

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

NEULEVEL, INC.,	)	
	)	
Plaintiff,	)	C.A. No. 011245A
	)	
v.	)	
	)	
AMAZON.COM, INC.,	)	
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff NeuLevel, Inc. alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331(a) (federal question). This Court also has jurisdiction over Count I of this action pursuant to 28 U.S.C. § 1121 (cause of action arising under the Lanham Act) and 28 U.S.C. § 1338(a) (cause of action arising under an act related to trademarks) because such cause of action arises under the Trademark Act of 1946, as amended (Lanham Act), 15 U.S.C. § 1051 et seq., as is hereinafter more fully described. This Court also has jurisdiction over Count II of this action pursuant to the Commerce Clause of the United States Constitution, Art. I, § 8, cl. 3.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2). Venue is appropriate in this Division pursuant to Local Rule 3(c).

**NATURE OF THE ACTION**

3. This action is brought pursuant to 28 U.S.C. §§ 2201-02 seeking a declaration that NeuLevel's process for establishing a new gTLD, which NeuLevel is pursuing in collaboration with the Internet Corporation for Assigned Names and Numbers ("ICANN") pursuant to

contract, does not violate federal trademark statutes and cannot be subject to State regulation as it involves matters of federal concern.

4. As part of the effort to expand opportunities on the Internet, ICANN, the nonprofit entity responsible for developing and administering policies relating to the Internet Domain Name System (“DNS”), approved the addition of seven new generic top level domain names (“gTLDs”) to the Internet. Among these newly-selected gTLDs was .biz. Plaintiff NeuLevel, Inc., then known as JVTeam, L.L.C., was selected from among numerous applicants to facilitate the registry for .biz gTLDs. Thereafter, Plaintiff sought, through extensive discussions with ICANN, to create a feasible and equitable system pursuant to which applications for the .biz gTLDs could be allocated among multiple parties with legitimate interests in acquiring the same limited resource – a singular, distinctive, one of a kind .biz gTLD. NeuLevel and ICANN entered into a registry agreement on May 11, 2001 intended to address this concern and to avoid implementing a domain name registration process that would result in multiple Internet users clogging and potentially disabling the network in a race to the domain name registry cyber-door. The NeuLevel registry agreement also took into account the implications for intellectual property owners inherent in the addition of new domain names to the Internet. The .biz registry process began at the end of May, 2001. Names in the .biz Internet domain name registry are scheduled to go live on October 1, 2001, at which point successful applicants for .biz gTLDs will obtain control over the domain names allocated to them.

5. On July 30, 2001, Amazon.com threatened litigation against NeuLevel in a letter sent to NeuLevel’s office in Sterling, Virginia. Specifically, Amazon.com, through counsel, alleged that NeuLevel’s negotiated domain name allocation and registration plan violates state and federal lottery laws, Section 5 of the Federal Trade Commission Act, and the Federal

Trademark Dilution Act, and threatened to sue NeuLevel if NeuLevel failed to abandon its .biz Internet domain name registration plan within ten days and institute the domain name registration plan demanded by Amazon.com. Amazon.com's demanded scheme for domain name registration is not tailored to address the complex problems inherent in the task of allocating a limited resource among multiple interested parties, some with intellectual property interests, who could potentially clog and disable the Internet in an attempt to obtain desired .biz gTLDs. Upon receipt of Amazon.com's demand letter, NeuLevel became greatly concerned about the imminent threat of litigation propounded by Amazon.com and the potential implication of such litigation on the validity of .biz gTLD assignments scheduled to be made to Internet users worldwide on October 1, 2001.

#### **THE PARTIES**

6. Plaintiff NeuLevel is incorporated in Delaware with its principal place of business in Sterling, Virginia.

7. Upon information and belief defendant Amazon.com is incorporated in Delaware with its principal place of business in Seattle, Washington.

8. NeuLevel is based in Sterling, Virginia. The databases used by NeuLevel to store data for and to operate the .biz registry are located in Sterling, Virginia. Development of the .biz registry design occurred in Sterling, Virginia and the registry will be operated from that location.

