



Internet Corporation for Assigned
Names and Numbers
(ICANN)
4676 Admiralty Way, Suite 330
Marina del rey, CA 90292-6601
USA
Att.: Dr. Paul Twomey

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mma

Re. New gTLDs - .brand – Comments to the IRT Report

We refer to our earlier letters with comments to the two versions of the Draft Applicant Guidebook. We have reviewed the IRT Report and unfortunately, the suggestions in the IRT Report have not lessened our grave concerns regarding the release of new gTLDs. We do of course in principle support the suggestions in the IRT Report but we believe that the suggestions are in no way sufficient to protect the rights of trademark owners when the new gTLDs are released.

Our main concerns with the suggestions in the IRT Report are the following:

We support the idea behind the Globally Protected Marks List (GPML). For such a list to be of any value to owners of global trademarks the possibility of blocking infringing domain names, both on the top level and the second level, must however include more than just "domain names [that] consist[...] of the complete and identical textual elements of the GPM". Such a blocking mechanism does not provide the GPM owner with any benefit that equals the resources (financial and manpower) the GPM owner will have to use to get on this list and stay on it. The GPML would only be of value to trademark owners if the possibilities of blocking domain names are extended to domain names containing the GPM and for instance one or more generic words. This would reflect the kind of abuse that GPM owners are faced with on a daily basis.

The suggestion in the IRT Report means that if the LEGO trademark could get on the GPML that LEGO. and .LEGO would be blocked but not LEGObricks. or .LEGOshop which are typical examples of domain names that cybersquatters would choose. Such a very limited protection does not make any sense to trademark owners and an extension of the protection is definitely needed if ICANN is serious about wanting to protect trademark owners' rights.

We also support the idea behind the IP Claims Service for non-GPMs. But again the limited protection afforded trademark owners in the IRT Report means that this mechanism is of little actual value. The IP Claims Service is limited to "identically match[ing] trademarks". This means that a registrant will only have to positively opt in if he tries to register LEGO. (assuming the LEGO trademark is not on the GPML) but that he is free to register LEGOshop. or LEGObricks. without having to opt in. Such a limitation makes the IP Claims Service a fictitious protection as most registrants of infringing domain names on the second level will not receive the notice and can thus pretend not to be in bad faith. The IP Claims Service should be extended to domain names containing the trademark and for instance one or more generic words.

Furthermore, we support the URS which seems to be a much needed supplement to the standard UDRP. However, the URS does not include a loser pays mechanism which means that trademark owners are again left with the financial burden of pursuing cybersquatters in bad faith without any means of compensation. This is clearly not satisfactory for trademark owners.



We believe that all of the above issues were also raised in many of the comments to the Draft Applicant Guidebook and we had hoped that the IRT Report would have reflected these comments to a much larger extent. The IRT Report has in principle adopted mechanisms that seem to take the comments to the Draft Applicant Guidebook into consideration but the suggested actual execution of the mechanisms make them of little value to trademark owners or put a large burden on trademark owners that does not equal the benefits.

We know there will be further consultations of all relevant parties and forums and it is our hope that the suggestions in the IRT Report will be improved after these consultations and before any new gTLD is implemented. We are, as always, more than willing to discuss all of our concerns with you and elaborate on them.

On behalf of the following companies:

LEO Pharma A/S
Arla Foods amba
Vestas Wind Systems A/S
GEORG JENSEN A/S
Carlsberg Breweries A/S
Bestseller A/S
Grundfos A/S
ROCKWOOL INTERNATIONAL A/S
Coloplast A/S
Danfoss A/S
Danisco A/S
VKR Holding A/S
Bang & Olufsen a/s

Yours sincerely,
LEGO Juris A/S



Peter Kjær
Deputy General Counsel