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NAME.SPACE, INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

16 NAME.SPACE, INC.,
17 Plaintiff,
18 v.
19 INTERNET CORPORATION FOR
20 ASSIGNED NAMES AND NUMBERS,
21 Defendant.

Case No.

CV12-8676

HA
(PWA)

COMPLAINT

DEMAND FOR JURY TRIAL

23 Plaintiff name.space, Inc. ("name.space"), by and through its undersigned
24 counsel, brings this Complaint against Defendant Internet Corporation for Assigned
25 Names and Numbers ("ICANN"), and alleges as follows:
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INTRODUCTION

1. name.space is the originator, operator and promoter of 482 Top Level Domains (“TLDs”), which is the highest level identifier in an Internet “domain name”—such as .com or .gov.
2. ICANN controls and purports to be responsible for the entire worldwide Internet Domain Name System (“DNS”). The DNS is an essential part of the logical infrastructure that makes the Internet work by assigning unique domain names to computers running web sites and other services including e-mail and voice-over-IP, and by coordinating master computer servers which ensure that all Internet users typing a domain name into their browsers reach the same “host” computer and service. ICANN has exclusive control in determining whether to permit new TLDs into the DNS and whether to permit interconnection with TLD operators like name.space. The DNS is the critical, essential intermediary that allows Internet users to reach a website or connect to other services—whose real address is identified by a set of numbers—by typing an alphanumeric domain name in their Internet browser’s address bar.
3. name.space’s TLDs have been shut out of the DNS by ICANN and its predecessors, and forced to operate its own network of TLDs, thereby effectively blocking and quarantining name.space TLDs and its registrants’ domains from the majority of Internet users. Instead, ICANN has given priority for any new TLDs to an exclusive group of insiders and industry incumbents who control ICANN, either directly or financially.
4. In 2000, name.space applied (the “2000 Application”) for 118 of its TLDs to be delegated onto the DNS master database known as the “root.zone file,” or simply “the Root.” Notwithstanding ICANN’s acknowledgement of name.space’s qualifications and payment of the \$50,000 application fee, ICANN refused to make a final determination of name.space’s 2000 Application. Meanwhile, the same

1 handful of companies already dominating control of the Internet—many of which
2 have close ties to ICANN’s board of directors—received the only new TLDs
3 delegated by ICANN, further entrenching their status as Internet powerhouses and
4 consummate insiders.

5 5. Nevertheless, when ICANN announced it would hold another round of TLD
6 applications in 2012, name.space relied on representations from ICANN that its
7 2000 Application remained pending, and had not been finally determined. At no
8 point has name.space been informed of anything to the contrary.

9 6. Rather than adopting a procedure to account for the pending 2000
10 Application and facilitate the expansion of TLD providers in the DNS, ICANN
11 adopted a procedure so complex and expensive that it once again effectively
12 prohibited newcomers from competing. It instead has permitted participation solely
13 by ICANN insiders and industry titans.

14 7. ICANN raised the application fee to \$185,000—more than three times the
15 previous amount. Further, unlike the 2000 round where applicants could apply for
16 multiple TLD strings conforming to a uniform business model in a single
17 application, this time each TLD application required its own non-refundable
18 application fee. name.space’s application for the same 118 TLDs for which it
19 applied in 2000 would thus cost over 436 times more in 2012. In adopting this
20 process, ICANN effectively and intentionally precluded name.space from
21 implementing its business model of incorporating the simultaneous operation of a
22 significant number of TLDs, which was designed to drive not only name.space’s
23 revenue stream but also its competitive appeal to other rights holders seeking to
24 register domain names under multiple TLDs. This approach by ICANN was
25 consciously adopted as an attack on name.space’s business model and a means by
26 which to create and maintain market power in the TLD markets.

27 8. Even further, not only was the 2012 process anticompetitive, but ICANN
28 allowed applicants to apply for TLDs *that name.space had originated and was*

1 *already operating and promoting.* In other words, the 482 TLDs that name.space
2 originated and has been using in commerce continuously since 1996 were being
3 auctioned off by ICANN to any takers who could afford it, in total disregard to
4 name.space's trademark rights in those TLDs.

5 9. Finally, through its anticompetitive, self-interested actions, ICANN has
6 created a scenario whereby name.space will be unable to ensure that its contracts
7 with its existing and prospective customers can be performed. Specifically, if and
8 when ICANN delegates a TLD on the DNS that is identical with a TLD that
9 currently resolves on the name.space network, name.space's customer's websites
10 and other services will effectively be preempted by websites and services that
11 resolve on ICANN's DNS and point to different hosts. Once again, this serves to
12 benefit only ICANN and the industry insiders and power players whose interests
13 ICANN appears to represent.

14 10. In fact, on June 13, 2012, ICANN published its list of TLD strings for which
15 applications were submitted to delegate those TLDs to the DNS. Included on this
16 list were several TLDs that already resolve on the name.space network, including
17 .art, .blog, .book, .design, .home, .inc. and .sucks. If and when those applications
18 are approved, however, those TLDs will become associated not only with
19 name.space—which has been operating and promoting those TLDs in commerce
20 for over fifteen years—but also with the prospective registers that have paid
21 ICANN \$185,000 per TLD.

22 11. Accordingly, name.space brings this action against ICANN, seeking damages
23 and injunctive and declaratory relief, for violations of the Sherman Act and the
24 Lanham Act, as well as state and common law trademark infringement, unfair
25 competition and tortious interference claims.

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JURISDICTION AND VENUE

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2 12. This Court has original subject matter jurisdiction under 28 U.S.C. §§ 1331
3 and 1338(a) and (b) over the claims in this action arising under the Sherman Act, 15
4 U.S.C. §§ 1 and 2, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*

5 13. This Court also has diversity subject matter jurisdiction over this action
6 pursuant to 28 U.S.C. § 1332 in that it is a dispute between citizens of different
7 States where the matter in controversy exceeds the sum of \$75,000, exclusive of
8 interest and costs.

9 14. This Court also has supplemental jurisdiction over name.space's state law
10 claims pursuant to 28 U.S.C. § 1367(a), because those claims are so related to
11 name.space's federal law claims that they form part of the same case or controversy
12 and derive from a common nucleus of operative facts.

13 15. This Court has personal jurisdiction over ICANN, because, on information
14 and belief, ICANN is a California corporation with its principal place of business in
15 this District.

16 16. The trade and interstate commerce relevant to this action are at least the
17 following: (i) the international market for TLDs and markets for each individual
18 TLD permitted by ICANN to participate in the DNS, and (ii) the markets for
19 wholesale and retail registrations within each TLD. The activities of ICANN and
20 its co-conspirators, as described herein, were within the flow of and had a
21 substantial effect on interstate commerce.

22 17. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) because
23 ICANN resides in this District and a substantial part of the events giving rise to
24 name.space's claims occurred in this District.

1 **PARTIES**

2 18. Plaintiff name.space is a corporation organized under the laws of the State of
3 Delaware, with its principal place of business at 134 West 37th Street, Suite 200,
4 New York, New York.

5 19. Upon information and belief, Defendant ICANN is a non-profit corporation
6 organized under the laws of the state of California, with its principal place of
7 business in Marina del Rey, California. ICANN has the exclusive control over the
8 Internet's DNS. As discussed further below, ICANN derives its authority to
9 manage the DNS from a series of agreements with the United States government.

