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BRIAN J. WINTERFELDT
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March 21, 2014

VIA EMAIL to cherine.chalaby@icann.org

ICANN Board New gTLD Program Committee
c/o Cherine Chalaby, Chair
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094

Re: Fair Administration, Community Involvement and Support, and Competitor Misinformation about Kosher Marketing Assets LLC's Application for .KOSHER

Dear ICANN Board New gTLD Program Committee:

I write on behalf of Kosher Marketing Assets LLC (KMA) in response to a letter recently sent to you by the Union of Orthodox Jewish Congregations of America (OU) and other competitors to KMA's parent organization, OK Kosher Certification (OK). *See* Letter from Rabbi Moshe Elefant, Dr. Avrom Pollak, Rabbi Sholem Fishbane, Rabbi Ari Senter, and Rabbi S. Adler to the ICANN New gTLD Program Committee (March 6, 2014).

Community Involvement and Support for the .KOSHER gTLD Application

OK is one of the world's oldest and largest international kosher certification organizations. OK is highly regarded and recognized as a global leader within the kosher food certification industry. OK provides certification in over 90 countries on 6 continents with the support of more than 350 of the world's leading experts on the laws of kashrus.

OK's competitors have repeatedly mischaracterized KMA's application and demand "equal treatment" of .KOSHER with Asia Green IT Systems' .HALAL gTLD application, which was opposed by some members of ICANN's Governmental Advisory Committee (GAC) for lack of community involvement and support.

In contrast with Asia Green's application, the .KOSHER application includes direct involvement of OK, and is supported by over 40 kosher certification organizations, certifying rabbis, and other essential kosher industry players from over 20 counties worldwide, including such prominent figures as Rabbi Berel Lazar, the Chief Rabbi of Russia, and Rabbi Levi Shemtov, who certifies events at the Capitol and White House in Washington, D.C. The GAC has not opposed the proposed .KOSHER gTLD.

Misrepresentations of Government Statements

The OU's latest letter manifestly distorts communications from the Deputy Minister of Religious Services of Israel and the United States Government ("USG") to suggest that these entities formally oppose KMA's operation of .KOSHER.

First, in no way does Deputy Minister Rabbi Eliyahu Ben Dahan's generalized statement about use of the term "kosher" in the domain name system express opposition, official or otherwise, to KMA's application for .KOSHER. In fact, Rabbi Dahan has not sent or even addressed the statement to ICANN. The statement shows no familiarity with the application, applicant, or OK. Instead, the statement offers a personal opinion on commercial use and private ownership the term "Kosher," such as the "purchas[e]" of a domain name by a private entity, and the "public fraud" that may result.

Indeed, Israel's Ministry of Religious Services has not opposed KMA's operation of .KOSHER. On the contrary, the Ministry's Director General has formally honored the OK with a letter of recommendation specifically praising the organization's professional conduct and reliability. *See* Letter from Director General Avigdor Ochana, Israel Ministry of Religious Services (April 18, 2013) (Enclosed as Attachment A).

Second, the USG has not opposed KMA's application for .KOSHER. The USG's letter referred to by the OU plainly states that "Stakeholders have raised concerns with us about the lack of clarity on the status of this issue regarding a number of applications for generic terms, some of which were included in the non-exhaustive list in the GAC Beijing Communiqué (e.g. .WEATHER) and some that were not (.KOSHER)." *See* Letter from Lawrence E. Strickling to Dr. Stephen D.

Crocker (February 4, 2014). This simply highlights to KMA, the specific concerns that the OU has voiced with the USG. It seems that the OU continues to lobby the USG, while attempting to herald those lobbying efforts as evidence that the USG opposes KMA's operation of the .KOSHER gTLD.

Fair and Transparent Registration Policies

KMA agrees with Dr. Crocker's reply of February 10, 2014 stating that the existing Public Interest Commitment (PIC) Specification fully implements the GAC's Beijing advice on restricted access registries when considered in conjunction with the other protections in the New gTLD Registry Agreement (RA).

