

1 Jeffrey A. LeVee (State Bar No. 125863)
jlevee@jonesday.com
2 Samantha S. Eisner (State Bar No. 230344)
seisner@jonesday.com
3 JONES DAY
555 South Flower Street
4 Fiftieth Floor
Los Angeles, CA 90071-2300
5 Telephone: (213) 489-3939
Facsimile: (213) 243-2539
6

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7 Attorneys for Plaintiff
The Internet Corporation for Assigned Names
and Numbers
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
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12 The Internet Corporation for Assigned
Names and Numbers,
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14 Plaintiff,

15 v.

16 RegisterFly.Com, Inc., and
UnifiedNames, Inc.,
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18 Defendants.
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Case No. CV 07-2089 R (PLAx)

**ICANN'S REPORT ON
DEFENDANTS' COMPLIANCE
WITH INJUNCTION**

Date: TBD
Time: TBD
Judge: Hon. Manuel L. Real

1 **I. INTRODUCTION**

2 On May 25, 2007, this Court ordered that Defendants RegisterFly.Com, Inc.
3 and UnifiedNames, Inc. (collectively, "RegisterFly") had until June 1, 2007 to
4 comply with all provisions of the Preliminary Injunction ("PI") entered on April 26,
5 2007 (the "Sanctions Order"). For every day after June 1, 2007 that RegisterFly
6 fails to comply with the PI, RegisterFly is subject to \$5,000.00 in contempt
7 sanctions.

8 RegisterFly has failed to comply with the PI, and should be subject to the
9 enforcement of this Court's Sanctions Order. ICANN provides this report to assist
10 the Court in evaluating RegisterFly's failures of compliance.

11 On June 1, 2007, RegisterFly submitted the Declaration of Kevin Medina Re:
12 Compliance with Court Order of May 25, 2007 ("Medina Decl.") in an attempt to
13 demonstrate compliance with the Court orders. In fact, the Declaration merely
14 demonstrates RegisterFly's *selective* compliance with certain of the PI terms,
15 coupled with false statements as well as justifications to excuse complete
16 performance of this Court's dictates.

17 The time for presenting justifications and excuses has long passed;
18 RegisterFly has had several weeks to correct whatever obstacles it claims it now
19 faces in meeting the terms of the PI. Mr. Medina's declaration simply makes clear
20 that RegisterFly failed even to attempt to comply with the Court's PI until a month
21 after the entry, and then only under the threat of sanctions.

22 **II. REGISTERFLY HAS FAILED TO COMPLY WITH THE**
23 **COURT'S PRELIMINARY INJUNCTION.**

24 **A. RegisterFly continues to fail to comply with the notice**
25 **provision of the Sanctions Order and the PI.**

26 To prevent the risk of consumer confusion and harm, the Court required
27 RegisterFly to post a notice to consumers on its website regarding the status of its
28 termination as an ICANN-accredited registrar. (Sanctions Order, ¶ 3; PI, ¶¶ 11,

1 16.) The Court's Orders require that these notices to consumers be posted at
2 <http://www.registerfly.com/>, and dictates certain placement requirements.

3 RegisterFly acknowledges that the Court's Orders require the notice to
4 consumers be posted on its home page (*see* Medina Decl., ¶ 4), and that the notice
5 was not yet posted there. (*Id.*) Instead, as of the time of the filing of the Medina
6 Declaration, the notice to consumers was only posted on RegisterFly's Customer
7 Support page (a page that customers would view only if they are having problems)
8 (<http://www.registerfly.com/help/>). (*Id.*) As of June 4, 2007, the notice was posted
9 on the home page of RegisterFly's site, but on the bottom of the page. (Declaration
10 of Samantha Eisner ISO Report ("Eisner Decl."), ¶ 3.) RegisterFly tells this Court
11 that "script errors" make it necessary for it to hide this notice on its home page, and
12 that it needs more time to correct the scripting to allow for proper placement on the
13 required pages.¹ (*Id.*)

14 RegisterFly's request for more time is unacceptable. This notice requirement
15 has been in force against RegisterFly since April 26, 2007. Even if ten business
16 days are required to alter the scripting of this page, RegisterFly should not be
17 entitled to any form of grace period or relief from the operation of these Orders
18 beyond May 10, 2007, ten business days after April 26, 2007. Particularly in light
19 of RegisterFly's representation that "the terms of the provisional remedies sought

