

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

**AFFIDAVIT OF DANIEL E. HALLORAN
(sworn October 17, 2003)
(in response to motion for confidentiality order)**

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 am an attorney admitted to the State Bar of California, and am the Chief Registrar Liaison and Acting Secretary of the Defendant, Internet Corporation for Assigned Names and Numbers ("ICANN"). I am the individual at ICANN with primary responsibility for instructing counsel on the conduct of this litigation.

2. I am swearing this Affidavit in response to a motion brought by the Plaintiff, Pool.com Inc. ("Pool.com"), for an order directing that 23 agreements referred to in the Affidavit of Robert Hall, sworn September 17, 2003 (the "Hall Affidavit") served in response to ICANN's motion to strike Pool.com's claim on jurisdictional grounds,

need not be produced and that certain information in those agreements, as selected by Pool.com, be provided only to counsel to ICANN.

3. The agreements at issue are 23 agreements referred to in the Hall Affidavit. According to Mr. Hall, Pool.com entered into these agreements with 23 ICANN-accredited registrars, "many of whom are Canadian and based in Ontario" (the "Agreements"). Pool.com refers to the Agreements in paragraphs 25 and 36 of the Hall Affidavit under the headings "Substantial Connection between Pool.com and this Jurisdiction", and "Pool.com's BackOrder Services". Obviously Mr. Hall refers to the Agreements in an attempt to show that Pool.com's business has connections to Ontario.

4. By letter dated September 22, 2003, ICANN sought production of the Agreements Pool.com referenced in the Hall Affidavit. ICANN's request was met with a refusal to produce the Agreements in their entirety. Pool.com's current position appears to be that it will only produce expurgated versions of the Agreements (or a form of the Agreements) and that certain of the expurgated information will be provided to ICANN's counsel on the condition that it not be provided to ICANN.

5. ICANN's request for production, Pool.com's response, and a complete record of the subsequent correspondence with respect to production of the Agreements is attached hereto as Exhibits "A" through "U".

6. The correspondence shows that Pool.com has taken contradictory positions with respect to the production of the Agreements. For example, by letter dated September 26, 2003, Pool.com's counsel wrote to ICANN's counsel to set out its position with respect to production of the Agreements. In that letter, counsel stated:

"I am writing to advise that our position in relation to the production of the Pool.com Register Partner agreements is that the agreements themselves are confidential pursuant to the terms of the agreements and, therefore, can only be disclosed to you and your client under a protective order of the Court. Such an order would limit disclosure of the agreement to you and your client for the purposes of the litigation and prevent the agreements from being disclosed to third parties." (emphasis added)

7. Also, on September 26, 2003, counsel to Pool.com delivered a draft Order to ICANN's counsel for discussion purposes. In the cover letter, Pool.com's counsel said that "we are looking for your consent to a confidentiality order". The Order that was being proposed by Pool.com would have allowed representatives of ICANN to receive full, unexpurgated copies of the 23 Agreements and would have allowed the representatives of ICANN and its counsel to disclose the Agreements to any person for the purpose of assisting in this action. Contrary to its current position on this motion, Pool.com was not attempting to prevent ICANN from being provided with copies of the Agreements or any portions of the Agreements.

8. On September 29, 2003, after a discussion with ICANN's counsel, Pool.com's counsel sent a revised draft of the Order that Pool.com wished the Court to grant. In its cover letter, counsel stated "We are prepared to provide the Agreements, redacted as to the fee and term provisions as previously agreed to by counsel, once you have indicated your consent to the terms of the draft Order". The enclosed draft Order again confirmed that ICANN would be provided with copies of the 23 Agreements and that only the fee and term provisions would be redacted. The Order proposed by Pool.com on September 29, 2003 would not have had the effect of allowing Pool.com to

redact the name or location of the counter-party to the Agreement before such Agreement was provided to ICANN.

