



May 11, 2015

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: AICPA's CPE Application for .CPA (No. 1-1911-56672)

ICANN Board of Directors and Economist Intelligence Unit,

I am writing on behalf of Donuts Inc. and its subsidiary applicant Trixy Canyon, LLC. Attached is another copy of our filing regarding the Community Priority Evaluation application by AICPA for .CPA (No. 1-1911-56672), which was previously provided to you on 22 April 2015.

We appreciate your attention to and consideration of this matter. Feel free to reach out to me should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathon Nevett".

Jonathon Nevett
Co-Founder
Donuts Inc.

**Application by AICPA for .CPA (Serial No. 1-1911-56672):
Comment to Community Priority Evaluation**

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INTRODUCTION

The Community Priority Evaluation (“CPE”) is a serious undertaking. While designed to protect true communities and their designations, a “successful” CPE also *disqualifies* otherwise legitimate applicants that have met the rigorous criteria to operate a top-level domain:

[A] qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application.

Applicant Guidebook (“Guidebook” or “AGB”) § 4.2.3 at 4-9. Accordingly, ICANN created a scoring methodology to “identify qualified community-based applications,” while preventing “false positives” -- *i.e.*, “awarding undue priority to an application that refers to a ‘community’ construed merely to get a sought-after generic word as a gTLD string.” *Id.*

The system grants community priority only to applications that score at least 14 out of 16 possible points across four categories. *Id.* at 4-10. The application under review (“Application”) by AICPA (also referred to as the “Applicant”)¹ falls well short of that threshold, and thus cannot properly eliminate other legitimate competing applicants.

Among other things, the variety and breadth of a term like “CPA,” particularly as its intended use appears in the Application, defies “clear delineation” of a “community.” Based on the “community establishment” criteria analyzed more fully below, the Application should barely earn two, and certainly no more than three, of the four points available in this category.

Moreover, an insufficient “nexus” exists between the TLD and the asserted community. As would a “local tennis club applying for .TENNIS,”² Applicant attempts to “capture a wider geographic/thematic remit than it actually has.” The Guidebook specifically disallows *any* “nexus” points in this situation.³ The failure in this category alone defeats the Application.

The Application further suffers from vague and ill-defined “registration policies,” making determination and enforcement of who can register second-level names extremely

¹ See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/208>.

² See AGB at 4-13.

³ *Id.*; see also Economic Intelligence Unit (“EIU”) CPE Guidelines (“Guidelines”) at 8.

difficult. Under the four separate, single-point subcategories of “registration policies” discussed below, Applicant appears entitled to no more than two points in total.

Finally, the Application has no meaningful documented community support, but does have opposition. The Applicant includes but a single letter – from *itself* – and little else to entitle it to two “support” points.⁴ The Application also faces a competing CPE application for the same string, which should render it ineligible for two full “opposition” points. Proper application of the “community endorsement” standard, therefore, should result in two, and certainly no more than three, of the four possible points.

It should come as no surprise that, according to the criteria, this geographically-limited Applicant cannot succeed in using CPE to co-opt the term “CPA” with the breadth with which it proposes to use the TLD. ICANN formulated the community TLD concept to protect the labels of real, discrete and well-defined groups, not to allow opportunists the means to *commandeer* broadly-applicable terms for their own purposes. That would run directly contrary to the intent of the new gTLD program — which is to *increase* competition in domain names, not impede it.⁵

These points do not diminish the Application; it simply does not meet ICANN’s stringent community criteria. Applicant certainly has the right to proceed with its Application, but must do so on the same level as all applicants, such as the author of this comment, who have equal rights to compete for the string.

ANALYSIS

The Guidebook allows the Panel to award up to four points in each of four categories (maximum points in parentheses):

- “Community establishment,” which involves “delineation” (2) and “extension” (2), AGB at 4-10 *et seq.*;
- “Nexus,” meaning both “nexus” (3) and “uniqueness” (1), *id.* at 4-12 *et seq.*;
- “Registration policies,” consisting of “eligibility” (1), “name selection” (1), “content and use” (1) and “enforcement” (1), *id.* at 4-14 *et seq.*; and
- “Community endorsement,” which considers “support” (2) and “opposition” (2), *id.* at 4-18 *et seq.*

⁴ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/104564?t:ac=208>

⁵ See <http://newgtlds.icann.org/en/about/program>.

