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The Internet Corporation for Assigned Names and Numbers

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

The Internet Corporation for Assigned Names and Numbers,

Plaintiff,

v.

RegisterFly.Com, Inc., and UnifiedNames, Inc.,

Defendants.

Case No. CV 07-2089 R (PLAx)

SUPPLEMENT TO PLAINTIFF ICANN'S APPLICATION FOR TEMPORARY RESTRAINING ORDER

Date: TBD
Time: TBD
Judge: Hon. Manuel L. Real

I. INTRODUCTION

On Thursday, March 29, 2007, Plaintiff Internet Corporation for Assigned Names and Numbers ("ICANN") filed its Application for Temporary Restraining Order ("TRO Application") and requested certain relief against Defendants RegisterFly.Com, Inc. and UnifiedNames, Inc. (collectively, "RegisterFly").[1] As detailed in ICANN's supporting brief and declarations, RegisterFly has been serving as an "ICANN-accredited" registrar, and ICANN is in the process of terminating that accreditation for a number of reasons, including the fact that RegisterFly appears to be on the brink of dissolution. In order to protect RegisterFly's customers – who collectively hold registrations for nearly 875,000 domain names[2] – ICANN seeks this Court's order requiring RegisterFly to comply with its contractual duties to provide ICANN electronic copies of all registration data that ICANN is entitled to under Section 3.6 of the Registrar Accreditation Agreement ("RAA") between the parties. ICANN is also seeking emergency relief in obtaining access to audit and to inspect RegisterFly's data under Section 3.4 of the RAA, access that RegisterFly continues to deny. If ICANN is not given this data, RegisterFly's customers may ultimately lose the ability to use the domain names that they have registered and paid for.

Since the filing of the TRO Application, ICANN has received some of the requested data submissions from RegisterFly. All of the submissions have been

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[1] At the time of filing the TRO Application, ICANN served all papers on the attorneys for RegisterFly, as well as the company's CEO, via email and federal express. ICANN also has achieved personal service of summons on RegisterFly.Com, Inc. (on April 2, 2007) and on UnifiedNames.Com (on April 5, 2007). To date, the defendants have not acknowledged ICANN's filing of suit or the pending TRO Application.

[2] ICANN's TRO Application identified a higher number of registered domain names registered through RegisterFly. In the interim time period, some customers have been able to transfer their registered names to other ICANN-accredited registrars, accounting for the lower number cited here.

deficient. Through analysis of RegisterFly's submissions, ICANN has identified specific modifications to the prior [Proposed] Temporary Restraining Order that will allow ICANN to better protect RegisterFly's customers from imminent harm. Further, ICANN has determined that it will be able to protect RegisterFly's customers through the receipt of *weekly* updates, as opposed to the 48-hour updates previously requested. ICANN therefore submits this Supplement, as well as a Revised [Proposed] Temporary Restraining Order.

II. THE DATA DEFICIENCIES

A. INCOMPLETE DATA

As explained in ICANN's TRO Application and supporting papers, some of RegisterFly's customers have names registered through a "proxy" registration service, whereby an entity, such as "ProtectFly," is publicly listed as the registrant of record. The identifying information for the equitable registrant – the person who actually maintains and uses the domain name – is maintained by RegisterFly, but is shielded from the public. In the data files submitted by RegisterFly, over 175,000 of the records – approximately 20% of RegisterFly's total registrations – list a proxy registration service such as "ProtectFly" as the registrant of record, and thus do not contain the information for the equitable (true) registrant. This means that ICANN *does not have the data for 20% of the domain names registered through RegisterFly*, and therefore has no means to assist or protect the equitable registrants of these protected names. ICANN therefore is modifying the [Proposed] Temporary Restraining Order to require RegisterFly to *immediately* provide ICANN with an electronic copy of this equitable registrant data.

In addition to the proxy issues, ICANN has identified significant discrepancies in the domain names that the Internet registries report as registered through RegisterFly, as compared to the domain names appearing in RegisterFly's submissions. As explained in ICANN's TRO Application and supporting papers, nearly 10% of the RegisterFly-registered names that should have appeared in the

.com and .net registries were *not* found in RegisterFly's first data submission. This trend has continued. ICANN requested that the registries provide 10,000-name samples of domain names identified as registered through RegisterFly.[3] Comparing these samples with a RegisterFly data file dated March 28, 2007, *9.3%* (or 930 names) that appeared in the .org registry as having been registered through RegisterFly, were missing from the data that ICANN received from RegisterFly itself, and 2.64% of .info names were missing. Based upon these discrepancies, ICANN still needs this Court's assistance in requiring RegisterFly to provide *accurate and complete* registration data under Section 3.6 of the RAA.

B. PROCESS AND ANALYSIS ISSUES

ICANN also needs this Court's assistance in defining the process by which RegisterFly makes its data submissions. With this Court's help, this process could be significantly improved and streamlined to better protect RegisterFly's customers from imminent harm. Accompanying this memorandum is a revised proposed order that addresses each of these issues and also will provide a greater level of security to the transfer process.

