Baker Hostetler

Baker&Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

Robert B. G. Horowitz
direct dial: 212.589.4240
rhorowitz@bakerlaw.com

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Dear Sirs:

We represent a client interested in this matter and write about three issues: a) the Global Protected Marks List ("GPML"); b) conflicting gTLD applications by legitimate rights holders; and, c) Rights Protection Mechanisms ("RPMs") being required for gTLDs that will be used in closed systems.

A. The GPML issue.

There are companies that, because of reasons beyond their control, namely force majeure, lost the ability to use their marks in one of the 5 ICANN regions. As a result, such companies cannot use, and have not registered, their marks in the countries covered by one region. However, some companies in this position otherwise have a global presence.

In page 17 of its latest report, the IRT recommends that a mark be registered "across all 5 ICANN regions" in order to be accepted on the GPML by the IP Clearinghouse. Included among the regions is "the North American region". ICANN identifies the following countries as within the North American region: American Samoa. Canada, Guam, Northern Mariana Islands, Puerto Rico, U.S. Minor Outlying Islands, United States, and US Virgin Islands.

Under ICANN's view of what comprises "North America" – which notably lacks Mexico, a party to the North American Free Trade Agreement (NAFTA) with the U.S. and Canada—companies blocked from using their marks in the United States and Canada do not have any trademark registrations for their house marks in the North American region. If the IRT's recommendation of registration in all five ICANN regions is adopted, such companies' house marks will not qualify for the GPML because they are not registered in all five regions as they are presently constituted by ICANN.

We seriously question the appropriateness of the IRT not recommending placement on the GPML of marks that are registered in four out of five regions, particularly in view of the apparent arbitrariness of ICANN's constitution of at least one region. We urge the IRT to recommend to ICANN that registrations in four out of five regions, in numbers to be determined as provided for in page 17 of the report, be allowed instead where an applicant for the GPML shows a global consistency for its trademarks.

Should the IRT hold fast to its recommendation that trademark registrations in all five regions are necessary for a mark to qualify for the GPML, then we urge that the IRT recommend to ICANN a means by which companies who have been subjected to a position forced upon them by force majeure can register their marks on the GPML by demonstrating the special circumstance of not being able to be in a particular region, and providing proof of a multitude of registrations in a multitude of countries other than the U.S. and Canada. We submit this is an equitable approach for such companies.

B. Conflicting applications of legitimate rights holders.

We also envision situations where, due to force majeure, there are two legitimate rights holders who seek a gTLD for the same house mark. We respectfully submit the rules for implementation of gTLDs deal with conflicts of this kind where it is very clear that registrations in all five regions is not a suitable requirement because of events beyond the control of the legitimate rights holders, and that an evaluation based upon a preponderance of trademark rights and other circumstances -- including any existing contracts and contractual arrangements between the legitimate rights holders, concessions they have made in the past and prior conflict resolutions-- be considered in the process of awarding the gTLD. Such an evaluation mechanism will insure fairness in the process and should result in an award of the gTLD to the legitimate rights holder with the greatest global presence.

C. Requiring RPMs in closed systems.

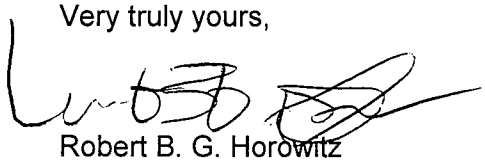
On page 20 of its report, the IRT states the following:

> For example, if a trademark owner applied for a .brand TLD, operated it as a closed TLD and restricted second-level registrations to its employees and subsidiaries, the .brand TLD would not need to provide an IP Claim or Sunrise process.

While the IRT is very conscious of the problems second level domains create for trademark owners, its not recommending RPMs for closed systems would create more second level domains that incorporate marks of others.

An example taken to its logical conclusion is as follows: If Panasonic were to obtain the gTLD for .PANASONIC, someone conceivably could register SONY.PANASONIC in a closed system. We do not believe that such a result is what the IRT intends. Accordingly, we submit the IRT will better serve the interests of trademark owners by requiring RPMs for all systems.

Very truly yours,



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