UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-8676 PA (PLAx)	Date	March 4, 2013
Title	name.space, Inc. v. Internet Corp. for Assigned Names & Numbers		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Paul Songco	N/A	N/A
Deputy Clerk	Court Reporter	Tape No.

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"). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for February 25, 2013, is vacated, and the matter taken off calendar.

I. Factual & Procedural Background

In 1998, the United States Department of Commerce assigned to ICANN the exclusive authority to manage the Internet's Domain Name System ("DNS"). The DNS links the Internet Protocol ("IP") address of a particular computer or host server, which consists of a string of four sets of numbers between 0 and 255 separated by periods, for instance 170.11.225.15, with a unique alphanumeric "domain name," such as "nytimes.com." The ".com" in that example is the "top level domain" ("TLD") and "nytimes" is the second level domain. To convert a domain name to an IP address, a DNS server accesses the "root zone file" (the "Root"), which contains a master list of all TLDs. The Root enables the connection of domain names to IP addresses by first directing an Internet user's request to the appropriate TLD, which then routes the user to the desired host computer or server through the second (and possibly third or fourth) level domain.

Currently, there are eight generic top level domains ("gTLDs"), such as .com and .net, that anyone can obtain, fourteen sponsored top level domains ("sTLDs"), such as .gov and .edu, that are restricted to specific classes of users, and a large number of country-code top level domains ("ccTLDs"), such as .ca for Canada or .fr for France, that are operated by sovereign nations or companies authorized to operate the ccTLD for the country. A limited number of companies and organizations, including VeriSign, Inc., have obtained ICANN's authorization to operate the gTLDs and must pay a fee to ICANN to do so. These companies and organizations are called TLD "registries" and act as domain name wholesalers. Other companies, like GoDaddy.com, are called TLD "registrars," and serve as domain name retailers by selling second level domain names to the "registrants" who want to obtain domain names.

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Plaintiff operates 482 TLDs on an alternative Internet that is not connected to the Root. Because Plaintiff's TLDs are not listed on the Root, the vast majority of Internet users cannot access the domain names that have been registered through Plaintiff. Only by changing the DNS settings on each individual's computer, and bypassing the default DNS settings that rely on the Root, can a user view the content available on the websites registered through Plaintiff. Among the 482 gTLDs on Plaintiff's alternative Internet are .art, .book, .cars, .golf, .movie, and .sucks.

In 2000, ICANN sought to expand the number of available TLDs and adopted a policy for the introduction of new TLDs through an application process (the "2000 Application Round"). The application fee to participate in the 2000 Application Round was $50,000, and applicants could submit multiple TLD strings in a single application without paying additional fees. Plaintiff participated in the 2000 Application Round and applied to ICANN to be named the registry for 118 gTLDs. As part of Plaintiff's application, it submitted an "Unsponsored TLD Application Transmittal Form." That form included a liability waiver that stated:

> In consideration of ICANN's review of the application . . . the applicant 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 TLD.

(ICANN's Req. for Judicial Notice, Ex. C, § B14.2.) ICANN never approved Plaintiff's application. Instead, it approved only seven new TLDs, the gTLDs .biz and .info, and the sTLDs .aero, .coop, .museum, .name, and .pro. According to Plaintiff's Complaint, the "overwhelming majority" of these new TLDs were awarded to firms that were already dominant in the TLD and domain name registrar industries. (Compl. ¶ 57.)

ICANN opened a new round of applications for TLD registries with an application window from January 12, 2012 through April 12, 2012 (the "2012 Application Round"). Prior to initiating the 2012 Application Round, ICANN had, in 2009, agreed with the United States Department of Commerce that it would "ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation." (Compl. ¶ 63.) ICANN increased its application fee for the 2012 Application Round to $185,000 for each TLD and did not, as Plaintiff had done during the 2000 Application Round, permit an applicant to apply for multiple TLDs in the same application. (Compl. ¶ 67.)

Plaintiff alleges, on "information and belief," that the 2012 Application Round, by requiring application fees for each TLD for which an application has been submitted:

> [W]as designed intentionally to preclude or at least impede name.space's business model—which incorporates the simultaneous operation of a

> significant number of gTLDs. Indeed, name.space appears to be uniquely situated in this regard as its 2000 Application contains 118 gTLDs already in service that predate the ICANN application process and the formation of ICANN itself.

(Compl. ¶ 69.) As part of the 2012 Application Round, ICANN did offer to reduce the application fees of those who had unsuccessfully participated in the 2000 Application Round from $185,000 to $99,000, but this reduction would apply to only one TLD. (Compl. ¶ 70.)

