

Dr. Bruce Tonkin
Board Governance Committee
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
By E-Mail

18th October 2013

Dear Dr. Tonkin

String Confusion Objections

Further to my letter of 9th September 2013 (copy attached) to the Chair of the New gTLD Program Committee, I am writing on behalf of two of the three applicants for the .CAM string, dot Agency Limited and AC Webconnecting Holding B.V. As you are aware, Verisign, Inc (“Verisign”) submitted string confusion objections against all three applications for .CAM, including the two applicants supporting this letter, and United TLD Holdco Limited (“United TLD”). The two applicants dot Agency Limited and AC Webconnecting Holding B.V. prevailed against Verisign, Inc. Our various proposed usages of the .cam registry were decided not to cause string similarity with .com under the terms of the Applicant Guidebook (“AGB”). United TLD’s arguments over its useages of the .cam registry failed to over turn Verisign’s objection that it would cause string similarity.

Whilst we are not aware that United TLD, or Verisign, have initiated any particular action such as a reconsideration request (and we assume that both are out of time to do so), United TLD has not withdrawn its application.

We are writing because both the continuing applicants for the .CAM string would appreciate finality from the Board in respect of the matter, so that, in the spirit of the AGB, the parties can agree to resolve the contention set. This is encouraged in a number of places within the AGB, for example:

- At paragraph 4.1.3 *“Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.”*

We refer to the BGC recommendation in respect of Reconsideration Request 13-10 by Commercial Connect LLC (the applicant for .SHOP which objected on string confusion basis to various IDNs based on online shopping). In this case, the Reconsideration Request was rightly denied, because there was no indication that the expert appointed in the string confusion case violated any policy or process in dismissing Commercial Connect’s objection, and there was no indication that ICANN acted inconsistent with any established policy or procedure. The same decision was reached in Reconsideration Request 13-9 submitted by Amazon, who lost a string confusion objection brought by Commercial Connect against its application for the Japanese character IDN for .shop.

The BGC was very clear in its decision making process that the expert determinations should not be reopened as part of the Reconsideration process:

“The fact that these two ICDR Panels evaluated potentially similar objections yet came to different conclusions does not mean that one Panel applied the wrong standard. On a procedural level, each expert Panel generally rests its determination on the materials presented to it by the parties to that particular objection, and the objector bears the burden of proof.” [BGC Recommendation on Reconsideration Request 13-9](#) page 11

The BGC was also clear that it is reasonable for different expert panellists to reach different conclusions on near identical issues, which is correct:

“The fact that these two panels, evaluating similar objections, came to different conclusions does not mean that the panels inconsistently applied the standard for evaluating string confusion objections, nor does it establish a policy or process violation to support Reconsideration....Two panels confronting nearly identical issues could rightfully reach different determinations, based on the strength of the materials presented” [BGC Recommendation on Reconsideration Request 13-10](#) page 6.

As I pointed out in my letter of 9th September, it was United TLD’s decision to reject consolidation on the .CAM cases which directly led to the appointment of separate panellists. United TLD expressly stated that the reason behind this rejection was that they wished individual defences to be judged on their own merits which is exactly what has taken place.

The Applicant Guidebook, at Modules 3 and 4, is very formulaic as to what happens when there are string confusion objection decisions. Applications which are eliminated by a successful objection cannot proceed. Naturally, the remaining applications in a contention set proceed:

“In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.” Paragraph 3.2.2.1 AGB

However, in the recommendation in response to Reconsideration Request 13-10, the BGC determined that ICANN staff provide a report to the NGPC, for delivery in 30 days, setting out options for dealing with the situation raised within the Request, namely the differing outcomes of the String Confusion Objection Dispute Resolution process in two similar disputes involving Commercial Connect’s string confusion objections against IDNs representing online shopping. The motive for this, the potential outcomes, and the impact upon other string confusion determinations are unclear.

We would therefore be grateful for the Board’s confirmation that no Reconsideration request has been filed by United TLD or Verisign, and that the two prevailing applicants for .CAM can continue to resolve the contention set in the manner envisaged by the AGB, safe in the knowledge that the expert determinations, which were properly made in accordance with the clearly defined policies and procedures set out in the AGB, will not be reopened.

We thank you for your kind consideration of our views in this matter.

Yours sincerely



Peter Young

Chief Legal Officer, Famous Four Media Limited



Mike Rodenbaugh

For and on behalf of AC Webconnecting Holding B.V.

cc Fadi Chehadé Esq, President/CEO ICANN