

1 DANIEL C. DECARLO, SB# 160307  
E-Mail: [decarlo@lbbslaw.com](mailto:decarlo@lbbslaw.com)

2 DEBORAH F. SIRIAS, SB# 102893  
E-Mail: [sirias@lbbslaw.com](mailto:sirias@lbbslaw.com)

3 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
221 North Figueroa Street, Suite 1200  
4 Los Angeles, California 90012  
Telephone: (213) 250-1800  
5 Facsimile: (213) 250-7900

6 Attorneys for Defendant The Board of Trustees  
of the California State University and Robert Rauch

7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 MARKETING INFORMATION  
MASTERS, INC., a California  
12 corporation,

13 Plaintiff,

14 v.

15 THE BOARD OF TRUSTEES OF THE  
CALIFORNIA STATE UNIVERSITY,  
16 WHICH IS THE STATE OF  
CALIFORNIA ACTING IN ITS  
17 HIGHER EDUCATION CAPACITY  
(erroneously sued herein as THE  
18 BOARD OF TRUSTEES OF THE  
CALIFORNIA STATE UNIVERSITY  
19 SYSTEM, A PUBLIC ENTITY  
ACTING THROUGH ITS  
20 SUBDIVISION SAN DIEGO STATE  
UNIVERSITY); and ROBERT A.  
21 RAUCH, an individual,

22 Defendants.  
23

CASE NO. 06CV 1682 JAH JMA

ANSWER BY DEFENDANT  
ROBERT A RAUCH TO  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT

Action Filed: August 18, 2006  
Trial Date: None

LEWIS BRISBOIS BISGAARD & SMITH LLP  
221 NORTH FIGUEROA STREET, SUITE 1200  
LOS ANGELES, CALIFORNIA 90012-2601  
TELEPHONE (213) 250-1800

24 Defendant Robert A. Rauch ("Defendant"), hereby answers the Second  
25 Amended Complaint of Plaintiff Marketing Information Masters, Inc. ("Plaintiff")  
26 according to the numbered Paragraphs, as follows:<sup>1/</sup>

27  
28 <sup>1/</sup>Per this Court's Order on December 2, 2008, all claims against all other  
defendants named in this suit been dismissed with prejudice, and thus this Answer is  
on behalf of Defendant Robert A. Rauch only. As to Rauch, per this Court's Order,

1           1.     Admitted in part; denied in part. Defendant denies the claim for  
2 Conversion as it was dismissed with prejudice per this Court's Order of December 2,  
3 2008. Except as stated herein, Defendant admits Paragraph 1.

4           2.     Defendant is without Knowledge or information sufficient to form a  
5 belief as to the truth of the allegations of Paragraph 2 and thus, deny same.

6           3.     Admitted

7           4.     Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations of Paragraph 4 and thus, deny same.

9           5.     Defendant is without knowledge or information sufficient to form a  
10 belief as to the truth of the allegations of Paragraph 5 and thus, deny same.

11          6.     Defendant is without knowledge or information sufficient to form a  
12 belief as to the truth of the allegations of Paragraph 6 and thus, deny same.

13          7.     Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations of Paragraph 7 and thus, deny same.

15          8.     Defendant is without knowledge or information sufficient to form a  
16 belief as to the truth of the allegations of Paragraph 8 and thus, deny same.

17          9.     Admitted.

18          10.    As it relates to the allegations in paragraph 10, Defendant admits that he  
19 possessed a copy of the 2003 Economic Impact Report, as to all other allegations,  
20 such are denied.

21          11.    As to Defendant Rauch, in his individual capacity, the allegations are  
22 denied.

23          12.    Admitted in part; denied in part. Defendant denies the claim that he is  
24 guilty of copyright infringement, conversion, and unfair business practices.  
25 Defendant is without knowledge or information sufficient to form a belief as to the  
26 truth of the remaining allegations of Paragraph 12 and thus, deny same.

27 \_\_\_\_\_  
28 all claims against him in his official capacity have been dismissed with prejudice.

