

GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV of the [GAC Singapore Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to Singapore GAC Advice” (for example “1-111-11111 Response to Singapore GAC Advice”). All GAC Advice Responses to the GAC Singapore Communiqué must be received no later than 23:59:59 UTC on 02-May-2014.

Respondent:

Applicant Name	Asia Spa and Wellness Promotion Council Limited
Application ID	1-1309-81322
Applied for TLD (string)	SPA

Response:

Dear ICANN Board, NGPC and GAC,

We welcome the GAC advice on .SPA and appreciate the opportunity to respond.

With the confirmation from the GAC advice that *“the GAC understands that the relevant parties in these discussions are the city of Spa and the applicants”*, the path forward is clear. According to the Applicant Guidebook (AGB: 2.2.1.4.2), the determination of *“which governments are relevant”* to a geographic name requiring government support (or non-objection) is based *“on the inputs of the applicant, governments, and its own research and analysis.”* The GAC advice states clearly that the relevant government entity for .SPA is the city of Spa.

Also according to AGB: 2.2.1.4.2: *“An application for a city... will require documentation of support or non-objection... if: (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and (b) The applied-for string is a city name as listed on official city documents.”* The fact that “SPA” is a city name as listed on official city documents is apparent.

It is important to note that here, the AGB specifically uses the phrase *“purposes associated with the city name”* and NOT “purposes associated with the city”. This represents a significant difference for the specific case of “SPA” because the city name “Spa” is the etymological origins of the term “spa”, which is associated with the city’s thermal spring water, now synonymous with hydrotherapy and springs with healing

properties. The use of “spa” for purposes related to hydrotherapy and springs with healing properties must therefore logically be interpreted as “*purposes associated with the city name.*” It is also important to note that the AGB specifically used “*associated*” which casts a wider net to allow governments to appropriately weigh in to address the challenge of city names, also identified in AGB: 2.2.1.4.2, “*because city names may also be generic terms or brand names*”.

It is clear from applicant statements from BOTH remaining applications for .SPA that the applicant intends to use the TLD “*primarily for purposes associated with the city name*” (even if it is not for purposes associated with the city or its citizens):

ASWPC application (18a):

.spa is dedicated to the spa and wellness community

Donuts (Foggy Sunset, LLC) application (18a):

There are literally hundreds of different uses of the word SPA, broadly including day spas, dental spas, garden spas, medical spas, bath spas, hot tubs, soda fountains, etc.

Note that ALL of the listed “different uses of the word SPA... day spas, dental spas...” are “*primarily for purposes associated with the city name*” as explained above, despite the continued insistence by the other applicant (Donuts) otherwise in their subsequent response to GAC advices.

AGB: 2.2.1.4 further stipulates that “*applied-for gTLD strings will be reviewed according to the requirements... regardless of whether the application indicates it is for a geographic name.*”

The other applicant (Donuts) further contends in their response to the Durban GAC Advice (<http://newgtlds.icann.org/sites/default/files/applicants/28aug13/gac-advice-response-1-1619-92115-en.pdf>) that “*Other city examples are not delayed... numerous additional applications for various names that are generic dictionary terms, but also are names of cities. For example: .TOURS (Tours, France), .PINK (Pink, Oklahoma, US), .ORANGE (Multiple cities in France, Australia, US). Clearly none of these TLDs are targeted toward the respective cities mentioned*” Following the AGB, none of the examples: “tours”, “pink” or “orange” meet the requirements to be considered a geographic name (city name) requiring government support (or non-objection), primarily because the applicants are not using the TLD for “*purposes associated with the city name*”. Unlike “spa” the etymological origins of the words “tours”, “pink” or “orange” are not associated with the corresponding cities and therefore the stated purposes from the applicants (“tours”: unspecified; “pink”: create an Internet identity tied to the color, “orange”: promote the identity and authenticity of its brand Orange as a global telecommunications company) are not associated with the city name.¹

¹ See Exhibit A

Finally, according to AGB: 3.1, “GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities. GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.” The issue with .SPA was included in:

- Beijing GAC Advice
 - <https://gacweb.icann.org/display/GACADV/2013-04-11-gTLDStrings>
- Durban GAC Advice
 - <https://gacweb.icann.org/display/GACADV/2013-07-18-gTLDStrings>
- Buenos Aires GAC Advice
 - <https://gacweb.icann.org/display/GACADV/2013-11-20-spa>
- Singapore GAC Advice
 - <https://gacweb.icann.org/display/GACADV/2014-03-27-spa>

Furthermore, the letters from the Deputy Prime Minister, Mr. Johan vande Lanotte on July 1, 2013 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-01jul13-en.pdf>) and March 20, 2014 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-20mar14-en.pdf>) both clearly advised that “The Belgian law of 26 June 2003 concerning abusive registration of domain names gives the town of Spa the right to appeal against an owner of a “.spa” domain name”, which matches with the AGB: 3.1 provision that an application “potentially violate national law or raise sensitivities.”

