

February 25, 2014

VIA EMAIL to [reconsideration@icann.org](mailto:reconsideration@icann.org)

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

**Re: Reconsideration Request 14-4; Kosher Marketing Assets LLC Reply to Supplement Submitted by Union of Orthodox Jewish Congregations of America.**

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

I write on behalf of Kosher Marketing Assets LLC (“KMA”) in response to the supplement recently submitted by the Union of Orthodox Jewish Congregations of America (“OU”). See [Letter from David E. Weslow to ICANN Board Governance Committee](#) (February 19, 2014).

We disagree completely with the interpretations and arguments adopted by the OU with respect to a recent exchange of letters between the ICANN Board New gTLD Program Committee (“NGPC”) and the United States Government (“USG”). First, the OU argues that the NGPC has “directly disavowed” the contractually binding nature of Specification Eleven with regard to the openness and non-discrimination obligations placed upon applicants. See Supplement at pp. 2-3. Second, the OU attempts to turn its own concerns regarding Specification Eleven into “broad concerns” on behalf of the USG. *Id* at p. 3. KMA respectfully requests that the BGC reject the OU’s arguments, and ultimately reject Reconsideration Request 14-4.

The plain language provided by the NGPC states that Specification Eleven “has the weight of a binding contractual obligation that may be enforced through the new dispute resolution mechanism that will be available to a party harmed by a registry operator’s failure to comply with such public interest commitments.” See [Letter from Dr. Stephen D. Crocker to Heather Dryden](#) (February 10, 2014). To wit, the NGPC continued, Specification Eleven “should be

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viewed holistically in the context of all the changes made to the new gTLD Registry Agreement to address GAC Advice.” *Id.* This plain language signifies to KMA that transparency, openness and non-discrimination are all interconnected elements in the holistic approach adopted by the NGPC. And that, contrary to the OU’s allegations, transparency is merely one element with a “central role ... in ensuring that restrictions do not provide undue preferences or subject parties to undue disadvantages.” *Id.*

In addition, the plain language provided by the USG states that “Stakeholders have raised concerns with us about the lack of clarity on the status of this issue regarding a number of applications for generic terms, some of which were included in the non-exhaustive list in the GAC Beijing Communiqué (e.g. .WEATHER) and some that were not (.KOSHER).” See [Letter from Lawrence E. Strickling to Dr. Stephen D. Crocker](#) (February 4, 2014). This simply highlights to KMA, the specific and self-interested concerns that the OU has voiced with the USG. Contrary to the OU’s allegations, this language does not demonstrate any deficiencies with Specification Eleven. Rather, the USG recognized that Specification Eleven “attempt[s] to address these concerns” and anticipated a written briefing from the NGPC on the subject. *Id.*

In response, the NGPC’s written briefing concluded that Specification Eleven “fully implements the GAC’s Beijing Advice on restricted access registries when considered in conjunction with other protections in the New gTLD Registry Agreement.” See [Letter from Dr. Stephen D. Crocker to Heather Dryden](#) (February 10, 2014). This strikes KMA as support for the contractually binding nature of Specification Eleven with regard to the openness and non-discrimination obligations placed upon applicants. It seems that the OU continues to lobby the USG on this issue, while attempting to herald those lobbying efforts before the BGC as evidence that the USG shares their rather hyperbolic concerns.

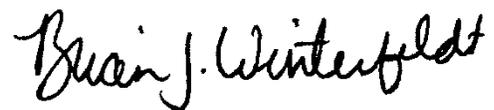
In short, the interpretations and arguments adopted by the OU, with respect to a recent exchange of letters between the NGPC and the USG, are unreasonable and attempt to twist plain language beyond their clear meaning and intent. Accordingly, for the aforementioned reasons, as well as the arguments made within the previous letters submitted by KMA, we

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respectfully request that the BGC reject the OU's self-serving arguments, and ultimately reject Reconsideration Request 14-4.

Respectfully,



Brian J. Winterfeldt

*Representative for Kosher Marketing Assets, LLC*

**Brian J. Winterfeldt**

Head of Internet Practice

**Katten Muchin Rosenman LLP**

Contact Information Redacted