

1 **Case Number: 01-14-0001-6263 [Donuts Inc.-vs- Internet**
2 **Corporation for Assigned Names and Numbers (ICANN)]**

3 **PROCEDURAL ORDER NO. 1**

4 **Issued July 17, 2015**

5 1. The instant proceeding is an Independent Review Procedure (IRP) administered by the ICDR.

6 2. This Order follows an organizational meeting among the Tribunal and the Parties’
7 representatives. It was conducted by telephone on July 14, 2015, between 10 and 11:30 am
8 (Pacific Time).

9 3. The Parties are:

10 Donuts Inc. (Donuts), and

11 Internet Corporation for Assigned Names and Numbers (ICANN).

12 4. The Tribunal consists of Philip W. Boesch, Jr., Jack J. Coe, Jr. (Chair), and Rayner M.
13 Hamilton.

14 5. Each Tribunal member is to be and remain independent and impartial.

15 6. The Parties are represented as follows:

16 Donuts: by Messrs. John M. Genga and Don C. Moody of the IP & Technology Legal Group,
17 Sherman Oaks, CA.

18 ICANN: by Mr. Jeffrey A. LeVee and Ms. Charlotte S. Wasserstein of Jones Day, Los
19 Angeles, CA.

20 7. The Parties have made the following written submissions on the merits:

21 Donuts filed a Request for Independent Review dated October 8, 2014, and supporting
22 materials (supplied by several digital links) (“the Request”).

23 ICANN filed a Consolidated Response to Donuts’ Request dated November 14, 2014, and
24 supporting materials (in a separate pdf)(“the Response”).

25 8. The governing procedural rules are the ICDR Arbitration Rules (as amended and effective
26 June 1, 2014) as augmented by the ICDR Supplementary Procedures for the ICANN Independent
27 Review Process (published 2011)(Supplementary Procedures).

28 Any inconsistencies between these two texts shall be addressed in accordance with Rule 2 of
29 Supplementary Procedures. The Supplementary Procedures may be interpreted in light of Article
30 IV of the ICANN Bylaws.

31 The Parties may agree that other texts shall guide the Tribunal; the Tribunal will give any such
32 agreement due consideration. A Party may also individually suggest for consideration other
33 texts.

34 9. The Tribunal's mandate is as described in Rule 8 of the Supplemental Procedures.

35 10. Concerning the scope of the matters before the Tribunal, the Tribunal notes the following:

36 Pursuant to the Parties' stipulations (made at the telephone conference call of July 14, 2015)
37 the petition for emergency relief made by Donuts, dated October 8, 2014, is not before this
38 tribunal.

39 Pursuant to representations made by Mr. Genga (made at the telephone conference call of July
40 14, 2015) the Tribunal understands that this IRP no longer extends to rulings regarding the
41 gTLD ".SKI" and alleged ICANN Board actions or inactions related thereto.

42 11. Any further exchanges of documents and other information between the Parties should occur
43 through cooperation and in the manner set forth in Article 21 of the ICDR Rules.

44 12. The Parties are invited to make further written submissions as follows:

45 **Donuts:** On or before August 6, 2015, by 5pm (Pacific Time), Donuts will file a supplemental
46 memorandum. It should not exceed 20 pages but in other respects will be in accordance with
47 Rule 5 of the Supplementary Procedures.

48 The scope of Donuts submission should be limited to responding to positions set forth in
49 ICANN's Consolidated Response of November 14, 2014 to the extent they are not fully
50 addressed in Donuts' Request.

51 Donuts submission may also acquaint the Tribunal with sources and precedent not previously
52 examined in the Request.

53 **ICANN:** On or before August 26, 2015, by 5pm (Pacific Time), ICANN will file a
54 supplemental memorandum that responds to Donuts' supplemental memorandum. It should
55 not exceed 20 pages but in other respects will be in accordance with Rule 5 of the
56 Supplementary Procedures.

57 The scope of the ICANN submission should be limited to addressing positions set forth in
58 Donuts' supplemental filing, to the extent they are not fully addressed in ICANN's
59 Consolidated Response.

60 ICANN's submission may also acquaint the Tribunal with sources and precedent not
61 previously examined in the initial round of submissions, including but not limited to those
62 introduced by Donuts in its supplemental memorandum.

63 In relying on legal theories and related authority, the Parties should consider whether
64 preliminary governing law issues are presented, and should guide the Tribunal accordingly.

65 The Tribunal will grant extensions of time, or relax format limitations, only for specific and
66 compelling reasons.

67 Each supplemental pre-Hearing submission invited above should be as complete as the
68 proffering Party can make it. No written submission on the merits or supporting documents
69 should be proffered subsequent to the filings contemplated above.

70 The Tribunal does not expect to authorize post-Hearing briefs.

71 9. Hearing for Argument: The Parties are requested to confirm their availability for a one-day
72 Hearing during which they will present oral argument and respond to Tribunal questions. (The
73 Tribunal expects that less than one full day, total, will be required to hear both Parties). The
74 proposed dates fall in the following two week span: September 14-19 and 21-26, 2015.

75 10. Communications to or from the Tribunal may be made directly by email. Any such
76 communication to the Tribunal should be addressed to all of its members; any such
77 communications should also be copied to Case Administrator and to the Counter-Party. The
78 Tribunal may from time to time communicate information to the Parties with the assistance of
79 the Case Administrator, rather than directly.

80 The parties shall not engage in any form of ex parte contact with any Tribunal member, unless
81 authorized to do so by the ICDR Rules or by the Tribunal.

82 *Jack J. Coe, Jr*

83 Chair, for the Tribunal