

## **EXPERT DETERMINATION LEGAL RIGHTS OBJECTION**

DotMusic Limited vs. .Music LLC

Case No. LRO2013-0063

### **1. The Parties**

The Objector/Complainant (the “Objector”) is DotMusic Limited of Lemesos, Cyprus, represented by Constantinos Roussos of the United States of America.

The Applicant/Respondent (the “Applicant”) is .Music LLC of Nashville, United States, represented by the Law Offices of Karen J. Bernstein, LLC, United States.

### **2. The applied-for gTLD string**

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

### **3. Procedural History**

The Legal Rights Objection (the “Objection”) was filed with the WIPO Arbitration and Mediation Center (the “WIPO Center”) on March 14, 2013 (March 13, 2013 UTC) 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 22, 2013 and determined that the Objection complied 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 received a proposal from a third party to consolidate the objections LRO2013-0057, LRO2013-0058, LRO2013-0059, LRO2013-0060, LRO2013-0061, LRO2013-0062, and LRO2013-0063 on April 25, 2013. The Objector and the Applicant indicated support to aspects of the consolidation proposal which was opposed by other parties in the objections referred to in the consolidation proposal. In accordance with Article 12 of Procedure and Paragraph 7(d) of the WIPO Rules for New gTLD Dispute Resolution, the WIPO Center did not make a decision to consolidate the objections 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 19, 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 17, 2013.

The WIPO Center appointed C.K. Kwong as the Panel in this matter on June 17, 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.

On July 17, 2013 the Objector directly copied the Panel into an email from the Objector to the WIPO Center attaching an unsolicited Additional Submission with prolific references to website links. On July 22, 2013, both Parties made further submissions to the WIPO Center which were copied directly to the Panel in relation to the admission of the Objector's unsolicited Additional Submission of July 17, 2013.

By Expert Panel Order No. 1, a copy of which is appended to this decision as an addendum, it was ordered for the reasons given therein, *inter alia*, that (1) the unsolicited Additional Submission submitted by the Objector on July 17, 2013 be admitted with the exclusion of all links supplied in the footnotes thereto and the contents of websites to which those links resolve; (2) the Applicant may file a Further Response (if any) strictly in reply to the points arising from the body of the Objector's Additional Submissions excluding website links within ten days in electronic form by email to the WIPO Center.

The Panel further noted that although the Objector previously requested on April 26, 2013 that correspondence relating to these proceedings be copied to a Mr. Jason Schaeffer of ESQwire.com P.C. as a person assisting the Objector, Mr. Schaeffer clarified by email on July 10, 2013 that the legal representative for the Objector in these proceedings was the original filer of the Objections, Mr. Constantinos Roussos. Paragraph 5 of Expert Panel Order No. 1 directed that no party other than those specifically referred to in these pleadings as their properly authorized representatives should be copied with the communication of these proceedings.

On August 2, 2013, the Center received the Applicant's Response to Objector's Additional Submission. On the same day, the Center advised the Parties that in accordance with Article 21(a) of the Procedure, the deadline for the rendering of the Expert determination was extended by 14 days.

On August 14, 2013, the Center advised the parties that the deadline for rendering of the Expert determination was further extended by 7 days.

#### **4. Factual Background**

##### **A. The Objector**

The Objector in this proceeding is DotMusic Limited, a Cyprus limited company, which according to an extract of Memorandum of Association included in Appendix B of the Objection, has an official reference no. HE303620.

According to the information provided in Appendix A to the Response, a new gTLD application (ID No. 1-1115-14110) has been submitted to ICANN by DotMusic/CGR E-Commerce Limited with Constantinos Roussos as Managing Director and was posted online on June 13, 2012. In paragraph 18(a) of this new gTLD application it was stated, *inter alia*, that:

"The .MUSIC Mission/Purpose is:

- Creating a trusted, safe online haven for music consumption & licensing.
- Establishing a safe home on the Internet for Music Community ("Community") members regardless of locale or size;
- Protecting intellectual property and fighting piracy;
- Supporting Musicians' welfare, rights and fair compensation;

- Promoting music and the arts, cultural diversity & music education;
- Following a multi-stakeholder approach of fair representation of all types of global music constituents ...”

