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DOTCONNECTAFRICA TRUST

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL

DOTCONNECTAFRICA TRUST, a Mauritius
Charitable Trust;

Plaintiff,

v.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, a
California corporation;

Defendants.

Case No. BC607494

Assigned for all purposes to the Honorable
Howard L. Halm

**EVIDENTIARY OBJECTIONS BY
DOTCONNECTAFRICA TO
DECLARATION OF MOKGABUDI
LUCKY MASILELA IN SUPPORT OF
PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

DATE: February 2, 2017

TIME: 8:29 a.m.

DEPT: 53

Evidentiary Objections to Declaration of Mokgabudi Lucky Masilela

Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 3: ZACR was originally formed in 1988 under the name UniForum S.A. The purpose of the company was to promote open standards and systems in computer hardware and software. In 1995, the company was assigned the administration rights for the South African domain name, “co.za.” Today ZACR has registered over 1 million co.za domain name registrations – or about 95% of the total registrations for “za.” Due to its well-known reputation for independence and neutrality, as well as technical competence and operational excellence, ZACR is the single largest domain name registry on the African continent.</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code §702) 3. Speculative (Evid. Code § 1200, et seq.) Conclusory (<i>Evinger v. MacDougall</i> (1938) 28 Cal.App.2d 175.) Irrelevant (Evid. Code § 350)</p>		
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 4: After Internet Corporation For Assigned Names and Numbers (“ICANN”) formally launched the “New gTLD Program,” ZACR submitted an application for the .Africa gTLD. I am aware that both ZACR and DCA submitted their respective applications for the .Africa gTLD in the Spring/ Summer of 2012. At the same time, ZACR also applied for, and obtained, the .CapeTown, .Joburg and .Durban gTLDs, and these gTLDs have been launched to the Internet public.</p>	<p>1. Irrelevant (Evid. Code § 350)</p>		
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 5: I am familiar with the ICANN selection criteria for the gTLD. ICANN set forth selection criteria in an Applicant Guidebook. Among other things, ICANN made clear that because the .Africa gTLD represented the name of a geographic region, an applicant would need to provide documentation showing support from at least 60% of the governments in the region. Further, ICANN criteria provided that no more than one objection from a government or public entity associated</p>	<p>1. The Application Guidebook is the best evidence of the document. (Evid. Code § 1520) 2. Lacks foundation (Evid. Code § 403) 3. Lacks personal knowledge. (Evid. Code §702)</p>		

EVIDENTIARY OBJECTIONS BY DOTCONNECTAFRICA TO DECLARATION OF MOKGABUDI LUCKY MASILELA IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

with the geographic region would be permitted. These criteria are set forth in ICANN Application Guidebook Module 2, and available online at: [http://newgtlds.icann.org/en/applicants/agb/par 2.2.1.4.2.4](http://newgtlds.icann.org/en/applicants/agb/par-2.2.1.4.2.4).

Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
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¶ 6: ZACR submitted its application to ICANN with the full support of African Union member states via the African Union Commission (“AUC”) endorsement. Specifically, the AUC, which serves as the Secretariat of the African Union, provided a letter supporting ZACR’s application. ZACR submitted a letter of support from the African Union dated July 4, 2012. In response, ICANN’s Geographic Names Panel provided ZACR with Clarifying Questions relating to deficiencies in the AUC letter of support. Attached hereto as **Exhibit A** is a true and correct copy of the Geographic Names Panel Clarifying Questions. ZACR addressed the deficiencies and submitted an updated letter of support on or about July 2, 2013. A true and correct copy of the July 2, 2013 AUC letter is attached as **Exhibit B**. In addition, the only nonmember, Morocco, separately provided a letter supporting ZACR’s application. A true and correct copy of the March 28, 2012 Moroccan letter of support is attached as **Exhibit C**.

1. The letters are the best evidence of the letters. (Evid. Code § 1520)

Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
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¶ 7: ZACR received the support of the African Union only after the AUC publicized a request for proposal (“RFP”). This was an open bid process. The AUC made clear that it was only going to support one applicant. By way of background, the AUC RFP process began because it was well known that ICANN was considering a new gTLD program, including .Africa. It was in anticipation of this new gTLD program that the AUC decided to hold an RFP to support a single,

