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6 INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10
11 VERISIGN, INC., a Delaware corporation,

12 Plaintiff,

13 v.

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

16 Defendants.
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18
19 and related cross-complaints.
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CASE NO. BC 320763

Assigned for all purposes to
Judge Rolf M. Treu

Complaint Filed: Aug. 27, 2004
ICANN's Cross-complaint Filed: Nov. 12, 2004
VeriSign's Cross-complaint Filed: Dec. 28,
2004

**ANSWER OF CROSS-DEFENDANT
ICANN TO CROSS-COMPLAINANT'S
UNVERIFIED CROSS-COMPLAINT**

21 Cross-Defendant Internet Corporation for Assigned Names and Numbers ("ICANN")
22 answers the Cross-Complaint of Cross-Complainant VeriSign, Inc. ("VeriSign") as follows:

23 **GENERAL DENIAL**

24 Pursuant to section 431.30 (d) of the California Code of Civil Procedure, ICANN hereby
25 denies each and every allegation and cause of action in VeriSign's unverified Cross-Complaint.
26 ICANN further denies that VeriSign is entitled to the relief sought in the Cross-Complaint or to
27 any relief whatsoever.
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SEPARATE AND AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses, ICANN asserts and alleges as follows:

FIRST AFFIRMATIVE DEFENSE:

(Failure to State a Cause of Action -- As to All Causes of Action)

1. VeriSign's Cross-Complaint fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE:

(Failure to State a Claim Upon Which Relief May Be Granted -- As to All Causes of Action)

2. VeriSign's Cross-Complaint is barred, in whole or in part, because it fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE:

(Unclean Hands -- As to All Causes of Action)

3. VeriSign's Cross-Complaint is barred, in whole or in part, by reason of VeriSign's unclean hands.

FOURTH AFFIRMATIVE DEFENSE:

(Waiver -- As to All Causes of Action)

4. VeriSign's Cross-Complaint is barred, in whole or in part, by the equitable doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE:

(Estoppel -- As to All Causes of Action)

5. VeriSign's Cross-Complaint is barred, in whole or in part, by the equitable doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE:

(Lack of Irreparable Injury -- As to the First And Third Causes of Action)

6. VeriSign's claims seeking injunctive relief are barred, in whole are in part, because VeriSign has not suffered an irreparable injury.

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SEVENTH AFFIRMATIVE DEFENSE:

(Failure to Perform Conditions Under Contract -- As to All Causes of Action)

7. VeriSign's claims are barred, in whole or in part, because VeriSign has not fully and fairly performed all necessary conditions under the 2001 .com Registry Agreement.

EIGHTH AFFIRMATIVE DEFENSE:

(Material Breach -- As to All Causes of Action)

8. VeriSign's claims are barred, in whole or in part, because VeriSign is in material breach of its obligations under the 2001 .com Registry Agreement.

NINTH AFFIRMATIVE DEFENSE:

(Failure to Mitigate -- As to All Causes of Action)

9. The recovery of VeriSign, if any, should be barred or diminished by reason of VeriSign's failure to mitigate its alleged damages.

TENTH AFFIRMATIVE DEFENSE:

(Adequate Remedy at Law -- As to the First Cause of Action)

10. VeriSign's claim seeking specific performance is barred, in whole or in part, because VeriSign has an adequate remedy at law.

ELEVENTH AFFIRMATIVE DEFENSE:

(Adequate Alternative Remedy -- As to the Second Cause of Action)

11. To the extent that VeriSign is entitled to declaratory relief, VeriSign has an adequate alternative remedy.

TWELFTH AFFIRMATIVE DEFENSE:

(Set-Off -- As to All Causes of Action)

12. To the extent VeriSign has any contractual right to funds from ICANN, VeriSign's recovery must be reduced or eliminated by the damages owed to ICANN by reason of VeriSign's breaches of the 2001 .com Registry Agreement and the law.

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THIRTEENTH AFFIRMATIVE DEFENSE:

(No Breach of Duty -- As to All Causes of Action)

13. In all of its dealings with VeriSign, ICANN has fully complied with and fully performed all of its contractual, legal, and other duties and obligations, if any, toward VeriSign.

FOURTEENTH AFFIRMATIVE DEFENSE:

(Consent -- As to All Causes of Action)

14. VeriSign's claims are barred, in whole or in part, by VeriSign's consent in that, *inter alia*: VeriSign has acted in such a fashion as to have acquiesced in, or to have reasonably appeared to acquiesce in, ICANN's manners, practices, procedures, and guidelines of accrediting registrars; and, conversely, VeriSign has failed promptly to take issue with ICANN's manners, practices, procedures, and guidelines of accrediting registrars. As a result, VeriSign is legally deemed to have consented to ICANN's manners, practices, procedures, and guidelines of accrediting registrars, and VeriSign's purported causes of action are accordingly barred thereby.