Therefore, given the clear provisions in the AGB, the specific indication of the relevant parties in the GAC Advice, the demonstrated validity and relevance of such GAC Advice according to the AGB, and the expressed purposes of the TLD from the applicant statements as it relates to the AGB on geographical names requiring government support (or non-objection), the appropriate path forward would be for ICANN to accept the GAC Advice, follow the AGB, and trigger the Geographic Names Extended Evaluation for the remaining applications for .SPA.

According to the AGB: 2.3.1 Geographic Names Extended Evaluation, “In the case of an application that has been identified as a geographic name... the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation... (at least 90 calendar days from the date of the notice).”

This will ensure that the integrity of the new gTLD process is not compromised, and continue to be transparent, timely, predictable, non-discriminatory and in accordance with the expectations set forth in the AGB. This will also be equitable for all applicants involved as it sets the condition at the same base requirement of non-objection (not necessarily support) from the relevant government in full accordance with the definitions stipulated in the AGB.

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ASWPC has patiently followed the new gTLD process including the comprehensive GAC Advice process and is committed to continue following the new gTLD process according to reasonable interpretation of the AGB that is not only market-driven or free-for-all, but one that is non-discriminatory also for smaller legitimate applicants. Certain requirements to consider governments and the protection of public interest were carefully included in the AGB for valid reasons. The situation with “.SPA” is a good example of where the discretion provided by the AGB for ICANN to do the right thing can best be utilized by ICANN to serve the public interest rather than pure commercial interests.

ASWPC looks to ICANN to uphold the integrity of the new gTLD process, respect cultural heritage, serve the public interest, and follow the appropriate processes and requirements already in the AGB. ASWPC stands fully prepared to cooperate with ICANN and comply with the Geographic Names Extended Evaluation according to the AGB.

Sincerely,

William Ng
Chairman
Asia Spa and Wellness Promotion Council Limited (ASWPC)

Exhibit A: Comparison of .SPA and “Other city examples” As Contended by Donuts

In its response to the Durban GAC Advice

(<http://newgtlds.icann.org/sites/default/files/applicants/28aug13/gac-advice-response-1-1619-92115-en.pdf>), Foggy Sunset, LLC (Donuts) made the following argument:

Other city examples are not delayed

So is the case regarding numerous additional applications for various names that are generic dictionary terms, but also are names of cities. For example:

.TOURS (Tours, France)

.PINK (Pink, Oklahoma, US)

.ORANGE (Multiple cities in France, Australia, US)

Clearly none of these TLDs are targeted toward the respective cities mentioned, and as is the case with .SPA, the independent geographic evaluation panel did not require the approval of any of these localities in order for the applications to proceed. The gTLD program is intended to be transparent, timely, predictable, and non-discriminatory. Random delays of some applications that happen to be city names defeat these goals.

The argument is logically flawed because the comparisons are not equal. For “SPA”, the etymological origin of the word is the direct reason why the word “spa” means what it is now taken to “generically” mean: springs with curative properties. Therefore the use of the term “SPA” with such meaning clearly associates it with the city name, even if the use is not about the city and/or its citizens.

The same cannot be said for “TOURS”, “PINK” or “ORANGE”.

According to the Online Etymology Dictionary (<http://www.etymonline.com>):

“TOURS” (http://www.etymonline.com/index.php?term=tour&allowed_in_frame=0):

tour (n.)

c.1300, "a turn, a shift on duty," from Old French tor, tourn, tourn "a turn, trick, round, circuit, circumference," from torner, tourner "to turn" (see turn (v.)). Sense of "a continued ramble or excursion" is from 1640s. Tour de France as a bicycle race is recorded in English from 1916 (Tour de France Cycliste), distinguished from a motorcar race of the same name. The Grand Tour, a journey through France, Germany, Switzerland, and Italy formerly was the finishing touch in the education of a gentleman.

tour (v.)