Applying the standards established by ICANN for these criteria, and giving Applicant the benefit of all doubts on each, the Application can earn no more than 4 to 8 of the 16 available points. Of course, a failing score on CPE does not completely defeat the Application; the Applicant must simply compete for the string with other applicants.

CRITERION 1: The Application does not “establish” a “clearly delineated community,” which requires more than a mere commonality of interests.

The Guidebook provides for “community establishment” as the first of the four CPE factors. It breaks the criterion into two subfactors, “delineation” and “extension,” with two points possible for each. The Application under review does not merit full points.

“Delineation’ relates to the membership of a community, where a clear and straightforward membership definition scores high, but an unclear, dispersed or unbound definition scores low.” *Id.*, at 4-11; see also Guidelines at 4. The test considers:

- The “level of public recognition of the group as a community,” including the existence of “formal boundaries around” it and “what persons or entities ... form” it (which we call the “Identification” element),
- Whether the alleged community pre-dates the commencement of the new gTLD program in 2007 (the “Existence” element), and
- The level of “organization” of the community through at least one dedicated entity with documented evidence of community activities (the “Organization” element).

AGB at 4-11. Satisfying all three of the Identification, Existence and Organization factors will allow an application to score up to two “delineation” points. AGB at 4-12; Guidelines at 3. For the other two points, “extension” relates to “the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime” AGB at 4-12; Guidelines at 5-6.

The Application does not fully satisfy the “delineation” test.

While accounting as a profession and the “CPA” designation both have “existed” for a number of years, the Application still does not and cannot satisfy the other elements sufficiently to earn both points for delineation. Its community definition in particular is not “clear and straightforward,” but rather more “unclear, dispersed or unbound.”

AICPA suggests it may initially limit its “community” solely to its own members. Applic. § 20(c). However, it has not applied for .AICPA, but rather for the much broader .CPA.

Moreover, the Application leaves the door open to a much larger group of registrants. For example, AICPA states that it will “possibly” expand registrations to encompass not only its own individual members, but also “third parties who perform services or offer

products to the benefit of Applicant's members." Applic. § 20(c). Neither the public nor the constituents of a "community" so defined would readily recognize such a loose aggregation as part of any discrete grouping. The group would include many unaffiliated businesses with no meaningful relationship to one another. The Applicant does not specify precisely what types of "services" or "products" it might consider "beneficial" to its members. Would a local printing/graphics shop that makes business cards for members qualify? What about the repair service that fixes the copier or fax machine?

Further, even this (much broader) definition is itself subject to significant alteration, in that AICPA also reserves the right "change or restrict any policies, procedures and practices at any point in time." Applic. § 20(c). In addition, AICPA as an organization does not, and does not claim to, "dedicate" itself to accountancy *globally*, or to the universe of CPA product and service providers locally or globally.

The Application simply does not clearly "delineate" a community. As such, it must lose at least a point in the "delineation" subcategory. *See, e.g.*, the EIU CPE Rpt. re: .TAXI (Taxi Pay GmbH) at 2.⁶ *See also* AGB at 4-10 (allowing only one point for an application meeting only two of the three "delineation" subfactors).

Geographic and other limitations do not allow an award of both "extension" points.

AICPA also loses at least a point on "Extension," which examines two aspects: size and longevity. As to the former, "[t]wo conditions must be met to fulfil the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community amongst its members." *See* EIU CPE Rpt. re: .INC (Dot Registry LLC) at 3.⁷

First, as mentioned above, in an effort to increase the size of its "community," the Application describes it as including "third parties who perform services or offer products to the benefit of [AICPA] members." Applic. § 20(c). This varied and boundless constituency would lack the necessary "awareness and recognition" of their inclusion in a CPA "community" to justify an award of full points.

