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13 **ZA Central Registry, NPC**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES - CENTRAL**

12 DOTCONNECTAFRICA TRUST, a  
13 Mauritius Charitable Trust,  
14 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR  
16 ASSIGNED NAMES AND NUMBERS; a  
17 California corporation; ZA Central Registry,  
18 a South African non-profit company; DOES  
19 1 through 50, inclusive,  
20 Defendants.

CASE NO. BC607494

*Assigned to the Hon. Howard L. Halm,  
Dept. 53*

**ZA CENTRAL REGISTRY, NPC'S  
RESPONSE TO PLAINTIFF'S  
EVIDENTIARY OBJECTIONS TO  
DECLARATION II OF MOKGABUDI  
LUCKY MASILELA**

Date: February 2, 2017  
Time: 8:29 a.m.  
Dept.: 53

1 Defendant ZA Central Registry, NPC (“ZACR”) submits its responses to the evidentiary  
 2 objections to the Declaration II of Mokgabudi Lucky Masilela (“Masilela Declaration”) filed by  
 3 Plaintiff DOTCONNECTAFRICA Trust (“DCA”).

Masilela Decl.	DCA’s Objection	ZACR’s Response	Court’s Ruling
<p>4 ¶ 3: ZACR was            5 originally formed in            6 1988 under the name            7 UniForum S.A. The            8 purpose of the            9 company was to            10 promote open            11 standards and            12 systems in computer            13 hardware and            14 software. In 1995,            15 the company was            16 assigned the            17 administration rights            18 for the South African            19 domain name,            20 “co.za.” Today            21 ZACR has registered            22 over 1 million co.za            23 domain name            24 registrations – or            25 about 95% of the            26 total registrations for            27 “.za.” Due to its</p>	<p>1. Lacks foundation,            irrelevant (Evid.            Code § 403)            2. Lacks personal            knowledge (Evid.            Code § 702)            3. Speculative (Evid.            Code § 1200, et seq.)            [sic] Conclusory            (Evinger v.            MacDougall (1938)            28 Cal. App. 2d            175.)            4. Irrelevant (Evid.            Code § 350)</p>	<p>Mr. Masilela is the            Chief Executive            Officer of ZACR and            has personal            knowledge of            ZACR’s history,            reputation and            operations. Mr.            Masilela’s testimony            is relevant to show            that ZACR was an            experienced            applicant for .Africa,            and further has            experience working            with ICANN.</p>	

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<p>well-known reputation for independence and neutrality, as well as technical competence and operational excellence, ZACR is the single largest domain name registry on the African continent. ZACR has significant experience working with Internet Corporation For Assigned Names and Numbers (“ICANN”) as a registry operator and is familiar with ICANN protocols.</p>			
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<b>Masilela Decl.</b>	<b>DCA's Objection</b>	<b>ZACR's Response</b>	<b>Court's Ruling</b>
<p>¶ 4: As a registry operator, ZACR works directly with registrars and is familiar with ICANN's Registry and Registrar accreditations. ICANN expressly permits the functions of the registry operator and registrar to be handled by a single body ("cross ownership" or "vertical integration"). ICANN approved vertical integration in 2010, even before the new gTLD process began. Vertical Integration is a practical way for registry operators to distribute or provide</p>	<p>1. Lacks foundation, irrelevant (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code § 702) 3. Speculative (Evid. Code § 1200, et seq.) [sic] Conclusory (Evinger v. MacDougall (1938) 28 Cal. App. 2d 175.)</p>	<p>Mr. Masilela is the Chief Executive Officer of ZACR and has personal knowledge of ZACR's operations, including ICANN requirements for registrar and registry relations. As CEO, Mr. Masilela also has knowledge of ZACR's plans to implement .Africa in conformance with industry standard and practice. Mr. Masilela's testimony is relevant to show that ZACR's plans for .Africa are entirely consistent with ICANN requirements and industry standards.</p>	

1 domain names to  
2 underserved markets  
3 or communities. In  
4 practice, this means  
5 that the registry  
6 operator can utilize  
7 its own vertical  
8 registrar channel to  
9 reach end user  
10 markets not  
11 adequately serviced  
12 by the traditional  
13 registrar channel. IN  
14 the case of .Africa,  
15 ZACR plans to  
16 implement a proxy  
17 service which will  
18 allow it to establish a  
19 more competitive,  
20 and widely  
21 distributed, reseller  
22 channel for .Africa.  
23 This is in line with  
24 ZACR's enterprise  
25 developmental  
26 obligations. This has  
27 become a common  
28 practice amongst the

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leading registry providers worldwide.			
<b>Masilela Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
¶ 5: A registry Operator is contractually compelled by the ICANN Registry Agreement to deal with all Registrars in a fair and equitable manner. ZACR, therefore, cannot provide preferential treatment or access to its own vertical registrar. ICANN has compliance mechanisms in place to monitor vertical integration. Pricing and treatment of registrars is also regulated by clauses 2.9 and 2.10 of the ICANN Registry Agreement.	<p>1. The Registry Agreement is the best evidence of the document. (Evid. Code § 1520)</p> <p>2. Lacks foundation (Evid. Code § 403)</p> <p>3. Lacks personal knowledge. (Evid. Code §702)</p> <p>4. Speculative (Evid. Code § 1200, et seq.)</p> <p>5. Conclusory (<i>Evinger v. MacDougall</i> (1938) 28 Cal. App. 2d 175.)</p>	Mr. Masilela is the Chief Executive Officer of ZACR and has personal knowledge of ZACR’s operations, including ICANN requirements for registrar and registry relations. That includes personal knowledge and an understanding of the requirements under the ICANN Registry Agreement.	

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<b>Masilela Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
<p>¶ 6: Though my experience as CEO of a registry operator, I know that the “sunrise” process is not intended to auction “premium” names to the highest bidder, but is rather a compulsory rights protection mechanism prescribed by ICANN to assist trademark owners in obtaining their corresponding domain names. It involves a third party (the Trademark Clearinghouse) who pre-validates trademark rights so these applicants can be given preference during the initial</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code § 702) 3. Speculative (Evid. Code § 1200, et seq.)</p>	<p>Mr. Masilela is the Chief Executive Officer of ZACR and has personal knowledge of ZACR’s operations, including ICANN requirements for registrar and registry relations. That includes personal knowledge, based upon ZACR’s experience as the single largest domain name registry on the African continent, for ICANN’s “sunrise” process.</p>	

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stages of the domain name launch.			
<b>Masilela Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
¶ 7: Contrary to DCA’s baseless insinuation, no ZACR employee or officer was involved with the AUC committee that selected ZACR as the successful applicant in the AUC’s Request for Proposal (“RFP”).	1. Misstates the record. Ms. Bekele’s declaration states that “The members of the AUC committee formed to choose who to endorse for the .Africa gTLD were individuals who were also members of other organizations affiliated with ZACR.” See January 3, 2017 Bekele Declaration ¶ 21.	DCA has not interposed a proper evidentiary objection. This is improper argument that should be stricken. Nor is there any foundation for Ms. Bekele’s baseless assertion. Indeed, she fails to identify the individuals or what it means to be “affiliated.”	
<b>Masilela Decl.</b>	<b>DCA’s Objection</b>	<b>ZACR’s Response</b>	<b>Court’s Ruling</b>
¶ 8: As part of the AUC’s open RFP process, the AUC required all applicants for AUC endorsement of .Africa to agree that	1. The Request for Proposals by the African Union Commission for the Operation of Dot Africa, dated November 2011, is	The Court may refer to the Request for Proposals by the African Union Commission for the Operation of Dot Africa, which is part	



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<p>the AUC would be a partner in the .Africa process. A true and correct copy of the Request for Proposals by the African Union Commission for the Operation of Dot Africa, dated November 2011, is attached hereto as <b>Exhibit A.</b></p>	<p>the best evidence of that document. (Evid. Code § 1520).</p>	<p>of the record (Declaration of Masilela Decl. II, Exhibit A.)</p> <p>Additionally, Mr. Masilela is the Chief Executive Officer of ZACR and can address the process for the RFP on behalf of ZACR.</p>	
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DATED: February 1, 2017

KESSELMAN BRANTLY STOCKINGER LLP

By: 

David W. Kesselman  
Amy T. Brantly  
Kara D. McDonald  
*Attorneys for Intervenor*  
ZA Central Registry, NPC

1 **PROOF OF SERVICE**

2 *Dotconnectafrica Trust v. ICANN, et al.*  
3 Los Angeles Superior Court, Central District Case No. BC607494

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 At the time of service, I was over 18 years of age and not a party to this action. I am  
6 employed in the County of Los Angeles, State of California. My business address is 1230  
7 Rosecrans Avenue, Suite 690, Manhattan Beach, California 90266.

8 On February 1, 2017, I served true copies of following document(s) described as  
9 **ZA CENTRAL REGISTRY, NPC'S RESPONSE TO PLAINTIFF'S EVIDENTIARY  
10 OBJECTIONS TO DECLARATION II OF MOKGABUDI LUCKY MASILELA** on the  
11 interested parties in this action as follows:

12 Ethan J. Brown, Esq.  
13 Sara C. Colón, Esq.  
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**BY ELECTRONIC SERVICE:** Pursuant to agreement of the parties, I caused the document to be sent to the email addresses listed above.

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

Executed on February 1, 2017, at Manhattan Beach, California.



Melinda Quiane