

1 Jeffrey A. LeVee (State Bar No. 125863)
Erin L. Burke (State Bar No. 186660)
2 Rachel Tessa Gezersh (State Bar No. 251299)
Amanda Pushinsky (State Bar No. 267950)
3 JONES DAY
555 South Flower Street
4 Fiftieth Floor
Los Angeles, CA 90071.2300
5 Telephone: +1.213.489.3939
Facsimile: +1.213.243.2539
6 Email: jlevec@JonesDay.com

7 Attorneys for Defendant
8 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 DOTCONNECTAFRICA TRUST,

14 Plaintiff,

15 v.

16 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, *et*
17 *al.*,

18 Defendants.
19
20
21

CASE NO. BC607494

Assigned to Hon. Howard L. Halm

**ICANN'S EVIDENTIARY
OBJECTIONS TO DECLARATION
AND SUPPLEMENTAL
DECLARATION OF SOPHIA
BEKELE ESHETE FILED IN
SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION (FILED AS A TRO)**

DATE: February 2, 2017

TIME: 8:30 a.m.

DEPT: 53

1 Defendant the Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby
 2 submits the following evidentiary objections to the Declaration of Sophia Bekele Eshete (“Bekele
 3 Declaration”), filed in support of plaintiff’s Motion for Preliminary Injunction (filed as a TRO).
 4

OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT’S RULING
¶ 35: “If .Africa is delegated to ZACR before this case is resolved DCA will likely be forced to stop operating due to a lack of funding.”	1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Code § 702). Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that if .AFRICA is delegated to ZACR before this case is resolved DCA will likely be forced to stop operating due to a lack of funding. Further, the testimony is speculative and should be stricken.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
¶ 36: “Once the gTLD is awarded and the party controlling it begins selling or offering its use to users of the Internet including businesses, organizations, persons and governments, it would be difficult if not impossible to unwind that control and provide it to another party.”	1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Improper Opinion Testimony (Evid. Code §§ 800-803). Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that it would be difficult to unwind the control of a gTLD and provide it to another party. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT'S RULING
<p>¶ 37: “Based on my understanding of ICANN’s rules and the requirements of a registry, if .Africa were re-delegated from ZACR to DCA, third party registrar contracts would have to be unwound. Third parties with whom ZACR contracted to provide domain names under the .Africa gTLD would have to transition technically and contractually to DCA – a process that would be costly and burdensome for all such that re-delegation is simply not viable here. Further, ZACR plans to charge more to registrars than DCA, which will create more complications in the redelegation process.”</p>	<p>1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Cod. § 702) 4. Improper Opinion Testimony (Evid. Code §§ 800-803). 5. Hearsay (Evid. Code § 1200, et seq.).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that unwinding third party contracts would be costly and burdensome and re-delegation not viable. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p> <p>Similarly, Ms. Bekele fails to lay a foundation as to the source of her knowledge or demonstrate personal knowledge as to what amount ZACR plans to charge registrars, or the claim that that purported “fact” would “create more complications in re-delegation.” Those statements are speculative and/or an inadmissible opinion.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>¶ 38: “Until the New gTLD Program was instituted in 2012, ICANN used to have a strict policy over separating a Registry (the entity that holds the rights to a gTLD) and Registrar (the entity responsible for selling individual domain names under the gTLD to consumers) operation to manage the business conflict over the same organization having to register and sell a domain name. ICANN now</p>	<p>1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Cod. § 702) 4. Improper Opinion Testimony (Evid. Code §§ 800-803). 5. Hearsay (Evid. Code § 1200, et seq.).</p> <p>Ms. Bekele fails to lay a foundation as</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT'S RULING
18 19 20 21 22 23 24 25 26 27 28	<p>permits a combined operation of allowing a Registry operator to also be a Registrar, provided the organization file a disclosure of such with ICANN. Despite the disclosure to ICANN, this process of allowing a registry to also run its own sales registrar operation is still subject to manipulation, depending on the contract relations set up by the registry, which has not been thoroughly vetted.”</p>	<p>to the source of her knowledge, or demonstrate personal knowledge, of the statement that ICANN used to have a strict policy over separating a Registry and Registrar operation to manage the business conflict over the same organization having to register and sell a domain name. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p> <p>Similarly, Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that the “process of allowing a registry to also run its own sales registrar operation is subject to manipulation,” or the claim that the contract relations set up by a registry “has not been thoroughly vetted.” Those statements are speculative and/or an inadmissible opinion.</p>	
	<p>¶ 39: “Registry Operator can sell domains and collect the money without restraint. Using a current gTLD “.club” as an example, below sales channels include – auctions, registrar channel, direct deals, portfolio deals, brokers, and the aftermarket. <i>See</i> http://www.thedomains.com/2015/12/03/club-has-record-month-selling-over-1-6-in-premiumdomains [“November was a record-breaking month for both regular .CLUB registrations and premium domain name sales. It was our first month with more than \$1 million in Premium Name sales, with strong deals coming from two auctions, our registrar channel, registry direct</p>	<ol style="list-style-type: none"> 1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Improper Opinion Testimony (Evid. Code §§ 800-803). 4. Speculation (Evid. Code § 702) 5. Hearsay (Evid. Code § 1200, et seq.). <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that registry operator can sell domains and collect the money without restraint. Further, because it is not rationally based on her perception, this statement amounts to</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT'S RULING
deals (including several portfolio deals) as well as through brokers and the aftermarket.”]	inadmissible opinion testimony.	
¶ 40: “Therefore, the revenue share on each of the above channels would be variable and potentially open to manipulation and the contractual relation with the registry cannot always be monitored and reported.”	<p>1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Code § 702) 4. Improper Opinion Testimony (Evid. Code §§ 800-803).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that revenue share on sales channels would be variable and potentially open to manipulation. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p> <p>Similarly, Ms. Bekele fails to lay a foundation as to the source of her knowledge or demonstrate personal knowledge, of the statement that contractual relation with the registry cannot always be monitored and reported. This statement is speculative and/or an inadmissible opinion.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
¶ 41: “Importantly, once a premium domain name is sold, there is no way to reverse the sale. The next opportunity to re-make these sales comes at renewal, which is somewhere between 1 and 10 years.”	<p>1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Speculation (Evid. Cod. § 702) 4. Improper Opinion Testimony (Evid. Code §§ 800-803).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that once a premium</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

