

1 PERRY R. CLARK, State Bar No. 197101
 Law Offices of Perry R. Clark
 2 3457 Cowper St.
 Palo Alto, CA 94306
 3 Telephone: (650) 248-5817
 Facsimile: (650) 618 8533
 4 perry@perryclarklaw.com

5 Attorney for Plaintiff
 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 GODADDY.COM, INC.,)

14 Defendant.)

CASE NO.: 09-CV-5939 PJH

)
) **MOTION TO STRIKE CERTAIN**
) **AFFIRMATIVE DEFENSES OF**
) **GODADDY**

) Date: September 29, 2010

) Time: 9:00 a.m.

) Courtroom 3

) Judge: Hon. Phyllis J. Hamilton
 15)

16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NOTICE OF MOTION

TO ALL PARTIES AND COUNSEL OF RECORD: Please take notice that pursuant to Fed. R. Civ. P. 12(f), Plaintiff Petroliam Nasional Berhad (“Plaintiff” or “Petronas”) hereby moves this Court to strike all of Defendant GoDaddy.com, Inc.’s affirmative defenses in its complaint (Docket No. 27, attached hereto as Ex. A for convenience). Plaintiff further provides notice that pursuant to the Court’s practice, Plaintiff has selected September 29, 2010 at 9 a.m. as the date the motion will be heard.

MEMORANDUM IN SUPPORT

Plaintiff’s motion to strike should be granted because all of GoDaddy’s Affirmative Defenses are pled as a mere list of the common names for certain defenses and fail to provide notice of the factual or legal grounds, if any, for the defenses.

Federal Rule of Civil Procedure 12(f) provides that a court may strike “from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Whether a pleading is procedurally sufficient so as to withstand a motion to strike is governed by Fed. R. Civ. P. Rule 8(c), under which “the key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense.” *Wyshak v. City National Bank*, 607 F.2d 824, 827 (9th Cir. 1979). “Bare statements reciting mere legal conclusions do not provide a plaintiff with fair notice of the defense asserted, as required by *Wyshak*” and Rule 8. *CTF Dev., Inc. v. Penta Hospitality, LLC*, 2009 U.S. Dist. LEXIS 99538 (N.D. Cal. Oct. 26, 2009) (striking affirmative defenses pled as “all or some of [plaintiff’s] claims are barred under the doctrine of unclean hands” and “all or some of [plaintiff’s] claims are barred because any marks claimed by [plaintiff], including its registration for PENTA (U.S. Reg. No. 3,568,660), are invalid.”) A court may “strike defenses that do no more than name the defenses without listing their elements or supporting facts.” *Qarbon.com Inc. v. eHelp Corp.*,

1 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004) (striking affirmative defenses and stating plaintiff
2 is “barred from recovery in whole or in part by the doctrines of waiver, estoppel, and unclean
3 hands.”). “Where an affirmative defense simply states a legal conclusion or theory without the
4 support of facts explaining how it connects to the instant case, it is insufficient and will not
5 withstand a motion to strike.” *Solis v. Zenith Capital, LLC*, No. C-08-4854, 2009 U.S. Dist.
6 LEXIS 43350, at *8-19 (N.D. Cal. May 8, 2009) (citing *Jones v. Community Redevelopment*
7 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984)).

8 Here, defendant’s complaint simply lists defenses, such as “waiver,” “laches,” or
9 “acquiescence” without providing any supporting facts. Ex. A (Compl. at 8:8-28). For others,
10 GoDaddy identifies general legal concepts but provides no indication of the legal or factual basis
11 for their application to the complaint or this case, such as the “failure of Petronas to mitigate
12 damages” or “the Lanham Act safe harbor for registrars.” *Id.* GoDaddy also states, with no
13 specificity at all, that the complaint “fails to state claim upon which relief can be granted” but
14 provides not information of any kind as why this might be true.

15 Because the affirmative defenses in GoDaddy’s answer fail to meet the pleading standard
16 set forth in Rule 8, they should be stricken pursuant Rule 12(f).

