

Flip Petillion

12 May 2016

Members of the ICANN Board, and  
Mr Akram Atallah,  
President, Global Domains Division  
Ms. Christine Willett  
Vice President, GDD Operations

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

UNITED STATES OF AMERICA

**By e-mail**

Dear Members of the ICANN Board of Directors, Mr. Atallah and Ms. Willett

**Re: .hotel data exposure issue**

I refer to my letter of 8 March 2015, and I am writing to you on behalf of Travel Reservations SRL ("TRS", formerly Despegar Online SRL), Famous Four Media Limited (and its subsidiary applicant dot Hotel Limited), Fegistry LLC, Minds+Machines Group Limited (formerly, Top Level Domain Holdings Limited), Donuts Inc. (and its subsidiary applicant Spring McCook, LLC), and Radix FZC (and its subsidiary applicant DotHotel Inc.).

Earlier today, I was informed of recent correspondence between ICANN and HOTEL Top-Level-Domain s.a.r.l. ("HTLD"). I was surprised that I had to find out about this correspondence myself, despite counsel to ICANN had committed to keep me informed of developments. Not having heard back from him, despite repeated requests, I address my request, as expressed in my e-mail of 10 May 2016, directly to you. Please find attached the relevant correspondence.

In any event, I understand from ICANN's letter to HTLD of 16 March 2016 that ICANN:

- (i) is taking my clients' concerns very seriously;
- (ii) acknowledges that Dirk Krischenowski accessed and downloaded confidential information in relation to my clients' applications (including technical and financial information) and that he appears to have specifically searched for such information; and
- (iii) found out that multiple business connections exist between HTLD and Mr. Krischenowski.

From HTLD's response of 23 March 2016, I learn that:

- (i) Mr. Krischenowski was an important shareholder of HTLD;
- (ii) that he was a consultant to HTLD at the time he accessed my clients' proprietary information; and
- (iii) that Mr. Krischenowski continued being a consultant and an important shareholder of HTLD, long after applicants were informed about Mr. Krischenowski illegal appropriation of trade secrets.

HTLD claims that it only learned about Mr. Krischenowski's action on 30 April 2015. However, HTLD kept Mr. Krischenowski as a consultant until 31 December 2015, and Mr. Krischenowski remained the managing director of HTLD's related company, Hotel Top-Level-Domain GmbH, until 18 March 2016. Mr. Krischenowski also remained a major shareholder of HTLD.

As a result, HTLD did not take any action until it was informed that ICANN is taking the issue very seriously.

HTLD's is now claiming that it did not use the information that was misappropriated by Mr. Krischenowski to support its application in the framework of ICANN's evaluation.

However, it is of no relevance whether or not HTLD has used this information in the framework of ICANN's evaluation of .hotel. What matters is that the information was accessed with the obvious intent to obtain an unfair advantage over direct competitors. The future registry operator of the .hotel gTLD will compete with other registry operators. In the unlikely event that HTLD were allowed to operate the .hotel gTLD, HTLD would have an unfair advantage over competing registry operators, because of its access to sensitive business information of my clients. HTLD could use this unfair advantage to adapt its commercial strategy, pricing, technical infrastructure, etc., an advantage HTLD would never have obtained, had it not illegally accessed sensitive business information of its direct competitors.

The fact that HTLD nevertheless submits that the information that was obtained by Mr. Krischenowski could not have supported HTLD's application for .hotel, and that it waited for almost an entire year, and after being summoned by ICANN, to terminate its relationship with Mr. Krischenowski, further demonstrates that allowing HTLD's application to proceed would be a disservice to the Internet community.

\*

In view of the above, I reiterate my clients' request that ICANN and its Board cancel the application of HTLD for .hotel.

This letter is not intended to be a complete statement of the elements of facts or law relevant to this matter and is sent without prejudice and reserving all rights.

