

01/06/2017

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/22/16

DEPT. 53

HONORABLE HOWARD L. HALM

JUDGE S. SMYTHE

DEPUTY CLERK

HONORABLE
1

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

F. RODRIGUEZ, C.A.

Deputy Sheriff

S. DORN, CSR #11387

Reporter

8:29 am BC607494

Plaintiff	BROWN, HERI, SMITH & KHAN
Counsel	BY: ETHAN J. BROWN and KETE BARNE\$
Defendant	JONES DAY
Counsel	BY: JEFFREY A. LeVEE ✓ and ERIN L. BURKE

DOTCONNECTAFRICA TRUST
VS.
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

170.6 JUDGE KWAN BY DEFENDANT

NATURE OF PROCEEDINGS:

ALSO APPEARING:

KESSELMAN BRANTLY STOCKINGER
BY: DAVID W. KESSELMAN
and AMY T. BRANTLY

**MOTION OF PLAINTIFF DOTCONNECTAFRICA TRUST,
FOR PRELIMINARY INJUNCTION**

The motion of plaintiff DotConnectAfrica Trust for a Preliminary Injunction comes on for hearing.

The plaintiff is seeking to enjoin defendant Internet Corporation for Assigned Names and Numbers (ICANN) from issuing the .Africa generic top level domain (gTLD) until this case has been resolved.

The matter is argued at length and stands submitted.

Note that the court advised counsel that he was lacking exhibit F to the declaration of Mokgabudi Lucky Masilela, with its summary of costs, which was conditionally placed under seal by prior order of court.

A copy was provided by the intervenor's counsel, and will be returned to counsel upon service of the court's ruling.

01/06/2017 10:10

MINUTES ENTERED 12/22/16 COUNTY CLERK
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EX A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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DOTCONNECTAFRICA TRUST

VS.

Defendant

JONES DAY

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

Counsel

BY: JEFFREY A. LeVEE
and ERIN L. BURKE

170.6 JUDGE KWAN BY DEFENDANT

NATURE OF PROCEEDINGS:

The court sets this matter for a case management conference on 1-23-17, 8:30 a.m., this department.

The court intends to set the matter for trial at that time, and asks that counsel begin checking their calendars for mutually agreeable dates.

Case Management Statements must be submitted before the conference.

LATER: The plaintiff's motion for the imposition of a Preliminary Injunction is denied, based on the reasoning expressed in the oral and written arguments of defense counsel.

Further, the court has considered the unopposed application of the defendant to file exhibit F to the Masilela declaration under seal, and it is so-ordered.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order dated 12-22-16 upon all parties/counsel named below by placing the document for collection and mailing so as to

<p align="center">MINUTES ENTERED 12/22/16 COUNTY CLERK</p>

01/06/2017/915

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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S. DORN, CSR #11387

Reporter

8:29 am

BC607494

DOTCONNECTAFRICA TRUST
VS.
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

Plaintiff BROWN, HERI, SMITH & KHAN
Counsel BY: ETHAN J. BROWN
and KETE BARNES
Defendant JONES DAY
Counsel BY: JEFFREY A. LeVEE
and ERIN L. BURKE

170.6 JUDGE KWAN BY DEFENDANT

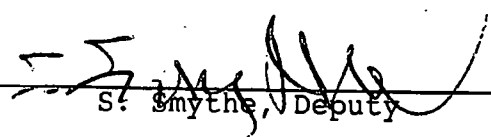
NATURE OF PROCEEDINGS:

cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 12-22-16

Sherri R. Carter, Executive Officer/Clerk

By:


S. Smythe, Deputy

Brown, Neri, Smith & Khan
Attn.: Ethan J. Brown, Esq.
11766 Wilshire Blvd., #1670
Los Angeles, Calif. 90025

Jones Day
Attn.: Jeffrey A. LeVee, Esq.
555 S. Flower St., 50th Floor
Los Angeles, Calif. 90071-2300

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12/22/16
COUNTY CLERK

01/06/2017 10:10

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/22/16

DEPT. 53

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Deputy Sheriff

S. DORN, CSR #11387

Reporter

8:29 am

BC607494

DOTCONNECTAFRICA TRUST
VS.
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

Plaintiff

BROWN, HERI, SMITH & KHAN

Counsel

BY: ETHAN J. BROWN
and KETE BARNES

Defendant

JONES DAY

Counsel

BY: JEFFREY A. LeVEE
and ERIN L. BURKE

170.6 JUDGE KWAN BY DEFENDANT

NATURE OF PROCEEDINGS:

Kesselman Brantly Stockinger LLP
Attn.: David W. Kesselman, Esq.
1230 Rosecrans Ave., #690
Manhattan Beach, Calif. 90266

MINUTES ENTERED
12/22/16
COUNTY CLERK

01/06/2017 7:15

01/06/2017

EXHIBIT B

David Kesselman

From: Kete Barnes <kete@bnsklaw.com>
Sent: Tuesday, January 03, 2017 9:49 AM
To: Jeffrey LeVee; David Kesselman
Cc: Rachel Gezerseh; cswasserstein@jonesday.com; Amy Brantly; Sara Colón; Ethan Brown
Subject: DCA v. ICANN - Notice of Ex Parte Application for Temporary Restraining Order

