

July 28, 2012

VIA EMAIL (steve.crocker@icann.org; akram.atallah@icann.org;
cherine.chalaby@icann.org; john.jeffrey@icann.org;
heather.dryden@ic.gc.ca; kurt.pritz@icann.org;
ssene@ntia.doc.gov; ocl@gih.com)

Jeffrey M. Stoler
Partner
T. 617.449.6511
F. 617.326.3112
jstoler@mccarter.com

McCarter & English, LLP
265 Franklin Street
Boston, MA 02110-3113
T. 617.449.6500
F. 617.607.9200
www.mccarter.com

Dr. Stephen D. Crocker, Board Chair
Akram Atallah, Interim CEO
Cherine Chalaby, Chair, New gTLD Program Committee
John Jeffrey, General Counsel
Heather Dryden, Chair, Government Advisory Committee
Kurt Pritz, SVP Stakeholder Relations and Acting Director of New gTLD Program
Suzanne Sene, U.S. Representative to ICANN Government Advisory Committee
Dr. Olivier M.J. Crépin-Leblond, Chair, ICANN At Large Advisory Committee
Internet Corporation for Assigned Names and Numbers
1101 New York Ave, NW, Suite 930
Washington, DC 20005

Re: gTLD Applications of Demand Media, Inc. and Donuts, Inc.

Dear Dr. Crocker, et al.:

Demand Media, Inc. ("***Demand Media***") and Donuts, Inc. ("***Donuts***") appear to have applied for at least 333 top-level domains.

This firm wishes to bring to ICANN's attention¹ information detailing why the applications from Demand Media and Donuts (together hereinafter referred to as "***Demand/Donuts***") should not survive the Background Screening standards set forth in §§ 1.2.1 and 2.1 of the gTLD Applicant Guidebook, Version 2012-06-04 (hereinafter, the "***Guidebook***").

Specifically, this letter details:

- the extraordinary number of rulings against Demand Media companies by UDRP panels – based on findings of bad faith, cybersquatting and/or typosquatting – which rulings demonstrate Demand Media's ineligibility to pass ICANN's Background Screening;

¹ With regard to the eligibility of applicants for gTLDs, § 1.2.1 of the gTLD Applicant Guidebook, Version 2012-06-04 (hereinafter, the "***Guidebook***") states that "ICANN may take into account information received from any source if it is relevant to the criteria [regarding an applicant's eligibility]." We believe the Guidebook included this statement so as to encourage persons with relevant information to step forward in connection with ICANN's evaluation of applicant eligibility.

BOSTON

HARTFORD

NEW YORK

NEWARK

PHILADELPHIA

STAMFORD

WILMINGTON

- the strong evidence that Donuts is merely an alter ego of, and working in concert with, Demand Media; evidence should lead to the conclusion that Donuts should fail ICANN's Background Screening for the same reason Demand Media should fail;
- the existence of an "option" obtained by Demand Media on 100+ of Donuts' gTLD applications and the intention of Demand Media and Donuts to form work in concert to exploit their new gTLDs;
- the obfuscation and omissions by Donuts in its gTLD applications (which obfuscations and omissions are also found in Demand Media's gTLD applications);
- the patent obtained by a control person of both Demand Media and Donuts that would, when implemented, cause unregistered domain names to become commercial advertisements;
- the history of Demand Media executives as major distributors of malware (including the settlement agreement with the Attorney General of the State of New York); and
- information regarding problematic, questionable and/or illegal Internet business activities that directors of Donuts are or have been engaged.

I. **BACKGROUND**

1. The Guidebook states that all applicants are subject to ICANN's Background Screening as to their history of cybersquatting and other types of conduct, as articulated in §§ 1.2.1, 2.1, 2.1(b) and 2.1.2 of the Guidebook.²
2. More specifically, §1.2.1 of the Guidebook states:

"In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program [that ...]

m. has been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy

² Section 2.1 of the Guidebook states that ICANN will conduct its own Background Screening in two areas: (a) general business diligence and criminal history; and (b) history of cybersquatting behavior. That Section further states that each application must pass both Background Screening areas to be eligible to proceed. Although §2.1.1 appears to waive the general business diligence and criminal history screening for applicants that are publicly traded corporations (listed and in good standing on any of the world's largest 25 stock exchanges), no such waiver applies to ICANN's evaluation of an applicant's history of cybersquatting behavior. Guidebook §§1.2.1, 2.1, 2.1(b) and 2.1.2.

(UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the Background Screening process;

o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).”

3. The importance of this threshold for eligibility is emphasized in §2.1.2 of the Guidebook, entitled “History of Cybersquatting”, which states in part:

“ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

“The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.”

