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17 ASSIGNED NAMES AND NUMBERS

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20 REGISTERSITE.COM, et al.,

21 Plaintiff,

22 v.

23 INTERNET CORPORATION FOR  
24 ASSIGNED NAMES AND  
25 NUMBERS, a California  
26 Corporation; VERISIGN, INC., a  
27 Delaware Corporation; and DOES 1-  
28 150, inclusive,

Defendants.

Case No. CV 04-1368 ABC (CWx)

**NOTICE OF ERRATA TO  
DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS' MOTION  
TO DISMISS CERTAIN CAUSES OF  
ACTION FOR FAILURE TO STATE  
A CLAIM UNDER FRCP RULE  
12(b)(6)**

BY \_\_\_\_\_

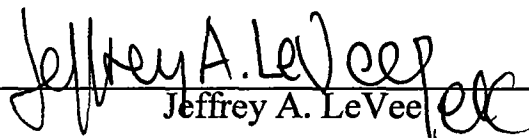
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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

FILED

1 Please take notice that Defendant Internet Corporation for Assigned Names  
2 and Numbers' ("ICANN") Motion to Dismiss Certain Causes of Action for Failure  
3 to State A Claim Under FRCP Rule 12(b)(6) ("Motion to Dismiss") was  
4 inadvertently submitted without a Table of Contents and a Table of Authorities. As  
5 such, ICANN hereby submits a copy of its Notice of Motion and Motion to  
6 Dismiss, with the Table of Contents and Table of Authorities attached thereto, as  
7 Exhibit A. No changes have been made to either ICANN's Notice of Motion or  
8 Motion to Dismiss, other than the addition of the Table of Contents and Table of  
9 Authorities. ICANN respectfully requests that the Court recognize this copy of  
10 ICANN's Notice of Motion and Motion to Dismiss.

11 Dated: June 1, 2004

JONES DAY

13 By:   
14 Jeffrey A. LeVeque

15 Attorneys for Defendant INTERNET  
16 CORPORATION FOR ASSIGNED  
17 NAMES AND NUMBERS

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11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

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15 REGISTERSITE.COM, et al.,  
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20 Delaware Corporation; and DOES 1-  
150, inclusive,  
21 Defendants.

Case No. CV041368 ABC (CWx)  
**DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS' NOTICE  
OF MOTION AND MOTION TO  
DISMISS CERTAIN CAUSES OF  
ACTION FOR FAILURE TO STATE  
A CLAIM UNDER FRCP 12(B)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: July 12, 2004  
Time: 10:00 a.m.  
Dept: 680

Honorable Audrey B. Collins

1 PLEASE TAKE NOTICE that, on July 12, 2004, at 10:00 a.m. or as soon  
2 thereafter as counsel may be heard at the courtroom of the Honorable Audrey B.  
3 Collins, United States District Judge, located at 255 East Temple Street, Los  
4 Angeles, CA 90012, Defendant Internet Corporation for Assigned Names and  
5 Numbers ("ICANN") will and hereby does move this Court, pursuant to  
6 Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing the  
7 following claims for relief contained in the complaint filed by Registersite.com,  
8 Name.com, R. Lee Chambers Company LLC, Fiducia LLC, Spot Domain, LLC,  
9 !\$6.25 Domains! Network, Inc., AusRegistry Group Pty Ltd and !\$!Bid It Win It,  
10 Inc.'s ("Plaintiffs"):

- 11 • first claim for relief for violation of California Business and Professions  
12 Code Section 17200 et seq., as against ICANN;
- 13 • fifth claim for relief for violation of California Business and Professions  
14 Code Section 17200 et seq., as against ICANN;
- 15 • seventh claim for relief for violation of California Business and  
16 Professions Code Section 17200 et seq., as against ICANN; and  
17 • twelfth claim for relief for breach of contract.