KMA has discussed Assistant Secretary Strickling's letter with National Telecommunications and Information Administration (NTIA) representatives and KMA has also formally replied with an affirmation to operate a fair and transparent gTLD. *See* Letter from Kosher Marketing Assets, LLC to Assistant Secretary Lawrence E. Strickling (March 12, 2014) (Enclosed as Attachment B). This reply includes proposed Public Interest Commitment (PIC) language for .KOSHER offered by KMA in the spirit of good faith. KMA is happy to work with the ICANN Board, the NTIA, and the GAC to resolve any questions concerning KMA's application and the implementation of the proposed PIC.

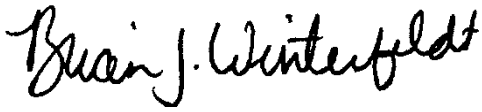
Defamatory Accusation of Extortion

Finally, we condemn the OU's false accusation that KMA has conditioned its proposed PIC Specification or application amendments on any third party payment. KMA has repeatedly offered in good faith to file a new PIC Specification at no cost in connection with a settlement addressing the OU's apparent concerns, and even offered joint control of the TLD so long as expenses were shared. *See* Email from Menachem Levy to Sholem Fishbane and Moshe Elefant (March 5, 2013) (Enclosed as Attachment C). The OU has rejected all offers outright. *See* Email from Sholem Fishbane and Moshe Elefant to Menachem Levy (April 10, 2013) (Enclosed as Attachment D).

Indeed, KMA is presently weighing its options for legal recourse in connection with these and other negative and patently false allegations regarding the .KOSHER new gTLD application made by these stakeholders both in the media and to governmental officials.

On behalf of Kosher Marketing Assets LLC, we thank you for your attention to this matter. Should you wish to learn more about OK Kosher, Kosher Marketing Assets, or the community involvement and support for the .KOSHER gTLD application, please do not hesitate to contact me.

Respectfully,



Brian J. Winterfeldt
Representative for Kosher Marketing Assets, LLC

CC: Dr. Stephen Crocker, Chairman of the Board, ICANN (steve.crocker@icann.org)
Mr. Fadi Chehadé, President and CEO, ICANN (fadi.chehade@icann.org)
Ms. Heather Dryden, GAC Chair (heather.dryden@ic.gc.ca; gacsec@icann.org)

Attachment A

Letter from Director General Avigdor Ochana,
Israel Ministry of Religious Services (April 18, 2013)

המשרד לשירותי דת
המנהל הכללי

ח' אייר התשע"ג
18 באפריל 2013

לכבוד
הרב **אהרון חסקל**
מנכ"ל ארגון הכשרות OK - ישראל

שלום רב,

במסגרת תפקידי כמנכ"ל המשרד לשירותי-דת אני משמש כרגולטור על המועצות הדתיות בישראל ומחלקות הכשרות בכל עיר ועיר בארץ.

במסגרת תפקידי למדתי לעומק את מערך הכשרות בארץ ובחנתי דרכים לשפר ולייעל את התחום. במסגרת כך ביקרתי בארגוני כשרות רבים בארץ ובעולם וביניהם ארגון הכשרות OK.

לאחר ביקורי במשרד הראשי של הארגון בניו יורק בראשות הרב דן יואל ליווי ובשלוחה הישראלית בראשותך, הריני מוצא לנכון לציין לשבח באופן מיוחד את ההתנהלות המקצועית, דרכי הפעולה והרמה הטכנולוגית הגבוהה המתופעלים ע"י צוות ירא שמיים, אמין ומנוסה.

ארגון ה- OK הוא אחד מארגוני הכשרות הגדולים בעולם ולדעתי אחד מהאמינים והאיכותיים ביותר בעולם.

יישר כחכם וברכת הצלחה בהמשך דרככם!

בכבוד רב,
אביגדור אוחנה
המנהל הכללי

רח' כנפי נשרים 7, גבעת שאול, ירושלים 94090 ☎ טל': 02-5311170 🖷 פקס: 02-6535469
7 Kanfei Nesharim St. Jerusalem 91340. Israel.
www.dat.gov.il

Israel

Ministry of Religious Services
Director General

8 Iyar 5773
April 18, 2013

To
Rabbi **Aharon Haskel,**
Director of the OK Kosher Certification Organization – Israel

Greetings,

Within the framework of my responsibilities as the Director General of the Ministry of Religious Services, I serve as regulator of the religious councils in Israel, and of the kosher certification organizations in each city in Israel.

Within the framework of my responsibilities, I have engaged in a thorough study of the operations of kosher certification in Israel and have examined ways to improve and optimize the field. As part of this effort, I have visited many kosher certification organizations in Israel and throughout the world, including the OK Kosher Certification organization.

After my visit to the main office of the organization in New York, which is headed by Rabbi Don Yoel Levy, and to the Israeli branch headed by you, I deem it appropriate to extend special praise for the professional conduct, practices and the high technological level at which the God-fearing, reliable and experienced staff operates.

The OK organization is one of the largest kosher certification organizations in the world, and in my opinion, one of the most reliable and quality-oriented kosher certification organizations in the world.

Congratulations and best wishes for success in your ongoing activities!

Sincerely,
[signature]
Avigdor Ochana
Director General

7 Kanfei Nesharim Street, Givat Shaul, Jerusalem 94090 ☎ Tel.: 02-5311170 🖷 Fax: 02-6535469
7 Kanfei Nesharim St. Jerusalem 91340. Israel.
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New York, NY 10014 • (212) 620-5600

State of New York)
) ss:
County of Kings)

Certificate of Accuracy

This is to certify that the attached:

Ministry of Religious Affairs letter of recommendation

originally written in the Hebrew language is, to the best of our knowledge and belief, a true, accurate and complete translation into the English language.

Dated: April 26, 2013

Yasushi Sasaki
Project Manager, Legal Translations
Merrill Brink International

Sworn to and signed before
me, this 26th day of
April 2013

ROBERT J. MAZZA
Notary Public, State of New York
No. 01MA5057911
Qualified in Kings County
Commission Expires April 1, 2014

Notary Public

Attachment B

Letter from Kosher Marketing Assets, LLC to Assistant Secretary Lawrence E. Strickling (March 12, 2014)

Katten
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BRIAN J. WINTERFELDT
brian.winterfeldt@kattenlaw.com
(202) 625-3562 direct
(202) 339-8244 fax

March 12, 2014

VIA FEDEX AND EMAIL to lstrickling@ntia.doc.gov

Lawrence E. Strickling
Office of the Assistant Secretary for Communications and Information and
NTIA Administrator
National Telecommunications & Information Administration
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230

Re: Kosher Marketing Assets LLC's Public Interest Commitment Proposal for .KOSHER

Dear Assistant Secretary Strickling:

I write on behalf of our client, Kosher Marketing Assets LLC (KMA), in response to your letter of February 4, 2014 to Dr. Stephen D. Crocker concerning the implementation of Governmental Advisory Committee (GAC) Advice as set forth in its Beijing Communiqué. With this letter KMA affirms its commitment to a fair and transparent operation of the .KOSHER gTLD and requests a meeting with you and your staff to discuss a practical implementation of the proposed Public Interest Commitment (PIC) Specification contained herein.

KMA's parent organization is OK Kosher Certification (OK), one of the world's oldest and largest international kosher certification organizations. OK is recognized and highly regarded as a global leader within the kosher food certification industry, and provides certification in over ninety countries on six continents with the support of more than 350 of the world's leading experts on the laws of kashrus.

KMA applied to operate the .KOSHER gTLD for the benefit of the entire kosher industry, including consumers, producers, vendors and certifiers of kosher food. The application is supported by over forty kosher certification organizations, certifying rabbis, and other essential kosher industry players from over twenty counties worldwide, including such prominent figures as Rabbi Berel Lazar, the Chief Rabbi of Russia, and Rabbi Levi Shemtov, who certifies events at the Capitol and White House in Washington, D.C.

We acknowledge that some stakeholders, such as the Union of Orthodox Jewish Congregations of America (OU), have raised concerns with you about how Specification 11 of the New gTLD Registry Agreement (RA) ensures both fair and transparent registration policies for new gTLD applications for terms which were not included in the list in the GAC Beijing Communiqué, such as .KOSHER. Indeed, KMA is presently weighing its options for legal recourse in connection with negative and patently false allegations regarding the .KOSHER new gTLD application made by these stakeholders both in the media and to governmental officials.