OBJECTED-TO PORTION OF BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT'S RULING
	domain name is sold, there is no way to reverse the sale and that the next opportunity to re-make these sales comes at renewal. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.	
¶ 42: "In this regard, reversing the process of the sale on the name is likely impossible, if another registry is to take over."	<p>1. Lacks Foundation (Evid. Code § 403).</p> <p>2. Lacks Personal Knowledge (Evid. Code § 702).</p> <p>3. Speculation (Evid. Cod. § 702)</p> <p>4. Improper Opinion Testimony (Evid. Code §§ 800-803).</p> <p>5. Hearsay (Evid. Code § 1200, et seq.).</p> <p>Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that reversing the process of the sale on a registry name is likely impossible, if another registry is to take over. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1 Defendant the Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby
 2 submits the following evidentiary objections to the Supplemental Declaration of Sophia Bekele
 3 Eshete (“Bekele Declaration”), filed in support of plaintiff’s Motion for Preliminary Injunction
 4 (filed as a TRO).

6 7 8 9 10 11 12 13 14 15 16 17 18	OBJECTED-TO PORTION OF SUPPLEMENTAL BEKELE DECLARATION	GROUNDS FOR OBJECTION	COURT’S RULING
	¶ 11: “DCA would not have applied for the .Africa gTLD, paid the non-refundable fee, and would not have spent years campaigning for the endorsements and preparing an application, if it had known that ICANN would favor ZACR throughout the process.”	1. Lacks Foundation (Evid. Code § 403). 2. Lacks Personal Knowledge (Evid. Code § 702). 3. Improper Opinion Testimony (Evid. Code §§ 800-803). Ms. Bekele fails to lay a foundation as to the source of her knowledge, or demonstrate personal knowledge, of the statement that ICANN would favor ZACR throughout the application process. Further, because it is not rationally based on her perception, this statement amounts to inadmissible opinion testimony.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

19 Dated: January 20, 2017

JONES DAY

20
 21 By:  J.V.
 Jeffrey A. LeVee

22 Attorneys for Defendant
 23 INTERNET CORPORATION FOR
 24 ASSIGNED NAMES AND NUMBERS

1 **PROOF OF SERVICE**

2 I, Diane Sanchez, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On January 20,
6 2017, I served a copy of the within document(s):

7 **ICANN'S EVIDENTIARY OBJECTIONS TO DECLARATION AND SUPPLEMENTAL
8 DECLARATION OF SOPHIA BEKELE ESHETE FILED IN SUPPORT OF
9 PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (FILED AS A TRO)**

- 10 by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in the United States mail at Los Angeles, California addressed as set
12 forth below.
- 13 by placing the document(s) listed above in a sealed Federal Express envelope and
14 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery
15 Service agent for delivery.
- 16 by personally delivering the document(s) listed above to the person(s) at the
17 address(es) set forth below.
- 18 by transmitting via e-mail or electronic transmission the document(s) listed above
19 to the person(s) at the e-mail address(es) set forth below.

20 Ethan J. Brown
ethan@bnslawgroup.com
21 Sara C. Colón
sara@bnslawgroup.com
22 Rowennakete "Kete" Barnes
kete@bnsklaw.com
23 BROWN NERI & SMITH LLP
11766 Wilshire Boulevard, Suite 1670
24 Los Angeles, California 90025
Telephone: (310) 593-9890

25 David W. Kesselman, Esq.
Kesselman Brantly Stockinger LLP
1230 Rosecrans Ave, Suite 690
Manhattan Beach, CA 90266
(310) 307-4556
(310) 307-4570 fax
26 dkesselman@kbslaw.com

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

Executed on January 20, 2017, at Los Angeles, California.



Diane Sanchez