1 CHRISTOPHER A. KEELE (#154608)
   SHAYE DIVELEY (#215602)
2 STOEL RIVES LLP
   111 Sutter Street, Suite 700
3 San Francisco, CA 94104
   Telephone:(415) 617-8900
4 Facsimile: (415) 676-3000

   Case assigned to Judge Emilie Elias

5 Attorneys for Plaintiff
   SNAPNAMES.COM INCORPORATED

FILED
LOS ANGELES SUPERIOR COURT

NOV 1 8 2004

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY_____
       J. SUNGA, DEPUTY

6

7   **BY FACSIMILE**

8   SUPERIOR COURT OF THE STATE OF CALIFORNIA

9   COUNTY OF LOS ANGELES

10 SNAPNAMES.COM   Case No.   BC 324782
    INCORPORATED, an Oregon
11 corporation,   COMPLAINT

12   Plaintiff,   (Tortious Interference)   *D.3*

13   v.

14 INTERNET CORPORATION FOR
    ASSIGNED NAMES AND
15 NUMBERS, a California
    corporation,   TRIAL BY JURY DEMANDED

16
              Defendant.
17

18   Plaintiff SnapNames.com, Inc. ("SnapNames") alleges as follows:

19   <u>PARTIES AND VENUE</u>

20   1.   Plaintiff SnapNames is an Oregon corporation with its principal place

21 of business in Oregon.

22   2.   Defendant ICANN is a nonprofit corporation, organized and existing

23 under the laws of the State of California, with its principal office and place of

24 business located in Marina del Rey, California.

25   3.   Venue is proper in this Court pursuant to the Code of Civil Procedure

26 including, without limitation, Section 395.5.

27

28

STOEL RIVES LLP
ATTORNEYS AT LAW
PORTLAND

                                                           COMPLAINT

Portlnd2-4486200.7 0010720-00001

4.   This action arises out of the tortious interference by ICANN's staff with SnapNames' actual and prospective business relations related to a wait listing service to be offered by VeriSign under a license to use SnapNames' technology. The wait listing service, which as more fully detailed below ICANN's staff has wrongfully delayed, is designed to meet market demand for an orderly and reliable, open and transparent, way for Internet domain name registrants to submit a subscription to register a currently registered domain name in the event the current registrant elects not to renew the registration.

THE INTERNET DOMAIN NAME SYSTEM

5.   The Internet is a network of interconnected computers and computer networks. Every computer connected directly to the Internet has unique address. These addresses, which are known as Internet Protocol ("IP") numbers, are necessary for computers to "communicate" with each other over the Internet. An example of an IP number might be: 98.27.241.30.

6.   Because IP numbers can be cumbersome and difficult for Internet users to remember or to use, the IP number system has been overlaid with a more "user-friendly" system of domain names: the Internet domain name system ("DNS"). This overlay associates a unique alphanumeric character string—or domain name—with a specific IP number.

7.   Internet domain names consist of a string of "domains" separated by periods. "Top-level" domains, or "TLDs", are found to the right of the period and include (among others) ".com," ".gov," ".net" and ".biz," which are sometimes referred to as "generic" TLDs (also known as "gTLDs"). Other top-level domains are referred to as country code TLDs (also known as "ccTLDs"), and are represented by two-letter abbreviations for each country, such as ".uk" (United Kingdom) and ".ca" (Canada). For relevant purposes herein, gTLDs are functionally equivalent to ccTLDs. There are approximately 250 top-level

COMPLAINT

OSL RIVES LLP
ATTORNEYS AT LAW
PORTLAND

Portlnd2-4486200.7 0010720-00001

1   domains, which are administered and operated by numerous entities, both in and

2   outside of the United States.

3   8.   "Second-level" domains ("SLDs") are those domains immediately to

4   the left of the top-level domains, such as "uscourts" in the domain name

5   "uscourts.gov." There are over 50 million second-level domains currently

6   registered within the various TLDs.

7   9.   Because domain names are essentially "addresses" that allow

8   computers connected to the Internet to communicate with each other, each domain

9   name must be unique, even if it differs from another domain name by only one

10   character (e.g., "uscourts.com" is different from "uscourt.com" or "us-courts.com").

