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July 21, 2010

Mr. Peter Dengate-Thrush, Chairman
Internet Corporation for Assigned Names & Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Re: Concerns relating to the fourth version of the new gTLD Draft Applicant Guidebook

Dear Mr. Dengate-Thrush and the ICANN Board:

E.I. du Pont de Nemours and Company (DuPont) has an extensive trademark portfolio that comprises over 1,700 unique trademarks and over 17,000 trademark registrations worldwide. As a large brand owner, we are very concerned that the new version 4 of the gTLD Draft Applicant Guidebook (DAG 4) does not adequately address our concerns regarding the protection of our valuable trademarks.

Specifically, our concerns are:

- 1) The Trademark Clearinghouse, proposed in DAG 4, is **not** a rights protection mechanism, only a database that does nothing to truly protect the rights of brand owners. Instead, brand owners including DuPont, will be forced in practice to seek defensive registrations of their valuable trademarks in the Trademark Clearinghouse. This will increase their workload and costs.

The Sunrise and Trademark Claims services, as proposed in DAG 4, do not provide a sufficient level of protection for registered trademarks. Registrants only have to declare that they do not infringe upon third party rights when registering a domain name. As such, neither of these so-called rights protection mechanisms hinder or even reduce the number of domain names registered in bad faith. Furthermore, the "matching" of trademarks within the Trademark Claims service is limited to **identical** matches...this clearly does not protect the brand owner since most cyber-squatters deliberately misspell or slightly alter the appearance of a brand owners trademark.

In addition, while the Trademark Claims service purports to recognize all registered trademarks, the Sunrise service only recognizes those trademarks registered in countries conducting so-called substantive reviews or examinations. ICANN has not explained the reason for this inconsistency. This leaves open for domain name abuse the thousands of registered trademarks in numerous countries not conducting these substantive reviews.

- 2) The Uniform Rapid Suspension system (URS) proposed in DAG 4 is much weaker than the URS proposed in the IRT Report. With the procedure envisaged, and particularly with the incorporation of an appeal process, it is unlikely that the URS will be either more rapid or cheaper than ordinary UDRP. An infringing domain name is only blocked for the balance of the registration period, allowing the cyber-squatter to repeat the infringement of the trademark at a later time. The proposed URS also lacks a loser-pay-all mechanism that would put "teeth" into the system and discourage cyber-squatting.
- 3) The concern around the *Trademark Post-Delegation Dispute Resolution Procedure* (Trademark PDDRP) is mainly the standard set by the words "clear and convincing evidence", applicable to both the Top and Second Levels, that may seem unreasonable in this type of procedure.

In contrast, ICANN seems to be prepared to tolerate a degree of illegal activities on registries by establishing, in the Second Level, that

[...] It is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

This imbalance between the stringent standard for Complainants and the leniency towards registries is troubling and difficult to justify.

- 4) Finally, the entire goal of the original recommendations of the Implementation Recommendation Team was to provide for a "tapestry of rights protection mechanisms" that, working together, would give brand holders the necessary safeguards. Unfortunately, the ineffective URS, the narrowly tailored Trademark Clearinghouse, and the glaring omission of the originally proposed Globally Protected Marks List seriously calls into question the viability of these Rights Protection Mechanisms to protect brand holders.

In our opinion and as outlined in the points above, ICANN has not yet solved the concerns of brand owners. We strongly urge ICANN to address these concerns before any new gTLDs are released.

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In addition, we fully support the letter from Fred Feldman of Mark Monitor to ICANN, dated July 19, 2010, which also makes mention of relevant issues that will have a significantly detrimental effect on brand and rights holders if left unresolved.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Van H. Leichter". The signature is fluid and cursive, with a large, stylized initial "V".

Van H. Leichter
Corporate Counsel and IP Leader - Trademarks