

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

MICHAEL MOORE;)	
RONALD P. GENTRY;)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. : 07-P-1153-W
)	
ENOM, INC. et al.,)	
)	
Defendants.)	

**PLAINTIFFS’ SUPPLEMENTAL STATEMENT OF FACTS AND BRIEF IN
OPPOSITION TO DEFENDANT ICANN’S ARGUMENT THAT THERE IS NO
PERSONAL JURISDICTION OVER ICANN**

COME NOW, Plaintiffs, Ronald P. Gentry and Michael Moore, and file this Statement of Facts and Supplemental Opposition to Defendant ICANN’S argument that Plaintiffs’ claims against it are due to be dismissed because Plaintiffs cannot establish personal jurisdiction over ICANN:

STATEMENT OF FACTS

1. Michael Moore and Ronald P. Gentry believed they had registered one hundred and nine [109] Internet names with one of the ICANN accredited registrars, RegisterFly.com, Inc. However, in this case, RegisterFly.com, Inc. was actually acting as a reseller of domain names for another ICANN accredited registrar, eNom.com.. Plaintiffs had to a separate fee for the registration of each name and, therefore, Plaintiffs had to pay 109 separate fees. Even though the names were registered through ICANN accredited registrars, for each of 109 separate Internet domain names that Plaintiffs registered, Defendant ICANN received a different fee for each of the domain names. Additionally, for each domain name, Plaintiffs had to enter into a

separate agreement. Thus, there were 109 separate instances where the Plaintiffs entered that required them to submit to ICANN's Uniform Dispute Resolution Policy, Domain Transfer Agreement all of ICANN's future policies. (Registry-Registrar Agreement Ex. 1 at paragraph 5.3)(.com Registry Agreement Ex. 2 at paragraphs 7 B; 22). Furthermore, any time an Alabama citizen registers a domain name, Defendant ICANN receives a fee. (*Id.*)

2. After the domain names were registered, RegisterFly.com, Inc. and/or e Nom, Inc. placed a number of charges on Plaintiff, Ronald P. Gentry's, credit card that were unauthorized and fraudulent. Plaintiffs contacted RegisterFly.com, Inc. and complained about the unauthorized charges. (See Complaint).

3. Furthermore, on November 28, 2005, in a support ticket at RegisterFly.com, Inc., Plaintiff, Michael Moore, informed RegisterFly.com, Inc., again, that it was not authorized to place any more charges upon any credit card associated with his account.

4. Despite the prior notice, from November 28, 2005 until January of 2006, RegisterFly.com, Inc. and/or e Nom, Inc. placed further, unauthorized charges on Plaintiffs' credit cards. Once again, Plaintiffs complained about these additional charges and notified that no further chargers were to be placed.

5. On or about January 9, 2006, RegisterFly.com, Inc. and/or eNom, Inc. illegally seized the 109 Internet names that Michael Moore had registered and transferred the domain names into an account owned and maintained by eNom, Inc.

6. Plaintiffs contacted Defendants, including ICANN, regarding this illegal conduct on numerous occasions. (Ex. 6-54). However, nothing was done to remedy the problem.

7. ICANN requires the registry, such as RegisterFly.com, Inc. and/or eNom, Inc., to

force those who have registered domain names with them, such as Plaintiffs here, to agree to participate in the Uniform Dispute Resolution Policy. ICANN also required the registrars to make its domain name registrants agree to a Domain Transfer Agreement. Another provision in the domain name registration agreement made the registrants agree that registration was subject to all of ICANN's current and future policies and specifications.

8. Accordingly, here, there were 109 separate instances where Plaintiffs had to agree to submit any dispute that they had regarding the domain names to a Uniform Dispute Resolution Policy.

9. In addition, Plaintiffs participated in Defendant ICANN's Uniform Dispute Resolution Policy regarding one of the names that was taken from them. (Ex. 53). ICANN considered the merits of Plaintiffs' complaint and rendered a decision with regard to the complaint. (Ex. 54).

ARGUMENT

A. This Court has personal jurisdiction over all Defendants, including ICANN.

Counsel for the Plaintiffs will not repeat the arguments in its previous brief. However, contrary to arguments of ICANN's counsel, this Court has specific, personal jurisdiction over Defendant ICANN. The Due Process clause allows this Court to exercise jurisdiction over ICANN because of the contacts that it had with Alabama in this particular case and, the exercise of jurisdiction over ICANN would not offend traditional notions of fair play and substantial justice. *International Shoe Company, Inc. v. Washington*, 326 U. S. 310 (1945); *Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007); *McGow v. McCurry*, 412 F. 3d. 1207 (11th Cir. 2005). *Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007). Here, Plaintiffs can also establish general, personal jurisdiction because there is a continuous and

systematic contact with Alabama and its citizens. *McGow v. McCurry*, 412 F. 3d. 1207 (11th Cir. 2005). *Sloss Industries Corporation v. Eurisol*, 488 F. 3d. 922 (11th Cir. 2007). Furthermore, according to the 11th Circuit, has previously held that in the event that a defendant's affidavit and the plaintiff's complaint conflict, the district court must construe all reasonable inferences in the favor of the plaintiff. *Morris v. SEE, Inc.*, 843 F. 2d. 489 (11th Cir. 1988) and *Mutual Services Insurance Company v. Frit Industries, Inc.* 358. F. 3d. 1312 (11th Cir. 2004). To conclude, RICO provides for nationwide service of process in private suits. 18 U. S. C. 1965(d). Plaintiffs are in the process of amending their RICO allegations to withstand Defendants' present motions. Accordingly, Defendant ICANN's motion to dismiss based on lack of personal jurisdiction is due to be denied.

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request this Honorable Court issue an order denying Defendants ICANN's Motion to Dismiss based on lack of personal jurisdiction.

Respectfully submitted,

S/ T. Blake Liveoak
T. Blake Liveoak LIV014
Attorney for Plaintiffs

OF COUNSEL:

COLLINS, LIVEOAK & BOYLES, P.C.
2021 Morris Avenue, Suite 200
Birmingham, Alabama 35203
(205) 324-1834
Fax: (205) 324-1846
E-mail: TBL@clbpc.com

CERTIFICATE OF SERVICE

I hereby certify that on September 25th, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing; and I hereby certify that any non-E-filing participants to whom the foregoing is due will have a copy of same placed in the United States mail, first class postage prepaid and properly addressed this same day.

Dylan Black, Esquire
BRADLEY ARANT ROSE & WHITE, LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203-2104

Randy Gainer, Esquire
Fred Burnside, Esquire
BRADLEY ARANT ROSE & WHITE, LLP
Seattle, Washington

Will Hill Tankersly, Esquire
Balch & Bingham, LLP
Post Office Box 366
Birmingham, Alabama 35201

Jeffery A. LeVee, Esquire
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, California 90071

RegisterFly.com, Inc.
623 Egel Roack Avenue
Suite #7
West Orange, NJ 07052

S/ T. Blake Liveoak
OF COUNSEL