

# RESERVED NAMES CHALLENGE POLICY

**1.0 Title:** Reserve Names Challenge Policy  
**Version Control:** 1.0  
**Date of Implementation:** DRAFT-20141217

## 2.0 Summary

This Reserved Names Challenge Policy (the "Policy") has been created to provide a procedure for a third party (the "Requestor") to seek the allocation of certain names reserved by the Registry Operator and to challenge certain proposals for allocation of reserved names. This Policy describes standards that will be applied to resolve all challenges to the reservation, and/or proposed release from reservation, of reserved names.

Article 2.6 of Registry Operator's Registry Agreement with ICANN authorizes Registry Operator to establish or modify, at any time Registry Operator's reservation or blocking of strings within the <.TLD> at Registry Operator's discretion. Registry Operator is also required pursuant to Specification 5 of its Registry Agreement with ICANN to reserve or block certain strings from registration or allocation.

This Policy is incorporated by reference into the Registration Agreement for each domain name registered in <.TLD> and all applicants for reserve list names agree to be bound by this policy. This Policy may be invoked by filing a complaint with the National Arbitration Forum (the "Forum") as set forth herein.

## 3.0 Applicable Challenges

A reserved name in <.TLD> will be subject to an administrative proceeding upon submission of a complaint by a Requestor showing by a preponderance of the evidence that the reserved name should be allocated to the Requestor or that another party's application for release of a reserved name was improper. Any such challenge is to be filed with the Forum and is to be decided by a Panel appointed by the Forum (the "Panel").

Prior to initiating a challenge under Paragraph 3.0 of this Policy, the potential Requestor must submit a complaint to Registry Operator at [complaint@ftld.com](mailto:complaint@ftld.com). When possible, Registry Operator will attempt to resolve the issue internally. In the event Registry Operator, in its discretion, is unable to timely resolve the complaint, Registry Operator will notify the potential Requestor to submit its challenge to the Forum as outlined in this Policy.

### 3.1 Requests for Allocation from the Reserve List

Requests for allocation of reserved names may be filed in writing with the Forum pursuant to this paragraph (an "Allocation Request") if the Requestor meets all eligibility criteria for registration of the reserved name and the reserved name in question corresponds to the trademark, trade name or service mark owned and used by the Requestor that is:

- 3.1.1 protectable under applicable law; and
- 3.1.2 subject to an active, valid registration that is owned by Requestor.

Additionally, the Requestor must establish that:

- 3.1.3 Registry Operator has demonstrated no rights or legitimate interests in respect to the reservation of the name; and
- 3.1.4 Registry Operator has reserved the name in bad faith.

### 3.2 Challenge to a Reserved Name Allocation

Registry Operator may elect, in its discretion, to allocate certain reserved names in accordance with the allocation mechanisms including, but not limited to, Requests for Proposals (RFPs), as defined in Registry Operator's Name Allocation Policy. When submitting a response to any such RFP (an "Applicant Proposal"), the Applicant must represent and warrant that (1) the statements made in the Applicant Proposal are complete and accurate; (2) to the Applicant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (3) the Applicant is not applying to register the domain name for an unlawful purpose; (4) the Applicant will not use the domain name in violation of Registry Operators' Acceptable Use / Anti-Abuse Policy; and (5) the Applicant will not knowingly use the domain name in violation of any applicable laws or regulations.

Upon Registry Operator's publication of an RFP regarding potential allocation of a reserved name, Registry Operator will specify a time period for submission of any Applicant Proposal and will specify a time period (the "Challenge Period") for submission to the Forum of any challenges (a "Proposal Challenge") to an Applicant Proposal. A Proposal Challenge may be filed in writing with the Forum pursuant to this paragraph if:

- 3.2.1 the reserved name in question is identical or confusingly similar to a trademark, trade name or service mark in which the Challenger has rights;
- 3.2.2 the Applicant has no rights or legitimate interests in respect to the reserved name; and
- 3.2.3 the Applicant has applied for allocation of the reserved name in bad faith.

