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# Ex. 8

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5 Attorney for Plaintiff  
PETROLIAM NASIONAL BERHAD  
6

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11	PETROLIAM NASIONAL BERHAD,	)	CASE NO: 10-CV-03052 PJH
		)	
12	Plaintiff,	)	Date: September 15, 2010
		)	Time: 9:00 a.m.
13	vs.	)	Location: Courtroom 3
		)	Third Floor
14	PETRONASTOWERS.NET, an internet domain	)	
	name,	)	
15		)	
	Defendant.	)	

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19 **NOTICE OF MOTION AND**  
20 **MOTION FOR ORDER TRANSFERRING DOMAIN NAME**  
21 **PURSUANT TO 15 U.S.C. § 1125(D) AND**  
22 **FOR ENTRY OF JUDGMENT**  
23  
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25 NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D) AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

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**I. NOTICE OF MOTION**

TO ALL PARTIES AND COUNSEL OF RECORD: Please take notice that Plaintiff Petroliam Nasional Berhad (“Plaintiff” or “Petronas”) will and hereby does makes this motion for an order transferring the domain name “PETRONASTOWERS.NET” to Plaintiff Petronas pursuant to 15 U.S.C. § 1125(D) and for entry of judgment. Please further take notice of the hearing date for this motion: September 15, 2010 at 9 a.m.

**II. STATEMENT OF RELIEF REQUESTED**

Plaintiff Petronas requests that this Court issue an order directing GoDaddy.Com, Inc. to transfer the domain name “PETRONASTOWERS.NET” to Plaintiff Petronas pursuant to 15 U.S.C. § 1125(D). Plaintiff Petronas further requests an order entering final judgment in Petronas’s favor in this action. On July 12, 2010, Plaintiff Petronas informed the registrant of the internet domain name “PETRONASTOWERS.NET” of its intent to pursue this action at the physical and email addresses provided GoDaddy and as required by 15 U.S.C. § 1125(D). Ex. A. Plaintiff Petronas has not received any communication from the registrant as of the date of this motion. Plaintiff Petronas also has served a copy of the motion and supporting papers as set forth in declaration of service attached as Ex. B on the registrant and counsel for the domain name registrar, GoDaddy.com, Inc. Plaintiff Petronas is unaware of any person or entity that does, or would, oppose the motion.

**III. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

The “PETRONASTOWERS.NET” domain name should be transferred to Plaintiff Petronas under the Anticyberpiracy section of the Lanham Trademark Act, 15 U.S.C. § 1125(D)(2). A court may issue an order transferring a domain name pursuant to 15 U.S.C. § 1125(D)(2) where: (1) the domain name “violates any right of the owner of a mark registered in

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NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15 U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

1 the Patent and Trademark Office,” 15 U.S.C. § 1125(D)(2)(A)(i), (2) the owner of the mark “is  
2 not able obtain *in personam* jurisdiction over a person who would have been a defendant in a  
3 civil action [for cybersquatting] under [15 U.S.C. § 1125(D)] paragraph (1),” 15 U.S.C. §  
4 1125(D)(2)(A)(ii)(I), and (3) the domain name registrar “deposit[s] with the court documents  
5 sufficient to establish the court’s control and authority regarding the disposition of the  
6 registration and use of the domain name,” 15 U.S.C. § 1125(D)(2)(D). Because all three of the  
7 foregoing requirements are met with respect to the domain name “PETRONASTOWERS.NET,”  
8 an order transferring the domain name to Petronas should issue in this case.

9 **A. “PETRONASTOWERS.NET” Infringes the Trademark Rights of Petronas**

10 There can be no dispute that the first requirement for the transfer of the  
11 “PETRONASTOWERS.NET” domain under the Anticyberpiracy section of the Lanham Act—  
12 that the domain name infringes the trademark rights of Petronas—is met in this case.  
13 Specifically, the Anticyberpiracy section applies to any domain name “that violates any right of  
14 the owner of a mark registered in the Patent and Trademark Office, or protected under subsection  
15 (a) [false designation of origin] or (c) [dilution] [of 15 U.S.C. § 1125].” 15 U.S.C. §  
16 1125(d)(2)(A)(i).

