

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

Att: Rod Beckstrom

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LR

Coloplast A/S
Holtedam 1
3050 Humlebæk
Denmark
Tel: +45 4911 1111
www.coloplast.com
CVR-nr. 69749917

New gTLDs – DAG 4

Dear Mr. Beckstrom

Lisbeth Rahbek
Trademark Manager

Corporate Legal & IP

Dir. tel. +45 4911 1614
Mob. +45 4911 1614
Fax +45 4911 1849
dklr@coloplast.com

Many trademark owners and trademark communities have already from the release of DAG 1 presented their serious concerns about the new gTLD program, but from the DAG 4 it seems clear that ICANN ignores these concerns since the new draft does not contain any proper rights protection mechanisms.

We have together with Lego Juris A/S and other companies already raised our concerns regarding the release of the new gTLDs. Hopefully, the following arguments will give rise to ICANN taking steps to improve the rights protection mechanism which is so important to trademark owners.

We don't find that the Trademark Clearinghouse is any rights protection mechanism. It is simply a database and as such it does not solve any of the issues raised by trademark owners in this respect. Instead the Trademark Clearinghouse promotes the need for defensive registrations. It thus seems to go directly against the premises of the work on the overarching issues, namely to lessen the burden of trademark owners who do not want more defensive registrations.

DAG 4 proposes two so-called rights protections mechanisms that are, however, neither new nor sufficient. Sunrise and Trademark Claims services are 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 hinder or even reduce the number of domain names registered in bad faith. Furthermore, both mechanisms are pre-launch and need also to be post-launch to have any real value. Moreover, the "matching" taking place in connection with the Trademark Claims service is limited to exact matches which are clearly insufficient as most cyber-squatting is not an exact match.

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

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

ICANN still 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 our concerns seriously.

In our opinion, ICANN has not yet solved the overarching trademark issue. We urge ICANN to solve the trademark issue before any new gTLDs are released.

Yours sincerely,



Lisbeth Rahbek