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8 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 9 OAKLAND DIVISION  
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11 PETROLIAM NASIONAL BERHAD  
 (“PETRONAS”)

12 Plaintiff,

13 vs.

14 GO DADDY.COM, INC.,

Defendant.

) Case No.: C09-5939 PJH

)  
 ) MOTION TO STRIKE AND MOTION FOR  
 ) LEAVE TO FILE SUR-REPLY IN SUPPORT  
 ) OF OPPOSITION TO MOTION FOR  
 ) JUDGMENT ON THE PLEADINGS AND  
 ) FOR ATTORNEYS’S FEES AND COSTS

15 ) Date: September 8, 2010

16 ) Time: 9:00 a.m.

) Courtroom 3

17 ) Judge: Hon. Phyllis J. Hamilton  
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24 MOTION TO STRIKE AND MOTION FOR LEAVE TO  
 FILE SUR-REPLY IN SUPPORT OF OPPOSITION TO MOTION  
 FOR JUDGMENT ON THE PLEADINGS

Case No.: C09-5939 PJH

1 Defendant GoDaddy argues for the first time in its Reply that “plaintiff cannot state a  
2 claim for . . . contributory cybersquatting . . . based on GoDaddy’s domain name routing  
3 function.” Reply at 7:5-7. This is an entirely new argument and is mentioned nowhere in its  
4 Memorandum in Support of its Motion to Dismiss [Docket No. 50], in which GoDaddy provided  
5 only the following footnote with respect to plaintiff’s cause of action for contributory  
6 cybersquatting:

7 Plaintiff does not plead any facts that establish (or even attempt to establish)  
8 contributory liability for cybersquatting, and does not even make a conclusory  
9 statement related to contributory liability in the recitation of elements for the first  
claim. The mention of contributory cybersquatting is meaningless, and should be  
disregarded.

10 Memorandum at 9:23-27, n. 7.

11 “It is well accepted that raising of new issues and submission of new facts in [a] reply  
12 brief is improper.” *Roe v. Doe*, 2009 U.S. Dist. LEXIS 59440 (N.D. Cal. June 30, 2009) (*citing*  
13 *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 682 (S.D. Cal. 1999); *Provenz v. Miller*, 102 F.3d  
14 1478, 1483 (9th Cir. 1996); *Contratto v. Ethicon, Inc.*, 227 F.R.D. 304, 309 (N.D. Cal. 2005)  
15 (*citing Gold v. Wolpert*, 876 F.2d 1327, 1331 n.6 (7th Cir. 1989) (“It is well settled that new  
16 arguments cannot be made for the first time in reply.”))

17 Because this argument was raised for the first time in defendant’s reply brief, all of the  
18 arguments presented by GoDaddy in support of its motion to dismiss plaintiff’s claim for  
19 contributory cybersquatting other than the statement at 9:23-27, n. 7 of its Memorandum (quoted  
20 above) should be stricken. *Roe*, 2009 U.S. Dist. LEXIS 59440 (granting in part motion to strike  
21 by striking new matter offered first time on reply); *Contratto*, 227 F.R.D. at 309 (same).

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24 Case No.: C09-5939 PJH

1 To the extent this material is not stricken, plaintiff moves for leave to file the sur-reply  
2 attached hereto as Ex. A pursuant to Civil Local Rule 7-3(d).

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4  
5 Dated: September 7, 2010

Respectfully Submitted,  
Law Offices of Perry R. Clark

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Perry R. Clark

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Ex. A

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

11	PETROLIAM NASIONAL BERHAD	)	Case No.: C09-5939 PJH
	(“PETRONAS”)	)	
12	Plaintiff,	)	SUR-REPLY IN SUPPORT OF
		)	OPPOSITION TO MOTION FOR
13	vs.	)	JUDGMENT ON THE PLEADINGS AND
		)	FOR ATTORNEYS’S FEES AND COSTS
14	GO DADDY.COM, INC.,	)	
	Defendant.	)	Date: September 8, 2010
15		)	Time: 9:00 a.m.
		)	Courtroom 3
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24 SUR-REPLY IN SUPPORT OF OPPOSITION TO MOTION  
FOR JUDGMENT ON THE PLEADINGS  
Case No.: C09-5939 PJH

