

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, Annex I, and Annex II of the [GAC Beijing 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 GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses must be received no later than 23:59:59 UTC on 10-May-2013.

Respondent:

Applicant Name	Patagonia, Inc.
Application ID	1-1084-78254
Applied for TLD (string)	.patagonia

Response:

Response of Patagonia, Inc. to Governmental Advisory Committee Advice to ICANN Board of Directors Regarding .patagonia gTLD Application

The Governmental Advisory Committee (“GAC”) did not identify in its GAC Advice to the ICANN Board of Directors (“Board”) why it contends that further GAC consideration may be warranted for the .patagonia gTLD application filed by Patagonia, Inc. (“Patagonia”). Based on the Early Warnings filed by both the Argentine Republic and the Republic of Chile in which both governments state that “patagonia” is a name of a region within their countries and identify withdrawal of the .patagonia application as the only acceptable remedial measure, Patagonia believes that GAC representatives of both countries sought GAC Advice rejecting the .patagonia application on the ground that it is a “geographic name.”

Patagonia respectfully requests that the Board allow Patagonia’s .patagonia application to proceed now beyond Initial Evaluation.

First, the “Geographic Names” terms and provisions of the Applicant Guidebook require it. Patagonia has reasonably relied upon the process set forth in Applicant Guidebook, has expended significant effort and resources in reliance on those terms and provisions, and is in full compliance with the rules contained therein. In particular, Patagonia went to great lengths before deciding to proceed with its .patagonia application to ensure that the .patagonia gTLD string is not a “Geographic Name” as ICANN has defined that term.

Second, preventing Patagonia’s .patagonia application from proceeding now beyond Initial Evaluation contradicts and renders moot key principles of certainty and clarity for applicants and a predictable evaluation process that were adopted by the GNSO, the Board, and the GAC. Changing now the crucial, outcome-determinative provisions of the Applicant Guidebook such

GAC Advice Response Form for Applicants



as the definition of Geographic Names constitutes a material and arbitrary change to the Applicant Guidebook, made without proper notice to Patagonia.

Third, allowing Patagonia's .patagonia application to proceed now avoids the conflict arising from a potential scenario in which future GAC Advice calls for adverse action against the .patagonia application on the same basis as an ICANN-funded, government-filed Community Objection found to be without merit by the ICANN-selected Dispute Resolution Provider.

Fourth, no objective legal standard prevents or prohibits Patagonia from applying for or operating a .patagonia gTLD. Neither the laws of the Argentine Republic nor the laws of the Republic of Chile, the two countries that filed Early Warnings against Patagonia's .patagonia application and that presumably sought GAC Advice on it, prohibit or limit use of the name "Patagonia." To the contrary, the laws of both countries have affirmatively protected Patagonia's PATAGONIA Trademarks for over two decades. Moreover, Patagonia's ownership of hundreds of registrations globally for its PATAGONIA Trademarks makes clear that the laws of scores of GAC member countries also affirmatively protect Patagonia's PATAGONIA Trademarks.

Finally, Patagonia filed its .patagonia application and continues to act in good faith consistent both with its reputation as an outstanding corporate citizen and its mission statement, which is "Build the best product, cause no unnecessary harm, use business to inspire and implement solutions to the environmental crisis." Patagonia intends to use the .patagonia gTLD as a ".brand gTLD" for a beneficial purpose, and has made every effort to engage collaboratively with the Argentine Republic and the Republic of Chile over their concerns about the .patagonia application.

If the ICANN Board decides that Patagonia's .patagonia application should not proceed now beyond Initial Evaluation, Patagonia respectfully requests that the Board communicate to the GAC that the Board must receive the GAC's final and definitive advice relating to Patagonia's .patagonia application on or before the conclusion of the ICANN meeting in Durban, South Africa on July 18, 2013. It is indisputable that Patagonia will be materially and irreversibly prejudiced if the issue of whether Patagonia's .patagonia application may proceed is considered during the ICANN meeting in Buenos Aires, Argentina.

I. "Patagonia" is not a "Geographic Name" as defined by ICANN.

"Patagonia" is not a country or territory name, and is thus not prohibited as a gTLD string. Section 2.2.1.4.1 of the Applicant Guidebook sets forth seven criteria for identifying the country or territory names that are "not available under the New gTLD Program in this application round." None of these criteria applies to "Patagonia."