17 Here, the “PETRONASTOWERS.NET” domain name violates the rights of Petronas  
18 with respect to its federally registered “PETRONAS” mark because it infringes that mark under  
19 15 U.S.C. § 1125(a) and (c). As an initial matter, Petronas is the owner of the duly registered  
20 federal trademark for the mark “PETRONAS.” Ex. C. In addition, the  
21 “PETRONASTOWERS.NET” domain name infringes the “PETRONAS” mark under 15 U.S.C.  
22 § 1114 because the domain name is “a use in commerce” of the “PETRONAS” mark that is  
23 “likely to cause confusion” among consumers as to whether the pornographic website using the  
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25 NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

1 “PETRONASTOWERS.NET” domain name is associated with Petronas—which it is not.  
2 *Automotive Gold, Inc. v. Volkswagen of America, Inc.*, 457 F.3d 1062, 1075-76 (9th Cir. 2006).  
3 Moreover, the “PETRONASTOWERS.NET” domain name violates the rights of Petronas under  
4 15 U.S.C. § 1125(a) by creating a “false designation of origin” as to the pornographic website  
5 found at the “PETRONASTOWERS.NET” domain name because that site did not “originate”  
6 with Petronas and, in fact, Petronas strongly objects to the site and its use of “PETRONAS.”  
7 *New West Corp. v. N.Y.M. Co. of California*, 595 F.2d 1194, 1201 (9th Cir. 1979) (“Whether we  
8 call the violation infringement, unfair competition, or false designation of origin, the test is  
9 identical—is there a likelihood of confusion?”).

10 Accordingly, the first requirement for the transfer of the “PETRONASTOWERS.NET”  
11 domain name to Petronas under the Anticyberpiracy section of the Lanham is met because that  
12 domain name infringes the trademark rights of Petronas.

13 **B. *In Personam* Jurisdiction Is Unavailable As To The Registrant of**  
14 **“PETRONASTOWERS.NET”**

15 The second requirement for the transfer of “PETRONASTOWERS.NET” to Petronas is  
16 met because in a civil action under 15 U.S.C. § 1125(d) the court would not have had *in*  
17 *personam* jurisdiction over the registrant of the “PETRONASTOWERS.NET” domain name.  
18 According to 15 U.S.C. § 1125(d)(2)(A)(ii)(I), an *in rem* action for the transfer of a domain name  
19 is proper where “the owner [of the mark] . . . is not able to obtain *in personam* jurisdiction over a  
20 person who would have been a defendant in a civil action [for cybersquatting] under [15 U.S.C.  
21 § 1125(d)] paragraph (2).” 15 U.S.C. § 1125(d)(2)(A)(ii)(I).

22 Here, according to records of the registrar of the “PETRONASTOWERS.NET” domain  
23 name (GoDaddy.com), the domain name was registered by “Heiko Schonenekeess” whose  
24

25 NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

1 address is “BPM 195226, 372 Old Street, London, Ec1V 9AU, United Kingdom.” Ex. D. The  
2 internet registrant also provided an email address: “cc\_ltd@live.com.” Although Plaintiff  
3 Petronas tried repeatedly to locate and contact the registrant, including by Federal Express and  
4 email, it was unable to do so. Petronas was also unable to identify any grounds for the exercise  
5 of personal jurisdiction over the registrant. The registrant of the “PETRONASTOWERS.NET”  
6 domain name would be liable as a defendant in action for cybersquatting under 15 U.S.C. §  
7 1125(d). Because the registrant of the “PETRONASTOWERS.NET” domain could not be  
8 subjected to *in personam* jurisdiction, the second requirement of the Anticyberpiracy section has  
9 been met with respect to the “PETRONASTOWERS.NET” domain name.

10 **C. The Domain Registrar (GoDaddy) Certifies This Court’s Authority Over the**  
11 **Domain Name “PETRONASTOWERS.NET”**

12 GoDaddy is the registrar of the domain name “PETRONASTOWERS.NET” and, as  
13 required by the Anitcyberpiracy section, has provided certification that this Court has the  
14 “control and authority” to transfer the “PETRONASTOWERS.NET” domain name to Petronas.  
15 Specifically, 15 U.S.C. § 1125(d)(2)(D)(i) provides that, upon the filing of an Anticyberpiracy  
16 action, “the domain name registrar . . . shall expeditiously deposit with the court documents  
17 sufficient to establish the court’s control and authority regarding the disposition of the  
18 registration and use of the domain name to the court.” GoDaddy provided this information to  
19 Petronas and it is being filed along with this motion. Ex. E. As a result, all of the requirements  
20 for an order directing GoDaddy to transfer the “PETRONASTOWERS.NET” domain name to  
21 Petronas under the Anticyberpiracy section have been met.

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25 NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

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**D. Entry of Judgment**

In this action, Plaintiff Petronas seeks an order transferring the “PETRONASTOWERS.NET” domain name. Upon the issuance of such an order, the Court will have granted complete relief to Petronas and entry of judgment will be proper under Fed. R. Civ. P. 54. Accordingly, Plaintiff Petronas requests that in addition to an order transferring the “PETRONASTOWERS.NET” domain name, the Court also issue final judgment in favor of Petronas.

**IV. CONCLUSION**

For the foregoing reasons, Plaintiff Petronas respectfully requests an order directing GoDaddy.com to transfer the “PETRONASTOWERS.NET” domain name to Petronas and the entry of judgment in favor of Petronas. A proposed order and proposed final judgment are being filed with this motion.