II. FINDINGS AGAINST DEMAND MEDIA GROUP BY UDRP PANELS

4. Demand Media, its eNom and its Demand Domains³ subsidiaries are merely three of the 140+ entities that comprise the Demand Media “family” of entities⁴ (together referred to as the “***Demand Media Group***”).
5. Public filings reveal that the Demand Media Group has, collectively, suffered at least 39 adverse UDRP decisions. This number includes 33 cases where the respondent was “Demand Domains” or some variation thereof, five cases where the respondent was “eNom” or some variation thereof, and one case

³ The records of the Secretary of State for the State of Delaware reveal that Demand Media caused its Demand Domains, Inc. subsidiary to be merged with and into another of its subsidiaries, named Hot Media, Inc., on March 7, 2008. See footnote 4, below.

⁴ A list of Demand Media’s subsidiaries was included as Exhibit 21.1 of Demand Media’s Annual Report on Form 10-K filed with the U.S. Securities and Exchange Commission on February 24, 2012, a copy of which list is provided at Exhibit A to this letter.

where the respondent was “Acquire This Name”, another member of the Demand Media Group.⁴ The full list of these decisions, together with a guide to the tribunals’ findings and a web link to the tribunals’ written decisions is provided in Exhibit B to this letter.

6. Possibly more important is that, of the 39 rulings against the Demand Media Group, the tribunals made express findings of “bad faith,” “typosquatting” and/or “cybersquatting” on the part of the named member of the Demand Media Group in 24 – almost two-thirds – of those cases.
7. Of these 39 rulings against the Demand Media Group, 22 have been rendered within the past four years. In fact, the following 22 adverse decisions were all rendered since September 1, 2008 and, therefore, within four years of ICANN’s receipt of Demand/Donut’s applications. Those cases are:

2008

- *Davis + Henderson, Limited Partnership v. Whois Privacy Protection Service, Inc./Demand Domains Inc.*; **finding of bad faith.**
- *American Airlines, Inc. v. Demand Domains, Inc.*; **findings of bad faith, typosquatting and cybersquatting.**
- *Aventis Pharmaceuticals Holdings Inc., Aventis Pharmaceuticals Inc. and Sanofi-Aventis v. Demand Domains, Inc.*
- *Tokyu Corporation v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
- *Sanofi-Aventis v. Demand Domains, Inc./Whois Privacy Protection Service*; **finding of bad faith.**

2009

- *The American Automobile Association, Inc. v. Demand Domains, Inc.*
- *Caja de Ahorros Monte de Piedad de Madrid v. Acquire This Name, Inc., Matt Overman*
- *Russian Standard Bank Joint Stock Company v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
- *Cafepress.com, Inc. v. Demand Domains, Inc.*
- *SCI Services, Inc. v. Demand Domains, Inc.*
- *AIDA Cruises German Branch of Societa di Crociere Mercurio S.r.L v. Whois Privacy Protection Servives, Inc./Demand Domains, Inc.*
- *BHP Billiton Innovation Pty Ltd. v. Demand Domains, Inc.*; **findings of bad faith and typosquatting.**

- *Credit Industriel et Commercial S.A. v. Demand Domains, Inc.*; **finding of bad faith.**

2010

- *Texas Lottery Commission v. Demand Domains, Inc.*; **finding of bad faith.**
- *BHP Billiton Innovation Pty Ltd v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*; **findings of bad faith, typosquatting and cybersquatting.**
- *Spirits Marque One, LLC v. Demand Domains, Inc.*; **finding of bad faith.**
- *Successories.com, LLC v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*; **finding of bad faith, typosquatting and cybersquatting.**
- *Ezeego One Travels and Tours, Ltd. v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*; **finding of bad faith.**
- *Easy Gardener Products, Inc. v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*; **finding of bad faith.**
- *Asahi Breweries Ltd. v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*; **finding of bad faith.**

2011

- *Pepkor IP (Proprietary) Limited Translink Services S.a.r.l. v. Domain Name Administrator/Demand Domains*; **finding of bad faith.**
- *Universal American Corp. v. Whois Privacy Protection Service, Inc./Whois Agent*;⁵ **findings of bad faith and typosquatting**

8. We believe these decisions – no less the full list provided in Exhibit B – provide the basis for finding that the Domain Media Entities and/or the individuals named in Demand Media’s applications for gTLDs, have a long history of engaging in cybersquatting and bad faith as defined in the Uniform Domain Name Dispute Resolution Policy.⁶

⁵ *Universal American Corp.* is included due to the fact that the respondent in that case, Whois Privacy Protection Service, Inc./Whois Agent, was represented by Christina G. Raocha, Demand Domain’s in-house corporate counsel.

