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Jeffrey A. LeVee (State Bar No. 125863)
jlevee@jonesday.com
Samantha S. Eisner (State Bar No. 230344)
seisner@jonesday.com
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2300
Telephone: (213) 489-3939
Facsimile: (213) 243-2539

Attorneys for Plaintiff
The Internet Corporation for Assigned Names
and Numbers

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CLERK, U.S. DISTRICT COURT
JUN 12 2007
CENTRAL DISTRICT OF CALIFORNIA
BY *W* DEPUTY

SEARCHED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

The Internet Corporation for Assigned
Names and Numbers,

Plaintiff,

RegisterFly.Com, Inc., and
UnifiedNames, Inc.,

Defendants.

Case No. CV 07-2089 R (PLAx)

~~PROPOSED~~ PERMANENT
INJUNCTION, WITH FINDINGS
OF FACT AND CONCLUSIONS
OF LAW

Date: May 25, 2007
Time: 10:00 a.m.
Judge: Hon. Manuel L. Real

JUDGE

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 13 2007
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY LOCAL RULE 7.1(c)

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1 On May 25, 2007, this Court heard argument from Plaintiff's Internet
2 Corporation for Assigned Names and Numbers ("ICANN") and Defendants
3 RegisterFly.Com, Inc. and UnifiedNames, Inc. (collectively, "RegisterFly") as to
4 whether the April 26, 2007 Preliminary Injunction granted against RegisterFly
5 should be entered as a Permanent Injunction. Based upon the argument of counsel,
6 and the entirety of the record in the above-captioned case, this Court ISSUES a
7 Permanent Injunction against RegisterFly in accordance with Federal Rules of Civil
8 Procedure, Rules 54 and 65.

9
10 **FINDINGS OF FACT**

- 11 1. RegisterFly and ICANN are parties to a Registrar Accreditation
12 Agreement ("RAA"), through which RegisterFly serves as an ICANN-accredited
13 registrar.
14 2. On March 15, 2007, ICANN provided RegisterFly with a Notice of
15 Termination of the Registrar Accreditation Agreement.
16 3. On March 29, 2007, ICANN filed this action against RegisterFly for
17 breach of contract, injunction and declaratory relief.
18 4. The day prior to ICANN filing suit, on March 28, 2007, and as
19 allowed under Section 5.6 of the RAA, RegisterFly initiated an arbitration before
20 the American Arbitration Association (the "AAA arbitration") contesting ICANN's
21 Notice of Termination.
22 5. Along with ICANN's complaint, ICANN filed an application for a
23 Temporary Restraining Order ("TRO").
24 6. This Court granted ICANN's TRO on April 16, 2007. Although
25 ICANN provided this Court with information demonstrating service of process on
26 defendants, RegisterFly did not appear or provide any opposition to the TRO.
27 (April 6, 2007 and April 9, 2007 Proof of Service of Summons.)
28

1 7. On April 16, 2007, this Court set an Order to Show Cause re
2 Preliminary Injunction for hearing on April 26, 2007 and ordered ICANN to
3 provide notice to RegisterFly.

4 8. On April 26, 2007, this Court entered a Preliminary Injunction against
5 RegisterFly. At the hearing on the Preliminary Injunction, ICANN appeared and
6 provided this Court with information demonstrating service of the Order to Show
7 Cause on Preliminary Injunction. RegisterFly did not appear or otherwise provide
8 any opposition to the entry of the Preliminary Injunction. (April 26, 2007
9 Preliminary Injunction, 2:11-13.)

10 9. In briefing and at the hearing on the Preliminary Injunction, ICANN
11 provided this Court with documentation of RegisterFly's failures to comply with
12 the TRO. (April 26, 2007 Preliminary Injunction, 2:8-11.)

13 10. On May 2, 2007, ICANN filed an *ex parte* application seeking Civil
14 Contempt Sanctions against RegisterFly for its failure to comply with the
15 Preliminary Injunction. In its application and at the May 9, 2007 hearing on the
16 same, ICANN provided this Court with evidence of RegisterFly's failures to
17 provide the required Data to ICANN or to otherwise comply with the Preliminary
18 Injunction. (May 9, 2007 Revised Order Granting Civil Contempt Sanctions, 2:12-
19 15.)