#### **FACTUAL BACKGROUND**

##### **Development of the Internet**

9. The Internet is a network of computer networks that operates worldwide. It is the product of research efforts by the Department of Defense ("DOD") and the National Science Foundation ("NSF"), two federally funded research organizations. The DOD launched

ARPANET, the Internet's predecessor, in 1969. Ultimately, the NSFNET of the National Science Foundation superseded ARPANET in 1990. The United States has played a central role in the development and support of the Internet for the last thirty years, and controls the management of the A root pursuant to government contracts.

10. The Internet consists of a hierarchical network of computers that are able to resolve alphanumeric data into groups of numbers. These groups of numbers, also known as IP addresses, are the "phone numbers" that enable the network to locate a particular site on the Internet. This process allows a user to reach a particular Internet site by typing in a domain name rather than the corresponding blocks of numbers. Domain names are also structured hierarchically, with the name at the farthest right designated as the top level domain name, and the name immediately to the left called the second level domain name. For example, in the domain name NeuLevel.biz, ".biz" is the top-level domain name, while "NeuLevel" is the second level domain name.

11. In order to ensure that all domain name requests resolve in a uniform manner, the Internet was designed with a root zone file that resides at the top of the hierarchical system. This master root server is also known as the "A" root. The A root is physically located in the State of Virginia within this judicial district and is controlled by the United States Department of Commerce ("DOC"). Directly beneath the A root are 12 other root servers located worldwide that receive updated information daily from the A root concerning the root zone file and top level domain zones files. From these root servers, the Internet spreads out into a vast global network for worldwide use.

12. The A root is currently operated by Network Solutions, Inc. ("NSI") pursuant to a contract between NSI and the United States. Under that agreement, the United States, through

the DOC, retains final policy control over the A root. Specifically, the DOC determines what additions, including new top level domain names, may be made to the A root. For example, the addition of the top-level domain name .ps (signifying Palestine) to the A root was possible only with DOC's direction and approval, which came after DOC reviewed a report from ICANN recommending the addition of the .ps domain name.

13. NSI originally became involved in domain name administration through a cooperative agreement with NSF. In 1998, DOC entered into a Memorandum of Agreement with NSF whereby the responsibilities under the cooperative agreement between NSF and NSI were transferred to DOC. DOC then amended the NSF agreement with NSI to provide that NSI operates the A root under the direction of DOC. At this time, NSI continues to operate the A root subject to the direction and control of the DOC.

14. The Internet is a shared global resource that has recently become a source of substantial economic benefits for many individuals, businesses and countries. It has long been thought, however, that more top level domains should be added to the Internet. No centralized authority controls the Internet beyond the A root and its twelve inferior root servers, and thus its smooth functioning depends upon a consensus of its users worldwide.

#### **Expansion of Competition in the Domain Name System**

15. On June 10, 1998, the DOC published a policy statement that has come to be known as the White Paper. 63 Fed Reg 31741 (1998). The policy statement embodied in the White Paper indicated the DOC's willingness to enter into an agreement with a nonprofit entity, to be composed of private sector Internet users worldwide, to administer policy for the Internet name and address system (the domain name system, or "DNS"). This private entity, according to the White Paper, would also oversee and set policy for the circumstances in which new top level

domains would be added to the A root, and would perform other Internet functions. The White Paper directed this entity to achieve certain federal policy goals articulated by then-President Clinton in his 1997 Presidential Directive on Electronic Commerce: (a) Internet stability; (b) competition; (c) private, bottom-up coordination; and (d) representation.

16. In the White Paper, the DOC chose not to move forward in adding new generic top level domain names, stating that the policy issues relating to new gTLD's were "formidable" and that the designated nonprofit entity could best make those decisions based upon "global input."

17. On November 25, 1998, after receiving various proposals and submissions, DOC selected ICANN as the nonprofit entity to administer policy and to perform other functions relating to the DNS and the Internet. At that time, DOC and ICANN entered into a Memorandum of Understanding ("MOU").

#### **The Terms of the MOU: ICANN's Role In the Domain Name System**

18. The MOU is a cooperative agreement between DOC and ICANN. As such, it is a Congressionally authorized means for achieving federal policy objectives. Pursuant to the MOU, DOC and ICANN agree to collaborate on the DNS Project and to "jointly design, develop and test mechanisms, methods and procedures", specifically including "[o]versight of the policy for determining the circumstances under which new top level domains would be added to the root system." MOU at II.B.c. The MOU also sets forth DOC's conclusion that its DNS project can best be performed with the participation of ICANN.

