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Internet Corporation for Assigned
Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
USA
Att.: Rod Beckstrom

New gTLDs - DAG 4

Dear Mr Beckstrom

This is to address an important issue regarding the Draft Applicant Guidebook and the IRT Report. We know that other trademark owners have already raised serious concerns – which we fully share - regarding the release of the new gTLDs but unfortunately, it seems that ICANN might not deal with these concerns as DAG 4 does not contain any proper mechanisms to protect trademark owners' rights.

In our opinion the Trademark Clearinghouse is NOT a rights protection mechanism but simply a database. Such a database does not solve the trademark issues that ought to be addressed. On the contrary the Trademark Clearinghouse promotes the need for defensive registrations which is something trademark owners do not want as that will increase the workload and costs.

Two so-called rights protections mechanisms are proposed in DAG 4. These are, however, neither new nor sufficient. Sunrise and Trademark Claims services are already in existence today. The Sunrise service exists in an identical form and the Trademark Claims service exists in a form where registrants have to declare that they do not infringe upon third party rights when registering a domain name. Neither of these mechanisms have proven sufficient to prevent or reduce the number of domain names registered in bad faith. Both mechanisms are pre-launch but to have any real value they must also be post-launch. Moreover, the "matching" taking place in connection with the Trademark Claims service is limited to exact matches. As most cyber-squatting is not an exact match this is clearly insufficient.

LEO Pharma A/S
Industriparken 55
DK - 2750 Ballerup
Denmark

Phone +45 44 94 58 88
Direct +45 72 26 30 32
Fax +45 72 26 33 50
E-mail isabell.jensen@leo-pharma.com
Internet www.leo-pharma.com



DAG 4 provides for a difference as regards the trademarks which are recognized within the Trademark Claims and Sunrise services. The Trademark Claims service recognizes all registered trademarks while only trademarks that are registered in countries conducting a so-called substantive review or examination are recognized in the Sunrise service. There seems to be no explanation for this difference which means that all CTMs and most national European trademarks are excluded from the Sunrise service.

Also the Uniform Rapid Suspension (URS) proposed in DAG 4 is much weaker than the URS proposed in the IRT Report. It doesn't seem to be more rapid or cheaper than the ordinary UDRP. Furthermore, the domain name is only blocked for a short period of time with the possibility of perpetuating the cyber-squatting. The proposed URS lacks a loser-pays mechanism which would be essential in a URS of any real value. There is not even a fee for filing a response to a complaint, and also the burden of proof is on the trademark owner to prove that the registrant has no legitimate interest in the domain name. Finally, the URS is apparently only available to owners of trademarks registered in countries conducting a so-called substantive review or examination. This means that all CTMs and most national European trademarks are excluded from the URS.

ICANN seems to ignore that cyber-squatting and all kinds of fraud on the internet is increasing in number and DAG 4 contains nothing that shows trademark owners that ICANN has taken the concerns raised earlier by other trademark owners seriously.

In our opinion, ICANN has yet to solve the trademark issue which we urge ICANN to do before any new gTLDs are released.

Kind regards

Isabell Jensen

Head of Department

Trademarks, Designs & Domain Names