

INDEPENDENT REVIEW PROCESS
INTERNATIONAL CENTER FOR DISPUTE RESOLUTION

AFILIAS DOMAINS NO. 3 LTD.,

Claimant,

and

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,

Respondent,

and

NU DOTCO, LLC. and VERISIGN, INC.

Proposed Intervenors.

ICDR CASE NO: 01-18-0004-2702

**DECLARATION OF JOSE IGNACIO RASCO III IN SUPPORT OF
REQUEST BY NU DOTCO, LLC TO PARTICIPATE AS *AMICUS CURIAE* IN
INDEPENDENT REVIEW PROCESS**

Steven A. Marenberg
Charles E. Elder
IRELL & MANELLA LLP
1800 Ave. of the Stars, Suite 900
Los Angeles, California, 90067
Tel: (310) 277-1010

Counsel to Proposed *Amicus Curiae*
Nu Dotco, LLC

DECLARATION OF JOSE IGNACIO RASCO III

I, Jose Ignacio Rasco III, declare as follows:

1. I am the Chief Financial Officer and a manager of Nu Dotco, LLC (“NDC”). I have personal knowledge of the facts set forth below and if called upon as a witness, I could and would testify competently thereto.

2. On June 13, 2012, NDC submitted an application to ICANN to acquire the right to operate the .web gTLD.

3. NDC’s application passed all applicable evaluations by ICANN in June 2013 and was placed in a Contention Set with the other applicants for the .web gTLD, pursuant to the procedures set forth in the Guidebook.

4. In accordance with ICANN’s application requirements, NDC’s application stated that it was a Delaware limited liability company and identified three people as its officers: Jose Ignacio Rasco III, CFO; Juan Diego Calle, CEO; and Nicolai Bezsonoff, COO. It listed myself as its “Primary Contact” and Mr. Bezsonoff as its “Secondary Contact.” It identified two owners having at least 15% interests: Domain Marketing Holdings, LLC, and Nuco LP, LLC.

5. There has never been a change in NDC’s control, and no one other than those named in the application has ever owned more than a 15% interest in NDC. Furthermore, there were no changes in circumstances that rendered untrue or inaccurate any information in NDC’s application.

6. On August 15, 2015, more than three years following the submission of NDC’s application, NDC and VeriSign entered into an executory agreement (“Agreement”) by which (i) Verisign agreed to provide the funds for NDC to participate in the auction for the .web gTLD, and (ii) if NDC prevailed at the auction, upon execution of the registry agreement between ICANN and NDC, and upon further application to ICANN and with ICANN’s consent, NDC would assign the registry agreement for the .web gTLD to Verisign.

7. The Agreement did not transfer ownership, management, or control of NDC to Verisign, and Verisign has never had any direct or indirect legal or beneficial ownership or other interest in NDC or the .web gTLD application.

8. On June 6, 2016, Donuts Inc. (“Donuts”), the parent company of Contention Set member Ruby Glen, contacted NDC to ask it to reconsider its decision to forego a private resolution of the Contention Set and for a two-month delay of the public auction. On June 7, 2016, on behalf of NDC, I informed Donuts that NDC would not change its position and would not agree to postpone the public auction. I did not inform Donuts of any change in ownership or control of NDC, as there had been none.

9. On June 7, 2016, Afilius contacted Mr. Calle to ask NDC to reconsider NDC’s decision to forego a private resolution of the Contention Set. In an effort to persuade NDC, Afilius offered to “guarantee [NDC] score[s] at least 16 mil if you go into the private auction and lose.” NDC declined Afilius’s offer, whereupon Afilius offered to increase the guaranteed payment to \$17.02 million. NDC again declined Afilius’s offer. A true and correct copy of this text message thread is attached hereto as Exhibit A.

10. On June 23, 2016, in a bid to delay the upcoming public auction, Donuts and Ruby Glen falsely represented to ICANN that NDC had changed its ownership and/or management structure, but had not reported that change to ICANN as required. Donuts and Ruby Glen requested that ICANN delay the public auction based on these misrepresentations.

11. ICANN contacted NDC on June 27, 2016, to investigate the accuracy of Donuts and Ruby Glen’s complaint. I responded that same day and confirmed that there had been no changes to NDC’s ownership and/or management.

12. Ruby Glen further objected to the scheduled public auction to the ICANN Ombudsman in late June 2016. In support of its efforts to delay the public auction, Ruby Glen made the same misrepresentations to the Ombudsman as it made above to ICANN. Upon information and belief, after communications with NDC, the Ombudsman advised ICANN and Ruby Glen that there were no grounds for a delay of the auction.

13. On July 5, 2016, Oliver Mauss of Schlund, another member of the .web Contention Set, emailed Mr. Calle a proposal for an “alternative private auction,” touting its alleged numerous advantages over an ICANN public auction. So-called “benefits” of this alternative form of private auction model, according to Mr. Mauss, included that the winning participant would pay less for the gTLD than it would in an ICANN public auction; it “divides the participants into groups of strong and weak”; the “weak players are meant to lose and are compensated for this with a pre-defined sum”; “the strong players bid for the asset”; and “the losing weak players receive a lower return than in the Applicant Auction.” A true and correct copy of this email is attached hereto as Exhibit B.

14. On July 8, 2016, I informed ICANN that there was no basis to delay the scheduled public auction in a conversation with Christine Willett, the Vice President, Global Domains Division Operations, for ICANN. I reiterated to Ms. Willett that neither the ownership nor management of NDC had changed since NDC filed its .web application and, accordingly, there was no need to update the application. During this call, Ms. Willett stated that she understood that the attempt to delay the public auction was motivated by the desire of Donuts, Afilias, and the other applicants to hold a private auction. I advised Ms. Willett that NDC had the same understanding.

15. On July 11, 2016, I confirmed in writing to Ms. Willett that NDC had made clear to other applicants that it had no desire to participate in a private auction and that it was committed to participating in ICANN’s scheduled public auction.

16. On several occasions, Mr. Calle and I were contacted by Steve Heflin and John Kane of Afilias, Jonathon Nevitt of Donuts, and/or Oliver Mauss of Schlund in an attempt to pressure NDC into resolving the Contention Set via private auction in lieu of ICANN’s public auction. On each such occasion, Mr. Calle or I responded that NDC was not interested in participating in a private auction.

17. On July 22, 2016, five days before the Auction’s July 27, 2016 commencement date, after the deposit deadline for the Auction had passed, and during the Blackout Period, John

Kane at Afiliat attempted to engage in a prohibited discussion with me regarding bids, bidding strategies and settlement of the contention set, by sending me the following text message in violation of ICANN's blackout rules: "If ICANN delays the auction next week would you again consider a private auction?" A true and correct copy of this text message is attached hereto as Exhibit C.

18. In accordance with its Agreement with NDC, Verisign provided funds to NDC for it to use in its bidding for the .web gTLD in the public auction. NDC submitted a final bid of \$142 million that ICANN deemed to be and announced as the winning bid, and paid \$135 million for the rights to acquire the .web gTLD. Under the applicable Auction Rules, the amount to be paid was the amount of the second-to-last bid in the auction, which was \$135 million.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 10, 2018, in Miami, Florida.



Jose Ignacio Rasco III