

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

Gulf Cooperation Council (GCC)

Gulf Cooperation Council Building

Contact Information
Redacted

(Claimant)

v.

**Internet Corporation for
Assigned Names and Numbers
(ICANN)**

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

(Respondent)

ICDR Case No. _____

**CLAIMANT GULF COOPERATION COUNCIL'S REQUEST FOR EMERGENCY
ARBITRATOR AND
INTERIM MEASURES OF PROTECTION**

Akin Gump Strauss Hauer & Feld LLP

Counsel for Claimant GCC

I. INTRODUCTION

1. Claimant, the Gulf Cooperation Council (the “GCC”), is a political and economic alliance of six Arab nations that border the Gulf: (1) United Arab Emirates (“UAE”); (2) Saudi Arabia; (3) Kuwait; (4) Qatar; (5) Bahrain; and (6) Oman. Among other things, the GCC promotes the cultural and geographic beliefs these Arab nations share, including the one that the Gulf’s correct name is the “Arabian Gulf.” Not surprisingly, the GCC strongly opposed the generic top-level domain (“gTLD”) application for .PERSIANGULF. Despite the GCC’s opposition, Respondent Internet Corporation for Assigned Names and Numbers (“ICANN”) approved the .PERSIANGULF gTLD. ICANN intends to sign a registry agreement for that gTLD imminently.

2. ICANN’s decision to register the .PERSIANGULF gTLD violates ICANN’s promises outlined in its Bylaws, Articles of Incorporation, and gTLD Applicant Guidebook to: (1) respect geographic sensitivities; (2) heed the informed opinion on public policy issues; and (3) operate in a fair and non-discriminatory manner. GCC therefore has sought an independent review of ICANN’s decision.

3. But the independent review process¹ (“IRP”) is just under way. Because an IRP Panel has not yet been selected, and because ICANN has not yet formed a standing panel, ICANN can render the GCC’s IRP request moot by simply signing the registry agreement for .PERSIANGULF—which it intends to do any day—before an IRP Panel is selected. To ensure a meaningful opportunity for an independent review, the GCC now invokes Articles 6 and 24 of the ICDR Rules to seek: (a) timely appointment of an Emergency Arbitrator to hear its request for emergency relief to preserve its right to a meaningful independent review; and (b) an order

¹ The GCC filed its notice and request for independent review on December 5, 2014. The GCC, through counsel, notified ICANN of this request for emergency relief, as required by Article 6 of the ICDR Rules.

enjoining ICANN from executing the .PERSIANGULF registry agreement while the GCC's IRP request is ongoing.

II. BACKGROUND OF THE DISPUTE

a. ICANN Promises to Apply Its Policies Consistently to Ensure Fairness.

4. ICANN promises to operate for the benefit of the Internet community while acting in conformity with its Bylaws, Articles of Incorporation, and other guidelines.² To do so, "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness."³ To ensure consistency and fairness, ICANN promises to make decisions by applying documented policies neutrally and objectively.⁴ ICANN also promises to "duly tak[e] into account governments' or public authorities' recommendations"⁵ and to cooperate with the relevant international organizations.⁶ And ICANN promises to not apply its policies inequitably or to single out any particular group for disparate treatment.⁷

5. When implementing the New gTLD Program, ICANN's Governmental Advisory Committee ("GAC") issued additional principles, beyond the general ones in ICANN's Bylaws and Articles of Incorporation, that are specific to the new gTLDs.⁸ GAC, which was formed to advise ICANN on government concerns relating to public policy matters,⁹ created these principles with ICANN's Bylaws and Articles of Incorporation in mind.¹⁰

² ICANN's Articles of Incorporation [<https://www.icann.org/resources/pages/articles-2012-02-25-en>] at Art. 4.

³ ICANN's Bylaws [<https://www.icann.org/resources/pages/bylaws-2012-02-25-en>] at Art. 3, § 1.

⁴ *Id.* at Art. 1, § 2.

⁵ *Id.* at Art 1. § 2.

⁶ ICANN's Articles of Incorporation at [<https://www.icann.org/resources/pages/articles-2012-02-25-en>] Art. 4.