1746, "make a tour, travel about," from tour (n.). Related: Toured; touring.

There is no indication of any etymological relationship between the English word “tour(s)” and Tours the city in central France.

Furthermore, applicant statements by Sugar Station, LLC (Donuts) within the application for the new gTLD “.tours” did not indicate that the applicant will use the TLD primarily for purposes associated with the city name. In fact, Donuts did not provide any specific indication of the purpose in #18a for “*the mission/purpose of your proposed gTLD*” except for stating in its application (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/570>) that: “This TLD is a generic term and its second level names will be attractive to a variety of Internet users.” (NOTE the difference of treatment by Donuts with “.SPA”.)

For “PINK”

(http://www.etymonline.com/index.php?term=pink&allowed_in_frame=0):

pink (n., adj.)

1570s, common name of Dianthus, a garden plant of various colors, of unknown origin. Its use for "pale rose color" first recorded 1733 (pink-coloured is recorded from 1680s), from one of the colors of the flowers. The plant name is perhaps from pink (v.) via notion of "perforated" petals, or from Dutch pink "small" (see pinkie), from the term pinck oogen "half-closed eyes," literally "small eyes," which was borrowed into English (1570s) and may have been used as a name for Dianthus, which sometimes has pale red flowers.

The flower meaning led (by 1590s) to a figurative use for "the flower" or finest example of anything (as in Mercutio's "Nay, I am the very pinck of curtesie," Rom. & Jul. II.iv.61). Political noun sense "person perceived as left of center but not entirely radical (i.e. red)" is attested by 1927, but the image dates to at least 1837. Pink slip "discharge notice" is first recorded 1915. To see pink elephants "hallucinate from alcoholism" first recorded 1913 in Jack London's "John Barleycorn."

pink (v.)

c.1200, pungde "pierce, stab," later (early 14c.) "make holes in; spur a horse," of uncertain origin; perhaps from a Romanic stem that also yielded French piquer, Spanish picar (see pike (n.2)). Or perhaps from Old English pyngan and directly from Latin pungere "to prick, pierce" (see pungent). Surviving mainly in pinking shears.

Similarly, there is no indication of any etymological relationship with Pink, the town in Pottawatomie County, Oklahoma, United States, which is part of the Oklahoma City.

Also, applicant statements by Afilias Limited within the application for the new gTLD “.pink” did not indicate that the applicant will use the TLD primarily for purposes associated with the city name. In fact, Afilias specifically indicated (<https://gtldresult.icann.org/application->

[result/applicationstatus/applicationdetails/1846](#)) in #18a for “*the mission/purpose of your proposed gTLD*” that: “.PINK proposes to create an Internet space in which businesses, organizations and individuals can create an Internet identity tied to the color and the concept of pink.”

“ORANGE”

(http://www.etymonline.com/index.php?term=orange&allowed_in_frame=0):

orange (n.)

c.1300, of the fruit, from Old French orange, orange (12c., Modern French orange), from Medieval Latin pomum de oronge, from Italian arancia, originally narancia (Venetian naranza), alteration of Arabic naranj, from Persian narang, from Sanskrit naranga-s "orange tree," of uncertain origin. Not used as a color word until 1540s.

Loss of initial n- probably due to confusion with definite article (as in une narange, una narancia), but perhaps influenced by French or "gold." The name of the town of Orange in France (see Orangemen) perhaps was deformed by the name of the fruit. Orange juice is attested from 1723.

The tree's original range probably was northern India. The Persian orange, grown widely in southern Europe after its introduction in Italy 11c., was bitter; sweet oranges were brought to Europe 15c. from India by Portuguese traders and quickly displaced the bitter variety, but only Modern Greek still seems to distinguish the bitter (nerantzi) from the sweet (portokali "Portuguese") orange. Portuguese, Spanish, Arab, and Dutch sailors planted citrus trees along trade routes to prevent scurvy. On his second voyage in 1493, Christopher Columbus brought the seeds of oranges, lemons and citrons to Haiti and the Caribbean. Introduced in Florida (along with lemons) in 1513 by Spanish explorer Juan Ponce de Leon. Introduced to Hawaii 1792.

For “ORANGE”, it is important to note that the name of the town of Orange in France was “*deformed by the name of the fruit*” (the name of the town was originally unrelated to that of the orange fruit, but was later conflated with it, i.e. they share no etymological origin) and not vice versa, as in the case of “Spa”. Therefore, again, the use of the word “orange” is not associated with the city name (whether it be the French cities or similarly in the US and Australia).

