

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

ICDR Case No. 01-14-0001-5004

Dot Registry, LLC,)
)
Claimant,)
)
v.)
)
Internet Corporation for Assigned Names and Numbers,)
)
Respondent.)

**AMENDMENT TO REQUEST OF DOT REGISTRY, LLC
FOR INDEPENDENT REVIEW PROCESS**

Weil, Gotshal & Manges, LLP
Contact Information Redacted

Counsel for Claimant

February 4, 2015

I. INTRODUCTION

1. Dot Registry, LLC (“Dot Registry”) hereby submits this amendment to its Request for Independent Review Process (“IRP”),¹ pursuant to Article 9 of the International Arbitration Rules of the International Centre for Dispute Resolution (“ICDR Rules”).² This Amendment incorporates by reference all of the facts and arguments set forth in Dot Registry’s Request for IRP.³

2. In this IRP, Dot Registry seeks review of the handling and treatment of its applications by ICANN and the Economist Intelligence Unit (“EIU”), the sole evaluator retained by ICANN to perform Community Priority Evaluations (“CPEs”) of Community Applications. As set forth in the Request for IRP, the EIU not only mismanaged the procedure for evaluating Dot Registry’s applications, but misapplied the standards set forth in the AGB. Subsequent to Dot Registry filing its Request for IRP, the EIU performed, and ICANN posted the results of, additional CPEs. A review of these CPEs reveals that the EIU has not interpreted and applied the CPE criteria set forth in the AGB consistently and in an equitable and non-discriminatory manner. Troublingly, ICANN has not satisfied its obligation to ensure that the EIU is complying with ICANN’s own policies and procedures for performing CPEs. When Dot Registry and the National Association of Secretaries of State raised concerns about this through their joint Reconsideration Requests, the Board failed to exercise requisite diligence and care in its review of these issues.⁴

II. SUMMARY OF RELEVANT FACTS

A. Publication of Prevailing CPE for the String .ECO

3. Prior to Dot Registry filing a Request for IRP, applications for only three strings—.HOTEL,

¹ Request of Dot Registry, LLC for Independent Review Process (Sept. 21, 2014) [hereinafter, “Request for IRP”].

² See International Centre for Dispute Resolution, International Dispute Resolution Procedures (1 June 2104) (hereinafter “ICDR Rules”) [Ex. C-002].

³ Unless otherwise indicated, acronyms have the same meaning as indicated in Dot Registry’s Request for IRP.

⁴ See generally, Reconsideration Request For, for Application No. 1-880-35979 (.INC) (11 Apr. 2013) [Ex. C-021]; Reconsideration Request For, for Application No. 1-880-17627 (.LLC) (11 Apr. 2013) [Ex. C-017]; Reconsideration Request Application, for Application No. 1-880-35508 (.LLP) (11 Apr. 2013) [Ex. C-022].

.RADIO and .OSAKA—had passed CPE.⁵ On October 7, 2014, the EIU accepted Big Room Inc.’s application for .ECO community priority.⁶ In light of the conclusions reached by the evaluators in the .ECO CPE Determination, Dot Registry undertook a careful and detailed review of all four of the applications that have passed CPE to date. Dot Registry has determined that the EIU has inconsistently interpreted and applied the standards for performing CPEs.

4. In the .ECO CPE Determination, the EIU awarded .ECO the maximum number of points available under the community establishment criterion of the evaluation on the basis that the string represented the “Global Environmental Community,” which included non-profit organizations that self-identify as having an environmental mission, businesses that undertake sustainable practices or otherwise self-certify compliance with principles that are environmentally friendly, government agencies with environmental missions and individuals affiliated with any of the aforementioned as well as academics and “environmental professionals.”⁷ The EIU determined that the string sufficiently defined the community, even though certain members of the community might not affiliate with or be considered affiliated with the environmental community.⁸ The analysis and conclusions reached in the .ECO CPE are in stark contrast to the standard applied to Dot Registry’s strings, where for example, the EIU found that individual corporations, limited liability corporations and limited liability partnerships failed to adequately self-identify with the INC, LLC and LLP communities, despite the fact that members of those communities took affirmative steps to register with the state and identify as one of those specific forms of business entities. Whereas the EIU awarded .ECO the maximum score

⁵ See generally, New gTLD Program Community Priority Evaluation Report, Application ID: 1-1032-95136 (.HOTEL) (11 June 2014), [Ex C-031]; New gTLD Program Community Priority Evaluation Report, Application ID: 1-901-9391 (.OSAKA) (30 July 2014), [Ex C-032]; New gTLD Program Community Priority Evaluation Report, Application ID: 1-1083-39123 (.RADIO) (10 September 2014), [Ex C-033].

⁶ See generally, New gTLD Program Community Priority Evaluation Report, Application ID: 1-912-59314 (.ECO) (6 October 2014), [Ex C-034].

⁷ See New gTLD Program Community Priority Evaluation Report, Application ID: 1-912-59314 (.ECO), p. 1-3 (6 October 2014), [Ex C-034] (explaining how the ECO community is clearly delineated pursuant to the AGB requirements).

⁸ *Id.* at p. 6 (“the community as defined by the application also includes some entities, such as businesses that use certified environmental management systems, which may not automatically be associated with the gTLD.”).

of four points for the community establishment criterion, the EIU gave each of Dot Registry's applications for .INC, .LLC and .LLP a score of zero for this criterion.⁹

B. Comparison with Strings Prevailing in CPE

5. After performing a detailed review of the EIU's CPE report in .ECO, as well as the public portions of Big Room, Inc.'s application and public comments made regarding the application and the CPE, Dot Registry undertook detailed analyses of the EIU CPE reports, applications and public comments relating to the other three passing strings, HOTEL Top-Level-Domain S.a.r.l.'s application for .HOTEL, Interlink Co., Ltd.'s application for .OSAKA, and the European Broadcasting Union's application for .RADIO. Based upon a careful and detailed review of the applications that prevailed during CPE and a comparison to Dot Registry's own CPE reports, Dot Registry has determined that the EIU applied the AGB criteria to Community Applications in an inconsistent and arbitrary manner.

III. SUMMARY OF ICANN'S BREACHES

6. Dot Registry has suffered harm as a result of the EIU's inconsistent and inequitable interpretation and application of the CPE criteria, and the Board's failure to ensure that the EIU is complying with its policies and procedures. Consequently, Dot Registry amends its September 21, 2014, Request for IRP to add the following claims:

- The Board breached ICANN's Articles of Incorporation and Bylaws by failing to ensure that the EIU applied the criteria for performing CPEs in an equitable and non-discriminatory manner;¹⁰ and
- The Board is responsible for its agent, the EIU, applying ICANN's policies and procedures for CPE in an arbitrary and discriminatory manner.¹¹

⁹ New gTLD Program, Community Priority Evaluation Report, for Application No. 1-880-17627 (.LLC) (11 June 2014), p. 1-4 [Ex. C-018]; New gTLD Program, Community Priority Evaluation Report, for Application No. 1-880-35508 (.LLP) (11 June 2014), p. 1-4 [Ex. C-019]; New gTLD Program, Community Priority Evaluation Report, for Application No. 1-880-35979 (.INC) (11 June 2014), p. 1-4 [Ex. C-020].

¹⁰ Bylaws, Art. II, § 3; Articles of Incorporation, Art. 3 [Ex. C-001].

¹¹ *Id.* at Art. I § 2 (7), (8), Art. III § 1; *see also*, Affirmation of Commitments, Cls. 3, 9.1 [Ex. C-028].

IV. RESERVATION OF RIGHTS

7. Dot Registry reserves all of its rights to supplement or amend its claims during the IRP, including to further elaborate upon and substantiate the factual and legal positions set forth herein.¹²

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Arif H. Ali', with a stylized flourish at the end.

Arif H. Ali
Counsel for Claimant

¹² See ICDR Rules, Art. 9 (“Any party may amend or supplement its claim, counterclaim, setoff or defense unless the tribunal considers it inappropriate to allow such amendment or supplement because of the party’s delay in making it, prejudice to the other parties or any other circumstances.”) [Ex. C-002].