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14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

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18 VERISIGN, INC., a Delaware
corporation,
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20 Plaintiff,
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22 v.
23 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
NUMBERS, a California corporation;
DOES 1-50,
24 Defendants.

Case No. CV-04-1292 AHM (CTx)
25
26 **PLAINTIFF VERISIGN, INC.'S
COUNTER-STATEMENT TO
DEFENDANT'S NOTICE OF
RELATED CASES**

[C.D. Cal. Local Rule 83-1.3.2]

1 Pursuant to Local Rule 83-1.3.2, plaintiff VERISIGN, INC. ("VeriSign")
2 submits this counter-statement to the "Notice of Related Cases" filed by defendant
3 Internet Corporation for Assigned Names and Numbers ("ICANN"), on March 5,
4 2004.

5 **I. UNDER GENERAL ORDER 224, THIS CASE IS NOT A PROPER**
6 **CANDIDATE FOR THE RELATED CASE TRANSFER PROPOSED**
7 **IN THE NOTICE**

8 In its Notice, ICANN asserts that this case is related to a former (now closed)
9 case, *Dotster v. ICANN*, No. 03-CV5404 JFW (MANx) ("*Dotster*"), which ICANN
10 litigated with different parties, on different issues, based upon a different contract,
11 concerning a service that is only one of many comprising the instant case. ICANN
12 further asserts that this case and *Dotster* are also related to a third case,
13 *Registersite.com v. ICANN*, No. 04-CV-1368 ABC (CWx) ("*Registersite*").

14 However, the central focus of this case, including the contract between ICANN
15 and VeriSign, is completely separate and distinct from the issues presented in the
16 *Dotster* and *Registersite* cases. Because ICANN's Notice does not properly state the
17 nature of these cases, VeriSign is responding to ensure that the Court is accurately
18 apprised of the nature of these cases in evaluating the purported "related case" notice.
19 *Cf. United National Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1116-17 (9th Cir.
20 2001).

21 **A. *VeriSign v. ICANN*, No. CV-04-1292 AHM (CTx)**

22 Contrary to ICANN's conclusory characterization, the instant case is materially
23 different from both the *Dotster* and *Registersite* cases. It has a distinct and far
24 broader focus, and it concerns a different contract and a completely distinct
25 relationship.

26 First, unlike the two other cases, this action does *not* present a dispute between
27 registrars and ICANN. Rather, this case involves a series of disputes solely between
28 VeriSign and ICANN regarding their obligations to each other. No registrars are
parties to this action. Second, while the *Dotster* and *Registersite* cases both address

1 the same contract between registrars and ICANN, the instant case concerns a
2 different and separate contract, the .com Registry Agreement between VeriSign and
3 ICANN, to which registrars are neither parties nor third-party beneficiaries.

4 Third, while ICANN characterizes the instant case as one that “arises from
5 disputes . . . concerning WLS” and “specifically involves VeriSign’s proposal to
6 implement WLS,” in fact, WLS is only one of at least four separate services that are a
7 subject of the disputes in this suit, and there are many factual allegations supporting
8 the claims for relief at issue that are unrelated to WLS. *See* Complaint ¶¶ 32-68.
9 Further, this suit involves broader antitrust, tort, and other issues with respect to the
10 on-going relationship between VeriSign and ICANN, which are not present in or
11 raised by the *Dotster* or *Registersite* actions.

12 In this context, the mere fact that WLS is the sole focus of the *Dotster* or
13 *Registersite* suits is not dispositive to the “relatedness” question presently before the
14 Court. Resolution of the issues presented by allegations concerning WLS in the
15 instant matter is dependent on facts specific only to this case and on the VeriSign-
16 ICANN agreement, which are not at issue in *Dotster* and *Registersite*, and which
17 require a separate and distinct legal analysis. *See ESS Technology, Inc. v. PC-TEL,*
18 *Inc.*, Nos. C-99-20292 RMW, C-01-1300 VRW & C-01-1981 VRW, 2001 WL
19 1891713 (N.D. Cal. Nov. 28, 2001) (refusing to relate a patent licensing case between
20 competitors to two other licensing cases against an individual inventor concerning the
21 same technology because of the different legal analysis involved).

22 In short, contrary to ICANN’s suggestion, there is neither the possibility of
23 inconsistent judgments nor the prospect of substantial duplication of judicial
24 resources sufficient to warrant a case transfer. The prior handling of the issues in
25 *Dotster* would not have given Judge Walter any familiarity or expertise with respect
26 to the separate contract or issues involved in this case. Therefore, this case should
27 not be treated as “related” to, and should not be coordinated with, *Dotster* or
28 *Registersite*.

