

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

**AFFIDAVIT OF DANIEL E. HALLORAN
(sworn October 17, 2003)
(in response to motion for confidentiality order)**

I, DANIEL E. HALLORAN, of the City of Los Angeles, in the State of California, in the United States of America, MAKE OATH AND SAY:

1. I am an attorney admitted to the State Bar of California, and am the Chief Registrar Liaison and Acting Secretary of the Defendant, Internet Corporation for Assigned Names and Numbers ("ICANN"). I am the individual at ICANN with primary responsibility for instructing counsel on the conduct of this litigation.

2. I am swearing this Affidavit in response to a motion brought by the Plaintiff, Pool.com Inc. ("Pool.com"), for an order directing that 23 agreements referred to in the Affidavit of Robert Hall, sworn September 17, 2003 (the "Hall Affidavit") served in response to ICANN's motion to strike Pool.com's claim on jurisdictional grounds,

need not be produced and that certain information in those agreements, as selected by Pool.com, be provided only to counsel to ICANN.

3. The agreements at issue are 23 agreements referred to in the Hall Affidavit. According to Mr. Hall, Pool.com entered into these agreements with 23 ICANN-accredited registrars, "many of whom are Canadian and based in Ontario" (the "Agreements"). Pool.com refers to the Agreements in paragraphs 25 and 36 of the Hall Affidavit under the headings "Substantial Connection between Pool.com and this Jurisdiction", and "Pool.com's BackOrder Services". Obviously Mr. Hall refers to the Agreements in an attempt to show that Pool.com's business has connections to Ontario.

4. By letter dated September 22, 2003, ICANN sought production of the Agreements Pool.com referenced in the Hall Affidavit. ICANN's request was met with a refusal to produce the Agreements in their entirety. Pool.com's current position appears to be that it will only produce expurgated versions of the Agreements (or a form of the Agreements) and that certain of the expurgated information will be provided to ICANN's counsel on the condition that it not be provided to ICANN.

5. ICANN's request for production, Pool.com's response, and a complete record of the subsequent correspondence with respect to production of the Agreements is attached hereto as Exhibits "A" through "U".

6. The correspondence shows that Pool.com has taken contradictory positions with respect to the production of the Agreements. For example, by letter dated September 26, 2003, Pool.com's counsel wrote to ICANN's counsel to set out its position with respect to production of the Agreements. In that letter, counsel stated:

"I am writing to advise that our position in relation to the production of the Pool.com Register Partner agreements is that the agreements themselves are confidential pursuant to the terms of the agreements and, therefore, can only be disclosed to you and your client under a protective order of the Court. Such an order would limit disclosure of the agreement to you and your client for the purposes of the litigation and prevent the agreements from being disclosed to third parties." (emphasis added)

7. Also, on September 26, 2003, counsel to Pool.com delivered a draft Order to ICANN's counsel for discussion purposes. In the cover letter, Pool.com's counsel said that "we are looking for your consent to a confidentiality order". The Order that was being proposed by Pool.com would have allowed representatives of ICANN to receive full, unexpurgated copies of the 23 Agreements and would have allowed the representatives of ICANN and its counsel to disclose the Agreements to any person for the purpose of assisting in this action. Contrary to its current position on this motion, Pool.com was not attempting to prevent ICANN from being provided with copies of the Agreements or any portions of the Agreements.

8. On September 29, 2003, after a discussion with ICANN's counsel, Pool.com's counsel sent a revised draft of the Order that Pool.com wished the Court to grant. In its cover letter, counsel stated "We are prepared to provide the Agreements, redacted as to the fee and term provisions as previously agreed to by counsel, once you have indicated your consent to the terms of the draft Order". The enclosed draft Order again confirmed that ICANN would be provided with copies of the 23 Agreements and that only the fee and term provisions would be redacted. The Order proposed by Pool.com on September 29, 2003 would not have had the effect of allowing Pool.com to