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COMMENTS OF THE INTERNET COMMITTEE OF THE INTERNATIONAL TRADEMARK ASSOCIATION ON THE GNSO COUNCIL'S DRAFT DOMAIN NAME TASTING MOTION

The Internet Committee of the International Trademark Association (INTA) is pleased to provide these comments on the GNSO Council's Draft Domain Name Tasting Motion ("Draft Motion").

The INTA Internet Committee applauds the GNSO Council for the work done to date to identify and develop possible solutions to the abusive practice of domain tasting. Notwithstanding the INTA Internet Committee's preference that domain tasting be addressed through the wholesale elimination of the Add Grace Period (AGP), the Internet Committee is hopeful that the Draft Motion will, as the Council intended, virtually eliminate the incidence of domain tasting and the resulting harms it causes to trademark owners. It will be monitoring the Registries' monthly reports accordingly. The Internet Committee supports the Draft Motion, subject to the concerns outlined below:

- 1 Paragraph 1.a. of the motion indicates "an Applicable gTLD Operator may not offer any refund to a registrar for any domain names deleted during the AGP that exceed (i) 10%..." To avoid ambiguity the Internet Committee believes it is preferable for "may not" to be replaced with "shall not."
- 2 In its current form, the Draft Motion lacks sufficient guidance to the Applicable gTLD Operators¹ as to what constitutes "extraordinary circumstances" to warrant an exemption for a Registrar from the AGP deletion ceiling set forth in paragraph 1.a of the Draft Motion. The absence of more detailed guidance may facilitate the exploitation of the exemption. One option for providing more detailed guidance is to include in the Draft Motion an illustrative list of the types of circumstances that would be considered "extraordinary." Another option is to include in the Draft Motion a requirement that ICANN Staff develop guidelines for what types of circumstances would be considered extraordinary.
- 3 The INTA Internet Committee has similar concerns about the lack of guidance regarding the reference to "regularly" in paragraph 1.a, and suggests that the relevant frequency be set forth in the Draft Motion or developed by ICANN Staff in consultation with all stakeholders.

¹ References to "Registry Operator" in paragraph 1.b should be replaced with "Applicable gTLD Operator."

- 4 The reporting requirements contained in paragraph 1.c are valuable and the Internet Committee applauds this transparency mechanism. The Internet Committee strongly believes that stakeholders are entitled to know which Registrars have requested an exemption, for what circumstances, and whether the Applicable gTLD Operator granted the exemption. Accordingly, the Draft Motion should specify that the information required to be reported by the Applicable gTLD Operators to ICANN be released to the public as part of the monthly reports now accessible at <http://www.icann.org/tlds/monthly-reports/>. Public disclosure of this information will enhance transparency and accountability as well as facilitate independent assessment of the effectiveness of the proposed changes in eradicating domain tasting. Given the likelihood that "exceptional circumstances" will have implications for Internet security and stability, the public has a right to such information.
- 5 As drafted, the Draft Motion contains no timeframe or deadlines for implementation. Adding a timeframe or deadline for implementation that would start from the date of a Board vote on the GNSO Council's policy recommendation would both ensure a prompt implementation of the Draft Motion and a prompt determination whether the policy resulting from the Draft Motion is effective in eliminating abusive domain tasting.
- 6 The INTA Internet Committee strongly recommends that further GNSO Council action be taken promptly if the policy resulting from the Draft Motion does not virtually eliminate domain tasting. Further, an assessment of the policy's efficacy should be conducted at the end of the two-year period referenced in paragraph 2.a.

INTA (www.inta.org) is a 129-year-old not-for-profit membership association of more than 5500 trademark owners and professionals, from more than 190 countries, dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce. INTA's Internet Committee is a group of over 100 trademark attorneys and professionals from all over the world charged with developing and advocating policies to advance the balanced protection of trademarks on the Internet. The Internet Committee's policy work is focused on a broad range of issues including evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet.