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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY _____

6 Attorneys for Plaintiff
7 The Internet Corporation for Assigned Names
and Numbers

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 The Internet Corporation for Assigned
Names and Numbers,

13
14 Plaintiff,

15 v.

16 RegisterFly.Com, Inc., and
UnifiedNames, Inc.,

17 Defendants.
18
19

Case No. CV 07-2089 R (PLAx)

**ICANN'S OPPOSITION TO EX
PARTE APPLICATION TO
MODIFY INJUNCTION**

Date: TBD
Time: TBD
Judge: Hon. Manuel L. Real

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1 **I. INTRODUCTION**

2 On April 26, 2007, this Court entered a Preliminary Injunction (“PI”) against
3 Defendants RegisterFly.Com, Inc. and UnifiedNames, Inc. (collectively,
4 RegisterFly. RegisterFly told this Court that it did not object to any of the terms of
5 the PI. Now, well after the date for compliance with the PI, RegisterFly filed an
6 application to excuse its compliance with Paragraphs 11 and 16 – the requirement
7 that RegisterFly place a notice to consumers at the top of its website home page to
8 alert consumers to the status of the termination of its ICANN accreditation (the
9 “Notice” or “Notice to Consumers”). RegisterFly has *never* complied with the
10 Notice requirements. The Court should reject RegisterFly’s request – brought
11 nearly six weeks after RegisterFly first violated the PI – to excuse its compliance
12 and relieve it from the Notice obligation.

13 RegisterFly’s *Ex Parte* Application to Modify Injunction Or, In the
14 Alternative, to Reconsider Issuance of Injunction (“Application” or “App.”) is
15 nothing more than a motion that this Court reconsider its granting of a Permanent
16 Injunction against RegisterFly on May 25, 2007.¹ At that hearing on the Permanent
17 Injunction, RegisterFly *made exactly the same arguments* it now presents to this
18 Court. The entirety of this Application is brought in violation of this Court’s Local
19 Rules: “No motion for reconsideration **shall in any manner repeat any oral or**
20 **written argument** made in support of or in opposition to the original motion.”
21 (L.R. 7-18) (emphasis added).

22 The record is clear: RegisterFly *already* raised the “irrelevance” of the
23 notice to consumers to this Court at the hearing on the Permanent Injunction based
24 on RegisterFly’s no longer acting as a registrar, and this Court rejected that
25 argument. In addition, RegisterFly already argued against the entry of the

26 ¹ The only “new” relief requested is a modification of the Notice provisions
27 PI. The Permanent Injunction is to be identical in form to the PI, and the Court
28 flatly rejected any need for modification of the Notice provisions at the hearing on
the Permanent Injunction.

1 Permanent Injunction based upon the arbitration agreement between the parties.
2 RegisterFly raised the *very same arguments* as contained in its Application in a
3 prior briefing to the Court (filed on May 24, 2007) *and* in oral argument on May 25.
4 This Court considered and flatly rejected RegisterFly's argument.

5 This matter is *not* appropriate for ex parte relief; RegisterFly could have
6 appeared nearly *six weeks* ago to challenge ICANN's request for a notice to
7 consumers that must be posted after RegisterFly's registrar operations had ceased.
8 But RegisterFly already told this Court that it found the PI proper, and made the
9 affirmative choice to not appear in opposition. RegisterFly's decision to continue
10 as a reseller of domain name registrations makes the posting of a notice to
11 consumers *even more important* to protect current and potential domain name
12 registrants from confusion and harm, as RegisterFly itself admits that there is no
13 apparent difference to the consumer when dealing with a reseller as opposed to a
14 registrar.

15 RegisterFly's self-help in avoiding compliance with the Notice provision and
16 creating an excuse to bring an unsupportable *ex parte* motion to be relieved future
17 compliance should be rejected. RegisterFly should be required to comply with this
18 Court's Orders in full.