9. Notwithstanding the positions set out by Pool.com in those two draft Orders, shortly thereafter, Pool.com apparently changed its position and advised that it would no longer agree to provide the Agreements but would instead provide them in a much greater redacted form and that it would provide some of the redacted information to ICANN's counsel so long as that information was not passed on to ICANN.

10. Not surprisingly, Pool.com's proposal is unacceptable. In order to deal with Pool.com's suggestion in Mr. Hall's Affidavit that it has "substantial connections" with Ontario and that the Agreements are with registrars "who are in Canada and based in Ontario", ICANN must be provided with all 23 Agreements, in their original form. We need to see the original, unexpurgated documents so as to allow us to verify when the agreements were entered into and with whom. It would be unfair to require ICANN to rely on information given by Pool.com and its counsel regarding the Agreements. Further, the identity of the registrar parties and their alleged location is unquestionably relevant to the issues on the jurisdiction motion. Moreover, ICANN will be prejudiced and suffer a real disadvantage if denied access to this information.

11. I and other ICANN employees have in-depth knowledge and experience not shared by our counsel concerning registrars and the domain registration business. Disclosure of the Agreements, including registrar parties' identities and location, is essential to ICANN in that it will assist me (and others at ICANN) in instructing counsel on the jurisdiction motion in at least the following ways:

- (a) the information will be used to determine whether or not any of the 23 registrars' business is, in fact, carried on in Ontario as alleged;
- (b) the information will be used to advise counsel on whether any of the 23 registrars is in fact an Ontario resident, or whether they are actually registered in other jurisdictions but simply "based" in Ontario;
- (c) if necessary, the information will permit ICANN to ascertain what percentage of each registrar's business is carried on in Ontario;
- (d) the information will put me in a better position to instruct counsel as to whether counsel should conduct any further examinations of Pool.com or examinations of non-parties;
- (e) the information will be used to determine whether any of the 23 registrars may be related companies to Pool.com; and
- (f) without the names and addresses of the registrar parties and copies of the 23 agreements it will be impossible to know if there are, in fact, 23 separate agreements.

12. It would be fundamentally unfair to deny ICANN access to the Agreements and the information relating to the identity of the registrars. It was Pool.com which put the registrars' identities in issue in the first place by suggesting that its entry into Agreements with these registrars, "many of whom are Canadian and based in Ontario", constitutes a connection between Pool.com's lawsuit and Ontario. ICANN should be permitted to test Pool.com's assertions through full discovery of the referenced Agreements, including discovery that will only be feasible if ICANN has access to the entire Agreements, including registrars' names and addresses.

State of California, County of _____ } ss.
Subscribed and sworn to before me on October _____, 2003

(Name of Notary)

DANIEL E. HALLORAN

POOL.com INC.
Plaintiff

and

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
Defendant

Court File No: 03-CV-24621

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

AFFIDAVIT OF DANIEL E. HALLORAN

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From: Matthew P. Gottlieb
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October 16, 2003

File No. 201779

<i>To: Name</i>	<i>Firm</i>	<i>Telephone Number</i>	<i>Fax Number</i>
Courtney Schaberg	Jones Day, Los Angeles, CA	213.243.2572	213.243.2539

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Total No. of Pages, including this page: 2

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File No. 201779

October 16, 2003

BY FAX

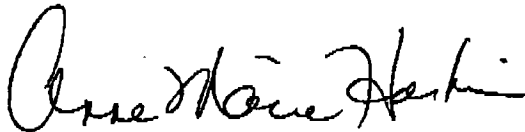
Y. Monica Song
Osler, Hoskin & Harcourt LLP
50 O'Connor Street
Suite 1500
Ottawa, ON K1P 6L2

Dear Ms Song:

ICANN ats POOL.com Inc.

May we please be provided with a copy of the draft order Pool.com is seeking in connection with your motion for a confidentiality order.

