

Wilmer Cutler Pickering Hale and Dorr LLP
350 South Grand Ave., Suite 2100
Los Angeles, CA 90071

1 WILMER CUTLER PICKERING
2 HALE AND DORR LLP
3 Andrea Weiss Jeffries (SBN: 183408)
4 andrea.jeffries@wilmerhale.com
5 Bethany Stevens (SBN: 245672)
6 bethany.stevens@wilmerhale.com
7 350 S. Grand Ave., Suite 2100
8 Los Angeles, CA 90071
9 +1 (213) 443-5300
10 +1 (213) 443-5400

11 J. Beckwith Burr (*pro hac vice*)
12 becky.burr@wilmerhale.com
13 Ali M. Stoettelwerth (*pro hac vice*)
14 ali.stoettelwerth@wilmerhale.com
15 Perry A. Lange (*pro hac vice*)
16 Perry.lange@wilmerhale.com
17 1875 Pennsylvania Avenue NW
18 Washington, DC 20006
19 +1 (202) 663-6000
20 +1 (202) 663-6363

21 Attorneys for Defendant
22 ICM Registry, LLC

23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA

25 MANWIN LICENSING,
26 INTERNATIONAL S.A.R.L. and
27 DIGITAL PLAYGROUND, INC.

28 Plaintiffs,

vs.

ICM REGISTRY, LLC, d/b/a .XXX;
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS;
and DOES 1-10

Defendants.

Case No. CV 11-9514-PSG (JCGx)

**DECLARATION OF GREGORY
DUMAS IN SUPPORT OF
DEFENDANT ICM REGISTRY,
LLC'S MOTION TO STRIKE
PLAINTIFFS' STATE LAW CAUSES
OF ACTION PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION 425.16**

Date: April 2, 2012
Time: 1:30 p.m.
Place: Courtroom 880

Hon. Philip S. Gutierrez

Wilmer Cutler Pickering Hale and Dorr LLP
350 South Grand Ave., Suite 2100
Los Angeles, CA 90071

1 I, Gregory Dumas, hereby declare as follows:

2 1. I am a consultant for defendant ICM Registry, LLC (“ICM”), and have
3 served as the ICM Marketing Director since mid-2010. I submit this declaration in
4 support of ICM’s Motion to Strike Plaintiffs’ State Law Causes of Action Pursuant to
5 California Code of Civil Procedure Section 425.16. I have personal knowledge of the
6 facts set forth herein, unless otherwise stated, and, if called upon to testify as a
7 witness, I could and would competently testify thereto under oath. All Exhibits to this
8 Declaration are maintained in business records, in the ordinary course of my business.

9 2. Prior to executing its contract with Internet Corporation for Assigned
10 Names and Numbers (“ICANN”), ICM developed the “Founders Program.” In
11 December 2010, a few months after the decision to proceed with the .XXX sTLD was
12 made by ICANN, the Founders Program was formally launched and was available to
13 leading companies within the online adult entertainment industry. ICM’s Founders
14 Program was established to support expressive activities by members of the
15 Sponsored Community, whereby early adopters of the .XXX sTLD could secure and
16 develop domain names in anticipation of the official launch; the Founders Program
17 closed on July 31, 2011. Under the terms of the agreement applicable to participation
18 in the program, “Founders” were allocated specific valuable .XXX domains which
19 must contain unique content and not merely direct users to alternate TLDs.

20 3. My responsibilities at ICM included helping businesses become
21 “Founders” within the Founders Program.

22 4. On or about April 13, 2011, Plaintiff Digital Playground, Inc. (“Digital
23 Playground”) expressed interest in participating in the Founders Program. I spoke
24 with Digital Playground’s Chief Operating Officer, Farley Cahen, and explained to
25 him the policies of the Founders Program. After explaining the policies, Mr. Cahen
26 sent me a long list of .XXX domains that Digital Playground wanted to use in
27 connection with the Founders Program. Despite communications between myself, on
28 behalf of ICM, and Digital Playground, Digital Playground did not take actions

Wilmer Cutler Pickering Hale and Dorr LLP
350 South Grand Ave., Suite 2100
Los Angeles, CA 90071

1 necessary to participate in the Founders Program prior to passage of the deadline for
2 participation in the program, which was July 31, 2011.

3 5. At some point during the Venus Tradeshow in Berlin, Germany, which
4 ran from October 21-24, 2010, I, along with my ICM colleague, Claudio Menegatti
5 (“Menegatti”), met with Manwin representative Fabian Thylmann (“Thylmann”). The
6 Manwin representative informed Menegatti and me that Manwin saw the introduction
7 of the .XXX sTLD as a threat to Manwin’s dominance over the adult Internet industry.
8 At that time, Thylmann said that he would do whatever he could to stop .XXX.
9 Specifically, Thylmann said that if ICANN approved the .XXX sTLD, Manwin would
10 file a lawsuit against ICM to disrupt its ability to conduct business.

11 6. On December 20, 2010, I sent an email to Thylmann informing him of
12 the launch of the Founders Program and suggesting that it might be a good
13 opportunity for Manwin. Thylmann responded saying “...the .xxx domain is useless
14 even if it comes to market, and I am not interested, just as I was not interested before.”
15 Attached as Exhibit 1 to this Declaration is a true and correct copy of this email
16 correspondence.