Dated: August 10, 2010

LAW OFFICES OF PERRY R. CLARK

By:  /s/ Perry R. Clark .  
Perry R. Clark

Attorney for Plaintiff  
PETROLIAM NASIONAL BERHAD

NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15 U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

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# Ex. A

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NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D) AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH



LAW OFFICES OF  
**PERRY R. CLARK**

3457 Cowper St.  
PALO ALTO, CA 94306  
TELEPHONE: 650 248 5817  
FACSIMILE: 650 618 8533

July 12, 2010

**By Electronic Mail and Federal Express**


Heiko Schoenekeess  
BPM 195226  
372 Old Street  
London EC1V 9AU  
United Kingdom

**Re: “PETRONASTOWERS.NET” DOMAIN NAME**

To Whom It May Concern:

Please take notice that your registration of the domain name “PETRONASTOWERS.NET” is a violation of 15 U.S.C. § 1125(D) and that we intend to proceed as counsel for Petroliam Nasional Berhad (Petronas) pursuant to that section as set forth in the enclosed complaint. We also have provided this notice to you by electronic mail at the email address (“cc\_ltd@live.com”) maintained by GoDaddy.com, Inc., the registrar of “PETRONASTOWERS.NET.”

Best Regards,



---

Perry Clark

OPPAPP000109

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PETROLIAM NASIONAL BERHAD  
6 (PETRONAS)

7  
8 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
9

10 PETROLIAM NASIONAL BERHAD, )

11 Plaintiff, )

12 vs. )

13 PETRONASTOWERS.NET, an internet domain )  
name, )

14 Defendant. )  
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CASE NO.: 10-CV-\_\_\_\_\_

**IN REM COMPLAINT FOR  
VIOLATION OF 15 U.S.C. § 1125(D)  
(CYBERPIRACY)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Petroliam Nasional Berhad (“Petronas”) for its *In Rem* Complaint against  
2 Defendant PETRONASTOWERS.NET, an internet domain name, alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff Petronas is a corporation duly organized under the laws of Malaysia with a  
5 principal place of business located at Tower 1, Petronas Twin Towers, Kuala Lumpur City Centre,  
6 50088, Kuala Lumpur, Malaysia. Petronas is wholly-owned by the Government of Malaysia and  
7 is vested with the entire ownership and control of the petroleum resources of Malaysia.

8 2. Defendant PETRONASTOWERS.NET is an internet domain name that serves as  
9 the internet address for a website displaying obscene and highly offensive content. Plaintiff  
10 Petronas has not authorized the use of its United States Trademark “PETRONAS” or any other of  
11 its marks in connection with the domain name PETRONASTOWERS.NET or the associated  
12 website.

13 3. On information and belief, VeriSign, Inc. is the domain name registry for  
14 PETRONASTOWERS.NET.

15 4. GoDaddy.com, Inc. (“GoDaddy”) is the domain name registrar for  
16 PETRONASTOWERS.NET.

17 5. According to GoDaddy’s “WHOIS” database (available at  
18 “[http://who.godaddy.com/WhoIs.aspx?domain=petronastowers.net&prog\\_id=godaddy](http://who.godaddy.com/WhoIs.aspx?domain=petronastowers.net&prog_id=godaddy)”), the  
19 registrant of PETRONASTOWERS.NET is “Heiko Schoenekess, BPM 195226, 372 Old Streed,  
20 London, London EC1V 9AU, United Kingdom.”

21 **JURISDICTION AND VENUE**

22 6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(b)  
23 because this case arises under 15 U.S.C. § 1125(d).



1 Petronas and house the offices of many other major foreign and domestic corporations, including  
2 IBM, Microsoft, Boeing, McKinsey & Co., and Reuters. The Petronas Twin Towers and the  
3 adjoining Suria KLCC mall complex house some of Malaysia's leading cultural facilities,  
4 including an art museum (the Petronas Gallery), a symphony hall (the Petronas Philharmonic Hall,  
5 home to the Malaysian Philharmonic Orchestra), a science and technology discovery center  
6 (Petrosains), and a world-class aquarium (Aquaria KLCC, located in the adjoining Kuala Lumpur  
7 Convention Center).

8 13. As an iconic landmark that is famous around the world and one of the most visited  
9 destinations in Southeast Asia, the Petronas Twin Towers are widely and inseparably identified  
10 with Petronas, its brand, and the trademark "PETRONAS."

11 14. Petronas owns all right and title to United States Trademark No. 2969707 for the  
12 mark "PETRONAS." Petronas also is the owner of the trademark "PETRONAS TWIN  
13 TOWERS," and others.

14 15. At all relevant times, Petronas uses its "PETRONAS" mark to, among other things,  
15 identify itself as the source of the goods and services it provides.