19 **II. BACKGROUND FACTS AND PROCEDURAL HISTORY**

20 ICANN continually provided this Court with a discussion of the factual and
21 procedural history between the parties, and for brevity, will not restate the entire
22 history of this litigation below. In response to RegisterFly's "Pertinent Facts"
23 section, however, ICANN presents some additional facts to identify the recent
24 timeline of events and clarify RegisterFly's misrepresentations to the Court.

25 Of primary import are the facts relating to RegisterFly's *continuing* violation
26 of the Notice requirements – a violation continuing to this day. RegisterFly did not
27 even *attempt* to comply until approximately May 29, 2007, *over a month* after the
28 Court entered the April 26, 2007 Preliminary Injunction, and after the threat of

1 sanctions. At that time, RegisterFly failed to place the order on its main webpage,
2 and did not place the Notice at the top of the page as required. On June 4, 2007,
3 RegisterFly finally placed the Notice on its website home page, but *still* remains in
4 violation of the Notice provision as the Notice is located at the bottom of the page.
5 (*See* Consolidated Declaration of Samantha Eisner (“Eisner Decl.”), ¶ 3.)
6 RegisterFly ignores the fact of its non-compliance in its Application. (App.,
7 *passim*.)

8 RegisterFly raised its concerns over the imposition of the Notice once
9 RegisterFly stopped acting as a registrar to this Court and to ICANN. There is
10 nothing “new” about this fact or circumstance. Once RegisterFly retained counsel
11 in California, on May 23, 2007 RegisterFly contacted ICANN to determine if
12 ICANN would stipulate to removing the Notice to Consumer provisions from the
13 PI. (Eisner Decl., ¶ 13.) Next, RegisterFly told this Court in oral argument that the
14 fact that RegisterFly was no longer acting as a registrar, the Notice to Consumer
15 provisions were irrelevant.² (May 25, 2007 hearing.) Now, RegisterFly tells the
16 Court it just should not be forced to comply.

17 ICANN initiated this lawsuit against RegisterFly on March 29, 2007.
18 RegisterFly initiated the AAA Arbitration against ICANN on March 28, 2007 –
19 *after* ICANN provided RegisterFly with notice that it intended to file suit and seek
20 a temporary restraining order. (Eisner Decl., ¶ 14.) After receipt of notice, and
21 prior to initiating the arbitration, RegisterFly attempted to persuade ICANN to not
22 file suit, and promised to provide ICANN with the requested data. (Eisner Decl., ¶
23 14.) RegisterFly had previously staved off ICANN’s filing of suit in this matter
24 with the provision of an insufficient data file, and ICANN determined that it must
25 proceed with suit and could not take the risk of allowing RegisterFly to *continue* to

26 ² Indeed, on May 23, 2007, RegisterFly told ICANN that it would likely
27 oppose the Permanent Injunction if only to contest the notice provisions. (Eisner
28 Decl., ¶ 13.) RegisterFly’s May 24, 2007 filings did not mention the challenge to
the notice provision, and RegisterFly only mentioned that concern in oral argument.

1 frustrate ICANN's attempts to protect RegisterFly's customers. (Eisner Decl., ¶
2 14.)

3 While RegisterFly tells this Court that it started out as a reseller, it does not
4 tell this Court about the fact that RegisterFly encountered problems as a reseller.
5 ENom, a registrar with which RegisterFly maintained a reseller relationship with,
6 was contacted by ICANN on more than one occasion relating to customer
7 complaints over RegisterFly. (Eisner Decl., ¶ 15.) RegisterFly's track record as a
8 reseller raises many of the same concerns as the documented issues with
9 RegisterFly as a registrar. Indeed, one source of RegisterFly customer complaints
10 to ICANN involved confusion over RegisterFly's status as a reseller or registrar.
11 (Eisner Decl., ¶ 15.)

