

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

NETSPHERE, INC.,	§	
MANILA INDUSTRIES., INC., AND	§	
MUNISH KRISHAN	§	
	§	
PLAINTIFFS,	§	
	§	
V.	§	CIVIL ACTION NO. 3:09-CV-0988-F
	§	
JEFFREY BARON AND	§	
ONDOVA LIMITED COMPANY,	§	
	§	
DEFENDANTS.	§	

**ORDER DENYING NON-PARTY INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS' MOTION TO VACATE**

BEFORE THE COURT is ICANN's Motion to Vacate the Court's Order Granting the Receiver's Verified Emergency Motion to Enforce Stay and the Court's Show Cause Order (Doc. No. 728). After considering the parties' arguments and relevant law, the Court is of the opinion that the Motion should be **DENIED**.

**I. Discussion**

On November 28, 2011, the Court granted the Receiver's Verified Emergency Motion to Enforce Stay (Doc. No. 724). Among other things, the Court ordered that ICANN shall immediately stay and abate the UDRP proceeding on [www.funnygames.com](http://www.funnygames.com) and shall, within two days of the issuance of that 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](http://www.funnygames.com).

The Court had not received notice that ICANN has stayed and abated the UDRP proceedings, and, as a result, the Court again ordered ICANN to stay and abate the proceedings and to file notice confirming that it has complied with the Order Granting the Receiver's Emergency Motion to Stay by December 6, 2011 (Doc. No. 726). ICANN responded to this

Order to Show Cause and argued that it does not have authority to “stay and abate” any UDRP Proceeding and that the Court lacks personal jurisdiction over it.

***1. ICANN’s Authority to Stay the UDRP Claim Against Funnygames.com***

The Receiver responded to ICANN’s first argument by demonstrating how ICANN can easily instruct WIPO to observe the Court’s stay. Indeed, as ICANN concedes, it created the UDRP and established the standards for resolving disputes concerning the registration and use of internet domain names. 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.) ICANN has also forwarded the Court’s Order to WIPO for its information. Finally, several courts have recognized that ICANN has “appointed,” “accredited,” and “authorized” WIPO with the authority to stay proceedings. *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”). It is no leap in logic to find that ICANN has the authority to stay the instant UDRP claim against Funnygames.com. The Court can draw no other inference other than that it simply has chosen not to.

***2. This Court’s Jurisdiction Over ICANN.***

The Receiver’s response to ICANN’s jurisdictional argument is equally compelling. 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. Specifically, ICANN relies on *International Shoe Company v. Washington*, 326 U.S. 310 (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 since “to do so would offend the traditional notions of fair play and substantial justice.”

But ICANN’s argument misses the mark. The Court has statutory jurisdiction over ICANN not through its contacts with Texas, but by virtue of this matter being a federal equity receivership proceeding. As several courts have held previously, “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 28 U.S.C. § 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). This Court has already ruled that 28 U.S.C. § 754 subjects Receivership Assets to nationwide jurisdiction (Doc. 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.”). Section 754’s companion statute, Section 1692, “provides for service of process in any such district where 754 filings are properly made.”

The Receiver has fully complied with all service-of-process requirements and thus ICANN is subject to the Court’s jurisdiction. The Receiver was required to file the Section 754 documents “by December 4, 2010” (Doc. No. 728), 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). On December 6, 2010, 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’s principal place of business in Marina del Rey is located. *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

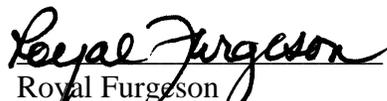
U.S.C. § 754. Additionally, on December 7, 2010, the Receiver served ICANN with additional copies of the Original Complaint (Doc. No. 1) and the Order Appointing Receiver (Doc. No. 124). Consequently, contrary to ICANN's contention, the Receiver complied with Section 754, thus extending this Court's jurisdiction over ICANN.

## II. Conclusion

For the foregoing reasons, ICANN's Motion to Vacate the Court's Order Granting the Receiver's Verified Emergency Motion to Enforce Stay and the Court's Show Cause Order (Doc. No. 728) is **DENIED**. Once again, the Court **ORDERS** ICANN to stay and abate the proceedings and to file notice confirming that it has complied with the Order Granting the Receiver's Emergency Motion to Stay by **December 16, 2011**. If ICANN fails to comply with the Court's orders, then the Court will proceed *sua sponte* to hold a hearing to determine if ICANN is in contempt and should be subjected to fines and sanctions.

IT IS SO ORDERED.

SIGNED this 13th day of December, 2011.

  
Royal Furgeson  
Senior United States District Judge