

EXPERT DETERMINATION LEGAL RIGHTS OBJECTION

AC Webconnecting Holding B.V. v. Dot Agency Limited

Case No. LRO2013-0007

1. The Parties

The Objector/Complainant is AC Webconnecting Holding B.V. of Rotterdam, The Netherlands, represented by Merk-Echt B.V., The Netherlands.

The Applicant/Respondent is Dot Agency Limited, of Gibraltar, United Kingdom of Great Britain and Northern Ireland represented by Famous Four Media Limited, of United Kingdom of Great Britain and Northern Ireland.

2. The applied-for gTLD string

The applied-for gTLD string is <.cam>.

3. Procedural History

The Legal Rights Objection (“Objection”) was filed with the WIPO Arbitration and Mediation Center (the “WIPO Center”) on March 12, 2013 pursuant to the New gTLD Dispute Resolution Procedure (the “Procedure”).

In accordance with Article 9 of the Procedure, the WIPO Center has completed the review of the Objection on March 25, 2013 and has determined that the Objection complies with the requirements of the Procedure and the World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections (the “WIPO Rules for New gTLD Dispute Resolution”).

The WIPO Center has received a proposal from the Respondent to consolidate the LRO Objections LRO2013-0006 and LRO2013-0007 on April 23, 2013. The Objector has indicated opposition to aspects of the consolidation proposal. In accordance with Article 12 of the Procedure and Paragraph 7(d) of the WIPO Rules for New gTLD Dispute Resolution, the WIPO Center has not made a decision to consolidate LRO2013-0006 and LRO2013-0007 for purposes of Article 12(b) of the Procedure.

In accordance with Article 11(a) of the Procedure, the WIPO Center formally notified the Applicant of the Objection, and the proceedings commenced on April 16, 2013. In accordance with Article 11(b) and relevant communication provisions of the Procedure, the Response was timely filed with the WIPO Center on May 15, 2013.

The WIPO Center appointed James Bridgeman as the Panel in this matter on June 13, 2013. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the WIPO Center to ensure compliance with Article 13(c) of the Procedure and Paragraph 9 of WIPO Rules for New gTLD Dispute Resolution.

4. Factual Background

The Objector claims rights as the controlling owner of the registrants of the following trademarks:

- XLOVECAM, CTM registration number 005506241, which was registered by AC Webconnecting B.V. of Burgermeester Knappertlaan 18d, 3117 BA Schiedam, Netherlands on October 17, 2007 in class 38 for "Broadcasting, dissemination and transmission of visual images, audio information, graphics, data and other information, using radio, telecommunications apparatus, electronic media or the Internet." and International trademark registration number 1007540 for the XLOVECAM mark also in class 38.
- BOYCAM French trade mark registration number 3369260 registered by CC Media SARL, 13 La Canebière, 13001 Marseille, France on July 7, 2005 in class 41 for the following services: "Agence de modèle pour artites, exploitation de publications électroniques en ligne, production de films, productions de films sur bande vidéo, publication de livres et de périodiques en ligne." (*sic*)

On December 12, 2011, the Objector applied to register two Community Trade Marks viz.

- .CAM (word); and
- .CAM (figurative).

On January 12, 2012, the period for acceptance of applications for new TLDs by ICANN commenced.

On May 30, 2012, the Applicant filed the application, which is the subject of the present Objection, for the new gTLD <.CAM>.

On June 13, 2012, the applications for new gTLDs were made public by ICANN.

On December 6, 2012 the Objector's Community Trade Mark .CAM (word) was registered with registration number 10483501.

On December 7, 2012, the Objector's Community Trade Mark .CAM & Design was registered with registration number 10483618.

Both said Community Trade Marks ("CTMs") were registered for the following services in classes 35, 38, 42 and 45:

Class 35

Commercial information; payroll preparation and personnel records management; office functions in connection with the setting up and managing of databases and the positioning, optimization, notification, monitoring and adjustment of the findability of the websites of others using search engines; professional consultancy in connection with business management, including in relation to e-commerce; commercial and business organization; project management; secretarial and office functions relating to the claiming of domain names; consultancy and information regarding the aforesaid services; the aforesaid services also provided via electronic networks, such as the Internet; excluding the aforementioned services in the field of financial, monetary, real estate and insurance services of any kind.

Class 38

Providing access to electronic communication networks, including the Internet; electronic data transfer; telecommunications services related to search engines, electronic mail traffic and work groups; providing and rental of telecommunications facilities, including telecommunications apparatus, instruments and interfaces (computer hardware), including network apparatus, instruments and interfaces; providing/leasing of access time to computer databases; providing access to the Internet; providing and leasing of access time to databases; leasing access time to search engines for searching, retrieving, indexing, linking and arranging data for the Internet, electronic communications networks and electronic databases; consultancy and information regarding the aforesaid services, including provided via electronic networks, such as the Internet; excluding the aforementioned services in the field of financial, monetary, real estate and insurance services of any kind.

Class 42

Design, development, implementation, updating and maintenance of software and software packages; design and development of data processing equipment, computers and computer peripheral devices; computerization consultancy; services of ICT specialists, including via helpdesks; computer systems analysis; consultancy with regard to information technology and communications technology; computer programming; design, development, updating, maintenance, graphic design and creation of websites and gateways to websites (computer software); technical consultancy in relation to computer hardware and software; webhosting; quality control regarding computers and computer peripheral devices; web design; graphic design (product development); providing of software for search engines for websites; services of ICT specialists aimed at ensuring the security of computers, computer software and IT infrastructures; technical project studies in the field of computer hardware and software; consultancy and information regarding the aforesaid services, including provided via electronic networks, such as the Internet; excluding the aforementioned services in the field of financial, monetary, real estate and insurance services of any kind.

Class 45

Legal services; registration of domain names, including coordination of the assignment of domain names and address space; consultancy and information regarding the aforesaid services, including via electronic networks, such as the Internet; excluding the aforementioned services in the field of financial, monetary, real estate and insurance services of any kind.

The Objector has also applied for the disputed new TLD <.CAM> in the present round of applications for new gTLDs.

