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CLERK U.S. DISTRICT COURT
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13   UNITED STATES DISTRICT COURT

       CENTRAL DISTRICT OF CALIFORNIA

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15   WESTERN DIVISION

16   NAME.SPACE, INC.,   Case No. **CV12-8676-PA (PLAx)**

17   Plaintiff,

18   v.   **COMPLAINT**

19   INTERNET CORPORATION FOR   **DEMAND FOR JURY TRIAL**

20   ASSIGNED NAMES AND NUMBERS,

21   Defendant.

22

23   Plaintiff name.space, Inc. ("name.space"), by and through its undersigned

24   counsel, brings this Complaint against Defendant Internet Corporation for Assigned

25   Names and Numbers ("ICANN"), and alleges as follows:

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ny-1023809

INTRODUCTION

1.   name.space is the originator, operator and promoter of 482 Top Level Domains ("TLDs"), which is the highest level identifier in an Internet "domain name"—such as .com or .gov.

2.   ICANN controls and purports to be responsible for the entire worldwide Internet Domain Name System ("DNS"). The DNS is an essential part of the logical infrastructure that makes the Internet work by assigning unique domain names to computers running web sites and other services including e-mail and voice-over-IP, and by coordinating master computer servers which ensure that all Internet users typing a domain name into their browsers reach the same "host" computer and service. ICANN has exclusive control in determining whether to permit new TLDs into the DNS and whether to permit interconnection with TLD operators like name.space. The DNS is the critical, essential intermediary that allows Internet users to reach a website or connect to other services—whose real address is identified by a set of numbers—by typing an alphanumeric domain name in their Internet browser's address bar.

3.   name.space's TLDs have been shut out of the DNS by ICANN and its predecessors, and forced to operate its own network of TLDs, thereby effectively blocking and quarantining name.space TLDs and its registrants' domains from the majority of Internet users. Instead, ICANN has given priority for any new TLDs to an exclusive group of insiders and industry incumbents who control ICANN, either directly or financially.

4.   In 2000, name.space applied (the "2000 Application") for 118 of its TLDs to be delegated onto the DNS master database known as the "root.zone file," or simply "the Root." Notwithstanding ICANN's acknowledgement of name.space's qualifications and payment of the $50,000 application fee, ICANN refused to make a final determination of name.space's 2000 Application. Meanwhile, the same

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handful of companies already dominating control of the Internet—many of which have close ties to ICANN's board of directors—received the only new TLDs delegated by ICANN, further entrenching their status as Internet powerhouses and consummate insiders.

5.   Nevertheless, when ICANN announced it would hold another round of TLD applications in 2012, name.space relied on representations from ICANN that its 2000 Application remained pending, and had not been finally determined. At no point has name.space been informed of anything to the contrary.

6.   Rather than adopting a procedure to account for the pending 2000 Application and facilitate the expansion of TLD providers in the DNS, ICANN adopted a procedure so complex and expensive that it once again effectively prohibited newcomers from competing. It instead has permitted participation solely by ICANN insiders and industry titans.

7.   ICANN raised the application fee to $185,000—more than three times the previous amount. Further, unlike the 2000 round where applicants could apply for multiple TLD strings conforming to a uniform business model in a single application, this time each TLD application required its own non-refundable application fee. name.space's application for the same 118 TLDs for which it applied in 2000 would thus cost over 436 times more in 2012. In adopting this process, ICANN effectively and intentionally precluded name.space from implementing its business model of incorporating the simultaneous operation of a significant number of TLDs, which was designed to drive not only name.space's revenue stream but also its competitive appeal to other rights holders seeking to register domain names under multiple TLDs. This approach by ICANN was consciously adopted as an attack on name.space's business model and a means by which to create and maintain market power in the TLD markets.

8.   Even further, not only was the 2012 process anticompetitive, but ICANN allowed applicants to apply for TLDs *that name.space had originated and was*

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ny-1023809

already operating and promoting. In other words, the 482 TLDs that name.space originated and has been using in commerce continuously since 1996 were being auctioned off by ICANN to any takers who could afford it, in total disregard to name.space's trademark rights in those TLDs.

9.   Finally, through its anticompetitive, self-interested actions, ICANN has created a scenario whereby name.space will be unable to ensure that its contracts with its existing and prospective customers can be performed. Specifically, if and when ICANN delegates a TLD on the DNS that is identical with a TLD that currently resolves on the name.space network, name.space's customer's websites and other services will effectively be preempted by websites and services that resolve on ICANN's DNS and point to different hosts. Once again, this serves to benefit only ICANN and the industry insiders and power players whose interests ICANN appears to represent.

10.   In fact, on June 13, 2012, ICANN published its list of TLD strings for which applications were submitted to delegate those TLDs to the DNS. Included on this list were several TLDs that already resolve on the name.space network, including .art, .blog, .book, .design, .home, .inc. and .sucks. If and when those applications are approved, however, those TLDs will become associated not only with name.space—which has been operating and promoting those TLDs in commerce for over fifteen years—but also with the prospective registers that have paid ICANN $185,000 per TLD.

11.   Accordingly, name.space brings this action against ICANN, seeking damages and injunctive and declaratory relief, for violations of the Sherman Act and the Lanham Act, as well as state and common law trademark infringement, unfair competition and tortious interference claims.

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JURISDICTION AND VENUE

12.   This Court has original subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and (b) over the claims in this action arising under the Sherman Act, 15 U.S.C. §§ 1 and 2, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*

13.   This Court also has diversity subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that it is a dispute between citizens of different States where the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs.

14.   This Court also has supplemental jurisdiction over name.space's state law claims pursuant to 28 U.S.C. § 1367(a), because those claims are so related to name.space's federal law claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

15.   This Court has personal jurisdiction over ICANN, because, on information and belief, ICANN is a California corporation with its principal place of business in this District.

16.   The trade and interstate commerce relevant to this action are at least the following: (i) the international market for TLDs and markets for each individual TLD permitted by ICANN to participate in the DNS, and (ii) the markets for wholesale and retail registrations within each TLD. The activities of ICANN and its co-conspirators, as described herein, were within the flow of and had a substantial effect on interstate commerce.

17.   Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) because ICANN resides in this District and a substantial part of the events giving rise to name.space's claims occurred in this District.

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18. Plaintiff name.space is a corporation organized under the laws of the State of Delaware, with its principal place of business at 134 West 37th Street, Suite 200, New York, New York.

19. Upon information and belief, Defendant ICANN is a non-profit corporation organized under the laws of the state of California, with its principal place of business in Marina del Rey, California. ICANN has the exclusive control over the Internet's DNS. As discussed further below, ICANN derives its authority to manage the DNS from a series of agreements with the United States government.

FACTUAL ALLEGATIONS

A. The Architecture of the Internet.

1. The DNS System.

20. At heart, the Internet is a series of interconnected servers and computers. Each computer or host server connected to the Internet can be identified by at least one unique Internet protocol ("IP") address, which consists of a string of four sets of numbers between 0 and 255, separated by periods (e.g., 170.11.225.15).

21. For ease of reference, a DNS was created to link an IP address with a unique alphanumeric "domain name," such as "nytimes.com." The DNS is a simple, efficient way for Internet users to navigate the web: remembering that "nytimes.com" is the address for The New York Times website is much easier than remembering its numeric IP address.