19. The MOU sets forth four principles for the parties to jointly follow – principles that were first identified in the President's Directive. Those principles call for (1) maintaining the stability of the Internet while transitioning DNS management to the private sector; (2)

promoting management of the DNS in a manner that permits market mechanisms to support competition and consumer choice; (3) developing a private coordinating system that is flexible and able to accommodate rapid change in the Internet; and (4) promoting technical management of the DNS to reflect the “global and functional diversity” of Internet users and their needs.

20. The MOU also calls for ICANN and DOC to “collaborate on . . . a plan” for adding new gTLD’s. The MOU recognizes the consumer benefits to be obtained by the addition of new gTLD’s because of the competition among domain name registries that will result.

#### **The Award of the New .biz Domain**

21. After years of extensive international debate and comment about the addition of new top level domains, including at regular, quarterly meetings conducted by ICANN, it was finally determined that new gTLDs could be added to the Internet. The ICANN meetings were held around the world, including in Berlin, Germany, May 1999; Santiago, Chile, August 1999; Cairo, Egypt, March 2000; and Yokohama, Japan, July 2000. The ICANN meetings each lasted four days, with the third day of each meeting wholly devoted to public comment.

22. After these international meetings, committee meetings of various working groups set up to consider the issues surrounding the launch of the new gTLDs, including the Intellectual Property Constituency and the Governmental Advisory Committee (comprised of government representatives of ICANN participant countries) and extensive public debate at ICANN meetings and in internet discussion fora, ICANN solicited RFPs for the introduction of gTLDs. The criteria for proposals and the selection process focused, *inter alia*, on the need to maintain the Internet’s stability, to enhance competition for registry services, to protect the rights of third parties, and to prove financial, technical and operational viability for the new registry.

NeuLevel's proposal for the .biz registry was posted on the Internet in October 2000 for public comment.

23. On November 16, 2000, ICANN selected seven new gTLD's, including .biz. The selection process was public and open, consistent with ICANN's consensus-driven, bottom-up decisionmaking policy. The successful applicant for the .biz registry was the plaintiff, NeuLevel, Inc., then known as JVTeam, L.L.C. Thereafter, ICANN and NeuLevel undertook an extensive process of discussion and negotiation to develop a satisfactory top-level domain name registry agreement.

24. Top level domains are operated by registries pursuant to contracts with ICANN. Registries, in turn, enter into contracts with registrars, the terms of which are approved by ICANN. The registrars deal directly with the Internet public and accept applications to register domain names. This general structure has been in place for years in the operations of the .com, .net, .org and .edu registries.

25. Following the November 2000 decisions, ICANN concurrently negotiated with the four new unsponsored registry applicants for a uniform base registry agreement, which was ultimately developed. Differences in the manner of operation of each registry were to be addressed in appendices to the uniform base agreement.

26. Out of the global Internet consensus process, so many issues emerged that ICANN's Domain Name Supporting Organization ("DNSO") determined that gTLDs needed to be introduced in a slow, deliberate, controlled and responsible manner. As a result, it took months for NeuLevel and ICANN to finalize their specific agreement.

27. The negotiations between ICANN and NeuLevel involved many complicated and technical issues. One of those issues involved the proper means to handle the initial crush of



demand for new domain names, as described in the testimony before Congress of Mr. Louis Touton, the General Counsel of ICANN:

The introduction of the new top-level domains is likely to lead to an initial surge in registrations. This surge can challenge the ability of trademark owners to defend their marks, as well as the more general proposition that all those wishing to register names not subject to trademark should have a fair chance to do so. Because no global top-level domains have been introduced for over fifteen years, we have no real-world experience concerning how to meet these challenges in the now-heavily-commercial Internet. Accordingly, based on extensive consultations with the Internet community, including intellectual property interests, the selected operators have taken great care to design start-up protocols to address intellectual property issues specifically and fairness concerns in general. These plans take somewhat different approaches, the achievements of which will be closely monitored with the purpose of developing real-world experience as to what works best. All of the approaches incorporate detailed publicity plans, so that intellectual property owners and potential registrants will have the information they need to protect their interests.

Testimony of Louis Touton Before the House Judiciary Committee, March 22, 2001.