FIFTEENTH AFFIRMATIVE DEFENSE:

(Ratification -- As to All Causes of Action)

15. VeriSign's claims are barred, in whole or in part, by VeriSign's ratification in that, *inter alia*: VeriSign has acted in such a fashion as to have acquiesced in, or to have reasonably appeared to acquiesce in, ICANN's manners, practices, procedures, and guidelines of accrediting registrars; and, conversely, VeriSign has failed promptly to take issue with ICANN's manners, practices, procedures, and guidelines of accrediting registrars. As a result, VeriSign is legally deemed to have ratified ICANN's manners, practices, procedures, and guidelines of accrediting registrars, and VeriSign's purported causes of action are accordingly barred thereby.

SIXTEENTH AFFIRMATIVE DEFENSE:

(Limitation of Damages -- As to All Causes of Action)

16. To the extent that VeriSign has any claimed damages, the amount of VeriSign's relief is limited by Section II.13 of the 2001 .com Registry Agreement.

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SEVENTEENTH AFFIRMATIVE DEFENSE:

(Justification -- As to the Third Cause of Action)

17. VeriSign’s claim is barred, in whole or in part, because any conduct engaged in by ICANN has been reasonable, based upon independent, legitimate business and economic justifications, without any purpose or intent to injure competition.

EIGHTEENTH AFFIRMATIVE DEFENSE:

(Lack of Standing to Sue for Injuries Alleged -- As to the Third Cause of Action)

18. VeriSign lacks standing to sue for the injuries alleged.

NINETEENTH AFFIRMATIVE DEFENSE:

(Suit Barred Because Benefits Realized -- As to the Third Cause of Action)

19. VeriSign enjoys substantial benefits from the registration of all ICANN accredited registrars and is thereby barred from making the claims for relief set forth in its third cause of action.

TWENTIETH AFFIRMATIVE DEFENSE:

(Intervening or Superseding Acts of Third Parties -- As to the Third Cause of Action)

20. VeriSign’s damages, if any, resulted from the acts or omissions of third parties over whom ICANN had no control. The acts of such third parties constitute intervening or superseding causes of the harm, if any, suffered by VeriSign.

TWENTY-FIRST AFFIRMATIVE DEFENSE:

(Proximate Cause -- As to All Causes of Action)

21. VeriSign’s alleged damages, if any, were caused by its own actions or the actions of persons or entities over which ICANN had no control and were not proximately caused by ICANN.

TWENTY-SECOND AFFIRMATIVE DEFENSE:

(Attorneys’ Fees -- As to the Third Cause of Action)

22. VeriSign lacks standing to seek attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5.

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TWENTY-THIRD AFFIRMATIVE DEFENSE:

(Eventual Defenses Incorporated by Reference -- As to All Causes of Action)

23. ICANN hereby adopts and incorporates by this reference any and all other affirmative defenses it may eventually assert in this proceeding.

TWENTY-FOURTH AFFIRMATIVE DEFENSE:

(Reservation of Rights to Assert Additional Defenses -- As to All Causes of Action)

24. ICANN has not knowingly or intentionally waived any applicable affirmative defenses and reserves the right to assert and rely on such other applicable affirmative defenses as may become available or apparent during discovery proceedings. ICANN further reserves the right to amend its answer and/or affirmative defenses accordingly and/or to delete affirmative defenses that it determines are not applicable during the course of subsequent discovery.

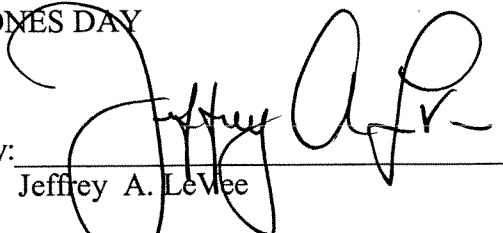
PRAYER

WHEREFORE, ICANN prays as follows:

- 1. That VeriSign takes nothing by reason of the Cross-Complaint on file herein;
- 2. For judgment in favor of ICANN and against VeriSign on its causes of action in the Cross-Complaint;
- 3. ICANN's costs of suit incurred herein; and
- 4. For such other relief as the Court may deem fair and equitable.

Dated: February 14, 2005

JONES DAY

By: 

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 West Fifth Street, Suite 4600, Los Angeles, California 90013.

On February 14, 2005, I caused to be served the document described as:

ANSWER OF CROSS-DEFENDANT ICANN TO CROSS-COMPLAINANT'S UNVERIFIED CROSS-COMPLAINT

on the interested parties in this action.

X **BY (U.S. MAIL).** I placed ___ the original X a true copy thereof enclosed in sealed envelope(s) to the addressee(s) as follows:

___ **BY PERSONAL SERVICE.** I placed ___ the original X true copies thereof enclosed in sealed envelope(s) and caused such envelope to be hand delivered via messenger to the offices of the addressee(s) as follows:

LAURENCE HUTT, ESQ.
ARNOLD & PORTER
777 S. Figueroa, 44th Fl.,
Los Angeles, CA 90017

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. 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 date of deposit of mailing in affidavit.

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

Executed on February 14, 2005, at Los Angeles, California.

Elba Alonso de Ortega
Type or Print Name


Signature