

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/423/ICANN/40

GULF COOPERATION COUNCIL
(SAUDI ARABIA)

vs/

ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE TIC. TLD. STI.
(TURKEY)

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ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE TIC. TLD. STI. (TURKEY)

Expert Determination by

Judge Stephen M. Schwebel

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EXPERT DETERMINATION

1. An Application for the registration of a Generic Top- Level Domain Name (“gTLD”), namely, “.Persiangulf”, was generated on 8 July 2012 by the Applicant, ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI. (Turkey). Its address is Büyükdere Cad. Kirgülü Sk., Metrocity AVM, D Block, Floor 4, No. 11, 34394 Levent, Istanbul, Turkey, abbasnia@agitsys.com. The Applicant is represented by Mr. Mike Rodenbaugh, Rodenbaugh Law, 548 Market Street, San Francisco, California, United States of America, mike@rodenbaugh.com.
2. A Community Objection was filed to the registration of “.Persiangulf” on 13 March 2013. The Objector is the GULF COOPERATION COUNCIL Its address is Gulf Cooperation Council Building, King Khaled Road, Diplomatic Area 7153, Saudi Arabia, gcctelec@batelco.com.bh. The Objector is represented by Mr. Badr El-Dein Abdel Khalek, Talal Abu Ghazaleh Organization, A26 Smart Village, Km 28 Cairo/Alex Desert Road, P.O. Box 150 Smart Village 12577, Egypt, taglegal.egypt@tag-legal.com.
3. The Response of the Applicant to the Community Objection was filed on 15 May 2013. The language of all submissions and proceedings is English, in accordance with Article 5(a) of the Procedure.
4. All communications by the parties, the Expert Panel and the International Centre for Expertise of the International Chamber of Commerce (“Centre”) were transmitted electronically in accordance with Article 6(a) of the Procedure.

5. The Expert Panel, Stephen M. Schwebel (1501 K Street, NW, Suite 410, Washington, D.C. 20005, USA, judgeschwebel@aol.com) was appointed on 12 June 2013 by the Chairman of the Standing Committee of the Centre. In making his determination, the Expert, the sole member of the Panel, acted in accordance with the Rules for Expertise of the ICC, supplemented by the ICC Practice Note on the Administration of Cases under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure (the “Procedure”).
6. The file was transmitted by the Centre to the Expert Panel on 12 August 2013, which accordingly is the date of the Expert Panel’s final constitution. On 21 August 2013, the Expert informed the Parties by e-mail of his receipt of the file, and that additional submissions were not requested and a hearing was not contemplated. The Parties did not file further submissions or request to do so and did not request a hearing. The Expert rendered the Panel’s determination to the Centre for its scrutiny within the 45-day time limit of the transmission of the file.

Summary of the Objection

7. The Community Objection is made by the Cooperation Council for the Arab States of the Gulf, known as the Gulf Cooperation Council (GCC). The Objection recalls that the GCC is an intergovernmental organization, established by treaty duly registered with the Secretariat of the United Nations, composed of six Arab States bordering the Gulf, namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. Its mission is to effect coordination and integration among its Member States in all fields.
8. The GCC, the Objector in these proceedings, observes that the Applicant in these proceedings has applied for the gTLD “.Persiangulf”, referring to the body of water which separates the Arabian Peninsula and the territory of Iran. The Objector recalls that, while surrounding Arab States maintain that that body of water should bear the name “Arabian Gulf”, Iran “stands for the denomination ‘Persian Gulf’”. The GCC, as an established institution of the Arabian Gulf community which objects to the applied-for gTLD, maintains that, “ICANN should not authorize the launch of this gTLD and therefore interfere in a sensitive case.”
9. The Objector acknowledges that, for a Community Objection to be upheld, there must be “a substantial opposition to the gTLD application from a representative portion of the community to which the gTLD string may be explicitly or implicitly targeted”. The Objector notes that the Application for “.Persiangulf” has given rise to numerous negative comments on ICANN’s webpage. The Governments of Bahrain, Oman, Qatar and the United Arab Emirates issued an “early warning” expressing serious concern, observing that the gTLD is “problematic and refers to a geographical place with a disputed name” and maintaining that there is a lack of community involvement and support among the eight littoral States for a consensual name, whether “Arabian Gulf” or “Persian Gulf”. The Objector recalls that there is a longstanding dispute over the

question among these littoral States, namely, Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. “They cannot reach a consensus on a unique name for the designated body of water and use alternatively the name of ‘Arabian Gulf’ or ‘Persian Gulf’”. The Objector contends that ICANN should not “bring this dispute into the cyber world and by doing so give credence to one side over the other”. The Objection reproduces a map of the 16th Century that denominates the Gulf as the “Arabian Gulf” as well as a contemporary map of Google that leaves that body of water unnamed in deference to objections that have been raised against one name or another. The Objector notes that the Gulf has borne various names over the centuries.