20 11. On May 9, 2007, this Court granted ICANN's application for Civil
21 Contempt Sanctions. At the same hearing, this Court requested that ICANN submit
22 an Order to Show Cause re Further Sanctions requiring the personal appearance of
23 RegisterFly's principal and counsel.

24 12. On May 14, 2007, the Court set the hearing on the Order to Show
25 Cause re Further Sanctions for May 25, 2007 and set the hearing for Permanent
26 Injunction for that same date.

27 13. On May 22, 2007, RegisterFly appeared for the first time in this Court,
28 filing a Notice of Appearance of Counsel.

1 14. On May 24, 2007, RegisterFly filed responses to the Order to Show
2 Cause re Further Sanctions and the Permanent Injunction.

3 15. In its May 24 filings and also during oral argument on May 25, 2007,
4 RegisterFly stated that it did not find objectionable any portion of the injunctive
5 relief that the Court had previously granted to date to ICANN. (May 24, 2007
6 Response to OSC Why Permanent Injunction Should Not Issue at 2:1-4; Transcript
7 of May 25, 2007 Hearing on Further Sanctions and Permanent Injunction ("May 25
8 Hearing"), 6:11-14.)

9 16. On May 25, 2007, ICANN and RegisterFly appeared at the hearing on
10 Order to Show Cause re Further Sanctions and the Permanent Injunction.

11 17. RegisterFly acknowledged at the May 25 hearing that it had not yet
12 provided ICANN with all Data it was required to under the Permanent Injunction,
13 including Data for the equitable registrants of those domain names currently
14 identified as registered by a proxy registration service, such as "ProtectFly." (May
15 25 Hearing, 4:6-23; 13:17-19.)

16 18. ICANN also stated, and the Court also found, that RegisterFly had not
17 yet provided ICANN with access to audit RegisterFly's books and records as
18 required under the Permanent Injunction. (May 25 Hearing, 5:4-5; 13:17-21.)

19 19. ICANN also stated, RegisterFly admitted, and the Court also found,
20 that RegisterFly had not yet posted any notice to consumers on its website
21 regarding the termination of its ICANN accreditation as required under the
22 Permanent Injunction. (May 25 Hearing, 8:25-9:3; 12:12-13:2; 13:22-25.)

23 20. Although RegisterFly was in the process of completing the process of
24 transferring its domain names to a different registrar, the Court found that notice to
25 consumers is still relevant and must be placed on the website. (May 25 Hearing,
26 13:22-25.)

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1 8. This Court has jurisdiction to enter a Permanent Injunction against
2 RegisterFly. (May 25 Hearing, 17:25-18:5; 19:6-8.)

3 9. It is appropriate to enter a Permanent Injunction against RegisterFly
4 granting all relief as granted in the Preliminary Injunction. (May 25, 2007 Hearing;
5 19:6-8.)

6
7 **[PROPOSED] PERMANENT INJUNCTION**

8 IT IS HEREBY ORDERED THAT:

9 The April 26, 2007 Revised Temporary Restraining Order against
10 Defendants RegisterFly.Com, Inc. and UnifiedNames, Inc. is hereby ISSUED as a
11 Permanent Injunction.

12 IT IS FURTHER ORDERED THAT:

13 1. Defendants RegisterFly.Com, Inc., and UnifiedNames, Inc. and all of
14 their officers, directors, agents, or representatives (collectively referred to as
15 "RegisterFly"), and all persons or entities in active concert with or under common
16 control by or with the above listed, are hereby directed *immediately*, in accordance
17 with Sections 3.4 and 3.6 of the Registrar Accreditation Agreement ("RAA")
18 between ICANN and RegisterFly, to provide ICANN with a complete copy of all
19 registrant data for all Internet domain names that RegisterFly services as an
20 ICANN-accredited Registrar, including the registration data for the equitable
21 registrants of those domain names currently identified as registered by a proxy
22 registration service, such as "ProtectFly" (the "Data"). To be clear, RegisterFly is
23 required to provide a complete and accurate copy of all Data, including all
24 registrant data identifying a proxy registration service as registrant, and separately
25 to provide a copy of the registration data for the equitable registrants of those
26 domain names identified as registered by a proxy registration service. In providing
27 ICANN with this Data, RegisterFly is enjoined and restrained from altering or
28 destroying any of the Data prior to making the copy, except for those alterations

1 required to facilitate RegisterFly customer-requested domain name transfers.
2 RegisterFly is further directed to provide ICANN a complete and current update of
3 the Data on a recurring weekly (once every seven days) basis.