"Patagonia" is not a Geographic Name that required documentation of support or non-objection from any government or public authority. Section 2.2.1.4.2 of the Applicant Guidebook identifies five specific categories of gTLD strings that are considered geographic names and require such documentation. These categories are: (1) capital city names; (2) city names where applicants declare that they intend to use the gTLD for purposes associated with the city name; (3) sub-national place names listed in the ISO 3166-2 standard; (4) regional names appearing on the list of UNESCO regions; and (5) regional names on the UN's "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other

GAC Advice Response Form for Applicants



groupings” list. The name “Patagonia” does not fall within any of these categories and does not appear on any of the above lists.

The Geographic Names Panel, which has reportedly completed its review of all gTLD applications, has not contacted Patagonia regarding its .patagonia application.

Patagonia’s .patagonia application is in full compliance with the requirements on Geographic Names set forth in Section 2.2.1.4 of the Applicant Guidebook, and with all other Guidebook requirements. Prohibiting Patagonia’s .patagonia application from proceeding beyond Initial Evaluation based on the GAC Advice renders these clear rules moot.

II. The Board Must Honor Principles of Certainty, Clarity, and Predictability Adopted by the Board and GAC, as well as the GAC’s Own Position on the Definition of Geographic Names.

The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. GNSO Policy Recommendation 1.

The GAC adopted this GNSO policy recommendation on the introduction of new gTLDs as one of the GAC’s general public policy principles in its March 28, 2007 GAC Principles Regarding New gTLDs. The Board adopted this GNSO policy recommendation on the introduction of new gTLDs in June 2008. Board Resolution 2008.06.26.02.

The Board incorporated this policy recommendation into its subsequent statements on the issue of geographic names. For example, in its “ICANN Board Rationale on Geographic Names Associated with the gTLD Program,” the Board found “the balance of retaining certainty for applicants and demonstrating flexibility in finding solutions” and the “goals of providing greater clarity of applicants and appropriate safeguards for governments and the broad community” to be “significant factors” in the Board’s rationale for implementing the new gTLD program containing the adopted measures on geographic names as now set forth in the Applicant Guidebook. Similarly, the Board identified as one of its reasons for the proposed approach to geographic names as now set forth in the Applicant Guidebook the “inten[tion] to create a predictable, repeatable process for the evaluation of gTLD applications. Thus, to the extent possible, geographic names are defined with respect to pre-existing lists.” These pre-existing lists are the same lists referenced in Section 2.2.1.4 of the Applicant Guidebook, the same lists on which “Patagonia” does not appear.

In its May 26, 2011 “GAC Comments on the Applicant Guidebook,” the GAC “accept[ed] ICANN’s interpretation with regard to the definition of geographic names.” This “definition of geographic names” is Section 2.2.1.4 of the Applicant Guidebook – the same section under which Patagonia is not considered a “Geographic Name.”

Moreover, the GAC itself voluntarily recognized that the “definition of geographic names” could implicate brands and, in that event, the relevant government had the responsibility to identify safeguards:

GAC recalls that in cases in which geographic names correspond with generic names or brands, such a regulation would not exclude per se the use of generic names and brands as Top-Level Domains. It would, however, be in the area of responsibility of the adequate government to define requirements and safeguards to prevent the use of those Top-Level Domains as geoTLDs.

GAC Cartagena Communiqué - scorecard to serve as the basis of the GAC approach to Brussels ICANN Board/GAC consultation meeting 28 February-1 March 2011, accessible at <http://archive.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>.

Under the GAC's position, which it never repudiated or reversed, even if "Patagonia" met the definition of a geographic name (which it does not), the applicable remedial measure is not the rejection of the .patagonia application, is not the insistence that Patagonia withdraw its .patagonia application, and is not GAC Advice that the .patagonia application not proceed to Initial Evaluation. To the contrary, the applicable remedial measure is the delineation by the Argentine Republic and the Republic of Chile of requirements and safeguards to prevent the use of .patagonia as a geoTLD. Yet, as discussed below, neither government has made any meaningful effort to engage collaboratively with Patagonia.