According to the Complaint, Plaintiff did not participate in the 2012 Application Round as a result of the "procedural and financial barriers created by ICANN." (Compl. ¶75.) Plaintiff alleges that ICANN did not prevent 2012 applicants from applying for TLDs that others, including Plaintiff, had applied for in 2000. (Compl. 73.) On June 13, 2012, ICANN announced that the 2012 Application Round included applications to operate 189 gTLDs that Plaintiff has operated on its alternative Internet. (Compl. ¶ 88.) Plaintiff, upon "information and belief," alleges that "ICANN intends to delegate certain of these gTLDs to 2012 applicants, in violation of name.space's trademark rights." (Compl. ¶ 89.) Finally, the Complaint alleges that it already provides services to its clients using the gTLDs on its alternative Internet, that ICANN has knowledge of Plaintiff's relationships with its clients, and that ICANN's approval of another registry to operate any of the gTLDs Plaintiff has used would disrupt Plaintiff's relationships with its clients. (Compl. ¶¶ 91-93.)

The Complaint alleges claims for: (1) conspiracy in restraint of trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1; (2) monopolization in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, (3) conspiracy to restrain trade in violation of California's Cartwright Act, California Business and Professions Code section 16720; (4) unfair competition and false designation of origin under the Lanham Act, 15 U.S.C. § 1125(a); (5) common law trademark infringement; (6) unfair competition pursuant to California Business and Professions Code section 17200; (7) common law unfair competition; (8) tortious interference with contract; and (9) tortious interference with prospective economic advantage.

ICANN's Motion to Dismiss challenges the sufficiency of each of Plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6) except the fourth and fifth claims for trade infringement and seventh claim for common law unfair competition, over which ICANN contends, pursuant to Rule 12(b)(1), that the Court lacks subject matter jurisdiction because Plaintiff's claims are not yet justiciable. In support of ICANN's Motion, ICANN requested that the Court take judicial notice of the liability waiver contained in the 2000 "Unsponsored TLD Application Transmittal Form." After Plaintiff objected that the liability waiver was not a proper subject of judicial notice, the Court converted that portion of ICANN's Motion to Dismiss that relies on the liability waiver into a summary judgment motion in accordance with Rule 12(d) and allowed the parties to supplement their briefing.

II. **Legal Standard**

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Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp. , 108 F.3d 246, 248–49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561, 127 S. Ct. at 1968 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556, 127 S. Ct. at 1965. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555, 127 S. Ct. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555, 127 S. Ct. at 1964–65 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

Under Federal Rule of Civil Procedure 12(b)(1), a complaint may be dismissed for lack of jurisdiction over the subject matter of the action. Federal courts have subject matter jurisdiction only over matters authorized by the Constitution and Congress. See, e.g., Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). In seeking to invoke this Court's jurisdiction, Plaintiff bears the burden of proving that jurisdiction exists. Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986). When moving under Rule 12(b)(1), a party may either show that the allegations of the complaint, taken as true, are insufficient to invoke federal jurisdiction, or present

evidence that disputes allegations that, by themselves, would otherwise be sufficient to invoke jurisdiction. Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004). "[T]he district court is not confined by the facts contained in the four corners of the complaint – it may consider facts and need not assume the truthfulness of the complaint." Americopters, LLC v. FAA, 441 F.3d 726, 732 n.4 (9th Cir. 2006). Further, "[w]here the jurisdictional issue is separable from the merits of the case, the judge may consider the evidence presented with respect to the jurisdictional issue and rule on that issue, resolving factual disputes if necessary." Thornhill Pub. Co. v. General Tel. & Electronics Corp., 594 F.2d 730, 733 (9th Cir. 1979); see also Corrie v. Caterpillar, 503 F.3d 974, 980 (9th Cir. 2007).

III. Analysis

As an initial matter, ICANN contends that Plaintiff released all of the claims it asserts when it signed the Unsponsored TLD Application Transmittal Form in 2000. In both its Opposition to the Motion to Dismiss and the converted Motion for Summary Judgment, Plaintiff asserts that the release's language cannot be construed to include claims arising out of the 2012 Application Round that Plaintiff could not have anticipated in 2012 and, in the alternative, that the release is, at a minimum, ambiguous such that the scope of the release is not amenable to resolution at this stage of the proceedings. By participating in the 2000 Application Round, Plaintiff "release[d] and forever discharge[d]" ICANN "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 TLD."

The Court concludes that while this release unambiguously applies to all claims Plaintiff may possess arising out of the 2000 Application Round, the Court cannot determine, at least on the record before it, that Plaintiff released claims that it might acquire in the future, including those arising out of the 2012 Application Round, when it submitted its application in 2000. See Baker Pac. Corp. v. Suttles, 220 Cal. App. 3d 1148, 1154, 269 Cal. Rptr. 709, 712 (1990) (holding that a contractual provision that has the effect of waiving liability for future intentional torts is void as against public policy). Although many of Plaintiff's claims could be broadly construed to relate to "the establishment or failure to establish a new TLD," the record currently before the Court does not compel the conclusion that the parties intended in 2000 to immunize ICANN from antitrust liability for actions it might take in 2012. While some of the Complaint's individual factual allegations do fall within the unambiguous scope of the release, others do not. As a result, the Court cannot, at this stage of the litigation, grant ICANN's converted summary judgment motion based on the release as to the entirety of Plaintiff's Complaint.

A. Antitrust Claims

In support of its antitrust claims, Plaintiff alleges that ICANN "has entered into a conspiracy that includes current and former members if ICANN's board of directors, VeriSign, Afilias and the select few other companies that operate as TLD registries." (Compl. ¶ 95.) According to Plaintiff, the co-conspirators "have worked in concert to structure the 2012 Application Round to ensure that the current TLD registries continue to dominate the TLD registry market and to deter other potential market

entrants, for example, by charging a prohibitively high fee to submit an application." (Compl. ¶ 97.) Plaintiff alleges that the co-conspirators "entered into and furthered their conspiracy" during at least eight meetings of ICANN's board of directors held in 2010 and 2011. (Compl. ¶ 66.) Plaintiff asserts that the conspiracy has resulted in "anticompetitive effects in the international market to act as a gTLD registry" (the "TLD registry market"), in the "international market for domain names," and the "market for blocking or defensive registrations services." (Compl. ¶¶ 77-80.)

1. **Conspiracy in Restraint of Trade under Section 1 of the Sherman Act and California's Cartwright Act**

Section 1 of the Sherman Act prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 1. To state a claim under Section 1:

> [C]laimants must plead not just ultimate facts (such as a conspiracy) but evidentiary facts which, if true, will prove: (1) a contract, combination or conspiracy among two or more persons or distinct business entities; (2) by which the persons or entities intended to harm or restrain trade or commerce among the several States, or with foreign nations; (3) which actually injures competition.

Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1047 (9th Cir. 2008). Following Twombly, the Ninth Circuit has observed:

> [T]o allege an agreement between antitrust co-conspirators, the complaint must allege facts such as a "specific time, place, or person involved in the alleged conspiracies" to give a defendant seeking to respond to allegations of a conspiracy an idea of where to begin. A bare allegation of a conspiracy is almost impossible to defend against, particularly where the defendants are large institutions with hundreds of employees entering into contracts and agreements daily.

Id. (quoting Twombly, 550 U.S. at 565 n.10, 127 S. Ct. at 1970). "The analysis under California's antitrust law mirrors the analysis under federal law because the Cartwright Act was modeled after the Sherman Act." County of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1160 (9th Cir. 2001) (citations omitted).

The Court concludes that Plaintiff has not alleged sufficient evidentiary facts in support of its antitrust conspiracy claims to satisfy the Twombly standard. The Complaint really has alleged nothing more than that ICANN set the application fee for the 2012 Application Round at a higher amount than Plaintiff is willing to pay. But as the Complaint also makes clear, ICANN received at least 189 applications for gTLDs that have appeared on Plaintiff's alternative Internet, plus an unknown number

of other applications for other gTLDs. See Coal. for ICANN Transparency v. VeriSign, Inc., 611 F.3d 495, 502 (9th Cir. 2009) (noting that "a high price alone is not an antitrust violation."). The Complaint simply does not allege facts that state a plausible antitrust conspiracy claim based on the price of an application for the 2012 Application Round to satisfy the Twombly standard. Moreover, because many entities did participate in the 2012 Application Round, Plaintiff's conclusory allegations do not support even an inference that the 2012 Application Round's application fee has restrained trade. Id. at 504 ("[A]n entity cannot be held liable for antitrust violations if it simply unilaterally increased its prices, absent a showing that it either conspired with another entity in order to restrain trade, or acted in a market in which it holds or is attempting to hold a monopoly."). At most, Plaintiff has alleged that it has been harmed by ICANN's 2012 application fee, but it alleges no evidentiary facts suggesting that the fee has actually injured competition. The injury Plaintiff alleges to its preferred business model is insufficient to support an antitrust claim. See McGlinchy v. Shell Chemical Co., 845 F.2d 802, 811 (9th Cir. 1988) ("The alleged violation must cause injury to competition beyond the impact on the claimant . . . .").

