

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

8 Attorneys for Defendant
 Go Daddy.com, Inc.
 9

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12 Petroliam Nasional Berhad,
 13 Plaintiff,
 14 vs.
 15 GoDaddy.com, Inc.,
 16 Defendant.
 17

) CASE NO.: 09-CV-5939 PJH
)
) **REPLY IN FURTHER SUPPORT OF**
) **DEFENDANT’S MOTION TO**
) **DISMISS FIRST AMENDED**
) **COMPLAINT**
)
) DATE: March 9, 2011
) TIME: 9:00 a.m.
) JUDGE: Hon. Phyllis J. Hamilton
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26

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1 **I. INTRODUCTION**

2 Plaintiff Petroliam Nasional Berhad’s (“Plaintiff’s”) Opposition rests on one erroneous
3 premise: that Defendant GoDaddy.com, Inc.’s (“Go Daddy’s”) routing service is not a protected
4 activity of domain name registrars. This argument flies in the face of the decade-old law of
5 *Lockheed v. Network Solutions, Inc.*,¹ and also the law of this case, insofar as this Court has
6 already held that in *Lockheed*, “defendant Network Solutions, Inc. (‘NSI’) was not liable for
7 contributory infringement based on its ‘routing’ of a domain-name registrant’s allegedly infringing
8 domain name, as the ‘routing’ was simply a ‘service’ connected to the registration service.” Order
9 Granting Go Daddy’s Motion for Judgment on the Pleadings (“Order”), at 3.

10 Plaintiff never disputes that the activity alleged in the First Amended Complaint (“FAC”)
11 is merely the routing service of a domain name registrar.² Instead, Plaintiff argues that somehow
12 this routing service subjects a domain name registrar to liability under the Anti-Cybersquatting
13 Consumer Protection Act (“ACPA”), despite well-established case law to the contrary.

18 ¹ *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 984 (9th Cir. 1999).

19 ² When discussing the Opposition, Go Daddy refers to the arguments and page numbers in the
20 so-called “corrected” opposition filed mid-day on February 17. Though Plaintiff’s opposition was
21 due on February 16, Plaintiff did not file any response to Go Daddy’s Motion until February 17.
22 The initial response was replete with Local Rule violations (in addition to being filed late, the
23 response was not on proper pleading paper, and did not include tables even though it was well
24 over 10 pages, for example). (Docket No. 78.) Subsequently, Plaintiff filed another late pleading,
25 curiously titled the “Opposition to the Corrected Motion to Dismiss First Amended Complaint,”
26 which included tables and pleading paper. (Docket No. 79.) This document included additional
27 argument, as well as corrected formatting. Then, a day later, Plaintiff filed a “supplemental”
28 opposition, including two pages of additional argument (as well as several pages of
incomprehensible notes, which presumably were filed in error). (Docket No. 80.) This late
response by dribs and drabs is not only in violation of the Local Rules, it is also prejudicial to Go
Daddy, which had only one week – over a holiday weekend – to draft a reply. For these reasons,
Go Daddy moves to strike Plaintiff’s various opposition papers in their entirety.

1 **II. ALL COUNTS IN THE FIRST AMENDED COMPLAINT SHOULD BE**
2 **DISMISSED**

3 **A. Go Daddy’s Routing Function Is Substantially Similar to the Routing Service**
4 **in *Lockheed***

5 Plaintiff does not dispute that Go Daddy’s function as alleged in the FAC is virtually
6 indistinguishable from NSI’s function in the seminal *Lockheed* case. This Court has already
7 determined that if the service Go Daddy provided here were substantially similar to the routing
8 service NSI provided in *Lockheed*, Plaintiff’s claims “will likely fail.” *See* Order at 4 (“Because
9 the complaint in this case is so inadequately pled, it is not clear whether the forwarding service
10 offered by GoDaddy is substantially similar to the ‘routing’ service offered by NSI in *Lockheed*.
11 If the two are the same, then [Plaintiff] Petronas will not succeed in its claim of contributory
12 infringement, let alone the claim of infringement. Similarly, the cybersquatting claims will likely
13 fail.”).