Also, applicant statements by Orange Brand Services Limited within the application for the new gTLD “.orange” did not indicate that the applicant will use the TLD primarily for purposes associated with the city name: Orange. In fact, Orange Brand Services Limited specifically indicated (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1660>) in #18a for “*the mission/purpose of your proposed gTLD*” that they intend to develop a: “.orange domain space that promote the identity and authenticity of its brand... Orange is a

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global telecommunications company, providing a range of mobile and broadband communication services.”

“SPA” (http://www.etymonline.com/index.php?term=spa&allowed_in_frame=0)

spa (n.)

*"medicinal or mineral spring," 1620s, from the name of the health resort in eastern Belgium, known since 14c., that features mineral springs believed to have curative properties. The place name is from Walloon *espa* "spring, fountain." As "commercial establishment offering health and beauty treatments," 1960.*

In contrast with the examples of “TOURS”, “PINK” and “ORANGE”, the etymological origin of the English word “spa” clearly links it with the city of Spa (known since 14th Century), which is a municipality of Belgium in the country's Walloon Region and Province of Liège.

Moreover, applicant statements by BOTH remaining applications for .SPA indicated within their respective application for the new gTLD that the applicant intends to use the TLD “*primarily for purposes associated with the city name*” (i.e. related to hydrotherapy and springs with curative properties):

ASWPC application (18a: <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/123>):

.spa is dedicated to the spa and wellness community

Donuts (Foggy Sunset, LLC) application (18a: <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/599>):

The .SPA TLD will be attractive to a very broad and diverse group of registrants. There are literally hundreds of different uses of the word SPA, broadly including day spas, dental spas, garden spas, medical spas, bath spas, hot tubs, soda fountains, etc., as well as a corporate identifier in certain jurisdictions.²

Unlike for “.tours” where Donuts made no specific indication on the purpose of the TLD, Donuts, from applicant statements within their application for “.spa”, clearly indicated that the applicant will use the TLD primarily for purposes associated with the city name, i.e. related to hydrotherapy and springs with curative properties: “day spas, dental spas, garden spas, medical spas, bath spas, hot tubs, soda fountains, etc.”.

Therefore, the applications for “.SPA” meets the requirements as set out in the AGB for city names requiring government support (or non-objection):

² Note that we understand from the GAC representative from Italy where the acronym “S.p.A.” is used to represent “Società per azioni”, which means a public limited company.

2.2.1.4.2 Geographic Names Requiring Government Support

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

...

2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired. An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

(a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

(b) The applied-for string is a city name as listed on official city documents.⁷

⁷*City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.*

...

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis.

We note that AGB: 2.2.1.4.2 clearly expressed that “*City names present challenges because city names may also be generic terms or brand names*”, but that does not exempt them from requiring government support (or non-objection). Applications for TLD strings that matches a city name “*regardless of whether the application indicates it is for a geographic name*” (AGB: 2.2.1.4), are also subject to the requirements.

We also note that the city of Spa, as advised by AGB: 2.2.1.4.2 (Footnote 7), did not solely rely on ICANN’s “*evaluation process as the primary means of protecting their interests in a string*”, and therefore have participated in the GAC Advice process through the Belgian GAC representative according to AGB: 3.1 where it provides that: “*GAC members can raise concerns about any application to the GAC. The GAC as a whole will*

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consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.”

This resulted in specific GAC Advices on the matter in the GAC Communiqués of Beijing, Durban, Buenos Aires and Singapore.

In addition, the Deputy Prime Minister of Belgium has also twice written to ICANN on the issue:

1. July 1, 2013 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-01jul13-en.pdf>) and
2. March 20, 2014 (<http://www.icann.org/en/news/correspondence/lanotte-to-chehade-crocker-20mar14-en.pdf>)

The letters clearly explain the validity of the GAC Advice according to AGB: 3.1: *“The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.”*

Finally, we also note according to the AGB (2.2.1.4.2 Geographic Names Requiring Government Support), the Geographic Names Panel (GNP) must determine which governments are relevant based on the inputs of governments. The Singapore GAC Advice provides that input from governments.

Therefore, the only appropriate path forward would be for both remaining applications for .SPA to enter into Geographic Names Extended Evaluation according to AGB: 2.3.1, *“In the case of an application that has been identified as a geographic name... the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation... (at least 90 calendar days from the date of the notice).”*