

1 Stuart M. Brown (SBN 170028)
2 PRESTON GATES & ELLIS LLP
222 SW Columbia Street
3 Suite 1400
Portland, OR 97201-6632
4 Telephone: (503) 228-3200
Facsimile: (503) 248-9085
5 Email: sbrown@prestongates.com

6 Kathleen O. Peterson (SBN 124791)
7 Aaron M. McKown (SBN 208781)
PRESTON GATES & ELLIS LLP
1900 Main Street, Suite 600
8 Irvine, CA 92614
Telephone: (949) 253-0900
9 Facsimile: (949) 253-0902
Email: aaronm@prestongates.com

10 Attorneys for Plaintiffs

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 AT LOS ANGELES

15 DOTSTER, INC., a Washington
16 corporation, GO DADDY SOFTWARE,
17 INC., an Arizona corporation, eNOM,
18 INC., a Washington corporation,

19 Plaintiffs,

20 v.

21 INTERNET CORPORATION FOR
22 ASSIGNED NAMES AND
23 NUMBERS, a California nonprofit
corporation

24 Defendant.

25 Civil Case No. 03-5045

26 DECLARATION OF MARTIN S.
GARTHWAITE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

I, Martin S. Garthwaite, declare and state as follows:

Page 1- DECLARATION OF MARTIN S. GARTHWAITE IN
SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

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PRESTON GATES & ELLIS LLP
222 SW COLUMBIA STREET
SUITE 1400
PORTLAND, OR 97201-6632
TELEPHONE: (503) 228-3200

FILED

JFW

(MAX)

1 I am the General Counsel of Plaintiff eNom, Inc. ("eNom"). I make this
2 declaration of my own knowledge, and after a review of documents maintained by
3 eNom in the normal course of business. If called as a witness I could testify to each of
4 the following facts:

5 1. I have read and agree with paragraphs 1 through 37 of the Declaration of
6 Clint Page in Support of Plaintiffs' Motion for Temporary Restraining Order and
7 Preliminary Injunction dated July 14, 2003.

8 2. eNom has been accredited as a domain name ("Domain") registrar
9 ("Registrar") by Internet Corporation for Assigned Names and Numbers
10 ("Defendant"). eNom has signed an Registrar Accreditation Agreement
11 ("Accreditation Agreement") with Defendant, and such Accreditation Agreement is
12 dated May 17, 2001, and is attached hereto as Exhibit A. eNom is accredited to
13 register the .COM and .NET top-level Domains ("TLDs").

14 3. eNom is one of approximately 45 Registrars who compete to re-register
15 Domains that are expiring or otherwise being deleted by the VeriSign Global Registry
16 Services, a division of VeriSign, Inc., which operates the .COM and .NET registry
17 (the "Registry").

18 4. The technology and process that eNom has developed to register expiring
19 Domains that are being deleted in a Batch Delete is marketed to potential domain
20 registrants ("Domain Registrants") under the name "Club Drop." Club Drop operates
21 as combination subscription, first-come first-served, and blind-auction service model.

22 5. Club Drop participants first must purchase a monthly subscription to the
23 service. The subscription price is approximately ninety-nine dollars (\$99.00) per
24 monthly subscription. Subscribers are allowed to review a list of the domain names
25 which are scheduled to be deleted in the Registry's Batch Delete process. Subscribers
26 select which, if any, of the domain names they wish to attempt to acquire. Under the

1 earlier approach to this service which was in place until July 15, 2003, if two or more
2 subscribers wish to acquire the same domain name (and if the domain name is
3 acquired by eNom), the domain name is awarded to the subscriber after consideration
4 of a complex of factors, including when and how often the subscriber requested the
5 name and whether and how recently the subscriber had been awarded domain names
6 in previous rounds (the purpose of these factors generally being to achieve an
7 equitable distribution of acquired domain names). Under the approach to this service
8 which will be in place after July 15, 2003 (the day after this declaration is executed), if
9 two or more subscribers wish to acquire the same domain name (and if the domain
10 name is acquired by eNom), the domain name is given to the subscriber who placed
11 the highest bid on the domain (bids being placed prior to when eNom attempted to
12 acquire the domain from the Registry). Competing subscribers do not, at this time,
13 know each other's bids, making it a blind auction. If two subscribers submitted the
14 same bid, then the domain name is awarded using the complex of factors described
15 above. The change in the service model was made in response to interaction with
16 subscribers. The service model may be modified in the future.

17 6. eNom then uses its registry connection (as well as the registry
18 connections of another registrar or registrars who are under contract with eNom for
19 this purpose) to attempt to acquire the desired domain names at the time when eNom's
20 staff estimates that the domain names will be available. Some judgment is used by
21 eNom's staff in determining the order in which to attempt to acquire domain names.
22 Acquired domain names result in payment of the usual registry fees and in the
23 payment of registration fees by the ultimate registrant. The registration fee earned by
24 eNom with respect to each domain name varies slightly, as different eNom registrants
25 and resellers pay different registration fees to eNom, depending largely on the party's
26 volume of business with eNom. The higher

1 7. eNom is aware that participants compare estimated success rates, prices,
2 and overall service packages through online message systems and other means. As a
3 result, eNom believes that the Club Drop service competes fiercely with the offerings
4 of the various market participants.

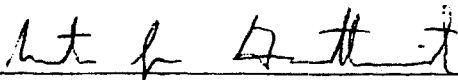
5 8. On an annual basis, eNom pays registrar accreditation fees to Defendant
6 in accordance with the Accreditation Agreement and Defendant's then-current
7 policies. In 2002, for example, eNom paid approximately \$123,298.07 in
8 accreditation fees. In 2001, eNom paid approximately \$44,901.24 in accreditation
9 fees.

10 9. Implementation of the proposed WLS will effectively destroy eNom's
11 Club Drop Service and other competing models because WLS creates a first-come,
12 first-served model that preempts the competitive Batch Delete process that currently
13 exists, which allows Registrars to compete with one another.

14 10. Implementation of the WLS will essentially end the current business
15 model eNom has created, as well as the business models created by its competitors.
16 There will no longer be deleting Domains of value for people to bid on, as valuable
17 Domains will likely have WLS subscriptions placed on them.

18 11. The estimated value of the business that eNom' will lose if WLS is
19 implemented substantially exceeds \$100,000.

20
21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct, and that this declaration was executed
23 on July 14, 2003 at Redmond, Washington.

24
25 
26 _____
Martin S. Garthwaite