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3 30882 Rivera Place
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7 Attorney for DOTCONNECTAFRICA TRUST

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 UNLIMITED JURISDICTION

11
12 DOTCONNECTAFRICA TRUST,) Case No.: BC607494
13)
14 Plaintiff,) EX PARTE APPLICATION FOR
15 vs.) TEMPORARY RESTRAINING ORDER
16) AND ORDER TO SHOW CAUSE RE
17 INTERNET CORPORATION FOR) PRELIMINARY INJUNCTION
18 ASSIGNED NAMES AND NUMBERS and)
19 DOES 1 through 50, inclusive,) Date: January 25, 2016
20) Time: 8:30 AM
21) Location: 85
22) Judge: Hon. James C. Chalfant
23) Date Action Filed: January 20, 2016
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23 Plaintiff DOTCONNECTAFRICA TRUST applies for a temporary restraining order and for
24 issuance of an order to show cause requiring defendant Internet Corporation for Assigned Names and
25 Numbers (hereinafter "ICANN") to show cause why a preliminary injunction should not issue
26 pending trial in this action, enjoining defendant ICANN and its employees, agents, and persons acting
27 with it, or on its behalf, from any further action delegating the gTLD .AFRICA, any further action
28

1 regarding registry agreements, signed or unsigned, regarding the gTLD .AFRICA, and halting the
2 Extended Evaluation process regarding Plaintiff's application for the gTLD .AFRICA.

3 This application is made pursuant to the provisions of Code of Civil Procedure section 527 on the
4 ground that defendant ICANN violated the rules and procedures of the application process for the
5 gTLD .AFRICA, that ICANN violated its own Bylaws regarding a fair and transparent application
6 process, and that ICANN violated its own Articles of Incorporation regarding a fair and transparent
7 application process.
8

9 This application is further made pursuant to California Business & Professions Code §17203
10 which specifically allows for injunctions to prevent unfair business actions and fraudulent business
11 activities.
12

13 This application is based upon the Memorandum in Support, the Declaration of Ms. Sophia
14 Bekele (Plaintiff's Founder and CEO), the verified Complaint in this action, and the accompanying
15 Declaration of Notice of Brandon Schantz
16
17

18 DATED: January 25, 2016
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22 _____
23 Brandon Schantz
24 Attorney for DotConnectAfrica Trust
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 UNLIMITED JURISDICTION

11
12
13 DOTCONNECTAFRICA TRUST,) Case No.: BC607494
14 Plaintiff,)
15 vs.) DECLARATION OF SOPHIA BEKELE IN
16 INTERNET CORPORATION FOR) SUPPORT OF EX PARTE APPLICATION
17 ASSIGNED NAMES AND NUMBERS and) FOR TEMPORARY RESTRAINING
18 DOES 1 through 50, inclusive,) ORDER AND ORDER TO SHOW CAUSE
19 Defendants) RE PRELIMINARY INJUNCTION
20) Date: January 25, 2016
21) Time: 8:30 AM
22) Location: 85
23) Judge: Hon. James C. Chalfant
24) Date Action Filed: January 20, 2016
25)
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27)
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23 I, Sophia Bekele, declare:

24 1. I am the Founder and Chief Executive Officer (hereinafter "CEO") of DotConnectAfrica
25 Trust, Plaintiff in this action, and I have personal knowledge of each fact stated in this Declaration
26 and if called as a witness I would testify to the truth of these facts.

27 2. In or about 2011, the Internet Corporation for Assigned Names and Numbers (hereinafter
28 "ICANN") approved a program to expand the Generic Top Level Domains (hereinafter "gTLD")

1 through which such domains will be applied for by eligible applicants and made available as part of
2 its 2012 Generic Top Level Domain Internet Expansion Program.

3 3. As part of the gTLD application process, applicants promised to pay the sum of
4 \$185,000.00 to ICANN. In return, ICANN promised to conduct the bid process in a transparent
5 manner, ensure competition, and abide by its own Bylaws, Articles of Incorporation, and the rules set
6 forth in the gTLD Applicant's Guidebook.

7 4. In or about May 2012 Plaintiff submitted an application to ICANN for the delegation rights
8 of the .AFRICA gTLD as part of the 2012 new gTLD Internet Expansion Program.

9 5. Plaintiff paid ICANN the sum of \$185,000.00 and provided a \$300,000.00 Letter of Credit,
10 valid for five year terms, as a financial guarantee to satisfy the application requirement to provide a
11 Registry Continuing Operations Instrument ("COI") of appropriate value.

12 6. On June 4, 2013, the ICANN Board New gTLD Program Committee posted a notice that it
13 had decided not to accept Plaintiff's application.

14 7. The application process, however, was tainted with irregularities, conflicts of interests by
15 various ICANN Board members and staff, and a lack of transparency.