European Community Trademark Registration No. 008139792 for the mark consisting of a green dot followed by MUSIC in grey, where the letter “s” resembles a reversed white treble clef positioned inside a star with fading green and grey colours, is registered in the name of Constantinos Roussos in respect of various goods and services under Classes 35 (... management of databases for Internet domain names and projects...administrative services provided in connection with registration and allotment of Internet domain names and other Internet addresses...), 42 (including computer services, namely research, reservation, recording and administration of Internet domain names; design creation, hosting, maintenance of Internet websites for others;...) and 45 (including domain name reservation, registration, maintenance and management services; domain name searching services; domain name registry services...).

European Community Trademark Registration No. 008139834 for the mark consisting of DOT coloured in green followed by MUSIC in grey, where the letter “s” resembles a white treble clef positioned inside a star with fading green and grey colours, is registered in the name of Constantinos Roussos in respect of certain goods and services under Classes 35 (... management of databases for Internet domain names and projects ... administrative services provided in connection with registration and allotment of Internet domain names and other Internet addresses...), 42 (... computer services, namely research, reservation, recording and administration of Internet domain names; design creation, hosting, maintenance of Internet websites for others;...) and 45 (... domain name reservation, registration, maintenance and management services; domain name searching services; domain name registry services...).

## **B. The Applicant**

According to Annex B to the Response filed by the Applicant, a new gTLD application ID No. 1-959-51046 has been submitted to ICANN by the Applicant and posted online on June 13, 2012. In paragraph 18(a) of its new gTLD application for the <.music> string, the Applicant stated, *inter alia*, that “[t]he mission of .music is to collaboratively grow a domain that serves artists, songwriters and music professionals; promote music, and nurtures the art ... all for the love of music.”

## **5. Parties’ Contentions**

### **A. Objector**

In the Objection, the Objector, DotMusic Limited, refers to itself as a subsidiary of CGR E-Commerce Limited, which together with related entities further referred to as “DotMusic” in the Objection, owns the European Community Trademark Registration for the marks .MUSIC and DOTMUSIC in 27 European Union countries (the “Marks”). It further claims that the so-called “DotMusic” owns various trademark registrations, as well as the common law rights associated under classes relating to domain registration and domain-related business.

The reference to a group of entities under the collective description or definition of “DotMusic” which are not parties to its Objection but merely described as related entities has caused some difficulties. The DotMusic group of entities claim to own various registered and unregistered rights but there is no explanations as to how each of such rights relate to the Objector, the Cyprus company DotMusic Limited. In paragraph [11] of the Objection, the so-called “DotMusic” (being an enlarged body of entities by a self-created definition aforesaid) went onto assert that the applied-for TLD string <.music> infringes the existing legal rights of the so-called group of entities “DotMusic” recognized or enforceable under generally accepted an internationally-recognized principles of law.

Against this setting and very broadly, the Objector claims that it is engaged in the business of e-commerce, affiliate marketing and domain-related activities since 2005 having generated millions of dollars in revenue and spent millions of dollars acquiring, developing and monetizing “.music” domain names. The Objector

further claims that it conducts business as “DotMusic” and “.music” or “music.us”.

Evidence were filed including the sponsorship of various events, press releases and Internet traffic to show the fame of the .MUSIC and DOTMUSIC Marks and business by the so-called “DotMusic” group of entities.

According to the Objector, the acquisition and use of the .MUSIC and DOTMUSIC marks have been *bona fide* for the business activities of the Objector. These Marks have become well known and the Applicant has prior knowledge of the Objector’s use of the .MUSIC and DOTMUSIC Marks in the domain name service industry.

The applied-for <.music> gTLD is identical to the Objector’s .MUSIC mark in sight, sound and connotation.

It is claimed that the Objector is commonly known and recognized by the .MUSIC and DOTMUSIC Marks. The use of the string comprising the potential new gTLD <.music> by the Applicant would create a strong likelihood of confusion and infringe the existing legal rights of the Objector and result in material harm and abrogation on the Objector’s existing legal rights. As a result, the potential use of the applied-for gTLD by the Applicant:

- (a) takes unfair advantage of the distinctive character and reputation of DotMusic’s Marks and DotMusic’s business; and
- (b) unjustifiably impairs the distinctive character and reputation of DotMusic’s Marks and DotMusic’s business; and
- (c) creates an impermissible likelihood of confusion between the applied-for gTLD and DotMusic’s Marks and DotMusic’s business.