10 **FACTUAL ALLEGATIONS**

11 **A. The Architecture of the Internet.**

12 **1. The DNS System.**

13 20. At heart, the Internet is a series of interconnected servers and computers.
14 Each computer or host server connected to the Internet can be identified by at least
15 one unique Internet protocol ("IP") address, which consists of a string of four sets
16 of numbers between 0 and 255, separated by periods (e.g., 170.11.225.15).

17 21. For ease of reference, a DNS was created to link an IP address with a unique
18 alphanumeric "domain name," such as "nytimes.com." The DNS is a simple,
19 efficient way for Internet users to navigate the web: remembering that
20 "nytimes.com" is the address for The New York Times website is much easier than
21 remembering its numeric IP address.

22 22. The domain name is incorporated into a Uniform Resource Locator ("URL").
23 When an Internet user types the URL into his or her web browser application (such
24 as Internet Explorer or Firefox), the URL is sent to a DNS server. The DNS server
25 looks up the IP address assigned to that domain name, and the browser then
26 connects to the server having that IP address, which hosts the desired website.

2. Top-Level Domains.

1
2 23. The DNS uses a hierarchical structure. The alphanumeric field to the far
3 right is known as the “Top Level Domain” (“TLD”)—such as .com, .net, or .edu.
4 The other, lower-level fields follow to the left of the TLD, separated by periods.
5 The first field to the left of the TLD is the Second Level Domain (“SLD”), followed
6 by the Third Level Domain, and so on. Thus, using the nytimes.com example,
7 “.com” is the TLD, and “nytimes” is the SLD. (There is no Third Level Domain in
8 this example.)

9 24. In order to link a domain name to an IP address, the DNS server must have
10 access to the Root, which serves as the highest level of the DNS hierarchy and
11 contains a “master list” of all the TLDs. The Root enables the connection of
12 domain names to IP addresses by first directing an Internet user’s request to the
13 appropriate TLD, which then routes the user to the desired host computer via the
14 second (and possibly third or fourth) level domain.

15 25. Currently, the number of TLDs (other than country code TLDs, discussed
16 below) has been arbitrarily limited to twenty-two. Upon information and belief,
17 there are no financial, technical or other constraints to adding new TLDs to the
18 current architecture of the Internet via access to the Root.

19 26. A limited number of corporations and organizations operate these TLDs, and
20 they must pay a fee to ICANN in order to do so. These organizations and
21 corporations are “wholesale” providers of TLDs—they sell the ability to register a
22 domain name with a particular TLD and maintain a “zone file,” or registry, of all
23 the domain names associated with that TLD. TLD wholesalers are commonly
24 referred to as TLD “registries.”

25 27. The “retail” sellers of domain names, called “registrars,” are companies that
26 sell the second-level domain names directly to the companies and content providers
27 that want to create a website or provide other services. Registrars, such as
28 “godaddy.com,” must be approved by the TLD registries to sell domain names.

1 The “registrants”—individual companies and content producers, such as The New
2 York Times, that purchase a domain name through the registrar—rent that domain
3 name by paying an annual fee to the registrar.

4 28. The TLD market is extremely lucrative, and, at present, is controlled by a
5 small group of industry insiders. For example, wholesale TLD registries receive
6 approximately \$5-7 per year for every domain name in that particular TLD registry.
7 Considering that there are over a hundred million websites using the “.com” TLD,
8 annual revenue for Verisign, Inc. (“Verisign”)—the only ICANN-authorized .com
9 TLD registry—is approximately between \$500 and \$700 million.

10 29. There are three different categories of TLDs:

11 (a) Fourteen of the twenty-two TLDs are “sponsored top level domains”
12 (“sTLDs”), such as .gov and .edu, that are restricted to specific classes of
13 users who must meet a given criterion in order to register with them (*e.g.*, be
14 a U.S. government agency to receive a .gov domain, or be an accredited
15 educational institution to receive a .edu domain).

16 (b) The other eight TLDs are “generic top level domains” (“gTLDs”),
17 such as .com and .net, that permit anyone to register.

18 (c) Additionally, separate from the twenty-two TLDs controlled by
19 corporate entities, there are unique “country-code top level domains”
20 (“ccTLDs”) that are operated by sovereign nations, or companies with the
21 authority to operate the TLD on behalf of those countries. Each country or
22 designated entity with the authority to operate a ccTLD may set its own
23 registration restrictions and dictate the registration fee.

24 30. Despite the limited number of available TLDs, there exists competition for
25 the most commercially “desirable” TLDs. Consumers, for example, may be more
26 likely to trust an e-commerce site with a “.com” domain name, rather than a “.biz”
27 domain name. The “.com” suggests a legitimacy that other TLDs may not have.
28 On information and belief, most Internet users expect that a website will use .com

1 and reflexively append .com to particular content producer's trademarked brand
2 name when seeking access to that content producer's website.

3 31. Additionally, there are no technological or legal reasons that might prevent a
4 gTLD registry from offering hundreds of gTLDs; as described below, this is, in
5 fact, name.space's business model.

6 **B. name.space Begins Operating as a Registry.**

7 32. In 1996, Paul Garrin, founder of name.space, established a network of
8 servers in five countries on two continents to provide a competing registry with that
9 of Network Solutions, Inc. ("Network Solutions"), which, in 1992, had been
10 granted exclusive control over the Root by the National Science Foundation
11 ("NSF"), a U.S. government agency. In 1995, Network Solutions was permitted to
12 operate for profit as a TLD registry, and began charging fees to register domain
13 names on the Root's limited number of TLDs.

14 33. In contrast to Network Solution's arbitrarily limited TLDs, name.space
15 offered over five hundred different and "expressive" TLDs, such as .art, .food,
16 .magic, .music, .now and .sucks. Name.space's business model offered a wide
17 array of TLDs for content providers, allowing for increased consumer accessibility
18 to specific Internet sites, as well as stronger expressiveness, marketability and
19 branding. For example, at the time, name.space's domain name in the Network
20 Solutions registry was "namespace.pgpmedia.com," while its domain name through
21 name.space's registry was simply "name.space" (where .space, rather than .com,
22 was the TLD).

23 34. Unfortunately, name.space was effectively unable to compete with Network
24 Solutions because name.space's TLDs were not on the Root and therefore
25 segregated from the majority of the global Internet. When an Internet user enters a
26 URL into his or her web browser, the web browser will by default look to the Root
27 to resolve that URL. Only by changing the DNS settings on each individual's
28 computer with the IP addresses of name.space DNS resolvers, and bypassing the

1 DNS settings assigned by the user's service provider (which by default point to the
2 Network Solutions-controlled Root), can the URL resolve domain names in service
3 on name.space's registry. Practically speaking, for 99.9% of the world, the Root is
4 the Internet. Domain names under name.space's TLDs were by default not
5 universally resolvable on the Internet, thereby eliminating any chance of
6 name.space competing with Network Solutions, and enabling Network Solutions to
7 operate its government-granted monopoly with impunity.

