

1 Perry R. Clark (197101)  
 Jia Jia Gu (244863)  
 2 KIRKLAND & ELLIS LLP  
 950 Page Mill Road  
 3 Palo Alto, California 94304  
 Telephone: (650) 859-7000  
 4 Facsimile: (650) 859-7500

5 Sarah L Forney (254769)  
 KIRKLAND & ELLIS LLP  
 6 555 California Street, Suite 2700  
 San Francisco, California 94104  
 7 Telephone: (415) 439-1400  
 Facsimile: (415) 439-1500

8 Attorneys for Plaintiff  
 9 Petroliam Nasional Berhad

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

14 Petroliam Nasional Berhad,  
 15 Plaintiff.

17 v.

19 GoDaddy.com, Inc.  
 20 Defendant.

) CASE NO. 09-CV-\_\_\_\_\_  
 )  
 ) **NOTICE OF MOTION AND MOTION**  
 ) **FOR TEMPORARY RESTRAINING**  
 ) **ORDER;**  
 )  
 ) **MEMORANDUM IN SUPPORT; AND**  
 )  
 ) **CERTIFICATION OF COUNSEL**  
 )  
 ) Hearing Date: 12/18/2009

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE THAT Plaintiff Petroliam Nasional Berhad (“PETRONAS”)  
3 hereby moves for a temporary restraining order against Defendant GoDaddy.com, Inc.  
4 (“GoDaddy”). Plaintiff will appear for a hearing on its motion on December 18, 2009 before the  
5 General Duty Judge at the United States District Court for the Northern District of California, San  
6 Francisco Division, 450 Golden Gate Ave., San Francisco, CA 94102.

7 Plaintiff seeks a temporary restraining order requiring Defendant GoDaddy to cease to  
8 register, remove from its servers, and otherwise disable the domain name “www.petronastower.net,”  
9 and affiliated website, all of which are infringing Plaintiff’s trademark, causing confusion to the  
10 public, distributing highly offensive and pornographic material, and causing irreparable harm to the  
11 Plaintiff.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 Defendant GoDaddy should be ordered to disable the domain name “petronastower.net,” and  
14 its affiliated website, because the domain name and website are using Petronas’ trademark to divert  
15 customers to a site that distributes highly offensive pornographic materials. This motion for a  
16 temporary restraining order is necessary because Plaintiff has repeatedly requested that Defendant  
17 GoDaddy disable “www.petronastower.net” (the “Infringing Domain Name”) and the associated  
18 Infringing Website but GoDaddy has refused to do so. Unless Defendant is immediately enjoined  
19 from further contributing to the infringement of Plaintiff’s trademark, Plaintiff will continue to suffer  
20 irreparable harm. Plaintiff and its counsel contacted Defendant GoDaddy by telephone, email, and  
21 through Defendant GoDaddy’s formal trademark infringement notification mechanism and was  
22 unable to succeed in having the Infringing Domain Name and Infringing Website disabled. In  
23 addition, as set forth in Section II below, Plaintiff’s counsel attempted to provide notice of this  
24 motion to GoDaddy by email and telephone.

25 Accordingly, a temporary restraining order should issue against Defendant GoDaddy  
26 requiring the Infringing Domain Name and Infringing Website immediately be taken down or  
27 otherwise made inaccessible to the public.  
28

1 **I. PLAINTIFF WILL CONTINUE TO SUFFER IMMEDIATE AND IRREPARABLE**  
2 **HARM UNLESS A TEMPORARY RESTRAINING ORDER IS GRANTED**

3 Defendant GoDaddy's continued registration and support of the Infringing Domain Name  
4 and the Infringing Website infringes Plaintiff's United States trademark directly and contributorily  
5 and is causing immediate and irreparable harm to Plaintiff. Defendant GoDaddy has refused to  
6 cease its infringement of Plaintiff's trademark and, as a result, a temporary restraining order should  
7 issue pursuant to Fed. R. Civ. P. 65(b).

8 **A. The Disputed Domain Name Infringes Petronas' Trademark**

9 Plaintiff is a large petroleum company based in Malaysia with operations in more than 33  
10 countries worldwide and employs approximately 16,000 people. Manokaran Decl. ¶ 3. Petronas'  
11 sole and official website is located at the domain name "www.petronas.com.my" ("Official Petronas  
12 Website."). Manokaran Decl. ¶ 4. Petronas also owns "www.petronastwintows.com.my" along with  
13 several U.S.-based "mirror" websites including the URLs "www.petronas.com,"  
14 "www.petronas.org," "www.petronas.my," and "www.petronastwintowers.com." Manokaran Decl.  
15 ¶¶ 4-5. The Petronas Twin Towers, which house Petronas' headquarters, are one of the most well-  
16 known landmarks in Asia and are extremely closely identified with Petronas. Manokaran Decl. ¶ 5.  
17 The Petronas Twin Towers attract visitors from Malaysia and the rest of the world for the  
18 commercial, cultural, and other offerings housed at the Petronas Twin Towers. *Id.* Petronas uses its  
19 Official Petronas Website to provide news and information about its business, communicate with  
20 customers, potential customers, and employees, recruit and hire employees for its locations around  
21 the world, advertise its products, and promote its brand. Manokaran Decl. ¶ 6. Petronas uses the  
22 "petronastwintowers.com.my" website to provide information to as many people as possible about  
23 the Petronas Twin Towers. Manokaran Decl. ¶ 5.

24 On or about November 26, 2009, PETRONAS learned that a person or persons unknown to  
25 Petronas had registered the domain name "petronastower.net" ("Infringing Domain Name") and was  
26 operating a website using that domain name without Petronas' knowledge or consent. Manokaran  
27 Decl. ¶ 7. Since at least November 26, 2009, the "petronastower.net" website ("Infringing  
28 Website") has displayed highly offensive, obscene, and pornographic material. As a result, any

1 person directing a web browser to, or otherwise accessing the “petronastower.net” website will be  
2 exposed to the highly offensive and pornographic material displayed there. Manokaran Decl. ¶ 8.  
3 As a result, there is a high likelihood that GoDaddy’s use of the Infringing Domain Name will  
4 confuse consumers.

5 Petronas owns all right, title, and interest in U.S. Trademark No. 9269707 for  
6 “PETRONAS.” Manokaran Decl. ¶ 12. Petronas has not authorized the use of the PETRONAS  
7 mark in connection with the “petronastower.net” domain name or website. Manokaran Decl. ¶ 13.  
8 The Infringing Domain Name and the affiliated Infringing Website use Plaintiff’s registered  
9 PETRONAS mark.

10 **B. Defendant GoDaddy Refuses to Disable the Infringing Domain Name and**  
11 **Website**

12 On or about November 26, 2009, PETRONAS learned that the Infringing Domain Name had  
13 been registered with Defendant, GoDaddy. Manokaran Decl. ¶ 7. Beginning on November 26,  
14 2009, Petronas contacted GoDaddy repeatedly to inform GoDaddy of the unauthorized use of  
15 Petronas’ mark in the Infringing Domain Name, and that highly offensive, obscene, and  
16 pornographic material was being displayed on the Infringing Website. Manokaran Decl. ¶ 10 and  
17 Ex. A. Petronas contacted GoDaddy at two separate email addresses (“abuse@godaddy.com” and  
18 “support@godaddy.com” to request prompt action with respect to the Infringing Domain Name and  
19 offensive Infringing Website. *Id.*

20 On or about December 1, 2009, GoDaddy’s “Spam and Abuse Department” responded to  
21 PETRONAS stating that it is “prohibited from becoming involved in domain name ownership  
22 disputes” and refusing to take any action with respect to the Infringing Domain Name and offensive  
23 Infringing Website. Manokaran Decl. ¶ 11 and Ex. A. According to GoDaddy, any dispute over the  
24 “ownership or wording of the domain name itself will need to be sent to either the registrant, through  
25 an arbitration forum such as the World Intellectual Property Organization, or the local court system.”  
26 *Id.*

27 On December 14, 2009, Petronas’ United States counsel contacted GoDaddy via telephone to  
28 inform it of the Infringing Domain Name and offensive Infringing Website and to request that the

1 Infringing Domain Name and Infringing Website be disabled. Clark Decl. ¶ 2. Specifically,  
2 Petronas' counsel called the telephone number for the "Abuse Department" (480 624 2505) listed in  
3 GoDaddy's public database of information related to its domain names. Clark Decl. ¶ 3, Ex. A.  
4 Counsel for Petronas informed the operator in GoDaddy's Abuse Department that the  
5 "petronastower.net" domain name that GoDaddy had registered infringed Petronas's United States  
6 trademark and requested that the domain name be disabled. Clark Decl. ¶ 4. The operator in  
7 GoDaddy's Abuse Department stated that GoDaddy did not respond to allegations of trademark  
8 infringement unless they were submitted in writing according to GoDaddy's "Trademark and/or  
9 Copyright Infringement Policy." Clark Decl. ¶ 5.

