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8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 REGISTERSITE.COM, an Assumed
Name of ABR PRODUCTS INC., a
13 New York Corporation, et al.,

14 Plaintiffs,

15 v.

16 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
17 NUMBERS, a California corporation;
VERISIGN, INC., a Delaware
18 Corporation; NETWORK
SOLUTIONS, INC., a Delaware
19 Corporation; ENOM, INC., a
Washington Corporation; ENOM
20 FOREIGN HOLDINGS
CORPORATION, a Washington
21 Corporation; and DOES 1-10,
inclusive,

22 Defendants.
23

Case No. CV 04-1368 ABC (CWx)

**MEMORANDUM OF POINTS
AND AUTHORITIES OF
DEFENDANTS VERISIGN, INC.
AND NETWORK SOLUTIONS,
INC. IN SUPPORT OF MOTION
TO DISMISS THE FIRST
AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM
PURSUANT TO FED. R.
CIV. P. 12(b)(6)**

Date: July 12, 2004
Time: 10:00 a.m.
Courtroom: 680 – Roybal Fed. Bldg.
Hon. Audrey B. Collins

[Notice of Motion and Motion filed
concurrently herewith]

24
25 Defendants VeriSign, Inc. (“VeriSign”) and Network Solutions, Inc. (“NSI”)
26 respectfully submit this joint memorandum in support of their Motion to Dismiss all
27 claims asserted against them in the First Amended Complaint filed herein by Plaintiffs
28 (the “Complaint” or “FAC”).

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1 **I. INTRODUCTION**

2 Plaintiffs contend they are eight businesses that offer, among other things,
3 services purportedly designed to assist persons in obtaining registrations for recently
4 deleted Internet domain names in the event the prior registrant allowed the domain name
5 registration to lapse and the domain name to be deleted.¹ They have filed a 51-page
6 complaint based on a service, the Wait Listing Service (“WLS”), that VeriSign proposed
7 over two years ago, but which is not launched or active. Nevertheless, Plaintiffs assert
8 that WLS should be enjoined because it purportedly would harm competition and
9 consumers. However, as Plaintiffs are aware, in another action filed last year in this
10 Court by three registrars to block WLS, Judge Walter found that “WLS has the potential
11 to benefit registries, registrars . . . and, *most importantly, the public.*”² *Dotster, Inc. v.*
12 *Internet Corp. for Assigned Names & Numbers*, 296 F. Supp. 2d 1159, 1166 (C.D. Cal.
13 2003) (emphasis added).

14 Viewed in the light most favorable to Plaintiffs, their allegations do not reflect
15 any unlawful action by VeriSign or NSI. Plaintiffs have accused VeriSign and NSI –
16 based solely on VeriSign’s *proposal* to implement WLS – of operating an “illegal
17 lottery,” violating federal antitrust laws, and deceiving “consumers” about the value of
18 WLS. Plaintiffs’ own Complaint reveals that these allegations are baseless. The facts
19 alleged in the Complaint establish that by *proposing* to offer WLS, VeriSign and NSI
20 have proposed no illegal lottery, have committed no antitrust violation, and have
21 disrupted no existing business relationship between Plaintiffs and others, and that no

22 ¹ In fact, at least two of the Plaintiffs, Esite and BidItWinIt, apparently have no active
23 business operations and have *never* provided any domain name registration services.
24 See <http://www.esite.com>; <http://www.biditwinit.com>. In addition, AusRegistry Group
25 does not even offer registration services to consumers. See
26 <http://www.registrarsasia.com>.

27 ² In the *Dotster* action, this Court denied a preliminary injunction motion brought by
28 several registrars against ICANN that sought to enjoin the implementation of WLS. The
Dotster action was later dismissed with prejudice. Certain Plaintiffs in this action,
namely R. Lee Chambers Co. LLC and Fiducia LLC, are members of an organization
called the Domain Justice Coalition (“DJC”), of which the *Dotster* plaintiffs also are
members. The DJC publicly has claimed responsibility for the *Dotster* action. See
<http://www.stopwls.com/lawsuit.html>.

1 reasonable “consumer” could be misled by VeriSign’s and NSI’s promotions for the
2 proposed WLS service.

