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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 DIGITAL ENVOY, INC.,

Case No. C 04 01497 RS

15 Plaintiff/Counterdefendant,

16 v.

**ANSWER TO COUNTERCLAIMS OF
 GOOGLE, INC. AND DEMAND FOR
 JURY TRIAL**

17 GOOGLE, INC.,

18 Defendant/Counterclaimant.
 19

20 Digital Envoy, Inc. (“Digital Envoy”) answers the Counterclaims filed by Google, Inc.
 21 (“Google”) as follows:

22 1. In response to paragraph 1 of the Counterclaim, Digital Envoy states that the first
 23 two sentences of the paragraph describe Google’s requested relief and do not require a response
 24 except that Digital Envoy denies Google is entitled to any relief. Digital Envoy denies the
 25 allegations contained in the third and final sentence of the paragraph.

26 2. Digital Envoy admits the allegations contained in paragraph 2 of the Counterclaim
 27 on information and belief.

28 3. Digital Envoy admits the allegations contained in paragraph 3 of the Counterclaim.

1 4. In response to paragraph 4 of the Counterclaim, Digital Envoy admits there is
2 diversity jurisdiction.

3 5. In response to paragraph 5 of the Counterclaim, Digital Envoy admits the
4 allegations contained in first sentence of the paragraph and denies the second sentence.
5 Accordingly, Digital Envoy admits that this District is an appropriate venue for this action.

6 6. In response to paragraph 6 of the Counterclaim, Digital Envoy denies the
7 description of Google's business is comprehensive of all of the businesses of Google, but
8 otherwise admits the allegations contained in this paragraph.

9 7. In response to paragraph 7 of the Counterclaim, Digital Envoy denies that there are
10 several companies offering technology capable of providing the information provided by Digital
11 Envoy. Digital Envoy further denies the implication that Digital Envoy's technology only
12 provides the geographic information noted or that the information only can be used to tailor
13 content of websites, to the extent such allegations are implied by this paragraph. Digital Envoy
14 otherwise admits the allegations contained in this paragraph.

15 8. In response to paragraph 8 of the Counterclaim, Digital Envoy denies Google's
16 characterization of the Agreement contained in the first sentence and accordingly denies the
17 allegations contained in the first sentence. Digital Envoy admits the allegations contained in
18 second sentence of this paragraph.

19 9. In response to paragraph 9 of the Counterclaim, Digital Envoy denies Google's
20 characterization of the Agreement contained in the first sentence and accordingly denies the
21 allegations contained in the first sentence. In response to the second sentence, Digital Envoy
22 admits that Google's monthly payments to Digital Envoy under the Agreement were originally
23 \$3,000 and by amendment was raised to \$8,000.

24 10. In response to paragraph 10 of the Counterclaim, Digital Envoy denies Google's
25 characterization of the Agreement and accordingly denies the allegations contained in this
26 paragraph.
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1 11. In response to paragraph 11 of the Counterclaim, Digital Envoy admits that Google
2 has met its payment obligations under the Agreement, but otherwise denies the allegations
3 contained in this paragraph.

4 12. Digital Envoy denies the allegations contained in paragraph 12 of the
5 Counterclaim.

6 13. Digital Envoy denies the allegations contained in paragraph 13 of the
7 Counterclaim.

8 14. Digital Envoy denies the allegations contained in paragraph 14 of the
9 Counterclaim.

10 15. Digital Envoy denies the allegations contained in paragraph 15 of the
11 Counterclaim, except that it admits filing a lawsuit against Google on March 29, 2004.

12 16. In response to paragraph 16 of the Counterclaim, Digital Envoy incorporates its
13 responses to paragraphs 1 through 15 of the Counterclaim.

14 17. Digital Envoy admits the allegations contained in paragraph 17 of the
15 Counterclaim.

16 18. In response to paragraph 18 of the Counterclaim, Digital Envoy admits that Google
17 has met its payment obligations under the Agreement, but otherwise denies the allegations
18 contained in this paragraph.

19 19. Digital Envoy denies the allegations contained in paragraph 19 of the
20 Counterclaim.

21 20. Digital Envoy denies the allegations contained in paragraph 20 of the
22 Counterclaim.

23 21. In response to paragraph 21 of the Counterclaim, Digital Envoy incorporates its
24 responses to paragraphs 1 through 20 of the Counterclaim.

25 22. In response to paragraph 22 of the Counterclaim, Digital Envoy denies the
26 allegations contained in the first two sentences of the paragraph and admits the allegations
27 contained in the last two sentences.

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1 23. In response to paragraph 23 of the Counterclaim, Digital Envoy states that the
2 paragraph describes Google’s requested relief and does not require a response except that Digital
3 Envoy denied Google is entitled to any relief.

4 **AFFIRMATIVE DEFENSES**

5 24. **First Affirmative Defense** Some or all of plaintiff’s claims for relief fail to state a
6 claim upon which relief can be granted.

7 25. **Second Affirmative Defense:** Some or all of plaintiff’s claims for relief are barred
8 by waiver.

9 26. **Third Affirmative Defense:** Some or all of plaintiff’s claims for relief are barred
10 by estoppel.

11 27. **Fourth Affirmative Defense:** Some or all of plaintiff’s claims for relief are barred
12 by laches.

13 28. **Fifth Affirmative Defense:** Some or all of plaintiff’s claims for relief are barred
14 by the doctrine of unclean hands.

15 29. **Sixth Affirmative Defense:** Some or all of plaintiff’s claims are barred by
16 plaintiff’s failure to mitigate its damages.

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PRAYER

30. WHEREFORE, Digital Envoy respectfully prays that the Court dismiss these Counterclaims, or in the alternative enter judgment in favor of Digital Envoy and against Google, for its costs and for such other relief as deemed just and proper.

DATED: November 3, 2004

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

-s-

P. CRAIG CARDON
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JURY TRIAL DEMAND

Plaintiff/Counter defendant Digital Envoy, Inc. demands trial by jury on these Counterclaims as to all issues so triable.

DATED: November 3, 2004

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____
 -s-
 P. CRAIG CARDON
 BRIAN R. BLACKMAN

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