

## JURISDICTION SUBGROUP ICANN LITIGATION SUMMARY v2.1

Reviewed by:	Bartlett D. Morgan
Name of Case:	<b>Subramaniam v. ICANN, et al</b>
Parties: <sup>1</sup>	Denise Subramaniam (Plaintiff) ICANN (Defendant), Susan k Woodard (Defendant), Charles Steinberger (Defendant), Internet.bs (Defendant)
Citizenship of Parties:	United States of America
Court/Venue:	Circuit Court of the State of Oregon, Washington County, Oregon, USA
Was a contract involved? Did it have a Choice of Law provision; if so, which jurisdiction?:	Yes. The complaint brought into question provisions in the ICANN Registrar Accreditation Agreement which the Plaintiff alleged created obligations not just between ICANN and accredited registrars but also third parties. At Clause 5.6, that agreement indicated, <i>inter alia</i> , that "...In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA;..."
Law used to determine conflict of laws issues (i.e., to determine which substantive law applies):	Nil since there was no substantive written decision in the case. The case came to an end when the Claimant failed to prosecute the claim and there was no response to an Order to Show Cause.
Substantive Law Governing the Dispute (i.e., which law applies to the dispute and/or interpretation of contracts):	Nil since there was no substantive written decision in the case. The case came to an end when the Claimant failed to prosecute the claim and there was no response to an Order to Show Cause.
Date Case Began:	Proceedings were filed on April 6, 2011
Date Case Ended:	Proceedings ended on August 22, 2011
Causes of Action: <sup>2</sup>	Chiefly violations of Ors §72 "Sales Act" also violations of the USC §12182 "Americans with Disabilities Act"
Issues Presented/Brief Summary of Case:	As the claim was not concluded in the usual way (i.e. on the merits after trial of the issues), no issues were traversed <i>per se</i> .

<sup>1</sup> Show each party and their status (Plaintiff (P), Defendant (D), or other). Please list any non-party participants, such as Amicus Curiae (AC).

<sup>2</sup> For example, breach of contract, tortious interference with contract, violation of antitrust laws, etc. (state which laws)

	<p>The underlying claim was primarily founded on the Plaintiff's contention that:</p> <ol style="list-style-type: none"> <li>1. One of the defendants, Charles Steinberger, owned a company - 4Domains Inc - which sold the Plaintiff domain names.</li> <li>2. 4Domains Inc was an ICANN accredited Registrar.</li> <li>3. 4Domains Inc became insolvent and eventually filed for bankruptcy.</li> <li>4. 4Domains Inc, in breach of its contractual obligations to ICANN, did not inform ICANN that it was insolvent prior to filing for bankruptcy.</li> <li>5. Had 4Domains Inc informed ICANN of its insolvency, the subsequent transfer and loss of certain domain names registered by her with 4Domains Inc would not have occurred.</li> </ol>
Was Preliminary Relief Requested (and if so, was it granted)?:	One of the Defendants (Susan Woodard, the trustee in bankruptcy for the bankruptcy estate of defendant Charles Steinberger) caused the claim to be removed from Oregon State Court and referred directly to the Bankruptcy Court for the Middle District of Florida. ICANN only became properly involved after this removal had already taken place. Eventually, ICANN's motion to withdraw the reference to the Florida Bankruptcy Court was granted and the claim was transferred to the Federal District Court for the District of Oregon.
Relief Requested by Plaintiff:	The Plaintiff, Subramaniam, primarily sought damages. Specifically, damages in the sum of \$2,537,500.00 plus \$165,00.00 from filing until domains in question were restored; damages in the sum of \$2,750,000.00 for the second claim; damages in the sum of \$500,000.00 for the third claim; and \$100,000.00 for the fourth claim.
Outcome of Case and Relief Granted (if any):	Case dismissed with prejudice after the claimant failed to respond to ICANN's motion to dismiss and generally failed to prosecute the case.
Was Jurisdiction Contested, and if so, what was the outcome?: <sup>3</sup>	There was no substantive written decision in the case. The case came to an end when the Claimant failed to prosecute the claim and there was no response to an Order to Show Cause.
Relevance of the case to the Jurisdiction Subgroup mandate:	There was no written decision and so, it is impossible to infer relevance.

<sup>3</sup> For example, was there a challenge to venue, challenge to change of venue, challenge to governing law, challenge to application of "choice of law" provision. Please describe the outcome as well as the challenge.

Impact of case on ICANN accountability/operations: <sup>4</sup>	Nil.
Did the Court comment on any jurisdiction-related matters?:	no
Did the Court comment on the merit, lack of merit and/or frivolity of the plaintiff's claims?:	no
Key Documents:	Plaintiff's Complaint Order of Dismissal

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<sup>4</sup> Indicate whether the case had, will have or could have an effect on ICANN's accountability mechanisms or the operation of ICANN's policies.