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March 6, 2014

David E. Weslow
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VIA E-MAIL - reconsideration@icann.org

ICANN Board Governance Committee
Dr. Bruce Tonkin, Chairman
Members of the Board Governance Committee
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094

Re: Reconsideration Request No. 14-4
Union of Orthodox Jewish Congregations of America
<.kosher>

Dear Dr. Tonkin and Members of the Board Governance Committee:

We write on behalf of the Union of Orthodox Jewish Congregations of America (“OU Kosher”), STAR-K Kosher Certification, Inc. (“STAR-K”), Kosher Supervision Service, Inc. (“KOF-K”), Chicago Rabbinical Council (“cRc”), and The Kashruth Council of Canada (“COR” and, collectively, the “Requestors”) to provide a brief response to the letter recently submitted by the .kosher applicant, Kosher Marketing Assets LLC (“KMA”). See [Letter from Brian J. Winterfeldt to ICANN Board Governance Committee](#) (25 Feb. 2014).

KMA mischaracterizes the Requestors’ position in Reconsideration Request No. 14-4 by suggesting that Requestors contest the “contractually binding nature of Specification [11].” Despite KMA’s colorful mischaracterizations of Requestors’ positions and feigned outrage at the positions not actually asserted by the Requestors, Requestors do not dispute that gTLD applicants’ commitments under Specification 11 will be binding and subject to the Public Interest Commitment Dispute Resolution Mechanism. The Request for Reconsideration contends, and the NGPC Letter of 10 February 2014 clearly confirms, that the nature of the contractual commitments in Section 3.c of Specification 11 is necessarily limited, and the .kosher Expert Determination improperly applied ICANN policy by attributing to Specification 11 a broader and incorrect contractual interpretation that conflicts with the NGPC’s position.

Specifically, Section 3.c binds a registry operator to “operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration

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policies.” The NGPC, in its letter, explained that this “contractual language focuses on transparency” rather than directly prohibiting practices that “provide undue preferences or subject parties to undue disadvantages.” The Requestors’ longstanding position on Section 3.c of Specification 11 is consistent with the NGPC’s position. KMA’s various filings with the Board Governance Committee seek to distract from the fact that the ICC’s Expert Determination simply cannot be reconciled with the plain language of Section 3.c of Specification 11—as shown by the NGPC’s position on Section 3.c of Specification 11.

Finally, notwithstanding KMA’s efforts to belittle the views of the United States Government, Secretary Strickling’s recent letter to ICANN reflects the concerns of many GAC members about the possibility that registry operators, including KMA, could use restricted registration policies to confer undue preference to a party or to subject potential registrants to undue disadvantage. When read in connection with the exclusionary and discriminatory language of the .kosher gTLD application, and the NGPC’s position confirming that Section 3.c of Specification 11 mandates only transparency, it is evident that concerns about Section 3.c of Specification 11 are valid and the .kosher Expert Determination is inconsistent with ICANN policy given that the expert errantly interpreted the contractual requirements of Section 3.c of Specification 11.

Accordingly, the BGC should disregard KMA’s attempt to distort the Requesters’ arguments and grant Request for Reconsideration No. 14-4.

Respectfully Submitted,

/s/ David E. Weslow

David E. Weslow

Attorney for the Union of Orthodox Jewish Congregations of America (OU Kosher), STAR-K Kosher Certification, Inc. (STAR-K), Chicago Rabbinical Council, Inc. (cRc), Kosher Supervision Service, Inc. (Kof-K), and The Kashruth Council of Canada (COR)