The Board must honor the principles of certainty, clarity, and predictability adopted by the Board itself and incorporated into the Board's rationale on geographic names. Similarly, the Board should also honor the same principles as adopted by the GAC, as well as the GAC's own position on the definition of Geographic Names. The Board should do so by allowing Patagonia's .patagonia application to proceed now beyond Initial Evaluation, and not wait until after the Durban meeting. To do otherwise renders those principles and position moot and effectively constitutes a material and arbitrary change to the Applicant Guidebook, made without proper notice to Patagonia and more than one year after the .patagonia application was submitted.

III. Avoid A Conflict Between Dispute Resolution Proceeding Outcomes and GAC Advice

The Ministry of Foreign Affairs of Argentina has filed a Community Objection against the .patagonia application. Patagonia expects to prevail on the merits. Accordingly, if the Board accepts GAC Advice, the Board may face a situation in which both Patagonia has defeated an ICANN-funded, government-filed Community Objection and subsequent GAC Advice calls for adverse action against the .patagonia application on the same basis found to be without merit by the ICANN-selected Dispute Resolution Provider. Allowing the .patagonia application to proceed now beyond Initial Evaluation avoids such a conflict and honors the dispute resolution process established by the Board.

IV. No Law of the Argentine Republic or the Republic of Chile Prohibits Patagonia's .patagonia Application.

No laws in the Argentine Republic or the Republic of Chile, the two countries that filed Early Warnings against Patagonia's .patagonia application and that presumably sought GAC advice on it, prohibit Patagonia's .patagonia application. Neither country's law contains any special protections for the use of the name "Patagonia," or any limitations or prohibitions on use of that name. Neither country's law prohibits Patagonia, Inc., or any other entity, from applying for or operating a .patagonia gTLD. And there are no restrictions on registration of domain names

GAC Advice Response Form for Applicants



containing or consisting of “patagonia” in the .ar and .cl ccTLDs. See Exhibit A, Declaration of Gustavo P. Giay at ¶¶ 6-7; Exhibit B, Declaration of Bernardo Serrano at ¶¶ 6-7.

To the contrary, the laws of both countries affirmatively protect Patagonia’s trademarks that contain or consist of PATAGONIA (the “PATAGONIA Trademarks”). Patagonia owns 11 registrations for PATAGONIA Trademarks in the Argentine Republic, the first of which issued more than 20 years ago. See Exhibit A, Declaration of Gustavo P. Giay at ¶ 4. Patagonia also owns 5 registrations for PATAGONIA Trademarks in the Republic of Chile, the first of which issued more than 29 years ago. See Exhibit B, Declaration of Bernardo Serrano at ¶ 4. Patagonia has relied on these registrations to secure and enforce rights in its PATAGONIA Trademarks against third parties in both countries.

Moreover, Patagonia owns hundreds of registrations globally for its PATAGONIA Trademarks, including 225 registrations in 61 GAC member countries and entities. This number increases to 306 registrations in 68 GAC member countries and entities if Patagonia’s Benelux registrations are counted separately for Belgium, Luxembourg, and Netherlands; and its Community Trade Mark (EU) registrations are counted separately for each EU member country that is also a GAC member. See Exhibit C. Patagonia’s ownership of these PATAGONIA Trademarks registrations makes clear that the laws of more than half the GAC-member countries also affirmatively protect Patagonia’s PATAGONIA Trademarks.

Neither the Joint Ministerial Statement signed by representatives of the Argentine Republic and the Republic of Chile on November 8, 2012 nor the April 5, 2013 Montevideo Declaration constitutes a prohibition on Patagonia’s .patagonia application. Neither has force of law in the Argentine Republic or the Republic of Chile. In the Argentine Republic, neither can be the basis of an enforcement action, and neither can be enforced privately or by the government. Similarly, in the Republic of Chile, neither can be the basis for a private or government enforcement action. Thus, neither prohibits or limits the use of the name “Patagonia,” generally or specifically as a gTLD. See Exhibit A, Declaration of Gustavo P. Giay at ¶ 9; Exhibit B, Declaration of Bernardo Serrano at ¶ 9.

Finally, even if the Joint Ministerial Statement or the Montevideo Declaration had the force of law, they would be inapplicable to Patagonia’s .patagonia application. Both occurred long after Patagonia had submitted its .patagonia application to ICANN. Similarly, any new law in either country that attempted to limit use of the name “Patagonia” would also be inapplicable. Patagonia’s .patagonia application is in full compliance with applicable law – the law as of the date Patagonia filed its .patagonia application.