22. The domain name is incorporated into a Uniform Resource Locator ("URL"). When an Internet user types the URL into his or her web browser application (such as Internet Explorer or Firefox), the URL is sent to a DNS server. The DNS server looks up the IP address assigned to that domain name, and the browser then connects to the server having that IP address, which hosts the desired website.

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2. Top-Level Domains.

23.   The DNS uses a hierarchical structure. The alphanumeric field to the far right is known as the "Top Level Domain" ("TLD")—such as .com, .net, or .edu. The other, lower-level fields follow to the left of the TLD, separated by periods. The first field to the left of the TLD is the Second Level Domain ("SLD"), followed by the Third Level Domain, and so on. Thus, using the nytimes.com example, ".com" is the TLD, and "nytimes" is the SLD. (There is no Third Level Domain in this example.)

24.   In order to link a domain name to an IP address, the DNS server must have access to the Root, which serves as the highest level of the DNS hierarchy and contains a "master list" of all the TLDs. The Root enables the connection of domain names to IP addresses by first directing an Internet user's request to the appropriate TLD, which then routes the user to the desired host computer via the second (and possibly third or fourth) level domain.

25.   Currently, the number of TLDs (other than country code TLDs, discussed below) has been arbitrarily limited to twenty-two. Upon information and belief, there are no financial, technical or other constraints to adding new TLDs to the current architecture of the Internet via access to the Root.

26.   A limited number of corporations and organizations operate these TLDs, and they must pay a fee to ICANN in order to do so. These organizations and corporations are "wholesale" providers of TLDs—they sell the ability to register a domain name with a particular TLD and maintain a "zone file," or registry, of all the domain names associated with that TLD. TLD wholesalers are commonly referred to as TLD "registries."

27.   The "retail" sellers of domain names, called "registrars," are companies that sell the second-level domain names directly to the companies and content providers that want to create a website or provide other services. Registrars, such as "godaddy.com," must be approved by the TLD registries to sell domain names.

The "registrants"—individual companies and content producers, such as The New York Times, that purchase a domain name through the registrar—rent that domain name by paying an annual fee to the registrar.

28.   The TLD market is extremely lucrative, and, at present, is controlled by a small group of industry insiders. For example, wholesale TLD registries receive approximately $5-7 per year for every domain name in that particular TLD registry. Considering that there are over a hundred million websites using the ".com" TLD, annual revenue for Verisign, Inc. ("Verisign")—the only ICANN-authorized .com TLD registry—is approximately between $500 and $700 million.

29.   There are three different categories of TLDs:

   (a)   Fourteen of the twenty-two TLDs are "sponsored top level domains" ("sTLDs"), such as .gov and .edu, that are restricted to specific classes of users who must meet a given criterion in order to register with them (e.g., be a U.S. government agency to receive a .gov domain, or be an accredited educational institution to receive a .edu domain).

   (b)   The other eight TLDs are "generic top level domains" ("gTLDs"), such as .com and .net, that permit anyone to register.

   (c)   Additionally, separate from the twenty-two TLDs controlled by corporate entities, there are unique "country-code top level domains" ("ccTLDs") that are operated by sovereign nations, or companies with the authority to operate the TLD on behalf of those countries. Each country or designated entity with the authority to operate a ccTLD may set its own registration restrictions and dictate the registration fee.

30.   Despite the limited number of available TLDs, there exists competition for the most commercially "desirable" TLDs. Consumers, for example, may be more likely to trust an e-commerce site with a ".com" domain name, rather than a ".biz" domain name. The ".com" suggests a legitimacy that other TLDs may not have. On information and belief, most Internet users expect that a website will use .com

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and reflexively append .com to particular content producer's trademarked brand name when seeking access to that content producer's website.

31.   Additionally, there are no technological or legal reasons that might prevent a gTLD registry from offering hundreds of gTLDS; as described below, this is, in fact, name.space's business model.

B.   name.space Begins Operating as a Registry.

32.   In 1996, Paul Garrin, founder of name.space, established a network of servers in five countries on two continents to provide a competing registry with that of Network Solutions, Inc. ("Network Solutions"), which, in 1992, had been granted exclusive control over the Root by the National Science Foundation ("NSF"), a U.S. government agency. In 1995, Network Solutions was permitted to operate for profit as a TLD registry, and began charging fees to register domain names on the Root's limited number of TLDs.

33.   In contrast to Network Solution's arbitrarily limited TLDs, name.space offered over five hundred different and "expressive" TLDs, such as .art, .food, .magic, .music, .now and .sucks. Name.space's business model offered a wide array of TLDs for content providers, allowing for increased consumer accessibility to specific Internet sites, as well as stronger expressiveness, marketability and branding. For example, at the time, name.space's domain name in the Network Solutions registry was "namespace.pgpmedia.com," while its domain name through name.space's registry was simply "name.space" (where .space, rather than .com, was the TLD).

34.   Unfortunately, name.space was effectively unable to compete with Network Solutions because name.space's TLDs were not on the Root and therefore segregated from the majority of the global Internet. When an Internet user enters a URL into his or her web browser, the web browser will by default look to the Root to resolve that URL. Only by changing the DNS settings on each individual's computer with the IP addresses of name.space DNS resolvers, and bypassing the

9

ny-1023809

DNS settings assigned by the user's service provider (which by default point to the Network Solutions-controlled Root), can the URL resolve domain names in service on name.space's registry. Practically speaking, for 99.9% of the world, the Root is the Internet. Domain names under name.space's TLDs were by default not universally resolvable on the Internet, thereby eliminating any chance of name.space competing with Network Solutions, and enabling Network Solutions to operate its government-granted monopoly with impunity.

C. ICANN Takes Over Management of the DNS on the Root.

35.   In 1997, the U.S. government issued a report entitled "A Framework for Global Electronic Commerce," which transferred control of Internet governance from NSF to the Department of Commerce (the "DOC"). Soon after, the DOC solicited comments from stakeholders and published a "white paper" that reflected the commentators' consensus that a new, not-for-profit corporation should have the exclusive authority to manage the DNS.

36.   In 1998, the DOC assigned ICANN the exclusive authority to manage the DNS system. According to the National Telecommunications and Information Administration ("NTIA")—a division of the DOC that is responsible for "promoting the stability and security" of the DNS "through its participation on behalf of the U.S. government in Internet Corporation for Assigned Names and Numbers (ICANN) activities"—ICANN "is the not-for-profit entity responsible for coordinating the technical management of the Internet's domain name system (DNS) and for ensuring its continued security, stability and integrity." In reality, ICANN has not been operating as a truly disinterested "not-for-profit entity."

37.   Pursuant to its agreements with the U.S. government, ICANN has the exclusive authority to determine whether to introduce new TLDs into the Internet's current architecture. And, significantly, ICANN also has the exclusive authority to determine what companies will operate as registries for these TLDs.

38.   According to the U.S. government white paper that addresses ICANN's role as the government-sanctioned gatekeeper to the Internet, "[t]he new corporation [ICANN] does not need any special grant of immunity from the antitrust laws so long as its policies and practices are reasonably based on, and no broader than necessary to promote the legitimate coordinating objectives of the new corporation."

39.   Further, the white paper states that: "[a]pplicable antitrust law will provide accountability to and protection for the international Internet community. Legal challenges and lawsuits can be expected within the normal course of business for any enterprise and the new corporation [ICANN] should anticipate this reality."

40.   Regarding the process by which ICANN determines what new TLDs to authorize, the white paper states that: "the decision making process would need to reflect a balance of interests and should not be dominated by any single interest category."

41.   Moreover, ICANN's "activities would need to be open to all persons who are directly affected by the entity, with *no undue financial barriers to participation* or unreasonable restrictions on participation."

42.   Similarly, a U.S. government "green paper" recognized that "the new corporation's [ICANN's] processes should be fair, open and pro-competitive. Its decision-making processes should be sound and transparent." The green paper also warns ICANN to guard against "capture by a self-interested faction."

43.   Far from being fair and open with no undue financial barriers to participation, the process leading to the 2012 application round has been shrouded in secrecy, with significant financial and administrative barriers to entry added since the 2000 process that conflict with ICANN's mandate.

44.   Upon information and belief, ICANN is controlled by a board of directors with significant conflicts of interest; the ICANN Board is comprised of industry insiders that seek to entrench their power to the detriment of the Internet

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community and the general public. ICANN Board members have close business and financial connections with the existing TLD registries, as well as domain name registrants. These conflicts of interest have resulted in a commercial environment that unlawfully insulates industry insiders, stifles competition and, as discussed below, has precluded name.space from implementing its business model and competing as a domain name registry.

D. ICANN Introduces a Limited Number of New TLDs and Grants Only Industry Insiders the Authority to Operate as the New TLD Registries.

1. The 2000 Application Round Opens.

45. In 2000, ICANN sought to expand the number of available TLDs and adopted a policy for the introduction of new TLDs through an application process (the "2000 Application Round").

46. To be selected as a new TLD registry, applicants had to establish their ability to provide the technical expertise necessary to operate a TLD, as well as their financial and business management strengths. The 2000 Application Round instructions were approximately seven pages long.

47. The application fee for the 2000 Application Round was $50,000, and applicants could submit multiple TLD strings in a single application without paying any additional fees.

48. One of the stated goals of the 2000 Application Round was to "provide a vehicle for providing a diverse range of concepts for innovative uses of the DNS." ICANN emphasized that it was "seek[ing] diversity and hop[ing] to rely on the creative approach of the applications to all aspects of the introduction and operation of new TLDs." ICANN encouraged applicants to "[b]e creative."

2. name.space Applies for 118 gTLDs.

49. After four years of efforts seeking inclusion of its TLDs into the Root through administrative and legal means, name.space finally had a chance to add a

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1 portion of its exclusive catalog of TLDs to the DNS and to begin competing with

2 other TLD registries.

3 50.   In 2000, as part of the 2000 Application Round, name.space submitted a

4 complete and timely application with ICANN to operate as the registry for 118

5 gTLDs, and paid the $50,000 application fee. A full list of all 118 gTLDs from

6 name.space's 2000 Application is attached as Exhibit A.

7 51.   ICANN accepted name.space's 2000 Application, and in fact selected

8 name.space's 2000 Application as one of the "strong candidates" and one of the

9 top-ten applications submitted in the 2000 Application Round.

10 52.   Moreover, a former Chairperson of ICANN's board of directors, strongly

11 supported name.space's 2000 Application and stated that name.space represents

12 diversity and free speech on the Internet. The former Chair also stated that

13 name.space would likely be a successful business that would support both

14 commerce and free speech.

15 53.   Notwithstanding the status and credentials of name.space's 2000 Application,

16 ICANN simply dragged its feet on making a determination. ICANN never rejected

17 name.space's 2000 Application, but neither advanced name.space's 2000

18 Application for delegation nor awarded name.space the authority to operate any of

19 name.space's TLDs over the DNS.

20 54.   In fact, to this day, on information and belief, name.space's 2000 Application

21 is still pending. As one ICANN committee member stated with respect to

22 name.space's 2000 Application, "we'll wait them out."

23 55.   Rather than delegating name.space's 118 gTLDs, ICANN ignored its own

24 mandates of "seeking diversity" and relying on creative approaches to the

25 introduction and operation of new TLDs, and instead approved only seven new

26 TLDs: the gTLDs .biz and .info and the sTLDs .aero, .coop, .museum, .name and

27 .pro.

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56.   As Professor Milton Mueller of Syracuse University wrote in his 2004 book, *Ruling the Root*, "[a]dding the name.space TLDs to the [] root.zone would have transformed the commercial environment of the DNS. As the only registry for hundreds of top-level domains, name.space would have been quickly elevated to the status of peer of Network Solutions ."

57.   Significantly, almost no new industry players emerged from the 2000 Application Round as TLD registries. ICANN awarded the overwhelming majority—over 99%—of the "new" TLDs to existing dominant firms in the TLD and domain name registrar industries.

58.   In 2000, Verisign acquired Network Solutions, including Network Solutions' control of the .com, .net and .org TLDs. Verisign's acquisition of Network Solutions added to its already significant TLD business: Verisign also has the exclusive contracts to operate the .name and .gov sTLDs and the .cc and .tv ccTLDs.

E.   ICANN Launches the 2012 Application Round for New TLDs While Placing Significant Barriers to Entry.

59.   Since 2000, ICANN's policies and actions regarding the TLD market have come under increasing scrutiny from the Internet community, members of Congress and international agencies.

60.   ICANN has ties to and benefits from payments from the select few industry players that are able to operate domain name registries. Such conflicts of interest have been widely reported. Notably, ICANN's outgoing president and CEO has been quoted as stating: "ICANN must be able to act for the public good while placing commercial and financial interests in the appropriate context. How can it do this if all top leadership is from the very domain name industry it is supposed to coordinate independently?"

61.   Upon information and belief, some of those conflicts include Chair Steve Crocker, who runs the consulting firm Shinkuro, which has a silent investment from

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domain name registry provider Afilias Limited ("Afilias"), the owner of .org and .info, and Vice-chair Bruce Tonkin, a senior executive with Melbourne IT, an Australian company that has advertised its ability to help clients secure gTLD registry accreditation from ICANN. Ram Mohan, Afilias's Executive Vice President and Chief Technology Officer, also sits on the ICANN board of directors. Further, Peter Dengate Thrush, former Chairman of ICANN's board of directors, is now the Executive Chairman of Top Level Domain Holdings, Inc., which filed ninety-two applications for new gTLDs in 2012.

62.   Amidst this widespread criticism, ICANN opened a new round of applications for TLD registries (the "2012 Application Round"). The application window ran from January 12, 2012 through April 12, 2012.

63.   In a 2009 agreement with the DOC, ICANN emphasized that it would "ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation."

64.   In contrast to the seven-page instruction manual from the 2000 Application Round, the rules and procedures for the 2012 Application Round were set forth in a massive 349-page guidebook.

65.   ICANN purports to operate by consensus. In fact, ICANN's creation of the 2012 Application Round, its announcements regarding the 2012 Application Round and the rules that ICANN adopted were the result of an unlawful series of agreements between ICANN and its co-conspirators, some of whom had already left ICANN and some of whom were in the ICANN organization when the 2012 Application Round was decided and announced, but thereafter left ICANN.