8 **C. ICANN Takes Over Management of the DNS on the Root.**

9 35. In 1997, the U.S. government issued a report entitled "A Framework for
10 Global Electronic Commerce," which transferred control of Internet governance
11 from NSF to the Department of Commerce (the "DOC"). Soon after, the DOC
12 solicited comments from stakeholders and published a "white paper" that reflected
13 the commentators' consensus that a new, not-for-profit corporation should have the
14 exclusive authority to manage the DNS.

15 36. In 1998, the DOC assigned ICANN the exclusive authority to manage the
16 DNS system. According to the National Telecommunications and Information
17 Administration ("NTIA")—a division of the DOC that is responsible for
18 "promoting the stability and security" of the DNS "through its participation on
19 behalf of the U.S. government in Internet Corporation for Assigned Names and
20 Numbers (ICANN) activities"—ICANN "is the not-for-profit entity responsible for
21 coordinating the technical management of the Internet's domain name system
22 (DNS) and for ensuring its continued security, stability and integrity." In reality,
23 ICANN has not been operating as a truly disinterested "not-for-profit entity."

24 37. Pursuant to its agreements with the U.S. government, ICANN has the
25 exclusive authority to determine whether to introduce new TLDs into the Internet's
26 current architecture. And, significantly, ICANN also has the exclusive authority to
27 determine what companies will operate as registries for these TLDs.

28

1 38. According to the U.S. government white paper that addresses ICANN's role
2 as the government-sanctioned gatekeeper to the Internet, "[t]he new corporation
3 [ICANN] does not need any special grant of immunity from the antitrust laws so
4 long as its policies and practices are reasonably based on, and no broader than
5 necessary to promote the legitimate coordinating objectives of the new
6 corporation."

7 39. Further, the white paper states that: "[a]pplicable antitrust law will provide
8 accountability to and protection for the international Internet community. Legal
9 challenges and lawsuits can be expected within the normal course of business for
10 any enterprise and the new corporation [ICANN] should anticipate this reality."

11 40. Regarding the process by which ICANN determines what new TLDs to
12 authorize, the white paper states that: "the decision making process would need to
13 reflect a balance of interests and should not be dominated by any single interest
14 category."

15 41. Moreover, ICANN's "activities would need to be open to all persons who are
16 directly affected by the entity, with *no undue financial barriers to participation* or
17 unreasonable restrictions on participation."

18 42. Similarly, a U.S. government "green paper" recognized that "the new
19 corporation's [ICANN's] processes should be fair, open and pro-competitive. Its
20 decision-making processes should be sound and transparent." The green paper also
21 warns ICANN to guard against "capture by a self-interested faction."

22 43. Far from being fair and open with no undue financial barriers to
23 participation, the process leading to the 2012 application round has been shrouded
24 in secrecy, with significant financial and administrative barriers to entry added
25 since the 2000 process that conflict with ICANN's mandate.

26 44. Upon information and belief, ICANN is controlled by a board of directors
27 with significant conflicts of interest; the ICANN Board is comprised of industry
28 insiders that seek to entrench their power to the detriment of the Internet

1 community and the general public. ICANN Board members have close business
2 and financial connections with the existing TLD registries, as well as domain name
3 registrants. These conflicts of interest have resulted in a commercial environment
4 that unlawfully insulates industry insiders, stifles competition and, as discussed
5 below, has precluded name.space from implementing its business model and
6 competing as a domain name registry.

7 **D. ICANN Introduces a Limited Number of New TLDs and Grants**
8 **Only Industry Insiders the Authority to Operate as the New TLD**
9 **Registries.**

10 **1. The 2000 Application Round Opens.**

11 45. In 2000, ICANN sought to expand the number of available TLDs and
12 adopted a policy for the introduction of new TLDs through an application process
13 (the "2000 Application Round").

14 46. To be selected as a new TLD registry, applicants had to establish their ability
15 to provide the technical expertise necessary to operate a TLD, as well as their
16 financial and business management strengths. The 2000 Application Round
17 instructions were approximately seven pages long.

18 47. The application fee for the 2000 Application Round was \$50,000, and
19 applicants could submit multiple TLD strings in a single application without paying
20 any additional fees.

21 48. One of the stated goals of the 2000 Application Round was to "provide a
22 vehicle for providing a diverse range of concepts for innovative uses of the DNS."
23 ICANN emphasized that it was "seek[ing] diversity and hop[ing] to rely on the
24 creative approach of the applications to all aspects of the introduction and operation
25 of new TLDs." ICANN encouraged applicants to "[b]e creative."

26 **2. name.space Applies for 118 gTLDs.**

27 49. After four years of efforts seeking inclusion of its TLDs into the Root
28 through administrative and legal means, name.space finally had a chance to add a

1 portion of its exclusive catalog of TLDs to the DNS and to begin competing with
2 other TLD registries.

3 50. In 2000, as part of the 2000 Application Round, name.space submitted a
4 complete and timely application with ICANN to operate as the registry for 118
5 gTLDs, and paid the \$50,000 application fee. A full list of all 118 gTLDs from
6 name.space's 2000 Application is attached as Exhibit A.

7 51. ICANN accepted name.space's 2000 Application, and in fact selected
8 name.space's 2000 Application as one of the "strong candidates" and one of the
9 top-ten applications submitted in the 2000 Application Round.

10 52. Moreover, a former Chairperson of ICANN's board of directors, strongly
11 supported name.space's 2000 Application and stated that name.space represents
12 diversity and free speech on the Internet. The former Chair also stated that
13 name.space would likely be a successful business that would support both
14 commerce and free speech.

15 53. Notwithstanding the status and credentials of name.space's 2000 Application,
16 ICANN simply dragged its feet on making a determination. ICANN never rejected
17 name.space's 2000 Application, but neither advanced name.space's 2000
18 Application for delegation nor awarded name.space the authority to operate any of
19 name.space's TLDs over the DNS.

20 54. In fact, to this day, on information and belief, name.space's 2000 Application
21 is still pending. As one ICANN committee member stated with respect to
22 name.space's 2000 Application, "we'll wait them out."

23 55. Rather than delegating name.space's 118 gTLDs, ICANN ignored its own
24 mandates of "seeking diversity" and relying on creative approaches to the
25 introduction and operation of new TLDs, and instead approved only seven new
26 TLDs: the gTLDs .biz and .info and the sTLDs .aero, .coop, .museum, .name and
27 .pro.

28

1 56. As Professor Milton Mueller of Syracuse University wrote in his 2004 book,
2 *Ruling the Root*, “[a]dding the name.space TLDs to the [] root.zone would have
3 transformed the commercial environment of the DNS. As the only registry for
4 hundreds of top-level domains, name.space would have been quickly elevated to the
5 status of peer of Network Solutions .”

6 57. Significantly, almost no new industry players emerged from the 2000
7 Application Round as TLD registries. ICANN awarded the overwhelming
8 majority—over 99%—of the “new” TLDs to existing dominant firms in the TLD
9 and domain name registrar industries.

10 58. In 2000, Verisign acquired Network Solutions, including Network Solutions’
11 control of the .com, .net and .org TLDs. Verisign’s acquisition of Network
12 Solutions added to its already significant TLD business: Verisign also has the
13 exclusive contracts to operate the .name and .gov sTLDs and the .cc and .tv
14 ccTLDs.

15 **E. ICANN Launches the 2012 Application Round for New TLDs**
16 **While Placing Significant Barriers to Entry.**

17 59. Since 2000, ICANN’s policies and actions regarding the TLD market have
18 come under increasing scrutiny from the Internet community, members of Congress
19 and international agencies.