14 Plaintiff does not contest, refute, or even mention Go Daddy’s explanation that the
15 function of Go Daddy as alleged in the FAC is legally equivalent to the function of NSI in
16 *Lockheed*. Instead, Plaintiff takes the untenable position that a registrar’s routing function is not
17 protected. This position is clearly contrary to well-established law, and thus the FAC must be
18 dismissed.

19 **B. Routing of Internet Traffic Is a Protected Activity of Domain Name Registrars**

20 **1. The ACPA and Well-Established Case Law Make Clear that Domain**
21 **Name Registrars Performing Their Registration and Routing Functions**
22 **Are Not Cybersquatters**

23 The Ninth Circuit has determined that a domain name registrar’s routing function is not
24 subject to direct or secondary liability for trademark violations. *See Lockheed*, 194 F.3d at 984-
25 85. The Court equated the routing activity of a registrar to the delivery service of the U.S. Postal
26 Service: “[the domain name registrar] NSI does not supply the domain-name combination
27 [Internet address] any more than the Postal Service supplies a street address by performing the
28 routine service of routing mail.” Though *Lockheed* pre-dates the ACPA, ACPA cases involving
domain name registrars routinely refer to *Lockheed*. For example, in *Bird v. Parsons*, 289 F.3d

1 865, 869 (6th Cir. 2002), the Sixth Circuit considered a trademark owner’s claim against a domain
2 name registrar, among others, and held that the registrar could not be held liable under the ACPA.
3 The protected registration and routing functions of the domain name registrar were the same as
4 articulated in *Lockheed*: “These [domain name] registrars screen the domain-name applications to
5 make sure that the desired name is not already being used. In addition, the registrar maintains a
6 directory that links domain names with their corresponding IP addresses.” *Bird v. Parsons*, 289
7 F.3d at 869 (citing both the District Court and Ninth Circuit *Lockheed* decisions). These functions
8 specifically include routing Internet traffic to the website of the registrant’s choice: “An Internet
9 user who seeks to access a website enters the domain-name combination that corresponds to the IP
10 address, and he or she is then routed electronically to the computer that hosts that address.” *Id.*
11 *See also, e.g., Solid Host, NL v. Namecheap, Inc.*, 652 F. Supp. 2d 1092, 1112 (C.D. Cal. 2009) (in
12 considering contributory liability under the ACPA, the “Ninth Circuit’s analysis in *Lockheed*
13 *Martin I* [is] instructive”).

14 Plaintiff is unable to cite any case law to support its outlandish argument that a domain
15 name registrar’s routing activity subjects it to liability.³ As Plaintiff cannot cite to any support for
16 its position, it attempts to ignore ten years of case law and re-interpret isolated language of
17 *Lockheed*. In particular, Plaintiff tries to narrow or eliminate the clear result of *Lockheed* by
18 taking two quotations out of context. First, the *Lockheed* Court notes that the domain name
19 registrar was not involved in “linking domain names with potentially infringing resources such as
20 websites.” *Opp.* at 5 (quoting the District Court opinion in *Lockheed*, 985 F. Supp. 949, 961 (C.D.
21 Cal. 1997). Plaintiff takes this statement to mean – in contradiction with the rest of the District
22

23 ³ Plaintiff’s refers to *Verizon Cal. Inc. v. OnlineNIC, Inc.*, 647 F. Supp. 2d 1110 (N.D. Cal.
24 2009), *Solid Host*, and *Lockheed II*, but these cases do not support its position. None of these
25 cases considered the routing function of a domain name registrar, let alone held it to be violative
26 of the ACPA. Indeed, each of these cases confirm that a registrar acting in its purely passive
capacity, *i.e.*, one that does not offer any ancillary services in the particular case, is immune from
ACPA liability.

1 Court opinion and the Ninth Circuit opinion – that the domain name registrar’s routing function is
2 not a protected activity. However, when read in context, this statement clearly indicates that
3 defendant NSI, like Go Daddy here, had no role in *deciding* to link the domain name at issue with
4 the allegedly infringing website; the registrant alone made that decision, and then instructed the
5 passive registrar to route Internet traffic accordingly:

6 The registration of a domain name, without more, does not amount
7 to infringement of a mark similar to the name. Infringing acts
8 occur when a domain name is used in a Web site or other Internet
9 form of communication in connection with goods or services.
10 After a domain name is registered, NSI’s involvement is over. NSI
11 is not part of the process of linking domain names with potentially
12 infringing resources such as Web sites. NSI does not require
13 holders to use domain names for Web sites or any other form of
14 Internet communication. Nor do domain name holders need NSI’s
15 permission to do so.