V. Consistent With Its Values, Patagonia Has Submitted its .patagonia Application in Good Faith, with Good Intent and Full Transparency.

Patagonia values its contribution toward combatting environmental destruction, making a positive social impact, and achieving profits through principles. Its commitment to these efforts is reflected throughout all areas of its business, including its actions related to its .patagonia application. Patagonia has submitted its .patagonia application to ICANN in good faith, with beneficial intent and full transparency. Patagonia looks forward to providing the general public, the outdoor industry, and all existing and future consumers of PATAGONIA products and services with an authenticated and more secure experience under the .patagonia gTLD.

GAC Advice Response Form for Applicants



Patagonia's passion for preserving wilderness terrain and for restoring damaged areas to their original, natural condition drives the company to do all it can to reverse the decline in the health of the planet. In 2012, Patagonia became California's first Benefit Corporation. While Patagonia's commitment to its environmental mission has long been reflected in its broad range of activities, Benefit Corporation status formally requires Patagonia to commit to its environmental mission in its Articles of Incorporation, and to publish independently verified reports on its social and environmental performance. Other key benefit purposes are: (1) donating 1% of annual gross sales to environmental causes; (2) building the best product with no unnecessary harm; (3) conducting operations causing no unnecessary harm; (4) sharing best practices with other companies; (5) being transparent; and (6) providing a supportive work environment.

Since 1985, Patagonia has donated at least 1% of its sales to hundreds of grassroots environmental organizations around the world. To date, it has awarded over \$46 million in cash and in-kind donations. In 2002, Patagonia founder Yvon Chouinard co-founded 1% For the Planet, which encourages other business leaders to make similar pledges. That initiative now has more than 1,000 members. In 1989, Patagonia co-founded the Conservation Alliance, which has brought together more than 185 companies to support environmental organizations. Since its inception, the Conservation Alliance has contributed close to \$12 million to such organizations and plans to disburse \$1.5 million in 2013.

Patagonia is equally committed to reducing the impact of its own business on the environment. Since 2000, Patagonia has worked with the independent bluesign standard for textiles to evaluate and reduce resource consumption and to screen raw materials used in its supply chain. Since 2001, it has been a Participating Company in the Fair Labor Association, a multi-stakeholder organization that acts as a third-party monitor of its members' factories. Since 2005, Patagonia has recycled 56.6 tons of outdoor clothing through its Common Threads Partnership, which facilitates re-use of pre-owned clothes through eBay, the world's largest marketplace for clothing and apparel. And in 2010, Patagonia co-founded the Sustainable Apparel Coalition, a group of 49 industry leaders in apparel and footwear who work with nonprofits and NGOs to reduce the impact of their businesses on the environment and society.

In May 2013, Patagonia launched \$20 Million & Change, an investment fund set up to help like-minded start-up companies. Through it, Patagonia aims to invest in companies working to bring about positive change in five critical areas: clothing, food, water, energy, and waste. The title is a nod to the fact that \$20 million is a starting amount with the ability to grow, and more important, the ability to "change" the way business is done. Startups funded by \$20 Million & Change must exhibit Patagonia's core values.

Patagonia also values transparency and acting in good faith. By way of example, the company provides information to its customers about its factories and key suppliers and their practices through its Footprint Chronicles microsite. Consistent with these values, Patagonia has proceeded in good faith and reasonable reliance on the rules set forth in the Applicant Guidebook. Its .patagonia application complies with all applicable rules in the Guidebook, not least those governing the use of Geographic Names as gTLDs.

GAC Advice Response Form for Applicants



Also consistent with its values, Patagonia has sought to open a dialogue regarding its .patagonia application with the governments of the Argentine Republic and the Republic of Chile. Ms. Hilary Dessouky, Patagonia’s General Counsel and Vice President, wrote in early February to the Argentine and Chilean Ambassadors to the United States to advise that Patagonia did not intend to withdraw its .patagonia application; and to request a meeting (in person in Washington, DC or by telephone) to discuss their respective country’s concerns regarding the .patagonia application and to explore the possibility of remedial measures other than withdrawal of the .patagonia application. Patagonia eventually received a response from the Chilean Embassy on April 5, 2013 – the second day of GAC consultations in Beijing – and from the Argentine Embassy on April 10, 2013 – the last day of GAC consultations in Beijing. Because of scheduling issues (including Patagonia’s counsel’s presence in Beijing for the ICANN Meeting and Ms. Dessouky’s international business travel), it was not possible to meet with either country’s representatives at that time.

