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15 ASSIGNED NAMES AND NUMBERS

COPY

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Superior Court of California
County of Los Angeles

JAN 25 2016

Sherri R. Carter, Executive Officer/Clerk
By: Jennifer De Luna, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 DOTCONNECTAFRICA TRUST., a
14 California corporation,

15 Plaintiff,

16 v.

17 INTERNET CORPORATION FOR
18 ASSIGNED NAMES AND NUMBERS

19 Defendant.

CASE NO. BC607494

SPECIAL APPEARANCE OF
INTERNET CORPORATION OF
ASSIGNED NAMES AND NUMBERS
IN OPPOSITION TO
DOTCONNECTAFRICA TRUST'S
EX PARTE MOTION FOR A
TEMPORARY RESTRAINING
ORDER.

Date: January 25, 2016
Time: 8:30 a.m.
Dept: 85

Complaint Filed: January 20, 2016

1 Defendant Internet Corporation for Assigned Names and Numbers (“ICANN”) has not yet
2 been served with a summons and complaint or otherwise appeared in this case, but makes a
3 special appearance in opposition to Plaintiff DotConnectAfrica Trust’s (“DCA”) *Ex Parte* Motion
4 for a Temporary Restraining Order (“TRO Motion”). ICANN opposes DCA’s TRO Motion on
5 the following grounds.

6 First, DCA’s purported “notice” of the instant TRO Motion is legally improper. Plaintiff
7 DCA filed its complaint in this case on January 20, 2015, but has not effectuated service on
8 ICANN. Nonetheless, at 8:06 a.m. yesterday (Sunday) morning, DCA’s counsel sent an email to
9 ICANN’s counsel indicating that he would be asking the Court for a hearing this morning on
10 DCA’s TRO Motion. In his email, counsel stated that DCA was moving for *ex parte* relief
11 pursuant to California Rule of Court 5.151(e). This rule applies to family law matters, which the
12 instant action is not.

13 ICANN’s counsel responded to DCA’s counsel’s email, explaining that if that email was
14 intended to be “notice” of its TRO Motion, it was wholly improper. DCA’s counsel responded
15 that he was instead moving for relief pursuant to California Rule of Court 3.1204(c) and claimed
16 that shorter notice was justified by exceptional circumstances. However, DCA’s counsel failed to
17 provide sufficient explanation of the alleged “exceptional circumstances” and has not made any
18 affirmative factual showing by way of declaration, as is required. *See* Cal. R. Ct. 3.1202(c).
19 Indeed, as of 6:00 a.m. this morning (the time that this opposition was finished), DCA had failed
20 to even provide, much less serve, ICANN with any papers in support of its TRO Motion (despite
21 promising to do so the day before).

22 Second, no emergency exists justifying an *ex parte* TRO motion. The key action which
23 DCA seeks to enjoin—the delegation of the .AFRICA generic Top Level Domain¹ to another

24 ¹ ICANN is a California non-profit public benefit corporation. Pursuant to a series of
25 agreements over the years with the United States Department of Commerce, ICANN oversees the
26 Internet’s domain name system (“DNS”) on behalf of the Internet community, ensuring the
27 DNS’s continued security, stability, and integrity. The function of the DNS is to convert numeric
28 IP addresses into easily-remembered domain names that permit users to find specific websites,
such as “USCOURTS.GOV.” and “ICANN.ORG.” The “.GOV” and “.ORG” in these addresses,
just like more well-known “.COM,” are referred to as top-level domains, or TLDs. Throughout
its history, ICANN has sought to expand the number of the Internet’s TLDs in order to promote
consumer choice and competition. To that end, in 2012, ICANN launched the “New gTLD

1 party—is not immediately imminent. At present, DCA’s application is still being evaluated to
2 determine whether DCA can garner the necessary support required by the new gTLD evaluation
3 process. In particular, in the summer of 2015, DCA failed one of the required application
4 reviews, a Geographic Names Review that verifies that applicants for gTLDs representing
5 geographic regions (such as .AFRICA) have the support of 60% of the nations in the region.
6 After failing its Geographic Names Review, DCA elected to pursue what is called Extended
7 Evaluation, during which DCA is granted additional time to obtain the requisite evidence of
8 support. DCA now has until January 28, 2016 – later this week – to provide the Geographic
9 Names Review Panel with additional evidence demonstrating that it has the requisite support for
10 its application. After DCA submits whatever additional evidence it wishes, the panel will assess
11 that evidence and determine whether DCA’s application passes Geographic Names Review, a
12 process that could take several weeks. Then, if DCA passes Extended Evaluation, further review
13 will be needed, taking even more time.

14 Moreover, even assuming that DCA fails the Geographic Names Panel’s Extended
15 Evaluation, and .AFRICA is delegated to another entity, this non-imminent “emergency” is
16 entirely of DCA’s own making—DCA’s application has been in Extended Evaluation for nearly
17 three months (and in fact DCA has had years to generate the requisite support within Africa), yet
18 DCA chose to wait until now to move for a TRO. DCA’s “emergency” is clearly of its own
19 making.