10. The Objector observes that the notion of “community” is broad and not precisely defined by ICANN’s Guidebook for the new gTLD program. The Objector views the Arab States of the Gulf as a clearly delineated community. “A substantial portion of the Arabian Peninsula Community is opposing the string ‘.Persiangulf.’ ” The opposition of the GCC States demonstrates “that there is an obvious and substantial opposition from a significant portion of the community”.
11. The Objector notes that the Application states that, “A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce....The PERSIANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.” The Objector continues: “This clearly shows that the applicant is targeting a confined community which consist of people and organizations bordering the gulf basically covering the 8 countries namely Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Thus, if the applied for gTLD string does not intend to explicitly target opponents to the ‘Persian Gulf’ denomination, at least an implicit link can be easily identified. Hence, a strong association between the applied - for gTLD string ‘.Persiangulf’ and the community represented by the Objector (i.e. GCC) exists.”
12. The Objector further contends that the existence of such a sensitive gTLD without the endorsement of the Arabian Gulf community will allow the Applicant to interfere with the core activities of the community, and that there is a likelihood of material detriment to the targeted community resulting from the Applicant’s operation of “.Persiangulf”. Use of that term online “is likely to increase the possibility of social unrest in the Arabian gulf region” and hence the level of dispute around the naming of this area.
13. The Objector concludes that, since there is no consensus on the name of the gulf, and because “the majority of the targeted community recognizes the name “Arabian Gulf” as opposed to “Persian Gulf”, the limited interest of the targeted community in the proposed name will affect its sustainability”.
14. The remedy requested is the withdrawal of the Application.

Summary of the Response

Standing

15. The Applicant initially contends that the Objector, the GCC, lacks standing to object. It observes that Section 3.2.2. of the Applicant Guidebook provides the following requirement for standing to assert a Community Objection: “Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection.” The Applicant maintains that the GCC however “fails to provide any evidence that the name of the body of water is a ‘sensitive case’ or has anything to do with the GCC’s mission.” The GCC “has no strong association to the TLD string .PersianGulf, and therefore lacks standing in the matter.”
16. The Applicant observes that many of the Arab States of the GCC consider the body of water at issue to be called the Arabian Gulf. “And so those states and/or the GCC itself are free to apply to operate the TLD .ArabianGulf if they so choose. But they offer not the faintest shred of proof to show the required ‘strong connection’ between the GCC and the TLD string .PersianGulf”. They rather disavow that name in favor of another. Therefore, the Applicant maintains, the GCC as the Objector clearly lacks standing to assert a Community Objection to the .Persian Gulf TLD Application.

Applicant’s Community Support

17. The Applicant further contends that it has “garnered overwhelming community support”—“more than 48,000 individual expressions of support via an online petition... for .PARS and .PersianGulf submitted to ICANN...” in addition to the support of the Islamic Republic of Iran.

The GCC Lacks Proper Grounds for Objection

18. The Applicant moreover maintains that the Objector fails to meet the four tests prescribed by the Applicant Guidebook, Section 3.5.4 of Module 3.
19. First, it must show that the community invoked by the Objector is a clearly delineated community. But, the Applicant contends, the Objector provides no evidence of the existence of the purported “Arabian Peninsula Community.” It appears to be “an imagined ad hoc community devised solely in response to Applicant’s application.” Its existence is hardly sustained by a Google search. Nor are geographical boundaries on one side of the Gulf supportive of the existence of a clearly delineated community. Even if it were accepted that the GCC represents its six member States as the Arabian Peninsula Community, and that their populations support the GCC position that .PersianGulf should not exist as a TLD string, their populations would total 39.4 million.

On the other side of the Gulf lies Iran, with more than 75 million people. The Applicant maintains that the Government of the Islamic Republic of Iran supports the .PersianGulfApplication. It observes that Iranians ubiquitously refer to the Persian Gulf. It recalls that United Nations documents mandate reference to the Persian Gulf. It notes that there are hundreds (if not thousands or millions) of maps that refer to the Persian Gulf, as do almost all maps printed before 1960. Calling the body of water between the Arabian Peninsula and Persia as the “Persian Gulf” has been predominant and pervasive for some 2500 years. “The ‘Arabian Peninsula Community’ did not exist prior to this Objection, and shows no association with the .PersianGulf TLD string.”

20. “Therefore, it is not clearly delineated within the meaning of the Guidebook, and the Objection must fail.”
21. Second, the Applicant argues, there is no substantial, proven community opposition to the Application. Reference to “numerous comments”, and to “early warnings” from four GCC Member States, do not suffice. The purported “Arabian Peninsula Community” represented by the GCC disavows the Persian Gulf name and has no association with that name. So its opposition cannot be considered substantial.
22. Third, in respect of “targeting”, the Applicant contends that the Objector must prove a strong association between the applied-for TLD string and the community represented by the Objector. The Objector cites the fact that the Applicant intends to promote the .PersianGulf domain names to persons in the Persian Gulf region. But the Applicant responds that it would not plan to sell the .PersianGulf domain names to persons in the region “who disavow the very name”. Such persons, apparently represented by the GCC, “are not likely to be interested in .PersianGulf domain names whatsoever, nor to be harmed by their existence. Therefore they cannot claim any association with that TLD string.”
23. The Objector accepts that the Applicant does not intend explicitly to target opponents of the Persian Gulf denomination. But it claims that “an implicit link can easily be identified.” It fails however to identify that link or provide evidence of its significance. “Any such link would be a link of non-association, or disavowment of the denomination ‘Persian Gulf’ – and thus is the polar opposite of the ‘strong association’ ” that the Objector is required to prove.
24. Fourth, in respect of detriment, the Applicant maintains that the Objector must prove that acceptance of the Application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. But, argues the Applicant, the Objector hardly addresses, still less evidences, the several detrimental factors set out in the Guidebook. It says no more than that allowing “the existence of such a sensitive string without the endorsement of the Arabian Gulf community which is linked to this area will allow the applicant to interfere with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string. Hence, there is likelihood of

material detriment.” The Applicant states that ICANN’s Independent Objector, Dr. Alain Pellet, thoroughly reviewed the purported public opposition to the .PersianGulf TLD, and found no basis for any “Public Interest” or “Community Objection”. The Applicant in its Application affirmed its public interest commitment in detail and has entered into organizational arrangements that will give effect to that commitment. It contends that, “Such documented efforts must outweigh GCC’s rank speculation that the TLD will somehow in some unspecified manner affect regional residents’ ‘core activities’. All regional ccTLDs are still available for their use. Perhaps soon the GCC or another entity will apply for the .ArabianGulf TLD and it can be provided to residents as well.” The Objector argues that the existence of political disputes over the name of the Gulf somehow proves that “concrete damages” are likely to occur to the Objector’s community, but offers no proof to sustain this speculation. The Objector has offered no evidence of a dispute over the name. People have called the Gulf by different names “for many centuries if not millennia”. But there is no evidence “as to how such purported dispute has ever caused or contributed to any social unrest in the region or elsewhere.” The Objector “has wholly failed to prove any likelihood of any detriment to anyone, and thus its Objection must fail.”

25. Attached to the Response of the Applicant are extensive annexes, including an archive of maps denominating the Gulf as the “Persian Gulf”.

The Determination of the Expert

26. The first question to be decided is, does the Objector have standing, pursuant to Article 8(a)(ii) of the Procedure, and to Module 3 of the Guidebook, Articles 3.2.2 and 3.2.2.4, to object?
27. The Applicant maintains that the Objector characterizes itself as the “Arabian Peninsula Community”. That Community, says the Applicant, is an imaginary construct which lacks standing to object to the Application because it is not part of the Persian Gulf community. According to the Applicant, it is, on the contrary, the polar opposite because it disavows the very name of that community, a community which is directed only to those of Iranian heritage and interests.
28. This position of the Applicant however is not wholly consistent with the terms of its Application. The Application’s description of the mission and purpose of “.PersianGulf” emphasizes the ethnicity of more than one hundred million Persians worldwide and their common cultural, linguistic and historical heritage. However, it also states that: “While the .PERSIANGULF TLD ties back historically and culturally to the Middle Eastern people, it also has the potential to tie together the great number of people across the globe that may have any ties to or business in the region....A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce....The proposed TLD is, quite obviously, the name of the Persian Gulf, a region in which many people live, and from which many benefit by way of resources.

