

2011, the Court issued its *Order to Show Cause* ordering ICANN to stay and abate the UDRP Claim immediately and notify the Court of its compliance by December 6, 2011 (the “Show Cause Order”). [Docket No. 726.] On December 5, 2011, ICANN filed its *Non-Party Internet Corporation for Assigned Names and Numbers’ Response to Order to Show Cause* (the “Response”). [Docket No. 728.] The same day the Court ordered the Receiver to respond to the Response no later than December 9, 2011. [Docket No. 729.] Pursuant to the Court’s order, the Receiver files this response brief.

II. ARGUMENT AND AUTHORITIES

A. ICANN Has the Authority to Stay the UDRP Claim Against Funnygames.com.

ICANN wants this Court to believe it has no influence over 1) the dispute resolution policy ICANN created and continues to govern or 2) ICANN’s own approved arbitrators. ICANN makes the blanket assertion that because it is not a “party” to the UDRP Claim, it lacks the “authority” to intervene and direct the WIPO to recognize this Court’s stay. [Docket No. 728 at pp.4-5.] Interestingly, the Response provides no explanation for why ICANN cannot intervene or, more precisely, what is stopping its involvement in the WIPO proceeding against funnygames.com. The answer is simple: nothing. ICANN can easily instruct WIPO to observe the Court’s stay. (See Declaration of Damon Nelson, attached hereto as Exhibit A, at ¶ 6.)

At the same time ICANN is proclaiming its supposed impotence, it readily admits it created the UDRP establishing the standards for resolving disputes concerning the registration and use of internet domain names. (Docket No. 728 at p. 3; Ex. A at ¶ 7.) ICANN also confesses that only arbiters it approves of (*i.e.*, WIPO) may adjudicate UDRP disputes. (Docket No. 728 at p. 4; Ex. A at ¶ 7.) Several federal courts have recognized that ICANN has, indeed, “appointed,” “accredited,” and “authorized” WIPO with this authority. See, *e.g.*, *Barcelona.com*,

Inc. v. Excelentísimo Ayuntamiento Barcelona, 330 F.3d 617, 621 (4th Cir. 2003) (“authorized”); *Virtual Countries v. Republic of S. Africa*, 300 F.3d 230, 233 (2d Cir. 2002) (“accredited”); *Sallen v. Corinthians Licenciamentos LTDA*, 273 F.3d 14, 21 (1st Cir. 2001) (“accredited”); *Barcelona.com, Inc. v. Excelentísimo Ayuntamiento Barcelona*, 189 F.Supp.2d 367, 370 (E.D. Va. 2002) (“appointed”). Lastly, ICANN reserves the unilateral right to change the UDRP process (and presumably the accreditation process). (Ex. A at ¶ 7.)

So, it stands to reason that ICANN—which created and maintains jurisdiction over the UDRP and provides WIPO with its accreditation—has the ability to get involved in the UDRP Claim. (*Id.* at ¶ 8.) In other words, there is nothing preventing ICANN from instructing WIPO to stay the UDRP Claim or risk losing its status as an ICANN-accredited UDRP arbiter. (*Id.*) ICANN’s failure to mention anything in this regard substantiates this point. So, essentially, the issue for ICANN is not one of can’t but, instead, one of won’t.¹

B. This Court Has Jurisdiction Over ICANN.

So, the next question is why, if ICANN has the power to comply with the Show Cause Order, it chooses not to do so. The answer appears to be much bigger than the funnygames.com dispute. Indeed, ICANN, an American company, apparently does not want to be under the control of any American court. The issue rears its head under the pretense of “jurisdiction.”

In its Response, ICANN argues that this Court cannot order ICANN to stay or abate the dispute over funnygames.com because this Court lacks personal jurisdiction over ICANN.

¹ An internet registrar is an ICANN-accredited organization that manages the reservation of domain names in accordance with ICANN policies. (Ex. A. at ¶ 9.) Fabulous.com is the registrar for all of the Novo Point, LLC and Quantec, LLC domain names (including funnygames.com). (*Id.*) Registrars are contractually obligated to abide by the UDRP decisions of ICANN-approved arbitration panels like WIPO. (*Id.*) So, if WIPO issued a decision adverse to Novo Point, LLC that funnygames.com should be transferred to the complainant in the dispute, Fabulous.com would be obligated to transfer the domain under ICANN policy. (*Id.*) However, ICANN could nonetheless direct Fabulous.com to disregard any adverse WIPO decision regarding funnygames.com and, instead, allow for domain name’s transfer to any Court-approved purchaser. (*Id.*) Again, this demonstrates another avenue which ICANN can utilize authority it claims to lack.

[Docket No. 728 at 2.] Specifically, ICANN relies on *International Shoe Company v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945) and its progeny for the proposition that, due to ICANN's alleged "lack of minimum contacts with Texas," this Court cannot issue orders as to ICANN—"to do so would offend the traditional notions of fair play and substantial justice."

[Docket No. 728 at p. 5.]

1. *Federal statutes confer jurisdiction over ICANN.*

ICANN misses the point. This Court has statutory jurisdiction over ICANN not through ICANN's contacts with Texas, but by virtue of this matter being a federal equity receivership proceeding. [See Docket No. 124 at p. 1 ("It is hereby ordered that Peter S. Vogel is appointed Receiver for Defendant Jeffrey Baron with the full power of an equity receiver.")] "The *in personam* jurisdiction of a Court in a federal equity receivership proceeding is not governed by traditional minimum contacts analysis." *Quilling v. Cristell*, No. 304-CV-252, 2006 WL 316981, at *2 (W.D. N.C. Feb. 9, 2006); see also *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 823 ("An exhaustive search of decisions involving the federal receivership statutes reveals no case where a minimum contacts test was applied to non-resident defendants."). Instead, "[i]n cases involving federal equity receiverships, the receivership court acquires nationwide jurisdiction based on the interplay of 28 U.S.C. § 754 and 28 U.S.C. § 1692." *Cristell*, 2006 WL 316981, at *2 (emphasis added). "[I]f a congressional statute provides for extraterritorial or nationwide service of process, the district court has personal jurisdiction over all served within the extended territory of the district court." *Id.*

Pursuant to Section 754, "the territorial jurisdiction of the appointing court is extended to any district of the United States where property believed to be that of the receivership estate is found, provided that the proper documents have been filed in each district as required by § 754."

S.E.C. v. Wealth Mgmt. LLC, No. 09-C-506, 2011 WL 666095, at *1 (E.D. Wis. Feb. 15, 2011) (quoting *Haile*, 657 F.2d at 823); *see also S.E.C. v. Bilzerian*, 378 F.3d 1100, 1104 (D.C. Cir. 2004); *Cristell*, 2006 WL 316981, at *2. The “proper documents” required to be filed by Section 754 are “copies of the complaint and such order of appointment in the district court,” which must be filed “within ten days after the entry of [the Receiver’s] order of appointment.” 28 U.S.C. § 754; *see also Wealth Mgmt. LLC*, 2011 WL 666095, at *2. The filing of such papers “in another district within the statutory 10-day period acts to extend the receiver court’s personal jurisdiction over individuals in that district.” *Wealth Mgmt. LLC*, 2011 WL 666095, at *1; *see also S.E.C. v. Vision Commc’ns, Inc.*, 74 F.3d 287, 290-91 (D.C. Cir. 1996); *Haile*, 657 F.2d at 823; *Steinberg v. A Analyst Ltd.*, No. 04-60898-CIV, 2009 WL 838989, at *2 (S.D. Fl. Mar. 26, 2009).

Section 754’s companion statute, Section 1692, “provides for service of process in any such district where 754 filings are properly made.” *Cristell*, 2006 WL 316981, at *2.

Section 1692 states in relevant part:

In proceedings in a district court where a receiver is appointed for property, real, personal or mixed, situated in different districts, process may issue and be executed in any such district, but orders affecting the property shall be entered of record in each such district.

28 U.S.C. § 1692. This Court has already ruled that 28 U.S.C. § 754 subjects Receivership Assets to nationwide jurisdiction. [Docket No. 293.] *See also Quilling v. Stark*, No. 3:05-CV-1976-L, 2006 WL 1683442, at *3 (N.D. Tex. June 19, 2006) (Lindsay, J.) (finding that Sections 754 and 1692 “[t]ogether . . . give a receivership court both *in rem* and *in personam* jurisdiction in all districts where property of the receivership estate may be located.”); *Warfield v. Arpe*, No. 3:05-CV-1457-R, 2007 WL 549467, at *10-11 (N.D. Tex. Feb. 22, 2007) (Buchmeyer, J.) (“By enacting §§ 754 and 1692, Congress has extended the territorial jurisdiction of a receivership court to any district where property of the receivership may be located, as long as the receiver

complies with all statutory prerequisites to jurisdiction.”); *Cristell*, 2006 WL 316981, at *2; *Steinberg*, 2009 WL 838989, at *3; *Court-Appointed Receiver of Lancer Mgmt. Group LLC v. Lauer*, No. 05-60584-CIV, 2008 WL 906274, at *3 (S.D. Fl. Mar. 31, 2008).

ICANN claims that “there is no evidence that [t]he Receiver has filed any such required documents in California, where ICANN is located.” [Docket No. 728 at p. 6 n.4.] This is incorrect. On December 6, 2010,² the Receiver filed the required documents and established a miscellaneous action in the U.S. District Court for the Central District of California, where ICANN is located.³ *See Netsphere Inc., et al. v. Baron et al.*; Cause No. 2:10-MC-417; in the U.S. District Court for the Central District of California. The same day, the Receiver served ICANN with a copy of the *Notice of Filing Miscellaneous Action Per 28 U.S.C. § 754*. (A true and correct copy of the Receiver’s December 6, 2010, transmittal letter is attached hereto as Exhibit B.) Additionally, on December 7, 2010, the Receiver served ICANN with additional copies of the *Original Complaint* [Docket No. 1] and the *Order Appointing Receiver* [Docket No. 124]. (A true and correct copy of the December 7, 2010 transmittal letter is attached hereto as Exhibit C.) Contrary to ICANN’s contention, the Receiver complied with Section 754, thus extending this Court’s jurisdiction over ICANN.⁴

² ICANN asserts that, because he was appointed on November 24, 2010, the Receiver was required to file the Section 754 documents “by December 4, 2010.” [Docket No. 728 at p. 6 n.4.] However, December 4, 2010 was a Saturday, and December 6, 2010 (a Monday) was the “next day that is not a Saturday, Sunday, or legal holiday.” *See* FED. R. CIV. P. 6(a)(1)(C) (applicable “in computing any time period specified . . . in any statute that does not specify a method of computing time,” such as 28 U.S.C. § 754).

³ In its Response, ICANN states that its principal place of business is in Marina del Rey California, which is located in the Central District of California. [Docket No. 728 at p. 3.]

⁴ ICANN’s due process argument is moot since ICANN clearly knows about the Show Cause Order by way of the Response. Nonetheless, ICANN had notice of the Receiver’s intentions with regard to ICANN and the UDRP Claim well before issuance of the Show Cause Order. Specifically, on November 18, 2011, the Receiver requested in writing “that ICANN immediately instruct WIPO to observe the Stay of Proceedings [pursuant to the Order Appointing Receiver] and not proceed with any adjudication of the UDRP Claim for the pendency of the Receivership (the ‘Instruction’).” (A true and correct copy of the Receiver’s November 18, 2011 written request is attached hereto as Exhibit D.) On November 21, 2011, ICANN responded to the Receiver and refused to comply

2. *This Court has personal jurisdiction over ICANN.*

Even if the Court did not have jurisdiction over ICANN pursuant to 28 U.S.C. §§ 754 and 1692 (which it does), this Court still has personal jurisdiction over ICANN. A court will find personal jurisdiction over a party where two requirements are met: (1) the party “purposefully availed himself of the benefits and protections of the forum state by establishing ‘minimum contacts’ with that forum state”; and (2) “the exercise of jurisdiction over the nonresident defendant must not offend ‘traditional notions of fair play and substantial justice.’” *Gundle Lining Constr. Corp. v. Adams County Asphalt, Inc.*, 85 F.3d 201, 204-05 (5th Cir. 1996) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945)). “General jurisdiction” exists over a party who has “continuous and systematic general business contacts” with the forum state.” *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 484 (5th Cir. 2008) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S. Ct. 1868 (1984)). In determining whether the assertion of personal jurisdiction comports with “fair play and substantial justice,” courts may evaluate “the burden on defendant,” the forum State’s interest in adjudicating the dispute,” the moving party’s “interest in obtaining convenient and effective relief,” and “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 466-67, 105 S. Ct.

with the Instruction. (A true and correct copy of ICANN’s November 21, 2011 response is attached hereto as Exhibit E.)

On November 28, 2011, this Court issued its *Order Granting the Receiver’s Emergency Motion to Enforce Stay*, ordering *inter alia* that ICANN “immediately stay and abate the UDRP Proceeding On www.funnygames.com” (the “Stay Order”). [Docket No. 724.] Immediately, the Receiver served ICANN with the Stay Order. (A true and correct copy of the Receiver’s e-mail transmitting the order to ICANN is attached hereto as Exhibit F.) On November 29, 2011, ICANN transmitted correspondence to the Receiver contending *inter alia* it was not subject to the Court’s jurisdiction and, thus, did not have to comply with the Stay Order. (A true and correct copy of the letter ICANN’s November 29, 2011 correspondence with the Receiver is attached hereto as Exhibit G.)

2174, 2184 (1985). “These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.” *Id.*

a. ICANN has continuous and systematic contact with the forum state.

ICANN is “officially recognized by the U.S. Department of Commerce as the global, nonprofit consensus organization designed to carry on administration of the Internet name and address system.” *Id.*; *see also Sallen*, 273 F.3d at 20. ICANN “governs the assignment of Internet domain names, the allocation of Internet Protocol (IP) address space, and management of the Domain Name System (DNS) and Internet ‘root’ server.” *Parisi v. Netlearning, Inc.*, 139 F.Supp.2d 745, 746 n.2 (E.D. Va. 2001). Further, since October 1999, “ICANN has supervised a non-binding arbitral system [the UDRP] for resolving domain name disputes.” *Virtual Countries, Inc.*, 300 F.3d at 233. In short, and as this Court has noted, ICANN is “a nonprofit corporation that governs the Internet.” *Lockheed Martin Corp. v. Network Solutions, Inc.*, 141 F.Supp.2d 648, 651 (N.D. Tex. 2001) (McBryde, J.); *see also Compana LLC v. Mondial Assistance SAS*, No. 3:07-CV-1293-D, 2008 WL 190522, at *1 (N.D. Tex. Jan. 23, 2008) (Fitzwater, J.) (identifying ICANN as “the quasi-governmental body that regulates many aspects of the Internet”). Courts have found personal jurisdiction to exist over non-resident parties based upon contact with the forum state over the Internet. *See e.g., EDIAS Software Int’l, L.L.C. v. BASIS Int’l Ltd.*, 947 F. Supp. 413 (D. Ariz. 1996) (personal jurisdiction established over out-of-state defendant who posted allegedly defamatory statements on its website where court found postings caused injury in forum state).

b. A finding of personal jurisdiction over ICANN comports with fair play and substantial justice.