⁷ ICANN's Bylaws [<https://www.icann.org/resources/pages/bylaws-2012-02-25-en>] at Art. 1, § 3.

⁸ *See* Annex 1 [March 28, 2007 GAC Principles Regarding New gTLDs].

⁹ *Id.* at 2.2.

¹⁰ *Id.* at 1.4.

6. Of particular importance here, the GAC-created gTLD principles caution that when ICANN considers the introduction, delegation, and operation of new gTLDs, ICANN must respect the sensitivities regarding such gTLDs containing terms with national, cultural, geographic and religious significance.¹¹ The GAC principles also warn ICANN to avoid country, territory or place name *unless in agreement with the relevant governments or public authorities*.¹²

b. The .PERSIANGULF gTLD Represents the Latest Attempt to Impose the “Persian Gulf” Name on the World.

7. Asia Green IT System Bilgisayar San. Ve. Tic. Ltd. Sti. (“Asia Green”), a Turkish corporation, applied for the .PERSIANGULF gTLD.¹³

8. The .PERSIANGULF application claims it will unite people across the globe, all of whom have ties to the Gulf region.¹⁴ However, of the Gulf bordering nations, only Iran, the *sole* non-Arab nation that borders the Gulf, uses the term “Persian Gulf.” In fact, the correct name of the Gulf region has been disputed for more than 50 years. The Arab nations that border the Gulf and prefer the name “Arabian Gulf.”

9. Iran has gone to great lengths to make its insistence upon the “Persian Gulf” name known. Iran has: (1) threatened to ban commercial airlines from landing in Iran or using Iranian airspace if they refer to the Arabian Gulf;¹⁵ (2) refused to allow Iranian soccer players to

¹¹ *Id.* at 2 & 2.1(b).

¹² *Id.* at 2.2 (emphasis added).

¹³ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination (Oct. 30, 2013)] at ¶ 2.

¹⁴ See Annex 3 [July 8, 2012 .PERSIANGULF Application] at 18A.

¹⁵ See Annex 4 [*Iran threatens airline ban over “Arabian Gulf” tag*, REUTERS (Feb. 22, 2010), <http://www.reuters.com/article/2010/02/22/us-iran-arabs-airlines-idUSTRE61L2EI20100222> (last visited Dec. 2, 2014)].

play in the Arabian Gulf League;¹⁶ and (3) banned the National Geographic atlas for listing Arabian Gulf in addition to “Persian Gulf,” and *The Economist* magazine for simply referring to the body of water as “the Gulf.”¹⁷ Consistent with its prior insistence, Asia Green, which is founded by Iranian nationals, will not allow anyone who disavows the Persian Gulf name, (i.e. the Arab community) to register a domain name on the .PERSIANGULF gTLD.¹⁸

c. The GCC Strongly Opposed the .PERSIANGULF gTLD Application because it is a Disputed Geographic Name and Lacks Community Support.

10. Concerned about the possible issuance of the .PERSIANGULF gTLD, the UAE wrote to ICANN and GAC to raise its disapproval and non-endorsement of the .PERSIANGULF gTLD application.¹⁹ The governments of Oman, Qatar, and Bahrain also wrote to ICANN and GAC, raising identical concerns.²⁰

11. Soon thereafter, ICANN issued an Early Warning Notice advising ICANN that the GCC finds the .PERSIANGULF gTLD problematic as it refers to a disputed name and lacks community involvement or support.²¹

12. The GCC also filed a Community Objection to the .PERSIANGULF application.²² In that Community Objection, the GCC again highlighted the Gulf-name dispute and cautioned

¹⁶ See Annex 5 [James M. Dorsey, *Gulf rivalry between Iran, UAE transferred to the football pitch*, HURRIYET DAILY NEWS (Jul. 29, 2013), <http://www.hurriyetdailynews.com/gulf-rivalry-between-iran-uae-transferred-to-the-football-pitch.aspx?pageID=238&nID=51560&NewsCatID=364>].