Similarly, Plaintiff's allegations that the 2012 Application Round failed to adequately protect the interests of those who applied during the 2000 Application Round do not support the Complaint's antitrust conspiracy claims because any such allegations fall within the scope of the release. Plaintiff's participation in the 2000 Application Round does not entitle it to any special protections because it waived any claim relating to "any action or inaction by or on behalf of ICANN in connection with this application." Finally, the Court notes that Plaintiff has also not alleged sufficient facts explaining who it believes participated in the conspiracy, and what the alleged co-conspirators actually agreed to do in violation of the antitrust laws. The Court therefore concludes that the Complaint's antitrust conspiracy claims brought pursuant to the Sherman Act and California's Cartwright Act fail to state claims upon which relief can be granted.

2. **Monopolization under Section 2 of the Sherman Act**

There are three elements to a "'successful claim of Section 2 monopolization: (a) the possession of monopoly power in the relevant market; (b) the willful acquisition or maintenance of that power; and (c) causal antitrust injury.'" Allied Orthopedic Appliances, Inc. v. Tyco Health Care Group LP, 592 F.3d 991, 998 (9th Cir. 2010) (quoting Cal. ComputerProds., Inc. v. Int'l Bus. Mach. Corp., 613 F.2d 727, 735 (9th Cir. 1979)). The Supreme Court, in interpreting Section 2 of the Sherman Act, has concluded that the "willful acquisition or maintenance of" monopoly power must be "distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." United States v. Grinnell Corp., 384 U.S. 563, 570-71 (1966). Here, as the Complaint alleges, ICANN's power to control which TLDs will be accepted into the DNS and the entities that will act as registries for those TLDs was delegated to it by the United States Department of Commerce. As a result, whatever monopoly power ICANN may possess was "thrust upon" it as the result of "historic accident" rather than the result of "willful acquisition." Id.

Additionally, the Complaint fails to allege sufficient facts to establish an antitrust injury. Plaintiff's allegation that ICANN's 2012 Application Round application fee was too high, without more, does not support a monopolization claim. "The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system." Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004). As the Complaint establishes, many entities did participate in the 2012 Application Round. The fact that Plaintiff either did not have the resources or otherwise declined to do so does not state a plausible monopolization claim. See McGlinchy v. Shell Chemical Co., 845 F.2d at 811. The Court therefore concludes that the Complaint fails to state a monopolization claim under Section 2 of the Sherman Act.

B. Trademark and Common Law Unfair Competition Claims

Plaintiff's trademark infringement and common law unfair competition claims are based on the Complaint's allegations that ICANN has announced that the 2012 Application Round included applications to operate 189 gTLDs that Plaintiff has operated on its alternative Internet. (Compl. ¶ 88.) According to the Complaint, Plaintiff is informed and believes that "ICANN intends to delegate certain of these gTLDs to 2012 applicants, in violation of name.space's trademark rights." (Compl. ¶ 89.) In its Motion to Dismiss, ICANN asserts that the Court lacks subject matter jurisdiction over these claims because they are not yet ripe for consideration and therefore do not present an actual case or controversy under Article III. The Ninth Circuit requires "actual or imminent infringement" for a claim to be justiciable. Swedlow, Inc. v. Rohm & Haas Co., 455 F.2d 884, 886 (9th Cir. 1972). An "existing controversy" is "manifested by specific acts of alleged infringement or an immediate capability and intent" to infringe. Id.

Based on almost identical allegations brought by another entity challenging ICANN's actions arising out of the 2012 Application Round, Judge Pregerson recently applied Swedlow and dismissed similar trademark infringement claims for lack of an actual case or controversy. See Image Online Design, Inc. v. ICANN, No. CV 12-8968 DDP (Jcx), 2013 WL 489899, at *5 (C.D. Cal. Feb. 7, 2013) ("The court finds that IOD has not alleged use of the trademark or "immediate capability and intent" to infringe, and therefore the trademark infringement claim is not ripe for adjudication. Infringement is, at this stage, merely speculative.").[1/] This Court similarly concludes that Plaintiff has not alleged sufficient

[1/] Judge Pregerson also persuasively concluded that trademark claims similar to those asserted by Plaintiff here could not state a claim because gTLDs serve no source identifying function and are therefore not protectable as trademarks. See id. at *7 ("The proposition that TLDs are not generally source indicators has been adopted by courts, legal scholars, and other authorities."); id. at *8 ("Because the purported mark .WEB used as a TLD is generic, IOD cannot obtain common law trademark protection and therefore cannot state a claim for infringement . . . ."). Although ICANN moved to dismiss Image Online Design's trademark claim, for an unexplained reason, ICANN specifically reserved moving on that ground in the present motion.

facts to establish a justiciable case or controversy and therefore grants ICANN's Motion to Dismiss the Complaint's trademark infringement and common law unfair competition claims.

