

1 J.W. Ring (Oregon State Bar #85430)
2 Preston Gates & Ellis LLP
3 222 SW Columbia Street
4 Suite 1400
5 Portland, OR 97201-6632
6 Telephone: (503) 228-3200
7 Facsimile: (503) 248-9085

8 Kathleen O. Peterson (SBN 124791)
9 Aaron M. McKown (SBN 208781)
10 Preston Gates & Ellis LLP
11 1900 Main Street, Suite 600
12 Irvine, CA 92614
13 Telephone: (949) 253-0900
14 Facsimile: (949) 253-0902

15 Attorneys for Plaintiffs
16 DOTSTER, INC., a Washington
17 corporation, GO DADDY SOFTWARE,
18 INC., an Arizona corporation,
19 and eNOM, Incorporated, a
20 Nevada corporation

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 DOTSTER, INC., a Washington
24 corporation, GO DADDY SOFTWARE,
25 INC., an Arizona corporation,
26 and eNOM, Incorporated, a
27 Nevada corporation,

28 Plaintiffs,

v.

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

Defendant.

Case No. CV03-5045 JFW (MANx)

SECOND DECLARATION OF
CLINT PAGE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

Date: October 6, 2003
Time: 1:30 p.m.
Ctrm: 16
Judge: John F. Walter

1 I, Clint Page, declare and state as follows:

2 I am the president and a stockholder of Plaintiff Dotster, Inc. ("Dotster"). I
3 make this declaration of my actual knowledge, and after a review of documents
4 maintained by Dotster in the normal course of business and a review of documents on
5 file in this case or publicly available. If called as a witness I could testify to each of
6 the following facts:

7 1. Dotster is one of approximately 50 domain name registrars ("Registrars")
8 that compete to re-register domain names ("Domains") that expire or otherwise are
9 deleted by the VeriSign Global Registry Services ("VeriSign"), a division of
10 VeriSign, Inc. VeriSign operates the .COM and .NET registry (the "Registry").

11 2. In June, 2001 Dotster developed certain technology and processes to
12 register expiring Domains and began marketing the service to potential domain
13 registrants under the name "NameWinner". NameWinner operates on an auction
14 model. Dotster was the first company to offer an auction service in the expired
15 domain market, and one of the first to promote expiring Domains to consumers. The
16 business was built on the demand we received by listening to our customers' desires
17 to find "good" Domains. Most people found it difficult to find a good domain name
18 because the consensus was that all the best names were already registered. We
19 invested a significant amount of time and financial resources to bring the capability to
20 customers.

21 **Implementation of WLS Will Devastate Dotster's Business.**

22 3. Customers will be more likely to use the proposed Wait List Service
23 ("WLS") than NameWinner because WLS will be offered at the Registry level. By
24 offering to pre-sell Domains even before they expire, VeriSign offers a service that
25 cannot be provided by Dotster. Dotster can only sell Domains upon expiration using
26 NameWinner. WLS creates a single, first-come, first-served model that preempts the
27 competitive process that currently exists. If the proposed WLS is implemented,
28

1 instead of simply deleting the name from the Registry as part of the Batch Delete
2 process, VeriSign will first check to determine whether a WLS subscription has been
3 purchased for the domain name.

4 4. Dotster is currently regarded as a leading company in the expiring
5 Domain market due to the success of its NameWinner technology, and without the
6 significant value provided by Dotster's NameWinner, Dotster's reputation will be
7 harmed significantly.

8 5. Implementation of the proposed WLS will effectively destroy Dotster's
9 NameWinner business. Valuable deleted Domains will not longer be available
10 through bids using NameWinner because these Domains will likely be reserved
11 through WLS subscriptions.

12 6. Implementation of the proposed WLS will significantly damage Dotster's
13 domain name registration business. Dotster will lose the business that it otherwise
14 would have received from registering Domains of NameWinner customers that secure
15 the right to an expired domain name through NameWinner.