In determining whether personal jurisdiction in this case comports with “fair play and substantial justice,” this Court should note that “modern transportation and communication have

made it much less burdensome for a party . . . to defend himself in [another] State.” *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 423, 104 S. Ct. at 1876. Despite the fact it resides in California, ICANN has had no difficulty presenting its positions to this Court. [*See* Docket No. 728.] Further, having disputes relating to Receivership Assets (such as funnygames.com) managed in a single forum—*i.e.*, this Court, from which the Receivership arises—promotes “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies.” *See Rudzewicz*, 471 U.S. at 466-67, 105 S. Ct. at 2184 (1985). The alternative—having such disputes heard in whatever forum Receivership Assets happen to be located—is the least effective approach and weighs heavily against the Receiver’s considerable interest in obtaining “convenient and effective relief” in this forum. *Id.* The Receiver has advised the Court of the tight budgetary margins within which he is operating. [Docket No. 707.] Should he be forced to fight to protect Receivership Assets across multiple forums, the Receiver would face yet further strain on his ability to satisfy the Receivership’s liabilities at a time when the Receivership’s financial position is growing more and more precarious. [*Id.*] Undoubtedly, this Court shares the Receiver’s interest in the cost-effective management of the Receivership estate and in the protection of assets belonging to the Receivership as the *Rudzewicz* Court advises.

Respectfully submitted,

/s/ Barry M. Golden

Barry M. Golden

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**ATTORNEYS FOR THE RECEIVER,
PETER S. VOGEL**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on December 8, 2011.

/s/ Peter L. Loh

Peter L. Loh

Exhibit A

DECLARATION OF DAMON NELSON

I, Damon Nelson, state and declare as follows:

1. I have over 20 years of experience in computer programming, web design, and Internet business.
2. I served 18 months as the registrar for the domain names at issue as part of the bankruptcy proceedings for Ondova Limited Company ("Ondova"). My duties at Ondova included responding to hundreds of Uniform Domain Name Dispute Resolution Policy ("UDRP") actions, cease and desist demands, and complaints of trademark infringement. I am also familiar with the policies and operations of the Internet Corporation for Assigned Names and Numbers ("ICANN") and specifically how they concern UDRP proceedings.
3. I also manage my own domain name portfolio of approximately 400 domains containing websites for e-commerce, video, blogs, and "domain parking" and consults with clients concerning their online marketing campaigns.
4. I hold Bachelor of Science and Masters in Business Administration degrees from Texas A&M University with specific course emphasis in engineering, computer programming, marketing, and investing.
5. I am the Permanent Manager of Novo Point, LLC and Quantec, LLC, having been so appointed by the United States District Court for the Northern District of Texas (the "Court") in the matter styled *Netsphere, Inc., et al. v. Jeffrey Baron, et al.*, Civil Action No. 3:09-CV-0988-F (the "Lawsuit").
6. I believe that ICANN has the ability to instruct the World Intellectual Property Organization ("WIPO") to observe the Court's stay of the Lawsuit.
7. It is my understanding that ICANN created the UDRP which establishes the standards for resolving disputes concerning the registration and use of internet domain names.



See <http://www.icann.org/en/dndr/udrp/policy.htm>. It is also my understanding that only arbiters like WIPO that ICANN approves of can hear UDRP disputes. See <http://www.icann.org/en/dndr/udrp/approved-providers.htm>. It is also my understanding that ICANN reserves the right to change the UDRP and the arbiter accreditation process as well. See <http://www.icann.org/en/dndr/udrp/policy.htm>.

8. Thus, it is my belief that ICANN simply does not want to get involved in the UDRP proceeding regarding funnygames.com. I am not aware of anything preventing ICANN from instructing WIPO to stay the UDRP action against funnygames.com or risk endangering its accreditation as a UDRP arbiter.

9. An internet registrar is an ICANN-accredited organization which manages the reservation of domain names in accordance with ICANN policies. A company called Fabulous.com is the registrar for all of the Novo Point, LLC and Quantec, LLC domain names (including funnygames.com). Registrars are contractually obligated to abide by the UDRP decisions of ICANN-approved arbiters like WIPO. So, if WIPO issued a decision adverse to Novo Point, LLC that funnygames.com should be transferred to the complainant in the dispute, Fabulous.com would be obligated to transfer the domain under ICANN policy. Nevertheless, I believe that ICANN could direct Fabulous.com to disregard any adverse decision WIPO rendered against funnygames.com and allow for the transfer of the domain name to any Court-approved purchaser.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 8, 2011.


Damon Nelson

Exhibit B

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December 6, 2010

TO: Attached Distribution List

Re: Peter S. Vogel, Receiver; *Netsphere, Inc., et al. v. Jeffrey Baron, et al.*; Civil Action No. 3:09-cv-0988, In the United States District Court for the Northern District of Texas, Dallas Division.

To Whom It May Concern:

In connection with the appointment of Peter S. Vogel as Receiver over Jeffrey Baron in the above referenced matter, enclosed please find copies of the Notices of Filing Miscellaneous Action per 28 U.S.C. § 754 (the "Notices"), with copies of the Original Complaint and the Order Appointing Receiver in the above-referenced matter attached as exhibits (the "Exhibits"), filed in each of the following courts:

- 1) United States District Court for the District of Utah;
- 2) United States District Court for the District of Nevada;
- 3) United States District Court for the District of Wyoming;
- 4) United States District Court for the Central District of California;
- 5) United States District Court for the Northern District of California;
- 6) United States District Court for the Northern District of Ohio;
- 7) United States District Court for the District of Colorado;
- 8) United States District Court for the Eastern District of Virginia;
- 9) United States District Court for the Northern District of Alabama;
- 10) United States District Court for the District of the Virgin Islands;
- 11) United States District Court for the Western District of Texas (all divisions);
- 12) United States District Court for the Eastern District of Texas (all divisions); and

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13) United States District Court for the Southern District of Texas (all divisions).

Although all the Notices filed in the above-listed courts included the Exhibits, please note that the Notice of Filing Miscellaneous Action Per 28 U.S.C. § 754 filed in the Utah District Court is the only Notice enclosed in this correspondence that includes the Exhibits. This was done for purposes of volume.

You should also expect to be served shortly by the Receiver's local counsel with copies of the Notices of Filing Miscellaneous Action per 28 U.S.C. § 754, with copies of the Original Complaint and the Order Appointing Receiver in the above-referenced matter attached, filed in the U.S. District Courts for the Districts of South Dakota and Delaware.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Blakley", with a long horizontal flourish extending to the right.

John David Blakley

Encl.

December 6, 2010

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December 6, 2010

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December 6, 2010

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Exhibit C

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December 7, 2010

TO: Attached Distribution List

Re: Peter S. Vogel, Receiver; *Netsphere, Inc., et al. v. Jeffrey Baron, et al.*; Civil Action No. 3:09-cv-0988, In the United States District Court for the Northern District of Texas, Dallas Division (the "Court").

To Whom It May Concern:

In connection with the appointment of Peter S. Vogel as Receiver (the "Receiver") over Jeffrey Baron in the above referenced matter, enclosed please find copies of the Original Complaint and the Order Appointing Receiver in the above-referenced matter.

Sincerely,

Peter Loh w/p JDB

Peter L. Loh

Encl.

December 6, 2010

Page 2

DISTRIBUTION LIST:

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Exhibit D

BLAKLEY, JOHN DAVID

From: LOH, PETER
Sent: Friday, November 18, 2011 11:01 AM
To: 'khalil.rasheed@icann.org'
Cc: 'domain.disputes@wipo.intl'; 'arbiter.mail@wipo.int'; VOGEL, PETER; GOLDEN, BARRY; BLAKLEY, JOHN DAVID; LOH, PETER
Subject: URGENT: Request of U.S. Court-Appointed Receiver for Stay of WIPO Action
Attachments: 11.18.11 Peter S. Vogel, Receiver Letter to Khalil Rasheed re funnygames.com.pdf; image001.png

Mr. Rasheed,

Please find attached to this e-mail **urgent** correspondence from Peter S. Vogel, court-appointed Receiver over Novo Point, LLC, requesting ICANN instruct WIPO to observe the stay of certain proceedings (including proceedings relating to the ownership of Receivership Assets such as funnygames.com) put in place by the U.S. District Court for the Northern District of Texas.

The attached correspondence requires your immediate attention and response, as a complaint has been filed with WIPO regarding the ownership of funnygames.com.

A copy of the attached correspondence is also being sent to your office via Federal Express.

Peter L. Loh | Partner
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000 | Dallas, TX 75201
214.999.4391 direct
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GARDERE

attorneys and counselors ■ www.gardere.com

Peter S. Vogel

Direct Phone: 214-999-4422

Direct Fax: 214-999-3422

Email: pvogel@gardere.com

November 18, 2011

Mr. Khalil Rasheed
ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292

Via Federal Express and E-mail (khalil.rasheed@icann.org)

Re: Request of Peter S. Vogel, Receiver (the "Receiver") over Novo Point, LLC ("Novo Point"), true registrant of funnygames.com (the "Domain"), to stay the Complaint submitted to the World Intellectual Property Organization ("WIPO") Arbitration and Mediation Center by Tibaco Beheer B.V. ("Tibaco") relating to the Domain.

Dear Mr. Rasheed:

On November 24, 2010, in a matter styled as *Netsphere, Inc., et al. v. Jeffrey Baron, et al.*; Civil Action No. 3:09-cv-0988 (the "Lawsuit"), the United States District Court for the Northern District of Texas (the "Court") appointed the undersigned Receiver over an individual named Jeff Baron and various corporate entities. A true and correct copy of the Court's *Order Appointing Receiver* (the "Receiver Order") is attached to this letter as Attachment 1. The Receivership Order grants the Receiver exclusive control over certain "Receivership Parties" and all of the assets held by those Receivership Parties, *i.e.*, the "Receivership Assets." (See Attachment 1 at pp. 1-3.) On December 17, 2010, the Court issued an order (the "Novo Point Order") declaring that "the Receiver Order's definition of Receivership Parties has always included Novo Point, LLC." Accordingly, the undersigned is the duly-appointed Receiver over Novo Point and the assets held by Novo Point are Receivership Assets. A true and correct copy of the Novo Point Order is attached to this letter as Attachment 2.

Novo Point is the true registrant of, and therefore holds as its asset, the Domain. Accordingly, the Domain is a Receivership Asset under the exclusive control of the Receiver by order of the Court. The Receiver Order directs the Receiver to conserve, hold, and protect all Receivership Assets. (See Attachment 1 at pp. 7-8.) The Receiver Order further provides that, except by leave of the Court, proceedings relating to ownership and rights to Receivership Assets, such as that of the Domain, shall be **stayed** during the pendency of the Receivership:

During the pendency of the receivership . . . all other persons and entities aside from the Receiver are hereby stayed from taking any action to establish or enforce any claim, right, or interest . . . against . . . the Receivership Party [or its] . . . assets . . . including, but not limited to . . . [c]ommencing, prosecuting, continuing, entering, enforcing any suit or proceeding . . . or [d]oing any act or thing whatsoever to interfere with the Receiver[']s . . . management of the assets .

GARDERE WYNNNE SEWELL LLP

3000 Thanksgiving Tower, 1601 Elm Street, Dallas, Texas 75201-4761 ■ 214.999.3000 Phone ■ 214.999.4667 Fax
Austin ■ Dallas ■ Houston ■ Mexico City

Mr. Khalil Rasheed
November 18, 2011
Page 2

. . . or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets . . . of the Receivership Party.

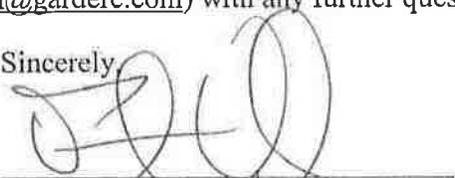
(the "Stay on Proceedings"). (See Attachment 1 at pp. 12-13.)

On November 16, 2011, the Receiver became aware that Tibera submitted its Complaint to WIPO for decision in accordance with the Uniform Domain Name Dispute Resolution Policy, approved by ICANN, bearing the caption *Tibaco Beheer B.V. De Zaale 11 5612 AJ Eindhoven The Netherlands v. Identity Protected By Whois Privacy Services Pty Ltd, Customer ID: 41323079999371*, and regarding the ownership and other rights relating to the Domain (the "Complaint"). A true and correct copy of the Complaint is attached to this letter as Attachment 3. The Complaint alleges that the Domain infringes certain alleged trademark rights in violation of Uniform Domain Name Dispute Resolution Policy and seeks transfer of the Domain's registration from Receivership Party Novo Point to the complainant. (*Id.* at pp. 8-9.) Notably, the Complaint goes so far as to recognize the entry of the Receiver Order, my appointment as Receiver, and Novo Point as the current registrant of the Domain. (See *id.* at p. 4.)

Because the Domain is a Receivership Asset, subject to my exclusive control as Receiver over Novo Point, the filing of the Complaint violates the Stay of Proceedings. Accordingly, I hereby respectfully request that ICANN immediately instruct WIPO to observe the Stay of Proceedings and not proceed with any adjudication of the Complaint or any other actions concerning the ownership or other rights relating to the Domain for the pendency of the Receivership (the "Instruction"). If ICANN does not confirm the Instruction in writing on or before 12:00 p.m. CST on Monday, November 21, 2011, the undersigned will seek any and all legal remedies at his disposal to enforce the Stay on Proceedings.

Please give this matter your immediate attention and contact the undersigned or his counsel (Peter Loh at (214) 999-4391 or ploh@gardere.com) with any further questions.

Sincerely



Peter S. Vogel, Receiver

PSV: jdb
Enclosures

Mr. Khalil Rasheed
November 18, 2011
Page 3

c: *Via Federal Express and E-mail* (domain.disputes@wipo.int)

WIPO Arbitration and Mediation Center
34, chemin des Colombettes
P.O. Box 18
1211 Geneva 20
Switzerland

Via Federal Express and Facsimile (212-963-4801)

WIPO Coordination Office
2 UN Plaza, Suite 2525
New York, NY 10017

Attachment 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

ONDOVA LIMITED COMPANY,

Debtor.

