

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/510/ICANN/127

AMERICAN INSURANCE ASSOCIATION

(USA)

vs/

DOTFRESH INC.

(UAE)

(Consolidated with case No. EXP/433/ICANN/50

THE FINANCIAL SERVICES ROUNDTABLE (USA) vs/ DOTFRESH INC (UAE))

This document is a copy of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

**TABLE OF CONTENTS**

**1. INTRODUCTION** ..... 3

**2. PROCEDURAL AND FACTUAL BACKGROUND**..... 4

**3. REQUIREMENTS AND STANDARDS APPLICABLE TO OBJECTION** ..... 6

    A. Applicable rules

    B. Requirements and standards

**4. SUMMARY OF THE OBJECTION**..... 10

    A. Standing to object

        a. An established institution

        b. Ongoing relationship with the community

        c. The community is clearly delineated

    B. Requirements on the merits

        a. There is substantial opposition to the Application

        b. There is a strong association between the string and the community

        c. The Application is likely to cause material detriment

**5. SUMMARY OF THE APPLICANT’S REPOSE**..... 14

    A. Lack of Standing

    B. Requirements on the merits

**6. FINDINGS OF THE EXPERT** ..... 17

    A. The Objector’s standing to object

        a. The Objector is an established institution

        b. Ongoing relationship with a clearly delineated community

    B. Test 1: Clearly delineated community

    C. Test 2: Substantial opposition by the community

    D. Test 3: Strong association between community and string

        a. Statements contained in the Application

        b. Level of association by the public

**7. CONCLUSION** ..... 24

**8. COSTS**..... 25

**DECISION**..... 26

## List of Abbreviations

<b>Applicant</b>	Dotfresh Inc.
<b>Application</b>	Appl. I.D. 1-1512-32835, <.insurance>
<b>Attachment</b>	Attachment to Module 3 of the gTLD Applicant Guidebook
<b>Centre</b>	International Centre for Expertise of the International Chamber of Commerce
<b>Directi</b>	Parent company of the Applicant
<b>Expert Determination</b>	Expert Determination
<b>GFIA</b>	Global Federation of Insurance Associations
<b>gTLD</b>	generic Top Level Domain
<b>Guidebook</b>	gTLD Applicant Guidebook
<b>ICANN</b>	Internet Corporation for Assigned Names and Numbers
<b>ICANN Final Report</b>	Final Report by the ICANN Generic Names Supporting Organization dated August 8, 2007
<b>Objection</b>	Community Objection filed by the American Insurance Association
<b>Objector</b>	American Insurance Association
<b>PIC</b>	Public Interest Commitment filed by the Applicant on 31 May 2013
<b>Proceeding</b>	Exp. 510/ICANN/127
<b>Procedure</b>	Module 3 of gTLD Applicant Guidebook
<b>Requirements</b>	The standing to file an objection and the four tests on the merits that the Objection must meet to be successful
<b>Rules</b>	Rules for Expertise of the ICC
<b>P&amp;C Insurance Providers</b>	Community of companies that are licensed and authorised to sell property-casualty insurance products

## 1. INTRODUCTION

1. This expert determination [**“Expert Determination”**] is issued pursuant to the proceedings being held before the International Centre for Expertise [**“Centre”**] of the International Chamber of Commerce Centre designated as EXP/510/ICANN/127 [**“Proceeding”**]<sup>1</sup>.
2. The Proceeding deals with the Community Objection [**“Objection”**] filed by the American Insurance Association [**“Objector”**] to the application registered by Dotfresh Inc. [**“Applicant”**] before the Internet Corporation for Assigned Names and Numbers [**“ICANN”**] for the new generic top level domain [**“gTLD”**] <.insurance> (Appl. I.D. 1-1512-32835) [**“Application”**].
3. The Objector – American Insurance Association – is an insurance trade organisation, the purpose of which is to represent and advocate on behalf of its approximately 300 insurers members. The Objector’s address is:

Ms. Angel Gleason  
Associate Counsel  
American Insurance Association  
2101 L Street, NW, Suite 400  
Washington D.C. 20037 USA  
Ph: (+ 1) 202.828.7181  
agleason@aiadc.org

4. The Objector is represented by:

David E. Weslow, Esq.  
Wiley Rein LLP  
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5. The Applicant – Dotfresh Inc. – is a wholly-owned subsidiary within the Directi group<sup>2</sup> [**“Directi”**], incorporated under the laws of the Republic of Seychelles. The Applicant’s address and representative are:

Mr. Brijesh Harish Joshi  
Dotfresh Inc.  
F/19, BC1, Ras Al Khaimah FTZ, P.O. Box # 16113, Ras Al Khaimah,  
Ras Al Khaimah – 16113, AE  
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6. The Expert is:

Mr. Juan Fernandez-Armesto  
Armesto & Asociados

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<sup>1</sup> This case is consolidated with EXP/433/ICANN/50. However, each of the objections is being issued a separate Expert Determination.

<sup>2</sup> Application, answer Q29.

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## **2. PROCEDURAL AND FACTUAL BACKGROUND**

7. On 13 June 2012 the Applicant filed with ICANN an application requesting the gTLD .insurance.
8. On 13 March 2013 the Objector filed an Objection with the Centre, which gave rise to the Proceeding.
9. On 23 April 2013 the Centre informed the parties that the case had been consolidated with EXP/433/ICANN/50<sup>3</sup>.
10. On 3 May 2013 ICANN declared that the Application had passed the Initial Evaluation.
11. The Applicant filed its Response on 7 June 2013.

### Appointment of Expert

12. The Expert was appointed on 28 July 2013 by the Chairman of the Standing Committee of the Centre pursuant to article 3(3) of Appendix I to the Rules.

### Main procedural steps of the Proceeding

13. The file was transferred to me on 5 August 2013 following the payment in full by the parties of the requested advances on costs and the confirmation of the constitution of the panel by the Centre.
14. By letter of 12 August 2013 I inquired whether the parties required further submissions<sup>4</sup>.
15. By letter of 20 August 2013 I communicated the following decisions:
  - To authorise additional submissions, providing, as discussed with the parties, a period of thirty days for the Objector's additional submissions (ending on 18 September 2013) and a subsequent thirty days for the Applicant's response (ending on 18 October 2013). As agreed with the parties, and duly authorised by the Centre, the forty-five day period to deliver the Expert Determination would commence upon delivery of the last additional submission.
  - Regarding the petition for a hearing, I decided to request the parties to provide further arguments on this matter in their Additional Submissions, and to decide on the hearing petition after the delivery of the last of the Additional Submissions.

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<sup>3</sup> The Applicant was requested by the Centre to file a response for each objection. The Expert was given the discretion to issue one or two Expert Determinations. The Mission Statement provided that there would be two Expert Determinations.

<sup>4</sup> The Objector requested further submissions and a hearing. The Applicant did not object, but requested the opportunity to reply, which was granted by the Expert.

16. On 27 August 2013, after consultation with the parties, I delivered to the parties a Mission Statement, reflecting the basic aspects of the Proceeding.
17. The Objector delivered the Additional Submissions on 18 September 2013.
18. On 19 September 2013, the Objector delivered a letter from the Global Federation of Insurance Associations [“GFIA”] endorsing the Objector’s position, and requesting the panel to allow inclusion of such letter in the consolidated proceeding. The Applicant made no objection to such request, and on 27 September 2013 I authorized the inclusion of the GFIA letter into the Proceeding.<sup>5</sup>
19. The Applicant filed its Additional Submissions on 18 October 2013.
20. On 22 October 2013, the Objector sent a letter stating that the Additional Submissions presented by the Applicant exceeded the wording limits established in my letter of 20 August 2013, and suggested that the Additional Submissions be rejected or alternatively an authorization be granted to the Objector to submit a further responsive pleading up to the wording limit of the Applicant’s document. The Applicant submitted that its Additional Submissions were within the limits provided in the letter, and rejected the Objector’s allegations.
21. On 25 October 2013, I issued a letter agreeing with the Objector’s allegations, and requesting the Applicant to submit a redrafted Additional Submission, complying with the limits provided in my letter of 20 August 2013.
22. On 28 October 2013, and pursuant to my letter of 20 August 2013, I issued a letter resolving on the Objector’s request for a hearing, denying such request, as allowed under article 19 of the Attachment.
23. On 30 October 2013, the Applicant delivered the redrafted Additional Submissions.
24. The language of the Proceeding has been English<sup>6</sup>, which was the language of all documentation submitted, and all communications have been delivered by email<sup>7</sup>.

#### Delivery date

25. Article 21(a) of the Attachment provides that the Centre and the Expert shall make reasonable efforts to ensure that the Expert renders his decision within 45 days of the “constitution of the [p]anel”. The Centre considers that the panel is constituted when the Expert is appointed, the parties have paid their respective advances on costs in full and the file is transferred to the Expert. In this case, the panel was constituted on 5 August 2013 (i.e. the date on which the file was transmitted to the Expert). The Centre and the Expert were accordingly to make reasonable efforts to ensure the determination was rendered no later than 19 September 2013 (as calculated in accordance with articles 6(e) and 6(f) of the Attachment)<sup>8</sup>. Pursuant to article 21(b) of the Attachment, the Expert submitted the determination in draft form to the Centre for scrutiny as to form before it was signed.

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<sup>5</sup> By email of said date.

<sup>6</sup> As required by article 5(a) of the Attachment.

<sup>7</sup> As required by article 6(a) of the Attachment.

<sup>8</sup> Pursuant to article 17 of the Attachment, the Expert authorized the request made by the parties to deliver additional submissions, and fixed the calendar for the delivery of the documentation and of the expert determination accordingly.

### 3. **REQUIREMENTS AND STANDARDS APPLICABLE TO THE OBJECTION**

26. A community objection permits an application to be rejected if a significant part of the community to which the string is explicitly or implicitly targeted presents substantial opposition and there is likelihood of material detriment to the rights or legitimate interests of a significant portion of the members of the community. The determination is to be made by an expert panel<sup>9</sup>.

#### A. **Applicable rules**

27. In its review of a community objection, the panel will apply primarily:

- Module 3 (Objection Procedures) [**“Procedure”**] and its attachment [**“Attachment”**] of the gTLD Applicant Guidebook [**“Guidebook”**] (other parts of the Guidebook will also be helpful as reference, including specifically Module 4 (String Contention Procedures)<sup>10</sup>).
- Rules for Expertise of the ICC [**“Rules”**].
- Appendix III to the Rules, Schedule of expertise costs for proceedings under the Procedure.
- ICC Practice Note on the Administration of Cases under the new gTLD Dispute Resolution Procedure.

28. Finally, the Procedure refers to the 8 August 2007 Final Report by the ICANN Generic Names Supporting Organization [**“ICANN Final Report”**], which includes the rationales of the different objections<sup>11</sup>. Thus, the panel can draw additional guidance from the ICANN Final Report.

29. I now detail below certain relevant aspects of each of these rules.

#### B. **Requirements and standards**

30. Pursuant to the Procedure, a community objection must satisfy the following requirements to be successful:

31. First: the Objector must prove that it has standing to object<sup>12</sup> (a).

32. Second: having proven standing, the Objector must prove that the following four tests regarding the merits are complied with<sup>13</sup> (b):

- The community invoked by the objector is a clearly delineated community;
- The community opposition to the application is substantial;
- There is a strong association between the community invoked and the applied-for string; and

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<sup>9</sup> Recommendation 20 – ICANN Final Report: “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted”.

<sup>10</sup> On the reference value of Module 4, see paragraph 47 for further analysis.

<sup>11</sup> Procedure, 3-5.

<sup>12</sup> Procedure, 3-5.

<sup>13</sup> Procedure, 3-22/25.

- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.

The standing and the four tests described below will be referred to as the “**Requirements**”.

33. To assist the panel in its task, the Procedure identifies for each of the Requirements a non-exhaustive list of factors which the panel may consider. The panel is authorised to balance the relevant factors (though not all factors must be established) and to take other factors into consideration<sup>14</sup>.
34. In making its determination, the panel may refer to and base its findings upon the statements and documents submitted by the parties and/or any rules or principles that it determines applicable<sup>15</sup>.
35. The panel must bear in mind that it is the Objector who bears the burden of proving that the Requirements and standards applicable to the Objection are met<sup>16</sup>.

**a. Standing to object**

36. The first step is to qualify for standing to file a community objection. In order to have standing, the Objector must prove that it is an established institution and that it has an ongoing relationship with a clearly delineated community.
37. To evaluate whether the Objector is an established institution, the panel may consider, among others, the following factors<sup>17</sup>:
  - Level of global recognition of the institution;
  - Length of time the institution has been in existence; and
  - Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organisation, or treaty; the institution must not have been established solely in conjunction with the gTLD application process.
38. To evaluate whether there is an ongoing relationship with a clearly delineated community, the panel may consider, among others, the following factors<sup>18</sup>:
  - The presence of mechanisms for participation in activities, membership and leadership;
  - Institutional purpose related to the benefit of the associated community;
  - Performance of regular activities that benefit the associated community and
  - The level of formal boundaries around the community.

**b. Requirements on the merits**

39. If the Objector is found to have standing, then it must pass the following four tests on the merits.

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<sup>14</sup> Procedure, 3-22/25.

<sup>15</sup> Attachment, article 20(b).

<sup>16</sup> Attachment, article 20(c).

<sup>17</sup> Procedure, 3-8.

<sup>18</sup> Procedure, 3-8.



