

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

March 2, 2007

VIA FACSIMILE AND ELECTRONIC MAIL

Aristotle G. Mirzaian, Esq.
Mirzaian Schoenbrodt, LLP
17 Pine Street, 1st Floor
Morristown, NJ 07960

Re: RegisterFly.com, Inc.: Second Notice of Breach and
Notice to File Suit

Dear Mr. Mirzaian:

This law firm represents the Internet Corporation for Assigned Names and Numbers ("ICANN"). As you know, ICANN is responsible for coordinating the management of the technical elements of the Internet's Domain Name System in order to ensure universal resolvability so that all users of the Internet can find all valid addresses.

For several months, ICANN has been expressing concerns to RegisterFly that it was in breach of many of its obligations under the parties' contract (known as the Registrar Accreditation Agreement or "RAA"). Unfortunately, despite repeated assurances that RegisterFly would cure these breaches, it has failed to do so. Accordingly, on February 21, 2007, Kurt Pritz, ICANN's Senior Vice President for Services, sent RegisterFly a ten-page letter identifying many of RegisterFly's breaches of the RAA and giving formal notice to RegisterFly that it was required to cure the breaches. On that same day, Mr. Pritz sent RegisterFly a formal notice of audit and demand for data escrow in accordance with provisions of the RAA.

Following RegisterFly's receipt of Mr. Pritz' February 21 letters and various telephone conversations, ICANN sent two employees from ICANN's offices in Marina del Rey, California to New Jersey to conduct the audit. The most important purpose of this visit, of course, was to inspect and copy all RegisterFly registration data as ICANN had requested. ICANN seeks and is entitled to this data in order to protect RegisterFly's customers so that they will continue to be able to utilize and operate their domain names. As ICANN has repeatedly assured RegisterFly's representatives, ICANN has no other conceivable purpose for requesting this data.

Upon ICANN's arrival in New Jersey, RegisterFly representatives indicated that they did not want to allow ICANN to conduct the audit, but that RegisterFly might be willing to escrow certain data, but only on its own terms. What RegisterFly wants or is willing to do is irrelevant unless it complies with the RAA.

Aristotle G. Mirzaian, Esq.
March 2, 2007
Page 2

On February 28, 2007, while ICANN's representatives were still in New Jersey, Mr. Pritz sent RegisterFly one last letter requesting that ICANN representatives be given access to RegisterFly's offices and data at 3 p.m. EST on March 1, 2007. You sent a response to Mr. Pritz on March 1, in which you indicated that RegisterFly would not, in fact, comply with ICANN's request to inspect and copy RegisterFly's records. Your letter also stated that RegisterFly's refusal to comply with ICANN's audit request "should not be construed as my client's unwillingness to cooperate with ICANN but rather as evidence of their continuing efforts to service their customers." This statement is preposterous: it is ICANN that is attempting to assist RegisterFly's customers by seeking to preserve all of the registration data for those customers. Thus, RegisterFly's refusal to cooperate with ICANN is strong evidence that RegisterFly has no intent to service its customers or to comply with RegisterFly's contractual obligations under the RAA.

Your March 1 letter further indicated that RegisterFly might be willing to enter into an escrow arrangement, which RegisterFly is obligated to do pursuant to the RAA. Your qualification, however, that escrow be conditioned on a stipulation that "the information shall not be released by the escrow agent without my client's prior written consent" is unreasonable. As you and your client are aware, paragraph 3.6 of the RAA sets forth the circumstances under which the data in escrow can be released and ICANN does not intend to stipulate to anything other than what is contained in the RAA. While ICANN appreciates RegisterFly's offer to place data into escrow, this offer does not relieve RegisterFly of its other obligations under the RAA – including the obligations referenced above – nor would it be acceptable for the escrow instructions to require RegisterFly's approval before any data was released from the escrow.

This letter shall serve as an official notice of breach of the audit and data escrow provisions of the RAA and official notice that, if RegisterFly does not cure these breaches within fifteen days, ICANN may terminate your client's RAA and thus terminate your client's right to operate as an ICANN-accredited registrar. This shall also serve as an official notice that your client has breached paragraph 3.3 of the RAA. Specifically, RegisterFly has failed to continuously "provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD in which it is accredited." Again, RegisterFly has fifteen working days to cure this breach or ICANN may terminate your client's RAA.

As a result of RegisterFly's continuing breaches of the RAA, and because of ICANN's great (and increasing) concern that Internet customers will be irreparably harmed if RegisterFly continues flagrantly to breach the RAA, this letter constitutes official notice that ICANN will be filing suit against RegisterFly in the United States District Court for the Central District of California. (The RAA provides that exclusive venue for litigation related to the RAA shall be in California.) ICANN will file this suit on Tuesday, March 6, 2007, prior to noon Pacific time. ICANN will present an ex parte application seeking a temporary restraining order requiring

Aristotle G. Mirzaian, Esq.
March 2, 2007
Page 3

RegisterFly to turn over the data that ICANN has requested (in particular, copies of all registration data for all RegisterFly registrants) and to permit an emergency audit of RegisterFly's books and records. We urge you to consult the Central District's Local Rules in this respect and, in particular, Local Rule 7-19. At the time ICANN files the suit, it will serve you (or your designee) with copies of the papers.

Notwithstanding the above, ICANN would like to continue discussions regarding data escrow. RegisterFly's current proposal with respect to data escrow, however, does not cure any of RegisterFly's breaches of the RAA, and obviously will not change ICANN's decision to proceed with its lawsuit next Tuesday.

Very truly yours,


Jeffrey A. LeVee

cc: Mr. Kurt Pritz
Harold Rabner, Esq.