16 8. On August 19, 2013 Plaintiff informed ICANN that it intended to seek relief before an
17 Independent Review Panel arbitration proceeding regarding its application to .AFRICA.

18 9. Despite the arbitration proceedings, on or about March 23, 2014, Plaintiff became aware
19 that ICANN intended to sign an agreement with Plaintiff's competitor delegating the rights to
20 .AFRICA.

21 10. This competitor, a South African corporation, was allowed by ICANN to break the rules
22 of the application process in order to ensure the survival of the competitor's application.

23 11. In an effort to safeguard its rights pending the ongoing arbitration, Plaintiff wrote to
24 ICANN requesting that it immediately cease any further processing of all applications for the
25 delegation of .AFRICA.

26 12. In response, and despite the pending arbitration, ICANN moved forward by two days the
27 signing date of the registry agreement with Plaintiff's competitor.
28

1 13. ICANN then attempted to present the execution of the contract as a *fait accompli* and
2 argued that Plaintiff should have sought to stop ICANN from proceeding; which is exactly what
3 Plaintiff attempted to do.

4 14. The arbitration panel then ruled that “ICANN must immediately refrain from any further
5 processing of any application for .AFRICA” during the remainder of the arbitration proceedings and
6 post-arbitration. Attached as Exhibit A is a true and correct copy of pages 1 and 61-63 of the “Final
7 Declaration, International Centre for Dispute Resolution’s Independent Review Panel, Case #50 2013
8 001083”, pg. 58, paragraph 135.

9 15. An arbitration panel later concluded that ICANN conducted the application process in a
10 manner that violated their Bylaws and Articles of Incorporation. *Id.* at pg. 61, para. 148.

11 16. Plaintiff’s application was then sent back to an initial evaluation status by ICANN; erasing
12 all of Plaintiff’s previous geographic support. However, this re-evaluation is not a fresh-start but is
13 being used by the same members of ICANN, who violated the Bylaws and Articles of Incorporation
14 in the first evaluation, to justify their earlier decision.

15 17. Plaintiff is suffering, and will continue to suffer, irreparable harm. Without an order
16 preventing ICANN from taking further steps to delegate .AFRICA, DCA will be unable to obtain a
17 remedy in this matter. Operation of .AFRICA is a unique right, and there is no substitute right that
18 could be awarded to DCA. Moreover, it would be impossible to quantify the harm. DCA was created
19 expressly for the purpose of campaigning for, competing for and ultimately operating .AFRICA.
20 DCA has numerous charitable initiatives that are based upon this mission. If it is deprived of the
21 opportunity even to compete to operate .AFRICA, DCA will be unable to accomplish its charitable
22 aims and will be unable to perform its mandate.

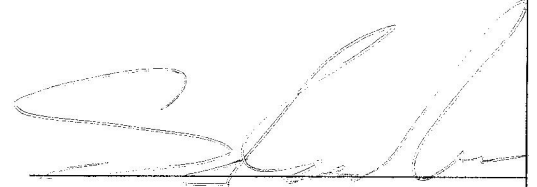
23 18. Plaintiff possesses a high likelihood of success on the merits of this matter as a prior
24 arbitration ruling as already declared that ICANN’s actions violated its Bylaws and Articles of
25 Incorporation.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct.

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4 Dated: January 24, 2016



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8 Sophia Bekele
9 Founder and CEO
10 DotConnectAfrica Trust, Plaintiff
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EXHIBIT A

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Independent Review Panel**

CASE #50 2013 001083

FINAL DECLARATION

In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation For Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* (ICDR Rules) and the *Supplementary Procedures for ICANN Independent Review Process* of the International Centre for Dispute Resolution (ICDR),

**Between: DotConnectAfrica Trust;
("Claimant" or "DCA Trust")**

Represented by Mr. Arif H. Ali, Ms. Meredith Craven, Ms. Erin Yates and Mr. Ricardo Ampudia of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 20005, U.S.A.

And

**Internet Corporation for Assigned Names and Numbers (ICANN);
("Respondent" or "ICANN")**

Represented by Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

IRP Panel

**Prof. Catherine Kessedjian
Hon. William J. Cahill (Ret.)
Babak Barin, *President***

135.DCA Trust on the other hand, submits that, “should it prevail in this IRP, ICANN should be responsible for all of the costs of this IRP, including the interim measures proceeding.” In particular, DCA Trust writes:

