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8   **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9   **COUNTY OF LOS ANGELES**

10 | VERISIGN, INC., a Delaware corporation,) | Case No. BC 320 763
11 | Plaintiff,) | [Assigned for all purposes to Judge Rolf M. Treu]
   | v.)
12 |) | **CROSS-COMPLAINT FOR:**
13 | INTERNET CORPORATION FOR) |
   | ASSIGNED NAMES AND NUMBERS, a) | **(1) BREACH OF CONTRACT;**
14 | California corporation; DOES 1-50,) | **(2) DECLARATORY AND INJUNCTIVE**
   |) | **RELIEF; AND**
   | Defendants.) | **(3) UNFAIR COMPETITION IN**
15 |) | **VIOLATION OF BUSINESS AND**
   |) | **PROFESSIONS CODE §§ 17200 *ET SEQ.***
16 |) |
   |) | Complaint filed: Aug. 27, 2004
17 |) | ICANN Cross-Compl. filed: Nov. 12, 2004
   |) | VeriSign Cross-Compl. filed: Dec. 28, 2004
18 | INTERNET CORPORATION FOR)
   | ASSIGNED NAMES AND NUMBERS, a)
19 | California corporation,)
   |)
20 | Cross-Complainant,)
   | v.)
21 |)
   | VERISIGN, INC., a Delaware corporation,)
22 |)
   | Cross-Defendant.)
23 |)
24 | VERISIGN, INC., a Delaware corporation,)
   |)
25 | Cross-Complainant,)
   | v.)
26 |)
   | INTERNET CORPORATION FOR)
27 | ASSIGNED NAMES AND NUMBERS, a)
   | California corporation; DOES 51-100,)
28 |)
   | Cross-Defendants.)

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Cross-Complainant VERISIGN, INC. ("VeriSign"), for its Cross-Complaint herein, alleges as follows:

1.   VeriSign commenced this action against the Internet Corporation for Assigned Names and Numbers ("ICANN") through the filing of a Complaint on August 27, 2004. As part of its response to the Complaint, on or about November 12, 2004, ICANN cross-complained against VeriSign alleging, among other matters, purported claims arising out of supposed additional, and more recent, circumstances and occurrences than those forming the basis of the Complaint.

2.   By its Answer filed concurrently herewith, VeriSign denies all material allegations of ICANN's Cross-Complaint. In compliance with the provisions of Code of Civil Procedure sections 426.10 *et seq.* and 428.10 *et seq.*, the purpose of this Cross-Complaint is for VeriSign to assert against ICANN those further claims that it presently has against ICANN relating to the same additional, and more recent, circumstances and occurrences alleged in and forming a subject matter of ICANN's Cross-Complaint.

PARTIES

3.   Cross-Complainant VeriSign is a corporation, duly organized and existing under the laws of the State of Delaware, with its principal office and place of business located in Mountain View, California. Since 1992, VeriSign or its predecessor, Network Solutions, Inc. ("NSI"), has acted as the exclusive registry for the ".com" top-level domain, among others.

4.   Cross-Defendant ICANN is a nonprofit corporation, organized and existing under the laws of the State of California, with its principal office and place of business located in Marina del Rey, California.

5.   Cross-Defendants Does 51-100 are persons who instigated, encouraged, facilitated, acted in concert or conspiracy with, aided and abetted, or are otherwise responsible in some manner or degree for the breaches or conduct of ICANN alleged herein. VeriSign is presently ignorant of the true names and capacities of Does 51-100, and will amend this Cross-Complaint accordingly once they are known.

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INCORPORATION

6. VeriSign incorporates by this reference as though fully set forth herein the allegations of paragraphs 1 through 76 of its Complaint on file in this action.

ACCREDITATION OF REGISTRARS

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." "Second-level" domains are those domains immediately to the left of the top-level domain, such as "uscourts" in the second-level domain name "uscourts.gov."

8. A domain name does not exist until it is requested and registered. The individual or organization that seeks to register a specific domain name (such as "name.com") is a "registrant." Potential registrants, however, do not have direct access to the .com generic top-level domain ("gTLD") registry, which is operated by VeriSign. Instead, to register a domain name, a potential registrant must complete the necessary applications with one of the private companies that act as domain name "registrars." The domain name registrar, in turn, submits a request to the authorized registry for that top-level domain. Thus, a domain name is created when, following a request from the registrar, the domain name is included in the master database of registered domain names of the authorized registry for that top-level domain. For example, an individual seeking to register the second-level domain name "name.com" would submit a request to register that domain name in the .com gTLD registry's master database through a domain name registrar.

