



New gTLD Program
Community Priority Evaluation Report
Report Date: 10 August 2016

Application ID:	1-1702-73085
Applied-for String:	MERCK
Applicant Name:	Merck Registry Holdings

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	9 Point(s)	
	Earned	Achievable
Criteria		
#1: Community Establishment	4	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	2	4
#4: Community Endorsement	3	4
Total	9	16
Minimum Required Total Score to Pass <u>14</u>		

Criterion #1: Community Establishment	4/4 Point(s)
1-A Delineation	2/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as defined by the application met the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook (AGB), as the community defined in the application demonstrates sufficient delineation, organization, and pre-existence. The application received a score of 2 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition and there must be awareness and recognition of a community (as defined by the application) among its members.</p>	

According to the application:

The Merck community includes, but is not limited to, the following:

1. Merck Core Businesses: Pharmaceutical, Animal Health, and Consumer Care
2. Philanthropic and Corporate Responsibility Programs, such as: Merck for Mothers, The Merck MECTIZAN Donation Program, Merck Company Foundation, and Merck Helps (The ACT Program; SUPPORT Program; Merck Patient Assistance Program; Merck Vaccine Patient Assistance Program)
3. Medical and Scientific Publications and Websites, such as: The Merck Manual, The Merck Index, MerckResearch.net, Merck Medicus, Merck Academy, The Merck Institute for Science Education (MISE), UNCF/Merck Science Initiative, Merck Engage, and Merck Services

The Merck community coalesces around the Merck family of marks and the community of interests that relate to those marks. The Merck community is based on Merck's widely recognized, registered family of Merck marks, and in the community's internal union around the values, purposes, and common aims developed through decades of development. The community to be served by the .MERCK gTLD is therefore defined and readily identifiable, with members at all levels sharing interests, aims, and commitments to service...

The Merck community is easily defined by its authorized use of the Merck family of marks. A member of the Merck community must be authorized to use one or more marks controlled by Merck.

According to the AGB, "Delineation relates to the membership of a community, where a clear and straightforward membership definition scores high, while an unclear, dispersed or unbound definition scores low." As required by the AGB, the application shows a clear and straightforward membership definition, given the requirement of the authorized use of the "Merck family of marks" used by the applicant for the purposes of defining the proposed community. Moreover, the applicant clearly defines the community as a logical grouping of Merck businesses, programs, and licensees. The membership is tightly delineated through the categories and requirements noted above and thus satisfies the AGB's requirement for a clear and straightforward membership definition.

According to the AGB's second Delineation criterion, "community" implies "more of cohesion than a mere commonality of interest" and there should be "an awareness and recognition of a community among its members." The community as defined in the application has awareness and recognition among its members. This is because the community as defined consists of Merck & Co.¹ businesses, subsidiaries, corporate programs, and Merck mark licensees. These members cohere by way of a shared corporate governance, values, and mission. In many cases, these entities would also have shared corporate financial governance and reporting.

The Panel determined that the community as defined in the application satisfies both of the conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

¹ According to the application, "Merck & Co. Inc., parent of Merck Sharp and Dohme Corp...(collectively "Merck"), is a Fortune 100 company and one of the largest healthcare companies in the world...Merck has created a new, wholly-owned subsidiary, Merck Registry Holdings, Inc. ("MRH"), to apply for and bring the .MERCK gTLD to market. The gTLD string for which MRH is applying reflects this community: .MERCK.

According to the AGB, “*organized* implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.” The applicant’s parent company, Merck & Co.², is itself an organization that is expressly dedicated to its membership, i.e., the community as defined in the application. Merck & Co. has not organized itself or its members for the purposes of obtaining a TLD but represents the members of its defined community as a matter of its mission. Additionally, as required by the AGB, Merck & Co. demonstrates that it engages in community activities. These include common corporate activities such as an annual general meeting for shareholders.

The Panel determined that the community as defined in the application satisfies both of the conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed) and must display an awareness and recognition of a community among its members.

The community as defined in the application, i.e., Merck & Co. and its subsidiaries, affiliates, foundations and related parties, and approved licensees, was active prior to September 2007 as required by the AGB, section 4.2.3. In 1917 Merck & Co. was established as an independent company. As discussed above, Merck’s membership, in addition to being active prior to 2007, demonstrates the AGB’s requirements for awareness and recognition.