16 16. Petronas uses its mark, for example, in its internet domain names associated with  
17 Petronas's websites. Petronas's sole official website uses a domain name owned by Petronas that  
18 uses the PETRONAS mark exclusively, "www.petronas.com.my," (the "Official Petronas  
19 Website"). Petronas also owns several other domain names that operate "mirror" websites which  
20 redirect to the Official Petronas Website: "www.petronas.com," "www.petronas.org," and  
21 "www.petronas.my."

22 17. Petronas also uses the PETRONAS mark for the domain name associated with its  
23 official Petronas Twin Towers website containing information about the Petronas Twin Towers,  
24 "www.petronastwintowers.com.my." As with the Official Petronas Website, Petronas owns other  
25

1 domain names, such as “petronastwintowers.com,” which redirect web users to the official  
2 “www.petronastwintowers.com.my” website.

3 18. According to publicly available records, Go Daddy is the domain name registrar for  
4 the defendant domain name “WWW.PETRONASTOWERS.NET.” The domain name  
5 “WWW.PETRONASTOWERS.NET” is the internet address for a pornographic website that  
6 displays obscene and highly offensive content as soon as a computer user’s internet browser  
7 arrives at the site.

8 19. Petronas has never authorized the use of its PETRONAS mark, or any other  
9 Petronas mark, in the “WWW.PETRONASTOWERS.NET” domain name.

10 20. GoDaddy’s public records, known as “WHOIS” (“http://who.godaddy.com/  
11 WhoIs.aspx?domain=petronastowers.net&prog\_id=godaddy”), state that the registrant of the  
12 “PETRONASTOWERS.NET” domain name is “Heiko Schoenekess, BPM 195226, 372 Old  
13 Streed, London, London EC1V 9AU, United Kingdom.”

14 21. Go Daddy’s records also state that the “Administrative Contact” and the “Technical  
15 Contact” for the “PETRONASTOWERS.NET” domain name is “Schoenekess, Heiko  
16 cc\_ltd@live.com, BPM 195226 372 Old Streed, London, London EC1V 9AU, United Kingdom,  
17 +44.2076636606.”

18 22. Plaintiff Petronas has been unable to locate the registrant of the  
19 “WWW.PETRONASTOWERS.NET” domain name based on the information provided by the  
20 domain registrar, Go Daddy. Petronas has sent notice of its intent to proceed under 15 U.S.C.  
21 1125(d)(2)(A), as well as a copy of that section, to the registrant of the  
22 “PETRONASTOWERS.NET” domain name, at the postal and email addresses he or she provided,  
23 on information and belief, to the registrar, Go Daddy, as set forth above. Petronas also attempted  
24  
25

1 to provide such notice by telephoning the telephone numbers in the Go Daddy records but calls  
2 placed to those telephone numbers were not answered.

3 **CLAIM FOR RELIEF UNDER 15 U.S.C. 1125(d)(2)(A)**

4 23. Petronas incorporates and re-alleges the preceding paragraphs as if set forth fully  
5 herein.

6 24. The domain name "PETRONASTOWERS.NET" violates the rights of Petronas as  
7 the owner of the registered mark "PETRONAS" and marks protected under 15 U.S.C. §§ 1125(a)  
8 and (c).

9 25. Petronas has been unable to find (or establish personal jurisdiction over) the  
10 registrant of the domain name "PETRONASTOWERS.NET" by using the diligence described in  
11 15 U.S.C. §§ 1125(d)(2)(A)(ii)(II)(aa).

12 **RELIEF SOUGHT**

13 In light of the foregoing, Petronas respectfully requests the following relief:

- 14 1. The Court issue an order that Go Daddy, as the domain name registrar immediately  
15 transfer all right, title, and interest in the domain name "PETRONASTOWERS.NET" to Petronas;  
16 2. Alternatively, the Court issues an order forever cancelling the domain name  
17 "PETRONASTOWERS.NET."

18 Dated: July 12, 2010

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21 By: 


Perry R. Clark  
Attorneys for Plaintiff  
Petroleum Nasional Berhad

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**JURY DEMAND**

1. Plaintiff Petronas respectfully demands a jury trial on all issues so triable

Dated: July 12, 2010

By:   
Perry R. Clark  
Attorneys for Plaintiff  
Petroliam Nasional Berhad





39 of 99 DOCUMENTS

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\*\*\* CURRENT THROUGH PL 111-198, WITH A GAP OF PL 111-195, APPROVED 7/2/2010 \*\*\*

TITLE 15. COMMERCE AND TRADE  
CHAPTER 22. TRADEMARKS  
GENERAL PROVISIONS

**Go to the United States Code Service Archive Directory**

*15 USCS § 1125*

Review expert commentary from The National Institute for Trial Advocacy preceding 15 USCS § 1051.