11   A given domain name, therefore, can be registered to only one entity.

<div align="center">

REGISTRATION OF DOMAIN NAMES ON THE
.COM AND .NET REGISTRIES

</div>

14   10.   VeriSign, Inc. acts as the "registry" for domain names registered in the

15   .com and .net gTLDs in accordance with a written agreement with ICANN. As the

16   "registry" for the .com gTLD, VeriSign maintains the definitive directory, known

17   as a "zone file," that associates registered domain names in this TLD with the

18   corresponding IP numbers of their respective domain name servers. The domain

19   name servers, in turn, direct Internet queries to resources such as websites and

20   email systems.

21   11.   A domain name is created by an individual or organization that

22   registers the domain name and thereby includes it in the registry's master database.

23   The individual or organization that registers a specific domain name is a

24   "registrant." Registrants do not have direct access to the VeriSign registry.

25   Instead, prospective registrants must register domain names through any of the now

26   more than 400 entities located in the United States and throughout the world that

27   are accredited by ICANN as domain name "registrars" for the second-level domain

28   names in the .com and .net gTLD.

1   12.   Registrars provide direct services to registrants and prospective

2   registrants, such as processing domain name registrations. The VeriSign registry

3   has no contractual or other relationship with a registrant, and in fact has no

4   information on or knowledge of who is the registrant of a domain name. Registrars

5   have a contractual relationship with registrants and, for names registered in the

6   .com and .net gTLDs, keep all information as to the registrant.

7   13.   Registering, transferring, and deleting a domain name requires

8   interaction between a registrar and the registry. This interaction is highly structured

9   and automated, and takes place through a Registry Registrar Protocol ("RRP"), or

10   through Extensible Provisioning Protocol ("EPP"). Registry-registrar

11   communications occur over a secure electronic connection. The registry's role is

12   entirely passive and automated—namely it is to process registrars' domain name

13   registration requests on behalf of registrants, comparing those requests against the

14   registry tables of registered domain names to prevent duplicate registrations of the

15   same domain name and registering the domain name in the registry database if it is

16   not already registered.

17   14.   Registrars initiate all changes to the registry database with respect to a

18   particular domain name record by issuing electronic commands to the registry, such

19   as "add," "check," "delete," "transfer," and "renew," all as more fully described in

20   the RRP. VeriSign can register or update domain names in its database only in

21   response to requests from registrars.

22   15.   Registrars submit their customers' ("registrants") registration requests

23   to the applicable TLD registry to determine if a requested domain name is available

24   for registration, i.e., that the domain name is not already registered to someone else.

25   In connection with VeriSign's operation of the registry for the .com and .net

26   gTLDs, if a requested domain name is not already in the registry's database, the

27   registry's computer will record the new domain name, the corresponding IP

28   numbers(s) of associated domain name servers, and the name of the registrar

-4-   COMPLAINT

1 effectuating the registration for the customer-registrant, in its master database. The

2 registration process is then complete.

3   VERISIGN'S OFFER OF A WAIT LISTING SERVICE
                        USING SNAPNAMES' TECHNOLOGY

4

5   16.   In or about December 2001, VeriSign informed ICANN of the details

6 of a proposed Wait Listing Service ("WLS") that VeriSign intended to begin

7 offering. In order to offer WLS, VeriSign executed a License and Development

8 Agreement with SnapNames with an effective date of September 21, 2001 through

9 which VeriSign obtained a license to certain SnapNames technology necessary to

10 implement WLS. At all times material to this dispute, ICANN and competitors of

11 WLS have been aware of the contractual relationship between VeriSign and

12 SnapNames concerning WLS.

13   17.   WLS is designed to meet a market demand for an orderly and reliable,

14 open and transparent, way for domain name registrants, through their selected,

15 participating registrars, to submit a subscription to register a currently registered

16 domain name in the event the current registrant elects not to renew the registration.

17   18.   Using WLS, a prospective domain name registrant, through any of the

18 participating operational ICANN-accredited registrars, could submit a subscription

19 on a first-come, first-served basis for a domain name currently registered in the

20 .com or .net gTLD registry. In the event that a registered domain name in the .com

21 or .net gTLD registry, on which a WLS subscription is placed, is not renewed, and

22 thereby becomes available for creation and registration—and more than 25,000

23 domain names become available in this manner each day—the holder of the WLS

24 subscription would automatically become the registrant of the domain name.

25   19.   If there is no WLS subscription for a domain name in the .com or .net

26 gTLD registry, upon the deletion of the domain name registration by the sponsoring

27 registrar, the domain name is deleted from the VeriSign registry's database and

28

1 becomes available for creation and registration through any participating ICANN-

2 accredited registrar, on a first-come, first-served basis.