12 ICANN did not know that RegisterFly was intending to continue act as a
13 reseller until May 29, 2007. (Eisner Decl., ¶ 16.) On June 1, 2007, pursuant to the
14 Court's Injunctions, ICANN formally terminated RegisterFly's accreditation.
15 (Eisner Decl., ¶ 12.) As stated in RegisterFly's concurrently-filed Report on
16 Compliance, ICANN's termination of the RAA places a limitation on RegisterFly's
17 ability to engage in "the solicitation and/or acceptance of domain name
18 registrations, transfers or renewals, [and] accepting payment for domain name
19 registrations, transfers or renewals," (PI, ¶ 15). ICANN sought the inclusion of this
20 language in the Preliminary Injunction to provide yet another level of protection for
21 RegisterFly's customers.

22 ICANN does not now seek and has never sought the enforcement of the
23 Notice to Consumer provisions of the Injunctions as punitive measures against
24 RegisterFly. ICANN requested the posting of notice as a means of informing
25 potential and current customers of RegisterFly of the need to perform further
26 research prior to selecting RegisterFly. (April 24, 2007 Memo. ISO Preliminary
27 Injunction, p. 5, n.6.) ICANN maintains that its consumer protection goals in
28 assuring a posting of Notice to Consumers regarding termination are *even more*

1 *essential* now that it has confirmation that RegisterFly intends to remain active in
2 the domain name registration business as a reseller. (Eisner Decl., ¶ 18.)

3 **III. REGISTERFLY HAS NOT MET ITS BURDEN IN**
4 **DEMONSTRATING ITS NEED FOR MODIFICATION OF THE**
5 **COURT'S ORDERS.**

6 When seeking to modify an order of the Court under Federal Rule of Civil
7 Procedure 60(b)(5), a party must “satisfy the initial burden of showing a significant
8 change . . . in factual conditions . . . warranting modification of the decree,” and
9 then the Court “must then determine whether the proposed modification is suitably
10 tailored to resolve the problems created by the changed factual . . . conditions.”
11 *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005) (*citing Rufo v.*
12 *Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992)) (denying modification of
13 consent decree). When relying on changed factual conditions, the movant “must
14 additional show that the changed conditions make compliance with the [order]
15 ‘more onerous’, ‘unworkable’, or ‘detrimental to the public interest’.” *Id.* (citations
16 omitted). Relief from an order “should not be granted, however, simply because a
17 party finds ‘it is no longer convenient to live with the terms’ of the order.” *SEC v.*
18 *Coldicutt*, 258 F.3d 939, 942 (9th Cir. 2001) (*citing Rufo*, 502 U.S. at 383) (denying
19 motion to modify nine year old injunction because the movant’s subjective
20 concerns of stigma were not sufficient to meet burden).

21 In order to rely on the “catch all” provision of Rule 60(b)(6) to modify an
22 order, a movant must demonstrate that “extraordinary circumstances” exist.
23 *Maraziti v. Thorpe*, 52 F.3d 252, 254-55 (9th Cir. 1995) (*citing Ackermann v.*
24 *United States*, 340 U.S. 193, 199-201 (1950)) (denying modification of order).
25 Extraordinary circumstances *do not* exist where a movant reiterates an argument
26 already presented to the court. *Id.*

1 **A. There are No Changed Circumstances that Support the**
2 **Modification of the Preliminary or Permanent Injunction Under**
3 **Rule 60(b)(5).**

4 RegisterFly states that the fact that it “no longer acts as a domain name
5 registrar and the efforts [it] ha[s] taken in this regard are new and material facts that
6 warrant the Court’s reconsideration of its prior order.” (App. at 2:6-9.) This
7 statement is simply not true. These are *not* new facts or circumstances. A movant
8 cannot base a request for modification of an order on facts or circumstances that it
9 knew of or reasonably contemplated occurring at the time of entry of the order.