10 On December 16, 2009, Petronas' counsel provided a formal Notice of Trademark  
11 Infringement and a request that the Infringing Website be disabled as required by GoDaddy's  
12 "Trademark and/or Copyright Infringement Policy." Clark Decl. ¶ 3, Ex. B. Petronas provided  
13 GoDaddy with a signed declaration identifying the address of the offensive Infringing Website, the  
14 registrant information for the Infringing Website as obtained from GoDaddy's WHOIS database, and  
15 information regarding Petronas' trademark rights, including Petronas's registration of U.S.  
16 Trademark No. 2969707 for "PETRONAS." *Id.*

17 GoDaddy responded on December 16, 2009 with an email stating that it would not disable  
18 the Infringing Domain Name or Infringing Website and that any disputes over the "ownership or  
19 wording of the domain name itself will need to be sent to either the registrant, through an arbitration  
20 forum such as the World Intellectual Property Organization, or the local court system." Clark Decl.  
21 ¶ 4, Ex. C.

22 On December 16, 2009, Petronas attempted to contact the registrant of the Infringing Domain  
23 Name by using the email and telephone number provided by GoDaddy. Clark Decl. ¶ 8, Ex. D. The  
24 email address provided for the registrant by GoDaddy for the Infringing Domain Name was  
25 "ddd\_private@hotmail.com." *Id.* Petronas informed the registrant via email of the Infringing  
26 Domain Name and the offensive Infringing Website. Clark Decl. ¶ 9, Ex. E. Petronas requested that  
27 the registrant immediately cease and desist from further use of the domain name, and also requested  
28 that the registrant transfer ownership of the domain name to Petronas. *Id.* Petronas did not receive a

1 response to its email and calls to the telephone number went to a recorded message asking for a “10-  
2 Digit YAK message to be followed by the hash sign.” Clark ¶ 10.

3 Defendant GoDaddy’s continued refusal to disable the Infringing Domain Name, despite  
4 having direct knowledge of infringement, constitutes contributory trademark infringement and  
5 contributory infringement under the Anticybersquatting Statute. A party is liable for contributory  
6 infringement if it “continues to supply a product knowing that the recipient is using the product to  
7 engage in trademark infringement.” *Inwood Labs. V. Ives Labs.*, 456 U.S. 844, 854-55 (1982).

8 Where, as here, the contributory infringer provides a service, as opposed to a product, the  
9 contributory infringer is liable “where [it] knows or has reason to know of the infringing activity.”  
10 *Perfect 10 v. Cybernet Ventures, Inc.*, 213 F.Supp. 2d 1146, 1188-89 (C.D.Cal. 2002).

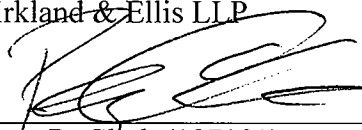
11 The harm caused by trademark infringement is presumed to be “irreparable.” *GoTo.com v.*  
12 *Walt Disney Co.*, 202 F.3d 1199, 1209 (9th Cir. 2000) (upon a showing of likely success as to  
13 trademark infringement, a Court “may presume irreparable injury”). In addition, the obscene and  
14 pornographic material associated with the Infringing Domain Name is harmful to Petronas’s image.

## 15 **II. CERTIFICATION**

16 Pursuant to Fed. R. Civ. P. 65(b), the undersigned counsel (Perry R. Clark) certifies that he  
17 made the following efforts to provide notice of this motion for a temporary restraining order to the  
18 Plaintiff. First, he called the GoDaddy Abuse Department on December 18, 2009 at (480) 624 2505  
19 and informed the operator of this motion. The operator directed that notice be emailed to  
20 “legal@godaddy.com.” Second, Mr. Clark sent an email to “legal@godaddy.com” providing notice  
21 of this motion and the telephone number and email address at which Mr. Clark could be reached.  
22 Clark Decl. ¶ 11 Ex. F. Finally, Mr. Clark sent a copy of this notice of motion, motion, and  
23 supporting papers to “legal@godaddy.com.”

1 DATED: December 18, 2009

Respectfully submitted,  
Kirkland & Ellis LLP



---

Perry R. Clark (197101)  
Jia Jia Gu (244863)  
KIRKLAND & ELLIS LLP  
950 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 859-7000  
Facsimile: (650) 859-7500

Sarah L Forney (254769)  
KIRKLAND & ELLIS LLP  
555 California Street, Suite 2700  
San Francisco, California 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500

Attorneys for Plaintiff  
Petroliam Nasional Berhad