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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17
18 VERISIGN, INC., a Delaware
corporation,
19
20 Plaintiff,
21 v.
22 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
23 NUMBERS, a California corporation
24 Defendants.

Case No. CV 04-1292 AHM (CTx)

**FIRST AMENDED COMPLAINT
FOR VIOLATION OF THE
ANTITRUST LAWS, SPECIFIC
PERFORMANCE OF
CONTRACT, DAMAGES FOR
BREACH OF CONTRACT,
INTERFERENCE WITH
CONTRACTUAL RELATIONS,
DECLARATORY AND
INJUNCTIVE RELIEF**

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27 Plaintiff VERISIGN, INC. ("VeriSign") alleges, upon information and belief,
28 as follows:

THE INTERNET DOMAIN NAME SYSTEM

1
2 9. The Internet is a network of interconnected computers and computer
3 networks. Every computer connected directly to the Internet has a unique address.
4 These addresses, which are known as Internet Protocol (“IP”) numbers, are necessary
5 for computers to “communicate” with each other over the Internet. An example of an
6 IP number might be: 98.27.241.30.

7 10. Because IP numbers can be cumbersome and difficult for Internet users
8 to remember or to use, the IP number system has been overlaid with a more “user-
9 friendly” system of domain names: the Internet domain name system (“DNS”). This
10 overlay associates a unique alpha-numeric character string – or domain name – with a
11 specific IP number.

12 11. Internet domain names consist of a string of “domains” separated by
13 periods. “Top-level” domains, or “TLDs”, are found to the right of the period and
14 include (among others) “.com,” “.gov,” “.net” and “.biz,” which are sometimes
15 referred to as “generic” TLDs (also known as “gTLDs”). Other top-level domains are
16 referred to as country code TLDs (also known as “ccTLDs”), and are represented by
17 two-letter abbreviations for each country, such as “.uk” (United Kingdom) and “.ca”
18 (Canada). For relevant purposes herein, gTLDs are functionally equivalent to
19 ccTLDs. There are approximately 250 top-level domains, which are administered
20 and operated by numerous entities, both in and outside of the United States.

21 12. “Second-level” domains (“SLDs”) are those domains immediately to the
22 left of the top-level domains, such as “uscourts” in the domain name “uscourts.gov.”
23 There are over 50 million second-level domains currently registered within the
24 various TLDs.

25 13. Because domain names are essentially “addresses” that allow computers
26 connected to the Internet to communicate with each other, each domain name must be
27 unique, even if it differs from another domain name by only one character (*e.g.*,
28

1 “uscourts.com” is different from “uscourt.com” or “us-courts.com”). A given domain
2 name, therefore, can be registered to only one entity.

3 14. VeriSign acts as the “registry” for domain names registered in the .com
4 gTLD in accordance with a written agreement with ICANN. As the “registry” for the
5 .com gTLD, VeriSign maintains the definitive directory that associates registered
6 domain names in this gTLD with the corresponding IP numbers of their respective
7 domain name servers. The domain name servers, in turn, direct Internet queries to
8 resources such as websites and email systems.

9 15. A domain name is created by an individual or organization that registers
10 the domain name and thereby includes it in the registry’s master database. The
11 individual or organization that registers a specific domain name is a “registrant.”
12 Registrants do not have direct access to the VeriSign registry. Instead, prospective
13 registrants must register domain names through any one of approximately 175
14 operational private companies located in the United States and throughout the world
15 that act as domain name “registrars” for the second-level domain names in the .com
16 gTLD.

17 THE PARTIES

18 16. From 1993 until November 1999, in accordance with Cooperative
19 Agreement NCR 92-18742 (“Cooperative Agreement”) entered into between NSI and
20 the National Science Foundation (“NSF”), NSI performed domain name registration
21 and registry functions for the .com and .net gTLDs, among others, in exchange for
22 financial and other support from the United States Government. The National
23 Telecommunications and Information Administration of the United States
24 Department of Commerce (“DOC”) assumed responsibility from NSF for
25 administering the Cooperative Agreement on or about October 1, 1998, pursuant to
26 Amendment 10 of the Cooperative Agreement. For a period of time subsequent to
27 November 1999, NSI continued to serve as a registrar of domain names, and
28

1 VeriSign has operated the registries for the .com and .net (among other) gTLDs, as
2 more specifically described below.

3 17. ICANN is a private corporation that was created in 1998 in response to a
4 plan by the DOC to introduce competition into the field of domain name registration,
5 among other objectives. ICANN is governed by and acts through an international
6 Board of Directors that is elected by members of various constituent groups and
7 supporting organizations within ICANN. As more specifically alleged below, among
8 the members of these groups are operators of gTLDs that compete with each other
9 and with VeriSign; domain name registrars that are present or potential competitors
10 of each other and of VeriSign for certain services; and foreign governments and
11 foreign registries that have ccTLDs that compete with the gTLD registries operated
12 by VeriSign. ICANN frequently carries out its activities, including the conduct
13 alleged herein, through the collective action of its supporting organizations (which, in
14 turn, are comprised of various constituent groups). In fact, in certain circumstances,
15 ICANN was bound by its By-Laws to follow the actions of its supporting
16 organizations.