66.   Upon information and belief, ICANN and the co-conspirators entered into and furthered their conspiracy on at least the following occasions:

- March 12, 2010: the ICANN board of directors met in Nairobi, Kenya;

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ny-1023809

1   - September 24, 2010: a special meeting of the ICANN board of directors
2   was held in Trondheim, Norway;
3   - October 28, 2010: a special meeting of the ICANN board of directors was
4   held via teleconference;
5   - December 10, 2010: the ICANN board of directors met in Brussels,
6   Belgium;
7   - January 25, 2011: a special meeting of the ICANN board of directors was
8   held via teleconference;
9   - March 18, 2011: the ICANN board of directors met in San Francisco,
10   California;
11   - October 11, 2011: a special meeting of the ICANN board of directors was
12   held in Santa Monica, California;
13   - October 28, 2011: the ICANN board of directors met in Dakar, Senegal;
14   - December 8, 2011: a special meeting of the ICANN board of directors
15   was held via teleconference.
16   67.   In order to apply in the 2012 Application Round, ICANN required applicants
17   to pay a whopping $185,000 per TLD fee—over three times more than the 2000
18   Application Round's $50,000 fee. More importantly, unlike the 2000 Application
19   Round, ICANN forbid applicants from submitting multiple TLD strings in the same
20   application.
21   68.   Therefore, had name.space re-applied in the 2012 Application Round for
22   delegation of the same 118 gTLDs that remain pending from name.space's 2000
23   Application, it would have cost name.space almost $22 million, more than 436
24   times the price of name.space's 2000 Application for the same 118 gTLDs.
25   69.   Upon information and belief, the 2012 Application Round, by requiring
26   application fees for each TLD for which an application has been submitted, was
27   designed intentionally to preclude or at least impede name.space's business
28   model—which incorporates the simultaneous operation of a significant number of

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1   gTLDs. Indeed, name.space appears to be uniquely situated in this regard as its

2   2000 Application contains 118 gTLDs already in service that predate the ICANN

3   application process and the formation of ICANN itself.

4   70.   In a transparent attempt to avoid the conflict between the pending 2000

5   applications and the new, more expensive 2012 applications, ICANN offered a one-

6   time $86,000 reduction in the application fee for the 2012 Application Round for

7   those applicants that previously applied in 2000, but whose TLDs were not

8   delegated into the Root. This fee reduction could only be used for a single TLD

9   application. If the applicant chose to accept this one-time fee reduction, it would

10   waive any claim it had to its 2000 application. Otherwise, the 349-page guidebook

11   did not mention how ICANN would treat any previous applicants from the 2000

12   Application Round whose applications, like name.space's, are still pending.

13   71.   In addition, in the 2012 Application Round, ICANN instituted a binding

14   dispute resolution process to resolve any conflicts with regard to a 2012

15   application. Upon information and belief, ICANN is attempting to use the 2012

16   Application Round to force previous applicants from the 2000 Application Round

17   to submit to this new dispute resolution process.

18   72.   Further, ICANN did not prevent 2012 applicants from applying for

19   delegation of TLDs that were already included in other applicants' pending 2000

20   applications.

21   73.   Upon information and belief, ICANN knowingly and willingly created the

22   application process for the 2012 Application Round without adequate safeguards in

23   place to protect the 2000 applicants' rights in their proposed or already operating

24   TLDs.

25   74.   Upon information and belief, it costs as much or more to apply for one gTLD

26   string in the 2012 Application Round than it does to launch a TLD registry in the

27   market.

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75. As a result of the 2012 Application Round's procedural and financial barriers created by ICANN, name.space was unable to participate in the 2012 Application Round, and continues to seek delegation of its 118 gTLDs from its 2000 Application.

76. Instead of structuring the 2012 Application Round to foster innovation and competition, ICANN's imposition of procedural and financial hurdles created a process in which only industry insiders—such as former ICANN board of directors Chairman Peter Dengate Thrush—and industry behemoths, including some of the world's largest technology companies, can realistically hope to get their applied-for gTLDs delegated to the Root.

F. ICANN's Power in the Relevant Markets

77. The actions of ICANN and the co-conspirators, described above, have had anticompetitive effects in the international market to act as a gTLD registry with access to the DNS (the "TLD registry market"). The TLD registry market also includes the potential market for gTLD registries with access to the DNS that offer multiple gTLD strings.

78. The market to act as a gTLD registry with access to the DNS is a unique and separate market because there is no reasonable substitute for it. The overwhelming majority of Internet users access content online through websites registered with TLDs that have access to the DNS and through e-mail services that are entirely dependent on the DNS. Further, all consumer and commercial Internet connections by default point to the ICANN-controlled DNS such that only TLDs controlled by ICANN are accessible. Put differently, in order for a potential gTLD registry to provide its services to consumers on what is commonly known as the Internet, access to the DNS is necessary. And without access to the DNS—access that is controlled by ICANN and the co-conspirators—a potential gTLD registry cannot enter the market to create and operate new gTLDs on the Internet despite consumer demand for new, unique gTLDs.

18

79. In addition, the actions of ICANN and the co-conspirators have had anticompetitive effects in the international market for domain names. Content creators and other consumers that purchase domain names are limited to "shopping" for second-level domain names because they effectively have no choice among the few available gTLDs. But absent ICANN's anticompetitive acts, there would exist separate markets for both the selection of TLDs *and* for second-level domains. Consumers recognize this and are beginning to demand more choice in gTLDs and, in particular, more expressive options. ICANN and the co-conspirators, however, continue to dictate the supply of TLDs, with resulting anticompetitive effects in the market for domain names.

80. Finally, the actions of ICANN and the co-conspirators have had anticompetitive effects in the market for blocking or defensive registrations services. ICANN's and the co-conspirator's current business model thrives on permitting a select group of TLD registries to extract monopoly rents in the market for defensive registrations by granting each TLD registry the exclusive right to operate a given TLD. In order for content creators and trademark owners to protect their brand and/or marks, they must "defensively" register with multiple TLDs or risk that their brand and/or mark could become diluted, confused with other marks/content, or associated with something undesirable. ICANN and the co-conspirators permit some TLD registries to do essentially nothing but extract profit. There is no need for these TLD registries to provide services because a "defensively" registered website is not intended to be actively run by the content creator; the sole reason to defensively register is to protect a brand and/or mark. Further, even though a TLD registry may operate a TLD for which there is little demand, such as .biz, it can still reap monopoly profits by forcing content creator to register with that TLD or risk harm to their brand and/or mark. Because ICANN and the co-conspirators control the supply of TLDs, they prevent other players from

entering the market and offering a different models for brand and trademark protection.

G. ICANN Is Seeking to Delegate TLDs in Violation of name.space's Trademark Rights.

81.   name.space has originated at least 482 gTLDs, which it has been using in commerce to promote name.space's services continuously since 1996. A list of the 482 gTLDs belonging to name.space is attached as Exhibit B.

82.   name.space has been using the 482 gTLDs at issue to promote name.space by making them available for registration and resolution, among other services, to those users who choose to operate on name.space's network. Those users, as a result, identify and associate those gTLDs with name.space and its services, and name.space has trademark rights in those gTLDs.

