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12 **THE UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 ENTREPRENEUR MEDIA, INC.,
 15 Plaintiff,

16 vs.

17 EYGN Limited, ERNST & YOUNG
 18 LLP and ERNST & YOUNG
 ADVISORY INC.,
 19 Defendants.

Case No. SACV08-0608 DOC
 (MLGx)

**OPPOSITION OF DEFENDANTS
 EYGN LIMITED AND ERNST &
 YOUNG LLP TO PLAINTIFF'S
 MOTION FOR INJUNCTION
 REGARDING SECOND-FILED
 ACTION**

21 EYGN Limited and ERNST &
 YOUNG LLP,
 22 Counterclaim-Plaintiffs,

23 vs.

24 ENTREPRENEUR MEDIA, INC., a
 25 New York corporation,
 26 Counterclaim-Defendant.

Date: December 22, 2008
 Time: 8:30 a.m.
 Courtroom: 9D
 Judge: Honorable David O. Carter

28

1 In opposition to the motion by Plaintiff Entrepreneur Media, Inc. (“EMI”) for
2 an “Injunction Regarding Second-Filed Action,” Defendants EYGN Limited
3 (“EYGN”) and Ernst & Young LLP (“Ernst & Young”) submit this memorandum of
4 points and authorities; the accompanying declarations of Larry J. Haynes, dated
5 October 29, 2008, Victoria Cochrane, dated October 29, 2008 and Craig Mende,
6 dated November 12, 2008; and the accompanying memoranda of points and
7 authorities in support of EYGN’s Motion for Judgment on the Pleadings for Lack of
8 Personal Jurisdiction (“EYGN’s Dismissal Motion”) and Ernst & Young’s Motion
9 for Judgment on the Pleadings or, in the Alternative, to Transfer (“Ernst & Young’s
10 Dismissal Motion”).

11 ARGUMENT

12 EMI asks this Court to enjoin EYGN and Ernst & Young from prosecuting
13 their trademark infringement action against EMI in the United States District Court
14 for the Southern District of New York (the “New York Action”). In support of its
15 motion, EMI argues that (1) its declaratory judgment action in this Court was filed
16 first, (2) the New York Action is “identical” to this one, and (3) this declaratory
17 judgment action was not a prohibited “anticipatory filing.” EMI emphasizes that the
18 “first-to-file” rule on which it relies was developed for the purpose of “promoting
19 efficiency,” and asserts that the rule should apply absent compelling circumstances.
20 (Pl. Inj. Mem. at 6 (internal quotation marks and citations omitted).)

21 EMI’s argument, however, ignores the circumstances of this case. As set
22 forth in EYGN’s Dismissal Motion, this Court does not have personal jurisdiction
23 over EYGN, a Bahamian corporation with no ties to California. Accordingly, this
24 Court *cannot* enjoin EYGN from prosecuting its trademark infringement action
25 against EMI in New York. *See Zepeda v. United States Immigration &*
26 *Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court may issue
27 an injunction [only] if it has personal jurisdiction over the parties ...; it may not
28 attempt to determine the rights of persons not before the court.”).

1 Thus, the injunction sought by EMI, if granted, would bar only one party—
2 Ernst & Young—from participating in the New York Action. But the end result
3 would be two actions across the country—one on the East Coast between EYGN
4 and EMI, and another on the West Coast between EMI and Ernst & Young¹—
5 involving overlapping issues. Such a perverse result would hardly “promot[e]
6 efficiency” in the resolution of the parties’ disputes. Rather, for the reasons set forth
7 in Ernst & Young’s Dismissal Motion, the Court should not only deny EMI’s
8 request for an injunction, but also dismiss EMI’s action in its entirety or, in the
9 alternative, transfer EMI’s action to the New York forum, where all of the relevant
10 parties *are* subject to jurisdiction.

11 **CONCLUSION**

12 For the foregoing reasons, EYGN and Ernst & Young respectfully request
13 that this Court deny EMI’s motion to enjoin prosecution of the New York Action.

14
15 DATED: November 12, 2008

16 BERRY & PERKINS,
17 A Professional Corporation

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

18 By: 

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26 ¹ As set forth in the accompanying Motion for Judgment on the Pleadings for Lack
27 of Subject Matter Jurisdiction filed by the remaining defendant, Ernst & Young
28 Advisory Inc. (“EYAI”), the Court must dismiss EMI’s claims against that entity for
lack of subject matter jurisdiction because there is no case or controversy involving
EYAI.