

1 Ethan J. Brown (SBN 218814)

2 *ethan@bnslawgroup.com*

3 Sara C. Colón (SBN 281514)

4 *sara@bnslawgroup.com*

5 **BROWN NERI & SMITH LLP**

6 11766 Wilshire Boulevard, Suite 1670

7 Los Angeles, California 90025

8 Telephone: (310) 593-9890

9 Facsimile: (310) 593-9980

10 *Attorneys for Plaintiff*

11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST, a
15 Mauritius Charitable Trust,

16
17 Plaintiff,

18 v.

19 INTERNET CORPORATION FOR
20 ASSIGNED NAMES AND NUMBERS,
21 a California corporation; ZA Central
22 Registry, a South African non-profit
23 company; DOES 1 through 50, inclusive,

24 Defendants.

Case No. 2:16-cv-00862-RGK (JCx)

**EVIDENTIARY OBJECTIONS TO
DECLARATION OF MOCTAR
YEDALY**

Date: April 4, 2016

Hearing: 9:00 a.m.

Courtroom: 850

[Filed concurrently: Reply ISO Motion
for Preliminary Injunction;
Supplemental Sophia Bekele Eshete;
Declaration of Sara C. Colón; and
Evidentiary Objections to Declarations
of Kevin Espinola, Christine Willet,
Jeffrey LeVee, and Akram Atallah]

1 Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) respectfully submits
 2 the following evidentiary objections to the Declaration of Moctar Yedaly (“Yedaly
 3 Declaration”) relied upon by Defendant Internet Corporation for Assigned Names
 4 and Numbers (“ICANN”) in support of its opposition to DCA’s Motion for a
 5 Preliminary Injunction.

6 **PLAINTIFF’S EVIDENTIARY OBJECTIONS**

Yedaly Declaration ¶	DCA Objection	Sustained	Overruled
	DCA objects to the entire Yedaly declaration pursuant to Fed. R. Evid. 403 on the grounds that his declaration is misleading as it fails to state that Defendant ZA Central Registry (“ZACR”) agreed to grant the AUC (“African Union Commission”) any rights to the gTLD .Africa that ZACR obtains. [Bekele Declaration, ¶32 Ex. 20, p.617, ¶7] Moctar Yedaly is affiliated with the Infrastructure and Energy Department at		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	the AUC.		
Yedaly Declaration ¶	DCA Objection	Sustained	Overruled
¶3: “Notwithstanding this, the Government of Morocco provided its letter of support for ZACR’s application for the .AFRICA TLD.”	DCA objects on the grounds that the letter of support from the Moroccan government is the best evidence of that letter. (Fed. R. Evid. §1002). Conclusory [Fed. R. Evid. 602].		
Yedaly Declaration ¶	DCA Objection	Sustained	Overruled
¶6: “I have been integrally involved in the UAC’s efforts to support the delegation of a .AFRICA top level domain for the African continent. This initiative is fully endorsed by the African Union and has widespread support across the continent. The launch of the .AFRICA domain is of historic significance to the African continent. With the goal of establishing “Africa in One Space”, .AFRICA will provide secure, world-class technical infrastructure to leverage the	Lacks personal knowledge, lacks foundation, speculative and conclusory [Fed. R. Evid. 602]. Improper lay opinion [Fed. R. Evid. 701].		

EVIDENTIARY OBJECTIONS TO DECLARATION OF MOCTAR YEDALY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>continent’s socio-economic capacity and potential. Built on a consensus-driven framework of best practices and open standards, the .Africa Registry will place special emphasis on securing the rights of intellectual property owners, Internet users and the broader African community. The .AFRICA gTLD will enable governments, business and civil society to build brands, promote development and establish long-term relationships ¶ with this market. The .AFRICA gTLD will also help governments, the private sector, organizations and individuals associate their services, product and information with the continent.</p>			
<p>Yedaly Declaration ¶</p>	<p>DCA Objection</p>	<p>Sustained</p>	<p>Overruled</p>
<p>¶8: “Pursuant to that mandate, the AUC issued a public request for expressions of interest, followed by a request for proposals, (“RFP process”) seeking applications from</p>	<p>Lacks foundation [Fed. R. Evid. 602]. Prejudicial [Fed. R. Evid. 403].</p>		