3   20.   Each month in the .com and .net gTLDs, more than 800,000 previously

4 registered domain names become available for creation and registration by

5 registrants through ICANN-accredited registrars. Some of these are re-registered

6 within milliseconds of when they become available, often by an entity interested in

7 having a desired name for use in a business or personal web site, or by individuals

8 and entities who operate as domain name speculators who "stockpile" domain

9 names or register a recently available domain name to capture prior "traffic"

10 associated with that domain name. As explained below, the number of actual new

11 registrations is highly disproportionate to the "add" transactions submitted by

12 registrars to the registry to register these domain names.

13   21.   Those registrars seeking to register a recently available domain name

14 through one of the programs currently used by their customers, themselves, or third

15 parties to obtain deleted domain names do so by programming their systems to

16 transmit literally continuous automated "add" domain name commands to the

17 registry for a particular domain name in an effort to be the first registrar to request

18 the domain name when it becomes available. Since this tactic is followed

19 simultaneously by multiple registrars seeking multiple domain names, and often the

20 same domain names, either individually or in concert with each other, the

21 cumulative effect of these "add storms" has been to overwhelm the registry,

22 threatening or delaying the registry's receipt and performance of other registrar

23 commands, such as to register new domain names, jeopardizing the stability and

24 operation of the registry and negatively impacting registrars who do not participate

25 in such activity. Further, the nature of these operations is very technically complex

26 and therefore effectively disallows access to deleting names to anyone without

27 advanced knowledge and technical capability. Potential registrants may use any of

28 several services that attempt to "capture" a name as it becomes available, but

JEL RIVES LLP
FORNEYS AT LAW
PORTLAND

-6-

COMPLAINT

1   efficacy of these services varies and generally is not fully reliable. In fact, often

2   end-users are forced to use, pay for and carefully monitor many of these services at

3   once in the hope of obtaining a desired name.

4   22.   This phenomenon is confirmed by the number of "add" commands

5   received by the VeriSign .com registry in recent history. In July 2003, VeriSign

6   reported that in excess of 100 million "add" commands were being submitted to the

7   .com registry per day, representing over 95% of all daily commands received by the

8   registry. It is believed that the number of such commands has greatly increased

9   over the last year.

10   23.   The adoption of WLS will lessen the load on the .com and .net gTLD

11   registries, avoid the operation difficulties that the "add storms" have caused, and

12   provide a more reliable, intuitive, predictable and valuable service for registrars to

13   offer to registrants.

14   24.   Further, as VeriSign reported in September 2004, some entities have

15   secured multiple registrar accreditations from ICANN as a way to amass additional

16   transaction capacity with the registry, allowing them to intensify the rate at which

17   they can barrage the registry, with high volume, continuous "add" commands,

18   thereby hoping to increase their chances of capturing domain names upon their

19   deletion by the registry. These sham registrars are not meant to fill any primary or

20   other registration function; their sole purpose is to attack the registry with "add"

21   commands.

22   25.   ICANN grants registrar accreditation approval in an uneven and

23   inequitable manner; some entities have been granted large numbers of registrations

24   in short order, while SnapNames has had accreditation applications pending before

25   ICANN's staff with no action taken for many months.

26   TECHNICAL DESCRIPTION OF WLS

27   26.   Pursuant to its agreements with ICANN and with accredited registrars,

28   VeriSign does not delete a domain name until it receives a specific "delete"

DEL RIVES LLP
TTORNEYS AT LAW
PORTLAND

COMPLAINT

Portlnd2-4486200.7 0010720-00001

1   command from the registrant's sponsoring registrar directing it to do so. Even then,

2   VeriSign follows an established procedure and timetable in effectuating the delete

3   command in the registry's database. In the absence of a delete command from the

4   sponsoring registrar, and even if the expiration date for a registered domain name

5   has been reached, the registry automatically renews the registration of the domain

6   name. Specifically, after a registration or an automatic renewal, the registrar has up

7   to 45 days within which to cancel the registration. Following a registrar's

8   submission of a delete command to the registry, the deleting registrar still has the

9   30-day Registry Grace Period within which to renew the domain name before the

10 deletion command is actually effectuated in the registry. Thereafter, there is a five-

11 day "pending delete period" before the deletion is complete in the registry's

12 database.