A decision against the Objector will unfairly enrich the Applicant as they will be able to leverage on the Objector’s branding awareness marketing efforts throughout the domain name service and music industries.

## **B. Applicant**

The Applicant was formed by a small group of dedicated business professionals who shared a common desire to work with music creators. Its mission is to serve the global music community by creating a new names base where music maker would be able to find their Internet home within the community. It has apparently worked with and received the endorsement and support of 60 of the most representative, creditable, diverse and sizable organizations that comprise the global music community.

The Applicant either denies the Objector’s contentions or casts them as irrelevant mainly by reason of the generic and descriptive nature of the word “music” in relation to the music industry and the Internet business serving the same.

The Applicant contends that the Objector fails at the very first level *i.e.* it has no trademark rights for MUSIC and DOTMUSIC nor has it generated any rights as unregistered trademarks by virtue of the registration of those words as a company name or business name, or the registration of those words at the second level in other top level domain name such as <.us>. “Music” is a generic word and is free for everyone to use in relation to goods and services related to music, and to any goods and services associated with music.

The European Community Trademarks referred to in Section 4 above are comprised of MUSIC together with a figurative element. No realistic amount of use of the word “music” in relation to music-related goods and services could overcome the word’s descriptiveness and allow for the acquisition of a secondary trademark meaning.

The Applicant cannot be taking “unfair advantage” of the said trademarks either registered or unregistered. The Applicant has applied-for a gTLD consisting of a generic word which is free for all.

The corresponding United States Trademark applications of the marks .MUSIC and DOTMUSIC were rejected for descriptiveness.

In Annex G to the Response which contains a refusal issued by the United States Patent and Trademark Office in 2009, it was said that the word mark DOTMUSIC was merely descriptive of that applicant's services because:

“...the term DOT is defined in pertinent part as ‘A period or decimal point. This terminology is used in internet domain names; for example, .net is pronounced “dot net”. Further, the term MUSIC is defined in pertinent part as “vocal, instrumental, or mechanical sounds having rhythm, melody or harmony” ... Therefore the applicant's mark DOTMUSIC, merely describes a feature of the applicant's domain name registration services, namely, that the ‘music community’ can ‘reserve, register, renew etc.’ their domain names at the top level domain (TLD) identified as ‘.music’ (or ‘dot music’.)”

The Applicant's applied for gTLD <.music> does not incorporate any of the figurative elements of the said European Community marks referred to in Section 4 above. The word portion of the said marks *i.e.* “music” is generic and inherently descriptive for music-related goods and services. Appendix D to the Objection, which consists of self-serving domain searches with over 3 million result returns, confirms the generic nature of the word. The International Federation of Arts Council and Culture Agencies which is one of the Objector's partners and represented by the principle of the Objector, brought a separate Community Objection against the Applicant in the International chamber of Commerce and supports the view that “music” is a generic term, especially as it relates to a domain name registry that features second-level domain registrations for music-oriented websites. This is shown in Annex K and Annex L to the Response.

According to the Applicant, top-level domain names are devoid of distinctive character and not considered trademark source identifiers. The evidence of use adduced by the Objector relating to second-level music domain names are irrelevant. The use of a generic word like “music” in relation to offering domain registration and registry services by the Objector cannot accumulate to establish rights in that generic word.

Any harm to the Objector when the Applicant's community application is approved would be the result of competition in business but not trademark infringement. The Objector ought to know that it is taking a risk by investing monies into the applied-for <.music> string.

The Applicant intends to use the word “music” in its generic meaning which does not prejudice the Objector. Any loss incurred by the Objector is a risk the Objector has to take in seeking to acquire rights in a generic word.

The Objector has introduced materials purportedly in support of its claim of the marks being well known are in fact irrelevant even though the Objector or its principle may be known by some in the music industry.

## **6. Discussion and Findings**

### **A. Objector's standing under Section 3.2.2**

Under Section 3.2.2 of the ICANN gTLD Applicant Guidebook (the “Guidebook”), objectors must satisfy standing requirements in order to have their objections considered. In the case of Legal Rights Objections, an objector must satisfy the Panel that it is the holder of the legal rights on which it relies upon. Under Section 3.2.2.2, the source and documentation of the existing legal rights (which may include either registered or unregistered trademarks) an objector is claiming the applied-for gTLD is infringing must be included in the filing.

