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NAMES AND NUMBERS
8

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

11
12 DOTCONNECTAFRICA TRUST,

13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, et
16 al.,

17 Defendant.

CASE NO. BC607494

Assigned for all purposes to
Hon. Howard L. Halm

**ICANN'S RESPONSES TO DCA'S
EVIDENTIARY OBJECTIONS TO
THE DECLARATION OF JEFFREY
A. LEVEE**

DATE: February 2, 2017
TIME: 8:30 a.m.
DEPT: 53

1 Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby
 2 responds to Plaintiff DotConnectAfrica Trust's ("DCA") evidentiary objections to the Declaration
 3 of Jeffrey A. LeVee ("LeVee Decl."), filed in support of ICANN's Opposition to Plaintiff's
 4 Motion for Preliminary Injunction.

LeVee Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>5 ¶ 5: In May 2015, a two-day 6 final hearing was held in the 7 DCA IRP. On July 9, 2015, 8 the IRP Panel issued a 63- 9 page final declaration 10 ("Declaration"). Paragraphs 11 92-117 (pages 39- 54) detail 12 the IRP Panel's findings 13 regarding the merits of 14 DCA's claims. The IRP 15 Panel's discussion is devoted 16 exclusively to the Board's 17 acceptance of the GAC's 18 Advice. The IRP Panel 19 concludes that ICANN's 20 Board did not act 21 consistently with ICANN's 22 Articles and Bylaws in 23 accepting the GAC's Advice. 24 (¶ 115.) With respect to all of 25 DCA's other claims, the IRP 26 Panel reaches no conclusion 27 except to state in Paragraph 28 117 that: [Plaintiff] had criticized ICANN for its various actions and decisions throughout this IRP and ICANN has responded to each of these criticisms in detail. However, the Panel, having carefully considered these criticisms and decided that the above [i.e., its finding regarding the GAC's Advice] is dispositive of this IRP, [] does not find it necessary to determine who was right, to what extent and for what reasons in respect to</p>	<p>1. Best evidence rule. (Evid. Code § 1520)</p>	<p><u>Best Evidence.</u> Mr. LeVee's statement is not offered to prove the contents of a writing. Mr. LeVee's testimony is based on his personal knowledge of the IRP Panel's Declaration and IRP proceedings.</p>	

1	the other criticisms and alleged shortcomings of the 27 ICANN Board identified by DCA Trust.			
3	LeVee Declaration	DCA Objection	ICANN's Response	Court's Ruling
4	¶ 6: The IRP Panel recommends that "ICANN continue to refrain from delegating the .AFRICA gTLD and permit [Plaintiffs] application to proceed through the remainder of the new gTLD application process" (<i>id.</i> ¶¶133, 148- 149). The IRP Panel concludes that DCA is the prevailing party and orders ICANN to pay DCA's costs. (¶¶ 139, 146, 150.)	1. Best evidence rule. (Evid. Code § 1520.)	<u>Best Evidence.</u> Mr. LeVee's statement is not offered to prove the contents of a writing. Mr. LeVee's testimony is based on his personal knowledge of the IRP Panel's Declaration and IRP proceedings.	
12	LeVee Declaration	DCA Objection	ICANN's Response	Court's Ruling
14	¶ 7: The IRP Panel made no findings whatsoever that could be construed to remove or eliminate the Guidebook requirement that an application for a gTLD representing a geographic region (such as .AFRICA) must obtain the support or nonobjection of at least 60% of the governments in that region. To the contrary, as the IRP Panel notes in Paragraph 46 (on page 14), DCA specifically asked the IRP Panel to give DCA "no less than 18 months to obtain Government support as set out in the [Guidebook] ... or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA," but the IRP Panel did not address DCA's request at all. Ms. Bekele confirmed in	1. Best evidence rule. (Evid. Code § 1520.)	<u>Best Evidence.</u> Mr. LeVee's statement is not offered to prove the contents of a writing. Mr. LeVee's testimony is based on his personal knowledge of the IRP Panel's Declaration, IRP proceedings and Deposition of Sophia Bekele.	

1 deposition her understanding
 2 that nothing in the IRP
 3 Declaration addressed
 4 whether or not DCA had
 5 passed the requirement of
 6 obtaining 60 percent
 7 governmental support, and
 8 she further confirmed that the
 9 IRP Panel did not find that
 10 DCA could "skip" that
 11 evaluation. *See* Ex. H at
 12 203:4-7.

