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7 Attorneys for REGISTERFLY.COM, INC. AND UNIFIEDNAMES, INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
11

12 THE INTERNET CORPORATION FOR)
13 ASSIGNED NAMES AND NUMBERS,)

14 Plaintiff,

15 v.

16 REGISTERFLY.COM, INC., and
UNIFIED NAMES, INC. ,

17 Defendants.
18
19

CASE NO. CV 07-2089 R (PLAx)

**DECLARATION OF HEATHER L.
MCCLOSKEY IN SUPPORT OF
RESPONSE TO OSC RE:
CONTEMPT**

DATE: June 12, 2007
TIME: 10:00 a.m.
CTRM.: 8 (Hon. Manuel L. Real)

20 I, Heather L. McCloskey, declare:

21 1. I am an attorney at law duly licensed to practice before this Court and
22 am counsel of record herein for defendants RegisterFly.com, Inc. and
23 UnifiedNames, Inc. Unless otherwise stated I have first-hand personal knowledge
24 of the facts set forth herein and if called as a witness could competently testify
25 thereto.

26 2. On May 31, 2007, I received a complete copy of all audit data then in
27 the possession of RegisterFly and sent an e-mail to ICANN's counsel, Samantha
28 Eisner inviting ICANN to come to my office to review the audit data. Attached

1 hereto as Exhibit 1 is a true and correct copy of my May 31, 2007 e-mail.

2 3. In response to my e-mail, on June 1, 2007, Ms. Eisner requested that
3 we provide a complete copy of the data to her. In an effort to accommodate this
4 request, my office downloaded the data to a dvd, which was then messengered to
5 Ms. Eisner. Attached hereto as Exhibit 2 is a true and correct copy of my e-mail to
6 Ms. Eisner informing her that the dvd was being messengered to her office.

7 4. The data was in a file in linux format, so I was not able to open the file,
8 and would have had to have brought in a different computer system to accommodate
9 the inspection. Therefore, when the copy was made for ICANN, my office was not
10 able to confirm that the dvd was reading correctly.

11 5. When Ms. Eisner informed me that the dvd was not reading, I obtained
12 a link to the data file and provided to her as soon as possible. The functional link
13 was provided on Monday, June 4, 2007. Attached hereto as Exhibit 3 is a true and
14 correct copy of my e-mail sending Ms. Eisner the link to the data file.

15
16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct and that this was executed on the 11th day of June, 2007
18 at Beverly Hills, California.


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21 
22 Heather L. McCloskey
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EXHIBIT 1

Patricia Rojas

From: Heather McCloskey
Sent: Monday, June 11, 2007 6:40 AM
To: Patricia Rojas
Subject: FW: ICANN Audit of RegisterFly Books

From: Heather McCloskey
Sent: Thursday, May 31, 2007 12:38 PM
To: 'Samantha Eisner'; jlevee@JonesDay.com
Cc: Kelly Scott
Subject: ICANN Audit of RegisterFly Books

Ms. Eisner and Mr. LeVee,

I am now in possession of RegisterFly's registration data which is available for ICANN to review and/or audit at any time. Please inform me when you would like to review the data and I will make it available at my office.

Thank you,

Heather McCloskey

Ervin, Cohen & Jessup LLP
9401 Wilshire Blvd, 9th Floor
Beverly Hills, CA 90212-2974
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Direct Fax: 310-887-6853
Email: hmccloskey@ecjlaw.com

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The information contained herein is confidential and privileged attorney-client information or work product intended only for the individual or entity to whom it is addressed. Any unauthorized use, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately.

6/11/2007

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EXHIBIT 2

Patricia Rojas

From: Heather McCloskey
Sent: Monday, June 11, 2007 6:42 AM
To: Patricia Rojas
Subject: FW: ICANN Audit of RegisterFly Books and additional data issues

From: Samantha Eisner [mailto:seisner@JonesDay.com]
Sent: Friday, June 01, 2007 11:28 AM
To: Heather McCloskey
Cc: jleeve@JonesDay.com; Kelly Scott
Subject: Re: ICANN Audit of RegisterFly Books and additional data issues

Ms. McCloskey,

Though we obviously have a disagreement regarding the scope of ICANN's audit rights, ICANN would like to obtain a copy of the registration data you have available. Please have a copy of the data transmitted to my office today. If you require anything to prepare the copy for ICANN, please let me know. In addition, if there are file transmittal issues, please contact me to arrange for courier service to pick up the copy from your office.