1           13. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations of Paragraph 13 and thus, deny same.

3           14. Admitted.

4           15. Admitted.

5           16. Defendant is without knowledge or information sufficient to form a  
6 belief as to the truth of the allegations of Paragraph 16 and thus, deny same.

7           17. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations of Paragraph 17 and thus, deny same.

9           18. Admitted

10          19. Admitted

11          20. Admitted

12          21. Defendant admits that he was an employee of California State  
13 University San Diego ("CSUSD") and admits that all of the activity for which is  
14 alleged to have been undertaken by Rauch, was done in his capacity as an employee  
15 of CSUSD. As to all other allegations in paragraph 21, such are denied.

16          22. Admitted.

17          23. Defendant admits that all relevant times he was acting as the Agent,  
18 Servant and Employee of CSUSD, as to all other allegations in Paragraph 23, such  
19 are denied.

20          24. Defendant is without knowledge or information sufficient to form a  
21 belief as to the truth of the allegations of Paragraph 24 and thus, deny same.

22          25. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations of Paragraph 25 and thus, deny same.

24          26. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations of Paragraph 26 and thus, deny same.

26          27. Defendant is without knowledge or information sufficient to form a  
27 belief as to the truth of the allegations of Paragraph 27 and thus, deny same.

28          28. Defendant is without knowledge or information sufficient to form a

1 belief as to the truth of the allegations of Paragraph 28 and thus, deny same.

2 29. Defendant is without knowledge or information sufficient to form a  
3 belief as to the truth of the allegations of Paragraph 29 and thus, deny same.

4 30. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations of Paragraph 30 and thus, deny same.

6 31. Defendant is without knowledge or information sufficient to form a  
7 belief as to the truth of the allegations of Paragraph 31 and thus, deny same.

8 32. Defendant is without knowledge or information sufficient to form a  
9 belief as to the truth of the allegations of Paragraph 32 and thus, deny same.

10 33. Admitted.

11 34. Defendant admits that on or about November of 2003 he contacted Mr.  
12 Casinelli and had a conversation with him. As to all other allegations in paragraph  
13 34, such are denied.

14 35. Defendant is without knowledge or information sufficient to form a  
15 belief as to the truth of the allegations of Paragraph 35 and thus, deny same.

16 36. As to Defendant Rauch, in his individual capacity, the allegations are  
17 denied.

18 37. As to Defendant Rauch, the allegations are denied.

19 38. As to Defendant Rauch, the allegations are denied.

20 39. As to Defendant Rauch, the allegations are denied.

21 40. As to Defendant Rauch, the allegations are denied.

22 41. As to Defendant Rauch, the allegations are denied.

23 42. Defendant admits that CSUSD conducted an internal investigation, as to  
24 all other allegations in paragraph 42 Defendant is without knowledge or information  
25 sufficient to form a belief as to the truth of the allegations.

26 43. Defendant is without knowledge or information sufficient to form a  
27 belief as to the truth of the allegations of Paragraph 43 and thus, deny same.

28 44. Defendant is without knowledge or information sufficient to form a

1 belief as to the truth of the allegations of Paragraph 44 and thus, deny same.

2  
3 **FIRST CLAIM FOR RELIEF**

4 **(Copyright Infringement)**

5 45. Defendant incorporates by reference his answers to Paragraphs 1  
6 through 44 as if fully set forth herein.

7 46. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations of Paragraph 46 and thus, deny same.

9 47. Defendant is without knowledge or information sufficient to form a  
10 belief as to the truth of the allegations of Paragraph 47 and thus, deny same.

11 48. As to Defendant Rauch, the allegations are denied.

12 49. As to Defendant Rauch, the allegations are denied.

13 50. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations of Paragraph 50 and thus, deny same.

15 51. As to Defendant Rauch, the allegations are denied.

16 52. As to Defendant Rauch, the allegations are denied.

17 53. As to Defendant Rauch, the allegations are denied.

18 54. As to Defendant Rauch, the allegations are denied.

19 55. As to Defendant Rauch, the allegations are denied.