13   27.   In the event a prospective registrant inquires about registering a

14 domain name that is already created and registered, the registrant's registrar would

15 check to determine whether a WLS subscription exists for the desired domain

16 name. If there is no existing WLS subscription for the domain name, then—using

17 an interface separate from the shared registration system used to add, delete, and

18 transfer domain names—the registrar submits a WLS subscription order for that

19 domain name, and the domain name is identified in the WLS database as being a

20 "subscribed" domain name. With WLS, only one subscription will be accepted for

21 each registered domain name on a first-come/first-served basis, thus mirroring the

22 primary registration system, and each subscription is valid for a one-year period.

23 Should the requested domain name be deleted and become available for creation

24 and registration during the one-year subscription period, the holder of the

25 subscription will automatically become the registrant of the domain name. The

26 WLS service essentially gives a potential new registrant a "next in line" position

27 that guarantees automatic assignment of the domain name if it becomes available.

28

28. WLS subscription will only be available through ICANN-accredited registrars, who submit WLS subscription orders directly to the .com and .net registries. Registrars are thus the direct customers of the VeriSign registries for WLS. Subscriptions are not available directly to consumers through the .com and .net registries, only accredited registrars. All accredited registrars will be able (but not required) to offer WLS service to their customers.

29. WLS does not affect current domain name registrations. A registrant will continue to be the registrant of its domain name indefinitely, so long as it continues to renew the domain name in a timely fashion and to meet the requirements of its chosen registrar. A WLS subscription matures into a domain name registration only when a domain name reaches the end of the Registry Grace Period.

30. If the surrendered domain name is the subject of a WLS subscription, the domain name is automatically added to the registry database, using the WLS data, or pre-registration, supplied by the registrar sponsoring the WLS subscription at the time the subscription was created. The WLS "subscriber" then becomes the new registrant of the domain name. The registry, through its automated system, notifies the subscription registrar, who updates its registration record to reflect the new domain name registrant. The subscription is cleared from the WLS database, and a new WLS subscription order can be placed for that domain name through any accredited registrar.

31. All ICANN-accredited registrars will be given an equal opportunity, at an equal wholesale price, to participate in WLS. They will also have the option of not participating. Even if they elect not to participate in WLS, registrars, on behalf of their clients, may still register, delete, transfer or otherwise make registered domain names available in the secondary market (e.g., auctions, person-to-person transactions, etc.), or offer all the deleted domain services offered currently as they have done prior to WLS.

-9-

COMPLAINT

Portlnd2-4486200.7 0010720-00001

ALTERNATIVES ARE BEING OFFERED TO WLS

32.   Even without WLS, certain registrars and others have been providing wait-listing type services of various kinds at the registrar level. In essence, these services watch for a desired domain name to be deleted and immediately seek to register it with the registry. To do so successfully, they must be the *first* registrar (among the many that may be seeking the same domain name for their respective customers) to submit a registration request to the registry for the domain name after it has been released. The services therefore have to engage in a high-tech "race" with other registrars to "grab" a deleted domain name just as soon as it becomes available, by running automated or robotic "scripts" that continuously ping the registry database by submitting "add" domain name commands for domain names that will be deleted in an attempt to register the desired domain name. Their results for customers are entirely hit-or-miss and often provide for a confusing and exploitative experience for consumers. As the general counsel for GoDaddy, a competitor of WLS has stated: "Each registrar writes its own software that keeps pinging the registry: The one that happens to ping the registry immediately after deletion wins the backordered name."

33.   In the process, however, these registrar-level services have technically harmful effects and threaten the stability of the Internet, because the robotic "add storms" cause enormously high (and ever-increasing) registry database loads, threatening the stability of the registry database and Domain Name System and thereby the Internet. Moreover, this method of operation is highly inefficient and effectively "freezes out" any potential registrant who has minimal technical sophistication or knowledge of or about various services in the business of re-registering deleted names for their customers. Substantial registry resources are necessary to support, handle, and respond to the automated "add" inquiries of the registrars trying to register recently deleted domain names, a function for which the registry systems were not designed and for which the registry receives no

COMPLAINT

compensation by registrars, and which ultimately draws resources and efficiency from the system designed to serve all registrars for all domain name registration functions. Stated another way, the actions of a few operators in bombarding the registry database significantly disadvantages other registrars and the majority of end-users.

34.   Typical of this inefficiency is one recent 17-day period when, according to VeriSign, in efforts to register recently deleted domain names, registrars initiated an average of nearly 500,000 "add" attempts in VeriSign's registry systems for *each* one successful new domain name registration. The non-WLS system for registering deleted domain names gives registrars the incentive to inundate the registry system with domain name queries and "add" commands without regard to the cost to or the impact on the registry infrastructure, other registrars, or the functioning of the Domain Name System.