16 *Lockheed*, 985 F. Supp. at 961-962 (internal citations omitted).

17 Plaintiff also makes much of the isolated statement in *Lockheed* that “[a]fter a domain
18 name is registered, NSI’s involvement is over” (taken out of context from the quotation above).
19 However, this statement too merely emphasizes that the domain name registrar was not involved
20 in placing infringing content at the destination website, or in the decision to point a domain name
21 to that website. The *Lockheed* Court clearly included NSI’s routing function as part of the
22 “registration” process, as it is during the same process that the registrant identifies the destination
23 of Internet traffic for the domain name, most often by listing the domain name servers where the
24 content is hosted. This information tells the registrar where the Internet traffic should be directed.
25 See Order at 3 (in *Lockheed*, “‘routing’ was simply a ‘service’ connected with the registration
26 service.”).

27 All subsequent interpretations of this District Court opinion support this interpretation.
28 The Ninth Circuit, the *Bird v. Parsons* Court, and this Court all read the *Lockheed* case as it is
29 clearly written: to include the routing function as part of the protected activity of a domain name
30 registrar.

1 **C. Plaintiff Has Failed to State a Claim for Direct Cybersquatting**

2 Even if the statutory safe harbor and well-established case law did not bar Plaintiff’s
3 claims (which they do), the FAC must be dismissed because Plaintiff has failed to state a claim for
4 either direct or contributory cybersquatting. For direct cybersquatting, Plaintiff has failed to allege
5 two of the three elements of the claim: (i) that Go Daddy “register[ed], traffic[ked] in, or use[d]” a
6 domain name, (ii) with “bad faith intent to profit from [Plaintiff’s] mark.” 15 U.S.C.
7 § 1125(d)(1)(A)(i)-(ii). *See also, e.g., Bird v. Parsons*, 289 F.3d 865, 880 (6th Cir. 2002)
8 (describing elements of an ACPA claim); *Lockheed Martin Corp. v. Network Solutions, Inc.*,
9 (*Lockheed II*), 141 F. Supp. 2d 648 (N.D. Tex. 2001) (same); *Solid Host*, 652 F. Supp. 2d at
10 1100-01 (same).

11 **1. Plaintiff Has Not Alleged that Go Daddy Registered, Trafficked in, or**
12 **Used the Domain Names**

13 To plead a claim under the ACPA, Plaintiff must allege that Go Daddy registered,
14 trafficked in, or used the domain names at issue (the “Domain Names”). Plaintiff argues only that
15 Go Daddy “used” the Domain Names. *See Opp.* at 8-9. Plaintiff cites no authority, however, to
16 establish that Go Daddy’s routing function can be construed as a “use” of the domain name under
17 the ACPA. Indeed, there is no indication that routing a domain name to the website of the
18 registrant’s choice, automatically and as instructed by the registrant, could constitute a “use” of the
19 domain name by Go Daddy.

20 Moreover, as Plaintiff admits, the statute itself limits liability for the “use” of a domain
21 name to the registrant or the authorized licensee of the registrant. 15 U.S.C. § 1125(d)(1)(D);
22 cited in *Opp.* at 8. Plaintiff contends that one sentence in the complaint establishes this authorized
23 license: “on May 2009 [sic], the registrant used GoDaddy’s online ‘dashboard’ to instruct
24 GoDaddy to use its Name Servers to direct anyone clicking on ‘petronastower.net’ to be
25 forwarded to a website containing highly offensive, obscene pornography.” *Opp.* at 9 (quoting
26 FAC ¶ 44). This activity does not come close to granting a license to use the domain name, and
27 tellingly, Plaintiff cites no support for its conclusion.

1 In fact, there is authority stating that such activity does *not* make a registrar the registrant’s
2 authorized licensee under the statute. The Court in *Bird v. Parsons* considered strikingly similar
3 allegations, and held that they did not make the registrar defendant an “authorized licensee” of the
4 registrant under the ACPA. *See Bird v. Parsons*, 289 F.3d at 881. In *Bird*, the third-party
5 registrant registered the allegedly infringing domain name with the defendant domain name
6 registrar, and directed the registrar to route Internet traffic to a parked page.⁴ *See id.* at 870.
7 Based on these facts, the Court held that there were no allegations in the Complaint to establish
8 that the domain name registrar was the registrant’s “authorized licensee,” and the plaintiff had not
9 pleaded the “registration, trafficking, or use” prong of the ACPA against the domain name
10 registrar. *Id.* at 881.

11 **2. Plaintiff Has Not Alleged that Go Daddy Had a Bad Faith Intent to**
12 **Profit from Plaintiff’s Mark**

13 **a. Bad Faith Intent to Profit is Not Pled in the FAC**

14 The FAC does not mention a bad faith intent to profit.⁵ For this reason alone, the direct
15 cybersquatting claim should be dismissed, as it is an essential element of an ACPA claim. *See* 15
16 U.S.C. § 1125(d)(1)(A)(i). Plaintiff admits that the FAC “does not use the words ‘bad faith’ to
17 described [sic] GoDaddy’s intent to profit.” *Opp.* at 10. Plaintiff attempts to excuse this omission
18 by citation to a case holding: “a specific statute [need not] be named” in a complaint. *Id.*
19 However, this action is not one where Plaintiff has failed to cite to the particular statute; Plaintiff

20 ⁴ *Bird v. Parsons* defines a “parked page” as follows: “In addition to acting as a registrar, [the
21 registrar defendant] allows registrants to ‘park’ their domain names on its ‘Futurehome page.’
22 This service is useful for registrants who lack an Internet server to which the new domain name
can be assigned.” 289 F.3d at 870.

23 ⁵ As noted above, Plaintiff’s Supplemental Material, filed two days after the opposition
24 deadline, should be disregarded as untimely. The “supplemental” argument contends that the
25 statutory safe harbor does not apply because Go Daddy had a bad faith intent to profit from the
26 domain name registration. For the reasons stated in this section, the FAC contains no allegations
of bad faith, and certainly no allegations of bad faith intent to profit from Plaintiff’s trademark.
Therefore, even if the Supplemental Material is not ignored outright, the argument should be
disregarded.

1 has failed to plead the elements of a claim. Without an allegation of “bad faith intent to profit
2 from [Plaintiff’s] mark,” the claim cannot stand. 15 U.S.C. § 1125(d)(1)(A)(i). *See also Jones v.*
3 *Cnty. Redevelopment Agency of the city of Los Angeles*, 733 F. 2d 646, 649 (9th Cir. 1984) (“[A]
4 pleading must ‘give[] fair notice and state[] the elements of the claim plainly and succinctly.’”
5 (quoting 2A J. Moore & J. Lucas, Moore’s Federal Practice ¶ 8.13 at 8-111 (2d Ed.1983)).

6
7 **b. Plaintiff Has Not Alleged Bad Faith Intent to Profit From its Mark**

8 The FAC does not allege bad faith intent to profit *from Plaintiff’s trademark*, as required
9 by the ACPA. *See* 15 U.S.C. § 1125(d)(1)(A)(i). In apparent defense of this omission, Plaintiff
10 constructs a false debate regarding whether the law requires allegations of bad faith intent to profit
11 *from the mark* or *from the goodwill associated with the mark*. *Opp.* at 11. The distinction does
12 not matter, as Plaintiff has not alleged either.