10 RegisterFly already knew *and* already informed the Court that RegisterFly
11 was no longer acting as a Registrar. It told the Court – in writing and at the hearing
12 – that “RegisterFly is not acting as a registrar.”³ (May 24, 2007 Response of
13 Defendants to Order to Show Cause Why Permanent Injunction Should Not Issue
14 (“Response Re: Perm. Inj.”) at 4:12; Heather McCloskey argument at May 25
15 hearing.) RegisterFly also informed this court of the near completion of the
16 RegisterFly-GoDaddy transfer that RegisterFly now relies on as a “new”
17 occurrence sufficient to grant modification. (Response Re. Perm. Inj. at 4:14-18).

18 RegisterFly actually *argued* to the Court that the fact that RegisterFly was no
19 longer acting as a registrar and was transferring domain names to a buyer rendered
20 the Notice provisions as “irrelevant,” and requested this Court to alter that portion
21 of the Permanent Injunction. (Argument of Heather McCloskey at May 25
22 hearing.) The Court considered and rejected this argument, and ordered the

23 ³ RegisterFly similarly ignores and misstates the record of this proceeding by
24 its claim that “the Court noted . . . that it had not been presented with evidence of
25 the pending arbitration” (*Ex Parte App.* at 4:10-11) and the underlying declaration
26 statement that “At the hearing on May 25, 2007, the Court noted that it had not had
27 any opportunity to review the documents submitted by the defendants prior to the
28 hearing.” (Decl. of Heather McCloskey ISO *Ex Parte App.* at ¶ 3, 2:3-5.) At the
hearing, this Court told RegisterFly that it had reviewed the papers that very
morning, and only denied knowledge of the substance of the arbitration proceeding,
though it was aware of the arbitration itself.

1 Permanent Injunction to be granted in full against RegisterFly. RegisterFly *cannot*
2 rely on *any* of these facts as sufficiently “new” to warrant a modification of the PI
3 and/or the Permanent Injunction.

4 RegisterFly’s new ‘status’ as a reseller is not a new fact either. RegisterFly
5 knew – though it did not share this fact with the Court or with ICANN – that it was
6 negotiating a deal that would allow it to maintain active as a domain name reseller.
7 A movant *may not* use facts and circumstances that it was aware of and could have
8 presented to the Court earlier as support for a request for modification under Rule
9 60(b)(5). A permanent injunction is to be modified only when the movant is facing
10 unforeseen obstacles. *See Coldicutt*, 258 F.3d at 945 (emphasis added) (denying
11 motion to terminate where movant “failed to establish a sufficient change of
12 circumstances.”).

13 RegisterFly ignores the fact that it has known – since April 26, 2007 – that it
14 would be subject to a Notice posting after it was no longer acting as an ICANN-
15 accredited registrar. Paragraph 16 of the PI states just that. More importantly,
16 RegisterFly *did not find any portion of the PI objectionable* and elected to not
17 oppose the imposition of the PI. (ICANN’s Report on Defendants’ Compliance
18 with Injunction 2: 14-16). The only new fact or circumstance here is that
19 RegisterFly is now operating under threat of sanctions by the Court, and can no
20 longer simply refuse to comply with this Court’s orders.

21 **B. Requiring a Notice Provision is Essential for the Continued**
22 **Protection of Potential Registrants and Is Still in the Public**
23 **Interest.**

24 In addition to failing to identify *any* changed fact or circumstance, to support
25 modification, RegisterFly fails to explain how the continued imposition of the
26 Notice requirement would be “onerous”, “unworkable”, or “detrimental to the
27 public interest.” In fact, RegisterFly’s continuing as a reseller without providing
28 any notice would be the only result detrimental to the public interest.

