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6 Attorneys for Plaintiff
7 The Internet Corporation for Assigned Names
and Numbers
8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 The Internet Corporation for Assigned
Names and Numbers,

13
14 Plaintiff,

15 v.

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

17 Defendants.
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Case No. CV 07-2089 R (PLAx)

**SUPPLEMENTAL
DECLARATION OF
SAMANTHA EISNER
REGARDING DEFENDANTS'
COMPLIANCE WITH COURT
ORDERS**

Hearing Date: June 15, 2007
Hearing Time: 10:00 a.m.
Judge: Hon. Manuel L. Real

FILED
2007 JUN 14 PM 4:07
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

1 I, Samantha Eisner, declare:

2 1. I am an associate with the law firm Jones Day, counsel of record for
3 plaintiff Internet Corporation for Assigned Names and Numbers ("ICANN") in this
4 action. I am admitted to practice before this Court. I submit this declaration in
5 further support of ICANN's Report on Compliance with Injunction in Support of
6 Further Sanctions ("ICANN's Report") against defendants RegisterFly.Com, Inc.
7 and UnifiedNames, Inc. (collectively, "RegisterFly"). I have personal knowledge
8 of the facts set forth in this declaration and am competent to testify if called as a
9 witness.

10 2. Paragraph 11 of the April 26, 2007 Preliminary Injunction, formally
11 entered as a Permanent Injunction on June 12, 2007 (the "Injunction") required
12 RegisterFly to post a notice of consumers on the top-third of its home page at
13 <http://www.registerfly.com/> and required the notice to be posted in 14-point type.
14 From a review of declarations submitted on RegisterFly's behalf, it is
15 uncontroverted that RegisterFly first contacted its webmaster and requested the
16 posting of the notice to consumers on May 25, 2007.

17 3. Kevin Medina, in a Supplemental Declaration submitted to this Court
18 on June 11, 2007, confirmed that the notice to consumers was not placed on the
19 top-third of RegisterFly's homepage until the morning of June 11, 2007, 46 days
20 after the entry of the Preliminary Injunction, and 15 days after the May 27, 2007
21 deadline set by this Court for RegisterFly to complete the posting.

22 4. The notice to consumers posted on June 11, 2007 was in a font size
23 smaller than the Court-ordered 14-point type face, in continued violation of the
24 Injunction.

25 5. On the morning of June 13, 2007, I logged onto
26 [http://www.registerfly.com.](http://www.registerfly.com/) I observed that the font size of the notice was
27 corrected to a 14-point type face.

28

1 6. On June 11, 2007, RegisterFly filed a Response to Order to Show
2 Cause Regarding Further Sanctions in which RegisterFly stated that the audit
3 information RegisterFly was to make available to ICANN under Paragraph 8 of the
4 Injunction was hosted by a third party, Tucows, and Tucows required an additional
5 3 weeks to produce the audit information.

6 7. On the afternoon of June 12, 2007, I participated in a conference call
7 regarding the audit data. Also participating on the call were three representatives
8 from ICANN, Heather McCloskey (counsel of record for RegisterFly), Kevin
9 Medina, Robert O'Neill (an employee of RegisterFly), and Elliot Noss, the CEO of
10 Tucows.

11 8. During the June 12, 2007 conference call, the participants established
12 that the only audit data that Tucows had in its possession was the audit data
13 specified under Section 3.4.2.1 of the Registrar Accreditation Agreement between
14 RegisterFly and ICANN (the "RAA").

15 9. On the June 12, 2007 conference call, Kevin Medina confirmed that
16 RegisterFly – not Tucows – held the audit information specified at Sections 3.4.2.2
17 (written communications with Registered Name Holders) and 3.4.2.3 of the RAA
18 (records of Registered Name Holder accounts with RegisterFly). Thus, the prior
19 representations that RegisterFly did not have access to this information were
20 incorrect. These audit data specifications have never been in Tucows possession.
21 On the conference call, ICANN reiterated to Ms. McCloskey and Mr. Medina that it
22 expected this information to be provided in accordance with this Court's Orders.

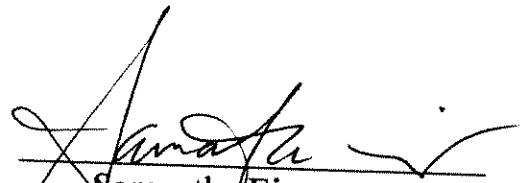
23 10. On June 13, 2007, I sent Ms. McCloskey an email confirming that as a
24 result of the June 12, 2007 conference call, ICANN now knows that the portion of
25 the audit data in Tucows' possession (but not in the possession of RegisterFly) is
26 not necessary at the present time, and can be generated at a later time. A true and
27 correct copy of my June 13, 2007 email to Ms. McCloskey is attached hereto as
28 Exhibit A.