83.   While the U.S. Patent and Trademark Office ("USPTO") regards TLDs as generally serving no source-indicating function, the USPTO has recognized that "[a]s the number of available TLDs is increased by the Internet Corporation for Assigned Names and Numbers ("ICANN"), or if the nature of new TLDs changes, the examining attorney must consider any potential source-indicating function of the TLD and introduce evidence as to the significance of the TLD." The USPTO has thus explicitly recognized that TLDs could, in fact, serve source-indicating functions.

84.   The USPTO's prior stance on the function of TLDs as generally not being source indicating is a relic of an essentially exclusive ".com" era, which is rapidly coming to an end. In other words, using the USPTO's logic, if a brand owner has a trademarked name, the trademark covers both "brand" and "brand.com," because .com does not add any source indicating function, it is merely the common parlance for a company's website. Today, however, a brand owner can go to name.space and register "brand.now" or "brand.power," or a competitor or commentator can register "brand.sucks"—all recognizable as name.space's gTLDs. While ".com"

20

still dominates the gTLD market, it is by no means the only possible gTLD. Notwithstanding the hurdles to TLD competition created by ICANN, name.space uses its trademarked gTLDs to compete with other registries in the gTLD market.

85.   Regardless of the USPTO's position on federal trademark registration for TLDs—which notably is at odds with policies of other countries—name.space has acquired common law trademark rights in its gTLDs.

86.   Accordingly, name.space's 482 gTLDs—such as .now, .power, .space and .sucks, to name a few—would be infringed by competing gTLDs delegated under the same name.

87.   Indeed, applicants in the 2012 Application Round have applied for TLDs that are among the 482 gTLDs that name.space has operated and promoted continuously since 1996 and in which name.space has exclusive trademark rights.

88.   On June 13, 2012, ICANN announced that applications had been filed to have 189 gTLDs that have resolved on the name.space network continuously since 1996 delegated on the DNS. The list of gTLDs that were applied for in the 2012 Application Round and that are currently being operated and promoted by name.space on the name.space network include: .art, .blog, .book, .casino, .design, .home, .inc, .movie, .shop and .sucks. A complete list is attached hereto as Exhibit C.

89.   Upon information and belief, ICANN intends to delegate certain of these gTLDs to 2012 applicants, in violation of name.space's trademark rights.

90.   ICANN's refusal to delegate name.space's gTLDs to the DNS under its 2000 Application has enabled and induced 2012 applicants to apply for delegation of those gTLDs as part of the 2012 Application Round. Without ICANN's consent and support, those 2012 applicants would be unable to apply for and receive delegation of name.space's trademarked gTLDs. ICANN in turn receives substantial application fees from these applicants and benefits from any prospective infringement.

91.   Moreover, name.space currently provides services to websites and various network services in operation on the Internet that use domains under its gTLDs. Any delegation by ICANN of those gTLDs to others will therefore cause disruption to name.space's existing services and to the content on its network, not to mention confusion as to where each gTLD in conflict resolves.

92.   name.space has notified ICANN of the existence of this potential conflict and disruption, and about name.space's existing and prospective contractual relationships with its customers regarding name.space's gTLDs. As a result, ICANN is well aware of the disruption that its actions have caused and will cause.

93.   Given name.space's priority in first establishing those gTLDs and providing services thereto, any conflicting delegation by ICANN would amount to interference with name.space's services and its relationships with existing and prospective customers.

FIRST CLAIM FOR RELIEF

(Contract, Combination or Conspiracy in Restraint of Trade under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1)

94.   Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

95.   ICANN has entered into a conspiracy that includes current and former members of ICANN's board of directors, Verisign, Afilias and the select few other companies that operate as TLD registries (the "co-conspirators").

96.   The conspiracy that exists between ICANN, the co-conspirators, and the current TLD registries exists, in part, because members of ICANN's board of directors have known, vested interests in the economic performance of the TLD registries. By way of example, and as set forth above, a "revolving door" exists where members of ICANN's board of directors leave ICANN to work for a TLD registry and vice versa.

97. ICANN and the co-conspirators have worked in concert to structure the 2012 Application Round to ensure that the current TLD registries continue to dominate the TLD registry market and to deter other potential market entrants, for example, by charging a prohibitively high fee to submit an application.

98. By and through this conspiracy, ICANN and the TLD registries intend to limit competition to the TLD registry market in order to retain their dominant market positions. In addition, ICANN has precluded the creation of a market for the sale of registrations of multiple TLD strings.

99. As a result of ICANN's conspiracy, consumers have few choices in the market for domain names, and, in particular, they have virtually no choices for "expressive" TLDs, such as those offered by name.space.

100. Another result of ICANN's conspiracy is that the price of registering a TLD is artificially high. Additionally, content producers must spend enormous amounts of money to "defensively" register domain names under separate TLDs to protect their brands.

101. Further, ICANN has conspired to administer the DNS in a way that prevents name.space's business model from entering the international market operation as a TLD registry.

102. By and through this conspiracy, ICANN imposed rules in the 2012 Application Round that prevent name.space's business model from competing as a TLD registry.

103. There is no legal, business or technological rationale for the rules imposed by ICANN in its administration of the DNS or in the 2012 Application Round. In fact, on information and belief, ICANN could easily "interconnect" name.space and other networks to ICANN's DNS, which would dramatically increase competition in the relevant markets.

104. name.space has spent over sixteen years developing a business plan to serve the needs of domain name registrants. By making that business approach

23

impossible—to the benefit of ICANN and its co-conspirators—name.space was precluded from entering and competing in this market.

105. Because of ICANN's conspiracy, name.space has lost millions of dollars in potential revenue.

SECOND CLAIM FOR RELIEF

(Monopolization under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2)

106. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

107. ICANN controls access to the Root—it is the sole and exclusive authority in charge of the DNS. By managing the DNS and controlling access to the Root, ICANN effectively controls access to the public Internet.

108. It is not reasonable or practical to duplicate management of the DNS.

109. Through its exclusive authority to manage the DNS, ICANN is the sole entity that determines whether to admit new TLDs into the DNS by allowing TLD registries access to the Root. ICANN alone has the power to determine what companies will operate as registries for TLDs that are universally resolvable on the public Internet.

110. No federal agency has the power to compel ICANN to provide TLD registries with access to the Root, or to compel ICANN to award private companies with contracts to operate as TLD registries.

111. Absent access to the Root, it is impossible for a potential TLD registry to enter the TLD market.

112. ICANN uses its control over access to the Root in order to eliminate competition from the relevant markets.

113. Specifically, ICANN's control over access to the Root has, and continues to have, the effect of preventing name.space from competing in the TLD registry market. Indeed, ICANN's actions, as set forth above, indicate that it has structured

24

ny-1023809

the 2012 Application Round to prevent name.space from competing in the TLD registry market.

114. Upon information and belief, ICANN has restricted, and continues to restrict, access to the Root in order to enrich current and former members of the ICANN board of directors that have close ties with the extremely small number of TLD registries that currently have access to the Root.

THIRD CLAIM FOR RELIEF

(Unlawful Restraint of Trade and Conspiracy in Restraint of Trade Under the Cartwright Act, California Business and Professions Code §§ 16720 et seq.)

115. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

116. ICANN and the co-conspirators have conspired to and acted in concert unlawfully to restrain and eliminate competition in the relevant markets, as described above in paragraphs 94-105, in violation of the Cartwright Act, California Business & Professions Code sections 16720 *et seq.*

117. Because of ICANN's and the co-conspirator's unlawful actions under the Cartwright Act, name.space has lost millions of dollars of potential revenue.

