

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

<b>Case No.</b>	CV 12-8676 PA (PLAx)	<b>Date</b>	January 15, 2013
<b>Title</b>	Name.Space, Inc. v. Internet Corp. for Assigned Names & Numbers		

<b>Present: The Honorable</b>	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE
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Paul Songco Deputy Clerk	N/A Court Reporter	N/A Tape No.
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Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

**Proceedings:** IN CHAMBERS—COURT ORDER

Before the Court is a Motion to Dismiss filed by defendant Internet Corporation for Assigned Names & Numbers (“ICANN”) (Docket No. 21). ICANN challenges the sufficiency of the Complaint filed by plaintiff name.space, Inc. (“Plaintiff”).

ICANN has submitted in support of its Motion to Dismiss a Request for Judicial Notice that includes an “Un-sponsored TLD Application Transmittal Form” (“2000 Application”) that ICANN asserts was submitted to it by Plaintiff in October 2000. The 2000 Application includes a release that provides that Plaintiff “hereby releases and forever discharges ICANN and each of its officers, directors, employees, consultants, attorneys, and agents from any and all claims and liabilities relating in any way to (a) any action or inaction by or on behalf of ICANN in connection with this application or (b) the establishment or failure to establish a new [Top Level Domain].” (Request for Judicial Notice, Ex. C, § B14.2.) According to ICANN’s Motion to Dismiss, that release is dispositive of each of the claims asserted in Plaintiff’s Complaint.

Plaintiff objects to the Request for Judicial Notice because it does not believe that the claims it asserts in this action “necessarily rely” on the 2000 Application despite the fact that the Complaint references the 2000 Application. As a general rule, a court may not consider “any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” United States v. Corinthian Colleges, 655 F.3d 984, 998 (9th Cir. 2011) (quoting Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)). A court “may, however, consider materials that are submitted with and attached to the Complaint . . . [and] may also consider unattached evidence on which the complaint ‘necessarily relies’ if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the document.” Id. at 998-99 (citing Marder v. Lopez, 450 F.3d 445, 448 (9th Cir.2006)).

The Court concludes that Plaintiff’s claims do not “necessarily rely” on the 2000 Application. The Court therefore cannot consider the 2000 Application in ruling on ICANN’s Rule 12(b)(6) Motion to Dismiss. Rule 12(d), however, allows the Court to convert a Rule 12(b)(6) motion to dismiss to a Rule 56 motion for summary judgment. See Fed. R. 12(d) (“If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleading are presented to and not excluded by the court, the motion must be

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treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.”); see also Swedberg v. Marotzke, 339 F.3d 1139, 1146 (9th Cir. 2003) (“A Rule 12(b)(6) motion to dismiss supported by extraneous materials cannot be regarded as one for summary judgment until the district court acts to convert the motion by indicating, preferably by an explicit ruling, that it will not exclude those materials from its consideration.”); In re Rothery, 143 F.3d 546, 549 (9th Cir. 1998) “There is no notice requirement for the conversion [of a Rule 12(b)(6) motion into a Rule 56 motion], but the court must give the parties a reasonable opportunity to present material that would be pertinent under the summary judgement motion.”).

The Court hereby provides notice that it intends to convert ICANN’s Rule 12(b)(6) motion into a Rule 56 motion. Plaintiff may file a further Opposition to the Motion for Summary Judgment no later than February 4, 2013. ICANN may file a supplemental Reply no later than February 11, 2013. The hearing, currently calendared for January 23, 2013, is continued to February 25, 2013, at 1:30 p.m.

IT IS SO ORDERED.