In the meantime, Patagonia filed a PIC Specification for its .patagonia application. Exhibit D. Because the consultation process with the Governments of the Argentine Republic and the Republic of Chile had not yet concluded, Patagonia believed that any substantive, completed PIC Specification would be both incomplete and materially prejudicial to such discussions. Accordingly, Patagonia reserved its rights to submit to ICANN in the future a completed PIC Specification and intends to do so if the completed discussions result in Patagonia’s agreement to implement certain remedial measures.

An initial phone meeting occurred on May 2, 2013 among Ms. Dessouky, Patagonia’s outside counsel, and representatives of the Chilean Embassy. During that meeting, representatives of the Chilean Embassy communicated the general position of the Republic of Chile, but were unable to provide any reactions to remedial measures proposed by Patagonia or any meaningful guidance regarding the Republic of Chile’s view as to whether its concern is capable of being remediated other than through withdrawal of the .patagonia application. The parties agreed to continue meeting after the Chilean Embassy representatives received further instructions from capital.

A phone meeting with the Argentine Embassy is scheduled for May 13, 2013.

* * * *

Patagonia’s .patagonia application complies with all relevant provisions of the Applicant Guidebook, and all provisions of Argentine and Chilean law. The .patagonia application must be evaluated by the Guidebook standards on Geographic Names, which the Board and GAC have accepted, and not by new, arbitrary criteria. Patagonia respectfully submits that the Board should determine not to accept GAC Advice regarding Patagonia’s .patagonia application and should allow the .patagonia application to proceed now beyond Initial Evaluation.

EXHIBIT A

DECLARATION OF GUSTAVO P. GIAY

I, Gustavo P. Giay, hereby declare as follows:

1. I am a partner at the law firm of Marval, O'Farrell & Mairal, a law firm from Buenos Aires, Argentina. I make this declaration in support of Patagonia, Inc.'s .patagonia gTLD application, Appl. No. 1-1084-78254 (the "Application").

2. I received my law degree from Universidad de Buenos Aires in 1994, and in 1997 I obtained an L.L.M. from Northwestern University. Since then I have specialized my legal practice in intellectual property. I represent Patagonia, Inc. in the Argentine Republic in connection with the Application. I am familiar with the facts set forth in this declaration and could, if called as a witness, testify competently with regard to them.

3. Patagonia is a region of the Argentine Republic comprising the provinces of La Pampa, Río Negro, Neuquén, Chubut, Santa Cruz, and Tierra del Fuego, Antártida e Islas del Atlántico Sur. Patagonia is not itself a province of the Argentine Republic. The region has a total surface area of 1,911,605 square kilometers and a population totaling 2,348,973 inhabitants (2010 data)

4. Patagonia, Inc. owns the following trademark registrations in the Argentine Republic containing or consisting of the name "PATAGONIA":

<u>Trademark</u>	<u>Country</u>	<u>Current Reg. No.</u>	<u>Reg. Date</u>	<u>Classes</u>	<u>Notes</u>
PATAGONIA	Argentina	1,893,074	09-30-1992	25	Originally registered as No. 1,404,964.
PATAGONIA & Design	Argentina	1,984,365	09-30-1992	25	Originally registered as No. 1,404,158.
PATAGONIA (Stylized)	Argentina	2,019,929	12-30-1993	18	Originally registered as No. 1,493,559.

<u>Trademark</u>	<u>Country</u>	<u>Current Reg. No.</u>	<u>Reg. Date</u>	<u>Classes</u>	<u>Notes</u>
PATAGONIA & Design	Argentina	2,019,930	12-30- 1993	18	Originally registered as No. 1,493,560.
PATAGONIA (Stylized)	Argentina	2,068,861	09-12- 1995	25	Originally registered as No. 1,574,931.
PATAGONIA & Design	Argentina	2,180,825	05-27- 1997	28	Originally registered as No. 1,633,794.
PATAGONIA (Stylized)	Argentina	2,342,741	12-18- 1998	28	Originally registered under No. 1,710,930
PATAGONIA UNIVERSITY	Argentina	2,136,282	07-18- 2005	16	
PATAGONIA UNIVERSITY	Argentina	2,136,286	01-09- 2007	41	
PATAGONIA UNIVERSITY	Argentina	2,136,288	01-09- 2007	42	
PATAGONIA UNIVERSITY	Argentina	2,137,233	01-09- 2007	9	

By virtue of Patagonia, Inc.'s ownership of the above trademark registrations, Argentine law affirmatively protects Patagonia, Inc.'s use of the name "Patagonia" in its trademarks.

