

1 fees for routing (or “forwarding”) domain names, and no other fees were charged for such
2 services with respect to the petronastower.net and petronastowers.net domain names.

3 Go Daddy’s fees were in no way dependent on, or in any way related to, the particular
4 domain names, any trademark of Petronas, or the websites to which the domains were forwarded.
5 Both registration and forwarding of the domain names “petronastower.net” and
6 “petronastowers.net” were accomplished through automated, passive services in response to the
7 registrant’s requests via online forms. Registration and forwarding of the domains did not
8 involve volitional conduct on the part of any Go Daddy employees.

9 Go Daddy’s handling of Petronas’s 2009 trademark complaint was in accordance with its
10 Standard Operating Procedure, its Trademark Policy, standard industry practice, and over a
11 decade of case law.

12 Go Daddy has already identified persons with knowledge and produced documents
13 relating to the foregoing in response to prior discovery requests. Persons with relevant
14 knowledge include Rod Simonini, Matthew Bilunes, Jessica Hanyen, and Laurie Anderson.

15 **INTERROGATORY NO. 11:**

16 Please describe in detail what GoDaddy did after it was contacted on July 7, 2010
17 concerning the domain name “petronastowers.net,” including by identifying all persons with
18 knowledge of the foregoing and by describing all documents related to the foregoing.

19 **RESPONSE TO INTERROGATORY NO. 11:**

20 In addition to the General Objections, Go Daddy objects to this interrogatory on the
21 grounds that it is cumulative, vague, ambiguous and unintelligible.

22 Subject to and without waving the foregoing objections, Go Daddy responds as follows:

23 Since April 1, 2007, Go Daddy has served as the registrar for the domain name
24 “petronastowers.net.” As part of its registrar services, Go Daddy provided routing services,
25 pointing the domain name to the name servers or website of the registrant’s choosing. At times,
26 Go Daddy routed or “forwarded” the domain name to a pre-existing website, automatically at the
27 request of the domain name registrant.

28

1 After receiving a routine trademark complaint on July 7, 2010 from Petronas's counsel,
2 Perry Clark, via Go Daddy's general trademark dispute email address,
3 TrademarkClaims@godaddy.com, Go Daddy followed its Trademark Policy and Standard
4 Operating Procedure. In particular, Go Daddy investigated the claim to determine whether Go
5 Daddy was providing any hosting or other services to the registrant of the domain name. After
6 confirming that Go Daddy served merely as the registrar for the domain name (and did not
7 provide website hosting or other ancillary services), Go Daddy again followed its Trademark
8 Policy and Standard Operating Procedure, and informed Petronas's counsel by e-mail – two days
9 after the complaint – that:

10 [a]lthough the domain PETRONASTOWERS.NET is registered through
11 our company, the domain is forwarding to a website (camfunchat.com)
12 that is hosted elsewhere. Any issues regarding the content of the website
13 will need to be addressed to the owner of the site either directly, or to the
14 hosting provider.

15 We can only process claims of trademark infringement against the content
16 of the websites that we host. ICANN, the managing body of the internet,
17 domain name registrars, specifically prohibits domain registrars from
18 becoming involved in disputes over domain ownership in their Uniform
19 Domain Name Dispute Resolution Policy.

20 Any disputes over the ownership or wording of the domain name itself
21 will need to be sent either to the owner, or through an arbitration forum, or
22 the local court system.

23 On July 12, 2010, Petronas filed an *in rem* action under the Lanham Act against the
24 petronastowers.net domain name. In connection with that lawsuit, Go Daddy cooperated with
25 Petronas to provide the necessary registrar's certificate. After the domain name registrant failed
26 to respond to the *in rem* complaint, the Court ordered transfer of the domain name on August 27,
27 2010. Go Daddy transferred the petronastowers.net domain name to counsel for Petronas, Perry
28 Clark, on August 30, 2010. The domain name is still registered by Mr. Clark with Go Daddy.

