

MVS Dispute Resolution Policy

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1. Purpose and Scope

- 1.1. The Mark Validation System (MVS) Dispute Resolution Policy allows Mark Holders and third parties to challenge the outcome of the MVS validation process.
- 1.2. This Policy does not affect any claim that the Mark Holder or any third party might have under the Sunrise Dispute Resolution Policy.

2. Definitions

In this Policy, the following words and phrases have the following meanings:

- 2.1. **“Complainant”** means a legal or natural person who brings a dispute under this Policy.
- 2.2. **“Launch Policy”** means the Registry’s published launch policy for the Namespace concerned.
- 2.3. **“Mark”** means and includes:
 - 2.3.1. a nationally or regionally registered trade mark from any jurisdiction;
 - 2.3.2. a mark that has been validated through a court of law or other judicial proceeding in any jurisdiction;
 - 2.3.3. a mark protected by a statute or treaty;
 - 2.3.4. the registered name of a company, trust or other juristic entity OR a registered business or trading name; or
 - 2.3.5. an unregistered or “common law” trade mark.
- 2.4. **“Mark Holder”** means the party (or its authorised agent) claiming rights to a Mark which is the subject of the dispute under this Policy.
- 2.5. **“MVS”** or **“Mark Validation System”** means the Mark information aggregation, notification, and validation service retained by the Registry (www.markvalidation.co.za).
- 2.6. **“MVS Guidelines”** mean the guidelines published by the MVS accessible at <https://mvs.registry.net.za/en/guidelines/>.
- 2.7. **“MVS Provider”** means Domain Name Services (Pty) Ltd, the operator of the MVS, its successors or permitted assigns.
- 2.8. **“Namespace”** means a top level domain or a second level domain of the domain name system.
- 2.9. **“Panel”** means the individuals appointed by the MVS to deal with a particular dispute under this Policy as described in clause 6.4.
- 2.10. **“Policy”** means this Mark Validation System (MVS) Dispute Resolution Policy.
- 2.11. **“Registry”** means the ZA Central Registry NPC, appointed to administer the Namespace.

- 2.12. “**Sunrise Period**” and “**Sunrise Application**” are as defined in the Launch Policy.
- 2.13. “**Validation**” means the process by which a submitted Mark is checked for accuracy and for compliance with the validation requirements for Marks set out in the MVS Guidelines.
- 2.14. “**Validators**” means the persons who carried out the Validation of a particular Mark on behalf of the MVS Provider.

3. Grounds of Dispute

Complainants may bring disputes under this Policy under one of two grounds:

- 3.1. that the Validators improperly rejected a Mark; or
- 3.2. that the Validators improperly accepted a Mark.

4. Disputes related to improper rejection

4.1. General

- 4.1.1. These disputes can only be made by the Mark Holder after being notified that the Mark has been rejected by the Validators.
- 4.1.2. In order to succeed the Complainant must show that the Validators, taking into account the MVS Guidelines, the Launch Policy and other relevant material, erred in rejecting the Complainant’s Mark.

4.2. Procedure for Mark Holders to submit a dispute

- 4.2.1. Disputes must be submitted to the MVS within a period of sixty (60) calendar days after the outcome of the Mark Validation was posted on the MVS.
- 4.2.2. Disputes must be submitted through the completion of the appropriate dispute resolution request form available on the MVS Website.

4.3. Evidence

- 4.3.1. When submitting a dispute, the Complainant must include the following information:
 - 4.3.1.1. The Mark in dispute;
 - 4.3.1.2. Name of the Mark Holder;
 - 4.3.1.3. No more than 500 words describing how the ground(s) set out in clause 4.1.2 are relied on; and
 - 4.3.1.4. Supporting documentation.
- 4.3.2. The submission must conclude with the following statement:

The complainant certifies that the information contained in this submission is, to the best of complainant’s knowledge, both complete and accurate, that this dispute is not

being used for any improper purpose, and that the assertions in this submission are warranted under applicable law.

The complainant exempts from liability and waives any right of recourse against the registry, the MVS Provider, and/or the panellist(s) (as well as their respective directors, employees, officers and agents) from any loss, damage, or claim related to or arising from the subject matter of this dispute.

- 4.3.3. All evidence relied upon by the Complainant must be attached to the submission with a schedule indexing all documents.

4.4. Examination of the Submission

- 4.4.1. Within seven (7) calendar days of receipt of the required information from the Complainant in the required form, the Panel will review and come to a determination of the dispute.
- 4.4.2. The Panel will determine whether the Validators erred in rejecting the Mark concerned taking into account the factors set out in clause 4.1.2.
- 4.4.3. If the Panel determines that the Validators were correct in rejecting the Mark, the Panel will notify the Complainant through the MVS. The Mark's status will remain as "rejected".
- 4.4.4. If the Panel determines that the Validators erred in rejecting the Mark, the Panel will notify the Complainant through the MVS. The Mark's status will be changed to "validated".