1 **B. Registersite.com v. ICANN, No. 04-CV-1368 ABC (CWx)**

2 In contrast, VeriSign does agree that under the transfer criteria set forth in
3 General Order 224, the *Registersite* case is “related” to the *Dotster* case, and should
4 thus be transferred to Judge Walter.¹

5 Specifically, both the *Registersite* and *Dotster* cases concern the same central
6 and common *registrar* challenge to the legality of VeriSign’s proposed Wait Listing
7 Service (“WLS”). The plaintiffs in both cases are similarly situated; they are all
8 purportedly registrars who claim their existing business will be affected by WLS.
9 Both cases, unlike the instant action, also concern and require interpretation of the
10 same agreement, the Registrar Accreditation Agreement between the registrar-
11 plaintiffs and ICANN. Indeed, one of the claims for relief asserted by the plaintiffs in
12 *Registersite* against ICANN is substantively identical to the claim for relief asserted
13 against ICANN by the plaintiffs in *Dotster*, and Judge Walter squarely addressed that
14 claim in denying requests for injunctive relief in *Dotster*.²

15 In contrast, VeriSign is not a party to the Registrar Accreditation Agreement,
16 nor is that agreement at issue in this case, only in *Dotster* and *Registersite*. Likewise,
17 the Registry-Registrar Agreement, upon which one of the purported claims against
18 VeriSign in *Registersite* is premised, is not in issue in this suit, and ICANN is not a
19 party to that agreement. As a result, *Dotster* and *Registersite* are “related” to each
20 other, not to this case.

21 **II. CONCLUSION**

22 The underlying dispute in the instant case is not related to either the *Dotster* or
23 *Registersite* cases. This case does not arise from the same or a substantially identical

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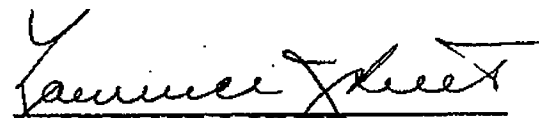
¹ In that connection, VeriSign notes that claims asserted against it in the *Registersite*
25 case are subject to a contractual venue selection clause contained in the Registry-
26 Registrar Agreement between registrars and VeriSign. As between registrars and
27 VeriSign, that clause places venue in the Eastern District of Virginia. ICANN is not
28 a party to the Registry-Registrar Agreement.

² VeriSign was not a party in *Dotster* and no claims were asserted against it in that
case.

1 transaction, happening or event. Further, it does not call for a determination of the
2 same or substantially identical questions of law and fact. Accordingly, this case
3 should not be transferred. However, because the *Registersite* case is related to the
4 *Dotster* case, *Registersite* should be transferred to Judge Walter.

5
6 DATED: March 12, 2004

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 777 South Figueroa Street, 44th Floor, Los Angeles, California 90017-5844.

On March 12, 2004, I served the foregoing document described as: PLAINTIFF VERISIGN, INC.'S COUNTER-STATEMENT TO DEFENDANT'S NOTICE OF RELATED CASES

by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

by placing the original and a true copy thereof enclosed in sealed envelope(s) addressed as follows: Type Address Here or DELETE

BY MAIL I placed such envelope with postage thereon prepaid in the United States Mail at 777 South Figueroa Street, 44th Floor, Los Angeles, California 90017-5844. Executed on March 12, 2004 at Los Angeles, California.

BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the office of the addressee. Executed on _____ at Los Angeles, California.

BY FACSIMILE The above-referenced document (together with all exhibits and attachments thereto) was transmitted via facsimile transmission to the addressee(s) as indicated on the attached mailing list on the date thereof. The transmission was reported as completed and without error. Executed on _____ at Los Angeles, California.

BY FEDERAL EXPRESS I am readily familiar with Arnold & Porter LLP's business practices of collecting and processing items for pickup and next business day delivery by Federal Express. Under said practices, items to be delivered the next business day are either picked up by Federal Express or deposited in a box or other facility regularly maintained by Federal Express in the ordinary course of business on that same day with the cost thereof billed to Arnold & Porter LLP's account. I placed such sealed envelope for delivery by Federal Express to the offices of the addressee(s) as indicated on the attached mailing list on the date hereof following ordinary business practices. Executed on _____ at Los Angeles, California.

STATE I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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

Rosie K. Nishi
Type or Print Name


Signature

List of Parties Served

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