1           GoDaddy argues for the first time in its Reply that plaintiff’s contributory cybersquatting  
2 claim should be dismissed on the grounds that, because “GoDaddy acted only as the registrar for  
3 the Domain Name, it is not liable for contributory cybersquatting” under the “safe harbor” for  
4 domain name registrars created by *Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980  
5 (9th Cir. 1999). Reply at 7:13-15.

6           This argument must fail because the *Lockheed* decision concerned a registrar that did not  
7 provide the type of linking or “affiliation of the infringing website with the registrant-selected  
8 domain name” that GoDaddy admits it provides here. Reply at 4:19-27. To the contrary, the  
9 record in *Lockheed* showed that “after a domain name is registered, [the registrar’s] involvement  
10 is over. [The registrar] ***is not a part of the process of linking domain names with potentially***  
11 ***infringing resources such as websites.***” *Lockheed*, 958 F.Supp. at 953 (emphasis added). The  
12 evidence cited in *Lockheed* showed that—unlike GoDaddy’s domain name forwarding service  
13 here—***the registrar did not, and could not, route or forward an internet user to a web site***  
14 because “the domain name servers, which are outside of NSI’s [the registrar’s] control, connect  
15 domain names with internet resources such as Web sites and email systems.” *Lockheed*, 958  
16 F.Supp. at 953. As the *Lockheed* court explained, the registrar’s “role in the internet is  
17 distinguishable from that of an Internet service provider whose computers provide the actual  
18 storage and communications for infringing material.” *Id.* at 961-62 (“The services necessary to  
19 maintain a Web site, such as an IP address, communications, computer processing and storage,  
20 are provided by Internet service providers (‘ISP’s’) who provide the host computers and  
21 connection necessary for communications on the internet.”).

1           GoDaddy’s argument that the “routing of the registrants’ domain names to the website of  
2 the registrant’s choice” is one of “the various protected functions of a domain name registrar”  
3 under *Lockheed* is based on an incorrect interpretation of a statement in the *Lockheed* opinion.  
4 Reply at 3:10-13. Specifically, GoDaddy bases its “safe-harbor” argument on the Ninth Circuit’s  
5 statement in *Lockheed* that “[a registrar’s] role differs little from that of the United States Postal  
6 Service: when an Internet user enters a domain-name combination, [the registrar] translates the  
7 domain-name combination to the registrant’s IP address and routes the information or command  
8 to the corresponding computer.” *Lockheed*, 194 F.3d 980.

9           GoDaddy interprets the phrase “and routes the information or command to the  
10 corresponding computer” in *Lockheed* to mean that the registrar routes, or links, the domain  
11 name to a specific website. A accurate reading, however, of the Ninth Circuit’s opinion in  
12 *Lockheed* (including the “district court’s in-depth discussion of the internet technology that  
13 forms the basis for this cause of action” on which it is based), shows the “information or  
14 command that is routed” by the registrar is simply the IP address of the domain name server  
15 associated with the domain name and not an actual connection or link to the website. *Lockheed*,  
16 194 F.3d 980 at 981. As explained in *Lockheed*, “[the registrar] performs two functions in the  
17 domain name system. First, it screens domain name applications against its registry to prevent  
18 repeated registrations of the same domain name. Second, it maintains a directory linking domain  
19 names with the IP address of the domain name servers.” *Lockheed*, 958 F.Supp. at 952. Thus,  
20 when *Lockheed* states that “[the registrar] translates the domain-name combination to the  
21 registrant’s IP address and routes the information or command to the corresponding computer,” it  
22 is simply stating that the registrar routes the IP address corresponding to the domain name to the

