



21 February 2007

Registerfly.Com, Inc.  
404 Main Street, Suite 401  
Boonton, NJ 07005  
Attn: Glenn Stansbury

Re: Notice of Breach of ICANN Registrar Accreditation Agreement

Dear Glenn:

This letter is a formal notice of several breaches of sections 3.4, 3.9, and 4.1 of Registerfly.Com, Inc.'s ("Registerfly") Registrar Accreditation Agreement ("RAA"). Under section 5.3.4 of the RAA, Registerfly has 15 working days to cure the breaches described in this letter. If the breaches are not cured in that period, then the Internet Corporation for Assigned Names and Numbers ("ICANN") may give notice of termination of the RAA, after which Registerfly may initiate arbitration to determine the appropriateness of termination.

As you are aware, ICANN staff has met with executive management of Registerfly on at least three occasions over the past year and exchanged numerous email messages and telephone calls in an attempt to resolve the issues described below. Despite repeated assurances of progress, the volume of complaints directed to ICANN about Registerfly continues to grow on a daily basis. ICANN provides you with the following information regarding Registerfly's breaches and potential breaches of the RAA.

**I. Consensus Policy Breaches**

**A. Governing Provisions**

Section 4.1 obligates ICANN-accredited registrars to abide by any Consensus Policies. One such applicable Consensus Policy is the 12 July 2004 Policy on Transfer of Registrations between Registrars ("Inter-Registrar Transfer Policy"), available at <http://www.icann.org/transfers/policy-12jul04.htm>. The Inter-Registrar Transfer Policy ("Transfer Policy") limits the situations in which a losing Registrar may deny a transfer request. (Inter-Registrar Transfer Policy at section A.3). In addition, under Section A.5, "Registrars must provide the Registered Name Holder with the unique 'AuthInfo' code within five (5) calendar days of the Registered Name Holder's initial request if the Registrar does not provide facilities for the Registered Name Holder to generate and manage their own unique 'AuthInfo' code."



If a Registered Name is in Registrar Lock Status, the losing Registrar may not deny a transfer request unless the Registered Name Holder is provided with the reasonable opportunity and ability to unlock the domain name prior to the Transfer Request. (Inter-Registrar Transfer Policy at section A.3)

B. Registerfly's Breach of the Provisions

This portion of the notice of breach addresses Registerfly's obligations under section 4.1, under which Registerfly agreed to abide by all Consensus Policies addressing "the transfer of registration data upon a change in registrar sponsoring one or more Registered Names." As part of this obligation, Registerfly is bound to follow the Inter-Registrar Transfer Policy, which specifies, at section A.3, the obligations of a losing registrar. Under section A.3, Registerfly has five days within which to provide requested information and assist a Registered Name Holder in the process for transferring registrations to a different Registrar. Under section A.5, if the transfer of a Registered Name requires additional security codes, Registerfly must provide these "AuthInfo" codes within five days. Finally, Registerfly may not block a Registered Name Holder's request to transfer a locked domain name without providing an opportunity to unlock the name. Despite these explicit obligations, Registerfly has withheld its approval or otherwise acted to block requested transfers of Registered Names. The following are seven examples of Registerfly's failure to comply with its contractual obligations:

1. Failure to provide authorization info codes

a. A complainant stated that he requested AuthInfo codes for four Registered Names (NAMES REDACTED) but that Registerfly did not provide the codes, despite the lapse of over five days.

b. A complainant stated that he requested AuthInfo codes for fifteen Registered Names (NAMES REDACTED) but that Registerfly did not provide the requested codes within one week of the request.

c. A complainant stated that she requested an AuthInfo code for her Registered Name (NAME REDACTED), but that Registerfly ignored the request for at least six days and never issued an AuthInfo code.

d. A complainant stated that she requested AuthInfo codes for both of her Registered Names (NAMES REDACTED) on 12 February 2007, but that as of 19 February 2007, Registerfly had not provided any AuthInfo codes.

e. A complainant stated that as of 22 January 2007, Registerfly had not responded to his 12 January 2007 requests for AuthInfo codes to transfer his Registered Names (NAMES REDACTED).



## 2. Failure to unlock names

a. A complainant stated that several times since 4 February 2007 he requested that his domain name (NAME REDACTED) be unlocked, but that Registerfly did not act on these requests, causing the transfer to be denied.

b. A complainant stated that on 15 February 2007 he requested that his Registered Names (NAMES REDACTED) be unlocked, but that Registerfly reported that it could not unlock the domains. The domain names remain locked to date.

Registerfly's demonstrated failure to follow the Inter-Registrar Transfer Policy is not simply a violation of the RAA. It also frustrates and impedes ICANN's stated purpose in providing a "straightforward procedure for domain name holders to transfer their names from one ICANN-accredited registrar to another should they wish to do so." (See [http://www.icann.org/transfers/.](http://www.icann.org/transfers/)) Each registrar's compliance with these procedures is essential for this Consensus Policy to work as anticipated. Violations of this policy by Registerfly, as those outlined above, harm both the customer and other registrars. Registerfly's violation of the Transfer Policy provides an independent ground for termination of Registerfly's accreditation, if all such violations are not cured within 15 days of this notice.

## **II. Documentation Breaches**

### A. Governing Provisions

Section 3.4 of the RAA obligates ICANN-accredited registrars to maintain and update databases containing certain data elements for each active Registered Name it has sponsored within each TLD for which it is accredited. The data points include:

- The name and postal address of the Registered Name Holder, administrative contact, technical contact, and billing contact;
- Email address of the administrative contact, technical contact, and billing contact;
- Voice telephone number of the administrative contact, technical contact, and billing contact;
- Fax number, where available, of the administrative contact, technical contact, and billing contact; and
- Any other Registry Data that Registrar submitted to the Registry Operator.

In addition, ICANN-accredited registrars are bound to maintain certain records relating to dealings with Registry Operators and Registered Name Holders for three years, and make these



records available for ICANN inspection. The Registrar must maintain the following information:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

B. History of Registerfly's Documentation and Customer Service Issues Potentially Implicating the RAA's Documentation Provisions

On 13 October 2004, ICANN entered into a registrar accreditation agreement with Top Class Names, Inc. On or around 22 November 2004, Top Class Names, Inc. filed a Certificate of Amendment of Certificate of Incorporation with the State of Delaware, changing its name to [Registerfly.Com](#), Inc. Prior to this time, Registerfly had only been a reseller of domain names for eNom, Inc. (an ICANN-accredited registrar) and, to a lesser extent, other accredited registrars.

In late 2005 and early 2006, ICANN began seeing a large number of complaints from Registerfly customers. At that time, most of the complaints involved Registered Names that were registered by Registerfly not as a registrar, but as a reseller for eNom. The complaints frequently included allegations that Registerfly was overcharging (two, three and four times per transaction). Customers reported that Registerfly did not provide customer service: Registerfly did not answer emails or support tickets and the call hold time was frequently in excess of 30 minutes. When the customers would initiate a chargeback through their credit card companies, Registerfly apparently retaliated by denying the customer access to all of the Registered Names in their account, not just the Registered Name involved in the chargeback transaction. ICANN forwarded the complaints to eNom.

On 17 January 2006, Tim Cole, ICANN's Chief Registrar Liaison, forwarded a complaint about Registerfly (as reseller) to eNom, and mentioned "the unusually high number of complaints we get concerning Registerfly." eNom responded with an explanation from its reseller (Registerfly) which indicated that Registerfly intended to move the domain names under its management to its own credential (from eNom's). In this same response, Registerfly indicated that 90% of its complaints involved chargebacks.

On 21 February 2006, Tim Cole again contacted eNom (through its then General Counsel, Martin Garthwaite), describing a potential breach of eNom's RAA occurring through allegations of Registerfly (as reseller) altering customers' whois data and populating the whois record with intentionally inaccurate data. At this time, ICANN confirmed with eNom that any Registered



Names sponsored through eNom's accreditation – even if processed through Registerfly a reseller – were eNom's responsibility.

In April 2006, ICANN continued to receive complaints about Registerfly as both a registrar and as a reseller. Registerfly's customers reported being inexplicably locked out of their accounts. Additionally, complaints stated that domain names were disappearing from customer accounts. Kevin Medina, Registerfly's listed primary contact, contacted Mike Zupke, ICANN's Registrar Liaison Manager, and stated these issues were as a result of "growing pains." On 18 April 2006, Mike Zupke reiterated to Registerfly ICANN's concerns regarding the volume of complaints against Registerfly, and the fact that many of these complaints concerned chargebacks. The complaints continued, and in May 2006 started to include reports of problems with "stolen" registrations and Registerfly reseller renewals, which actually resulted in transferred registrations to Registerfly as a registrar.

On 19 May 2006, ICANN received a complaint from a Registered Name Holder that after a reportedly heated argument with Registerfly, the Whois information for the 220 Registered Names held by that party had been changed to reflect "Kevin Medina" as the Registered Name Holder instead of the customer. As part of its investigation of this situation, ICANN immediately requested documentation pursuant to section 3.4 of the RAA. After receiving no response, on 26 May 2006, ICANN announced an on-site audit to obtain the requested information. On 6 June 2006, Kevin Medina agreed to respond to ICANN's request voluntarily. On 12 June 2006, Registerfly provided incomplete records to ICANN. ICANN had to continually pressure Registerfly until the documentation was complete.

On 15 June 2006, in response to ICANN's audit notice and in addition to dealing with the requested documentation, Registerfly, through its representatives Kevin Medina and Glenn Stansbury (VP of Operations for Registerfly), came to ICANN's Marina del Rey headquarters to meet with ICANN staff to discuss the inordinate number of complaints ICANN had received regarding Registerfly. Mr. Medina and Mr. Stansbury both assured ICANN that Registerfly was working hard to improve its customer service and that it was working to relieve the pressure on the Registerfly employees who worked in the Risk/Fraud department so that chargebacks would no longer be an issue. Mr. Medina disclosed that employees in Registerfly's Risk/Fraud department were paid strictly on commission, but that the policy would be changed as a result of Registerfly's discussions with ICANN.

Over the next few months, complaints to ICANN about Registerfly's handling of chargebacks decreased, although overall complaints regarding Registerfly increased. In particular, ICANN began to see a number of complaints from customers who experienced difficulty in renewing their registrations because they were unclear about "renewal/transfers." These "renewal/transfers" were apparently transactions in which Registerfly (as registrar) offered Registerfly's (as reseller) eNom-managed customers incentives to migrate to Registerfly's accreditation.



ICANN did not receive complete documentation in response to its audit request of 26 May 2006 until 4 October 2006. Upon review of the complete documentation, ICANN determined that the provided records demonstrated irregularities.

On 20 November 2006, Tim Cole requested that Registerfly meet with ICANN in person at the upcoming Sao Paulo ICANN meeting because Registerfly was not responding to email or telephonic inquiries about, among other things, the ever-increasing complaints from Registerfly customers about over-charging. On 3 December 2006, Tim Cole, Mike Zupke, and ICANN's Contractual Compliance Director Stacy Burnette met with Registerfly representatives Mr. Stansbury and Mark Klein (VP of Sales of Registerfly) in Sao Paulo, Brazil to discuss the continuing issues with Registerfly. These issues included:

- (1) Registerfly' failure to renew customer names;
- (2) customer service failures;
- (3) customer billing errors;
- (4) nonpayment of ICANN invoices; and
- (5) insufficient funding of registry accounts.

At the meeting, Mr. Stansbury and Mr. Klein repeated the previous assurances from Registerfly that these issues were being corrected and that Registerfly would be opening a new customer service facility within one week. Ms. Burnette provided Mr. Stansbury with a document including the greatest of ICANN's concerns. Mr. Stansbury promised to respond in writing by 3 January 2007, but no response was ever received by ICANN. Mr. Stansbury also asked ICANN to provide his email address and telephone number to all Registerfly customers who needed assistance, saying that he would personally resolve all complaints.

In January 2007, ICANN continued to receive complaints about Registerfly in both its registrar and reseller capacities for failing to process transactions, as well as many other general customer service complaints from consumers, other ICANN-accredited registrars, ICANN board members, and the U.S. Department of Commerce. The most common complaint by Registerfly customers was that transactions that were billed and paid were not being effected at the registry. In addition, multiple-year renewals and registrations were only processed for one year instead of the number of years that had been paid for. ICANN requested responses from Registerfly on several occasions, but received little or no explanation. Customers reported that Registerfly was unresponsive to their inquiries, even those referred directly by ICANN to Mr. Stansbury or Mr. Medina.

