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Ms. Christine Willett
Vice President, New gTLD Program ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Ms. Heather Dryden
GAC Chair

RE: Inclusion of the brand identifier “REALTOR” in the “Professional Services” category of the GAC’s Beijing advice and ICANN’s subsequent decision to freeze advancement of such applications

Dear Ms. Willett and Ms. Dryden,

Real Estate Domains LLC (RED), on behalf of the National Association of REALTORS® (NAR), is the sole applicant for the .REALTOR gTLD. We were surprised to see NAR’s coined term “REALTOR®” grouped with a list of generic terms in the GAC’s Professional Services category, a list which consists of the generic descriptive terms abogado, accountant, accountants, architect, associates, attorney, broker, brokers, doctor, dentists, dds, engineer, lawyer, legal, realty and vet.

We did not initially comment upon this surprise inclusion, but ICANN’s recent decision to freeze advancement of such “Category 1” applications dictates this communication. As we believe that inclusion of our coined term amongst a list of generics is based upon mistaken information, we respectfully ask that .REALTOR be removed from the Category 1 Professional Services list. Additionally, we request that RED’s application for .REALTOR be unfrozen.

NAR applauds the GAC for its reasoning and purpose behind its Advice regarding Category 1 Professional Services string applicants. We agree with the GAC that strings “that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws”, and additionally that such strings:

may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset...are associated with market sectors which have clear and/or regulated entry requirements (such as ... professional services ...) in multiple jurisdictions...

In this light, we note that such Advice is particularly applicable to all of the *generic* terms identified as Category 1 Professional Services, as all of such generic professions are subject to regulations and/or entry requirements in multiple jurisdictions which will vary from jurisdiction to jurisdiction, as no one entity or jurisdiction regulates all lawyers, accountants, doctors, etc. That is why the Advice is applicable to the generic term “realty”, but does not apply to the coined membership mark “REALTOR®”.

The coined term “REALTOR®”, invented by NAR in 1915, is a registered collective membership mark of the National Association of REALTORS® that identifies a real estate professional who is a member of the NAR and pledges to abide by its strict Code of Ethics. As detailed in RED’s application, the term REALTOR® is registered as a collective membership mark by NAR. NAR has also registered “REALTOR” for that or other services in over 45 nations and the European Community.

For the better part of a century, NAR has invested into building the term “REALTOR®” into the famous brand it is today in the mind of the public. The uniqueness and distinguishable characteristics of the term REALTOR® has been upheld by multiple courts, including the US Federal Court system. We fear that the GAC might not be aware that the term REALTOR® is today a famous brand of NAR and *not* a generic term to those in the real estate industry. For example, the words “real estate agent”, “broker”, or “estate agent” are not interchangeable with the term REALTOR®.

“REALTOR” is thus quite distinguishable from all of the other generic strings identified as Category 1 Professional Services. While all individual REALTORS® are engaged in some facet of the real estate business, such as real estate brokerage, appraisal, property management, building or developing, and are for that reason performing “professional services”, there is a distinction between the regulation of each such professional service (any of which may be regulated in some fashion by at least some governmental jurisdiction) and the determination of whether such professionals may identify themselves as REALTORS®.

Practice of a real estate profession is subject to varying jurisdiction-based regulation (which is why inclusion of the generic term “.realty” is entirely appropriate in Category 1 Professional Services), but whether real estate professionals may identify themselves as REALTORS® is solely at NAR’s discretion as the owner of the REALTOR® famous brand.

Thus while a REALTOR® performs professional services, each of which may be subject to regulation and/or entry requirements, regulation of and entry into the .REALTOR® gTLD is properly placed with the organization that invented the term and has made this term distinguishable and famous.

In the event the GAC was not aware of the distinctive, non-generic nature of the term REALTOR®, we believe that inclusion of the term in Category 1 Professional Services may have been in error. In that light, we respectfully request that the term .REALTOR be removed from the GAC's Category 1 Professional Services list.

While we hope the GAC grants our request, in any event we respectfully ask that ICANN remove the .REALTOR application from the "freeze" list and allow further unabated processing of the application. The .REALTOR application is not in contention and has no objections.

The GAC's concerns (with which NAR fully agrees) relate to ensuring that certain strings incorporate "registry policies in line with arrangements in place offline"; specifically in instances "which have clear and/or regulated entry requirements". With regard to the .REALTOR application, NAR is the entity best placed to ensure such registry policies are in place.

Unlike the other generic identifiers in Category 1 Professional Services, which we believe will likely require further input regarding the nature of applicable jurisdictional regulation/entry requirements, regulation of and entry into the .REALTOR gTLD, as set forth above, is rightfully governed by NAR as the owner of the REALTOR® famous mark. As set forth in RED's application and subsequent PIC's for the .REALTOR application, NAR will provide "registry policies in line with arrangements in place offline", as NAR has been doing for the REALTOR® mark for nearly 100 years. Rest assured NAR will continue to provide, "clear and/or regulated entry requirements" for use of the REALTOR® mark and as applicable inclusion/use of the new .REALTOR gTLD.

As NAR and RED's application and PIC's have addressed the GAC's concerns as such relate to the coined and famous term .REALTOR in Category 1 Professional Services, we believe that there is no reasonable purpose for the ICANN Board to hold up or "freeze" the advancement of .REALTOR to delegation. As such, we request that ICANN remove the .REALTOR application from its "freeze" list.

While our above-stated concerns are directed to inclusion in the GAC's list and ICANN's freeze of RED's application, we are also aware that ICANN is currently considering alternative provisions for inclusion in the Registry Agreement for .brand applications. While we are unclear as to what such alternative provisions would entail, or to what extent an application will be considered a ".brand" application, we are aware of at least one



instance where an applicant has identified itself to the GAC as a brand-related gTLD application in response to inclusion in GAC Advice (we refer to the American Insurance Association's response to GAC Advice regarding .travelersinsurance). Such analysis also relates to the .REALTOR gTLD application, and we ask both the GAC and ICANN to view this correspondence in this light; particularly as the .REALTOR application may indeed be a ".brand" application as such may be defined at some point in the future.

We hope you find this information constructive in your upcoming discussions in Durban, South Africa. Should have any questions or wish to seek further clarification, please do not hesitate to contact NAR or RED.

Sincerely,

/Michael Thiel/
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Counsel
National Association of REALTORS®

/Brian Johnson/
Brian Johnson
General Counsel
Real Estate Domains, LLC

cc: Mr. Fadi Chehadé, President and CEO, ICANN
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