

1 Jeffrey A. LeVee (State Bar No. 125863)  
Erin L. Burke (State Bar No. 186660)  
2 Rachel Tessa Gezerseh (State Bar No. 251299)  
Amanda Pushinsky (State Bar No. 267950)  
3 JONES DAY  
555 South Flower Street  
4 Fiftieth Floor  
Los Angeles, CA 90071.2300  
5 Telephone: +1.213.489.3939  
Facsimile: +1.213.243.2539  
6 Email: jlevec@JonesDay.com

7 Attorneys for Defendant  
8 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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13 DOTCONNECTAFRICA TRUST,

14 Plaintiff,

15 v.

16 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS, *et*  
17 *al.*,

18 Defendants.  
19

**CASE NO. BC607494**

Assigned to Hon. Howard L. Halm

**ICANN'S EVIDENTIARY  
OBJECTIONS TO REPLY  
DECLARATION OF SOPHIA  
BEKELE ESHETE FILED IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION (FILED AS A TRO)**

DATE: February 2, 2017

TIME: 8:30 a.m.

DEPT: 53

1 Defendant the Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby  
 2 submits the following evidentiary objections to the Reply Declaration of Sophia Bekele Eshete  
 3 (“Bekele Declaration”), filed in support of plaintiff’s Motion for Preliminary Injunction (filed as a  
 4 TRO).

OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT’S RULING
8 Exhibits C, D, E, F 9 10 11 12 13 14 15 16 17 18 19	<p>1. <b>New Evidence Submitted For First Time With Reply</b></p> <p>Ms. Bekele submitted evidence in reply clearly that should have been submitted with DCA’s moving papers. Exhibits C and D pertain to DCA’s allegations that ZACR’s application was flawed, an argument made in DCA’s pleadings on this motion and also in DCA’s pleadings on its first motion for preliminary injunction heard in this Court on December 22, 2016. Similarly, Exhibit E pertains to the alleged haste of the Board’s acceptance of the GAC advice, again an argument made in DCA’s initial pleadings. Exhibit F pertains to ICANN’s post-IRP actions, a topic likewise argued in DCA’s initial pleadings.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
20 ¶ 3: “Thus, if DCA were precluded 21 from being awarded the .Africa 22 gTLD, both DCA and DCA 23 Registry would be harmed.” 24 25 26 27 28	<p>1. <b>Lacks Foundation (Evid. Code § 403).</b></p> <p>2. <b>Lacks Personal Knowledge (Evid. Code § 702).</b></p> <p>3. <b>Speculation (Evid. Code § 702).</b></p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that if DCA were precluded from being awarded the .Africa gTLD, both DCA and DCA Registry would be harmed. Further, the testimony is speculative and should be stricken.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

<b>OBJECTED-TO PORTION OF BEKELE DECLARATION</b>	<b>GROUNDS FOR OBJECTION</b>	<b>COURT'S RULING</b>
<p>¶ 4: "ICANN claims to be unaware of the April 16, 2010 purported withdrawal letter from the AUC. However, on various occasions in communicating with ICANN, I referred to the letter."</p>	<p><b>1. Best Evidence Rule (Evid. Code § 1520)</b></p> <p>The purported communications – not cited or attached here – between ICANN and DCA are the best evidence of these alleged communications.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>¶ 6: "Similar to other endorsement letters that ZACR submitted during its application, the purported endorsement letter submitted on Namibia's behalf, endorses the AUC's reserved-names initiative, which was already rejected by ICANN in response to the request, however, appropriated by ZACR as its own for application at ICANN. Despite, ICANN accepted these 30 + endorsements."</p>	<p><b>1. Lacks Foundation (Evid. Code § 403).</b> <b>2. Lacks Personal Knowledge (Evid. Code § 702).</b> <b>3. Speculation (Evid. Cod. § 702)</b> <b>4. Improper Opinion Testimony (Evid. Code §§ 800-803).</b> <b>5. Hearsay (Evid. Code § 1200, et seq.).</b></p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of any of the assertions contained in this statement. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p> <p>Similarly, Ms. Bekele fails to lay a foundation as to the source of her knowledge or demonstrate personal knowledge of the statement that ICANN accepted these 30 + endorsements. This statement is speculative, an inadmissible opinion, and false.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>¶ 8: "DCA also objected to the fact that ZACR had various inconsistencies and issues with its application including background screening, legal and administrative oversight issues, application submission on behalf of the "African Community",</p>	<p><b>1. Lacks Foundation (Evid. Code § 403).</b> <b>2. Lacks Personal Knowledge (Evid. Code § 702).</b> <b>3. Improper Opinion Testimony (Evid. Code §§ 800-803).</b> <b>4. Speculation (Evid. Code § 702)</b></p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT'S RULING
misrepresentation of its endorsements, legal rights, and financial capability.”	Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of any of the assertions contained in this statement. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony. The testimony is speculative and should be stricken.	
¶ 9: “ICANN was also well-aware of the issues of the AUC’s April 16, 2010 letter and the objections by DCA to the AUC’s Request for Proposal through the press releases issued on DCA’s website. DCA’s website tracks through email who has reviewed and sent such press releases, and members of ICANN were involved.”	<p><b>1. Lacks Foundation (Evid. Code § 403).</b>  <b>2. Lacks Personal Knowledge (Evid. Code § 702).</b>  <b>3. Speculation (Evid. Code § 702)</b>  <b>4. Improper Opinion Testimony (Evid. Code §§ 800-803).</b></p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of ICANN's knowledge or lack thereof of the April 16, 2010 letter. Further, because these statements are not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p> <p>Similarly, Ms. Bekele fails to lay a foundation as to the source of her knowledge or demonstrate personal knowledge, of the statement that members of ICANN were involved in reviewing or sending press releases on DCA’s website. This statement is speculative and/or an inadmissible opinion.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
¶ 10: “DCA also made clear its concerns with ICANN’s processing of DCA’s application after the IRP had concluded, ICANN’s haste in adopting a board resolution prior to	<p><b>1. Lacks Foundation (Evid. Code § 403).</b>  <b>2. Lacks Personal Knowledge (Evid. Code § 702).</b>  <b>3. Speculation (Evid. Cod.</b></p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

