

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 | Ferrero Trading Lux SA |
| Application ID | 1-1126-16883 |
| Applied for TLD (string) | KINDER |

Response:

Ferrero Trading Lux SA (Ferrero) submits the following response to the ICANN Governmental Advisory Committee’s (GAC) Advice provided in its Beijing Communiqué.

The GAC Communiqué states that for the following categories of strings, enhanced safeguards should apply: Children; Environmental; Health and Fitness; Financial; Gambling; Charity; Education; Intellectual Property; Professional Services; Corporate Identifiers; Generic Geographic Terms; Inherently Governmental Functions.

We note that our interpretation of the rationale of Annex 1 of the GAC Communiqué is to provide “enhanced safeguards” that should be applied to particular strings in certain categories which “are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm”.

Among the non-exhaustive list of strings that said safeguards should apply to, the GAC Communiqué provides the following applied-for gTLDs under the “Children” category: .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys. Nearly all of the strings listed with respect to “enhanced safeguards” include generic strings with unrestricted registration policies.

We note that the application for .KINDER is for a “closed” or single-entity single-use Registry filed by the company Ferrero Trading Lux SA (Ferrero), and which will not be open to any external registrant. The Ferrero Group was founded in 1946 in Alba, a town in Northwest Italy, and is a leading manufacturer of chocolate and other confectionery products. The trademark Kinder was created and registered worldwide as early as 1968 as a division of the Ferrero Group with the original mission of developing products targeting “mothers” and specifically dedicated to children and is nowadays a brand leader in the Confectionery market, with a presence in more than 100 countries.

We also note that in Ferrero's reply to question 18 of the .KINDER application it was stated that the .KINDER registry will be used for the purpose to "protect the intellectual property that Ferrero has on Kinder", "to provide a platform for the delivery of secure digital material for consumers, key stakeholders, business partners and employees", "to provide a platform able to ensure a strong global and consistent presence for the Kinder brand in the digital world across all the Ferrero Business Units" and "to contribute to the development of best practice for private brand registry operators".

It was also underlined that:

- "the registry will be rigorously controlled by authorised Ferrero personnel but it is predicted that it will also benefit [...] customers: a new .Kinder registry will benefit them because it will be a location for authentic, accessible information about the product within the Ferrero family, a transparent, reliable and trusted source of information about the product and consumer activities (e.g. promotion, communications, digital tool) that the different Kinder sub-brands will put in place";
- Ferrero wants its "customers to know that they are in a trusted and authentic destination once they arrive at the new gTLD. Above all, [Ferrero] want[s] them to be confident that they will receive accurate information and that any sensitive personal details they provide will be protected";
- ".Kinder names may not be delegated or assigned to external organizations, institutions, or individuals";
- "the .Kinder registry will be a standard registry closed to third parties and will be used only by pre validated representatives of Ferrero or selected partners. Social costs and negative consequences on customers are therefore likely to be minimised and possibly even eliminated";
- "one major goal of the .Kinder registry is the protection of consumers from confusion. In a sense, the .Kinder registry is itself a tool to eliminate or minimize that social cost because a .Kinder domain will signpost authenticity. We will control allocation of second level domains very carefully, checking to ensure that requests for domains are authentic and valid";
- "There will be no market in .Kinder domains".

Therefore, in light of our interpretation of the rationale of the Communiqué with reference to the "sensitive" categories identified therein as opposed to the characteristics of the .KINDER application summarized above, we believe that all the perfectly understandable concerns that the GAC raised in points 1-5 of the Category 1 section of Annex 1 are already duly addressed in the application for .KINDER and we thus wonder whether it could have been simply an oversight to have included also this application in such non-exhaustive list as it is the only application within the "Children" category filed by a trademark owner as a closed .Brand application.

We would very much appreciate your kind cooperation in providing us some clarification as to the above and advising us on the best way to address the matter herein in order to overcome this issue and provide the GAC with any further clarifications, declarations and reassurances deemed necessary, which Ferrero is prepared to render.