9. Accordingly, prospective registrants must register domain names through any one of approximately 235 operational domain name registrars located in the United States and throughout the world that register second-level domain names in the .com gTLD. The interaction between the .com gTLD registry and a registrar entailed in registering, transferring, and deleting a domain name in the .com gTLD is highly structured and automated, and takes place through a Registry-Registrar Protocol ("RRP"). Registry-registrar communications occur over a secure electronic connection.

10. The .com gTLD registry uses a Shared Registration System ("SRS"), which permits multiple domain name registrars to register second-level domain names in the .com gTLD. Before a domain name registrar may register second-level domain names in the .com gTLD, and

CROSS-COMPLAINT BY VERISIGN

communicate with the .com gTLD registry's systems (the SRS), it must first become "accredited" by ICANN. As part of ICANN's accreditation process, each registrar must enter into a standard form Registrar Accreditation Agreement ("RAA") with ICANN. A central principle of access to the SRS is that each domain name registrar accredited by ICANN shall have "equivalent access" to the .com gTLD registry for the performance of registrar services, including registering, transferring, and deleting second-level domain names.

11. For an ICANN "accredited" domain name registrar to gain operational access to the .com gTLD registry's systems operated by VeriSign, such that it can register domain names in the .com gTLD and transact other authorized business with the registry, the registrar must, among other actions, execute a separate Registry-Registrar Agreement ("RRA") with VeriSign in a form previously approved by ICANN, must provide certain surety instruments and evidence of financial responsibility, must agree to use specified protocols and interfaces for accessing the registry, and must commit to be bound by certain restrictions, limitations, and obligations governing its use of the registry, as more fully set forth in the RRA.

12. Registrars for the .com gTLD pay substantial annual accreditation fees to ICANN. Collectively, these registrar accreditation fees constitute a material and indispensable portion of ICANN's overall annual operating revenues. As ICANN's budget and spending have grown in recent years, ICANN increasingly has come to rely and depend upon the revenues generated from registrar accreditation fees.

13. As the number of ICANN-accredited registrars for second-level domain names in the .com gTLD grows, the burdens and stresses on the .com gTLD registry, and the associated costs and expenses to VeriSign as the operator of the .com gTLD registry, correspondingly also grow. These effects on the .com gTLD registry result from, among other factors, the need for VeriSign to monitor, adapt, and expand the capacity of, and access to, the registry to keep pace with the number of live or active registrars.

14. Nonetheless, pursuant to the currently operative .com Registry Agreement (the "2001 .com Registry Agreement") between VeriSign and ICANN, VeriSign receives no portion of the accreditation fees paid to ICANN by new and existing registrars, nor is VeriSign authorized by

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ICANN to impose any charge or fee when registrars merely access the .com gTLD registry systems, regardless of the frequency with which they access those systems or their purpose in doing so. Instead, with respect to its provision of registry services, VeriSign is only permitted by ICANN to charge specified amounts for the initial registration of a domain name, the renewal of a registered domain name, and the transfer from one registrar to another of sponsorship of a domain name registration.

THE GROWTH OF BACK-ORDER SERVICES

15.   Domain names are registered within the .com gTLD for a limited period of time. If that period expires without renewal of the domain name registration, or if the registrant chooses to cancel the registration, the domain name will be deleted and the domain name becomes available to the first person who creates and requests registration of the domain name. Additionally, domain names may be cancelled, and become available to the public, following administrative and legal disputes.

16.   Many registrars, as well as non-registrar domain name resellers and back-order service providers, offer services to the public that attempt to register deleted domain names as soon as they become available for registration. Back-order service providers and resellers act essentially as brokers between potential registrants seeking domain names and registrars who are the only entities authorized to register a domain name with the .com gTLD registry.

17.   Those entities seeking to register a recently deleted domain name through one of their back-order programs have done so by transmitting literally continuous automated "add" domain name commands to the registry for a particular domain name in an effort to be the first registrar to request the domain name. Because this tactic is followed simultaneously by multiple registrars seeking multiple domain names, and often the same domain names, either individually or in concert with each other, the cumulative effect of these robotic "add storms" has been to overwhelm the registry's automated systems, thereby threatening or delaying the registry's receipt and performance of other registrar commands (such as to register new domain names) jeopardizing the operation of the registry, and negatively impacting registrars who do not participate in such activity.

