



The Internet Corporation for Assigned Names and Numbers

11 December 2014

Merck & Co., Inc.
Attn: Ms. Rashi Rai (primary contact)
Associate Director
One Merck Drive
Whitehouse Station, New Jersey
08889 United States

Merck KGaA
Attn: Mr. Torsten Bettinger (primary contact)
Bettinger Schneider Schramm
Partner
Mittenwalder Strasse 42
Munich
81377 Germany

Dear Ms. Rai and Mr. Bettinger:

I am writing to Merck & Co., Inc. and Merck KGaA in regard to your respective applications to The Internet Corporation for Assigned Names and Numbers (ICANN) for new Top Level Domains. ICANN welcomes that fact that each of your companies applied for new gTLDs. We recognize that both companies are well respected in their various jurisdictions, and we have enjoyed working with your respective teams. We also recognize however, as referenced below, that your companies have a complicated history and relationship.

As you know, Merck & Co., Inc., based in the United States, has applied for .MSD, .MERCKMSD, and .MERCK. Of those three applications, .MSD is in contracting, but .MERCKMSD and .MERCK are on hold.

Merck KGaA, based in Germany, has applied for .EMERCK and .MERCK. ICANN has delegated .EMERCK, but the application for .MERCK is on hold.

The applications mentioned above as being on hold currently are the subject of an Independent Review Proceeding that Merck KGaA has filed.

Although ICANN makes every effort to accommodate applicants and the legal issues that arise in conjunction with their applications, ICANN has become increasingly concerned about the unique disputes related to your respective applications for .MERCK. These disputes have

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nothing to do with ICANN, but instead relate to the long and complex relationship between your respective companies. The materials that your companies have submitted to ICANN indicate that your companies have been litigating issues related to your respective rights for several decades, and there seems to be little hope of any comprehensive resolution. The problem for ICANN, of course, is that your companies have now caused ICANN to be in the middle of your long-running disputes, a place where ICANN does not belong. Merely by being caught in the middle, ICANN has been forced to devote substantial resources and incur considerable legal fees. Further, it appears ICANN will be required to expend a significant amount of additional fees and resources before this matter is resolved.

When you applied for a new gTLD, each of you agreed to the terms and conditions set out in the new gTLD Applicant Guidebook. Paragraph 3 of Module 6 of the Guidebook (<http://newgtlds.icann.org/en/applicants/agb>) states as follows:

Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

ICANN staff is giving serious consideration to invoking Paragraph 3 of Module 6 of the Guidebook, and recommending to the ICANN Board New gTLD Program Committee (NGPC), which has the full authority of the Board in this matter, that ICANN not proceed with either of your applications for .MERCK. We intend to make the final decision whether to recommend that ICANN invoke this provision by 5 January 2015. If you have any comments that you would like ICANN to consider in this regard, please provide them to us by 23 December 2014. We would be particularly interested in whether your respective companies believe that there is any way for you to work collaboratively with respect to the .MERCK gTLD or otherwise find a mechanism by which ICANN would be able to avoid being in the middle of your disputes. Further, if you believe that there is a possibility of cooperation between your organizations, ICANN would be happy to do what we can to facilitate a face-to-face discussion between representatives of each of your organizations.

If we elect not to proceed with the applications, ICANN will return to each of you a pro-rated amount of your Application fees that allows ICANN to recover its costs of processing these applications.



We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Akram Atallah", with a long horizontal flourish extending to the right.

Akram Atallah
ICANN
President, Global Domains Division