On March 23, 2014, DCA learned via email from a supporter of ZA Central Registry (“ZACR”), DCA’s competitor for .AFRICA, that ZACR would sign a registry agreement with ICANN in three days’ time (March 26) to be the registry operator for .AFRICA. The very same day, we sent a letter on behalf of DCA to ICANN’s counsel asking ICANN to refrain from executing the registry agreement with ZACR in light of the pending IRP proceedings. See DCA’s Request for Emergency Arbitrator and Interim Measures of Protection, Annex I (28 Mar. 2014). Instead, ICANN entered into the registry agreement with ZACR the very next day—two days ahead of schedule. [...] Later that same day, ICANN responded to DCA’s request by treating the execution of the contract as a *fait accompli* and, for the first time, informed DCA that it would accept the application of Rule 37 of the 2010 [ICDR Rules], which provides for emergency measures of protection, even though ICANN’s Supplementary Procedures for ICANN Independent Review Process expressly provide that Rule 37 does not apply to IRPs. A few days later, on March 28, 2014, DCA filed a Request for Emergency Arbitrator and Interim Measures of Protection with the ICDR. ICANN responded to DCA’s request on April 4, 2014. An emergency arbitrator was appointed by the ICDR; however, the following week, the original panel was fully constituted and the parties’ respective submissions were submitted to the Panel for its review on April 13, 2014. After a teleconference with the parties on April 22 and a telephonic hearing on May 5, the Panel ruled that “ICANN must immediately refrain from any further processing of any application for .AFRICA” during the pendency of the IRP. Decision on Interim Measures of Protection, ¶ 51 (12 May 2014).

136.A review of the various procedural orders, decisions, and declarations in this IRP clearly indicates that DCA Trust prevailed in many of the questions and issues raised.

137.In its letter of 1 July 2015, DCA Trust refers to several instances in which ICANN was not successful in its position before this Panel. According to DCA Trust, the following are some examples, “ICANN’s Request for Partial Reconsideration, ICANN’s request for the Panel to rehear the proceedings, and the evidentiary treatment of ICANN’s written witness testimony in the event it refused to make its witnesses available for questioning during the merits hearing.”

138.The Panel has no doubt, as ICANN writes in its letter of 1 July 2015, that the Parties’ respective positions in this IRP “were asserted in good faith.” According to ICANN, “although those positions were in many instances diametrically opposed, ICANN does not doubt that DCA believed in the credibility of the positions that it took, and

144. After reading the Parties' written submissions concerning the issue of costs and their allocation, and deliberation, the Panel is unanimous in deciding that DCA Trust is the prevailing party in this IRP and ICANN shall bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

145. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, however, DCA Trust and ICANN shall each bear their own expenses, and they shall also each bear their own legal representation fees.

146. For the avoidance of any doubt therefore, the Panel concludes that ICANN shall be responsible for paying the following costs and expenses:

- a) the fees and expenses of the panelists;
- b) the fees and expenses of the administrator, the ICDR;
- c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
- d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.

147. The above amounts are easily quantifiable and the Parties are invited to cooperate with one another and the ICDR to deal with this part of this Final Declaration.

V. DECLARATION OF THE PANEL

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to

refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

150. The Panel declares DCA Trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:

- a) the fees and expenses of the panelists;
- b) the fees and expenses of the administrator, the ICDR;
- c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
- d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
- e) As a result of the above, the administrative fees of the ICDR totaling US\$4,600 and the Panelists' compensation and expenses totaling US\$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US\$198,046.04

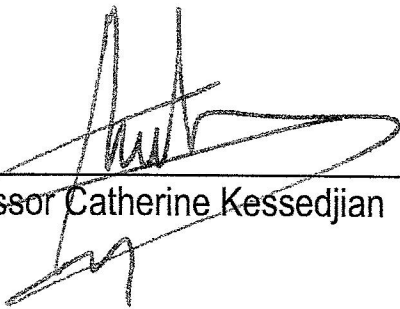
151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

The Panel finally would like to take this opportunity to fondly remember its collaboration with the Hon. Richard C. Neal (Ret. and now Deceased) and to congratulate both Parties' legal teams for their hard work, civility and responsiveness during the entire proceedings. The Panel was extremely impressed with the quality of the written work presented to it and oral advocacy skills of the Parties' legal representatives.

This Final Declaration has sixty-three (63) pages.

Date: Thursday, 9 July 2015.

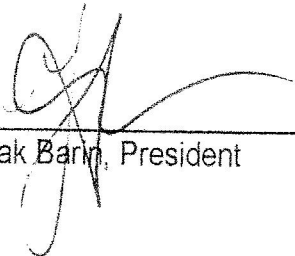
Place of the IRP, Los Angeles, California.



Professor Catherine Kessedjian



Hon. William J. Cahill (Ret.)



Babak Barin, President

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3 30882 Rivera Place
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6 EMAIL: bschantz@schantzlegal.com

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8 Attorney for DOTCONNECTAFRICA TRUST

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12 UNLIMITED JURISDICTION

13 DOTCONNECTAFRICA TRUST,

14 Plaintiff,

15 vs.

