

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ANNE MARTINEZ, individually and)
on behalf of all other persons)
similarly situated,)

Civil Action No 07-CV-188

Plaintiffs,)

v.)

REGISTERFLY, INC.,)
UNIFIEDNAMES INC.)

NOTICE OF SUBSEQUENT FILING

HOSTING SERVICES GROUP INC.)

KEVIN MEDINA, in his personal capacity and)

as an agent of RegisterFly, Inc. and)

as an agent of Unifiednames Inc.)

John Naruszewicz, in his capacity as an agent)

of both Unifiednames and RegisterFly,)

ENOM, and)

ICANN,)

Defendants.)

COMES NOW the defendant, Internet Corporation for Assigned Names and Numbers ("ICANN"), by and through counsel and hereby files this Notice of Subsequent Filing of the Class Action lawsuit properly filed against defendants Unified Names, Inc. and RegisterFly by disgruntled customers of RegisterFly.

This the 24th day of April, 2007.

/s/ Philip J. Mohr
Philip J. Mohr, NC State Bar #24427
Womble Carlyle Sandridge & Rice, PLLC
One West Fourth Street, NC 27101
Telephone: 336-721-3577
Fax: 336-733-8358

CERTIFICATE OF SERVICE

I hereby certify that on this date a the foregoing **NOTICE OF SUBSEQUENT FILING** has been caused to be electronically filed with the Clerk of Court and served electronically through the Clerk of Court on April 24th, 2007 to the following person(s):

E. Clarke Dummit, Esquire
213 West Sixth Street
Winston-Salem, NC 27101
Attorney for Plaintiff

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Nexsen Pruet Adams Kleemeier
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Attorney for eNom

/s/ Philip J. Mohr
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Attorney for Defendant ICANN

GAINEY & McKENNA
666 Godwin Avenue - Suite 230
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Attorneys for Plaintiff
Our File No.: 170.146

RECEIVED & FILED
MORRIS COUNTY
APR 24 2007
CIVIL DIVISION

X
DAVID KELLER, on behalf of himself and
all others similarly situated,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
Docket No.: L-880-07

Plaintiff,

Civil Action

vs.

UNIFIEDNAMES, INC., d/b/a
REGISTERFLY, JOHN DOES (1-10) and
ABC CORPORATIONS (1-10),

**COMPLAINT, JURY DEMAND AND
DESIGNATION OF TRIAL COUNSEL**

ENTERED ON ACTS

Defendant.

X

Plaintiff, David Keller ("Plaintiff"), by and through his undersigned counsel on behalf of himself and all others similarly situated, alleges for this Class Action Complaint against Defendant Unifiednames, Inc. d/b/a Registerfly ("Registerfly") as follows:

JURISDICTION AND VENUE

1. Registerfly is a New Jersey corporation maintaining a principal place of business at 404 Main Street, Boonton, Morris County, New Jersey.
2. The acts and omissions of Registerfly giving rise to the claims alleged herein occurred and emanated from the corporate headquarters of Registerfly in this County.

PARTIES

3. Plaintiff David Keller is a resident of Seaside, New Jersey, who had several internet website domain names registered through Defendant Registerfly, and who currently is being prevented from renewing, transferring, or otherwise preserving his domain names by Registerfly's conduct, as alleged herein below. Plaintiff recently made a payment to Registerfly for the purpose

of renewing one of his domain names. Although Registerfly accepted Plaintiff's payment, it failed to effectively renew his domain name.

4. Defendant Registerfly is engaged in the business of registering internet website domain names on the worldwide web and related internet services.

FACTUAL ALLEGATIONS

5. Plaintiff brings this action as a class action pursuant to Rule 4:32-1, *et seq.* on behalf of himself and all other persons and entities who registered internet website domain names through Defendant Registerfly (the "Class").

6. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members can be determined only by appropriate discovery, based upon publicly-disclosed information, Plaintiff believes that the Class comprises over 10,000 members located in New Jersey and across the United States.

7. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff will fairly and adequately protect and represent the interests of the members of the Class and has retained counsel competent and experienced in class action litigation.

8. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

9. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

- a. Whether Registerfly has failed to renew, transfer, or otherwise preserve the internet website domain names of the members of the Class; and
- b. Whether the Class is entitled to the relief requested herein.

10. Plaintiff knows of no difficulty that will be encountered in the management of this case that would preclude its maintenance and certification as a class action.

11. Registerfly has approximately 200,000 domain names reserved for its customers, i.e. Plaintiff and the other members of the Class.

12. Registerfly had a duty to conduct its business in good faith and with due care to provide that its customers may renew, transfer, and otherwise preserve the internet website domain names that they reserved and paid for through Registerfly.

13. Registerfly had a contractual duty to permit its customers to be able to review, transfer, and otherwise preserve their internet website domain names that they reserved and paid for through Registerfly.

14. Due to the corporate malfeasance of Registerfly, Registerfly has failed to renew and/or lost approximately 75,000 domain names for its customers, including Plaintiff and the Class, since January 2007 because Registerfly failed to reserve or renew domain names per their customers' requests.