35.   WLS is more open, transparent, intuitive and predictable than the registrars' prior informal and uncertain "wait list" system. WLS provides all registrars with an equal opportunity to assist customers in re-registering a domain name that may be deleted, in a way that is simple and clear. It does not favor speculators or those registrars with elaborate and disruptive automated systems. Rather, WLS ensures a "fair playing field" and equivalent access for all registrars and their customers regardless of their market or technological advantage. The benefits of WLS extend not only to VeriSign's direct customers (registrars) but also to end-users (registrants and prospective registrants). WLS provides a simple, fair, low-cost and easy to understand procedure for registering recently deleted domain names, one that intuitively mirrors the primary registration system. The registrar services for registering deleted, and not reclaimed by the original registrant, domain names have low efficacy rates and thus offer mere "chances" at registering a domain name that is already registered by someone else. WLS, on the other hand, provides a 100% certainty that if the domain name is deleted, the domain name will

1   be registered to the WLS subscriber, with the attendant business certainty for the

2   WLS subscriber of knowing it is "first in line" or pre-registered for a particular

3   domain name should it become available. The benefit to the consumer by a

4   registrar offering this service is apparent.

5   36.   WLS has the effect of reducing system load for these constant checks

6   of target domain names. The excessive demand on operational resources of the

7   registry for all registrars will be reduced, and system access will be retained at a

8   reasonable and safe level. By the same token, WLS also preserves the operational

9   resources of registrars. Once a domain name is under WLS subscription, registrars

10   no longer need to engage in the inefficient process of making continuing, constant

11   checks for the WLS-subscribed domain name.

12

13   ## WLS WOULD NOT IMPACT CURRENT PROCESSES FOR
     ## REGISTERING RECENTLY DELETED NAMES

14

15   37.   Current processes for registering deleted domain names are not

16   precluded by WLS. The current registrar technology will still be available for all

     domain names for which there is not an active WLS subscription.
17
         38.   WLS does not impact to any degree the ability of end-users to register
18
     new (currently unregistered) domain names in the .com and .net gTLDs through
19
     any of the more than 400 existing ICANN-accredited registrars for the .com and
20
     ,net gTLDs. It is also important to note that, because other gTLDs and ccTLDs are
21
     now pervasive in the marketplace, neither a .com or a .net registration, nor a WLS
22
     subscription, is a necessity. Indeed, the percentage of registrations in the .com and
23
     .net gTLDs have been steadily declining over the past several years, while those in
24
     other TLDs have been rapidly increasing. WLS would have no impact on the
25
     processes for registering recently deleted domain names in .org, .biz, or any of the
26
     more than 200 other gTLDs and ccTLDs.
27

28

-12-   COMPLAINT

Pnrlnd7-4486700 7 0010770 00001

39. Notwithstanding WLS, end-users will also still be able to negotiate directly with the current registrants to acquire a domain name by transfer.

40. Nor does WLS adversely impact the ability of prospective registrants to scour auction sites to purchase currently registered domain names. End-users can bid on names being offered for sale, and, if so, they can follow the procedures of the auction sites to bid on, secure and accept transfer of a domain name registration.

41. WLS likewise does not impact the ability of end-users to obtain and register domain names by initiating dispute proceedings. End-users succeeding on a Uniform Dispute Resolution Policy (UDRP) complaint and/or in a court proceeding can have the registration of subject domain names transferred.

42. Furthermore, even with WLS, vigorous competition will still exist among registrars, just as it does now, to get prospective registrants to use a given registrar for the purpose of inquiring about the availability of domain names and placing WLS subscriptions, or using competitive recently deleted domain name services.

43. To the extent WLS may displace some of the current registrar services for registering deleted domain names in the .com and .net gTLDs, it will be because WLS' reliability and efficiency make it preferable to consumers.

44. The obvious benefits of WLS are such that ICANN's Board of Directors has formally approved or endorsed the system on no less than three occasions.

HISTORY OF CONSIDERATION OF WLS

ICANN Board's Approval of WLS

45. Following a protracted review process, ICANN's Board first approved WLS on August 23, 2002. The ICANN Board determined that WLS "promotes consumer choice" and that the "option of subscribing to a guaranteed 'wait list' service is a beneficial option for consumers." For these reasons, the Board

1   approved a resolution (Resolution 02.100), authorizing (with certain conditions,

2   imposed largely to address the stated concerns of certain registrars) the president

3   and general counsel of ICANN to negotiate appropriate revisions to VeriSign's

4   registry agreements to allow for the offering of WLS.

<div align="center">Efforts to Delay The Implementation of WLS</div>

5

6   46.   On September 12, 2002, Dotster, Inc. ("Dotster") filed a formal

7   reconsideration request with ICANN seeking to overturn the ICANN Board's

8   approval of WLS.

9   47.   On May 20, 2003, nine months after the ICANN Board's approval of

10   WLS, ICANN's Reconsideration Committee determined that Dotster's request

11   lacked merit, and recommended that the Board take no action on it. Indeed, after

12   further consideration, the ICANN Board not only chose not to adopt Dotster's

13   changes but, on June 2, 2003, approved a further resolution (Resolution 03.80),

14   limiting the conditions it had originally sought to impose in connection with WLS.

15   ICANN's staff was instructed to proceed with necessary steps to implement WLS.

16   48.   At that point, VeriSign planned to launch WLS in October 2003.

17   49.   On September 4, 2003, ICANN's staff advised VeriSign that it should

18   not go forward with implementation of WLS, as VeriSign had not agreed to

19   conditions that ICANN's staff sought to impose on VeriSign and the staff had not

20   yet sought Department of Commerce approval. As a result, VeriSign delayed its

21   planned launch of WLS.

22   50.   On January 2, 2004, ICANN's general counsel reported to ICANN's

23   Board that negotiations with VeriSign for implementation of WLS had been

24   successfully concluded.

25   51.   On March 6, 2004, another ten months following the second approval

26   of WLS, the ICANN Board approved WLS for a third, and presumably final, time

27   (resolution 04.19). ICANN's staff was directed to submit the service to the

28   Department of Commerce for review and approval.

52.   According to VeriSign, ICANN's staff has failed to work with VeriSign in good faith to complete the steps necessary to submit WLS to the Department of Commerce for review and approval.

53.   In litigation brought in this Court by VeriSign against ICANN, VeriSign is seeking a declaration that WLS is not a registry service and not subject to review, approval or regulation by ICANN.

54.   Notwithstanding its position regarding whether WLS is a registry service, VeriSign reports that it offered to sign an appropriate and reasonable amendment to its registry agreement with ICANN which amendment would incorporate terms previously agreed upon between VeriSign and ICANN (and approved by ICANN's Board) necessary for implementation of WLS and for submission to the Department of Commerce for review and approval. However, VeriSign has asked ICANN to agree that in executing an amendment to proceed with WLS, VeriSign is not waiving its position that WLS is not a registry service and that such issue will be preserved for ultimate adjudication at a later date. VeriSign reports that ICANN's staff has failed and refused to proceed on this basis.

55.   The conduct of ICANN's staff toward VeriSign regarding WLS is consistent with their conduct toward to SnapNames. ICANN's staff is aware of SnapNames' relationship with VeriSign and its economic interest in advancing WLS. Nevertheless, since March 2004, ICANN's staff, and its attorneys, have repeatedly misrepresented the status of WLS to SnapNames. For example, early in the summer of 2004, ICANN represented that WLS would be submitted to the Department of Commerce within days or weeks. When that was shown to be false, they represented that VeriSign was at fault. ICANN represented that VeriSign had failed to return phone calls or respond to proposals by ICANN's staff to move WLS forward. VeriSign denies this.

56.   VeriSign reported to SnapNames that, following the March 2004 ICANN Board action again approving WLS and instructing ICANN's staff to

COMPLAINT

1   proceed to negotiate with VeriSign to implement the service, ICANN's staff failed

2   to respond in good faith to repeated efforts by VeriSign to finalize and execute a

3   conditional amendment to the registry agreement (reserving VerisSign's rights as to

4   whether WLS is a registry service). According to VeriSign, within the last few

5   months VeriSign's representatives offered to meet ICANN's staff at a place of

6   ICANN's choosing, and to remain in a room together to negotiate, draft and finalize

7   any necessary documents to permit WLS to be forwarded to the Department of

8   Commerce for review and approval. Again, according to VeriSign, all of its efforts

9   to engage ICANN's staff (and in particular ICANN's general counsel John Jeffrey)

10   in a process to move WLS forward in good faith have been fruitless.

