IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

CORN LAKE, LLC, Claimant, v. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, Respondent.	ICDR Case No. 01-15-0002-9938

SUPPLEMENTAL EXHIBITS

IN FURTHER SUPPORT OF REQUEST FOR INDEPENDENT REVIEW PROCESS

RE NEW gTLD APPLICATION FOR .CHARITY

(Pursuant to November 9, 2015 Procedural Order No. 1)

THE IP and TECHNOLOGY LEGAL GROUP, P.C.
John M. Genga, Contact Information Redacted
Don C. Moody, Contact Information Redacted
Khurram A. Nizami, Contact Information Redacted
15260 Ventura Boulevard, Suite 1810
Sherman Oaks, California 91403 USA
Telephone: +1 (818) 444-4580
Facsimile: +1 (818) 444-4585
http://newgtlddisputes.com

Attorneys for Claimant
CORN LAKE, LLC

Ex #	Description
18	November 24, 2015 Genga email to LeVee
19	November 24, 2015 Wasserstein email response to Genga
20	November 30, 2015 Genga email response to Wasserstein
21	November 30, 2015 Wasserstein email response to Genga
22	July 12, 2013 NGPC memo and attachment
23	September 6, 2013 email from SRL to ICC w/attachments
24	October 25, 2013 email from SRL to ICC
25	July 8, 2014 Ombudsman letter

DATED: December 10, 2015

THE IP and TECHNOLOGY LEGAL GROUP, P.C.

By:_____/jmg/_____
John M. Genga
Attorneys for Claimant
CORN LAKE, LLC

EXHIBIT 18

From: John M. Genga
Sent: Tuesday, November 24, 2015 2:13 PM
To: Jeffrey LeVee
Cc: Charlotte S Wasserstein; Kate Wallace; Don Moody; John M. Genga
Subject: Re: Charity

Actually, Jeff, I do want to meet and confer with you regarding the status of the production, and two issues in particular at this point.

First, I note that some of the production to this point includes what appear to be "communications among, by or to the ICANN Board or staff in connection with Reconsideration Request 14-3," responsive to request no. 1. Not knowing all of the additional documents that ICANN may have in response to this request that it may produce by December 4, we are aware that ICANN staff prepares an analysis of, and recommendations regarding, reconsideration requests to the BGC. We have not seen that document as it relates to the .CHARITY reconsideration request (No. 14-3), and do expect to see it by the time you complete the production. Kindly so confirm.

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John M. Genga
Genga & Associates, P.C.
15260 Ventura Blvd., Suite 1810
Sherman Oaks, CA 91403
Phone: +1-818-444-4580 | Fax: +1-818-444-4585
Contact Information Redacted

From: Jeffrey LeVee <jlevee@JonesDay.com>
Sent: Tuesday, November 24, 2015 6:38 AM
To: John M. Genga
Cc: Charlotte S Wasserstein; Kate Wallace
Subject: Charity

John:

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Jeff LeVee
JONES DAY® - One Firm Worldwide

Contact Information Redacted

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege.
If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
==========

EXHIBIT 19

From: Charlotte S Wasserstein <cswasserstein@jonesday.com>
Sent: Tuesday, November 24, 2015 4:52 PM
To: John M. Genga
Cc: Jeffrey LeVee; Kate Wallace
Subject: Charity
Attachments: Revised_ICANN_CHARITY001.DAT

Hi John,

I'm writing to respond to your below email to Jeff. As to the first issue you raise, ICANN's legal department makes recommendations on reconsideration requests, and therefore any drafts or discussions related to those recommendations are privileged and will not be produced. To the extent there are any non-privileged staff communications regarding Request 14-3, they have been or will be produced (and as you know, the final determination is publicly available in any event).

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For background, ICANN collected thousands of unique documents in the course of this document review, and Jones Day attorneys, as well as our production vendor, will be working through the holiday this week to ensure that all responsive, non-privileged documents are produced by the production deadline. We can assure you that this review comprises ICANN's good faith efforts to respond to your belated document requests.