KMA agrees with Dr. Crocker's reply of February 10, 2014 stating that the existing PIC Specification fully implements the GAC's Beijing advice on restricted access registries when considered in conjunction with the other protections in the RA. Indeed, the Expert Panel that dismissed the OU's formal objection against the application agreed that KMA is obligated by Specification 11 to provide adequate safeguards against any improper behaviors to the detriment of other members of the community. The Expert specifically recognized KMA's good faith and explicitly considered and rejected the claim that KMA would be in a position to apply subjective standards to exclude the OU and its clients or to contradict its certification standards. See *Union of Orthodox Jewish Congregations of America vs. Kosher Marketing Assets LLC*, ICC Case No. EXP/424/ICANN/41 (January 14, 2014).

In the spirit of good faith, KMA wishes to recommit to a fair and transparent operation of .KOSHER by offering to include a PIC Specification with its RA above and beyond the language in Specification 11. While KMA believes that some eligibility criteria will be necessary to maintain the integrity of the space, it recognizes the diversity of kosher certification organizations and will not limit eligibility based on kosher certification methodology, whether established by OK or KMA alone. Accordingly, KMA would like to include a PIC Specification in which:

> *The Registry Operator commits to administer registry access in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.*

We hope this additional PIC Specification assures you that KMA will operate .KOSHER in an open manner with appropriate eligibility requirements, and administer the gTLD in a fair and transparent way, as both OK and KMA have committed in previous letters to ICANN, the

National Telecommunications and Information Administration (NTIA), and the United States Department of Commerce.

We look forward to the NTIA's discussion of stakeholder concerns at the March GAC meeting in Singapore. We wish to reiterate KMA's request for a conference with NTIA after the Singapore meeting to personally confirm its commitment to operating a fair and transparent TLD, and to obtain your feedback on the practical implementation of this Public Interest Commitment in light of GAC discussions in Singapore.

Finally, we encourage you to review Timothy D. Lytton's book *Kosher: Private Regulation in the Age of Industry Food* to learn more about the nature and landscape of kosher certification. You will see Mr. Lytton provides important context, particularly in Appendix A, about the role and relationships between industry players such as the OU and OK.

On behalf of Kosher Marketing Assets LLC, we thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or concerns about OK Kosher, Kosher Marketing Assets, the .KOSHER gTLD application, or the kosher certification industry in general.

Respectfully,

Brian J. Winterfeldt

Brian J. Winterfeldt

Attachment C

Email from Menachem Levy to Sholem Fishbane
and Moshe Elefant (March 5, 2013)

Menachem Levy

From: Menachem Levy
Sent: Tuesday, March 05, 2013 4:26 PM
To: 'Sholem Fishbane'
Cc: 'Rabbi Don Yoel Levy'; 'Moshe Elefant'
Subject: RE: Thank you

Dear Rabbi Elephant,

This is to confirm our conversation of today that the following are the two options we see for avoiding the need for an objection to the .kosher TLD

1. Joint Control
    a. The OK is happy to share the ownership of the LLC with anyone willing to share the costs equally.
    b. This requires some investigation in terms of how the details can be made to work there, and fit within ICANN's structure, which we would expect any prospective owner to provide the initial investigation for a proposal. The main reason for this is since decisions made in forming the proposal will require increased costs and investment in the LLC to satisfy ICANN's requirements, so we want you to hear that from your experts putting in the proposal, and form your expectations accordingly. We don't feel hearing it from us would create the buy-in necessary to actually have a deal. Of course we are happy to have initial discussions about the form of such an arrangement right away, we just expect the full proposal to be made by the group.
    c. We will be happy to cooperate in whatever is needed to make that happen, including disclosing the full application that we submitted to ICANN, which lists the financials, etc. (of course under NDA). as well as make available anyone who can help provide the information needed to put together that proposal.
2. Fair practice
    a. The OK is willing to put in a Public Interest Commitment stating terms that the objectors are comfortable with in our operation of the domain, including a term that there will be no price discrimination between any registrants of the domain. There will be no distinction between the OK and the OU or others in this. This approach will not cost the Agencies anything.
    b. I should disclose that the Public Interest Commitment deadline is today, however although it is not 100% clear, our service provider here (Afilias) is of the opinion that we can file to have one added after the deadline, and either way we can amend the application to specifically make this requirement according to everybody if we miss today's deadline.

