

## 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 Durban Communique](#) 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 to the GAC Durban Communique must be received no later than 23:59:59 UTC on 23-August-2013.

### Respondent:

Applicant Name	Foggy Sunset, LLC
Application ID	1-1619-92115
Applied for TLD (string)	.SPA

### Summary

Having received GAC Advice on .SPA in Beijing, Donuts Inc. has engaged with representatives from the city of Spa, Belgium to find appropriate remediation mechanisms. Donuts has developed significant additional protections for the city including reserving certain city-related names, making available for registration by the city other city-related names, terms of use for all registrants to prohibit uses that would violate the legitimate interests of the city, and implementation of enforcement mechanisms. These plus Donuts’ additional protections that go beyond those required by ICANN will help protect the legitimate interests of the city, and ensure non-discriminatory access to the TLD.

While we plan to continue our dialogue with the city to see if we can finalize an agreement, Donuts will not agree to additional concessions sought by the city, including a financial interest in the TLD. We are concerned that such an agreement, in addition to being entirely inconsistent with rules of the Applicant Guidebook and global trade disciplines regarding fair use, sets a bad precedent. Consequently, we strongly believe that the .SPA TLD should not be kept in this state of limbo any longer. “Spa” is not a geographical name within the meaning of the Guidebook. Similarly situated generic terms that happen to be city names are not delayed. The legitimate interests of the city will be protected if Donuts’ operates the .SPA TLD. As such, this application should not be held up any longer.

### Response:

Donuts Inc., the parent applicant for this gTLD, appreciates the opportunity to comment on GAC advice from the Durban meeting.

Donuts has been in contact with the legal representative for the city of Spa, Belgium, regarding the city’s concerns and to learn more about the city’s rich history and its interests in the .SPA gTLD. As previously noted, we received no notification of these concerns prior to the GAC’s Beijing Communique, and appreciate the time he has taken to describe the background and potential solutions.

It is unclear whether we will reach agreement with the city, as we found several of the city's demands, including 25% of all net profit from the .SPA TLD, to be unacceptable.

While Donuts' participation in the new gTLD program is extensive and intends to provide new consumer choices and industry competition, we have taken care to progress carefully, ensuring various interests are heard and, to the extent possible, accommodating those legitimate interests.

### **Relevant Applicant Guidebook Standard: Spa does not have a "right" to the name**

Further, Donuts' applications have meticulously followed the program requirements and, to date, all examined applications have passed their necessary ICANN evaluations. We certainly understand the city's concerns, and it's important to point out we carefully avoided applying for names that targeted geographic identifiers, as described in the Applicant Guidebook. We respectfully call your attention to the relevant standard for when city approval is required:

#### **AGB 2.2.1.4.2**

*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.*

The above is footnoted with the following (emphasis added):

***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.***

Donuts did not declare in its application for .SPA that it intends the TLD to be associated with the city. Further, it is clear from the application (and our intent) that the primary purpose of the TLD is not related to the city. As such, ICANN and its independent geographic evaluation panelists did not require city approval of our .SPA application. As such, it is unfair for our application to be intentionally held hostage on the basis of a city government's perceived harm.

### **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.

### **Donuts protection mechanisms will protect the city's legitimate interests**

As mentioned above, Donuts has implemented safeguards for consumers and rights holders beyond those required by the new gTLD program. In addition, we have worked with other governments as a result of GAC Early Warnings in order to otherwise address concerns regarding potential abusive behavior. Those interactions with governments generally have been successful and the governmental concerns were alleviated after a review of Donuts' operational intentions.

Our protection mechanisms include the ability to address abusive behavior if and when identified, and to take rapid action to mitigate such behavior. Our acceptable use policies will be clear that unlawful, abusive, and nefarious behavior will not be tolerated in any of our TLDs.

### **Spa-related safeguards will protect specific names requested by the city and provides use protections**

While the initial approach by the city included a number of requests that were excessive, Donuts continues to work in good faith with the city to attempt to arrive at an agreeable solution.

As the TLD was not intended to be associated with the city, we are willing to add a term of use for the .SPA TLD (should we become the registry operator) that prohibits a .SPA domain name from being used for purposes specifically associated with or purportedly on behalf of the city of Spa, Belgium without city approval, and that misuse of a registration as such is subject to remediation, including termination of the registration. Now that we are more aware of the history of the city and its interest in the program, we also informed the city of our willingness to reserve certain names in the .SPA TLD that the parties agree would be of legitimate interest to the city, so that no one else could use them, as well as provide the city with the opportunity to register for a fee certain names prior to general commercial availability that it may want to use. Therefore, the city would be able to use certain names that it may find desirable. These names must be limited to city-specific names, however, to preserve non-discriminatory access to the TLD.

### **Conclusion**

Donuts welcomes any additional questions the Board or the GAC may have about the .SPA application. The overriding principles are that: the application does not require city approval under the rules of the Applicant Guidebook; our current safeguards are more than sufficient to protect the city's interests—however, we have proposed additional reasonable accommodations to the city based on constructive discussions post-GAC advice; requests by the city for a financial interest in the TLD is inappropriate; and, the application should be treated consistently with other similarly situated applications, as to not create concerns over discriminatory treatment and access. We therefore urge you to act swiftly and move this application forward.