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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 REGISTERSITE.COM, an Assumed
13 Name of ABR PRODUCTS INC., a
14 New York Corporation, *et al.*,

15 Plaintiffs,

16 v.

17 INTERNET CORPORATION FOR
18 ASSIGNED NAMES AND
19 NUMBERS, a California corporation,
20 *et al.*,

21 Defendants.

Case No. CV 04-1368 ABC (CWx)

Hon. Audrey B. Collins

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
STRIKE PORTIONS OF
DEFENDANT INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS'S
MOTION TO DISMISS CERTAIN
CAUSES OF ACTION FOR
FAILURE TO STATE A CLAIM
UNDER FED. R. CIV. P. 12(b)(6);
and MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

22 DATE: July 12, 2004
23 TIME: 10:00 a.m.
24 COURTROOM: Room 680 –
25 Roybal Bldg.
26
27
28

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that, on July 12, 2004, at 10:00 a.m., or as soon
3 thereafter as the matter may be heard, at the courtroom of the Honorable Audrey B.
4 Collins, located at 255 East Temple Street, Los Angeles, California, the Plaintiffs in
5 the above captioned action will, and hereby do, move this Court to strike certain
6 portions of Defendant Internet Corporation for Assigned Names and Numbers's
7 ("ICANN") Motion to Dismiss Certain Causes of Action for Failure to State a
8 Claim Under FED. R. CIV. P. 12(B)(6) (the "Motion"), for the following reason:

9 ICANN has made a number of factual contentions in its Motion that are
10 unsupported by declarations or "other written evidence," as required by Local Rule
11 7-6. Accordingly, this Court should strike ICANN's unsupported factual
12 contentions from the record.


13 This motion will be based on this Notice of Motion and Motion at the
14 accompanying Memorandum of Points and Authorities, ICANN's above referenced
15 Motion at and such other and further evidence as may be presented to the Court at
16 the time of hearing.

17 Dated this 17th day of June, 2004.

18
19 Respectfully Submitted,

20 **NEWMAN & NEWMAN,**
21 **ATTORNEYS AT LAW, LLP**

22
23 By:


24 _____
25 Derek A. Newman (190467)
26 S. Christopher Winter (190474)
27 Venkat Balasubramani (189192)

28 Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs respectfully request that the Court strike portions of the Motion to
3 Dismiss Certain Causes of Action for Failure to State a Claim Under FED. R. CIV. P.
4 12(B)(6) (the “Motion”) brought by Defendant Internet Corporation for Assigned
5 Names and Numbers (“ICANN”).

6 Local Rule 7-6 requires that all “[f]actual contentions involved in any
7 motion... shall be presented, heard, and determined **upon declarations and other**
8 **written evidence** (including documents, photographs, deposition excerpts, etc.)
9 alone, except that the Court may, in its discretion, require or allow oral examination
10 of any declarant or any other witness.” (Emphasis added.)

11 A number of factual contentions in ICANN’s Motion are unsupported by any
12 declarations or other written evidence. Accordingly, this Court should strike all of
13 ICANN’s unsupported contentions from the record, pursuant to Local Rule 7-6.

14 ICANN’s unsupported factual contentions include the following:

15 1. “Each of the four claims the Plaintiffs now make against ICANN arises
16 entirely from that same WLS proposal and ICANN’s failure to use its contracts with
17 VeriSign to reject the proposal.” (Motion at 1:14-16.)

18 2. “Instead, this lawsuit was apparently filed merely as a tactic to try to delay
19 the implementation of WLS because Plaintiffs will make more money if WLS is
20 delayed.” (Motion at 1:23-25.)

21 3. “The Internet registrars could elect to offer WLS to consumers if they
22 wished, but they would be under no obligation to ofer WLS.” (Motion at 2:20-22.)

23 4. “The difference between Plaintiffs’ services and WLS is that Plaintiffs
24 offer no guarantee... This would guarantee the customer the right to be next in line
25 to acquire the domain name should it be deleted.” (Motion at 3:1-12.)

26 5. “...reconsideration at the requests of registrars...” (Motion at 4:10-11.)

27 6. “The present case is like *Rosenbluth*... By bringing this action, Plaintiffs
28 seek to block WLS and deny consumers a choice in the matter.” (Motion at 8:15-

1 21.)

2 7. “While the WLS contains contingencies, the contingencies are not
3 determined by simple ‘chance’ ... Indeed, WLS provides dramatically more certainty
4 than the ‘system’ Plaintiffs offer – in which any of dozens of Registrars might be
5 able to obtain a deleted domain name on behalf of its customer.” (Motion at 13:19-
6 14:11.)


7 Plaintiffs respectfully request that this Court strike the above statements from
8 the record in the above captioned proceeding, pursuant to Local Rule 7-6.

9
10 Dated this 17th day of June, 2004.

11 Respectfully Submitted,

12 **NEWMAN & NEWMAN,**
13 **ATTORNEYS AT LAW, LLP**

14
15 By:


16 _____
17 Derek A. Newman (190467)
18 S. Christopher Winter (190474)
19 Venkat Balasubramani (189192)

20 Attorneys for Plaintiffs
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1 **PROOF OF SERVICE**

2
3 I hereby certify that on this 17th day of June, 2004, I served the foregoing document described
4 as:

5 **-PLAINTIFFS' NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF**
6 **DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS'S**
7 **MOTION TO DISMISS CERTAIN CAUSES OF ACTION FOR FAILURE TO STATE A CLAIM**
8 **UNDER FED.R.CIV.P. 12(b)(6); and MEMORANDUM OF POINTS AND AUTHORITIES IN**
9 **SUPPORT THEREOF. and**
10 **-PROOF OF SERVICE**

11 to be served on all interested parties in this action by transmitting a true copy thereof by Email, and by
12 Federal Express addressed as follows:

13 Laurence J. Hutt, Esq.
14 Arnold & Porter LLP
15 1900 Avenue of the Stars, 17th Floor
16 Los Angeles, CA 90067- 4408

Jeffrey A. LeVee, Esq.
Jones Day
555 West Fifth Street, Suite 4600
Los Angeles, CA 90013 - 1025

17 Email: Laurence_Hutt@aporter.com

Email: jlevee@jonesday.com

18 Frederick F. Mumm, Esq.
19 Davis Wright Tremaine LLP
20 865 S. Figueroa Street, Suite 2400
21 Los Angeles, CA 90017 - 2566

22 Email: fredmumm@dwt.com

23 I declare that I am employed in the office of a member of the bar of this court at whose direction
24 the service was made.

25 Executed on June 17th , 2004 at Seattle, Washington.

26 *Diana Au*

27 _____
28 Diana Au