Yours very truly,


for Matthew P. Gottlieb

MPG/amh

cc: Andrea Burke

bcc: Courtney Shaberg

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(in response to motion for confidentiality order)**

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 am an attorney admitted to the State Bar of California, and am the Chief Registrar Liaison and Acting Secretary of the Defendant, Internet Corporation for Assigned Names and Numbers ("ICANN"). I am the individual at ICANN responsible for instructing counsel on the conduct of this litigation.

2. I am swearing this Affidavit in response to a motion brought by the Plaintiff, Pool.com Inc. ("Pool.com"), for an order directing that certain information contained in certain agreements referred to in the Affidavit of Robert Hall, sworn September 17, 2003 (the "Hall Affidavit") is confidential and need not be produced to ICANN. This motion arises in the context of a larger motion brought by ICANN to stay or dismiss this action on a jurisdictional basis.

3. The agreements at issue are 23 agreements which Pool.com claims it entered into with 23 registrars, "many of whom are Canadian and based in Ontario." Pool.com refers to the agreements in paragraphs 25 and 36 of the Hall Affidavit under the headings "Substantial Connection between Pool.com and this Jurisdiction", and "Pool.com's BackOrder Services".

4. By letter dated September 22, 2003, ICANN sought production of the agreements from Pool.com referenced in the Hall Affidavit. ICANN's request was met with a refusal to produce the agreements in their entirety. Instead, Pool.com suggested that certain information be expurgated, including the names and addresses of the registrar parties. The, which information names and addresses would be disclosed not to ICANN, but only to its's counsel, but not to ICANN. Pool.com's unsupported claim is that -cites- that the agreements reasons of require confidentiality from ICANN, the entity over which it is trying to obtain jurisdiction through use of the very same agreements.-

5. ICANN's request for production, Pool.com's response, and a complete record of the subsequent correspondence with respect to production of the agreements is attached hereto as Exhibits "■" through "■".

6. Not surprisingly, Pool.com's proposed solution is unacceptable. In ICANN's view, the identity of the registrar parties is unquestionably relevant to the issues on the jurisdiction motion. Moreover, ICANN will be prejudiced and suffer a real disadvantage if denied access to this information.

7. Disclosure of ~~the identity of the registrar parties'~~ identities is essential to ICANN in that it will assist me in instructing counsel on the jurisdiction motion in at least the following ways:

- (a) the information will be used to determine whether or not each registrar's business is, in fact, carried on in Ontario as alleged;
- (b) the information will be used to advise counsel on whether the registrars are in fact Ontario residents, or whether they are actually registered in other jurisdictions but simply "based" in Ontario;
- (c) if necessary, the information will permit ICANN to ascertain what percentage of each registrar's business is carried on in Ontario;
- (d) the information will put me in a better position to instruct counsel as to whether counsel should conduct any further examinations of Pool.com or examinations of non-parties;
- (e) the information will be used to determine whether any of the registrars may be related companies to Pool.com; and
- (f) without the names and addresses of the registrar parties it will be impossible to know if there are, in fact, 23 separate agreements.

8. It would be fundamentally unfair to deny ICANN access to the information relating to the identity of the registrars. ~~I since it was Pool.com which put their~~ registrars' identities in issue in the first place by suggesting that its it was connected to Ontario because it has entered into agreements with these registrars, "many of whom are Canadian and based in Ontario," constitutes a connection between Pool.com's lawsuit and Ontario. ~~It is only fair to allow ICANN should be permitted to test~~

Pool.com's assertions ~~by permitting it through full discovery of the referenced agreements, including discovery that will only be feasible if ICANN has access to the registrars names and addresses.~~ access to the names and addresses of these registrars for the purposes of determining the strength of Pool.com's connection to Ontario.

State of California, County of _____ } ss.
Subscribed and sworn to before me on September 5, 2003

(Name of Notary)

DANIEL E. HALLORAN

POOL.com INC.

and

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
Defendant

Plaintiff

Court File No: 03-CV-24621

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