Best

Charlotte Wasserstein
Associate

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555 S. Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2542
Contact Information Redacted

From: "John M. Genga"Contact Information Redacted
To: Jeffrey LeVee <jlevee@JonesDay.com>,
Cc: Charlotte S Wasserstein <cswasserstein@jonesday.com>, Kate Wallace <kwallace@JonesDay.com>, Don MoodyContact Information Redacted , "John M. Genga"Contact Information Redacted
Date: 11/24/2015 02:12 PM
Subject: Re: Charity

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First, I note that some of the production to this point includes what appear to be "communications among, by or to the ICANN Board or staff in connection with Reconsideration Request 14-3," responsive to request no. 1. Not knowing all of the additional documents that ICANN may have in response to this request that it may produce by December 4, we are aware that ICANN staff prepares an analysis of, and recommendations regarding, reconsideration requests to the BGC. We have not seen that document as it relates to the .CHARITY reconsideration request (No. 14-3), and do expect to see it by the time you complete the production. Kindly so confirm.

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Sent: Tuesday, November 24, 2015 6:38 AM
To: John M. Genga
Cc: Charlotte S Wasserstein; Kate Wallace
Subject: Charity

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Jeff LeVee
JONES DAY® - One Firm Worldwide
Contact Information Redacted

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EXHIBIT 20

From: John M. Genga
Sent: Monday, November 30, 2015 9:11 AM
To: Charlotte S Wasserstein
Cc: Jeffrey LeVee; Kate Wallace; John M. Genga; Don Moody
Subject: Re: Charity

Charlotte,

We cannot open your attachment and therefore cannot ascertain the redactions. If you could please print the file to PDF, that would help; thanks.

I am not sure why you continue to characterize our document requests as "belated" when the Panel has approved them and specifically ordered -- twice, in writing -- that you comply fully, timely and without withholding on the asserted basis of confidentiality or an overly expansive view of the attorney-client privilege.

With regard to ICANN staff recommendations to the Board for Reconsideration Request, 14-3, those communications that do not involve attorneys certainly enjoy no privilege; nor do those where an attorney appears only incidentally or participates in a business, policy or other non-legal capacity. As to such matters, please note the Panel's admonition in its Procedural Order No. 2:

> ICANN is reminded that the mere sending of a communication to or from an internal ICANN attorney does not render that communication privileged. The communication also must be made to facilitate the rendition of professional legal services to the client; therefore, the sending or receiving ICANN attorney must be functioning in the capacity of a lawyer (as opposed to Board Member or business advisor, for example) at the relevant time. Further, the mere fact that an in-house ICANN attorney is copied on an e-mail, including as one of many addressees, is insufficient by itself to establish the attorney-client privilege.

Although the Panel, "[a]t this stage," has made "no order ... for production of any privilege log," the broad manner in which your email suggests that you may interpret the privilege would make a log appropriate for those few documents coming within the narrow range of those constituting or pertaining to staff recommendations to the Board regarding Reconsideration Request 14-3. We would ask that ICANN agree voluntarily to produce such a log for those documents, so as to avoid having to involve the Panel in what should be a simple matter with which ICANN can comply easily.

Thank you for your consideration of this matter.

John M. Genga

Genga & Associates, P.C.

15260 Ventura Blvd., Suite 1810

Sherman Oaks, CA 91403

Phone: +1-818-444-4580 | Fax: +1-818-444-4585

Contact Information Redacted

From: Charlotte S Wasserstein <cswasserstein@jonesday.com>
Sent: Tuesday, November 24, 2015 4:52 PM
To: John M. Genga
Cc: Jeffrey LeVee; Kate Wallace
Subject: Charity

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Best

Charlotte Wasserstein
Associate

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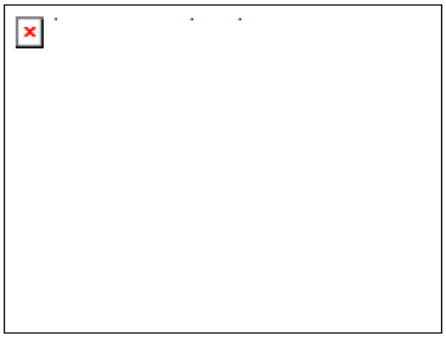

