

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.**, )  
**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, Inc.**, and )  
**ICANN**, )  
 )  
Defendants. )

**Civil Action No 07-cv-00188**

**MOTION FOR PRELIMINARY  
INJUNCTION**

**(Fed. R. Civ. P. 65(a))**

---

Without waiving any objections to the Recommendation and Order of U.S. Magistrate Judge P. Trevor Sharp of March 21st 2007, and in response to the Court's Order, the Plaintiff Anne Martinez hereby objects to the recommendation is part, but further shows the Court, for the reasons stated herein, that time is of the essence in the Court responding to the ongoing problem, and thus the Plaintiff believes that the urgency of time has come to outweigh the risk of vindictive destruction of data, and retribution against the Plaintiff; and thus requests that the Court remove the seal from this case, authorize the Plaintiff to serve all parties with actual notice of hearing and grant an expedited hearing for March 23rd on this Plaintiff's Motion for Preliminary Injunction.

## **RELIEF SOUGHT**

Plaintiff moves the court for a preliminary injunction pending the final judgment in this action. The preliminary injunction will compel RegisterFly, this defendant's agents, servants, employees, and attorneys, and all persons in active concert and participation with this defendant, to:

(1) Immediately provide for escrow, to ICANN and Plaintiff's counsel an electronic copy of all data which RegisterFly is already required to provide pursuant to section 3.2.3 of ICANN's RAA with RegisterFly<sup>1</sup>, Including but not limited to:

- a. all domain names registered through RegisterFly, the accompanying "whois" data, and any authorization codes associated with any of the domains;
- b. Electronic copy: an electronic database of the information in a common database form, as determined by industry standards;
- c. Domain Names: any domain RegisterFly has ever sold the registration to, registered, or renewed the registration of since 2002.
- d. "Whois" Information includes:
  - i. the name, address, telephone number, and email address of the domain's Administrative Contact;

---

<sup>1</sup> 3.2.3 In order to allow reconstitution of the Registry Database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry Operator, within ten days of any such request by ICANN, Registrar shall submit an electronic database containing the data elements listed in Subsections 3.2.1.1 through 3.2.1.6 for all active records in the registry sponsored by Registrar, in a format specified by ICANN, to the Registry Operator for the appropriate TLD.

- ii. the name, address, telephone number, and email address of the domain owner's Technical Contact
  - iii. the registrar of record;
  - iv. the record's expiration date;
  - v. the record's creation date;
  - vi. the domain servers in listed order; and
  - vii. the domain status.
- e. Authorization codes: any codes attached to domain names that are required for the transfer of registration from RegisterFly to another ICANN certified Registrar;
- and
- (2) Maintain all domain names currently registered through RegisterFly such that internet protocol will continue to direct inquiries to the proper server or host site provided by the registrant, regardless of expiration date.
- (3) Allow all registrants to renew and transfer their domain name registration pursuant to the RAA between ICANN and RegisterFly, on a timely and ongoing basis.

### **GROUND FOR RELIEF**

It is essential that the court issue the requested preliminary injunction to prevent immediate and irreparable injury because:

1. The domain data which not only demonstrates ownership, but conveys actual ownership rights to domain owners, may be permanently lost, causing plaintiff registrants to permanently lose ownership of their domains, or lose control and ownership of the property during the pendency of this action until such time as a court can look at thousands of individual claims of ownership in that:

- 1) RegisterFly has willfully refused to comply with long standing data escrow provisions;
- 2) The site has been hacked, and is open to both internal corruption and external corruption (see Affidavit of Anne Martinez).

2. Anne Martinez, whose domain “goCertify.com” RegisterFly has failed to transfer and failed to renew, and others similarly situated, will suffer immediate and irreparable harm if RegisterFly is not required to continue to point, or direct, any and all electronic inquires to the host server used by the domain’s owner. This would:

- 1) effecting a total loss of use of the domain, which would
- 2) preclude the plaintiff from running her business, which would
- 3) effect the loss of substantial contracts, business reputation, and continued business transactions.

3. The plaintiff has no other adequate remedy at law for the injuries sought to be prevented by the requested preliminary injunction,

4. The plaintiff is likely to succeed on the merits of this action, as shown by the documents filed by the Plaintiff and confirmed by the Recommendation and Order of U.S. Magistrate Judge P. Trevor Sharp of March 21<sup>st</sup> 2007.

5. The issuance of a preliminary injunction will not cause undue inconvenience or loss to defendants in that the data is already required to be maintained pursuant to defendants current contractual obligations; as shown by the documents filed by the Plaintiff, and most specifically: James N. Smith, Jr. Affidavit In Support Of Preliminary Injunction.

### **SUPPORT FOR MOTION**

This motion is based on all of the papers and records on file in this action, including the representations made by ICANN by Samantha Eisner to the Court at the sealed Hearing on March 20, 2007, this document, the verified complaint, the supporting affidavits of James N. Smith, Jr. and the prior affidavits filed of Anne Martinez in Support of the Temporary

Restraining Order, and on whatever argument and evidence is presented at the hearing of this motion.

This the 22<sup>nd</sup> day of March 2007.

---

E. CLARKE DUMMIT  
Attorney for Plaintiff  
213 West Sixth Street  
Winston-Salem, NC 27101  
(336) 777-8081