The Panel determined that the community as defined in the application fulfills the requirements for pre-existence.

1-B Extension

2/2 Point(s)

The Panel determined that the community as identified in the application met the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as the application fulfilled the requirements for the size and longevity of the community. The application received a score of 2 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of considerable size. According to the applicant’s website, the company employs around 68,000 people globally. Additionally, as discussed above, the community defined by the application demonstrates the recognition and awareness required by the AGB.

The Panel determined that the community as defined in the application satisfies both of the conditions to fulfil the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application demonstrates longevity. Merck & Co. has been in existence for nearly 100 years, is a publicly traded company, and invested \$6.6 billion in research and development in 2015³. There is clear evidence that the company intends to operate in the future. Additionally, as discussed above, the community defined by the application demonstrates the recognition and awareness required by the AGB.

² Ibid.

³ See <http://www.merck.com/about/our-history/facts/home.html>

The Panel determined that the community as defined in the application satisfies both of the conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The string does not identify or match the name of the community as defined in the application, nor is it a well-known short-form or abbreviation of the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus (of 2 out of 3 points; 1 point is not possible), the applied-for string must identify the community. “Identify means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.”</p> <p>According to the AGB, “identify means that the applied for string closely describes the community or the community members, <i>without over-reaching substantially beyond the community</i>” (AGB, 4.2.3, emphasis added), and the applied-for string must at least identify the community for full or partial credit. Although the string Merck matches the name of the community as defined by the applicant, it also matches the name of another corporate entity known as “Merck” outside of the US and Canada. This Germany-based company, Merck KGaA, operates in the pharmaceutical and chemicals industry, and has 50,000 employees in 68 countries. It is therefore a substantial entity also known by the name “Merck”. The Panel has determined, therefore, that the string is “over-reaching substantially beyond the community” (AGB) and cannot identify the community it defines because the applied-for string also identifies a substantial entity—Merck KGaA—that is not part of the community defined by the applicant.</p> <p>The Panel determined that the applied-for string does not match or identify the community or the community members as defined in the application. It therefore does not meet the requirements for Nexus.</p>	
2-B Uniqueness	0/1 Point(s)
<p>The Panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.</p> <p>To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. This is based on the Panel’s determination that the applied-for string “.MERCK” does not identify the community defined by the application according to AGB standards. Therefore, since the string does not identify the community, it cannot be said to “have no other significant meaning <i>beyond identifying the community</i>” (AGB, emphasis added). The Panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.</p>	
Criterion #3: Registration Policies	2/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p>	

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. According to the application:

Registrations within the community may be made by the following businesses, institutions, or organizations:

- (a) Qualified subsidiaries and affiliates
- (b) Merck foundations and related parties
- (c) Approved licensees

As the operator of the .MERCK gTLD, MRH will take its responsibilities to the community extremely seriously. Due to the nature of the activities that will be conducted using the .MERCK gTLD, it is essential that registrations only be permitted by verified members of the community, namely qualified subsidiaries and affiliates of Merck, Merck foundations and related parties, as well as approved licensees.

The application therefore demonstrates adherence to the AGB's requirement by restricting domain registration to entities that are members of the community defined by the application. The Panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

0/1 Point(s)

The Panel determined that the application did not meet the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are not consistent with the articulated community-based purpose of the applied-for TLD. The application received a score of 0 out of 1 point under criterion 3-B: Name Selection.

According to the application:

II. Name Selection: What Types of Second-Level Names may be Registered in the gTLD.
At the time of filing this application, MRH has not yet finalized the specific name selection criteria. When this criteria is finalized it will be publicly posted on the MRH website.

Therefore, the Panel determined that the application did not satisfy the conditions to fulfill the requirements for Name Selection rules that are consistent with the applicant's community-based purpose. This is because the applicant did not provide name selection criteria.

3-C Content and Use

0/1 Point(s)

The Panel determined that the application did not meet the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the content and use rules included are not consistent with the articulated community-based purpose of the applied-for TLD. The application therefore received a score of 0 points under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies for content and use must be consistent with the articulated community-based purpose of the applied-for gTLD. According to the application:

III. Content Use
MRH has not yet finalized an Acceptable Use Policy (AUP). A draft policy has been included in response to Question 28 of this application, but has not yet been finalized by Merck's legal team. Such approval and posting of the policy will be done in advance of the launch of the registry.

