

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department N

20STCV42881

October 17, 2022

**FEESTRY, LLC., et al. vs INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1:30 PM

Judge: Honorable Craig D. Karlan
Judicial Assistant: S. Hwang
Courtroom Assistant: S. Mixon

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter re: Motion to Compel Further Discovery Responses and Hearing on Motion to Compel Further Responses and Request for Sanctions (Filed by Plaintiffs on 09/13/2021)

The Court, having taken the matter under submission on 09/06/2022, now rules as follows:

*****RULING*****

Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. Ltd., and Domain Venture Partners PPC Limited's Motion to Compel Further Responses to Demands for Inspection Propounded Upon Defendant Internet Corporation for Assigned Names and Numbers, and for Sanctions is DENIED.

Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. Ltd., and Domain Venture Partners PPC Limited's Motion to Compel Further Responses to Special Interrogatories Propounded Upon Defendant Internet Corporation for Assigned Names and Numbers, and for Sanctions is DENIED.

As to the supplemental production agreed to by Defendant Internet Corporation for Assigned Names and Numbers, such production shall be completed on or before December 16, 2022.

Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. Ltd., and Domain Venture Partners PPC Limited to give notice.

REASONING

If a party that has propounded interrogatories or requests for production believes that the responses received are evasive or incomplete, or that an objection to the interrogatories is

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department N

20STCV42881

October 17, 2022

**FEGISTRY, LLC., et al. vs INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1:30 PM

Judge: Honorable Craig D. Karlan
Judicial Assistant: S. Hwang
Courtroom Assistant: S. Mixon

CSR: None
ERM: None
Deputy Sheriff: None

without merit or too general, the propounding party may bring a motion to compel further responses to the interrogatories. (Code Civ. Proc., §§ 2030.300, subd. (a), 2031.310, subd. (a); see also *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1189-1190 [motion to compel proper to challenge “boilerplate” responses].) Further, “[o]n receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: [¶] (1) An answer to a particular request is evasive or incomplete. [¶] (2) An objection to a particular request is without merit or too general.” (Code Civ. Proc., § 2033.290, subd. (a).)

“Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response” to the interrogatories or requests for admission. (Code Civ. Proc., §§ 2030.300, subd. (c), 2031.310, subd. (c), 2033.290, subd. (c).) This timeliness requirement is mandatory, and in some sense may even be considered a matter of jurisdiction, and the Court therefore “[has] no power to make an order compelling further answers where the propounding party failed to serve this motion within the statutory time.” (*Prof'l Career Colls., Magna Inst., Inc. v. Superior Court* (1989) 207 Cal.App.3d 490, 493; see also *Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681 [same].)

A motion to compel further responses must be accompanied by a meet and confer declaration under Code of Civil Procedure section 2016.040. (See Code Civ. Proc., §§ 2030.300, subd. (b), 2031.310, subd. (b), 2033.290, subd. (b).) A meet and confer declaration must “state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” (Code Civ. Proc., § 2016.040.) California Rules of Court, rule 3.1345(a) requires that any motion to compel further responses to discovery contain a separate statement with the text of each request, the response, and a statement of factual and legal reasons for compelling further.

Requests for Production of Documents

In Request for Production No. 21, Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. Ltd., and Domain Venture Partners PPC Limited (“Plaintiffs”) seek all iterations of Module 6 of the Applicant Guidebook (i.e., the Covenant Not to Sue), as well as any internal documents that concern or discuss such iterations. Plaintiffs argue Defendants intention in adopting and interpretation of the Covenant Not to Sue is “critical to core issues presented in Defendants’ demurrer.” In response, ICANN has agreed to produce all iterations of Module 6, but not its internal communications relating thereto, which ICANN argues are irrelevant to this action. The

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department N

20STCV42881

October 17, 2022

**FEESTRY, LLC., et al. vs INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1:30 PM

Judge: Honorable Craig D. Karlan

CSR: None

Judicial Assistant: S. Hwang

ERM: None

Courtroom Assistant: S. Mixon

Deputy Sheriff: None

Court agrees with ICANN.

Plaintiff clearly states in its prefatory first paragraph in the FAC that this action has been brought to implement certain dispute resolution procedural mechanisms specified in ICANN's Bylaws. Therefore, it is unclear how the Covenant Not to Sue has any applicability to this action. Moreover, the language of the Covenant Not to Sue is unambiguous, such that it is unclear how any of the sought discovery could aid the trier of fact. Thus, other than with respect to producing all iterations of Module 6, ICANN need not provide a further response at this juncture.