16 INTERNET CORPORATION FOR
17 ASSIGNED NAMES AND NUMBERS and
18 DOES 1 through 50, inclusive,

19 Defendants

) Case No.: BC607494

)

) DECLARATION OF BRANDON SCHANTZ

) REGARDING NOTICE UPON EX PARTE

) APPLICATION FOR TEMPORARY

) RESTRAINING ORDER TO SHOW CAUSE

) RE PRELIMINARY INJUNCTION

)

) Date: January 25, 2016

) Time: 8:30 AM

) Location: 85

) Judge: Hon. James C. Chalfant

) Date Action Filed: January 20, 2016

)

)

)

22
23 I, Brandon Schantz, declare:

24
25 1. I am the attorney for Plaintiff DOTCONNECTAFRICA TRUST. I have personal
26 knowledge of the facts set forth in this Declaration, and if called as a witness I would testify to the
27 truth of the following:

28 //

1 2. Pursuant to California Rules of Court 3.1203 and 3.1204, I informed attorneys for
2 Defendant Internet Corporation for Assigned Names and Numbers (hereinafter "ICANN") of this ex
3 parte request by two electronic mails (hereinafter "email" or "emails"). I sent the first email on
4 January 24, 2016, at 8:06 AM. I sent a further reply email to defendant ICANN's attorney, Mr.
5 Jeffrey LeVee, on January 24, 2016, at 12:18 PM. Attached to this Declaration as Exhibit A and
6 Exhibit B respectively are true and correct copies of these emails.

7 3. The first email, sent at 8:06 AM included mistake to the wrong California Rule of Court
8 (hereinafter "CRC"). Specifically, it cited CRC 5.151(e) which is the rule of court governing notice
9 for ex part requests in family law cases. This mistake was corrected in the subsequent email sent at
10 12:18 PM.

11 4. The incorrect citation, later corrected, does not subtract from the substance of the notice in
12 that Plaintiff put Defendant on notice of its intent to appear for an ex parte hearing on its application
13 for a temporary restraining order at 8:30 AM, January 25, 2016, in Dept. 85, Los Angeles Superior
14 Court, 111 North Hill Street, Los Angeles, California, 90012.

15 5. In the second email at 12:18 PM I further explained that Plaintiff was bringing this ex parte
16 application on shortened notice pursuant to California Rule of Court 3.1203(a). This section allows
17 for notice later than 10:00 AM on the court day prior to the noticed hearing date in exceptional
18 circumstances.

19 6. Pursuant to CRC 3.1204(c) I provided that reasoning to attorneys for defendant ICANN
20 and state the same in this Declaration as required. Specifically, ICANN has taken advantage of
21 earlier advanced notice to trample on Plaintiff's due process rights and to assign the unique property
22 rights in dispute to another company.

23 7. Plaintiff earlier requested that defendant ICANN refrain from delegating the rights to the
24 Generic Top-Level Domain Name .AFRICA pending the outcome of arbitration between the parties.

25 8. After that request, ICANN moved up the signing of a contract for the rights to .AFRICA by
26 several days in a violation of Plaintiff's due process rights.

27 //

1 9. This litigation was filed last Wednesday, January 20, 2016 and Plaintiff, based upon
2 defendant ICANN's past conduct, had a good-faith belief that providing ICANN several days' notice
3 (as opposed to the traditional 24 hours) would allow defendant ICANN to once again violate
4 Plaintiff's rights and proceed with contracts assigning away the unique property rights in question.

5 10. I expect an opposition to my request from defendant ICANN.

6 11. Plaintiff's pleadings were delivered to attorneys for defendant ICANN at the first
7 reasonable opportunity as required by CRC 3.1206 taking into account the emergency nature of this
8 hearing and that Plaintiff's representative and attorney live in different cities.

9 12. Specifically, I had to fly to San Francisco yesterday, Sunday, January 24, 2016 to work
10 with Plaintiff's CEO on these pleadings and obtain the necessary signatures. I flew to San Francisco
11 on United Airlines flight number 78 from Los Angeles at 8:12 AM. I returned to Los Angeles at late
12 last night on American Airlines Flight number 218. This arrived at Los Angeles airport at 9:00 PM.
13 I then had an hour and a half drive to my office in Orange County where I finished these documents
14 through the evening and early morning.

15
16
17 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
18 and correct.

19 Date: January 25, 2016
20
21

22 

23 Brandon Schantz
24 Attorney for DotConnectAfrica Trust
25
26
27
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EXHIBIT A



Brandon Schantz <bschantz@schantzlegal.com>

DCA Trust v ICANN--TRO Notice

5 messages

Brandon Schantz <bschantz@schantzlegal.com>

Sun, Jan 24, 2016 at 8:06 AM

To: Jeffrey LeVee <jlevee@jonesday.com>

Cc: rzernik@jonesday.com

Dear Mr. Jeffrey LeVee,

Pursuant to California Rule of Court 5.151(e) DotConnectAfrica Trust is providing Notice that it will appear tomorrow, January 25, 2016, at Los Angeles Superior Court, 111 N. Hill Street, Department 85, at 8:30 AM, for a Temporary Restraining Order in the case DotConnectAfrica Trust v. Internet Corporation for Assigned Names and Numbers (BC607494).