(i) First test: the Objector must prove that the community is clearly delineated

40. To evaluate whether the community is clearly delineated<sup>19</sup>, the Procedure provides that the panel may consider, among others, the following factors:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

(ii) Second test: the Objector must prove that the community opposition is substantial

41. This second Requirement will only be analysed if the first test is passed, i.e. if a clearly delineated community is found.

42. In considering whether the second test is met, the Procedure provides that the panel may consider, among others, the following factors<sup>20</sup>:

- The number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- The level of recognised stature or weight among sources of opposition;
- The distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- The historical defence of the community in other contexts; and
- The costs incurred by the objector in expressing opposition, including other channels the objector may have used to convey opposition.

(iii) Third test: the Objector must prove the existence of a strong association

43. If substantial opposition to the Application is evidenced, the Objector must then prove that there is a strong association between the applied-for string and the community invoked<sup>21</sup>.

44. To evaluate the existence of a strong association between the string and the community, the panel may consider, among others, the following factors<sup>22</sup>:

- Statements contained in the application;
- Other public statements by the applicant; and
- Associations by the public.

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<sup>19</sup> Procedure, 3-22/23.

<sup>20</sup> Procedure, 3-23.

<sup>21</sup> Procedure, 3-24.

<sup>22</sup> Procedure, 3-23/24.

(iv) Fourth test: the Objector must prove likelihood of detriment to rights or legitimate interests

45. Finally, if a strong association between community and string has been established, the Objector must prove that the Application creates the likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted<sup>23</sup>.
46. To evaluate the existence of material detriment to the members of the community, the Procedure advises the panel to use, among others, the following factors<sup>24</sup>:
- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
  - Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
  - Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
  - Dependence of the community represented by the objector on the DNS for its core activities;
  - Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
  - Level of certainty that alleged detrimental outcomes would occur.

\* \* \*

47. Module 4 of the Guidebook (String contention procedures) provides criteria to review and score a community-based application. It shares some common concepts with the community objection procedure (such as community establishment and nexus between the string and the community), though its standards are stricter, and though it can provide some guidance, it can only be taken as a general reference<sup>25</sup>.
48. ICANN provides the following guidelines in relation to Recommendation 20 of its Final Report:

“Guidelines

- a) Substantial – in determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.
- b) Significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more

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<sup>23</sup> Procedure, 3-24.

<sup>24</sup> Procedure, 3-24.

<sup>25</sup> Thus, Module 4 states that “*It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.*” – Module 4, 4-9.

established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) Community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community or a linguistic community. It may be a closely related community which believes it is impacted.

d) Explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.

e) Implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) Established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) Formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.

h) Detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely”.

#### **4. SUMMARY OF THE OBJECTION**

49. The Objector claims that the granting of the string “.insurance” to the Applicant will result in material harm to the insurance industry generally, the community of companies that are licensed and authorised to sell property-casualty insurance products [“**P&C Insurance Providers**”], and the consumers<sup>26</sup> and considers that the Application should be rejected.

50. The Objector claims that it has standing to object (A), and meets the four tests on the merits required by the Procedure (B).

##### **A. Standing to object**

51. The Objector must prove that it is an established institution (a) and that it has an ongoing relationship (b) with a clearly delineated community(c).

##### **a. An established institution**

52. The Objector states that it was born out of the merger in 1964 of the old American Insurance Association with the National Board and the Association of Casualty and Surety Companies<sup>27</sup>. It has a membership of approximately 300 P&C Insurance Providers that represent around 20% of total P&C insurance market in the United States<sup>28</sup>.

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<sup>26</sup> Objection, p. 5.

<sup>27</sup> Objection, p. 5.

<sup>28</sup> Objection, p. 11.

**b. Ongoing relationship with the community**

53. The Objector claims it is recognised as a leading voice on behalf of the P&C Insurance Providers<sup>29</sup>. In that role it has provided ongoing defence of the community of P&C Insurance Providers through litigation, lobbying and other forms of advocacy. It has, additionally, defended the community in a variety of contexts, including filing *amicus curiae* briefs in support of the property-casualty industries in hundreds of cases over the years. The Objector's president is an acknowledged advocate for the property-casualty insurance industry<sup>30</sup>.

**c. The community is clearly delineated**

54. From the above it follows that the Objector is an established institution with an ongoing relationship with the community of P&C Insurance Providers. The insurance industry is one of the most highly regulated industries in the world. This regulatory structure has resulted in a clearly delineated community of P&C Insurance Providers, that is, companies that are licensed and authorised to sell property-casualty insurance products<sup>31</sup>.

55. The common definition of a community is a unified body of individuals, which includes a group of people with a common characteristic or interest living together within a larger society, and a group linked by common policy. The P&C insurance industry is clearly described by these: the individual entities that make up the industry share the common characteristic of providing P&C insurance and are linked by the common regulatory policy that overrides the insurance policy<sup>32</sup>.

56. In addition, the Objector submits that<sup>33</sup>:

- The P&C Insurance Providers enjoy a strong recognition by the public at a global and local level. In this regard, the Objector highlights that the community has spent more than U.S. 4 billion on advertising in the U.S. alone in 2009.
- The community of P&C Insurance Providers is well-established, having existed in America [the Expert considers that a contextual reading of the relevant paragraph leads to conclude that the Objector refers to the U.S.] for almost 300 years; though the community is global, the United States plays a prominent role.
- Regarding the number of members of the community, the Objector points out that there were 2,686 P&C Insurance Providers in the United States in 2011.

57. The Objector concludes that the regulated nature of the community alone should be sufficient to meet the criteria proving a delineated community. However, the Objector has provided as additional evidence the level of recognition of the community, the length of time the community has been existence, the global distribution of the community and the number of entities that make up the community<sup>34</sup>.

**B. Requirements on the merits**

58. The Requirements on the merits consist of four tests, the first of which (the existence of a clearly delineated community) has already been addressed in the previous section. The Objector's position with respect to the remaining three tests is as follows.

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<sup>29</sup> Objection, p. 7.

<sup>30</sup> Objection, p. 7.

<sup>31</sup> Objection, p. 9.

<sup>32</sup> Add. Sub., p. 5.

<sup>33</sup> Objection, p. 10.

<sup>34</sup> Add. Sub., p. 7.