Go Daddy has already identified persons with knowledge and produced documents
relating to the foregoing in response to prior discovery requests. Persons with relevant
knowledge include Rod Simonini, Matthew Bilunes, Jessica Hanyen, and Laurie Anderson.

1 **INTERROGATORY NO. 12:**

2 Please describe in detail any steps GoDaddy had taken as of December 18, 2009 to
3 remove or otherwise disable the connection and affiliation between the “petronastower.net” and
4 “petronastowers.net” domain names and the pornographic website with which they were
5 associated, including by identifying all persons with knowledge of the foregoing and by
6 describing all documents related to the foregoing.

7 **RESPONSE TO INTERROGATORY NO. 12:**

8 In addition to the General Objections, Go Daddy objects to this interrogatory on the
9 grounds that it is cumulative, vague, ambiguous and unintelligible, particularly with respect to
10 the its use of the phrase “remove or otherwise disable the connection and affiliation between”.

11 Subject to and without waving the foregoing objections, Go Daddy responds as follows:

12 As of December 18, 2009, Go Daddy had not taken steps to prevent routing or
13 forwarding of the “petronastower.net” and “petronastowers.net” domain names to the website of
14 the registrant’s choosing.

15 As detailed in response to Interrogatory Nos. 9 and 11, incorporated herein by reference,
16 Go Daddy acted in accordance with its Standard Operating Procedure, its Trademark Policy,
17 standard industry practice, and over a decade of case law by, among other things, directing
18 Petronas to the appropriate agencies to resolve any trademark disputes in a prompt and efficient
19 manner, and by cooperating with Petronas in two *in rem* proceedings to facilitate the transfer of
20 the “petronastower.net” and “petronastowers.net” domain names.

21 Go Daddy has already identified persons with knowledge and produced documents
22 relating to the foregoing in response to prior discovery requests. Persons with relevant
23 knowledge include Rod Simonini, Matthew Bilunes, Jessica Hanyen, and Laurie Anderson.

24 **INTERROGATORY NO. 13:**

25 Please identify and describe in detail the basis for GoDaddy’s contentions in Paragraphs
26 102 through 112 of its Amended Answer and Counterclaims filed July 28, 2011 (Doc. No. 106),
27 including by identifying all persons with knowledge of the foregoing and by describing all
28 documents related to the foregoing.

1 **RESPONSE TO INTERROGATORY NO. 13:**

2 In addition to the General Objections, Go Daddy objects to this interrogatory on the
3 grounds that it is cumulative and compound. Go Daddy further objects to this interrogatory on
4 the ground that its investigation is ongoing, and Go Daddy will supplement its response to this
5 interrogatory as further information becomes available. Go Daddy also objects to the
6 interrogatory on the ground that it is not consistent with or does not meet the requirements of
7 Federal Rules of Civil Procedure.

8 Subject to and without waving the foregoing objections, Go Daddy responds as follows:

9 **First Affirmative Defense:** The Complaint, and each claim asserted within it, fails to
10 state a claim upon which relief can be granted. The bases for this affirmative defense is
11 explained in Go Daddy's motion for judgment on the pleadings filed August 3, 2010 (Dkt #50),
12 its reply in support of the motion filed August 25, 2010 (Dkt #57), its motion to dismiss filed
13 January 31, 2011 (Dkt #77), and its reply in support of that motion filed February 23, 2011 (Dkt
14 #81), all of which are incorporated by reference. Though the Court did not dismiss all of
15 Petronas' claims in response to Go Daddy's motions, Go Daddy continues to believe that
16 Petronas' complaint fails to state a claim, for the reasons set forth in the motions. The Court has
17 also stated that the court has "certain reservations concerning the adequacy of the pleading"
18 *See* Court Order of May 5, 2011, at 1 (Dkt # 87).

19 **Second Affirmative Defense:** The Complaint is barred, in whole or in part, by the
20 Lanham Act safe harbor for domain name registrars. 15 U.S.C. §1114. The bases for this
21 affirmative defense are set forth in detail in Go Daddy's motions for judgment on the pleadings
22 and its motion to dismiss, all of which are incorporated by reference.