DotConnectAfrica Trust will request a Temporary Restraining Order preventing the Internet Corporation for Assigned Names and Numbers from proceeding with the delegation of the gTLD .africa, from any further action regarding any registry agreement signed or unsigned regarding the gTLD .africa, and halting the Extended Evaluation of DotConnectAfrica Trust until this matter can be heard at a hearing for a Preliminary Injunction. At that time DotConnectAfrica Trust will move for a Preliminary Injunction for the same until the conclusion of this litigation.

Very truly yours,

Brandon Schantz, Esq.

Schantz Law Firm

T: 949.378.3651

bschantz@schantzlegal.com

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Brandon Schantz <bschantz@schantzlegal.com>

Sun, Jan 24, 2016 at 8:11 AM

To: Sophia Bekele <sophiabekele@yahoo.com>

FYI

Very truly yours,

Brandon Schantz, Esq.

Schantz Law Firm

T: 949.378.3651

bschantz@schantzlegal.com

This message is private or privileged. It is intended for the specified recipient(s) only. If you received this email in error, any review, use, dissemination, distribution, or copying of this email is strictly prohibited. If you are not the intended recipient, please delete this message and notify me immediately. Furthermore, responding to an email or reviewing material and information you provide us is not an agreement to

EXHIBIT B

Date: 01/24/2016 08:06 AM
Subject: DCA Trust v ICANN--TRO Notice

[Quoted text hidden]

=====

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

=====

Brandon Schantz <bschantz@schantzlegal.com>
To: Jeffrey LeVee <jlevee@jonesday.com>
Cc: rzernik@jonesday.com, Kate Wallace <kwallace@jonesday.com>

Sun, Jan 24, 2016 at 12:18 PM

Mr. LeVee,

You are correct on the California Rules of Court citation. The citation was mistakenly unchanged as I was traveling early this morning. The correct citation is CRC 3.1204. That being said, the citation does not affect the notice given to your client.

Moreover, CRC 3.1204(c) allows for notice later than 10:00 AM on the court day prior to the noticed hearing in the event of exceptional circumstances and provided those circumstances are reflected in a declaration. I am traveling today to meet with my client to obtain signatures on declarations. The exceptional circumstances will be reflected in our moving papers as required. Specifically, the exceptional circumstance which warrants a later notice is that your client, the Internet Corporation for Assigned Names and Numbers (ICANN), has previously used legal notice fraudulently in that ICANN previously moved up the signing of a registry agreement after receiving a notice from the IRP Arbitration Panel requesting that ICANN refrain from such action regarding .Africa. The fear that ICANN would use the notice to move forward with the registry agreement, and the resulting irreparable harm to DCA Trust, justifies the traditional 24 hour notice for Ex Parte Protection Orders.

The rule regarding providing the opposing party with the Ex Parte moving papers (CRC 3.1206) provides that those pleadings should be presented to the opposing party at the first reasonable opportunity; not that they need to be sent along with the notice. As the very nature of these proceedings are based upon an urgent need to prevent irreparable harm, the timing of the service of papers is given a wider latitude. I will have those pleadings signed, scanned, and emailed over later this afternoon.

Finally, as it relates to ICANN not yet appearing in the case, I am not aware of any rule of court that dictates that the opposing party first be allowed to appear; only that an action be commenced. An emergency cannot wait thirty (30) days. If you are aware of such a rule please let us know.

As for your arguments in your letter of Friday, January 22, 2016, we will address those and respond more fully in a letter tomorrow. However, very quickly, your threats of sanctions based on CCP 128.7 we find lacking in merit and simply another attempt to bully DCA Trust. The very specific factual allegations in the Complaint show a very serious investigation took place. Nor is the lawsuit meant to annoy or harass. In fact, ICANN lost an arbitration on the very issues in the Complaint. This only further proves the merit of our allegations and any motion from your client based upon CCP 128.7 will be met for a request of sanctions of our own. Rest assured that we will pursue those sanctions vigorously.

Again, as soon as reasonably possible we will provide you with our pleadings. We look forward to a civil and efficient handling of these claims.

become your attorney, provide advice or to take any actions on your behalf to protect your rights or comply with any deadline or statute of limitations. In order for us to become your attorney we would first have to agree to represent you by preparing and mutually signing an attorney retainer contract.