5. Argentine Trademark Law does not contain any provisions that would allow the Trademark Office or any other administrative agency to unilaterally revoke, cancel, or withdraw Patagonia, Inc.'s trademark registrations identified in paragraph 4.

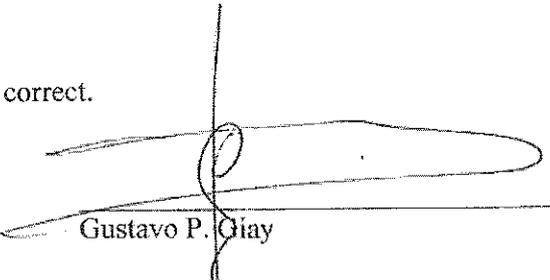
6. Argentine trademark law contains no specific protections for or prohibitions of the use of the name "Patagonia." There are no special legal protections for or limitations on use of the name "Patagonia" by itself under Argentine federal law.

7. Argentine federal law does not prohibit Patagonia, Inc., or any other entity from applying for and operating a .patagonia gTLD. Similarly, there are no restrictions on registration of <patagonia> domain names in the .ar ccTLD.

8. The Joint Ministerial Statement signed by the Governments of the Republic of Chile and the Argentine Republic on November 8, 2012 regarding “the importance of protecting the use of the name Patagonia,” does not have the force of law in the Argentine Republic. It cannot be the basis of an enforcement action, nor can it be enforced either privately or by the government, and as such it does not prohibit or limit the use of the name “Patagonia,” generally or specifically as a gTLD (e.g., .patagonia).

9. The Montevideo Declaration of the Fourth Ministerial Conference on the Information Society in Latin America and the Caribbean, dated April 5, 2013, which declares an intent to “[r]eject any attempt to appropriate, without the consent of the respective countries of Latin America and the Caribbean, the denominations ‘amazon’ and ‘patagonia’ in any language,” does not have the force of law in the Argentine Republic. It cannot be the basis of an enforcement action, nor can it be enforced either privately or by the government, and as such it does not prohibit or limit the use of the name “Patagonia,” generally or specifically as a gTLD (e.g., .patagonia).

I declare that the foregoing is true and correct.



Gustavo P. Giay

MAY 9, 2013.-

Date

EXHIBIT B

DECLARATION OF BERNARDO SERRANO

I, Bernardo Serrano, hereby declare as follows:

1. I am the senior partner at the law firm of Estudio Villaseca. I make this declaration in support of Patagonia, Inc.'s .patagonia gTLD application, Appl. No. 1-1084-78254 (the "Application").

2. I received my law degree from Pontificia Universidad Católica de Chile in 1973. Since that date, my legal practice has specialized in industrial and intellectual property, as well as Internet-related matters. I represent Patagonia, Inc. in the Republic of Chile in connection with intellectual property matters. I am familiar with the facts set forth in this statement and could, if called as a witness, testify competently with regard to them.

3. "Patagonia" is not the name of any official region, province, or any other political or geographic division of the Republic of Chile. Rather, it is the name of a determined portion of land without official political boundaries in the south of the Republic of Chile, between the Andes Mountains and the Pacific Ocean. Traditionally, Chilean Patagonia is considered to comprise the Palena province and the Aysen and Magallanes regions. However, according to a minority of sources, Patagonia also includes portions of the Los Ríos region, as well as the Osorno, Llanquihue, and Chiloé provinces.

4. Patagonia, Inc. owns the following trademark registrations in the Republic of Chile containing or consisting of the name "PATAGONIA":

<u>Trademark</u>	<u>Current Reg. No.</u>	<u>Reg. Date</u>	<u>Classes</u>	<u>Notes</u>
PATAGONIA	694,562	06-03-2004	25	Originally registered 01-18-1984 as No. 282,191.
PATAGONIA	871,525	11-15-2009	18	Originally registered 11-15-1999 as No. 552,927.

