

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

Anne Martinez, individually and)
on behalf of all other persons)
similarly situated,)
)
Plaintiffs,)
v.)
)
RegisterFly, Inc.,)
Unifiednames Inc.)
Hosting Services Group Inc.)
Kevin Medina, in his personal capacity and)
as an agent of RegisterFly, Inc. and)
as an agent of Unifiednames Inc.)
John Naruszewicz, in his capacity as an agent)
of both Unifiednames and RegisterFly,)
eNom, and)
ICANN,)
)
Defendants.)

Civil Action No 07 _____

JAMES N SMITH, JR'S
AFFIDAVIT IN SUPPORT OF
TEMPORARY RESTRAINING ORDER

After being duly sworn I do hereby depose, affirm, and swear to the following facts and submit this affidavit in Support of being appointed a receiver in this case:

1. I have reviewed the Plaintiff's complaint, and agree that there is an immediate threat to the (claimed) two million domain names which RegisterFly claims to be hosting per its web site.

2. Pursuant to my resume, attached as an exhibit to this affidavit, I have almost 30 years of experience in the computer industry, with a wide range of experience in varying fields from software, to hardware, to Internet procedures.

3. I am also a voting member of American Registry for Internet Numbers (ARIN) which provides services related to the technical coordination and management of Internet number resources in its respective areas of Canada, the United States, and several islands in the Caribbean Sea and North Atlantic Ocean. ARIN provides management of the Internet

numbers used in these areas and is not responsible for the names associated with these numbers.

4. There is good cause to believe that Defendants RegisterFly, Inc. and Kevin Medina violated multiple sections of federal and state law, as well as basic Internet protocol.

5. There is good cause to believe that immediate and irreparable harm will result to thousands of customers with thousands of domain names registrations at risk from Defendants' ongoing violations of their contractual obligations with ICANN unless the Defendants are restrained and enjoined by an order of this Court.

6. According to ICANN's updates on their own web site, ICANN has repeatedly breached its own policies regarding RegisterFly, and continues to allow RegisterFly to put the public at risk of further harm by continuing to allow RegisterFly to operate.

7. ICANN was established to be the guardian of domain names and Registrars with an obligation to accredit these Registrars and has an ongoing duty to maintain stability of domain owner's interest.

8. ICANN has breached its fiduciary duty to those end consumers who have registered domain names, paying a portion of each domain registration fee directly to ICANN to provide accreditation of and supervision of the Registrars.

9. It is abundantly clear based upon common sense and reason, coupled with my 29 years of experience in the computer and internet industry that based upon the Order by the Honorable Peter G. Sheridan dissolving the prior Consent Order, that RegisterFly and its affiliates, and its sole owner Kevin Medina, pose an immediate and substantial risk of both, not complying with ICANN's requests, but also in destroying evidence, destroying data, and doing irreparable harm to the public, and the Plaintiff in this case.

10. Good cause exists for this Court to appointment a Receiver to protect the data, and other assets of RegisterFly.

11. While I have a strong background in preserving financial assets based upon my years as a businessman in the computer industry, and I may assist the Court as the Court deems appropriate, I am an expert in the data preservation aspect of this case more than the financial issues.

12. Until such time as this Court shall appoint a Financial Receiver, and delineate the receiver's powers and duties, I will assist the Court in notifying any and all institutions or entities who currently have funds of the Defendant RegisterFly Inc., Unifiednames Inc., Hosting Services Group Inc. or Defendant Kevin Medina from distributing any funds until such time as this Order is amended, or this Court appoints a Financial Receiver. To wit, but not limited to:

- 1) Valley National Bank, 637 Eagle Rock Avenue West Orange, New Jersey with account number ending in 1710 which account is in the name of Hosting Services Group Inc. an affiliate of Unifiednames.
- 2) Humbolt Merchant Services which held approximately 280,000.00 as of March 2nd
- 3) Such other institutions as are in possession of any asset of Defendant RegisterFly Inc., Unifiednames Inc., Hosting Services Group Inc. or Defendant Kevin Medina

13. I hereby advise the Court that it is critical that a data receiver be vested with the immediate power to enlist the aid of the federal marshals to enforce this order, to seize and protect the digital and hardware assets of both Defendants RegisterFly.com Inc., Unifiednames Inc., and Defendant Kevin Medina wherever located.