13 The case on which Plaintiff relies, *DSPT Int’l, Inc. v. Nahum*, 624 F.3d 1213, 1218-19 (9th
14 Cir. 2010), a case not involving a domain name registrar, concerned an individual domain name
15 registrant who held a domain name hostage in order to gain leverage over a trademark holder. The
16 Ninth Circuit held that even though this situation did not strictly reflect a bad faith intent to profit
17 from the *goodwill* of the plaintiff’s mark, as the prior case law had demanded, the defendant’s
18 conduct still constituted bad faith intent to profit from the plaintiff’s trademark, as required by the
19 statute. *See id.* No such distinction is necessary here. Regardless, Plaintiff has not pled bad faith
20 intent to profit from any specific trademark. *See, e.g., Lockheed II*, 141 F. Supp. 2d at 654-55
21 (finding no liability in part because “[defendant Registrar did not have] ‘bad faith intent to profit
22 from’ *specific* marks.”) (emphasis added) (citation omitted).

23 Plaintiff argues further that various allegations in the FAC support bad faith on Go
24 Daddy’s part. These alleged acts of “bad faith,” however, merely reflect Go Daddy’s adherence to
25 the judicially approved policy of staying out of domain name disputes. The law does not require
26

1 Go Daddy to police the Internet. To do what Plaintiff asks would be financially devastating to Go
2 Daddy, as it would be to any registrar.

3 Defendant simply could not function as a registrar, or as keeper of
4 the registry, if it had to become entangled in, and bear the expense
5 of, disputes regarding the right of a registrant to use a particular
6 domain name. The fact that defendant could theoretically do what
7 plaintiff asks does not mean that defendant is obligated to do so at
8 the risk of financial ruin. The reason the UDRP was developed was
9 to provide the mechanism to resolve these disputes. Not only
10 would imposing plaintiff's scheme render the UDRP nugatory, it
11 would cause the domain name registration system in its entirety not
12 to be feasible.

13 *Lockheed II*, 141 F. Supp. 2d at 655.

14 Plaintiff has also failed to allege facts to support any "intent to profit" by Go Daddy. In
15 fact, the FAC alleges exactly the opposite: that Go Daddy does not receive any monetary
16 compensation for providing its routing service or for registering domain names that were allegedly
17 similar to the Plaintiff's marks. See FAC ¶¶ 69-70. Mere collection of standard registration fees
18 does not constitute "intent to profit" under the ACPA. See, e.g., *Solid Host*, 652 F. Supp. 2d at
19 1110 (holding that "the only intent to profit alleged is linked to [defendant's] operation and
20 promotion of its anonymity service," and that such allegation is insufficient to establish "intent to
21 profit" under the ACPA). In its Opposition, Plaintiff argues that somehow the intent to profit can
22 be inferred from the FAC as whole, without citing to any particular language that would support
23 such an allegation. Opp. at 15.⁶ This argument is unfounded and illogical.

24 ⁶ In this section of the Opposition, Plaintiff cites *Webquest.com, Inc. v. Hayward Indus.*, 2010
25 U.S. Dist. LEXIS 1118188, at *6 (E.D. Cal. 2010), for the proposition that bad faith intent to
26 profit from plaintiff's trademark is a factual question and not generally suited for judgment on the
27 pleadings. Opp. at 15. *Webquest*, however, concerned pleadings that alleged facts which, if
28 proven, could constitute bad faith. See 2010 U.S. Dist. LEXIS 1118188, at *6. Here, the FAC
fails to plead any such facts.

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c. The Nine “Bad Faith” Factors in the ACPA Are Inapplicable to This Case

The ACPA lists nine nonexclusive factors to assist the courts in evaluating whether a defendant who registered, trafficked in, or used a domain name did so with a bad faith intent to profit from the mark. 15 U.S.C. § 1125(d)(1)(B). Merely listing these factors demonstrates how inapplicable they are (and further underscores how Go Daddy’s conduct does not constitute a “use” of the domain name under the ACPA):

- (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

1 famous at the time of registration of such domain names, without
2 regard to the goods or services of the parties; and
3 (IX) the extent to which the mark incorporated in the person’s
4 domain name registration is or is not distinctive and famous within
5 the meaning of subsection (c).