LeVee Declaration

DCA Objection

ICANN's Response

Court's Ruling

9 ¶ 8: In its briefs to the IRP
 10 Panel, ICANN argued that
 11 IRP panel declarations were
 12 not binding on ICANN's
 13 Board. ICANN's argument
 14 was based, in part, on the fact
 15 that the only previous IRP
 16 declaration to have been
 17 issued (as of that time)
 18 expressly found that IRP
 19 panel declarations are not
 20 binding.¹ The *DCA* IRP Panel
 21 disagreed, however, and in a
 22 14 August 2014 declaration
 23 on procedural issues
 24 ("Procedural Declaration"),
 25 the IRP Panel determined
 26 that its declaration would be
 27 binding on ICANN's Board.
 28 The portions of the
 Procedural Declaration that
 address this point are
 reproduced at paragraph 23
 (pages 5-6) of the IRP
 Panel's Declaration.

n.1. A true and correct copy
 of an excerpt of this previous
 IRP declaration is attached to
 the concurrently-filed
 declaration of Akram
 Atallah.

1. Best evidence
 rule (Evid. Code §
 1520).

Best evidence: Mr.
 LeVee's statement is not
 offered to prove the
 contents of a writing. Mr.
 LeVee's testimony is based
 on his personal knowledge
 of the *DCA* IRP
 proceedings and past IRP
 proceedings.

LeVee Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>¶ 9: Most importantly, however, the question of whether the IRP Panel's Declaration was considered binding in conjunction with the DCA IRP became a moot point when ICANN's Board elected to adopt <i>all</i> of the findings and recommendations in the IRP Panel's Declaration. A copy of the resolution by ICANN's Board adopting the IRP Panel's Declaration is attached to the concurrently filed Declaration of Akram Atallah.</p>	<p>1. Best evidence rule (Evid. Code § 1520). 2. Lacks foundation (Evid. Code § 403).</p>	<p><u>Best evidence:</u> Mr. LeVee's statement is not offered to prove the contents of a writing. Mr. LeVee's testimony is based on his personal knowledge of the IRP Panel's Declaration and actions of ICANN's Board.</p> <p><u>Foundation:</u> Mr. LeVee laid the foundation for his testimony. Mr. LeVee testified that he is counsel to ICANN. (LeVee Decl. ¶ 1.) As such, he has personal knowledge of the IRP Panel's Declaration and actions of ICANN's Board.</p>	
LeVee Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>¶ 10: DCA filed this suit against ICANN on January 20, 2016, in Los Angeles County Superior Court. After the Superior Court denied DCA's request for a temporary restraining order, ICANN timely removed the case to federal court, invoking diversity jurisdiction. On March 1, 2016, DCA moved for a preliminary injunction, which the federal court granted on April 12, 2016 on the basis of an admitted factual error and before DCA admitted in deposition that the entire basis on which the district court had granted the injunction - that the IRP Panel had allowed DCA to skip the geographic review requirement - was false.</p>	<p>1. Best Evidence Rule (Evid. Code § 1520.)</p>	<p><u>Best Evidence.</u> Mr. LeVee's statement is not offered to prove the contents of a writing. Mr. LeVee's testimony is based on his personal knowledge of the procedural posture and filings of this case.</p>	

LeVee Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>¶ 11: Following remand, DCA again moved for preliminary injunction based on its ninth cause of action. The Court denied that motion on December 22, 2016 based on "the reasoning expressed in the oral and written arguments of defense counsel." Attached hereto as Exhibit I is a true and correct copy of the Court's December 22, 2016 Minute Order denying DCA's application for preliminary injunction.</p>	<p>1. Best Evidence Rule (Evid. Code § 1520.)</p>	<p><u>Best Evidence.</u> Mr. LeVee's statement is not offered to prove the contents of a writing. Mr. LeVee's testimony is based on his personal knowledge of the procedural posture and filings of this case.</p>	

Dated: February 1, 2017

Jones Day

By: 

Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

1 **PROOF OF SERVICE**

2 I, Diane Sanchez, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On February 1,
6 2017, I served a copy of the within document(s):

7 **ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS TO THE
8 DECLARATION OF JEFFREY A. LEVEE**

- 9 by placing the document(s) listed above in a sealed envelope with postage thereon
10 fully prepaid, in the United States mail at Los Angeles, California addressed as set
11 forth below.
- 12 by placing the document(s) listed above in a sealed Federal Express envelope and
13 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery
14 Service agent for delivery.
- 15 by personally delivering the document(s) listed above to the person(s) at the
16 address(es) set forth below.
- 17 by transmitting via e-mail or electronic transmission the document(s) listed above
18 to the person(s) at the e-mail address(es) set forth below.

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

28 Executed on February 1, 2017, at Los Angeles, California.


Diane Sanchez