- The total population of the countries in the Persian Gulf region exceeds 120 million people – and all of them have a sense of belonging to the Persian Gulf. The .PERSIANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.”
29. In the view of the Expert, it is incontestable that among the “peoples of various nations connected geographically and historically to the Persian Gulf” are the Arab inhabitants of the west side of the Gulf. It is undeniable that among “these peoples of various nations, connected geographically and historically to the Persian Gulf”, who have “a sense of belonging to the Persian Gulf” and are to be “tied together” by .PERSIANGULF gTLD, are Arabs inhabitants of the region. Many of those Arabs are inhabitants of the six States of the western littoral of the Gulf that have joined together to constitute the Gulf Cooperation Council. Through and by the agency of the Gulf Cooperation Council, an established intergovernmental organization internationally representing those inhabitants, which is the Objector in these proceedings, they have standing to challenge the registration of .PERSIANGULF gTLD. The Gulf Cooperation Council is an established, defined institution, constituted by treaty registered with the United Nations (“UN”). Founded in 1981, its existence and operations pre-date by decades the instant challenge that it has made; the GCC has not been formed for the purpose of raising its challenge. Its observer status at the United Nations imports global recognition of the GCC. It enjoys international legal personality. It has permanent headquarters in Riyadh, Saudi Arabia, and a range of activities designed to promote the co-ordination and integration of its Member States and to strengthen relations among their peoples, including their communications, education and culture. The GCC’s institutional purposes thus are to promote the co-operative benefit of the inhabitants of “the associated community”, namely the population of the GCC States. The Gulf Cooperation Council accordingly meets the criteria for standing to maintain a challenge set out in the Guidebook, Module 3, Articles 3.2.2 and 3.2.2.4.
30. The second question to be decided is, is there substantial community opposition to the Application?
31. Accepting that the community in question, pursuant to the foregoing interpretation of the Application set out in paragraphs 28 and 29 above, includes the Arab inhabitants of the Gulf who make up the population of the six States of its western littoral that compose the Gulf Cooperation Council, it is plain that there is substantial opposition of these Arab inhabitants of the Persian Gulf community and of the GCC which represents them internationally to the registration of .PERSIAN GULF gTLD. That opposition is reflected in the Summary of the Objection, paragraphs 7 to 14 above. Moreover, there has been vocal, reiterated challenge by Arab States and sources to the Persian Gulf denomination for more than fifty years. That challenge has been reflected in United Nations documentation. For example, an Editorial Directive of 10 January 1990 (ST.CS.SER.A/29) states, in the customary muted diplomatic parlance of United Nations

Secretariat documents, that: “The term ‘Persian Gulf’ is used in documents, publications and statements emanating from the Secretariat as the standard geographical designation for the body of water lying between the Arabian Peninsula and the Islamic Republic of Iran, thus following longstanding conventional practice....However, in documents, publications and statements emanating from a Member Government or intergovernmental organization, the terminology of the original should be retained.”

