

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PERKINS COIE LLP
CHRISTOPHER KAO (No. 237716)
ckao@perkinscoie.com
BRIAN P. HENNESSY (No. 226721)
bhennessy@perkinscoie.com
J. PATRICK CORRIGAN (No. 240859)
pcorrigan@perkinscoie.com
3150 Porter Drive
Palo Alto, CA 94304
Telephone: 650.838.4300
Facsimile: 650.838.4595

PERKINS COIE LLP
JASON A. YURASEK (No. 202131)
jyurasek@perkinscoie.com
Four Embarcadero Center, Suite 2400
San Francisco, CA 94111
Telephone: 415.344.7021
Facsimile: 415.344.7221

Attorneys for Plaintiff
craigslist, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CRAIGSLIST, INC., a Delaware
corporation,

Plaintiff,

v.

3TAPS, INC., a Delaware corporation;
PADMAPPER, INC., a Delaware
corporation; and Does 1 through 25,
inclusive,

Defendants.

Case No. CV 12-03816 CRB

**PLAINTIFF CRAIGSLIST, INC.’S ANSWER
TO DEFENDANT PADMAPPER, INC.’S
COUNTERCLAIM**

1 Plaintiff craigslist, Inc. (“craigslist”) answers Defendant PadMapper, Inc.’s
2 (“PadMapper”) Counterclaim as follows:

3 1. craigslist admits that PadMapper has filed a Counterclaim purporting to seek
4 damages, injunctive relief, and declaratory relief as to craigslist’s claims for copyright
5 infringement. craigslist denies the remaining allegations in paragraph 1 of the Counterclaim.

6 2. craigslist admits the allegations in paragraph 2 of the Counterclaim.

7 3. craigslist admits the allegations in the first and second sentences of paragraph 3 of
8 the Counterclaim. craigslist denies the remaining allegations in paragraph 3 of the Counterclaim.

9 4. Paragraph 4 states legal conclusions, to which no response is required.

10 5. craigslist admits that PadMapper’s first two claims for relief purport to seek
11 damages and injunctive relief against craigslist under Section 2 of the Sherman Act (15 U.S.C. §
12 2). The second sentence of paragraph 5 states legal conclusions, to which no response is required.
13 craigslist denies the remaining allegations in paragraph 5 of the Counterclaim.

14 6. craigslist admits that PadMapper’s third claim for relief purports to allege
15 violations of California Business and Professions Code § 17200. The second and third sentences
16 of paragraph 6 state legal conclusions, to which no response is required. craigslist denies the
17 remaining allegations in paragraph 6 of the Counterclaim.

18 7. craigslist admits that it resides in this judicial district. The remaining allegations
19 in paragraph 7 state legal conclusions, to which no response is required.

20 8. craigslist admits that it provides online classifieds for local communities in every
21 state in the United States. The second sentence of paragraph 8 states legal conclusions, to which
22 no response is required. craigslist denies the remaining allegations in paragraph 8 of the
23 Counterclaim.

24 9. craigslist denies the allegations in paragraph 9 of the Counterclaim.

25 10. craigslist admits that the entities that own backpage.com and ebayclassifieds.com
26 compete with craigslist, but denies that the market defined by PadMapper exists. craigslist denies
27 the remaining allegations in paragraph 10 of the Counterclaim.
28

1 11. craigslist admits that PadMapper competes with craigslist, but denies that the
2 markets defined by PadMapper exist. craigslist denies the remaining allegations in paragraph 11
3 of the Counterclaim.

4 12. craigslist denies the allegations in paragraph 12 of the Counterclaim.

5 13. craigslist denies the allegations in paragraph 13 of the Counterclaim.

6 14. The language of the Delaware Chancery Court's opinion in the case of *eBay*
7 *Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 8 (Del. Ch. 2010) speaks for itself. craigslist
8 denies the remaining allegations in paragraph 14 of the Counterclaim.

9 15. craigslist denies the allegations in paragraph 15 of the Counterclaim.

10 16. craigslist denies the allegations in paragraph 16 of the Counterclaim.

11 17. craigslist denies the allegations in paragraph 17 of the Counterclaim.