Thanks

Menachem

From: Sholem Fishbane [mailto:fishbane@crcweb.org]
Sent: Monday, February 25, 2013 4:44 PM
To: Menachem Levy
Cc: 'Rabbi Don Yoel Levy'; 'Moshe Elefant'
Subject: RE: Thank you

Dear Menachem,

I hope you had an enjoyable and uplifting Purim. After discussing the matter with our group and consulting our attorney we unfortunately feel that the proposal does not resolve our ideological objection to one agency owning the .kosher gTLD. If you have a proposal that indeed addresses this fundamental point please let me know and I will pass it on.

Kol tuv,

Sholem

From: Menachem Levy [mailto:m@levys.com]
Sent: Thursday, February 21, 2013 12:44 PM
To: Sholem Fishbane
Cc: 'Rabbi Don Yoel Levy'; 'Moshe Elefant'
Subject: RE: Thank you

Hi

What we can offer is that we submit a Public Interest Commitment, which is a new ICANN procedure introduced February 5th that puts a binding obligation in the contract with ICANN. That binding obligation can be something that prevents whatever harm you are concerned about. The advantage of such an approach would be that it would require no significant cost from you to run the domain on-going.

What do you think?

Thanks

Menachem

From: Sholem Fishbane [mailto:fishbane@crcweb.org]
Sent: Wednesday, February 20, 2013 9:15 PM
To: Menachem Levy
Cc: 'Rabbi Don Yoel Levy'; 'Moshe Elefant'
Subject: RE: Thank you

Reb Menachem:

I spoke briefly with Rabbi Elefant about this today and he asked me to convey that he did not mean at all that he was not open to any sustainable alternative and is willing to seriously consider any reasonable plan presented.

We look forward to hearing from you on this matter.

Kol tuv,

Sholem

From: Menachem Levy [mailto:m@levys.com]
Sent: Wednesday, February 20, 2013 10:20 AM
To: Sholem Fishbane
Cc: Rabbi Don Yoel Levy (rdylevy@ok.org); Moshe Elefant (elefantm@ou.org)
Subject: RE: Thank you

Dear Rabbi Fishbane,

My apologies for not writing back earlier, I was out of the country with limited e-mail access over the weekend.

My recollection is that Rabbi Elefant felt he didn't have the time or inclination for a partnership rather withdrawal voluntarily or by challenge, or some other means that ended the application, was what he wanted. Is my recollection accurate?

I am asking because if that is Rabbi Elefant's (and possibly other's) position, then any proposal that does not involve ending the application is a non-starter.

I am cc'ing Rabbi Elefant on this e-mail in the interest of time to help come to a resolution more quickly.

Thanks

Menachem
718.771.4141

From: Sholem Fishbane [mailto:fishbane@crcweb.org]
Sent: Friday, February 15, 2013 9:23 AM
To: Menachem Levy
Cc: 'Rabbi Don Yoel Levy'
Subject: RE: Thank you

Reb Menachem:

I checked with the group and the feeling was that they are definitely willing to listen to any proposal you may have.

If I remember correctly the reason why that part of the conversation did not materialize was that when we started exploring the option of changing the application to be owned by a group of agencies -to keep with our group's fundamental point of .kosher not belonging to anyone in particular as well as blocking another non-reliable agency from applying in the future- we could not fiscally meet your request to be fully reimbursed. Additionally, we could not explore the idea of possible revenue so that you could recoup your investment since neither of us had worked out a business plan. On top of that it seemed doubtful that our Boards would approve every year an additional $100,000 upkeep (I may be off on that # but that is what I remember) with no knowledge of our return. This is why we went back to the request of withdrawing as aside that we felt it is the correct thing to do because, however the outcome, we fundamentally believe that kosher does not belong to any one particular person or group but we will now need to invest valuable money and time.

So bottom line is yes - the group is certainly open to an idea that will meet the fundamental point described above and we turn to you on how that can be accomplished given the direction of the discussion also described above. Please note that since time is of the essence the group will simultaneously converse with lawyer on the objection discussion as to not lose that option in case we cannot come to an agreement.

Kol tuv and have a good Shabbos.

