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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 REGISTERSITE.COM, an Assumed
15 Name of ABR PRODUCTS INC., a
16 New York Corporation, et al.,

17 Plaintiffs,

18 v.

19 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
20 NUMBERS, a California corporation;
VERISIGN, INC., a Delaware
21 Corporation; and DOES 1-10,
inclusive,

22 Defendants.
23

Case No. CV 04-1368 ABC (CWx)

**DEFENDANT VERISIGN, INC.'S
COUNTER-STATEMENT TO
PLAINTIFFS' SUGGESTION OF
RELATED CASES**

[C.D. Cal. Local Rule 83-1.3.2]

24
25 Pursuant to Local Rule 83-1.3.2, defendant VERISIGN, INC. ("VeriSign")
26 submits this counter-statement to the suggestion in plaintiffs' Civil Cover Sheet filed
27 on March 1, 2004, that this action is related to two other cases in this District.
28

1 **I. THIS CASE IS RELATED TO *DOTSTER* BUT NOT TO *VERISIGN***

2 In their Civil Cover Sheet filed with the Complaint,¹ Plaintiff indicates that this
3 case is related to a former (now closed) case, *Dotster v. ICANN*, No. CV 03-5404
4 JFW (MANx) (“*Dotster*”), in which similarly situated registrar-plaintiffs also
5 litigated with defendant Internet Corporation for Assigned Names and Numbers
6 (“ICANN”) regarding the same proposed service.² Plaintiffs further indicate that this
7 case is related to another case, *VeriSign, Inc. v. ICANN*, No. CV 04-1292 AHM
8 (CTx) (“*VeriSign/ICANN*”), which does not involve any registrar parties and which
9 concerns a contract solely between VeriSign and ICANN and the overall relationship
10 between VeriSign and ICANN. As explained more fully below, the relationship
11 between the claims against ICANN in *Dotster* and the claims against ICANN in the
12 instant action are sufficient to warrant a transfer of this case to Judge Walter;³
13 however, this case and the *VeriSign/ICANN* case are not related to support a transfer
14 of this case to the court in which *VeriSign/ICANN* is pending.

15 **A. *Dotster v. ICANN*, No. CV 03-5404 JFW (MANx)**

16 Both this case and the *Dotster* case concern the same central and common
17 *registrar* challenge to the legality of the Wait Listing Service (“WLS”) VeriSign
18 proposes to make available for registrars to offer to their customers. The plaintiffs in
19 both cases are similarly situated; they are all purportedly registrars who claim their
20 existing business will be affected by WLS. Both this case and *Dotster*, unlike the

21
22 ¹ Plaintiffs have apparently not served and filed a separate Notice of Related Cases
23 under Local Rule 83-1.3.1. Nonetheless, because plaintiffs did indicate the existence
24 of allegedly related cases in its Civil Cover Sheet, VeriSign is responding to ensure
25 that the Court is accurately apprised of the nature of these cases in evaluating the
26 purported “related case” issue. *Cf. United National Ins. Co. v. R&D Latex Corp.*, 242
27 F.3d 1102, 1116-17 (9th Cir. 2001).

28 ² VeriSign was not a party in *Dotster* and no claims were asserted against it in that case.

³ VeriSign notes that claims asserted against it in the instant case are subject to a contractual venue selection clause contained in the Registry-Registrar Agreement between registrars and VeriSign. As between registrars and VeriSign, that clause places venue in the Eastern District of Virginia. ICANN is not a party to the Registry-Registrar Agreement.

1 *VeriSign/ICANN* action, also concern and require interpretation of the same
2 agreement, the Registrar Accreditation Agreement between the registrar-plaintiffs
3 and ICANN. Indeed, one of the claims for relief asserted by the plaintiffs herein
4 against ICANN is substantively identical to the claim for relief asserted against
5 ICANN by the plaintiffs in *Dotster*, and Judge Walter squarely addressed that claim
6 in denying requests for injunctive relief in *Dotster*.

7 In contrast, VeriSign is not a party to the Registrar Accreditation Agreement,
8 nor is that agreement at issue in the *VeriSign/ICANN* case, only in *Dotster* and in the
9 instant case. Likewise, the Registry-Registrar Agreement, upon which one of the
10 purported claims herein against VeriSign is premised, is not in issue in the
11 *VeriSign/ICANN* suit, and ICANN is not a party to that agreement. As a result,
12 *Dotster* and *Registersite* are “related” to each other, not to the *VeriSign/ICANN* case.

13 **B. *VeriSign v. ICANN*, No. CV-04-1292 AHM (CTx)**

14 The *VeriSign/ICANN* case, as indicated, is materially different from both the
15 *Dotster* case and this case. *VeriSign/ICANN* has a distinct and far broader focus, and
16 it concerns a different contract and a completely distinct relationship.

17 First, unlike the two other cases, the *VeriSign/ICANN* action does *not* present a
18 dispute between registrars and ICANN or between registrars and VeriSign. Rather,
19 *VeriSign/ICANN* involves a series of disputes solely between VeriSign and ICANN
20 regarding their obligations to each other. No registrars are parties to the
21 *VeriSign/ICANN* action. Second, while the *Dotster* case and this case both address
22 the same contract between registrars and ICANN, the *VeriSign/ICANN* case concerns
23 a different and separate contract, the .com Registry Agreement between VeriSign and
24 ICANN, to which registrars are neither parties nor third-party beneficiaries.