118. Under this claim for relief, name.space is entitled to recovery of its attorneys' fees and costs under California Business and Professions Code Section 16750(a).

FOURTH CLAIM FOR RELIEF

(Unfair Competition and False Designation of Origin under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a))

119. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

120. Since 1996, name.space has operated and promoted, and continues to operate and promote, 482 gTLDs in commerce through its own network. A list of these 482 gTLDs is attached hereto as Exhibit B.

25

121. name.space has rights in its inherently distinctive gTLDs in connection with its operation and promotion of a TLD registry and related services. These rights predate ICANN and the 2012 Application Round.

122. Since at least 1996, name.space has promoted and marketed its TLD registry services in the United States using the gTLD trademarks. name.space has expended substantial sums of money to build, maintain and enhance the reputation of its registry services.

123. ICANN's willingness to allow competing TLD registries to use the identical gTLDs in commerce on the ICANN-controlled DNS, in exchange for substantial fees that these registries pay to ICANN for such use, is likely to cause confusion as to the origin of these gTLDs and is likely to cause consumers to believe that these gTLDs are associated with name.space's competitors, rather than with name.space, and/or that there is a relationship between name.space and ICANN or name.space and its competitors.

124. ICANN's actions complained of herein are likely to cause confusion, mistake or deception among consumers as to an affiliation, connection or association between name.space and its gTLDs and name.space's competitors and their identical gTLDs, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

125. Alternatively and in addition, ICANN's exclusive control over which TLDs are delegated to the DNS, as well as its intentional inducement of prospective TLD registries to use name.space's gTLDs, without name.space's consent, in connection with TLD registry services, constitutes contributory infringement in violation of Section § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

126. Alternatively and in addition, ICANN's symbiotic partnership with competing TLD registries in its willingness to delegate infringing TLDs to the DNS in exchange for substantial application fees subjects ICANN to vicarious liability under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

127. ICANN's unauthorized conduct has deprived and will continue to deprive name.space of the ability to control its gTLDs and consumers' perception with regard to those gTLDs.

128. Allowing prospective domain name registries, including name.space's competitors, to apply for the unauthorized use of name.space's gTLDs on the ICANN-controlled DNS has enabled and will continue to enable ICANN to earn profits to which it is not in equity or good conscience entitled and has unjustly enriched ICANN at name.space's expense, all to ICANN's profit and name.space's detriment.

129. Because ICANN has refused to cease its infringing and unlawful conduct despite repeated requests by name.space, ICANN has acted willfully.

130. As a direct and proximate result of these acts, ICANN has profited and will continue to profit from the strength of name.space's gTLD trademarks, and name.space has been and will continue to be damaged by ICANN's acts, all in an amount to be determined at trial.

131. As a result of ICANN's conduct, name.space has suffered and/or will suffer substantial damage and irreparable harm, loss and injury to its gTLD trademarks and to name.space's business and goodwill, constituting an injury for which name.space has no adequate remedy at law. Unless this Court enjoins ICANN's conduct, name.space will continue to suffer irreparable harm.

FIFTH CLAIM FOR RELIEF

(Common Law Trademark Infringement)

132. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

133. Since 1996, name.space has operated and promoted, and continues to operate and promote, 482 gTLDs in commerce through its own network. A list of these 482 gTLDs is attached hereto as Exhibit B.

27

134. name.space has common law rights in the inherently distinctive gTLDs used in connection with its operation and promotion of TLD registry services. These rights predate any other use of these gTLDs in connection with TLD registry services.

135. Since at least 1996, name.space has promoted and marketed name.space's TLD registry services in the United States using these gTLD trademarks. name.space has expended substantial sums of money to build, maintain and enhance the reputation of its registry services.

136. ICANN's willingness to allow competing TLD registries to use the identical gTLDs in commerce on the ICANN-controlled DNS, in exchange for substantial fees that these registries pay to ICANN for such use, is likely to cause confusion as to the origin of these gTLDs and is likely to cause consumers to believe that these gTLDs are associated with name.space's competitors, rather than with name.space, and/or that there is a relationship between name.space and ICANN or name.space and its competitors, and thus constitutes common law trademark infringement.

137. Alternatively and in addition, ICANN's exclusive control over which TLDs are delegated to the DNS, as well as its intentional inducement of prospective TLD registries to use name.space's gTLDs, without name.space's consent, in connection with TLD registry services, constitutes contributory trademark infringement.

138. Alternatively and in addition, ICANN's symbiotic partnership with competing TLD registries in its willingness to delegate infringing TLDs to the DNS in exchange for substantial application fees subjects ICANN to vicarious liability for trademark infringement.

139. ICANN's unauthorized conduct has deprived and will continue to deprive name.space of the ability to control its gTLDs and consumers' perception with regard to those gTLDs.

140. Allowing prospective domain name registries, including name.space's competitors, to apply for the unauthorized use of name.space's gTLDs on the

28

ICANN-controlled DNS has enabled and will continue to enable ICANN to earn profits to which it is not in equity or good conscience entitled and has unjustly enriched ICANN at name.space's expense, all to ICANN's profit and name.space's detriment.

141. Because ICANN has refused to cease its infringing and unlawful conduct despite repeated requests by name.space, ICANN has acted willfully.

142. As a direct and proximate result of these acts, ICANN has profited and will continue to profit from the strength of name.space's gTLD trademarks, and name.space has been and will continue to be damaged by ICANN's acts, all in an amount to be determined at trial.

143. As a result of ICANN's conduct, name.space has suffered and/or will suffer substantial damage and irreparable harm, loss and injury to its gTLD trademarks and to name.space's business and goodwill, constituting an injury for which name.space has no adequate remedy at law. Unless this Court enjoins ICANN's conduct, name.space will continue to suffer irreparable harm.

SIXTH CLAIM FOR RELIEF

(Unfair Competition under California Business and Professions Code § 17200)

144. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

145. As set forth above, ICANN's conduct, including the manner in which it structured the 2012 Application Round, constitutes an unlawful business act or practice in that it violates Federal antitrust laws as set forth in Sections 1 and 2 of the Sherman Act, as well as Section 43(a) of the Lanham Act and common law rights. In particular:

(a) ICANN has violated Section 1 of the Sherman Act by conspiring to limit competition to the market for the sale of TLDs and by administering

29

ny-1023809

the DNS in a way that prevents certain business models from competing as TLD registries;

(b)   ICANN has violated Section 2 of the Sherman Act by monopolizing the Root and using its control over access to the Root to eliminate competition from the market;

(c)   ICANN has violated Section 43(a) of the Lanham Act and common law trademark rights by allowing name.space's competitors to use on the ICANN-controlled DNS the gTLDs that name.space originated and has operated and promoted since 1996, in exchange for substantial fees that these competitors pay to ICANN for such use, which is likely to cause confusion as to the origin of these gTLDs and is likely to cause consumers to believe that these gTLDs are associated with name.space's competitors, rather than with name.space, and/or that there is a relationship between name.space and ICANN or name.space and its competitors.