⁶ As an example, the panel in *BHP Billiton Innovation Pty Ltd v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*, Case No. D2010-0657 (June 17, 2010), in its finding of bad faith due to cybersquatting and typosquatting said,

“However, perhaps the most telling feature against the Respondent is its involvement in numerous other domain names. It would appear that it carries on business registering a variety of domain names which are

III. **ATTRIBUTION OF BAD FAITH UNDER ACPA AMONG AFFILIATED PERSONS**

9. There is substantial and well-known precedent for attributing bad faith conduct from one member of an affiliated group to other members of that group, particularly if those affiliates act in concert or are under common control.
10. In fact, one of the leading cases for that principal was the case of *Davis Vision, Inc. v. Demand Domains, Inc.*⁷ – a case involving the same Demand Media Group that is the subject of this letter.
11. Specifically, in the *Davis Vision* case, the National Arbitration Forum’s made a finding that:

“Whereas the Panel notes that Respondent [referring to Demand Media’s subsidiary, Demand Domains] and Registrar [referring to Demand Media’s subsidiary, eNom], have the same mailing address, the Panel infers that that Respondent, Demand Domains, Inc., is related to Registrar, eNom, Inc. – though the exact nature of the relationship is not stated in the record. Hence, **for purposes of analyzing bad faith**, the Panel will treat both Respondent [Demand Domains] and the Registrar [eNom] as a single entity....” (*emphasis supplied*)
12. The *Davis Vision* case is not alone in the domain name context in recognizing, as the courts regularly do, that ostensibly separate corporations should be treated as one and the same when those entities are shown to act in concert and/or are under common control.⁸

then used either for blocking or for sale [and, as a result] it is simply begging credulity for the Respondent to contend, as it does, that it ‘does not knowingly or intentionally register domains that conflict with third party rights.’ ”

See Exhibit B for a web link to the full text of the tribunal’s written decision.

⁷ *Davis Vision, Inc. v. Demand Domains, Inc.*, Claim Number: FA0802001142731 (March 26, 2008). <http://www.udrpsearch.com/naf/1142731>.

⁸ In addition, other UDRP panels have found that Demand Media and its eNom subsidiary must be treated as the same entity. *Paxar Americas, Inc. v. eNom, Inc.*, Claim Number: FA0705000980114 (June 22, 2007). See Exhibit B for a web link to the full text of the tribunals’ written decisions.

IV. DEMAND MEDIA GROUP AND DONUTS SHOULD BE VIEWED AS A SINGLE ENTITY FOR PURPOSES OF ICANN'S BACKGROUND SCREENING PROCESS

13. For the same reasons that the National Arbitration Forum has treated Demand Domains and eNom as a single entity “for purposes of analyzing bad faith”, we believe ICANN could and should treat Demand Media Group and Donuts as a single entity “for purposes of analyzing bad faith” under §1.2.1(m) of the Guidebook.
14. First, there is the well-known fact that Paul Stahura, the founder and CEO of Donuts⁹, long served as Demand Media’s President, Chief Strategy Officer and on its Board of Directors.¹⁰ During his years of setting the strategy and executing on the business plan of Demand Media, Demand Media Group lost no less than 24 UDRP cases. Moreover, the many subsequent UDRP cases decided adversely to the Demand Media Group were based on actions and business strategies that Mr. Stahura implemented during his tenure.¹¹
15. In addition, Richard Tindal, Demand Media’s former SVP Registry is also a principal of Donuts.¹² During Mr. Tindal’s tenure with Demand Media, at least 16 UDRP actions were decided in a manner adverse to the Demand Media Group.¹³
16. In June 2009, when ICANN’s rules went into effect and it was widely thought that implementation of the new gTLD program was imminent, the executives of Demand Media Group realized that Demand Media’s sordid history would clearly block its ability to successfully apply for the new gTLDs.
17. As an initial gambit, Demand Media petitioned ICANN to revise the rules.¹⁴
18. When ICANN rejected those revisions, the undersigned believes Demand Media decided it would be necessary to create a new entity to participate in

⁹ “Former Demand Media exec Paul Stahura emerges at stealthy Donuts Inc.” Geekwire.com, April 30, 2011 <http://www.geekwire.com/2011/demand-media-exec-paul-stahura-emerges-stealthy-donuts/>.

¹⁰ “Paul Stahura Leaving eNom and Demand Media After 12 Years,” Domain Name News, November 13, 2009 <http://www.domainnamenews.com/people/paul-stahura-leaving-enom-demand-media/6591>.

¹¹ See ¶7, above, and Exhibit B, *infra*.

¹² http://www.sec.gov/Archives/edgar/data/1518802/000151880211000001/xslFormDX01/primary_doc.xml.

¹³ See ¶7, above, and Exhibit B, *infra*.

¹⁴ “Demand Media Comments on the Proposed Final New gTLD Applicant Guidebook,” December 8, 2010 <http://forum.icann.org/lists/5gtld-guide/msg00039.html>.

the new gTLD program.¹⁵ As a result, Donuts was formed by Messrs. Stahura and Tindal.

19. It would make a mockery of ICANN rules, however, if Demand Media Group and its executives could absolve themselves of their record of adverse UDRP decisions merely by forming a new entity.
20. In fact, §1.2.1 of the Guidebook includes a paragraph, entirely in bold, warning applicants of ICANN's intention to look beyond mere corporate formalities – and to apply its Background Screening with regard to the conduct of the individuals involved with applicants – when it states:

“In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.”
(emphasis supplied)

21. In fact, without such a look-through approach, the Background Screening contemplated by §1.2.1 of the Guidebook would only screen-out the entities with bad UDRP histories that were not smart enough to form new entities to apply for gTLDs.

