies the Center of its intention to withdraw the challenge, the Center shall terminate the administrative proceeding. Such notification must be submitted in hard copy and signed by the Challenger.

(d) In case of a termination of the administrative proceeding in accordance with subparagraph (a), (b) or (c), any fees paid by the Challenger in accordance with Paragraph 13 shall be deemed forfeited.

13. Fees

The filing of a challenge is subject to the payment of a non-refundable Challenger's fee in the amount of USD 750. This fee is to be paid by credit card, at the time of the submission of the challenge in accordance with Paragraph 3(c)(xi). If the Center is not satisfied that the Challenger's fee has been paid within 15 days of the filing of the challenge, the Center will dismiss the challenge on the basis of the Challenger's failure to pay the Challenger's fee. Other arrangements may apply to the submission of Registry Challenges.

14. Exclusion of Liability

The Center shall not be liable to a Party for any act or omission in connection with any administrative proceeding under the Policy and the Rules.

15. Amendments

The version of these Rules in effect at the time of the submission of the challenge to the Center shall apply to the administrative proceeding commenced thereby. The Registry reserves the right to modify the Rules at any time in consultation with the Center.