23 **Third Affirmative Defense:** The Complaint is barred, in whole or in part, by the
24 equitable doctrines of waiver, estoppel and laches. On information and belief, the domain names
25 at issue were registered in 2003, and have pointed to pornographic content since that time. On
26 information and belief, Petronas waited until 2009 to take any action with regard to one of the
27 domain names at issue and waited until 2010 to take action with regard to the other domain name
28 at issue. The basis for this affirmative defense is that the disputed domain names were registered

1 in 2003, and have pointed to pornographic content since that time. Petronas waited until the last
 2 months of 2009 to take any action with regard to one of the disputed domain names
 3 (petronastowwer.net) and waited until 2010 to take action with regard to the other disputed
 4 domain name (petronastowers.net). Petronas, Heiko Shoenekeess, and David Daash are most
 5 likely to have knowledge of the foregoing facts.

6 **Fourth Affirmative Defense:** The Complaint is barred, in whole or in part, by the
 7 doctrine of acquiescence. On information and belief, Petronas did not take any action with
 8 regard to the domain names at issue for approximately six years and thereby acquiesced and
 9 forfeited any right to complain about the conduct that forms the basis for its allegations. The
 10 basis for this affirmative defense is that the disputed domain names were registered in 2003, and
 11 have pointed to pornographic content since that time. Petronas waited until the last months of
 12 2009 to take any action with regard to one of the disputed domain names (petronastowwer.net)
 13 and waited until 2010 to take action with regard to the other disputed domain name
 14 (petronastowers.net). Petronas, Heiko Shoenekeess, and David Daash are most likely to have
 15 knowledge of the foregoing facts.

16 **Fifth Affirmative Defense:** The Complaint is barred, in whole or in part, by failure to
 17 bring this action within the time allowed under the applicable the statute of limitation(s). See,
 18 e.g., Cal. Bus. & Prof. Code § 17208. The basis for this affirmative defense is that that the
 19 disputed domain names were registered in 2003, and have pointed to pornographic content since
 20 that time. Petronas waited until the last months of 2009 to take any action with regard to one of
 21 the disputed domain names (petronastowwer.net) and waited until 2010 to take action with
 22 regard to the other disputed domain name (petronastowers.net). Petronas, Heiko Shoenekeess,
 23 and David Daash are most likely to have knowledge of the foregoing facts.

24 **Sixth Affirmative Defense:** The Complaint is barred, in whole or in part, by the defense
 25 of misrepresentation of material facts. The Complaint contains numerous factually inaccurate
 26 allegations, including, *inter alia*, that “GoDaddy provides its ‘domain name forwarding’ service
 27 to registrants who registered their domain names with registrars other than GoDaddy.”

28 Complaint ¶ 30. In addition, on information and belief, Plaintiff has made false or improper

1 representations with the intent to induce the U.S. Patent and Trademark Office to issue a
2 trademark registration. The basis for this affirmative defense is that the First Amended
3 Complaint contains numerous material misrepresentations, including in paragraph 30, which
4 states that “GoDaddy provides its domain name forwarding service to registrants who registered
5 their domain names with registrars other than GoDaddy.” In fact, Go Daddy’s routing and
6 forwarding services are only provided to domain names registered with Go Daddy.

7 **Seventh Affirmative Defense:** Plaintiff’s alleged trademark is invalid and therefore
8 cannot support Plaintiff’s claims because, on information and belief, Plaintiff has abandoned the
9 alleged mark, has never used it in the United States, or otherwise does not have valid United
10 States trademark rights in the alleged mark. Plaintiff’s alleged trademark registration is invalid
11 for the reasons set forth in the below counterclaim and therefore cannot support Plaintiff’s
12 claims. The basis for this affirmative defense is that Petronas has abandoned its trademark, and
13 does not have a valid trademark registration because the mark in the alleged registration has been
14 abandoned and because the registration was improperly issued; so Petronas does not actually
15 possess the U.S. trademark rights it asserts in the First Amended Complaint. The basis for this
16 affirmative defense is further set forth in Go Daddy’s counterclaim for cancellation of Petronas’
17 trademark registration, which is incorporated by reference. Petronas is most likely to have
18 knowledge of the foregoing.