1 11. As of 2:30 p.m. on Thursday, June 14, 2007, I have not received any
2 submission of the portions of the RegisterFly audit data confirmed to be outside of
3 Tucows' possession.

4 12. In my June 13, 2007 email to Ms. McCloskey, I included a list
5 identifying the approximately 2,700 domain names still masked by a proxy whois
6 to allow for RegisterFly to perform further research regarding the equitable
7 registrant data for those names. On the morning of June 14, 2007, I received an
8 email from Ms. McCloskey providing a support ticket from 2003 with first name
9 and an email address for a person claimed to be the equitable registrant of nearly all
10 of the approximately 2,700 at issue names. I was not provided with any
11 information to demonstrate that this person was a current registrant of any of the at
12 issue names. I was also not provided with any other equitable registrant data for
13 any of the approximately 2,700 at issue names.

14
15 I declare under penalty of perjury under the laws of the United States that the
16 foregoing is true and correct. This declaration was signed on June 14, 2007 in Los
17 Angeles, California.

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Samantha Eisner



Samantha Eisner / JonesDay
 Extension 32220
 06/13/2007 01:52 PM

To hmcloskey@ecjlaw.com, kscott@ecjlaw.com
 cc jlevee@JonesDay.com
 bcc
 Subject ICANN v. RegisterFly: Remaining Data Compliance Issues

Ms. McCloskey:

I write in follow up to our phone call yesterday afternoon.

First, ICANN has determined that the log of registration data, including updates, submitted to the Registry Operators (RAA, section 3.4.2.1) is not necessary at this time as we now understand it can be created at a later date. ICANN understands that this log can only be generated through Tucows. In the event this log becomes necessary in the future, ICANN will contact RegisterFly and Tucows to structure a timeframe for submission.

Second, RegisterFly confirmed that the written communication with Registered Name Holders (RAA, section 3.4.2.2) and the records of the accounts of all Registered Name Holders, including dates and amounts of all payments and refunds (RAA, section 3.4.2.3) are in RegisterFly's possession, and *are not* (and have never been) in Tucows' system or possession. ICANN expects this information to be provided to ICANN prior to June 15.

Third, ICANN still expects RegisterFly to comply with Paragraph 8 the Permanent Injunction and provide ICANN with its books and records in addition to the Section 3.4 audit data. As you know, on May 31, 2007 I provided you with further justification of ICANN's need for this financial information, including, but not limited to, a need to obtain the financials to confirm RegisterFly's financial dealings with its registered name holders. I have not yet received any response to this email. In addition, ICANN has not yet received any of this financial information from your client.

Fourth, as discussed on the call, attached to this email is a list (in Excel and raw text form) identifying the registration records that are still marked with a proxy name service identifier. Please let me know if your client is able to recover any additional information relating to the equitable registrants of these names. As Steve Conte pointed out, your client could have generated this list without ICANN's assistance to review the data upon first notification of the issue.

Samantha Eisner
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 Fax: (213) 243-2539
 seisner@JonesDay.com



protectfly-privacy.xls >



protectfly-privacy.csv

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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.
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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 14, 2007, I deposited with Federal Express, a true and correct copy of the within documents:

**SUPPLEMENTAL DECLARATION OF
SAMANTHA EISNER REGARDING DEFENDANTS'
COMPLIANCE WITH COURT ORDERS**

in a sealed envelope, addressed as follows:

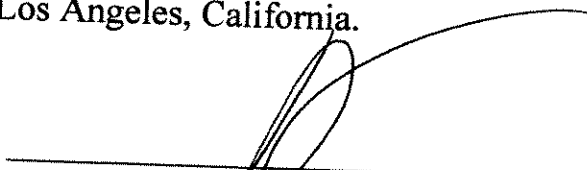
Heather McCloskey, Esq.
Ervin Cohen & Jessup LLP
9401 Wilshire Blvd., 9th Floor
Beverly Hills, CA 90212
Phone: 310-281-6349
Fax: 310-887-6853
Email:
hmcloskey@ECJLAW.COM

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 14, 2007, at Los Angeles, California.



Deborah Futrowsky