

No. 16-55693; No 16-55894

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DOTCONNECTAFRICA TRUST
Plaintiff/Appellee,

v.

**INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, et al.**
Defendant/Appellant

DOTCONNECTAFRICA TRUST
Plaintiff/Appellee,

v.

**INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, et al.**
Defendant/Appellant

and

ZA CENTRAL REGISTRY, NPC
Appellant.

On Appeal from the United States District Court
for the Central District of California, No. 2:16-cv-00862-RGK
The Honorable R. Gary Klausner

**APPELLEE DOTCONNECTAFRICA TRUST'S
ANSWERING MEMORANDUM REGARDING THE DISTRICT COURT'S LACK OF
JURISDICTION**

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Appellee DotConnectAfrica Trust (“DCA”) files this memorandum in response to Appellants Internet Corporation for Assigned Names and Numbers’ (“ICANN”) and ZA Central Registry, NPC (“ZACR”)’s memorandum regarding the district court’s jurisdiction. [Docket Entry No. 54]. DCA agrees that the appeals before this Court should be dismissed. However, this Court does not have jurisdiction to make a ruling as to the validity of the preliminary injunction and should merely dismiss Appellants’ appeals for lack of jurisdiction based on the district court’s remand of the case.

BACKGROUND

As Appellants’ brief states, the district court granted ZACR’s motion to intervene on October 20, 2016 and concluded that because ZACR was an indispensable foreign party, and that plaintiff DCA was also a foreign party, the district court did not have diversity jurisdiction and therefore did not have subject matter jurisdiction. *See Mattel, Inc. v. Bryant*, 446 F.3d 1011, 1013–14 (9th Cir. 2006); *Takeda v. Nw. Nat’l Life Ins. Co.*, 765 F.2d 815, 819 (9th Cir. 1985). The district court remanded the case but did not vacate its prior orders in the case. As the district court no longer has jurisdiction over this matter, this Court no longer has jurisdiction over the appeals. The Court cannot make any substantive rulings regarding the merits of the appeals, let alone the validity of the preliminary

injunction due to subject matter jurisdiction – an issue that was not briefed in the appeals.

DISCUSSION

There is no precedent for this Court to do anything other than dismiss the appeals for lack of jurisdiction. Appellants appear to seek a ruling from this Court to support their argument that the preliminary injunction is now “void and a nullity.” However, the district court did not rule on the validity of the preliminary injunction as a result of the jurisdictional issue nor is the validity of the preliminary injunction with regard to jurisdiction an issue in either appeal. Therefore, it would not be proper for this Court to decide the validity of the preliminary injunction. *See Seedman v. United States Dist. Court*, 837 F.2d 413, 414 (9th Cir. 1988) [“Remand orders based on section 1447(c) are unreviewable on ‘appeal or otherwise.’ 28 U.S.C. 1447(c). This language has been universally construed to preclude not only appellate review but also reconsideration by the district court. Once a district court certifies a remand order to state court it is divested of jurisdiction and can take no further action on the case.”] Thus, as the district court no longer has jurisdiction, this Court also no longer has jurisdiction over the issues on appeal.

The cases ICANN cites to support the notion that the preliminary injunction is a nullity are inapposite here. In *Watts*, the district court itself had ruled on the validity of its order with regard to lack of jurisdiction and that was the issue on

appeal. *See Watts v. Pinckney*, 752 F.2d 406, 409 (9th Cir. 1985). In *Morongo Band of Mission Indians v. California State Bd. of Equalization*, the district court had not dismissed the case and the Court asked for supplemental briefing on the jurisdictional issue before vacating the district court's order and instructing the district court to dismiss the case. *Morongo*, 858 F.2d 1376, 1379 – 1380 (9th Cir. 1988). *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722 (9th Cir. 1989) was reversed and remanded and, in any event, the statement regarding subject matter jurisdiction and court orders was dicta. Significantly, all cases cited were either appealed while the district court case was active, or appealed a decision regarding lack of subject matter jurisdiction.

Further, the district court *did* have jurisdiction over the case when it denied ZACR's motion for reconsideration because at that point ZACR had been dismissed as party. ER-013-016; 048-052. In its order on the motion for reconsideration, when the district court unquestionably had jurisdiction, the district court reaffirmed its decision regarding the preliminary injunction.

CONCLUSION

The Court should dismiss the appeals without opining on the validity of the preliminary injunction. If the Court has any question with regard to the jurisdictional issue, DCA respectfully requests that the Court require supplemental briefing before issuing an order.

Dated: October 31, 2016

Respectfully submitted,
BROWN NERI SMITH & KHAN

By: /s/ Ethan J. Brown
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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2016, I electronically filed the foregoing document described as *ANSWERING MEMORANDUM REGARDING THE DISTRICT COURT'S LACK OF JURISDICTION* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Rowennakete P. Barnes
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