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 2 DOCUMENTS.  
THIS IS PART 1.  
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

§ 1125. False designations of origin, false descriptions, and dilution forbidden

(a) Civil action.

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.

(3) In a civil action for trade dress infringement under this Act for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.

(b) Importation. Any goods marked or labeled in contravention of the provisions of this section shall not be imported

OPPAPP000117

into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized.

(c) Dilution by blurring; dilution by tarnishment.

(1) Injunctive relief. Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

(2) Definitions.

(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

(i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.

(ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.

(iii) The extent of actual recognition of the mark.

(iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

(B) For purposes of paragraph (1), "dilution by blurring" is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

(i) The degree of similarity between the mark or trade name and the famous mark.

(ii) The degree of inherent or acquired distinctiveness of the famous mark.

(iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.

(iv) The degree of recognition of the famous mark.

(v) Whether the user of the mark or trade name intended to create an association with the famous mark.

(vi) Any actual association between the mark or trade name and the famous mark.

(C) For purposes of paragraph (1), "dilution by tarnishment" is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

(3) Exclusions. The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

(A) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with--

(i) advertising or promotion that permits consumers to compare goods or services; or

(ii) identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.

(B) All forms of news reporting and news commentary.

(C) Any noncommercial use of a mark.

(4) Burden of proof. In a civil action for trade dress dilution under this Act for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that--

(A) the claimed trade dress, taken as a whole, is not functional and is famous; and

(B) if the claimed trade dress includes any mark or marks registered on the principal register, the unregistered matter, taken as a whole, is famous separate and apart from any fame of such registered marks.

(5) Additional remedies. In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 34. The owner of the famous mark shall also be entitled to the remedies set forth in sections 35(a) and 36 [15 USCS § 1117(a) and 1118], subject to the discretion of the court and the principles of

equity if--

(A) the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after the date of enactment of the Trademark Dilution Revision Act of 2006 [enacted Oct. 6, 2006]; and

(B) in a claim arising under this subsection--

(i) by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to trade on the recognition of the famous mark; or

(ii) by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark.

(6) Ownership of valid registration a complete bar to action. The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this Act shall be a complete bar to an action against that person, with respect to that mark, that--

(A)

(i) is brought by another person under the common law or a statute of a State; and

(ii) seeks to prevent dilution by blurring or dilution by tarnishment; or

(B) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

(7) Savings clause. Nothing in this subsection shall be construed to impair, modify, or supersede the applicability of the patent laws of the United States.

(d) Cyberpiracy prevention.

(1)

(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person--

(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and

(ii) registers, traffics in, or uses a domain name that--

(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;

(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or

(III) is a trademark, word, or name protected by reason of *section 706 of title 18, United States Code*, or *section 220506 of title 36, United States Code*.

(B) (i) In determining whether a person has a bad faith intent described under subparagraph (A), a court may consider factors such as, but not limited to--

(I) the trademark or other intellectual property rights of the person, if any, in the domain name;

(II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

(VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's

prior conduct indicating a pattern of such conduct;

(VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

(IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c).

(ii) Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

(C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(D) A person shall be liable for using a domain name under subparagraph (A) only if that person is the domain name registrant or that registrant's authorized licensee.

(E) As used in this paragraph, the term "traffics in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

(2)

(A) The owner of a mark may file an in rem civil action against a domain name in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if--

(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c); and

(ii) the court finds that the owner--

(I) is not able to obtain in personam jurisdiction over a person who would have been a defendant in a civil action under paragraph (1); or

(II) through due diligence was not able to find a person who would have been a defendant in a civil action under paragraph (1) by--

(aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

(bb) publishing notice of the action as the court may direct promptly after filing the action.

(B) The actions under subparagraph (A)(ii) shall constitute service of process.

(C) In an in rem action under this paragraph, a domain name shall be deemed to have its situs in the judicial district in which--

(i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or

(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

(D) (i) The remedies in an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark. Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in a United States district court under this paragraph, the domain name registrar, domain name registry, or other domain name authority shall--

(I) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and

(II) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

(ii) The domain name registrar or registry or other domain name authority shall not be liable for injunctive or monetary relief under this paragraph except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any such court order.

## 15 USCS § 1125

(3) The civil action established under paragraph (1) and the in rem action established under paragraph (2), and any remedy available under either such action, shall be in addition to any other civil action or remedy otherwise applicable.

(4) The in rem jurisdiction established under paragraph (2) shall be in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.

**HISTORY:**

(July 5, 1946, ch 540, Title VIII, § 43, 60 Stat. 441; Nov. 16, 1988, P.L. 100-667, Title I, § 132, 102 Stat. 3946; Oct. 27, 1992, P.L. 102-542, § 3(c), 106 Stat. 3568; Jan. 16, 1996, P.L. 104-98, § 3(a), 109 Stat. 985; Aug. 5, 1999, P.L. 106-43, §§ 3(a)(2), 5, 113 Stat. 219, 220; Nov. 29, 1999, P.L. 106-113, Div B, § 1000(a)(9), 113 Stat. 1536.)