17 7. In September, 2011, Thylmann initiated a conversation with my ICM
18 colleague, Chief Business Development Officer, Jonathan Todd (“Todd”) and me,
19 during an industry event in London. Thylmann purported to be interested in reaching
20 a mutually beneficial business deal between Manwin and ICM, and requested an in-
21 person meeting with ICM’s CEO, Stuart Lawley (“Lawley”).

22 8. I understand that this requested meeting was held between Lawley and
23 Thylmann on September 23, 2011. In fact, I understand that two meetings were held
24 on that date. I understand that at these meetings Manwin laid out a list of demands it
25 wanted ICM to meet in order for Manwin to conduct business with ICM.

26 9. On October 12, 2011, I attended what I understood to be a meeting with
27 Manwin to follow up on the September 23 meetings. This follow-up meeting
28 occurred at Manwin’s offices in Montreal.

Wilmer Cutler Pickering Hale and Dorr LLP
350 South Grand Ave., Suite 2100
Los Angeles, CA 90071

1 10. During the meeting, Manwin’s representatives refined the list of demands
2 presented to my ICM colleagues in the September 23 meetings. Specifically, at this
3 meeting, Manwin demanded that ICM: allocate a minimum of several thousand .XXX
4 domain names to Manwin free of charge; commit to prevent IFFOR from making any
5 policies that ban or restrict the operation of user-generated content “tube” sites on
6 .XXX domains; grant across-the-board discounts on all .XXX domain registrations;
7 and allow Manwin to operate certain ‘premium’ or high value domain names, such as
8 “tube.xxx,” through a revenue sharing arrangement between Manwin and ICM.
9 Thylmann further stated that he needed the deal to include concessions by ICM that
10 would put a positive “spin” on Manwin’s involvement, so that it would appear that
11 Manwin accomplished some positive impact for the industry when news of the deal
12 was announced.

13 11. Manwin threatened ICM by saying that if its demands were not met, it
14 intended to spend several million dollars per year for the next several years tying up
15 ICM in litigation. ICM agreed to certain deal points, and submitted a counter
16 proposal on others. During the negotiations, Thylmann affirmed his intention to start
17 a new trade group like the RIAA or MPAA, since, according to Thylmann, the Free
18 Speech Coalition (a trade group representing certain segments of the adult industry)
19 was not in a position to provide any real value for its members.

20 12. Leaving the negotiations, I understood that further discussions would
21 occur after the execution of appropriate confidentiality agreements.

22 //

23 //

24 //

25

26

27

28

1 13. ICM received no further communication from Manwin until learning of
2 the instant lawsuit.

3 I declare under penalty of perjury, under the laws of the United States, that the
4 foregoing is true and correct.

5 Executed on January __, 2012 at _____.

6

7

8

Gregory Dumas

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

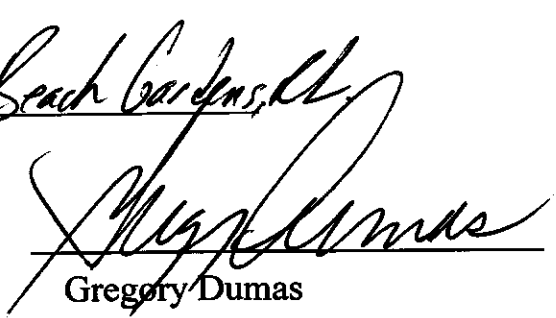
28

Wilmer Cutler Pickering Hale and Dorr LLP
350 South Grand Ave., Suite 2100
Los Angeles, CA 90071

1 13. ICM received no further communication from Manwin until learning of
2 the instant lawsuit.

3 I declare under penalty of perjury, under the laws of the United States, that the
4 foregoing is true and correct.

5 Executed on January 13, 2012 at Palm Beach Gardens, FL


Gregory Dumas

Wilmer Cutler Pickering Hale and Dorr LLP
350 South Grand Ave., Suite 2100
Los Angeles, CA 90071

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

Tuesday, July 12, 2011 9:58:02 AM ET

Subject: Re: .XXX Domains

Date: Monday, December 20, 2010 7:17:43 PM ET

From: Fabian

To: Greg Dumas

The mis-communication ICM loves to do and the blatant misrepresentations of facts is hilarious. Sorry... The ICANN conference gave you absolutely nothing. All that happened was that ICANN confirmed that already before they said in their opinion and from their standpoint the process is ok, but they have to talk to the GAC since the GAC strongly opposed it last time. The GAC still opposes it now, it is not going to pass the GAC.

There are no opportunities, the .XXX domain is useless even if it comes to market, and I am not interested, just as I was not interested before.

--

Fabian Thylmann
Manwin International
Managing Partner
ICQ: 1889711
Skype: nathan_pa
Cyprus Tel: +357.226.62320
Canadian Tel: +1.514.359.3555
Canadian Fax: +1.514.359.3556
Email: fabian@manwin.com



On Dec 20, 2010, at 7:23 PM, Greg Dumas wrote:

Fabian

I am not sure where you're based at the moment but if it's either Canada or Europe I don't think you're experiencing such great weather. Either way, I hope you're staying warm and dry while getting ready for the big holidays this weekend.

After we met in Berlin I wasn't sure how to follow-up with you. But after the recent ICANN conference in Cartagena, I thought it was best to contact you about how you'd like to move forward based on how well it went there. I think there are some good opportunities for your company and hope we can determine some of these together.

We also released the Founders program which is something I think you'd want to think about as well: <http://www.icmregistry.com/founder/>

Will you be going to Las Vegas next month? If so let me know as that might be a good place to meet. In the meantime, let me know how you think it's best to move forward.