

**BEFORE THE
BOARD ACCOUNTABILITY MECHANISMS COMMITTEE
OF THE
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

IN RE BOARD ACCOUNTABILITY
MECHANISMS COMMITTEE'S REVIEW
OF .WEB PURSUANT TO BOARD
RESOLUTION 2022.03.10.06

**DECLARATION OF HANNAH
COLEMAN IN SUPPORT OF REPLY
SUBMISSION BY NU DOTCO, LLC AND
VERISIGN, INC. TO BAMC'S REQUEST
FOR BRIEFING PURSUANT TO BOARD
RESOLUTION 2022.03.10.06**

Ronald L. Johnston
Ronald.Johnston@arnoldporter.com
James S. Blackburn
James.Blackburn@arnoldporter.com
Oscar Ramallo
Oscar.Ramallo@arnoldporter.com
Hannah Coleman
Hannah.Coleman@arnoldporter.com
ARNOLD & PORTER
777 S. Figueroa Street, 44th Floor
Los Angeles, California 90017
Tel: 213.243.4000
Fax: 213.243.4199

Counsel to VeriSign, Inc.

Steven A. Marenberg
stevenmarenberg@paulhastings.com
Josh B. Gordon
joshgordon@paulhastings.com
PAUL HASTINGS LLP
1999 Avenue of the Stars, 27th Floor
Los Angeles, California 90067
Tel: 310.620.5700
Fax: 310.620.5899

Counsel to Nu Dotco, LLC

DECLARATION OF HANNAH COLEMAN

I, Hannah Coleman, declare as follows:

1. I am an attorney with the firm of Arnold & Porter Kaye Scholer LLP (“Arnold & Porter”), counsel for VeriSign, Inc. (“Verisign”) in this action. Unless otherwise stated, the facts contained in this declaration are based on my personal knowledge, and if called as a witness, I could and would competently testify thereto.

2. Arnold & Porter, on behalf of Verisign, retained Charles River Associates (“CRA”) to assist in extracting, compiling and analyzing data related to ICANN’s New gTLD Program. All data that CRA extracted is publicly available on ICANN’s website. This declaration summarizes the data outputs from CRA.

Public Comments:

3. Module 1 of the Guidebook provides a mechanism for the public to submit comments on New gTLD Applications. *See* Guidebook, Module 1, at § 1.1.2.3.

4. ICANN’s website on New Generic Top-Level Domains includes a database of all public comments submitted during the Application Comment Forum for New gTLDs (hereinafter referred to as the “Public Comments Database”). The Public Comments Database is publicly available at the following link: <https://gtldcomment.icann.org/applicationcomment/viewcomments>.

5. According to the Public Comments Database (*id.*), ICANN received 12,834 public comments during the Application Comment Forum.

6. CRA extracted the 12,834 comments from the Public Comments Database and isolated the comments that include one or more of the following search terms:

- Competition
- Competitive
- Compete
- Competes
- Antitrust
- Market power

- Monopoly
- Monopolize
- Monopolise
- Monopolistic
- Verisign

7. During the IRP, although apparently now withdrawn, Afilias asserted that ICANN should reject NDC's .WEB Application due to competition concerns with Verisign's potential operation of .WEB. *See, e.g.*, Afilias' Reply Memorial (May 4, 2020), ¶¶ 122–24, 136. Specifically, Afilias alleged that Verisign intends to acquire .WEB to shut down and/or limit its competitive potential. *See, e.g.*, Afilias' Amended IRP Request (Mar. 21, 2019), ¶ 82. Afilias claimed that the public could have raised competition concerns directly to ICANN through the public comment process. *See, e.g., id.* ¶¶ 12, 57. Counsel for Verisign chose the above-listed search terms to identify any public comments that include similar competition-related complaints that Afilias has raised here.

8. Out of the 12,834 total comments, 2,114 comments included one or more of the above-listed search terms.

9. At my direction, a team of Arnold & Porter legal assistants reviewed the 2,114 comments. The legal assistants were instructed to identify comments where the commenter expressed concern that operation by a particular operator would impact competition. Out of the 2,114 comments, the legal assistants isolated under 20 unique¹ comments that fit this criteria. I reviewed this subset of comments and none of these comments asserted that a particular entity's operation of a proposed open gTLD would impact competition.

10. Specifically:

- a. While a number of comments referenced "competition" generally, the vast majority of these comments were complaints related to proposals for "closed" TLDs for generic terms that would not be available for third-party registrations. Other comments expressed concern over applicants' alleged

¹ Some commenters submitted identical comments for different applications and/or applicants.

plans to “price gouge” for domain names within the gTLDs for “defensive” registrations (i.e. registrations to prevent cybersquatting and other misuses of trademarks).

- b. For example, the United States Postal Service (“USPS”) submitted a public comment to Amazon EU S.à r.l.’s application for .MAIL. USPS’s concern was that Amazon, which had applied for 76 new gTLDs, intended to operate .MAIL as a “closed” registry, which meant that “the gTLD [would] not be available for domain name registration by third parties.” *See* Comment from Anne Aikman-Scalese (on behalf of the United States Postal Service) Re: Amazon EU S.à r.l.’s application for .MAIL (dated September 26, 2012), *available at* <https://gtldcomment.icann.org/applicationcomment/commentdetails/10487>. USPS went on to state that “[g]ranting such a large number of new gTLDs to any single Applicant, particularly one with as large a global Internet presence as Amazon, may tend to inhibit competition in the domain name marketplace” *Id.*
- c. Out of the 2,114 comments, there is no evidence that ICANN took these comments into consideration in its review of the applications.