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1   18.   VeriSign has attempted, at its own substantial expense, to alleviate the threats to the

2   .com gTLD registry posed by such activity on a short-term basis through the creation and operation

3   of a "batch pool." The batch pool is intended to be used by accredited registrars solely for the

4   registration of recently deleted domain names. Consistent with the principle of providing

5   "equivalent access" for all accredited registrars, VeriSign provides each accredited registrar the

6   same number of connections to the batch pool.

7   19.   The demand for the registration of deleted domain names has grown enormously in

8   recent years, and back-order service providers and resellers have searched for methods to enhance

9   their chances of being the first to obtain the right to register a deleted domain name for their

10   customers. One such method that has evolved is for back-order service providers and resellers to

11   align with accredited registrars and to use the batch pool connections that such registrars have been

12   given to obtain desirable deleted domain names. Most recently, a few back-order service providers

13   have facilitated the formation and accreditation of new registrars exclusively for the purpose of

14   obtaining as many batch pool connections as possible for the use of the back-order service

15   providers. As a result of this activity, these back-order service providers have amassed and are

16   amassing (through limited purpose "registrars," commonly known as "thread registrars") many

17   times the number of connections to the batch pool that any one bona fide accredited registrar has on

18   its own. In fact, approximately 40% of ICANN accredited registrars for second-level domain

19   names within the .com gTLD currently may be affiliated with a single "parent" entity.

20   20.   As a direct by-product of this activity, the number of new registrars seeking

21   accreditation to register second-level domain names in the .com gTLD has grown from one or two a

22   week to almost 25 a week over the last several months. Indeed, VeriSign is presently aware of

23   approximately 75 potential additional registrars whose accreditation is pending with ICANN, and

24   there are dozens of registrars recently accredited by ICANN in the queue to gain operational access

25   to the .com gTLD registry. VeriSign anticipates that by April 2005, it will have 438 registrars in its

26   system, an increase from the current approximately 250 accredited registrars. However, most of

27   these new registrars do not, and do not intend to, provide registrar services to members of the

28   public. They do not intend to engage in the business of a registrar. They do not intend to register

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1   domain names in the .com gTLD registry. As a result, their activity will lead to few, if any,

2   completed transactions in the registry.

3   21.   In effect, these "thread registrars" are formed and designed to perform a wholly new

4   service not contemplated by ICANN or VeriSign at the time the 2001 .com Registry Agreement was

5   executed: a "checking" service to ascertain whether the right to register a recently deleted domain

6   name can be obtained for the direct benefit of a single back-order service provider or reseller (or a

7   single "family" of back-order service providers and resellers). To the extent such "thread

8   registrars" do obtain the right to register a deleted domain name, they either transfer the domain

9   name to an affiliated registrar for actual registration, or they "hold" the domain name for a matter of

10   days to test its value at auction or otherwise and then delete it, without incurring registration fees, or

11   transfer it to an affiliated registrar for registration. Consequently, the accreditation by ICANN of

12   "thread" registrars solely or principally to perform "checking" services imposes a substantial burden

13   on the registry, and additional costs and expense on VeriSign, even though the "checking" services

14   performed by these "thread" registrars will generate no offsetting fees for VeriSign.

15   22.   For example, although the accreditation by ICANN of "thread" registrars and the

16   "checking" services those "thread" registrars perform generate no fees to VeriSign, VeriSign has

17   incurred and continues to incur significant costs to build out its systems, increase connectivity, and

18   otherwise adapt the .com gTLD registry to handle the load associated with the increasing number of

19   "thread" registrars and their access to VeriSign's systems. That load, and the attendant costs, are

20   necessitated, in part, by the sheer increase in the number of ICANN accredited "thread" registrars,

21   regardless of the level of activity in which those registrars engage. However, to the extent those

22   registrars do engage in a high volume of "checks" or other activity in the batch pool, the load on the

23   .com gTLD registry, and the related costs for VeriSign, are even higher.