¹⁷ See Annex 6 [Megan K. Stack, *Iran’s Anger Over a New Map Magnifies a Perception Gulf*, LA TIMES (Dec. 2, 2004), <http://articles.latimes.com/2004/dec/02/world/fg-gulfwar2> (last visited Dec. 2, 2014)]; and Annex 7 [*Iran bans The Economist for publishing map depicting ‘the Gulf,’ instead of Persian Gulf*, USA TODAY (Jun. 14, 2006), http://usatoday30.usatoday.com/news/world/2006-06-14-economist_x.htm].

¹⁸ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination (Oct. 30, 2013)] at ¶ 22.

¹⁹ See Annex 8 [October 14, 2012 letter from UAE Director General to ICANN and GAC] (emphasis added).

²⁰ See Annexes 9–11 [October 22, 2012 Letter from Bahrain General Director to ICANN and GAC; October 23, 2012 Letter from Qatar Secretary General to ICANN and GAC; and October 2012 Letter from Oman Chief Executive to ICANN and GAC].

²¹ See Annex 12 [November 20, 2012 GAC Early Warning for .PERSIANGULF].

²² See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination (Oct. 30, 2013)] at ¶ 2.

that ICANN not “bring this dispute into the cyber world and by doing so give credence to one side over the other.”²³ The GCC also cautioned that use of .PERSIANGULF “is likely to increase the possibility of social unrest in the Arabian gulf region.”²⁴

13. During the April 11, 2013 GAC Committee Meeting, GAC advised ICANN not to proceed beyond initial evaluation with the .PERSIANGULF gTLD application.²⁵ At the following GAC Committee Meeting in July, GAC again noted “members from UAE, Oman, Bahrain, and Qatar” did not believe that application should proceed “due to lack of community support and controversy of the name.”²⁶

14. Even the Independent Expert assigned to consider the GCC’s Community Objection acknowledged the dispute over the Gulf name has been ongoing for the last 50 years;²⁷ recognized the substantial opposition to the .PERSIANGULF gTLD; and questioned Asia Green’s decision to rely on a geographic region to unite Persians across the globe, especially when that region is indisputably bound up with the heritage not only of persons of Persian derivation but of millions of Arabs as well.²⁸

15. In spite of the GCC’s objections, and the Independent Expert’s recognition of substantial community opposition, ICANN approved the .PERSIANGULF gTLD and intends to sign the registry agreement with Asia Green imminently. The GCC filed a request for

²³ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination (Oct. 30, 2013)] at ¶ 9.

²⁴ *Id.* at ¶ 12.

²⁵ See Annex 13 [ICANN Government Advisory Committee, Communique – Beijing, People’s Republic of China (“Beijing Communique”) at § IV. (Apr. 11, 2013)].

²⁶ See Annex 14 [ICANN Government Advisory Committee, Communique – Durban, South Africa (“Durban Communique”) (Jul. 13-18, 2013)] at p. 2.

²⁷ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination (Oct. 30, 2013)] at ¶ 8.

²⁸ See *id.* at ¶ 9.

independent review and now seeks emergency interim relief to ensure that IRP request is meaningful and not prematurely mooted.

III. THE GCC IS ENTITLED TO EMERGENCY INTERIM RELIEF TO ENSURE A MEANINGFUL INDEPENDENT REVIEW.

a. Articles 6 and 24 of the ICDR Rules Apply to the GCC’s Request for Emergency Interim Relief.

16. Article 6 permits the appointment of an Emergency Arbitrator after a request for arbitration has been filed but “prior to the constitution of the tribunal.”²⁹ The GCC has filed its request for an IRP, but the IRP panel has yet to be appointed. And, ICANN has yet to form an omnibus standing panel—in derogation of its Bylaws. As explained by the DotConnectAfrica IRP Panel, because ICANN has failed to form a standing panel, a stay order preventing ICANN from taking further steps that could potentially moot [claimant’s] request for an independent review was appropriate.³⁰ Because there is no IRP panel here, and any steps by ICANN towards signing the registry agreement will render the GCC’s IRP request moot, emergency relief is appropriate.

b. The GCC Readily Satisfies the Standard for Emergency Interim Relief.