**a. There is substantial opposition to the Application**

59. The Objector claims that there is substantial opposition to the Application from the P&C Insurance Providers community. The opposition is represented essentially by the Objector, whose members represent approximately 20% of the total property-casualty insurance market in the United States. The U.S. P&C insurance industry is an important subset of the larger insurance community, and represents around 42% of the insurance sector in the U.S.<sup>35</sup>. The U.S. is the largest insurance market in the world<sup>36</sup>.
60. The Objector is widely recognised as a leading voice of the P&C Insurance Providers community as a consequence of many years providing ongoing defence for the community through litigation, lobbying and other forms of advocacy<sup>37</sup>.
61. In the international aspect, the Objector has achieved global recognition through its role as a leader in the development of key policy issues in the international arena. In this regard, the Objector has observer status with the International Association of Insurance Supervisors (“IAIS”), through which it has been continuously engaged in all of the IAIS regulatory activities<sup>38</sup>. The Objector has also supported the United States Trade Representatives efforts to negotiate an “International Services Agreement” with 47 countries that comprise the “Really Good Friends of Services” group, which accounts for more than 70% of global trade<sup>39</sup>.
62. The Objector highlights that its members are among the leaders in both the personal and commercial property-casualty insurance markets (at least two members are within the top ten writers of private passenger coverage and five among the top ten commercial carriers)<sup>40</sup>.
63. The Objector presents two letters supporting the Objection, one from the Insurance Bureau of Canada (“IBC”), a national industry association representing Canada’s private home, car and business insurers, representing 90% of Canada’s P&C insurance market.<sup>41</sup> The second letter comes from the Canadian Life and Health Insurance Association, the members of which account for 99% of Canada’s life and health insurance business<sup>42</sup>.
64. In addition to filing the Objection, the Objector has filed public comments against the Application, and sent two letters to the U.S. National Telecommunications and Information Administration expressing concerns. This evidences considerable effort and expense to oppose the Application.

**b. There is a strong association between the string and the community**

65. The Objector claims that there is a strong association between the P&C Insurance Providers community and the string. Automobile and homeowners insurance products are ubiquitous. This is evident on the basis that all U.S. states (except New Hampshire) require automobile insurance, and most lenders require homeowners to carry insurance on their homes. Moreover, the members of the P&C Insurance Providers community spend substantial amounts in

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<sup>35</sup> Objection, p. 13.

<sup>36</sup> Objection, p. 10.

<sup>37</sup> Objection, p. 12.

<sup>38</sup> Objection, p. 6.

<sup>39</sup> Objection, p. 6.

<sup>40</sup> Objection, p. 11.

<sup>41</sup> Objection, p. 12.

<sup>42</sup> Objection, p. 12.

advertising their products. As a result, the Objector states, consumers understand they can obtain insurance from many members of the community of P&C Insurance Providers<sup>43</sup>.

66. The Objector considers<sup>44</sup> that another element that evidences association between the .insurance and the community P&C Insurance Providers can be found in the Application, which:
- proclaims a desire to use the .insurance gTLD “to represent the insurance industry globally in its own differentiated namespace”, and
  - recognises that there are “insurance industry channels” that are essential to outreach to the broader insurance community (which would include leading trade associations, such as the Objector).
67. On the basis of the above, the Objector concludes that, given the substantial place of the community of P&C Insurance Providers within the broader insurance community, these statements make the strong association between the P&C Insurance Providers and .insurance readily apparent<sup>45</sup>.

**c. The Application is likely to cause material detriment**

68. The Objector claims that the operation of the Application will be detrimental to the insurance community. The Objector highlights that the Application lacks sufficient criteria in (i) the registration process (i.e. on who can own second-level domains) and (ii) the validation process (i.e. control that the eligibility criteria are met). Thus persons with no connection to the insurance industry could potentially hold out as brokers or carriers, using legitimate-appearing sites for phishing or other malicious data collecting purposes relying on the trust consumers impart to insurers in providing personal information<sup>46</sup>.
69. The Objector contends that, taking into account the above, the Applicant’s approach would be particularly disruptive given the increasing use of technology by members of the community of P&C Insurance providers to sell and service policies. The Objector points out that direct writers – companies that sell their own products and rely heavily on Internet sales channels – accounted for 51.1% of all property-casualty net premiums written in 2011<sup>47</sup>.
70. In addition to the above, the Objector contends that the Application does not include sufficient protections for variations of the trademarks and trade names of members of the P&C Insurance Providers community. This could lead to significant consumer confusion, consumer fraud and misleading advertisements of insurance products and services<sup>48</sup>.
71. The Objector submits that the likelihood of material detriment posed to the members of the insurance community by the .insurance gTLD application is made further certain by examination of the background of Directi<sup>49</sup>. In this respect, the Objector suggests that it appears likely that the Applicant’s parent company, Directi, should not survive the background screening standards set forth in sections 1.1 and 2.1 of the Guidebook, and stating that this entity clearly is not qualified to operate the .insurance gTLD according to the best interests of the highly-regulated insurance community<sup>50</sup>.

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<sup>43</sup> Objection, p. 13.

<sup>44</sup> Objection, p. 13.

<sup>45</sup> Objection, p. 14.

<sup>46</sup> Objection, p. 14/15.

<sup>47</sup> Objection, p. 15.

<sup>48</sup> Objection, p. 16.

<sup>49</sup> The parent company of the Applicant.

<sup>50</sup> Objection, p. 16.

## 5. SUMMARY OF THE APPLICANT'S RESPONSE

72. Responding to the Objection, the Applicant claims that the Objector has failed to prove standing (A), and has not proven any of the four tests on the merits (B).

### A. Lack of Standing

73. The Applicant alleges that the Objector lacks standing because it has failed to prove that it has an ongoing relationship with a delineated community, for various reasons, namely:

- A clear delineated community is required by the Guidebook standards. There is no community as defined by the Guidebook, and in any event it is not clearly defined. Consequently, there can be no on-going relationship therewith<sup>51</sup>.
- Even if a community is assumed to exist, the Objector has failed to evidence an on-going relationship. There is a relationship with the 300 insurance institutions (P&C and others) that form its membership, but the alleged insurance community does not consist only of these institutions. The Objector has failed to evidence any relationship with a single insurance company outside the U.S.<sup>52</sup>.

### B. Requirements on the merits

74. On the merits, the Applicant submits that the Objector has not been able to meet any of the four tests for several reasons, namely:

#### a. No clearly delineated community

75. The Applicant contends that the Objector has not identified a clearly delineated community for the following reasons<sup>53</sup>:

- *No cohesion*: Module 4 of the Guidebook states that the expression “community” has evolved considerably from its Latin origin – “*communitas*” meaning fellowship” which implies more of cohesion than a mere commonality of interest. There is no evidence existing or presented of cohesion between most P&C Insurance Providers around the world let alone every single P&C Insurance Provider in the world. P&C Insurance companies may have common interests, but do not cohere.
- *No awareness*: a visit to the web sites of 20 of the world’s leading P&C Insurance companies renders not a single mention of “community of P&C Insurance providers”. At the most, some mention “insurance industry”. There is no awareness of a “community of P&C Insurance”. The Objector itself acknowledges that there is an insurance industry, but none of its communications other than this objection refer to an insurance community.
- *No public recognition*: a google search for the term “community of P&C Insurance providers” does not bring up any single website that mentions the existence of such a community.

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<sup>51</sup> Response, p. 6.

<sup>52</sup> Response, p. 6.

<sup>53</sup> All detailed in the Response, p. 7/9.

