



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

CLERK

Case No. **CV 03-5045-JFW (MANx)**

Date: July 18, 2003

Title: **DOTSTER, INC., etc., et al. -v- INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, etc.**

**DOCKET ENTRY**

**PRESENT:**

**HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE**

**K. Leigh Ray  
Courtroom Deputy**

**None Present  
Court Reporter**

**ATTORNEYS PRESENT FOR PLAINTIFFS:**  
None

**ATTORNEYS PRESENT FOR DEFENDANTS:**  
None

**PROCEEDINGS (IN CHAMBERS):** ORDER DENYING PLAINTIFFS' REQUEST FOR TEMPORARY RESTRAINING ORDER, REQUEST FOR ISSUANCE OF AN ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION, AND REQUEST FOR EXPEDITED DISCOVERY

On July 16, 2003, Dotster, Inc., Go Daddy Software, Inc., and eNOM, Inc. (collectively "Plaintiffs") filed a complaint against Internet Corporation For Assigned Names And Numbers ("ICANN") alleging two claims for relief: (1) Declaratory judgment; and (2) Specific performance. On the same day, Plaintiffs filed a Motion For Temporary Restraining Order, Preliminary Injunction, And Expedited Discovery. On July 17, 2003, ICANN filed a Preliminary Opposition To Plaintiffs' Motion For Temporary Restraining Order, Preliminary Injunction, And Expedited Discovery. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. After considering the moving and opposing papers and the arguments therein, the Court rules as follows:

**I. Standard**

In the Ninth Circuit, "preliminary injunctive relief is available to a party who demonstrates either (1) a combination of probable success and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardships tips in its favor." *Arcamuzi v. Continental Airlines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987). "Under any formulation of the test, the moving party must demonstrate a significant threat of irreparable injury." *Id.* "Speculative

14

injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." *Carribbean Marine Services Company, Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); see also *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994) (holding that "[b]ecause injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate--as opposed to a merely conjectural or hypothetical--threat of future injury"). It is "well-settled law that [i]njunctions will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties." *Cambell Soup Co. v. Conagra, Inc.*, 977 F.2d 86, 92 (3d Cir. 1992) (citations and quotations omitted). Thus, courts will not grant preliminary injunctive relief where "[multiple contingencies must occur before [the plaintiff's] injuries ripen into concrete harms." *Carribbean Marine Services*, 844 F.2d at 674; see also *Skelly v. Dockweiler*, 75 F. Supp. 11, 17 (S.D.Cal. 1947) (denying a preliminary injunction because the alleged damage was "not immediate, but remote and flowing from contingencies which have not arisen and may never arise").

## II. Discussion

In this case, Plaintiffs have failed to demonstrate a significant threat of irreparable injury. Plaintiffs argue that they will be irreparably injured when the Wait Listing Service ("WLS") proposed by Verisign, Inc. ("Verisign") is implemented. According to Plaintiffs' complaint, negotiations between ICANN and Verisign regarding the implementation of WLS are on ongoing. (Compl. ¶ 42.) The complaint also states that WLS will not be implemented until October 11, 2003, nearly three months from the date Plaintiffs filed their current motion. (*Id.*) Moreover, according to evidence submitted by Defendant, whether WLS will ever be implemented is dependent upon several contingencies: (1) Verisign would have to actually reach an agreement with ICANN; (2) the United States Department of Commerce would have to approve the agreement; and (3) Verisign would have to undertake the significant technical and operational tasks of implementing WLS. (Halloran Decl. ¶ 14.) Thus, assuming that Plaintiffs will actually be damaged from the implementation of WLS, such damage will not be immediate, but remote and flowing from contingencies which have not arisen and may never arise. Accordingly, the Plaintiffs have not demonstrated a significant threat of irreparable harm for purposes of obtaining a temporary restraining order.

## III. Conclusion

For the foregoing reasons, the Court **DENIES** Plaintiffs' request for temporary restraining order, request for issuance of an order to show cause re preliminary injunction, and request for expedited discovery. If Plaintiffs wish to pursue their request for injunctive relief, they should proceed by way of noticed motion. Any issues regarding discovery shall be addressed by the magistrate judge assigned to this case.

IT IS SO ORDERED.

The Clerk shall serve a copy of this Minute Order on all parties to this action.