11   57.   On information and belief, ICANN's staff is attempting to further

12   delay and/or kill WLS in order to benefit competitors of WLS. ICANN's staff is

13   attempting to protect registrars and other service providers who offer inferior

14   unguaranteed "backorder" services, which are the very services that ICANN's

15   Board has stated do not provide the consumer benefit offered by WLS.

16   58.   ICANN has treated WLS in an unequal and disparate manner

17   compared to competitive "backorder" services offered by registrars as to which

18   ICANN has never sought to exercise any regulation or control and has never

19   imposed conditions similar to those imposed on WLS.

20   59.   As a result of ICANN's conduct, consumers have been deprived of a

21   beneficial new service and SnapNames has been deprived of the revenues and

22   profits it would have generated from and in connection with VeriSign's offering of

23   WLS. The delay in offering WLS has benefited other businesses that offer similar

24   or competitive services, including businesses that have combined and conspired

25   with ICANN's staff and caused ICANN to delay and obstruct the offering of WLS.

26   60.   On information and belief, ICANN's conduct to delay and/or kill WLS

27   has been in combination and conspiracy with, and at the behest of, certain service

28   providers and registrars who compete, or wish to compete, with WLS. While

FOEL RIVES LLP
ATTORNEYS AT LAW
PORTLAND

1 VeriSign's offering of WLS is being delayed by this improper conduct, registrars

2 and others, are free, and have been free, without these or other impediments and

3 conditions by ICANN, to offer similar services that are competitive with but

4 inferior to WLS, and many have done so.

5   61.   Notwithstanding the repeated "approval" of WLS by ICANN's Board,

6 ICANN's staff has engaged in conduct intended to delay or prevent VeriSign's

7 implementation of WLS. Such conduct has included the following:

8   (a)   Refusing to negotiate in good faith with VeriSign to amend the

9 VeriSign's registry agreements to add WLS while preserving VeriSign's right to

10 contest whether or not WLS is a registry service;

11   (b)   Refusing to respond to representatives of VeriSign and

12 SnapNames concerning the status of WLS or ICANN's position on submitting

13 WLS to the Department of Commerce (DoC);

14   (c)   Misrepresenting ICANN's plans concerning submission of WLS

15 to the DoC;

16   (d)   Misrepresenting the status of ICANN's submission of WLS to

17 the DoC;

18   (e)   Misrepresenting when and how ICANN would respond to

19 proposals by VeriSign to amend the Registry Agreement;

20   (f)   Misrepresenting that ICANN would timely draft proposed

21 amendments to the Registry Agreement in good faith; and

22   (g)   Intentionally delaying and refusing to move WLS forward in the

23 ICANN approval process and delaying and refusing to submit WLS to the DoC

24 following approval by the ICANN Board.

25   62.   ICANN and the registrars with whom ICANN's staff have conspired,

26 are aware of the contractual relationship between SnapNames and VeriSign, and of

27 the business opportunity that WLS presents to SnapNames.

28

FIRST CLAIM FOR RELIEF

63.   Plaintiff repeats and realleges the averments set out above.

64.   ICANN exercises authority and powers over registries and registrars to implement its standards and policies. Non-compliance with ICANN's standards and policies can place a provider of DNS and certain other Internet services at a great disadvantage in the marketplace. ICANN's staff has asserted this power to prevent VeriSign from offering WLS.

65.   ICANN and existing and potential competitors of VeriSign and SnapNames have conspired to delay, disadvantage and destroy WLS. The existing or potential competitors of VeriSign and SnapNames who, at all times relevant hereto, have actively combined with members of ICANN's staff to restrain competition with respect to WLS include, among others, the operators of the following registrars or competitive services: GoDaddy Software, Inc.; Alice's Registry, Inc.; eNom Inc.; Dotster, Inc.; and Pool.com, Inc. (the "WLS co-conspirators").

66.   On information and belief, one or more of the WLS co-conspirators have offered to fund expenses of ICANN in defense of the claims made by VeriSign concerning WLS. On information and belief, ICANN's staff has advised certain WLS co-conspirators that ICANN will provide the WLS co-conspirators with information about WLS related developments so as to provide the co-conspirators with sufficient notice prior to the actual launch of WLS to permit them to take legal, administrative or other action in an effort to further delay or kill WLS.

67.   As a result of this conduct, WLS has now been blocked and delayed for almost three years. The WLS co-conspirators have used this delay to introduce competitive but inferior, and often higher priced, products to WLS, beating VeriSign/SnapNames to the market by reason of their conspiratorial conduct and assistance from ICANN's staff. By reason of these delays, among other things,

DEL RIVES LLP
TTORNEYS AT LAW
PORTLAND

-18-   COMPLAINT

Portland2-4456290.7 0010780-00001

1   consumers have been denied a superior service and have paid artificially inflated

2   prices for inferior services.