- *Delineation*: there are innumerable differences in the standards that determine which companies can qualify as insurance companies across the world. Key differences lie in the required legal form, business plans, and list of documentations, minimum capital requirements and solvency margin requirements. Consequent to this, a P&C insurance company in Japan is not considered a P&C insurance company in Luxembourg. Therefore the purported “community of P&C insurance providers” is not clearly delineated.

**b. No substantial opposition**

76. The Applicant alleges that the Objector has not presented evidence of substantial opposition. Even assuming, for the sake of argument, the existence of a “community of P&C insurance providers”, the Objector has failed to show substantial opposition from within the community<sup>54</sup>.
77. The Applicant’s first argument is that the Objector’s members do not represent substantial opposition by themselves. They account for 2.2% of the 4.5 trillion of annual insurance premiums written worldwide, and the 300 members represent 0.67% of the 44,596 P&C Insurance companies worldwide. Thus they alone cannot represent substantial opposition<sup>55</sup>.
78. The Applicant’s second argument deals with the two letters delivered by the Objector in support of the Objection, and points out that<sup>56</sup>:
- One letter comes from Canadian Life & Health Insurance Association, a company that is unrelated to the purported “community of P&C Insurance providers”.
  - The second letter is from the Insurance Bureau of Canada, whose members account for 0.86% of the premiums in the word-wide market.

Again, these letters cannot be construed as evidence of substantial opposition within the community.

79. The Applicant’s third argument addresses the alleged historical defence of the community. The Applicant submits that<sup>57</sup>:
- The Objector’s lobbying, litigation and other forms of advocacy are limited to the U.S., and
  - Supporting the US Trade Representative in an international forum cannot be construed as evidence of defence of the entire purported community.
80. The Applicant’s fourth argument is that the Objector has not shown any significant cost incurred in expressing opposition to the Application<sup>58</sup>.

**c. Lack of strong association**

81. The Applicant claims that the Objector has not proven the existence of a strong association between the community and the string, for the following reasons<sup>59</sup>:

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<sup>54</sup> Response, p. 10.  
<sup>55</sup> Response, p. 10.  
<sup>56</sup> Response, p. 11.  
<sup>57</sup> Response, p. 12.  
<sup>58</sup> Response, p. 12.  
<sup>59</sup> Response, p. 13/14.



82. As its first argument, the Applicant argues that the “community of P&C insurance providers” is not a community, and the word insurance does not have a strong association with such purported community.
83. As a second argument, the word “insurance” has several different meanings in the dictionary, and none of the definitions identified suggests that the string “insurance” stands for a “community of P&C insurance providers”.
84. In the rebuttal section, the Applicant agrees that there is a global insurance industry. However, this does not show any evidence of the existence of a “community of P&C insurance providers”, nor does it indicate a strong association between .insurance and the purported “community of P&C insurance providers”.

**d. No material detriment**

85. The Applicant considers that the Objector has failed to demonstrate the likelihood of material detriment to the community for the following reasons.
86. As its first argument, the Applicant states that it has put in place a multitude of augmented security measures that go above and beyond ICANN’s requirements and enabled the Application to clear ICANN’s heightened requirements for financial TLDs<sup>60</sup>.
87. As a second argument, the Applicant points out that as a gesture to prove its intent to follow through on all its commitments, it has filed a public interest commitment [“**PI**C”] statement on 31 May 2013 making the commitments legally enforceable.<sup>61</sup>
88. The Applicant specifically rebuts, inter alia, the Objector’s allegations on:
  - (i) The lack of sufficient second-level domain (SLD) registration criteria. The Applicant states that the Application has ample SLD registration criteria including an Eligibility Requirement Policy and a Name Selection Policy, which ensure that general domain names within the .insurance are registered by insurance carriers, agents, brokers, services providers, etc. only<sup>62</sup>.
  - (ii) The lack of indication as of how specifically such potential registrants will be evaluated. The Applicant submits that<sup>63</sup>:

“... our application section 29, subsection 3.1 – Registrant Pre-verification clearly states that “domain names will not be activated before an extensive manual verification is done for each registration against our Eligibility criteria and Name selection policy and until the identity of the Registrant is validated thus ensuring zero abuse of the name space, and digital assertion of the Registrant. The validation will be performed by an external 3<sup>rd</sup> party agency”. Our application includes a quote from the prospective 3<sup>rd</sup> party agency”.

Thus, it is clear that any potential registrant will be subject to adequate evaluation.

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<sup>60</sup> Response, p. 15.

<sup>61</sup> Response, p. 15.

<sup>62</sup> Response, p. 15/16.

<sup>63</sup> Response, p. 16.

- (iii) The Applicant submits that Directi and the Applicant are different entities and any allegations against Directi are irrelevant to this Objection<sup>64</sup>.

## **6. FINDINGS OF THE EXPERT**

89. In order to be successful, the Objector must prove that it has standing to object (A) and that the four tests on the merits are met: the community it invokes is clearly delineated (B), there is substantial opposition from the community to the Application (C), there is a strong association between the community and the string (D), and the Application creates the likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted (E).
90. The above Requirements are cumulative, and thus if one is not met, considering whether the remainder are fulfilled or not is unnecessary.
91. The Objector claims it has met all the above Requirements, while the Applicant avers that the Objector has failed to prove any of the above Requirements.
92. I turn now to review the Requirements.

### **A. The Objector's standing to object**

93. To have standing, the Objector must prove that it is an established institution (a) with an ongoing relationship with a clearly delineated community (b).

#### **a. The Objector is an established institution**

94. The Objector has submitted evidence that it is an organisation comprising approximately 300 members of the community (representing around 20% of the P&C Insurance Providers market by premium<sup>65</sup>), engaged in the promotion and protection of its members and the P&C insurance industry generally<sup>66</sup>. Its proactive activities and public recognition are referred to in paragraph 104.
95. As for its historical existence, the Objector was created in 1964.
96. On the basis of the above, I am satisfied that the Objector has shown it is an established institution for the purposes of this Proceeding.

#### **b. Ongoing relationship with a clearly delineated community**

97. Having shown that it is an established institution, the Objector must then prove that it has an ongoing relationship with a clearly delineated community invoked by the Objector. I will

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<sup>64</sup> Response, p. 17.

<sup>65</sup> Objection, p.11.

<sup>66</sup> One of the factors I am suggested by the Procedure to consider is the global level of recognition of the institution (Procedure 3-8). Since I have found (see paragraph 99) that the invoked community is the U.S. P&C Insurance Community (i.e. a territorial community), I have taken into consideration the level recognition of the institution within the community invoked.

address first the issue of the clear delineation<sup>67</sup> and in second place the issue of the ongoing relationship.