§
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§

Case No. 3:09-cv-0988

ORDER APPOINTING RECEIVER

The Court hereby appoints a receiver and imposes an ancillary relief to assist the receiver as follows:

APPOINTMENT OF RECEIVER

IT IS HEREBY ORDERED that Peter Vogel is appointed Receiver for Jeffrey Baron with the full power of an equity receiver. The Receiver shall be entitled to possession and control over all Receivership Assets, Receivership Parties and Receivership Documents as defined herein, and shall be entitled to exercise all powers granted herein.

RECEIVERSHIP PARTIES, ASSETS, AND RECORDS

IT IS FURTHER ORDERED that the Court hereby takes exclusive jurisdiction over, and grants the Receiver exclusive control over, any and all "Receivership Parties", which term shall include Jeffrey Baron and the following entities:

- Village Trust, a Cook Islands Trust
- Equity Trust Company IRA 19471
- Daystar Trust, a Texas Trust
- Belton Trust, a Texas Trust
- Novo Point, Inc., a USVI Corporation
- Iguana Consulting, Inc., a USVI Corporation
- Quantec, Inc., a USVI Corporation
- Shiloh, LLC, a Delaware Limited Liability Company
- Novquant, LLC, a Delaware Limited Liability Company
- Manassas, LLC, a Texas Limited Liability Company
- Domialn Jamboree, LLC, a Wyoming Limited Liability Company
- ID Genesis, LLC, a Utah Limited Liability Company

and any entity under the direct or indirect control of Jeffrey Baron, whether by virtue of ownership, beneficial interest, a position as officer, director, power of attorney or any other

authority or right to act. The Court hereby enjoins any person from taking any action based upon any presently existing directive from any person other than the Receiver with regard to the affairs and business of the Receivership Parties, including but not limited to proceeding with the transfer of a portfolio of internet domain names ("Domain Names") for which Ondova Limited Company ("Ondova") acted as registrar. Specifically, but without limitation, VeriSign Inc and The Internet Corporation for Assigned Names and Numbers ("ICANN"), and any other entity connected to the transfer of the Domain Names, shall immediately cease such efforts and shall terminate any movement of the Domain Names.

IT IS FURTHER ORDERED that the Court hereby takes exclusive jurisdiction over, and grants the Receiver exclusive control over, any and all "Receivership Assets", which term shall include any and all legal or equitable interest in, right to, or claim to, any real or personal property (including "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code)), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located, and further including any legal or equitable interest in any trusts, corporations, partnerships, or other legal entities of any nature, that are:

1. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to, any Receivership Party;
2. in the actual or constructive possession of any Receivership Party; or
3. in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Receivership Party, including, but not limited to, any assets held by or for any Receivership Party in any account at any bank or savings and loan institution, or with any credit card processing agent, automated clearing house processor, network transaction processor,

bank debit processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, retirement fund custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind, either within or outside of the State of Texas.

IT IS FURTHER ORDERED that the Receiver shall be entitled to any document that any Receivership Party is entitled to possess as of the signing of this order ("Receivership Documents").

IT IS FURTHER ORDERED that all persons who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Receivership Assets.

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Receivership Party, or subject to access by any Receivership Party or under any Receivership Party's control, without providing the Receiver prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section;

C. Cashing any checks or depositing any payments from customers or clients of a Receivership Party;

D. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Receivership Party; or

E. Incurring liens or encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Receivership Party or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Receivership Party.

F. The funds, property, and assets affected by this Order shall include both existing assets and assets acquired after the effective date of this Order.

IT IS FURTHER ORDERED that any financial institution, business entity, or person maintaining or having custody or control of any account or other asset of any Receivership Party, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Receivership Party, which is served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the assets, funds, documents, or other property held by, or under its control:

1. on behalf of, or for the benefit of, any Receivership Party;
2. in any account maintained in the name of, or for the benefit of, or subject to withdrawal by, any Receivership Party; and
3. that are subject to access or use by, or under the signatory power of, any Receivership Party.

B. Deny any person other than the Receiver or his designee access to any safe deposit boxes or storage facilities that are either:

1. titled in the name, individually or jointly, of any Receivership Party; or
2. subject to access by any Receivership Party.

C. Provide the Receiver an immediate statement setting forth:

1. The identification number of each account or asset titled in the name, individually or jointly, of any Receivership Party, or held on behalf thereof, or for the benefit thereof, including all trust accounts managed on behalf of any Receivership Party or subject to any Receivership Party's control;

2. The balance of each such account, or a description of the nature and value of such asset;
3. The identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Receivership Party, whether in whole or in part; and
4. If the account, safe deposit box, storage facility, or other asset has been closed or removed, the date closed or removed and the balance on said date.

D. Immediately provide the Receiver with copies of all records or other documentation pertaining to each such account or asset, including, but not limited to, originals or copies of account applications, account statements, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

E. Immediately honor any requests by the Receiver with regard to transfers of assets to the Receiver or as the Receiver may direct.

DUTIES OF DEFENDANTS REGARDING ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that Defendants shall:

A. Within three business days following service of this Order, take such steps as are necessary to turn over control to the Receiver and repatriate to the Northern District of Texas all Receivership Documents and Receivership Assets that are located outside of the Northern District of Texas and are held by or for the Receivership Parties or are under the Receivership Parties' direct or indirect control, jointly, severally, or individually;

B. Within three business days following service of this Order, provide Plaintiff and the Receiver with a full accounting of all Receivership Documents and Receivership Assets wherever located, whether such Documents or Assets held by or for any Receivership Party or are under any Receivership Party's direct or indirect control, jointly, severally, or individually, including the addresses and names of any foreign or domestic financial institution or other entity

holding the Receivership Documents and Receivership Assets, along with the account numbers and balances; and

D. Immediately following service of this Order, provide Plaintiff and the Receiver access to Defendants' records and Documents held by Financial Institutions or other entities, wherever located.

POWERS AND DUTIES OF RECEIVER

IT IS FURTHER ORDERED that the Receiver shall immediately present a sworn statement that he will perform his duties faithfully and shall post a cash deposit or bond in the amount of \$1,000.

IT IS FURTHER ORDERED that in addition to all powers granted in equity to receivers, the Receiver shall immediately have the following express powers and duties:

A. To have immediate access to any business premises of the relevant Receivership Party, and immediate access to any other location where the relevant Receivership Party has conducted business and where property or business records are likely to be located.

B. To assume full control of the relevant Receivership Party by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee or agent of the Receivership Party, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Party;

C. To take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody or under the control of, the relevant Receivership Party, wherever situated, including without limitation all paper documents and all electronic data and devices that contain or store electronic data including but not limited to computers, laptops, data storage devices, back-up tapes, DVDs, CDs, and thumb drives and all other external storage devices and, as to equipment in the possession or under the control of the Receivership Parties,

all PDAs, smart phones, cellular telephones, and similar devices issued or paid for by the Receivership Party.

D. To act on behalf of the relevant Receivership Party and, subject to further order of the Court, to have the full power and authority to take all corporate actions, including but not limited to, the filing of a petition for bankruptcy as the authorized responsible person as to the relevant Receivership Party, dissolution of the Receivership Party, and sale of the Receivership Party.

E. To divert mail.

F. To sue for, collect, receive, take in possession, hold, and manage all assets and documents of the relevant Receivership Party and other persons or entities whose interests are now held by or under the direction, possession, custody or control of the Receivership Party.

G. To investigate, conserve, hold, and manage all Receivership Assets, and perform all acts necessary or advisable to preserve the value of those assets in an effort to prevent any irreparable loss, damage or injury to consumers or to creditors of the relevant Receivership Party including, but not limited to, obtaining an accounting of the assets, and preventing transfer, withdrawal or misapplication of assets.

H. To enter into contracts and purchase insurance as advisable or necessary.

I. To prevent the inequitable distribution of assets and determine, adjust, and protect the interests of creditors who have transacted business with the relevant Receivership Party.

J. To manage and administer the business of the relevant Receivership Party until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which include retaining, hiring, or dismissing any employees, independent contractors, or agents.

K. To choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists (collectively, "Professionals"), as each

Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order.

L. To make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order.

M. To institute, compromise, adjust, defend, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that each Receiver deems necessary and advisable to preserve or recover the assets of the relevant Receivership Party or that each Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including but not limited to, the filing of a petition for bankruptcy.

N. To conduct investigations and to issue subpoenas to obtain documents and records pertaining to, or in aid of, the receivership, and conduct discovery in this action on behalf of the receivership estate.

O. To consent to the dissolution of the receivership in the event that the Plaintiff may compromise the claim that gave rise to the appointment of the Receiver, provided, however, that no such dissolution shall occur without a motion by the Plaintiff and service provided by the Plaintiff upon all known creditors at least thirty days in advance of any such dissolution.

LIMITATION OF RECEIVER'S LIABILITY

IT IS FURTHER ORDERED that except for an act of gross negligence, the Receiver and the Professionals shall not be liable for any loss or damage incurred by any of the Receivership Parties, their officers, agents, servants, employees and attorneys or any other person, by reason of any act performed or omitted to be performed by the Receiver and the Professionals in connection with the discharge of his or her duties and responsibilities. Additionally, in the event of a discharge of the Receiver either by dissolution of the receivership or order of this Court, the Receiver shall have no further duty whatsoever.

PROFESSIONAL FEES

IT IS FURTHER ORDERED that each Receiver and his professionals, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, which compensation shall be derived exclusively from the assets now held by, or in the possession or control of, or which may be received by the relevant Receivership Party or which are otherwise recovered by the Receiver, against which the Receiver shall have a first and absolute administrative expense lien. The Receiver shall file with the Court and serve on the parties a fee application with regard to any compensation to be paid to professionals prior to the payment thereof.

COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED that the Defendants and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the relevant Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic account, or digital file or telephonic data in any medium; turning over all accounts, files, and records including those in possession or control of attorneys or accountants;

and advising all persons who owe money to the Receivership Party that all debts should be paid directly to the relevant Receiver. Defendants are hereby temporarily restrained and enjoined from directly or indirectly:

- A. Transacting any of the business of the Receivership Party;
- B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Party including, but not limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, or any other papers of any kind or nature;
- C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Party or the Receiver;
- D. Drawing on any existing line of credit available to Receivership Party;
- E. Excusing debts owed to the Receivership Party;
- F. Failing to notify the relevant Receiver of any asset, including accounts, of the Receivership Party held in any name other than the name of any of the Receivership Party, or by any person or entity other than the Receivership Party, or failing to provide any assistance or information requested by the relevant Receiver in connection with obtaining possession, custody or control of such assets;
- G. Doing any act that would, or failing to do any act which failure would, interfere with the relevant Receiver's taking custody, control, possession, or management of the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Party; or to refuse to cooperate with the relevant Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court; and

H. Filing, or causing to be filed, any petition on behalf of the Receivership Party for relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (2002), without prior permission from this Court.

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within such period as may be permitted by the Receiver, Defendants or any other person or entity shall transfer or deliver possession, custody, and control of the following to the relevant Receiver:

1. All assets of the Receivership Party, including, without limitation, bank accounts, web sites, buildings or office space owned, leased, rented, or otherwise occupied by the Receivership Party;

2. All documents of the Receivership Party, including, but not limited to, books and records of accounts, legal files (whether held by Defendants or their counsel) all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents, and other papers;

3. All of the Receivership Party's accounting records, tax records, and tax returns controlled by, or in the possession of, any bookkeeper, accountant, enrolled agent, licensed tax preparer or certified public accountant;

4. All loan applications made by or on behalf of Receivership Party and supporting documents held by any type of lender including, but not limited to, banks, savings and loans, thrifts or credit unions;

5. All assets belonging to members of the public now held by the Receivership Party; and

6. All keys and codes necessary to gain or secure access to any assets or documents of the Receivership Party including, but not limited to, access to their business premises, means of communication, accounts, computer systems or other property;

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may file ex parte an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receivers. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document or other thing and to deliver it to the Receivers.

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, leasing companies, landlords, ISOs, credit and debit card processing companies, insurance agents, insurance companies, commodity trading companies or any other person, including relatives, business associates or friends of the Defendants, or their subsidiaries or affiliates, holding assets of the Receivership Party or in trust for Receivership Party shall cooperate with all reasonable requests of each Receiver relating to implementation of this Order, including freezing and transferring funds at his or her direction and producing records related to the assets of the relevant Receivership Party.

STAY OF ACTIONS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during the pendency of the receivership ordered herein, all other persons and entities aside from the Receiver are hereby stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Party, any of their partnerships, assets, documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;

2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody or control of any asset; attempting to foreclose, forfeit, alter or terminate any interest in any asset, whether such acts are part of a judicial proceeding or are acts of self-help or otherwise;

3. Executing, issuing, serving or causing the execution, issuance or service of, any legal process including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; and

4. Doing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Party;

B. This Order does not stay:

1. The commencement or continuation of a criminal action or proceeding;

and

2. Except as otherwise provided in this Order, all persons and entities in need of documentation from the Receiver shall in all instances first attempt to secure such information by submitting a formal written request to the relevant Receiver, and, if such request has not been responded to within 30 days of receipt by the Receiver, any such person or entity may thereafter seek an Order of this Court with regard to the relief requested.

JURISDICTION

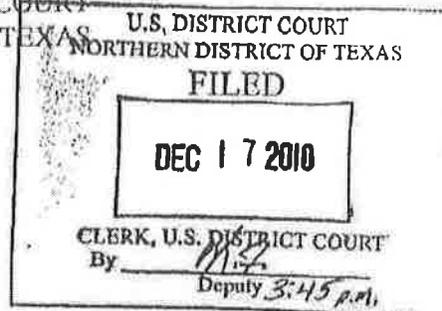
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this th 24 day of November, 2010

Reejae Ferguson
JUDGE/PRESIDING

Attachment 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



NETSPHERE, INC.,
MANILA INDUSTRIES., INC., AND
MUNISH KRISHAN

PLAINTIFFS,

V.

JEFFREY BARON AND
ONDOVA LIMITED COMPANY,

DEFENDANTS.

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CIVIL ACTION NO. 3:09-CV-0988-F

**ORDER GRANTING THE RECEIVER'S MOTION
TO CLARIFY THE RECEIVER ORDER
WITH RESPECT TO NOVO POINT, LLC AND QUANTEC, LLC**

CAME ON TO BE HEARD, the Receiver Peter S. Vogel's Motion to Clarify the Receiver Order. The Court considered the Motion and finds as follows:

On November 24, 2010, the Court issued an order appointing Peter S. Vogel as the Receiver for Defendant Jeffrey Baron (the "Receiver Order"). [Docket #124.] The Court declares that the Receiver Order's definition of Receivership Parties has always included Novo Point, LLC and Quantec, LLC (the "Clarification").