The Objector is DotMusic Limited who claims in paragraph 10 of the Objection to be the holder of the relied upon legal rights. However, paragraph 10 of the Objection also makes reference to CGR E-Commerce

Limited as the parent company of the Objector as well as unnamed “related entities” none of whom are parties to this proceeding but are included under the collective description “DotMusic”.

The Panel referred to the documents contained in Appendixes A and B to the Objection to ascertain who owns what legal rights.

The certificates and registration extracts contained in Appendix A to the Objection in relation to European Community Trademarks 008139792 for the mark .MUSIC (including design) and 008139834 for the mark DOTMUSIC (including design) both under Classes 35, 42 and 45 are registered in the name of Constantinos Roussos, not the Objector. As apparently conceded in the Objector’s Additional Submission, the references to other European Community Trademarks No. 010535375 for the mark .SONG (including design), 010535409 for the mark .TUNES (including design), and 010544377 for the mark .ARTIST (including design) are irrelevant for the purpose of this Objection and will not be further discussed here.

There are two pages in Appendix A which are apparently extracts from the Los Angeles County Registrar Recorder Office, which reference a company named CGR E-Commerce Limited LLC as a limited liability company with a fictitious business name “music” and “music.us”.

At Appendix B to the Objection there are English and non-English documents dating back to 2005 and 2006 on which appear the name “Constantinos George Roussos (CGR E-Commerce) Limited”. These documents suggest that Constantinos George Roussos (CGR E-Commerce) Limited is a company with a registered office in Cyprus with George Roussos and Constantinos Roussos as directors, and that Constantinos George Roussos (CGR E-Commerce) Limited has registered the business name “music.us” in Cyprus. Also included in Appendix B is a “Memorandum of Association of DotMusic Limited” as a company limited by shares. However, there is no evidence before the Panel that shows the relationship between Constantinos George Roussos (CGR E-Commerce) Limited and DotMusic Limited who is the Objector in these proceedings. Nor is there any evidence before the Panel that the European Community Trademarks registered in the name of Constantinos Roussos have been assigned or licensed to Constantinos George Roussos (CGR E-Commerce) Limited or to DotMusic Limited.

How all these entities are related and how the Objector ends up having the existing legal right it is seeking to rely on has not been demonstrated to the Panel. The Objector’s mere reference to a “DotMusic” group of entities in paragraph 10 of the Objection does not provide the source and documentation required by Section 3.2.2.2 to establish the existing legal rights which the Objector claims to hold and are allegedly infringed by the applied-for gTLD.

On the basis of the evidence adduced by the Objector, the Panel struggles to reach a conclusion that the Objector has satisfied the requirement that it is the holder of the legal rights which it purports to rely on under Section 3.2.2. An infringement of another party’s legal rights, even if proved, does not provide a ground for upholding the Objection which is for determination of the respective rights of the Parties to this proceeding only.

There is, however, an arguable inference that may be drawn from the combined facts, namely that Mr. Constantinos Roussos, the registered proprietor of the said European Trademark Nos. 008139792 and 008139834, holds himself as Managing Director of the Objector and signed the Objection filed with the WIPO Center. It may be inferred that there is in existence a license and/or authorization of such trademark rights to the Objector by Mr. Roussos so as to lend the Objector sufficient status to satisfy the standing requirement under Section 3.2.2.

Presuming there is such argument and for the benefit of putting this case to rest, the Panel is prepared to consider the Objection in the context of Section 3.5.2 of the Guidebook on the assumption that the Objector has passed the standing requirement under Section 3.2.2.

## **B. Infringement of the Objector's existing legal rights and the eight non-exclusive factors under Section 3.5.2**

Section 3.5.2 of the Objection Procedures provides that "In interpreting and giving meaning to 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'), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ('mark'); or unjustifiably impairs the distinctive character or the reputation of the objector's mark; or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark." The Section further provides that where the Objection is based on trademark rights, the Panel will consider eight non-exclusive factors which will be dealt with below.

