

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-cv-188

**MEMORANDUM IN SUPPORT OF
APPOINTMENT OF CLARKE
DUMMIT AS INTERIM LEAD
PLAINTIFFS' COUNSEL**

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INTERIM LEAD PLAINTIFFS' COUNSEL**

Plaintiff by and through her attorney submit this memorandum, pursuant to Rule 23(g)(2)(A) of the Federal Rules of Civil Procedure in support of the request that her counsel be appointed Interim Lead Counsel for all Plaintiffs until such time as the Class may be fully protected by injunctive relief, and the Court can review and appoint a permanent Lead Counsel.

There is an obvious need for the Class to be organized from the inception, even prior to the Defendant's all being served and filing answers, since the Class is in need of ongoing injunctive relief, and there is a rapidly unfolding and evolving situation that involves thousands of plaintiffs. The Class of Plaintiff's are still in the throws of attempting to migrate their domain names from RegisterFly.com even as the preliminary stages of the litigation are unfolding. The

Court has been moved to appoint an receiver for the Defendant RegisterFly.com Inc. and been moved for a protective Order protecting the Plaintiffs from vindictive actions by Kevin Medina personally, but also to prevent the destruction of evidence in this case, as well as the destruction of critical data which will irreparably harm thousands of domain name owners, and disturb the confidence the public has in the Internet as a whole, and have sever consequences on interstate commerce.

Plaintiff's Counsel needs the authority to act on behalf of the Class immediately to negotiate and secure contracts with Class action service providers such as Rust Consulting, Inc., Kinsella/Novak Communications, or EPIQ Systems, Inc. in order to effectively maintain the action without class members being further irreparably harmed by the ongoing acts of the Defendants.

Clarke Dummit should be appointed Co-Lead Counsel because he:

1. Immediately took the lead and worked diligently to identify and investigate potential claims and class members even as the Class was still being harmed;
2. filed the first complaint on behalf of the Class;
3. his action in filling the first complaint under seal prompted Defendant ICANN to finally decertify Defendant RegisterFly as an accredited Registrar, further protecting the Class;
4. has conferred the most valuable benefits upon the class thus far, including seeking injunctive relief for a number of class members to allow them to finally access their domain IP addresses;
5. has demonstrated experience in handling complex litigation, and cross-border litigation, particularly in the Securities industry, including successful representation in cross-border litigation, of Costa Rican Attorney in the Elfindepan litigation; and

6. has demonstrated that he has the resources, personnel, and technological capability, to best represent the class in the interim until such time as the Court can review any and all additional Plaintiffs.

COUNSEL'S INITIATIVES AND THE BENEFITS CONFERRED ON THE CLASS

1. Preliminary Relief:

The Defendant ICANN only chose to decertify RegisterFly.com after a year of breaching the RAA and months of ICANN's threats, twenty-four hours after getting notice of the Plaintiff's action and the pending TRO before the Court. Motions brought by counsel have secured the long overdue de-certification of Defendant RegisterFly.com.

To secure this relief, counsel:

- a) researched in an incredibly compressed time frame, not only all of the facts and history of the litigation, but the legal theories and causes of actions;
- b) researched entitlement to preliminary injunctive relief;
- c) prepared affidavits and memoranda of law to support the motion for relief;
- d) consulted with and retained experienced experts in the field of Internet Protocol to review the situation of prospective class members and render an opinion to the Court;
- e) researched and found an appropriate Receiver for the Court to appoint to protect the Class;
- f) has been in contact with representatives from multiple third parties, although without disclosing the parties to this action, to preliminarily determine and potentially contract for the multitude of services which the Class will need to properly administer a Class Action;

- g) sought and obtained an Order to keep the suit under seal for the benefit of the Class rather than publicizing the filing as an opportunity to garner additional class members;
- h) was a forceful advocate on behalf of prospective class members at hearings before Judge Sharp on March 14, 2007; and
- i) is currently willing to work with ICANN to facilitate the smooth transition of domain names to third party accredited Registrars.

2. Identified non-obvious theories of liability against ICANN and filed the first complaint:

Counsel first identified certain non-obvious legal theories under which ICANN is liable to the prospective class arising from implied warrantee and breach of fiduciary duty. Even as other Counsel have just started research the case and hold them selves out as able to litigate the matter:

ie: http://tcattorney.typepad.com/anticybersquatting_consum/registerfly/index.html

Is ICANN Liable for Failing to Rescind Registerfly's Accreditation?

There is a lot of commentary among registrants and watchers that ICANN is also responsible for the losses being incurred by those victimized by Registerfly. The issue of whether class action litigation can be brought against Registerfly, eNom and/or ICANN is also being hotly debated.

Traverse Legal attorneys are analyzing these issues on behalf of its clients. These issues are complicated and this web site is not meant to provide legal advise or create an attorney-client relationship. If you have a claim against Registerfly, you should [contact](#) and [retain an attorney](#) so that your specific situation can be analyzed.

3. Is ready to seek **U.S. Attorney's Office** Investigation of Defendants:

Counsel has held off on conversations and correspondence with the U.S. Attorney's Office as a catalyst in bringing about the ongoing investigation into the Defendants RegisterFly's and Kevin Medina's fraudulent conduct because the case is currently under seal, however counsel stands

ready willing and able to cooperate with any criminal investigation which may now be unfolding.

4. Investigated Activities of Defendants:

Counsel has aggressively investigated the activities of the defendants. These investigations have led counsel to various activities which appear to be ongoing and need further investigation such as the alleged use of a “fraud recovery account” to transfer domains out of RegisterFly to the detriment of the proper owners and to benefit corporate insiders. In addition, counsel’s investigations have revealed apparently fraudulent transfers by Medina to a third new domain which is listed to a P.O. Box fifteen miles from his residence in Florida. Counsel is continuing to investigate these claims and track funds from these fraudulent transfers.

5. Created a Database of Prospective Class Members:

Counsel, working with a software engineer, has created an electronic database of prospective class members which is ready to be populated as soon as ICANN will cooperate and transfer the electronic data, and the Court authorizes such transfer.

This database, among other things, enables the prospective class to establish the number of domain names each individual has registered, and then allows sub-classifications with regard to whether or not they were:

1. locked out of their domain name registration;
2. paid for and did not receive registrations;
3. paid for and did not receive renewals;
4. had the ownership of their domain name usurped;
5. temporarily have lost the use of their domain name;
6. permanently have lost the use of their domain name;

which may be used to establish numerosity for Sub-Class Certification as the case proceeds. Counsel has also established an electronic database containing information for the immediate prospective class members they represent, however this has deliberately been kept private until such time as the Court unseals the pleading in this case as an added protective measure for the Class.

CONCLUSION

For the reasons state above, the Court should appoint Clarke Dummit as Interim Lead Counsel for all plaintiffs, and vest him with the authority to negotiate with third party service providers on behalf of the Class to contract for support services to assist in the prosecution of this action.

This the 19th day of March 2007.

E. CLARKE DUMMIT
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