146.   In addition, ICANN's business acts, including but not limited to the way in which ICANN erected financial and administrative barriers to entry in the 2012 Application Round, constitute unfair business acts or practices and illustrate a desire to exclude potential market entrants, and in particular name.space, from operating as a TLD registry. The conduct alleged herein threatens an incipient violation of the antitrust laws. The conduct alleged herein also violates the policy or spirit of the antitrust laws because its effects are comparable to or the same as a violation of the law, and it otherwise significantly threatens or harms consumers and harms competition.

147.   As further set forth above, ICANN's conduct in allowing name.space's competitors to use on the ICANN-controlled DNS the gTLDs that name.space originated and has operated and promoted since 1996, in exchange for substantial fees that these competitors pay to ICANN for such use, constitutes a deceptive business practice because such practice is likely to deceive a reasonable consumer

30

as to the origin of these gTLDs and as to whether these gTLDs are associated with name.space's competitors rather than with name.space, as well as to deceive a reasonable consumer as to the relationship between name.space and ICANN or name.space and its competitors.

148. ICANN's unlawful, unfair and/or deceptive business practices have caused, and will continue to cause, injury in fact to name.space and loss of money or property in an amount to be determined at trial.

149. In addition, ICANN's unlawful, unfair and/or deceptive business practices have caused, and unless restrained and enjoined by this Court, will continue to cause irreparable harm, loss and injury to name.space for which name.space has no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF

(Common Law Unfair Competition)

150. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

151. Since 1996, name.space has invested substantial time, skill and money in developing and promoting the TLDs that name.space operates, promotes and services on the name.space network.

152. ICANN has exclusive control over whether name.space's gTLDs are delegated to the Root and therefore available to be accessed through the public Internet.

153. Rather than delegate name.space's gTLDs to the Root pursuant to name.space's 2000 Application, ICANN has instead allowed those gTLDs to be controlled by any third party willing to pay $185,000 to ICANN, notwithstanding the time and effort name.space has invested in these gTLDs since 1996.

154. In doing so, ICANN has effectively misappropriated name.space's gTLDs at little or no cost, and without name.space's authorization or consent.

155. To the contrary, name.space has explicitly notified ICANN that the 482 gTLDs that name.space originated and has operated and promoted for over fifteen years were the exclusive property of name.space.

156. Upon information and belief, ICANN has received substantial application fees from third-parties for ICANN to delegate name.space's gTLDs to the Root, to be controlled by those third parties. ICANN should be ordered to account for and pay over to name.space all gains, profits and advantages derived by ICANN from the acts complained of herein.

157. The aforesaid acts have also caused, and are likely to continue to cause, injury to the public and to name.space's sales and business reputation.

158. ICANN's aforesaid acts have caused, and will continue to cause, damage to name.space in an amount to be determined at trial and, unless and until restrained and enjoined by this Court, will continue to cause irreparable harm, loss and injury to name.space for which name.space has no adequate remedy at law.

EIGHTH CLAIM FOR RELIEF

(Tortious Interference with Contract)

159. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

160. name.space maintains contractual relationships with its customers, who purchase name.space's services, including the ability to register a domain name on name.space's network using any of the 482 gTLDs that name.space operates and promotes.

161. Upon information and belief, ICANN knows of name.space's contracts with its customers to provide and manage domain names that resolve on name.space's network.

162. ICANN has intentionally and knowingly interfered with name.space's existing customer contracts by permitting prospective TLD registries, including

name.space's competitors, to apply for delegation to the DNS of the same gTLDs that are the subject of name.space's existing customer contracts Any delegation of name.space's gTLDs to other TLD registries by ICANN will result in the same gTLD being operated on both the ICANN-controlled DNS *and* name.space's network.

163. Accepting such applications—not to mention granting any such applications—has disrupted and interfered with, and will continue to disrupt and interfere with, name.space's ability to fulfill its contractual obligations and provide content and services to its customers.

164. name.space has been damaged by ICANN's intentional interference in an amount to be determined at trial.

165. In addition, ICANN should be enjoined from delegating to the DNS any of the 482 gTLDs that name.space originated and currently operates and which are the subject of name.space's existing customer contracts, or name.space will suffer harm for which there is no adequate remedy at law.

NINTH CLAIM FOR RELIEF

(Tortious Interference with Prospective Economic Advantage)

166. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein each and every allegation in the paragraphs above.

167. name.space maintains relationships with prospective customers to provide name.space's services, using any of the 482 gTLDs that name.space operates and promotes, once those gTLDs have been delegated to the Root. These relationships are likely to provide future economic benefit to name.space.

168. Upon information and belief, ICANN knows of name.space's relationships with its prospective customers to provide and manage domain names that resolve on the Root.

33

169. Knowing of name.space's relationships with its customers—and the possibility that name.space could attract even more customers if allowed access to the Root—ICANN wrongfully and intentionally structured the 2012 Application Round to include significant financial and administrative hurdles designed to exclude name.space from the market for TLDs on the Root.

170. As a result, ICANN has interfered, and threatens to continue to interfere, with name.space's existing and prospective customers by denying name.space access to the Root.

171. ICANN's interference is the proximate cause of name.space's inability to offer its catalog of TLDs on the public Internet resulting damages to name.space in an amount to be determined at trial.

172. In addition, ICANN should be enjoined from delegating to the ICANN-controlled DNS any of the 482 gTLDs that name.space originated and continues to operate and which are the subject of name.space's existing and prospective economic relationships, or name.space will suffer harm for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE name.space prays for judgment as follows:

A.   Declaring that ICANN is liable for: violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; violation of the Cartwright Act, California Business and Professions Code Sections 16720 *et seq.*; violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a); common law trademark infringement; violation of the California Unfair Competition Act, California Business and Professions Code Sections 17200 *et seq.*; common law unfair competition; tortious interference with contract; and tortious interference with prospective economic advantage;

B.   Awarding damages in favor of name.space against ICANN for all damages sustained as a result of ICANN's wrongdoing, including prejudgment and post-judgment interest, in an amount to be proven at trial;

C.   Awarding injunctive relief in favor of name.space against ICANN as more particularly averred above;

D.   Awarding name.space reasonable costs and expenses incurred in this action, including attorneys' fees and costs; and

E.   Such other legal and equitable relief as may be available and as the Court deems just and proper.
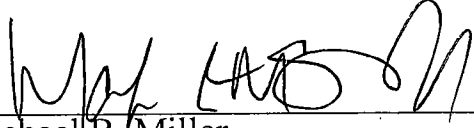
JURY DEMAND

Plaintiff name.space, Inc. hereby demands a trial by jury on all issues so triable.