17 Dated: August 25, 2010

LAW OFFICES OF PERRY R. CLARK

18

19

By: /s/ Perry R. Clark

20

Perry R. Clark

Attorney for Plaintiff

PETROLIAM NASIONAL BERHAD

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Ex. A

1 JOHN L. SLAFSKY, State Bar No. 195513
2 DAVID H. KRAMER, State Bar No. 168452
3 HOLLIS BETH HIRE, State Bar No. 203651
4 WILSON SONSINI GOODRICH & ROSATI
5 Professional Corporation
6 650 Page Mill Road
7 Palo Alto, CA 94304-1050
8 Telephone: (650) 493-9300
9 Facsimile: (650) 493-6811
10 jslafsky@wsgr.com
11 dkramer@wsgr.com
12 hhire@wsgr.com

13 Attorneys for Defendant
14 GoDaddy.com, Inc.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17)	CASE NO: 09-CV-5939 PJH
18	PETROLIAM NASIONAL BERHAD,)	
19	Plaintiff,)	
20	vs.)	ANSWER TO COMPLAINT
21	GODADDY.COM, INC.,)	
22	Defendant.)	DEMAND FOR JURY TRIAL
23)	
24)	

25 Defendant GoDaddy.com, Inc. ("GoDaddy"), by and through its attorneys, hereby answers
26 the Complaint of Plaintiff Petroliam Nasional Berhad ("Petronas") as follows:

27 **THE PARTIES**

- 28 1. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
29 paragraph 1 of the Complaint and on that basis denies them.
- 30 2. GoDaddy admits the allegations as set forth in paragraph 2 of the Complaint.

31 **JURISDICTION AND VENUE**

- 32 3. GoDaddy admits that this action purportedly arises under the Lanham Act and that
33 the Court has subject matter jurisdiction over the claims asserted in the Complaint. GoDaddy

1 lacks sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 3 of
2 the Complaint and on that basis denies them.

3 4. GoDaddy denies the allegations as set forth in paragraph 4 of the Complaint.

4 5. GoDaddy denies the allegations as set forth in paragraph 5 of the Complaint.

5 **INTRADISTRICT ASSIGNMENT**

6 6. GoDaddy admits the allegations as set forth in paragraph 6 of the Complaint.

7 **FACTUAL ALLEGATIONS**

8 7. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
9 paragraph 7 of the Complaint and on that basis denies them.

10 8. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
11 paragraph 8 of the Complaint and on that basis denies them.

12 9. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
13 paragraph 9 of the Complaint and on that basis denies them.

14 10. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
15 paragraph 10 of the Complaint and on that basis denies them.

16 11. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
17 paragraph 11 of the Complaint and on that basis denies them.

18 12. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
19 paragraph 12 of the Complaint and on that basis denies them.

20 13. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
21 paragraph 13 of the Complaint and on that basis denies them.

22 14. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
23 paragraph 14 of the Complaint and on that basis denies them.

24 15. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
25 paragraph 15 of the Complaint and on that basis denies them.

26 16. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
27 paragraph 16 of the Complaint and on that basis denies them.

28

1 17. GoDaddy admits that it was contacted on November 26, 2009 concerning the
2 domain name <petronastower.net>. GoDaddy denies the remaining allegations set forth in
3 paragraph 17 of the Complaint.

4 18. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
5 paragraph 18 of the Complaint and on that basis denies them.

6 19. GoDaddy admits that it was contacted on December 14, 2009 concerning the
7 domain name <petronastower.net>. GoDaddy denies the remaining allegations set forth in
8 paragraph 19 of the Complaint.

9 20. GoDaddy admits that it received a Request for Trademark Claims form concerning
10 the domain name <petronastower.net> on December 16, 2009. GoDaddy denies the remaining
11 allegations set forth in paragraph 20 of the Complaint.

12 21. GoDaddy admits that on December 16, 2009 it sent an e-mail message concerning
13 the domain name <petronastower.net>. GoDaddy denies the remaining allegations set forth in
14 paragraph 21 of the Complaint.

15 22. GoDaddy denies the allegations as set forth in paragraph 22 of the Complaint, and
16 notes in particular that the last sentence of this paragraph is incomprehensible.

17 23. GoDaddy admits the allegations as set forth in paragraph 23 of the Complaint.