6 *Id.*

7 Plaintiff argues that the first four factors weigh in its favor, as Go Daddy did not have any
8 legitimate right to use the PETRONAS mark. Opp. at 13. This argument is absurd. Go Daddy
9 registers domain names for third parties; it does not have or claim any “right” to use any
10 trademarks contained in these 40 million or more domain names. Plaintiff’s assertions that these
11 factors “weigh” in its favor are obtuse at best, and maliciously misleading at worst. Plaintiff also
12 argues that the “intent to divert customers” factor (Factor V) somehow “supports” a conclusion of
13 bad faith. Opp. at 13. When examined in whole, the factor requires that the defendant intend to
14 divert consumers “for commercial gain or with the intent to tarnish or disparage the mark, by
15 creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the
16 site.” Plaintiff has made no allegations concerning such behavior, and could not assert any such
17 allegations consistent with Rule 11. None of these factors bear on this case, and they certainly do
18 not weigh in Plaintiff’s favor.

19 **D. Plaintiff Has Failed to State a Claim for Contributory Cybersquatting**

20 To try to bolster its contributory cybersquatting claim, Plaintiff merely rehashes its
21 inaccurate dissection of the language in *Lockheed*. See Opp. at 16-17. Unfortunately for Plaintiff,
22 no matter how many quotations from *Lockheed* it isolates and mutilates, the holding is still the
23 same, and is still affirmed by the case law that followed.

24 The FAC fails to allege that Go Daddy intentionally induced infringement, that Go Daddy
25 exercised direct control and monitoring over the instrumentality that the Registrant used to engage
26 in cybersquatting, or that Go Daddy had knowledge of the particular instance of cybersquatting.
27 See *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 US 844 (1982), Motion 15-18. The *Lockheed* court
28 held that it would be “inappropriate to extend contributory liability to [a registrar] absent a
showing that [it] had unequivocal knowledge that a domain name was being used to infringe a

1 trademark.” 985 F. Supp. at 962. Assertions of infringement from a trademark owner are not
2 enough to impart such knowledge, and the standard of knowledge for cybersquatting is even
3 higher, because of the subjectivity of determining bad faith. *See Ford Motor Co. v.*
4 *Greatdomains.com, Inc.*, 177 F. Supp. 2d 635, 647 (E.D. Mich. 2001).

5 Plaintiff does not dispute that its own report to Go Daddy was the only notice Go Daddy
6 had of accused infringement or cybersquatting, or that *Lockheed* establishes that such notice is
7 insufficient. Plaintiff argues that *Lockheed* does not apply because “NSI [was] only involved in
8 the registration of domain names, not in the use of domain names in connection with goods and
9 services on the Internet.” Opp. at 16 (quoting *Lockheed*, 985 F. Supp. at 961). But there is no
10 allegation that Go Daddy uses domain names in connection with goods and services on the
11 Internet; in fact, it does not. Plaintiff further argues that “NSI [did] not provide the other services
12 needed to use the domain name in association with a website or other means of communication on
13 the Internet. The services necessary to maintain a website . . . are provided by Internet service
14 providers.” *Id.* at 17. Again, there are no allegations that Go Daddy is an Internet Service
15 Provider. Plaintiff’s allegations cannot support a claim for contributory liability.

16 **E. Plaintiff’s Unfair Competition Claim Falls with the Cybersquatting Claims**

17 As the direct and contributory cybersquatting claims must be dismissed, the unfair
18 competition claim must fail as well. *See Denbicare U.S.A., Inc. v. Toys “R” Us, Inc.*, 84 F.3d
19 1143, 1152 (9th Cir. 1996) (“[S]tate common law claims of unfair competition and actions
20 pursuant to California Business and Professions Code § 17200 are ‘substantially congruent’ to
21 claims made under the Lanham Act’ . . . Thus, since dismissal of [plaintiff’s] Lanham Act claim
22 was proper, dismissal of its § 17200 claim was proper as well”) (citation omitted). *See also* Order
23 at 9 (dismissing state law unfair competition claims in the original complaint in this case because
24 “they [we]re based on the same factual allegations, and such claims are ‘substantially congruent’
25 to claims made under the Lanham Act.”) (quoting *Denbicare*).

1 **III. CONCLUSION**

2 For the reasons stated above and in Go Daddy's Memorandum in Support of its Motion,
3 the Motion to Dismiss First Amended Complaint should be granted and Plaintiff's FAC should be
4 dismissed, without leave to amend.

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6 Dated: February 23, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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

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Attorneys for Defendant
Go Daddy.com, Inc.

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