(As amended Oct. 6, 2006, P.L. 109-312, § 2, 120 Stat. 1730.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

## References in text:

Acts March 3, 1881 and February 20, 1905, referred to in this section, are Acts March 3, 1881, ch 130, 22 Stat. 388, and Feb. 20, 1905, ch 592, 33 Stat. 724, which were repealed insofar as inconsistent with *15 USCS §§ 1051* et seq. by Act July 5, 1946, ch 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, formerly appeared as *15 USCS §§ 81* et seq..

"This Act", referred to in this section, is Act July 5, 1946, ch 540, 60 Stat. 427, which is popularly known as the Lanham Act or the Trademark Act of 1946, and which appears generally as *15 USCS §§ 1051* et seq. For full classification of such Act, consult USCS Tables volumes.

## Explanatory notes:

Similar provisions were contained in Act March 19, 1920, ch 104, § 3, 41 Stat. 534.

The amendment made by § 1000(a)(9) of Act Nov. 29, 1999, P.L. 106-113, is based on § 3002(a) of Title III of S. 1948 (113 Stat. 1501A-545), as introduced on Nov. 17, 1999, which was enacted into law by such § 1000(a)(9).

## Effective date of section:

This section takes effect one year from its enactment, as provided by Act July 5, 1946, ch 540, § 46, 60 Stat. 444, which appears as *15 USCS § 1051* note.

## Amendments:

1988. Act Nov. 16, 1988 (effective one year after enactment as provided by § 136 of such Act, which appears as *15 USCS § 1051* note) substituted subsec. (a) for one which read: "(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation."

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# Ex. B

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NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

1 Perry R. Clark, Esq.  
Law Offices of Perry R. Clark  
2 3457 Cowper St.  
Palo Alto, CA 94306  
3 Telephone: (650) 248-5817  
Facsimile: (650) 248-5816  
4 perry@perryclarklaw.com

5 Attorney for Plaintiff  
PETROLIAM NASIONAL BERHAD  
6

7

8

UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

10

OAKLAND DIVISION

11

PETROLIAM NASIONAL BERHAD, )

CASE NO: 10-CV-03052 PJH

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Plaintiff, )

**CERTIFICATE OF SERVICE**

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vs. )

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PETRONASTOWERS.NET, an internet domain )

name, )

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Defendant. )

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**CERTIFICATE OF SERVICE**

Case No.: 10-CV-03052 PJH

1 I, Perry Clark, state that I served Plaintiff's NOTICE OF MOTION AND MOTION FOR  
2 ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15 U.S.C. § 1125(D) AND  
3 FOR ENTRY OF JUDGMENT all exhibits thereto ("Motion") as follows:

- 4 1. I placed a copy of the motion in a Federal Express envelope with postage pre-paid  
5 for FedEx Express addressed to:  
6 Heiko Schoneneke  
7 BPM 195226  
8 372 Old Street  
9 London Ec1V 9AU  
10 United Kingdom  
11 Tel.: +44.2076636606
- 12 2. I deposited the Federal Express envelope identified in Paragraph 1 (above) in a  
13 Federal Express drop box on August 10, 2010.
- 14 3. I emailed a pdf copy of the motion to "[cc\\_ltd@live.com](mailto:cc_ltd@live.com)" on August 10, 2010.
- 15 4. I emailed a copy of the motion to counsel for GoDaddy, "[jslafsky@wsgr.com](mailto:jslafsky@wsgr.com)" on  
16 August 10, 2010.
- 17 5. I placed a copy of the motion in a U.S. Mail envelope with first class postage pre-  
18 paid addressed to:  
19 John Slafsky, Esq.  
20 Wilson Sonsini Goodrich & Rosati PC  
21 650 Page Mill Road  
22 Palo Alto, CA 94303

23  
24  
25 NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

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6. I deposited the U.S. Mail envelope identified in Paragraph 5 (above) in a U.S. Mailbox on August 10, 2010.

I declare under penalty of perjury that the forgoing is true and correct.

Dated: August 10, 2010

By: /s/ Perry R. Clark  
Perry R. Clark

25 NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

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# Ex. C

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NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH



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( Use the "Back" button of the Internet Browser to return to TESS)



**Word Mark PETRONAS**

**Goods and Services**

IC 001. US 001 005 006 010 026 046. G & S: Chemicals and petrochemicals for use in the manufacture of pharmaceuticals, cosmetics, detergents, packaging, wire and cable installation, cassette tapes, pipes, toys, films, floorings, synthetic rubber, paints and coatings, adhesives, fuel additives and lubricants, textiles, agriculture, electrical and electronic components, automotive parts, aerospace and aviation, building and construction materials, plastics, foods, and diagnostic equipment; chemical and petrochemical in the nature of methanol, ethylene, methyl tertiary butyl ether (MTBE), vinyl chloride monomer, polyvinyl chloride, polyethylene, polypropylene, propylene, ethyl benzene, and styrene monomer all for use in industrial, forestry, agricultural, horticultural, and scientific applications; photographic chemicals; artificial and synthetic resins for use in the manufacture of fibers, polymers and coatings, and molding compounds; plastic molding compounds for use in plastic extrusion operations plastic molding compounds for use the manufacture of molded plastic articles and plastic sheets and films; composts; manures; fertilizers for agricultural and domestic use; glue for industrial purposes, adhesives for general industrial use, contact cements; gases for heating, lighting, steam generating, cooking, refrigeration, drying and ventilating for industrial use in liquid and gaseous forms; oil dispersants; chemicals for separating oils; hydraulic fluids for general use; chemical additives for use in the manufacture of fuels, lubricants, gasoline and drilling lubricants; drilling muds for use in oil well drilling, coolants for vehicle engines, heat transfer fluids for industrial use, hydraulic fluids for general use, acidulated water for recharging accumulators and batteries; chemical additives for use with internal combustion engines. chemical additives for fuel saving treatments, catalysts for use in the oil processing industry, oil for preservation of masonry

IC 004. US 001 006 015. G & S: Transmission fluids, cutting oil for industrial metalworking, Crude oil, natural gasoline, fuel oil and general purpose greases, all purpose lubricants; gasoline; fuel gas; fuel oils; fuel alcohol; diesel fuel; gas; gasoline as lubricant; kerosene, unleaded fuel; oil gas; paraffin; petroleum; petroleum ether, fuels in liquid, gaseous and solid form, dust lying and absorbing

OPPAPP000127

compositions for use on unpaved roads; non-chemical additives for oils and fuels; petroleum jelly for industrial purposes, tallow, automatic transmission fluids; methanol petrochemicals for use in fuel, petroleum based dust suppressing compositions for use in manufacture

IC 011. US 013 021 023 031 034. G & S: Air conditioners, water distillation units, flares, gas and petrol burners for industrial purposes; gas regulators, heat exchangers, heat pumps, pasteurizers for use in food and beverage industry; electric radiators not for motors or engines, solar collectors for heating solar furnaces, water filters

**Mark  
Drawing  
Code**

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design  
Search  
Code**

01.15.08 - Raindrop (a single drop); Single drop (rain, tear, etc.); Teardrop (a single drop)

26.03.17 - Concentric ovals; Concentric ovals and ovals within ovals; Ovals within ovals; Ovals, concentric

26.03.21 - Ovals that are completely or partially shaded

26.03.28 - Miscellaneous designs with overall oval shape, including amoeba-like shapes and irregular ovals; Oval shape (miscellaneous overall shape)

**Serial  
Number**

78100185

**Filing Date**

December 28, 2001

**Current  
Filing Basis**

44E

**Original  
Filing Basis**

1B;44E

**Published  
for  
Opposition**

August 24, 2004

**Registration  
Number**

2969707

**Registration  
Date**

July 19, 2005

**Owner**

(REGISTRANT) Petroliam Nasional Berhad CORPORATION MALAYSIA Petronas Twin Towers, Tower 1 Kuala Lumpur City Centre 50088 Kuala Lumpur MALAYSIA

**Attorney of  
Record**

Brian E. Banner

**Description  
of Mark**

The mark consists of The design portion of the mark to the right of the word "PETRONAS" is the fanciful representation of a drop of oil in the color green and green is claimed as a part of the mark.

**Type of  
Mark**

TRADEMARK

**Register**

PRINCIPAL

**Live/Dead  
Indicator**

LIVE

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[TOP](#)
[HELP](#)
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# Ex. D

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NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

Username/Customer #

Password

[Create Account](#) | [Forgot Password](#) | [Sign Out](#)

[Deals of the Day](#)

Products

Domain Auctions

Marketplace

Support & Community

Domains

Hosting

Email

Websites

eCommerce

Business

SSL & Security

Design

Resell

Show All My Products

Check to add these alternate **PETRONASTOWERS** domain names.

- .INFO** \$0.89\*/yr **SAVE!**
- .ORG** \$14.99\*/yr
- .ME** \$8.99\*/yr **SAVE!**
- .MOBI** \$

Check to add these similar **PETRONASTOWERS.NET** domain names.