Counsel,

Please take notice that tomorrow, January 4, 2017, at 8:30 a.m., or as soon thereafter as may be heard, in Department 53 of Stanley Mosk Courthouse, Plaintiff DotConnectAfrica Trust (“DCA”) will apply *ex parte* for a temporary restraining order enjoining Defendant ICANN from taking any further action regarding the delegation of the .Africa gTLD. DCA’s application is based on its second and fifth causes of action for intentional misrepresentation and unfair competition, respectively. DCA applies *ex parte* because ICANN will not refrain from delegating the .Africa gTLD until a regularly noticed motion for a preliminary injunction can be heard, and DCA will suffer irreparable harm if the domain is delegated prior to the resolution of this case.

Please let me know if you oppose.

Sincerely,

Kete Barnes

Kete Barnes – *Associate*

Direct: (310) 905-3495

BROWN NERI SMITH & KHAN LLP

11766 Wilshire Blvd., Ste. 1670, Los Angeles, CA 90025



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01/03/2017

01/06/2017

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

<hr/>)
DOTCONNECTAFRICA TRUST,)
)
Plaintiff,)
)
vs.)No. BC607494)
)
INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS)
and DOES 1 through 50,)
inclusive,)
)
Defendants.)
<hr/>)

***CONTAINS HIGHLY CONFIDENTIAL
ATTORNEYS' EYES ONLY SECTION***

VIDEOTAPED DEPOSITION OF PERSON MOST QUALIFIED OF
DOTCONNECTAFRICA TRUST
SOPHIA BEKELE ESHETE
Los Angeles, California
Thursday, December 1, 2016
Volume I

Reported by:
Melissa M. Villagran, RPR, CLR
CSR No. 12543
Job No. 2479429
PAGES 1 - 290

01/06/2017

EXC

1 ICANN proposal.
 2 Q Well, what I don't know is whether you have
 3 the same employees today as you had back in 2012.
 4 A I think they remain the same except two.
 5 Q Okay. So who are the two who are no longer 03:07:44
 6 employees?
 7 A Samwell Ochangi (phonetic).
 8 Q Better spell the last name.
 9 A Ochangi, Samwell.
 10 Q Okay. We'll go with that. 03:07:58
 11 A Yeah.
 12 And then -- I don't know. Another fellow who
 13 is a Web site designer, the title.
 14 Q Okay. And -- and was he an employee or an
 15 independent contractor? 03:08:10
 16 A At that time he was employee.
 17 Q Okay. And Samuel was also an employee?
 18 A Samwell, yes.
 19 Q And what did he do?
 20 A He -- that was the first time -- actually, 03:08:18
 21 that was the time in 2011, right? When was that?
 22 Anyway, he just assisted -- most of them do
 23 technical work aside from the registry. There's
 24 only one fellow that actually works on .Africa.
 25 Otherwise, we perform Web sites, technical 03:08:35
 Page 210

1 services, support. We do media, digital media
 2 logging, all those sorts communications.
 3 Q Okay. And so --
 4 A So some of the people handle that.
 5 Q Let's -- let's -- there's two organizations. 03:08:50
 6 I want to separate them.
 7 A Okay.
 8 Q There is DCA Registry, and that's a
 9 for-profit company; is that correct?
 10 A It's a -- yeah. 03:08:57
 11 Q Okay. And where is that company --
 12 A That's Kenya.
 13 Q Okay.
 14 Then there is DCA --
 15 A Trust. 03:09:12
 16 Q -- Trust, and that's not for profit?
 17 A Yes.
 18 Q Okay.
 19 A That's based in Mauritius.
 20 Q Okay. 03:09:15
 21 A And it is -- DCA Registry is controlled by
 22 DCA Trust. So it's the controlling --
 23 Q Registry controls trust?
 24 A No. No. Trust controls registry.
 25 Q I got it backwards trust. 03:09:28
 Page 211

1 A Yes.
 2 Q Trust controls registry.
 3 A Correct.
 4 Q Okay.
 5 And you said DCA Trust has one employee? 03:09:33
 6 A No, no. All these employees are DCA Trust.
 7 There's no -- there's no employee in DCA Registry
 8 yet.
 9 Q Okay.
 10 A Right. Because it's not active. It's a 03:09:43
 11 registry designed just to set up .Africa, right?
 12 The .Africa doesn't exist --
 13 Q There's where I got confused.
 14 A -- so it's just sitting there.
 15 Q Okay. So the registry has never been in 03:09:53
 16 operation?
 17 A No.
 18 Q It's --
 19 A It's a partnership --
 20 Q -- formed as an organization under the laws 03:09:59
 21 of Kenya?
 22 A Kenya.
 23 Q But it hasn't actually done anything yet?
 24 A No.
 25 Q Okay. 03:10:09
 Page 212