98. The first question to be addressed is the definition of the community the Objector is invoking. The Objector has not expressly identified such community. In my opinion, the community being invoked by the Objector is that of the U.S. P&C Insurance Providers because most of the references regarding the invoked community are made to the U.S. P&C Insurance Providers<sup>68</sup>:
- Section 1 of the Objection regarding delineation essentially refers to the U.S. P&C Insurance Providers market<sup>69</sup>.
  - Section 3 of the Objection, regarding association of the string with the community, again refer essentially to the U.S. market<sup>70</sup>.
  - Additionally, the lack of evidence of substantial international P&C insurance support lends weight to the idea that the community represented is the U.S. community.
99. I acknowledge that the Objection also recognises and makes reference to the existence of a global P&C Insurance Providers community<sup>71</sup>. However, on the basis of the above, I will assume that the community invoked by the Objector is the P&C Insurance Providers comprised by entities licensed to sell P&C insurance products in the U.S. I will nevertheless make some further remarks in the course of my analysis related to the scope of the community invoked<sup>72</sup>.
100. The P&C Insurance Providers community (thus defined) counts with 2,686 entities in 2011, representing 42% of the total net insurance premiums in all the U.S.<sup>73</sup>.
101. Is the U.S. Property & Casualty Providers insurance community clearly delineated?<sup>74</sup>
102. In this regard, Module 4, criterion 1, dealing with the determination of Community Establishment defines delineation as relating

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<sup>67</sup> This review will also serve for the purposes of test 1 on the merits (clearly delineated community).

<sup>68</sup> Objection, p. 8/9.

<sup>69</sup> Objection, p. 9/10 (e.g., (i) number of P&C Insurance licenses issued in Rhode Island; (ii) establishing that the community was well-established, having existed in America [the Expert considers that a contextual reading of the relevant paragraph leads to conclude that the Objector refers to the U.S.] for almost 300 years, and (iii) the number of P&C Insurance Providers in the U.S.)

<sup>70</sup> Objection, p. 12/13 (e.g. (i) references to the need in every state of the U.S. to carry auto insurance or (ii) mentioning the advertising expenses of the community in the U.S. as recognition by the public of the community's existence).

<sup>71</sup> Objection, p. 10.

<sup>72</sup> Note that I consider below that the Objection would have failed under test 2 (substantial opposition - see paragraph 115, footnote 85) and test 3 (strong association - see paragraphs 130/131) if the community invoked was deemed to be a global P&C Insurance Providers community.

<sup>73</sup> Objection, p. 11/13.

<sup>74</sup> For the purposes of considering standing to file an objection, the Procedure requires, inter alia, evidence of an ongoing relationship with a clearly delineated community (see Procedure 3.2.2.4, 3-8). Additionally, the existence of a clearly defined community is one of the requirements that must be evidenced under the section on review of the merits (see Procedure 3.5.4, 3-22/23). I see no reason to consider that the same term "clearly delineated community" should have two different meanings. To avoid reviewing twice the same concept, I will take into consideration in this section not only the factor provided for in section 3.2.2.4 – existence of formal boundaries around the community – (which is restated under section 3.5.4), but also the factors suggested to the Expert under section 3.5.4. to evaluate the existence of a clearly defined community. The conclusion will thus be applicable both to the analysis on standing and the test under the merits.

“to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low”<sup>75</sup>.

103. The Procedure provides as a factor to ponder the existence of formal boundaries around the community<sup>76</sup>. In this regard, the Objector has stated that the P&C Insurance Providers are subject to a strong set of regulations covering registration and solvency requirements, among other aspects of the insurance legal protection regime. The high regulatory barriers constitute a clear formal boundary around the alleged community<sup>77</sup>, especially taking into consideration that the invoked community belongs to the same jurisdiction. I am therefore convinced of the existence of the formal boundaries around the community invoked.
104. The Procedure also provides as factors to consider the level of public recognition and the length of time the community has been in existence<sup>78</sup>. In this regard, the Objector has been in existence since 1964 and its members are all entities belonging to the community. Its objective is to advocate on behalf of the interests of the industry, and in that role has developed activities like filing *amicus curiae*. Its proactive role is recognised by the public<sup>79</sup>.
105. On the basis of the above I am ready to consider that the P&C Insurance Providers community invoked is clearly delineated for the purposes of standing.
106. I must now turn to the Applicant’s counter-arguments on the matter of clear delineation. The Applicant alleges that:
- (i) *No cohesion or awareness*: Module 4 of the Guidebook states that the expression “community” implies more of cohesion than a mere commonality of interest. There is no evidence existing or presented of cohesion between most P&C Insurance Providers around the world or of awareness of such a community. Proof of which is that a visit to the web sites of 20 of the world’s leading P&C Insurance companies renders no mention to a “community of P&C Insurance providers”. I am unconvinced. First, Module 4 precepts are not to be applied automatically, because they are meant for a different procedure (the contention procedure). In any event, I see signs of cohesion and awareness of the U.S. P&C Insurance Providers community since the Objector is an association of P&C Insurance Providers representing 20% of the community by premium, which acts to protect the interests of the community, and its President has undertaken significant actions undertaken on behalf of the P&C industry<sup>80</sup>.
  - (ii) *No public recognition*: a google search for the term “community of P&C Insurance providers” does not bring up any single website that mentions the existence of such a community. Again I am not persuaded: in general, the term community is more easily used in the context of persons, and not legal entities. In this latter context, the terms industry or sector are probably more appropriate, and certainly more readily used, when

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<sup>75</sup> Module 4, 4-11 (Module 4 of the Guidebook (String contention procedures) provides criteria to review and score a community-based application. It shares some common concepts with the community objection procedure, though its standards are stricter, and thus can only be taken as a general reference).

<sup>76</sup> Procedure, section 3.2.2.4, 3-8.

<sup>77</sup> Objection, p. 8.

<sup>78</sup> Procedure, section 3.5.4, 3-22/23.

<sup>79</sup> “The savvy chief of the leading property-casualty insurance trade group is skilled at building coalitions on Capital Hill”, “Pusey is a strong advocate for the property-casualty insurance industry”. Objection, p. 7.

<sup>80</sup> Objection, p. 7.

referring to community of legal entities as understood in the Guidebook<sup>81</sup>. Moreover, the high profile press actions of the president of the Objector, and the existence of publications such as *Property Casualty 360 – National Underwriter*, a publication covering the P&C insurance industry since 1897<sup>82</sup> are further evidence of public recognition of the community.

- (iii) *Difference in rules*: there are innumerable differences in the standards that define which companies can be considered as insurance companies across the world. This argument shall be dismissed *ad liminem* since I have already determined that the invoked community is narrowed down to the U.S. P&C Insurance Providers, who belong to the same jurisdiction and are subject a defined set of regulations.

\* \* \*

107. The conclusion reached *supra* is thus not altered: standing requires the Objector to prove that it is an established community with an ongoing relationship with a clearly delineated community. I find that the Objector has satisfied all these elements, and declare that the Objector has standing to file the Objection.

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108. Having established standing, the next task is to review whether the four tests on the merits have been satisfied.

