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DOTCONNECTAFRICA TRUST

SUPERIOR COURT THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL

DOTCONNECTAFRICA TRUST, a Mauritius
Charitable Trust;

Plaintiff,

v.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, a
California corporation;

Defendants.

Case No. BC607494

Assigned for all purposes to the Honorable
Howard L. Halm

**EVIDENTIARY OBJECTIONS BY
DOTCONNECTAFRICA TO
DECLARATION II OF MOKGABUDI
LUCKY MASILELA IN SUPPORT OF
PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

DATE: February 2, 2017

TIME: 8:29 a.m.

DEPT: 53

Evidentiary Objections to Declaration II of Lucky Masilela

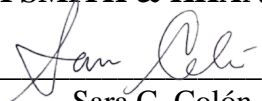
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 3: ZACR was originally formed in 1988 under the name UniForum S.A. The purpose of the company was to promote open standards and systems in computer hardware and software. In 1995, the company was assigned the administration rights for the South African domain name, “co.za.” Today ZACR has registered over 1 million co.za domain name registrations – or about 95% of the total registrations for “za.” Due to its well-known reputation for independence and neutrality, as well as technical competence and operational excellence, ZACR is the single largest domain name registry on the African continent. ZACR has significant experience working with Internet Corporation For Assigned Names and Numbers (“ICANN”) as a registry operator and is familiar with ICANN protocols.</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code §702) 3. Speculative (Evid. Code § 1200, et seq.) Conclusory (<i>Evinger v. MacDougall</i> (1938) 28 Cal.App.2d 175.) 4. Irrelevant (Evid. Code § 350)</p>		
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 4: As a registry operator, ZACR works directly with registrars and is familiar with ICANN’s Registry and Registrar accreditations. ICANN expressly permits the functions of the registry operator and the registrar to be handled by a single body (“cross ownership” or “vertical integration”). ICANN approved vertical integration in 2010, even before the new gTLD process began. Vertical Integration is a practical way for registry operators to distribute or provide domain names to underserved markets or communities. In practice, this means that the registry operator can utilize its own vertical registrar channel to reach end user markets not adequately serviced by the traditional registrar channel. In the case of .Africa, ZACR plans to implement a proxy service which will allow it to establish a more competitive, and widely distributed, reseller channel for .Africa. This is in line with ZACR’s enterprise developmental</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code §702) 3. Speculative (Evid. Code § 1200, et seq.) Conclusory (<i>Evinger v. MacDougall</i> (1938) 28 Cal.App.2d 175.)</p>		

1	obligations. This has become a common practice amongst the leading registry providers worldwide.			
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3	Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
4	¶ 5: A Registry Operator is contractually compelled by the ICANN Registry Agreement to deal with all Registrars in a fair and equitable manner. ZACR, therefore, cannot provide preferential treatment or access to its own vertical registrar. ICANN has compliance mechanisms in place to monitor vertical integration. Pricing and treatment of registrars is also regulated by clauses 2.9 and 2.10 of the ICANN Registry Agreement.	1. The Registry Agreement is the best evidence of the document. (Evid. Code § 1520) 2. Lacks foundation (Evid. Code § 403) 3. Lacks personal knowledge (Evid. Code §702) 4. Speculative (Evid. Code § 1200, et seq.) 5. Conclusory (<i>Evinger v. MacDougall</i> (1938) 28 Cal.App.2d 175.)		
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14	Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
15	¶ 6: Through my experience as CEO of a registry operator, I know that the “sunrise” process is not intended to auction “premium” names to the highest bidder, but is rather a compulsory rights protection mechanism prescribed by ICANN to assist trademark owners in obtaining their corresponding domain names. It involves a third party (the Trademark Clearinghouse) who pre-validates trademark rights so these applicants can be given preference during the initial stages of the domain name launch.	1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code §702) 3. Speculative (Evid. Code § 1200, et seq.)		
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22	Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
23	¶ 7: Contrary to DCA’s baseless insinuation, no ZACR employee or officer was involved with the AUC committee that selected ZACR as the successful applicant in the AUC’s Request for Proposal (“RFP”).	1. Misstates the record. Ms. Bekele’s declaration states that “The members of the AUC committee formed to choose who to endorse for the .Africa gTLD were individuals who were also members of other organizations affiliated with ZACR.” <i>See</i>		
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	January 3, 2017 Bekele Declaration ¶21.		
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
¶ 8: As part of the AUC’s open RFP process, the AUC required all applicants for AUC endorsement of .Africa to agree that the AUC would be a partner in the .Africa process. A true and correct copy of the Request for Proposals by the African Union Commission for the Operation of Dot Africa, dated November 2011, is attached hereto as Exhibit A .	1. The Request for Proposals by the African Union Commission for the Operation of Dot Africa, dated November 2011 is the best evidence of that document. (Evid. Code § 1520).		

Dated: January 26, 2017

BROWN NERI SMITH & KHAN LLP

By: 
Sara C. Colón

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST