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5 Attorney for Plaintiff  
 PETROLIAM NASIONAL BERHAD  
 6 (PETRONAS)

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

10	PETROLIAM NASIONAL BERHAD	)	CASE NO.: 09-CV-5939 PJH
11	(PETRONAS),	)	
		)	<b>MOTION TO STRIKE</b>
12	Plaintiff,	)	<b>AFFIRMATIVE DEFENSES OF</b>
		)	<b>GODADDY</b>
13	vs.	)	
		)	Date: August 3, 2011
14	GODADDY.COM, INC.,	)	Time: 9:00 a.m.
		)	Courtroom 3
15	Defendant.	)	Judge: Hon. Phyllis J. Hamilton
		)	

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**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 Answer to First Amended Complaint (Docket No. 89, attached hereto as Ex. A). Plaintiff further provides notice that pursuant to the Court’s practice, Plaintiff has selected August 3, 2011 at 9 a.m. as the date the motion will be heard.

Petronas filed a motion to strike the affirmative defenses in GoDaddy’s original Answer on August 25, 2010 (Doc. No. 55, attached as Ex. B) which was stayed pending resolution of GoDaddy’s then-pending motion for judgment on the pleadings (Doc. No. 64, attached as Ex. C). That motion was rendered moot by the filing of Petronas’s First Amended Complaint. Because GoDaddy’s Answer to First Amended Complaint contains a virtually identical—and thus identically deficient—pleading of its affirmative defenses as those in its original Answer, Petronas is again filing a motion to strike.

1 **MEMORANDUM IN SUPPORT**

2 Petronas’s motion to strike should be granted because all of GoDaddy’s Affirmative  
3 Defenses are pled as a mere list of the common names of certain defenses and, as a result, fail to  
4 provide notice of their underlying factual or legal grounds, if any. (Ex A at 9-10 (Doc. No. 89  
5 (Answer to Amended Complaint) (reproduced below)).

6 **FIRST AFFIRMATIVE DEFENSE**

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

9 **SECOND AFFIRMATION DEFENSE**

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

12 **THIRD AFFIRMATIVE DEFENSE**

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

15 **FOURTH AFFIRMATIVE DEFENSE**

16 105. The Complaint is barred, in whole or in part, by the doctrine of acquiescence.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 106. The Complaint is barred, in whole or in part, by the statute of limitations.

19 **SIXTH AFFIRMATIVE DEFENSE**

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

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**SEVENTH AFFIRMATIVE DEFENSE**

108. Plaintiff's alleged trademark and alleged trademark registration are invalid, and therefore cannot support plaintiff's claims.

**EIGHTH AFFIRMATIVE DEFENSE**

109. Plaintiff lacks standing to bring these claims.

**NINTH AFFIRMATIVE DEFENSE**

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

**TENTH AFFIRMATIVE DEFENSE**

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

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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 the pleading of 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.*, 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004) (striking affirmative defenses pled as "[plaintiff is] barred from recovery in whole or in part by the doctrines of waiver, estoppel, and unclean



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# Ex. A

1 JOHN L. SLAFSKY, State Bar No. 195513  
DAVID H. KRAMER, State Bar No. 168452  
2 HOLLIS BETH HIRE, State Bar No. 203651  
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7

8 Attorneys for Defendant  
GoDaddy.com, Inc.  
9

10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11		)	CASE NO: 09-CV-5939 PJH
12	PETROLIAM NASIONAL BERHAD,	)	
13	Plaintiff,	)	
14	vs.	)	<b>ANSWER TO FIRST AMENDED</b>
15	GODADDY.COM, INC.,	)	<b>COMPLAINT</b>
16	Defendant.	)	<b>DEMAND FOR JURY TRIAL</b>
17		)	
18		)	

19 Defendant GoDaddy.com, Inc. (“Go Daddy”), by and through its attorneys, hereby  
20 answers the First Amended Complaint (“Complaint”) of Plaintiff Petroliam Nasional Berhad  
21 (“Petronas”) as follows:

22 **THE PARTIES**

23 1. Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
24 in paragraph 1 of the Complaint and on that basis denies them.

25 2. Go Daddy admits the allegations as set forth in paragraph 2 of the Complaint.

26 **JURISDICTION AND VENUE**

27 3. Go Daddy admits that this action purportedly arises under the Lanham Act and that  
28 the Court has subject matter jurisdiction over the claims asserted in the Complaint. Go Daddy

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. Go Daddy denies the allegations as set forth in paragraph 4 of the Complaint.

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

5 **INTRADISTRICT ASSIGNMENT**

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

7 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

24 15. Go Daddy admits that according to the official website for the Internet Corporation  
25 for Assigned Names and Numbers (ICANN), ICANN is responsible for managing and  
26 coordinating the Domain Name System. Go Daddy denies the remaining allegations set forth in  
27 paragraph 15 of the Complaint.

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1           16.     Go Daddy admits that Verisign is the registry operator for “.com” and “.net”  
2 domain names. Go Daddy denies the remaining allegations set forth in paragraph 16 of the  
3 Complaint. The “Registry Agreement” speaks for itself.

4           17.     Go Daddy admits that Verisign maintains a database of registered “.net” domain  
5 names and any Internet Protocol addresses provided for issued “.net” domain names. Go Daddy  
6 denies the remaining allegations set forth in paragraph 17 of the Complaint.

7           18.     Go Daddy admits that Verisign receives information about domain name  
8 registrations from registrars, and that registrars enter into registration accreditation agreements  
9 with ICANN. Go Daddy denies the remaining allegations set forth in paragraph 18 of the  
10 Complaint. The agreements speak for themselves.

11          19.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
12 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 19 of the Complaint.

13          20.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
14 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 20 of the Complaint.  
15 The agreement speaks for itself.

16          21.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
17 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 21 of the Complaint.  
18 The agreement speaks for itself.

19          22.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
20 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 22 of the Complaint.  
21 The agreement speaks for itself.

22          23.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
23 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 23 of the Complaint.  
24 The agreement speaks for itself.

25          24.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
26 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 24 of the Complaint.  
27 The agreement speaks for itself.

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1           25.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
2 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 25 of the Complaint.  
3 The agreement speaks for itself.

4           26.     Go Daddy admits that it has entered into a registrar accreditation agreement with  
5 ICANN. Go Daddy denies the remaining allegations set forth in paragraph 26 of the Complaint.  
6 The agreement speaks for itself.

7           27.     Go Daddy denies the allegations set forth in paragraph 27 of the Complaint.

8           28.     Go Daddy admits that it offers a domain name hosting service. Go Daddy denies  
9 the remaining allegations set forth in paragraph 28 of the Complaint.

10          29.     Go Daddy admits that it offers a domain name forwarding service. Go Daddy  
11 denies the remaining allegations set forth in paragraph 29 of the Complaint.

12          30.     Go Daddy denies the allegations set forth in paragraph 30 of the Complaint.

13          31.     Go Daddy admits the allegations set forth in paragraph 31 of the Complaint.

14          32.     Go Daddy admits that it entered into a domain name registration agreement with  
15 the registrant of the <petronastower.net> and <petronastowers.net> domain names. Go Daddy  
16 denies the remaining allegations set forth in paragraph 32 of the Complaint.

17          33.     Go Daddy admits that ICANN has a registrar transfer dispute resolution policy. Go  
18 Daddy denies the remaining allegations set forth in paragraph 33 of the Complaint.

19          34.     Go Daddy admits that it has a trademark and/or copyright infringement policy. Go  
20 Daddy denies the remaining allegations set forth in paragraph 34 of the Complaint.

21          35.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
22 in paragraph 35 of the Complaint and on that basis denies them.

23          36.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
24 in paragraph 36 of the Complaint and on that basis denies them.

25          37.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
26 in paragraph 37 of the Complaint and on that basis denies them.

27          38.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
28 in paragraph 38 of the Complaint and on that basis denies them.

1           39.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
2 in paragraph 39 of the Complaint and on that basis denies them.

3           40.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
4 in paragraph 40 of the Complaint and on that basis denies them.

5           41.     Go Daddy admits that it was contacted on November 26, 2009 concerning the  
6 domain name <petronastower.net>. Go Daddy denies the remaining allegations set forth in  
7 paragraph 41 of the Complaint.

8           42.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
9 in paragraph 42 of the Complaint and on that basis denies them.

10          43.     Go Daddy admits the allegations set forth in paragraph 43 of the Complaint.

11          44.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
12 in paragraph 44 of the Complaint and on that basis denies them.

13          45.     Go Daddy admits that it was contacted on November 26, 2009 concerning the  
14 domain name <petronastower.net>. Go Daddy denies the remaining allegations set forth in  
15 paragraph 45 of the Complaint.

16          46.     Go Daddy admits that it sent an e-mail message concerning the domain name  
17 <petronastower.net> on or about December 1, 2009. Go Daddy denies the remaining allegations  
18 set forth in paragraph 46 of the Complaint.

19          47.     Go Daddy admits that it was contacted on December 14, 2009 concerning the  
20 domain name <petronastower.net>. Go Daddy denies the remaining allegations set forth in  
21 paragraph 47 of the Complaint.

22          48.     Go Daddy admits that it was contacted concerning the domain name  
23 <petronastower.net> on December 16, 2009. Go Daddy denies the remaining allegations set forth  
24 in paragraph 48 of the Complaint.

25          49.     Go Daddy admits that on December 16, 2009 it sent an e-mail message concerning  
26 the domain name <petronastower.net>. Go Daddy denies the remaining allegations set forth in  
27 paragraph 49 of the Complaint.

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1           60.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
2 in paragraph 60 of the Complaint and on that basis denies them.

3           61.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
4 in paragraph 61 of the Complaint and on that basis denies them.

5           62.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
6 in paragraph 62 of the Complaint and on that basis denies them.

7           63.     Go Daddy denies the allegations as set forth in paragraph 63 of the Complaint.

8           64.     Go Daddy denies the allegations as set forth in paragraph 64 of the Complaint.

9           65.     Go Daddy denies the allegations as set forth in paragraph 65 of the Complaint.

10          66.     Go Daddy denies the allegations as set forth in paragraph 66 of the Complaint

11          67.     Go Daddy denies the allegations as set forth in paragraph 67 of the Complaint.

12          68.     Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
13 in paragraph 68 of the Complaint and on that basis denies them.

14          69.     Go Daddy admits that it does not charge a fee for its domain name forwarding  
15 service. Go Daddy denies the remaining allegations set forth in paragraph 69 of the Complaint.

16          70.     Go Daddy admits that it charges registrants in general, and the registrant of the  
17 <petronastower.net> and <petronastowers.net> domain names in particular, a standard registration  
18 fee that does not relate in any way to any trademark rights of plaintiff or anyone else. Go Daddy  
19 denies the remaining allegations set forth in paragraph 70 of the Complaint.

20          71.     Go Daddy admits that every year hundreds of proceedings under the Uniform  
21 Domain Name Dispute Resolution Policy have been filed concerning the domain names that are  
22 registered with Go Daddy. Go Daddy denies the remaining allegations set forth in paragraph 71.

23          72.     Go Daddy denies the allegations set forth in paragraph 72 of the Complaint.

24          73.     Go Daddy denies the allegations set forth in paragraph 73 of the Complaint.

25          74.     Go Daddy denies the allegations set forth in paragraph 74 of the Complaint.

26          75.     Go Daddy denies the allegations set forth in paragraph 75 of the Complaint.

27          76.     Go Daddy denies the allegations set forth in paragraph 76 of the Complaint.

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**COUNT TWO**

**Contributory Liability for Cybersquatting**

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3 77. Go Daddy incorporates by reference its responses to paragraphs 1 through 76,  
4 inclusive, as through fully set forth herein.

5 78. Go Daddy lacks sufficient knowledge to admit or deny the allegations as set forth  
6 in paragraph 78 of the Complaint and on that basis denies them.

7 79. Go Daddy denies the allegations set forth in paragraph 79 of the Complaint.

8 80. Go Daddy denies the allegations set forth in paragraph 80 of the Complaint.

9 81. Go Daddy denies the allegations set forth in paragraph 81 of the Complaint.

10 82. Go Daddy denies the allegations set forth in paragraph 82 of the Complaint.

11 83. Go Daddy denies the allegations set forth in paragraph 83 of the Complaint.

12 84. Go Daddy denies the allegations set forth in paragraph 84 of the Complaint.