1 RegisterFly tells this Court *exactly* why providing the consumers with a
2 notification of the termination of RegisterFly’s accreditation is necessary. It
3 admits: “The difference between a reseller and a registrar is not obvious from
4 simply viewing a website and seeking to purchase a domain name.” (App. at 6:4-
5 5.) The differences are only apparent to those actors behind the scenes, such as the
6 registries that a registrar must access, or the fact that a reseller must maintain an
7 account with a registrar to allow for the registration of domain names. (See App. at
8 6:15-20.) Consumers are entirely at risk here; many people have been harmed as a
9 result of RegisterFly’s actions to date,⁴ and it’s entirely possible that some of the
10 registrants who expected to be migrated out of RegisterFly’s registrar services may
11 now learn that RegisterFly was only a reseller all along.⁵

12 RegisterFly’s worry about consumer confusion caused by the fact that “the
13 notice does not make mention that RegisterFly has transferred those names for
14 which it was the registrar to another entity and . . . the names that can be purchased
15 . . . are names for resale,” (App. at 5:19-21), does not render the Notice provisions
16 onerous. The Notice does not purport to regulate the rest of the content or the
17

18 ⁴ RegisterFly proves that it is willing to lie this Court in the hopes of
19 achieving its requested relief; there is no telling how it will maintain its customer
20 relationships where penalties for false statements may be harder to enforce. For
21 example, RegisterFly tells this Court that it has “removed all language on the
22 www.registerfly.com website that references [RegisterFly] as domain name
23 registrars.” (App. at 1:19-20.) This could not be further from the truth. After
24 ICANN received service of the Application on the afternoon of June 4, 2007, it was
25 able to locate no fewer than *ten* separate links from the registerfly.com page with
26 references to RegisterFly as a registrar – *including* the Uniform Domain Name
27 Dispute Resolution Policy incorporated as part of RegisterFly’s Registration
28 Agreement. (See <https://registerfly.com/info/dispute.php> at ¶ 1 (referring to “us
(the registrar)”); Eisner Decl., ¶ 19.). There is no question that the Notice as
required in the Injunctions is appropriately maintained against RegisterFly for the
time being.

⁵ There is already consumer confusion over RegisterFly as reseller and
RegisterFly as registrar for RegisterFly’s most recent customers.

1 business of the site. If RegisterFly believes a description of circumstances is
2 necessary for clarification, it could: (1) move this Court for modification of the
3 order to *include* such language in the Notice, or (2) simply place the additional
4 explanation elsewhere on the website. RegisterFly does not need Court relief to
5 remedy this concern.

6 **C. Registerfly's Request for Modification is Based in Whole on**
7 **Arguments Previously Presented to the Court.**

8 As discussed above, the entirety of RegisterFly's arguments in support of
9 modification were already presented to the Court. Moreover, RegisterFly does not
10 even claim that any extraordinary circumstances exist to support a granting of
11 modification under Rule 60(b)(6). (App., *passim*.) Pursuant to *Maraziti v. Thorpe*,
12 52 F.3d 252, 254-55 (9th Cir. 1995), RegisterFly's request for modification under
13 Rule 60(b)(6) should be denied.

14 **D. RegisterFly's Alternative Request for Reconsideration Should Be**
15 **Denied.**

16 RegisterFly requests that in the event this Court refuses to modify its order,
17 its Application should be considered a Motion for Reconsideration under Local
18 Rule 7-18. (App. at 9:14-13:6.) RegisterFly raises two grounds for
19 reconsideration: new facts and the court's failure go properly consider its ability to
20 issue the Permanent Injunction. RegisterFly does not satisfy either of these stated
21 grounds.

22 "No motion for reconsideration **shall in any manner repeat any oral or**
23 **written argument** made in support of or in opposition to the original motion."
24 L.R. 7-18 (emphasis added). If a movant seeks reconsideration based on new facts
25 and circumstances, it cannot rely on facts previously presented to the Court; it may
26 only rely on those items that an exercise of reasonable diligence would have
27 revealed to the movant at the time of the entry of the order. *Hirel Connectors, Inc.*
28 *v. U.S.*, No. CV 01-11069 DSF (VBKx), 2006 U.S. Dist. LEXIS 93524, at *5 (C.D.
Cal. June 30, 2006) (denying reconsideration). When challenging a Court's failure

1 to properly consider evidence, a movant is required to do more than show that the
2 Court did not give attention to a matter the movant considered important,
3 particularly when the matter is not worthy of consideration. *Metro Lights LLC v.*
4 *City of Los Angeles*, Case No. CV 04-1037 GAF (Ex), 2007 U.S. Dist. LEXIS
5 27618, at *7 (C.D. Cal. Jan. 24, 2007) (denying reconsideration when Court gave
6 proper weight – none – to movant’s earlier argument).