## 4.0 Evidence in Relation to an Allocation Request or Proposal Challenge

### 4.1 Allocation Requests

For the purpose of seeking allocation of a reserved name pursuant to Paragraph 3.1 of this Policy, the Requestor shall submit:

- 4.1.1 documentary evidence establishing the Requestor's eligibility for a <.TLD> domain name

- in accordance with the <.TLD> Registrant Eligibility Policy;
- 4.1.2 current status and title information for a trademark, trade name or service mark of the Requestor;
- 4.1.3 a current specimen of use demonstrating the Requestor's current use of the relevant trademark, trade name or service mark;
- 4.1.4 documentary evidence that Registry Operator has demonstrated no rights or legitimate interests in respect to the reservation of the name; and
- 4.1.5 documentary evidence that Registry Operator has reserved the name in bad faith.

#### 4.2 Proposal Challenges

For the purpose of challenging an Applicant Proposal pursuant to Paragraph 3.2 of this Policy, the following circumstances, in particular but without limitation, shall be evidence of a bad faith Applicant Proposal:

- 4.2.1 circumstances indicating that the Applicant has applied for the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Requestor who is the owner of a corresponding trademark, trade name or service mark, or to a competitor of that Requestor, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
- 4.2.2 circumstances indicating that the Applicant has applied for the domain name in order to prevent the owner of the trademark, trade name or service mark from reflecting the mark in a corresponding domain name, provided that the Applicant has engaged in a pattern of such conduct;
- 4.2.3 circumstances indicating that the Applicant has applied for the domain name primarily for the purpose of disrupting the business of a competitor; or
- 4.2.4 circumstances indicating that the Applicant intends to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the Requestor's mark as to the source, sponsorship, affiliation, or endorsement of the website or other online location or as to a product or service on the website or other online location.

#### 4.3 Responding to an Allocation Request

The following circumstances, in particular but without limitation, shall be evidence of Registry Operator's rights or legitimate interests to a reserved name for purposes of Paragraph 2.0 of this Policy:

- 4.3.1 the reserved name is a generic or common community; or
- 4.3.2 the Registry Operator has proposed a potential use of the domain name that provides a bona fide service to the community.

#### 4.4 Responding to a Proposal Challenge

The following circumstances, in particular but without limitation, shall be evidence of an Applicant's rights or legitimate interests to a reserved name for purposes of Paragraph 3.0 of this Policy:

- 4.4.1 evidence of the Applicant'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 a *bona fide* provision of information in a way that does not interfere with the legitimate exercise by third parties of their trademark, trade name or service mark rights; or

4.4.2 evidence of the type identified in Paragraph 4.1.

## **5.0 Communications**

5.1 Except as otherwise provided in this Policy, or by written permission from the Forum, any communication required under this Policy, following a submission to the Forum, shall be made by electronic mail to [domaindispute@adrforum.com](mailto:domaindispute@adrforum.com) or to the case coordinator assigned to facilitate the Allocation Request or Proposal Challenge.

5.2 Except as otherwise provided in this Policy, all communications provided for under this Policy shall be deemed to have been made:

5.2.1 if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable;

5.2.2 if delivered by facsimile transmission, on the date shown on the confirmation of transmission; or

5.2.3 if by postal or courier service, on the date of mailing marked on the receipt.

5.3 Except as otherwise provided in this Policy, all time periods calculated under this Policy shall commence on the earliest date that the communication is deemed to have been made in accordance with Paragraph 5.2.

5.4 Except as otherwise provided in this Policy, following the commencement of a proceeding pursuant to this Policy, any communication by:

5.4.1 a Panel to any Party shall be copied to the Forum and to the other Party;

5.4.2 the Forum to any Party shall be copied to the other Party; and

5.4.3 a Party, shall be copied to the other Party and the Forum.