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Los Angeles, CA 90071-2542
Contact Information Redacted

From: "John M. Genga" Contact Information Redacted
To: Jeffrey LeVee <jlevee@JonesDay.com>,
Cc: Charlotte S Wasserstein <cswasserstein@jonesday.com>, Kate Wallace <kwallace@JonesDay.com>, Don Moody Contact Information Redacted "John M. Genga" Contact Information Redacted
Date: 11/24/2015 02:12 PM
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Contact Information Redacted

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Sent: Tuesday, November 24, 2015 6:38 AM
To: John M. Genga
Cc: Charlotte S Wasserstein; Kate Wallace
Subject: Charity

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==========

EXHIBIT 21

From: Charlotte S Wasserstein <cswasserstein@jonesday.com>
Sent: Monday, November 30, 2015 4:25 PM
To: John M. Genga
Cc: Kate Wallace; Jeffrey LeVee; Don Moody
Subject: Re: Charity
Attachments: ICANN_CHARITY001 DAT - Excel.xlsx

John,

The file I attached is similar to the ones that you pull down from your FTP site when we do the productions - it isn't meant to be opened but rather loaded to a review platform. We've put the revised data file that shows the parent relationships in metadata onto your FTP site - let me know if you continue to have these issues with our first production (we included parent/attachment metadata in our volume 2 so it shouldn't be an issue there). You should also be able to tell from the images of the parent email what the attachments are. Also, I attach here an Excel spreadsheet that should make the relationships clear - this may be the easiest option.

As for the issue of the correspondence regarding reconsideration requests, there simply are no communications (other than those we have produced or will produce) that were not either created by counsel or sent to or from counsel for the purpose of obtaining legal advice. The Panel has already ruled on the privilege log issue.

All best,

Charlotte Wasserstein
Associate

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Los Angeles, CA 90071-2542
Contact Information Redacted

From: "John M. Genga" Contact Information Redacted
To: Charlotte S Wasserstein <cswasserstein@jonesday.com>
Cc: Jeffrey LeVee <jlevee@JonesDay.com>, Kate Wallace <kwallace@JonesDay.com>, "John M. Genga" Contact Information Redacted Don Moody Contact Information Redacted
Date: 11/30/2015 09:10 AM
Subject: Re: Charity

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Associate

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JONES DAY® - One Firm Worldwide
Contact Information Redacted

sender by reply e-mail, so that our records can be corrected.
==========

EXHIBIT 22

From: Jamie Hedlund
Sent: Friday, July 12, 2013 3:13 AM
To: board-gtlds@icann.org
Subject: Paper for Category 1 dialogue with the GAC
Attachments: Category 1 Dialogue Questions.pdf

All,

Per Chris's request, please find attached a paper laying out concerns with the GAC's Beijing Advice on GAC Category 1 Safeguard Advice. This was prepared for the NGPC dialogue with the GAC taking place on Sunday at 10:30-12:30 SAST. It will be discussed at tomorrow's NGPC meeting. Thanks.

Best,
Jamie

Questions and Concerns Regarding Portions of the GAC's Safeguard Advice

The NGPC looks forward to the dialogue with the GAC on certain portions of the GAC's Beijing Advice on New gTLDs. The purpose of this paper is to help facilitate the dialogue regarding the GAC's Category 1 and Category 2.1 Safeguard Advice. The paper is based on the major issues raised by parties in response to the NGPC's request for comments on how it should address the GAC's Safeguard Advice.

The paper begins with a review of general concerns raised by commenters on the Category 1 Safeguard advice. It then reviews concerns raised on the individual items 3-8 of the advice. Finally, it reviews concerns associated with the GAC's Category 2.1, Restricted Access advice, which is closely related to the Category 1 advice.

The NGPC hopes that the dialogue will provide clarity on the intent of portions the GAC's Safeguard Advice and help determine whether and how these items may be implemented.

