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 8 ERNST & YOUNG ADVISORY INC.

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

11 ENTREPRENEUR MEDIA, INC.,

Case No. SACV08-0608 DOC (MLGx)

12 Plaintiff,

13 vs.

**ANSWER OF DEFENDANT
 ERNST & YOUNG ADVISORY
 INC.**

14 EYGN Limited, ERNST & YOUNG
 15 LLP and ERNST & YOUNG
 16 ADVISORY INC.,

17 Defendants.

18
 19 Defendant Ernst & Young Advisory Inc. (“EAYI”) answers the Complaint of
 20 Plaintiff Entrepreneur Media Inc. (“EMI”) as follows:

21 **ANSWER**

22 1. Admits that EMI has instituted this action and purports to seek a
 23 declaration of rights; lacks knowledge or information sufficient to form a belief as to
 24 the truth of the remaining allegations of paragraph 1 of the Complaint, and on that
 25 basis denies the same.

26 2. Lacks knowledge or information sufficient to form a belief as to the
 27 truth of the allegations of paragraph 2 of the Complaint.

1 3. Lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations of paragraph 3 of the Complaint, and on that basis denies the
3 same.

4 4. Denies the allegations of paragraph 4, except admits that EAYI is
5 registered to do business in California, and states that the allegations contain
6 conclusions of law to which no answer is required.

7 5. Lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations of paragraph 16 of the Complaint, and on that basis denies
9 the same.

10 6. Denies the allegations of paragraph 6 of the Complaint, except admits
11 that Plaintiff purports to seek a declaration of rights and states that the second
12 sentence of paragraph 6 contains conclusions of law to which no answer is required.

13 7. Denies the allegations of paragraph 7 of the Complaint.

14 8. Denies the allegations of paragraph 8 of the Complaint.

15 9. Denies the allegations of paragraph 9 of the Complaint.

16 10. Lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations of paragraph 10 of the Complaint, and on that basis denies
18 the same.

19 11. Lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations of paragraph 11 of the Complaint, and on that basis denies
21 the same.

22 12. Lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations of paragraph 12 of the Complaint, and on that basis denies
24 the same.

25 13. Lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations of paragraph 13 of the Complaint, and on that basis denies
27 the same.

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1 14. Lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations of paragraph 14 of the Complaint, and on that basis denies
3 the same.

4 15. Lacks knowledge or information sufficient to form a belief as to the
5 truth of the allegations of paragraph 15 of the Complaint, and on that basis denies
6 the same.

7 16. Lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations of paragraph 16 of the Complaint, and on that basis denies
9 the same, except states that paragraph 16 of the Complaint contains statements of
10 law to which no response is required, and refers to the section of the Lanham Act
11 recited in paragraph 16 of the Complaint for its contents.

12 17. Lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations of paragraph 17 of the Complaint, and on that basis denies
14 the same.

15 18. Lacks knowledge or information sufficient to form a belief as to the
16 truth of the allegations of paragraph 18 of the Complaint, and on that basis denies
17 the same.

18 19. Lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations of paragraph 19 of the Complaint, and on that basis denies
20 the same.

21 20. Lacks knowledge or information sufficient to form a belief as to the
22 truth of the allegations of paragraph 20 of the Complaint, and on that basis denies
23 the same.

24 21. Lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations of paragraph 21 of the Complaint, and on that basis denies
26 the same.

27
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1 22. Lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations of paragraph 22 of the Complaint, and on that basis denies
3 the same.

4 23. Lacks knowledge or information sufficient to form a belief as to the
5 truth of the allegations of paragraph 23 of the Complaint, and on that basis denies
6 the same.

7 24. Repeats and incorporates by reference its responses in the preceding
8 paragraphs of this answer.

9 25. Lacks knowledge or information sufficient to form a belief as to the
10 truth of the allegations of paragraph 25 of the Complaint, and on that basis denies
11 the same, except specifically denies that there exists any actual, justiciable and
12 substantial controversy as between EAYI and EMI.

13 26. Lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations of paragraph 26 of the Complaint, and on that basis denies
15 the same.

16 27. Lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations of paragraph 27 of the Complaint, and on that basis denies
18 the same.

19 28. Lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations of paragraph 28 of the Complaint, and on that basis denies
21 the same.

22 29. Lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations of paragraph 29 of the Complaint, and on that basis denies
24 the same.

25 **First Affirmative Defense**

26 (Failure to State a Claim)

27 30. The Complaint fails to state a claim upon which relief may be granted
28 under Fed. R. Civ. P. 12(b)(6).