The Objector contends that the Applicant cannot operate the <.music> gTLD domain without infringing its Marks. Indeed, if the Applicant is granted the <.music> gTLD, necessarily, as contended for by the Objector, the Applicant will be using the word "music" in the course of its trade which word forms a part of the Objector's Marks in relation to identical services. There is no question that the operation of the <.music> gTLD will necessarily involve the Applicant using the top-level domain identifier in the course of its "management of databases for Internet domain names and administrative services provided in connection with registration and allotment of Internet domain names and other Internet addresses covered by the said registrations" under Class 35 as well as "domain name reservation, registration, maintenance and management services" under Class 45.

However, it should be noted that the present case concerns a domain name at the top-level not the second, and concerns a descriptive dictionary word. The generic use of the descriptive word "music" by the Applicant in running a top-level domain name that serves "artists, song writers and music professionals; promote music, and lectures the art... all for the love of music" as stated in paragraph 18(a) of its application for the new gTLD, is in this Panel's opinion unlikely to infringe the Objector's existing legal rights. In this Panel's view, when the sign corresponding to the gTLD is a generic word it is difficult to conclude that there is a deliberate attempt to confuse. It is precisely because generic words are incapable of distinguishing one provider from another, that trademark protection is generally denied to them. There are and will continue to be many other entities that use the term "music" to describe their products and services relating to music.

In any case, European Community Trademark Registration No. 008139792 is registered for the device mark consisting of a green dot followed by MUSIC in grey where the letter "s" resembles a reversed white treble clef positioned inside a star with fading green and grey colours, and European Community Trademark Registration No. 008139834 is registered for the device mark consisting of DOT coloured in green followed by MUSIC in grey where the letter "s" resembles a reversed white treble clef positioned inside a star with fading green and grey colours. When compared to the applied-for gTLD string, they are visually very different from the word "music". The European marks stand on the strength of their said distinctive design elements.

This being said, in so far as the Marks consist of MUSIC or DOTMUSIC (which is the phonetic equivalent to ".music"), compared to the applied-for <.music> gTLD they may be regarded as similar. However, the word "music" is generic and descriptive when used in relation to music, which is the intended field of use for both the Objector and the Applicant.

The Panel does not consider that any consumers seeing the gTLD <.music> would relate it exclusively to the Objector.

In arriving at the above conclusion, the Panel has focused on the descriptive nature of the word "music" and considered each of the following eight non-exclusive factors which the Panel shall address in turn.

**1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the Objector's existing mark.**

As indicated above, the Panel finds that the applied-for gTLD <.music> is not identical to the Objector's Marks for reasons discussed above. There are substantial differences with the Marks as registered. However, to the extent that a word mark and a design mark can be compared, the Panel finds that the applied-for gTLD bears similarity to the Marks which incorporate the word "music".

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

On the assumption that the Objector has passed the standing requirement under Section 3.2.2, there is nothing to suggest to the Panel that the Objector's acquisition and use of rights in the relevant Marks have not been *bona fide* for the business activities of the Objector.

**3. 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.**

In so far as the said Marks are considered as combination marks comprising MUSIC and other devices as registered, they stand on the strength of their said distinctive design elements. However, the generic word component "music" cannot relate exclusively to any party.

**4. 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.**

The Applicant has not admitted or denied knowledge of the Objector's marks. However, given the generic nature of the word component "music", the Panel does not consider whether the Applicant had knowledge of the Objector's mark as particularly relevant. There is no evidence to suggest that 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.

**5. 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.**

The sign corresponding to the gTLD is generic and the Applicant intends to use the word "music" in its generic meaning. The Panel therefore finds that the Applicant intends to use the <.music> 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.

**6. Whether the Applicant has marks or other intellectual property rights 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.**

The Applicant bases its case on the argument that the gTLD is generic and descriptive. It does not seek to prove any intellectual property rights.

**7. 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 as "music".



**8. Whether the Applicant's 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.**

Given the generic nature of the sign corresponding to the gTLD <.music>, the Panel finds that there is little or no likelihood of confusion with the Objector as to the source, sponsorship, affiliation, or endorsement of the gTLD.

**Conclusion**

The 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; or

(ii) unjustifiably impairs the distinctive character or the reputation of the Objector's mark; or

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

**7. Decision**

For the above reasons, the Objection is rejected.