24   23.   ICANN's accreditation of "thread" registrars also impairs VeriSign's ability to

25   service in an efficient manner newly accredited registrars that do intend to offer registrar services to

26   the public, and it impairs VeriSign's ability to take advantage of opportunities to increase

27   registrations of second-level domain names in the .com gTLD that do generate revenues for

28   VeriSign. Because of the volume of ICANN-accredited "thread" registrars in the queue seeking to

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1 gain operational access to the .com gTLD registry, bona fide registrars in the queue, including those

2 seeking to register second-level domain names in the .com gTLD in currently underserved

3 geographic regions, have been and are being delayed in obtaining operational access to the .com

4 gTLD registry, resulting in lost .com domain name registrations.

5   24.   The method and manner of intended operation of these new limited purpose,

6 "thread" registrars is known and understood by ICANN at the time that ICANN enters into the

7 RAA with them and accredits them. Indeed, ICANN has admitted that the accreditation of "thread"

8 registrars has created a problem for the .com gTLD registry and has stated that it would form a

9 committee to review the issue. To date, however, ICANN has not formed such a committee, nor

10 has it taken any other actions to alleviate the problem, to assure that it accredits only registrars that

11 intend to offer domain name registration services to the public, or to compensate VeriSign for the

12 significant added expense it incurs as a result of the accreditation of "thread" registrars.

THE 2001 .COM REGISTRY AGREEMENT

14   25.   On or about May 25, 2001, VeriSign entered into the 2001 .com Registry Agreement

15 with ICANN, which superseded the prior .com Registry Agreement entered into in 1999. Subject to

16 certain extension rights provided for therein, the 2001 .com Registry Agreement expires on

17 November 10, 2007.

18   26.   Under the 2001 .com Registry Agreement, VeriSign is required to "make access to

19 the Shared Registration System available to all ICANN-accredited registrars subject to the terms of

20 the Registry-Registrar Agreement (attached as Appendix F [to the 2001 .com Registry

21 Agreement])." VeriSign is also required to provide "Registry Services" to ICANN-accredited

22 registrars in a manner meeting the performance and functional specifications referenced and

23 described in the agreement. "Registry Services" generally are defined in the agreement as follows:

24   "Registry Services" means services provided as an integral part of the

25   Registry TLD, including all subdomains. These services include:

26   receipt of data concerning registrations of domain names and

27   nameservers from registrars; provision to registrars of status

28   information relating to the Registry TLD zone servers, dissemination

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1   of TLD zone files, operation of the Registry zone servers,

2   dissemination of contact and other information concerning domain

3   name and nameserver registrations in the Registry TLD, and such

4   other services required by ICANN through the establishment of

5   Consensus Policies as set forth in Definition 1 of this Agreement.

6   27.   The 2001 .com Registry Agreement defines "Consensus Policies" as consisting of

7   those specifications and policies established on the basis of a consensus among Internet

8   stakeholders represented in the ICANN process, as demonstrated by compliance with specific,

9   detailed procedures prescribed in the agreement. VeriSign generally is obligated to comply with

10   Consensus Policies if, among other requirements, they are properly adopted by ICANN and

11   consistent with ICANN's other contractual obligations, and: (A) they "do not unreasonably restrain

12   competition"; and (B) relate to: "(1) issues for which uniform or coordinated resolution is

13   reasonably necessary to facilitate interoperability, technical reliability and/or stable operation of the

14   Internet or DNS, (2) registry policies reasonably necessary to implement Consensus Policies

15   relating to registrars, or (3) resolution of disputes regarding the registration of domain names (as

16   opposed to the use of such domain names)."

17   28.   Recognizing the potential for harm to VeriSign from ICANN's subsequent adoption

18   of specifications or policies, the parties included in the 2001 .com Registry Agreement a provision

19   entitled "Protection from Burdens of Compliance With ICANN Policies." That provision expressly

20   provides: "ICANN shall indemnify, defend, and hold harmless Registry Operator [VeriSign] . . .

21   from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable

22   legal fees and expenses, arising solely from Registry Operator's compliance as required by this

23   Agreement with an ICANN specification or policy (including a Consensus Policy) established after

24   the Effective Date . . . ."

