

## AC CHAT

### New gTLD Subsequent Procedures Sub Team – Track 3 - String Contention, Objections & Disputes- Wednesday, 20 December 2016 at 20:00 UTC

Nathalie Peregrine: Welcome to the New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes call on the 20th December 2016 at 21:00 UTC

Nathalie Peregrine: Meeting Page: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_x\\_OJPDaw&d=DglFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd\\_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM\\_uTSDzggG&m=TfkF3s7Ox5CiQdEY\\_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=YLm9q9DcTPDAKk9WkgjTF3B-AuR3i7BTm4vDIgAZF\\_k&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_OJPDaw&d=DglFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsvXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=TfkF3s7Ox5CiQdEY_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=YLm9q9DcTPDAKk9WkgjTF3B-AuR3i7BTm4vDIgAZF_k&e=)

Paul McGrady: Avri & Cheryl, I hope you enjoyed your 23 free minutes today. I did. :)

avri doria: Paul did not know what to do with my time.

Paul McGrady: Happy to walk through it. It is meant only to spark discussion - :)

Cheryl Langdon-Orr (CLO): paul

Cheryl Langdon-Orr (CLO): /Avri

Karen Day: silence will be taken as agreement :)

Cheryl Langdon-Orr (CLO): I am baby sitting so I was kinda occupied ;-)

Gg Levine (NABP): "Universally" seems unrealistic as an alternative to "generally."

Cheryl Langdon-Orr (CLO): thx Alan

Kiran Malancharuvil: Robin, can you explain more about why ALAC would have standing? and why icann said no?

Karen Day: +1 Gg - i

Karen Day: universal isn't realistic so is there anything better than generally?

Gg Levine (NABP): Sorry, I don't have a better suggestion than generally.

Cheryl Langdon-Orr (CLO): access to funding for an objection

Karen Day: Gg - Me either so absent anyone coming up with one, looks to me like "generally" is what we'll need to stick with.

Greg Shatan: Maybe the intent was to allow ALAC to object only where they had standing.

Annebeth Lange, ccNSO: Good points from Alan here. ALAC is representing the users, even if it is difficult to prove.

Cheryl Langdon-Orr (CLO): that was the rationale for being funded to object Yes Annabeth

Karen Day: Jeff posted an opinion to the list, perhaps he can speak to it when he joins the call.

Paul McGrady 2: Apologies if this has already been asked, but were there times when ALAC filed an objection on a string that the I.O. didn't object to?

Kiran Malancharuvil: I'm okay with standing for alac if the objection process requires alac to justify why this is on behalf of users

avri doria: lots of things may not have appeared clear to the panelists all along the way.

avri doria: by default however, it will stand as it is.

Greg Shatan:Did ALAC analyze the standing issue before filing the objections? Or was it just assumed that there would be standing?

Alan Greenberg:disconnected

Greg Shatan:Maybe we need a Co-Dependent Objector....

Alan Greenberg:Can I please have a dialout to +1 514 487 9001

Karen Day:@Greg - we're looking at doing deeper research in the objections themselves and if we get it lined up we will definately add this question as one to include.

Paul McGrady 2:@Avri- thanks. Good things to think about.

Kiran Malancharuvil:how would you ever solve for that?

Kiran Malancharuvil:sorry, not on audio

Paul McGrady 2:Isn't the WHO an end user? Can't an end user ask the ALAC for help? I guess I don't see the gaming.

Kiran Malancharuvil:agree

avri doria:i think the notion of gaming and esepcially accusations of gaming are pernicious and should be avoided as much as possible.

Cheryl Langdon-Orr (CLO):agree

avri doria:judging the intentionality of others is really hard.

Annebeth Lange, ccNSO:@Avri - agree

Greg Shatan:WHO is an IGO and thus aligned more with the GAC, but I suppose we could also call them an end-user.

Alan Greenberg:Note that Jeff made it clear he was taking off his chair hat and speaking with relation to one of the applicants. (If I remember correctly).

Alan Greenberg:We did not class WHO as an end user, but as a group that alerted us to an end-user issue.

Kurt Pritz:(1) I found 23 Limited Public Interest Objections - all seem bona fide except of course, we cannot tell with the Independent Objector or ALAC; (2) Everyone has standing to file a Limited Public Interest Objection, ALAC file one and withdrew it (although I do not know why) so why was ALAC denied standing?

Kiran Malancharuvil 2:I honestly don't understand how we can call anything gaming. This is an open process. Organizations have every right to engage in the process

Kiran Malancharuvil 2:I think there's a tendency at ICANN to devalue certain voices (corporations, organizations, etc.) and I think that's dangerous. Multi-stakeholder is multi-stakeholder

Annebeth Lange, ccNSO:For me, gaming is something very different from what we are talking about now. I must be allowed to make a stakeholdergroup aware of a problem.

Paul McGrady 2:@Annebeth - agree. "Gaming" is something sinister. End Users making ALAC aware of a concern is not.

Phil Buckingham:+1 Annabeth.

Steve Chan:The resources that Robin has and will be referencing are available on the Wiki here: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_community.icann.org\\_x\\_Vz2AAw&d=DglFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd\\_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM\\_u](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_Vz2AAw&d=DglFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_u)

[TSDzggG&m=TfkF3s7Ox5CiQdEY\\_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=ja-8ej\\_g29oDcdLP274quO-0lehuCdPg14kAXE6pl0&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_purses.coach_&d=DgIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=TfkF3s7Ox5CiQdEY_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=XL_iWxVNjiaMgzJ7G5bk7ynjU_AkiTosvLVUTIKP4VE&e=)

Kurt Pritz:Are there any decisions where we thought the panel incorrectly found for the applicant?