Second, while AICPA may point to certain members outside the U.S. in an attempt to expand its size, the very name of its organization, "the *American* Institute of CPAs," reveals its smaller, more local focus. Just as the Florida State Bar might have a small percentage of lawyers in other states within its member base (whether due to relocation, practice expansion or otherwise), the fundamental fact remains that the organization dedicates itself to facilitating the practice of law *in Florida*. Similar to the

⁶ <https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>.

⁷ <https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>.

Applicant's claim, the Florida State Bar could not usurp rights of other legal associations simply by accepting other members or having some authority over its own members in other jurisdictions.⁸

The Application cannot qualify for two "extension" points. When combined with what likewise should be no more than a single point for "delineation," the Application should yield no more than two of the four possible "Community Establishment" points.

CRITERION 2: The Application does not establish a sufficient "nexus" with the non-unique term "CPA."

The second prong of CPE requires a "nexus" between the asserted community and the applied-for string. AGB at 4-12. The test consists of a "nexus" factor, worth zero, two or three points, and a "uniqueness" score of zero to one. An application must score at least two points for nexus in order to obtain a point for uniqueness. AGB at 4-14. Thus, the system allows a score of 4, 3, 2 or 0 points, but not a score of 1. Applicant, as shown below, merits none at all.

The application cannot earn the available three points for nexus.

The points available under the nexus subtest are awarded as follows:

- For a score of 3: The string matches the name of the community or is a well-known short-form or abbreviation of the community name;
- For a score of 2: The string identifies the community, but does not qualify for a score of 3; and
- For a score of 0: String nexus does not fulfill the requirements for a score of 2.

AGB § 4.2.3. The Application cannot earn three (or even two) points by these standards.

First, the string .CPA undeniably does not "match" the "community" claimed by the Application. "It is the AICPA members ... that the Applicant is committed to serve ..." Applic. § 20(a)(i). However, Applicant does not apply for .AICPA, the term that "matches" that "community."

Second, the Application "substantially overreaches" in that "the string indicates a wider geographical or thematic remit than the community has." Guidelines at 7. While Applicant includes within its organization "377,000 members in 128 countries," it concedes that it oversees only *United States* CPAs. Applic. § 20(a). Yet, Applicant applies for the more widely applicable .CPA.

⁸ See Applic. § 20(a): "The Applicant sets the professional and administrative standards for all CPAs *in the United States*." (Emphasis added.)

Just as in the Guidebook example (and corresponding EIU analysis) involving the string .TENNIS, Applicant has presence in a single geographic region, the U.S., even though it claims it would make registrations available to people and entities in Europe, Africa, Australia, Latin America and Asia. *Id.* As stated in the Guidebook:

[F]or a [“nexus”] score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a *globally well-known* but *local* tennis club applying for “.TENNIS”) then it would *not* qualify for a 2.

See AGB at 4-13 (emphases added). Even assuming Applicant is “globally well-known,” its “remit” remains “local” to the U.S., as even its organizational name pronounces. The Application therefore cannot earn the full three (or even two) potential nexus points.

Applicant made a conscious decision to apply for .CPA – a string with broad applicability – to serve its own purposes, such as to increase its visibility and value as a registry, to protect its “brand” and to preclude others from operating a registry using the “CPA” term over which it claims trademark protection. Applic. §§ 18(a), (b). While it may view these as perfectly legitimate business goals, in adopting them Applicant voluntarily abdicated any right to the scoring preference given to a string that readily identifies a single, very specific group of people.

Applicant cannot “have it both ways.” Just in the highly analogous case of .TENNIS, where the Panel awarded zero points to an applicant named “Tennis Australia,” AICPA should not earn any nexus points whatsoever. See EIU CPE Rpt. re .TENNIS at 4. See *also* EIU CPE Rpt. re: .MLS (The Canadian Real Estate Association) at 3 (awarding zero points for nexus for Canadian real estate applicant due to “substantial over-reach”).⁹

“CPA” does not “uniquely” identify the claimed “community.”