16 **Dotster Attempted to Engage ICANN in Dialogue Regarding WLS.**

17 7. Dotster and other Internet stakeholders attempted to discuss their
18 concerns with ICANN. For example, prior to the ICANN Board's approval of the
19 WLS proposal, Dotster participated heavily in what Dotster thought would be an
20 agreement with ICANN because the WLS proposal would directly impact the
21 allocation of registered Domains.

22 8. In January 2002, when Registrars voted as the "Registrar Constituency,"
23 Dotster voted against the proposal to implement WLS as did all other Registrars that
24 took a position on the matter.

25 9. Dotster participated in the Domain Names Supporting Organization Task
26 Force (the "Task Force") that examined the WLS proposal. The information and
27 opinions the Task Force received from ICANN indicated that ICANN believed that
28

1 the Task Force needed to establish a consensus policy. Ultimately the Task Force
2 reached a consensus that the WLS proposal should not be implemented, but ICANN
3 then ignored the Task Force consensus recommendation and ICANN's Board
4 approved a resolution authorizing ICANN's President and General Counsel to
5 negotiate with VeriSign to establish WLS.

6 10. Dotster has made ongoing efforts to work within the ICANN established
7 review procedures that are part of our Registrar Accreditation Agreement. For
8 example, after the ICANN Board approved a resolution authorizing negotiations with
9 VeriSign to establish WLS, I directed my legal counsel to submit a Request for
10 Review under the ICANN's Independent Review Policy, and Dotster's request for
11 review was submitted on September 9, 2002. A copy of the request for independent
12 review is attached hereto as Exhibit 1, and is incorporated herein by reference.
13 According to Sections 2.3.4 and 4.3.2 of Dotster's Registrar Accreditation Agreement,
14 Dotster is to use the Independent Review Policy to request an independent review of
15 ICANN's actions in situations where Dotster will be adversely affected by
16 implementation of "ICANN standards, policies, procedures or practices". However,
17 ICANN has not established the required Independent Review, even though it was
18 required by Dotster's Registrar Accreditation Agreement with ICANN and by
19 ICANN's then-current Bylaws.

20 11. In accordance with Dotster's contractually stated processes, I also
21 directed my legal counsel to submit a Reconsideration Request to again request that
22 ICANN reconsider the Board's August 23, 2002 decision. The request was submitted
23 to ICANN on September 12, 2002, and was timely filed in accordance with the then-
24 applicable Reconsideration Policy. A copy of the Reconsideration Request is attached
25 hereto as Exhibit 2, and is incorporated herein by reference. ICANN did not respond
26 to Dotster's Reconsideration Request until May 20, 2003! When ICANN did respond,
27 ICANN recommended that no action be taken on Dotster's request. Dotster's
28

1 attempts to engage in a constructive discourse regarding Dotster's ongoing concerns
2 related to the WLS have been repeatedly rejected by ICANN.

3 12. I also feel misled by VeriSign's statements that load issues are driving
4 the implementation of WLS, as the declaration of Benjamin Turner seems to state.
5 (See Turner Decl. ¶¶ 23, 24, 35-37). According to *VeriSign's Responses to Domain*
6 *Name Wait List Service Questions*, dated February 15, 2001, page 6 and 7, "In August
7 2001, VGRS did implement rate-limiting technology. Since that implementation,
8 VGRS has been able to manage registry load Second, **registry load is no**
9 **longer an issue**. The multiple pools and rate limiting technology have solved that
10 problem." (emphasis added). A copy of *VeriSign's Responses to Domain Name Wait*
11 *List Service Questions* is attached hereto as Exhibit 3, and is incorporated herein by
12 reference. VeriSign, in that same document stated that ". . . the registry load problems
13 are solved . . . Registry load should not be a criterion for determining the proper
14 course of action regarding deleted domain name registrations." *Id.* For VeriSign to
15 argue that the load problems are threatening the stability of the Internet is misleading.

16 I declare under penalty of perjury under the laws of the United States of
17 America that the foregoing is true and correct, and that this declaration was executed
18 on September 5, 2003 at Vancouver, Washington.

19
20
21 

22 Clint Page
23
24
25
26
27
28