25   29.   The 2001 .com Registry Agreement further sets forth the following "General

26   Obligations of ICANN." "With respect to all matters that impact the rights, obligations, or role of

27   Registry Operator," the agreement explicitly provides that ICANN shall, among other obligations:

28   (i) "exercise its responsibilities in an open and transparent manner," [and] (ii) "not unreasonably

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restrain competition and, to the extent feasible, promote and encourage robust competition . . . ." These and other obligations of ICANN to VeriSign under the 2001 .com Registry Agreement are not limited to VeriSign's provision of "Registry Services," but are owed by ICANN to VeriSign in connection with any conduct of ICANN that impacts VeriSign's "rights, obligations, or role of Registry Operator."

30. In addition, ICANN is subject to an implied covenant of good faith and fair dealing not to take actions unfairly or in bad faith to deprive VeriSign of the intended benefits of the 2001 .com Registry Agreement.

THE REGISTRY-REGISTRAR AGREEMENT

31. The RRA is entered into between VeriSign as operator of the .com gTLD registry and each accredited registrar for the registration of second-level domain names in the .com gTLD. The terms of the RRA are approved by ICANN, and the RRA is attached as an exhibit to the 2001 .com Registry Agreement between VeriSign and ICANN.

32. The RRA expressly provides that a registrar "shall not: (i) sublicense the RRP, APIs ['C' and 'Java' application program interfaces] or Software or otherwise permit any use of the RRP, APIs or Software by or for the benefit of any party other than Registrar, [or] (ii) publish, distribute or permit disclosure of the RRP, APIs or Software other than to employees, contractors, and agents of Registrar for use in Registrar's domain name registration business . . . ."

33. The RRA further explicitly compels a registrar to "employ the necessary measures to prevent its access to the System [SRS] granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than Registrar's customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations."

CROSS-COMPLAINT BY VERISIGN

FIRST CAUSE OF ACTION

(For Breach of Contract)

34.   VeriSign repeats and realleges the allegations contained in paragraphs 1 through 33 above as though fully set forth herein.

35.   The 2001 .com Registry Agreement constitutes a valid and binding contract between VeriSign and ICANN. The material terms of that agreement, insofar as they are pertinent to this action, include those set forth in paragraphs 25 through 30 above.

36.   All of the terms of the 2001 .com Registry Agreement are just and reasonable to ICANN, and the consideration for ICANN's obligations under the agreement, to the extent relevant to this action, is fair and adequate to ICANN.

37.   VeriSign has duly and properly performed, and is continuing duly and properly to perform, all of its obligations under the 2001 .com Registry Agreement, except those obligations it has been prevented or excused from performing as a result of ICANN's breaches and other conduct alleged in this Complaint.

38.   ICANN has materially breached its express and implied obligations to VeriSign under the 2001 .com Registry Agreement, including, without limitation, its obligations under the implied covenant of good faith and fair dealing thereunder, by engaging in the following acts and conduct, among others:

- ICANN has failed to act in an open and transparent manner with respect to the accreditation of new registrars and the identification and establishment of minimum standards for such accreditation. In fact, in its zeal to collect the additional annual fees that accreditation creates, and despite the burdens for the .com gTLD registry and for VeriSign that indiscriminate accreditation entails, ICANN has not established and applies no minimum standards for registrar accreditation.

- ICANN has knowingly accredited registrars that are not bona fide registrars, that do not intend to provide registrar services to members of the public, that do not intend to engage in the business of a registrar, that do not intend to register domain names in the .com gTLD registry, and that do not intend, and never intended, to abide by the conditions

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and restrictions imposed on them by the RRA, including, without limitation, those referred to in paragraphs 32 and 33 of this Cross-Complaint. ICANN has acted in that fashion without regard for the consequences to the .com gTLD registry or to VeriSign, in order to obtain the substantial annual accreditation fees that such new registrar accreditations generate for ICANN.

• ICANN has ignored its obligation to promote and encourage robust competition and, instead, has unreasonably restrained competition among registrars in the provision of back-order services, in that ICANN has, among other conduct, violated the spirit of "equivalent access" by registrars to the registry, by allowing and facilitating the aggregation of connections to the registry in the hands of a few registrars, back-order service providers, and resellers, to the detriment of other registrars, resellers, and VeriSign.

• ICANN has failed to indemnify VeriSign against the costs, expenses, and consequences of ICANN's newly effectuated policy of allowing the accreditation of "registrars" solely or primarily to perform back-order "checking" services rather than registrar services, even though such new services severely burden the operation of the .com gTLD registry and cause significant expense and loss for VeriSign, and even though such new services yield no offsetting fees or revenues for VeriSign.

39. ICANN threatens to persist, throughout the remaining term of the 2001 .com Registry Agreement, in the foregoing or similar conduct constituting breaches of the agreement, thereby increasing and exacerbating the threat to the .com gTLD registry and VeriSign's injuries and losses.

40. VeriSign has suffered, and will continue to suffer, substantial injuries and losses as a proximate result of the breaches and other conduct of ICANN alleged herein, including, without limitation, losses of amounts expended or to be expended to protect, stabilize, test, repair, and expand the registry; losses of revenues from third parties and from bona fide registrars whose operational access to the .com gTLD registry to register new second-level domain names has been delayed and impaired; and losses of profits, business opportunities, reputation, and good will.

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1   Accordingly, VeriSign is entitled to an award of monetary damages from ICANN, according to

2   proof at trial.

3   41.   However, VeriSign may have no adequate legal remedy against ICANN to obtain

4   full compensation or other monetary redress for all of its injuries and losses in that, among other

5   things: (i) ICANN is interfering with the business of VeriSign and injuring its reputation;

6   (ii) ICANN has insufficient assets to compensate VeriSign for its losses; (iii) some of VeriSign's

7   injuries and losses may be difficult to calculate precisely in dollar terms; and (iv) the 2001 .com

8   Registry Agreement purports to limit ICANN's liability for damages in the event of a breach of the

9   agreement to only a fraction of VeriSign's actual injuries and losses, which limitation may be

10   applicable to certain of the injuries alleged herein.

11   42.   The 2001 .com Registry Agreement provides and contemplates that VeriSign can

12   obtain a decree of specific performance and other equitable relief for a breach of the agreement.

13   43.   Accordingly, VeriSign is entitled to a judicial decree of specific performance

14   commanding and compelling ICANN to perform fully the terms and conditions of the 2001 .com

15   Registry Agreement, including, without limitation: (i) to exercise its responsibilities with respect to

16   the accreditation of registrars for the registration of second-level domain names in the .com gTLD

17   registry in an open and transparent manner; (ii) to promote and encourage robust competition in the

18   provision of back-order services; (iii) to identify and establish minimum standards for the

19   accreditation of registrars; (iv) to accredit only bona fide registrars who demonstrate an intent to

20   comply with the provisions of the RRA and to provide domain name registrations to members of the

21   public; and (v) to abide by the principle of "equivalent access" to the .com gTLD registry for

22   accredited registrars.

23   44.   VeriSign also is entitled to preliminary and permanent injunctive relief prohibiting

24   ICANN, its officers, directors, employees, agents, and others acting in concert or in association with

25   it, from directly or indirectly taking any action, or engaging in any conduct, to accredit registrars for

26   the registration of second-level domain names in the .com gTLD that ICANN has reasonable basis

27   to believe are not bona fide registrars, do not intend to provide registrar services to members of the

28   public, do not intend to register domain names in the .com gTLD registry, or do not intend to

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1   comply with the provisions of the RRA, or that have as their sole or primary purpose the use of their

2   batch pool connections for the benefit of batch pool service providers or resellers.

SECOND CAUSE OF ACTION

(For Declaratory Judgment)

5   45.   VeriSign repeats and realleges the allegations contained in paragraphs 1 through 44

6   above as though fully set forth herein.

7   46.   An actual and justiciable controversy has arisen, and now exists, between VeriSign

8   and ICANN with respect to the interpretation of essential terms of the 2001 .com Registry

9   Agreement and the application of those terms to VeriSign's handling and treatment of registrars

10   newly accredited by ICANN.

11   47.   More particularly, VeriSign contends that it has a right under the 2001 .com Registry

12   Agreement to refuse to enter into an RRA with, and to refuse to give access to the .com gTLD

13   registry to, ICANN-accredited registrars that VeriSign has a reasonable basis to believe are not bona

14   fide registrars, do not intend to provide registrar services to members of the public, do not intend to

15   register domain names in the .com gTLD registry, or do not intend to comply with the provisions of

16   the RRA, or that have as their sole or primary purpose the use of their batch pool connections for

17   the benefit of batch pool service providers or resellers.

18   48.   ICANN denies these contentions by VeriSign and contends the opposite.