The Court further clarifies that, based on the Clarification, the Receiver Order requires that the Receiver Parties (including, without limitation Novo Point, LLC and Quantec, LLC, as well as any individuals representing them) comply with all reasonable instructions given to them by the Receiver relating to the Receiver Order, the Receivership Parties, the Receiver Assets, and the Professionals, including, without limitation, instructions relating to the Receiver's efforts to obtain and maintain access to the Receiver Assets ("Further Clarification").

As specific examples of the Further Clarification (although these are merely examples, and not to be construed as limitations of the Further Clarification), the Court ORDERS that the following shall occur:

1. Jeff Harbin shall meet with counsel for the Receiver at an agreed upon time within one week of the date of this Order, at BBVA Compass Bank, 2301 Cedar Springs Road, Dallas, Texas 75201. Once at the bank, Jeff Harbin shall immediately execute whatever documents Receiver's counsel deem(s) necessary, including documents to effectuate the process for the Receiver and his counsel to obtain joint access to the Receiver Assets, including, without limitation, joint access to the following accounts: checking account #XXXXXX1315 at BBVA Compass, in the name of Novo Point, LLC; checking account #XXXXXX1323 at BBVA Compass, in the name of Quantec, LLC; ~~checking account #XXXXXX4043 at BBVA Compass,~~ ~~in the name of Quasar Services, LLC;~~ and ~~checking account #XXXXXX4027 at BBVA~~ ~~Compass.~~ ^{pe} ₆ Jeff Harbin shall not withdraw funds, issue checks, make other payments or enter ~~or~~ into or execute any contracts (written or oral) or in any way obligate Novo Point, LLC and/or Quantec, LLC in any other way, above the amount of \$3,000.00 (THREE THOUSAND DOLLARS) without the express written or e-mail authorization by the Receiver or his counsel, and the account shall be set up with the bank with those same restrictions (*i.e.*, permitting the Receiver or his counsel to withdraw funds, issues checks, or make payments above \$3,000 without Mr. Harbin's signature, but not permitting Mr. Harbin to withdraw funds, issue checks, or make payments above \$3,000 without the Receiver's or the Receiver's Counsel's signature). On or before the tenth day of each month, Mr. Harbin shall provide the Receiver and his counsel with a full and complete written accounting for the previous month of all of the accounts

identified in this paragraph, including, all transactions (regardless of whether the transactions involved more or less than \$3,000) and including among other things, (a) an accounting of all withdrawals from any and all of these accounts, (b) checks issued from any and all of these accounts, (c) payments made to any and all of these accounts, (d) deposits into any and all of these accounts, (e) contracts (written or oral) entered into on behalf of Quantec, LLC or Novo Point, LLC, and (f) any other obligations entered into on behalf of Quantec, LLC or Novo Point, LLC.

2. Jeff Harbin shall report to the Receiver and his counsel all communications with Jeff Baron within 48 hours after such communications occur.

pl 3. Jeff Harbin shall provide to the Receiver and his counsel all written and e-mail communications occurring since the date of this Order to or from (a) Jeff Baron, (b) Gary Schepps, (c) any other attorney representing Jeff Baron, (d) any other individual purporting to represent or act on behalf of Jeff Baron, (e) Mike Robertson, or (f) any other employee, representative, contractor, or agent of Fabulous.com or any other registrar.

pl 4. The Receiver shall have the right to terminate Jeff Harbin immediately (meaning at any time and without prior notice) if the Receiver reasonably believes that Jeff Harbin is not acting in the best interests of Quantec, LLC or Novo Point, LLC, or if the Receiver reasonably believes that Jeff Harbin is not complying with this Order or is working in conjunction with Jeff Baron to obstruct the Receiver from complying with the Receiver Order dated November 24, 2010.

5. Jeff Harbin shall immediately execute whatever documents Receiver's counsel deem(s) necessary to effectuate the process of the Receiver and his counsel obtaining sole access to all other *domestic* accounts comprising the Receiver Assets, including, without limitation: Roth Conversion IRA account #XXXXXXXXXX0491 at Dreyfus Investments, in the name of the Bank of New York Mellon Cust f/b/o Jeffrey D. Baron; IRA account #U647003 at Delaware Charter Guarantee & Trust d/b/a Principal Trust Company, in the name of Jeff Baron; Roth IRA account #XXX55 at Sterling Trust Company, in the name of Jeff Baron; money market account #XXXX9290 at Las Colinas Federal Credit Union, in the name of Jeff D. Baron; Roth IRA account #XX471 at Equity Trust Company, in the name of Jeffrey Baron; account #XXX-XXX236 with TD Ameritrade, in the name of Jeffrey Baron; money market account #XX-XXXXX0893 at American Century Investments, in the name of Jeffrey D. Baron; checking account #XXXXXXXX9614 at Capital One Bank, in the name of Jeffrey D. Baron; money market account #XXXXXXXX5908 at Capital One Bank, in the name of Jeffrey D. Baron; savings account #XXXXXXXX0961 at Capital One Bank, in the name of Jeffrey D. Baron; money market account #XXXX-XXXXXX7102 at Dreyfus Investments, in the name of Jeffrey D. Baron; money market account #XXX-XXXXXX1818 at Evergreen Investments, in the name of Jeffrey D. Baron; checking account #XXXXXXXX5728 at Hibernia National Bank, in the name of Jeffrey D. Baron; international stock index fund account #XXXX-XXXXXXXX7792 at The Vanguard Group, in the name of Jeffrey D. Baron; checking account #XXXXXXXX1261 at Woodforest National Bank, in the name of Jeffrey D. Baron; CD account #CDXXXXXXXX1063 at Woodforest National Bank, in the name of Jeffrey D. Baron; CD account #CDXXXXXXXX1064 at Woodforest National Bank, in the name of Jeffrey D. Baron; CD account #CDXXXXXXXX1065

at Woodforest National Bank, in the name of Jeffrey D. Baron; CD account #CDXXXXXX2223 at Woodforest National Bank, in the name of Jeffrey D. Baron; CD account #CDXXXXXX7831 at Woodforest National Bank, in the name of Jeffrey D. Baron; commercial checking account #XXXXXXX1811 at NetBank, in the name of Compana LLC; checking account #XXXXXXX3093 at Bank of America, in the name of Diamond Key, LLC; Roth IRA account #XXX-XX1396 at Mid-Ohio Securities Corporation, in the name of Equity Trust Co. Cust IRA of Jeffrey Baron; checking account #XXXXXXX8930 at Bank of America, in the name of Manassas, LLC; checking account #XXXX7068 at Park Cities Bank, in the name of Manassas, LLC; checking account #XXXX1121 at Park Cities Bank, in the name of Novo Point, LLC; account #XXXX3100 at Las Colinas Federal Credit Union, in the name of Ondova Limited Company; and checking account #XXXX1618 at Park Cities Bank, in the name of Quantec, LLC (collectively, the "Baron Domestic Accounts"). For example, but not to be taken as a limitation, Jeff Harbin shall execute immediately upon their presentation letters drafted by the Receiver to each of the aforementioned financial institutions maintaining the Baron Domestic Accounts instructing them immediately to direct any and all funds in Baron Domestic Accounts to the one or more of the accounts identified in paragraph 1 of this Order.

6. Jeff Harbin shall immediately execute whatever documents Receiver's counsel deem(s) necessary to effectuate the process of the Receiver and his counsel obtaining sole access to all *non-domestic* accounts comprising the Receiver Assets, including, without limitation, all accounts located in the Cook Islands that are owned, controlled or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to any Receivership Party or any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or

controlled by, or under common control with, any Receivership Party, including, without limitation, Southpac Trust Limited, The Village Trust, Quantec, LLC, Iguana Consulting, LLC, Novo Point, LLC, Iguana Consulting, Inc., and Quantec, Inc. ("Cook Island Accounts"). For example, but not to be taken as a limitation, Jeff Harbin shall execute immediately upon their presentation letters drafted by the Receiver to Brian Mason and Tine Faasili Poni^a at Southpac Trust Limited and Adrian Taylor at Asiacititrust with instructions relating to any and all Cook Island Accounts managed, controlled by, held by, subject to access by Southpac Trust Limited ("Southpac Trust Limited Accounts"), including a copy of this Order and instructions from Mr. Harbin that Brian Mason, Tine Faasili Ponia, or anyone working for or with either of them including Adrian Taylor at Asiacititrust shall (a) not withdraw any amounts from the Southpac Trust Limited Accounts, (b) not transfer any amounts from those Southpac Trust Limited Accounts, (c) not close the Southpac Trust Limited Accounts, and (d) to take all actions necessary to allow the Receiver and his counsel to gain sole access to and withdraw funds from the Southpac Trust Limited Accounts and direct said funds to one or more of the accounts identified in paragraph 1 of this Order. Nothing in this Order shall be construed either as evidencing or not evidencing that Jeff Harbin, Novo Point, LLC and/or Quantec, LLC are or are not in control of any of the trusts (*i.e.*, the Court is not issuing a ruling at this time as to whether Jeff Harbin, Novo Point, LLC, or Quantec LLC control any of the trusts). Likewise Mr. Harbin's, Novo Point, LLC's and/or Quantec LLC's^x compliance with this Order and/or the Receiver's instructions shall not be construed either as evidencing or not evidencing that any of Jeff Harbin, Novo Point, LLC and/or Quantec, LLC are or are not in control of any of the trusts.

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7. Jeff Harbin shall immediately execute whatever documents the Receiver or his counsel deem(s) necessary to divert funds to be transferred *by* certain revenue sources (including, but not limited to Netsphere, Hitfarm, Namedrive, Firstlook, Parked, DDC.com, Domainsponsor.com, SEDO, and Trellian / Above) ("Revenue Sources"), *from* whatever accounts the Revenue Sources were currently sending funds *to* one or more of the accounts identified in paragraph 1 of this Order. Further, but not to be taken as a limitation, Jeff Harbin shall immediately upon their presentation execute letters drafted by the Receiver to any internet domain name monetizers instructing the same to direct all funds immediately to one or more of the accounts identified in paragraph 1 of this Order. Mr. Harbin shall not divert or cause to be diverted any funds *by* the Revenue Sources *from* any of the accounts identified in paragraph 1 of this Order *to* any other accounts without prior written or e-mail authorization from the Receiver or his counsel.

8. Without prior written or e-mail authorization of the Receiver or his counsel, Jeff Harbin shall not attempt to retain or terminate any of the Receiver's Professionals, or any employees, contractors, or other service providers of Quantec, LLC or Novo Point, LLC, including, without limitation, hire or fire attorneys, CPAs, consultants, or the like. pe ✓

9. By 9:00 a.m. on December 28, 2010, Thomas Jackson and Joshua Cox shall both file a sworn statement to the Court setting forth the following information and copies of written documents sufficient to evidence these materials for legal services:

- a. Whom do you purport to represent.
- b. When did you commence that representation?
- c. What is the name of the individual who retained you to represent that party(ies)?
- d. Whether you have been paid a retainer, the amount of the retainer, and the account from which the retainer payment was drawn.

10. By 9:00 a.m. on December 28, 2010, Thomas Jackson, Joshua Cox, James Eckels, and Jeff Harbin, and shall each file a sworn statement to the Court setting forth the following information and copies of written documents sufficient to evidence these materials for legal

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 service:
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- a. The amounts you have received from any Receivership Parties since the date of the Receiver Order ("Post Receiver Order Payments").
- b. Who provided you with the Post Receiver Order Payments.
- c. The account from which the Post Receiver Order Payments was drawn.

If any of these ORDERS are not strictly followed, the Court ORDERS that the Receiver file a SHOW CAUSE MOTION FOR CONTEMPT.

SO ORDERED.

DATED: 12/17/2010


 U.S. District Judge Royal Ferguson

Attachment 3

Before the:

WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER

TIBACO BEHEER B.V.
De Zaaie 11
5612 AJ Eindhoven
the Netherlands

(Complainant)

-v-

Identity protected by Whois Privacy
Services PTY LTD., customer ID:
41323079999371.

(Respondent)

Disputed Domain Name:

www.funnygames.com

COMPLAINT

(Rules, Paragraph 3(b); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

I. Introduction

1. This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), approved by ICANN on October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

II. The Parties

A. The Complainant

(Rules, Paragraphs 3(b)(ii) and (iii))

2. The Complainant in this administrative proceeding is Tibaco Beheer B.V., a private limited liability company incorporated under Dutch law.

3. The Complainant's contact details are:

Address: *P.O. Box 80, 5600 AB Eindhoven, the Netherlands*
Telephone: *+31 (0)40 239 06 80*
Fax: *+31 (0)40 239 06 81*
E-mail: *teun@tibaco.nl*

4. The Complainant's authorized representative in this administrative proceeding is:

Name: *Anastasia I. Chistyakova*
Firm: *CMS Derks Star Busmann N.V.*
Address: *P.O. Box 85250, 3508 AG Utrecht, the Netherlands*
Telephone: *+31 (0)30 21 21 528*
Fax: *+31 (0)30 21 21 157*
E-mail: *anastasia.chistyakova@cms-dsb.com*

5. The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: *e-mail*
Address: *anastasia.chistyakova@cms-dsb.com*
Contact: *Anastasia I. Chistyakova*

Material including hardcopy (where applicable)

Method: *fax*
Address: *P.O. Box 85250, 3508 AG Utrecht, the Netherlands*
Fax: *+31 (0)30 21 21 157*
Contact: *Anastasia I. Chistyakova*

B. The Respondent
(Rules, Paragraph 3(b)(v))

6. According to DomainTools (<http://whois.domaintools.com>), the identity of the Respondent in this administrative proceeding is protected by Whois Privacy Service

PTY LTD. A copy of the printout of the database search conducted on the 2nd of November 2011 is provided as Annex 1.

7. The information disclosed in the WhoIs database search regarding how to contact the Respondent is as follows:

Name: *Whois Privacy Service PTY LTD.*
Address: *P.O. Box 923, Fortitude Valley QLD 4006, Australia*
Telephone: *+61 73 007 0090*
Fax: *+61 73 007 0091*
E-mail: *41323079999371.06d896@whoisprivacyservice.com.au*

Furthermore, in the correspondence with Whois Privacy Service PTY LTD, the following customer ID of the Respondent should be included: 41323079999371.