28. The design of the .biz registry, which many thought would have the greatest initial demand, was specifically geared to address those problems Mr. Touton described to Congress. The final registry agreement, which was concluded between NeuLevel and ICANN on May 11, 2001, contains the complete design and business model for the .biz registry, and describes the "circumstances" under which ICANN will recommend to DOC that the .biz top level domain name will be added to the A root.

29. Prior to the May 2001 signing, the various comments and revisions, as well as proposed changes to the NeuLevel appendices, were regularly and consistently posted on the ICANN website, just as the final registry agreement with all appendices can be retrieved today. Also during that time, ICANN received comments from the interested public around the world about the structure and the process whereby the .biz registry would be developed and operated. NeuLevel, at the time it signed the agreements, was aware of no comments indicating that the NeuLevel registry would be violative of any state lottery law or any federal law.

30. On May 15, 2001, the General Counsel of DOC issued a statement about the NeuLevel registry, stating that: “.biz and .info will offer consumer choice, provide our entrepreneurs with new avenues to pursue their ideas and are a welcome addition to the domain name marketplace. We congratulate ICANN on this latest progress in introducing competition consistent with maintaining Internet stability.”

#### **Trademark Issues and the New .biz Domain**

31. As agreed to by ICANN, NeuLevel proposed a process to respond to initial registration requests that (a) would be fair, (b) would not disenfranchise small businesses who might have equivalent intellectual property rights, but not the assets of a large company like the defendant herein, to bid up the price of a domain name, and (c) could be smoothly handled both by NeuLevel’s computers and ultimately on the Internet. NeuLevel and ICANN were well aware of the massive computer problems experienced by NSI whenever there was a surge in demand for domain names. The NeuLevel domain name registration design was consistent with the MOU’s objective of ensuring that the private sector can manage the DNS.

32. NeuLevel and ICANN were well aware of their responsibility to act consistent with the Presidential Directive instruction to create a system to deal with the fact that intellectual property (“IP”) owners in one country do not necessarily have superior intellectual property rights to those in another country, or that one IP owner, such as Amazon.com, does not have a superior IP right to the domain name amazon.biz, over that of another IP owner like Amazon Imaging, Inc., or the owner of the mark “AMAZON JUICE”, or a Brazilian travel company that specializes in trips along the Amazon River.

33. The inherent structure of the DNS, by enabling users to register and use their trademarks as domain names, makes trademark disputes likely. For example, Acme Uniforms

and Embroidery, Inc., American Stores Company or any other of the dozens of companies that have registered "ACME" as a trademark in the U.S. Patent and Trademark Office may wish to use their registered "ACME" trademark as their domain name, e.g. "acme.com" or "acme.biz". Amazon Imaging, Inc. and Amazon.com, Inc., may both wish to use "AMAZON" as their .biz domain name. Yet, only one of these entities, though each enjoys equally valid rights to their respective "AMAZON" trademarks, can use their "AMAZON" mark in a corresponding domain name in any single top-level domain, e.g. "amazon.biz". Thus, under intellectual property law, Amazon.com, Inc.'s registration for the domain name "amazon.com" does not prevent Amazon Imaging, Inc. from registering its "AMAZON" mark under a different top-level domain, such as amazon.biz. Because amazon.com and amazon.biz will exist in different top level domains, they resolve to different and unique Internet addresses and thus can function and coexist without collision.

34. The DOC specifically sought the advice of the World Intellectual Property Organization ("WIPO") on the proper procedures for protection of intellectual property rights, and the WIPO process was subsequently incorporated into the MOU, and then into the NeuLevel IP Claims process. The NeuLevel proposal that was posted for comment on the Internet in October 2000 included a detailed description of the proposed IP Claims process.

35. The NeuLevel-ICANN registry agreement was designed to address all of these and other concerns in the fairest and most equitable manner, consistent with the President's Directive, the White Paper and other statements of federal policy, including the MOU. After May 11, 2001, when the NeuLevel-ICANN registry agreement was signed, NeuLevel took steps to implement the registry agreement, undertaking an advertising campaign, designing the necessary computer systems, finalizing its agreements with the registrars (who began accepting

applications from interested domain name applicants), and doing a variety of other tasks to ensure that the registry would be operational by the projected “go live” date of October 1, 2001. On May 21, 2001, NeuLevel also began accepting Intellectual Property Claims (“IP Claims”) from the owners of intellectual property around the world.