7 As discussed above, no new facts exist to support a motion for
8 reconsideration under Local Rule 7-18. Not only were the facts *known* to
9 RegisterFly; RegisterFly already presented the facts in argument to the Court.
10 Further, RegisterFly has not demonstrated that the Court failed to weigh its
11 arguments relating to impropriety of the entry of the Permanent Injunction.
12 RegisterFly states that “the Court failed to consider its jurisdictional boundaries in
13 its issuance of the permanent injunction.” (App. at 11:13-14.) But the Court –
14 having been presented with argument relating to the arbitration both in paper and in
15 oral argument – both considered and denied RegisterFly’s jurisdictional argument.
16 (May 25 Hearing at 18:10-19.)

17 **IV. EX PARTE RELIEF IS NEITHER APPROPRIATE NOR**
18 **NECESSARY.**

19 Neither of RegisterFly’s requested forms of relief are proper for emergency
20 relief.

21 **A. RegisterFly has had Nearly Six Weeks to Bring a Motion Relating**
22 **to the Notice Provision.**

23 RegisterFly could have challenged the propriety of being subject to the
24 posting of the Notice to Consumers stating that its accreditation was terminated.
25 ICANN first requested this form of relief on April 24, 2007 in its Memorandum in
26 Support of Entry of Preliminary Injunction, (Mem. ISO PI at 5, n.6), and paragraph
27 16 of the [Proposed] Preliminary Injunction sought to specifically require
28 RegisterFly to post the Notice to Consumers once it could no longer act as a
registrar. RegisterFly chose not to challenge the requested relief – though the relief

1 required RegisterFly to do *exactly what* RegisterFly finds so objectionable now.
2 RegisterFly has had nearly six weeks to challenge this term of the injunction, and it
3 has failed to do so at every point. In fact, RegisterFly elected to *not* raise this
4 argument in a prior written submission to the Court. On May 23, 2007, RegisterFly
5 told ICANN that it intended to oppose the entry of the Permanent Injunction on the
6 basis of the mootness of the Notice provision. RegisterFly did not include the
7 argument in its May 24 filings. (Eisner Decl., ¶ 13.)

8 Moreover, as discussed above, RegisterFly has *already raised this argument*
9 to the Court and was denied.

10 **B. Granting an Emergency Request for Reconsideration is Futile and**
11 **Inappropriate.**

12 RegisterFly's *ex parte* request for relief from the Permanent Injunction is
13 similarly *not* appropriate for emergency relief. RegisterFly has acknowledged that
14 even in the absence of the Permanent Injunction, it would *still be subject* to the
15 Preliminary Injunction – which is identical in scope. Seeking relief from the
16 Permanent Injunction on an *ex parte* basis is waste of this Court's time.

17 **V. REGISTERFLY'S ABILITY TO MAINTAIN ITS ARBITRATION**
18 **AGAINST ICANN IS NOT IMPAIRED BY THIS COURT'S**
19 **GRANTING OF A PERMANENT INJUNCTION.**

20 As this Court found at the May 25, 2007 hearing, the entry of the Permanent
21 Injunction against RegisterFly did not affect RegisterFly's ability to maintain or
22 pursue its arbitration against ICANN. The Permanent Injunction affords *exactly the*
23 *same* scope of relief as granted in the Preliminary Injunction – relief that
24 RegisterFly has already admitted was properly sought and granted in all of its
25 particulars. This Court already determined that it has jurisdiction to enter the
26 Permanent Injunction, and RegisterFly has not presented any additional facts or law
27 to overturn the Court's finding. Moreover, ICANN has been participating in the
28 arbitration proceedings, and will continue to do so for as long as RegisterFly

1 persists in the maintenance of those proceedings. The Permanent Injunction does
2 not frustrate the contractual rights or expectations of the parties.