1. Lacks personal knowledge (Evid. Code § 702)
2. Lacks foundation (Evid. Code § 403)

1	qualified applicant for the African Union. This is because the AUC was specifically			
2	mandated by member states to set up the			
3	structures and modalities for the			
4	implementation of the dotAfrica (.Africa)			
5	gTLD. Details of the process are set forth			
6	in the September 29, 2015 AUC letter, a			
7	true and correct copy of which is attached			
8	hereto as Exhibit D . This letter is also			
9	available at: http://africanonespace.org/			
10	downloads/GNP.PDF			
11	Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
12	¶ 8: I was informed by AUC officials that	1. Hearsay (Evid.		
13	Plaintiff DotConnectAfrica Trust	Code § 1200, et seq.)		
14	("Plaintiff") chose not to participate in the			
15	RFP.			
16	Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
17	¶ 9: Attached as Exhibit E are true and	1. Irrelevant (Evid.		
18	correct copies of the 17 "Early Warning	Code § 350)		
19	Notices" from individual African countries			
20	to Plaintiff's application. These "Early			
21	Warning Notices" are also available online			
22	at:			
23	http://africanonespace.org/			
24	content.php?tag=13&title=Resources			
25	Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
26	¶ 10: The Registry Agreement between	1. Lacks personal		
27	ICANN and ZACR was effective on	knowledge (Evid.		
28	March 24, 2014 and runs for ten years.	Code §702)		
	Yet, over two years into the Agreement,	2. Lacks foundation		
	the .Africa gTLD has still not been	(Evid. Code § 403)		
	delegated to ZACR. In effect, 20% of the	3. Speculative (Evid.		
	period of the Agreement has already lapsed	Code §702)		
	without any benefit to ZACR. This delay	4. Conclusory.		
	has resulted in unforeseen and mounting	(<i>Evinger v.</i>		
	costs, as well as lost opportunities, for the	<i>MacDougall</i> (1938) 28		
	.Africa project.	Cal.App.2d 175.)		
		5. Biased and		
		misleading in that it		
		was entered into after		
		the initiation of the		
		IRP process by DCA,		
		the day after DCA		
		requested ICANN		
		refrain from delegating		

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<p>1 2 3 4 5 6 7</p>	<p>the .Africa domain based on the IRP proceeding pending, and on the grounds that the IRP ordered ICANN to refrain from further processing ZACR's application until the IRP proceeding concluded. See (Bekele Decl. ¶10, Ex. 1, pp. 4, ¶¶ 16-20)</p>		
<p>8</p>	<p>Lucky Masilela Declaration ¶</p>	<p>DCA Objection</p>	<p>Sustained Overruled</p>
<p>9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>¶ 11: ZACR has incurred considerable expenses both prior to and after entering into the Registry Agreement. The current and continuing cost due to the delay in the delegation is running at approximately \$16,632 per month. In May of 2016, ZACR previously estimated its average monthly costs at approximately \$18,386. Cost saving measures implemented by ZACR have brought the average amount of ZACR's costs down. A true and correct copy of a summary of average costs from July 2015 to October 2016 is included as Exhibit F. This is based upon a review of the monthly costs incurred from July 2015 to October 2016 for the .Africa project, including the ongoing costs related to consultants, marketing, sponsorships and related expenses. In determining these figures, we averaged the monthly expenses for the .Africa project and where necessary converted expenditures from South African Rand to U.S. dollars. These figures were configured by ZACR's finance section based on ZACR's financial records. The summary of costs listed in Exhibit F does not include any fees due to ICANN under the Registry Agreement or legal fees that ZACR had previously incurred. If we were to include actual and expected legal fees for this litigation, the ZACR finance section projects the cost figures would</p>	<p>4. Lacks foundation (Evid. Code § 403) 5. Lacks personal knowledge (Evid. Code §702) 6. Speculative (Evid. Code § 1200, et seq.) 7. Conclusory (<i>Evinger v. MacDougall</i> (1938) 28 Cal.App.2d 175.)</p>	

1 increase significantly beyond \$16,632 per
 2 month. The importance of maintaining
 3 visibility for the .Africa project, coupled
 4 with the ongoing need to interface with
 5 government officials throughout the
 African continent, makes clear that these
 ongoing expenses will continue during the
 course of this litigation.

Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>6 ¶ 12: The Loss of Net Income after Tax 7 (opportunity costs) suffered by ZACR 8 from the date of the planned delegation following the Registry Agreement through 9 December 1, 2016, are now estimated to be approximately \$15.5 million (U.S. dollars). 10 These estimates were configured by ZACR’s finance section. A true and correct 11 copy of a summary of the breakdown of ZACR’s opportunity costs are included in 12 the attached Exhibit F. The estimated 13 number of registration numbers are based on ZACR’s responses to ICANN’s 2012 14 application questions 46 – 50. ZACR 15 researched these numbers at the time of application and the application passed 16 ICANN evaluation. To be conservative, ZACR revised down some of these 17 numbers based on trends in the launch of 18 other new gTLDs. Of the \$15.5 million in lost opportunity costs, approximately \$5.8 19 million would have been donated to the dotAfrica Foundation for African online 20 development. Until such time as delegation takes place, the .Africa gTLD in effect 21 stagnates and generates no income and no value in the marketplace. The ongoing 22 delay is also prejudicial to the gTLD itself (no matter who the operator is) in that the 23 initial interest surrounding the launch of this domain name will have faded, and 24 persons who may have sought to register will have lost interest.</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code §702) 3. Speculative (Evid. Code § 1200, et seq.) 4. Conclusory (<i>Evinger v.</i> <i>MacDougall</i> (1938) 28 Cal.App.2d 175.) 5. Biased and misleading in that it was entered into after the initiation of the IRP process by DCA, the day after DCA requested ICANN refrain from delegating the .Africa domain based on the IRP proceeding pending, and on the grounds that the IRP ordered ICANN to refrain from further processing ZACR’s application until the IRP proceeding concluded. <i>See</i> (Bekele Decl. ¶10, Ex. 1, pp. 4, ¶¶ 16-20).</p>		
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>27 ¶ 13: Once a gTLD is delegated it starts increasing in value. The gTLD is at its</p>	<p>1. Lacks foundation (Evid. Code § 403)</p>		

