UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VERISIGN, INC., a Delaware corporation,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation; DOES 1-50,

Defendants.

Case No. CV 04-1292 AHM (CtX)

DECLARATION OF CHARLES A. GOMES IN OPPOSITION TO SPECIAL MOTION TO STRIKE OF DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Date: May 17, 2004
Time: 10:00 a.m.
Courtroom: 14 – Spring Street Bldg.
Hon. A. Howard Matz

[Memorandum of Points and Authorities; Evidentiary Objections; Appendix of Exhibits; Declarations; and [Proposed] Order concurrently filed and lodged herewith]
I, CHARLES A. GOMES, declare:

1. I know all of the following facts of my own personal knowledge and, if called and sworn as a witness, would competently testify thereto.

2. I am a Vice President of plaintiff VeriSign, Inc. ("VeriSign") and have been continuously employed by VeriSign, and its predecessor operator of the registry, Network Solutions, Inc. since approximately October 16, 1984. I work in VeriSign’s Naming and Directory Services unit. In that role, part of my duties focuses on Internet relations and VeriSign’s interactions with the Internet Corporation for Assigned Names and Numbers ("ICANN").

3. In addition to its role as operator of the registry for the .com and .net generic top level domains ("gTLDs"), VeriSign is also the operator of the registry for two country code top level domains ("ccTLDs"), specifically .cc and .tv. As one part of my responsibilities for VeriSign, I monitor and stay generally apprised of developments affecting ccTLD registry operators and the relationships between the ccTLD registry operators and ICANN.

4. In that connection, I have attended meetings of the ccTLD “constituency” within ICANN and of regional groups of ccTLD registry operators; I follow postings on ICANN’s website relating to ccTLDs; and, in the ordinary course of business, I receive reports from VeriSign’s representative in the ccTLD operator community. In the discharge of those (and my other) responsibilities for VeriSign, I regularly attend ICANN meetings and communicate with ICANN representatives on VeriSign’s behalf regarding subjects and issues of mutual interest and concern.

5. I am generally familiar with the terms of the 1999 Registry Agreement and the 2001 .com Registry Agreement between VeriSign and ICANN. One of the provisions of those Agreements is that ICANN will use reasonable efforts to, and make substantial progress, toward entering into registry agreements with operators of
over 240 ccTLDs. The purpose of that requirement is to promote competitive
equality between the gTLDs and the ccTLDs by ensuring that all registries are subject
to substantially the same contractual obligations and restrictions that ICANN
imposes, and seeks to impose on VeriSign. ICANN’s performance of that obligation
is particularly important to VeriSign as the operator of the .com gTLD. If ccTLDs
are not subject to the same set of conditions as ICANN seeks to impose on the
gTLDs, including .com, and if ccTLDs are free to introduce innovations and new
services for their customers and users that ICANN prohibits the .com gTLD to offer,
the .com gTLD will not be able to compete effectively with the ccTLDs.

6. This is no mere theoretical concern. Already, many ccTLDs are offering
or have offered services similar to VeriSign’s Site Finder (including .bz (Belize), .cc
(Cocos Islands), .cn (China), .cx (Christmas Island), .mp (Northern Mariana Islands),
.nu (Niue), .ph (Philippines), .pw (Palau), .td (Chad), .tk (Tokelau), .tv (Tuvalu), .tw
(Taiwan), and .ws (Western Samoa)) and many ccTLDs are offering or are intending
to offer IDN services (including .bz (Belize), .cc (Cocos Islands), .cn (China), .jp
(Japan), .kr (Korea), .nu (Niue), .tv (Tuvalu), and .tw (Taiwan)).

7. These services are attractive to registrants and potential registrants of
second level domain names, because they make registered domain names within these
ccTLDs easier to find and use and more accessible to consumers, particularly due to
the increased accessibility IDNs provide to non-English speaking consumers of
whom there are rapidly increasing numbers using the Internet. However, VeriSign’s
.com gTLD registry has been hindered and prohibited by ICANN from offering
similar Site Finder and IDN services.

8. In addition, the .de ccTLD operator has the flexibility to allow payment of
registry fees for domain name registration services in installments over the course of
a year, a flexibility that enabled the .de registry to align charges for its services with
monthly web-hosting charges and that is attractive to consumers. The .com Registry Agreement with ICANN does not permit this flexibility; therefore VeriSign’s .com TLD registry cannot compete in this area.

9. Presently, there are 244 ccTLDs. According to information presently posted on ICANN’s website, ICANN has entered into contracts with only 10 of the over 240 ccTLD registry operators – namely, .jp (Japan), .ke (Kenya), .au (Australia), .sd (Sudan), tw (Taiwan), .uz (Uzbekistan), .af (Afghanistan), .bi (Burundi), .la (Lao People’s Democratic Republic), and .mw (Malawi). The first six of those ccTLDs have “agreements” with ICANN; the latter four have “memoranda of understanding” with ICANN.

10. A total of about 19 million second level domain names are registered in all of the over 240 ccTLDs. Only around 700,000 of those domain names are registered in ccTLDs under some form of agreement with ICANN. Stated another way, the 10 ccTLD operators represent less than 4% of ccTLD domain name registrants. By far the largest ccTLDs, including .uk (England) and .de (Germany), continue to operate without the conditions of an ICANN contract or the conditions ICANN seeks to impose on gTLDs. Indeed, the United States Department of Commerce which has ultimate control over .us, the ccTLD for the United States, did not even authorize the operator of the .us ccTLD to enter into an agreement with ICANN.

