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11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

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

14 DOTCONNECTAFRICA TRUST, a Mauritius
15 Charitable Trust;

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND NUMBERS, a
20 California corporation;

21 Defendants.

Case No. BC607494

Assigned for all purposes to the Honorable
Howard L. Halm

**RESPONSE TO EVIDENTIARY
OBJECTIONS TO 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 Plaintiff DotConnectAfrica Trust (“DCA”) hereby responds to Defendant Internet
 2 Corporation for Assigned Names and Numbers’ (“ICANN”) evidentiary objections to the
 3 Declaration of Sophia Bekele Eshete (“Bekele Declaration”) filed in support of DCA’s Motion for
 4 Preliminary Injunction.

Bekele Declaration ¶	ICANN Objection	Response	Ruling
<p>5 ¶35: “If .Africa is 6 delegated to ZACR 7 before this case is 8 resolved DCA will 9 likely be forced to stop 10 operating due to a lack 11 of funding.”</p>	<p>1. Lacks Foundation (Evid. Code §403) 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Code 702.)</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 .Africa is delegated to ZACR before this case is resolved DCA will Likely be forced to stop operating due to a lack of funding. Further, the testimony is speculative and should be stricken.</p>	<p>Ms. Bekele’s testimony is based upon her personal knowledge as stated in the declaration. Ms. Bekele is the CEO of Plaintiff DCA and deals directly with its funders.</p>	<p>Overruled _____ Sustained _____</p>
Bekele Declaration ¶	ICANN Objection	Response	Ruling
<p>17 ¶36: "Once the gTLD 18 is awarded and the 19 party controlling it 20 begins selling or 21 offering its use to users 22 of the Internet 23 including businesses, 24 organizations, persons 25 and governments, it 26 would be difficult if 27 not impossible to 28 unwind that control and provide it to another party."</p>	<p>1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code §702). 3. Improper Opinion Testimony (Evid. Code §§800-803).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that it would be difficult to unwind the control of a gTLD and provide it to another party. On Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<p>Ms. Bekele’s testimony is based on her personal knowledge as stated in the declaration. Ms. Bekele is the CEO of Plaintiff DCA and deals directly with its founders.</p>	<p>Overruled _____ Sustained _____</p>

Bekele Declaration ¶	ICANN Objection	Response	Ruling
<p>¶ 37: “Based on my understanding of ICANN’s rules and the requirements of a registry, if .Africa were re-delegated from ZACR to DCA, third party registrar contracts would have to be unwound. Third parties with whom ZACR contracted to provide domain names under the .Africa gTLD would have to transition technically and contractually to DCA - a process that would be costly and burdensome for all such that re-delegation is simply not viable here. Further, ZACR plans to charge more to registrars than DCA, which will create more complications in the redelegation process.”</p>	<p>1. Lacks Foundation (Evid. Code §403) 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Code 702.) 4. Improper Opinion Testimony (Evid. Code §§800-803). 5. Hearsay (Evid. Code §1200, et seq.).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that unwinding third party contracts would be costly and burdensome and re-delegation not viable. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<p>Ms. Bekele’s testimony is based on her personal knowledge and understanding as stated in the declaration.</p>	<p>Overruled <hr/> Sustained <hr/></p>
Bekele Declaration ¶	ICANN Objection	Response	Ruling
<p>¶38: Until the New gTLD Program was instituted in 2012, ICANN used to have a strict policy over separating a Registry (the entity that hold the rights to a gTLD) and Registrar (the entity responsible for selling individual domain names under the gTLD to consumers) operation to manage the business conflict over the same organization having to</p>	<p>1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Cod. § 702) 4. Improper Opinion Testimony (Evid. Code §§ 800-803). 5. Hearsay (Evid. Code § 1200, et seq.).</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 used to have a strict policy over separating a Registry and a Registrar operation to</p>	<p>Ms. Bekele’s testimony is based on her personal knowledge as stated in the declaration.</p> <p>Ms. Bekele’s statements are based on her personal knowledge and perception.</p>	<p>Overruled <hr/> Sustained <hr/></p>