5. Parties' Contentions

A. Objector

The Objector submits that the proposed gTLD <.CAM> is identical to the Objector's CTM .CAM (word), registration number 10483501 and highly similar to the registered trademark CTM .CAM (fig.), registration number 10483618.

Each of the Objector's CTMs were filed on 12 December 2011 which is earlier in date than the Applicant's application for the disputed new gTLD <.CAM>.

The Objector claims that it and its affiliated companies have been extensively and widely using hundreds of Internet domain names containing the element CAM since 2005, which have acquired the status of protectable trademarks through use, including (but not limited to):

- <camdirect.fr>, <camdefolie.com>;
- <xlovecam.com>, <xlovecam.fr>, <xlovecam.de>;
- <livecamhot.com>, <livecam.info>, <livecam.mobil>, <livecam.org>;

- <camsearch.at>, <camsearch.biz>, <camsearch.tv>;
- <plaisircam.com>; and
- <xgaycam.cc>, <xgaycam.info>.

Said domain names are all in use for websites via which Internet users can chat with registered persons with the use of a webcam. The websites to which these domain names resolve are visited by about a million visitors/viewers and/or users per day. The Objector claims that it has made substantial investments to build a reputation of its trademarks and websites.

In order to further extend its already widespread use of trademarks and domain names containing the element “cam” the Objector has applied to operate the gTLD <.CAM>. The Objector’s intentions are to give all kinds of corporations and organizations a chance to register and use domain names with the .CAM extension.

The Objector submits that the string comprising the proposed new gTLD infringes the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law and specifically that the potential use of the applied-for gTLD by the Applicant would unjustifiably impair the distinctive character or the reputation of the Objector’s mark and create an impermissible likelihood of confusion between the applied-for gTLD and the Objector’s older trademarks. The Objector submits that such confusion is virtually a certainty because the proposed gTLD and the Objector’s marks are identical and the intended services are identical and/or highly related.

The Objector submits that the proposed new gTLD <.CAM> is identical to the Objector’s .CAM mark from a visual, phonetic and conceptual point of view and is highly similar to the .CAM (fig), XLOVECAM and BOYCAM marks. The acquisition and use of rights in the Objector’s marks has been *bona fide* and in accordance with EU law and the laws of the EU member states, as well as the Paris Convention on protection of trademarks.

The websites to which the domain names controlled and used by the Objector resolve are visited by an estimated one million viewers and/or users per day. As a result of this extensive use and the success of the websites, there is a high level of recognition on the part of the relevant public.

The Objector is not aware of the Applicant’s intentions with regard to the gTLD application and/or preparations to use and/or a *bona fide* offering of goods or services by the applicant. The Objector is not aware of any intellectual property rights of the Applicant in the .CAM mark or any similar sign. Nor is the Objector aware of any *bona fide* offering of goods and services in connection with the gTLD by the Applicant. The Applicant has not been known by the sign corresponding to the gTLD.

Any such intentions or preparations cannot be *bona fide*, because the use of the gTLD by the Applicant would create a likelihood of confusion with the Objector’s previously registered trademarks. Those trademarks are of multinational effect, protected throughout the European Union, and must be respected by ICANN and its appointed dispute resolution provider, the WIPO Center. The Applicant’s application for the proposed gTLD must be rejected on the basis that the applied-for TLD string is identical to the Objector’s previously registered trademark.

The Applicant was on constructive notice of the Objector’s trademark rights prior to the filing date of the TLD application, as the registration records were publicly available in OHIM’s database. Thus the Applicant could not have reasonably been unaware of such rights.

As stated in the Final Applicant Guidebook, Sec. 3.5.2, the Legal Rights Objection procedure is intended to give effect to a fundamental aspect of the new gTLD program, embodied in GNSO Recommendation 3: “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.”

The Objector’s legal rights in the .CAM trademark are enforceable under the European Union’s trademark

laws, and by extension the Paris Convention. These internationally recognized principles of law are inviolate and absolute. The Applicant's gTLD application is for an identical string, proposed to be used in the same manner described in the Objector's trademark registrations. Not only is there a likelihood of confusion, but an absolute certainty of consumer confusion. Therefore, the Legal Rights Objection must be sustained, and the Applicant's TLD application must be rejected.

B. Applicant

The Applicant denies that its use of the disputed proposed gTLD <.CAM> would unjustifiably impair the distinctive character or the reputation of the Objector's marks or otherwise create an impermissible likelihood of confusion between the proposed <.CAM> gTLD and the Objector's marks.

The Applicant submits that the Objector has failed to prove that it has valid existing rights in any of the asserted trademarks. The Guidebook states that legal rights objections must be based on "existing legal rights". Guidebook § 3.2.1.

Addressing the Objector's CTMs, the Applicant asks this Panel to note that while the Objector applied to register said .CAM (word) and .CAM (fig.) as Community Trade Marks on December 12, 2011, they were not in fact registered until December 6 and 7, 2012 respectively. The Applicant applied for the disputed proposed gTLD <.CAM> > on May 30, 2012 at a time when the Objector had no existing rights in either the .CAM (word) and .CAM (fig.) marks but merely had pending applications for both.

Furthermore the Applicant submits that the Objector has not adduced any evidence that either of the Objector's CTMs was used in commerce before the Applicant filed its application for the proposed gTLD <.CAM> on May 30, 2012, or since. In this regard the Applicant refers to a TinEye search and a Google reverse image search that it has annexed to the Response and submits that these searches reveal that the figurative mark has not been used at all out of 2.6 billion images on the Internet. The only result is on the trademark registers.

The Applicant furthermore submits that the applications for registration of the Objector's CTMs were made in bad faith mere weeks before ICANN opened the new gTLD application window in January 2012.

It is significant that the Objector has also applied to ICANN for the <.CAM> gTLD and in the circumstances, the Applicant submits that the Objector's applications to register the .CAM trademarks are a blatant attempt to create a ground for objection in order to gain advantage in the ICANN application process and secure the gTLD for itself. Applicants were generally well aware of the gTLD application process well before December 2012 because ICANN had approved the program on June 20, 2011.

The Applicant argues that it follows that the Objector's CTMs are vulnerable to cancellation pursuant to Article 51(1)(b) of the Council Regulation 207/2009 on the Community Trade Mark ("CTM Regulation"). "Bad faith" is a subjective factor which is determined by reference to the objective circumstances of the particular case. In the case of *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C529/07, the court considered that an intention to prevent a third party from marketing a product could, in certain circumstances, be an element of bad faith on the part of the applicant. Such would be the case if an applicant applied for a Community Trade Mark not intending to use it but with the sole objective of preventing a third party from entering the market. Uniform Domain Name Dispute Resolution Policy ("UDRP") Panels weighing trademark rights and domain names have long held that registering domain names under suspicious timing to merely reserve rights is an indicator of bad faith. *e.g.*, *Bumi Plc. v. BUMIPLC*, Case No. D2011-1249 (WIPO October 21, 2011); *Tiara Hotels & Resorts LLC v. John Pepin*, Case No. D2009-0041 (WIPO March, 10, 2009); *Playboy Enterprises International, Inc. v. Tamara Pitts*, Case No. D2006-0675 (WIPO August, 27, 2006); *Tennessee Education Lottery Corporation v. Mark Dalton*, Case No. D2003-0726 (WIPO November 3, 2003); *Vanguard Medica Limited v. Theo McCormick*, Case No. D2000-0067 (WIPO April 3, 2000).

The Applicant submits that there can be no likelihood of confusion between the disputed proposed gTLD

<.CAM> and said .CAM (word) and .CAM (fig.) CTMs because the Objector cannot and will not use said .CAM trademarks unless and until it is awarded the <.CAM> TLD by ICANN. If the Objector is not awarded the <.CAM> TLD said registrations would be immediately vulnerable to cancellation based on non-use.

Furthermore, the Applicant disputes that the Objector's said .CAM (word) and .CAM (fig.) CTMs are in any event protectable under European Community law, and submits that they are highly vulnerable to cancellation proceedings under Articles 56 and 57 of the Council Regulation 207/2009 on the Community Trade Mark ("CTM Regulation") on the absolute grounds for refusal of registration set out in Article 7. In this regard the Applicant submits that it is well established in Community trademark law that TLDs are generic and lack the requisite distinctiveness to be registered as Community trademarks. Citing: *DeTeMedien Deutsche Telekom Medien GmbH*, Case T-117/06 where the Court of First Instance of the European Communities considered whether the term "suchen.de" met the requirement at Article 7(1) of the CTM Regulation. (The Court held that the elements of the sign "suchen.de" consisted of two terms that were respectively in everyday usage (namely "suchen", meaning "to search") or which constituted a common technical term in German (namely ".de", which was the country-code top-level domain extension for Germany). As such, neither element individually possessed distinctive character.

The Applicant submits that there is a wealth of European Community caselaw that establishes that the TLD string is generic. Citing: *Pets.com* R 305/2001-3; *MobiTV, Inc v Cellcast Media SARL* R 1384/2008-2; *Fiesta Catering International, Inc* R 330/2007-1; *Jupitermedia* R 211/2006-4; *Learn.com Inc.* R 1047/2007-2; *RCP Amazon s.r.o v. Amazon Europe Holding Technologies SCS* 3365 C; *Getty Images (US), Inc.*, Case T-338/11; *Participate.Systems, Inc.* R 222/2002-1.

The Applicant submits that it is also well-settled under the trademark laws of the United States of America that TLDs are not source indicators and thus do not function as trademarks. Citing: *Image Online Design, Inc.*, at 16 ("[T]he proposition that TLDs are not generally source indicators has been adopted by courts, legal scholars, and other authorities."); McCarthy on Trademarks § 7:17.50 ("[A] top level domain indicator has no source indicating significance and cannot serve any trademark purpose ... [T]he TLD '.com' functions in the world of cyberspace much like the generic indicators 'Inc.', 'Co.', or 'Ltd.' placed after the name of a company."); Trademark Manual of Examining Procedure 5th Ed. (2007) § 1215.02 ("Generally, when a trademark, service mark, collective mark, or certification mark is composed, in whole or in part, of a domain name, neither the beginning of the URL ('http://www.') nor the TLD have any source-indicating significance. Instead, those designations are merely devices that every Internet site provider must use as part of its address.").

Of specific importance in the present case is that applications made by the Objector to register the asserted .CAM marks with the United States Patent & Trademark Office were refused by the Trademark Examiner for failure to function as a trademark. The Examiner stated in regard to both applications:

"the applied-for mark consists solely of a top-level domain name; it does not function as a service mark to identify and distinguish applicant's services from those of others and to indicate the source of applicant's services. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051-1053, 1127; TMEP §1215.02(d). Specifically, the applied-for would not be perceived as a service mark because they are "one of the primary measures used to structure the internet." See Attachment 4 – Domain.com Blog article about TLDs. Purchasers are accustomed to top-level domains being used merely to access internet pages and not for source identification. Therefore, because the mark will serve only to indicate the domain name of applicant's website and will not separately identify applicant's services or otherwise serve as a source indicator for applicant's services, registration is refused pursuant to Sections 1, 2, 3 & 45. "currently registered."

The Applicant submits that moreover, the Objector is clearly attempting to reserve trademark rights in the .CAM marks in order to subvert the new gTLD application process for its own application so that it does not have to proceed to auction with other applicants. The Objector's use of the .CAM mark in the European Community and the United States is "token use" of a term solely to reserve rights in a mark, and is not *bona fide* or genuine. Citing: *Ansul BV vs. Ajax Brandbeveiliging BV*, C-40-01 (ECJ Mar. 11, 2003) ("genuine use must ... be understood to denote use that is not merely token, serving solely to preserve the rights conferred

by the mark”); TMEP § 901.02 (noting that “use in commerce” necessary to establish rights in a mark was “the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.”).

Addressing the Objections based on the abovementioned registered trademarks XLOVECAM and BOYCAM, the Applicant submits that the Objector is not the registered owner of either registration and has failed to establish ownership or legal rights in either mark. It has merely asserted the connection with the registered owner but has provided no evidence of the relationship in either case.