32. It is true that Arab Governments and sources, including the Objector in these proceedings, disavow the propriety of calling the Gulf the “Persian Gulf”. But it does not follow that that disavowal imports that they are not part of the Persian Gulf community. The Persian Gulf is a geographical expression. It refers to a body of water separating the Arabian Peninsula from the landmass of Iran. The people who live round the littoral of that body of water may reasonably be viewed as a community, even though it is a community that is characterized by ethnic, historical, religious and political differences. Moreover, the opposition of Arab States and populations to denominating the Gulf as the Persian Gulf is substantial, as is manifested by the fact, of which the Expert takes judicial notice, that Arab States, individually and collectively, and Arab individuals and organizations, refer to the Gulf as the Arabian Gulf (as illustrated by the foregoing quotation from a UN document).
33. The third question to be decided is, is the target of the proposed domain explicitly or implicitly the Arab community of the Gulf?
34. The paramount objective of the proposed .PERSIANGULF gTLD is to provide an internet link among Iranians and persons of Iranian heritage, whether those persons live in or outside of Iran. However, as paragraphs 11, 28 and 29 above make clear, an objective of the domain is to tie together “peoples of various nations, connected geographically and historically to the Persian Gulf”. It follows that .PERSIANGULF gTLD, if not explicitly targeted to affect the inhabitants of the GCC States, implicitly targets them.
35. While the foregoing is a plausible conclusion, it is not necessarily an exclusive one. The language just quoted is open to the interpretation that not only the principal but sole objective of .PERSIANGULF gTLD is to establish an internet link among Iranians and persons of Iranian heritage whether they are nationals of Iran or of various other nations.
36. If that is indeed the sole objective however, the question arises, why is not the domain named .PERSIANHERITAGE rather than .PERSIANGULF? If the objective is confined to persons of Persian origin, why choose a geographical name? Why choose the name of a body of water that indisputably is bound up with the heritage not only of persons of Persian derivation but of millions of Arabs as well?
37. In view of these considerations, it is concluded that Arab inhabitants of the region would be implicitly targeted were .PERSIANGULF gTLD to be registered.
38. The fourth question that must be decided is whether those who are found to be implicitly targeted suffer the likelihood of material detriment to their rights or legitimate interests.

In this regard, the Guidebook provides in respect of a Community Objection, at Article 3.5.4:

“Detriment The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted....Factors that could be used by a panel in making this determination include but are not limited to:

- *Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string;*
- *Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely...*
- *Interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string;*
- *Dependence of the community represented by the objector on the DNS for its core activities;*
- *Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operations of the applied-for gTLD string; and*
- *Level of certainty that alleged detrimental outcomes would occur.*

If opposition by a community is determined, but there is no likelihood of material damage to the targeted community resulting from the applicant’s operation of the applied-for gTLD, the objection will fail.”

39. The Objector maintains that “allowing the existence of such a sensitive string without the endorsement of the Arabian gulf community which is linked to this area will allow the applicant to interfere with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string. Hence, there is likelihood of material detriment....”
40. In the view of the Expert, the foregoing argument does not provide or constitute proof that the Application if granted will create a likelihood of material detriment to the community of the Objector. Nor is it easy to see what material detriment is likely to occur, which may explain why the Objection is so terse in this regard. In the perception of the Expert, the fact remains that the practical effect of registration of .PERSIANGULF gTLD is difficult to discern and weigh. Hence it follows that a likelihood of material detriment has not been established.
41. This is not to suggest that the dispute is not important to the States and interests concerned. Such denomination disputes can be of high importance, roiling international

relations. One such dispute recently was the subject of a contentious case in the International Court of Justice. Other current such disputes concern, among other issues, the conflicting denomination of islands or of a sea between two countries.

42. The dispute between Arab States and supporters, on the one hand, and the Islamic Republic of Iran and its supporters, on other hand, over the denomination of the Gulf, has subsisted for more than fifty years. It is far from clear that registration of .PERSIANGULF gTLD would resolve, or exacerbate, or significantly affect, that dispute. In any event, the GCC and other Arab interests are and would remain free to seek registration of a domain such as .ARABIAN GULF gTLD.
43. It follows that the Objection fails for lack of evidence of the likelihood of material detriment to which registration of the Application would give rise.

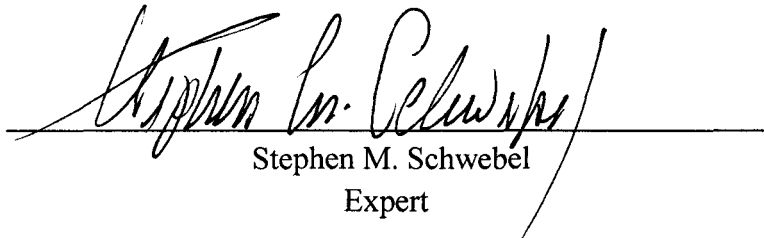
Decision:

In view of the above analysis and reasons, I hereby render the following Expert Determination according to Article 21(d) of the Procedure:

1. GULF COOPERATION COUNCIL's Objection is dismissed;
2. Applicant ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI prevails;
3. ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI's advance payment on costs shall be refunded by the Centre to ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI.

Date: 30 October 2013

Signature:



Stephen M. Schwebel
Expert