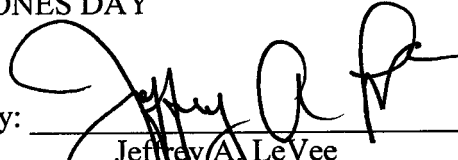
OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT'S RULING
<p>the next scheduled ICANN Board meeting, and ICANN countenance of ZACR's commentary and concerns with the processing of DCA's application through the remainder of the new gTLD process."</p>	<p><b>§ 702)</b>  <b>4. Improper Opinion Testimony (Evid. Code §§ 800-803).</b></p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge of "ICANN's haste in adopting a board resolution prior to the next scheduled ICANN Board meeting," or "ICANN countenance of ZACR's commentary and concerns with the processing of DCA's application through the remainder of the new gTLD process." Further, because they are not rationally based on her perception, these statements amount to inadmissible opinion testimony.</p>	
<p>¶ 11: "Even after ICANN was found at fault for accepting the GAC's improper advice, ICANN Board Chairman wrote to the GAC post-IRP, and stated that the ICANN Board would reconsider any additional advice or information the GAC presented to it, in the event that DCA's application was successful."</p>	<p><b>1. Lacks Foundation (Evid. Code § 403).</b>  <b>2. Lacks Personal Knowledge (Evid. Code § 702).</b>  <b>3. Speculation (Evid. Cod. § 702)</b>  <b>4. Improper Opinion Testimony (Evid. Code §§ 800-803).</b>  <b>5. Hearsay (Evid. Code § 1200, et seq.).</b>  <b>6. Best Evidence Rule (Evid. Code § 1520)</b></p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that "ICANN was found at fault for accepting the GAC's improper advice," and that the "ICANN Board Chairman wrote to the GAC post-IRP, and stated that the ICANN Board would reconsider any additional advice or information the GAC presented to it, in the event that DCA's application was successful." Further, because they are not</p>	<p><input type="checkbox"/> Sustained  <input type="checkbox"/> Overruled</p>

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<b>OBJECTED-TO PORTION OF BEKELE DECLARATION</b>	<b>GROUNDS FOR OBJECTION</b>	<b>COURT'S RULING</b>
	rationally based on her perception, these statements amount to inadmissible opinion testimony.  The purported communication between the ICANN Board Chairman and the GAC is the best evidence of this purported communication.	

Dated: February 1, 2017

JONES DAY

By:   
\_\_\_\_\_  
Jeffrey A. LeVee

Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS

1 **PROOF OF SERVICE**

2 I, Diane Sanchez, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On February 1,  
6 2017, I served a copy of the within document(s):

7 **ICANN’S EVIDENTIARY OBJECTIONS TO REPLY DECLARATION OF SOPHIA  
8 **BEKELE ESHETE FILED IN SUPPORT OF PLAINTIFF’S MOTION FOR  
PRELIMINARY INJUNCTION (FILED AS A TRO)****

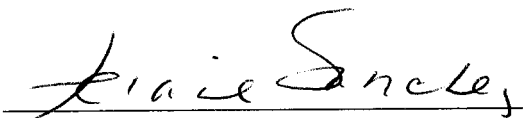
- 9  by placing the document(s) listed above in a sealed envelope with postage thereon  
10 fully prepaid, in the United States mail at Los Angeles, California addressed as set  
forth below.
- 11  by placing the document(s) listed above in a sealed Federal Express envelope and  
12 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery  
Service agent for delivery.
- 13  by personally delivering the document(s) listed above to the person(s) at the  
14 address(es) set forth below.
- 15  by transmitting via e-mail or electronic transmission the document(s) listed above  
16 to the person(s) at the e-mail address(es) set forth below.

17 Ethan J. Brown  
ethan@bnslawgroup.com  
18 Sara C. Colón  
sara@bnslawgroup.com  
19 Rowennakete "Kete" Barnes  
kete@bnsklaw.com  
20 BROWN NERI & SMITH LLP  
11766 Wilshire Boulevard, Suite 1670  
21 Los Angeles, California 90025  
Telephone: (310) 593-9890

David W. Kesselman, Esq.  
Kesselman Brantly Stockinger LLP  
1230 Rosecrans Ave, Suite 690  
Manhattan Beach, CA 90266  
(310) 307-4556  
(310) 307-4570 fax  
[dkesselman@kbslaw.com](mailto:dkesselman@kbslaw.com)

22 I declare that I am employed in the office of a member of the bar of this court at whose  
23 direction the service was made.

24 Executed on February 1, 2017, at Los Angeles, California.

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26   
27 Diane Sanchez