Furthermore, even if the Objector is found to have demonstrated ownership in the XLOVECAM and BOYCAM marks, the Applicant submits that in any event there is no similarity between the disputed proposed gTLD <.CAM> and either mark. They are not identical and the Applicant argues that the marks are completely dissimilar to the disputed proposed gTLD <.CAM> in terms of appearance, phonetic sound, or meaning. The initial, distinctive and dominant elements of the Objector’s marks are XLOVE and BOY, respectively. They contain substantial differences in sight (extra letters) and sound (extra syllables). As to meaning, the Objector’s marks refer to its webcam-related services and create distinct commercial impressions.

Moreover, the Applicant submits that both the XLOVECAM trade mark and the BOYCAM trade mark are conceptually and commercially weak, and entitled to a narrow scope of protection. Also, the Objector’s services, which are webcam services, would be very different from the Applicant’s proposed services if it is awarded the proposed gTLD, which would be domain name management services. For these reasons, even if consumers saw the Applicant’s proposed <.CAM> gTLD as a mark, they would not be confused into believing that its source was really the Objector. Accordingly, a proper weighing of these most important likelihood of confusion factors in favour of the Applicant would render confusion unlikely.

The Response also addresses the Objections based on the Objector’s claimed trade mark rights in the above listed Internet domain names that incorporate the letters “cam” as an element. The Applicant denies that the Objector has adduced any evidence of its claimed trade mark rights in the domain names incorporating the letters “ cam” on which it relies.

The Objector does not offer any evidence at all that its customers identify the term CAM or .CAM with Objector as the source of any services, and merely makes an unsubstantiated assertion that hundreds of unspecified websites are visited by one million visitors a day.

The Objector only lists 15 websites containing the term “cam”, but claims that it owns hundreds of domain names containing that term. There is no common link between any of the websites which would establish a trademark in the word “cam”, as there is no submitted proof that the word “cam” is used as or in a mark on the websites hosted at these domain names. Numerous Community Trade Mark cases establish that simple website visitor numbers are insufficient to establish trademark rights: Citing: *Retail Royalty Company R 1463/2012-2* (“The applicant includes data related to the traffic on their web-site. This data is presented in the form of a simple table, with no source indicated. The applicant also refers to sales via eBay online store, where customers from EU are mentioned. The applicant also mentions their page on Twitter and Facebook, which supposedly also have users in Europe.”; *T Hasbro UK Limited v Bob Licensing Sarl B 1 286 014* (“...the evidence submitted by the opponent in order to prove the reputed character of its marks consists solely of the extracts from the websites. The presence of the mark on the website shows nothing more than that the website is accessible. This is in itself not sufficient to prove reputation of the trade mark, apart for information, advertising and promotional purposes.... Moreover, the opponent did not submit any survey on its trade mark recognition. Moreover, no sales figures or affidavit, price lists or similar have been provided. On the basis of the above the Office concludes that the evidence submitted by the opponent does not demonstrate that the earlier trade mark acquired a high degree of distinctiveness through its use namely that the earlier mark is known by a significant part of the public concerned by that mark. Moreover, the opponent failed to submit information on the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.”)

The Objector has not submitted any evidence that it has established any reputation by the use of CAM as a trademark, such as survey evidence, sales figures, affidavits, market share or the geographical extent of reputation.

By contrast the Applicant refers to the results of a survey of general Internet users, commissioned by the Applicant which has been furnished in an annex to the Response that shows that the vast majority of those surveyed were unable to even categorise the figurative mark as an adult website and submits that the survey demonstrates that Internet users do not identify either the figurative mark or the word .CAM with the business of the Objector.

In summary, the Applicant submits that there is no likelihood of confusion between its proposed use of the <.CAM> string as a gTLD and any of the marks relied upon by the Objector.

The Applicant submits that it is making its application for the disputed proposed gTLD <.CAM> in good faith. In doing so the Applicant is relying on its freedom of expression rights to use terms in their generic sense for proffered goods and services under the Paris Convention for the Protection of Industry Property, the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR). As stated in its application, the Applicant intends to use .CAM in its generic sense, *i.e.*, to refer to domain names that it will manage on the proposed .CAM domain space for website owners that wish to register and use Internet domain names that immediately indicate to Internet users that the information or services at the resultant website are related to devices that record images that can be stored directly, transmitted to another location, *i.e.*, 'cameras'. Citing: Paris Convention Art. 6(ii); UDHR Art. 19; ICPR Art. 19(2).

The Applicant asserts that neither the Applicant nor any of its employees have been involved in cybersquatting. Neither the Applicant, nor any of its affiliated entities or senior employees, have ever engaged in any, let alone a pattern of, conduct applying for or operating TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others. In that regard, it is worth noting that the Applicant has recently passed initial evaluation, and therefore it (and by extension, the individuals and other entities involved in the application) has passed the background check run by ICANN. One of the requirements is that the Applicant and the senior named individuals involved should not have a history of cybersquatting or a certain number of adverse UDRP cases to constitute a pattern. None of the directors, employees or affiliates of the Applicant has ever been involved in a UDRP or other cybersquatting case. Also the Applicant and its affiliated entities in all has made 60 applications for gTLD strings, only one of which, namely the generic string <.MUSIC>, has been the subject of any Legal Rights Objection.

The Applicant denies any specific knowledge of the Objector's CTMs when applying for the disputed proposed gTLD <.CAM>, as they had not yet been registered at that time. The Applicant submits that its proposed use of the disputed proposed gTLD <.CAM> as a generic top level domain name, would not infringe any trademark rights. The Applicant intends to use the disputed proposed gTLD <.CAM> only in its generic sense where necessary to list or describe the offering of .CAM domain names within the registry and does not intend to use the sign corresponding to the gTLD in connection with any offering of goods, services or information. Therefore, there will be no interference with the exercise by the Objector of either of its legitimate marks, XLOVECAM or BOYCAM, even in the unlikely event one could say that there is a likelihood of confusion between the Applicant's use of the disputed proposed gTLD <.CAM> and those trademarks.

Such use is permissible pursuant to Article 12 of the CTM Regulation, Article 6 of Directive 89/104/EEC and what is commonly known in the United States as the "fair use" defence, where courts have held that "[a] generic name is free for use by anyone when applied to the products it signifies, is often a competitive necessity, and can be used in its generic sense notwithstanding its registration for other products" and thus "[g]enericness is a defense to a trademark infringement action." Anne Gilson LaLonde, Gilson on Trademarks § 2.02[1] (Matthew Bender 2012).

It is clear that pursuant to Article 12(c) of the CTM Regulation, a trademark owner must permit the use of its marks in certain situations, and this is a valid defence even if there is some similarity between a mark and

the generic use of that mark. For example, in *Gerolsteiner Brunnen GmbH & Co v Putsch GmbH*, Case C-100/02, 7 January 2004, the ECJ held: “The mere fact that there exists a likelihood of aural confusion between a word mark registered in one Member State and an indication of geographical origin from another Member State is insufficient to conclude that the use of that indication in the course of trade is not in accordance with honest practices.”

In *The Gillette Company and Gillette Group Finland Oy v LA-Laboratories Ltd Oy*, Case C-228/03, the ECJ held that the use of the trademark will not be in accordance with honest practices in industrial and commercial matters if: (a) “it is done in such a manner as to give the impression that there is a commercial connection between the third party and the trade mark owner”; (b) “it affects the value of the trade mark by taking unfair advantage of its distinctive character or repute”; (c) “it entails the discrediting or denigration of that mark”; or (d) “where the third party presents its product as an imitation or replica of the product bearing the trade mark of which it is not the owner.” Clearly none of the above apply to the proposed operation of the proposed gTLD by the Applicant, which will display no connection whatsoever with the trademarks XLOVECAM or BOYCAM.

Furthermore, the Objector itself in its application for <.CAM> gTLD, makes clear that it intends to use the gTLD in its generic sense to refer to domain names that are likely to host cam and camera-related information, goods, and/or services and makes no mention of any brand-related purposes for the gTLD.

The Applicant does not intend and never intended to use the disputed proposed gTLD <.CAM> as a trademark or source identifying term, and assumed that a generic term such as .CAM which included the dot could not be registered as a trademark. The Applicant intends to use the disputed proposed gTLD <.CAM> only to offer domain registration services, as a registry operator, and the term .CAM is totally descriptive of the service that will be offered. Accordingly, the Applicant had no reason or duty to search for marks similar to the disputed proposed gTLD <.CAM>.

The Applicant submits that in the relevant sector of the public there is no recognition of the sign corresponding to the proposed gTLD, as the mark of the Objector, of the Applicant or of any third party. The Applicant is not intending to use the gTLD as a trademark, but would only generically use the <.CAM> gTLD to refer to the domains within its registry. There can therefore be no confusion as to the source, sponsorship, affiliation or endorsement of the gTLD because Internet users will not see the use of the .TLD as a source identifier of Objector’s or Applicant’s services, but rather as part of Internet addresses. Even if the Panel found that Objector had valid protectable rights in the term “CAM” or marks containing ‘CAM’, the fair use defence would thus permit the use of the gTLD on the basis that it is necessary to use the word “CAM” descriptively in the operation of the <.CAM> gTLD registry.

6. Discussion and Findings

For ease of reference in the following paragraphs the Objector’s Community Trade Mark .CAM (word) registration number 10483501 and Community Trade Mark .CAM & Design registration number 10483618 are referred to as “the Objector’s CTMs”.

Additionally the Internet domain names <camdirect.fr>; <camdefolie>.com; <camsearch.at>; <camsearch.biz>; <camsearch.tv>; <xlovecam.com>; <xlovecam.fr>; <xlovecam.de>; <xgaycam.cc>; <xgaycam.info>; <livecamhot.com>; <livecam.info>; <livecam.mobil>; <livecam.org>; <plaisircam.com>; will be referred to collectively as the “Domain Names Relied upon by the Objector”.

In summary, and for reason given in detail below, this Panel finds that the potential use of the applied-for gTLD by the Applicant does not:

(i) take unfair advantage of the distinctive character or the reputation of the Objector’s registered or unregistered trademark or service mark (“mark”); and/or

(ii) unjustifiably impair the distinctive character or the reputation of the Objector's mark; and/or

(iii) otherwise create an impermissible likelihood of confusion between the applied-for gTLD and the Objector's mark.

because

- there is no similarity between the proposed gTLD and the BOYCAM mark, the XLOVECAM mark or the Domain Names Relied upon by the Objector and therefore there is no risk of confusion or association with any of them; and
- while the proposed gTLD is identical to the Objector's CTMs (allowing that one of the registrations is a figurative or device mark), in the context of use on the Internet generally, the "cam" element in each would be attributed a descriptive and generic meaning; when used specifically as a gTLD extension, the combination of the "." ("dot") element with the "cam" element would be understood to be what it is - a gTLD extension string with a limited and specific technical function. The situation may well be different if the proposed gTLD was identical to a distinctive existing mark or an existing mark that had acquired distinctiveness through use. Such is not the case with the Objector's Community Trade Marks in each of which the dominant element is a descriptive and generic reference to webcams and cameras.

In the circumstances the Applicant's arguments in relation to the date on which the claimed rights came into existence is moot.

A. Threshold issue as to the Objector's standing

Paragraph 3.2.2 of the ICANN Applicant Guidebook (Guidebook") states that as part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to make a Legal Rights Objection. The threshold is that the objector must be a "rightsholder". This is repeated in Paragraph 3.2.2.2 which states "[a] rightsholder has standing to file a legal rights objection."

There is a number of references to the fact that the "rights" relied upon by the "rightsholder" must be "existing" but these do not state what the relevant date would be on which the rights must "exist".

- Paragraph 3.2.1 of the Guidebook states that the rationales for grounds of objection are discussed in the final report of the ICANN policy development process for new gTLDs and refers in turn for the guidance of applicants to the Final Report of ICANN Generic Names Supporting Organisation, Introduction of New Generic Top-Level Domains, 8 August 2007, Part A: Final Report, Introduction of New Generic Top-Level Domains at <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>. The Final Report at Recommendation 3 states that "[s]trings must not infringe the *existing* legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights)." (emphasis added).
- Paragraph 3.2.2.2 of the Guidebook also states that "[t]he source and documentation of the *existing* legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing." (emphasis added).
- Paragraph 3.4.4 states "There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an *existing* legal rights objection." (emphasis added).
- Paragraph 3.5.2 of the Guidelines repeats Recommendation 3 of the GNSO and states that In the

case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors: 1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's *existing* mark." (emphasis added).

If an objector has already accrued rights either through ownership of a registered trademark or at common law through use of a mark, on the date when the application window opened, then by definition it has standing.

A threshold issue arises in the present case because the Applicant has argued that the Objector does not have standing in relation to any of the marks.

With reference to the Objector's CTMs, the Applicant argues that the Objector's claimed rights did not exist and were merely inchoate until December 6 and 7, 2012 and furthermore are not *bona fide*.

Having considered the evidence, this Panel finds that the Objector has made no commercial use, or at most has made notional use, of the .CAM (word) or .CAM (fig.) marks. The Objector applied to register these marks as Community Trade Marks on December 12, 2011 but they were not registered until December 6 and 7, 2012 respectively.

A number of dates suggest themselves as the possible relevant date for deciding whether the Objector is a "rightsholder" that has accrued "existing" rights to have standing to bring this Objection:

- the date on which common law rights accrued to the Objector through use of the .CAM (word) or .CAM (fig.) marks in the course of trade – this Panel finds that on the evidence there has not been sufficient use by the Objector of either the .CAM (word) or .CAM (fig.) marks to acquire any protection at common law;
- December 12, 2011, the date on which the rights holder filed applications for the Objector's CTMs;
- January 12, 2012, the date on which the window opened for applications for the current round of new gTLDs;
- May 30, 2012, which according to the Response was the date on which the Applicant applied for the proposed <.CAM> gTLD;
- June 13, 2012, the date on which the application for the new gTLD was first published by ICANN;
- December 6 and 7 2012 the dates on which Objector's CTMs were registered;
- March 12, 2013, the date on which this Objection was filed; or
- a later date prior to the making of the decision on the objection.

This Panel takes the view that the entry bar should be set low for the purposes of establishing standing, as is the case for considering complainant rights under paragraph 4.a.i of the UDRP.

Having considered the alternatives, and in the absence of any express guidance from the Procedure, this Panel has decided to accept the date of filing of this Objection, which was March 12, 2013 as the relevant date on which the Objector must have acquired "existing rights" for the purposes of acquiring standing.

The Objector was the registered owner of the Objector's CTMs on that date and therefore in this Panel's view has standing to bring this Objection. It is unnecessary therefore to consider whether it has standing based on any claimed rights in the BOYCAM mark, the XLOVECAM mark or the Domain Names Relied upon by the Objector.

B. Factors for consideration

(i) Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the Objector's existing marks.

The Objector's CTMs

This Panel has compared the proposed gTLD with the Objector's CTMs and each of them is composed of

the letters “C”, “A” and “M” in combination, preceded by the punctuation mark “.” which can be referred to as a “full stop”, a “period” or most commonly in the context of the Internet a “dot”. For the purposes of this determination it will be called a “dot” for ease of reference.

There being no other elements in either the marks or the proposed gTLD extension, and even allowing for the fact that one of the Objector’s CTMs is a figurative mark, this Panel finds that they are identical in appearance.

As to phonetic sound, it is most probable that both the proposed new gTLD and the Objector’s CTMs would be pronounced “dot cam” in the English language - the three letters “C”, “A” and “M” in combination being pronounced as a single word rather than individually. This is almost certainly the case in the context of the Internet. Existing gTLDs are commonly pronounced in this way, for example <.com> being “dot com”, <.org> being “dot org” and so on for other gTLDs such as <.int>, <.net> and <.aero>. On the other hand the component letters of two letter country code TLDs such as <.ie>, <.de>, <.ru> are individually spoken. The same is true for the <.eu>. Furthermore, the fact that the middle letter of the proposed gTLD is the vowel “A” adds to the likelihood that it would be pronounced as the two words “dot CAM”.

As to meaning, because this Objection is framed in the context of use on the Internet, this Panel finds that Internet users will attribute the identical generic meaning to the “cam” element in both the proposed .TLD and the Objector’s CTMs as meaning a “webcam” or “camera”.

In another context, the initial “dot” element may well have no significance but in the context of the Internet, the otherwise relatively insignificant “dot” takes on an important significance when used as part of an address of a website or other online location as a separating character with a technical purpose. The purpose will vary depending on the position of the “dot” in the address string. If it precedes the final element of the string, it will be taken to mean the gTLD extension. The Applicant proposes to use the <.CAM> string only as a gTLD extension and so the two elements of the “dot” and the word “cam” in combination will not have an identical meaning to the trademark used in another context.

This Expert finds therefore that the proposed new gTLD <.CAM> is identical to the Objector’s CTMs in appearance and phonetic sound, but only similar in meaning.

The XLOVECAM and BOYCAM trademarks

The Objector also claims rights in the two registered trademarks BOYCAM and XLOVECAM that are owned by third party companies which the Objector claims to control. The Applicant has argued that the Objector has failed to provide any evidence of the nature of its claimed rights.

In the interest of expedition and rather than delaying the process with another round of submissions by requesting additional information, this Panel has provisionally accepted the Objector’s claimed rights in these registered trademarks *de bene esse* and undertaken the exercise of comparison of each trademark with the proposed gTLD string <.CAM>.

This Panel finds that the proposed <.CAM> gTLD is neither identical nor similar in appearance, phonetic sound or meaning with either the BOYCAM or XLOVECAM mark.

There is only one common element in each, namely the letters “cam”. Given the context of the application under consideration, the services for which the trademarks are registered and the use to which the trademarks have been put to date, it is probable that the “cam” element would be seen by the relevant public in the context of the Internet.

Taking the trademarks and the <.CAM> string in their entirety and comparing each, there is no visual identity or similarity. The aural element “boy” in BOYCAM” and the additional elements “X” and “LOVE” produce a very different and distinct sound from the sound of the words “dot cam”.

As to meaning, on the balance of probabilities Internet users would attribute a reference to interactive webcam services perhaps with content of an adult nature, particularly in relation to the XLOVECAM mark. On the other hand the proposed gTLD <.CAM> has no such connotation of adult content and on the balance of probabilities a simple generic meaning of “webcam” or “camera” would be attributed by Internet users.

This Panel finds that the proposed gTLD is neither identical nor similar to the BOYCAM and XLOVECAM trademarks in appearance, phonetic sound or meaning.

The domain names relied upon by the Objector

The Objector also relies on its claimed service mark rights at common law in a number of Internet domain names incorporating the element “cam”.

The Applicant has also argued that the Objector has failed to provide any evidence that any such common law rights exist and further argues that even if they do exist, the Objector has failed to provide any evidence of its ownership of such rights. As above, in the interest of expedition, this Panel has accepted the Objector’s claims *de bene esse* and compared the Domain Names Relied upon by the Objector with the proposed gTLD string.

A threshold question to be decided is whether the ccTLD or gTLD extension in these domain names should be ignored for the purpose of comparison. This would certainly be the case under the UDRP. The present Objection is being considered under a new and distinct procedure from the UDRP and so UDRP decisions are of limited value. For this reason, this Panel has compared these domain names both including and excluding the TLD extension string in each case.

Each of the domain names incorporate the letters “c”, “a” and “m” in combination together with additional element(s). The presence of the additional element(s) means that none of these domain names are identical to the new gTLD <.CAM> string that is the subject of this Objection. The question to be considered in respect of each is therefore whether the <.CAM> string is similar, including in appearance, phonetic sound, or meaning.

For the purpose of comparison the Panel has grouped the Objector’s domain names into three categories and considered each as follows:

- <camdirect.fr>, <camdefolie>.com, <camsearch.at>, <camsearch.biz>, <camsearch.tv>;
- <xlovecam.com>, <xlovecam.fr>, <xlovecam.de>, <xgaycam.cc>, <xgaycam.info>; and
- <livecamhot.com>, <livecam.info>, <livecam.mobil>, <livecam.org>, <plaisircam.com>.

The domain names <camdirect.fr>, <camdefolie>.com>, <camsearch.at>, <camsearch.biz> and <camsearch.tv> are grouped together for the purpose of comparison because the element “cam” is the first element in each case in combination with a descriptive term.

This Expert finds that in appearance, none of the domain names relied upon by the Objector is similar to the proposed <.CAM> gTLD string *simpliciter*.

Furthermore, this Expert finds that in each case the additional element in the domain name would create a distinct and dissimilar phonetic sound from the words “dot cam”.

With regard to the respective meanings of the proposed new TLD string <.CAM> the second level domain name “camdirect” in <camdirect.fr> would be taken to refer to a website providing direct communication facilities; in <camdefolie.com> the meaning would probably relate to something connected with madness, foolishness or fun; and the inference in the domain names <camsearch.at>, <camsearch.biz> and <camsearch.tv> relates to a search facility. The additional element in each case distinguishes the second level domain name from the proposed generic meaning inferred by the proposed gTLD.

With regard to the domain names

- <xlovecam.com>, <xlovecam.fr>, <xlovecam.de>, <xgaycam.cc>, <xgaycam.info>; and
- <livecamhot.com>, <livecam.info>, <livecam.mobil>, <livecam.org>, <plaisircam.com>;

for the same reasons as are given above, this Panel finds that there is no visual or phonetic similarity between the second level domain name and the <.CAM> string. Additionally in both of these categories the additional elements contain inferences that they refer to online locations with adult content probably for webcam services and the additional element would distinguish the domain name from the proposed gTLD in each case.

With regard to all of the domain names, when making the comparisons, the respective gTLD and ccTLD extensions further distinguish the domain names from the proposed gTLD.

In summary therefore this Panel finds that the proposed new gTLD <.CAM> is identical to the Objector's CTMs in appearance, phonetic sound and meaning but it is neither identical nor similar to the BOYCAM or XLOVECAM marks or the domain names relied upon by the Objector.

As there is no similarity between the BOYCAM or XLOVECAM marks or the domain names relied upon by the Objector, the use of the proposed gTLD take will not take unfair advantage of the distinctive character or the reputation and/or unjustifiably impair the distinctive character or the reputation of the BOYCAM or XLOVECAM marks or the domain names relied upon by the Objector or otherwise create an impermissible likelihood of confusion.

The Objection must therefore fail insofar as it is based on claimed trademark rights in BOYCAM or XLOVECAM marks or the domain names relied upon by the Objector. It is not necessary to consider therefore whether the Objector has any rights in these domain names.

Furthermore, it follows that it is not necessary to give further consideration to the objection insofar as it is based on the BOYCAM or XLOVECAM marks or the domain names relied upon by the Objector and this Panel will proceed to consider the Objection insofar as it relates to the Objector's CTMs only.

(ii) Whether the Objector's acquisition and use of rights in the mark has been *bona fide*.

The applications to register the Objector's CTMs were made on December 12, 2011. The application window for the new gTLDs opened in January 2012.

While the Objector may well have anticipated or feared that there would be other parties (such as the Applicant) making applications for the <.CAM>, gTLD, it is improbable that the Applicant's intentions were known to the Objector in December 2011.

ICANN did not publish the Applicant's application until June 2012.

This Panel finds that on the balance of probabilities, the Objector made the Community Trade Mark applications with the ICANN process in mind.

On the balance of probabilities when the applications were made in December 2011, the Applicant intended to apply for the <.CAM> gTLD itself which it duly did. On the balance of probabilities, the Objector applied to register the Objector's CTMs and made similar applications in the United States to reserve rights in the hope of success in the ICANN application process.

In the circumstances, this Panel must accept the Objector's CTMs as valid unless and until they are successfully challenged and revoked.

As this Panel has found that there is no similarity between the proposed gTLD and the BOYCAM mark, the

XLOVECAM mark or the second level domain names relied upon by the Objector it is not necessary to give further consideration to these marks and domain names under this heading.

(iii) Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the Objector, of the Applicant or of a third party.

The Objector has not adduced any evidence of use of the .CAM (word) mark, the .CAM (fig.) mark within the European Community or elsewhere, as CTMs or otherwise. The Applicant has adduced evidence that there is no public recognition of the <.CAM> string as being the Objector's trade mark. This Panel finds that on the balance of probabilities, the Objector has made no or at most token use of the CAM (word) mark and the .CAM (fig.) marks relied upon by the Objector.

As this Panel has found that there is no similarity between the proposed gTLD and the BOYCAM mark, the XLOVECAM mark or the second level domain names relied upon by the Objector it is not necessary to give further consideration to these marks and domain names under this heading either.

(iv) The Applicant's intent in applying for the gTLD, including whether the Applicant at the time of application for the gTLD, had knowledge of the Objector's mark, or could not have reasonably been unaware of that mark, and including whether the Applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

This Panel finds that on the evidence adduced, the Applicant's application for the <.CAM> gTLD was on May 30, 2012, and remains a *bona fide* application in furtherance of a business venture, which was undertaken with no knowledge of the Objector's CTMs as they did not exist at the time.

The Applicant argues that the Objector had no "existing" rights in the Objector's CTMs when it made the application for the proposed gTLD on May 30, 2012.

This Panel accepts that the Objector was not a "rightsholder" until December 6 and 7, 2012.

As this Panel has found that there is no similarity between the proposed gTLD and the BOYCAM mark, the XLOVECAM mark or the second level domain names relied upon by the Objector it is not necessary to give further consideration to these marks and domain names under this heading either but it is improbable that the Applicant considered that there was any significant similarity between the proposed gTLD and the BOYCAM, XLOVECAM marks or any of the domain names that the Objector relies upon.

(v) Whether and to what extent the Applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a *bona fide* offering of goods or services or a *bona fide* provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.

This Panel accepts that the Applicant's only interest in <.CAM> is as the gTLD extension for which it has applied. There is no indication on the record that the Applicant has made any use of the <.CAM> string except insofar as it has applied to ICANN to manage the proposed <.CAM> gTLD registry.

(vi) Whether the Applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been *bona fide*, and whether the purported or likely use of the gTLD by the Applicant is consistent with such acquisition or use.

As above, this Panel accepts that the Applicant's only interest in <.CAM> is as the gTLD extension for which it has made a *bona fide* application and the Applicant expressly states that it makes no claim to any trademark rights in the proposed gTLD string.

(vii) Whether and to what extent the Applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the Applicant is consistent therewith and *bona fide*.

The Applicant has not been commonly known by the gTLD and makes no such claim.

(viii) Whether the Applicant intended use of the gTLD would create a likelihood of confusion with the Objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

Because of the descriptive and generic character of the "cam" word element in each of the Objector's CTMs the protection afforded by the Objector's CTMs must be limited in scope particularly when used in relation to the Internet, webcams or cameras.

The Objector has made only token use, if any, of either of the Objector's CTMs, and on the evidence before this Panel the Objector has not acquired any reputation or goodwill in either mark through use. If the Objector is awarded the gTLD it will have the opportunity to use these marks to provide registry services and other services in classes 35, 38, 42 and 45 as claimed in the CTM registrations.

On the other hand, it is axiomatic that if the Applicant is awarded the proposed gTLD, then the Objector cannot use the .CAM trademark in the provision of registry services, notwithstanding that the descriptions of the services in classes 35, 38, 42 and 45 are sufficiently broadly drafted as to include the provision of registry services. The Objector can only use the .CAM as a gTLD extension if it is successful in its application.

If used by the Objector in a trademark sense within the classes of services included in the registrations, but unrelated to Internet-based services, the "dot" element is unlikely to contribute very much distinctiveness to the .CAM trademarks.

If used in a trademark sense related to cameras or webcams the "dot" would be an even less distinctive element, the dominant element being the descriptive and generic word "cam" referring to cameras and webcams in such circumstances and afforded limited protection. The rights accruing to the Objector could not be used to prevent providers of products or services to describe their products.

By contrast however, if used in relation to the Internet, the "dot" element, when in combination with the "cam" element takes on a very significant meaning as a separator character in the address of a website or other online location such as an email address. If it immediately precedes the final element in a domain name or address, it separates the top-level and second-level domain names – it is the extension for the address of the top-level domain name registry. This Panel finds that in such circumstances, Internet users would attribute the same meaning to .CAM as did the Examiner in the USPTO quoted in the Applicant's submissions above *i.e.* that "the applied-for mark consists solely of a top-level domain name".

The Panel is conscious that the Applicant makes no claim to any trademark rights in the <.CAM> string and proposes only to use the string in its generic, descriptive sense as the top level domain name. If the Applicant behaves differently, then the Objector may have a remedy in another forum in appropriate circumstances.

Additionally, this Panel has considered the Applicant's submissions that a top level domain name cannot be a trade mark and the statement of the Examiner in the USPTO above. While this assertion may have been true in the past, in the dynamic world of the Internet the lines between top-level domain names and trademarks are becoming less definite, *e.g.* with the arrival of proposed new "dotBrand" gTLDs. While it may still be argued that a top level domain name is not in itself a trademark, a trademark may be used as a top level domain name as has been the case heretofore with second level domain names.

This Panel finds that the use of the <.CAM> gTLD as proposed by the Applicant would not create a likelihood of confusion with the Objector's CTMs as to the source, sponsorship, affiliation, or endorsement of the gTLD.

For completeness, as this Panel has found that there is no similarity between the proposed gTLD and the BOYCAM mark, the XLOVECAM mark or the domain names relied upon by the Objector there is no likelihood of confusion between any of them and the proposed gTLD.

7. Decision

For the foregoing reasons, the Objection is rejected.

[signed]

James Bridgeman
Sole Panel Expert
Date: July 30, 2013