8. Complainant has previously attempted to contact the registrar Fabulous.com to obtain contact details of the Respondent. In response to its request the Complainant was contacted by a certain Joshua Cox, informing the Complainant that the domain name was subject to an Order Appointing Receiver entered by United States District Court Judge Royal Ferguson in the lawsuit styled Netsphere v. Ondova, case no. 3:09-cv-0988, pending at the US District Court for the Northern District of Texas. Upon this notice, Complainant contacted the receiver Peter S. Vogel to enquire about the domain name. Mr. Vogel alleged that Novo Point LLC is the true registrant of the domain name funnygames.com. However, this information has not been confirmed by the registrar Fabulous.com.

III. The Domain Name and Registrar
(Rules, Paragraphs 3(b)(vi), (vii))

9. This dispute concerns the domain name identified below:

www.funnygames.com

10. The registrar with which the domain name is registered is:

Name: *Fabulous.com PTY LTD.*
Address: *P.O. Box 757, Fortitude Valley QLD 4006, Australia*
Telephone: *+61 7 3007 0070*
Fax: *+61 7 3007 0075*
E-mail: *support@fabulous.com*

IV. Language of Proceedings
(Rules, Paragraph 11)

11. To the best of the Complainant's knowledge, the language of the Registration Agreement is English. A copy of the Registration Agreement is provided as **Annex 2** to this Complaint. The Complaint has been submitted in English.

V. Jurisdictional Basis for the Administrative Proceeding
(Rules, Paragraphs 3(a), 3(b)(xv))

12. This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The Registration Agreement, pursuant to which the domain name that is the subject of this Complaint is registered, incorporates the Policy in paragraph 4.1. A true and correct copy of the domain name dispute policy that applies to the domain name in question is incorporated in the Registration Agreement (which is provided as Annex 2 to this Complaint) and can be found at [http://www.fabulous.com/informationcenter/index.htm?formcode\[objective\]=&formcode\[event\]=&formcode\[registrytime\]=1320241798&formcode\[certificte\]=6134fe81e73657a0e5e311a1790e4873&formdata\[ajid\]=1516](http://www.fabulous.com/informationcenter/index.htm?formcode[objective]=&formcode[event]=&formcode[registrytime]=1320241798&formcode[certificte]=6134fe81e73657a0e5e311a1790e4873&formdata[ajid]=1516).

VI. Factual and Legal Grounds
(Policy, Paragraphs 4(a), (b), (c); Rules, Paragraph 3)

13. This Complaint is based on the following grounds:
- A. The domain name(s) is(are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

Complainant is the owner of the following valid and subsisting trademarks (hereinafter referred to as: "**the Trademarks**"):

- figurative Benelux trademark consisting of the single word 'funnygames', registered with the Benelux trademarks register on 8th of December 2005 under registration number 0782386 for goods in classes 9 (electronic periodicals and publications) and 16 (periodicals and other printed matters) and for services in class 41 (leisure; exploitation of an online gaming website; organisation of educational and sports events);
- figurative international trademark consisting of the single word 'funnygames', registered with the WIPO on the 17th of July 2007 under registration number 931660 for goods in classes 9 (electronic periodicals and publications) and 16 (periodicals and other printed matters) and for services in class 41 (entertainment; organizing of games, also by electronic means via Internet/website; organizing of educational and sports events). This international registration is based on BX 0782386 mentioned above.

A copy of the registration certificate of BX 0782386 is provided as **Annex 3** and a copy of the registration certificate of INT 931660 is provided as **Annex 4**.

Complainant has been actively using the mark FUNNYGAMES in the course of its business activities prior to the abovementioned national and international trademark registrations. Complainant procures, licenses and markets (online) gaming content under the mark FUNNYGAMES. Complainant commenced its business activities with registration of the domain name funnygames.nl on the 19th of December 2001 and has been using it intensively since 2002. A copy of the registration certificate with Stichting Internet Domeinregistratie Nederland (SIDN) is provided as **Annex 5**. Since then Complainant has registered in the region of 30 ccTLD domain names incorporating the mark FUNNYGAMES. The underlying websites offer in the region of 8.600 online games and have an average of 2,5 million unique (international) visitors a month.

The domain name is confusingly similar to the above mentioned Trademarks in which Complainant has rights. The Trademarks consist of the word 'funnygames', which is the most distinctive element of the Trademarks. In that respect it should be emphasized that Complainant's Trademarks are predominantly present in the online world. The Trademarks of Complainant are often used and perceived as ten subsequent characters (F, U, N, N, Y, G, A, M, E and S) as typed or displayed on a computer. When used in this manner, there is no difference between the Trademarks and the domain name in question. Hence the domain name is destined to be used in

such a manner that is identical to the Trademarks of Complainant. In view of this, the figurative element of the Trademarks is irrelevant. Furthermore, from an aural point of view, the Trademarks and the domain name in question are identical in pronunciation. Just this phonetical similarity can be enough to create a likelihood of confusion.

Whether or not the Trademarks are distinctive is irrelevant in this proceedings.

Prior decisions of UDRP panels have repeatedly held that the inclusion of the top level domain '.com' in the disputed domain name does not affect a finding of confusing similarity (see *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525 holding that confusing similarity under the Policy is decided upon inclusion of a trademark in the domain name; and *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429).

- B. The Respondent has no rights or legitimate interests in respect of the domain name;
(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

Respondent has no rights to use the mark FUNNYGAMES. Respondent is not known by this mark, holds no registered trademarks for FUNNYGAMES and has not been licensed by Complainant to use this mark.

Furthermore, there is no legitimate reason why Respondent should choose to use the Complainant's Trademarks. The domain name resolves to a website containing one web page offering a number of search options, each option including a listing of links to third party commercial websites, which compete with the services offered by the Complainant. Screenshots of the contested website are provided as Annex 6. The website associated with this domain name appears to exist for the sole purpose of misleadingly diverting legitimate consumers of Complainant to Respondent's website, consequently diverting said consumers to third-party commercial websites via the links provided in the Respondent's website. Respondent is not making a legitimate non-commercial or fair use of the domain name, but clearly uses the domain name for commercial gain.

- C. The domain name was registered and is being used in bad faith.
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The domain name has been created on the 24th of December 2002, almost a year after the (at that moment already popular) domain name funnygames.nl has been registered. It is highly unlikely that Respondent was not aware of this registration, as Respondent is a company specialized in domain name registrations and holds a considerable portfolio of domain names. It may be assumed that Respondent conducted an availability or an Internet search prior to registration on the '.com' extension, and would have at least encountered the domain name funnygames.nl.

Respondent has solely used the domain name for the bad faith purpose of driving commercial business to its website which presents users with a number of sponsored listings, which subsequently redirect the user to competing third-party commercial websites. It is therefore highly likely that Respondent derives a financial gain from posting the sponsored listings, either from the number of Internet users that visit Respondent's website or by the number of Internet users that are redirected from Respondent's website to one of the third-party commercial websites. As such, Respondent takes unfair advantage of the distinctive character and repute of the Trademarks and Complainant's popular websites.

Moreover, as indicated above, the domain name in question is confusingly similar to the Trademarks, creating confusion by using a domain name that is phonetically equivalent to the Trademarks. The use of the domain name creates a likelihood of confusion with the Complainant's Trademarks as to the source, sponsorship, affiliation and endorsement of the Respondent's website (seeing as the website does not give away any information as to the origins of the website owner) and/or of the services offered on the Respondent's website, thus disrupting Complainant's business.

Last but not least, if Respondent turns out to be Texas International Property Associates, it should be noted that UDRP panels have encountered bad faith practices of this domain name holder in several cases before (see section X. below).

VII. Remedies Requested
(Rules, Paragraph 3(b)(x))

14. In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section VI. above, the Complainant requests the Administrative Panel appointed in

this administrative proceeding that the disputed domain name be transferred to the Complainant.

VIII. Administrative Panel

(Rules, Paragraph 3(b)(iv); Supplemental Rules, Paragraph 8(a))

15. The Complainant elects to have the dispute decided by a single-member Administrative Panel.

IX. Mutual Jurisdiction

(Rules, Paragraph 3(b)(xiii))

16. In accordance with Paragraph 3(b)(xiii) of the Rules, the Complainant will submit, with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the domain name that is the subject of this Complaint, to the jurisdiction of the courts at the location of the principal office of the concerned registrar.

X. Other Legal Proceedings

(Rules, Paragraph 3(b)(xi))

17. No legal proceedings have been commenced or terminated in connection with or relating to the domain name that is subject of this complaint. However, it has come to Complainant's attention that the domain name allegedly is subject to an Order Appointing Receiver entered by United States District Court Judge Royal Furgeson in the lawsuit styled *Netsphere v. Ondova*, case no. 3:09-cv-0988, pending at the US District Court for the Northern District of Texas. Under these circumstances Complainant maintains that this lawsuit is irrelevant to this administrative proceeding. The Order does not specify the grounds for asserting jurisdiction over any parties with respect to the transfer of the (unidentified) domain names, nor does it specify which domain names fall under the receivership.
18. Furthermore, as argued above, the domain name in question has been registered and is being used in bad faith, and it is unlikely that this issue will be addressed in the ongoing lawsuit. Last but not least, it is noteworthy that the same lawsuit has come up in several UDRP panel decisions (see *Judah Smith v. Whois Privacy Services Pty. Ltd. / URDMC LLC*, WIPO Case No. D2011-0397; *Amica Mutual Insurance Company v.*

Texas International Property Associates, URDMC LLC; WIPO Case No. D2010-2144 and *Eli Lilly & Co v. Texas International Property Associates*, WIPO Case No. D2010-1985), in which the panels exercised their discretion to continue to a decision on the merits, even if the domain names were implicated in pending litigation.

XI. Communications

(Rules, Paragraphs 2(b), 3(b)(xii); Supplemental Rules, Paragraphs 3, 4, 12)

19. A copy of this Complaint, together with the cover sheet as prescribed by the Supplemental Rules, has been sent or transmitted to the Whois Privacy Service PTY LTD. on the 16th of November 2011 by e-mail (~~41323079999371~~
~~06d896@whoisprivacyservices.com.au~~), seeing as the identity of the domain name holder could not be verified by the Complainant.
20. A copy of this Complaint has been sent or transmitted to Fabulous.com on the 16th of November 2011 by e-mail (support@fabulous.com).
21. This Complaint is submitted to the Center in electronic form, including annexes, in the appropriate format.

XII. Payment

(Rules, Paragraph 19; Supplemental Rules Paragraph 10, Annex D)

22. As required by the Rules and Supplemental Rules, payment in the amount of USD 1,500 has been made by credit card.

XIII. Certification

(Rules, Paragraph 3(b)(xiv); Supplemental Rules, Paragraph 14)

23. The Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar, (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

24. The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate; that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,



Anastasia I. Chistyakova

Date: 16 November 2011

XIV: List of Annexes

(Rules, Paragraph 3(b)(xv); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

1. copy of the printout of database search for 'funnygames.com' conducted on the 2nd of November 2011;
2. Registration Agreement of Fabulous.com PTY LTD;
3. copy of the registration certificate of Benelux trademark registration 0782386;
4. copy of the registration certificate of international trademark registration 931660;
5. copy of the registration certificate with SIDN of the domain name 'funnygames.nl';
6. screenshots of the website funnygames.com;

ANNEX I

FunnyGames.com - Funny Games

Page 1 of 1

This domain is protected by Whois Privacy Services Pty Ltd. For more
www.whoisprivacyservices.com.au

Domain funnygames.com)
Whois Privacy Services Pty Ltd
Domain Hostmaster, Customer ID : 41321079999371
41321079999371-06d886@whoisprivacyservices.com.au
PO Box 923
Portitude Valley QLD 4096 AU

Administrative contact:

Technical contact:

Billing contact:

Whois Privacy Services Pty Ltd
Domain Hostmaster, Customer ID : 41321079999371
41321079999371-06d886@whoisprivacyservices.com.au
PO Box 923
Portitude Valley QLD 4096 AU
Phone: Phone: +61.770070090
Fax: Phone: +61.739079091

Record dates:

Record created on: 2002-12-24 19:02:05 UTC
Record modified on: 2011-05-13 21:18:02 UTC
Record expires on: 2011-12-24 UTC

Name servers:

ns2.hitfarm.com
208.27.33.169
ns1.hitfarm.com
72.52.27.54

ANNEX 2

Domain Name Registration Agreement

Domain Name Registration Agreement

1. Introduction

1.1. This domain name registration agreement ("**Registration Agreement**") governs the terms and conditions upon which Fabulous.com Pty Ltd ACN 094 218 443 ("**Fabulous.com**") agrees to provide you ("**Registered Name Holder**") with the domain name registration service and associated services as described on the website located at www.Fabulous.com ("**Website**") and as otherwise described in this Registration Agreement ("**Services**").

1.2. Whois Privacy Services Pty Ltd ACN 133 058 741 provides a domain name privacy registration service ("**Whois Privacy Service**") for domain names registered with Fabulous.com. If you elect to subscribe to the Whois Privacy Service, you acknowledge that you have read, understood and agree to be bound by the terms and conditions of the ~~Whois Privacy Services Agreement~~.

1.3. By using the Services, you acknowledge that you have read, understood, and agree to be bound by the terms and conditions of this Registration Agreement, as well as our Privacy Policy and Anti-Spam Policy.

1.4. You acknowledge and agree that if you are in breach of this Registration Agreement, Fabulous.com may suspend, cancel or modify your use of the Services by providing you with notice to your primary email address listed on your Fabulous.com account.

1.5. Fabulous.com reserves the right to amend the terms and conditions set out in this Registration Agreement or the operation of the Services by notice to your Fabulous.com account. Where we vary the charges applying to the Services, we will give you 14 days' prior notice of the change. If you do not agree to the amendment of the terms or conditions of the Registration Agreement or the operation of the Services or the variation in the charges, you may terminate the Registration Agreement by emailing support@fabulous.com and we will assist you to transfer your domain name to the ICANN accredited domain name registrar of your choice.

1.6 For the purposes of this Registration Agreement, "**Australian Consumer Law**" means the *Competition and Consumer Act 2010 (Cth)*.

2. Domain Name Registration, Administration, and Renewal Services

2.1. Fabulous.com is an accredited Registrar of the Internet Corporation For Assigned Names and Numbers ("**ICANN**") for the .com, .net, .org and .info top level domains ("**gTLDs**").

2.2. All gTLDs that Fabulous.com registers or renews for you ("**Registered Names**") shall not be effective unless and until the administrator for the particular gTLD ("**Registry**") updates the central domain name registry database in accordance with the information you have provided to Fabulous.com, pursuant to the terms of the relevant Registry-Registrar Agreement entered into between that Registry and Fabulous.com.

3. Registration, Renewal, Recovery and Transfer of Domain Names

3.1. Fabulous.com registers domain names on a first come, first served basis and does not guarantee that any domain name applied for by you will be able to be registered.

