



March 6, 2014

VIA EMAIL (cherine.chalaby@icann.org)

ICANN New gTLD Program Committee
c/o Cherine Chalaby, Chair
Internet Corporation for Assigned Names and Numbers
12025 East Waterfront Drive
Los Angeles, CA 90094

Re: GAC Category 2 Advice and .kosher Application

Dear Members of the New gTLD Program Committee:

We are writing on behalf of the Union of Orthodox Jewish Congregations of America (OU Kosher), STAR-K Kosher Certification, Inc. (STAR-K), Chicago Rabbinical Council, Inc. (cRc), Kosher Supervision Service, Inc. (Kof-K), and The Kashruth Council of Canada (COR) to address the 10 February 2014 letter from Dr. Stephen D. Crocker, Chair, ICANN Board of Directors to Heather Dryden, Chair, Governmental Advisory Committee (the “NGPC Response”).

We have written previously to relay our concern with the exclusionary and discriminatory language set forth in the application of Kosher Marketing Assets LLC (“KMA”) for new gTLD string .kosher (the “.kosher Application”), and to provide you with Israel’s Deputy Minister of Religious Services’ objection to the .kosher Application. We now write to express our continuing concern regarding the restricted nature of the .kosher Application in light of the New gTLD Program Committee’s clarification in the NGPC Response regarding restricted access registries.

The NGPC Response makes clear that Specification 11 to the New gTLD Registry Agreement will not prevent a registry operator from implementing discriminatory registration policies, such as those proposed in the .kosher Application. In the Beijing Communiqué, the GAC advised the Board that registry operators should be required to administer access “in a transparent way **that does not give an undue preference to any registrars or registrants, including itself**, and shall not subject registrars or registrants to an undue disadvantage.” In response to this advice, the NGPC adopted Specification 11, which requires, under Section 3.c, that: “Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.” As the NGPC Response explains, Specification 11 “focuses on transparency” as a proxy for undue preference, but does not directly prohibit registry operators from implementing discriminatory policies. Therefore, Specification 11 would not prevent a registry operator, such as KMA, from

adopting discriminatory policies that confer upon it an undue preference, so long as such policies are transparent and the operator abides by the policies, as published.

It is clear from the plain language of the .kosher Application that the application violates the Beijing Communiqué given KMA's intention to operate the .kosher TLD in as close to an exclusive manner as possible. Although .kosher was not included among the GAC's non-exhaustive list of "exclusive access" registries, the specific language of the application indicates KMA's intention to operate .kosher in an exclusive or at least a highly restricted manner. Under Section 18(a) of the .kosher Application, KMA states:

The mission of the .KOSHER TLD is to promote Kosher food certification in general, and **OK Kosher Certification and its clients in particular.** All registrations in .KOSHER will be managed by Kosher Marketing Assets, LLC on behalf of OK Kosher Certification. **Only those clients who pass rigorous certification will be granted use of domains under this TLD.** Given existing data on certification and a conservative forecast for adoption of .KOSHER domains, we forecast having approximately 636 Domains Under Management (DUMs) by the third year of operation. Our financial responses in #45 through #50 go into detail on our funding, cost and revenue projections.

Section 18(b) makes KMA's intentions even more clear:

The mission and purpose of this TLD is to enhance and complement existing brand strategies of Kosher Marketing Assets and present the organization in a consistent manner. As such, **Kosher Marketing Assets intends to limit registration of domains either for its exclusive use or for use by closely affiliated organizations** in a manner that contributes to the purpose of this TLD. Kosher Marketing Assets also intends to govern the domain names registered to limit confusion and enhance user experience. **To accomplish these objectives, Kosher Marketing Assets may be the sole registrant of domains in the TLD.** However, due consideration has been made to all aspects of registry operations including the functions and policies defined below.

KMA repeats this language in Section 23 of the .kosher Application. To achieve its mission and purpose, KMA describes its proposed allocation of domains under the .kosher TLD as follows:

All domains under this TLD will be managed by Kosher Marketing Assets LLC on behalf of OK Kosher Certification, so they will only be made available to companies that have been personally visited, inspected, and are known to intend to use a domain to promote Kosher Certification.

Such exclusive or highly restrictive operations are plainly inconsistent with the GAC advice, as provided in the Beijing Communiqué. Furthermore, although KMA's intentions to operate .kosher as a "closed" gTLD may be limited by Specification 11, Section 3.d, which prevents a gTLD operator from limiting registration exclusively to a single person or entity and/or entities under common control, because KMA has been (and likely will continue to be) transparent about

its discriminatory intentions, nothing in ICANN’s policies or procedures will prevent KMA from discriminating in favor of its affiliate, OK Kosher Certification, and its clients. The potential for KMA to discriminate in its operation of the .kosher TLD has drawn the concern of two countries with large populations of consumers of Kosher goods: Israel and the United States. Rabbi Eliyahu Ben Dahan, Israel’s Deputy Minister of Religious Services, explained that “the term ‘kosher’ can be subject to different interpretations” and that discriminatory control by a private entity “may be detrimental to Jewish religious points of view.”¹ United States Assistant Secretary for Communications and Information Lawrence E. Strickling, meanwhile, referenced the .kosher Application when expressing concern that registry operators may use restrictive registry policies to grant “undue preference to any particular party” or subject “potential registrants to any undue advantage.”² The undersigned parties urge the NGPC to provide serious consideration to the concerns raised by Israel and the United States.

In our prior correspondence with ICANN, we have requested equal treatment of the applications for .kosher and .halal, which invoke similar religious sensitivities and which both lack community involvement and support.³ Now, the .halal applicant also has requested equal treatment of the two applications.⁴ However, although ICANN has suspended the .halal application, it has failed to do the same for the .kosher Application.⁵ Such disparate treatment is particularly unwarranted given that the .halal application on its face recites an open/inclusive registry whereas the .kosher Application on its face recites a discriminatory registration policy that clearly violates GAC Advice. Particularly in light of the .halal applicant’s recent pleading, there simply is no basis for ICANN to advance .kosher toward contracting while failing to do the same for .halal.

Finally, to the extent that KMA has suggested to ICANN that it may potentially be willing to amend the .kosher application and file a Public Interest Commitment Specification, but only if interested third parties agree to pay an unspecified amount, no interested third party should be required to pay applicants to ensure that they comply with ICANN’s rules. As the GAC noted in the Beijing Communiqué, there is a general rule that “the gTLD domain name space is operated in an open manner.” It is up to ICANN, not interested parties (who already face substantial costs under the New gTLD objection process), to ensure that all applicants comply with the open operation requirement.

¹ Rabbi Ben Dahan’s letter is enclosed and available on the Correspondence page of ICANN’s website, <https://www.icann.org/en/news/correspondence/elefant-et-al-to-crocker-19nov13-en.pdf>.

² Assistant Secretary Strickling’s letter is available on the Correspondence page of ICANN’s website, <http://www.icann.org/en/news/correspondence/strickling-to-crocker-04feb14-en.pdf>.

³ See Letter from Undersigned to Mr. Fadi Chehadé, Chief Executive Officer, ICANN (June 28, 2013), *available at* <https://www.icann.org/en/news/correspondence/senter-et-al-to-chehade-28jun13-en.pdf>.

⁴ See Asia Green IT System Ltd., Reconsideration Request 14-7, 13, *available at* <http://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-agit-26feb14-en.pdf> (“From a government “sensitivity” perspective, they must be deemed equal, as essentially the words mean the same thing -- halal referring to Muslim lifestyle and kosher referring to Jew lifestyle.”).

⁵ See Letter from Steven D. Crocker, Chair, ICANN Board of Directors, to Mehdi Abbasnia, Chairman & Managing Director, Asia Green IT System (Feb. 7, 2014), *available at* <http://www.icann.org/en/news/correspondence/crocker-to-abbasnia-07feb14-en.pdf>.

We appreciate your attention to this matter and respectfully request the courtesy of a response.

Sincerely,

*Union of Orthodox Jewish
Congregations of America*

STAR-K Kosher Certification, Inc.

By: /s/ Rabbi Moshe Elefant
Rabbi Moshe Elefant

By: /s/ Dr. Avrom Pollak
Dr. Avrom Pollak

Chicago Rabbinical Council, Inc.

Kosher Supervision Service, Inc.

By: /s/ Rabbi Sholem Fishbane
Rabbi Sholem Fishbane

By: /s/ Rabbi Ari Senter
Rabbi Ari Senter

The Kashruth Council of Canada

By: /s/ Rabbi S. Adler
Rabbi S. Adler

Enclosure

cc: Dr. Stephen Crocker, Chairman of the Board, ICANN (steve.crocker@icann.org)
Mr. Fadi Chehade, President and CEO, ICANN (fadi.chehade@icann.org)
Ms. Heather Dryden, GAC Chair (heather.dryden@ic.gc.ca; gacsec@icann.org)



סגן השר לשירותי דת

בסייד, יד' כסלו תשע"ד

November 17, 2013

To: **Avi Berman**, Executive Director
OU Israel, Jerusalem

1. This letter is in response to your request to receive my opinion regarding the application to ICANN for the use of the domain name "kosher" by a private party.
2. In my view, terms that have religious or national significance for the Jewish people cannot be the property of any private individual or group.
3. In addition using the domain name "kosher" for business purposes diminishes the term by attempting to make it a brand name.
4. Furthermore, the term "kosher" can be subject to different interpretations which depend on religious perceptions, customs and ancient traditions. Purchasing the domain name by a private entity which could then prevent other organizations from using the domain, may be detrimental to Jewish religious points of view.
5. A law passed in Israel in 1983 concerning kashrut fraud by businesses, factories, etc., prevents them from representing their businesses as kosher unless they have a kashrut certificate granted by a recognized authority, such as a local rabbi, the chief rabbinate, or someone who is qualified to determine kashrut.



סגן השר לשירותי דת

In other words, using the term "kosher" in places where food is served, or in businesses that manufacture food, is permitted only with the approval of the requisite public bodies. The principle behind this law is to prevent public fraud. In this vein, I believe that allocation of the domain name "kosher" to a private group or organization could lead to fraud and should therefore be prevented.

6. The term "kosher" constitutes a symbol for all Jews everywhere and therefore no organization should be permitted to privatize it which could lead to controversy.

Sincerely,

Edi Ben-Dahan

Rabbi Eliyahu Ben Dahan

Deputy Minister of Religious Services