11. ICANN posts registry agreements and memoranda of understanding to which it is a party on its website, and I have generally reviewed those agreements and compared them to the registry agreements ICANN has with gTLDs, including the 2001 .com Registry Agreement with VeriSign, which are also posted on ICANN’s website. The registry agreements and memoranda of understanding ICANN has signed with the 10 ccTLDs do not contain the same or equivalent terms as the 2001 .com Registry Agreement or ICANN’s registry agreements with other gTLDs. To the contrary, the ccTLD agreements are narrower in scope than the gTLD registry
agreements, and ICANN does not purport to require ccTLDs to comply with the same conditions and restrictions as ICANN has attempted to impose on VeriSign, for example, in connection with VeriSign’s Site Finder response service and IDN. In fact, while ICANN has hindered and delayed the launch and operation of new services by VeriSign, ICANN has reassured operators of ccTLDs that it will not attempt to interfere with their business and operations.

12. ICANN’s efforts to enter into contracts with ccTLD operators have been singularly unsuccessful, as the above data demonstrates. After initially relying primarily on governments to push the operators of their respective ccTLD registries to enter into contracts with ICANN, ICANN shifted course in or about 2001, and tried to force registry agreements on ccTLD registries by conditioning effectuating a ccTLD registry’s change in technical identification information, associated with the ccTLD operator’s operation of the registry, upon the ccTLD registry’s entering into a registry agreement with ICANN. This strategy was no more successful, as the small number of ccTLDs under contract with ICANN to this day shows, and ICANN’s attempted refusal to recognize changes in technical information, including registry administrators and name servers, even in situations in which a ccTLD registry operator went bankrupt or could no longer continue in business, itself imperiled the functioning of ccTLDs.

13. I have had experience dealing with ICANN in connection with the operation of a ccTLD registry. VeriSign acquired ownership of the corporation that operated the .tv ccTLD registry in 2000, with the consent of the Government of Tuvalu. Thereafter, VeriSign sought to change the designated administrative contact for the .tv registry in the master list of registry administrative contacts maintained by ICANN. Even though the registry operator for .tv had not changed, and VeriSign only wanted to designate a new administrative contact for .tv with the approval of both the prior administrative contact and the Government of Tuvalu, ICANN treated
the situation as if it were a redelegation of the registry operator for .tv and notified us that it would not make the change unless VeriSign entered into a registry agreement with ICANN for the .tv ccTLD. After substantial efforts by VeriSign, the then president of ICANN promised in 2002 to effectuate the requested change.

14. However, the change in administrative contact for the .tv registry was not made by ICANN then, and it has not been made by ICANN to this day. Rather, after four years, ICANN has advised VeriSign that the “process” of seeking this change in designation must start again. ICANN representatives have said that, among other steps, VeriSign will have to resubmit written consent to the change from the prior administrative contact for the .tv ccTLD registry, even though VeriSign has already submitted at least two such written consents to ICANN. In fact, the prior contact has demanded substantial sums from VeriSign to refurbish the consent. In addition, because of ICANN’s refusal to effectuate the change, .tv is not recognized as the valid operator of the ccTLD and therefore cannot join the “supporting organization” within ICANN for ccTLDs. As a result, ICANN does not officially recognize VeriSign as the operator of the .tv registry.

15. I have also had experience dealing with ICANN in the context of a promotional program VeriSign offered to .com registrars in 2001, to encourage new domain name registrations in the .com TLD. The program was scheduled to be in effect for two months. After the start of the program, I received a letter dated November 6, 2001, from Louis Touton, then Vice President and General Counsel of ICANN, in which he complains that the promotional program was improper and unauthorized, that it constituted a “registry service,” and that it was implemented without notice to ICANN, among other points.

16. On the same day, ICANN’s then President and Chief Executive Officer, M. Stuart Lynn, in an email to VeriSign’s President, Stratton Sclavos, charged that the promotional program called in question VeriSign’s commitment to the .com
Registry Agreement, and threatened to hold VeriSign in breach, and possibly either to
terminate or decline to renew the .com Registry Agreement, unless VeriSign made a
"rapid and significant change in [its] operations." I received and read a copy of Mr.
Lynn’s email the day after he sent it. A true and correct copy of that email is
submitted concurrently as Exhibit 1.

17. On November 19, 2001, I caused a written response to be transmitted to
Mr. Touton. A true and correct copy of that letter is submitted concurrently as
Exhibit 2. The letter accurately reflects and states the facts regarding the promotional
program and the position of VeriSign on the points Mr. Touton had raised. In the
letter, I take strong exception to his assertion that the program was or could be a
"registry service" under the 2001 .com Registry Agreement and explain that the
promised incentive to participating registrars was payment for their aggressively
advertising and promoting .com TLD registrations.

18. I subsequently received another letter from Mr. Touton regarding the
program, this one dated December 3, 2001. A true and correct copy of that letter is
submitted concurrently as Exhibit 3. In the letter, Mr. Touton expressly states that
ICANN intended “to issue a formal notice of breach” with respect to the program. In
response to that threat, VeriSign had to modify the program substantially in mid-
course and at substantial cost to VeriSign, as I understand is being described in more
detail in another declaration.
19. The promotional program had been favorably received by the registrar community and something like it could be offered freely at any time by most of VeriSign's ccTLD competitors without advance notice or ICANN involvement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 28th day of April 2004, at Sacramento, California.

[Signature]

CHARLES A. GOMES