13 85. Go Daddy denies the allegations set forth in paragraph 85 of the Complaint.

14 86. Go Daddy denies the allegations set forth in paragraph 86 of the Complaint.

15 87. Go Daddy denies the allegations set forth in paragraph 87 of the Complaint.

16 88. Go Daddy denies the allegations set forth in paragraph 88 of the Complaint.

17 89. Go Daddy denies the allegations set forth in paragraph 89 of the Complaint.

18 90. Go Daddy denies the allegations set forth in paragraph 90 of the Complaint.

19 91. Go Daddy denies the allegations set forth in paragraph 91 of the Complaint.

20 92. Go Daddy denies the allegations set forth in paragraph 92 of the Complaint.

21 93. Go Daddy admits that it does not claim ownership of the PETRONAS trademark.  
22 Go Daddy denies the remaining allegations set forth in paragraph 93 of the Complaint.

23 94. Go Daddy admits that its legal name is not incorporated in the <petronastower.net>  
24 or <petronastowers.net> domain names. Go Daddy denies the remaining allegations set forth in  
25 paragraph 94 of the Complaint.

26 95. Go Daddy denies the allegations set forth in paragraph 95 of the Complaint.

27 96. Go Daddy denies the allegations set forth in paragraph 96 of the Complaint.

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1 **COUNT THREE**

2 **Unfair Competition under California Bus. & Prof. Code § 17200**

3 **and California Common Law**

4 97. Go Daddy incorporates by reference its responses to paragraphs 1 through 96,  
5 inclusive, as though fully set forth herein.

6 98. Go Daddy denies the allegations set forth in paragraph 98 of the Complaint.

7 99. Go Daddy denies the allegations set forth in paragraph 99 of the Complaint.

8 100. Go Daddy denies the allegations set forth in paragraph 100 of the Complaint.

9 101. Go Daddy denies the allegations set forth in paragraph 101 of the Complaint.

10 **AFFIRMATIVE AND OTHER DEFENSES**

11 Go Daddy alleges the following affirmative and other defenses, reserving the right to  
12 modify, amend, and/or expand upon these defenses as discovery proceeds.

13 **FIRST AFFIRMATIVE DEFENSE**

14 102. The Complaint, and each claim asserted within it, fails to state a claim upon which  
15 relief can be granted.

16 **SECOND AFFIRMATION DEFENSE**

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

19 **THIRD AFFIRMATIVE DEFENSE**

20 104. The Complaint is barred, in whole or in part, by the equitable doctrines of waiver,  
21 estoppel and laches.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 105. The Complaint is barred, in whole or in part, by the doctrine of acquiescence.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 106. The Complaint is barred, in whole or in part, by the statute of limitations.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 107. The Complaint is barred, in whole or in part, by the defense of misrepresentation of  
28 material facts.

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**SEVENTH AFFIRMATIVE DEFENSE**

108. Plaintiff’s alleged trademark and alleged trademark registration are invalid, and therefore cannot support plaintiff’s claims.

**EIGHTH AFFIRMATIVE DEFENSE**

109. Plaintiff lacks standing to bring these claims.

**NINTH AFFIRMATIVE DEFENSE**

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

**TENTH AFFIRMATIVE DEFENSE**

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

**PRAYER FOR RELIEF**

WHEREFORE, Go Daddy 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 Go Daddy 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: May 19, 2011

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.



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**DEMAND FOR JURY TRIAL**

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

Dated: May 19, 2011

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.

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# Ex. B

1 PERRY R. CLARK, State Bar No. 197101  
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Facsimile: (650) 618 8533  
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5 Attorney for Plaintiff  
PETROLIAM NASIONAL BERHAD  
6 (PETRONAS)

7  
8 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
9

10	PETROLIAM NASIONAL BERHAD,	)	CASE NO.: 09-CV-5939 PJH
		)	
11	Plaintiff,	)	<b>MOTION TO STRIKE</b>
		)	<b>AFFIRMATIVE DEFENSES OF</b>
12	vs.	)	<b>GODADDY</b>
		)	
13	GODADDY.COM, INC.,	)	Date: September 29, 2010
		)	Time: 9:00 a.m.
14	Defendant.	)	Courtroom 3
		)	Judge: Hon. Phyllis J. Hamilton
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**NOTICE OF MOTION**

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

**MEMORANDUM IN SUPPORT**

8  
9 Plaintiff’s motion to strike should be granted because all of GoDaddy’s Affirmative  
10 Defenses are pled as a mere list of the common names for certain defenses and fail to provide  
11 notice of the factual or legal grounds, if any, for the defenses.