36. NeuLevel’s IP Claims process is designed to discourage cybersquatting, a widespread and abusive practice involving exploitation of another entity’s intellectual property. Since the commercial growth of the Internet, cybersquatting has been declared illegal in the United States, but widespread speculation and abusive conduct persists in this area. In an effort to thwart such abuse, the IP Claims process was designed to enable the owner of a trademark, whether registered or common law, to file notice of its IP right with NeuLevel so that another applicant seeking to register that mark as a domain name will be notified of the IP claim and given a chance to withdraw its domain name application without having to contest who has a right to the name. Each aspect of the NeuLevel registry agreement is similarly designed to achieve the smooth functioning of the Internet and to accomplish the federal policy objectives associated with the addition of new top level domains.

#### **DOC Approval To Add .biz to the “A” Root**

37. NeuLevel’s application process has been widely publicized and ongoing now for several months. NeuLevel has been accepting domain name applications from the network of registrars since May 25, 2001. These registrars are located in the United States, Canada, India, Korea, Japan, China, Norway, Spain, Kuwait, Israel and many other countries. Similarly, NeuLevel accepted IP claims for the period between May 21 and August 8, 2001. The domain name applications are due by September 17, 2001 and the registry is scheduled to be fully operational on October 1, 2001.

38. On June 26, 2001, the DOC, after receipt of the NeuLevel registry agreement, and reports from ICANN and IANA regarding their years-long effort to address the concerns of the Intellectual Property community, approved of the loading of .biz into the A root and directed NSI to make the addition of the .biz gTLD to the A root. NSI has complied with that directive and loaded .biz onto the A root. While .biz is not yet commercially available, it is now operational for testing and other technical purposes.

#### **Current and Threatened Litigation**

39. On June 30, 2001, defendant Amazon.com threatened to sue NeuLevel in a letter directed to and received in NeuLevel's office in Sterling, Virginia. The letter delineates theories for the existence of a *prima facie* case for violation of state lottery laws, specifically including the California statute providing for private attorney general enforcement by the defendant of the state lottery law (California Business & Professions Code § 17200, et seq.), for violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and for violation of the Federal Trademark Dilution Act (hereinafter referred to as the "Demand Letter").

40. By the Demand Letter, Amazon.com, through counsel, threatened to initiate litigation against NeuLevel if NeuLevel did not acquiesce to Amazon.com's demand that NeuLevel abandon its .biz Internet domain name registration plan within ten days and institute a domain name registration plan demanded by Amazon.com.

41. The Demand Letter states:

Amazon.com has authorized us to take appropriate steps immediately to end NeuLevel's illegal and extremely damaging conduct. By this letter, we offer you a chance to avoid the litigation, including claims for injunctive relief, damages and attorneys fees, that could result if you do not voluntarily terminate your continuing violation of state and federal law. Specifically, we demand that NeuLevel immediately:

- Terminate its acceptance of multiple applications for registration of any individual .biz domain name, limiting each potential registrant to one application per domain name;

- Agree to process .biz registration applications on a first come, first served basis, incorporating a “sunrise” period (similar to that implemented in connection with .info domain name registrations) for trademark owners;
- Terminate the system by which IP claimants have an increased chance of being chosen as the post-registration challenger of particular .biz domain names;
- Refund all application fees to all applicants who have submitted multiple applications for the registration of any individual .biz domain name; and
- Confirm that NeuLevel will not process .biz domain name applications or IP claims or issue .biz domain name registrations pursuant to its existing registration and IP Claims policies.

42. The Demand Letter is stylistically similar to a brief, containing detailed elements of Amazon.com’s potential claims against NeuLevel and multiple citations to statutes and cases:

The foregoing system violates the rights of trademark owners in a number of ways. First and foremost, it constitutes an illegal lottery under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and the laws of most states. Both the registration process and the IP Claim Service incorporate the elements of (1) a prize (*i.e.*, the opportunity to register or to challenge the registration of a .biz domain name); (2) chance (*i.e.*, determination of the person chosen as registrant or challenger is not based upon skill); and (3) consideration (*i.e.*, the \$2.00 application fee and \$90.00 IP Claim fee charge by NeuLevel). As such, NeuLevel’s actions clearly constitute unfair competition under the Federal Trade Commission Act. *See Federal Trade Commission v. R.F. Keppel & Bro., Inc.*, 29 U.S. 304. 54 S.Ct. 423 (1934). Moreover, the laws of many states allow a private cause of action for harm caused by the operation of an illegal lottery. *See, e.g.*, Cal. Bus. & Prof. Code §§ 17200 and 17204 (creating private right of action for injunctive relief and disgorgement of profits to redress any unlawful business practice, including violations of lottery provisions of Cal. Penal Code § 319); *Eben W. Haskell v. Time, Inc. et al.*, 965 F.Supp. 1398 (E.D. Cal. 1997).