14. It is my expert opinion, it would be easy for RegisterFly staff, management or owners to destroy this data, or corrupt the data that the Court should act with no notice to RegisterFly. It is customary and acceptable industry standards to cut off access to and control of the data prior to the custodian knowing that their control is to be changed.

15. ICANN's public announcement that they intent to seek a TRO has caused the situation to become even more explosive, and created an even great risk of corruption, alteration, transfer, or destruction the data.

16. I have the requisite skill, knowledge, resources, and ability to adequately preserve the digital data and the hardware associated with the protection of the general public should the Court grant the authority for a Court authorized Receivership to collect and preserve data.

17. While it is clear that staff at ICANN have not acted to protect the Plaintiff and the public, it is my expert opinion that it is in the public's best interest for any Receivership to have the authority to act independently of, and swifter than ICANN, but to act in coordination with its agents so far as is practical.

18. It is my expert opinion, and I therefore advise the Court to allow ICANN to have members of it's staff or other agents accompany and assist any Receiver in the duties the Court may assign.

19. It is my expert opinion, and I therefore advise the Court to appoint a Receiver who shall provide professional services to properly seize the assets of the defaulting defendants with the cooperation of ICANN and the top level domain Registries.

20. It is my expert opinion, and I therefore advise the Court that it is in the interests of justice that any Receiver enlist such of the Defendant's employees (Excluding Medina) as is reasonable and prudent to assist in the Data transition, if none appear to be reasonable and prudent, the Receiver needs to be able to contract with such others as is necessary to transfer these domain names to a reputable Registrar.

21. It is my expert opinion, and I therefore advise the Court that it is in the interests of justice that the Receiver should, after the data is secured, and as soon there after as possible, negotiate for the most effective and smooth transition of these domain names to a reputable Registrar to most effectively protect the goodwill and value associated with the customer's domain names, and cause the slightest possible interruption in the domain owner's use of the Internet.

22. It is anticipated that reputable Registrars will bid to purchase the right to host these domain names, as they stand to keep the new registrants as long time customers, however, the destruction of Goodwill with the domain owners may be considered more of a liability, (depending upon how smooth and how swift the transition) and thus reputable Registrars may in fact charge a fee for the transition. In either case the Receiver must have the power to negotiate as swiftly as possible the transition.

23. During the immediate period of time after seizure the Receiver should:

- 1) Post a notice on the RegisterFly domain to advise customers of RegisterFly of the circumstances that have cause their domain name to be protected under Court Order and to reassure the public;
- 2) Restrict the RegistrarFly.com web site such that no new names can be registered, and post in its place such notices to the public as will effectively accommodate this transition;
- 3) Negotiate with other known, more reputable Registrars the movement of the domains to a safe home; and
- 4) Take all reasonable efforts to decrypt and protect the data to accomplish this transition.

24. It is my expert opinion, and I therefore advise the Court that it is in the interests of justice that any Order to seize assets must remain under seal until such time as the Receiver has secured the digital data.

25. It is my expert opinion, and I therefore advise the Court that based upon my review of the assets of the Defendants as of March 2nd 2007 as listed in Honorable Peter G. Sheridan consent Order, along with the probable continued cash flow for RegisterFly based upon the number of domain names they claim, it is anticipated that assets frozen of Defendants should cover the initial costs of protecting the data, however it would be proper for the Court to tax such additional costs against ICANN since it has breached it's duty to protect these registrants.

26. It is my expert opinion, and I therefore advise the Court that ICANN should be well equipped to monitor and audit any independent receiver the Court may appoint to further assist the Court.

This the 13th day of March 2007.

JAMES N SMITH JR

SWORN to and subscribed

before me this the _____ day of _____, 2007

NOTARY PUBLIC

My Commission Expires: _____

James N Smith Jr “Nicky Smith”

301 South Elm Street, Suite 625
Greensboro, North Carolina 27401
Office: (336) 346-6000 Ext 105
Toll Free: (888) 400-5557
Cellular (336) 215-0410
Email: nicky.smith@carolinanet.com

EXECUTIVE OVERVIEW

For the past 27+ years, computers, advanced technology and solving problems with this new technology have been his business. In 1978, he graduated from [Appalachian State University in Boone, NC](#) with the first graduating class in the 16 North Carolina Universities with an Information Systems degree from the College of Business. At ASU he worked with their mainframe computer, a RCA Spectra (Univac) 70/46 series with 256K main core memory and a 20MB drum type disk drive programming COBOL, FORTRAN, RPG II and BASIC. Microcomputers or PCs as we know them today hadn't come to the market yet. His first experience with micros was with an Apple II with 32K memory, a single 360K 5-1/4 inch floppy in 1979.