**B. Test 1: Clearly delineated community**

109. The first test requires proving that a clearly delineated community exists, a concept which has already been considered for the purposes of standing. The analysis made in section 6.A is valid for these purposes: the U.S. P&C Insurance Providers are a clearly delineated community.

**C. Test 2: Substantial opposition by the community**

110. Having considered that the community invoked by the Objector is clearly delineated, the next test is to determine whether there is substantial opposition from the community.
111. To evaluate whether the opposition is substantial, the Procedure invites the Expert to consider several factors, including, among others, the number of expressions of opposition relative to the composition of the community, the representative nature of entities expressing opposition, the level of recognised stature or weight among sources of opposition and the distribution or diversity among sources of expressions of opposition.
112. The number of opponents in this case is limited to one, the Objector. The letters from Insurance Bureau of Canada and Canadian Life and Health Insurance Association, while providing some level of global recognition, are irrelevant for this specific analysis, since they are not members of the community invoked (the U.S. P&C Insurance Providers).

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<sup>81</sup> I draw attention to the Recommendation 20 of the Principles Recommendations & Implementation Guidelines produced by ICANN’s Generic Names Supporting Organization (GNSO), which specifically stated: “(c) Community – community should be interpreted broadly and will include, for example, an economic sector, ...”.

<sup>82</sup> Objection, p. 11.

113. Having said that, the Objector is an association representing over 300 entities, representing 20% of the U.S. market share. It proudly declares its intention to be the leading institution in this sector<sup>83</sup>. I accept the representative nature of the Objector, and that its opposition should be considered as the opposition of the members. Thus, the fact that no members have issued specific letters of opposition is irrelevant.
114. The issue is whether 20% of the community invoked can be counted as substantial opposition. In my opinion such percentage is not an insignificant proportion, and its weight may be supplemented by other factors, such as:
- The far-reaching historical existence of the Objector.
  - Several of the members of the Objector are among the top ten companies in the U.S. in two subsectors (two in private passenger coverage and five are among the top ten commercial carriers). I believe that a group including major companies of the community is a sign of leadership and representation of the larger group.
  - The lobbying capabilities of the Objector's president for the benefit of the whole community.
115. The Applicant has submitted argumentation on the allegedly little opposition from the global P&C Insurance companies worldwide<sup>84</sup>. Since I have ruled that the invoked community is limited to the U.S. P&C Insurance Companies, and the Objector must evidence substantial opposition from the invoked community, this argument turns moot<sup>85</sup>.

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<sup>83</sup> The Objector's web page states: "Since 1866, the American Insurance Association (AIA) has served as the leading property-casualty insurance trade organization. Representing more than 300 insurers that write more than \$110 billion in premiums each year, our member companies count themselves among the ranks of the most influential insurance companies in the country. .... Today, we work with member companies to bring consensus to the table, with expertise across the state, federal and international landscapes, we are the trusted industry advocate. We are proud to serve as a primary resource for policy makers, the media and the public on property-casualty insurance issues. AIA leads the charge in developing solutions to challenges at the state, national and international levels. Together with our member companies, we do more than follow the future of the industry. We help shape it."

<sup>84</sup> The Applicant has submitted that (i) the Objector's members account for 2.2% of the 4.5 trillion of annual insurance premiums written worldwide, and that the 300 members represent 0.67% of the 44,596 P&C Insurance companies worldwide. Thus, they alone cannot represent substantial opposition, (ii) of the two letters delivered by the Objector, only the Canadian Insurance Bureau is related to the P&C insurance sector, and (iii) the defence of the community alleged by the Objector is related to the U.S. and not to the global community. Supporting the U.S. Trade Representative in an international forum cannot be construed as evidence of defence of the entire purported community.

<sup>85</sup> It is important to note that, if *arguendo* I were to assume that the invoked community was the global P&C Insurance Providers, my conclusion on this "substantial opposition" test would be completely different for the following reasons: (i) The opposition from members of the P&C insurance companies to the Application presented by the Objector is limited to the Objector and the support of the Insurance Bureau of Canada (IBC). To the Applicant's allegations that the Objector's members represented 0.67% of the world's 44,596 P&C insurance companies, and 2.2% of the insurance market by premium volume, the Objector merely replied that its represented a far larger percentage of the P&C market than the 2.2% alleged by the Applicant (Add. Sub., p. 8); (ii) it is the Objector who bears the burden of proof, and such allegations do not allow me to consider the rebuttal of the Applicant's statement. For reference's sake, I have reviewed the 2011 Swiss Re Sigma World Insurance report referred to by the Objector (Objection p. 10). In this report, the U.S. non-life sector represents 33.8% of the world market, and Canada non-life sector represents 3.5%. This means that the Objector and IBC combined would represent around 10% of the non-life world market, a percentage which by itself does not denote substantial opposition; (iii) though some of the Objector's members are of some stature and relevance, I have seen no evidence to persuade me that they represent the voice of the global community; (iv) I am also not convinced that the Objector has achieved global recognition through its role as a leader in the development of

116. The above factors taken globally lead me to accept that there is substantial opposition from the community to the Application.
117. In conclusion, the Objector has evidenced substantial opposition from the U.S. P&C Insurance Providers community.

**D. Test 3: Strong association between community and string**

118. Having established substantial opposition to the Application, the next test to consider is whether there is a strong association between the community invoked and the string.
119. To help determine the issue, the Expert may balance factors including: the statements contained in the Application (a) and the level of association by the public between community and the string (b).

**a. Statements contained in the Application**

120. The Objector considers that the Application evidences association between the .insurance string and the community of P&C Insurance Providers, because it proclaims a desire to use the .insurance gTLD “to represent the insurance industry globally in its own differentiated namespace”, and recognises that there are “insurance industry channels” that are essential to outreach to the broader insurance community (which would include leading trade associations, such as the Objector). Given the substantial place of the P&C Insurance Providers within the broader insurance community, the association is readily apparent<sup>86</sup>.
121. The Applicant submits that nothing in its Application shows any evidence of a community of P&C Insurance Providers, nor does it indicate a strong association between .insurance and the purported community of P&C Insurance Providers.
122. I have to agree with the Applicant’s argument, and reject the Objector’s argument. In my opinion the paragraph quoted from the Application seems to target primarily entities directly involved in the insurance activity. However, the description in the Application refers to the insurance industry or community in general (it refers to the “insurance industry globally”, and to “insurance industry channels”, terms which neither identify nor refer specifically to the P&C Insurance Providers or the P&C insurance sector). Thus, an analysis of the paragraph does not lead to the conclusion that the Application is targeting specifically this type of insurance company. It is true that as part of the wider insurance community, to which the Application refers, the P&C insurers would be included. However, I do not find that the Application is targeting the P&C insurers any more distinctly than any other insurance sector. In consequence,

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key policy issues in the international arena. Though the Objector has observer status at IAIS, and has also supported the United States Trade Representatives, I cannot consider this as sufficient evidence that the Objector is a leader within a global P&C community; (v) I also find unpersuasive the allegations of substantial costs incurred in opposing the allegation, being restricted essentially to the issuance of two letters in addition to the Objection.