[signed]

**C. K. Kwong**

Sole Panel Expert

Date: August 21, 2013

## **ADDENDUM**

### **EXPERT PANEL ORDER NO. 1**

DotMusic Limited vs. .Music LLC

Case No. LRO2013-0063

The Panel has received directly from the Objector a copy of the email from the Objector to the Center of July 17, 2013 attaching thereto an Additional Submission for the Panel's consideration together with its request for leave to file the same.

The Panel further notes the additional submissions of both Parties of July 22, 2013 in addition to the Objector's unsolicited filing of July 17, 2013.

While the Additional Submission is purportedly filed in accordance with Article 17 of Attachment to Module 3 of the Applicant Guidebook, the Panel has not requested any of the parties to make additional submissions.

It is further noted that notwithstanding paragraph 3 of the WIPO Rules for New gTLD which provides that any submission to the Center or to the Panel shall be made by electronic mail (email) using [lro@wipo.int](mailto:lro@wipo.int), the said email and Additional Submission were sent by way of copy to the Panel on the basis that time is of the essence and that such submission have been necessitated by the recent publication of new WIPO case decision(s) with references to <.music>. Further submissions by the parties on July 22, 2013 were made directly to the Panel.

The Panel is of the view that the grounds submitted by the Objector can neither justify (a) the Additional Submission to the extent that the said WIPO cases were decided in their own particular matrix and in any case not binding on other Panels nor (b) justify deviation from the method of communication as expressly prescribed under paragraph 3 of the Rules as aforesaid. The preamble to the New gTLD Dispute Resolution Procedure provides that "These procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Programme, these procedures apply to all proceeding administered by each of the Dispute Resolution Service Providers (DRSP). Each of the DRSPs has a specific set of Rules that will also apply to such proceedings". The Procedures and Rules anticipate one single round of pleadings unless there are special circumstances to justify a departure. New decisions on Legal Rights Objection per se even with passing references to <.music> do not justify or require additional submissions. This should not be encouraged as a matter of policy as otherwise there will be endless rounds of submissions as new decisions are likely to be made on a regular basis, making these proceedings unduly cumbersome for the WIPO Center, the parties and the Panel which cannot be within the spirit of the Procedures. Parties should not be at liberty to improve or amend their cases without compliance with the Procedures and the Rules.

It is further noted that the Additional Submission contains footnotes with prolific references to links which present a nearly impossible task for the Panel and the Applicant to visit and try to ascertain the relevant parts which the Objector may seek to rely on with certainty.

Notwithstanding the above, the Panel has already been put to the task of reading the contents of the body of the Objector's Additional Submission under the force of circumstances. Taking all circumstances into account especially at a time when jurisprudence is developing and as a matter of procedural fairness, the Respondent should be given an opportunity to make submissions in response to the main points made in the Additional Submission if they choose to.

On a separate note, upon reading the case file, it is noted that while the Objector previously requested on April 26, 2013 that correspondence relating to these proceedings be copied to Jason Schaeffer as a person

assisting the Objector, the latter clarified by email on July 10, 2013 that there had been a confusion in the communications and that the original filer of the Objections remained the representative and contact.

In the premises, the following procedural orders are made:-

1. The unsolicited Additional Submission submitted by the Objector on July 17, 2013 will be admitted with the exclusion of all links supplied in the footnotes thereto and the contents of websites to which these links resolve.
2. Noting the Applicant's reply on July 22, 2013, the Applicant may file a Further Response (if any) strictly in reply to the points arising from the contents of the body of the Objector's Additional Submission (excluding the links referred to in the footnotes and contents of the websites to which these links resolve) within 10 days of the date of this Order.
3. The Further Response (if any) under paragraph 2 should be provided by the Applicant to the Center for forwarding to the Panel in electronic form using the email address: [lro@wipo.int](mailto:lro@wipo.int) and copied to the other party simultaneously.
4. No other information or materials except as specifically specified under paragraphs 2 and 3 above should be filed and supplied by any of the parties.
5. No party other than those specifically referred to in these pleadings as their properly authorized representatives should be copied with the communication of these proceedings.
6. In order to accommodate these procedural orders, the Panel reserves its position to extend the time for delivery of the decision herein to 7 days after receipt of the Further Response (if any) from the Applicant as specified in paragraph 2 or the expiry of time of filing the same.

C. K. Kwong  
Panelist  
Dated: July 23, 2013