Mode of Transfer: Beginning on March 29, 2007, and every Monday, Wednesday and Friday since, ICANN has received a data submission from RegisterFly. None of these data submissions has been made in accordance with the ICANN-RegisterFly negotiated process of submitting the data to a secured file transfer protocol ("SFTP") server. Instead, ICANN has received web links via email to the data submissions, which it must then download and place onto a secured server. Under RegisterFly's current (and self-selected process), the customer data is at risk, as the data is not encrypted or otherwise secured in transmission and could be compromised. If the designated SFTP server transfer

[3] ICANN is still waiting to receive current samples from .com and .net.

process were followed, the data files would be encrypted and there is little risk of corruption or hacking of the data.[4]

File Integrity Issues: ICANN presently has no means to ensure that it received the exact content of the file that RegisterFly submitted, as any data transfer is at risk for corruption or data loss. There is a simple fix to this process: If RegisterFly runs what the industry refers to as a MD5 algorithm over the file before it is sent, this will create a unique code – like a fingerprint – to describe the file. ICANN can then run the same algorithm over the file upon receipt. ICANN can then compare the resulting codes to assure that they match. ICANN and RegisterFly would be assured that ICANN received the entire intended file. This process is simple, and assures the integrity of the file transmission, which is necessary to assist ICANN in its goal of protecting RegisterFly's customers from the effects of data loss.

Data Formatting Problems: Under the current submission practice, once ICANN downloads the data file, it must then "clean" RegisterFly's data file prior to analysis. This "cleansing" process is necessary because *every* RegisterFly submission comes in a different file structure – organizing the data differently. A cleansing process, however, should not be necessary. If the RegisterFly data submissions were created in conformity with industry practices, the submissions would be in what is known as a "csv"[5] file format. (Instead, the data arrives in non-

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[4] In addition, the web-link download process adds two to four more hours – per transmission – to the processing time required by ICANN staff to even begin to review the data files for inconsistencies.

[5] A "csv" file is also known as a "comma separated value" file. The csv specification is found in a document known as RFC 4180 (*available at* http://rfc.net/rfc4180.html). RFCs, or Requests for Comments, represent sets of standards and industry best practices promulgated by the Internet community as a whole. Though RegisterFly's data submissions are currently in a comma separated format, the files are *not* in the standardized form as described in RFC 4180, or in *any* standard format.

standard forms, and *every* submission by RegisterFly is different, perhaps intentionally so.) ICANN must devote significant time to modifying the form of the data to "clean" it to a standard form that ICANN can then analyze. Further, because each submission is different in structure, ICANN must perform different modifications to attempt to standardize the files. RegisterFly's non-standard submissions – and the resulting ad hoc modifications – increase the potential for harm to RegisterFly's registrants, as it is extremely difficult for ICANN to identify inconsistencies or deficiencies in the data files. Moreover, the changing submission structure and the need for modification increases the possibility that some registrant data will ultimately fall through the cracks, leaving ICANN unable to protect those RegisterFly customers.

If the data were sent in a standardized .csv file, ICANN would not need to perform *any* modifications to the data file prior to analysis. The creation of a .csv file should not represent any burden to RegisterFly. Unless RegisterFly is simply transferring its actual database to ICANN – which does not appear to be the case – RegisterFly *must* perform an export of the registration to create the files it is currently submitting to ICANN. RegisterFly could simply export the file to a .csv format, as opposed to the unidentifiable formats currently being used. The creation of an export file is essentially like using a "Save As" command to save a Microsoft Word document (.doc) in a webpage (.htm) format instead of in a "Word" format.

III. CONCLUSION

Although RegisterFly is complying in part with ICANN's requests, RegisterFly continues to send incomplete files, data that appears to be missing substantial amounts of consumer information, and data that contains no consumer information and thus would prevent ICANN from protecting those consumers in the event RegisterFly goes out of business. Nothing that ICANN is requesting will increase the efforts that RegisterFly is currently undertaking to perform its data submissions. As a result, ICANN requests that the Court grant its application for a

temporary restraining order and enter the new Revised [Proposed] Temporary Restraining Order so that ICANN can have meaningful relief in its quest to protect the tens of thousands of RegisterFly customers who are at risk.

Dated: April 11, 2007

JONES DAY

By: Jeffrey A. LeVee /SSE
Jeffrey A. LeVee

Attorneys for Plaintiff
THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071-2300. On April 11, 2007, I deposited with Federal Express, a true and correct copy of the within documents:

SUPPLEMENT TO PLAINTIFF ICANN'S APPLICATION FOR TEMPORARY RESTRAINING ORDER

in a sealed envelope, addressed as follows:

Kevin Medina
RegisterFly.Com, Inc.
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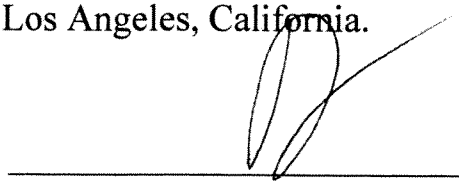
Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I have submitted a courtesy copy of the above described document via email to all parties listed above.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 11, 2007, at Los Angeles, California.



Deborah Futrowsky