18 **COUNT ONE**

19 **Cybersquatting and Contributory Cybersquatting Under 15 U.S.C. §1125(d)**

20 24. GoDaddy incorporates by reference its responses to paragraphs 1 through 23,
21 inclusive, as if fully set forth herein.

22 25. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
23 paragraph 25 of the Complaint and on that basis denies them.

24 26. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
25 paragraph 26 of the Complaint and on that basis denies them.

26 27. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
27 paragraph 27 of the Complaint and on that basis denies them.

28 28. GoDaddy denies the allegations as set forth in paragraph 28 of the Complaint.

1 29. GoDaddy denies the allegations as set forth in paragraph 29 of the Complaint.

2 30. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
3 paragraph 30 of the Complaint and on that basis denies them.

4 31. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
5 paragraph 31 of the Complaint and on that basis denies them.

6 32. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
7 paragraph 32 of the Complaint and on that basis denies them.

8 33. GoDaddy denies that it has taken any steps to divert Petronas customers, for
9 commercial gain or otherwise. GoDaddy lacks sufficient knowledge to admit or deny the
10 remaining allegations paragraph 33 of the Complaint and on that basis denies them.

11 34. Insofar as the allegations as set forth in paragraph 34 of the Complaint relate to
12 GoDaddy, GoDaddy denies them.

13 35. GoDaddy denies the allegations as set forth in paragraph 35 of the Complaint.

14 36. GoDaddy denies the allegations as set forth in paragraph 36 of the Complaint.

15 37. GoDaddy denies the allegations as set forth in paragraph 37 of the Complaint.

16 **COUNT TWO**

17 **Trademark Infringement and Contributory Infringement Under §1114(i)**

18 38. GoDaddy incorporates by reference its responses to paragraphs 1 through 37,
19 inclusive, as through fully set forth herein.

20 39. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
21 paragraph 39 of the Complaint and on that basis denies them.

22 40. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
23 paragraph 40 of the Complaint and on that basis denies them.

24 41. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
25 paragraph 41 of the Complaint and on that basis denies them.

26 42. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
27 paragraph 42 of the Complaint and on that basis denies them.

28

1 43. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
2 paragraph 43 of the Complaint and on that basis denies them.

3 44. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
4 paragraph 44 of the Complaint and on that basis denies them.

5 45. GoDaddy denies the allegations as set forth in paragraph 45 of the Complaint.

6 46. GoDaddy denies the allegations as set forth in paragraph 46 of the Complaint.

7 47. GoDaddy denies the allegations as set forth in paragraph 47 of the Complaint.

8 48. Insofar as the allegations as set forth in paragraph 48 of the Complaint relate to
9 GoDaddy, GoDaddy denies them.

10 49. Insofar as the allegations as set forth in paragraph 49 of the Complaint relate to
11 GoDaddy, GoDaddy denies them, and notes in particular that the reference to “log-used” is
12 incomprehensible.

13 50. Insofar as the allegations as set forth in paragraph 50 of the Complaint relate to
14 GoDaddy, GoDaddy denies them.

15 51. GoDaddy denies the allegations as set forth in paragraph 51 of the Complaint.

16 52. GoDaddy denies the allegations as set forth in paragraph 52 of the Complaint.

17 53. GoDaddy denies the allegations as set forth in paragraph 53 of the Complaint.

18 **COUNT THREE**

19 **False Designation of Origin of the “PETRONAS” Mark**

20 54. GoDaddy incorporates by reference its responses to paragraphs 1 through 53,
21 inclusive, as though fully set forth herein.

22 55. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
23 paragraph 55 of the Complaint and on that basis denies them.

24 56. GoDaddy lacks sufficient knowledge to admit or deny the allegations as set forth in
25 paragraph 56 of the Complaint and on that basis denies them.

26 57. Insofar as the allegations as set forth in paragraph 57 of the Complaint relate to
27 GoDaddy, GoDaddy denies them.

28

1 71. Insofar as the allegations set forth in paragraph 71 of the Complaint relate to
2 GoDaddy, GoDaddy denies them.

3 72. Insofar as the allegations set forth in paragraph 72 of the Complaint relate to
4 GoDaddy, GoDaddy denies them.