Dated: October 10, 2012   MORRISON & FOERSTER LLP

By: _____
          Michael B. Miller
          Craig B. Whitney
          Adam J. Hunt
          Mark R. McDonald

          Attorneys for Plaintiff
          NAME.SPACE, INC.

ny-1023809

EXHIBIT A

name.space's 118 gTLDs from 2000 ICANN gTLD Application

.ads	.fashion	.men	.society
.agency	.festival	.monitor	.software
.aids	.fiction	.movie	.solutions
.air	.film	.music	.sound
.antiques	.films	.news	.soup
.art	.foundation	.now	.space
.artists	.free	.nyc	.sports
.auction	.fun	.one	.star
.audio	.fund	.online	.studios
.bbs	.funds	.opera	.sucks
.books	.gallery	.page	.systems
.cafe	.games	.partners	.tech
.cam	.gay	.people	.temple
.card	.graphics	.planet	.theater
.cars	.group	.politics	.time
.center	.guide	.power	.times
.channel	.help	.productions	.toys
.church	.history	.projects	.trade
.city	.hotel	.properties	.travel
.club	.index	.radio	.voice
.commerce	.insurance	.records	.war
.computers	.jazz	.school	.watch
.consulting	.jobs	.security	.weather
.culture	.lab	.service	.women
.design	.mad	.sex	.world
.digital	.mag	.shareware	.writer
.direct	.magic	.shoes	.zine
.dtv	.mail	.shop	.zone
.dvd	.market	.show	
.factory	.media	.site	

EXHIBIT B

.academy	.bug	.culture	.finance
.access	.business	.cyber	.firm
.ads	.buy	.daily	.fish
.africa	.cable	.data	.flow
.age	.cafe	.day	.flux
.agency	.cam	.design	.folks
.aids	.camera	.dictionary	.food
.air	.camp	.digit	.form
.airlines	.canada	.digital	.forum
.alley	.capital	.dimension	.foundation
.almanac	.card	.dir	.free
.amor	.care	.direct	.fringe
.anarchy	.cars	.disc	.fuck
.antiques	.casino	.dish	.fun
.aps	.center	.dog	.fund
.arch	.central	.down	.funds
.art	.centre	.dtv	.funk
.artists	.channel	.dvd	.gallery
.arts	.chaos	.east	.game
.associates	.chapel	.easy	.games
.auction	.chat	.electric	.garden
.audio	.church	.elite	.gate
.band	.cigarettes	.email	.gay
.bank	.cigars	.enterprises	.geek
.bar	.circle	.entertainment	.general
.bbs	.city	.ephemera	.girl
.beat	.club	.erotic	.girls
.beer	.code	.erotica	.global
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.black	.comix	.factory	.grey
.blog	.commerce	.facts	.group
.blue	.computer	.fair	.growth
.body	.computers	.family	.guard
.book	.computing	.faq	.guide
.books	.congress	.farm	.guitar
.box	.connection	.fashion	.guitars
.boys	.construction	.fax	.hack
.brain	.consulting	.fellowship	.hacker
.brand	.cool	.festival	.hair
.broker	.corp	.fiction	.handbook
.bros	.country	.film	.hard
.brown	.creations	.films	.hat
.budapest	.cult	.filter	.hell

.help	.lives	.multimedia	.pool
.history	.llc	.music	.pop
.hole	.llp	.mutual	.porno
.home	.logic	.nation	.port
.hope	.logo	.network	.post
.host	.loop	.networks	.power
.hot	.lotto	.news	.presence
.hotel	.loud	.next	.president
.hotline	.love	.ngo	.press
.hour	.lover	.night	.privacy
.house	.lp	.noise	.private
.icon	.ltd	.north	.productions
.illusions	.mad	.nostalgia	.products
.illustrated	.mag	.not	.projects
.image	.magazine	.noticias	.properties
.impact	.magic	.now	.pub
.inc	.magnetics	.null	.public
.indeed	.mail	.nuts	.publicadvocate
.index	.mall	.nyc	.publications
.indigo	.man	.objects	.punk
.inn	.manifesto	.ocean	.radikal
.inside	.map	.oil	.radio
.institute	.market	.one	.reality
.insurance	.mars	.online	.realty
.internet	.materials	.open	.record
.irc	.matrix	.opera	.records
.islands	.mayor	.ops	.red
.jam	.med	.orange	.reflector
.jazz	.media	.out	.report
.jet	.medical	.outside	.reporter
.jewelry	.medium	.page	.republic
.jobs	.memorabilia	.paper	.resources
.journal	.men	.partner	.review
.kids	.metal	.partners	.ride
.lab	.mind	.peace	.right
.label	.minds	.people	.rights
.labs	.mission	.perfect	.road
.lava	.model	.photo	.rock
.law	.models	.pictures	.roots
.left	.monde	.place	.rough
.library	.money	.planet	.run
.lie	.monitor	.play	.said
.limited	.moon	.plaza	.sale
.link	.motors	.pleasures	.sands
.list	.movie	.poets	.sauna
.lit	.movies	.politics	.say

.scan	.south	.texte	.views
.scape	.spa	.theater	.violet
.school	.space	.theatre	.vision
.scifi	.speech	.thing	.vlog
.secret	.spider	.things	.voice
.secure	.sports	.think	.vox
.security	.spot	.thumb	.war
.senate	.square	.tiger	.watch
.sense	.star	.time	.way
.service	.state	.times	.weather
.services	.store	.tolerance	.west
.settings	.story	.toys	.white
.sex	.street	.trade	.wifi
.shareware	.student	.travel	.wine
.shoes	.studio	.trend	.wire
.shop	.studios	.tribe	.wise
.show	.sucks	.tribune	.women
.sidewalk	.suite	.truth	.works
.site	.surf	.tube	.workshop
.skate	.symphony	.txt	.world
.ski	.sync	.underground	.worldwide
.small	.system	.union	.writer
.society	.systems	.unit	.writers
.socks	.talk	.unix	.yellow
.soft	.tape	.unlimited	.zero
.software	.taxi	.up	.zine
.solutions	.tech	.usa	.zone
.sound	.temple	.video	
.soup	.text	.view	

EXHIBIT C

name.space's gTLDs Applied for by Other Companies in the 2012 Application Round

.academy	.fish	.nyc
.ads	.food	.one
.africa	.forum	.online
.agency	.foundation	.open
.art	.free	.orange
.associates	.fun	.page
.auction	.fund	.partners
.audio	.gallery	.photo
.band	.game	.pictures
.bank	.games	.place
.bar	.garden	.play
.beer	.gay	.press
.berlin	.global	.productions
.black	.gmbh	.properties
.blog	.golf	.pub
.blue	.graphics	.radio
.book	.green	.realty
.box	.group	.red
.broker	.guide	.report
.budapest	.guitars	.review
.business	.hair	.run
.buy	.haus	.sale
.cafe	.help	.school
.cam	.home	.secure
.camera	.host	.security
.camp	.hot	.services
.capital	.hotel	.sex
.care	.house	.shoes
.cars	.inc	.shop
.casino	.institute	.show
.center	.insurance	.site
.channel	.irish	.ski
.chat	.istanbul	.software
.church	.jewelry	.solutions
.circle	.kids	.spa
.city	.law	.space
.club	.limited	.sports

.coffee	.link	.spot
.college	.llc	.star
.computer	.llp	.store
.construction	.london	.studio
.consulting	.lotto	.sucks
.cool	.love	.surf
.corp	.ltd	.sydney
.country	.mail	.systems
.data	.man	.talk
.day	.map	.taxi
.design	.market	.tech
.digital	.matrix	.theater
.direct	.med	.theatre
.dish	.media	.toys
.dog	.medical	.trade
.dtv	.melbourne	.tube
.email	.men	.video
.enterprises	.money	.vision
.estate	.movie	.wales
.exchange	.music	.watch
.express	.mutual	.weather
.family	.network	.wine
.farm	.news	.works
.fashion	.next	.world
.film	.ngo	.zero
.finance	.now	.zone