15. More specifically, on or about March 19, 2007, the plaintiff, DAVID KELLER, paid a \$20.00 annual renewal fee to defendant by credit card to renew one of his domain names. Defendant immediately received and retained the renewal payment but failed to renew the domain name. Defendant is not permitting plaintiff and other class members to renew their domain names or to transfer them to another domain registry company, thus causing the loss of several thousand paid-for, unique names to others and/or their general availability in the public domain.

FIRST COUNT
(Specific Performance)

16. Plaintiff repeats the allegations set forth above as if the same were set forth and repeated fully herein.

17. The internet website domain names belonging to Plaintiff and the other members of the Class are unique property and not capable of reasonable substitution.

18. In order to maintain their website domain names and the value associated therewith, Plaintiff and other Class members need Registerfly to immediately permit them to effectively renew or transfer said domain names without further interruption or delay.

19. Registerfly's failure to specifically perform its obligations to permit Plaintiff and other Class Members from renewing or transferring domain names is causing or threatening the permanent and irreparable loss of their unique domain names.

20. The losses of unique internet website domain names cannot be adequately compensated through an award of money damages.

SECOND COUNT

(Negligence)

21. Plaintiff repeats the allegations set forth above in paragraphs 1 through 20 as if the same were set forth and repeated fully herein.

22. Plaintiff alleges this Count in the alternative as seeking monetary damages as an alternative remedy to specific performance until discovery may assist in further elucidating the most practical and appropriate remedy.

23. Registerfly failed to conduct its business in good faith, with due care, or in a manner that provided its customers to renew, transfer, and otherwise preserve the internet website domain names that they reserved and paid for through Registerfly.

24. Registerfly's corporate malfeasance and misconduct foreseeably caused its customers to lose internet domain names.

25. Plaintiff and the other members of the Class have suffered damages as a result.

THIRD COUNT

(Breach of Contract)

26. Plaintiff repeats the allegations set forth above in paragraphs 1 through 25 as if set forth and repeated fully herein.

27. Plaintiff alleges this Count in the alternative as seeking monetary damages as an alternative remedy to Specific Performance until discovery may assist in further elucidating the most practical and appropriate remedy.

28. Registerfly maintained contracts with Plaintiff and members of the Class whereby Registerfly had the obligation to review the domain names of Plaintiff and other Class Members upon their proper request and payment.

29. Registerfly breached its aforesaid contractual duties.

30. Plaintiff and other Class Members have suffered damages as a result.

FOURTH COUNT

(Violations of N.J.S.A. 56:8-2 et seq. Consumer Fraud Act)

31. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "30", inclusive with the same force and effect as though the same was more fully set forth at length herein.

32. The New Jersey Consumer Fraud Act (hereinafter "Act") states, in relevant part:

56:8-2. Fraud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice.

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; provided, however, that nothing

herein contained shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design or purpose of the advertiser.

33. Defendants violated the Act by failing to renew and/or losing approximately 75,000 domain names and by accepting payments from consumers for domain name renewals and then failing to renew those domain names.

34. The individual plaintiff and class members were caused to suffer damages as a result of defendants' acts and omissions, including ascertainable losses.

COUNT FIVE
UNJUST ENRICHMENT

35. Plaintiffs repeat and reiterate each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "34", inclusive with the same force and effect as though the same was more fully set forth at length herein.

36. The defendants' improper, unlawful and negligent activities, including failing to renew and/or losing approximately 75,000 domain names and their acceptance of payments from consumers for domain name renewals that they ultimately did not renew resulted in the unjust enrichment of the defendants. The defendants were unjustly enriched in the amount of money made by them through their improper, unlawful and negligent activities.

37. The plaintiffs have been damaged in the amount that the defendants were unjustly enriched and their damage was caused by the defendants' acts and omissions.

WHEREFORE, Plaintiff, on its own behalf and on behalf of the Class, demands judgment against Defendant Registerfly as follows:

- a. Declaring this action to be a proper class action, certifying the Class and Plaintiff as Class representative;
- b. Ordering Specific Performance by Defendant Registerfly to immediately permit Plaintiff and Class to renew or transfer their domain names without further interruption or delay;
- c. Alternatively, entering judgments in favor of Plaintiff and the Class against Defendant as may be apportioned by the Court, or finder of fact, or monetary damages of the Plaintiff and the Class, in an amount to be proven at trial;
- d. Awarding Plaintiff and the Class their costs of litigation, including reasonable attorneys' fees, reimbursements, expert fees, and interest;
- e. Awarding such further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all counts of the Complaint.

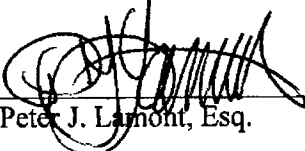
DESIGNATION OF TRIAL COUNSEL

Barry J. Gainey, Esq. and/or Peter A. Lagorio, Esq. (to be admitted *pro hac vice*) is hereby designated as trial counsel pursuant to R. 4:25-4, et seq.

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify pursuant to R. 4:5-1 that the matter in controversy is not the subject of any other Complaint pending in any court or of any pending arbitration proceeding.

Dated: March 29, 2007



Peter J. Lamont, Esq.

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