20 ¹ The Court's order gave RegisterFly forty-eight hours to comply with this
21 portion of the Sanctions Order. Thus, beginning on Sunday May 27, 2007, ICANN
22 notified RegisterFly of its failure to comply with the notice provision. RegisterFly
23 never once mentioned the scripting error as a reason for its failure to post the notice
24 on RegisterFly's main website page. Instead, RegisterFly referenced a scripting
25 error in relation to the physical location of the notice on the bottom of the customer
26 service page, even though ICANN continually raised the issue of proper posting on
27 www.registerfly.com. RegisterFly never presented ICANN with *any* explanation as
28 to this issue. (Eisner Decl., ¶ 2, Exs. A-C.) Whether or not "scripting errors" is a
legitimate excuse, Mr. Medina's declaration makes clear that he first encountered
the errors this past week, while the Court's PI was entered on April 26, 2007. In
short, RegisterFly obviously is accountable for any delays in complying with the
Court's Sanction Order.

1 by ICANN up to this point have not been objectionable to defendants” (May 24,
2 2007 Response to Order to Show Cause re: Permanent Injunction at 2:1-2),
3 RegisterFly has *no* excuse as to why it did not address this (or any other provision
4 of the Court’s Orders) sooner.

5 It is essential that RegisterFly have the notice to consumers posted on the
6 main page of its website. Potential and current customers will not know to open a
7 customer service link to obtain information relating to RegisterFly’s status as an
8 ICANN-accredited registrar. RegisterFly’s selective placement defeats the very
9 purpose why this relief was granted. RegisterFly should be subject to the
10 enforcement of the Court’s Sanctions Order for each and every day it fails to
11 comply with the proper notice requirements.

12 **B. The Data transfer is not complete.**

13 Mr. Medina states in his declaration that “ICANN now has all of the data
14 listed in paragraph 1 of the May 25, 2007 Order and the Preliminary Injunction.”
15 (Medina Decl., ¶ 2.) This is simply false. As this Court has heard before, there are
16 two components to the RegisterFly data -- the data regarding the equitable
17 registrants of domain names registered through a proxy service, such as
18 “ProtectFly,” and the “regular” data for all of the domain names that RegisterFly
19 serviced as an ICANN-accredited registrar.

20 Paragraph 1 of the Sanctions Order focused on the transfer of equitable
21 registrant data for the proxy service registrations. ICANN *still* does not have a
22 complete set of this data. (Declaration of Steve Conte ISO Report (“Conte Decl.”),
23 ¶ 3.) And despite RegisterFly’s attempts to demonstrate willful and early
24 compliance with all the data transfer provisions (Medina Decl., ¶ 1), ICANN did
25 not receive a single transmission with the equitable registrant data until May 24,
26 2007, almost 30 days after the entry of the PI. Even then, ICANN received data
27 relating to fewer than 50,000 of the proxy-registered names, although ICANN
28 understands that there are approximately 180,000 affected proxy-registered domain

1 names. Of the records received on May 24, 2007 purporting to relate to the
2 equitable registrants, over 1,300 of the records still refer to “ProtectFly” and do not
3 provide the required equitable registrant data. (Conte Decl., ¶ 4.)

4 At approximately 5:00 p.m. PDT on June 1, 2007, ICANN received another
5 transmission from RegisterFly purporting to be data relating to proxy-registered
6 names. This new data has records for approximately 200,000 of the proxy-
7 registered names, and approximately 2,700 of the records still refer to “ProtectFly”
8 and do not provide the required equitable registrant data. (Conte Decl., ¶ 5.)
9 ICANN informed RegisterFly of this missing data issue on June 4, 2007, and has
10 not yet received a response or explanation. (Eisner Decl., ¶ 4.) RegisterFly is in
11 continued violation Paragraph 1 of the Sanctions Order – and Paragraphs 1-3 of the
12 PI – and should be subject to further sanctions by the Court.²

13 **C. The Technical Specifications were not met by June 1, 2007.**

14 Paragraphs 2 and 3 of the Sanctions Order govern the technical specifications
15 of the transfer of Data to ICANN. Only one of these was partially met through a
16 May 31, 2007 submission, and RegisterFly remained in violation of this Court’s
17 Orders until June 2, 2007.

