

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

**DEFENDANT ICANN'S MOTION
FOR CONTINUANCE OF
PRELIMINARY INJUNCTION
HEARING SCHEDULED FOR
APRIL 11, 2007**

COMES NOW the defendant, Internet Corporation for Assigned Names and Numbers ("ICANN"), by and through counsel, and pursuant to Local Rule 6.1(b) hereby makes this Motion for Continuance of the Preliminary Injunction Hearing currently scheduled for April 11, 2007. In support of its Motion, ICANN shows unto the Court the following:

1. On March 13, 2007, plaintiff filed her Complaint under seal on behalf of herself and others similarly situated and immediately thereafter sought an *ex parte* temporary restraining order ("TRO").

2. United States Magistrate Judge Trevor Sharpe ordered plaintiff to notify ICANN of the pending TRO.

3. On March 20, 2007, ICANN made a special appearance for purposes of complying with Judge Sharpe's March 14, 2007 Order, but reserved all rights to subsequently object pursuant to F.R.C.P. 12.

4. At the March 20, 2007 hearing, plaintiff again presented her Motion for TRO. On March 21, 2007, Judge Sharpe recommended the TRO be denied. On March 23, 2007, the Honorable Judge William Osteen adopted Judge Sharpe's recommendation and denied plaintiff's Motion for TRO.

5. Despite the Order denying her Motion for TRO, plaintiff filed a Motion for Preliminary Injunction on March 22, 2007. In her Motion for Preliminary Injunction, plaintiff seeks an order compelling RegisterFly to immediately provide various electronic data to escrow; to maintain all domain names currently registered through RegisterFly; and to allow all registrants to renew and transfer their domain name registrations pursuant to the RAA between ICANN and RegisterFly. *See*, Plaintiff's Motion for Preliminary Injunction, "Relief Requested," pp. 1-3.

6. As indicated in its Notice of Special Appearance and as stated at the March 20, 2007 TRO hearing, ICANN does not believe this Court has personal jurisdiction over it, and furthermore believes that venue in this district is improper. ICANN has since filed a Motion to Dismiss Pursuant to F.R.C.P. 12(b)(2) and (b)(3), along with a supporting brief and affidavit.

7. For the reasons set forth in its brief, ICANN does not believe this Court can exercise personal jurisdiction over it in a constitutionally reasonable way. Any preliminary injunction order that might be entered over ICANN would therefore be moot.

8. Since the TRO hearing on March 20, 2007, ICANN has commenced litigation in the Central District of California against RegisterFly in an effort to protect RegisterFly's

customers (“ICANN Lawsuit”). A copy of said complaint is attached hereto as Exhibit A. ICANN has also filed an *ex parte* application and an application for a temporary restraining order. A copy of this application is attached hereto as Exhibit B.

9. As evidenced by the ICANN Lawsuit and the application for temporary restraining order, ICANN seeks many of the items which plaintiff in the instant case seeks in her motion for preliminary injunction. As such, plaintiff will not suffer harm in the event the hearing on her motion for preliminary injunction is continued until after this Court has ruled upon ICANN’s Motion to Dismiss.

10. ICANN, on the other hand, may suffer prejudice in the event it participates in any preliminary injunction hearing before its Motion to Dismiss is ruled upon. *See Wyrrough and Loser, Inc. v. Pelmor Laboratories, Inc.*, 376 F.2d 543 (3rd Cir. 1967)(where defendant participated in preliminary injunction hearing, defendant had waived its objections to personal jurisdiction and venue); *Broadcasting Corp. v. Offshore Broadcasting Corp.*, 869 F. Supp. 35 (D.D.C. 1994).

9. Defendant Enom has no objection to this motion. Plaintiff’s counsel objects to this Motion. ICANN is unaware of whether the remaining defendants have even been served in the instant case. As such, ICANN has been unable to determine their position on this Motion.

WEHEREFORE, for the above-listed reasons, ICANN respectfully requests this Court continue the preliminary injunction hearing currently scheduled for April 11, 2007 until after this Court has ruled upon ICANN's Motion to Dismiss Pursuant to F.R.C.P. 12(b)(2) and 12(b)(3).

This the 6th day of April, 2007.

/s/ Philip J. Mohr
Philip J. Mohr, NC State Bar #24427
Womble Carlyle Sandridge & Rice, PLLC
One West Fourth Street, NC 27101
Telephone: 336-721-3577
Fax: 336-733-8358

CERTIFICATE OF SERVICE

I hereby certify that on this date a the foregoing **DEFENDANT ICANN'S MOTION FOR CONTINUANCE OF PRELIMINARY INJUNCTION HEARING SCHEDULED FOR APRIL 11, 2007** has been caused to be electronically filed with the Clerk of Court and served electronically through the Clerk of Court on April 6th 2007 to the following person(s):

E. Clarke Dummit, Esquire
213 West Sixth Street
Winston-Salem, NC 27101
Attorney for Plaintiff(s)

Gary Beaver
Nexsen Pruet Adams Kleemeier
Suite 100
701 Green Valley Road
Greensboro, NC 27408
Attorney for Enom

/s/ Philip J. Mohr
Philip J. Mohr, NC State Bar #24427
Womble Carlyle Sandridge & Rice, PLLC
One West Fourth Street
Winston-Salem, NC 27101
336-721-3771
336-726-6006 (fax)
Attorney for Defendant ICANN