1 DCA Trust is the applicant --
 2 A The applicant. Yes, the applicant.
 3 Q -- for the gTLD; correct?
 4 A Right.
 5 Q And how many employees does it have today? 03:10:14
 6 A About seven people, and we have independent
 7 contractors. Give and take 15 people.
 8 Q Okay. Seven employees and another seven or
 9 eight independent contractors?
 10 A Yeah. In and out. 03:10:29
 11 Q Okay.
 12 A Yeah.
 13 Q And what are -- what are the employees doing?
 14 A Well, we have an active trust that deals with
 15 campaigning for women and youth, and so they manage 03:10:39
 16 the trust programs.
 17 We -- we recruit college students, women that
 18 qualify under the technology programs, and we train
 19 them in mobile arts, Internet, Internet governance
 20 programs. We have laid out various Internet 03:11:10
 21 educational programs. So we recently graduated
 22 about 25 students on mobile app, for example. And
 23 we give awards for organizations who focus on women
 24 and -- and youth.
 25 So it's an ongoing program. 03:11:34
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01/06/2017

1 .Africa applicant.
 2 Are there specific projects that you have in
 3 mind?
 4 A Yeah.
 5 Q What are those? 03:37:56
 6 A So the ones that listed on the application.
 7 Q Okay.
 8 A Which is supporting African women and African
 9 youth. We labeled them as Miss.Africa and
 10 Generation.Africa -- 03:38:06
 11 DEPOSITION OFFICER: You labeled them as?
 12 THE DEPONENT: Miss.Africa for -- for women
 13 and then Generation.Africa for youth.
 14 And then the other thing we listed was the
 15 CCTLDs, building capacity within the African CCTLDs. 03:38:22
 16 I -- that also came as a vision when I was doing
 17 Yes2dotAfrica campaign. And when the CCTLDs felt
 18 intimidated by .Africa, the large entity, so I
 19 proposed that model for the CCTLDs. Yeah.
 20 BY MR. LE VEE: 03:38:38
 21 Q Okay. And -- and the CCTLDs, those are
 22 country code?
 23 A Those are country codes.
 24 Q Okay. And when you say "threatened," at
 25 least in theory, if there's a .Africa top-level 03:38:46
 Page 242

1 that you and I had referred to, Ms. Bekele, from
 2 your Web site.
 3 This is the page that shows the team for the
 4 registry.
 5 A Okay. 03:57:53
 6 Q Correct?
 7 A Yes.
 8 (Exhibit 61 was marked for
 9 identification by the deposition
 10 officer and is attached hereto.) 03:57:56
 11 BY MR. LE VEE:
 12 Q And just to be clear, these people are not
 13 actually doing these jobs at this point because the
 14 registry has no operations?
 15 A Right. 03:58:04
 16 Q Okay.
 17 Are -- are these the people who would -- at
 18 this point in 2016, are these the people who would
 19 do these jobs if the .Africa TLD was awarded to DCA?
 20 A These are like C-level executives. You know 03:58:23
 21 that, right?
 22 Q I don't know.
 23 A Yeah.
 24 Q Okay.
 25 A If you read the titles of each of them -- 03:58:27
 Page 244

1 domain, people might be less inclined to purchase
 2 domain names in the CCTLDs --
 3 A Right.
 4 Q -- that are sponsored by other African
 5 countries? 03:39:02
 6 A Yes.
 7 Q Okay.
 8 A So on one of my presentations in Kampala, I
 9 remember they were very unhappy. So we proposed a
 10 model that would work for both sides in a close 03:39:10
 11 marketing scheme. Yeah.
 12 Q Okay.
 13 A So those are the three initiatives for --
 14 Q Thank you.
 15 MR. LE VEE: Okay. I need to take a short 03:39:22
 16 break.
 17 THE DEPONENT: Okay.
 18 MR. LE VEE: So let's do that.
 19 THE VIDEOGRAPHER: We are off the record at
 20 3:39 p.m. 03:39:27
 21 (Recess.)
 22 THE VIDEOGRAPHER: We are back on the record
 23 at 3:57 p.m.
 24 BY MR. LE VEE:
 25 Q Okay. So let me mark as Exhibit 61 the page 03:57:38
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1 Q Yes.
 2 A -- they are like general counsel and --
 3 So you would need to hire engineers to do
 4 .Africa, which probably requires very few engineers.
 5 Q Okay. 03:58:40
 6 A Yeah.
 7 Q But you've contacted and had discussions with
 8 each of the people --
 9 A These people.
 10 Q -- on this exhibit? 03:58:46
 11 A All of them.
 12 Q Exhibit 61?
 13 A Yes.
 14 Q Okay.
 15 And presumably at this point they are doing 03:58:54
 16 jobs other --
 17 A Yeah, actually, yeah. Shanil handles the
 18 trust work. He's an accountant, CFO. And Barry
 19 Ryan, he's also part of the trust. So they know our
 20 work. 03:59:08
 21 Q Okay.
 22 A And CentralNic is not involved yet, so . . .
 23 And this is the general counsel, the last
 24 one.
 25 Q Got it. 03:59:16
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01/06/2017