V. FURTHER EVIDENCE THAT DEMAND MEDIA GROUP AND DONUTS ARE ACTING FOR THE BENEFIT OF ONE ANOTHER AND ARE NOT INDEPENDENT

22. On June 11, 2012, Demand Media issued a press release¹⁶ trumpeting that Demand Media and Donuts were acting in concert with regard to their gTLD applications. Specifically, that release announced several strategic and financial relationships that Demand Media and Donuts had struck, stating (in part):

“As part of this initiative, Demand Media has applied for 26 [gTLDs] on a stand-alone [i.e., separate from Donuts] basis. In addition, Demand Media has entered into a strategic arrangement with Donuts Inc., an Internet domain name registry founded by industry veterans, through which it may acquire rights in certain gTLDs after they have been awarded to Do-

¹⁵ “Former Demand Media exec Paul Stahura emerges at stealthy Donuts Inc.” Geekwire.com, April 11, 2011 <http://www.geekwire.com/2011/demand-media-exec-paul-stahura-emerges-stealthy-donuts/>.

¹⁶ “Demand Media to Participate in Historic Expansion of Generic Top Level Web Domain Name Extensions.” <http://www.demandmedia.com/press-releases/2012/06/11/demand-media-to-participate-in-historic-expansion-of-generic-top-level-web-domain-name-extensions>.

nuts by ICANN. These rights are shared equally with Donuts and are associated with 107 gTLDs for which Donuts is the applicant. Further, as previously announced, a subsidiary of Demand Media has been selected as the technical registry operator for both Demand Media and Donuts.”

23. This joint venturing by Demand Media and Donuts with regard to their plans to exploit the commercial value of their gTLDs does not bode well for the ICANN community and the public interest, given Demand Media’s abysmal cybersquatting history and the fact that Donuts is now managed by the same people that managed Demand Media.
24. Furthermore, the fact that a member of the Demand Media Group “has been selected” as the technical registry operator for the new gTLDs only strengthens the inference that Demand Media Group and Donuts are acting as affiliates even as they must pretend not to be.
25. It is notable, as well, that a review of the gTLD applications reveals that Demand Media and Donuts appear to have carefully coordinated their applications to prevent any conflict between Donuts’ 307 applications and the 26 by Demand Media. This fact is in stark contra-distinction to all of the other applicants – where the record reflects that every other applicant with more than three applications (excluding those applying for their own trademarked terms) has at least one conflict with Donuts.

VI. ADDITIONAL POTENTIAL CONCERN

26. One clue to Demand Media’s and Donuts’ intentions for new Top Level Domains can be found in US Patent 7539774: “Method for domain name registration and a corresponding apparatus.”
27. This patent, filed by Mr. Stahura, and assigned to Demand Media, describes a method for working around ICANN’s prohibition against wildcarding, allowing for a registry to register extremely large numbers of pages at very low cost, without giving up ordinary domain registration revenue. As the patent describes:

The domain name <ad2a9d3ocs.com> may have a value, but it is probably less than the current minimum one year registration fee for this domain name in this TLD, which, on Jun. 17, 2005, is at least \$6.25, which does not include a markup for the registrar (VeriSign, the operator of the .com TLD, charges a registration fee of \$6.00, and ICANN charges a fee of \$0.25). As a consequence, <ad2a9d3ocs.com> is unlikely to become a registered domain name, notwithstanding that it may have some value.

This patent provides a way for Demand/Donuts to insert parking pages on such names, including on typographical variants of trademarks and generic names, at very low cost. Because Demand/Donuts would have proprietary access to registry traffic data, this patent would allow them to continue their cybersquatting activities on a monumental scale – in this case on virtually the entire new TLD second-level domain space. One can only imagine seeing vast quantities of parked pages for illegal pharmaceuticals on .health, or pages linking to malware on .security, .creditcards or .fund.

VII. DONUTS FAILED TO PROPERLY DISCLOSE THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, AND MAJOR SHAREHOLDERS FOR PUBLIC SCRUTINY, AS REQUIRED BY THE GUIDEBOOK.

28. Donuts, which includes subsidiaries (and subsidiaries of subsidiaries) as the named applicants and parents in each of its applications, should be independently disqualified as an applicant for failing to properly disclose its executives and beneficial owners as required by §1.2.1 of the Guidebook in its responses to questions 11(a) through (d) of the gTLD questionnaire.

Section 1.2.1 states, in part:

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners and major shareholders of that entity. The names of individuals included in the application will be published as part of the application....

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of information provided in questions 1-11. ICANN may take into account information received from any source if it is relevant to the criteria in this section [...]

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program [that...]

