

October 24, 2014

Mr. Cherine Chalaby
Chair
ICANN New gTLD Program Committee

RE: Standard of Review Applicable to the 3-Member Panel Review of the .CAM/.COM String Similarity Objection

Dear Mr. Chalaby:

On behalf of United TLD Holdco, Ltd., trading as Rightside Registry, let me express our thanks to the New gTLD Program Committee (NGPC) for issuing its Resolution No. 2014.10.12.NG03 (the "Resolution"), directing ICANN to establish a three-member panel (the "Review Panel") to reevaluate the inconsistent expert determination made with respect to our application for .CAM. We agree with the NGPC that allowing the three inconsistent expert determinations for .CAM to stand are not in the best interest of the new gTLD program nor the Internet community. We wish, however, to raise one important issue that needs clarification.

In its stated rationale for the Resolution, the NGPC declared that the standard of review to be applied by the Review Panel is:

whether the original Expert Panel could have reasonably come to the decision reached on the underlying SCO through an appropriate application for the standard of review as set for the in the Applicant Guidebook and the ICDR Supplementary Procedures for ICANN's New gTLD Program.

This standard suggests that the Review Panel cannot review or consider any evidence that was not before the original Expert Panel during the initial review of the objection. This appears supported by a later NGPC statement that the record on review should be limited to the expert reports and documentary evidence presented at the original proceeding.

However, also in its Resolution, the NGPC recommends that the Review Panel review, as background, the related SCO Expert Determinations which would include the other .CAM/.COM objection determinations. This should be a necessary requirement given the fact that the decisions in the other SCO Expert Determinations for .CAM resulted in inequitable treatment of the applicants for the same string which, in turn, resulted in the NGPC formulating the present review mechanism. Additionally, the Review Panel should consider, as background, the fact that in EVERY OTHER situation where VeriSign objected to an application for a string that was just one letter different from its existing TLDs (for example: .VET/.NET, .KOM/.COM, .BOM/.COM, .PET/.NET, and .NEW/.NET), the expert panelists found that there was NO string similarity between the applicant string and the VeriSign TLD.

It is critically important that the Review Panel consider not only the evidence that was presented to the Expert Panel during the first review but also the fact that *two* other SCO Expert Determinations were issued with different findings even though the applicants applied for the *exact same string*. To not

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take into account the other SCO Expert Determinations for .CAM, as well as the other objections filed by VeriSign, and instead simply leave the standard of review as stated would create the risk that the Review Panel reach the same decision as the Expert Panel in the first instance, which puts ICANN in the same position as it is today which, by its own admission, is not in the best interest of the Internet community.

The NGPC concluded that the differing .CAM/.COM Expert Determinations present **“exceptional circumstances warranting action by the NGPC because each of the Expert Determinations falls outside normal standards of what is perceived to be reasonable and just.”** Accepting this statement at its value, it makes little sense to create a review mechanism that will lead to the same unreasonable and unjust outcome which generated this review mechanism in the first place.

Therefore, in order insure that ICANN does not find itself in the exact same position as it is does today, we ask that the NGPC clarify that it will direct ICANN's President and CEO, or his designees, to establish the Review Panel with a standard of review that takes into account all of the related SCO Expert Determinations related to .CAM and the other expert determinations made against similar VeriSign objections, and the unreasonableness of the current outcome, in addition to what is in the best interest of the new gTLD Program and the Internet community.

We look forward to receiving your confirmation that the NGPC will clarify its position regarding the standard of review and the record of review and provide the appropriate direction to ICANN and the Review Panel regarding the handling of our .CAM Expert Determination.

Sincerely,



Statton Hammock
Vice-President, Business & Legal Affairs
United TLD Holdco Ltd. t/a Rightside Registry

cc: Akram Attallah
Cyrus Namazi