Kurt Pritz:evidently not working

Nathalie Peregrine:@ Kurt, I can dial out to you if you prefer

Kurt Pritz:i'll try later

Paul McGrady 2:Bad faith can only be inferred from the facts - unless a party admits to it - so we need more inference points.

avri doria:i think trying to decide that a decision of a panel was right or wrong is tough since there are two sides, at least, to each of the cases. we can mre look for places where different panels seemed to decide similar cases in a contradictory manner.

Kurt Pirtz:Abuse or infringement is generally demonstrated through use and there is no "use" at the application stage. (As Paul said.) But we should take care not to make a process that is more easily winnable just to balance out the results. There should be real infringement before an application is defined.

Paul McGrady 2:I think abuse can be shown without use as can dilution; infringement is based on use though.

Kurt Pirtz:Has the delegation of .coach or .express resulted in abuse?

Paul McGrady 2:[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_purses.coach\\_&d=DgIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd\\_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM\\_uTSDzggG&m=TfkF3s7Ox5CiQdEY\\_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=XL\\_iWxVNjiaMgzJ7G5bk7ynjU\\_AkiTosvLVUTIKP4VE&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_purses.coach_&d=DgIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=TfkF3s7Ox5CiQdEY_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=XL_iWxVNjiaMgzJ7G5bk7ynjU_AkiTosvLVUTIKP4VE&e=) leads to PPC ads, so yes.

Paul McGrady 2:@Robin, we should be careful with throwing around terms like "generic."

Kurt Pirtz:Then the RPM can be used with that specific example for purse.coach but all legitimate uses of a .coach name should not be barred

Nathaniel Edwards:Yes, but because a trademark is a dictionary term does not mean that it is not an arbitrary or fanciful trademark entitled to broad protection. GOOGLE had a dictionary meaning before it was a trademark.

Greg Shatan:wallets.coach and handbags.coach do the same. Feh.

Paul McGrady 2:Dictionary entry does not = generic.

Rubens Kuhl:Google did not. Googol did.

Alan Greenberg:Rubens is right.

Paul McGrady 2:I am happy to walk through my strawman now

Annebeth Lange, ccNSO:A trademark can be degenerated, and a generic name can be a trademark, so we must be careful here

Rubens Kuhl:What a Googol is: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_en.wikipedia.org\\_wiki\\_Googol&d=DgIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd\\_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM\\_uTSDzggG&m=TfkF3s7Ox5CiQdEY\\_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=9t4JS2txguH5xd2GmQetSE4wLQ08WYN8JkzH6jUkYW4&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_en.wikipedia.org_wiki_Googol&d=DgIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbecsvLhgsyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=TfkF3s7Ox5CiQdEY_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=9t4JS2txguH5xd2GmQetSE4wLQ08WYN8JkzH6jUkYW4&e=)

Alan Greenberg:10 ^ 100

Alan Greenberg:Invented by mathematician Edward Kasner's newpgeew as a name for a REALLY big number.

Alan Greenberg:Have to leave now. Good meeting.

Greg Shatan:Looks like all of those (bags.coach, too) are owned by Coach. Apparently registered defensively. Coincidence or business plan?

avri doria:Again, indicating intentions is risky.

Greg Shatan:After 7 or 8 tries (no football.coach, basketball, baseball, college, etc.) I found a legitimate use of coach! [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.fitness.coach\\_&d=DgIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd\\_FX3f4MVgkEli9GHvVoUhbcsvLhgysyXrxgtbL10DTBs0i1jYiBM\\_uTSDzggG&m=TfkF3s7Ox5CiQdEY\\_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=ulaFjuYDS69jDtOheOEDOL1YZoGhPoMqEFvnhPA2KDk&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.fitness.coach_&d=DgIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=PDd_FX3f4MVgkEli9GHvVoUhbcsvLhgysyXrxgtbL10DTBs0i1jYiBM_uTSDzggG&m=TfkF3s7Ox5CiQdEY_OQOHiomC5Bq8BSvdcr2FZRZHHY&s=ulaFjuYDS69jDtOheOEDOL1YZoGhPoMqEFvnhPA2KDk&e=)

Greg Shatan:Googol is not Google. But under a trademark infringement analysis, would probably be barred if used on related goods or services.

Robin Gross:We are over time, so need to close up now, folks.

Greg Shatan:A trademark by definition is not a generic name. And I've never heard the term "degenerated" applied to a trademark; perhaps something's been lost in translation.

Cheryl Langdon-Orr (CLO):great work Paul good food for thought... I am sorry but I have to leave now for my NEXT ICANN call... Seasons Greetings to you all... Bye for now

Greg Shatan:Time for the orchestra to start playing....

Annebeth Lange, ccNSO:Very good work, Paul

Paul McGrady 2:Sorry for going over all!

Annebeth Lange, ccNSO:Happy holidays everyone.

Karen Day:Thanks everyone for your contributions today! Happy Holidays!

Greg Shatan:Happy Holidays!

Rubens Kuhl:Happy Holidays!