18 **1. The .csv specification was not met until June 2.**

19 On the morning of June 1, 2007, ICANN informed RegisterFly that its
20 May 31, 2007 data submission did not meet the required .csv specification as
21 required in Paragraph 3.³ (Eisner Decl., ¶ 5.) At that time, RegisterFly requested

22 ² RegisterFly’s discussion of the timeliness of its submissions to ICANN is
23 irrelevant and disingenuous. In its very first filings with this Court, ICANN
24 addressed RegisterFly’s data submissions and how they were incomplete; these
25 unsatisfactory transmissions *necessitated* the filing of this suit. (See March 29,
26 2007 Declaration of Kurt Pritz, ¶¶ 19-21.) Further, the fact that RegisterFly *sent* a
file to ICANN does not in any way support the conclusion that the contents of the
file were sufficient and complete.

27 ³ ICANN provided this notification to RegisterFly approximately five hours
28 prior to receiving service of the Medina Decl., which incorrectly states “this upload
was in the requested .csv format.” (Medina Decl., ¶ 3; Eisner Decl., ¶ 5.)

1 further explanation as to what was required to meet RFC 4180 specifications. At
2 1:00 p.m. on June 1, 2007 – the last day for compliance with the Sanctions Order –
3 RegisterFly requested a phone call with ICANN’s technical staff to discuss this
4 issue.⁴ ICANN made its staff available for this last-minute request, and the parties
5 came to an apparent understanding regarding how RegisterFly is to comply with the
6 written specification of RFC 4180. (Eisner Decl., ¶ 5.; Conte Decl., ¶¶ 6-7.) The
7 first time that ICANN received a data transmission from RegisterFly that was
8 compliant with the negotiated format reached on June 1, 2007 was in the June 1,
9 2007 privacy-related data transmission. ICANN did not receive a complete,

10 _____
(continued...)

11 RegisterFly also appears to rely on the fact that the data submissions were in some
12 form of a .csv format to demonstrate that its submission were compliant with an
13 industry standard .csv format. (Medina Decl., ¶ 8.) ICANN has never contested
14 the fact that the RegisterFly submissions were in a comma separated value form;
15 the issue has always been the lack of *standardizing* of the format to allow for
16 ICANN review without alteration of the Data. (See April 11, 2007 Supplemental
17 Briefing In Support of Temporary Restraining Order (“April 11, 2007 Supp. TRO
18 Brief”) at p.5, n.5.) Mr. Medina’s assertion that “it is clear that [the submissions]
19 are in the required .csv format” (Medina Decl., ¶ 8), is just not true. (Conte Decl.,
20 ¶ 9.)

21 ⁴ ICANN has always remained available for discussions with RegisterFly
22 regarding these technical specifications. In fact, the orders on file in this case –
23 including the April 16, 2007 Temporary Restraining Order – contemplate that
24 RegisterFly may need to contact ICANN regarding this provision. (See April 16,
25 2007 TRO, ¶ 7, April 26, 2007 PI, ¶ 7.) The June 1, 2007 call was the first time
26 that anyone from RegisterFly contacted the staff at ICANN to discuss how
27 RegisterFly may be able to standardize its .csv format to RFC 4180 standards or an
28 otherwise usable. (Conte Decl., ¶ 7.)

29 During the June 1, 2007 call between ICANN and RegisterFly, Mr. Medina
30 suggested that it should have been ICANN’s responsibility to “pick up the phone”
31 and call RegisterFly to discuss the technical deficiencies so that RegisterFly could
32 have resolved these issues sooner. RegisterFly’s suggestion that *its* inability to
33 comply with the Court’s Orders is in *any way* a result of ICANN’s failure to reach
34 out to RegisterFly is absurd. The Orders issued against RegisterFly in this case
35 have always been RegisterFly’s responsibility to follow.

1 compliant set of the entirety of the Data that RegisterFly was required to produce
2 under Paragraphs 1-3 of the PI until June 2, 2007. (Conte Decl., ¶ 12.)
3 RegisterFly's late submissions to ICANN violated the Sanctions Order.