- n. fails to provide ICANN with identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process.

o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).¹⁷

29. In each of Donuts' 307 applications, the applicant is listed as a subsidiary of a subsidiary of Donuts.
30. Question 9(c) requires that: "[i]f the applying entity is a joint venture, [that applicant must] list all joint venture partners."¹⁸ Yet, none of Donuts' 307 applications has this question completed,¹⁹ even though public information indicates that Demand Media has interests in 107 of Donuts' applications that sound very much like joint ventures as noted in ¶21.²⁰
31. Question 11(a) requires the applicant to: "Enter the full name, contact information (permanent residence), and position of all directors (*i.e.*, members of the applicant's Board of Directors, if applicable)."²¹ Yet, none of Donuts' 307 applications has this question answered,²² in what can only be an attempt to mask each subsidiary's subsidiary's relationship to Donuts.
32. Question 11(b) requires the applicant to:
- (b) Enter the full name, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.²³

Yet, again, none of Donuts' 307 applications has this question completed.²⁴ It is conceivable that Donuts would explain that – because its applicants were formed as limited liability companies they do not officially have "corporate officers," and therefore no disclosure was required. Such an explanation would, however, seem to fall squarely within the injunction in §1.2.1(o) of the Guidebook against an applicant's failure "to provide a good faith effort to

¹⁷ Guidebook, §1.2.1.

¹⁸ Guidebook, Attachment to Module 2.

¹⁹ Public sections of Donuts' applications, available at <http://gtldresult.icann.org/application-result/>.

²⁰ MarketWatch.com, June 11, 2012 "Demand Media to Participate in Historic Expansion of Generic Top Level Web Domain Name Extensions."

²¹ Guidebook, Attachment to Module 2.

²² Public sections of Donuts' applications, available at <http://gtldresult.icann.org/application-result/>.

²³ Guidebook, Attachment to Module 2.

²⁴ Public sections of Donuts' applications, available at <http://gtldresult.icann.org/application-result/>.

disclose all relevant information relating to items (a) – (m)” and constitute a ruse to avoid the disclosures required by the rules.

33. The failure to be fully forthcoming in Donuts’ gTLD applications serves simply to underscore and provide further evidence of the bad faith that Demand Media Group has so richly displayed over its operating history. The fact that Donuts is now engaged in similar conduct *vis-à-vis* ICANN’s gTLD application process should not come as a surprise.

VIII. DEMAND MEDIA IS A WELL-KNOWN DISTRIBUTOR OF MALWARE

34. In 2010, ITBusinessEdge reported on the findings by HostExploit that Demand Media was the single worst registrar with respect to malware, with nearly twice the number of incidents as the second-worst offender.²⁵ This “worst in class” award covers malicious software that:

“[...] fundamentally disregards how users might choose to employ their own computer. Examples of such software include spyware, malware, rogues, and deceptive adware. It commonly appears in the form of free screensavers that surreptitiously generate advertisements, malicious web browser toolbars that take browsers to unexpected web pages and keylogger programs that transmit personal data to malicious third parties.”

35. Demand Media’s founder and president, Richard Rosenblatt, is no stranger to malware. Prior to starting Demand Media, he was the CEO of Intermix Media, and reached a settlement agreement with New York State Attorney General’s office²⁶, stating in part:

“In the filing, the Attorney General’s office said it documented at least 10 individual sites from which Intermix or its agents were distributing spyware with no warning. It contends that Intermix was responsible for dispensing more than **3.7 million malicious programs** to New Yorkers alone during the investigation, along with millions of other consumers.”²⁷ (*emphasis supplied*)

Amazingly, Donuts has applied for the top-level domain .security – as if this past record had no significance whatsoever.

²⁵ <http://www.itbusinessedge.com/cm/community/news/sec/blog/hostexploit-demand-media-home-to-badware/?cs=42714>; <http://www.spamfighter.com/News-14948-New-Report-On-Top-Badware-Networks-And-Service-Providers.htm>.

²⁶ http://news.cnet.com/2100-7348_3-5688609.html.

²⁷ http://news.cnet.com/2100-7348_3-5688609.html.

IX. ADDITIONAL ISSUES FOR GAC CONSIDERATION

36. The Governmental Advisory Committee (“**GAC**”) is cautioned to take special note of the fact that, though not listed as a participant in Donuts’ \$100,000,000 offering, it is logical to assume that since an employee – Graham Stirling – of Veddiss Ventures has a seat on Donuts’ Board of Directors²⁸, Veddiss Ventures and/or Veddiss Venture’s principals are, in fact, among Donuts’ equity investors. Veddiss Ventures’ founder and leader is Vikrant Bhargava, a founder of Party-Gaming, Plc (now a part of Bwin.Party Digital Entertainment Plc as the result of a March 2011 merger²⁹), the operator of PartyPoker.com, which operated illegal gaming sites in the United States.³⁰ According to publicly available information, Vikrant Bhargava was intimately involved in, and profited extensively from, Party Gaming since its beginning.³¹

²⁸ At least as of April 29, 2011 based on Donuts, Inc.’s Form D filing of that date, Filer ID Number 0001518802. <http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001518802>.