20 60. ICANN has ties to and benefits from payments from the select few industry
21 players that are able to operate domain name registries. Such conflicts of interest
22 have been widely reported. Notably, ICANN’s outgoing president and CEO has
23 been quoted as stating: “ICANN must be able to act for the public good while
24 placing commercial and financial interests in the appropriate context. How can it
25 do this if all top leadership is from the very domain name industry it is supposed to
26 coordinate independently?”

27 61. Upon information and belief, some of those conflicts include Chair Steve
28 Crocker, who runs the consulting firm Shinkuro, which has a silent investment from

1 domain name registry provider Afilias Limited (“Afilias”), the owner of .org and
2 .info, and Vice-chair Bruce Tonkin, a senior executive with Melbourne IT, an
3 Australian company that has advertised its ability to help clients secure gTLD
4 registry accreditation from ICANN. Ram Mohan, Afilias’s Executive Vice
5 President and Chief Technology Officer, also sits on the ICANN board of directors.
6 Further, Peter Dengate Thrush, former Chairman of ICANN’s board of directors, is
7 now the Executive Chairman of Top Level Domain Holdings, Inc., which filed
8 ninety-two applications for new gTLDs in 2012.

9 62. Amidst this widespread criticism, ICANN opened a new round of
10 applications for TLD registries (the “2012 Application Round”). The application
11 window ran from January 12, 2012 through April 12, 2012.

12 63. In a 2009 agreement with the DOC, ICANN emphasized that it would
13 “ensure that as it contemplates expanding the top-level domain space, the various
14 issues that are involved (including competition, consumer protection, security,
15 stability and resiliency, malicious abuse issues, sovereignty concerns, and rights
16 protection) will be adequately addressed prior to implementation.”

17 64. In contrast to the seven-page instruction manual from the 2000 Application
18 Round, the rules and procedures for the 2012 Application Round were set forth in a
19 massive 349-page guidebook.

20 65. ICANN purports to operate by consensus. In fact, ICANN’s creation of the
21 2012 Application Round, its announcements regarding the 2012 Application Round
22 and the rules that ICANN adopted were the result of an unlawful series of
23 agreements between ICANN and its co-conspirators, some of whom had already
24 left ICANN and some of whom were in the ICANN organization when the 2012
25 Application Round was decided and announced, but thereafter left ICANN.

26 66. Upon information and belief, ICANN and the co-conspirators entered into
27 and furthered their conspiracy on at least the following occasions:

- 28 - March 12, 2010: the ICANN board of directors met in Nairobi, Kenya;

- 1 - September 24, 2010: a special meeting of the ICANN board of directors
- 2 was held in Trondheim, Norway;
- 3 - October 28, 2010: a special meeting of the ICANN board of directors was
- 4 held via teleconference;
- 5 - December 10, 2010: the ICANN board of directors met in Brussels,
- 6 Belgium;
- 7 - January 25, 2011: a special meeting of the ICANN board of directors was
- 8 held via teleconference;
- 9 - March 18, 2011: the ICANN board of directors met in San Francisco,
- 10 California;
- 11 - October 11, 2011: a special meeting of the ICANN board of directors was
- 12 held in Santa Monica, California;
- 13 - October 28, 2011: the ICANN board of directors met in Dakar, Senegal;
- 14 - December 8, 2011: a special meeting of the ICANN board of directors
- 15 was held via teleconference.

16 67. In order to apply in the 2012 Application Round, ICANN required applicants
17 to pay a whopping \$185,000 per TLD fee—over three times more than the 2000
18 Application Round’s \$50,000 fee. More importantly, unlike the 2000 Application
19 Round, ICANN forbid applicants from submitting multiple TLD strings in the same
20 application.

21 68. Therefore, had name.space re-applied in the 2012 Application Round for
22 delegation of the same 118 gTLDs that remain pending from name.space’s 2000
23 Application, it would have cost name.space almost \$22 million, more than 436
24 times the price of name.space’s 2000 Application for the same 118 gTLDs.

25 69. Upon information and belief, the 2012 Application Round, by requiring
26 application fees for each TLD for which an application has been submitted, was
27 designed intentionally to preclude or at least impede name.space’s business
28 model—which incorporates the simultaneous operation of a significant number of

1 gTLDs. Indeed, name.space appears to be uniquely situated in this regard as its
2 2000 Application contains 118 gTLDs already in service that predate the ICANN
3 application process and the formation of ICANN itself.

4 70. In a transparent attempt to avoid the conflict between the pending 2000
5 applications and the new, more expensive 2012 applications, ICANN offered a one-
6 time \$86,000 reduction in the application fee for the 2012 Application Round for
7 those applicants that previously applied in 2000, but whose TLDs were not
8 delegated into the Root. This fee reduction could only be used for a single TLD
9 application. If the applicant chose to accept this one-time fee reduction, it would
10 waive any claim it had to its 2000 application. Otherwise, the 349-page guidebook
11 did not mention how ICANN would treat any previous applicants from the 2000
12 Application Round whose applications, like name.space's, are still pending.

13 71. In addition, in the 2012 Application Round, ICANN instituted a binding
14 dispute resolution process to resolve any conflicts with regard to a 2012
15 application. Upon information and belief, ICANN is attempting to use the 2012
16 Application Round to force previous applicants from the 2000 Application Round
17 to submit to this new dispute resolution process.

18 72. Further, ICANN did not prevent 2012 applicants from applying for
19 delegation of TLDs that were already included in other applicants' pending 2000
20 applications.

21 73. Upon information and belief, ICANN knowingly and willingly created the
22 application process for the 2012 Application Round without adequate safeguards in
23 place to protect the 2000 applicants' rights in their proposed or already operating
24 TLDs.

25 74. Upon information and belief, it costs as much or more to apply for one gTLD
26 string in the 2012 Application Round than it does to launch a TLD registry in the
27 market.

28

1 75. As a result of the 2012 Application Round's procedural and financial barriers
2 created by ICANN, name.space was unable to participate in the 2012 Application
3 Round, and continues to seek delegation of its 118 gTLDs from its 2000
4 Application.

5 76. Instead of structuring the 2012 Application Round to foster innovation and
6 competition, ICANN's imposition of procedural and financial hurdles created a
7 process in which only industry insiders—such as former ICANN board of directors
8 Chairman Peter Dengate Thrush—and industry behemoths, including some of the
9 world's largest technology companies, can realistically hope to get their applied-for
10 gTLDs delegated to the Root.

11 **F. ICANN's Power in the Relevant Markets**

12 77. The actions of ICANN and the co-conspirators, described above, have had
13 anticompetitive effects in the international market to act as a gTLD registry with
14 access to the DNS (the "TLD registry market"). The TLD registry market also
15 includes the potential market for gTLD registries with access to the DNS that offer
16 multiple gTLD strings.