17 18. In November 1998, the DOC entered into a Memorandum of
18 Understanding (“MOU”) with ICANN. In accordance with the MOU, ICANN was to
19 perform certain technical coordination functions in connection with the domain name
20 system. Among other things, ICANN was to study and develop procedures for the
21 transition from a system of one domain name registrar to a system of multiple
22 registrars of second-level domain names in the “.com,” “.net,” and “.org” gTLDs, and
23 for the creation of new gTLDs. The MOU established the promotion of competition
24 in the domain name system as one of its central principles. Furthermore, the MOU
25 explicitly prohibits ICANN from acting arbitrarily or unjustifiably to injure any
26 person or entity, or from “singl[ing] out any particular party for disparate treatment
27 unless justified by substantial and reasonable cause.”
28

1 “Registry Services” means services provided as an integral
2 part of the Registry TLD, including all subdomains. These
3 services include receipt of data concerning registrations of
4 domain names and name servers from registrars, provision
5 to registrars of status information relating to the Registry
6 TLD zone servers, dissemination of contact and other
7 information concerning domain name and name server
8 registrations in the Registry TLD, and such other services
9 required by ICANN through the establishment of Consensus
10 Policies as set forth in Definition 1 of this Agreement.

11 24. The 2001 .com Registry Agreement defines “Consensus Policies” as
12 consisting of those specifications and policies established on the basis of a consensus
13 among Internet stakeholders represented in the ICANN process, as demonstrated by
14 compliance with specific, detailed procedures prescribed in the agreement.

15 25. VeriSign generally is obligated to comply with Consensus Policies if,
16 among other requirements, they are properly adopted by ICANN and consistent with
17 ICANN’s other contractual obligations, and: (A) they “do not unreasonably restrain
18 competition”; and (B) relate to: “(1) issues for which uniform or coordinated
19 resolution is reasonably necessary to facilitate interoperability, technical reliability
20 and/or stable operation of the Internet or DNS, (2) registry policies reasonably
21 necessary to implement Consensus Policies relating to registrars, or (3) resolution of
22 disputes regarding the registration of domain names (as opposed to the use of such
23 domain name).”

24 26. Recognizing the potential for harm to VeriSign from ICANN’s
25 subsequent adoption of specifications or policies, the parties included in the 2001
26 .com Registry Agreement a provision entitled “Protection from Burdens of
27 Compliance With ICANN Policies.” That provision expressly provides: “ICANN
28 shall indemnify, defend, and hold harmless Registry Operator [VeriSign] . . . from

1 and against any and all claims, damages, liabilities, costs, and expenses, including
2 reasonable legal fees and expenses, arising solely from Registry Operator's
3 compliance as required by this Agreement with an ICANN specification or policy
4 (including a Consensus Policy) established after the Effective Date"

5 27. The 2001 .com Registry Agreement further sets forth the following
6 "General Obligations of ICANN." "With respect to all matters that impact the rights,
7 obligations, or role of Registry Operator," the agreement explicitly provides that
8 ICANN shall, among other obligations: (i) "exercise its responsibilities in an open
9 and transparent manner," (ii) "not unreasonably restrain competition and, to the
10 extent feasible, promote and encourage robust competition," and (iii) "not apply
11 standards, policies, procedures and practices arbitrarily, unjustifiably or inequitably
12 and not single out Registry Operator for disparate treatment unless justified by
13 substantial and reasonable cause." These and other obligations of ICANN to VeriSign
14 under the 2001 .com Registry Agreement are not limited to VeriSign's provision of
15 "Registry Services," but are owed by ICANN to VeriSign in connection with any
16 conduct of ICANN that impacts VeriSign's "rights, obligations, or role of Registry
17 Operator."

18 28. The 2001 .com Registry Agreement establishes affirmative obligations
19 of ICANN: (i) to establish and maintain "independent review policies" and "adequate
20 appeal procedures" to be available to VeriSign to the extent it "is adversely affected
21 by ICANN standards, policies, procedures or practices," and (ii) to take all reasonable
22 steps, and make substantial progress, towards entering into agreements, similar to the
23 2001 .com Registry Agreement, with registries competing with the .com gTLD
24 registry operated by VeriSign.

25 29. In addition to such express obligations not unreasonably or inequitably
26 to interfere with VeriSign's registry business, ICANN is subject to an implied
27 covenant of good faith and fair dealing not to take actions unfairly or in bad faith to
28 deprive VeriSign of the intended benefits of the 2001 .com Registry Agreement.