SCANNED

4 2. The Data referred to within this order, must include the following
5 information, as required under sections 3.2, 3.3, and 3.4 of the RAA:

- 6 • the Registered Name;
- 7 • the names of the primary nameserver and secondary
8 nameserver(s) for the Registered Name;
- 9 • the identity of the registrar (which may be provided through
10 registrar's website);
- 11 • the original creation date of the registration;
- 12 • the expiration date of the registration;
- 13 • the name and postal address of the Registered Name Holder;
- 14 • the name, postal address, e-mail address, voice telephone
15 number, and (where available) fax number of the technical
16 contact for the Registered Name;
- 17 • the name, postal address, e-mail address, voice telephone
18 number, and (where available) fax number of the administrative
19 contact for the Registered Name;
- 20 • the name and (where available) postal address, e-mail address,
21 voice telephone number, and fax number of the billing contact;
- 22 • any other Registry Data that the registrar has submitted to the
23 registry operator or placed in the registry database.

24 For the registration data for the equitable registrants of those domain
25 names currently identified as registered by a proxy registration service, such as
26 "ProtectFly", the Data referred to in this Order must include all of the information
27 specified above; however, the name, address, contact and billing information must
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1 reflect data as it relates to the equitable registrant, as opposed to the registered
2 proxy service.

3 3. An electronic copy of the registration data for the equitable registrants of
4 those domain names currently identified as registered by a proxy registration
5 service such as "ProtectFly" must be submitted to ICANN within twenty-four hours
6 of ICANN's service on RegisterFly of this Order, and must be made in accordance
7 with the procedures specified herein.

8 4. The Data that RegisterFly is required to provide to ICANN as set forth in
9 this Order must be current, complete and reflect all registration transfers up to the
10 point of the Data transmission to ICANN.

11 5. The Data referred to in this Order must be submitted to ICANN's secured
12 file transfer protocol ("SFTP") server as earlier agreed to by RegisterFly.

13 6. RegisterFly is required to perform a MD5 algorithm over each
14 transmission of Data prior to submission to ICANN and to provide ICANN with
15 that MD5 algorithm result with the Data file.

16 7. RegisterFly must provide the Data referred to in this Order in a consistent
17 .csv file format, in accordance with RFC 4180. If RegisterFly is unable to perform
18 .csv exports to create the Data file, RegisterFly must, within 48 hours of the entry
19 of this Order: (1) provide ICANN notice that it cannot perform the required export;
20 (2) complete discussions with ICANN staff to agree upon an acceptable
21 standardized file format; and (3) utilize the negotiated standardized file format for
22 all Data submissions.

23 8. RegisterFly, and all persons or entities in active concert with or under
24 common control, are enjoined immediately and permanently from taking any
25 actions to interfere with ICANN's rights to inspect and audit all of RegisterFly's
26 registration Data under Section 3.4.3. RegisterFly must make its books and
27 records, including the Data, immediately available for audit by ICANN.
28

1 9. RegisterFly, and all persons or entities in active concert with or under
2 common control, are enjoined immediately and permanently from taking any
3 actions to interfere with ICANN's rights under the RAA, including, but not limited
4 to, ICANN's right to use the Data in order to protect the domain names of
5 RegisterFly's customers. SCANNED

6 10. RegisterFly, and all persons or entities in active concert with or under
7 common control, must immediately provide ICANN with identification of all
8 physical locations where all Data referred to in this Order is located or stored.

9 11. RegisterFly must immediately post a notice on its website at
10 <http://www.registerfly.com/> and any other website through which it offers to
11 register Internet domain name registrations a notice that must appear in the top third
12 of each web page, must be in 14 point bold typeface, and must read "NOTICE TO
13 CONSUMERS: THE INTERNET CORPORATION FOR ASSIGNED NAMES
14 AND NUMBERS, THE NOT-FOR-PROFIT ENTITY THAT ADMINISTERS
15 THE INTERNET'S DOMAIN NAME SYSTEM, HAS ISSUED A NOTICE OF
16 TERMINATION OF THIS COMPANY'S ACCREDITATION TO SERVE AS AN
17 INTERNET DOMAIN NAME REGISTRAR. PLEASE SEE www.icann.org FOR
18 FURTHER INFORMATION."