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



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# Ex. C

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  
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13 Attorneys for Defendant  
14 GoDaddy.com, Inc.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 Petroliam Nasional Berhad,  
18 Plaintiff,  
19 vs.  
20 GoDaddy.com, Inc.,  
21 Defendant.

22 )  
23 ) CASE NO.: 09-CV-5939 PJH  
24 )  
25 ) **[PROPOSED] ORDER GRANTING**  
26 ) **DEFENDANT’S MOTION PURSUANT**  
27 ) **TO LOCAL RULE 6-3 TO POSTPONE**  
28 ) **HEARING ON PLAINTIFF’S**  
 ) **MOTION TO STRIKE CERTAIN**  
 ) **AFFIRMATIVE DEFENSES**  
 )  
 )  
 ) JUDGE: Hon. Phyllis J. Hamilton  
 )

29 Upon Defendant GoDaddy.com, Inc.’s Motion Pursuant to Local Rule 6-3 to Postpone  
30 Hearing on Plaintiff’s Motion to Strike Certain Affirmative Defenses, and in consideration of  
31 Plaintiff’s Opposition and the supporting declarations and exhibits filed in connection with the  
32 briefing on this Motion, and good cause appearing therefore;


33 **IT IS HEREBY ORDERED THAT:**

34 Defendant GoDaddy.com, Inc.’s Motion Pursuant to Local Rule 6-3 to Postpone Hearing  
35 on Plaintiff’s Motion to Strike Certain Affirmative Defenses is GRANTED. The hearing date for  
36 Plaintiff’s Motion to Strike Certain Affirmative Defenses, filed August 25, 2010, shall be

1 postponed to this Court's first available hearing date at least 5 weeks following a decision on the  
2 pending Motion for Judgment on the Pleadings and for an Order Finding Plaintiff Liable for  
3 Attorneys' Fees. Pursuant to Local Rule 7-3, Defendant shall file an opposition to the Motion to  
4 Strike not less than 21 days before the revised hearing date, and Plaintiff shall file a reply not less  
5 than 14 days before the revised hearing date. The parties are directed to the Ninth Circuit's recent  
6 decision in Whittlestone v. Handi-Craft Co., 2010 WL 3222417 (9th Cir., Aug. 17, 2010).

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Dated: 9/7/10

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The Hon. Phyllis J. Hamilton  
United States District Court Judge  




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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PETROLIAM NASIONAL BERHAD,

Plaintiff,

No. C 09-5939 PJH

v.

**ORDER DENYING MOTION TO DISMISS**

GODADDY.COM, INC.,

Defendant.

\_\_\_\_\_ /  
The motion of defendant GoDaddy.com, Inc. (“GoDaddy”) for an order dismissing the first amended complaint for failure to state a claim came on for hearing before this court on May 4, 2011. Plaintiff Petroliam Nasional Berhad (“Petronas”) appeared by its counsel Perry R. Clark, and GoDaddy appeared by its counsel John L. Slafsky and Hollis Beth Hire. Having read the parties’ papers and carefully considered their arguments, and good cause appearing, the court hereby DENIES the motion.

The court is unable to resolve a number of the issues raised in the present motion in the absence of a developed record. Among other things, the court requires a record clarifying the mechanics of what GoDaddy did or does with regard to the disputed domain names, and what “forwarding” and “routing” are and whether either or both can be considered part of domain name registration services generally or the services offered by GoDaddy. In addition, while the court has certain reservations concerning the adequacy of the pleading, it has concluded that dismissing the first amended complaint with leave to

1 amend, and then toiling through yet another round of briefing on motions to dismiss, would  
2 not be productive.

3 The court will conduct a case management conference on Thursday, May 26, 2011,  
4 at 2:00 p.m.

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6 **IT IS SO ORDERED.**

7 Dated: May 5, 2011



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PHYLLIS J. HAMILTON  
United States District Judge

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