The “uniqueness” subfactor “relates to the meaning of the string.”¹⁰ Put simply, does the string use a truly “unique” term that has no other significant meaning beyond referring to the community asserted by the applicant? The Panel need never even reach that question in its analysis here, as a point for uniqueness requires “that the string does identify the community - *i.e.*, scores 2 or 3 for ‘Nexus’ - in order to be eligible for a score of 1 for ‘Uniqueness.’” AGB at 4-14. Since Applicant cannot earn two or three points for “nexus,” as described above, the rules also bar it from a point for “uniqueness.”

⁹ <https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>

¹⁰ See <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf> at 65.

Even absent that bright line limitation, the Application still lacks “uniqueness” in the Guidebook sense. As mentioned, a string is only “unique” where it has “no other significant meaning beyond identifying the community described in the application.” AGB at 4-13. However, the term “CPA” has several possible meanings.

Looking only at accounting-related connotations, the “CPA” moniker can signify different professional designations depending on the area of the world: “Certified Public Accountant” in the U.S., “Certified Practising Accountant” in Australia,¹¹ and the newly-designated “Chartered Professional Accountant” in Canada.¹² And, the abbreviation has multiple meanings outside the accounting context.¹³ The term’s inherent ambiguity does not permit it to earn a point for “uniqueness,” even if it qualified for two of the three “nexus” points.

To be a truly unambiguous identifier, the “ideal” string would have no other possible associations except to the community in question. This arguably can be achieved by using the community institution abbreviation as string, but other possibilities exist – for example, putting a prefix or suffix on a generic string to make it distinctly and uniquely associated with the relevant community (such as prefixing “boy” to “scouts” for the community of boy scout organizations, or suffixing “growers” to “apple” for an association of apple growers).¹⁴

The breadth and brevity of the simple term “CPA” may make it an excellent choice for a top-level domain. However, its wide applicability defeats any efforts to associate it uniquely with one group in particular, as demonstrated by the simple presence of two competing community applications. Applicant could have freely chosen a string unique to its specific segment, .AICPA, but specifically elected to compete against others for the more generic .CPA. While this may have advantages from a marketing or business strategy perspective, it also carries the disadvantage of not uniquely identifying Applicant’s specific “community.”

¹¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/414>.

¹² http://en.wikipedia.org/wiki/Chartered_Professional_Accountant

¹³ The term can mean “Cost per Acquisition,” for calculating online advertising traffic (<http://www.web1marketing.com/glossary.php?term=Cost+Per+Acquisition>); “Critical Path Analysis” in project management (<http://www.investopedia.com/terms/c/critical-path-analysis-cpa.asp>); or even “Codigo Postal Argentino,” the term used for postal codes in Argentina (<http://www.correoargentino.com.ar/formularios/cpa>). Despite such other uses, AICPA boldly states that it is “not aware of any specific connotation the string [CPA] may have beyond the AICPA Community.” Applic. § 20(d)(ii).

¹⁴ See <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf> at 103.

Of the four total points available for “nexus” and “uniqueness,” the Application should earn zero. The term is not “unique,” and does not “closely describe” the purported community without substantially overreaching beyond it. Thus, the Applicant cannot possibly receive the necessary 14 of 16 points to pass CPE, and the Panel not even consider the remaining CPE criteria.

CRITERION 3: The Application lacks community-based registration policies.

“Registration policies” represent the conditions that the registry will set for prospective registrants – *i.e.*, those desiring to register second-level domains. A community application will receive one point for each of the four following policies:

- Eligibility restricted to community members (a largely unrestricted approach to eligibility receiving zero points);
- Name selection rules consistent with the articulated community-based purpose of the applied-for gTLD;
- Rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD; and
- Specific enforcement mechanisms (including an avenue for appeal).