19 12. RegisterFly is immediately and permanently enjoined from performing
20 any alterations to WHOIS data for any domain name for which RegisterFly
21 currently serves as the registrar of record except for those alterations required to
22 facilitate RegisterFly customer-requested domain name transfers.

23 13. ICANN is permitted immediately to take all steps necessary to preserve
24 the domain names of all registrants for which RegisterFly serves as the registrar of
25 record, including entering into agreements with domain name registries to prevent
26 the deletion of current RegisterFly domain names. The Court urges all domain
27 name registries to take whatever steps are necessary to assist ICANN in avoiding
28 the deletion of domain names registered by RegisterFly.

1 14. Pursuant to the Registrar Accreditation Agreement ("RAA") between
2 ICANN and RegisterFly, ICANN shall be permitted immediately to terminate
3 RegisterFly's RAA, thereby terminating RegisterFly's ability to serve as a registrar.
4 Should ICANN terminate the RAA, RegisterFly may continue to pursue an
5 arbitration to seek to have its accreditation restored.

6 15. In the event ICANN terminates the RAA, except as directed by ICANN,
7 RegisterFly shall be immediately enjoined from providing any service or function
8 performed by registrars, including but not limited to the solicitation and/or
9 acceptance of domain name registrations, transfers or renewals, accepting payment
10 for domain name registrations, transfers or renewals, and altering any WHOIS data
11 for domain names for which RegisterFly served as the registrar of record.

12 16. Upon ICANN's termination of the RAA, RegisterFly must immediately
13 post a notice on its website at <http://www.registerfly.com/> and any other website
14 through which it solicits Internet domain name registrations to inform customers
15 that its ICANN accreditation has been terminated. The notice must be placed in the
16 top third of each web page, must appear in 14 point bold typeface, and must read
17 "NOTICE TO CONSUMERS: ICANN HAS TERMINATED THIS COMPANY'S
18 ACCREDITATION TO SERVE AS AN INTERNET DOMAIN NAME
19 REGISTRAR. THIS COMPANY MAY NOT REGISTER DOMAIN NAMES.
20 PLEASE SEE www.icann.org FOR MORE INFORMATION."

21 17. Upon ICANN's termination of the RAA, ICANN shall be permitted to
22 use all Data collected for any purpose in the public interest, including but not
23 limited to facilitating a bulk transfer of all domain names for which RegisterFly (at
24 the time of termination) served as the registrar of record in accordance with
25 ICANN's Inter-Registrar Transfer Policy.

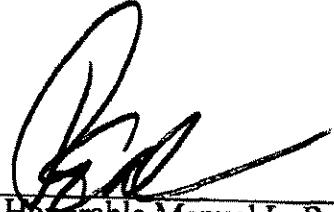
26 18. Upon ICANN's termination of the RAA, RegisterFly must take any and
27 all steps to facilitate ICANN's bulk transfer of all domain names for which
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RegisterFly (at the time of termination) served as the registrar of record in accordance with ICANN's Inter-Registrar Transfer Policy.

IT IS SO ORDERED.

Dated: June 12 2007



The Honorable Manuel L. Real
United States District Court Judge

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PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071-2300. On June 8, 2007, I deposited with Federal Express, a true and correct copy of the within documents:

**[PROPOSED] PERMANENT INJUNCTION, WITH
FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

in a sealed envelope, addressed as follows:

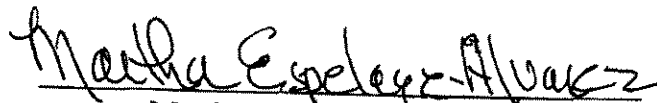
Heather L. McCloskey, Esq.
Ervin, Cohen & Jessup LLP
9401 Wilshire Blvd., 9th Floor
Beverly Hills, CA 90212
Email: hmcloskey@ecjlaw.com
Counsel for Registerfly.com, Inc.
and UnifiedNames, Inc.

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I have submitted a courtesy copy of the above described document via email to all parties listed above.

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

Executed on June 8, 2007, at Los Angeles, California.


Martha L. Espelage-Alvarez