



June 11, 2013

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Mr. Fadi Chehadé
President and CEO
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Mr. Chehadé,

I am writing to ask you to urge the United States Patent and Trademark Office (USPTO) as well as global Trademark offices to extend Trademark protection to the Top Level Domain industry. The term .COM should be eligible for Trademark protection as a Top Level Domain, as should the terms .Nike, .GAP and .RedCross.

Trademark Protection for TLDs would benefit ICANN in several ways:

Drastically Reduce Future Litigation Risk. There is a high risk (almost a certainty) that by pursuing its' current policy, ICANN may become embroiled in future legal disputes – such as the Namespace lawsuit and future incarnations of the Image Online Design lawsuit - over rights to new or future Top Level Domains. The risk of global companies filing lawsuits to protect their company or trade name at the root is almost a certainty because of the broad wording in the Applicant Guidebook and because of ICANN's stance of protecting every Trademark everywhere at the level of the Top Level Domain. That is not how Trademarks are supposed to work – and for good reason. Trademarks are supposed to be specific to one industry, and one locale, but because the United States Patent and Trademark Office has refused to step up and take responsibility for administering Trademarks, and global Trademark protection for TLDs is patchy at best, ICANN has been left in the awkward position of having to protect Trademarks in every industry in every country at the level of the root. This is an untenable and unsustainable position. ICANN must delegate authority to the USPTO, as well as to global Trademark offices, to provide Trademark protection for this industry.

Eliminate the .RedCross debate. ICANN should not be responsible for protecting terms such as .RedCross at the level of the Top Level Domain. This is clearly the purview of the appropriate Trademark authorities. ICANN would save itself a great deal of headache and embarrassment by delegating this debate to global Trademark offices.

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Trademark Protection for TLDs does not have any negative impact on ICANN.

No Loss of Control or Authority. ICANN would retain authority to approve or revoke registry contracts for new TLDs. This means that just because someone might have a Trademark for the .example Top Level Domain, such a Trademark would not guarantee ICANN's approval to actually operate the .example Top Level Domain or guarantee its delegation into the root directory. By the same token, even if a company had a Trademark for .example, and had been operating the .example TLD for ten years, ICANN could still revoke that company's contract to continue to operate the .example TLD (for example, for breach of contract) and could demand that the company transfer its TLD operations – including its Trademark – to another company.

No Loss to TLD Operators. TLD operators would not lose any authority to sell domain names within their Top Level Domains to customers. The purchase of a domain name could include a license to utilize the Trademarked Top Level Domain in any advertising. For example, the purchase of a .COM domain name could include a license to utilize the .COM Trademark in any lawful advertising. Indeed, a licensing agreement of this kind could give global authorities, including ICANN, the legitimate authority to revoke a domain name if a domain name holder was using a licensed Trademark (eg. The word .COM) for unlawful activities. This could also give ICANN more of a lever to demand that the TLD operators enforce their Trademark licensing agreements.

No Lost Income. If ICANN had expected to profit from potential auctions for Top Level Domains, that hope has clearly been extinguished by the success of Innovative Auctions, which recently held its first successful private auction for 6 TLDs including .club, .college, .luxury, .photography, .red and .vote. It is highly unlikely that any TLDs will choose to utilize auction services provided by ICANN. Therefore, ICANN will not suffer any lost income potential by encouraging global Trademark offices to provide Trademark protection for TLDs.

In conclusion, ICANN's Bylaws call for ICANN to recognize the policy role of other responsible entities – such as the United States Patent and Trademark Office – while performing its mission. It is important that, at this time of rapid innovation, we not lose sight of our existing institutions or of ICANN's core mission and values.

Thank you for your time.

Sincerely,

Mary Iqbal