

## GAC Early Warning – Submittal Website-WS-44846

---

<b>Application ID:</b>	1-1524-44846
<b>Entity/Applicant Name:</b>	Fern Edge, LLC
<b>String:</b>	.website
<b>Early Warning Issue Date:</b>	20 November 2012

### Early Warning Description – This will be posted publicly:

We are writing to urge ICANN to reject any application to release the top-level domain .website. Any such release will conflict with our top-level domain, .ws, which will cause significant economic harm to the Independent State of Samoa (“Samoa”) (formerly known as Western Samoa).

### Reason/Rationale for the Warning – This will be posted publicly:

Samoa has a population of approximately 193,000 (2011 est.), with a per capital GNI of \$2,840 (2011 est.). Our economy relies on tourism, remittances, agriculture and fishing. Throughout most of the 2000’s GDP steadily rose. Our Government had taken steps to reform the Government Sector, promote private businesses, deregulate the financial sector, promote investment and generate unique sources of revenue. Our economy has consequently been improving. Samoan Internet user growth exploded 1,700% since 2000 due in large part to our campaigns with the .ws top-level domain. However, on September 29, 2009, Samoa was hit hard by a devastating tsunami which severely damaged our country and our economy. Before the earthquake, Samoa slated to graduate the UN’s Least Developed Countries list in 2010. Due to economic and environmental vulnerability (as highlighted by the September 2009 tsunami), our graduation from the LDC list has been put back to the beginning of 2014, giving Samoa a breathing space of three years to make adjustments and reestablish policies necessary to sustain Samoa’s economy post LDC.

Obviously, Samoa would need to try and maintain and our current revenue sources. During this time of global economic uncertainty, any action or decision by ICANN that would weaken the important revenue we receive from the .ws domain registry would have a significant detrimental effect on Samoa’s revenues. For a small country with a narrow income base, the revenue from the .ws domain registry provides substantial benefit through the multiplier effect and its loss would be sorely felt.

**CONFUSINGLY SIMILAR**

The top-level domain .website, if released, would be confusingly similar to the top-level domain .ws; therefore, ICANN should reject the three (3) applications for the release of .website. A top-level domain is “confusingly similar” to another top-level domain when that top-level domain so resembles a top-level domain previously released by ICANN and used throughout the world, as to be likely to cause confusion, or to cause mistake, or to deceive.

Here, .ws closely resembles .website in meaning due to our development of the top-level domain over years through our license arrangements, extensive marketing campaigns and investment of millions of dollars. Since 1999, the top level domain, .ws, has been extensively marketed throughout the world as synonymous with “WebSite.” Users that register a .ws domain name do so because they want Internet users to think of such domain as their “WebSite.” Users that register for a .ws domain name do not do so because they want Internet users to believe it has some link with the country of Western Samoa.

Since 1999, over 1,000,000 .ws domain names have been registered and used by Internet users for their websites and email addresses. At one point in time, [www.WebSite.ws](http://www.WebSite.ws), was the 2,500<sup>th</sup> most visited website in the world. Currently .ws has millions of search results on Google and hundreds of millions of pages on the Google search engine.

If .website is released, Internet users attempting to find a person’s or company’s website will be confused as to whether he or she should go to the domain name with a .ws or .website. to find the website he or she is looking for. If Internet users are not able to quickly find the website they are looking for, they will grow frustrated and log off. One important goal of the Internet and those charged with assigning domain names should be to ensure that users can easily find the information they are looking for with as little confusion as possible. Creating and releasing confusingly similar top-level domains defeats this goal.

**INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Moreover, such conduct causes tortuous interference with the prospective economic advantage of Samoa and its licensees. The tort consists of intentional (or negligent) and improper methods of diverting or taking business from another that are not within the privilege of fair competition. Generally, the tort of interference with prospective economic advantage arises when (1) an economic relationship exists between the plaintiff and some third party with the probability of future economic benefit to the plaintiff; (2) the defendant has knowledge of the relationship; (3) the defendant engaged in wrongful conduct (either intentionally or negligently); (4) actual disruption of the relationship which causes economic harm occurs; (5) the economic harm to the plaintiff was proximately caused by the acts of the defendant; and (6) the defendant’s

## **GAC Early Warning – Submittal Website-WS-44846**

---

conduct was wrongful by some legal measure other than the fact of interference itself.

Here, the Government of Samoa through its licensees market the top level domain, .ws., as “WebSite” and register internet domains for over internet users desiring to have their own .ws WebSite. ICANN is aware of this contractual arrangement. Releasing top level domains .website will cause confusion among internet users as described above and such confusion will cause economic harm to Samoa by causing the number of .ws domain registrations to substantially decrease.

### **Possible Remediation steps for Applicant – This will be posted publicly:**

- The applicant should withdraw their application based on the information provided above

### **Further Notes from GAC Member(s) (Optional) – This will be posted publicly:**

The Government of Samoa and its licensees enthusiastically support the continuing expansion of the Internet and the opportunities it provides users and content providers, as well as the revenue it can help generate for our world’s lesser developed countries, which includes Samoa. However, the release of top-level domain names that are confusingly similar to existing top-level domains will have a destructive impact on such progress and drastically reduces revenues for Samoa. Accordingly, we strongly urge ICANN to reject the three (3) applications for the release of the .website top-level domain.

## **INFORMATION FOR APPLICANTS**

### **About GAC Early Warning**

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs or of a formal objection at a later stage in the process. Refer to section 1.1.2.4 of the Applicant Guidebook (<http://newgtlds.icann.org/en/applicants/agb>) for more information on GAC Early Warning.

### **Instructions if you receive the Early Warning**

**ICANN strongly encourages you work with relevant parties as soon as possible to address the concerns voiced in the GAC Early Warning.**

#### **Asking questions about your GAC Early Warning**

If you have questions or need clarification about your GAC Early Warning, please contact [gacearlywarning@gac.icann.org](mailto:gacearlywarning@gac.icann.org). As highlighted above, ICANN strongly encourages you to contact

## GAC Early Warning – Submittal Website-WS-44846

---

gacearlywarning@gac.icann.org as soon as practicable regarding the issues identified in the Early Warning.

### **Continuing with your application**

If you choose to continue with the application, then the “Applicant’s Response” section below should be completed. In this section, you should notify the GAC of intended actions, including the expected completion date. This completed form should then be sent to gacearlywarning@gac.icann.org. If your remediation steps involve submitting requests for changes to your application, see the change request process at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.

In the absence of a response, ICANN will continue to process the application as submitted.

### **Withdrawing your application**

If you choose to withdraw your application within the 21-day window to be eligible for a refund of 80% of the evaluation fee (USD 148,000), please follow the withdrawal process published at <http://newgtlds.icann.org/en/applicants/customer-service/withdrawal-refund>. Note that an application can still be withdrawn after the 21-day time period; however, the available refund amount is reduced. See section 1.5 of the Applicant Guidebook.

**For questions please contact: [gacearlywarning@gac.icann.org](mailto:gacearlywarning@gac.icann.org)**

### **Applicant Response:**

--

---