Begin forwarded message:

From: Brandon Schantz <bschantz@schantzlegal.com>
Date: January 24, 2016 at 8:06:11 AM PST
To: Jeffrey LeVee <jleee@jonesday.com>
Cc: rzernik@jonesday.com
Subject: DCA Trust v ICANN--TRO Notice

[Quoted text hidden]

Jeffrey LeVee <jleee@jonesday.com>
To: Brandon Schantz <bschantz@schantzlegal.com>
Cc: rzernik@jonesday.com, Kate Wallace <kwallace@jonesday.com>

Sun, Jan 24, 2016 at 11:01 AM

Mr. Schantz:

I have received your notice, which does not attach any pleadings. The notice is legally improper for at least three reasons:

1. You cite CRC 5.151(e) in your email, but that rule applies to family law cases, not this case.
2. In order to seek a TRO, you have to give proper notice, and that notice cannot be given on a Sunday before a Monday hearing. Nor have you complied with any of the other provisions of the court rule that would properly apply to this type of situation (a situation that includes the fact that ICANN has not yet appeared in the action).
3. Indeed, to my knowledge, ICANN has not even been served with a copy of the summons and complaint in this matter, and you never asked me to accept service (which I am not authorized to do in all events).

Further, as I wrote to you on January 22, 2016 (and you have not responded), DCA's application to ICANN (on which your lawsuit is based) contains an unambiguous covenant not to file a lawsuit against ICANN in any way arising out of the application. DCA's new lawsuit is barred by this covenant, which is contained in Module 6 of the application.

For all of these reasons, if you do not withdraw your email and confirm that you will NOT be appearing in LA Superior Court tomorrow morning, ICANN intends to seek sanctions against DCA and you personally. Rest assured that we will pursue our sanctions request vigorously.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: 213.243.2572

From: Brandon Schantz <bschantz@schantzlegal.com>
To: Jeffrey LeVee <jleee@jonesday.com>,
Cc: rzernik@jonesday.com

1 Brandon Schantz, SBN 278116
2 SCHANTZ LAW FIRM
3 30882 Rivera Place
4 Laguna Niguel, CA 92677
5 TEL: 949-378-3651
6 EMAIL: bschantz@schantzlegal.com

7
8
9 Attorney for DOTCONNECTAFRICA TRUST

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 UNLIMITED JURISDICTION

13 DOTCONNECTAFRICA TRUST,

14 Plaintiff,

15 vs.

16 INTERNET CORPORATION FOR
17 ASSIGNED NAMES AND NUMBERS and
18 DOES 1 through 50, inclusive,

19 Defendants

) Case No.: BC607494

)

) MEMORANDUM IN SUPPORT OF EX
) PARTE APPLICATION FOR TEMPORARY
) RESTRAINING ORDER AND ORDER TO
) SHOW CAUSE RE PRELIMINARY
) INJUNCTION

) Date: January 25, 2016

) Time: 8:30 AM

) Location: 85

) Judge: Hon. James C. Chalfant

) Date Action Filed: January 20, 2016

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I.

INTRODUCTION

PLAINTIFF submitted an application in May 2012 to the Internet Corporation for Assigned Names and Numbers (hereinafter “ICANN”), a U.S.-based non-profit organization based in California, to win the delegation rights (or mandate) for the administration of the DotAfrica (.AFRICA) generic Top-Level Domain (gTLD), an Internet resource that is available for delegation under the new gTLD Internet Expansion program of ICANN. The gTLD .AFRICA represents a unique piece of property.

However, certain problems arose while Plaintiff’s .AFRICA application was being processed by ICANN, due to violations by ICANN of its Bylaws, Articles of Incorporation, the rules governing the application process [as detailed in the gTLD Applicant’s Guidebook], and California laws against unfair competition as detailed in California Business and Professions Code §17200 etcetera.

The application process mandates that all disputes be decided by an Independent Review Panel (hereinafter “IRP”) arbitration. Plaintiff notified defendant ICANN of its intent to proceed with arbitration in order to high light the rampant violations and conflicts of interest by ICANN Board Members and staff throughout the application process. ICANN fought tooth and nail to prevent any sort of meaningful arbitration proceeding from taking place. In fact, when Plaintiff’s attorneys, in light of the pending arbitration, sent ICANN notice to immediately cease with any plans to delegate the unique rights of .AFRICA to another company ICANN responded by pushing forward the signing date of that registry agreement.

The arbitration panel ultimately concluded that ICANN’s actions throughout the entirety of the application process were in complete violation of its own Bylaws and its Articles of

1 Incorporation. The arbitration panel's final declaration mandated that ICANN be prohibited from
2 moving forward with any further delegation of .AFRICA pending a final resolution in this matter.
3 Plaintiff now seeks protection of California's courts because throughout this entire process ICANN
4 has shown a complete disregard for fair play.

