

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-22674-Civ-JORDAN/Torres

DELL INC.; AND ALIENWARE CORPORATION,

Plaintiffs,

vs.

BELGIUMDOMAINS, LLC; CAPITOLDOMAINS, LLC;
DOMAINDOORMAN, LLC; NETRIAN VENTURES LTD.;
IHOLDINGS.COM, INC.; JUAN PABLO VAZQUEZ a/k/a
JP VAZQUEZ, an individual; and DOES 1 – 10;

Defendants.

~~XXXXXX~~ ^{cjae} STIPULATED ORDER MODIFYING ORDER GRANTING PLAINTIFFS' *EX*
PARTE MOTION TO AMEND ORDER TO FREEZE ASSETS OF REGISTRAR AND
CORPORATE DEFENDANTS PENDING RESOLUTION OF PLAINTIFFS'
ENTITLEMENT TO A PERMANENT INJUNCTION

I. STIPULATION¹

Plaintiff's Dell, Inc. and Alienware Corporation (collectively "Plaintiffs") and Defendants BelgiumDomains, LLC, CapitolDomains, LLC, DomainDoorman, LLC, Netrian Ventures Ltd., and iHoldings.com, Inc. (collectively, "Defendants")² stipulated and have respectfully requested entry of this Stipulated Order modifying the December 12, 2007 Order Granting Plaintiffs' Ex Parte Motion to Amend Order to Freeze Assets of Registrar and Corporate Defendants Pending Resolution of Plaintiffs' Entitlement to a Permanent Injunction ("December 12, 2007 Order", [DE 86-2]). The parties request modification of the order to permit them to more effectively implement the Court's December 12, 2007 Order.

¹ This Stipulated Order Modifying Order Granting Plaintiffs' *Ex Parte* Motion to Amend Order to Freeze Assets of Registrar and Corporate Defendants Pending Resolution of Plaintiffs' Entitlement to a Permanent Injunction is referred to as the "Stipulated Order."

² In this Stipulated Order, the term "Defendants" does not include Defendant Juan Pablo Vazquez, a/k/a JP Vazquez.

Defendants acknowledge the November 16, 2007 Order Granting Plaintiffs' *Ex Parte* Motion to Amend Order to Freeze Assets of Registrar and Corporate Defendants Pending Resolution of Plaintiffs' Entitlement to a Permanent Injunction ("November 16, 2007 Order")³, and the December 12, 2007 Order, and will not challenge the validity or enforceability of either order, and expressly stipulate to the modification of the December 12, 2007 Order as provided herein, and will not challenge the validity or enforceability of this Stipulated Order. Plaintiffs acknowledge that by entering into this stipulation and agreeing not to challenge the November 16, 2007 Order, the December 12, 2007 Order, or the Stipulated Order, the Defendants do not admit any liability and preserve all other rights and arguments.

Defendants acknowledge the sufficiency of the \$500,000 bond currently posted, and will not challenge the bond amount.

II. ORDER

Plaintiffs and Defendants have stipulated to the entry of this order modifying the December 12, 2007 Order. The Court having considered the stipulation, being duly advised in the premises, and further finding good cause for granting this Stipulated Order, it is hereby

ORDERED AND ADJUDGED that the Stipulated Order is GRANTED and the Stipulation is incorporated herein. As a result, the December 12, 2007 Order is MODIFIED as follows:

1. In the Court's November 16, 2007 Order, certain domain names were identified in Exhibit 1. Pending final resolution of this case, Plaintiffs may, from time to time, modify the list of domain names identified in Exhibit 1 ("Domain Names"), and the latest version thereof shall constitute Exhibit 1. Modifications to Exhibit 1 shall be provided by Plaintiffs to Defendants, and unless necessary to enforce the terms of this Stipulated Order, such modifications shall not be submitted to the Court.

2. VeriSign, Inc. shall "lock" the Domain Names so as to prevent the deletion or registrar transfer of those Domain Names.

³ Under its terms, the November 16, 2007 Order was sealed. Plaintiffs and Defendants have filed separate motions to unseal, and the Court will issue an appropriate order.

3. Except as provided herein, Defendants shall not transfer, release, delete, or assign the Domain Names until resolution of Plaintiffs' entitlement to a permanent injunction.

4. Defendants shall not change the company or customer identification number used to generate any monies from any of the Domain Names.

5. From time to time, Defendants may provide to Counsel for Plaintiffs a list of Domain Names that Defendants seeks to delete from the registry. The criteria for the deletion of these Domain Names are as follows:

a. Domain Names that do not generate revenues in excess of \$11.50 on an annualized basis utilizing the most recent 30 days of data. In this circumstance, the following procedure shall be used:

i. Each month, and at least 20 days prior to the expiration date of the Domain Names Defendants seek to delete (If it is less than 20 days from the date of this Order until the expiration date for any Domain Name, then Plaintiffs and Defendants agree to use best efforts to complete the review described herein prior to the expiration date), Defendants shall provide to Plaintiffs and to a mutually agreeable Certified Public Accountant ("CPA") a spreadsheet containing at least the following information:

1. the Domain Name;
2. expiration date for the Domain Name;
3. the prior 12 month revenues generated from the Domain Name;
4. the annualized revenue from the Domain Name, if 12 months data is not available; and
5. the average number of page-views for the Domain Name based on the available data..

