



Re: Qualified Launch Program for New gTLD Registries

March 15, 2014

FairWinds Partners thanks ICANN for the opportunity to reply to the Public Comments posted on the draft Qualified Launch Program (“QLP”) Addendum.

FairWinds appreciates the additional transparency the QLP Addendum provides into the conditions under which a QLP will be approved by ICANN, as well as ICANN’s consideration of intellectual property rights in drafting the QLP Addendum. We wish to put forward recommendations that would further strengthen the intellectual property safeguards proposed for the QLP.

As advocated in the comments by ARI Registry Services, FairWinds supports the creation of a new list of labels to be barred from inclusion in a QLP, except under the conditions set forth in QLP Addendum 2.1 and 2.2. However, FairWinds believes that this list should contain the corresponding labels for all Trademark Clearinghouse-registered marks, as well as labels protected through the “TMCH +50” service. Given how their marks are rendered within logos and other advertising or marketing materials, some prominent trademarks may not be eligible for Sunrise Services. For example, while Hermès has a trademark registration through the United States Patent and Trademark Organization for “HERMES,” in its use the mark is rendered as “HERMÈS.” Provided that the intellectual property safeguards established within the QLP are limited to Sunrise-eligible marks, Hermès could be excluded from protection, leaving open the possibility that domains like HERMES.JEWELRY or HERMES.FASHION could be exploited by third parties within a QLP.¹ Further, we note that the “TMCH +50” service was developed specifically to protect labels that have previously been abused within the Domain Name System. Allowing these marks to be registered within a QLP would unfairly subject trademark owners that have sought protection for these previously abused labels within new gTLDs to further abuse.

We thank ICANN for considering these recommendations, which we believe would strengthen the intellectual property protections proposed for the QLP.

¹ FairWinds Partners has no affiliation with Hermès International S.A. The example is used solely for explanatory purposes.