3 Plaintiffs’ Complaint demonstrates only the lengths to which Plaintiffs will go to
4 stop WLS – a service that will bring certainty and order to the currently chaotic process
5 by which prospective domain name registrants seek to be the first to register a domain
6 name that has been deleted. Plaintiffs’ anti-competitive litigation maneuvers cannot
7 create a claim for relief. The Complaint should be dismissed in its entirety. Moreover,
8 the Court should not grant Plaintiffs leave to amend further because Plaintiffs have
9 already tried, without success, to correct its deficiencies by amending their original
10 pleading after VeriSign explained the defects therein in the parties’ “meet and confer.”

11 **II. SUMMARY OF THE COMPLAINT’S ALLEGATIONS**

12 **A. The Parties**

13 The Complaint asserts claims on behalf of eight businesses, all of which purport to
14 offer services to assist customers who seek to register a domain name that has been
15 registered to someone else and was recently deleted. (FAC ¶ 1.4.) Plaintiffs assert
16 claims against four defendants: VeriSign, NSI, eNom, Inc. (“eNom”), and Internet
17 Corporation for Assigned Names and Numbers (“ICANN”). They allege that VeriSign,
18 pursuant to an agreement with ICANN, operates the exclusive “registry” for the .com
19 and .net top-level domains (“TLDs”). (*Id.* ¶¶ 4.13, 4.44.) Plaintiffs allege a “registry” is
20 an organization responsible for maintaining the authoritative list of second-level domain
21 names within a TLD. (*Id.* ¶ 4.9 & n.2.)

22 Plaintiffs allege that domain name registrants do not interact directly with the
23 registry to register a domain name; instead, they register names only through registrars,
24 such as some of the Plaintiffs, which interface with the registry operator to determine the
25 availability of requested domain names and to register domain names. (*Id.* ¶¶ 4.10-
26 4.11.) Plaintiffs allege that NSI and eNom are domain name registrars.³ (*Id.* ¶ 1.3.)

27 ³ As Plaintiffs admit, the registrar business of NSI was sold last year. (FAC ¶ 2.11.)
28 NSI does not currently act as a domain name registrar and does not offer, advertise, or
promote WLS.

1 According to Plaintiffs, ICANN is a not-for-profit corporation recognized by the
2 U.S. Department of Commerce as the entity responsible for administering the domain
3 name system. (*See generally id.* ¶¶ 4.12-4.19.)

4 **B. Plaintiffs' Registration of Recently Deleted Domain Names**

5 Plaintiffs allege that there currently are 258 TLDs, including fourteen “generic”
6 domains (such as the .com, .net, and .gov TLDs) and 243 “country code” domains (such
7 as .us and .uk). (*Id.* ¶¶ 4.5-4.7.) They assert that, as the total number of domain names
8 registered in the .com and .net TLDs has grown, the quantity and quality of domain
9 names available for registration in those TLDs has been reduced, resulting in a
10 “shortage” of desirable domain names. (*Id.* ¶¶ 4.20-4.24.) According to Plaintiffs, the
11 shortage of domain names is ameliorated by the number of registered domain names
12 that expire because the registrations are not renewed by the current registrants. (*Id.*
13 ¶ 4.23.) Plaintiffs allege that approximately 800,000 domain names expire each month
14 and are returned, at least momentarily, to a supposed “pool” of unregistered domain
15 names available for registration.⁴ (*Id.* ¶ 4.24.)

16 Plaintiffs allege that domain names can be registered for periods from one to ten
17 years. (*Id.* ¶ 4.25.) If not renewed at the end of the term, the domain name registration
18 is deleted and is no longer included in the registry’s master database. At that point, the
19 domain name can be registered by anyone. (*Id.* ¶¶ 4.25-4.34.) According to the
20 Complaint, when domain names expire, many registrars compete to register the names
21 on behalf of their customers. (*Id.* ¶ 4.34.) Plaintiffs allege that, if the domain name is
22 desirable, at least 100 registrars typically compete to register it, and it is often “re-
23 registered” within a few milliseconds of being deleted. (*Id.* ¶¶ 4.34, 4.36.) To register
24 a .com or .net domain name that is about to be deleted, each competing registrar sends a
25

26 ⁴ Plaintiffs admit that references to a “shortage” or “pool” of “unregistered” or “expired”
27 domain names is a misnomer. (FAC ¶ 4.24 n.6.) Domain names either are registered,
28 and thus included in the registry’s database, or are not registered and do not exist. (*Id.*)
See generally Smith v. Network Solutions, Inc., 135 F. Supp. 2d 1159, 1160-64 (N.D.
Ala. 2001).