<u>Trademark</u>	<u>Current Reg. No.</u>	<u>Reg. Date</u>	<u>Classes</u>	<u>Notes</u>
PATAGONIA	754,375	01-31-2006	21, 9	
PATAGONIA	894,419	08-18-2010	35	
PATAGONIA CHILE	936,338	10-27-2011	35	

By virtue of Patagonia, Inc.'s ownership of the above trademark registration, Chilean law affirmatively protects Patagonia, Inc.'s use of the name "Patagonia" in its trademarks.

5. Under Chilean trademark law, the National Institute of Intellectual Property cannot unilaterally cancel, revoke, or withdraw Patagonia, Inc.'s trademark registrations.

6. Chilean law contains no protections for, or limitations or prohibitions on, the use of the name "Patagonia."

7. Chilean law does not refer to gTLDs, and does not prohibit Patagonia, Inc., or any other entity, from applying for or operating a .patagonia gTLD. Similarly, there are no restrictions on registration of the domain name <patagonia> in the .cl ccTLD.

8. The Joint Ministerial Statement signed by the Governments of the Republic of Chile and the Argentine Republic on November 8, 2012 regarding "the importance of protecting the use of the name Patagonia" reflects a statement of political intent. This Statement does not have the force of law in the Republic of Chile. It cannot be the basis of an enforcement action, either privately or by the government, and as such it does not prohibit or limit use of the name "Patagonia," generally or specifically as a gTLD (e.g., .patagonia).

9. The Montevideo Declaration of the Fourth Ministerial Conference on the Information Society in Latin America and the Caribbean, dated April 5, 2013, which declares an intent to reject any attempt to appropriate, without the consent of the respective countries of Latin

America and the Caribbean, the denominations 'amazon' and 'patagonia' in any language," reflects a statement of political intent. This Declaration does not have the force of law in the Republic of Chile. It cannot be the basis of an enforcement action, either privately or by the government, and as such it does not prohibit or limit use of the name "Patagonia," generally or specifically as a gTLD (e.g., .patagonia).

10. I declare that the foregoing is true and correct.

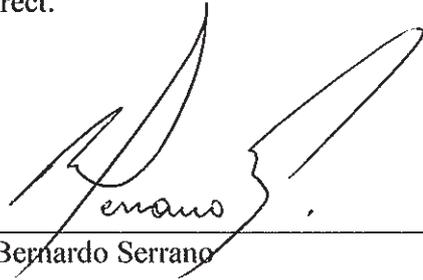

Bernardo Serrano
Date May 9, 2013

EXHIBIT C

**Patagonia, Inc. Registrations for PATAGONIA Trademarks
May 10, 2013**

GAC Member ¹	Number of Registrations	Earliest Issue or Effective Date	GAC Member	Number of Registrations	Earliest Issue or Effective Date
Argentina	11	1992	Mexico	7	1990
Armenia	1	2004	Morocco	1	2005
Australia	6	1983	New Zealand	6	1983
Austria	2	1982	Norway	2	1986
Bahrain	6	2006	Oman	6	2006
Belarus	1	2008	Pakistan	6	2007
Belgium (Benelux Office for Intellectual Property) ²	3	1984	Paraguay	1	1994
Brazil	4	1990	Peru	3	1993
Bulgaria	1	2011	Poland	2	2004
Canada	3	1987	Portugal	4	1991
Chile	5	1984	Qatar	6	2006
China	4	1991	Russian Federation	1	2010
Colombia	1	1998	Serbia	1	2005
Czech Republic	3	2002	Singapore	5	1990
Denmark	2	1987	Slovakia	2	2002
Estonia	1	2004	Slovenia	1	1995
European Commission (Office for Harmonization in the Internal Market) ³	3	2002	South Africa	4	1984
Finland	3	1989	Spain	7	1988
France	3	1982	Sweden	2	1986
Germany	4	1982	Switzerland	1	1983
Hong Kong SAR, China	5	1988	Taiwan	5	1985
Hungary	1	2002	Thailand	5	1990
Iceland	3	1988	Tunisia	1	2009
India	4	2005	Turkey	3	2001
Indonesia	3	2004	Ukraine	1	1995
Italy	3	1982	United Arab Emirates	6	2006
Japan	11	1990	United Kingdom	4	1982
Jordan	6	2006	United States of America	13	1982
Korea, Republic of	5	1986	Uruguay	1	1990
Kuwait	7	2006	Vietnam	1	2005
Malaysia	2	2003			

¹ Country and entity names are those used in the list of [GAC Representatives](#) available on the GAC's website.