3.2. You agree that you will not take any action in relation to a particular domain name until the successful registration of that domain name ("**Registered Name**") has been confirmed by

Fabulous.com.

3.3. You shall not have any proprietary rights in a Registered Name. Registration and/or renewal of a Registered Name only gives you a personal licence ("**Domain Name Licence**") to use the Registered Name for the period during which the registration of the domain name remains current ("**Registration Period**").

3.4. The continued registration and use of a Registered Name is subject to the payment of the applicable renewal fees prior to the expiry of the Registration Period and subject to your continued compliance with the terms of this Registration Agreement and any rules or policies published on the Website. In the event that the applicable renewal fees for a Registered Name have not been received by Fabulous.com (as cleared funds) on or before the expiry date, Fabulous.com reserves the right to immediately cancel the registration of the Registered Name and remove it from the Registry's root zone file, at which time, the Registered Name will cease to resolve to the nominated nameservers.

3.5. If you agree to have the Registration Period for the Registered Name automatically renewed by selecting the 'Auto-Renewal' feature (accessible via the online interface to your Fabulous.com account), then:

3.5.1 Fabulous.com will automatically renew the Registration Period for the Registered Name for a period of one (1) year from the expiry date of the current Registration Period for the Registered Name, subject to your continued compliance with the terms of this Registration Agreement and any rules or policies published on the Website. If the Auto-Renewal feature has been enabled, you hereby authorize and instruct Fabulous.com to charge and deduct the applicable registration renewal fees from your Fabulous.com account in accordance with clause 3.5.2.

3.5.2: Registration renewal fees are charged to you and deducted from your Fabulous.com account on the twentieth (20th) day of the month preceding the month in which the current Registration Period for the Registered Name expires. In the event that you do not have sufficient cleared funds in your account for the applicable registration renewal fees to be deducted, Fabulous.com reserves the right to cancel the registration of the Registered Name and remove it from the Registry's root zone file upon the expiry of the current Registration Period without further notice to you.

3.6. You acknowledge that it is your responsibility to ensure that the Domain Name Licence is renewed and release and hold Fabulous.com harmless against any claim for damage or loss arising from your failure to renew registration of a Registered Name.

3.7. It is your responsibility to ensure payment details remain current and that you maintain sufficient funds in your account for the applicable registration renewal fees where the Auto-Renewal feature has been enabled.

3.8. In the event that a Registered Name is not renewed by you prior to the expiry of the current Registration Period, the Registered Name is immediately removed from the Registry's root zone file and is then held by Fabulous.com for a period of thirty-three (33) days ("**Registrar Hold Period**"). You may renew the Registered Name at any time during the Registrar Hold Period, by paying the applicable registration fees and any past due renewal fees for the Registered Name to Fabulous.com. Upon payment of these fees, the Registrar Hold will be removed from the Registered Name and the relevant domain name data reinstated to the Registry's root zone file.

3.9. Five (5) days after the end of the Registrar Hold Period ("**Five Day Period**"), Fabulous.com shall request the Registry to delete the Registered Name from its central database of registered domain names. You may renew the Registered Name during this Five Day Period (ie. before Fabulous.com has requested the Registry to delete the Registered Name) by paying the applicable registration fees and any past due renewal fees together with a fee of US\$29.95 ("**Extension Fee**").

Fabulous.com charges the Extension Fee because it must manually renew the Registered Name.

3.10. After the Registry processes the request to delete the Registered Name, it will then be subject to an additional thirty (30) day "**Redemption Grace Period**" during which the Registered Name can still be recovered by Fabulous.com and re-registered to you.

3.11. Fabulous.com is charged a fee by the Registry and incurs additional administrative costs to recover a Registered Name during the Redemption Grace Period. Accordingly, Fabulous.com will charge you a US\$100 fee to recover a Registered Name during the Redemption Grace Period ("**Redemption Fee**") in addition to charging you the applicable registration fee and any past due renewal fees for the Registered Name. Fabulous.com will only recover a Registered Name during the Redemption Grace Period upon receiving a written notice (either by email or facsimile) from you, requesting Fabulous.com to recover the Registered Name and agreeing to pay the Redemption Fee.

3.12. After the expiry of the Redemption Grace Period, there is a 5 day window where the Registered Name goes in "**pending delete**" status, during which the Registered Name cannot be recovered by Fabulous.com. After the 5 day pending delete window, the Registered Name is made available for registration by the general public on a first come, first served basis.

3.13. The Domain Name Licence for a Registered Name may be transferred from you to a third party transferee ("**Transferee**") while Fabulous.com remains as the sponsoring registrar of the Registered Name by having the Transferee set up an account with Fabulous.com, agreeing to be bound by the terms of this Registration Agreement as the new registrant and then transferring or "pushing" the Registered Name into the Transferee's account. Transfers of a Registered Name in conjunction with a change of sponsoring registrar must be undertaken in accordance with clause 13 below.

3.14. New customers through a Backorder service:

If you have purchased a domain name through a Backorder service and that domain name was registered with, and not yet deleted by, Fabulous.com at the time of your purchase, you acknowledge and agree that your backorder purchase may be subject to cancellation for a period of up to thirty-five (35) days after the Registrar Hold Period for that domain name. If your backorder purchase is cancelled you will be entitled to a refund. A domain name purchased via the backorder service selected by Fabulous.com will be treated as a new registration and therefore a request to transfer the domain name to another registrar cannot be made within 60 days of the purchase of the domain name.

4. Domain Name Dispute Resolution Policy

4.1. You acknowledge that you have read, understood and agree to be bound by all terms and conditions of ICANN's Uniform Domain Name Dispute Resolution Policy ("**UDRP**"), as amended from time to time, which is hereby incorporated into this Registration Agreement by reference.

4.2. For the adjudication of disputes concerning or arising from use of the Registered Name, you shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts of both your domicile and where Fabulous.com is located.

5. Warranties and Obligations

5.1. You shall at all times comply with:

(a) ICANN standards, policies, procedures and practices; and

(b) operational standards, policies, procedures and practices adopted for each Registry TLD.

5.2. You shall provide to Fabulous.com, accurate and reliable contact details and promptly correct and update them during the term of registration of the Registered Name, including:

- (a) your full name, postal address, e-mail address, voice telephone number, and fax number (if available); the name of the authorized person for contact purposes if you are an organization, association, or corporation;
- (b) the names of the primary nameserver and secondary nameserver(s) for the Registered Name;
- (c) the name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and
- (d) the name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

5.3. Your wilful provision of inaccurate or unreliable information, your wilful failure to promptly update information provided to Fabulous.com, or your failure to respond for over fifteen calendar days to inquiries by Fabulous.com concerning the accuracy of contact details associated with your registration shall constitute a material breach of this Registration Agreement and be a basis for cancellation of the registration of your Registered Name.

5.4. If you license the use of a domain name to a third party ("Licensee"):

- (a) you are nonetheless the Registered Name Holder of record and responsible for providing your own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate the timely resolution of any problems that arise in connection with the Registered Name; and
- (b) you accept liability for harm caused by the wrongful use of the Registered Name unless you promptly disclose the current contact information provided by the Licensee and the identity of the Licensee to a party providing you reasonable evidence of actionable harm.

6. Payment of Moneys

6.1. The applicable fees for the registration or renewal of a Registered Name must be paid in full and any identification or authorization documents requested shall be provided to Fabulous.com at the time of submitting the domain name registration or renewal application, as the case may be. Fabulous.com reserves the right to not process a domain name registration or renewal until all applicable fees have been paid, the funds cleared and any requested identification or authorization documents have been received by Fabulous.com. All fees are non-refundable.

6.2. All payments of fees for the Services provided by Fabulous.com shall be made in U.S. dollars.

6.3. In the event that you fail to pay any and all moneys owed to Fabulous.com as and when they are due and payable ("Debt"), or if any requested identification or authorization documents are not provided, then Fabulous.com shall be entitled in its sole discretion, to take any or all of the following actions:

- (a) immediately suspend access to your Fabulous.com account;
- (b) assume full control of all of the Registered Names in your Fabulous.com account;

(c) transfer some or all of the Registered Names in your Fabulous.com account to Fabulous.com or its nominee, in partial or total satisfaction of the Debt. You hereby irrevocably appoint Fabulous.com as your attorney for the purposes of entering into any transaction and executing any document required to give effect to this clause 6.3.

6.4. You acknowledge and agree that upon Fabulous.com exercising its rights under clause 6.3, Fabulous.com shall have all rights as the official registrant of the relevant domain name, including the right to sell the domain name to a third party. Fabulous.com may in its sole and absolute discretion, re-transfer the relevant domain name to you, subject to the payment of any outstanding registration or renewal fees, as well as the payment to Fabulous.com of an administration fee.

6.5. If you are an Australian resident for taxation purposes, then in addition to the fees referred to in this clause 6, Fabulous.com is entitled to charge and collect from you an amount equal to 10% of those fees on account of the Goods and Services Tax ("GST") payable by Fabulous.com under the *New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

7. Collection of Personal Information

7.1. You must provide to Fabulous.com, the information set out in all of the fields of the applicable registration form or renewal form (**Personal Information**). You warrant that all Personal Information provided is complete, accurate, reliable and not otherwise misleading. You undertake to ensure that the Personal Information remains correct and current at all times during the Registration Period and to notify us immediately if there has been a change in the Personal Information. Failure to comply with this clause shall constitute a material breach of this Registration Agreement.

7.2. You may access the Personal Information provided to Fabulous.com for the purposes of amending any information that is incorrect or incomplete by using a unique registry key ("**Registry Key**") that is provided to you by Fabulous.com after registration of your Registered Name.

7.3. You may provide a written authorisation to an agent to hold and use the Registry Key. If you do, Fabulous.com must immediately be notified of such authorisation.

7.4. Personal Information we collect from you will be dealt with in accordance with the Fabulous.com Privacy Policy.

7.5. You consent to your Personal Information being:

(a) transmitted to, and used, copied, distributed, published, modified and otherwise processed by, the Registry or its designees and agents, including in relation to the relevant central domain name registry database; and

(b) used by Fabulous.com for inclusion in registers and databases maintained by Fabulous.com or its licensees, including the WHOIS database.

7.6. You consent to your Personal Information being processed, stored and used in accordance with this clause 7 and the Fabulous.com Privacy Policy.

7.7. You undertake to provide a copy of this clause 7 and the Fabulous.com Privacy Policy to any third-party individuals whose Personal Information is to be supplied to Fabulous.com by you and obtain the consent of such third party individuals before disclosing their Personal Information to Fabulous.com.

7.8. Fabulous.com will not process the Personal Information collected from you in a way that is incompatible with the purposes and other limitations as set out in this clause 7 or the Fabulous.com

Privacy Policy.

7.9. Fabulous.com undertakes to use all reasonable precautions to protect Personal Information from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

8. Agents and Licensees

8.1. If the Services are used or accessed by your agent, you shall nonetheless be bound as a principal by all terms and conditions of this Registration Agreement, including the UDRP.

8.2. You acknowledge that you remain the responsible contracting party under this Registration Agreement even if you license a third party to use the Registered Name.

9. No Warranty or Guarantee

9.1. The Registry or ICANN may provide that registration of certain domain names is prohibited ("Prohibited Domain"). Fabulous.com does not guarantee that any particular domain name you wish to register or renew is not a Prohibited Domain.

9.2. Fabulous.com does not guarantee that you will be able to register or renew a particular domain name, even if a preliminary search or inquiry indicates that the domain name is available. This may be due to:

(a) the simultaneous attempted registration of the domain name by another domain name registrar; or

(b) inaccuracies or errors in the domain name registration or renewal process or related databases, including the various WHOIS databases.

9.3. Fabulous.com may in its sole and absolute discretion, accept or reject your application for the registration or renewal of a particular domain name.

9.4. Fabulous.com is not responsible or liable in any way for any errors, omissions or any other actions or inactions by the Registry arising out of or in connection with your application for registration or renewal of a particular domain name, or a failure to register or renew a particular domain name.

9.5. To the maximum extent permitted by law (including the Australian Consumer Law), Fabulous.com disclaims all warranties and guarantees, whether express or implied, regarding the Services or any other services that Fabulous.com may perform for you from time to time. To the extent that such warranties or guarantees cannot be disclaimed by law, you agree that the liability of Fabulous.com shall be limited to the re-supply of the services (except to the extent that such limitation is in breach of the Australian Consumer Law).

9.6. You acknowledge and agree that the registration or renewal of a particular domain name through the Services or the subsequent use of the Registered Name does not confer upon you any proprietary rights in the Registered Name, nor does it guarantee immunity from and against any challenge to the registration of the Registered Name by any third party, nor from the cancellation, suspension or transfer of the Registered Name.

10. Third Party Rights

10.1. You warrant that the registration or renewal of the Registered Name is made in good faith and that, to the best of your knowledge and belief, neither the registration nor renewal of the Registered Name nor the manner in which it is or shall be used, either directly or indirectly, infringes the

intellectual property rights or other legal rights of any third party. A breach of this warranty shall constitute a material breach of this Registration Agreement.

11. Limitation of Liability

11.1. To the maximum extent permitted by law (including the Australian Consumer Law, neither Fabulous.com nor the Registry shall have any responsibility and shall not be liable to you or your agent or nominee for any and all indirect, incidental, punitive, special, exemplary, or consequential loss or damage or any damages resulting from loss of profits, arising out of or in connection with the Services or this Registration Agreement.

11.2 To the maximum extent permitted by law (including the Australian Consumer Law), you agree that in no event will the liability of Fabulous.com under this Registration Agreement for any matter exceed the fees paid by you to Fabulous.com for the provision of the Services.

12. Indemnity

12.1. To the maximum extent permitted by law (including the Australian Consumer Law), you agree to indemnify, keep indemnified, defend and forever hold harmless, Fabulous.com, the Registry and the Registry's sub-contractors, and the directors, officers, employees, agents and affiliates of each of them, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable legal fees and expenses) arising out of or in connection with:

- (a) your application to register or renew a particular domain name, or a failure to register or renew that domain name; or
- (b) your registration or use of any Registered Name, whether registered in your name or the name of your agent or nominee; or
- (c) your violation of any third party right, including without limitation any intellectual property or other proprietary rights;
- (d) any UDRP proceeding, other administrative proceeding or court proceeding with respect to the Registered Domain Name, whether initiated by you or by a third party.

12.2. The indemnity set out in this clause 12 shall survive the termination or expiration of this Registration Agreement.

13. Change in Registrar

13.1. You acknowledge and agree that you can change registrars for an existing domain name, but only in accordance with the ICANN approved Policy on Transfer of Registrations between Registrars. Policy on Transfer of Registrations between Registrars

13.2. If you choose to change registrars for an existing domain name, this Registration Agreement will be terminated. Termination of this Registration Agreement does not affect any accrued rights or remedies of either party existing as at the date of termination.

