

1 Jeffrey R. Patterson, Esq. (State Bar No. 126148)
Michael R. Adele, Esq. (State Bar No. 138339)
2 Michael J. Holmes, Esq. (State Bar No. 199311)

3 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
12348 High Bluff Drive, Suite 210
4 San Diego, CA 92130
Telephone: (858) 481-5055
5 Facsimile: (858) 481-5028

6 Attorneys for Plaintiff/Counter-Defendant
ENTREPRENEUR MEDIA, INC.

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 ENTREPRENEUR MEDIA, INC.,)
11)
12) Plaintiff,)

13) v.)

14) EYGN LIMITED; ERNST & YOUNG)
15) LLP; and ERNST & YOUNG)
16) ADVISORY INC.,)
17) Defendants.)

18) EYGN Limited and ERNST &)
19) YOUNG LLP)
20) Counterclaimants,)

21) v.)

22) ENTREPRENEUR MEDIA, INC.)
23) Counterdefendant.)

Case No. SACV08-0608 DOC

**NOTICE OF MOTION AND
MOTION OF PLAINTIFF
ENTREPRENEUR MEDIA, INC. FOR
INJUNCTION REGARDING
SECOND-FILED ACTION**

Date: November 10, 2008
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

23 **TO THE COURT, COUNSEL OF RECORD AND ALL INTERESTED PARTIES:**

24 **PLEASE TAKE NOTICE THAT** on November 10, 2008 at 8:30 a.m. in courtroom 9D of
25 the United States District Court for the Central District of California, located at 411 West Fourth
26 Street, Santa Ana, California 92701 Plaintiff Entrepreneur Media, Inc. ("Plaintiff") shall and hereby
27 does move (the "Motion") the above-captioned Court to enjoin Counterclaimants EYGN Limited
28 and Ernst & Young LLP ("Counterclaimants") from prosecuting the action that they filed against

1 Plaintiff in federal court for the Southern District of New York, specifically, *EYGN Limited and*
2 *Ernst & Young LLP v. Entrepreneur Media, Inc.*, Southern District of New York Civil Case
3 Number 08-CIV-6734 (AKH) (the "New York Action"), which Counterclaimants filed nearly two
4 months *after* commencement of the present action. Alternatively, Plaintiff requests that this Court
5 enjoin the second-filed New York Action.¹

6 The grounds for this Motion are the first-to-file rule recognized by case law within the Ninth
7 Circuit, as well as principals of comity and judicial efficiency, all as more particularly detailed in
8 the Memorandum of Points and Authorities filed contemporaneously herewith.

9 The bases for this Motion are this Notice of Motion and Motion, the Memorandum of Points
10 and Authorities, the Declarations of Peter Shea, Randall Broberg and Michael Adele and the
11 Request for Judicial Notice, all of which shall be filed contemporaneously herewith, the pleadings
12 and papers in the present action and the New York Action, any subsequent papers filed by
13 counsel in this action and/or the New York Action, and any oral argument that may be had at the
14 hearing on this Motion.

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16 Dated: October 14, 2008

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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18 By: 

MICHAEL R. ADELE
Attorneys for Plaintiff
ENTREPRENEUR MEDIA, INC.

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26 ¹ Ninth Circuit law appears to hold that the appropriate remedy relative to second-filed
27 actions is to enjoin the parties from that action from prosecuting the action (as opposed to enjoining
28 the proceedings themselves from continuing). Because there is some (albeit minor) ambiguity on
this issue, Plaintiff brings this motion in the alternative seeking, in the first instance, to enjoin
Counterclaimants from prosecuting the second filed action and, alternatively, seeking to enjoin the
second-filed action from proceeding.