Smith was a pioneer in personal computer during the early-1980s. He, with the help of three investors in Charlotte, North Carolina opened a retail computer store selling popular brands of computers, IBM, Apple, Compaq and Hewlett-Packard to major corporations such as First Union, Piedmont Natural Gas, Duke Power and many progressive thinking corporations. In 1985, Smith moved home to the Greensboro area and has been involved in the Piedmont Triad business community as CEO of two successful technology companies.

Today, Smith is active in a role of "Visionary Leader in Technology". He is actively involved in the changing technology and speaks regularly at meetings and seminars. He has an excellent working, and hands-on knowledge of data and voice services, routers and networking technology, internet connectivity and real-time business applications. Smith's consulting has helped hundreds of businesses make better decisions in deploying their internet, intranet and networking investments to provide measurable benefits to clients in short periods of time. Smith's push to be the first ISP in North Carolina to offer low cost, high quality SDSL Internet Access has proven to many businesses in downtown Greensboro.

Business Experience

After formal education, Smith worked for two companies in the Winston-Salem, NC area for a short time prior to entering into the computer consulting business. First, with [Hanes Corporation](#) in Winston-Salem, North Carolina he developed the first on-line order inquiry system in 1978 for the Knitwear Division utilizing their mainframe Honeywell system driven by a database. The second was with [Wake Forest University Bowman Gray School of Medicine and NC Baptist Hospitals](#) where he developed and implemented a real-time Time and Attendance System that was used to monitor employees work schedules and interface with various HR and Payroll systems.

In early-1980 Smith joined the computer consulting firm, Applied Management Systems, Inc. in Charlotte, North Carolina where he spend a year working with major corporations as a Senior Systems Analyst doing in-depth analysis of computer processes and making recommendations for changes. Applied Management Systems specialized in mainframe computer consulting for Fortune 1000 companies in the three state regions and had more than 100 professional consultants. Smith was one of the company's most productive consultants and specialized in banking applications.

In 1981 Smith asked the principal investors in Applied Management Systems to invest in his idea to open a retail computer store in Charlotte, North Carolina. The investors did and for the next four years both the investors and

Smith enjoyed great success as one of the first business class computer stores in Charlotte. The company grew from just a few employees in 1981 to more than 50 employees. While being a part of this new industry, Smith was asked in 1983 by Bill Gates, the founder of Microsoft to be a founding member of the Association of Better Computer Dealers (ABCD), now known as the Computer Industry Association with more than 80,000 members today. Sales for this single computer store exceeded \$7 Million in the last year of operation and in late-1984 the company was then sold debt-free to a chain store operation, The Math Box, Inc. (MBI).

In 1985, Nicky Smith started a company named "Micro Computer Resources" based in Greensboro, North Carolina with some enthusiastic computer professionals. Its mission was "to be a resource for all your computer needs". This company sold and serviced computers manufactured by IBM, Compaq, Hewlett-Packard and Epson. With the growth of the computer industry this growing company needed to make changes. Thousands of computer retailers were opening stores as fast as they could forcing the original computer solutions companies to begin to specialize in areas. Micro Computer Resources began offering high-level services such as networking, accounting solutions, repair services and total solution integration. In 1990 the company shortened its name to MCR Computer Services. By the mid-1990, the internet had become a major focus of many networking companies. The management of this company created a new corporation, NETMCR Internet Services with its purpose to provide access services, web development and network connectivity for businesses and individuals.

In 1994, [NETMCR Internet Services](#) grew from just a few dial up users and less than a dozen web sites to more than 4,000 dialup users, hundreds of web sites and business customers demanding high-speed access. A development team worked with major corporation to deploy web presence for customers to gain access this new technology. Major sites included, Volvo Trucks of America, Krispy Kreme Doughnuts, Dick Broadcasting, Inc. ([WKZL/WKRR](#)) American Orthopedic Surgery Association, [Orthodox Union](#) in New York, Steven S Fuller Homes in Atlanta, fyiQuest Networking, CSN a division of MCI Telecommunications and many of the local television stations.

In 1997, this new company with Smith's direction focused its efforts on business connectivity and web enabled business applications. Partnering with [US LEC](#) a new CLEC gave NETMCR a competitive edge in that we could offer voice services from a non-Bell telephone company and high-speed internet data access using the un-used channels of the T1 to the customer's premises. This service was now the basis of the company's rapid growth.

In March 2000 Smith started discussions with various CLECs to merge this enterprise into the telecommunications industry. Revenue peaked to more than \$3 Million annually just prior to TriVergent Communications acquiring the business and its talented staff on June 26, 2000. TriVergent acquires NETMCR of Greensboro, NC in June 2000. Press Release is at <http://www.nuvox.com/index.php/20?ID=206>

Immediately after TriVergent Communications, Inc. acquired [NETMCR Internet Services](#) the company was merged with another communications company Gabriel Communications, Inc. based in St Louis, MO. The two companies restated their name in 2001 as NuVox Communications, Inc.

During Smith's two years at [NuVox Communications](#) he served in the following capacities and had these responsibilities:

Director of Internet Services – responsible for the network integration of two ISPs purchased by TriVergent, (NETMCR and ISAAC.NET) into the TriVergent's network. Responsible for the migration of more than 1,000 customers from ISAAC.NET's billing system to the legacy NETMCR billing system. Ultimately migrated more than 3,000 billing records and history into NuVox's ROE and BillPlex billing and Customer care Systems. During this tenure Smith reported to Gary Merck, VP of Data Engineering.

Sales Director of Data Center Services – responsible for the development of the business plan and management of growth of Data Centers located in Miami, Atlanta, Greenville, Charleston, Charlotte and Greensboro. Smith was responsible for management of Major Account Data Sales Executives in five states. In addition to Sales responsibilities, Smith was responsible for implementation of customer's equipment in NuVox's Data Centers, billing, and financial reporting of revenue to corporate on a monthly basis. During this tenure Smith reported to Jim Dunn, VP of Sales.

Director for Advanced Networking Services – responsible for the understanding of complex networking customer applications and their opportunity to be part of the NuVox network. During this tenure Smith reported to Randy McDougald, VP of Marketing with additional reporting responsibility to Gary Merck, VP of Data Engineering.

Manager of Sales and Development – responsible for monthly training of new hire employees. During this time Smith traveled extensively into markets to assist account executives improve their selling skills and improve their base of knowledge of the services offered by NuVox. He continued to assist in major account sales. Helped in the deployment and deployment of NuSales. During this tenure Smith reported to Jeff Swisher.

In 2001 Smith started and continues to operate today a successful carrier class, server collocation facility, www.carolinanet.com

Education

Smith grew up in Winston-Salem, North Carolina and attended the nationally recognized RJ Reynolds Senior High School. After High School, he attended [Lees-McRae College](#) in the mountains of North Carolina. Continuing his education at [Appalachian State University](#) receiving a Bachelor of Science in Business Administration, with his major study in Information Systems and a minor in Accounting. Smith continued his education from 1989 until 1993 attending Leadership training and workshops at [Farr Associates](#) under the guidance of [Dr. Jim Farr](#).

Personal References

Jim Brodgen, Branch Manager for [US LEC](#), Greensboro, NC - (336) 544-1266
Scott Bowers, [Live Oak Capital Advisors, Inc.](#), Myrtle Beach, SC (843) 213-0290 (843) 497-9893
[Jack Lovgren](#) – [Network Telephone](#), Pensola, FL - (888) 432-4855 Ext 1601 (850) 939-1898
William Hammer - [Hammer Publications](#) – President, Greensboro, NC – (336) 273-0885
Jeff Swisher - MCI/Worldcom - Regional Sales Director - (919) 325-1279
Charles S. Houser, Board of Directors, NuVox Communications – (334) 965-3174
Gary Merck, VP Data Engineering, NuVox Communications - (864) 331-8172
Henry Hutton – Director of Operations - [LuLu Enterprises](#) – Raleigh, NC (919) 459-5858
Bill Edwards, [Edwards Communications, Inc.](#), Greensboro, NC – (336) 272-1156