18 Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, none of  
19 these claims for relief states a claim upon which relief may be granted, as against  
20 ICANN. These are the only claims for relief in the complaint that are asserted  
21 against ICANN.  
22

23 ICANN originally met and conferred with Plaintiffs on April 1, 2004, during  
24 which ICANN notified Plaintiffs that ICANN intended to file a motion to dismiss  
25 plaintiffs' original complaint. Plaintiffs elected to file an amended complaint,  
26 which they did on April 8, 2004.

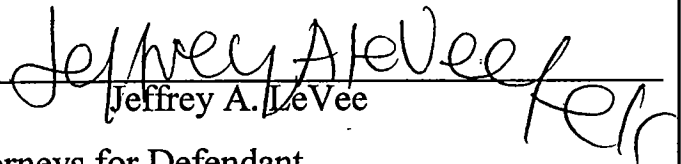
27 Although the first amended complaint deleted some of the defects in its  
28 claims against ICANN, it retained several others, and even introduced some

1 additional defects. This motion is made following the conference of counsel  
2 pursuant to Local Rule 7-3, which took place on May 20, 2004. Counsel were  
3 unable to reach any agreements that would obviate the need for the motion.

4 This motion is based upon this Notice of Motion and Motion, the  
5 Memorandum of Points and Authorities attached hereto, the concurrently-filed  
6 Request for Judicial Notice, all the papers, pleadings, and records on file herein,  
7 and on such other matters as may properly come before the Court before or at the  
8 hearing.

9 Dated: May 28, 2004

JONES DAY

10  
11 By:   
12 Jeffrey A. LeVee

13 Attorneys for Defendant  
14 INTERNET CORPORATION FOR  
15 ASSIGNED NAMES AND NUMBERS  
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28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 In pursuing this case against ICANN, Plaintiffs are seeking to raise issues  
4 *already decided* by Judge Walter in November 2003. Earlier that year, three other  
5 registrars, which have identical registrar accreditation agreements (“RAAs”) to  
6 those of plaintiffs, filed a lawsuit in this Court – known as the *Dotster* litigation –  
7 attacking the very same proposal for a Wait Listing Service (“WLS”) made by  
8 VeriSign. They made the same arguments that ICANN's acceptance of that  
9 proposal violated the procedures and other requirements set forth in the RAA, and  
10 sought a preliminary injunction to block WLS. Judge Walter denied the motion and  
11 in his Order made clear that the arguments of the *Dotster* plaintiffs provided no  
12 basis for relief. In the wake of that order, the *Dotster* plaintiffs voluntarily  
13 dismissed their lawsuit with prejudice.

14 Each of the four claims the Plaintiffs now make against ICANN arises  
15 entirely from that same WLS proposal and ICANN's failure to use its contracts with  
16 VeriSign to reject the proposal. As a result, Plaintiffs must know that their  
17 inclusion of ICANN in this lawsuit is unwarranted. Few of the claims for relief in  
18 the first amended complaint contain *any* of the necessary elements to state a claim  
19 against ICANN. For example, Plaintiffs include three California Business and  
20 Professions Code section 17200 claims against ICANN, each of which contain only  
21 one paltry allegation against ICANN.

22 The reason for Plaintiffs’ inability to aver facts that would support their  
23 claims is simple: there *are* no facts to support their claim. Instead, this lawsuit was  
24 apparently filed merely as a tactic to try to delay the implementation of WLS  
25 because Plaintiffs will make more money if WLS is delayed. The Court should not  
26 countenance such litigation tactic. ICANN urges the Court to dismiss the first,  
27 fifth, seventh, and twelfth claims against ICANN in Plaintiffs’ first amended  
28 complaint, with prejudice.