19 **Eighth Affirmative Defense:** Plaintiff lacks standing to bring these claims because it
20 does not possess valid United States trademark rights in the alleged trademark. The basis for this
21 affirmative defense is that Petronas has abandoned its trademark, and does not have a valid
22 trademark registration because the mark in the alleged registration has been abandoned and
23 because the registration was improperly issued; so Petronas does not actually possess the U.S.
24 trademark rights it asserts in the First Amended Complaint. The bases for this affirmative
25 defense are further set forth in Go Daddy’s counterclaim for cancellation of Petronas’ trademark
26 registration, which is incorporated by reference. Petronas is most likely to have knowledge of
27 the foregoing.

28 **Ninth Affirmative Defense:** The Complaint is barred, in whole or in part, by the failure

1 of Plaintiff to mitigate damages, if any, by waiting approximately six years to take action with
 2 regard to the domains at issue and choosing not to seek transfer of the domains at issue by the
 3 fastest available means, including a Uniform Domain-Name Dispute-Resolution Policy
 4 proceeding before an arbitrator accredited by the Internet Corporation for Assigned Names and
 5 Numbers, which proceeding would typically have been resolved far faster than the proceedings
 6 Plaintiff chose to pursue. The bases for this affirmative defense are that the disputed domain
 7 names were registered in 2003, and have pointed to pornographic content since that time.
 8 Petronas waited until the last months of 2009 to take any action with regard to one of the
 9 disputed domain names (petronastowwer.net) and waited until 2010 to take action with regard to
 10 the other disputed domain name (petronastowers.net). Also, though Petronas was aware of the
 11 Uniform Domain-Name Dispute-Resolution Policy, an expedited arbitration process for
 12 resolving domain name disputes, Petronas chose to file 3 federal lawsuits instead of proceeding
 13 under the UDRP, which typically resolves complaints within 60 days. Petronas, Heiko
 14 Shoenekeess, and David Daash are most likely to have knowledge of the foregoing facts.

15 **Tenth Affirmative Defense:** The Complaint is barred, in whole or in part, by the failure
 16 of Plaintiff to join an indispensable party as defendant in this action, including the domain name
 17 registrant, the company responsible for hosting the alleged website content, and anyone else that
 18 may be involved in the operation of the alleged websites. The basis for this affirmative defense
 19 is that Petronas failed to join an indispensable party or parties in the lawsuit, by failing to include
 20 the domain name registrants – Heiko Shoenekeess and David Daash – failing to include the
 21 company responsible for hosting the website content, or anyone else that may be involved with
 22 the website. Petronas, Heiko Shoenekeess, and David Daash are most likely to have knowledge
 23 of the foregoing facts.

24 **Eleventh Affirmative Defense:** The Complaint is barred, in whole or in part, by the
 25 equitable doctrine of unclean hands. On information and belief, Plaintiff has made false or
 26 improper representations with the intent to induce the U.S. Patent and Trademark Office to issue
 27 a trademark registration. On information and belief, Plaintiff has wielded this registration
 28 against Go Daddy in this action while knowing that it is invalid, in whole or in part. As set forth

1 below, the alleged trademark registration is therefore subject to cancellation or partial
 2 cancellation. The basis for this affirmative defense is that Petronas secured the alleged
 3 trademark registration under false pretenses, and it was improperly issued. Petronas, Heiko
 4 Shoenekeess, and David Daash are most likely to have knowledge of the foregoing facts.