AGB at 4-16. The Panel should score applications from a holistic perspective, applying these categories to the particularities of the community explicitly addressed, making sure they show alignment with the community-based purpose of the TLD and continuing accountability to the community named in the application. *Id.*¹⁵

Eligibility:

“To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members.” *Id.* While the Application at first glance may appear to offer some restrictions on eligibility, it is replete with qualifiers and reservations that make it impossible to determine what qualifications a potential registrant must meet. By way of example, AICPA first points out that:

At least during the initial months or even years following the delegation of the .cpa gTLD to the Applicant, this extension is likely going to be a so-called “single registrant TLD” as contemplated by ICANN in Article 4.5 of the template Registry Operator Agreement ... where “(i) all domain name

¹⁵ See also EIU CPE Rpt. re .IMMO (“[t]he registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD”), <https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 5.

registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, and (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator.”

Applic. 20(e)(i). AICPA then goes on to “open the door” to a much larger group of potential registrants:

At a later stage, in addition to AICPA, its Affiliates, individual members and possibly third parties who perform services or offer products to the benefit of the Applicant’s members, will possibly be entitled to register domain names in .cpa. That is to say, one of the main eligibility criteria will be that the interested party wishing to register a domain name in the .cpa TLD is either a member of the Applicant or has a sufficiently close link to the AICPA community.

Id. Applicant reserves flexibility to change its eligibility policies yet again if “there would be a risk that the reputation of the AICPA brand would be damaged by the content or use made by a registrant of a second-level domain name in the .cpa TLD.” *Id.* Such non-committal approaches should not merit a full scoring point, as the Panel cannot divine what specific eligibility criteria the Applicant will implement at any point in time.

Name Selection/Content and Use:

Similar concerns exist with AICPA’s proposed “restrictions” for name selection and for content and use. For example, AICPA first states that “names to be registered ... will likely relate to the following” items:

- registered trademarks of AICPA;
- names of the individual members of AICPA;
- names of organizations associated with the Applicant;
- third parties who perform services or offer products to the benefit of the Applicant’s members;
- names of departments within AICPA;
- names of foundations and social initiatives supported by AICPA; and
- names of events organized by AICPA.

Applic. § 20(e)(ii). Particularly with respect to “organizations associated with the Applicant” and “third parties who perform services or offer products to the benefit of the Applicant’s members,” the Application sets forth no standards for determining who might qualify for a .CPA domain name.

AICPA further states that it will “likely” require that “all content and use offered under the .cpa TLD compl[y] with all applicable laws, including, but not limited to, trademark laws, criminal laws, data protection laws etc.” *Id.*, 20(e)(iii). Such suggested restrictions do not relate in any specific way to the community-based purpose of the TLD. Moreover, just as with eligibility, AICPA states that it will “reserve the right to itself to grant exemptions from some or even all of these requirements.” *Id.* § 20(e)(ii).

CPE Panels have refused to award scoring points for registration policies that are “too vague to be consistent with the broad purposes of the gTLD.” *See* CPE Rpt. re .IMMO at 5 (granting 1 out of 4 possible points for the third criterion, and none at all for name selection or content and use). Given the nondescript, highly qualified wording of the Application and AICPA’s reservation to rewrite virtually anything it wants at any time, the Panel should award zero points each for “name selection” and “content and use.”

Enforcement Procedures:

The same holds true for enforcement. AICPA states that it “might” install a “complaints point of contact” who, if it so chooses, will “likely” have “powers to suspend, cancel or delete an application for or a registered a second-level domain name.” *Applic.* § 20(e)(iv). This will “likely be the only remedy” offered by AICPA to a complainant. *Id.* More particularly, the Application does not appear to provide for “appeal mechanisms,” which the Guidebook requires. AGB at 4-15; Guidelines at 14.

As it suggests no real “eligibility” criteria and few “naming” and “content and use” restrictions, the Application offers little to “enforce.” The Application does not demonstrate “continuing accountability” to the asserted community. AGB at 4-16; Guidelines at 14. As such, it cannot earn a point for “enforcement.”

With inadequate enforcement of non-existent or unclear eligibility, naming and content and use standards, the Application cannot receive anywhere near the four available “Registration Policies” points, if any at all. Enforcement mechanisms simply do not exist, and eligibility, naming and content and use standards are so vague and open-ended that awarding a point to any would require great indulgence on the part of the Panel.

CRITERION 4: The Application does not demonstrate relevant community support.