20 56. As to Defendant Rauch, the allegations are denied.

21 57. As to Defendant Rauch, the allegations are denied.

22 58. As to Defendant Rauch, the allegations are denied.

23 **SECOND CLAIM FOR RELIEF**

24 **(Conversion)**

25 59 Defendant incorporates by reference his answers to Paragraphs 1  
26 through 58 as if fully set forth herein.

27 60-66 Denied. Per this Court's Order of December 2, 2008, The Second Claim  
28 for Conversion has been dismissed with prejudice due to preemption of the

1 Copyright Act, thus the allegations are denied.

2 **THIRD CLAIM FOR RELIEF**

3 **(Misappropriation)**

4 67. Defendant incorporates by reference his answers to Paragraphs 1  
5 through 66 as if fully set forth herein.

6 68. Defendant is without knowledge or information sufficient to form a  
7 belief as to the truth of the allegations of Paragraph 68 and thus, deny same.

8 69. Defendant is without knowledge or information sufficient to form a  
9 belief as to the truth of the allegations of Paragraph 69 and thus, deny same.

10 70. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations of Paragraph 70 and thus, deny same.

12 71. As to Defendant Rauch, the allegations are denied.

13 72. As to Defendant Rauch, the allegations are denied.

14 73. As to Defendant Rauch, the allegations are denied.

15 74. As to Defendant Rauch, the allegations are denied.

16 75. As to Defendant Rauch, the allegations are denied.

17 76. As to Defendant Rauch, the allegations are denied.

18 77. As to Defendant Rauch, the allegations are denied.

19 78. As to Defendant Rauch, the allegations are denied.

20 **FOURTH CLAIM FOR RELIEF**

21 **(Unfair Business Practices)**

22 79. Defendant incorporates by reference his answers to Paragraphs 1  
23 through 78 as if fully set forth herein.

24 80. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations of Paragraph 80 and thus, deny same.

26 81. Admitted

27 82. As to Defendant Rauch, the allegations are denied.

28 83. As to Defendant Rauch, the allegations are denied.

1 84. As to Defendant Rauch, the allegations are denied.

2 85. As to Defendant Rauch, the allegations are denied.

3 86. As to Defendant Rauch, the allegations are denied.

4 87. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations of Paragraph 87 and thus, deny same.

6 88. As to Defendant Rauch, the allegations are denied.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 89. The complaint fails to set forth a cause of action upon which relief may  
10 be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 90. Plaintiff's claims are barred, in whole or in part, by the Eleventh  
13 Amendment of The United State Constitution.

14 **THIRD AFFIRMATIVE DEFENSE**

15 91. Plaintiff's claims are barred, in whole or in part, because Defendant is  
16 entitled to immunity for actions alleged to be wrongful herein.

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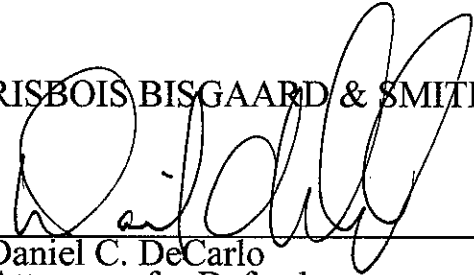
**FOURTH AFFIRMATIVE DEFENSE**

95. Defendant reserves the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the plaintiff's claims. These additional defenses cannot be articulated at this time due to the Plaintiff's failure to properly describe its claim with sufficient particularity in the complaint.

WHEREFORE, Defendant demands judgement dismissing the Complaint, with prejudice, and awarding Defendant's attorneys' fees, costs and disbursements of this action, and such other further relief as this Honorable Court deems just, equitable, and proper.

DATED: December 23, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

By   
Daniel C. DeCarlo  
Attorneys for Defendant

LEWIS BRISBOIS BISGAARD & SMITH LLP  
221 NORTH FIGUEROA STREET, SUITE 1200  
LOS ANGELES, CALIFORNIA 90012-2601  
TELEPHONE (213) 250-1800