19   49.   VeriSign and ICANN are bound to perform under the 2001 .com Registry

20   Agreement for at least another 3 years.

21   50.   If VeriSign relies on its interpretation of the 2001 .com Registry Agreement and

22   refuses to enter into an RRA with, and refuses to give access to the .com gTLD registry to, such

23   ICANN-accredited registrars, as VeriSign believes it has a legal and contractual right to do,

24   VeriSign risks ICANN's declaring it to be in breach of the 2001 .com Registry Agreement and/or

25   attempting to terminate the agreement prematurely, with resulting losses of revenue from third

26   parties, profits, extension rights, reputation, and good will.

27

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1   51.   Alternatively, were VeriSign to enter into an RRA with, and to give access to the

2   .com gTLD registry to, such ICANN-accredited registrars, VeriSign will risk jeopardizing the

3   operation of the registry and suffering consequent irreparable losses.

4   52.   In either event, VeriSign has and will have no adequate legal remedy against ICANN

5   for any of these losses. VeriSign is therefore in need of immediate declaratory relief from the Court

6   consistent with its contentions set forth above.

THIRD CAUSE OF ACTION

(For Violation of California's Unfair Competition Law --

Business and Professions Code §§ 17200 *et seq.*)

10   53.   VeriSign repeats and realleges the allegations contained in paragraphs 1 through 52

11   above as though fully set forth herein.

12   54.   ICANN has engaged in unfair business practices. Specifically, the following acts

13   and conduct, among others, constitute unfair competitive practices that have caused VeriSign to

14   suffer injury in fact:

15   •   ICANN has failed to establish or follow minimum standards for accrediting

16   new registrars that would prevent prospective registrars who had no intention of engaging in

17   a bona fide registrar business from becoming accredited.

18   •   ICANN has knowingly accredited registrars that are not bona fide registrars,

19   that do not intend to provide registrar services to members of the public, that do not intend

20   to engage in the business of a registrar, that do not intend to register domain names in the

21   .com gTLD registry, and that do not intend, and never intended, to abide by the conditions

22   and restrictions imposed on them by the RRA, including, without limitation, those referred

23   to in paragraphs 32 and 33 of this Cross-Complaint. ICANN has acted in this fashion

24   without regard for the consequences to the .com gTLD registry or to VeriSign, in order to

25   obtain the substantial annual accreditation fees that such new registrar accreditations

26   generate for ICANN.

27   •   ICANN has unreasonably restrained competition among registrars in the

28   provision of back-order services, in that ICANN has, among other conduct, violated the

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spirit of "equivalent access" by registrars to the registry by allowing and facilitating the aggregation of connections to the registry in the hands of a few registrars, back-order service providers, and resellers, to the detriment of other registrars, resellers, and VeriSign.

55. ICANN threatens to persist, at least throughout the remaining term of the 2001 .com Registry Agreement, in the foregoing or similar conduct, thereby increasing and exacerbating the unfair and unlawful manner in which ICANN is conducting its business and VeriSign's injuries and losses.

56. VeriSign has suffered, and will continue to suffer, substantial injuries and monetary losses as a proximate result of the unfair competitive practices of ICANN alleged herein, including, without limitation, losses of amounts expended or to be expended to protect, stabilize, test, repair, and expand the registry; losses of revenues from third parties and from bona fide registrars whose operational access to the .com gTLD registry to register new second-level domain names has been delayed; and losses of profits, business opportunities, reputation, and good will. Accordingly, VeriSign is entitled to an injunction against ICANN that prohibits ICANN from continuing its unfair and unlawful competitive practices. Specifically, VeriSign is entitled to preliminary and permanent injunctive relief prohibiting ICANN, its officers, directors, employees, agents, and others acting in concert or in association with it, from directly or indirectly taking any action, or engaging in any conduct, to accredit registrars for the registration of second-level domain names in the .com gTLD that ICANN has a reasonable basis to believe are not bona fide registrars, do not intend to provide registrar services to members of the public, do not intend to register domain names in the .com gTLD registry, or do not intend to comply with the provisions of the RRA, or that have as their sole or primary purpose the use of their batch pool connections for the benefit of batch pool service providers or resellers.