4 **2. RegisterFly's attempt at compliance with the MD5 hash**
5 **submission was not proper.**

6 On May 31, 2007, ICANN finally received a file purporting to be an MD5
7 hash from RegisterFly to accompany a data transmission. (Conte Decl., ¶ 10.) This
8 MD5 hash – required for its use as a comparison tool to assure file integrity – did
9 not match the hash generated by ICANN over the transmitted file. (Conte Decl.,
10 ¶ 10.) ICANN informed RegisterFly of this issue. (Eisner Decl., ¶ 5.) During the
11 June 1, 2007 call, the parties purported to reach an understanding of what was
12 required to meet this term of the Court's Orders. (Eisner Decl., ¶ 5.) RegisterFly
13 stated that its MD5 hash was submitted as a descriptor over an encrypted file, which
14 is not what ICANN requested and therefore rendered the file meaningless for
15 ICANN. ICANN did not receive a usable MD5 hash for the entirety of
16 RegisterFly's data submissions until June 2, 2007. (Conte Decl., ¶ 12.) RegisterFly
17 therefore was not in compliance with this Court's Orders.

18 As stated in the Medina Declaration as well as in a prior representation to this
19 Court, RegisterFly apparently believed that it was *excused* from performance of this
20 term of the PI based upon a March 27, 2007 email from Mr. Conte. (Medina Decl.,
21 ¶ 3 (discussing encryption).) But the MD5 hash has *never* been discussed as an
22 encryption tool. From the very first time ICANN mentioned the need for the MD5
23 hash in the an April 11, 2007 Supp. TRO Brief, ICANN has *always* referred to this
24 as a file integrity tool. (*See e.g.*, April 11, 2007 Supp. TRO Brief at 5:3-13.)
25 Moreover, ICANN has, on at least two occasions, specifically told RegisterFly that
26 the MD5 hash is *not* for encryption and/or RegisterFly does *not* require anything
27 from ICANN to generate such a hash over the file. (Eisner Decl., ¶ 6.)
28

1 RegisterFly's (apparent) misunderstanding is nothing more than a convenient
2 excuse in an attempt to explain its delays with compliance.

3 **D. RegisterFly has failed to provide ICANN with the entirety**
4 **of RegisterFly's books and records pursuant to Paragraph**
5 **8 of the PI.**

6 Paragraph 8 of the PI requires RegisterFly to "make its books and records,
7 including the Data, immediately available for audit by ICANN." (PI, ¶ 8.) On
8 May 31, 2007, RegisterFly purported to make the registration Data under Section
9 3.4.3 available to ICANN for inspection. On June 1, 2007 ICANN requested that
10 RegisterFly provide a copy of the audit materials for review, and RegisterFly had a
11 single DVD sent via messenger to ICANN. ICANN was not able to open the disk
12 to view the data. (Eisner Decl., ¶ 8; Conte Decl., ¶ 13.) Though ICANN requested
13 RegisterFly to confirm the functionality of the disk and testing before it was
14 submitted to ICANN, RegisterFly did not provide such confirmation. (Eisner
15 Decl., ¶ 8.)

16 On June 4, 2007, RegisterFly elected to provide ICANN with an alternative
17 form of transmission of the audit file, through an Internet download link. The first
18 link that RegisterFly submitted was expired, meaning that ICANN could not access
19 it. In addition, the linked file had the same name as RegisterFly's data submission
20 file, though the audit provision entitles ICANN to far more information than the
21 data sets RegisterFly was required to submit under Paragraphs 1-3 of the PI. (See
22 Eisner Decl., ¶ 8-9.) When ICANN requested clarification of the contents of the
23 file and notified RegisterFly of the expired link, RegisterFly responded with a *new*
24 internet download link. RegisterFly indicated that this new link should contain the
25 additional information that ICANN is entitled to under the audit provision. (Eisner
26 Decl., ¶ 8.) On the morning of June 5, 2007, ICANN downloaded the file available,
27 and found it to be the *exact duplicate* to RegisterFly's June 1, 2007 privacy data
28 submission. (Conte Decl., ¶ 13.)

1 On June 5, RegisterFly confirmed in an email to ICANN that RegisterFly had
2 not yet provided the entirety of the Data ICANN is entitled to under the audit
3 provision. (Eisner Decl., ¶ 9; Ex. I.)