- THEPETRONASTOWERS...** \$8.99\*/yr **SAVE!**
  - MYPETRONASTOWERS...** \$
  - FREEPETRONASTOWER...** \$8.99\*/yr **SAVE!**
  - BESTPETRONASTOWER...** \$
  - SPETRONASTOWERS.N...** \$8.99\*/yr **SAVE!**
  - ...ONASTOWERSSITE.NET** \$
  - ...ONASTOWERSONLINE.NET**
  - ONLINEPETRONASTOW...** \$
- \$8.99\*/yr **SAVE!**

Check to add these Premium domain names.

- PetronasLifestyle.com \$3,000.00
- TowerAgent.com \$999.00
- TowerSales.com \$988.00
- TowersClub.com \$900.00

**ADD TO CART**

\*Plus ICANN fee of \$0.18 per domain name year.

\*\*CA domain names will be registered through Go Daddy Domains Canada, Inc., a CIRA certified registrar

**How to grow STEEL BALLS  
(even if you're a woman)**

"Amazing ideas!" - Garrett K.

The data contained in GoDaddy.com, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose,

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including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

**Registrant:**

Heiko Schoenekess  
BPM 195226  
372 Old Streed  
London, London EC1V 9AU  
United Kingdom

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)

Domain Name: PETRONASTOWERS.NET

Created on: 08-May-03

Expires on: 08-May-11

Last Updated on: 23-Mar-10

**Administrative Contact:**

Schoenekess, Heiko [cc\\_ltd@live.com](mailto:cc_ltd@live.com)  
BPM 195226  
372 Old Streed  
London, London EC1V 9AU  
United Kingdom  
+44.2076636606 Fax -- +44.2076636606

**Technical Contact:**

Schoenekess, Heiko [cc\\_ltd@live.com](mailto:cc_ltd@live.com)  
BPM 195226  
372 Old Streed  
London, London EC1V 9AU  
United Kingdom  
+44.2076636606 Fax -- +44.2076636606

Domain servers in listed order:

NS39.DOMAINCONTROL.COM

NS40.DOMAINCONTROL.COM

Registry Status: clientDeleteProhibited

Registry Status: clientRenewProhibited

Registry Status: clientTransferProhibited

Registry Status: clientUpdateProhibited

[See Underlying Registry Data](#)

[Report Invalid Whois](#)

**Sign up for special offers:**  Enter your email address

**Account Manager**

My Account  
My Renewals  
My Upgrades  
Account Settings  
Customer Information  
Order History  
Create Account

**Shopping**

Offer Disclaimers  
Domain Search  
Product Catalog  
Product Advisor  
Gift Cards  
Go Daddy Mobile  
Today's Offers

**Resources**

Webmail  
WHOIS search  
ICANN Confirmation  
Affiliates  
Connect with Us  
Gadgets/Widgets  
Commercial Contest  
Site Map

**Help and Support**

Telephone Support & Sales  
Billing Support  
Email Our Support Team  
Frequently Asked Questions  
Discussion Forums  
User Guides  
Report Spam  
Test Our Products

**About Us**

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Customization  
Market Research

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GoDaddy.com is the world's No. 1 ICANN-accredited domain name registrar for .COM, .NET, .ORG, .INFO, .BIZ and .US

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OPPAPP000132



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# Ex. E

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NOTICE OF MOTION AND MOTION FOR ORDER TRANSFERRING DOMAIN NAME PURSUANT TO 15  
U.S.C. § 1125(D)  
AND FOR ENTRY OF JUDGMENT  
Case No.: 10-CV-03052 PJH

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United States District Court  
Northern District of California

PETROLIAM NASIONAL BERHAD,

Plaintiff

Registrar Certificate

v.

CASE NO.: 3:10-cv-03052-EDL

PETRONASTOWERS.NET, an internet  
domain name,

Defendant.

I, Matthew Bilunes, a representative of GoDaddy.com, Inc., registrar of Internet domain names under the top level domains .com, .org. and .net, among others, hereby declare:

1. I have personal knowledge of the facts stated herein, and would testify to such facts if so called to testify.

2. GoDaddy.com, Inc. is the registrar of the Domain Name at issue in this case, PETRONASTOWERS.NET

3. Per the Complaint filed at this Court, GoDaddy.com, Inc. placed the Domain Name on registrar lock, thus preventing the Domain Name from being transferred, modified or otherwise managed or manipulated.

4. Furthermore, GoDaddy.com, Inc. will not modify the status of the Domain Name unless and until instructed to do so by Order of the Court in the instant case.

1 5. Therefore, the Domain Name should be construed to be under the dominion and  
2 control of the Court until such time as GoDaddy.com, Inc. receives further instruction with  
3 regard to the Domain Name.  
4

5 6. I declare under penalty of perjury that the foregoing is true and correct.

6 **DATED** this July 14, 2010.

7 GoDaddy.com, Inc.

8 By: 

9 Matthew Bilunes  
10 Disputes Supervisor  
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