The applicant has acknowledged that its draft policy has not yet been finalized. Moreover, Question 28 of the application also does not explain a content and use policy that is consistent with the articulated community-based purpose of the applied-for gTLD. Therefore, the application does not demonstrate adherence to the AGB's requirement of content and use rules.

3-D Enforcement

1/1 Point(s)

The Panel determined that the application meets the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The application provides specific enforcement measures and outlines a coherent and appropriate appeals mechanisms. The application received a score of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. According to the application:

IV. Enforcement

MRH will enforce the AUP [Acceptable Use Policy] (which is still subject to legal review) during the term of the .MERCK Registry Agreement.

MRH will have complete enforcement rights over registrants' use of their .MERCK domain names. If a registrant violates the then in effect AUP, the registrant will be in material breach of the Agreement, and along with all other rights and remedies that MRH has under this Agreement with respect to such a breach, MRH reserves the right to revoke, suspend, terminate, cancel, or otherwise modify the registrant's rights to the domain name.

On a regular basis, MRH will randomly audit domain names registered in the .MERCK gTLD to ensure compliance with all eligibility and use criteria. If a violation is discovered, an investigation will immediately begin to rectify the violation.

If an applicant chooses to appeal, MRH will review the appeal to determine if there are any material changes to the action or activity. MRH will retain the right to assign the dispute to an ombudsman if necessary.

The applicant outlined policies that include specific enforcement measures constituting a coherent set and an appeals mechanism. The Panel determined that the application satisfies both of the two conditions to fulfill the requirements for Enforcement and therefore scores 1 point.

Criterion #4: Community Endorsement **3/4 Point(s)**

Support for or opposition to a CPE gTLD application may come by way of an application comment on ICANN's website, attachment to the application, or by correspondence with ICANN. The Panel reviews these comments and documents and as applicable attempts to verify them as per the guidelines published on the ICANN CPE website. Further details and procedures regarding the review and verification process may be found at <http://newgtlds.icann.org/en/applicants/cpe>. The table below summarizes the review and verification of all support for and opposition to the Merck Registry Holding's application for the string "Merck".

Summary of Review & Verification of Support/Opposition Materials as of 24 May 2016

	Total Received and Reviewed	Total Valid for Verification	Verification Attempted	Successfully Verified
Application Comments	0	n/a	n/a	n/a
Attachments to 20(f)	2	2	2	1

Correspondence	2 ⁴	13	13	8
Grand Total	4	15	15	9
4-A Support				2/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application fully met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the applicant had documented support from the recognized community institution(s)/member organization(s).</p> <p>The application received a maximum score of 2 points under criterion 4-A: Support. To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means those institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance.</p> <p>Because the applicant, Merck Registry Holdings, is applying for a gTLD intended for use by its parent company, Merck & Co. and the latter’s businesses, programs and licensees, the Panel determined that the applicant has documented authority to represent the recognized community institution/member organization. A recognized community institution or member organization is one which not only (1) represents the entirety of the community as defined by the application, but is also (2) recognized by the same community as its representative. Merck & Co., as the parent company and apex organization for other Merck entities, meets these standards. According to the application, “Merck has created a new wholly owned subsidiary, Merck Registry Holdings (“MRH”), to apply for and bring the .MERCK gTLD to market.”</p> <p>The Community Priority Evaluation Panel determined that the applicant therefore satisfies the requirements for full credit for Support.</p>				
4-B Opposition				1/2 Point(s)
<p>The Community Priority Evaluation panel has determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received one piece of relevant opposition. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p> <p>To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one relevant group of non-negligible size. The Community Priority Evaluation panel has determined that there is opposition from one relevant group of non-negligible size. The applicant was subject to a legal rights objection (LRO)⁵ from Merck KGaA. The latter asserts trademark rights for .Merck, to which it contends the gTLD string is identical. As discussed under section 2-A Nexus, although the string Merck matches the name of the community as defined by the applicant, it also matches the name of another corporate entity known as “Merck” outside the US and Canada (Merck KGaA). The Panel has determined that the opposition demonstrated by the LRO is therefore relevant. The applicant partially met the requirements for Opposition.</p>				

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the AGB or the Registry Agreement. For updated application status and complete details on the program, please refer to the AGB and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

⁴ 2 pieces of correspondence include 13 individual letters.

⁵ <https://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-1702-73085-en.pdf>