17 78. The market to act as a gTLD registry with access to the DNS is a unique and
18 separate market because there is no reasonable substitute for it. The overwhelming
19 majority of Internet users access content online through websites registered with
20 TLDs that have access to the DNS and through e-mail services that are entirely
21 dependent on the DNS. Further, all consumer and commercial Internet
22 connections by default point to the ICANN-controlled DNS such that only TLDs
23 controlled by ICANN are accessible. Put differently, in order for a potential gTLD
24 registry to provide its services to consumers on what is commonly known as the
25 Internet, access to the DNS is necessary. And without access to the DNS—access
26 that is controlled by ICANN and the co-conspirators—a potential gTLD registry
27 cannot enter the market to create and operate new gTLDs on the Internet despite
28 consumer demand for new, unique gTLDs.

1 79. In addition, the actions of ICANN and the co-conspirators have had
2 anticompetitive effects in the international market for domain names. Content
3 creators and other consumers that purchase domain names are limited to “shopping”
4 for second-level domain names because they effectively have no choice among the
5 few available gTLDs. But absent ICANN’s anticompetitive acts, there would exist
6 separate markets for both the selection of TLDs *and* for second-level domains.
7 Consumers recognize this and are beginning to demand more choice in gTLDs and,
8 in particular, more expressive options. ICANN and the co-conspirators, however,
9 continue to dictate the supply of TLDs, with resulting anticompetitive effects in the
10 market for domain names.

11 80. Finally, the actions of ICANN and the co-conspirators have had
12 anticompetitive effects in the market for blocking or defensive registrations
13 services. ICANN’s and the co-conspirator’s current business model thrives on
14 permitting a select group of TLD registries to extract monopoly rents in the market
15 for defensive registrations by granting each TLD registry the exclusive right to
16 operate a given TLD. In order for content creators and trademark owners to protect
17 their brand and/or marks, they must “defensively” register with multiple TLDs or
18 risk that their brand and/or mark could become diluted, confused with other
19 marks/content, or associated with something undesirable. ICANN and the co-
20 conspirators permit some TLD registries to do essentially nothing but extract profit.
21 There is no need for these TLD registries to provide services because a
22 “defensively” registered website is not intended to be actively run by the content
23 creator; the sole reason to defensively register is to protect a brand and/or mark.
24 Further, even though a TLD registry may operate a TLD for which there is little
25 demand, such as .biz, it can still reap monopoly profits by forcing content creator to
26 register with that TLD or risk harm to their brand and/or mark. Because ICANN
27 and the co-conspirators control the supply of TLDs, they prevent other players from
28

1 entering the market and offering a different models for brand and trademark
2 protection.

3 **G. ICANN Is Seeking to Delegate TLDs in Violation of name.space's**
4 **Trademark Rights.**

5 81. name.space has originated at least 482 gTLDs, which it has been using in
6 commerce to promote name.space's services continuously since 1996. A list of the
7 482 gTLDs belonging to name.space is attached as Exhibit B.

8 82. name.space has been using the 482 gTLDs at issue to promote name.space
9 by making them available for registration and resolution, among other services, to
10 those users who choose to operate on name.space's network. Those users, as a
11 result, identify and associate those gTLDs with name.space and its services, and
12 name.space has trademark rights in those gTLDs.

13 83. While the U.S. Patent and Trademark Office ("USPTO") regards TLDs as
14 generally serving no source-indicating function, the USPTO has recognized that
15 "[a]s the number of available TLDs is increased by the Internet Corporation for
16 Assigned Names and Numbers ("ICANN"), or if the nature of new TLDs changes,
17 the examining attorney must consider any potential source-indicating function of
18 the TLD and introduce evidence as to the significance of the TLD." The USPTO
19 has thus explicitly recognized that TLDs could, in fact, serve source-indicating
20 functions.

21 84. The USPTO's prior stance on the function of TLDs as generally not being
22 source indicating is a relic of an essentially exclusive ".com" era, which is rapidly
23 coming to an end. In other words, using the USPTO's logic, if a brand owner has a
24 trademarked name, the trademark covers both "brand" and "brand.com," because
25 .com does not add any source indicating function, it is merely the common parlance
26 for a company's website. Today, however, a brand owner can go to name.space
27 and register "brand.now" or "brand.power," or a competitor or commentator can
28 register "brand.sucks"—all recognizable as name.space's gTLDs. While ".com"

1 still dominates the gTLD market, it is by no means the only possible gTLD.

2 Notwithstanding the hurdles to TLD competition created by ICANN, name.space
3 uses its trademarked gTLDs to compete with other registries in the gTLD market.

4 85. Regardless of the USPTO's position on federal trademark registration for
5 TLDs—which notably is at odds with policies of other countries—name.space has
6 acquired common law trademark rights in its gTLDs.

7 86. Accordingly, name.space's 482 gTLDs—such as .now, .power, .space and
8 .sucks, to name a few—would be infringed by competing gTLDs delegated under
9 the same name.

10 87. Indeed, applicants in the 2012 Application Round have applied for TLDs that
11 are among the 482 gTLDs that name.space has operated and promoted continuously
12 since 1996 and in which name.space has exclusive trademark rights.

13 88. On June 13, 2012, ICANN announced that applications had been filed to
14 have 189 gTLDs that have resolved on the name.space network continuously since
15 1996 delegated on the DNS. The list of gTLDs that were applied for in the 2012
16 Application Round and that are currently being operated and promoted by
17 name.space on the name.space network include: .art, .blog, .book, .casino, .design,
18 .home, .inc, .movie, .shop and .sucks. A complete list is attached hereto as
19 Exhibit C.

20 89. Upon information and belief, ICANN intends to delegate certain of these
21 gTLDs to 2012 applicants, in violation of name.space's trademark rights.

22 90. ICANN's refusal to delegate name.space's gTLDs to the DNS under its 2000
23 Application has enabled and induced 2012 applicants to apply for delegation of
24 those gTLDs as part of the 2012 Application Round. Without ICANN's consent
25 and support, those 2012 applicants would be unable to apply for and receive
26 delegation of name.space's trademarked gTLDs. ICANN in turn receives
27 substantial application fees from these applicants and benefits from any prospective
28 infringement.

1 91. Moreover, name.space currently provides services to websites and various
2 network services in operation on the Internet that use domains under its gTLDs.
3 Any delegation by ICANN of those gTLDs to others will therefore cause disruption
4 to name.space's existing services and to the content on its network, not to mention
5 confusion as to where each gTLD in conflict resolves.

6 92. name.space has notified ICANN of the existence of this potential conflict and
7 disruption, and about name.space's existing and prospective contractual
8 relationships with its customers regarding name.space's gTLDs. As a result,
9 ICANN is well aware of the disruption that its actions have caused and will cause.

10 93. Given name.space's priority in first establishing those gTLDs and providing
11 services thereto, any conflicting delegation by ICANN would amount to
12 interference with name.space's services and its relationships with existing and
13 prospective customers.

14 **FIRST CLAIM FOR RELIEF**

15 **(Contract, Combination or Conspiracy in Restraint of Trade under Section 1**
16 **of the Sherman Antitrust Act, 15 U.S.C. § 1)**

17 94. Plaintiff hereby realleges and incorporates by reference as though fully set
18 forth herein each and every allegation in the paragraphs above.

19 95. ICANN has entered into a conspiracy that includes current and former
20 members of ICANN's board of directors, Verisign, Afilias and the select few other
21 companies that operate as TLD registries (the "co-conspirators").

22 96. The conspiracy that exists between ICANN, the co-conspirators, and the
23 current TLD registries exists, in part, because members of ICANN's board of
24 directors have known, vested interests in the economic performance of the TLD
25 registries. By way of example, and as set forth above, a "revolving door" exists
26 where members of ICANN's board of directors leave ICANN to work for a TLD
27 registry and vice versa.
28

1 97. ICANN and the co-conspirators have worked in concert to structure the 2012
2 Application Round to ensure that the current TLD registries continue to dominate
3 the TLD registry market and to deter other potential market entrants, for example,
4 by charging a prohibitively high fee to submit an application.

5 98. By and through this conspiracy, ICANN and the TLD registries intend to
6 limit competition to the TLD registry market in order to retain their dominant
7 market positions. In addition, ICANN has precluded the creation of a market for
8 the sale of registrations of multiple TLD strings.

9 99. As a result of ICANN's conspiracy, consumers have few choices in the
10 market for domain names, and, in particular, they have virtually no choices for
11 "expressive" TLDs, such as those offered by name.space.

12 100. Another result of ICANN's conspiracy is that the price of registering a TLD
13 is artificially high. Additionally, content producers must spend enormous amounts
14 of money to "defensively" register domain names under separate TLDs to protect
15 their brands.

16 101. Further, ICANN has conspired to administer the DNS in a way that prevents
17 name.space's business model from entering the international market operation as a
18 TLD registry.

19 102. By and through this conspiracy, ICANN imposed rules in the 2012
20 Application Round that prevent name.space's business model from competing as a
21 TLD registry.

22 103. There is no legal, business or technological rationale for the rules imposed by
23 ICANN in its administration of the DNS or in the 2012 Application Round. In fact,
24 on information and belief, ICANN could easily "interconnect" name.space and
25 other networks to ICANN's DNS, which would dramatically increase competition
26 in the relevant markets.

27 104. name.space has spent over sixteen years developing a business plan to serve
28 the needs of domain name registrants. By making that business approach

1 impossible—to the benefit of ICANN and its co-conspirators—name.space was
2 precluded from entering and competing in this market.

3 105. Because of ICANN's conspiracy, name.space has lost millions of dollars in
4 potential revenue.

5 SECOND CLAIM FOR RELIEF

6 **(Monopolization under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2)**

7 106. Plaintiff hereby realleges and incorporates by reference as though fully set
8 forth herein each and every allegation in the paragraphs above.

9 107. ICANN controls access to the Root—it is the sole and exclusive authority in
10 charge of the DNS. By managing the DNS and controlling access to the Root,
11 ICANN effectively controls access to the public Internet.

12 108. It is not reasonable or practical to duplicate management of the DNS.

13 109. Through its exclusive authority to manage the DNS, ICANN is the sole entity
14 that determines whether to admit new TLDs into the DNS by allowing TLD
15 registries access to the Root. ICANN alone has the power to determine what
16 companies will operate as registries for TLDs that are universally resolvable on the
17 public Internet.

18 110. No federal agency has the power to compel ICANN to provide TLD
19 registries with access to the Root, or to compel ICANN to award private companies
20 with contracts to operate as TLD registries.

21 111. Absent access to the Root, it is impossible for a potential TLD registry to
22 enter the TLD market.

23 112. ICANN uses its control over access to the Root in order to eliminate
24 competition from the relevant markets.

25 113. Specifically, ICANN's control over access to the Root has, and continues to
26 have, the effect of preventing name.space from competing in the TLD registry
27 market. Indeed, ICANN's actions, as set forth above, indicate that it has structured
28

1 the 2012 Application Round to prevent name.space from competing in the TLD
2 registry market.

3 114. Upon information and belief, ICANN has restricted, and continues to restrict,
4 access to the Root in order to enrich current and former members of the ICANN
5 board of directors that have close ties with the extremely small number of TLD
6 registries that currently have access to the Root.

7 **THIRD CLAIM FOR RELIEF**

8 **(Unlawful Restraint of Trade and Conspiracy in Restraint of Trade Under the**
9 **Cartwright Act, California Business and Professions Code §§ 16720 et seq.)**

10 115. Plaintiff hereby realleges and incorporates by reference as though fully set
11 forth herein each and every allegation in the paragraphs above.

12 116. ICANN and the co-conspirators have conspired to and acted in concert
13 unlawfully to restrain and eliminate competition in the relevant markets, as
14 described above in paragraphs 94-105, in violation of the Cartwright Act, California
15 Business & Professions Code sections 16720 *et seq.*

16 117. Because of ICANN's and the co-conspirator's unlawful actions under the
17 Cartwright Act, name.space has lost millions of dollars of potential revenue.

18 118. Under this claim for relief, name.space is entitled to recovery of its attorneys'
19 fees and costs under California Business and Professions Code Section 16750(a).

20 **FOURTH CLAIM FOR RELIEF**

21 **(Unfair Competition and False Designation of Origin under Section 43 of the**
22 **Lanham Act, 15 U.S.C. § 1125(a))**

23 119. Plaintiff hereby realleges and incorporates by reference as though fully set
24 forth herein each and every allegation in the paragraphs above.

25 120. Since 1996, name.space has operated and promoted, and continues to operate
26 and promote, 482 gTLDs in commerce through its own network. A list of these
27 482 gTLDs is attached hereto as Exhibit B.

1 121. name.space has rights in its inherently distinctive gTLDs in connection with
2 its operation and promotion of a TLD registry and related services. These rights
3 predate ICANN and the 2012 Application Round.

4 122. Since at least 1996, name.space has promoted and marketed its TLD registry
5 services in the United States using the gTLD trademarks. name.space has expended
6 substantial sums of money to build, maintain and enhance the reputation of its
7 registry services.

8 123. ICANN's willingness to allow competing TLD registries to use the identical
9 gTLDs in commerce on the ICANN-controlled DNS, in exchange for substantial
10 fees that these registries pay to ICANN for such use, is likely to cause confusion as
11 to the origin of these gTLDs and is likely to cause consumers to believe that these
12 gTLDs are associated with name.space's competitors, rather than with name.space,
13 and/or that there is a relationship between name.space and ICANN or name.space
14 and its competitors.

15 124. ICANN's actions complained of herein are likely to cause confusion, mistake
16 or deception among consumers as to an affiliation, connection or association
17 between name.space and its gTLDs and name.space's competitors and their
18 identical gTLDs, in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
19 § 1125(a).

20 125. Alternatively and in addition, ICANN's exclusive control over which TLDs
21 are delegated to the DNS, as well as its intentional inducement of prospective TLD
22 registries to use name.space's gTLDs, without name.space's consent, in connection
23 with TLD registry services, constitutes contributory infringement in violation of
24 Section § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

25 126. Alternatively and in addition, ICANN's symbiotic partnership with
26 competing TLD registries in its willingness to delegate infringing TLDs to the DNS
27 in exchange for substantial application fees subjects ICANN to vicarious liability
28 under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

1 127. ICANN's unauthorized conduct has deprived and will continue to deprive
2 name.space of the ability to control its gTLDs and consumers' perception with
3 regard to those gTLDs.

4 128. Allowing prospective domain name registries, including name.space's
5 competitors, to apply for the unauthorized use of name.space's gTLDs on the
6 ICANN-controlled DNS has enabled and will continue to enable ICANN to earn
7 profits to which it is not in equity or good conscience entitled and has unjustly
8 enriched ICANN at name.space's expense, all to ICANN's profit and name.space's
9 detriment.