Yours sincerely,



Flip Petillion

Annexes:

Letter of counsel to ICANN of 16 March 2016

Letter on behalf of my clients of 27 April 2016

Letter on behalf of my clients of 10 May 2016

# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071.2452  
TELEPHONE: +1.213.489.3939 • FACSIMILE: +1.213.243.2539

JP003845/1500880556  
172210-665016

March 16, 2016

Mr. Flip Petillion  
Crowell & Moring  
7, Rue Joseph Stevens  
B-1000 Brussels  
Belgium

Re: New gTLD Applicant Portal

Dear Mr. Petillion:

We represent ICANN with respect to this matter. We write in response to your letter dated 1 March 2016 sent on behalf of Travel Reservations SRL (formerly Despegar Online SRL) ("Despegar") and your letter dated 8 March 2016 sent on behalf of Despegar and Famous Four Media Limited (and its subsidiary applicant dot Hotel Limited), Fegistry LLC, Minds+Machines Group Limited (formerly, Top Level Domain Holdings Limited), Donuts Inc. (and its subsidiary applicants Spring McCook, LLC and Little Birch, LLC), and Radix FZC (and its subsidiary applicant DotHotel Inc.).

We thank you for bringing this matter to ICANN's attention and in particular for providing the information regarding Mr. Krischenowski's apparent representation of Hotel TLD in three string confusion objections in 2013. Please let us know if any of your clients have any further information regarding the connection between Mr. Krischenowski and Hotel TLD.

ICANN takes the portal misconfiguration issue and your clients' concerns very seriously and is thoroughly considering the appropriate response. Prior to making a final determination on your clients' request that ICANN cancel the application of Hotel TLD for the .Hotel gTLD, ICANN would like to provide Hotel TLD an opportunity to respond. To that end, ICANN will send a letter to Hotel TLD informing Hotel TLD of your clients' request that ICANN cancel Hotel TLD's application for the HOTEL gTLD, and asking Hotel TLD to respond within seven (7) days.

We appreciate your continued patience through this process and we will keep you informed of developments.

Very truly yours,



Michael G. Morgan

Flip Petillion

27 April 2016

Michael G. Morgan  
Jones Day  
555 South Flower Street  
Fiftieth Floor  
Los Angeles  
California 90071.2452

UNITED STATES OF AMERICA

By e-mail: [mgmorgan@jonesday.com](mailto:mgmorgan@jonesday.com)

Dear Colleague,

**Re: .hotel data exposure issue (your reference JP003845/1500880556 172210-66016)**

I refer to your letter of 16 March 2016 in which you informed me that ICANN was going to send a letter to Hotel Top-Level-Domain s.a.r.l. ("HTLD"), asking HTLD to respond within seven days.

Could you please inform me of any developments and send me a copy of the communications between ICANN and HTLD? I thank you in advance.

Yours sincerely,



Flip Petillion



Flip Petillion



10 May 2016

Michael G. Morgan  
Jones Day  
555 South Flower Street  
Fiftieth Floor  
Los Angeles  
California 90071.2452

UNITED STATES OF AMERICA

**By e-mail:**      **mgmorgan@jonesday.com**

Dear Colleague,

**Re:      .hotel data exposure issue (your reference JP003845/1500880556 172210-66016)**

I refer to my email of 27 April 2016, in which I requested an update on the developments and a copy of the communications between ICANN and HTLD. Unless mistaken, I did not yet receive a response. May I conclude that HTLD did not react to my clients' request, since you committed to keep me informed of the developments in this matter?

In the meantime, it was brought to my attention that the ICANN Board has scheduled a discussion on a report on .hotel at its meeting of 15 May 2016. The ICANN Board also plans to hold a confidential session at said meeting. I trust that the report on .hotel will be communicated well in advance of the meeting and that the Board's discussion on .hotel will not be part of the confidential session. My clients are of the opinion that they are entitled to full transparency regarding ICANN's consideration of the .hotel extension, and that they ought to be informed of all discussions by ICANN and its Board members regarding .hotel.

Therefore, I am looking forward to receiving i) a copy of all communications between ICANN and HTLD, ii) ICANN's report on .hotel, iii) ICANN's confirmation that .hotel will not be discussed during a confidential session, and iv) information on all other developments and discussions that may have occurred regarding .hotel.

You will appreciate that my clients should be given an opportunity to examine the requested information prior to the Board's meeting. I therefore insist that you send me the requested information by no later than 12 May 2016 at 11am UTC, failing which I will have to address my request directly to the ICANN Board.

p. 1 / 2

I thank you in advance for your immediate attention to this matter and your prompt reply.

Yours sincerely,

*Flip Petillion*

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Flip Petillion