

GAC Advice Response Form for Applicants



Please complete this form and submit it as an attachment to the current Customer Portal case using the following naming convention: “[Application ID] Additional Response to GAC Cat 2 Advice” (e.g, “1-111-11111 Additional Response to GAC Cat 2 Advice”). All responses must be received no later than 23:59:59 UTC on 17-January-2014.

Please note: This form will be publically posted.

Respondent:

Application Prioritization Number	670
Applicant Name	KBE gTLD Holding Inc
Application ID	1-1326-97308
Applied for TLD (string)	THEATER

Response:

January 17, 2014

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehade, President and CEO
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Key Brand Entertainment Inc. / KBE gTLD Holding Inc. Additional Response to GAC Category 2 Advice

Dear Dr. Crocker and Mr. Chehade:

We thank you for the opportunity to engage in a continued dialogue regarding our new gTLD applications. In consideration of the ongoing and most recent GAC Category 2 Advice (the “Advice”), we now respectfully provide an additional response to ICANN, the Board, the GAC and the New gTLD Program Committee (collectively, “ICANN”).

Key Brand Entertainment Inc. and its wholly-owned subsidiary, KBE gTLD Holding Inc., the applicant for .theater (collectively, “KBE” or “Applicant”), would like to preface this response by referencing our May 10, 2013 Applicant Response to GAC Advice issued in response to the GAC Beijing Communique (the “Beijing Response”). In the Beijing Response, Applicant provided our company background, described the objectives of our application and addressed specific portions of the GAC Beijing Communique, all of which continue to be germane to the Advice and this additional response.

KBE is the operator of the preeminent website for online Broadway and theater ticket sales and related services, content and information as well as one of the world’s leading developers, producers, presenters and distributors of live theater and stage shows. As owner and operator of the industry-leading broadway.com and theater.com websites as well as a robust portfolio of other Broadway- and theater-related domain names, KBE offers a full range of online services

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and features, including consumer ticketing, group sales and complete editorial coverage of Broadway presentations in New York City and over 40 other markets. Additionally, through its Broadway Across America and Broadway Across Canada businesses, KBE serves as a leading Broadway producer and presenter of first-class touring productions in more than 40 cities across the United States, Canada, the United Kingdom and Japan. As such, KBE is one of the world's leading brands in the Broadway and theater industry with well-recognized global brands serving as authoritative sources for high-quality content, services, information and industry news.

Within this context, there are constant challenges that KBE and other legitimate industry participants face as operators of online content and sales properties and that the general public faces as consumers of their content and services. The most difficult of these is competition with unlicensed and unauthorized ticket sellers who impersonate legitimate third parties (e.g. shows, venues, actors, etc.) and, by leveraging their goodwill, drive traffic away from legitimate sources. These unscrupulous actors impersonate intellectual property rights holders and mislead the public. Their actions are extremely damaging to the shows and venues, legitimate ticket resellers, the theater industry, and ultimately and most importantly, the public as a whole. The problem is pervasive not only in the United States but globally. Policing it is increasingly difficult given the sophistication of infringers, counterfeiters and scalpers. The lack of enforcement of existing laws globally is complicated by the sheer number of shows, venues and other theater-affiliated stakeholders, all of whom are targets of infringers and counterfeiters. This practice is rampant in the theater industry and undermines and infringes upon the trademark and other intellectual property rights of legitimate constituents of the theater industry.

In operating its gTLDs as stated in its applications and in accordance with all ICANN guidance, directives and contractual obligations, including the Registry Agreement and all of the Specifications, KBE will serve a public interest goal by protecting intellectual property rights holders, the industry, and, most importantly, the general public from the above articulated predatory and harmful behavior. As a leading participant in the theater industry, KBE has historically served as a promoter and custodian of both the physical and digital space within which it and the theater community operate for the benefit of the public at large. KBE has been successful in the past at combatting the unauthorized and illegal practices that have damaged the general public in its wholesale interaction with the theater industry. KBE has served, and will continue to serve, a public interest goal by protecting the integrity and safety of that space for the public at large when interacting with the theater industry and its community as customers, partners and contributors.

In sum, KBE will undoubtedly "serve a public interest goal" by creating a cohesive digital space that strikes a tactful balance between providing quality, enjoyable and meaningful theater-related content, services and opportunities for community engagement while maintaining a safe, constructive and controlled environment that protects the public from the predatory and harmful behavior of infringers, counterfeiters and scalpers.

Lastly, Applicant feels it necessary to again articulate its position on the Advice within the context of the new gTLD program as a whole. As we have stated in the past, Applicant maintains its position that the Advice is inconsistent with the rules, policies and procedures contained in the Applicant Guidebook ("AGB") and the open multi-stakeholder process that created it. The AGB embodied the rules for application for new gTLDs and the iterative process of the AGB was documented along the way. The final AGB published prior to the application

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window closing did not differentiate between open versus closed business models or mention “closed generics”. In fact, the debate leading up to the final version of the AGB, one which included extensive input from the ICANN community including GAC constituents, contemplated the validity of different registry and business models (e.g. sponsored, open, community, etc.) as well as the idea of restricting and even disallowing “closed generics”. Ultimately, the GNSO and the Board decided against creating such distinctions with the understanding that the business model and operation of the gTLD would be determined by the applicant. As long as the application passed evaluation pursuant to the AGB criteria and complied with the Registry Agreement, the business model and operating rules of that gTLD (including whether the applied-for string was to be “open” or “closed”) were to be determined by the applicant. KBE relied in good faith on the AGB and the authoritative guidance available to it at the time of application. KBE and all applicants have made significant investments and taken positions in reliance on that guidance, which if changed retroactively would negatively impact the new gTLD program, its applicants and ICANN.

Thank you for your time and consideration on this matter and we look forward to and hope for meaningful progress on these issues.

Sincerely,

Matt Kupchin
Co-CEO, Interactive Division