10 129. Because ICANN has refused to cease its infringing and unlawful conduct
11 despite repeated requests by name.space, ICANN has acted willfully.

12 130. As a direct and proximate result of these acts, ICANN has profited and will
13 continue to profit from the strength of name.space's gTLD trademarks, and
14 name.space has been and will continue to be damaged by ICANN's acts, all in an
15 amount to be determined at trial.

16 131. As a result of ICANN's conduct, name.space has suffered and/or will suffer
17 substantial damage and irreparable harm, loss and injury to its gTLD trademarks
18 and to name.space's business and goodwill, constituting an injury for which
19 name.space has no adequate remedy at law. Unless this Court enjoins ICANN's
20 conduct, name.space will continue to suffer irreparable harm.

21 **FIFTH CLAIM FOR RELIEF**

22 **(Common Law Trademark Infringement)**

23 132. Plaintiff hereby realleges and incorporates by reference as though fully set
24 forth herein each and every allegation in the paragraphs above.

25 133. Since 1996, name.space has operated and promoted, and continues to operate
26 and promote, 482 gTLDs in commerce through its own network. A list of these
27 482 gTLDs is attached hereto as Exhibit B.
28

1 134. name.space has common law rights in the inherently distinctive gTLDs used
2 in connection with its operation and promotion of TLD registry services. These
3 rights predate any other use of these gTLDs in connection with TLD registry
4 services.

5 135. Since at least 1996, name.space has promoted and marketed name.space's
6 TLD registry services in the United States using these gTLD trademarks.
7 name.space has expended substantial sums of money to build, maintain and
8 enhance the reputation of its registry services.

9 136. ICANN's willingness to allow competing TLD registries to use the identical
10 gTLDs in commerce on the ICANN-controlled DNS, in exchange for substantial
11 fees that these registries pay to ICANN for such use, is likely to cause confusion as
12 to the origin of these gTLDs and is likely to cause consumers to believe that these
13 gTLDs are associated with name.space's competitors, rather than with name.space,
14 and/or that there is a relationship between name.space and ICANN or name.space
15 and its competitors, and thus constitutes common law trademark infringement.

16 137. Alternatively and in addition, ICANN's exclusive control over which TLDs
17 are delegated to the DNS, as well as its intentional inducement of prospective TLD
18 registries to use name.space's gTLDs, without name.space's consent, in connection
19 with TLD registry services, constitutes contributory trademark infringement.

20 138. Alternatively and in addition, ICANN's symbiotic partnership with
21 competing TLD registries in its willingness to delegate infringing TLDs to the DNS
22 in exchange for substantial application fees subjects ICANN to vicarious liability
23 for trademark infringement.

24 139. ICANN's unauthorized conduct has deprived and will continue to deprive
25 name.space of the ability to control its gTLDs and consumers' perception with
26 regard to those gTLDs.

27 140. Allowing prospective domain name registries, including name.space's
28 competitors, to apply for the unauthorized use of name.space's gTLDs on the

1 ICANN-controlled DNS has enabled and will continue to enable ICANN to earn
2 profits to which it is not in equity or good conscience entitled and has unjustly
3 enriched ICANN at name.space's expense, all to ICANN's profit and name.space's
4 detriment.

5 141. Because ICANN has refused to cease its infringing and unlawful conduct
6 despite repeated requests by name.space, ICANN has acted willfully.

7 142. As a direct and proximate result of these acts, ICANN has profited and will
8 continue to profit from the strength of name.space's gTLD trademarks, and
9 name.space has been and will continue to be damaged by ICANN's acts, all in an
10 amount to be determined at trial.

11 143. As a result of ICANN's conduct, name.space has suffered and/or will suffer
12 substantial damage and irreparable harm, loss and injury to its gTLD trademarks
13 and to name.space's business and goodwill, constituting an injury for which
14 name.space has no adequate remedy at law. Unless this Court enjoins ICANN's
15 conduct, name.space will continue to suffer irreparable harm.

16 **SIXTH CLAIM FOR RELIEF**

17 **(Unfair Competition under California Business and Professions Code § 17200)**

18 144. Plaintiff hereby realleges and incorporates by reference as though fully set
19 forth herein each and every allegation in the paragraphs above.

20 145. As set forth above, ICANN's conduct, including the manner in which it
21 structured the 2012 Application Round, constitutes an unlawful business act or
22 practice in that it violates Federal antitrust laws as set forth in Sections 1 and 2 of
23 the Sherman Act, as well as Section 43(a) of the Lanham Act and common law
24 rights. In particular:

- 25 (a) ICANN has violated Section 1 of the Sherman Act by conspiring to
26 limit competition to the market for the sale of TLDs and by administering
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1 the DNS in a way that prevents certain business models from competing as
2 TLD registries;

3 (b) ICANN has violated Section 2 of the Sherman Act by monopolizing
4 the Root and using its control over access to the Root to eliminate
5 competition from the market;

6 (c) ICANN has violated Section 43(a) of the Lanham Act and common
7 law trademark rights by allowing name.space's competitors to use on the
8 ICANN-controlled DNS the gTLDs that name.space originated and has
9 operated and promoted since 1996, in exchange for substantial fees that
10 these competitors pay to ICANN for such use, which is likely to cause
11 confusion as to the origin of these gTLDs and is likely to cause consumers
12 to believe that these gTLDs are associated with name.space's competitors,
13 rather than with name.space, and/or that there is a relationship between
14 name.space and ICANN or name.space and its competitors.

15 146. In addition, ICANN's business acts, including but not limited to the way in
16 which ICANN erected financial and administrative barriers to entry in the 2012
17 Application Round, constitute unfair business acts or practices and illustrate a
18 desire to exclude potential market entrants, and in particular name.space, from
19 operating as a TLD registry. The conduct alleged herein threatens an incipient
20 violation of the antitrust laws. The conduct alleged herein also violates the policy
21 or spirit of the antitrust laws because its effects are comparable to or the same as a
22 violation of the law, and it otherwise significantly threatens or harms consumers
23 and harms competition.

24 147. As further set forth above, ICANN's conduct in allowing name.space's
25 competitors to use on the ICANN-controlled DNS the gTLDs that name.space
26 originated and has operated and promoted since 1996, in exchange for substantial
27 fees that these competitors pay to ICANN for such use, constitutes a deceptive
28 business practice because such practice is likely to deceive a reasonable consumer

1 as to the origin of these gTLDs and as to whether these gTLDs are associated with
2 name.space's competitors rather than with name.space, as well as to deceive a
3 reasonable consumer as to the relationship between name.space and ICANN or
4 name.space and its competitors.

5 148. ICANN's unlawful, unfair and/or deceptive business practices have caused,
6 and will continue to cause, injury in fact to name.space and loss of money or
7 property in an amount to be determined at trial.

8 149. In addition, ICANN's unlawful, unfair and/or deceptive business practices
9 have caused, and unless restrained and enjoined by this Court, will continue to
10 cause irreparable harm, loss and injury to name.space for which name.space has no
11 adequate remedy at law.

12 **SEVENTH CLAIM FOR RELIEF**

13 **(Common Law Unfair Competition)**

14 150. Plaintiff hereby realleges and incorporates by reference as though fully set
15 forth herein each and every allegation in the paragraphs above.