5.5 It shall be the responsibility of the sender to retain records of the fact and circumstances of sending a communication, which shall be made available upon request for inspection by affected parties and for reporting purposes.

## **6.0 Language of the Proceeding**

6.1 Unless otherwise determined by the Forum, or the Panel in exceptional circumstances, the language of the proceeding shall be English.

6.2 The Panel may order that any documents submitted in languages other than English be accompanied by a translation in whole or in part into English.

## **7.0 The Complaint**

7.1 Any person or entity may initiate a proceeding under this Policy by submitting a complaint to the Forum in accordance with this Policy articulating an Allocation Request or Proposal Challenge, provided that a Proposal Challenge may only be filed during the Challenge Period, and including evidence in support of such complaint (the complaint and supporting evidence shall be referred to collectively as the "Complaint").

7.2 The Complaint shall be submitted by electronic mail to [domaindispute@adrforum.com](mailto:domaindispute@adrforum.com).

7.3 The Complaint shall:

- 7.3.1 Request that the Allocation Request or Proposal Challenge be submitted for decision in accordance with this Policy;
- 7.3.2 Provide the full name, postal and e-mail addresses, and the telephone and telefax numbers of the Requestor and of any representative authorized to act for the Requestor in the proceeding;
- 7.3.3 Specify the reserved name that is the subject of the Complaint;
- 7.3.4 Describe, in less than 5,000 words, the grounds on which the Allocation Request or Proposal Challenge is made;
- 7.3.5 Identify any other legal proceedings that have been commenced or terminated in connection with or relating to the reserved name that is subject of the Complaint;
- 7.3.6 Confirm that the Complaint Deposit (defined herein) has been paid to the Forum;
- 7.3.7 Annex any documentary or other evidence together with a schedule indexing such evidence; and
- 7.3.8 Include the following statements:

"Requestor certifies that the information contained in this Complaint is to the best of Requestor'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 this Policy and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.";

"If submitting a Proposal Challenge, Requestor agrees that its claims and remedies concerning the domain name, the Complaint, or the resolution of the Complaint shall be solely against the Applicant and Requestor waives all such claims and remedies against (a) the Forum and panelists, (b) the Registry Operator, and (c) the Internet Corporation for Assigned Names and Numbers (ICANN), as well as the directors, officers, employees, and agents of each of these.";

"If submitting an Allocation Request, Requestor agrees that this Policy represents the sole and exclusive avenue for seeking redress regarding the reserved name and Requestor waives all claims and remedies concerning the reserved name against (a) the Forum and panelists, (b) the Registry Operator, and (c) the Internet Corporation for Assigned Names and Numbers (ICANN), as well as the directors, officers, employees, and agents of each of these."

7.4 Provided the trademark, trade name or service mark rights invoked by the Requestor are based on rights in the same trademark, trade name or service mark, and for a Proposal Challenge the reserved names in question have been applied for by the same Applicant, a Complaint may relate to more than

one reserved name.

## **8.0 Notification of Complaint**

8.1 Upon receipt of Complaint, the Forum shall review the Complaint for formal compliance with this Policy.

8.2 If the Forum finds the Complaint to be formally deficient, it shall notify the Requestor of the nature of the formal deficiencies identified. The Requestor shall have five (5) calendar days after such notification within which to correct any such formal deficiencies, failing which the Complaint will be deemed withdrawn without prejudice to the submission of another complaint by the Requestor in accordance with this Policy. In such an event, the Forum shall notify all parties of the deemed withdrawal of the Complaint.

8.3 If the Forum finds that the Complaint is in compliance with this Policy, the Forum shall forward the Complaint to Registry Operator and the Applicant (for Complaints including a Proposal Challenge) within three (3) calendar days following the Forum's receipt of the Complaint Deposit paid by the Requestor.

8.4 The date of commencement of the proceeding shall be the date on which the Forum completes its responsibilities under Paragraph 8.3.