<p>1 register and sell a 2 domain name. ICANN 3 now permits a combined 4 operation of allowing a 5 Registry operator to also 6 be a Registrar, provided 7 the organization file a 8 disclosure of such with 9 ICANN. Despite the 10 disclosure to ICANN, 11 this process of allowing 12 a registry to also run its 13 own sales registrar 14 operation is still subject 15 to manipulation, 16 depending on the 17 contract relations set up 18 by the registry, which 19 has not been thoroughly 20 vetted.”</p>	<p>manage the business conflict over the same organization having to register and sell a domain name. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<p>There are no out of court statements made.</p>	
<p>Bekele Declaration ¶</p>	<p>ICANN Objection</p>	<p>Response</p>	<p>Ruling</p>
<p>¶ 39: “Registry Operator can sell domains and collect the money without restraint. Using a current gTLD “.club” as an example, below sales channels include – auctions, registrar channel, direct deals, portfolio deals, broker, and the aftermarket. <i>See</i> http://www.thedomains.com/2015/12/03/club-has-record-month-selling-over-1-6-in-premiumdomains [“November was a record-breaking month for both regular. CLUB registrations and premium domain name sales. It was our first</p>	<p>1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Improper Opinion Testimony (Evid. Code §§ 800-803). 4. Speculation (Evid. Cod. § 702) 5. Hearsay (Evid. Code § 1200, et seq.).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that registry operator can sell domains and collect the money without restraint. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<p>Ms. Bekele’s testimony is based on her personal knowledge as stated in the declaration.</p>	<p>Overruled _____ Sustained _____</p>

1	month with more than			
2	\$1 million in Premium			
3	Name sales, with strong			
4	deals coming from two			
5	auctions, our registrar			
6	channel, registry direct			
7	deals (including several			
8	portfolio deals) as well			
9	as through brokers and			
10	the aftermarket.”]”			
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	Bekele Declaration ¶	ICANN Objection	Response	Ruling
	¶ 40: “Therefore, the revenue share on each of the above channels would be variable and potentially open to manipulation and the contractual relation with the registry cannot always be monitored and reported.”	<p>1. Lacks Foundation (Evid. Code § 403).</p> <p>2. Lacks Personal Knowledge (Evid. Code § 702).</p> <p>3. Speculation (Evid. Cod. § 702)</p> <p>4. Improper Opinion Testimony (Evid. Code §§ 800-803).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that revenue share on sales channels would be variable and potentially open to manipulation. 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 contractual relation with the registry cannot always be monitored and reported. This statement is speculative and/or an inadmissible opinion.</p>	Ms. Bekele’s testimony is based on her personal knowledge as stated in the declaration.	
	Bekele Declaration ¶	ICANN Objection	Response	Ruling
	¶ 41: “Importantly, once a premium domain name is sold, there is no way	<p>1. Foundation (Evid. Code § 403).</p> <p>2. Lacks Personal Knowledge (Evid. Code § 702).</p>	Ms. Bekele’s testimony is based on her personal	

<p>1 to reverse the sale. The 2 next opportunity to re- 3 make these sales comes 4 at renewal, which is 5 somewhere between 1 6 and 10 years.”</p>	<p>3. Speculation (Evid. Cod. § 702) 4. Improper Opinion Testimony (Evid. Code §§ 800-803).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that once a premium domain name is sold, there is no way to reverse the sale and that the next opportunity to re-make these sales comes at renewal. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<p>knowledge as stated in the declaration.</p>	
<p>Bekele Declaration ¶</p>	<p>ICANN Objection</p>	<p>Response</p>	<p>Ruling</p>
<p>11 ¶ 42: “In this regard, 12 reversing the process of 13 the sale on the name is 14 likely impossible, if 15 another registry is to 16 take over.”</p>	<p>1. Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Cod. § 702) 4. Improper Opinion Testimony (Evid. Code §§ 800-803).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that reversing the process of the sale on a registry name is likely impossible, if another registry is to take over. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<p>Ms. Bekele’s testimony is based on her personal knowledge as stated in the declaration.</p>	

<p>Bekele Supplemental Declaration ¶</p>	<p>ICANN Objection</p>	<p>Response</p>	<p>Ruling</p>
<p>25 ¶ 11: “DCA would not have applied for the 26 .Africa gTLD, paid the non-refundable fee, 27 and would not have spent years campaigning 28 for the endorsements and preparing an application, if it had known that ICANN would favor ZACR throughout the process.”</p>	<p>1. Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702).</p>	<p>Ms. Bekele’s testimony is based on her personal knowledge as stated in the declaration.</p>	

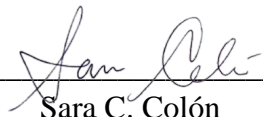
RESPONSE TO EVIDENTIARY OBJECTIONS TO DECLARATION OF SOPHIA BEKELE ESHETE FILED IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION (FILED AS A TRO)

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	<p>3. Improper Opinion Testimony (Evid. Code §§ 800-803).</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 would favor ZACR throughout the application process. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<p>Ms. Bekele does not state that DCA knew ICANN would favor ZACR at the time applicaiotns were submitted. This informaitno was discovered after the application processes was conducted.</p> <p>The entire statement is based upon her personal knowledge.</p>	
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Dated: January 26, 2017

BROWN NERI SMITH & KHAN LLP

By: 
Sara C. Colón

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST