

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 39

**23STCV19554**

**VERANDAGLOBAL.COM, INC., et al. vs INTERNET  
CORPORATION FOR ASSIGNED NAMES AND NUMBERS,  
INC.**

February 15, 2024

8:30 AM

Judge: Honorable Stephen I. Goorvitch  
Judicial Assistant: R. Mendoza  
Courtroom Assistant: K. Ghazarian

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Case Management Conference; Hearing on Demurrer -  
without Motion to Strike

The matters are not called for hearing.

The Court posts a tentative ruling in advance of the hearing for the parties to review.

Counsel for Plaintiffs and counsel for Defendant submit on the Court's tentative via email.

The Court's tentative shall issue as the Order of the Court.

After reading and considering all moving and opposing documents, the Court rules as follows:

The Demurrer - without Motion to Strike filed by Internet Corporation for Assigned Names and Numbers, Inc. on 09/18/2023 is Sustained with Leave to Amend.

Plaintiffs VerandaGlobal, Inc. and Bryan Tallman (collectively, "Plaintiffs") filed this action against Defendant Internet Corporation for Assigned Names and Numbers, Inc. ("ICANN" or "Defendant") asserting the following causes of action:

1. Declaratory Judgment
2. Unfair Competition under Business and Professions Code section 17200
3. Breach of Contract
4. Breach of the Implied Covenant of Good Faith and Fair Dealing
5. Breach of Quasi-Contract
6. Negligence
7. Fraudulent Inducement

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ICANN is a California non-profit public benefits corporation with its principal place of business in Los Angeles, California. (Complaint, ¶ 13.) ICANN registers internet domain names. (Id., ¶ 2.) In March 2000, X.com merged with Confinity to create PayPal. (Ibid.) Then, in July 2017, Elon Musk reacquired the domain X.com from PayPal. (Ibid.) However, ICANN will not allow Plaintiffs to register certain “single character” domain names. (Id., ¶ 3.) This action follows, and Defendant demurs to every cause of action.

“It is black letter law that a demurrer tests the legal sufficiency of the allegations in a complaint.” (Lewis v. Safeway, Inc. (2015) 235 Cal.App.4th 385, 388.) In ruling on a demurrer, the court must “liberally construe[]” the allegations of the complaint. (Code Civ. Proc., § 452.) “This rule of liberal construction means that the reviewing court draws inferences favorable to the plaintiff, not the defendant.” (Perez v. Golden Empire Transit Dist. (2012) 209 Cal.App.4th 1228, 1238.)

The Court sustains the demurrer to the third, fourth, and fifth causes of action. The gravamen of this action is that ICANN breached its own bylaws and policies. Plaintiffs attempt to assert contractual claims by alleging: “Plaintiffs entered [sic] a binding agreement with ICANN and/or through its agents that was governed by ICANN’s policies and procedures.” (Complaint, ¶ 131.) Plaintiffs do not attach a copy of the complaint or quote the relevant provisions verbatim in the body of the complaint, which is problematic. “If the action is based on an alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written instrument must be attached and incorporated by reference.” (Harris v. Rudin, Richman & Appel (1999) 74 Cal.App.4th 299, 307, citing Otworth v. Southern Pacific Transportation Company (1985) 166 Cal.App.3d 452, 459.) Indeed, the complaint does not expressly allege that the contract required ICANN to follow specific policies and procedures requiring registry of single character domain names.

Even assuming there was a contract requiring ICANN to adhere to certain policies and procedures, the complaint does not clearly allege what policy or procedure was violated by ICANN’s refusal to permit registration of single character domain names. Plaintiffs quote from ICANN’s motion to dismiss in a federal lawsuit filed in 2011. (See Complaint, ¶ 24.) Even accepting these representations for pleading purposes, none of the quoted language evidences a policy of allowing single character domain names. Plaintiffs’ counsel focuses on certain language as follows:

- “[ICANN] does not participate in any market, and its Bylaws expressly forbid it from

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participating in any of the markets.”

- “[T]here are no restrictions as to who can acquire a domain name subscription in ‘unsponsored’ TLDs.”

- “ICANN [has] the authority and responsibility to coordinate the DNS in the public interest by, among other things, promoting competition and consumer choice in the DNS marketplace.”

- “The Corporation shall operate for the benefit of the Internet Community . . . through open and transparent processes that enable competition and open entry in Internet-related markets.”

- “ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN.”

- “ICANN’s Bylaws prohibit it from operating as an Internet registry or registrar. ICANN does not sell anything or make anything; its functions are noncommercial and in support of the public interest.”

- “[O]ne of ICANN’s core values in support of its mission is to create competition within the DNS.”

- “ICANN shall not act as a domain name Registry or Registrar or IP Address Registry in competition with entities affected by the plan developed under this Agreement.

- “Neither party . . . shall act unjustifiably or arbitrarily.”

(Complaint, ¶ 24.) None of these sections (or any other language quoted from ICANN’s motion to dismiss) establishes a policy that ICANN will approve a single character domain name. Plaintiffs cite a “Final Report Introduction of New Generic Top-Level Domains” with certain recommendations from 2007. (Id., ¶ 37.) One of the recommendations states: “In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable.)” (Ibid.) This is not a policy; it is merely a recommendation from 2007. Plaintiffs cite a variety of public statements by various officers, but none is a representation that ICANN will permit registration of single registration domain names. Simply, the complaint does not clearly identify a policy requiring ICANN to permit registration of single character domain names. Accordingly, the Court sustains the demurrer to the third, fourth, and fifth causes of action.

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The Court sustains the demurrer to the first cause of action because this matter is not suitable for declaratory relief. (See *Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324; *California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1624.)

The declaratory relief statute should not be used for the purpose of anticipating and determining an issue which can be determined in the main action. The object of the statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues.

(*General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470.) In this case, the declaratory relief claim is duplicative of the contractual claims. The Court has discretion to decline to issue a declaratory judgment under these circumstances. (See *AICCO, Inc. v. Insurance Company of North America* (2001) 90 Cal.App.4th 579, 590.) Therefore, the Court sustains the demurrer to the first cause of action.

The Court sustains the demurrer to the sixth cause of action—negligence—because the complaint does not allege a duty. Nor could Plaintiffs allege a duty under these circumstances. In the absence of a duty, there can be no claim for negligence.

The Court sustains the demurrer to the seventh cause of action, fraudulent inducement. Plaintiff must allege fraud with particularity. “This means: (1) general pleading of the legal conclusion of fraud is insufficient; and (2) every element of the cause of action for fraud must be alleged in full, factually and specifically, and the policy of liberal construction of pleading will not usually be invoked to sustain a pleading that is defective in any material respect.” (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331.) The elements of promissory fraud are as follows: (1) Defendant made a misrepresentation, i.e., a false promise; (2) Defendant knew the promise was false when it was made; (3) Defendant intended to defraud Plaintiff, i.e., induce Plaintiff’s reliance on the false promise; (4) Plaintiff relied on the false promise and the reliance was justifiable; and (5) Plaintiff was damaged. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) The complaint does not satisfy this standard. Plaintiffs’ theory is that they purchased a number of single character domain names based upon ICANN’s alleged representation (i.e., its public policy and public statements) of permitting such domain names. While this may be a viable theory, as discussed, the complaint does not clearly allege that ICANN promised Plaintiffs that they could, in fact, register single character domain names. Therefore, the demurrer is sustained.

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Finally, the Court sustains the demurrer to the unfair competition claim under Business and Professions Code section 17200. This claim appears to be derivative of the fraudulent inducement claim.

**CONCLUSION AND ORDER**

Based upon the foregoing, the Court orders as follows:

1. The Court sustains Defendant's demurrer.
2. The Court grants leave to amend with respect to the second, third, fourth, fifth, and seventh causes of action.
3. The Court denies leave to amend with respect to the first cause of action (declaratory judgment) and the sixth cause of action (negligence) as no amendment would resolve the defects.
4. Plaintiffs' counsel shall file a first amended complaint within thirty (30) days.
5. The Court continues the case management conference to April 22, 2024, at 8:30 a.m.
6. Defendant may notice any responsive pleading for hearing at the case management conference.
7. Defendant's counsel shall provide notice and file proof of such with the Court.

On the Court's own motion, the Case Management Conference scheduled for 02/15/2024 is continued to 04/22/2024 at 08:30 AM in Department 39 at Stanley Mosk Courthouse.