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6 **II.**

7 **A TEMPORARY RESTRAINING ORDER MAY ISSUE WHERE GREAT AND**
8 **IRREPARABLE INJURY WILL RESULT TO THE APPLICANT UNLESS THE**
9 **OFFENDING CONDUCT IS IMMEDIATELY RESTRAINED**

10 A TRO may issue when "[i]t appears from the facts shown by affidavit or by the verified
11 complaint that great or irreparable injury will result to the applicant before the matter can be heard on
12 notice..." (Code Civ. Proc. § 527(c)(1).) The Court should grant the TRO where the likelihood is that
13 the Plaintiff will prevail on the merits at trial, and where the interim harm to the Plaintiff without the
14 TRO outweighs the likely harm to the defendant if the order is issued. *Church of Christ in Hollywood*
15 *v. Superior Court*, 99 Cal. App. 4th 1244, 1251 (2d Dist. 2002).

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17 The granting or denial of a temporary restraining order is discretionary with the trial judge
18 and amounts to a mere preliminary or interlocutory order to keep the subject of the litigation in status
19 quo pending the determination of the action on its merits. *Gray v. Bybee*, 60 Cal. App. 2d 564, 571,
20 141 P.2d 32 (3d Dist. 1943).

21
22 As stated in the Declaration of Plaintiff's Founder and CEO, Ms. Sophia Bekele, if Defendant
23 is not immediately restrained and enjoined from engaging in the aforesaid conduct, Plaintiff will
24 suffer great and immediate irreparable harm. Specifically, without an order preventing ICANN from
25 taking further steps to delegate .AFRICA, Plaintiff will be unable to obtain a satisfactory remedy in
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1 this matter. Operation of .AFRICA is a unique right (akin to owning unique real property), and there
2 is no substitute right that could be awarded to Plaintiff. Moreover, it would be impossible to quantify
3 the harm. Plaintiff was created expressly for the purpose of campaigning for, competing for and
4 ultimately operating .AFRICA. Plaintiff has numerous charitable initiatives that are based upon this
5 mission. If it is deprived of the opportunity even to compete to operate .AFRICA, Plaintiff will be
6 unable to accomplish its charitable aims and will be unable to perform its mandate. The loss of the
7 equitable ownership of .AFRICA and the loss of respect in the African and Internet communities is
8 something that mere monetary damages cannot account for.
9

10 On the other hand, the Defendant is not likely to suffer any damages if the TRO is granted as
11 the application fee of \$185,000.00 has already been paid by Plaintiff to ICANN. Furthermore,
12 ICANN is in possession of \$300,000 Letter of Credit from Plaintiff as insurance. As further stated in
13 the Declaration of Ms. Sophia Bekele, there is a high likelihood that Plaintiff will prevail on the
14 merits at trial because there has already been an arbitration on the actions that ICANN took regarding
15 Plaintiff's application for .AFRICA. That arbitration panel declared that ICANN's actions violated
16 its own Bylaws and Articles of Incorporation. Thus, the merits of Plaintiff's allegations have already
17 been established.
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20 Additionally, judicial efficiency favors the issuance of this TRO and subsequent Preliminary
21 Injunction. Plaintiff has shown a high likelihood of success because of the previous arbitration panel
22 ruling in its favor. If a TRO is not granted judicial efficiency will be wasted as any contract and/or
23 registry agreements signed pending this litigation will then have to be declared null and void. This
24 no doubt will only prolong this litigation.
25

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1 For the above reasons, a Temporary Restraining Order should be immediately issued to
2 prevent further harm to Plaintiff as alleged and as set forth in the attached declaration(s).

3 **III.**

4 **AN ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION SHOULD ALSO ISSUE**

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6 When a preliminary injunction is sought along with a TRO, the party must request an order to
7 show cause (OSC) regarding the preliminary injunction. Cal. Rules of Court, rule 3.1150(a).

8 Plaintiff requests a full hearing on a Preliminary Injunction for the same reasons and under the
9 same authorities as set forth in support of the TRO, and requests that an Order to Show Cause be
10 issued along with the TRO to afford Defendant the opportunity to show why he/she/it should not be
11 restrained and enjoined in the same manner for the remainder of this litigation.

12 A Preliminary Injunction is proper in the following circumstances:

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14 "(1) When it appears by the complaint that the Plaintiff is entitled to the relief demanded, and
15 such relief, or any part thereof, consists in restraining the commission or continuance of the act
16 complained of, either for a limited period or perpetually.

17
18 (2) When it appears by the complaint or affidavits that the commission or continuance of
19 some act during the litigation would produce waste, or great or irreparable injury, to a party to the
20 action.

21
22 (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is
23 about to do, or is procuring or suffering to be done, some act in violation of the rights of another
24 party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

25 (4) When pecuniary compensation would not afford adequate relief.

1 (5) Where it would be extremely difficult to ascertain the amount of compensation which
2 would afford adequate relief.

3 (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

4 (7) Where the obligation arises from a trust."

