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December 15, 2008

**Via Facsimile and U.S. Mail**

Mr. Thomas K. Kahn, Clerk  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth Street, N.W., Atlanta, GA 30303-6147  
*Facsimile: (404) 335-6162*

**Re: *Internet Solutions Corp. v. Marshall*; Case No. 08-12328**

Dear Mr. Kahn:

This letter brief is submitted in response to the Court's request of November 24, 2008, and addresses the relevance of *Licciardello v. Lovelady*, No. 07-14086 (11th Cir. October 10, 2008) to this case.

*Licciardello* is not relevant to this case, both because it deals with an entirely different area of law and because the facts of that case controlled the result while the facts in the instant case are markedly different.

I. LEGAL DIFFERENCES

*Licciardello* is a trademark infringement case, not a defamation case. In trademark infringement cases, it is well-settled that the proper forum in which to litigate such a case is where the mark's owner resides. However, it is equally well-settled that in defamation actions which involve important free speech concerns, the analysis is far more complex.

The reason that trademark infringement cases are examined by a more lax standard is that trademark law is uniform throughout the United States. Accordingly, what is a Lanham Act violation in one state will be a Lanham Act violation in the other 49 states. Defamation law, on the other hand, is different in each state. Wide variance in interpretation of defamatory comments, defenses, and privileges exists. Defendants in one jurisdiction are not on fair notice of the controlling defamation law in other, remote locales.

Allowing plaintiffs to choose inconvenient forums for a defamation action allows any company that is merely criticized to engage in the punitive action of dragging a defendant to an inconvenient forum prior to any determination that any tortious conduct occurred.

II. FACTUAL DIFFERENCES

Personal jurisdiction cases are highly fact-specific. Accordingly, applying the legal conclusions in *Licciardello* to this case would be improper, as there are key factual distinctions in this case (aside from the fact that it is a Lanham Act case), which make it inapplicable to *ISC v. Marshall*.

In *Licciardello*, the court noted that the trademark infringement "individually targeted Carman" *Op. at* 15. In that case, the defendant formerly served as the plaintiff's manager. Accordingly, when the defendant infringed upon the plaintiff's intellectual property rights, the defendant could have had no

doubt that he was acting in a manner that would directly target an individual who resided in Florida. As the plaintiff's former manager, the defendant was in a unique position to have full knowledge of this fact. Accordingly, in *Licciardello*, the defendant's actions were "expressly aimed at" Florida. This case is distinguishable because:

**1) The record reflects that Marshall is not the author of any of the complained-of statements.** Those statements were, as the record shows, made by commenters to her blog. Accordingly, Marshall *aimed* nothing actionable at I.S.C. If anyone aimed anything at I.S.C., it was these commenters, and whatever aim they may have taken cannot be transferred to Ms. Marshall. In fact, Marshall is immune from liability for any statements made by third parties, which makes the fact that this case was brought at all patently frivolous. See 47 U.S.C. § 230.

**2) The record in this case reflects that I.S.C. is not clearly a Florida entity.** While Lovelady clearly was aware of Licciardello's Florida residency, Marshall could not have had any clear indication that I.S.C. was a Florida entity. A search of the Florida Secretary of State's public records reflects that I.S.C. may claim a right to do business in Florida, however, the only publicly available document demonstrates that I.S.C. is a defunct Nevada corporation with a mailing address of I.S.C.'s former counsel. A reasonable person, upon making an inquiry, would presume that I.S.C. was a Nevada entity, represented by Florida counsel. The factual record supports this conclusion.

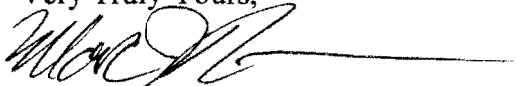
### III. OTHER ISSUES THAT MAKE *LICCIARDELLO* IRRELEVANT TO THE INSTANT CASE:

In *Licciardello*, the defendant did not enter any arguments (and there was no evidence) to address *where* the injury from the tort occurred, if there was one. In the instant case, Marshall has made such arguments, and the fact that the defendant in another case failed to address a key issue should not affect a defendant in an unrelated case. *ISC v. Marshall* has a far more well-developed factual record. In this case, even if this court were to apply the *Calder* effects test, this Court must examine where the actual "harm" from the commenters statements caused any effect. The effect would not necessarily occur in Florida, as the harm from a defamatory statement occurs when a reader receives the message and changes his or her opinion of the plaintiff as a result of the defamatory message. In this case, it has not so much as been argued, let alone shown, that anyone read the complained-of statements – much less, anyone in Florida.

*Licciardello* notes that the due process analysis requires that a court examine: (1) the burden on the defendant of litigating in the forum; (2) the forum's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; and (4) the judicial system's interest in resolving the dispute.

(1) The Defendant is heavily burdened in this case, unlike *Licciardello* who regularly did business in Florida. Ms. Marshall has zero contacts of any kind with Florida. (2) This forum has less of an interest in this dispute than Nevada – where I.S.C. is incorporated. (3) The judgment (if any) will need to be domesticated in Washington. Therefore, it is most convenient to simply adjudicate the case there.

Very Truly Yours,



Marc J. Randazza

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MJR/ja

cc: Keith E. Kress, Esq. (via U.S. mail only)  
per counsel's request