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April 15, 2004

VIA FACSIMILE (206) 274-2801

Derek A. Newman, Esq.
Newman & Newman
505 Fifth Avenue South, Suite 610
Seattle, WA 98104

Re: *Registersite.com v. ICANN, et al.*; Case No. CV04-1368 (ABC)

Dear Derek:

Having reviewed plaintiffs' original and first amended complaints, I write to tell you that ICANN believes that you and your clients have brought this litigation in bad faith, at least as against ICANN. In particular:

1. Four of your clients -- ! \$! Bit It Win It, Inc., !\$6.25 DOMAINS! Network Inc., Fiducia LLC and Name.com LLC -- were accredited by ICANN as Internet registrars on or after October 28, 2003 (several months after the *Dotster* plaintiffs had filed their lawsuit and lost their motion for a temporary restraining order). Obviously, these clients went into business knowing full well that ICANN's Board had approved negotiations on WLS, and that a court had denied a TRO with respect to WLS. ICANN's actions could not possibly have breached the Registrar Accreditation Agreements with these four plaintiffs because, among other things, ICANN's Board had approved negotiations on WLS long before any of these entities was accredited or had entered into the RAA.

2. Judge Walter's opinion denying the *Dotster* plaintiffs' motion for preliminary injunction makes it quite clear that the *Dotster* plaintiffs had no hope of prevailing on a claim for breach of contract. Those plaintiffs dismissed their suit with prejudice shortly thereafter. Your clients surely have no better odds of prevailing and, given the facts set forth above, undoubtedly have a weaker case.

3. The notion that any of these entities suffered cognizable damages is absurd. As of December 31, 2003, the four entities referenced above combined accounted for fewer than 1,250 Internet name registrations. If they based their business models on their form of "wait list service," they have only themselves to blame if their models ultimately fail.

4. The notion that WLS constitutes an unlawful lottery, or that ICANN would be liable under Business & Professions Code section 17200, is simply wrong. To the extent you are

Derek A. Newman, Esq.
April 15, 2004
Page 2

relying on Judge Mohr's interim decisions in the *Smiley* litigation, there are very significant differences between WLS and the roll-out of the ".biz" registry. Among other things, the ".biz" initial roll-out was to involve random selection among competing consumers; WLS will not involve any randomness.

5. Your lawsuit was filed days before ICANN's Board was to consider WLS again and obviously was timed with this in mind. The fact that the suit failed to achieve your objective of delaying WLS does not diminish the fact that the timing was motivated by reasons other than a legitimately-held view that your clients were entitled to relief.

For these and other reasons, ICANN is extremely confident that it will prevail in this litigation. The purpose of this letter is to put you and your clients on notice that, once ICANN prevails, ICANN is likely to file suit for malicious prosecution against both you and your clients. In that suit, we will seek to recover all of ICANN's attorneys' fees and costs in connection with the litigation.

Should you and your clients wish to avoid this risk, ICANN will agree that, if your clients dismiss the litigation against ICANN with prejudice on or before April 24, 2004, ICANN will agree to waive its right to file a malicious prosecution lawsuit or otherwise to seek to recover its attorneys' fees and costs in connection with this action. After April 24, 2004, ICANN will not agree to these terms.

Very truly yours,

Jeffrey A. LeVee

cc: John Jeffrey, Esq.