20 As a result, there is no conceivable emergency here, much less “extraordinary
21 circumstances” warranting emergency relief based on improper notice in a situation where the
22 defendant, ICANN, has not even been served with the complaint. Given the complete lack of
23 emergency, there is no reason why DCA should not be required to seek its desired relief through a
24 preliminary injunction motion or, at the very least, a regularly noticed TRO motion, giving
25 ICANN a reasonable opportunity to respond to DCA’s motion on the merits (particularly where,

26 (continued...)

27
28 Program,” which aims to add thousands of new generic, or “gTLDs,” to the Internet, such as the .AFRICA gTLD DCA seeks to operate.

1 as here, DCA has not presented ICANN with any papers in support of its request in advance of
2 the hearing).

3 Given that opportunity, ICANN would demonstrate that DCA is not entitled to any relief,
4 emergency or otherwise. DCA, a sophisticated, well-funded business entity, signed a release and
5 a covenant not to sue when it submitted its application for .AFRICA. That release covers any
6 disputes arising out of the evaluation of DCA's application and clearly bars DCA's purported
7 claims in this case. For this reason alone (although there are many more), DCA has no possibility
8 of success on the merits, and no entitlement to the relief it seeks. Attached to this opposition as
9 Exhibit A is a copy of a letter Jones Day sent to DCA's counsel on January 22, 2016, that
10 summarizes why DCA cannot pursue its lawsuit in this (or any) Court.

11 Dated: January 25, 2015

JONES DAY

12
13 By: K. Wallace
14 Kate Wallace

15 Counsel for Defendant
16 INTERNET CORPORATION FOR
17 ASSIGNED NAMES AND NUMBERS

18 NAI-1500788133v2
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EXHIBIT A

JONES DAY

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JLEVEE@JONESDAY.COM

January 22, 2016

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Brandon Schantz, Esq.
Schantz Law Firm
30882 Rivera Place
Laguna Niguel, CA 92677
bschantz@schantzlegal.com

Re: *DotConnectAfrica Trust v. Internet Corporation for Assigned Names and Numbers*
Los Angeles Superior Court Case No. BC607494

Dear Mr. Schantz:

Jones Day represents the Internet Corporation for Assigned Names and Numbers ("ICANN"). Your client DotConnectAfrica Trust ("DCA") has named ICANN as a defendant in the above-entitled lawsuit ("Lawsuit"). Although ICANN has not been served with process in the Lawsuit and expressly reserves its rights to challenge the claims asserted in the Lawsuit, I am writing to provide you and your client an opportunity to dismiss the Lawsuit.

Beyond the numerous deficiencies in the allegations of the complaint, DCA's entire Lawsuit is barred by the release that DCA accepted and acknowledged as part of its application in the 2012 New gTLD Program to operate the .AFRICA gTLD ("Application"). Specifically, the Terms and Conditions of the Application – available in Module 6 of the New gTLD Applicant Guidebook ("Guidebook"), which is enclosed with this letter for your convenience – provide that:

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

...

ALKHOBAR • AMSTERDAM • ATLANTA • BEIJING • BOSTON • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS
DETROIT • DUBAI • DÜSSELDORF • FRANKFURT • HONG KONG • HOUSTON • IRVINE • JEDDAH • LONDON • LOS ANGELES
MADRID • MEXICO CITY • MIAMI • MILAN • MOSCOW • MUNICH • NEW YORK • PARIS • PERTH • PITTSBURGH • RIYADH
SAN DIEGO • SAN FRANCISCO • SÃO PAULO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

Brandon Schantz, Esq.
January 22, 2016
Page 2

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties [i.e., ICANN's affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents] from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

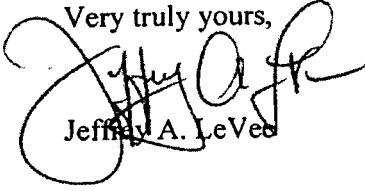
DCA's Lawsuit alleges that it arises out of ICANN's evaluation of DCA's Application, and the Lawsuit is therefore barred by the release contained in Module 6 of the Guidebook. In addition, DCA's filing of this Lawsuit constitutes a breach of the Terms and Conditions of its Application and reflects a failure to conduct the good faith pre-suit investigation required by Section 128.7 of the California Code of Civil Procedure and Rule 11 of the Federal Rules of Civil Procedure. In the event DCA does not immediately dismiss the Lawsuit and forces ICANN to defend the Lawsuit, ICANN will seek sanctions against DCA and you personally pursuant to

JONES DAY

Brandon Schantz, Esq.
January 22, 2016
Page 3

Section 128.7 and/or Rule 11. Further, ICANN will deem DCA in material breach of the Terms and Conditions of its Application, which likely will lead to the cancellation of DCA's Application.

I look forward to hearing from you.

Very truly yours,

Jeffrey A. LeVee

Enclosures

NAI-1500782956v1



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application - Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.