5 Code Civ. Proc. § 526(a).

6
7 As with a Temporary Restraining Order, when granting a preliminary injunction the Court
8 weighs two interrelated factors; the likelihood the moving party will prevail on the merits, and the
9 relative interim harm to the parties from the issuance or non-issuance of the injunction. *Whyte v.*
10 *Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1449 (4th Dist. 2002). As shown in the Declaration(s)
11 submitted herewith, and as will be shown at the hearing on a preliminary injunction, sufficient
12 grounds exist for both the TRO and a preliminary injunction.
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14 **IV.**

15 **EX PARTE RELIEF IS PERMITTED UNDER THESE CIRCUMSTANCES AND**
16 **PLAINTIFF HAS COMPLIED WITH CALIFORNIA RULES OF COURT**

17 "An applicant [for an ex parte application] must make an affirmative factual showing in a
18 declaration containing competent testimony based on personal knowledge of irreparable harm,
19 immediate danger, or any other statutory basis for granting relief ex parte." Cal. Rules of Court, rule
20 3.1202(c).
21

22 As shown by the attached Declaration of Ms. Sophia Bekele, and stated above, there is an
23 imminent and present danger of irreparable harm/immediate danger or other statutory basis for
24 granting relief ex parte. Mere monetary damages will not be able to compensate Plaintiff if ICANN
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1 is not prohibited from delegating away the equitable ownership rights of .AFRICA pending this
2 litigation.

3 As shown in the accompanying Declaration of Brandon Schantz, Plaintiff has complied with
4 all the California Rules of Court as they related to an ex parte application.
5

6 V.

7 **CONCLUSION**

8 For all of the foregoing reasons and supporting facts and authorities, Plaintiff respectfully
9 requests that the Court issue a Temporary Restraining Order, and set an Order to Show Cause hearing
10 for Preliminary Injunction.
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13 Respectfully submitted,
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15 DATED: January 25, 2016
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18 Brandon Schantz
19 Attorney for DotConnectAfrica Trust
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7 Attorney for DOTCONNECTAFRICA TRUST

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 UNLIMITED JURISDICTION

11 DOTCONNECTAFRICA TRUST,) Case No.: BC607494
12)
13 Plaintiff,) [PROPOSED] TEMPORARY
14) RESTRAINING ORDER AND ORDER TO
15 vs.) SHOW CAUSE RE PRELIMINARY
16) INJUNCTION
17 INTERNET CORPORATION FOR)
18 ASSIGNED NAMES AND NUMBERS and) Date: January 25, 2016
19 DOES 1 through 50, inclusive,) Time: 8:30 AM
20) Location: 85
21 Defendants) Judge: Hon. James C. Chalfant
22) Date Action Filed: January 20, 2016
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23 On reading the Complaint of Plaintiff on file in the above-entitled action and the accompanying
24 declaration(s), it appears to the satisfaction of the court that this is a proper case for granting an order
25 to show cause for a preliminary injunction and a temporary restraining order, and that, unless the
26 temporary restraining order prayed for be granted, great or irreparable injury will result to plaintiff
27 before the matter can be heard on notice.
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1 IT IS ORDERED that, pending the hearing and determination of the order to show cause, the
2 above-named defendants, and each of them, and their officers, agents, employees, representatives,
3 and all persons acting in concert or participating with them, are restrained and enjoined from
4 engaging in or performing, directly or indirectly, any and all of the following acts:

- 5
- 6 1. Any further steps towards the delegation of the .AFRICA gTLD, including but not limited to
7 execution or assessment of pre-delegation testing, negotiations or discussions relating to
8 delegation with the entity ZA Central Registry or any of its officers or agents.
 - 9 2. The immediate halting of the Extended Evaluation of Plaintiff's application for .AFRICA,
10 including any decisions by the evaluation panel as to Plaintiff's pending application for
11 .AFRICA.
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13 IT IS FURTHER ORDERED that the above-named defendants, and each of them, appear in
14 Department 85 of this court, located at 111 North Hill Street, Los Angeles, California 90012 on
15 _____ (date), at _____ (time), or as soon thereafter as the matter
16 may be heard, then and there to show cause, if any they have, why they and their agents, servants,
17 employees, and representatives, and all persons acting in concert or participating with them, should
18 not be enjoined and restrained during the pendency of this action from engaging in, committing, or
19 performing, directly or indirectly, any and all of the above stated acts.
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21 IT IS FURTHER ORDERED that:

22 a. Plaintiff shall serve this order to show cause on defendants in the following time and manner:
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25 b. Proof of service must be delivered to the court hearing the OSC on:
26 _____
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28 c. The parties shall adhere to the following briefing schedule:

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IT IS FURTHER ORDERED that copies of the Complaint, declaration(s), and this order to show cause and temporary restraining order be served the parties against whom this order is made not later than _____ (date).

Dated: January 25, 2016.

James C. Chalfant
Judge of the Superior Court