5. Disputes related to improper Validation

5.1. General

- 5.1.1. These disputes can only be made by a third party after the Validators have Validated a Mark.
- 5.1.2. In order to succeed the Complainant must show that the Validators, taking into account the MVS Guidelines, the Launch Policy and other relevant material, erred in not rejecting the Mark Holder's Mark during Validation. There are three possible grounds:
 - 5.1.2.1. The Mark is not in full force and effect;
 - 5.1.2.2. The Mark Holder is not in fact the owner or licensee of the underlying Mark; or
 - 5.1.2.3. The Mark does not meet the eligibility requirements for Validation in the MVS.

5.2. Procedure

- 5.2.1. Disputes must be submitted through the completion of the appropriate dispute resolution request form available on the MVS Website.

5.3. Evidence

5.3.1. When submitting a dispute the Complainant must provide the following information:

- 5.3.1.1. Name of the Complainant;
- 5.3.1.2. Address of the Complainant;
- 5.3.1.3. VAT number if applicable;
- 5.3.1.4. Email address of the Complainant;
- 5.3.1.5. Mark identification number;
- 5.3.1.6. Name of the Mark in dispute;
- 5.3.1.7. Name of the Mark Holder associated with the Mark in dispute; and
- 5.3.1.8. No more than 500 words describing how the ground(s) set out in clause 5.1.2 are relied on; and
- 5.3.1.9. Supporting documentation.

5.3.2. The submission must conclude with the following statement:

The complainant certifies that the information contained in this submission is, to the best of complainant's knowledge, both complete and accurate, that this dispute is not being used for any improper purpose, such as to harass the registrant, and that the assertions in this submission are warranted under applicable law.

The complainant exempts from liability and waives any right of recourse against the registry, the MVS Provider, and / or the panellist(s) (as well as their respective directors, employees, officers and agents) from any loss, damage, or claim related to or arising from the subject matter of this dispute.

5.3.3. All evidence relied upon by the Complainant must be attached to the submission with a schedule indexing all documents.

5.4. Examination of the dispute

5.4.1. Within seven (7) calendar days of receipt of the required information from the Complainant in the required form, the Panel will review and come to a determination of the dispute.

5.4.2. The Panel will determine whether the Validators erred in accepting the Mark concerned during the Validation taking into account the factors set out in clause 5.1.2.

5.4.3. If the Panel determines that the Validators were correct in accepting the Mark during Validation, the Panel will notify the Complainant and the Mark Holder through the MVS within five (5) calendar days. The Mark's status will remain as "validated".

- 5.4.4. If the Panel determines that the Validators erred in accepting the Mark during the Validation, the Panel will notify the Complainant and the Mark Holder through the MVS within five (5) calendar days. The Mark's status will be changed to "rejected".

6. Fees

- 6.1. The Complainant must pay the dispute fee at the time of the dispute's submission. The Panel will not proceed to review the dispute until the dispute fee has been paid in full.
- 6.2. The payment methods are detailed on the MVS Website.
- 6.3. The dispute fees for the various grounds of dispute are as follows:
 - 6.3.1. disputes related to improper rejection of Marks: ZAR 1 500 (one thousand five hundred rand); and
 - 6.3.2. disputes related to improper validation of Marks: ZAR 1 500 (one thousand five hundred rand).
- 6.4. The dispute fee will be refunded to the Complainant if a dispute is upheld.

7. Panellists

- 7.1. Disputes will be reviewed by a panel made up of three MVS validators.
- 7.2. No person who was involved in the validation of the disputed Mark will participate in the panel in respect of a dispute relating to that Mark.

8. General Provisions on Panel Decisions

- 8.1. If a party fails to comply with any of the time periods set out in this Policy or by the Panel and there are no extraordinary circumstances, the Panel must proceed to make a decision on the dispute.
- 8.2. The Panel's decision must be based on the statements and documents provided by the parties, this Policy, the MVS Guidelines, the Launch Policy and other relevant Registry policies, as well as any rules, laws and principles of law that the Panel deems applicable.
- 8.3. The process will involve no in-person hearings (which includes communications by Skype, teleconference, video conference or web conference).
- 8.4. The decision will be in writing. The Panel may choose to provide reasons for its decision.
- 8.5. The Panel's decision is final and will not be subject to appeal.

9. Exclusions of Liability

Neither the Registry, the MVS Provider, nor any Panellist will be liable to a party for any act or omission in relation to any dispute under this Policy unless there has been deliberate wrongdoing.

10. Language

The language of proceedings is English. If a relevant document is in another language, the party relying on it must provide certified translations into English as well as a copy of the original.

11. Ability to Update

The MVS Provider has the discretion to amend this Policy at any time and without notice. The parties must review the most recent version as published on the MVS Website. The version of this Policy that was in effect at the time of submission of the dispute to the MVS will apply to the relevant dispute.

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