²⁹ http://en.wikipedia.org/wiki/Bwin.Party_Digital_Entertainment.

³⁰ From <http://www.gamblingsites.com/history/partygaming/>:

“In a press release on October 2nd, 2006, Party Poker said: ‘The Company will suspend all real money gaming business with U.S. residents, and such suspension will continue indefinitely, subject to clarification of the interpretation and enforcement of US law and the impact on financial institutions of this and other related legislation....’

In April 2009, Party Gaming signed a non prosecution [sic] deal with the Department of Justice, where the group admitted that it had targeted US citizens prior to the UIGEA – an act that went against US gambling laws. Party Gaming agreed to pay the sum of \$105 million over a period of four years.”

³¹ From http://en.wikipedia.org/wiki/Anurag_Dikshit:

“At age 26, (Anurag) Dikshit was asked by Partygaming founder, American Ruth Parasol, to write the company’s betting software. His programme enabled gamblers around the world to play one another in poker. After seeing first hand Anurag’s impressive skills with programming he was given a large number of shares in the company to continue working with PartyGaming.

In 2000, Dikshit hired a friend from his alma mater, Vikrant Bhargava, to begin working at PartyGaming with him and others.

Despite PartyGaming being one of the first online gaming companies to pull out of the US market, in December 2008, Dikshit agreed to cooperate with the U.S. Justice Department in an investigation of PartyGaming. Dikshit entered the plea to one count of online gambling in violation of the Federal Wire Act and agreed to forfeit \$300 million.”

37. This is exactly the type of information that full and honest Question 11 disclosure is designed to elicit from applicants so that ICANN can perform meaningful due diligence and the public can provide meaningful comments – in all instances, but particularly when the applicant Donuts, has applied for the TLDs .casino, .gaming, and (yes) .poker; as well as .soccer, .futbol, .football, rugby, .basketball and .cricket, all sports for which PartyGaming/Bwin offers online bookmaking.³²
38. Furthermore, Donuts has applied for equally sensitive strings in the healthcare industry, including .health, .doctor, and .medical despite a very poor background regarding illicit pharmaceutical names. In particular, Giga Om has reported that eNom knowingly profited from the sale of domain names to distributors of illegal pharmaceuticals.³³
39. According to a report of watchdog site Knujon, cited in the above article (a study which covers the period in which Paul Stahura was a director of Demand Media and chief executive of the eNom subsidiary that was directly involved in these activities):
- “more than 4,000 ‘rogue Internet pharmacies’ use eNom’s registration services, which the firm says is **seven times as many as use any other registrar**. eNom has become an accessory to violation of the criminal statutes listed above, by virtue of knowingly continuing to permit registration of these sites, and refusing to suspend the domains once being put on notice. In other words, the firm says, **‘eNom has become an arm of illicit international drug traffic.’**” (*emphasis supplied*)
40. Surely this is an issue of utmost import to the GAC. For the stewardship of key health domains including .health, .healthcare and .medical to be granted to Mr. Stahura’s new controlled entity “Donuts” without significant further due diligence (notwithstanding the clear UDRP and other reasons for disqualification) would certainly expose the governing bodies to serious question.

X. CONCLUSION

41. The eligibility requirements set forth in the Guidebook are designed to protect the domain name system, the rights of intellectual property holders, and domain name users.

³² <https://www.bwin.com/sportsbook.aspx>.

³³ <http://gigaom.com/2010/06/21/demand-media-subsiary-accused-of-enabling-illegal-drug-sales/>.

42. As described above, Demand Media Group and its key executives are, by ICANN's established eligibility guidelines, unsuited and ineligible to participate in the new gTLD program.
43. As described above, Donuts and its key executives are, by ICANN's established eligibility guidelines, unsuited and ineligible to participate in the new gTLD program.
44. Based on the foregoing evidence, all of which is publicly available, ICANN can and should reject the applications from Donuts and its subsidiaries, Demand Media and its subsidiaries, and their respective affiliated companies.

As the foregoing reflects, a recitation of the facts – no less the implications – regarding Demand/Donuts applications require more than the 3500 characters that is the prescribed limit for comments. By the same token, the undersigned understands that its comments must satisfy the requirements prescribed. As a result, we would be obliged if Ms. Chalaby, Mr. Jeffrey or a member of their staffs could be in touch with us to advise how best to approach this issue. It would also be important if we could receive advice as to whether our comments should be entered into the ICANN system for each of Demand/Donuts' 333 applications or if another approach is appropriate.

In closing, we are hopeful that the foregoing will prove useful to ICANN in connection with its Background Screening process, and we invite you to be in touch with the undersigned if there are questions or concerns with which we could assist.

Yours truly,



Jeffrey M. Stoler

Exhibit A

Subsidiaries of Demand Media, Inc.

