

Fadi Chehadé
Internet Corporation for Assigned Names and Numbers (ICANN)
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Brussels, 18 January 2013

Dear Mr Chehadé,

AIM, the European Brands Association, thanks ICANN for opening a consultation on the "Strawman Solution" for rights protection in the new gTLD programme. We fully support the comments submitted by the Business Constituency on 15th January.

In order to ensure a clean internet space that protects consumers against fraud and deception, and to promote fair, legal competition, AIM stresses the need for the new gTLD programme to protect intellectual property rights. Unfortunately concerns relating to consumer and IP protection have not been sufficiently addressed in this programme to date. While supporting the need for enhanced competition in the online world, this cannot be at the expense of consumer deception and harm.

Without effective protection of rights, the benefits of new gTLDs risk being skewed to business models predicated upon free-riding that do nothing to promote innovation, competition or consumer benefit. On the contrary, this means no more than expecting good faith companies to pay for defences against unwarranted land grabs, leading to reduced reinvestment, innovation, employment and tax revenues.

Consumers and internet users are already faced with:

- Domain names containing brand names aimed at children (toys, pharmaceuticals, media characters etc.) linked to adult content sites;
- Domain names containing pharmaceutical brand names that are cybersquatted, allowing purchases far above legal regulated limits and/or access to products not licensed in the jurisdiction of purchase;
- Domain names containing brand names from all sectors that lead to sites selling counterfeit product.

to name but a few issues. All of this, when extrapolated into the new environment of several hundred gTLDs, will only grow.

Consumers are relying on ICANN to do its utmost to protect them from deception, fraud and harm.

The Trademark Clearing House is not a rights protection mechanism, but a flag so that good faith registrants know that a requested string may be problematic. As such it is difficult to justify the related Trademark Claims Notices being limited to the start-up period, as this would

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deprive later applicants of this knowledge and potentially lead to costly, and unnecessary, UDRPs and litigation. Limiting such Notices will only lead to increased defensive registrations, cluttering the domain name space with unwanted and unused names serving no purpose.

Extending the Clearinghouse to include strings which have previously been determined to have been abusively registered or used (e.g. by UDRP or court proceedings) is both logical and positive. However, we fail to see why this should be limited to 50 records. Surely if a trade mark has appeared over 50 times in abusive registrations this shows that it is at high risk? Such a limitation would serve only to enhance pointless expenditure: already it is the common practice of bad faith registrants to not respond to cease and desist letters or to UDRP proceedings, yet the brand holder still needs to pay the drafting and filing costs. For example, an AIM member took 160 UDRPs within the last 12 months, and lost just one. Extrapolating these fees to all brand owners to include outside counsel, WIPO (etc.) fees and the transfer of a site that now has to be managed for fear of repeat abuse adds up to huge - and completely avoidable - waste.

We also return to the IPC's suggestion for Limited Preventative Registrations; this would in no way extend any existing IP rights but would, on the contrary, allow trade mark holders to avoid multiple defensive (thus, useless) registrations at the second level.

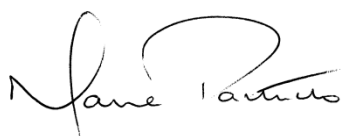
The cost of such defensive registrations cannot be underestimated. Already today, with so few gTLDs available, the situation faced by AIM members includes:

- A global toy company. Estimated total needs: about 50 domain names, each with a maintenance cost of c. \$240 p.a. thus a total of c. \$12,000. In reality: forced to maintain some 3500 registrations for defensive reasons, thus an actual cost of c. \$840,000 p.a.
- A global beauty company. Current portfolio of more than 10,000 DNs of which some two thirds are defensive registrations, with similar costs to those above.
- A global food company. Half of its total domain names are maintained for defensive registrations or because they were acquired from transfer from cybersquatters, thus has about 3000 domains that are of no positive use. Estimated annual costs: c. \$200,000.

ICANN's role as a global body should be to protect users, promote innovation and fair competition and maintain a clean internet space, free from fraud and deception. Without efficient RPMs for the new gTLDs, we fear that this may be compromised.

Please do not hesitate to contact us should you require any further information.

Yours sincerely



Marie Pattullo
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AIM, the European Brands Association