16 151. Since 1996, name.space has invested substantial time, skill and money in
17 developing and promoting the TLDs that name.space operates, promotes and
18 services on the name.space network.

19 152. ICANN has exclusive control over whether name.space's gTLDs are
20 delegated to the Root and therefore available to be accessed through the public
21 Internet.

22 153. Rather than delegate name.space's gTLDs to the Root pursuant to
23 name.space's 2000 Application, ICANN has instead allowed those gTLDs to be
24 controlled by any third party willing to pay \$185,000 to ICANN, notwithstanding
25 the time and effort name.space has invested in these gTLDs since 1996.

26 154. In doing so, ICANN has effectively misappropriated name.space's gTLDs at
27 little or no cost, and without name.space's authorization or consent.
28

1 155. To the contrary, name.space has explicitly notified ICANN that the 482
2 gTLDs that name.space originated and has operated and promoted for over fifteen
3 years were the exclusive property of name.space.

4 156. Upon information and belief, ICANN has received substantial application
5 fees from third-parties for ICANN to delegate name.space's gTLDs to the Root, to
6 be controlled by those third parties. ICANN should be ordered to account for and
7 pay over to name.space all gains, profits and advantages derived by ICANN from
8 the acts complained of herein.

9 157. The aforesaid acts have also caused, and are likely to continue to cause,
10 injury to the public and to name.space's sales and business reputation.

11 158. ICANN's aforesaid acts have caused, and will continue to cause, damage to
12 name.space in an amount to be determined at trial and, unless and until restrained
13 and enjoined by this Court, will continue to cause irreparable harm, loss and injury
14 to name.space for which name.space has no adequate remedy at law.

15 **EIGHTH CLAIM FOR RELIEF**

16 **(Tortious Interference with Contract)**

17 159. Plaintiff hereby realleges and incorporates by reference as though fully set
18 forth herein each and every allegation in the paragraphs above.

19 160. name.space maintains contractual relationships with its customers, who
20 purchase name.space's services, including the ability to register a domain name on
21 name.space's network using any of the 482 gTLDs that name.space operates and
22 promotes.

23 161. Upon information and belief, ICANN knows of name.space's contracts with
24 its customers to provide and manage domain names that resolve on name.space's
25 network.

26 162. ICANN has intentionally and knowingly interfered with name.space's
27 existing customer contracts by permitting prospective TLD registries, including
28

1 name.space's competitors, to apply for delegation to the DNS of the same gTLDs
2 that are the subject of name.space's existing customer contracts. Any delegation of
3 name.space's gTLDs to other TLD registries by ICANN will result in the same
4 gTLD being operated on both the ICANN-controlled DNS *and* name.space's
5 network.

6 163. Accepting such applications—not to mention granting any such
7 applications—has disrupted and interfered with, and will continue to disrupt and
8 interfere with, name.space's ability to fulfill its contractual obligations and provide
9 content and services to its customers.

10 164. name.space has been damaged by ICANN's intentional interference in an
11 amount to be determined at trial.

12 165. In addition, ICANN should be enjoined from delegating to the DNS any of
13 the 482 gTLDs that name.space originated and currently operates and which are the
14 subject of name.space's existing customer contracts, or name.space will suffer harm
15 for which there is no adequate remedy at law.

16 **NINTH CLAIM FOR RELIEF**

17 **(Tortious Interference with Prospective Economic Advantage)**

18 166. Plaintiff hereby realleges and incorporates by reference as though fully set
19 forth herein each and every allegation in the paragraphs above.

20 167. name.space maintains relationships with prospective customers to provide
21 name.space's services, using any of the 482 gTLDs that name.space operates and
22 promotes, once those gTLDs have been delegated to the Root. These relationships
23 are likely to provide future economic benefit to name.space.

24 168. Upon information and belief, ICANN knows of name.space's relationships
25 with its prospective customers to provide and manage domain names that resolve
26 on the Root.

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1 169. Knowing of name.space's relationships with its customers—and the
2 possibility that name.space could attract even more customers if allowed access to
3 the Root—ICANN wrongfully and intentionally structured the 2012 Application
4 Round to include significant financial and administrative hurdles designed to
5 exclude name.space from the market for TLDs on the Root.

6 170. As a result, ICANN has interfered, and threatens to continue to interfere,
7 with name.space's existing and prospective customers by denying name.space
8 access to the Root.

9 171. ICANN's interference is the proximate cause of name.space's inability to
10 offer its catalog of TLDs on the public Internet resulting damages to name.space in
11 an amount to be determined at trial.

12 172. In addition, ICANN should be enjoined from delegating to the ICANN-
13 controlled DNS any of the 482 gTLDs that name.space originated and continues to
14 operate and which are the subject of name.space's existing and prospective
15 economic relationships, or name.space will suffer harm for which there is no
16 adequate remedy at law.

17 **PRAYER FOR RELIEF**

18 WHEREFORE name.space prays for judgment as follows:

19 A. Declaring that ICANN is liable for: violation of Sections 1 and 2 of the
20 Sherman Act, 15 U.S.C. §§ 1 and 2; violation of the Cartwright Act, California
21 Business and Professions Code Sections 16720 *et seq.*; violation of Section 43 of
22 the Lanham Act, 15 U.S.C. § 1125(a); common law trademark infringement;
23 violation of the California Unfair Competition Act, California Business and
24 Professions Code Sections 17200 *et seq.*; common law unfair competition; tortious
25 interference with contract; and tortious interference with prospective economic
26 advantage;

1 B. Awarding damages in favor of name.space against ICANN for all
2 damages sustained as a result of ICANN's wrongdoing, including prejudgment and
3 post-judgment interest, in an amount to be proven at trial;

4 C. Awarding injunctive relief in favor of name.space against ICANN as
5 more particularly averred above;

6 D. Awarding name.space reasonable costs and expenses incurred in this
7 action, including attorneys' fees and costs; and

8 E. Such other legal and equitable relief as may be available and as the
9 Court deems just and proper.

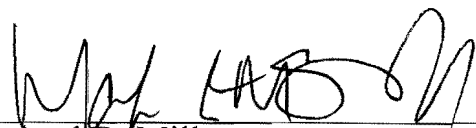
10 **JURY DEMAND**

11 Plaintiff name.space, Inc. hereby demands a trial by jury on all issues so
12 triable.

13 Dated: October 10, 2012

MORRISON & FOERSTER LLP

14
15
16 By: _____


Michael B. Miller
Craig B. Whitney
Adam J. Hunt
Mark R. McDonald

Attorneys for Plaintiff
NAME.SPACE, INC.

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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

ORIGINAL

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) name.space, Inc.	DEFENDANTS Internet Corporation for Assigned Names and Numbers
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Morrison & Foerster LLP 555 West Fifth Street, Suite 3500, Los Angeles CA 90013 (213) 892-5200	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Sherman Antitrust Act, 15 U.S.C. Sections 1, 2; Lanham Act, 15 U.S.C. Section 1125(a)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor. Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV12-8676

FOR OFFICE USE ONLY: Case Number _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New York

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X SIGNATURE OF ATTORNEY (OR PRO PER): *[Handwritten Signature]* Date 10/10/12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended, plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))