

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

**SECOND SUPPLEMENTARY AFFIDAVIT
OF DANIEL E. HALLORAN
(sworn January 21, 2004)**

I, DANIEL E. HALLORAN, of the City of Los Angeles, in the State of California, in the United States of America, MAKE OATH AND SAY:

1. I swear this Affidavit as a Second Supplementary Affidavit to my Affidavit sworn September 5, 2003. In this Affidavit I will use the same defined terms as in my Affidavit sworn September 5, 2003.

"23 Agreements"

2. In his Affidavit sworn on September 17, 2003, Robert Hall, the sole director of Pool.com, swore that:

"As of the date of this Affidavit, Pool.com has, to this end, entered into relationships with over 23 Registrars, many of whom are Canadian and based in Ontario.

...

As stated above, Pool.com identifies and enters into contracts for back-order services with customers for specific

domain names. Also, as stated above, Pool.com has entered into 23 separate agreements with an equal number of accredited Registrars to make the necessary registration request for the names ordered by Pool.com customer."

3. By letter dated September 22, 2003, ICANN's counsel requested production of the 23 agreements referred in the Hall Affidavit. ICANN's request was met with a refusal to produce the 23 agreements in their entirety and, eventually, Pool.com brought a motion for an Order authorizing it to produce redacted versions of the 23 agreements referred to in Mr. Hall's Affidavit and preventing ICANN's counsel from sharing certain information about the agreements with ICANN. Attached hereto as Exhibit "A" is a copy of Pool.com's Notice of Motion. The motion was opposed by ICANN.

4. By Decision rendered December 3, 2003, Justice Maranger of the Ontario Superior Court of Justice dismissed the motion.

5. On December 12, 2003, counsel for Pool.com delivered to ICANN's counsel a Document Brief containing the agreements referred to in the Affidavit of Mr. Hall. In the cover letter attached to the Document Brief, counsel advised that "there is no writing for two of the agreements". Attached hereto as Exhibit "B" to my Affidavit is a copy of the letter from Monica Song dated December 12, 2003 with the attached Document Brief.

6. The Document Brief that was delivered by Pool.com did not contain 23 agreements with accredited Registrars. Indeed, only 17 agreements were provided and of the 17 agreements that were provided, only 15 are with accredited Registrars.

Moreover, contrary to what Mr. Hall swore to in his Affidavit of September 17, 2003, Pool.com has not entered into agreements with "23 Accredited Registrars, many of whom are Canadian and based in Ontario". Only three counter-parties to the agreements even have offices in Ontario and none of the other counter-parties are located elsewhere in Canada. Further, as discussed below, one of the three "Ontario" companies does not even carry on an active Registrar business and the other two entities have businesses that do not, in fact, cater to residents of Ontario.

7. According to the documents provided by Pool.com, a Registrar Partner Agreement was entered into on July 19, 2003 between Pool.com and "Rebel.com". According to ICANN's records, Rebel.com is a Delaware corporation that has Mr. Hall as its main contact. Also, Rebel.com has as one of its addresses, 43 Auriga Drive, Ottawa, Ontario, K2E 7Y8 (i.e., the same address given by Pool.com for its business). Therefore, it appears that Rebel.com is a related entity to Pool.com. Moreover, Rebel.com does not yet carry on business as a Registrar (according to its homepage).

8. The other two agreements provided by Pool.com with purported Ontario connections were with "A Technology dba NameSystem" and "Neteka Inc.". While both of those companies have registered offices in Ontario, it appears clear from the companies' respective websites that their businesses are not geared towards residents of Ontario and, in fact, are geared towards the United States market. Indeed, both websites appear to quote their fees in American dollars.

9. The other 14 Registrar Partner Agreements that have been produced by Pool.com are entered into with parties from around the world, including California,

Australia, Israel, Tennessee, Massachusetts, Bahamas, Hong Kong, Florida, Barbados, New York, Japan, Arkansas and Colorado.

California Action

10. In my Affidavit sworn September 5, 2003, I referred (in paragraphs 41 to 48) to an action commenced in California with respect to the WLS. The details of the action are set out in my earlier Affidavit. Since I swore my Affidavit, the Plaintiffs in the California action filed a motion for a preliminary injunction for an Order, in effect, preventing the establishment of the WLS.

11. By Order dated November 10, 2003, The Honourable John F. Walter, United States District Judge for the United States District Court (Central District of California) denied the Plaintiffs' motion for a preliminary injunction. In the course of his Reasons, the Judge decided that the "Plaintiffs have failed to demonstrate either a likelihood of success on, or a serious question going to, the merits of their claims". Attached hereto and marked as Exhibit "C" to my Affidavit is a copy of the Decision.

12. The Action has now been dismissed, with prejudice, by the Plaintiffs.

State of California, County of LOS ANGELES } ss.
Subscribed and sworn to before me on January 21, 2004

F. R. Patterson
(Name of Notary)

Daniel E. Halloran
DANIEL E. HALLORAN