8.5 The Forum shall immediately notify the Requestor, the Applicant if applicable, and the Registry Operator of the date of commencement of the proceeding. For Complaints including a Proposal Challenge, Registry Operator shall provide the Forum with a copy of the relevant Applicant Proposal for consideration by the Panel.

8.6 Within twenty (20) days of the date of commencement of a proceeding, Registry Operator shall, if Registry Operator so chooses, submit to Forum any information or documentation relating to Registry Operator's position concerning the domain name(s), the Complaint, and compliance with this Policy and any other applicable Registry Operator Policies.

## **9.0 The Response to a Proposal Challenge**

9.1 Within twenty (20) days of the date of commencement of a proceeding involving a Proposal Challenge, the Applicant shall submit a response to the Forum.

9.2 The response shall be submitted by electronic mail and shall:

9.2.1 Respond specifically, in less than 5,000 words, to the statements and allegations contained in the Complaint and include any and all bases for the Applicant to prevail on the Complaint;

9.2.2 Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Applicant and of any representative authorized to act for the Applicant in the proceeding;

9.2.3 Identify any other legal proceedings that have been commenced or terminated in

connection with or relating to the trademark, trade name, service mark and/or reserved name that is the subject of the Complaint;

9.2.4 Annex any documentary or other evidence upon which the Applicant relies, together with a schedule indexing such documents; and

9.2.5 Conclude with the following statement followed by the signature of the Applicant or its authorized representative:

"Applicant certifies that the information contained in this Response is to the best of Applicant'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 this Policy and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."

9.3 At the request of the Applicant, the Forum 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 Forum.

9.4 If an Applicant does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the Complaint.

## **10.0 Appointment of Panel**

10.1 The Forum shall maintain a published list of panelists and their qualifications. The Forum may extend or otherwise amend such list at any time.

10.2 The Forum shall appoint a single member from its list of panelists within ten (10) calendar days following the lapse of the time period for submissions to the Forum pursuant to Paragraphs 8.6 and 9.1.

10.3 Once the Panel is appointed, the Forum shall notify the Parties of the panelist appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the Complaint to the Forum.

## **11.0 Impartiality and Independence**

The Panel shall be impartial and independent from the Requestor, the Registry Operator, and the Applicant if applicable, and shall have, before accepting appointment, disclosed to the Forum any circumstances giving rise to justifiable doubt as to the Panel's impartiality or independence. If, at any stage during the proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panel, the Panel shall promptly disclose such circumstances to the Forum. In such event, the Forum shall have the discretion to appoint a substitute Panel.

## **12.0 Communications between Parties and Panel**

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All

communications between a Party and the Panel shall be made to the Forum.

### **13.0 General Powers of the Panel**

13.1 The Panel shall conduct the proceeding in such manner as it considers appropriate in accordance with this Policy.

13.2 The Panel shall ensure that the proceeding takes place with due expedition. It may extend, in exceptional cases, a period of time fixed by this Policy or by the Panel.

13.3 The Panel shall determine the admissibility, relevance, materiality and weight of the evidence submitted by the Requestor and the Applicant if applicable.

13.4 The Panel may, in exceptional circumstances, request or allow the submission of further statements or documents by the Requestor or the Applicant if applicable.

13.5 There shall be no in-person hearings.

### **14.0 Transmission of the File to the Panel**

The Forum shall forward the file to the Panel as soon as the Panel is appointed. The file shall include the Complaint and, as applicable, any information or documentation from the Registry Operator in accordance with Paragraph 8.6, the Applicant Proposal as received from the Registry Operator in accordance with Paragraph 8.5, and the Applicant's response in accordance with Paragraph 9.1, The Applicant Proposal shall not be sent to the Requestor.

### **15.0 Default**

15.1 In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by this Policy or the Panel, the Panel shall proceed to a decision on the Complaint.