11. CRA also extracted the 1,003 comments submitted by Jeffrey Stoler. This includes comments submitted with respect to the 107 applications where Mr. Stoler commented that Demand Media—the entity allegedly behind 107 Donuts applications—had a disqualifying history of cybersquatting. All 107 applications passed initial evaluation without ICANN mentioning Mr. Stoler’s comments in the published initial evaluation results for those applications, let alone indicating that Mr. Stoler’s comments had impacted ICANN’s scoring for those applications.

Application Updates:

12. ICANN’s website on New Generic Top-Level Domains also includes a database of all New gTLD Applications (hereinafter referred to as the “Applications Database”). The

Applications Database is publicly available at the following link: <https://gtldresult.icann.org/>. The database also includes summaries of any updates that the applicant made to the application.

13. According to the Applications Database (*id.*), ICANN received 1,930 applications as part of the New gTLD Program. Of the 1,930 total applications, 1,571 applications included one or more updates. *Id.* (filter by Updates: Has Updates).

14. CRA extracted the 1,930 applications from the Applications Database. CRA ran searches on the 1,930 applications to isolate the applications that included updates to one or more of the following application questions: 1, 8(a), 9(a), 9(b), 9(c), 11, 18(a), 18(b), 31 and 45.

15. During the IRP and in its Opening Submission to the BAMC, Afilias alleges that ICANN should reject NDC's .WEB Application because NDC did not "modify or update its application in any respect after its initial submission in 2012." Afilias' Opening Submission (July 29, 2022) ¶ 64; *see also id.* ¶¶ 58–64, 123–28. Specifically, Afilias alleges that NDC's responses to Question 11 ("Applicant Background") and Question 18 ("Mission/Purpose") were not accurate in light of the DAA. *Id.*

16. Counsel for Verisign chose the above-listed application questions to isolate updates that potentially concerned: 1) a change in management or ownership of the applicant, or 2) a change in the mission/purpose of the application. In addition to isolating updates to Questions 11 and 18, CRA also ran searches for the following application questions that have the potential of including information relevant to categories 1 & 2 above:

- a. Question 1: "Full legal name"
- b. Question 8(a): "Legal form of the Applicant"
- c. Question 9(a): "If the applying entity is a subsidiary, provide the exchange and symbol"
- d. Question 9(b): "If the applying entity is a subsidiary, provide the parent company"
- e. Question 9(c): "If the applying entity is a joint venture, list all joint venture partners"

- f. Question 31: “Technical Overview of Proposed Registry”
- g. Question 45: “Financial Statements”

17. CRA identified 1,164 applications that included updates to Question 11, Question 18, or the questions in a.–g., above. The Applications Database indicates that ICANN accepted each of the requested updates, and there is no evidence that ICANN rejected any of the applications based on applicant updates to previous responses to these questions.

18. CRA also ran a search on all applications with updates to isolate the applications where ICANN included a notation in the application summary that there was a “re-evaluation.” Only 36 applications included notations to a “re-evaluation.” Out of the 36 applications with “re-evaluation” notations, there is only one instance where ICANN did not approve the application. In this instance, TATA Sons Limited applied for .TATA. In the Extended Evaluation Report, ICANN determined that the application was ineligible for further review. *See* TATA Extended Evaluation Report (January 13, 2017), available at <https://newgtlds.icann.org/sites/default/files/ee/te3woafroespou7oad0ufi6/ee-1-1720-93817-en.pdf>. The Geographic Names Panel determined that TATA Sons Limited’s application “falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4,” and that “the required documentation of support or non-objection was either not provided or did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook.” *Id.* ICANN approved the applications for the remaining 35 applications.

GAC Early Warning Notices:

19. Module 1 of the Guidebook provides a mechanism for ICANN’s Governmental Advisory Committee (GAC) to issue a “GAC Early Warning notice” concerning an application. *See* Guidebook, Module 1, at § 1.1.2.4.

20. ICANN’s website on New Generic Top-Level Domains includes a database of all GAC Early Warning Notices submitted during the Application Comment Forum for New gTLDs (hereinafter referred to as the “GAC Early Warning Database”). The GAC Early Warning

Database is publicly available at the following link: <https://gac.icann.org/activity/gac-early-warnings>.

21. CRA extracted all GAC Early Warning Notices and isolated the notices that include one or more of the following search terms:

- Competition
- Competitive
- Compete
- Competes
- Antitrust
- Market power
- Monopoly
- Monopolize
- Monopolise
- Monopolistic
- Verisign

22. Counsel for Verisign chose these search terms to identify any GAC Early Warning Notices that include similar competition-related complaints that Afilias has raised here (*see supra*, ¶ 7). During the IRP, Afilias claimed that GAC could have raised competition concerns directly to ICANN through the GAC Early Warning mechanism. Afilias' Response to *Amici* Briefs (July 24, 2020), ¶ 108.

23. CRA identified 113 GAC Early Warning Notices that included one or more of the above-listed search terms. Australia submitted 82 of the Notices; France submitted 13; Germany submitted 9; Mali submitted 5; Samoa submitted 3; and Switzerland submitted 1.

24. I reviewed the 113 Notices and concluded the following:

- a. While GAC members expressed concerns about consumer protections, delegation of TLDs for highly regulated industries (e.g., medicine), and other similar concerns, GAC members never objected to a TLD application based on the type of competition concerns raised by Afilias here.
- b. Specifically, no GAC member objected to the operation of a proposed open TLD by a particular applicant on the grounds that it allegedly would impact competition in the TLD market.

- c. GAC members never objected to any of Verisign's (VeriSign, Inc. and VeriSign Sarl) gTLD applications: 大拿, 點看, कॉम, 닷넷, नेट, கௌ, KOM, 点看, קום, 닷컴, كوم, コム, COMSEC, or VERISIGN.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 29, 2022, in Los Angeles, California.



Hannah Coleman