

From: Burr, Becky [Becky.Burr@wilmerhale.com]
Sent: Monday, December 06, 2010 2:14 PM
To: John Jeffrey
Cc: rita.rodin@skadden.com; ray.plzak@icann.org;
ram.mohan@icann.org; dennis.jennings@icann.org
Subject: RE: Reconsideration 10-2; Meeting Sunday 5 December 2010

John:

I wanted to respond directly to your email of December 5, 2010, and specifically with respect to your proposal for a "mediation" between representatives of the Coalition and Employ Media. Until our conference call with Gary Anderson on the Tuesday before Thanksgiving, the Coalition never understood that the meeting you proposed in early October was intended to serve the mediation of a commercial dispute between the Coalition and Employ Media. As I recall, you proposed this meeting because Employ Media had stated that the Coalition's opposition to the Employ Media Phased Allocation Program resulted from the Coalition's "misunderstanding" about the Program. To be sure, while the Coalition was certainly willing to hear Employ Media out on the alleged misunderstanding, the Coalition never contemplated that mediation was the proper mechanism given the significant .JOBS Charter compliance questions at issue in Reconsideration Request 10-2. The notion is further confusing given your request that we submit a formal letter requesting a meeting of the parties -- which is set forth in my November 15th letter to you -- if you believed this meeting was to be mediation between Employ Media and the Coalition that was separate from the reconsideration process.

I found your assertion that this is merely a commercial dispute between Employ Media and the Coalition surprising and worrisome, given the fact that the BGC members indicated yesterday that they were still reviewing the materials and the Committee has not completed its work on the Reconsideration.

Moreover, the Coalition strongly disagrees with your assertion that this is a mere dispute that should be handled "in a different forum other than in the Reconsideration Process." In fact, as set forth in our numerous submissions, the seminal issue is a matter of compliance with the .JOBS Charter. The Coalition's position is that in approving the Phased Allocation Program, the Board relied on ICANN Staff prep materials and assertions that failed to convey how the Program clearly violated the terms of the Charter. Moreover, the significance of the

Charter compliance issue is underscored by the questions posed by the BGC to both Employ Media and SHRM. For example, in Questions # 7 and 9 to SHRM, the BGC asked the following questions:

Question 7: "Did the SHRM PD Council intend to enable the Registry (Employ Media) to register domain names in the .JOBS sTLD for the purpose of allowing third-party job postings on those sites? If so, please explain how this consistent with the .JOBS Charter."

Question 9: "Are independent job site operators (such as Monster.com) engaged in "human resources management" for the purpose of the definition set forth in the .JOBS Charter if the job site operator is advertising for jobs outside its own organization?"

Because Employ Media's compliance with the .JOBS Charter is the primary issue of the Coalition's Reconsideration request, it is not clear what value mediation might serve. Clearly, the parties would not have any authority to make any type of binding agreement with respect to the Charter. For example, the parties certainly could not negotiate an agreement that is outside the .JOBS policy development process and/or would violate the terms of the .JOBS Charter. Simply put, the Coalition has no authority to enforce the Charter, other than to follow ICANN's prescribed reconsideration process through which it has provided the BGC and ICANN with numerous facts supporting the Coalition's position the Program violates the fundamental principles of the Charter.

In sum, this issue is properly brought as a request for reconsideration under Article IV, Section 2 of ICANN's bylaws, since the Coalition has established that "one or more actions . . . of the ICANN Board have been taken . . . without consideration of material information" The record is very clear that no one is enforcing compliance with the .JOBS Charter. Employ Media has indicated that it intends to proceed with the Program under the authority granted to it by ICANN and SHRM, and it fact is implementing the Phased Allocation Program notwithstanding the pendency of this Reconsideration. ICANN is accountable to the members of the Internet community and has been entrusted with the responsibility for ensuring that the tenets of the .JOBS Charter are upheld. This accountability is exercised through, and perfectly suited for, the reconsideration process. If the Coalition determines that the reconsideration review turns out to be a fatally flawed process, we reserve our right to seek any and all other remedies.

Regards,

Becky

J. Beckwith Burr | WilmerHale
1875 Pennsylvania Avenue NW
Washington, DC 20006 USA
+1 202 663 6695 (t)
+1 202 663 6363 (f)
becky.burr@wilmerhale.com

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