17. An Emergency Arbitrator has jurisdiction to administer “any interim or conservancy measure the emergency arbitrator deems necessary, including injunctive relief”³¹ To satisfy the standard for emergency interim relief, a party need only establish “the nature of the relief sought and the reasons why such relief is required on an emergency basis” and “the reasons why the party is entitled to such relief.”³² To determine whether emergency

²⁹ See ICDR Rules [<https://www.icdr.org/>] at Art. 6(1).

³⁰ See Annex 15 [*DotConnectAfrica v. ICANN*, ICDR Case No. 50 117 T 1083 13, Decision on Interim Measures of Protection (May 12, 2014)] at ¶ 7.

³¹ ICDR Rules at Art. 6(4).

³² *Id.* at 6(1).

interim relief is appropriate, the requesting party must merely satisfy a four-part test establishing: (1) urgency; (2) necessity; (3) the protection of an existing right; and (4) a reasonable possibility of success on the merits.³³ The GCC satisfies all four parts of this test.

i. Factor 1: The GCC Urgently Needs Emergency Relief to Ensure a Meaningful IRP.

18. A request for interim relief is urgent if an action that is prejudicial to the rights of a party is likely to be taken before a final decision is reached.³⁴ Here, the GCC's request is urgent because failing emergency relief ICANN will sign the registry agreement soon, thereby preventing the GCC from meaningfully pursuing independent review.

ii. Factor 2: The GCC's Need for Emergency Relief Outweighs any Potential Harm Suffered by Another Party.

19. No party will be harmed if emergency interim relief is granted. Indeed, ICANN will suffer no harm if it is required to wait until completion of the IRP before it can execute the registry agreement with Asia Green. Nor will Asia Green. Asia Green already registered the .PARS gTLD to "tie together the tens of millions of people across the globe who read Persian-script languages."³⁵ Even if Asia Green had not already registered the .PARS gTLD, a "few more months of delay" while waiting for the IRP determination is not a cognizable harm, let

³³ See Annex 15 [*DotConnectAfrica v. ICANN*, ICDR Case No. 50 117 T 1083 13, Decision on Interim Measures of Protection (May 12, 2014)] at ¶¶ 11-12.

³⁴ See Annex 16 [*Burlington Resources Inc. and others v. Republic of Ecuador and Empresa Estatal Petroleos del Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 on Burlington Oriente's Request for Provisional Measures (Jun. 29, 2009); see also Annex 17 *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 1, at 23 (Mar. 31, 2006) ("In the Arbitral Tribunal's view, the degree of 'urgency' . . . may be satisfied where a party can prove that there is a need to obtain the requested measure at a certain point in the procedure before the issuance of an award."); *DotConnectAfrica*, Decision on Interim Measures of Protection, at 9].

³⁵ See Annex 18 [.pars gTLD Application Submitted to ICANN by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (Jun. 13, 2012), <https://domainia.com/tlds/pars/application/1-2127-79611>].

alone one that would outweigh the clear harm that would result from the failure to grant interim relief.³⁶

iii. Factor 3: The GCC Seeks to Protect the Existing Right of Independent Review Pursuant to ICANN's By-Laws.

20. The GCC seeks to protect an important, existing right—its right under the ICANN Bylaws to seek a meaningful independent review process. Article IV of the ICANN Bylaws provides for independent review to keep ICANN “accountable to the community for operating in a manner that is consistent with these Bylaws. Here, the mechanism for independent review—which provides GCC with an existing, enforceable right³⁷—would be rendered useless if the registry agreement is signed during the pendency of the process. As such, interim relief is warranted here to protect an existing right.

iv. Factor 4: The GCC Can Readily Show a Reasonable Possibility of Success on the Merits.

21. The granting of an interim relief is available on a showing which is less than what is normally required for the merits³⁸ To show entitlement to IRP, the GCC need only show ICANN violated its guidelines and the GCC suffered material detriment as a result.³⁹ The showing required here is even lower; the GCC must show only a reasonable possibility that ICANN violated its guidelines and the GCC suffered material detriment as a result.

22. ICANN violated numerous guidelines. First, ICANN ignored the public policy principles under the New gTLD Program. Under these public policy principles, ICANN must respect sensitivities regarding terms with national, cultural, geographic and religious

³⁶ ¶ See Annex 15 [*DotConnectAfrica v. ICANN*, ICDR Case No. 50 117 T 1083 13, Decision on Interim Measures of Protection (May 12, 2014)] at ¶ 11.

³⁷ *Id.* at ¶ 12.

³⁸ *Id.* at ¶ 37.

³⁹ ICANN Bylaws [<https://www.icann.org/resources/pages/bylaws-2012-02-25-en>] at Art. 4, § 3.

significance.⁴⁰ ICANN was on notice of the sensitive nature of the .PERSIANGULF application long before deciding to approve it. Indeed, long before deciding to approve the .PERSIANGULF application, the Arab governments of Oman, Bahrain, Qatar, and the UAE all wrote to ICANN and the GAC that the Gulf name is “controversial and debatable” and is without community support.⁴¹ GAC also issued an Early Warning against the .PERSIANGULF application, advising ICANN of the sensitive nature of the gTLD and noting it lacked community support.

23. Second, ICANN failed to properly consider GAC’s advice. During the April 11, 2013 GAC Committee Meeting, GAC advised ICANN to not proceed beyond the initial evaluation stage with the .PERSIANGULF gTLD.⁴² Three months later, although unable to reach a consensus, “[t]he GAC noted the opinion of GAC members from UAE, Oman, Bahrain and Qatar that this application should not proceed due to lack of community support and controversy of the name.”⁴³ ICANN focused solely on the lack of GAC consensus and ignored the noted concerns of the Arab communities.

24. Third, ICANN compounded this mistake by ignoring GAC’s principles that state “ICANN should avoid country, territory or place names. . . unless in agreement with the relevant governments or public authorities.”⁴⁴ There can be no dispute that the relevant governments do not agree to the “Persian Gulf” name.

25. As a result of these violations, the GCC suffered material detriment. The GCC has been denied the right to a fair and transparent challenge to the .PERSIANGULF gTLD. And,

⁴⁰ See Annex 1 [March 28, 2007 GAC Principles Regarding New gTLDs] at 2.1.

⁴¹ See Annexes 9-11 [October 22, 2012 Letter from Bahrain General Director to ICANN and GAC; October 23, 2012 Letter from Qatar Secretary General to ICANN and GAC; and October 2012 Letter from Oman Chief Executive to ICANN and GAC].

⁴² See Annex 13 [ICANN Government Advisory Committee, Communique – Beijing, People’s Republic of China (“Beijing Communique”) (Apr. 11, 2013)] at § IV.

⁴³ See Annex 14 [ICANN Government Advisory Committee, Communique – Durban, South Africa (“Durban Communique”) (Jul. 13-18, 2013)] at p. 2.

⁴⁴ See Annex 1 [March 28, 2007 GAC Principles Regarding New gTLDs] at 2.2.

the GCC has suffered discrimination. ICANN ignored the Arab communities' position on the Gulf naming dispute, thereby giving credence only to the Iranians' position. ICANN silenced the Arab community when it ignored their Community Objection and government opposition to the .PERSIANGULF gTLD. Further, the GCC was harmed because the .PERSIANGULF gTLD will promote Iranian beliefs, especially with respect to the disputed Gulf name and falsely create the perception that the Arab nations that reside in the Gulf accept the disputed name.

IV. SUMMARY OF RELIEF REQUESTED

26. In light of the foregoing, the GCC respectfully requests (1) the timely appointment of an Emergency Arbitrator to decide its request for emergency relief and (2) an order compelling ICANN to refrain from any further steps towards the execution of the .PERSIANGULF registry agreement, unless and until the IRP is completed.

27. Not only is granting the GCC's request for emergency relief appropriate, it will also prevent a perverse incentive where ICANN can run afoul of its obligations knowing that it can simply execute a registry agreement to evade accountability for its decisions. Accordingly, the GCC's request should be granted.

December 5, 2014

Respectfully submitted,

Natasha Kohne/ks
Natasha Kohne

Counsel for Claimant