### C. Registerfly's Breaches of the Provisions

This portion of the notice of breach addresses Registerfly's obligations under section 3.4 of the RAA, under which Registerfly agreed to maintain, and provide ICANN with copies for inspection, of records of Registered Name Holder accounts, including payment and other modifications. Despite these promises, Registerfly has failed to provide ICANN with the



complete documentation to satisfy its obligations under section 3.4. The following are two examples of Registerfly's failure to comply with its contractual obligations:

1. Request on 22 January 2007: Mike Zupke received a voice mail message from a Registerfly customer seeking assistance with renewal of two domain names: (NAMES REDACTED). According to the customer, he had been trying since 12 January 2007 to renew his Registered Names or obtain authorization codes to transfer his Registered Names to another ICANN-accredited registrar. On 22 January 2007, Mr. Zupke emailed Mr. Stansbury and Mr. Medina requested, under section 3.4, "copies of all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts, between your registrar and this customer, by no later than 29 January 2007." The email message was transmitted again to Mr. Medina on 6 February 2007. ICANN has not received any response to this Request.

2. Request on 26 January 2007: Stacy Burnette sent an email to Mr. Stansbury regarding a complaint over seven Registered Names: (NAMES REDACTED). In accordance with Registerfly's obligations under section 3.4, Ms. Burnette requested that Registerfly provide the following documentation by 2 February 2007:

- The name(s) and postal address(es) of the Registered Name Holder(s) of the domain names [];
- The name(s), postal address(es), e-mail address(es), voice telephone number(s), and (if available) fax number(s) of the technical contact(s) for the domain names [];
- The name(s), postal address(es), e-mail address(es), voice telephone number(s), and (if available) fax number(s) of the administrative contact(s) for the domain names [];
- The name(s) and (if available) postal address(es), e-mail address(es), voice telephone number(s), and fax number(s) of the billing contact(s) for the domain names [];
- Records of the submission dates and times, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operators related to the domain names []; and
- Records of all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with the Registered Name Holder(s), including but not limited to registration contracts, related to the domain names [].

On 29 January 2007, Ms. Burnette received a reply email from Registerfly, which was copied to Mr. Stansbury, stating "Please be advised we are compiling the requested information. Please contact us if you need any other information." The return email included incomplete records. ICANN has not received any further response to Ms. Burnette's request.



These two examples, as well as other examples of communication by Registerfly, demonstrate Registerfly's breach of section 3.4 of the RAA. Through its failure to adequately and timely respond to ICANN's requests for documentation, Registerfly is not only neglecting its duties under the contract, but frustrating ICANN's ability to assist customers in achieving resolution of customer complaints. As discussed above, Registerfly has a documented history of customer service and registration issues, and its failures to adequately provide information to respond to investigation of these issues only amplifies the problem. In addition, Registerfly's actions in failing to timely provide ICANN with the requested information imposes additional burdens on ICANN, in increased time and staff effort to simply obtain the information. Registerfly's violations of section 3.4 of the RAA provide an independent ground for termination of Registerfly's accreditation, if all such violations are not cured within 15 days of this notice.

### **III. Accreditation Fee Breaches**

Under section 3.9 of the RAA, ICANN-accredited registrars are obligated to pay yearly and variable fees to ICANN in a timely fashion. This portion of the notice of breach concerns Registerfly's obligations under section 3.9 of the RAA, under which Registerfly agreed to timely pay its accreditation fees. Despite this agreement, Registerfly has a substantial outstanding balance to ICANN that it has failed to pay.

On 10 October 2006, ICANN notified Registerfly that it had an outstanding balance of \$131,422.86 in fees immediately due to ICANN, of which \$44,985.16 was over 90 days past due. A month later, on 10 November 2006, ICANN had not received any response from Registerfly. Mike Zupke called Glenn Stansbury to inquire as to why Registerfly was not paying its invoices to ICANN. Mr. Stansbury reported that he was unaware of this issue. Kevin Medina then called Mr. Zupke and claimed to be unaware of the issue but promised to wire \$49,000 to ICANN that week and another \$44,000 at the beginning of the next week. During that conversation, Mr. Zupke expressed to Mr. Medina that failure to pay ICANN invoices is a breach of Registerfly's RAA that, if unresolved, could result in proceedings to terminate Registerfly's accreditation.

On 4 December 2006, ICANN received a wire transfer from Registerfly in the amount of \$70,000. ICANN received an additional \$59,999 the next day. On both 11 December and 19 December 2006, ICANN requested from Mr. Stansbury and Mr. Medina payment of Registerfly's remaining balance. Mr. Medina promised that payment would be made on 22 December 2006. No payment was received. ICANN again requested payment of the outstanding balance on 9 January 2007 and 2 February 2007. To date, \$5,423.86 remains outstanding, and is over 60 days past due.

ICANN-accredited Registrars are bound to pay ICANN in a timely fashion. If Registerfly fails to cure this breach of its RAA within 15 working days, its non-payment of ICANN fees provide an independent ground for ICANN to proceed to termination of Registerfly's accreditation.



#### **IV. Additional Issues Concerning Registerfly's Business Dealings**

On 30 October 2006, ICANN received information from (REGISTRY NAME REDACTED) that Registerfly was not maintaining a sufficient balance with (REDACTED) to process all of the transfers into Registerfly that had been requested. Specifically, (REDACTED) provided ICANN with copies of emails to Mr. Medina that indicated that 592 transfers were failing due to Registerfly's insufficient funding of its (REDACTED) account. The emails from (REDACTED) to Mr. Medina (dated 24, 26, and 30 October 2006) were all apparently met with silence, causing (REDACTED) to ask ICANN for assistance. Mike Zupke approached this issue in his 10 November 2006 conversations with Registerfly, and this issue was also one of the topics discussed between Registerfly and ICANN at the 3 December 2006 meeting in Sao Paulo, Brazil.

Registerfly's failure to properly fund its Registry Accounts places its customers at risk of losing the Registered Names the customers paid for. Indeed, Registerfly customers self-report that such instances have already occurred. Moreover, federal court documents filed by UnifiedNames, Inc. against Mr. Medina allege that in January 2007 alone 75,000 registrations were lost due to Registerfly's failure to fund its accounts with registries and eNom. Such failures indicate the potential for complete frustration of the RAA for failure to actually provide the consumer with registrar services. In addition, the inability to retain sufficient funding for Registry Accounts also raises concerns that Registerfly may be bankrupt or insolvent, which would allow ICANN to immediately terminate the RAA under section 5.3.7.

ICANN specifically reserves the right to pursue any and all other breaches besides those enumerated above, and nothing herein shall be deemed a waiver of that right.

#### **V. Conclusion**

As noted above, section 5.3.4 of the Registrar Accreditation Agreement agreed in October 2004 between Registerfly and ICANN provides that notice of termination of Registerfly's accreditation may be given if these breaches are not cured within 15 working days.

Registerfly's pattern of neglect of its obligations to ICANN, fellow registrars, and customers demonstrated by the above circumstances is unacceptable. Though Registerfly agreed to such commitments as timely payment of fees, maintenance and provision of required documentation, and the procedures to facilitate the free transfer of domain names in its October 2004 accreditation agreement, these commitments have not been met. The above recitation demonstrates that Registerfly has repeatedly taken what appears to be a cavalier attitude toward the promises it made.

Registerfly's conduct has fallen far short of both its responsibilities to the public and its agreements. We therefore provide this formal notice of breach of Registerfly's Registrar Accreditation Agreement with ICANN.



ICANN's goal in this matter is to promote full compliance with all terms of the RAA in order to provide accurate and timely service to Registerfly customers and to preserve their expectations and abilities to renew and transfer Registered Domain Names. In addition, ICANN seeks to enforce compliance of the fee provisions agreed to by Registerfly. We hereby demand that Registerfly act promptly to cure the breaches outlined in this letter, and will become more responsive and cooperative in dealing with additional issues as they are discovered. Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kurt J. Pritz". The signature is fluid and cursive, with a prominent loop at the end.

Kurt J. Pritz  
Senior Vice President, Services