Acquire This Name, Inc.
Afterdark Domains, Inc.
Arab Internet Names, Inc.
Asiadomains, Incorporated
Big house Services, Inc.
Dagnabit, Incorporated
Demand Media (Netherlands) B.V.
Demand Media International Holdings Limited
Demand Media Europe Limited
Demand Media Sweden AB
Domain Rouge, Inc.
Domainnovations, Incorporated
Dropoutlet, Incorporated
eNom Canada Corp.
eNom Corporate, Inc.
eNom GMP Services, Inc.
eNom World, Inc.
eNom, Incorporated
eNom1, Inc.
eNom1008, Inc.
eNom1009, Inc.
eNom1010, Inc.
eNom1012, Inc.
eNom1013, Inc.
eNom1014, Inc.
eNom1033, Inc.
eNom1034, Inc.
eNom1035, Inc.
eNom1036, Inc.
eNom1037, Inc.
eNom1038, Inc.
eNom2, Inc.

eNom3, Inc.

eNom371, Incorporated

eNom373, Incorporated

eNom375, Incorporated

eNom377, Incorporated

eNom379, Incorporated

eNom381, Incorporated

eNom383, Incorporated

eNom385, Incorporated

eNom387, Incorporated

eNom389, Incorporated

eNom391, Incorporated

eNom393, Incorporated

eNom395, Incorporated

eNom397, Incorporated

eNom399, Incorporated

eNom4, Inc.

eNom403, Incorporated

eNom405, Incorporated

eNom407, Incorporated

eNom409, Incorporated

eNom411, Incorporated

eNom413, Incorporated

eNom415, Incorporated

eNom417, Incorporated

eNom419, Incorporated

eNom420, Incorporated

eNom421, Incorporated

eNom423, Incorporated

eNom425, Incorporated

eNom427, Incorporated

eNom429, Incorporated

eNom431, Incorporated

eNom433, Incorporated

eNom435, Incorporated

eNom437, Incorporated

eNom439, Incorporated
eNom441, Incorporated
eNom443, Incorporated
eNom445, Incorporated
eNom447, Incorporated
eNom449, Incorporated
eNom451, Incorporated
eNom453, Incorporated
eNom455, Incorporated
eNom457, Incorporated
eNom459, Incorporated
eNom461, Incorporated
eNom463, Incorporated
eNom465, Incorporated
eNom467, Incorporated
eNom469, Incorporated
eNom5, Inc.
eNom623, Inc.
eNom625, Inc.
eNom635, Inc.
eNom646, Inc.
eNom647, Inc.
eNom650, Inc.
eNom652, Inc.
eNom654, Inc.
eNom655, Inc.
eNom656, Inc.
eNom659, Inc.
eNom661, Inc.
eNom662, Inc.
eNom663, Inc.
eNom666, Inc.
eNom672, Inc.
enoma1, Inc.
eNomAte, Inc.
eNomAU, Inc.

eNombre Corporation
eNomEU, Inc.
eNomfor, Inc.
eNomMX, Inc.
eNomnz, Inc.
eNomsky, Inc.
eNomTen, Inc.
eNomToo, Inc.
eNomV, Inc.
eNomX, Inc.
Entertainment Names, Incorporated
Extra Threads Corporation
FeNomINAL, Inc.
Fushi Tarazu, Incorporated
Gunga Galunga Corporation
Hot Media, Inc.
Indirection Identity Corporation
Internet Internal Affairs Corporation
Kingdomains, Incorporated
Mark Barker, Incorporated
Mobile Name Services Incorporated
Name Nelly Corporation
Name Thread Corporation
NameJet, LLC
Nerd Names Corporation
Nom Infinitum, Inc.
One Putt, Inc.
Out of the Box S.A.
Pluck UK Limited
Postal Domains, Incorporated
Private Domains, Incorporated
Retail Domains, Inc.
SBSNames, Incorporated
Searchnresq, Inc.
Secure Business Services, Inc.
SicherRegister, Incorporated

Sipence, Incorporated
Small Business Names and Certs, Incorporated
SssassS, Incorporated
The Internet Chef, Inc.
Traffic Names, Incorporated
Travel Domains, Incorporated
Vedacore.com, Inc.
Whiteglove Domains, Incorporated
Whois Privacy Protection Services, Inc.