12 18. craigslist denies the allegations in paragraph 18 of the Counterclaim.

13 19. craigslist admits that PadMapper competes with craigslist, but denies that the
14 markets defined by PadMapper exist. craigslist denies the remaining allegations in paragraph 19
15 of the Counterclaim.

16 20. craigslist denies the allegations in paragraph 20 of the Counterclaim.

17 21. craigslist denies the allegations in paragraph 21 of the Counterclaim.

18 22. craigslist does not have knowledge or information sufficient to form a belief as to
19 the truth of the allegations of the first sentence of paragraph 22 of the Counterclaim and,
20 therefore, denies the same. craigslist denies the remaining allegations in paragraph 22 of the
21 Counterclaim.

22 23. craigslist denies the allegations in paragraph 23 of the Counterclaim.

23 24. craigslist denies the allegations in the first and last sentences of paragraph 24 of
24 the Counterclaim. craigslist does not have knowledge or information sufficient to form a belief as
25 to the truth of the remaining allegations of paragraph 24 and, therefore, denies the same.

26 25. craigslist does not have knowledge or information sufficient to form a belief as to
27 the truth of the allegations of paragraph 25 of the Counterclaim and, therefore, denies the same.

28 26. craigslist denies the allegations in paragraph 26 of the Counterclaim.

1 27. craigslist denies the allegations in paragraph 27 of the Counterclaim.

2 28. craigslist denies the allegations in paragraph 28 of the Counterclaim.

3 29. craigslist denies the allegations in paragraph 29 of the Counterclaim.

4 30. craigslist denies the allegations in paragraph 30 of the Counterclaim.

5 31. craigslist admits that ebayclassifieds.com competes with craigslist, but denies that
6 the markets defined by PadMapper exist. craigslist denies the remaining allegations in paragraph
7 31 of the Counterclaim.

8 32. craigslist denies the allegations in paragraph 32 of the Counterclaim.

9 33. craigslist denies the allegations in paragraph 33 of the Counterclaim.

10 34. craigslist does not have knowledge or information sufficient to form a belief as to
11 the truth of the allegations of paragraph 34 of the Counterclaim and, therefore, denies the same.

12 35. craigslist denies the allegations in paragraph 35 of the Counterclaim.

13 36. craigslist denies the allegations in paragraph 36 of the Counterclaim.

14 37. The allegations in craigslist’s Complaint speak for themselves. craigslist’s Terms
15 of Use speak for themselves. craigslist allows general internet search engines—Google and
16 Bing—to access the craigslist website to facilitate their search functionality. craigslist includes a
17 “NOARCHIVE” instruction in its HTML headers to inform search engines that they are not to
18 make available cached copies of craigslist postings. This instruction has been present, and
19 unchanged, in craigslist postings for many years. craigslist denies the remaining allegations in
20 paragraph 37 of the Counterclaim.

21 38. craigslist admits the allegations in the second sentence of paragraph 38 of the
22 Counterclaim. craigslist denies the remaining allegations in paragraph 38 of the Counterclaim.

23 39. The last sentence of paragraph 39 states legal conclusions, to which no response is
24 required. craigslist denies the remaining allegations in paragraph 39 of the Counterclaim.

25 40. The last sentence of paragraph 40 states legal conclusions, to which no response is
26 required. craigslist denies the remaining allegations in paragraph 40 of the Counterclaim.

27 41. craigslist denies the allegations in paragraph 41 of the Counterclaim.

28

1 42. The first sentence of Paragraph 42 states legal conclusions, to which no response is
2 required. craigslist denies the remaining allegations in paragraph 42 of the Counterclaim.

3 43. craigslist denies the allegations in paragraph 43 of the Counterclaim.

4 44. craigslist denies the allegations in paragraph 44 of the Counterclaim.

5 45. craigslist denies the allegations in paragraph 45 of the Counterclaim.

6 46. craigslist denies the allegations in paragraph 46 of the Counterclaim.