14. Use of the Registered Names

14.1. You warrant and covenant that:

- (a) The Registered Names shall not be used in such way as to mislead or deceive minors into viewing sexually explicit material, whether in breach of the provisions of H.R.939 Truth in Domain

Fabulous - Information Center

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Names Act (United States) or otherwise ("**Misleading Activity**");

(b) The Registered Names shall not be used to redirect internet traffic to any website that contains content (or links to such content) that:

(i) Is hateful, defamatory, derogatory or bigoted based on racial, ethnic, political grounds or otherwise causes injury, damage or harm of any kind to any person or entity;

(ii) That is threatening or invades another person's privacy or property rights or otherwise in breach of a duty owed to a third party;

(iii) Depicts minors engaged in any activity of a sexual nature or may otherwise harm minors;

(iv) Infringes the registered trademark, copyright, patent rights, trade secret or other intellectual property rights of a third party;

(v) Violates any applicable local, state, national or international law or regulation;

(vi) Promotes, is involved in or assists in, the conduct of illegal activity of any kind or promotes business opportunities or investments which are not permitted under law;

(vii) Advertises or offers for sale any goods or services that are unlawful or in breach of any national or international law or regulation;

(viii) Advertise or offer for sale any goods or services the advertiser does not have the legal right to sell; or

(ix) Attempts to defraud members of the public in any way (for example, "phishing" sites).

(collectively referred to as "**Illegal Activities**").

14.2. Fabulous.com does not condone the use of a Registered Name for or in connection with any Misleading Activity or any Illegal Activity and reserves the right to report such activities to the relevant legal enforcement agencies if it determines in its sole and absolute discretion that a Registered Name is being used in such manner.

15. Material Breach

15.1. You are in material breach of this Registration Agreement ("**Material Breach**") entitling Fabulous.com to exercise its rights under clause 16 if, after having received notice from Fabulous.com of the particulars of the breach ("**Breach Notice**"), you:

(a) fail to rectify the breach within five (5) business days of receipt of the Breach Notice; or

(b) fail to provide Fabulous.com with a reasonable explanation in defence of the breach within five (5) business days of receipt of the Breach Notice.

16. Suspension, Cancellation, Transfer or Modification of Domain Name Registration

16.1. Fabulous.com may immediately suspend, cancel, transfer or modify your registration of Registered Names by providing you with notice to your primary email address listed on your Fabulous.com account if:

- (a) you are in Material Breach of this Registration Agreement;
- (b) Fabulous.com has reasonable grounds to believe that a Registered Name is being used for or in connection with a Misleading Activity or an Illegal Activity; or
- (c) Fabulous.com has reasonable grounds to believe that a Registered Name(s) is being used contrary to Fabulous.com's Anti-Spam Policy.

16.2. Your Registered Names are subject to suspension, cancellation, transfer or modification by Fabulous.com, pursuant to the terms of any applicable rules, policies or procedures adopted by:

- (a) ICANN; or
- (b) Any domain name registrar (including Fabulous.com) or any central domain name registry operator (including the Registry) to the extent that they are not inconsistent with those of or adopted by ICANN, for the purpose(s) of:
 - (i) correcting mistakes by Fabulous.com or any central domain name registry operator (including the Registry) in registering, renewing and/or transferring the Registered Names; or
 - (ii) resolving disputes concerning the Registered Names.

16.3. The relevant Registry has the right to deny, cancel or transfer any registration or transaction, or place any domain name on registry lock, hold or similar status that it deems necessary in its discretion:

- (a) to protect the integrity and stability of the Registry;
- (b) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process;
- (c) to avoid any liability, civil or criminal, on the part of the Registry, as well as its affiliates, subsidiaries, officers, directors and employees; or
- (d) to correct mistakes by Fabulous.com or the Registry in registering, renewing and/or transferring the Registered Names.

The Registry also reserves the right to place upon registry lock, hold or similar status a Registered Name during resolution of a dispute.

16.4. You acknowledge and agree that the .ORG Registry, Public Interest Registry ("PIR"), has in place a Domain Anti-Abuse Policy and that an abusive use of a domain name may give rise to PIR exercising its right pursuant to clause 16.3. Please read the Policy for an understanding of what PIR regards as an abusive use of a domain name.

17. Parking of Domains

17.1. Upon registration of one or more domain names pursuant to this Registration Agreement, you may elect to have Fabulous.com host the Registered Name(s) and/or any other domain names of which you are the official registrant ("Parked Domains") on a domain name server owned or controlled by Fabulous.com or a related body corporate or related entity of Fabulous.com at no charge to you.

17.2. At your or your agent's request, Fabulous.com may redirect all browser traffic directed at the Parked Domains to a URL of the website of the "Roar" Internet Directory service, owned and

controlled by Roar.com Pty Ltd ("Roar") or to a website of another entity with whom Fabulous.com or a related body corporate of Fabulous.com has entered into an agreement ("Affiliate"). Roar and the Affiliates display pay-per-click advertisements of commercial websites operated by third parties, including material or links to material that contains content of an adult nature that is not suitable for viewing by minors or which may otherwise be deemed obscene or offensive ("Adult Material").

17.3. To the maximum extent permitted by law (including the Australian Consumer Law), Fabulous.com, Roar.com Pty Ltd and the Affiliates shall have no responsibility and shall not be liable to you or your agent for any criminal or civil sanctions imposed on you or your agent as a direct or indirect result of browser traffic directed at the Parked Domains being redirected to Adult Material, whether or not such redirection is caused by the categorisation of the Parked Domain by Fabulous.com, Roar.com Pty Ltd or the Affiliates.

18. Survival

18.1. Clauses 7, 9, 10, 11, 12, 14 and 18 shall survive the termination or expiration of this Registration Agreement.

19. Severability

19.1. The terms of this Registration Agreement are severable. If any term or provision is declared invalid or unenforceable, it shall be severed from this Registration Agreement and shall not affect the interpretation or operation of the remaining terms or provisions, which shall remain in full force and effect.

20. Entire Agreement

20.1. To the maximum extent permitted by law (including the Australian Consumer Law), this Registration Agreement and the UDRP incorporated herein, constitutes the entire agreement between you and Fabulous.com regarding the provision of the Services and supersede all prior agreements and understandings, whether established by custom, practice, policy, or precedent.

21. Governing Law

21.1. This Registration Agreement is governed in all respects by and construed in accordance with the laws of the State of Queensland, Australia, and you submit to the non-exclusive jurisdiction (without prejudice to other potentially applicable jurisdictions) of the Courts of Queensland.

22. Relationship

22.1. Nothing in this Registration Agreement shall be construed as creating the relationship of agency, partnership or joint venture between the parties.

23. Force Majeure

23.1. Neither party will be in default or otherwise liable for any delay or failure in its performance under this Registration Agreement where such delay or failure arises by reason of an Act of God, any government or governmental body, acts of war, the elements, strikes or labor disputes, power or system failures, failure of the Internet, computer hacking, or other causes beyond the reasonable control of such party.

24. Waiver

24.1. Failure by either party to exercise or enforce any right or provision of this Registration

Agreement shall not be deemed to be a waiver of such right or provision and does not affect the right to require any provision to be performed at any time thereafter.

25. Notices

25.1. All notices required to be sent under this Registration Agreement shall be sent via e-mail:

(a) If to Fabulous.com, to support@fabulous.com

(b) If to you, to the primary e-mail address listed on your Fabulous.com account.

25.2. Any notice sent shall be deemed to have been received at the time and date logged by the sender's email server or confirmation of delivery of the email message to the recipient's email server.

ANNEX 3



Markenregister - Registre des Marques - Trademarks Register

01 Inschrijfsnummer
0782386

Nummer en dagtekening (dag en uur) van het depot
1087851 19-10-2005, 10.00

02 Vervaldatum
19-10-2015

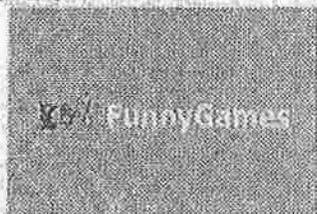
03 Naam van de houder
Libaco Beheer B.V.

04 Adres (straat en nummer) van de houder
De Zaanle 11

05 Postcode, plaats en land van de houder
5612 AJ Eindhoven,
Nederland

06 Naam en adres van de gemachtigde of vermelding van het correspondentie-adres van de houder.
Algemeen Octrooi- en Merkenbureau B.V.
John F. Kennedylaan 2
5612 AB Eindhoven
Nederland

09 Afbeelding van het beeldmerk



12 In voorkomend geval, vermelding van: classificatie van de beeldelementen, vormmerk, kleur met of zonder beschrijving, onderscheidende elementen
CFE 4.5.3-15

13 Klasse-aanduiding en opgave van de waren en diensten
Kl 9 Elektronische tijdschriften en publicaties.
Kl 16 Tijdschriften en overige drukwerken.
Kl 41 Ontspanning; het exploiteren van een on-line spelletjesite; het organiseren van educatieve en sportieve evenementen.

14 Klasse-opgave en opgave van de waren en diensten
09 16 41

Datum inschrijving
08-12-2005

Datum publicatie depot
01-12-2005

Publicatiedatum van de inschrijving
01-01-2006

Status
Merk ingeschreven

BENELUX OFFICE FOR INTELLECTUAL PROPERTY

Translation

01 Registration number
0782386
Number and date (day and hour) of application
1087851 19-10-2005, 10.00
02 Expiry date
19-10-2015
03 Name of applicant
Tibaco Beheer B.V.
04 Address (street and number) of applicant
De Zaale 11
05 Zipcode, place and country of applicant
5612 AJ Eindhoven
The Netherlands
06 Name and address of attorney or mentioning of address of correspondence of applicant
Algemeen Octrooi- en Merkenbureau B.V.
John F. Kennedylaan 2
5612 AB Eindhoven
The Netherlands
09 Device mark



12 As it occurs, indication of classification of figurative elements, shape mark, colour with or without description, distinctive elements
CFE 4.5.5-15
13 Classes and goods and services
Cl 9 Electronic magazines and publications.
Cl 16 Magazines and other printed matter.
Cl 41 Entertainment; the exploitation of an online gamewebsite; the organisation of educational and sporting events.
14 Classes
09 16 41
Date registration
08-12-2005
Publication date of the application
01-12-2005
Publication date of the registration
01-01-2006
Status
Trademark registered

ANNEX 4

Simple search

Page 1 of 2



MADRID

The International Trademark System

Printed : 02/11/2011

931660 - FunnyGames

Countries: CH EM NO US

161 Date of the registration
17.07.2007

180 Expected expiration date of the registration/renewal
17.07.2017

270 Language of the application
English

Current Status

732 Name and address of the holder of the registration
Tibaco Beheer B.V.
De Zaale 11
NL-5612 AJ Eindhoven (NL)

811 Contracting State of which the holder is a national
BX

842 Legal nature of the holder (legal entity) and State, and, where applicable, territory within that State where organized
Limited Liability Company under Dutch law

740 Name and address of the representative
Algemeen Oudrooi- en Merkenbureau
John F. Kennedylaan 2
NL-5612 AB Eindhoven (NL)

770 Name and address of the previous holder
Tibaco B.V.
De Zaale 11
Eindhoven (NL)

640 Mark



531 International Classification of the Figurative Elements of Marks (Vienna Classification) - VCL(8)
04.05.05 ; 04.05.15

Simple search

Page 2 of 2

511 International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Clf 09

Electronic periodicals and publications.

16

Periodicals and other printed matters.

41

Entertainment; organizing of games, also by electronic means via Internet / website; organizing of and sports events.

821 Basic application

BX, 19.10.2005, 1087851

822 Basic registration

BX, 08.12.2005, 782386

832 Designation(s) under the Madrid Protocol

EM - NO - US

834 Designation(s) under the Madrid Protocol by virtue of Article 9sexies

CH

627 Indications regarding use requirements

US

Registration: 2007/32 Gaz. 20.08.2007, CH, EM, NO

Grant of protection subject to opposition: 2007/60 Gaz. 08.11.2007, EM

Grant of protection subject to opposition: 2008/14 Gaz. 06.05.2008, NO

Grant of protection: 2008/26 Gaz. 21.07.2008, NO

Grant of protection: 2008/77 Gaz. 07.08.2008, EM

Subsequent designation: 2008/3 Gaz. 05.02.2009, US

Total provisional refusal of protection: 2009/11 Gaz. 02.04.2009, US

Other final decision - Awaiting transition before publication: US

ANNEX 5



Whois

Use the Whois

Acceptance:

For more detailed information about the domain name, tick this box. By ticking the box, you confirm that you have read and accept the 'Whois Terms and Conditions of Use' and that you will use the information provided only for a purpose or purposes permitted under those terms and conditions. The 'Whois Terms and Conditions of Use' can be downloaded from this webpage.

funnygames



[More about the Whois](#)

Domain name	funnygames.nl
Status	active
Registrant	Tibaco Beheer B.V.
Administrative contact	erik@tibaco.nl
Registrar	Registrar.eu Willem Buytewechstraat 40 3024BN ROTTERDAM Netherlands
Technical contacts	erik@tibaco.nl
Domain nameservers	ns10.dnsmadeeasy.com ns11.dnsmadeeasy.com ns12.dnsmadeeasy.com ns13.dnsmadeeasy.com
Date registered	2001-12-19
Record maintained	NL Domain Registry

Copyright notice

No part of this publication may be reproduced, published, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, recording, or otherwise, without prior permission of the Foundation for Internet Domain Registration in the Netherlands (SIDN). These restrictions apply equally to registrars, except in that reproductions and publications are permitted insofar as they are reasonable, necessary and solely in the context of the registration activities referred to in the General Terms and Conditions for .nl Registrars.

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Dutch Copyright Act, protection of authors' rights (Section 10, subsection 1)

clause 1);

Using the Whois, you can check the status of a domain name (Is lookup), or get more detailed information about a registered domain name (Whois lookup).

Is lookup instructions

Enter the domain name whose status you want to check, and click 'OK'. The Whois will then tell you the status of the name, according to the most recent records. The various statuses are explained here.

Whois lookup instructions

Before using the Whois, you need to agree to the Whois Terms and Conditions of Use. To do so, simply tick the 'I agree' box. Next, enter the .nl domain name that you want more information about, and click 'OK'. The Whois will then give you the registration details for the name.