Adverse UDRP Rulings Against Demand Media Group

2004

- *BB&T Corporation v. Enom Domain aka EnomInternational Corp*
<http://domains.adrforum.com/domains/decisions/341277.htm>
finding of bad faith

2006

- *Sharelook Beteiligungs GmbH v. Enom Partner*³⁴
<http://www.wipo.int/amc/en/domains/decisions/html/2005/d2005-1001.html>
finding of bad faith
- *Tandy Leather Company, Inc. v. eNom's Club Drop c/o Steve Brown*
<http://www.adrforum.com/domains/decisions/611760.htm>
finding of bad faith
- *The Royal Bank of Scotland Group plc, Direct Line Insurance plc, and Privilège Insurance Company Limited v. Demand Domains, c/o C.S.C.*
<http://domains.adrforum.com/domains/decisions/714952.htm>
finding of bad faith; finding of typosquatting

2007

- *Peek & Cloppenburg KG v. Demand Domains*
<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0019.html>
finding of bad faith; finding of typosquatting
- *Paxar Americas, Inc. v. eNom, Inc.*
<http://domains.adrforum.com/domains/decisions/980114.htm>
finding of bad faith
- *Instituto del Fondo Nacional de la Vivienda para los Trabajadores v. Demand Domains, Inc. Whois Privacy Protection Service Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-0917.html>
- *Vein Clinics of America, Inc. v. Demand Domains, Inc.*
<http://www.adrforum.com/domains/decisions/1094605.htm>

2008

- *Maverick Multimedia, Inc. v. Demand Domains, Inc.*
<http://domain.adrforum.com/domains/decisions/1112068.htm>

³⁴ We note that eNom and Young Nah were joint respondents in this case but eNom verified that it was the administrative, billing and technical contact for the domain name at issue when the WIPO Arbitration and Mediation Center sent its verification request. No further action was taken by any respondent in the matter.

- *AXA SA v. Demand Domains, Inc./Whois Privacy Protection Service, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1382.html>
finding of bad faith
- *Chivas Brothers Limited v. Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2007/d2007-1789.html>
finding of bad faith
- *Ami James v. Demand Domains*
<http://domains.adrforum.com/domains/decisions/1106240.htm>
finding of bad faith
- *Davis Vision, Inc. v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1142731.htm>
finding of bad faith
- *Port Aventura, S.A. v. Demand Domains, Inc./Whois Privacy Protection Service, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-0176.html>
- *Micro Motion Inc. v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1153703.htm>
- *American Hunter, Inc. v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1177285.htm>
- *China Unionpay Co., LTD. v. Demand Domains, Inc.*
<http://www.udrpsearch.com/adndrc/cn0800208>
- *Davis + Henderson, Limited Partnership v. Whois Privacy Protection Service, Inc./Demand Domains Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1162.html>
finding of bad faith
- *American Airlines, Inc. v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1224762.htm>
finding of bad faith; finding of typosquatting and cybersquatting
- *Aventis Pharmaceuticals Holdings Inc. Aventis Pharmaceuticals Inc. Sanofi-aventis v. Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1465.html>
- *Tokyu Corporation v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1406.html>
- *Sanofi-Aventis v. Demand Domains, Inc./Whois Privacy Protection Service*
<http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1484.html>
finding of bad faith

2009

- *The American Automobile Association, Inc. v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1241641.htm>
- *Caja de Ahorros Monte de Piedad de Madrid v. Acquire This Name, Inc., Matt Overman*
<http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0411.html>

- *Russian Standard Bank Joint Stock Company v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0732.html>
- *Cafepress.com, Inc. v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1273216.htm>
- *SCI Services, Inc. v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1277774.htm>
- *AIDA Cruises German Branch of Societa di Crociere Mercurio S.r.L v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-1006.html>
- *BHP Billiton Innovation Pty Ltd. v. Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-1068.html>
finding of bad faith; finding of typosquatting
- *Credit Industriel et Commercial S.A. v. Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-1184.html>
finding of bad faith

2010

- *Texas Lottery Commission v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1318449.htm>
finding of bad faith
- *BHP Billiton Innovation Pty Ltd v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/text/2010/d2010-0657.html>
finding of bad faith; finding of typosquatting and cybersquatting
- *Spirits Marque One, LLC v. Demand Domains, Inc.*
<http://domains.adrforum.com/domains/decisions/1325235.htm>
finding of bad faith
- *Successories.com, LLC v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/text/2010/d2010-0753.html>
finding of bad faith; finding of typosquatting and cybersquatting
- *Ezeego One Travels and Tours, Ltd. v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.udrpsearch.com/wipo/d2010-1347>
finding of bad faith
- *Easy Gardener Products, Inc. v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2010-1185>
finding of bad faith
- *Asahi Breweries Ltd. v. Whois Privacy Protection Service, Inc./Demand Domains, Inc.*
<http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-1481.html>
finding of bad faith

2011

- *Pepkor IP (Proprietary) Limited Translink Services S.a.r.l. v. Domain Name Administrator/Demand Domains*
<http://www.udrpsearch.com/wipo/d2010-1723>
finding of bad faith
- *Universal American Corp. v. Whois Privacy Protection Service, Inc./Whois Agent*³⁵
<http://domains.adrforum.com/domains/decisions/1392665.htm>
finding of bad faith; finding of typosquatting

³⁵ *Universal American Corp.* is included due to the fact that the respondent in that case, Whois Privacy Protection Service, Inc./Whois Agent, was represented by Christina G. Raocha, Demand Domain's in-house corporate counsel.