7 47. craigslist admits that its Terms of Use provide: “Any access to or use of craigslist
8 to design, develop, test, update, operate, modify, maintain, support, market, advertise, distribute
9 or otherwise make available any program, application or service (including, without limitation,
10 any device, technology, product, computer program, mobile device application, website, or
11 mechanical or personal service) that enables or provides access to, use of, operation of or
12 interoperation with craigslist (including, without limitation, to access content, post content, cross-
13 post content, re-post content, respond or reply to content, verify content, transmit content, create
14 accounts, verify accounts, use accounts, circumvent and/or automate technological security
15 measures or restrictions, or flag content) is prohibited.” craigslist does not have knowledge or
16 information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47
17 and, therefore, denies the same.

18 48. craigslist does not have knowledge or information sufficient to form a belief as to
19 the truth of the allegations in the second sentence of paragraph 48 and, therefore, denies the same.
20 craigslist denies the remaining allegations in paragraph 48 of the Counterclaim.

21 49. craigslist admits that it takes steps to minimize “spam” and other inappropriate
22 postings, including omitting postings from Table of Contents (“TOC”) pages and search results.
23 craigslist denies the remaining allegations in paragraph 49 of the Counterclaim.

24 50. craigslist admits that it takes steps to minimize “spam” and other inappropriate
25 postings, including omitting postings from TOC pages and search results. craigslist denies the
26 remaining allegations in paragraph 50 of the Counterclaim.

27 51. craigslist denies the allegations in paragraph 51 of the Counterclaim.

28

1 52. craigslist does not have knowledge or information sufficient to form a belief as to
2 the truth of the remaining allegations of paragraph 52 and, therefore, denies the same.

3 53. craigslist does not have knowledge or information sufficient to form a belief as to
4 the truth of the remaining allegations of paragraph 53 and, therefore, denies the same.

5 54. craigslist denies the allegations in paragraph 54 of the Counterclaim.

6 55. craigslist denies the allegations in paragraph 55 of the Counterclaim.

7 56. craigslist realleges and incorporates by reference all of the preceding paragraphs.

8 57. craigslist denies the allegations in paragraph 57 of the Counterclaim.

9 58. craigslist denies the allegations in paragraph 58 of the Counterclaim.

10 59. craigslist denies the allegations in paragraph 59 of the Counterclaim.

11 60. craigslist denies the allegations in paragraph 60 of the Counterclaim.

12 61. craigslist realleges and incorporates by reference all of the preceding paragraphs.

13 62. craigslist denies the allegations in paragraph 62 of the Counterclaim.

14 63. craigslist denies the allegations in paragraph 63 of the Counterclaim.

15 64. craigslist denies the allegations in paragraph 64 of the Counterclaim.

16 65. craigslist denies the allegations in paragraph 65 of the Counterclaim.

17 66. craigslist denies the allegations in paragraph 66 of the Counterclaim.

18 67. craigslist realleges and incorporates by reference all of the preceding paragraphs.

19 68. Paragraph 68 states legal conclusions, to which no response is required.

20 69. craigslist denies the allegations in paragraph 69 of the Counterclaim.

21 70. craigslist denies the allegations in paragraph 70 of the Counterclaim.

22 71. craigslist denies the allegations in paragraph 71 of the Counterclaim.

23 72. craigslist's Complaint speaks for itself. craigslist denies the remaining allegations
24 in paragraph 72 of the Counterclaim.

25 73. craigslist denies the allegations in paragraph 73 of the Counterclaim.

26 74. craigslist denies the allegations in paragraph 74 of the Counterclaim.

27
28

1 **AFFIRMATIVE DEFENSES**

2 **First Affirmative Defense**

3 75. PadMapper's counterclaims fail to state a claim against craigslist upon which relief
4 can be granted.

5 **Second Affirmative Defense**

6 76. PadMapper's counterclaims are barred, in whole or part, by applicable statutes of
7 limitations.

8 **Third Affirmative Defense**

9 77. PadMapper's counterclaims are barred, in whole or part, because PadMapper lacks
10 standing to assert its claims and/or to seek some or all of the requested relief.

11 **Fourth Affirmative Defense**

12 78. PadMapper's counterclaims are barred, in whole or part, because PadMapper
13 suffered no injury in fact as a result of the alleged conduct.