Further, NeuLevel is violating the rights of owners of famous trademarks under the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c). Specifically, NeuLevel is deriving enhanced revenues by selling chances to register or to challenge registration of domain names that incorporate famous trademarks such as AMAZON.COM®. This constitutes “commercial use” of such trademarks and give rise to a dilution claim even if the mark is not used to identify specific goods or services. *See Panavision Int’l L.P. v. Toeppen*, 141 F.3d 1316 (9<sup>th</sup> Cir. 1998) (defendant’s attempt to sell domain name constituted commercial use of famous trademark, and violated Federal Trademark Dilution Act, even though defendant had never used domain name to

identify goods or services to the public).<sup>1</sup> The remedies for your illegal actions may include recovery of the profits NeuLevel has obtained by reason of its illegal acts, recovery by each trademark owner of its actual damages and reimbursement of their attorneys fees and costs.

43. The Demand Letter presented NeuLevel with the Hobbesian choice of being sued by Amazon.com or of acquiescing to Amazon.com's demand that it abandon its domain name registration plan in favor of a plan proposed by Amazon.com. Such abandonment would necessarily result in breach of NeuLevel's registry agreement with ICANN. The detailed and threatening content of the demand letter caused NeuLevel a reasonable apprehension of being immediately sued by Amazon.com.

44. NeuLevel's apprehension about being sued by Amazon.com is heightened by the fact that the .biz Internet domain name registry is scheduled to go live on October 1, 2001. It is critical to NeuLevel that customers obtain clear and enforceable contractual rights to the domain names they obtain through NeuLevel's .biz Internet domain name registration process.

45. NeuLevel's fear of being sued by Amazon is further enhanced by the fact that state law claims have been advanced in a class action suit filed in state court in California alleging violations of the California Business & Professions Code § 17200, et seq., against NeuLevel, ICANN, and more than fifty (50) registrars for the .biz domain. The complaint, advanced as a private attorney general action to enforce California's state lottery law, alleges that violations of the California Penal Code regarding lottery laws make out the element of unfair competition under § 17200 of the California Business & Professions Code. The California

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<sup>1</sup> [Footnote extracted from Amazon.com's Demand Letter]. NeuLevel's actions are distinguishable from those at issue in *Academy of Motion Picture Arts & Sciences v. Network Solutions, Inc.*, 989 F.Supp. 1276 (C.D. Cal. 1997). There, the district court held that, because Network Solutions issued domain name registrations on a strictly first come, first served basis, and thus did not derive any greater revenue from the registration of domain names that incorporated the plaintiff's trademarks than it did from other registrations, Network Solutions did not make the "commercial use" of domain names required by the Federal Trademark Dilution Act Id. 1279. By contrast, NeuLevel's pre-registration system does increase the revenues that NeuLevel receives in connection with domain names that are valuable because they incorporate famous trademarks with substantial goodwill. Thus, NeuLevel's actions are far closer to those held to constitute dilution in *Panavision* than to the circumstances presented by the Network Solutions case.

complaint does not raise trademark issues. Further, the California courts have no identifiable interest in adjudicating the federal statutory and constitutional claims advanced by NeuLevel before this Court.

**COUNT I**  
**NON-INFRINGEMENT OF RIGHTS UNDER 15 U.S.C. § 1125(c)**

46. NeuLevel realleges and incorporates herein by reference all allegations contained in the preceding paragraphs of this Complaint as though the same were fully rewritten herein.

47. NeuLevel, the registry chosen by ICANN to operate the registry for .biz domain names, has not yet processed applications for .biz domain names. No .biz domain names other than those used by NeuLevel (neulevel.biz and nic.biz) have been registered or are being used.