5 73. Insofar as the allegations set forth in paragraph 73 of the Complaint relate to
6 GoDaddy, GoDaddy denies them.

7 74. GoDaddy denies the allegations as set forth in paragraph 74 of the Complaint.

8 **COUNT FIVE**

9 **Trademark Infringement Under California Business &**
10 **Professions Code §14320 and California Common Law**

11 75. GoDaddy incorporates by reference its responses to paragraphs 1 through 74,
12 inclusive, as though fully set forth herein.

13 76. GoDaddy denies the allegations as set forth in paragraph 76 of the Complaint.

14 77. Insofar as the allegations as set forth in paragraph 77 of the Complaint relate to
15 GoDaddy, GoDaddy denies them.

16 78. Insofar as the allegations as set forth in paragraph 78 of the Complaint relate to
17 GoDaddy, GoDaddy denies them.

18 79. Insofar as the allegations as set forth in paragraph 79 of the Complaint relate to
19 GoDaddy, GoDaddy denies them.

20 80. Insofar as the allegations as set forth in paragraph 80 of the Complaint relate to
21 GoDaddy, GoDaddy denies them.

22 81. Insofar as the allegations as set forth in paragraph 81 of the Complaint relate to
23 GoDaddy, GoDaddy denies them.

24 **COUNT SIX**

25 **Unfair Competition Under California Business & Professions**
26 **Code §17200 and California Common Law**

27 82. GoDaddy incorporates by reference its responses to paragraphs 1 through 81,
28 inclusive, as though fully set forth herein.

83. GoDaddy denies the allegations as set forth in paragraphs 83 of the Complaint.

1 84. GoDaddy denies the allegations as set forth in paragraphs 84 of the Complaint.

2 85. GoDaddy denies the allegations as set forth in paragraphs 85 of the Complaint.

3 86. GoDaddy denies the allegations as set forth in paragraphs 86 of the Complaint.

4 **AFFIRMATIVE AND OTHER DEFENSES**

5 GoDaddy alleges the following affirmative and other defenses, reserving the right to
6 modify, amend, and/or expand upon these defenses as discovery proceeds.

7 **FIRST AFFIRMATIVE DEFENSE**

8 87. The Complaint, and each claim asserted within it, fails to state a claim upon which
9 relief can be granted.

10 **SECOND AFFIRMATION DEFENSE**

11 88. The Complaint is barred, in whole or in part, by the Lanham Act safe harbor for
12 domain name registrars. 15 U.S.C. §1114.

13 **THIRD AFFIRMATIVE DEFENSE**

14 89. The Complaint is barred, in whole or in part, by the equitable doctrines of waiver,
15 estoppel and laches.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 90. The Complaint is barred, in whole or in part, by the doctrine of acquiescence.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 91. The Complaint is barred, in whole or in part, by the statute of limitations.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 92. The Complaint is barred, in whole or in part, by the defense of misrepresentation of
22 material facts.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 93. The Complaint is barred, in whole or in part, by the failure of Petronas to mitigate
25 damages, if any.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 94. The Complaint is barred, in whole or in part, by the failure of Petronas to join an
28 indispensable party as defendant in this action.

PRAYER FOR RELIEF

WHEREFORE, GoDaddy prays for judgment in its favor as follows:

- a. That the Court deny the Complaint in its entirety, with prejudice, and specifically deny each and every prayer for relief contained therein;
- b. That the Court award GoDaddy its reasonable costs, disbursements, and attorneys' fees incurred in this action, to the extent permitted by law, including but not limited to 15 U.S.C. § 1117, 28 U.S.C. § 1927, and Fed. R. Civ. P. 11; and
- c. That the Court grant such other and further relief as the Court deems just and equitable.

Dated: March 11, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ John L. Slafsky

John L. Slafsky
David E. Kramer
Hollis Beth Hire

Attorneys for Defendant
GoDaddy.com, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Defendant GoDaddy hereby demands a trial by jury of this action pursuant to Federal Rule of Civil Procedure 38 and Civil L.R. 3-6.

Dated: March 11, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ John L. Slafsky
John L. Slafsky
David E. Kramer
Hollis Beth Hire

Attorneys for Defendant
GoDaddy.com, Inc.