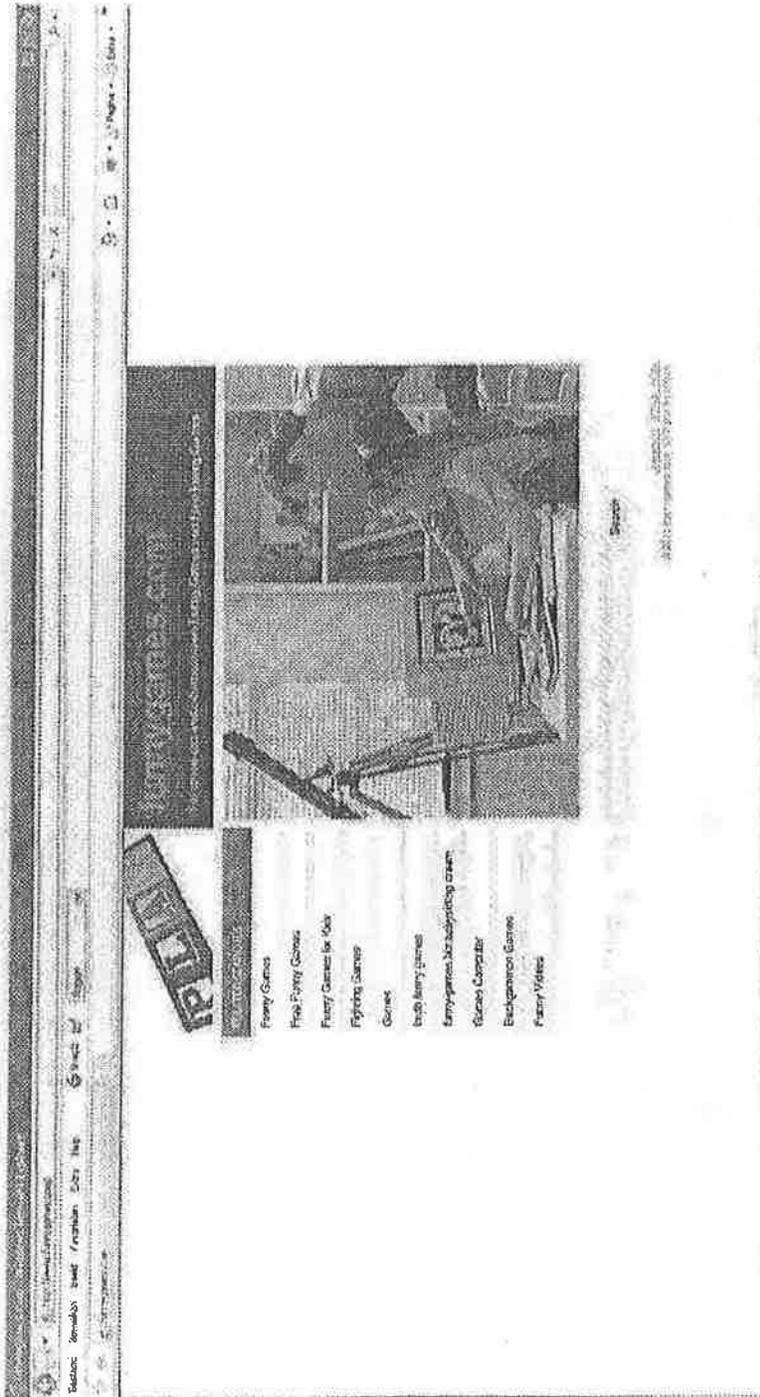
Explanation of Is output

The status of a name can be any of the following:

- * **free:** the .nl domain name is still available for registration
- * **withdrawn:** the .nl domain name is barred from registration
- * **excluded:** the .nl domain name is excluded from registration
- * **requested:** an application for the .nl domain name is being processed
- * **active:** the .nl domain name has already been registered. (If you want to know who has registered the name, tick the 'Extended search' box. You will then be shown more information about whoever has registered the name.)
- * **inactive:** the .nl domain name has already been registered, but has not yet been added to the .nl zone file. (If you want to know who has registered the name, tick the 'Extended search' box. You will then be shown more information about whoever has registered the name.)
- * **In quarantine:** this .nl domain name's registration has been cancelled. Following cancellation, a domain name is placed in quarantine for forty days.



ANNEX 6



Internet Explorer 8.0.6002.18146

http://www.hugoboss.com

Home Products Mail Printen Site Map Shop by Store

www.hugoboss.com

RECENTLY VIEWED

Family Games

Fun Family Games

Family Games for Kids

Fighting Games

Games

Indie/Arty games

Strategy and Role-playing games

Games Corporate

Franchise Games

Family Video

RECOMMENDED

Family Games
[More over Family Games Family Games - ZuluSoft](#)
[www.zulusoft.com/Products/](#)

Family Games
[More over 2500 Online Real-time Java Flash/Actionscript](#)
[www.gamemaster.com](#)

Robbie Stewart [Profile page](#)
[Robbie Stewart](#) [EPC 17 Advertisement](#)

Lord In House [View profile](#)
[to let me know how many times I've won or lost a game.](#)
[www.gamemaster.com](#)

PlayStation Online Games
[PlayStation Online Games](#)
[PlayStation Online Games](#)

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[Play more of our free online games and more!](#)
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[www.fpsworld.com](#)

Games' Worlds
[Add new Games' Worlds Game World - No 99 Add!](#)
[www.gameworld.com](#)

Exhibit E

BLAKLEY, JOHN DAVID

From: Khalil Rasheed [khalil.rasheed@icann.org]
Sent: Monday, November 21, 2011 7:57 PM
To: LOH, PETER
Cc: 'domain.disputes@wipo.intl'; 'arbiter.mail@wipo.int'; VOGEL, PETER; GOLDEN, BARRY; BLAKLEY, JOHN DAVID
Subject: RE: URGENT: Request of U.S. Court-Appointed Receiver for Stay of WIPO Action
Attachments: image001.png

Dear Mr. Loh,

Thank you for contacting ICANN.

As previously discussed in correspondence dated 26 September 2011, ICANN is entrusted with determining whether contracted parties comply with ICANN agreements. ICANN takes this responsibility very seriously and considers every issue referred to ICANN, as a potential noncompliance matter.

ICANN has no role in administering proceedings under the UDRP. Further, ICANN has no authority to order any organization to comply with a court order. This is usually the authority and jurisdiction of the court issuing the order. As an aside, it does not appear that WIPO is a party to the court order that you are referring to.

Please note, WIPO is one of four approved dispute resolution providers that can hear complaints under the UDRP. Each provider follows the Rules for the UDRP as well as its own supplemental rules.

Please contact me if you have questions.

Sincerely,
Khalil Rasheed

Khalil Rasheed
Senior Manager, Contractual Compliance
The Internet Corporation for Assigned Names and Numbers ("ICANN")
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292
USA

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Thank you.

From: LOH, PETER [mailto:ploh@gardere.com]
Sent: Friday, November 18, 2011 9:01 AM
To: Khalil Rasheed
Cc: 'domain.disputes@wipo.intl'; 'arbiter.mail@wipo.int'; VOGEL, PETER; GOLDEN, BARRY; BLAKLEY, JOHN DAVID; LOH,

PETER

Subject: URGENT: Request of U.S. Court-Appointed Receiver for Stay of WIPO Action

Mr. Rasheed,

Please find attached to this e-mail **urgent** correspondence from Peter S. Vogel, court-appointed Receiver over Novo Point, LLC, requesting ICANN instruct WIPO to observe the stay of certain proceedings (including proceedings relating to the ownership of Receivership Assets such as funygames.com) put in place by the U.S. District Court for the Northern District of Texas.

The attached correspondence requires your immediate attention and response, as a complaint has been filed with WIPO regarding the ownership of funnygames.com.

A copy of the attached correspondence is also being sent to your office via Federal Express.

Peter L. Loh | Partner
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000 | Dallas, TX 75201
214.999.4391 direct
214.729.9058 cell
214.999.3391 fax
[Gardere](#) | [Bio](#) | [vCard](#)

GARDERE

Austin | Dallas | Houston | Mexico City

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Exhibit F

BLAKLEY, JOHN DAVID

From: LOH, PETER
Sent: Friday, December 02, 2011 4:57 PM
To: 'Disputes, Domain'; legal@fabulous.com; anastasia.chistyakova@cms-dsb.com; 41323079999371-6f8641@whoisprivacyservices.com.au; 41323079999371-06d896@whoisprivacyservices.com.au; 'khalil.rasheed@icann.org'; 'support@fabulous.com'; 'Peter Stevenson'; Rogier de Vrey; 'Kate Wallace'; Jeffrey LeVee
Cc: OndovaLimited@gmail.com; VOGEL, PETER; BLAKLEY, JOHN DAVID; GOLDEN, BARRY; jamesmeckels@gmail.com; Jeff Baron; 'legal@schepps.net'; 'MacPete, John W.'; 'Corky@syllp.com'; 'Urbanik, Raymond'; Joshua Cox; LOH, PETER
Subject: Case No. D2011-2021 re: Funnygames.com--Court Issues Show Cause Order to ICANN
Attachments: Order to Show Cause--ICANN.PDF; image001.png

Ladies and Gentlemen: Today U.S. District Judge Royal Furgeson issued an Order to Show Cause with regard to the UDRP action against funnygames.com currently pending at WIPO. Specifically, and among other things, ICANN is immediately ordered to stay and abate the UDRP proceeding against funnygames.com and file notice with the Court of its compliance with this order no later than December 6, 2011. Failure to comply will result in the Court *sua sponte* holding a hearing to determine if ICANN should be held in contempt and sanctioned.

Please let me know if you have any questions.

Peter L. Loh | Partner
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000 | Dallas, TX 75201
214.999.4391 direct
214.729.9058 cell
214.999.3391 fax
[Gardere](#) | [Bio](#) | [vCard](#)

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Exhibit G

JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071-2300
TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2572
jlevee@JonesDay.com

November 29, 2011

VIA EMAIL AND U.S. MAIL

Peter L. Loh
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
ploh@gardere.com

**Re: *Netsphere, Inc., et al. v. Jeffrey Baron and Ondova Limited Company*
Case No. 3:09-CV-0988-F**

Dear Mr. Loh:

I am writing on behalf of the Internet Corporation for Assigned Names and Numbers (“ICANN”) in regards to the Court’s Order Granting The Receiver’s Emergency Motion To Enforce Stay (Dkt. # 724), entered in the above-captioned action on November 28, 2011 (“Order”). I understand that you are counsel for the receiver, Peter S. Vogel, in this action.

In response to The Receiver’s Verified Emergency Motion To Enforce Stay (filed on November 21, 2011 (Dkt. # 722) (“Receiver’s Motion”)), the Court ordered that “ICANN shall immediately stay and abate the UDRP Proceeding On www.funnygames.com and shall, within two days of the issuance of this Order, file notice with this Court confirming that it has complied with this Order and stayed and abated the UDRP Proceeding On www.funnygames.com.” For the reasons set forth below, the Order is an unenforceable ex parte order as to ICANN.

As an initial matter, ICANN is not a party to the above-captioned matter, nor did ICANN receive notice of the Receiver’s Motion, as required by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 4. As ICANN was never served with the Receiver’s Motion – indeed, you merely emailed ICANN a copy of the Court’s order after it was entered – ICANN did not have notice of the Receiver’s Motion in violation of its Constitutional right to due process. Therefore, the Court’s Order on such motion is invalid and void as to ICANN. *See Shaw v. 500516 N.B. Ltd.*, 668 F. Supp. 2d 237 (D. Me. 2009) (holding invalid a default judgment that was entered following defective service of complaint).

Second, even if you had effected proper service, ICANN could never be a proper party to the Court’s November 28, 2011 Order because the United States District Court for the Northern District of Texas lacks personal jurisdiction over ICANN. In particular, ICANN has no employees, assets, bank accounts, real property, personal property, offices, or other facilities in

JONES DAY

Peter L. Loh
November 29, 2011
Page 2

Texas. ICANN is not licensed to do business in Texas, does not have a registered agent for service of process in Texas, and has no phone numbers or mailing addresses in Texas. In fact, ICANN does not sell or offer anything for sale in Texas or anywhere else. Based on ICANN's lack of minimum contacts with Texas, ICANN could not reasonably anticipate being haled into court in Texas, and to do so would offend the traditional notions of fair play and substantial justice. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L.Ed. 95 (1945). As a matter of constitutional due process, this Court lacks jurisdiction to issue orders with respect to ICANN.

Indeed, several other courts throughout the country have entered orders to the effect that they also lack jurisdiction over ICANN. By way of example, I would direct your attention to the following order issued by the District Court in Alabama: <http://www.icann.org/en/legal/moore-v-icann/moore-v-icann-dismissal.pdf>.

Finally, the Court's November 28, 2011 Order assumes – based on your misleading and inaccurate representations in the Receiver's Motion – that ICANN has the authority to stay and abate UDRP proceedings. It does not. As ICANN has told you repeatedly, ICANN is not a party to or otherwise involved in the UDRP proceedings. Indeed, while ICANN—through the community-driven policy development process—created the UDRP as a uniform policy applicable to all gTLD domain name registrations, by the terms of the UDRP, ICANN is not a party to UDRP proceedings. *See* The Uniform Domain Name Dispute Resolution Policy, available at <http://www.icann.org/en/dndr/udrp/policy.htm> (the Notes section specifically provides that “[t]he policy is between the registrar (or other registration authority in the case of a country-code top-level domain) and its customer (the domain-name holder or registrant)”; ICANN is not a party to UDRP proceedings.).

In short, ICANN is not involved in UDRP proceedings. ICANN is not a party to UDRP proceedings; ICANN does not play any role in administering proceedings under the UDRP; ICANN does not have authority to stay or abate UDRP proceedings; and nor does ICANN have authority to instruct WIPO to do so. ICANN has forwarded the Court's Order to WIPO for its information, but ICANN does not have the authority to undertake any further action at this time.¹

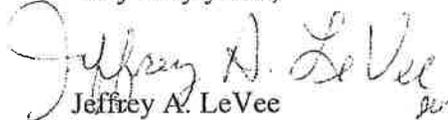
We have explained the foregoing principles to you before. For the reasons previously articulated and those described more fully in this letter, the Court's November 28, 2011 Order plainly is an unenforceable ex parte order as to ICANN. Further, because ICANN is not a party

¹ ICANN would lack any such authority even assuming, *arguendo*, ICANN was properly served with the Receiver's Motion or the Court's November 28, 2011 Order, and further assuming that ICANN could properly be a party to the Court's Order (it cannot).

Peter L. Loh
November 29, 2011
Page 3

to or otherwise involved in the UDRP proceedings, ICANN is unable to “stay and abate the UDRP Proceeding On www.funnygames.com” in any event.

Very truly yours,


Jeffrey A. LeVee
Counsel for ICANN