² A trademark registrations issued by the Benelux Office for Intellectual Property provides protection in Belgium, Luxembourg, and Netherlands. For purposes of this chart, these registrations have been counted only as being Belgian registrations.

³ A trademark registration issued by OHIM, referred to as a Community Trade Mark ("CTM"), provides protection in all member countries of the European Union. Accordingly, Patagonia's CTM registrations of its PATAGONIA Trademarks provide protection in the following EU-member countries that are also GAC members: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom. For purposes of this chart, these registrations have been counted only as being European Commission registrations.

EXHIBIT D

gTLD String: .patagonia
Applicant Entity Name: Patagonia, Inc.
Application ID#: 1-1084-78254

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on [date to be determined at time of contracting], 2013 (or any subsequent form of Registrar Accreditation Agreement approved by the ICANN Board of Directors) in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator's application to ICANN for the TLD, which commitments, statements of intent and business plans are hereby incorporated by reference into this Agreement. Registry Operator's obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN ((posted at [url to be inserted when final procedure is adopted])), as it may be amended by ICANN from time to time, the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

Patagonia, Inc.'s Reservation of Rights

Patagonia, Inc. ("Patagonia") has no objection in principle to submitting a Public Interest Commitments ("PIC") Specification. However, for the reasons set forth below, Patagonia hereby reserves its rights to submit to ICANN in the future a completed Section 2 of the PIC Specification:

A. Patagonia has requested the opportunity to meet with representatives of the Governments of the Argentine Republic and the Republic of Chile to discuss the concerns the Governments of the Argentine Republic and the Republic of Chile, respectively, have raised in their Early Warnings, to provide more detail about Patagonia's plans for the use of .patagonia, and to discuss potential alternative remedial measures to address the issues raised by the respective Governments in their respective Early Warnings. The requested meetings and discussions have not yet occurred. Until the consultation process with the Governments of the Argentine Republic and the Republic of Chile has been concluded, Patagonia believes that any substantive, completed Section 2 of the PIC Specification submitted by Patagonia at this time would be both incomplete and materially prejudicial to such discussions.

B. Sections 2 of the PIC Specification require Registry Operators to agree to be bound by a Public Interest Commitment Dispute Resolution Process that has not yet been drafted, that has not yet been disclosed, and, most importantly, about which the ICANN community – including new gTLD applicants such as Patagonia – has been unable to provide any meaningful opportunity for review, comment, and consultation.

C. ICANN has not stated if a completed Section 2 of the PIC Specification is a prerequisite to an Applicant's adoption and implementation of restrictions on the registration and use of domain names in the applied-for gTLD to itself where the Applicant has previously set forth such restrictions in its Question 18 response contained in its application.

3. Registry Operator agrees to perform following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply

with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

Patagonia, Inc.'s Reservation of Rights

Patagonia, Inc. ("Patagonia") has no objection in principle to submitting a Public Interest Commitments ("PIC") Specification. However, for the reasons set forth below, Patagonia hereby reserves its rights to potentially submit to ICANN in the future a completed Section 3 of the PIC Specification:

A. Patagonia has requested the opportunity to meet with representatives of the Governments of the Argentine Republic and the Republic of Chile to discuss the concerns the Governments of the Argentine Republic and the Republic of Chile, respectively, have raised in their Early Warnings, to provide more detail about Patagonia's plans for the use of .patagonia, and to discuss potential alternative remedial measures to address the issues raised by the respective Governments in their respective Early Warnings. The requested meetings and discussions have not yet occurred. Until the consultation process with the Governments of the Argentine Republic and the Republic of Chile has been concluded, Patagonia believes that any substantive, completed Section 3 of the PIC Specification potentially submitted by Patagonia at this time would be both incomplete and materially prejudicial to such discussions.

B. Section 3 of the PIC Specification require Registry Operators to agree to be bound by a Public Interest Commitment Dispute Resolution Process that has not yet been drafted, that has not yet been disclosed, and, most importantly, about which the ICANN community – including new gTLD applicants such as Patagonia – has been unable to provide any meaningful opportunity for review, comment, and consultation.