In conclusion, if *arguendo* I had assumed that the clearly delineated community had been the global P&C Insurance Providers community, I would have concluded that the Objector had failed to evidence substantial opposition to the Application. Thus Test 2 would not have been met successfully, and the Objection would have failed without it being needed to inquire further as to whether the other Requirements on the merits were met.

<sup>86</sup> Objection, p. 13/14.

the Application does not help identify an association between the string .insurance and the P&C Insurance Providers community<sup>87</sup>.

123. I thus cannot find that the wording of the Application evidences a strong association between the string and any P&C Insurance Providers community.

**b. Level of association by the public**

124. Another relevant factor that the Procedure establishes for consideration is the level of association by the public between the string and the community.

125. The Objector claims that there is a strong association between the P&C Insurance Providers community and the string. Automobile and homeowners insurance products are ubiquitous. This is evident on the basis that all U.S. states (except New Hampshire) require automobile insurance, and most lenders require homeowners to carry insurance on their homes. Moreover, the members of the P&C Insurance Providers community spend substantial amounts in advertising their products, which heightens the association by the public. Finally, the P&C Insurance community is an important subset of the broader insurance community, representing 42% of total premiums in the U.S.

126. The Applicant contends that the word “insurance” has several different meanings in the dictionary, and none of the definitions identified suggests that the string “insurance” stands for a “community of P&C insurance providers”. Neither the fact that most Americans are required to carry a minimum level of insurance nor that the alleged community accounts for 42% of insurance premiums evidence a strong association between .insurance and the alleged community of P&C insurance providers.

127. The issue is not, as the Applicant suggests in its first argument, whether the term .insurance stands for insurance community from a grammatical perspective, but whether there is a strong perception by the public associating the string and the community. Possible examples could be .kosher associated with the Jewish community, or .vatican with the Catholic community.

128. To determine the level of public perception, I must consider two issues: the extent of the term public (i) and what should be understood and how to value association by the public (ii).

129. (i) Public: the U.S. P&C Insurance Providers is a community restricted to the U.S. This raises the question as to whether the public perception should be measured on U.S. public perception, as the Objection seems to imply<sup>88</sup>, despite the fact that it is the Applicant’s intention to use the string worldwide. I consider that the public, in relation to which the test should be measured, is the world, or at least the English speaking world population (since insurance is an English word).

130. (ii) Association by the public: association means that the string term brings to mind the community invoked. This can be a matter of degree; the association can be very strong (for example, the term “navajo” would be very strongly associated with the Navajo Indian community since it uniquely identifies the community<sup>89</sup>) or it can be weak (for example the string .indian would have in my opinion a low association with the Navajo tribe: in this case, the

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<sup>87</sup> The Public Interest Commitment (PIC) filed by the Applicant restates part of the Application and does not provide additional data that might affect the analysis made in this section.

<sup>88</sup> Objection, p. 12/13.

<sup>89</sup> Note, however, that uniqueness is not necessary to prove a strong association.



string does not describe uniquely the community, nor does it even identify it). I agree with the Applicant that no evidence has been delivered to prove that the public generally links the term insurance to the P&C Insurance Providers community invoked for two reasons:

- I am not convinced that the consumer public in general strongly associates the term insurance to the concept of P&C insurance on a global scale. The term insurance clearly overreaches the concept of P&C insurance, because it includes all types of insurance. Thus, there does not seem to be a risk that the public may associate the term insurance to the confined P&C insurance community<sup>90</sup>.
- I am even less persuaded that the consumer public strongly associates the term insurance to the U.S. P&C Insurance Providers community. The narrowness with which the community has been defined renders it very difficult to accept that a global public (even restricted to English speaking countries) strongly associates the term insurance with the geographically-bound community of U.S. P&C Insurance Providers.

131. In conclusion, I find that the Objector has not evidenced that the English speaking population strongly associates the string .insurance to the U.S. P&C Insurance Providers community invoked, and therefore has failed to meet one of the four tests established in section 3.5.4 of the Procedure. This failure leads to the dismissal of the Objection<sup>91</sup>.

## 7. CONCLUSION

132. I find that while the Objector has established its standing to file the Objection against the granting of the string .insurance to the Applicant, the Objector has not met the burden of establishing a strong association between the string .insurance and the U.S. P&C Insurance Providers community (Test 3).

133. Since the Objector has not met Test 3 successfully and given that the Requirements are cumulative, considering whether Test 4 (Material Harm) has been complied with becomes moot.

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134. It is worth noting that the above conclusions are based on the decision that the invoked community is not the global P&C insurance market, but only the U.S. P&C Insurance providers; however, if *arguendo* I were to assume that the invoked community was the global P&C insurance market, the final result would not be altered: the Objection would still be dismissed. This is so, because (i) I would still be unpersuaded as to the existence of a strong association between the generic string insurance and the specific community of P&C (rather than, say,

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<sup>90</sup> The two letters delivered by the Objector in support of the Objection (annexes B and C) associate the string insurance with the insurance industry and not the more specific P&C insurance business. Specifically, the letter from the Canadian Life and Health Insurance Association, Inc. states: “There is a strong association between the insurance industry, in Canada and internationally, and the gTLD string “.insurance”. The letter from the Insurance Bureau of Canada states: “Clearly, .insurance is strongly associated with a highly recognizable international financial services industry which, in Canada, is highly regulated at both the federal and provincial level.”

<sup>91</sup> The same conclusion is reached whether the community invoked is the global P&C Insurance Providers, or the U.S. P&C Insurance Providers community.

health or other areas), and (ii) the Objector has not sufficiently proven opposition from the global P&C Insurance Providers<sup>92</sup>.

## **8. COSTS**

135. The Applicant has requested payment of the costs reasonably incurred in opposing the Objection. However, pursuant to article 14(e) of the Attachment to the Procedure, upon termination of the proceedings, the Dispute Resolution Service Provider shall only refund to the prevailing party, as determined by the panel, its advance payment of costs. Thus, the panel has no mandate on costs other than the advanced costs referred to in article 14(e) of the Attachment.

136. The Applicant has prevailed and thus should have its advance costs refunded.

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<sup>92</sup> See footnote 85.

## DECISION

For the reasons given above, and in relation to the Objection filed by the American Insurance Association as the Objector against the Application filed by Dotfresh Inc. as the Applicant, for the gTLD .insurance, I find and declare, in accordance with article 21(d) of the Attachment, that:

- I. The Applicant has prevailed and;
- II. The Applicant shall have its advance deposit refunded by the Centre.

Date: 10 February 2014

Signature: 

Mr. Juan Fernández-Armesto  
Expert