

1 Kelly O. Scott (SBN 132186)
kscott@ecjlaw.com
2 Heather L. McCloskey (SBN 193239)
hmcloskey@ecjlaw.com
3 **ERVIN, COHEN & JESSUP LLP**
9401 Wilshire Boulevard, Ninth Floor
4 Beverly Hills, California 90212-2974
Telephone (310) 273-6333
5 Facsimile (310) 859-2325

6 Attorneys for REGISTERFLY.COM, INC. AND UNIFIEDNAMES, INC.

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10

11 THE INTERNET CORPORATION FOR)	CASE NO. CV 07-2089 R (PLAx)
12 ASSIGNED NAMES AND NUMBERS,)	
13 Plaintiff,)	EX PARTE APPLICATION TO
14 v.)	EXCUSE APPEARANCE BY
15 REGISTERFLY.COM, INC., and)	MITCHELL NOVICK OR, IN THE
16 UNIFIED NAMES, INC. ,)	ALTERNATIVE, TO PERMIT
17 Defendants.)	TELEPHONIC APPEARANCE;
	MEMORANDUM OF POINTS AND
	AUTHORITIES; DECLARATIONS
	OF MITCHELL P. NOVICK AND
	HEATHER L. MCCLOSKEY IN
	SUPPORT THEREOF

18

19 Defendants RegisterFly.com, Inc. and UnifiedNames, Inc. (hereinafter
20 "defendants") bring this *ex parte* application for relief from this Court's order of
21 May 14, 2007 requiring the personal appearance of defendants' general counsel
22 Mitchell P. Novick and permitting appearance by defendants' counsel of record in
23 this matter, Heather L. McCloskey of Ervin, Cohen & Jessup, LLP, to appear in his
24 place.

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26 This Application is based upon this notice, the memorandum of points and
27 authorities attached hereto and the declarations of Mitchell P. Novick and Heather
28 L. McCloskey attached hereto and filed concurrently herewith; such other matter as
may be filed with the Court prior to the hearing on the motion; and the pleadings,

1 records and files in this action.

2 Notice of defendants' intent to file this Application was given by e-mail on
3 May 21, 2007 at 8:15 p.m. Plaintiff's counsel has indicated that they will not
4 oppose the application. (See Declaration of Heather L. McCloskey, ¶2.)
5

6 DATED: May 22, 2007

ERVIN, COHEN & JESSUP LLP
Kelly O. Scott
Heather L. McCloskey

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9 By: Heather L. McCloskey
Heather L. McCloskey
10 Attorneys for REGISTERRLY.COM, INC.
11 AND UNIFIEDNAMES, INC.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Until Monday, May 21, 2007, defendants had not appeared and had never
4 retained counsel to appear for them in this matter. On May 9, 2007, this Court
5 ordered defendants' principal, Kevin Medina, and their general counsel, Mitchell P.
6 Novick, to personally appear before this Court even though Mr. Novick had never
7 been retained or appeared as counsel for defendants in this case. Defendants have
8 since that time retained Heather L. McCloskey of Ervin, Cohen & Jessup, LLP to
9 represent them in connection with this case. Mr. Novick is unable to personally
10 attend the May 25, 2007 hearing at which he was ordered to personally appear.
11 Given the fact that defendants are now represented by counsel other than Mr.
12 Novick and the fact that Mr. Novick is unable to attend the hearing (for religious
13 reasons), defendants request that this Court excuse Mr. Novick from his obligation
14 to appear at the May 25, 2007 hearing or, in the alternative, permit Mr. Novick to
15 appear telephonically at the hearing.

16 **II. PERTINENT FACTS**

17 On May 9, 2007, this Court heard ICANN's Ex Parte Application For Civil
18 Contempt Sanctions and granted the sanctions sought. At that same hearing, this
19 Court also ordered that defendants' principal, Mr. Kevin Medina, and defendants'
20 general counsel, Mr. Mitchell P. Novick, personally appear before this Court on
21 May 25, 2007. Following the May 9, 2007 hearing, defendants retained counsel to
22 represent them in this action, Heather L. McCloskey of Ervin, Cohen & Jessup,
23 LLP. Defendants' counsel filed a Notice of Appearance on May 21, 2007 and will
24 be attending the hearing on May 25, 2007. (McCloskey Decl., ¶3.)

25 Mr. Novick is not admitted to practice in this judicial district and has never
26 appeared for defendants in connection with this lawsuit. Mr. Novick is not able to
27 personally appear in this Court on May 25, 2007 at 10:00 a.m. because due to Mr.
28 Novick's observance of the Jewish holiday of Shavuot (Pentecost), there are no

1 reasonable travel arrangements that will get him to the Court in time for this hearing
2 (See Declaration of Mitchell P. Novick, ¶4).

3 **III. ARGUMENT**

4 Good cause exists for the requested *ex parte* relief. The need for this motion
5 did not arise until May 14, 2007, and was not known to defendants or to Mr. Novick
6 until May 16, 2007. Mr. Novick is not and has never been counsel of record in this
7 matter and is not admitted to practice in this judicial district. Defendants have
8 recently retained counsel to represent them in this lawsuit and this counsel will
9 attend the May 25, 2007 hearing, along with defendants' principal, Mr. Kevin
10 Medina.