I. Categories of Strings

As an initial matter, the challenge of defining categories was the subject of Board-GAC consultations prior to the approval of the Applicant Guidebook. At that time, the GAC advised:

> "those strings that refer to particular sectors, such as those subject to national regulation (such as bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered "community-based" strings.
>
> Applicants seeking such strings should be required to affirmatively identify them as "community-based strings" and must demonstrate their affiliation with the affected community, the specific purpose of the proposed TLD, and –when opportune evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD."

In its "Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response,"[1] the Board noted that it had previously rejected the idea that community name definitions be expanded to include other sectors and regulated business:

> "Expansion of categories in a clear way is extremely difficult. This is reflected in the public comment received. Community definitions have been drawn narrowly in the Guidebook to prevent abuses. Even expansion of categories will probably not address GAC concerns in some way as even the expanded definition might leave some genuine area of sensitivity unaddressed."

[1] *See* http://archive.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf at 2.2.1 and 2.2.1.

The Board further noted that the GAC Early Warning and GAC Advice on New gTLDs procedures are designed to address the GAC concern. Utilizing these procedures:

> "the GAC can provide input on any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues and give indications to applicants on ways to avoid formal objections."
>
> The GAC Early Warning and GAC Advice procedures can be applied to any application, regardless of whether the applicant has been self-designated as a community TLD."

With this background in mind, the NGPC wishes to discuss with the GAC the following issues with the strings listed in the Category 1 Safeguard advice.

1. The list of strings is inconsistent. The categories are broad and undefined. This creates issues of fairness and predictable treatment of new gTLD applications. For example:

    a. The list places many generic words in the same categories as highly regulated industries. For example:

Generic	Highly Regulated
SAVE	BANK
CARE	LAWYER
HEART	PHARMACY

    b. Some of the strings identified apply to a range of individuals, businesses and associations and has segments that are both licensed and unlicensed.

        i. Example: .ENGINEER could apply to software engineers as well as civil engineers. Also, engineers are regulated in some parts of the world, but not others. In some cases, only specific disciplines require licenses or certificates.

        ii. Example: .LEGAL could apply to lawyers, paralegals, legal research services and publishers, and court reporting and transcribing services often used in the legal profession. Not all of these businesses and associations require licenses.

    c. It is difficult to determine the relevant industry self-regulation organizations. If the relevant organizations could be identified, it is not feasible to establish working relationships with them all.

        i. Example: In the United States, some engineering disciplines are regulated at the state level and not at the national level. This would require the registry operator for .ENGINEER to form relationships with all 50 state regulators in the United States, in addition to regulators across the world. This could easily amount to hundreds of relationships.

ii. Example: For .HIPHOP, it is not clear who the relevant regulatory body is for purposes of complying with the Category 1 Safeguards.

d. Many of the strings are generic terms that may be sensitive or regulated in a single or a few jurisdictions, but it is not appropriate to limit their use in other jurisdictions.

2. There is no principled basis for distinguishing between certain categories and strings. Examples provided by the community include:

GAC Category 1

Intellectual Property:	.fashion but not .style or .clothing .author but not .actor .hiphop but not .dance
Education:	.degree, .mba, and .university but not .college; .education; .phd; .training; .science
Financial:	.discount but not .cheap or .bargain .financialaid but not .scholarships
Charity:	.charity but not .foundation
Professional Services:	.lawyer and .doctor but not .contractors

3. In some instances the safeguards are related to the content of websites, which is outside the scope of ICANN's remit.

II. Comments and other concerns regarding individual Category 1 Safeguards

Safeguard #1: *Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.*

Safeguard #2: *Registry operators will require registrars at the time of registration to notify registrants of this requirement.*

No concerns. Safeguards 1 and 2 require registrants to comply with applicable law, which all registrants are already required to do.

Safeguard #3: *Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.*

1. The safeguard is not specific enough, and thus it is not possible to implement it.

2. The registry operator is not the appropriate entity to monitor security practices within each registrant's website and data operations

3. The registry operator is not the appropriate entity to carry out the safeguard. Instead, it should be handled by appropriate legislative, law enforcement and industry expert bodies.

