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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 VERISIGN, INC., a Delaware
18 corporation,

19 Plaintiff,

20 v.

21 INTERNET CORPORATION FOR
22 ASSIGNED NAMES AND
NUMBERS, a California corporation;
23 DOES 1-50,

24 Defendants.

Case No. CV 04-1292 AHM (CTx)

**DECLARATION OF BENJAMIN
DESJARDINS IN OPPOSITION TO
SPECIAL MOTION TO STRIKE OF
DEFENDANT INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS**

Date: May 17, 2004
Time: 10:00 a.m.
Courtroom: 14 – Spring Street Bldg.
Hon. A. Howard Matz

[Memorandum of Points and Authorities;
Evidentiary Objections; Appendix of
Exhibits; Declarations; and [Proposed] Order
concurrently filed and lodged herewith]

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1 I, BENJAMIN DESJARDINS, declare:
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3 1. I know all of the following facts of my own personal knowledge and, if
4 called and sworn as a witness, would competently testify thereto.

5 2. I am a Product Marketing Manager with plaintiff VeriSign, Inc.
6 ("VeriSign") and have been continuously employed by VeriSign since approximately
7 June 2000. In general terms, my work consists of promotion and marketing of, and
8 communications concerning, VeriSign's products and services. As part of my duties
9 for VeriSign, I was the businessperson responsible for a marketing program VeriSign
10 conducted in late 2001, to encourage registrars to promote the registration of second-
11 level domain names within the .com and .net top-level domains ("TLDs").

12 3. The individual or organization that creates and registers a specific
13 domain name is a "registrant." Registrants do not have direct access to VeriSign's
14 .com registry. Rather, prospective registrants must register domain names through
15 any one of over 100 accredited "registrars" for the .com TLD. Registrars provide
16 direct services to registrants and prospective registrants, such as processing domain
17 name registrations. The VeriSign .com TLD registry has no contractual or other
18 direct relationship with a registrant. Registrars have a contractual relationship with
19 registrants. Consequently, to boost the volume of domain name registrations within
20 the .com TLD, VeriSign enlisted the participation of registrars for the .com TLD.

21 4. In 2001, several new TLDs that compete with VeriSign, including .biz
22 and .info, began registering domain names. Amid this mounting competition from
23 new TLDs, the VeriSign marketing program that I planned and implemented in late
24 2001 (the "Marketing Program") was designed to enhance the attractiveness and
25 visibility of domain names within the .com and .net TLDs.

26 5. Under the Marketing Program, VeriSign agreed to pay a "placement fee"
27 to registrars who signed up for the program and, among other things, (1) displayed a
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1 .com/.net promotional banner on their Internet home pages, and (2) placed .com and
2 .net in the first and second slots in their website's "drop-down menus." As a result, if
3 a potential registrant desired to register the second-level domain name "dogsforale,"
4 for example, a registrar that was participating in the Marketing Program would offer
5 "dogsforale.com" and "dogsforale.net" before or above "dogsforale.biz."

6 6. Essentially, the Marketing Program's placement fees would compensate
7 participating registrars for providing these marketing and promotional services for
8 VeriSign over their websites. As the Marketing Program was designed, VeriSign
9 would compensate a participating registrar in proportion to the effectiveness of its
10 promotional services in generating additional .com/.net name registrations. More
11 specifically, a participating registrar's placement fee was directly tied to its ability to
12 generate greater domain name registrations in the .com and .net TLDs for November
13 and December 2001 than it had generated in the "baseline" months of August and
14 September 2001. We established various compensation "tiers" for registrars that
15 corresponded to specific percentage increases in their .com and .net domain name
16 registrations over the baseline months.

17 7. We launched the marketing program on November 1, 2001. It was my
18 understanding that ICANN had no authority to regulate or prescribe VeriSign's
19 marketing or promotional programs. We did not "pre-clear" the program with
20 ICANN.

21 8. Less than a week after the Marketing Program went into effect, ICANN
22 asserted that the program did not comply with the terms of VeriSign's registry
23 agreements with ICANN and threatened to issue a formal notice declaring VeriSign
24 in breach of those agreements, and potentially to terminate or decline to renew the
25 agreements, unless we agreed to abandon the Marketing Program or to revise it in a
26 manner acceptable to ICANN. ICANN specifically asserted, among other things, that
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1 the placement fees to be paid under the Marketing Program constituted a volume
2 discount supposedly prohibited by the registry agreements.

3 9. To my knowledge, no one at VeriSign considered the placement fees to
4 be volume discounts. Although we disagreed with ICANN's position on this issue,
5 and told ICANN so, under the circumstances we had no choice but to change, mid-
6 course, the way that registrar placement fees would be calculated. Understandably,
7 participating registrars could not be expected to agree to less favorable payment terms
8 than the terms they agreed to accept when they undertook to provide promotional
9 services for the benefit of VeriSign. As a result, in order to satisfy ICANN and still
10 meet our duties to registrars in accordance with the Marketing Program, we were
11 forced to replace the original placement fee formula with one more costly to us and
12 more advantageous to participating registrars. We consequently paid participating
13 registrars substantially more in placement fees than we originally agreed to pay when
14 the program was first offered and sold to registrars.

15 10. After the Marketing Program concluded, I performed an analysis of the
16 program's effectiveness. As part of that analysis, I compared the return that VeriSign
17 actually realized on its investment in the program with the return that it would have
18 realized had it paid placement fees according to the originally agreed formula. Based
19 on this analysis, I concluded that VeriSign realized a 150% return on its investment in
20 the Marketing Program, as compared to a 170% return that we would have realized
21 had ICANN not interfered in the program.

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23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct. Executed this 28th day of April 2004,
25 at Cambridge, Massachusetts.

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28 **BENJAMIN DESJARDINS**