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VIA E-MAIL - reconsideration@icann.org

ICANN Board Governance Committee
Dr. Bruce Tonkin, Chairman
Members of the Board Governance Committee
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094

Re: Reconsideration Request No. 14-4
Union of Orthodox Jewish Congregations of America
<.kosher>

Dear Dr. Tonkin and Members of the Board Governance Committee:

On behalf of the Union of Orthodox Jewish Congregations of America (“OU Kosher”), STAR-K Kosher Certification, Inc. (“STAR-K”), Kosher Supervision Service, Inc. (“KOF-K”), Chicago Rabbinical Council (“cRc”), and The Kashruth Council of Canada (“COR” and, collectively, the “Requestors”), we respectfully request your indulgence to allow us to supplement the record in this proceeding with recent developments from ICANN’s Governmental Advisory Committee that are directly relevant to the pending request for reconsideration.

The request for reconsideration identifies two aspects of the Expert Determination in the .kosher Community Objection proceeding that contradict established ICANN policies: (1) the Expert Determination ignored the requirement in the Applicant Guidebook to consider whether the application itself, not any subsequent (non-binding) clarifications thereto, creates a likelihood of material detriment; and (2) the Expert Determination erroneously interpreted Specification 11 to the New gTLD Registry Agreement as prohibiting discriminatory registry operations, when it does not.

In its Singapore Communiqué, the GAC directly addressed the Expert Determination’s improper reliance on Specification 11 to remediate any detriment that KMA’s proposed operation of the .kosher gTLD may cause, asking the NGPC if it “considered that transparency alone might not only be insufficient to deter unduly preferential or discriminatory registration policies, but it will be equally difficult for anyone seeking redress to meet the standard of harm required in the PICDRP?” The GAC explained that “if Specification 11 Section C is limited to a

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transparency commitment,” as the NGPC recently clarified,¹ “then the harm stemming from discriminatory registration policies that are publicized cannot be amended or corrected through a PICDRP.”²

The GAC Singapore Communiqué, thus, provides further support for the Requesters’ contention that the Expert’s express reliance on the false belief that Specification 11 “provides significant safeguards against any type of abuse” was erroneous and contradicts ICANN’s established policies. As the United States’ representative to the GAC eloquently stated during a GAC Plenary session, “one can be completely transparent and yet completely discriminatory.”³

Respectfully Submitted,

/s/ David E. Weslow

David E. Weslow

Enclosure

¹ See Letter from Stephen D. Crocker, Chair, ICANN, to Heather Dryden, Chair, Governmental Advisory Committee (10 Feb. 2014) (clarifying that “[t]he contractual language focuses on transparency because of the central role transparency plays in ensuring that restrictions do not provide undue preferences or subject parties to undue disadvantages”).

² See GAC Singapore Communiqué at 12, attached hereto as **Annex U** to Request 14-4.

³ Comments of Suzanne Radell at GAC Plenary (22 Mar. 2014 1600 to 18:00 SGT), audio recording at 1:05:20, available at <http://audio.icann.org/meetings/singapore2014/gac-plenary-1600-22mar14-en.mp3>.