1 **Second Affirmative Defense**

2 (Lack of Controversy)

3 31. There is no actual, justiciable or substantial controversy between EYAI
4 and EMI, as EYAI has had no communications with EMI concerning use of or
5 rights in the ENTREPRENEUR OF THE YEAR mark. As such, this Court lacks
6 subject matter jurisdiction over EMI’s claims for declaratory relief as against EAYI.

7 **Third Affirmative Defense**

8 (Failure to Effect Proper Service)

9 32. As against EAYI, the Complaint and each cause of action and count
10 therein are barred under Federal Rules of Civil Procedure 12(b)(4) and (5) because,
11 upon information and belief, Plaintiff failed to effect proper service of process on
12 EAYI.

13 **Fourth Affirmative Defense**

14 (Unclean Hands)

15 33. The Complaint and each cause of action and count therein are barred by
16 Plaintiff’s own improper conduct and unclean hands.

17 **Fifth Affirmative Defense**

18 (Waiver)

19 34. The Complaint and each cause of action and count therein are barred by
20 the doctrine of waiver, acquiescence, estoppel and/or laches.

21 **Sixth Affirmative Defense**

22 (Improper Pleading)

23 35. Plaintiff’s Complaint violates Federal Rules of Civil Procedure 8(a)(2)
24 and 8(d)(1), which respectively require a “short and plain statement of the claim
25 showing that the pleader is entitled to relief” and that “[e]ach allegation must be
26 simple, concise, and direct.” Accordingly, Defendants are not obligated to
27 separately admit or deny each of the multiple allegations of the numerous sentences
28 and clauses of Plaintiff’s Complaint.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendant prays for judgment as follows:

3 A. Dismissing the Complaint with prejudice;

4 B. Awarding Defendant its attorneys' fees and costs in this civil action
5 pursuant to 15 U.S.C. § 1117; and

6 C. Granting Defendant such other and further relief as the Court may
7 deem just and proper.

8
9 DATED: July 28, 2008

Respectfully submitted,

10 BERRY & PERKINS
11 A Professional Corporation

12
13 By *Kevin R. Lussier*
14 Kevin R. Lussier
15 Attorneys for Defendant
ERNST & YOUNG ADVISORY INC.

16 And

17 FROSS ZELNICK LEHRMAN
18 & ZISSU
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23 New York, New York 10017
24 Phone: (212) 813-5990
25 Fax: (212) 813-5901
26 Of Counsel for Defendant Ernst & Young
27 Advisory Inc.
28

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of
3 eighteen and not a party to the within action. My business address is Berry & Perkins, 2049
4 Century Park East, Suite 950, Los Angeles, California 90067.

5 On July 28, 2008, I caused the following document(s) to be served: **ANSWER OF
6 DEFENDANT ERNST & YOUNG ADVISORY INC.** in this action by placing a true and
7 correct copy thereof enclosed in a sealed envelope addressed as follows:

8 Michael R. Adele, Esq.
9 ALLEN MATKINS LECK GAMBLE MALLOY & NATSIS LLP
10 12348 High Bluff Drive, Suite 210
11 San Diego, California 92130
12 *Attorneys for Plaintiff*

13 X **BY REGULAR U.S. MAIL:** I am readily familiar with the business' practice for
14 collection and processing of correspondence for mailing with the United States Postal
15 Service; such correspondence would be deposited with the United States Postal Service the
16 same day of deposit in the ordinary course of business. I know that the envelope was
17 sealed and, with postage thereon fully prepaid, placed for collection and mailing on this
18 date, following ordinary business practices, in the United States mail at Los Angeles,
19 California.

20 — **BY FACSIMILE TRANSMISSION:** I sent a true and complete copy of the document(s)
21 described above by facsimile transmission to the telephone number(s) set forth opposite
22 the name(s) of the person(s) set forth above.

23 — **BY FEDERAL EXPRESS OVERNIGHT DELIVERY OR OTHER EXPRESS
24 OVERNIGHT SERVICE:** I declare that the foregoing described document(s) was(were)
25 deposited on the date indicated below in a box or other facility regularly maintained by the
26 express service carrier, or delivered to an authorized courier or driver authorized by the
27 express service carrier to receive documents, in an envelope or package designated by the
28 express service carrier with delivery fees paid or provided for, addressed to the person(s)
on whom it is to be served, at the address as last given by that person on any document
filed in the cause and served on this office.

— **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the above
address(es).

— **(State)** I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

22 X **(Federal)** I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

23 Executed on July 28, 2008, at Los Angeles, California.

24 *Deborah K. Diederich*
25 Deborah K. Diederich