INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

New gTLD String Confusion Panel

Re: 50 504 T 00218 13

VERISIGN, INC., Objector

and

CHARLESTON ROAD REGISTRY, INC.,
Applicant

String: <.new>

EXPERT DETERMINATION

The Parties

The Objector is VeriSign, Inc. ("VeriSign" or "Objector") and is represented by
Thomas C. Indelicarto, Esq., Vice President and Associate General Counsel of
VeriSign.

The Applicant is Charleston Road Registry Inc. ("Charleston Road" or "Applicant")
and is represented by Brian J. Winterfeldt, Esq. of Katten Muchin Rosenman LLP
(formerly, until July 5, 2013, of Steptoe & Johnson LLP).

The New gTLD String Objected To

The new gTLD string applied for and objected to is: **<.new>**

Prevailing Party

The Applicant has prevailed, and the Objection is dismissed.

The New gTLD String Confusion Process

Module 3 of the ICANN gTLD Applicant Guidebook contains Objection Procedures
and the new gTLD Dispute Resolution Procedures ("the Procedure").

Article 1(b) of the Procedure states that "The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this new gTLD Dispute Resolution Procedure."

As expressed in the Guidebook, and the Procedure, there are four (4) grounds to object to the registration of new gTLDs. One of these grounds expressed String Confusion, as described in DRP Article 2(e)(i): **"(i) 'String Confusion Objection' refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications."**

Article 3(a) states that 'String Confusion Objections shall be administered by the International Centre for Dispute Resolution."

Procedural History of this Case

Charleston Road filed its New gTLD Application for string .new. VeriSign timely filed and served its String Confusion Objection dated March 13, 2013. ("Objection") Charleston Road filed and served its String Confusion Response on or about May 16, 2013. ("Response") The International Centre for Dispute Resolution ("ICDR") determined that the Objection and Response complied with applicable rules and so advised the parties (ICDR letters, April 3 and May 23, 2013). The undersigned was thereafter appointed as expert (ICDR letter to parties, June 14, 2013).

Basis for Objector's Standing to Object based on String Confusion

VeriSign is the existing TLD operator of .net.

Parties' Contentions

VeriSign contends that the applied-for .new string is confusingly similar to its .net TLD. It urges that there is clear "visual similarity" between the two, that "similarity of sound is and will remain an important consideration" and in considering "similarity, words or marks should be considered as they are encountered in the marketplace," i.e., one should "appraise the overall impression . . . ." (Objection, p. 5) VeriSign also contends that there is a likelihood of confusion between .new and .net, based in part on .net's alleged recognition and strength, the allegedly low degree of care expected to be used by users and the marketing channels to be used by each string.

Charleston Road contends that VeriSign has "failed to meet its significant burden for establishing confusion, citing the Guidebook, in part, that "it must be **probable**, not merely possible that confusion will arise in the mind of the average, reasonable Internet user . . . [and] [m]ere association, in the sense that the string brings another to mind is insufficient to find a likelihood of confusion. (Response, p. 1, emphasis in

original) It urges that "substitution of the letter 'T' with the letter 'W' clearly creates a distinct visual impression," and the string words have distinctly different pronunciations. (Id. pp. 3-5) Charleston Road further contends that the two words ("new" and "net") have entirely different meanings. Charleston Road also disputes that the degree of care expected to be exercised by the average reasonable consumer is low. Charleston Road requests that VeriSign's objection be denied.

Discussion and Findings

The applicable standards and requirements for a string confusion objection are set forth in the Guidebook and the Procedure.

> "The objector bears the burden of proof in each case." Guidebook, Section 3.5.

> "The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards." Procedure, Article 20(c).

> "A DRSP panel (here, the appointed expert) hearing a string confusion objection will consider whether the applied-for gTLD is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion." Guidebook. Section 3.5.1.

Upon my review and consideration of the Objection, Response and the affidavits filed in support of the Objection, VeriSign has not sustained its burden of proof.

While there is a certain, but, in my judgment, limited visual similarity between .net and .new, the parties agree that visual similarity is not determinative. I do not find aural similarity – the words do not sound the same. VeriSign's expert acknowledges that "the aural similarities between .new and .net are not as extensive as some of the others." (Affidavit of Gail Stygall, p. 2) Also, they do not have the same meaning; VeriSign states that "net" is derived from an abbreviation of "network," while "new" is defined as "having recently come into existence." (Response, p. 5) VeriSign's expert acknowledges that "[t]he semantic similarities are minor. . . ." (Stygall Affid.., p.2) VeriSign's argument that the relevant class of users will be "casual Internet users" (Objection, pgs. 6 [degree of care] and 8 [increased likelihood of confusion]) is rejected; the applicable standard is "the average, reasonable Internet user."
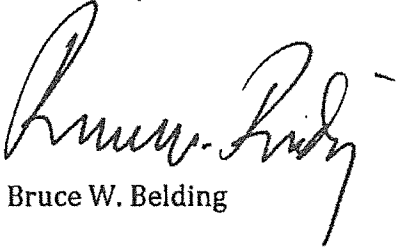
It is acknowledged that only one letter is changed, and that it is "possible" that an Internet user may be confused, but in my assessment of the submissions and the

arguments of the parties, the applied-for string .new does not so nearly resemble .net that it is likely to deceive or cause confusion, and it is not "probable" that confusion will arise in the mind of the average, reasonable Internet user.

Determination

The Applicant has prevailed and the Objection is dismissed.

Dated: August 8, 2013

Bruce W. Belding

Sole Expert Panelist