15.2 If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, this Policy or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

### **16.0 Panel Decisions**

16.1 The Panel's decision on the Complaint shall be limited to a determination on the conditions set out in Paragraph 3.0 of this Policy.

16.2 The Panel shall render its decision on the basis of the case file as received by the Panel in accordance with Paragraph 14.0, and in accordance with this Policy and any rules and principles of law that it deems applicable.



16.3 The Panel shall make a decision based on a preponderance of the evidence.

16.4 In the absence of exceptional circumstances, the Panel shall forward its decision on the Complaint to the Forum within fourteen (14) days of its appointment pursuant to Paragraph 10.0.

16.5 The Panel's decision shall be in writing, provide a brief summary of the reasons on which it is based, indicate the date on which it was rendered, and identify the name of the panelist.

16.6 The Panel's decision under this Policy shall be without prejudice to the findings and outcome of any case which may be filed by any party in relation to or in connection with the domain name under the Uniform Domain Name Dispute Resolution Policy (UDRP), the Uniform Rapid Suspension System (URS), or under any other policy that may apply upon allocation of the reserved name.

### **17.0 Remedies**

The remedies available to a Requestor pursuant to any proceeding under this Policy shall be limited to the following:

17.1 For Allocation Requests, a recommendation by the Panel to the Registry Operator that the reserved name be allocated to the Requestor.

17.2 For Proposal Challenges, a recommendation by the Panel that the Registry Operator reject the Applicant Proposal.

### **18.0 Communication of Decision**

The Forum shall communicate the decision to the Parties and the Registry Operator. The Registry Operator will take action in response to the Panel's decision as it deems appropriate in its sole discretion. The Forum shall publish the full text of every decision under this Policy on a publicly accessible website, except that any confidential portion may be redacted by the Panel prior to publication of the decision.

### **19.0 Termination of Proceeding**

19.1 If the Requestor notifies the Forum of its intention to withdraw the Complaint, the Forum shall terminate the proceeding. Such notification must be submitted electronically and be signed by the Requestor or its authorized representative.

19.2 If it becomes unnecessary or impossible to continue the proceeding for any other reason, the Forum, or, after its appointment, the Panel may terminate the proceeding.

### **20.0 Fees**

20.1 The fees for administration of a proceeding under this Policy shall be borne by the Party that

does not prevail in the proceeding.

20.2 The filing of a Complaint is subject to a payment to the Forum in the amount of USD 1,500 (the "Complaint Deposit"). The Complaint Deposit is to be made by the Requestor to the Forum at the time of submission of the Complaint.

20.3 If the Requestor prevails, the Complaint Deposit will be refunded by the Forum to the Requestor and the fee of USD 1,500 will be paid to the Forum by the Registry Operator.

### **21.0 Effect of Court Proceedings**

21.1 In the event of any legal proceedings initiated by and between the Parties prior to or during a proceeding under this Policy, the Panel shall have the discretion to decide whether to suspend or terminate the proceeding, or to proceed to a decision.

21.2 In the event that a Party initiates any legal proceedings involving the reserved name in question and/or the other Party during the pendency of a proceeding under this Policy, such Party shall promptly notify the Panel and the Forum.

### **22.0 Exclusion of Liability**

22.1 The Forum or the Panel shall not be liable to a Party or to the Registry Operator for any act or omission in connection with any proceeding.

22.2 The Registry Operator shall not be liable as a result of any decision rendered by the Panel.

### **23.0 Amendment**

The Registry Operator reserves the right to modify this Policy at any time subject to the terms of its Memorandum of Understanding with the Forum. Such revised Policy shall be posted on the Registry Operator's website at [www.ftld.com/policies](http://www.ftld.com/policies) at least 15-calendar days before it becomes effective; unless this Policy has already been invoked by the submission of a Complaint, in which event the version of the Policy in effect at the time it was invoked will apply until the dispute is concluded, all such changes will be binding with respect to any dispute, whether the dispute arose before, on or after the effective date of the change.