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

A. On the First Cause of Action of this Cross-Complaint:

1. For entry of a judicial decree of specific performance commanding and compelling ICANN to perform fully the terms and conditions of the 2001 .com Registry Agreement, including, without limitation: (i) to exercise its responsibilities with respect to the

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accreditation of registrars for the registration of second-level domain names in the .com gTLD

registry in an open and transparent manner; (ii) to promote and encourage robust competition in the

provision of back-order services; (iii) to identify and establish minimum standards for the

accreditation of registrars; (iv) to accredit only bona fide registrars who demonstrate an intent to

comply with the provisions of the RRA and to provide domain name registrations to members of the

public; and (v) to abide by the principle of "equivalent access" to the .com gTLD registry for

accredited registrars.

2. For entry of a preliminary and permanent injunction prohibiting ICANN, its

officers, directors, employees, agents, and others acting in concert or in association with it, from

directly or indirectly taking any action, or engaging in any conduct to accredit registrars for the

registration of second-level domain names in the .com gTLD that ICANN has a reasonable basis to

believe are not bona fide registrars, do not intend to provide registrar services to members of the

public, do not intend to register domain names in the .com gTLD registry, or do not intend to

comply with the provisions of the RRA, or that have as their sole or primary purpose the use of their

batch pool connections for the benefit of batch pool service providers or resellers.

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

4. For its reasonable attorneys' fees pursuant to contract.

B. On the Second Cause of Action of this Cross-Complaint:

1. For entry of a final and binding judicial declaration determining and

adjudicating each and all of VeriSign's contentions as set forth in paragraph 47 above.

2. For its reasonable attorneys' fees.

C. On the Third Cause of Action of this Cross-Complaint:

1. For entry of a preliminary and permanent injunction prohibiting ICANN, its

officers, directors, employees, agents, and others acting in concert or in association with it, from

directly or indirectly continuing to act in a manner that violates the prohibitions against unfair

competition, including prohibiting ICANN from taking any action, or engaging in any conduct to

accredit registrars for the registration of second-level domain names in the .com gTLD which

ICANN has a reasonable basis to believe are not bona fide registrars, do not intend to provide

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1 registrar services to members of the public, do not intend to register domain names in the .com

2 gTLD registry, or do not intend to comply with the provisions of the RRA, or which have as their

3 sole or primary purpose the use of their batch pool connections for the benefit of batch pool service

4 providers or resellers.

   2.   For its reasonable attorneys' fees.

   D.   On All Causes of Action of this Cross-Complaint:

   1.   For its costs of suit incurred herein.

   2.   For such further relief as is just and proper.

DATED: December 28, 2004.   ARNOLD & PORTER LLP
                                             RONALD L. JOHNSTON
                                             LAURENCE J. HUTT
                                             SUZANNE V. WILSON
                                             JAMES S. BLACKBURN

                                   By: _____
                                       RONALD L. JOHNSTON
                                       Attorneys for Plaintiff,
                                       Cross-Defendant &
                                       Cross-Complainant VeriSign, Inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA   )
)   ss

COUNTY OF LOS ANGELES   )

        I am employed by First Legal Support Services in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1511 W. Beverly Blvd., Los Angeles, California 90026. On **December 28, 2004**, I served a document described as **CROSS-COMPLAINT FOR: (1) BREACH OF CONTRACT; (2) DECLARATORY AND INJUNCTIVE RELIEF; AND (3) UNFAIR COMPETITION IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.*** on the following interested party in this action by personally delivering a copy to:

☒   by placing true copies thereof enclosed in sealed envelopes addressed as stated below:

Jeffrey A. LeVee
John S. Sasaki
Christina Coates
Sean W. Jaquez
JONES DAY
555 West Fifth Street, Suite 4600
Los Angeles, California 90013-1025

☒   **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the office of the addressee. Executed on **December 28, 2004** at Angeles, California.

☐   **BY MAIL** I placed such envelope with postage thereon prepaid in the United States Mail at 777 South Figureoa Street, 44th Floor, Los Angeles, California 90017-5844. Executed on   at Los Angeles, CA.

☐   **BY ELECTRONIC TRANSMISSION** The above-referenced document (together with all exhibits and attachments thereto) was transmitted via electronic transmission to the addressee(s) as indicated on the attached mailing list on the date thereof. The transmission was reported as completed and without error. Executed on   Los Angeles, California.

☒   **STATE** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐   **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

_Avel Rubio_____   _____
Type or Print Name   Signature

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