4 Even if RegisterFly's file submissions had been complete to satisfy Section
5 3.4.3 of the audit requirement in the RAA, RegisterFly, would still *not* be in
6 compliance with Paragraph 8 of the PI. Paragraph 8 entitles ICANN to far more
7 than RegisterFly's limited interpretation of books and records, which RegisterFly
8 interprets to be mean *only* the registration Data. The broad use of "books and
9 records" entitles ICANN to also review RegisterFly's financial data, but
10 RegisterFly refuses to make that available to ICANN. (Eisner Decl., ¶ 10.)

11 RegisterFly is therefore in continuing violation of Paragraph 8 of the PI, and
12 should be subject to the enforcement of the Court's Sanctions Order.

13 **E. RegisterFly has not complied with the requirement to**
14 **identify the locations of data storage.**

15 Paragraph 10 of the PI requires RegisterFly to provide ICANN with the
16 identification of all physical locations where all Data as referred to in the PI was
17 located or stored. RegisterFly has *never* provided this information to ICANN, and
18 remains in violation of the PI. (Eisner Decl., ¶ 11.) RegisterFly should be subject
19 to the enforcement of the Court's Sanctions Order for each day, beginning June 2,
20 2007, it fails to comply with this term of the PI.

21 **F. RegisterFly must comply with additional terms of the PI.**

22 On June 1, 2007, ICANN officially terminated the Registrar Accreditation
23 Agreement with RegisterFly pursuant to Paragraph 14 of the PI. (Eisner Decl.,
24 ¶ 12; Ex. J.) Upon termination, the PI imposes additional obligations upon
25 RegisterFly, including an alteration of the notice to consumers to reflect the fact of
26 termination. (PI, ¶ 16.) RegisterFly has not yet complied with these additional
27 obligations.
28

1 **III. SUGGESTED TOOLS FOR CERTIFICATION OF COMPLIANCE.**

2 Given the transfer of the domain names previously registered through
3 RegisterFly to a new registrar, ICANN understands that RegisterFly may no longer
4 be able to update the Data it is required to submit to ICANN. ICANN, however,
5 still requires RegisterFly to provide it with a complete copy of all registration Data,
6 in the event that ICANN ever has to step in to assist RegisterFly's (former)
7 customers.

8 To that end, ICANN requests that RegisterFly be required to file a
9 declaration stating that RegisterFly has provided to ICANN a complete and correct
10 copy of all RegisterFly registration Data, including but not limited to all registration
11 Data provided to GoDaddy in compliance with the RegisterFly-GoDaddy transfer
12 agreement.

13 **IV. CONCLUSION**

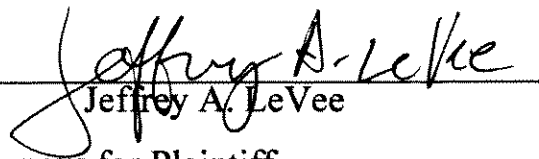
14 RegisterFly has violated – and continues to violate – every order this Court
15 has issued against it. RegisterFly's conduct continues to harm customers and
16 potential customers, and RegisterFly continues to thwart ICANN's ability to protect
17 those customers even while RegisterFly is no longer acting as an ICANN-
18 accredited registrar. Instead of complying with this Court's orders, RegisterFly has
19 provided the Court mostly with excuses.

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1 ICANN respectfully requests and urges this Court to continue to enforce its
2 contempt and sanctions power over RegisterFly.

3
4 Dated: June 5, 2007

Respectfully submitted,
JONES DAY

6
7 By: 
Jeffrey A. LeVee

8 Attorneys for Plaintiff
9 THE INTERNET CORPORATION
10 FOR ASSIGNED NAMES AND
11 NUMBERS
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PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071-2300. On June 5, 2007, I deposited with Federal Express, a true and correct copy of the within documents:

**ICANN'S REPORT ON DEFENDANTS'
COMPLIANCE WITH INJUNCTION**

in a sealed envelope, addressed as follows:

Heather L. McCloskey, Esq.
Ervin, Cohen & Jessup LLP
9401 Wilshire Blvd., 9th Floor
Beverly Hills, CA 90212
Email: hmcloskey@ecjlaw.com
Counsel for Registerfly.com, Inc.
and UnifiedNames, Inc.

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I have submitted a courtesy copy of the above described document via email to all parties listed above.

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 June 5, 2007, at Los Angeles, California.



Martha L. Espelage-Alvarez