In Request for Production Nos. 22 and 23, Plaintiffs seek all documents possessed by ICANN or its "Constituent Bodies, contractors or agents" regarding the efficacy and fairness of the "Board Accountability Mechanisms Committee . . . reviewing its own decisions in matters made subject of gTLD applicants' Requests for Reconsideration" and of ICANN's "Board's review and approval of its Board Accountability Mechanisms Committee . . . gTLD program decisions." Here, it is unclear how the documents Plaintiffs seek are limited to Plaintiffs' claims. Moreover, Plaintiffs' requests here are overbroad; Plaintiffs must limit and clarify these requests to solely obtain documents which are relevant to Plaintiffs' claims. As such, ICANN need not provide further responses to these requests at this juncture, other than as to the process for implementing Ombudsman review of Reconsideration Requests and the Ombudsman's recusal from considering Plaintiffs' Request 18-6, which ICANN has already agreed to produce.

In Request for Production No. 26, Plaintiffs seek all documents and things which concern, reflect or relate to any, and all, discussions, deliberations, decisions, actions and statements of Defendant's "Accountability Structures Expert Panel" ("ASEP") and its "Accountability and Transparency Review Team" ("ATRT") related to Defendant's purported Accountability Mechanisms. As noted by Defendants, the Bylaws did not refer to a Standing Panel until 2013 and did not refer to Ombudsman review of Reconsideration Requests until 2016, years after Plaintiffs submitted their applications to ICANN in 2012. In addition, Plaintiffs' requests are again overbroad. As such, ICANN need not provide further responses to these requests at this juncture.

In Request for Production No. 27, Plaintiffs seek all documents relating to "Defendant's April 8, 2013 statement as alleged in Paragraph 50 of Plaintiffs' Complaint." ICANN states this statement cannot be the basis for Plaintiffs' fraud or breach of contract claims, and indeed the Court so found in its ruling sustaining a prior demurrer, finding that claims of purported fraud relating to conduct occurring after Plaintiffs signed the subject contracts cannot serve as the basis for a fraud claim as there are no facts indicating that ICANN misrepresented facts that induced Plaintiffs to submit their applications. As such, ICANN need not provide a further response at

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department N

20STCV42881

October 17, 2022

**FEGISTRY, LLC., et al. vs INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1:30 PM

Judge: Honorable Craig D. Karlan

CSR: None

Judicial Assistant: S. Hwang

ERM: None

Courtroom Assistant: S. Mixon

Deputy Sheriff: None

this juncture.

Accordingly, Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. Ltd., and Domain Venture Partners PPC Limited's Motion to Compel Further Responses to Demands for Inspection Propounded Upon Defendant Internet Corporation for Assigned Names and Numbers is DENIED. Given that the Court has denied Plaintiffs' motions, Plaintiffs' request for monetary sanctions is also DENIED.

Special Interrogatories

In Special Interrogatory Nos. 12 and 13, Plaintiffs seek information relating to "analyses, discussions, reports, resolutions, communiques, or other documents had or taken by the Defendant or its Constituent Bodies, contractors or agents" regarding the efficacy and fairness of the "Board Accountability Mechanisms Committee . . . reviewing its own decisions in matters made subject of gTLD applicants' Requests for Reconsideration" and of ICANN's "Board's review and approval of its Board Accountability Mechanisms Committee . . . gTLD program decisions." Again, it is not clear how these requests are limited to Plaintiffs' claims regarding the Bylaws. Moreover, Plaintiffs' requests are overbroad and unduly burdensome and appear to invade the attorney-client privilege; Plaintiffs must limit and clarify these requests to solely obtain documents which are relevant to Plaintiffs' claims and such that they do not facially seek attorney-client privileged information. As such, ICANN need not provide further responses to these requests at this juncture.

Accordingly, Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. Ltd., and Domain Venture Partners PPC Limited's Motion to Compel Further Responses to Special Interrogatories Propounded Upon Defendant Internet Corporation for Assigned Names and Numbers, and for Sanctions is DENIED.

Finally, the Court notes that Defendant ICANN has stated certain items are available on-line and can equally be accessed and downloaded by Plaintiffs. However, absent a stipulation authenticating such documents, Defendant ICANN is obligated to produce hard-copies of any such document in its possession so that Plaintiffs will not have issues seeking admissibility thereof at trial.

END OF RULING

Clerk to give notice to Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. Ltd., and Domain Venture Partners PPC Limited who shall give notice to all relevant counsel.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department N

20STCV42881

October 17, 2022

**FEGISTRY, LLC., et al. vs INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1:30 PM

Judge: Honorable Craig D. Karlan

CSR: None

Judicial Assistant: S. Hwang

ERM: None

Courtroom Assistant: S. Mixon

Deputy Sheriff: None

Certificate of Mailing is attached.

Minute order entry made by V. Yonker, Judicial Assistant Trainee