48. When NeuLevel begins registering domain names and operating the .biz registry, NeuLevel will not own any of the domain names it registers for third parties and will not control the use of such domain names, except to disable such domain names should the user or the registrant not comply with NeuLevel's stated ICANN-approved policies. NeuLevel will enter into contracts with registrars for the technical maintenance of Internet addresses on the .biz registry, subject to the terms and conditions that have been approved by ICANN.

49. NeuLevel will process applications for and register domain names that are chosen by the customers and potential customers of registrars with whom NeuLevel contracts, and will do so upon request of such registrars. NeuLevel will not offer for sale, rent or lease or otherwise trade in any specific domain name.

50. NeuLevel has not provided and will not provide content for the websites located at .biz addresses, nor will it control the nature or quality of the content on such websites or of the goods or services provided through such websites.



51. NeuLevel will operate at all times as a neutral domain name registry, according to its agreements with ICANN. As required by such agreements, NeuLevel does not opine on or attempt to resolve disputes among its customers and potential customers relating to claimed legal rights, including, but not limited to, intellectual property rights. NeuLevel's IP Claims Service permits trademark owners to publicize their claim of trademark rights in a timely and efficient way to persons seeking to register .biz domain names. The IP Claims Service does not determine disputed trademark rights. Trademark owners who do not avail themselves of the IP Claims Service are not foreclosed from challenging a .biz domain name registration through the available administrative dispute resolution processes or in a Court of law. Moreover, the registration agreements require the end user to certify that it is unaware of any intellectual property rights that would defeat its right to use the name.

52. All of NeuLevel's processes and policies, including those disputed by Amazon.com, have been reviewed by ICANN in the course of an open, public review process, and have been approved by ICANN and memorialized in contracts between ICANN and NeuLevel. These contracts are publicly available on the [icann.org](http://icann.org) website.

53. The activities of NeuLevel, as described above, do not constitute commercial use of trademarks in commerce.

54. The activities of NeuLevel, as described above, are not likely to dilute and are not capable of diluting the distinctive quality of trademarks chosen by NeuLevel's customers or potential customers for use as a .biz domain name.

55. NeuLevel's activities, as described above, do not and will not infringe any trademark right of Amazon.com, Inc. under 15 U.S.C. § 1125(c).

56. Amazon.com, Inc. has not and could not suffer any damage from NeuLevel's activities.

57. An actual controversy has arisen and now exists between NeuLevel and the Defendant. NeuLevel therefore requests a declaration of its rights as to such matters, as well as further necessary or proper relief, pursuant to 28 U.S.C. §§ 2201-2. In particular, the Court should declare that NeuLevel's processes and policies do not violate the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c), as alleged by Defendant, and do not infringe upon any rights of Defendant.

**COUNT II**  
**CONFLICT WITH THE COMMERCE CLAUSE**

58. NeuLevel realleges and incorporates herein by reference all allegations contained in the preceding paragraphs of this Complaint as though the same were fully rewritten herein.

59. Allocation and registration of Internet domain names fall within the range of interests protected by the Commerce Clause of the United States Constitution. Domain name allocation and registration have global commercial implications, and effective regulation of the DNS process requires that entities allocating and registering domain names receive cohesive treatment on at least a national, if not global level.

60. Each of the several states has enacted laws concerning lotteries which facially or as interpreted conflict with one another. Subjecting the allocation of Internet domain names to individual state laws constitutes an unconstitutional burden on interstate commerce by creating inconsistent obligations under each state's particularized requirements, thereby hampering NeuLevel's ability to register domain names and to execute the objective of the United States Department of Commerce of expanding Internet commerce, privatizing the Internet, and eventually transferring the United States' control of the A root to the global Internet community.

61. The Executive, Legislative, and Judicial branches of the United States have consistently recognized that the Internet domain name registration process requires uniform regulation. The incidental effect of applying individual state laws to NeuLevel's domain name registration plan requires NeuLevel to design its program to satisfy the most restrictive state's lottery laws, thereby imposing that state's law extraterritorially and encroaching on Congress's exclusive power to regulate interstate and international commerce.

62. The burden of imposing specific local law requirements upon the Internet domain name registration system is excessive, far surpassing any incidental benefit that attempted compliance with local regulations would confer. The global reach of the Internet, and the domain name registration system operated therein, makes application of local lottery laws to NeuLevel's domain name registration plan so burdensome as to result in an invalid indirect regulation of interstate commerce in violation of the Commerce Clause.

