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David W. Kesselman (SBN 203838)
dkesselman@kbslaw.com

Amy T. Brantly (SBN 210893)
abrantly@kbslaw.com

Kara D. McDonald (SBN 225540)
kmcdonald@kbslaw.com

KESSELMAN BRANTLY STOCKINGER LLP
1230 Rosecrans Ave., Suite 690
Manhattan Beach, CA 90266
Telephone: (310) 307-4555
Facsimile: (310) 307-4570

Attorneys for Intervenor
ZA Central Registry, NPC

FILED
Superior Court of California
County of Los Angeles

IAN 04 2017 *for*

Sherri A. Carter, Executive Officer/Clerk
By *K. Mason* Deputy
K. Mason

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL**

DOTCONNECTAFRICA TRUST, a
Mauritius Charitable Trust,

Plaintiff,

v.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, a
California corporation; ZA Central Registry,
a South African non-profit company; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. BC607494

*Assigned for all purposes to the Honorable
Howard Halm*

DEEMED BRIEF FOR: 1/31/17

**OPPOSITION TO PLAINTIFF'S EX
PARTE APPLICATION FOR A
TEMPORARY RESTRAINING ORDER**

[Filed concurrently: Declaration of David W.
Kesselman]

Date: January 4, 2017
Time: 8:30 a.m.
Dept.: 53

01/06/2017

1 Plaintiff DotConnectAfrica Trust's ("DCA") *ex parte* application for a temporary
2 restraining order ("TRO") should be denied.

3 This Court previously reviewed extensive written submissions and allowed almost two
4 hours of oral argument to address DCA's motion for a preliminary injunction. In that motion,
5 DCA sought an order preventing defendant Internet Corporation For Assigned Names and
6 Numbers ("ICANN") from delegating .Africa to intervenor ZA Central Registry, NPC
7 ("ZACR") while this litigation is pending. This Court properly denied DCA's motion for a
8 preliminary injunction, "based on the reasoning expressed in the oral and written arguments of
9 defense counsel." *See* Declaration of David W. Kesselman ("Kesselman Decl."), **Exhibit A**
10 (December 22, 2016 Minute Order).

11 Not content with the Court's ruling, DCA now files this new *ex parte* application for a
12 TRO asking for the very same relief that this Court previously denied. Although DCA had not
13 bothered to serve ZACR with its TRO papers at the time of this writing (January 3, 2017 at
14 5pm), DCA advised in an email that it intends to move for a TRO based upon the Second and
15 Fifth Causes of Action. *See* Kesselman Decl., **Exhibit B** (January 3, 2017 email). There is no
16 basis for DCA's latest request for relief.

17 First, DCA cannot demonstrate irreparable harm for the same reasons it could not do so
18 with respect to the preliminary injunction:

19 • ICANN has an entire procedure for redelegation. In the event that DCA
20 ultimately prevails in this lawsuit (it cannot for the reasons previously addressed) then ICANN
21 has the power to transfer the .Africa gTLD from ZACR to DCA. In his declaration in
22 opposition to DCA's motion for preliminary injunction, ICANN's Global Domains Division
23 President explained that ICANN has this authority and that it has done so on dozens of
24 occasions. *See* Declaration of Akram Atallah ¶ 13. DCA could provide no evidence to properly
25 refute this point. Accordingly, on this basis alone, there can be no irreparable harm to DCA.¹
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27 ¹ As noted during the oral argument, DCA convinced Judge Klausner to issue a
28 preliminary injunction in the first instance by falsely claiming that .Africa could be delegated
only once. DCA has now been forced to concede that this statement was not true.

1 • The harm to ZACR outweighs any supposed harm to DCA. ZACR, which
2 participated and prevailed in the African Union Commission (“AUC”) RFP process, has spent
3 years and invested heavily in the development of the .Africa gTLD program. ZACR signed a
4 registry agreement with ICANN in 2014 but has not been able to begin marketing .Africa and
5 continues to lose thousands of dollars on a monthly basis. ZACR also continues to lose millions
6 of dollars in opportunity costs as fully set forth in the Declaration of Mokgabudi Lucky Masilela
7 (“Masilela Decl.”) ¶¶ 10-13, Exhibit F (filed under seal).

8 • The harm to the African people is substantial and ongoing. Government,
9 business and civic leaders throughout the African continent have expressed their concerns about
10 the ongoing delay in the delegation and availability of the gTLD .Africa. The African Union
11 Commission (“AUC”), the formal representative of 53 countries within Africa, has submitted an
12 extensive declaration (in opposition to DCA’s motion for a preliminary injunction) explaining
13 the need for .Africa and the ongoing negative impact on the people of the African continent.²
14 *See* Declaration of Moctar Yedaly ¶¶ 18; Masilela Decl. ¶ 17. Further, the nonprofit entity that
15 would be funded by .Africa and benefit the continent continues to be delayed to the detriment of
16 the African people. Yedaly Decl. ¶19, Masilela Decl. ¶ 12-17.

17 • As against the demonstrated ongoing and significant harm to ZACR and the
18 people of Africa, DCA can proffer no real evidence of harm. DCA suggested in its preliminary
19 injunction motion papers that if delegation were to proceed then it would stop operating due to a
20 lack of funding. *See* Declaration of Sophia Bekele Escheat ¶ 7. But this statement was entirely
21 duplicitous because, as Ms. Bekele conceded in her deposition and DCA counsel further
22 acknowledged during the oral argument, DCA has never been an operational entity. *See*
23 Kesselman Decl., Ex. C (Excerpt of December 1, 2016 Sophia Bekele Eschete Deposition). In
24 fact, DCA is a shell entity.

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27 ² As addressed in the preliminary injunction motion papers and accompanying
28 declarations, the record is undisputed that ZACR had the support of all 53 member states of the
AUC and the support of Morocco (the only African country that is not a member of the AUC).
See Masilela Decl. Ex. B & C; Yedaly Decl. ¶ 3.

1 In short, the balance of harms clearly shows that the TRO must be denied. On the one
2 hand, DCA is a shell entity that has never been operational. On the other hand, ZACR and the
3 entire continent of Africa have been waiting for years to access the .Africa gTLD.

4 Second, DCA cannot show any likelihood of success on the merits. So as not to
5 duplicate the arguments made by ICANN, ZACR joins each and every argument included in
6 ICANN's opposition to this *ex parte* application.

7 For all of these reasons, DCA's *ex parte* application for a TRO is without merit and
8 should be denied.

9
10 DATED: January 4, 2017

KESSELMAN BRANTLY STOCKINGER LLP

11
12 By:  _____

David W. Kesselman

Amy T. Brantly

Kara D. McDonald

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14 Attorneys for ZA Central Registry, NPC
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