The “community endorsement” test looks at both support and opposition, with up to two points for each subfactor. The Application has inadequate support to qualify for more than one the two available points, and the existence of documented opposition entitles it to no more than one of those two points.

For “support,” an applicant must demonstrate that:

- It is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community. It must have documented support from institutions/organizations representing a majority of the overall community in order to score 2.
- Documented support from at least one group with relevance may allow a score of 1, but does not suffice for a score of 2.

AGB at 4-17. In the Application, Applicant offers only one letter, authored by its own President and CEO.¹⁶ While Applicant could be seen as a “recognized community institution/member organization” for its own members, the Guidebook requires more for an award of full points. Specifically, support analysis includes “due regard for the communities implicitly addressed by the string.” AGB at 4-17; *see also* Guidelines at 17.

With respect to “Support,” it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 *if* the string is clearly oriented to *that national level*, but only a 1 *if the string implicitly addresses similar communities in other nations*.

AGB at 4-18 (emphases added). Here, the Application not only addresses constituencies outside of Applicant’s home country, the USA, it does so *explicitly*. *See, e.g.*, Applic. § 18(a)(iii) (“Stakeholders” for a .CPA TLD “include ... over 1 million CPAs worldwide”); *id.* § 20(a)(ii)(a) (identifying “[i]nternational associate” members). As such, its score for the “support” sub-criterion must be no more than 1 point.

Indeed, the fact that a second applicant from another area of the world also claims “community” status for a .CPA TLD casts significant doubt upon AICPA’s attempt to portray itself as an anointed spokesperson for the entire global accounting profession. *See, e.g.*, Applic. §§ 20(a), (b). This fact also impacts the “opposition” subtest. While no particularly adverse comments concerning the Application appear on ICANN’s comment page (<https://gtldcomment.icann.org/applicationcomment/viewcomments>), opposition does appear from a community application for the domain by CPA Australia. The group claims to have 139,000 members of its own, and has presented reasoned arguments in its community bid for the TLD. While still insufficient to score 14 out of 16 points, these arguments do not seem “clearly spurious” or filed simply for “obstruction” purposes. Guidelines at 20.

Importantly, if AICPA succeeds in its CPE bid, CPA Australia either will have to participate in an auction (if it, too, passes CPE) or be eliminated from the program entirely. AGB at 4-8. Its application therefore amounts to an act in “opposition” by a group on “non-

¹⁶ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/104564?t:ac=208>.

negligible size,” such that a point should be deducted in this subcategory. AGB at 4-17. With a maximum of one point also achievable for “support,” the Application should score no higher than two points for the entire fourth criterion.

CONCLUSION

The Applicant undertakes the CPE essentially as a “low cost, high reward” gamble. It inappropriately attempts to use the CPE process to circumvent the appropriate contention set resolution process defined by ICANN.

However, one would expect to find it exceedingly difficult to succeed at CPE using such a sweeping designation as “CPA.” This is why ICANN set the community bar so high – to prevent applicants limited in scope from misusing the CPE process in order to gain an advantage by claiming broader “community” status.

An objective consideration of the relevant criteria would suggest the following scores:

- Most appropriately two, but certainly no more than three, points for “Community Establishment,” due to an unclear and amorphous community definition;
- Zero points for “Nexus,” as the Application “substantially overreaches,” and “CPA” is not a “unique” term;
- As few as zero, and certainly no more than two, points for “Registration Policies” due to the extensive qualifying language and rights reservations, coupled with no appeal mechanism;
- Two to three points for “Community Endorsement,” as the string at minimum “implicitly addresses” other constituencies that have not expressed support, and faces a competing application that should prevent two full opposition points.

Thus, 4 to 8 points represents the absolute “best case” scenario for the Applicant. Falling well short of the 14 points necessary out of the 16 available, the Application should not pass CPE.

DATED: April 22, 2015

Respectfully submitted,

THE IP and TECHNOLOGY LEGAL GROUP, P.C.

By: _____/img/_____

John M. Genga

Attorneys for TRIXY CANYON, LLC

Applicant for .CPA