In addition, I have been informed of a few data transmittal issues that ICANN requires clarification on. First, ICANN received a data transmission from your client yesterday (May 31, 2007). An MD5 hash accompanied the file, but it did not match the hash generated by ICANN upon receipt. ICANN ran its MD5 hash twice, and both times generated the following hash:
2d9455f694dd269d3da3cb429c887c13 Copy of regfly_escrow_may30.zip. The RegisterFly hash was as follows: HMAC-MD5 -> Copy of regfly_escrow_may30.zip ae9282ce1a8ffa46c1cbeb1b41834c9a. I am still working with ICANN's technical department to determine what may be necessary to correct this issue, but I wanted to bring it to your attention in the event that your client has some ideas for a fix. As you may be aware, the data transmission did not meet the .csv specifications as required in the Court's orders.

Finally, I have been informed that this morning ICANN received 2 files from your client:

downloads601.zip
HMAC-[ALL HASHers] (Base16)-0000601.txt

ICANN is unable to unzip the .zip file (it is potentially corrupted), and cannot determine what these files are. Please provide a description of these files and their contents, and request your client to send a new zip file.

Thank you,

Samantha Eisner
Jones Day
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071
(213) 243-2220
Fax: (213) 243-2539
seisner@JonesDay.com

"Heather McCloskey" <hmcloskey@ECJLAW.COM>

05/31/2007 12:38 PM

To "Samantha Eisner" <seisner@JonesDay.com>, <jleeve@JonesDay.com>
cc "Kelly Scott" <kscott@ECJLAW.COM>
Subject ICANN Audit of RegisterFly Books

6/11/2007

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Ms. Eisner and Mr. LeVee,

I am now in possession of RegisterFly's registration data which is available for ICANN to review and/or audit at any time. Please inform me when you would like to review the data and I will make it available at my office.

Thank you,

Heather
McCloskey

**Ervin, Cohen
& Jessup LLP**

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

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6/11/2007

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EXHIBIT 3

Patricia Rojas

From: Heather McCloskey
Sent: Monday, June 11, 2007 6:38 AM
To: Patricia Rojas
Subject: FW: SendThisFile File Notification

-----Original Message-----

From: Heather McCloskey
Sent: Monday, June 04, 2007 4:58 PM
To: 'Samantha Eisner'
Cc: Kelly Scott
Subject: FW: SendThisFile File Notification

Ms. Eisner,

Attached is a link to the updated file. The expiration of the prior one simply refers to your ability to access the file. If you can access it, it is not expired. I am sure the current version is not expired.

I am working on getting more information about everything that is included in the file. My understanding is that it includes all registrant data, as well as the additional information required. I will confirm this and let you know.

Heather McCloskey
Ervin, Cohen & Jessup LLP
9401 Wilshire Blvd, 9th Floor
Beverly Hills, CA 90212-2974
Phone: 310-281-6349
Direct Fax: 310-887-6853
Email: hmccloskey@ecjlaw.com

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-----Original Message-----

From: files@sendthisfile.com [mailto:files@sendthisfile.com]
Sent: Monday, June 04, 2007 4:35 PM
To: Heather McCloskey
Subject: SendThisFile File Notification

SendThisFile (R) - by SendThisFile, Inc

From: kevin@unifiednames-inc.com
Subject: SendThisFile File Notification
Expires: The file will be removed in 3 days

Click the following link(s) to retrieve your file(s):

private.zip
<http://www8.sendthisfile.com/d.jsp?t=vmrUAXDVPgW5BhZx8UVWq2Vh>

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If the link isn't clickable, copy and paste the link into a browser to download your file.

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PROOF OF SERVICE BY HAND-DELIVERY

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 350 S. Figueroa Street, Suite 299, Los Angeles, California 90071.

On June 11, 2007, I served the document described as **DECLARATION OF HEATHER L. MCCLOSKEY IN SUPPORT OF RESPONSE TO OSC RE: CONTEMPT** on the parties in this action by delivering a true copy thereof enclosed in a sealed envelope addressed as follows:

Jeffrey A. LeVee
Samantha Eisner
Jones Day
555 S. Flower Street, 50th Floor
Los Angeles, CA 90071-2300
Tel: (213) 489-3939
Fax: (213) 243-2539
Attorneys for Plaintiff

I delivered such envelope(s) by hand to the office of the addressee(s).

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

EXECUTED on June 11, 2007 at Beverly Hills, California.

By: *Tim Lawson*

Print: _____