63. In its letter dated July 30, 2001, Defendant threatened to immediately initiate litigation against NeuLevel alleging that its Internet domain name registration plan violates state lottery laws including, without limitation, California's state laws. Pursuant to California law cited in the Demand Letter, the defendant may enforce such law as a private attorney general in a California state court. Subjecting NeuLevel's Internet domain name registration plan to local laws and standards or to inconsistent obligations under various individual state lottery laws impermissibly burdens interstate commerce in violation of the Commerce Clause.

64. Any state court relief granted to the defendant under such law would pose an unconstitutional burden on interstate commerce. Similarly, any such private attorney general action, under color of state law, would create an unconstitutional burden on interstate commerce.

65. An actual controversy has arisen and now exists between NeuLevel and the Defendant. NeuLevel therefore requests a declaration of its rights as to such matters, as well as further necessary or proper relief, pursuant to 28 U.S.C. §§ 2201-2. In particular, the Court should declare that (a) subjecting NeuLevel's Internet domain name registration plan to evaluation under the California state lottery laws by a private attorney general has the incidental effect of giving California's lottery laws extraterritorial effect, thus encroaching upon Congress' exclusive power to regulate interstate and international commerce in violation of the Commerce Clause; (b) management of the DNS, including the Internet domain name registration process, requires cohesive national or global treatment, and evaluating NeuLevel's plan under any state's lottery laws subjects the DNS and NeuLevel to inconsistent obligations in violation of the Commerce Clause; and imposing specific local law requirements upon NeuLevel's Internet domain name registration system is so excessive as to outweigh any incidental benefit that compliance with local regulations would confer, resulting in an invalid regulation of interstate commerce in violation of the Commerce Clause.

**WHEREFORE**, plaintiff, NeuLevel, Inc., seeks a declaratory judgment from this Court:

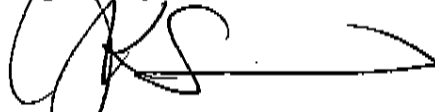
1. That NeuLevel's processes and policies, including its registration and maintenance of domain names in the .biz top-level domain and IP Claims Service, do not infringe any trademark rights of Amazon.com, Inc.;

2. That NeuLevel's processes and policies, including its registration and maintenance of domain names in the .biz top-level domain and IP Claims Service, do not constitute trademark dilution in violation of any rights of Amazon.com, Inc. under 15 U.S.C. § 1125(c);

3. That subjecting NeuLevel's processes and policies to evaluation under individual state lottery laws violates the Commerce Clause;

4. That NeuLevel have such other and further relief as this Court shall deem just and proper.

Respectfully submitted,



Jeffrey K. Sherwood, Esq. (VSB # 19222)  
Cheryl A. Falvey, Esq. (VSB # 46534)  
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
1676 International Drive, Penthouse  
McLean, Virginia 22102  
(703) 891-7500 (phone)  
(703) 891-7501 (fax)

COUNSEL FOR PLAINTIFF NEULEVEL, INC.

James E. Daniels, Esq.  
Juan C. Ordonez, Esq.  
HALL DICKLER KENT GOLDSTEIN & WOOD, LLP  
909 Third Avenue, 27<sup>th</sup> Floor  
New York, NY 10022  
(212) 339-5400  
(212) 935-3121

OF COUNSEL

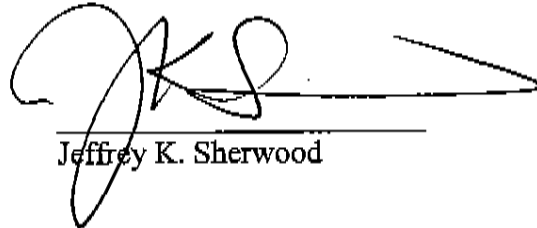
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **First Amended Complaint For Declaratory Relief** was served via Federal Express this 6<sup>th</sup> day of September, 2001, upon:

Martin P. Willard, Esquire  
Barry J. Reingold, Esquire  
PERKINS COIE LLP  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Of Counsel:  
David J. Burman  
James R. McCullagh  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4800  
Seattle, Washington 98101

Counsel for Defendant Amazon.com, Inc.



Jeffrey K. Sherwood