4. It is not clear whether the phrase "reasonable and appropriate security measures commensurate with the offering of those services, *as defined by applicable law and recognized industry standards*" is intended to simply require registrants to abide by applicable law (which would be feasible), or if the GAC is intending to create a new standard (reasonable and appropriate…) that registries would be required to develop and enforce;

5. It is not clear how "recognized industry standards" would be identified and applied in the context of hundreds of different sectors.

Safeguard #4: *Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.*

1. The safeguard raises contract enforcement questions (e.g., how are the relevant regulatory agencies and industry self-regulatory organizations identified; who determines which industry self-regulation organizations bodies are "relevant" to a particular string and which governmental body is the competent regulatory agency).

2. Some regulatory bodies or industry self-regulatory bodies may not be responsive to collaboration with registry operators.

Safeguard #5: *Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.*

1. If an individual wants to register myname.health in order to keep his friends informed of his progress in eating better and exercising more. How would he determine which regulatory agencies and self-regulatory organizations around the globe are relevant?

2. Registry operators already have a point of contact for a registrant as a result of the accurate WHOIS data requirements. There are existing standards, such as RFC 2142, that

mandates abuse@domain as the standard point of contact for "inappropriate public behavior."

3. How would this safeguard apply to non-commercial TLDs? Who would be responsible for determining whether a registrant was required to provide the "contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business"? Who would be responsible for determining whether a registrant had satisfied this requirement?

Safeguards ## 6-8

"In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:

Safeguard #6: *At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.*

Safeguard #7: *In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.*

Safeguard #8: *The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve."*

1. It is not clear to which strings these safeguards apply ("***some*** of the above strings may require further targeted safeguards;" "***a limited subset*** of the above strings are associated with market sectors which have clear and/or regulated entry requirements;" "the additional safeguards below should apply to ***some*** of the strings in those sectors").
2. Implementation would change the nature of some new gTLDs from being open to uses that are not regulated into restricted TLDs open only to registrants that can prove their status or credentials.
3. Implementation would potentially discriminate against users in developing nations whose governments do not have regulatory bodies or keep databases which a registry/registrar could work with to verify credentials.
4. Implementation would potentially discriminate against users in developed nations whose governments have developed different regulatory regimes. For example, in some countries, anyone can claim to be an accountant but anyone holding themselves out as a chartered accountant or certified accountant is subject to regulation.

Category 2

Restricted Registration Policies

1. **Restricted Access**

"As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1 above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage."

1. What are the "types of risks" contemplated by this advice?

2. Would the GAC advice prohibit restricted registry policies for strings that do not give rise to the "types of risks" contemplated by this advice? For example, could a registry operator of a generic string like .popularsport restrict registry access to professional teams?

3. If a registry operator elects to restrict registration access, does the advice indicate that such restrictions must be limited to those that are appropriate for "the types of risks associated with the TLD"? Or does it mean that in addition to whatever other restrictions the registry operator imposes, there must also be restrictions to address the types of risks that may be associated with the TLD?

EXHIBIT 23

From: Peter Young Contact Information Redacted
Sent: Friday, September 6, 2013 2:44 AM
To: Contact Information Redacted
Cc: Contact Information Redacted John M. Genga; Don Moody; Contact Information Redacted drfiling@icann.org; ICC; Wordsworth, Sam; Van Den Biesen, Phon; "Müller , Daniel"; "Bajer Pellet, Héloïse"; Alain Pellet
Subject: RE: Famous4 #1
Attachments: Charity Objection response.pdf; Annex 1.docx; A new case has been created - Case 00108766 (12.3 KB)

Dear Mr Portwood

I attach our written rejoinder and supporting annexes for your kind consideration.

Kind regards

Peter Young
For and on behalf of Spring Registry Limited

From: Alain Pellet [mailto:contact@independent-objector-newgtlds.org]
Sent: 22 August 2013 20:11
To: Contact Information Redacted
Cc: icanntas; Peter Young; Contact Information Redacted

drfiling@icann.org; ICC; Wordsworth, Sam; Van Den Biesen, Phon; "Müller , Daniel"; "Bajer Pellet, Héloïse"
Subject: EXP/400/ICANN/17 Additional Written Statement

Dear Mr. Portwood,

By e-mail of 2 August 2013, I requested authorization to file an additional written statement in order to address new issues which have been raised by the Applicant's response. This request was granted and I thank you sincerely for this opportunity.