3   68.   The availability of WLS would have expanded the range of

4   alternatives available to prospective registrants seeking to register currently

5   registered second-level domain names and to registrars seeking to offer such

6   "backorder" services to customers. None of the currently available backorder

7   services is able to guarantee that its customer will obtain the desired domain name

8   registration if it becomes available. Indeed, many providers of competitive services

9   exploit this inefficiency in the system to auction a domain name among multiple

10   "backorder" customers.

11   69.   In contrast to current competitive services, a WLS subscriber would be

12   guaranteed that it would get the domain name if that domain name became

13   available. WLS would thereby have been a superior service that would have

14   stimulated quality and price competition in the relevant markets.

15   70.   As of the filing of this Complaint, on information and belief, ICANN

16   still has not agreed to terms for the introduction WLS, has refused to negotiate

17   those terms in good faith, has delayed or refused to negotiate terms, and has failed

18   and refused to forward WLS to DoC for approval. As a result, WLS has not been

19   made available to registrars or registrants.

20   71.   Representatives of ICANN publicly have acknowledged the unique

21   benefits for consumers and competition that the WLS would provide. In July 2003,

22   for example, ICANN's President testified before a Senate Committee that "[t]he

23   VeriSign [WLS] proposal offered a significant improvement from a consumer

24   perspective to the various services already offered by registrars," and that "[I]t

25   would be anomalous to 'protect' competition between providers of non-guaranteed

26   products by preventing the new competition of a guaranteed product that at least

27   some consumers would likely prefer."

28

TOEL RIVER LLP
ATTORNEYS AT LAW
MARYLAND

-19-   COMPLAINT

Portlnd2-4486200.7 0010720-nnnn1

72.   Notwithstanding the clear benefits that WLS would have provided to competition and consumers, ICANN's staff continues to engage in the wrongful conduct described herein.

73.   The specific wrongful acts of ICANN's staff alleged above have not been expressly or impliedly authorized or directed by DoC or any other agency of the United States Government, nor have these specific acts been the subject of active supervision by any agency of the United States Government.

74.   SnapNames has been injured in its business and property, and is threatened with continued injury to its business and property, as a result of the improper conduct of ICANN's staff as alleged above.

75.   As a direct result of ICANN's intentional acts and conduct, the value to SnapNames of the contractual relationship between VeriSign and SnapNames has been injured or destroyed and SnapNames has been, and is being, deprived of revenues it would otherwise have derived from performance of its contract.

76.   ICANN's intentional interference with the existing contractual relationship between VeriSign and SnapNames has directly and proximately resulted in a substantial loss of revenues and profits to SnapNames. SnapNames is entitled to an award from ICANN of monetary damages therefor, according to proof at trial.

77.   ICANN's interference and conduct alleged herein was, inter alia, intentional, undertaken for the purpose of harming SnapNames and assisting its competitors, sought to be justified by ICANN on grounds known by it to be false and baseless, and otherwise malicious, oppressive, and fraudulent within the meaning of California Civil Code Section 3294. Consequently, SnapNames is entitled to an award of punitive or exemplary damages sufficient in amount to punish and to make an example of ICANN.

WHEREFORE Plaintiff prays for entry of judgment against Defendant as follows:

COMPLAINT

ROBL RIVES LLP
ATTORNEYS AT LAW
PORTLAND
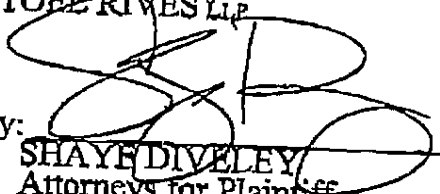
Portlnd2-4486200.7 0010720-00001

1.   For an award of monetary damages, according to proof.

2.   For an award of punitive or exemplary damages.

3.   For a preliminary and permanent injunction enjoining Defendants and their agents, servants, employees and all other persons acting under, in concert with, or for them, from obstructing or interfering with SnapNames' interest and rights with respect to the existing contractual relationship between VeriSign and SnapNames; and

4.   For all other relief the Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues so triable.

DATED: November 18, 2004.

STOEL RIVES LLP

By: _____
SHAYE DIVELEY
Attorneys for Plaintiff