5 **INTERROGATORY NO. 14:**

6 Please identify and describe in detail the basis for GoDaddy's contentions in its
 7 Counterclaim for Cancellation on pages 11 through 14 of its Amended Answer and
 8 Counterclaims filed July 28, 2011 (Doc. No. 106), including by identifying all persons with
 9 knowledge of the foregoing and by describing all documents related to the foregoing.

10 **RESPONSE TO INTERROGATORY NO. 14:**

11 In addition to the General Objections, Go Daddy objects to this interrogatory on the
 12 grounds that it is cumulative and compound, and calls for legal conclusions. Go Daddy further
 13 objects to this interrogatory on the ground that its investigation is ongoing, and Go Daddy will
 14 supplement its response to this interrogatory as further information becomes available. Go
 15 Daddy also objects to the interrogatory on the ground that it is not consistent with or does not
 16 meet the requirements of Federal Rules of Civil Procedure.

17 Subject to and without waving the foregoing objections, Go Daddy responds as follows:

18 The bases for Go Daddy's counterclaim for cancellation of Petronas' trademark
 19 registration are: Petronas has abandoned the mark in the registration through failure to use the
 20 mark in commerce in the United States in connection with all or some of the listed goods;
 21 Petronas represented that it had an intent to use all the goods listed in the application in
 22 commerce in the United States, when in fact it did not have such an intent; Petronas based its
 23 trademark registration on particular Malaysian registrations which are narrower in scope than the
 24 resulting United States registration, and therefore the registration was improperly issued for all or
 25 some of the listed goods. In particular, the Malaysian registrations do not include the following
 26 goods, which are included in the United States registration:

27 Chemical and petrochemicals for use in the manufacture or pharmaceuticals,
 28 cosmetics, detergents, packaging, wire and cable installation, cassette tapes, pipes,
 toys, films, floorings, synthetic rubber, paints and coating, adhesives, fuel

1 additives, textiles, agriculture, electrical and electronic components, automotive
 2 parts, aerospace and aviation, building and construction materials, plastic foods,
 3 and diagnostic equipment; Chemical and petro chemical in the nature of vinyl
 4 chloride monomer, polyvinyl chloride, polypropylene; photographic chemicals;
 5 artificial and synthetic resins for use in the manufacture of fibers, polymers and
 6 coatings, and molding compounds; plastic molding compounds for use in plastic
 7 extrusion operations; plastic molding compounds for use in the manufacture of
 8 molder plastic articles and plastic sheets and films; composts; manures; fertilizers
 9 for agricultural and domestic use; glue for industrial purposes; adhesives for
 10 general industrial use; contact cements; gases for heating for heating, lighting,
 11 steam generating, cooking, refrigeration, drying and ventilating for industrial use
 12 in liquid and gaseous forms; oil disperants; chemicals for separating oils;
 13 hydraulic fluids for general use, chemical additives for use in the manufacture of
 14 fuels; drilling muds for use in oil well drilling, coolants for vehicles engines, heat
 15 transfer fluids for industrial use, hydraulic fluids for general use, acidulated water
 16 for recharging accumulators and batteries; and chemical additives for use in the
 17 oil processing industry.

18 _____
 19 Petronas is most likely to have knowledge of the foregoing facts.

20 **INTERROGATORY NO. 15:**

21 Please identify and describe in detail GoDaddy's efforts to preserve information,
 22 including electronically stored information, related to this case, including by identifying all
 23 persons with knowledge of the foregoing and by describing all documents related to the
 24 foregoing.

25 **RESPONSE TO INTERROGATORY NO. 15:**

26 In addition to the General Objections, Go Daddy objects to this interrogatory on the
 27 grounds that it is calls for information that is protected from disclosure by the attorney-client
 28 privilege or work product doctrine, call for information beyond the extent permitted by the
 Federal Rules of Civil Procedure, is vague, ambiguous, and overbroad.