C. Tortious Interference with Contract and Tortious Interference with Prospective Economic Advantage

The Complaint alleges that Plaintiff provides services to its clients using the gTLDs on its alternative Internet, that ICANN has knowledge of Plaintiff's relationships with its clients, and that ICANN's approval of another registry to operate any of the gTLDs Plaintiff has used would disrupt Plaintiff's relationships with its clients. (Compl. ¶¶ 91-93.)

1. Tortious Interference with Contract

"Under California law, a claim for intentional interference with contract requires: (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce breach or disruption of the contract; (4) actual breach or disruption; and (5) resulting damage." Family Home & Fin. Ctr. v. Fed Home Loan Mortg. Corp., 525 F.3d 822, 825 (9th Cir.2008).

The Complaint's conclusory allegations concerning ICANN's knowledge of Plaintiff's relationships with its clients do not satisfy the Twombly standard. Moreover, the Complaint does not allege any intentional actions undertaken by ICANN "designed to induce breach" of Plaintiff's contracts with its clients or any evidentiary facts, as opposed to conclusory allegations, of actual breach or disruption and resulting damage. See Image Online Design, Inc., 2013 WL at *9 ("IOD cannot simply allege that ICANN has interfered with its business model; for this tort, it must allege actual interference withactual contracts, such that the result is a specific breach, not merely general damage to the business."). The Court therefore concludes that the Complaint's claim for tortious interference with contract fails to state a claim.

2. Tortious Interference with Prospective Economic Advantage

A claim for intentional interference with prospective economic advantage requires:

> "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant."

Pardi v. Kaiser Found. Hosps., 389 F.3d 840, 852 (9th Cir. 2004) (quoting Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1153, 131 Cal. Rptr. 2d 29, 45 (2003)). Under California

law, in addition to these elements, a plaintiff asserting a claim for intentional interference with prospective economic advantage must also plead and prove "that the defendant's conduct was 'wrongful by some legal measure other than the fact of interference itself.'" Korea Supply Co., 29 Cal. 4th at 1153 (quoting Della Penna v. Toyota Motor Sales, U.S.A., Inc., 11 Cal. 4th 376, 393, 45 Cal. Rptr. 2d 436, 447 (1995)).

As with Plaintiff's insufficient allegations in support of its claim for intentional interference with contract, the Complaint fails to allege any intentional actions undertaken by ICANN "designed to disrupt" the relationship Plaintiff has with its clients or evidentiary facts of actual disruption and resulting economic harm. Additionally, because Plaintiff's antitrust and trademark infringement claims are insufficient to state viable claims, Plaintiff has not alleged the independent wrongfulness required to state a claim for interference with prospective economic advantage. See Image Online Design, Inc., 2013 WL at *10. The Court therefore grants ICANN's Motion to Dismiss this claim.

D. **Unfair Business Practices under California Business and Professions Code Section 17200**

Plaintiff's claim arising under California Business and Professions Code section 17200 relies on the Complaint's claims for antitrust violations and trademark infringement to supply the required "unlawful" business practices to state a claim. Because the Court has concluded that those claims allege insufficient facts to state viable claims, Plaintiff's section 17200 claim necessarily fails.

CONCLUSION

For all of the foregoing reasons, the Court grants ICANN's Motion to Dismiss. Because whatever monopoly power ICANN possesses was given to it by the United States Department of Commerce and not the result of the "willful acquisition" of monopoly power, the Court concludes that no amendment could cure the deficiencies in Plaintiff's monopolization claim brought pursuant to Section 2 of the Sherman Act. That claim is therefore dismissed with prejudice. Plaintiff's remaining claims are dismissed with leave to amend. Plaintiff's First Amended Complaint, if any, shall be filed no later than March 22, 2013. Failure to file a First Amended Complaint by that date may result in the dismissal of this action without prejudice.

IT IS SO ORDERED.