Sholem

From: Menachem Levy [mailto:m@levys.com]
Sent: Thursday, February 14, 2013 8:53 PM
To: fishbane@crcweb.org
Cc: Rabbi Don Yoel Levy
Subject: RE: Thank you

k

From: Rabbi Sholem Fishbane [mailto:fishbane@crcweb.org]
Sent: Thursday, February 14, 2013 10:37 AM
To: Menachem Levy
Cc: Rabbi Don Yoel Levy
Subject: Re: Thank you

Good morning. I am traveling so my response time is a bit delayed. I will check with the group and let you know.

Sholem

From: Menachem Levy <m@levys.com>
Date: Wed, 13 Feb 2013 20:42:53 +0000
To: Sholem Fishbane<fishbane@crcweb.org>
Cc: 'Levy, Rabbi Don Yoel'<rdylevy@ok.org>
Subject: RE: Thank you

Dear Rabbi Fishbane

My father prefers to challenge and lose rather than withdraw.

What I am asking is if there is an option that doesn't involve withdrawal.

My understanding from the meeting is that the consensus was either the application is withdrawn or it is challenged.

If those are the only options, then my father would rather face the challenge.

However, if there is an option where the TLD application moves forward, perhaps in some modified form, then we want to make sure we have explored all such avenues before you are at the point of no return on the challenge.

So my question is – is the group willing to consider something which keeps the TLD application alive, or is all that will stop the challenge is for us to withdraw?

Thanks

Menachem

From: Sholem Fishbane [mailto:fishbane@crcweb.org]
Sent: Wednesday, February 13, 2013 2:26 PM
To: Menachem Levy
Cc: 'Levy, Rabbi Don Yoel'
Subject: RE: Thank you

Reb Menachem:

I am running to the airport (back to NY for the weekend) but I wanted to quickly get some clarification on your email below as Rabbi Elefant mentioned to me that he spoke to your father yesterday and got the impression that your father preferred for us to challenge. Please let me know if Rabbi Elefant misunderstood and/or if you have thought of another option.

Sholem

From: Menachem Levy [mailto:m@levys.com]
Sent: Wednesday, February 13, 2013 11:22 AM
To: Sholem Fishbane; Levy, Rabbi Don Yoel
Subject: RE: Thank you

Hi

Before we get to the point of no return on the objection process, I just want to clarify if there is any option for working to find a way to have the TLD registered in a way that includes the participation of all relevant agencies? Any avenue that would allow the TLD to see the light of day in a way that is inclusive is something that we are interested in pursuing. Or is the only option on the table the terms of withdrawal of the application?

Menachem

From: Sholem Fishbane [mailto:fishbane@crcweb.org]
Sent: Tuesday, February 12, 2013 12:20 AM
To: Levy, Rabbi Don Yoel; Menachem Levy
Subject: Thank you

Thank you for your time today. While we did not necessarily agree on a joint plan- I thought it was a great meeting . I look forward to helping to resolve any issues in the future that might arise regarding this or anything else I can be of help.

Kol tuv,

Rabbi Sholem Fishbane
Chicago Rabbinical Council
Kashrus Administrator
773-465-3900 x 104
773-465-6632 Fax
www.crcweb.org
http://twitter.com/crckosher

Attachment D

Email from Sholem Fishbane and Moshe Elefant
to Menachem Levy (April 10, 2013)

Menachem Levy

From: Sholem Fishbane <fishbane@crcweb.org>
Sent: Wednesday, April 10, 2013 9:27 PM
To: Menachem Levy
Cc: Rabbi Moshe Elefant
Subject: .kosher gTLD

Dear Menachem:

On behalf of the group, we have been directed to communicate with you, that in response to our recent discussions and emails regarding our objections to the .kosher gTLD, we would like to reiterate our position that we are ideologically opposed to .kosher existing as a gTLD and certainly to its being owned by a single or small group of kosher agencies. Our interest is that there should not be a .kosher gTLD at all.

We appreciate however, that you have invested significant resources in putting forth your application, so we did try to explore some creative solutions with you. Unfortunately, it is evident that a solution is simply not feasible.

Because of our strong belief that the .kosher gTLD should not be owned by any entity, we have decided that we will await a decision on the objection from the ICC .

Kind regards,

Rabbis Moshe Elefant and Sholem Fishbane