ii. Plaintiffs may, at their election, choose to become the registrant for any Domain Name Defendants seek to delete. In such cases, Plaintiffs shall pay to the appropriate Defendant registrar the registrar's cost for the Domain Name registration (e.g., \$6.62 per domain name for .com,

comprised of \$6.42 registry cost + 0.20 The Internet Corporation for Assigned Names and Numbers ("ICANN") fee).

iii. Plaintiffs shall, within 5 days from receipt of notice from the CPA that the information regarding the Domain Names Defendants seek to delete is accurate:

1. modify the list of Domain Names identified in Exhibit 1, removing the Domain Names Defendants seek to delete which Plaintiffs do not chose to become the registrant for; and
2. transmit the modified Exhibit 1 to VeriSign.

iv. Defendants shall provide to Plaintiffs its recommendation for the CPA within 5 days of this Order. Plaintiffs may accept this CPA, or shall provide to Defendants its recommendation for the CPA, within 5 days of this Order. Defendants may accept this CPA. In the event neither the Defendants' nor Plaintiffs' recommendation for the CPA is acceptable to the other, the two CPAs shall confer and jointly select a mutually agreeable CPA. If the two CPAs cannot mutually agree, the Court will appoint a CPA.

1. Defendants shall provide the CPA direct access to allow the CPA to verify the accuracy of the information provided under ¶5(a)(i) is accurate. The CPA shall employ accepted accounting practices, including where appropriate sampling, to verify accuracy. The CPA shall send notice to the Defendants and Plaintiffs that the information is accurate, or if not accurate, identify any inaccuracies.

2. All charges incurred by any CPA shall be jointly split by Defendants (1/2) and Plaintiffs (1/2);

b. Domain Names that have been ordered transferred by a decision rendered under the ICANN Uniform Dispute Resolution Policy, or by order of any court of competent jurisdiction over the Domain Name, to persons or entities that are neither related to nor affiliated with Defendants. In this circumstance, Plaintiffs shall, within 10 days from receipt of decision or order, modify the list of Domain

Names identified in Exhibit 1, removing the Domain Names identified in the decision or order, and transmit the modified Exhibit 1 to VeriSign; and

c. Domain Names that Defendants identify that may infringe, or are alleged to infringe, the trademarks of non-parties. In this circumstance, Plaintiffs shall, within 10 days from receipt of notice of such Domain Names from Defendants, review the Domain Names and, if a reasonable basis exists that the Domain Names infringe the trademarks of non-parties, modify the list of Domain Names identified in Exhibit 1, removing the Domain Names identified, and transmit the modified Exhibit 1 to VeriSign. No such Domain Names may be registered by any Defendant or any affiliate, subsidiary or related entity.

6. Google Inc. shall deposit into a secure and segregated interest-bearing bank account (the "Segregated Account") all funds held for or owed to any of the Defendants (the "Secured Funds"). Google shall take reasonable precautions to ensure that any future accounts created by Defendants in the Google AdSense for Domains program are also secured and segregated under this Order.

7. Google shall provide Plaintiffs and Defendants with a monthly accounting of the Secured Funds in the Segregated Account ("Monthly Report").

8. Pending further Order from this Court, and for funds currently held and for each month this Stipulated Order is in effect:

- a. The first \$1 million of Secured Funds deposited by Google each month into the Segregated Account, or if less than \$1 million is deposited then the full amount deposited, shall be retained therein;
- b. The second \$1 million of Secured Funds deposited by Google each month into the Segregated Account, or if less than \$2 million is deposited then the full amount over \$1 million, shall be disbursed to Defendants within 5 business days from the date of each Monthly Report; and
- c. To the extent that Secured Funds in excess of \$2 million are deposited each month into the Secured Account, 50% of these Secured Funds shall be retained in the Secured Account, and 50% of these Secured Funds shall be disbursed to Defendants within 5 business days from the date of each Monthly Report.

9. Defendants will provide to Plaintiffs and to the CPA a list of Domain Names with annualized revenue of less than \$8.00 that Defendants would have deleted in the normal course of business but were unable to do so due to the November 16, 2007 Order and the December 12, 2007 Order. The CPA shall verify that the annualized revenue, based upon the data for the 30 days prior to when the Domain Name would have been deleted, is less than \$8.00 for each Domain Name on the list. For each Domain Name verified by the CPA, Plaintiffs shall direct Google to disburse to Defendants from the Secured Funds in the Segregated Account, the sum of \$3.31 per Domain Name.

10. ICANN shall not transfer the registrar accreditations granted to any Defendant to any entity, nor allow the registrar accreditations be used by any Defendant outside of the State of Florida. ICANN shall not issue any new registrar accreditation to any Defendant.

11. Defendants shall not remove, move, alter, or destroy, any item of computer hardware or software currently owned, operated, or used by Defendants.

12. This temporary relief shall continue until final resolution of Plaintiffs' request for permanent injunctive relief.

13. All provisions in the November 16, 2007 and December 12, 2007 Orders that conflict with the terms of this Stipulated Order are hereby vacated.

DONE AND ORDERED in Chamber, at Miami, Miami-Dade County, Florida, this 16th day of January, 2008.


UNITED STATES DISTRICT JUDGE
ADALBERTO JORDAN

Copies furnished to Counsel
on the attached Service List