EVIDENTIARY OBJECTIONS TO DECLARATION OF MOCTAR YEDALY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>private organizations (including DCA interested in operating the .AFRICA gTLD).”</p>			
<p>Yedaly Declaration ¶</p>	<p>DCA Objection</p>	<p>Sustained</p>	<p>Overruled</p>
<p>¶9: “On April 16, 2010, the AUC sent DCA a letter informing it that ‘following consultations with relevant stakeholders...[it] no longer endorse[d] individual initiates [for .AFRICA].’ Instead, ‘in coordination with the Member States...the [AUC] w[ould] go through [an] open [selection] process.’ This letter is attached as Exhibit 7 to the Declaration of Sophia Bekele Eshete (ECF No. 17-7). One of the purposes of this letter was to advise DCA that the AUC was withdrawing any previous support the AUC had announced for DCA now that the AUC was more fully engaged and had determined to conduct an open selection process to identify the registry operator that the AUC would endorse.</p>	<p>The best evidence of the April 16, 2010 letter is the April 16, 2010 letter itself [Fed. R. Evid. 1002].</p>		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Yedaly Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶10: “DCA chose not to participate in the RFP Process. ZA Central Registry (“ZACR”) prevailed in the RFP Process, and ZACR submitted an application to ICANN for the .AFRICA gTLD with the full support of the AUC and with more than 60% support from individual African Governments as required by the new gTLD Applicants’ Guidebook. The AUC did not support DCA’s application for .AFRICA at the time DCA submitted it to ICANN in 2012, and it does not support DCA’s application now. In addition, 17 (seventeen) GAC Early Warning Notices and Consensus advice was issued against DCA’s application for .Africa. Attached hereto as Exhibit B and C are true and correct copies of the aforementioned documents.”</p>	<p>The documents are the best evidence of the documents [Fed. R. Evid. 1002]. Lacks foundation [Fed. R. Evid. 602].</p> <p>Exhibit B and C were a part of the process that the IRP Panel found problematic. (See Bekele Decl., ¶5, Ex. 1, p.0052, ¶109 “The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address the</p>		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to ensure the fairness required by Article III, Sec. 1 above, and are therefore inconsistent with the Articles of Incorporation and Bylaws of ICANN.”)</p>		
Yedaly Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶12: “ZACR has signed a registry agreement with ICANN and is fully prepared to proceed once ICANN is able to complete the delegation. I am aware that ZACR has incurred considerable expenses, and will continue to incur such expenses, without being able to proceed with the delegation of .AFRICA. Further delays will increase this</p>	<p>Prejudicial and irrelevant [Fed. R. Evid. 403]. Lacks personal knowledge, lacks foundation, speculative, and conclusory [Fed. R. 602; Local Rule 7-7 (Declarations shall contain only factual, evidentiary matter and shall conform as far as</p>		

EVIDENTIARY OBJECTIONS TO DECLARATION OF MOCTAR YEDALY

<p>1 prejudice.”</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p>possible to the requirements of F.R.Civ.P. 56(c)(4); <i>See also Bank Melli Iran v. Pahlavi</i>, 58 F.3d 1406, 1412-1413 (9th Cir. 1995) (Holding “the Bank’s response to Pahlavi’s evidence was information and belief declarations from their counsel. Those were entitled to no weight because the declarant did not have personal knowledge.” [emphasis added])).</p>		
--	---	--	--

18
19 Dated: March 21, 2016

BROWN NERI & SMITH LLP

20
21 By: /s/ Ethan J. Brown
22 Ethan J. Brown

23 *Attorneys for Plaintiff*
24 DOTCONNECTAFRICA TRUST