Accordingly, please find attached the above mentioned additional written statement, as well as its annex, regarding my Community objection against the gTLD string .Charity applied-by Spring Registry Limited, case EXP/400/ICANN/17.

I remain at your disposal should you need any further information.

Sincerely,

Alain PELLET
ICANN - Independent Objector

Redacted - Confidential Application Information

Redacted - Confidential Application Information

Redacted - Confidential Application Information

Redacted - Confidential Application Information

Redacted - Confidential Application Information

EXHIBIT 24

From: Peter Young Contact Information Redacted
Sent: Friday, October 25, 2013 5:25 AM
To: Contact Information Redacted
Cc: Contact Information Redacted John M. Genga; Don Moody; Contact Information Redacted drfiling@icann.org; ICC; Wordsworth, Sam; Van Den Biesen, Phon; "Müller , Daniel"; "Bajer Pellet, Héloïse"; Alain Pellet
Subject: RE: Famous 4 #2

Dear Mr Portwood

I refer to our Rejoinder of 6th September.

I apologise for the unsolicited communication, but, since filing of our earlier Rejoinder, our amended PIC SPEC referred to therein has been published by ICANN for public comment:

https://gtldresult.icann.org/application-result/applicationstatus/applicationchangehistory/1186

I make this submission merely to make you aware of independent evidence that our eligibility policy is progressing through the new gTLD application process, and in the interests of justice I hope you can consider this evidence. It merely confirms what was stated in our Rejoinder, and should only take a moment to consider.

Articles 17 and 18 of the Dispute Rules do provide the Panel with the power to admit additional material, and making this submission is the only way to draw it to your attention.

Yours sincerely

Peter Young

Peter Young
Managing Director/Chief Legal Officer
Famous Four Media Limited
2nd Floor, Leisure Island Business
Center Ocean Village, Gibraltar
Contact Information Redacted

From: Peter Young
Sent: 06 September 2013 11:44
To: Contact Information Redacted
Cc: icanntas; Contact Information Redacted 'drfiling@icann.org'; 'ICC';

'Wordsworth, Sam'; 'Van Den Biesen, Phon'; '"Müller , Daniel"'; '"Bajer Pellet, Héloïse"'; 'Alain Pellet'
Subject: RE: EXP/400/ICANN/17 Rejoinder

Dear Mr Portwood

I attach our written rejoinder and supporting annexes for your kind consideration.

Kind regards

Peter Young
For and on behalf of Spring Registry Limited

From: Alain Pellet [mailto:contact@independent-objector-newgtlds.org]
Sent: 22 August 2013 20:11
To: Contact Information Redacted
Cc: icanntas; Peter Young; Contact Information Redacted

ICC; Wordsworth, Sam; Van Den Biesen, Phon; "Müller , Daniel"; "Bajer Pellet, Héloïse"
Subject: EXP/400/ICANN/17 Additional Written Statement

Dear Mr. Portwood,

By e-mail of 2 August 2013, I requested authorization to file an additional written statement in order to address new issues which have been raised by the Applicant's response. This request was granted and I thank you sincerely for this opportunity.

Accordingly, please find attached the above mentioned additional written statement, as well as its annex, regarding my Community objection against the gTLD string .Charity applied-by Spring Registry Limited, case EXP/400/ICANN/17.

I remain at your disposal should you need any further information.

Sincerely,

Alain PELLET
ICANN - Independent Objector

EXHIBIT 25

Office of the Ombudsman

Case 14-00122

In a matter of a Complaint by Donuts

Report dated 8th July 2014

Introduction

This investigation relates to the dispute resolution process used for competing applicants to new gTLDs . When the application process began, it was anticipated that there would be a particular strings which would be particularly attractive to some applicants. In addition, it was recognised that there was potential for conflict with issues such as name collision, legal rights objections and community objections. The application process dealt with these by providing for a dispute resolution process using independent experts with the procedure being managed by a number of specialist providers. In particular ICC and WIPO and ICDR handled these disputes. These procedures are described in the Applicant Guidebook. The nature of such disputes is that there is a winner and sometimes several losers. This investigation therefore began with a complaint from Donuts, who are a significant applicant for many strings. They were not successful in a number of strings as follows.

