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13 May 2011

Re. New gTLDs – gTLD Applicant Guidebook

We refer to our previous letters regarding the Draft Applicant Guidebook and the IRT Report. In all our previous letters we have raised serious concerns regarding the release of the new gTLDs and all our concerns still stand. We will however not repeat our previous comments in this letter but focus on the changes made to the Trademark Clearinghouse and the Uniform Rapid Suspension (URS) in the Applicant Guidebook.

As regards the Trademark Clearinghouse we are pleased to see the requirement that all new gTLD registries must have both a Trademark Claims Service and a Sunrise process.

Neither of these mechanisms have however proven sufficient to hinder or even reduce the number of domain names registered in bad faith. Both mechanisms are for the pre-launch or initial launch period. Infringements of rights occur not just in the launch phase but more often after such a phase and for as long as the registry operator is active. The Trademark Claims Service needs to be post-launch as well to have any real value.

Furthermore, the Trademark Claims Service needs to cover more than identical matches. Most cyber-squatting is not an identical match to the trademark being squatted but contains different generic words. Such cases of trademarks plus generic terms must also be covered by the Trademark Claims Service if ICANN intends for such a service to have any real value.

The URS is still much weaker than the URS proposed in the IRT Report. It does not seem to be more rapid or cheaper than the ordinary UDRP and the burden of proof on the trademark owner is too high. There is no loser pays mechanism which would be essential in a URS, or even a fee for filing a response to a complaint. The addition of a limited "loser pays" model if the complaint lists 26 or more domain names does not make any sense. There is no justification for the number 26 and a loser pays mechanism should be a general mechanism, not one that will not realistically have any effect.

In general, the stated objectives of the work on the new gTLDs still do not seem to be achieved with the Applicant Guidebook. ICANN has in no way shown that the new gTLDs will bring innovation, consumer choice and lower prices nor that they serve any public interest

Corporate Marketing & Arla Brand

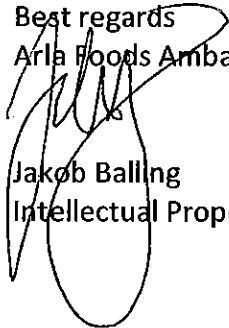
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and ICANN have definitely not shown that with the new gTLDs “the need for brand protection and the opportunity for user confusion will be greatly diminished” (ICANN*s public comment summary of February 21, 2011, p. 2). Quite the opposite seems to be the realistic outcome of the release of the new gTLDs.

We therefore again urge ICANN to reconsider the overarching issues before any new gTLDs are released.

Best regards
Arla Foods Amba

A handwritten signature in black ink, appearing to read 'Jakob Balling', is written over the typed name and title.

Jakob Balling
Intellectual Property Specialist