11 In the alternative, if this Court is not inclined to excuse Mr. Novick from his
12 obligation to appear on May 25, 2007, defendants request that Mr. Novick be
13 permitted to appear telephonically so as not to require him to travel to Los Angeles
14 for he hearing, in conflict with his religious observances.

15 **IV. CONCLUSION**

16 The requested *ex parte* relief should be granted. Mr. Novick is unable to
17 personally attend the hearing before this Court on May 25, 2007 without conflict
18 with his religious observances. In the event this Court is not inclined to excuse Mr.
19 Novick from his obligation to personally appear on May 25, 2007, then defendants
20 request that Mr. Novick be permitted to appear telephonically.

22 DATED: May 22, 2007

ERVIN, COHEN & JESSUP LLP
Kelly O. Scott
Heather L. McCloskey

25 By: Heather L. McCloskey
Heather L. McCloskey
Attorneys for REGISTERFLV.COM, INC.
AND UNIFIEDNAMES, INC.

DECLARATION OF MITCHELL P. NOVICK

I, Mitchell P. Novick, declare:

1. I am an attorney at law and am a member of the New Jersey Bar. I have acted as General Counsel for RegisterFly.com, Inc. and UnitedNames, Inc., defendants in the above-referenced action. I am not admitted to practice in this judicial district.

2. On May 14, 2007, this Court entered an Order requiring that Kevin Medina, the principal of defendant companies, and I both appear personally before this Court on May 25, 2007 at 10:00 a.m.

3. Since that date, defendants have retained as their counsel in this case Heather L. McCloskey of Ervin, Cohen & Jessup, LLP. Ms. McCloskey filed a Notice of Appearance on May 21, 2007.

4. I am unable to personally appear before this Court on May 25, 2007 at 10:00 a.m. because, as an Orthodox Jew, I observe the Jewish holiday of Shavuot (Pentecost) from sundown tonight (May 22, 2007) through sundown Thursday (May 24, 2007), the day prior to this hearing. My religious observance includes, inter alia, no work, no telephone or e-mail use, and no travel by motorized vehicle. Thus, I would not be able to be traveling on an airplane or even leave my residence in New Jersey to go to an airport from tonight until this Thursday at about 9:00 p.m. EDT. In light of these religious restrictions, I have checked the airline flight schedules for all airports within 50 miles of my residence to determine which regularly scheduled commercial flights I could use to arrive at this Court at the

designated hearing time. There are no such flights.

5. Further, since defendants have retained counsel who has appeared in this matter and I have never appeared for defendants in this matter, it seems that the appearance of defendants' counsel of record herein might satisfy the Court's purposes in requiring personal appearance.

6. In addition, I can appear telephonically at the May 25, 2007, if the Court so instructs.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this was executed on the 22nd day of May, 2007, at Montclair, New Jersey.

Mitchell P. Novick

Mitchell P. Novick

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DECLARATION OF HEATHER L. MCCLOSKEY


I, Heather L. McCloskey, declare:

1. I am an attorney at law duly licensed to practice before this Court and am counsel of record herein for defendants RegisterFly.Com, Inc. and UnifiedNames, Inc. Unless otherwise stated, I have personal knowledge of the facts stated herein and if called as a witness could competently testify thereto.

2. On Monday, May 21, 2007 at 8:15 p.m., I gave notice of this *ex parte* application to Samantha Eisner and Jeff LeVee, counsel for ICANN by e-mail. By return e-mail, Ms. Eisner informed me that ICANN will not oppose this application.

3. I was recently retained to represent defendants in this case and filed a Notice of Appearance on May 21, 2007. I plan to attend the hearing before this Court on May 25, 2007, along with defendants' principal, Kevin Medina.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this was executed on the 22nd day of May, 2007 at Beverly Hills, California.


Heather L. McCloskey

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 9401 Wilshire Boulevard, Beverly Hills, California 90212-2974.

On May 22, 2007, I served the document described as **EX PARTE APPLICATION TO EXCUSE APPEARANCE BY MITCHELL NOVICK OR, IN THE ALTERNATIVE, TO PERMIT TELEPHONIC APPEARANCE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF MITCHELL P. NOVICK AND HEATHER L. MCCLOSKEY IN SUPPORT THEREOF** on counsel for the parties in this action, or on the parties in propria persona, addressed as stated on the attached service list:

BY MAIL: By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service on that same day. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

BY NEXT-DAY DELIVERY: Via Overnight Express. I am readily familiar with my employer's practice for the collection and processing of correspondence via Overnight Express. In the ordinary course of business, this correspondence would be picked up by Overnight Express on that same day.

BY FACSIMILE: I caused such document to be sent via facsimile to the names and facsimile numbers listed above and received confirmed transmission reports indicating that this document was successfully transmitted to the parties named above.

(STATE) I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

EXECUTED on May 22, 2007 at Beverly Hills, California.



PATRICIA ROJAS

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Jeffrey A. LeVee
Samantha Eisner
Jones Day
555 S. Flower Street, 50th Floor
Los Angeles, CA 90071-2300
Tel: (213) 489-3939
Fax: (213) 243-2539

Mitchell P. Novick
Law Offices Of Mitchell P. Novick
66 Park Street
Montclair, New Jersey 07042
Tel: (973) 744-5150
Fax (973) 744-2227