Subject to and without waving the foregoing objections, Go Daddy responds as follows:

Go Daddy sent litigation hold memos and instructions to relevant employees and
 conducted multiple discussions with key employees regarding document preservation and
 collection. Go Daddy has preserved all email correspondence from all employees and has
 conducted multiple, exhaustive searches, including searching the entire volume of Go Daddy
 emails since the launch of the company – roughly 88.5 million – for documents relcvant to the
 present action.

1 Go Daddy has already produced documents relating to the foregoing in response to prior
2 discovery requests and is willing to produce a 30(b)(6) witness to testify on this topic.

3 **INTERROGATORY NO. 16:**

4 Please identify and describe in detail, including by identifying all persons with
5 knowledge of the following and by describing all documents related to the following, the
6 services provided by Go Daddy related to the disputed domain names, including technical
7 aspects of routing/forwarding the disputed domain names.

8 **RESPONSE TO INTERROGATORY NO. 16:**

9 In addition to the General Objections, Go Daddy objects to this interrogatory on the
10 grounds that it is cumulative, vague, ambiguous and unintelligible, overbroad and harassing.

11 Subject to and without waving the foregoing objections, Go Daddy responds as follows:

12 Go Daddy provided registrar services with respect to the disputed domain names. As part
13 of the registration services offered to all 50 million domain names under its management, Go
14 Daddy provides routing services to registrants, meaning that registrants can log into their Go
15 Daddy accounts on the Go Daddy website and indicate the name servers (of the website hosting
16 company) or the existing website that they would like the internet traffic for that domain name to
17 be pointed to. When the registrant indicates an existing website to point traffic to, instead of a
18 set of name servers at his website hosting company, it is generally referred to as "forwarding"
19 the domain name. Here, the registrant of the disputed domain names logged into his account on
20 the Go Daddy website and directed the automated system to forward the domain names to a pre-
21 existing website. Go Daddy's system then automatically forwarded traffic to the existing
22 website, as the registrant requested.

23 Go Daddy has already identified persons with knowledge and produced documents
24 relating to the foregoing in response to prior discovery requests. Persons with relevant
25 knowledge include Linda Jett, John Roling, and Jeff Munson.

26 **INTERROGATORY NO. 17:**

27 Please identify and describe in detail Go Daddy's trademark polices relating to the
28 disputed domain names and the application of Go Daddy's trademark complaint/dispute

1 practices relating to the disputed domain names and please include in your response an
2 identification of all persons with knowledge of the foregoing and a description of all documents
3 related to the foregoing.

4 **RESPONSE TO INTERROGATORY NO. 17:**

5 In addition to the General Objections, Go Daddy objects to this interrogatory on the
6 grounds that it is cumulative and has already been answered by Go Daddy's prior discovery
7 responses.

8 Subject to and without waving the foregoing objections, Go Daddy responds as follows:

9 See Go Daddy's responses to Interrogatory Nos. 9 and 11, incorporated herein by
10 reference, and documents Bates-numbered GD-000564—GD-000578; GD-001306—GD-
11 001309; GD-001318—GD-001321. Additionally, the following individuals may have relevant
12 knowledge: Rod Simonini, Matthew Bilunes, Jessica Hanyen, and Laurie Anderson.

13 **INTERROGATORY NO. 18:**

14 Please identify and describe in detail Go Daddy's domain name registration process
15 relating to the disputed domain names, including the process of transferring to GoDaddy an
16 existing domain name from another registrar and please include in your response an
17 identification of all persons with knowledge of the foregoing and a description of all documents
18 related to the foregoing.

19 **RESPONSE TO INTERROGATORY NO. 18:**

20 In addition to the General Objections, Go Daddy objects to this interrogatory on the
21 grounds that it is cumulative and has already been answered by Go Daddy's prior discovery
22 responses.

23 Subject to and without waving the foregoing objections, Go Daddy responds as follows:

24 See documents Bates-numbered GD-000500—GD-000502; GD-000508—GD-000531;
25 GD-002446—GD-002467; GD-002526—GD-002550. Additionally, the following individuals
26 may have relevant knowledge: Camille Ede, Laurie Anderson, and John Roling.

27
28