28 **EVIDENTIARY OBJECTIONS BY DOTCONNECTAFRICA TO DECLARATION OF MOKGABUDI LUCKY MASILELA IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<p>lowest value prior to delegation and increases as the number of second level domain delegations (for example: xyz.africa) increases. If Plaintiff is redelegated the .Africa gTLD, it will suffer no irreparable harm as it will inherit a more valuable gTLD without incurring the cost to develop it.</p>	<p>2. Lacks personal knowledge (Evid. Code §702) 3. Speculative (Evid. Code § 1200, et seq.) 4. Conclusory (<i>Evinger v. MacDougall</i> (1938) 28 Cal.App.2d 175.) 5. Irrelevant to the extent that the standard at issue is whether DCA would be harmed, not irreparably harmed. (Evid. Code § 403) 6. Biased and misleading in that it was entered into after the initiation of the IRP process by DCA, the day after DCA requested ICANN refrain from delegating the .Africa domain based on the IRP proceeding pending, and on the grounds that the IRP ordered ICANN to refrain from further processing ZACR’s application until the IRP proceeding concluded. <i>See</i> (Bekele Decl. ¶10, Ex. 1, pp. 4, ¶¶ 16-20).</p>		
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23 24 25 26 27 28	<p>Lucky Masilela Declaration ¶</p> <p>¶ 14: Attached hereto as Exhibit G are true and correct copies of exemplar printouts of redelegations including gTLDs, from the Internet Assigned Numbers Authority (“IANA”) website, https://www.iana.org/reports. Additional examples can be found on the website.</p>	<p>DCA Objection</p> <p>1. Irrelevant. (Evid. Code § 403)</p>	<p>Sustained</p>	<p>Overruled</p>
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EVIDENTIARY OBJECTIONS BY DOTCONNECTAFRICA TO DECLARATION OF MOKGABUDI LUCKY MASILELA IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 15: Attached hereto as Exhibit H are true and correct copies of printouts from the following websites which discuss redelegation of gTLDs: http://domaincite.com/18849-youmight-be-surprised-how-many-new-gtlds-have-changed-hands-already; http://domaincite.com/20235-minds-machines-dumps-back-end-and-registrar-in-nominet-uniregistry-deals; http://www.afilias.info/news/2003/01/02/public-interest-registry-assumes-control-org-domain-name-registry.</p>	<p>1. Irrelevant. (Evid. Code § 403)</p>		
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 16: I am aware that ICANN builds in time limits in its gTLD registry agreements. I am further informed, based upon my experience in the industry and discussions with technical personnel within ZACR, that a re-delegation of a gTLD is entirely feasible. In fact, ICANN has prepared for this precise eventuality and issued a manual in 2013 providing step-by-step instructions for how to redelegate a gTLD. The manual, titled “User Documentation on Delegating and Redelegating a Generic Top Level Domain (gTLD),” makes clear that the process is available and feasible if necessary. A true and correct copy of the manual is attached hereto as Exhibit I. It is also available on ICANN’s website: https://www.icann.org/en/system/files/files/gtld-drd-ui-10sep13-en.pdf</p>	<p>1. The manual itself is the best evidence of the manual. (Evid. Code § 1520)</p>		
Lucky Masilela Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶ 17: In my role as ZACR’s CEO, and based upon my numerous and ongoing discussions with political, business and civic leaders from throughout the African Union, it is my firm understanding and belief that the ongoing delay in the delegation of .Africa is depriving the</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code §702) 3. Speculative (Evid. Code § 1200, et seq.)</p>		

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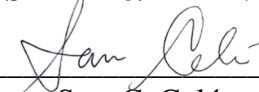
1 people of the Africa continent of an
2 important opportunity to expand internet
3 domain name capabilities. The .Africa
4 domain name would add brand value to the
5 continent and would provide a platform
6 that connects products, businesses and
7 individuals that have interests in Africa.
8 The African people are further harmed
9 because the agreement between ZACR and
10 the AUC required that a foundation be
11 created upon delegation and that a
12 significant portion of the revenues received
13 from second level domain delegations (for
14 example: xyz.africa) be directed to the
15 “dotAfrica Foundation.” The Foundation
16 would use the revenues to fund various
17 African domain name and Internet related
18 developmental projects which are now
19 delayed as a result of the preliminary
20 injunction.

4. Conclusory
(*Evinger v.*
MacDougall (1938) 28
Cal.App.2d 175.)
5. Hearsay (Evid.
Code § 1200, et seq.)

13 Dated: January 26, 2017

BROWN NERI SMITH & KHAN LLP

14 By: _____


Sara C. Colón

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST

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**EVIDENTIARY OBJECTIONS BY DOTCONNECTAFRICA TO DECLARATION OF MOKGABUDI LUCKY
MASILELA IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**