3 In the unlikely event that RegisterFly prevails in the arbitration, and
4 ultimately obtains the right to have its ICANN accreditation restored, the onerous
5 “practical implications” that RegisterFly suggests in its Application are absurd.
6 RegisterFly states that it would have to “forever continue to maintain on its website
7 the notice concerning its ICANN accreditation, regardless of the outcome of the
8 arbitration proceedings . . . [and therefore] the entry of this preliminary [*sic*]
9 injunction renders the arbitration agreement contained in the RAA completely
10 meaningless.” (App. at 12:1-6.) It is almost comical that RegisterFly – which
11 appears to have taken every possible action to *avoid* placing the notice on its
12 website when it *agrees* that it has been appropriately subject to this Court’s
13 Preliminary Injunction ordering such placement – is worried about a future
14 continuing obligation. Obviously, if circumstances were to change to allow
15 RegisterFly to again act as a registrar, that change would surely be of the type to
16 support a modification of the Permanent Injunction under Rule 60(b)(5).⁶

17 **VI. CONCLUSION**

18 RegisterFly has demonstrated that it is willing to stoop to any low to avoid
19 proper placement of the Notice to Consumers. It now has brought this meritless *Ex*
20 *Parte* Application, wasting the time of this Court and ICANN. ICANN requests
21 that RegisterFly’s *Ex Parte* Application be denied in full, and that RegisterFly be
22 required to immediately and completely comply with all Orders of this Court.
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27 ⁶ Far different from RegisterFly’s improper invocation of Rule 60(b)(5) in its
28 Application.

1 Dated: June 5, 2007

Respectfully submitted,

2 JONES DAY

3
4 By:

Jeffrey A. LeVee / SSE
Jeffrey A. LeVee

5 Attorneys for Plaintiff
6 THE INTERNET CORPORATION FOR
7 ASSIGNED NAMES AND NUMBERS
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1 **PROOF OF SERVICE BY OVERNIGHT DELIVERY**

2 I am a citizen of the United States and employed in Los Angeles County,
3 California. I am over the age of eighteen years and not a party to the within-entitled
4 action. My business address is 555 South Flower Street, Fiftieth Floor, Los
5 Angeles, California 90071-2300. On June 5, 2007, I deposited with Federal
6 Express, a true and correct copy of the within documents:

7 **ICANN'S OPPOSITION TO EX PARTE**
8 **APPLICATION TO MODIFY INJUNCTION**

9 in a sealed envelope, addressed as follows:

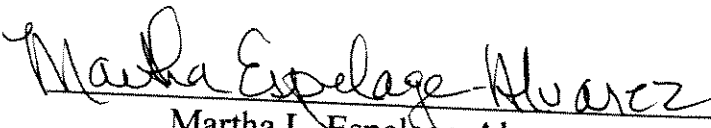
10 Heather L. McCloskey, Esq.
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12 9401 Wilshire Blvd., 9th Floor
13 Beverly Hills, CA 90212
14 Email: hmcloskey@ecjlaw.com
15 Counsel for Registerfly.com, Inc.
16 and UnifiedNames, Inc.

17 Following ordinary business practices, the envelope was sealed and placed
18 for collection by Federal Express on this date, and would, in the ordinary course of
19 business, be retrieved by Federal Express for overnight delivery on this date.

20 I have submitted a courtesy copy of the above described document via email
21 to all parties listed above.

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

24 Executed on June 5, 2007, at Los Angeles, California.

25 
26 Martha L. Espelage-Alvarez