Strings:-

.Charity. Hospital. Insurance. Medical. Rugby. Shopping. Ski. Sports. Architect

Facts

The essence of the complaint is that the dispute resolution providers have made errors in the various decisions relating to the names sought by Donuts, where they lost the dispute resolution processes.

Investigation

To undertake this investigation I have explained it to the complainant that any referral to me must be within my jurisdiction. I have explained the limits of my jurisdiction and the problems which may arise from examining the dispute resolution provider decisions. I have also sought comments from some of the successful applicants.

Issues

The issue which I am required to investigate are whether the issues raised are within my jurisdiction, and if so, whether I can recommend to the board that the decisions should be affected.

Jurisdiction

The issue of jurisdiction is critical to this complaint. I have sought clarification of this issue and sought further comments from Donuts because of my concerns about jurisdiction. Although I have

been presented with some ingenious arguments, I am not persuaded that I have jurisdiction to look at any of the issues raised. In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, the BGC is not required to evaluate the Panel's substantive conclusion that there is substantial opposition from a significant portion of the community to which the string may be targeted. Rather, the BGC's review is limited to whether the Panel violated any established policy or process.

My jurisdiction is very similar, although I have a different approach, based on whether the way in which the expert processed the decisions was unfair, but like the BGC, I cannot review the substance of the determination. It is useful to refer to my bylaw which refers to unfairness and delay, but underlying this, is the issue that there must be a failure of process. The comments from Donuts have looked to interpret the differences in the panel decisions as a failure of process, but that is not the correct interpretation of my jurisdiction. Procedural fairness is very different from making an error of law in the decision itself. It is not appropriate for me to enter into any discussion or evaluation of the decisions themselves however. If I were to undertake the exercise urged upon me by Donuts, then I would step well outside my jurisdiction, and have not done so accordingly.

From looking at the two reconsideration requests made by Donuts and the responses from the BGC, I understand the essence of their complaint is that the experts did not apply the policy as laid out in the AGB. This would be an issue of interpretation of the principles and law used by the expert, in reaching the decision. This was expressed more widely as a violation of bylaws, policies or contracts with applicants. What I was anxious to analyse, is specific examples which would demonstrate unfairness caused by any such violation. It is beyond the scope of my jurisdiction to review how the expert has interpreted the principles and law. That goes into the substance of the decision, and like the BGC I cannot review that. To put this in another way, the expert can make a decision on legal principles, which is different from what an applicant would prefer, but if this is reached through a process of application of principle, then I cannot intervene. I have seen no evidence of breaches of the ICANN bylaws. I would however recommend to the BGC that they seek a rehearing through another expert, if the unfairness was of a substantial and serious nature. But different interpretations of the AGB are open to the expert, and while someone may strongly disagree, this is not unfairness in such a fashion that I can make a recommendation, because it is not a failure of process.

I should add for completeness, that for some of these strings I also sought comment from the other affected parties. The comments have been useful although not necessary to reach my conclusion. Because I have not made any adverse findings about either the successful applicants all the panel administrators or the panellists, it has not been necessary to seek comment from them.

In preparing this report I have considered a very substantial amount of material, but I have not commented in any detail on this, largely because of the pressure of time to resolve this matter. There are clearly strong views about the dispute resolution provider decisions in the community, but in my view this may well be something to consider in the lessons learned phase. It is not something that I can resolve.

Result

As a result of this investigation, I consider the complaint is not upheld and I therefore do not make any recommendations, other than noting that to the New GTLD Committee and to the other affected parties, that I do not uphold the complaint. This should therefore mean that where there are no other issues, which would hold these particular strings up for being involved in the accountability mechanisms of ICANN, the Ombudsman complaint shall no longer be a reason that the application is not proceedings through the process.

Chris LaHatte

Ombudsman