1 **STATEMENT OF RELEVANT FACTS**

2 Although Plaintiffs' first amended complaint is lengthy, its allegations with  
3 respect to ICANN may be summarized as follows:

4 Defendant VeriSign is the Internet "registry" for the ".com" and ".net"  
5 domains. FAC ¶¶ 4.9, 4.44. A "registry" is analogous to a telephone book in that it  
6 maintains a list (and other relevant information) of all of the Internet domain names  
7 registered in that particular domain (i.e., ".com"). If a consumer wishes to register  
8 a name in either of those domains, the consumer contacts an Internet "registrar"  
9 (such as one of the Plaintiffs), which in turn contacts VeriSign to see if the domain  
10 name is available or if it is already registered. FAC. ¶¶ 4.10-4.11. Domain name  
11 registrations typically are for one or two years. FAC ¶ 4.38. At the end of the  
12 registration period, some registrants elect not to renew their domain name  
13 registrations, in which case VeriSign deletes the name from the registry. FAC  
14 ¶¶ 4.26-4.28.

15 Some time ago, VeriSign proposed to offer WLS. Via WLS, a consumer  
16 (through a registrar) could purchase the ability to "stand in line" for a domain name  
17 that might be deleted from the registry. FAC ¶¶ 4.46. If the current subscriber of  
18 the domain name elected not to renew her subscription, VeriSign would  
19 automatically register the domain name in the name of the person who had  
20 purchased the WLS subscription. FAC ¶ 4.48. The Internet registrars could elect  
21 to offer WLS to consumers if they wished, but they would be under no obligation to  
22 offer WLS.

23 Plaintiffs are Internet registrars (FAC ¶ 1.4) that "act[] as an interface  
24 between registrants [consumers] and the registry operator [in this case, VeriSign],  
25 providing domain name registration and other related services to consumers." FAC  
26 ¶¶ 4.8-4.10. For various periods of time,<sup>1</sup> Plaintiffs have been offering similar

27 <sup>1</sup> ICANN notes that some of the Plaintiffs actually became registrars and  
28 commenced offering their wait listing services well after VeriSign began public  
discussions of WLS in 2001, or even after ICANN agreed that it would revise its

1 types of “wait listing” services to consumers. The difference between Plaintiffs’  
2 services and WLS is that Plaintiffs offer no guarantee that they can obtain a  
3 domain name for their customers if the name is deleted from the registry. Instead,  
4 under Plaintiffs’ version of “wait listing,” if VeriSign deletes a domain name from  
5 the registry, multiple registrars attempt, on behalf of their various customers, to  
6 acquire the name in a “split-second” race to be first-in-line when the domain name  
7 becomes available. Only one registrar will be successful in obtaining the deleted  
8 name for its customer; the other customers will be out of luck. Unlike under WLS,  
9 the current system for re-registration of deleted domain names, a customer would  
10 simply have to sign up with any one registrar to be placed on the waiting list. This  
11 would guarantee the customer the right to be next in line to acquire the domain  
12 name should it be deleted.

13 ICANN is a not-for-profit California corporation that, in 1998, entered into a  
14 Memorandum of Understanding with the United States Department of Commerce  
15 (“DOC”), which charged ICANN with certain responsibilities for managing and  
16 administering the Domain Name System. FAC ¶¶ 4.1-4.7, 4.15-4.18; Bylaws, Art.  
17 1, § 1.<sup>2</sup> The mission of ICANN is to coordinate, at the overall level, the global  
18 Internet's systems of unique identifiers, and in particular to ensure the stable and  
19 secure operation of the Internet's unique identifier systems. Bylaws, Art. 1, § 1.  
20 ICANN conducts no commercial business, and its bylaws do not permit it to  
21 function as an Internet registrar or registry. Bylaws, Art. 2, § 2.

22  
23  
24 (continued...)

25 agreement with VeriSign to remove the contractual prohibition against its  
26 introduction. In fact, a few of the Plaintiffs actually commenced offering this  
27 service after the *Dotster* case was filed. These Plaintiffs obviously entered the  
28 registrar business knowing that WLS was approaching introduction.

<sup>2</sup> See <http://www.icann.org/general/bylaws.htm> for ICANN's Bylaws.