25 Third, while the registrar-plaintiffs in *Dotster* and in this action challenge the
26 WLS service, WLS is only one of at least four separate services that are a subject of
27 the disputes in the *VeriSign/ICANN* suit, and there are many factual allegations
28 supporting the claims for relief at issue in *VeriSign/ICANN* that are unrelated to WLS.

1 Further, *VeriSign/ICANN* involves broader antitrust, tort, and other issues with
2 respect to the on-going relationship between VeriSign and ICANN, which are not
3 present in or raised by the *Dotster* action or by this action.

4 In this context, the mere fact that WLS is the sole focus of the *Dotster* suit and
5 this suit is not dispositive to the “relatedness” question. Resolution of the issues
6 presented by allegations concerning WLS in the *VeriSign/ICANN* matter is dependent
7 on facts specific only to that case and on the VeriSign-ICANN agreement, which are
8 not at issue either in *Dotster* and in this action , and which require a separate and
9 distinct legal analysis. *See ESS Technology, Inc. v. PC-TEL, Inc.*, Nos. C-99-20292
10 RMW, C-01-1300 VRW & C-01-1981 VRW, 2001 WL 1891713 (N.D. Cal. Nov. 28,
11 2001) (refusing to relate a patent licensing case between competitors to two other
12 licensing cases against an individual inventor concerning the same technology
13 because of the different legal analysis involved).

14 In short, as between the *VeriSign/ICANN* action, on the one hand, and this
15 action and *Dotster*, on the other, there is neither the possibility of inconsistent
16 judgments nor the prospect of substantial duplication of judicial resources sufficient
17 to warrant a case transfer. The prior handling of the issues in *Dotster* would not have
18 given Judge Walter any familiarity or expertise with respect to the separate contract
19 or issues involved in the *VeriSign/ICANN* case. Therefore, the *VeriSign/ICANN* case
20 should not be treated as “related” to, and should not be coordinated with, *Dotster* or
21 this action.

22 II. CONCLUSION

23 Since this case is related to the *Dotster* case, it should be transferred to Judge
24 Walter who handled the *Dotster* case.

25 However, the underlying dispute in the *VeriSign/ICANN* case is fundamentally
26 different than in either the *Dotster* case or this case. ICANN litigated the *Dotster*
27 case on different issues, based upon a different contract, concerning a service that is
28 only one of many comprising the *VeriSign/ICANN* case. Furthermore, the central

1 focus of the *VeriSign/ICANN* case, including the contract between ICANN and
2 VeriSign, is completely separate and distinct from the issues presented in the *Dotster*
3 case and in this case.

4 This case does not arise from the same or a substantially identical transaction,
5 happening or event as *VeriSign/ICANN*. Further, this case does not call for a
6 determination of the same or substantially identical questions of law and fact as
7 *VeriSign/ICANN* does. Accordingly, this case should not be coordinated with
8 *VeriSign/ICANN*.

9
10 DATED: March 17, 2004

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PROOF OF SERVICE

1
2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action. My business address is 777 South Figueroa Street, 44th Floor,
6 Los Angeles, California 90017-5844.

7 On March 17, 2004, I served the foregoing document described as: DEFENDANT
8 VERISIGN, INC.'S COUNTER-STATEMENT TO PLAINTIFFS' SUGGESTION OF RELATED
9 CASES

10 by placing true copies thereof enclosed in sealed envelopes addressed as stated on the
11 attached mailing list.

12 by placing the original and a true copy thereof enclosed in sealed envelope(s)
13 addressed as follows: Type Address Here or DELETE

14 **BY MAIL** I placed such envelope with postage thereon prepaid in the United States Mail
15 at 777 South Figueroa Street, 44th Floor, Los Angeles, California 90017-5844. Executed
16 on March 17, 2004 at Los Angeles, California.

17 **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the office
18 of the addressee. Executed on _____ at Los Angeles, California.

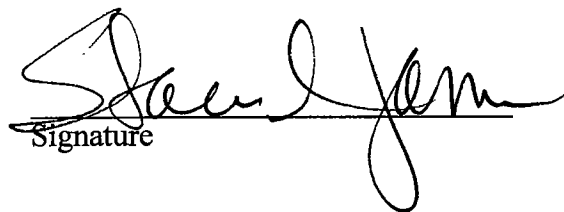
19 **BY FACSIMILE** The above-referenced document (together with all exhibits and
20 attachments thereto) was transmitted via facsimile transmission to the addressee(s) as
21 indicated on the attached mailing list on the date thereof. The transmission was reported as
22 completed and without error. Executed on _____ at Los Angeles, California.

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24 practices of collecting and processing items for pickup and next business day delivery by
25 Federal Express. Under said practices, items to be delivered the next business day are either
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STATE I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

FEDERAL 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.

Stacie James
Type or Print Name


Signature

List of Parties Served

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