14 **Fifth Affirmative Defense**

15 79. PadMapper's counterclaims are barred, in whole or part, because PadMapper
16 suffered no antitrust injury as a result of the alleged conduct.

17 **Sixth Affirmative Defense**

18 80. PadMapper's counterclaims are barred, in whole or part, because competition has
19 not been harmed.

20 **Seventh Affirmative Defense**

21 81. PadMapper's counterclaims are barred, in whole or part, because PadMapper's
22 alleged conduct is protected by the Noerr-Pennington doctrine and under the Constitution of the
23 United States.

24 **Eighth Affirmative Defense**

25 82. PadMapper's counterclaims are barred, in whole or part, because injuries alleged
26 were caused in whole or in part by the conduct of third parties for whom craigslist was not
27 responsible, through forces in the marketplace over which craigslist had no control, or through
28 acts or omissions on the part of PadMapper.

1 **Ninth Affirmative Defense**

2 83. PadMapper's counterclaims are barred, in whole or part, because the alleged
3 conduct is permissible under the rights and privileges afforded craigslist under the intellectual
4 property laws of the United States.

5 **Tenth Affirmative Defense**

6 84. PadMapper's counterclaims are barred, in whole or in part, under the doctrine of
7 unclean hands.

8 **Eleventh Affirmative Defense**

9 85. PadMapper's counterclaims are barred, in whole or in part, under the doctrine of
10 laches.

11 **Twelfth Affirmative Defense**

12 86. PadMapper's counterclaims are barred, in whole or part, under the doctrines of
13 waiver and/or estoppel.

14 **Thirteenth Affirmative Defense**

15 87. PadMapper's counterclaims are barred, in whole or part, because any and all of
16 craigslist's alleged actions or omissions challenged by PadMapper were justified, constituted
17 bona fide business competition, and were carried out in furtherance of craigslist's legitimate
18 business interests.

19 **Fourteenth Affirmative Defense**

20 88. PadMapper's counterclaims are barred, in whole or part, because the alleged
21 activities of craigslist did not result in adverse effects on competition or, in the alternative, any
22 such effects were outweighed by the pro-competitive benefits of the activities.

23 **Fifteenth Affirmative Defense**

24 89. PadMapper's counterclaims are barred, in whole or part, because PadMapper
25 insufficiently alleged product and geographic markets.

26 **Sixteenth Affirmative Defense**

27 90. PadMapper's counterclaims are barred, in whole or in part, because the alleged
28 damages sought are too speculative and uncertain.

Seventeenth Affirmative Defense

91. PadMapper failed to mitigate its damages, if any.

Eighteenth Affirmative Defense

92. PadMapper is not entitled to injunctive or other equitable relief because any injury to it is not immediate and/or irreparable, and because PadMapper has an adequate remedy at law.

Nineteenth Affirmative Defense

93. To the extent that under applicable choice of law rules, the laws of other jurisdictions apply to PadMapper’s claims asserted under California state law, craigslist reserves each and every defense available to it under the laws of any such other states, the United States, or foreign countries.

94. craigslist reserves the right to raise additional defenses that may become available or appear during discovery proceedings or otherwise in this case and hereby reserves its right to amend this Answer to include any such defense.

PRAYER FOR RELIEF

craigslist denies that PadMapper is entitled to any relief whatsoever on its counterclaims, including the specific relief requested in its Prayer for Relief.

WHEREFORE, craigslist prays for judgment against PadMapper on its counterclaims as follows:

- (a) Dismissing PadMapper’s counterclaims with prejudice;
- (b) Granting such other and further relief as the Court deems just and proper.

November 20, 2012

PERKINS COIE LLP

By: /s/ Jason Yurasek
Jason Yurasek (SBN 202131)
JYurasek@perkinscoie.com

Attorneys for Plaintiff
craigslist, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Christopher Kao, hereby attest, pursuant to N.D. Cal. Local Rule 5-1(i)(3), that the concurrence to the filing of this document has been obtained from each signatory hereto.

November 20, 2012

PERKINS COIE LLP

By: /s/ Christopher Kao
Christopher Kao (SBN 237716)
CKao@perkinscoie.com

Attorneys for Plaintiff
craigslist, Inc.