

The Honorable Robert J. Bryan

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MARK FERGUSON, a married individual,
d/b/a WHEW.COM,

10 Plaintiff,

11 v.

12 ACTIVE RESPONSE GROUP, an New York
13 company; THE BRADFORD EXCHANGE,
14 LTD., an Illinois corporation; QUINSTREET,
15 INC., a California corporation; VISION CARE
16 HOLDINGS, LLC., a Florida Limited Liability
Company; NAUTILUS, INC., a Washington
corporation; and JOHN DOES, I-CC,

17 Defendants.

NO. C07-5378 RJB

QUINSTREET, INC.'S ANSWER TO
COMPLAINT

18 COMES NOW defendant QUINSTREET, INC. and in answer to plaintiff's Complaint
19 for Penalties and Damages herein, admits, denies, and alleges as follows:

20 1. Defendant admits the allegations of Paragraphs 1, 8, and 9.

21 2. Defendant admits that it is a corporation with its principal place of business in
22 the State of California. Defendant denies the remaining allegations of Paragraph 4 of the
23 Complaint.
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QUINSTREET, INC.'S ANSWER TO COMPLAINT - 1
(C07-5378 RJB)

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1 3. Defendant admits that jurisdiction in the above Court is proper under Federal
2 question jurisdiction. Defendant denies that the Court has diversity jurisdiction.

3 4. Defendant has insufficient information to admit or deny the allegations of
4 Paragraphs 2, 3, 5, 6, 10, 11, 12, 13, 14, and 15 of the Complaint and therefore, on the basis of
5 such lack of information and belief, denies all of the allegations of said Paragraphs.

6 5. Defendant denies each and every allegation contained in Paragraphs 16, 17, 18,
7 19, 20, 21, and 22 of the Complaint.

8 6. Further answering said Complaint, defendant denies that plaintiff is entitled to
9 any damages, penalties, statutory damages, general damages, special damages, attorney fees,
10 interest, injunctive relief, or any other relief as a result of any act, conduct, or omission on the
11 part of this defendant.

12 7. AS AND FOR A FIRST AFFIRMATIVE DEFENSE, this answering defendant
13 alleges that plaintiff lacks standing to assert the claims herein.

14 8. AS AND FOR A SECOND AFFIRMATIVE DEFENSE, this answering
15 defendant alleges that plaintiff's Complaint and each cause of action contained therein fails to
16 state a claim for relief.

17 9. AS AND FOR A THIRD AFFIRMATIVE DEFENSE, this answering defendant
18 alleges, on information and belief, that plaintiff intercepted one or more of the subject e-mails
19 that were not intended to be sent to or received by plaintiff.

20 10. AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, this answering
21 defendant alleges, on information and belief, that plaintiff was not the intended recipient or
22 addressee of one or more of the subject e-mails.

23 11. AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, this answering defendant
24 alleges, on information and belief, that plaintiff expressly or impliedly consented to receipt of
25 one or more of the subject e-mails.

1 12. AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, this answering defendant
2 alleges, on information and belief, that plaintiff waived any right to relief and/or consented to
3 the alleged damage or harm by failing or refusing to notify the sender of the allegedly unlawful
4 e-mails by failing or refusing to “opt out.”

5 13. AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, this answering
6 defendant alleges that plaintiff’s Complaint and each cause of action therein is barred by the
7 Doctrine of Unclean Hands as a result of plaintiff’s own wrongful conduct.

8 14. AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, this answering
9 defendant alleges that RCW 19.190.010-.110 and/or RCW 19.86.010-.170 are preempted by
10 the “CAN SPAM Act of 2003” and, accordingly, plaintiff’s Second and Third Causes of
11 Action are not legally cognizable.

12 15. AS AND FOR A NINTH AFFIRMATIVE DEFENSE, this answering
13 defendant alleges that plaintiff has no private remedy against defendant and that any claimed
14 violation of law may only be enforced by the Federal Trade Commission and/or the
15 Washington Attorney General.

16 16. AS AND FOR A TENTH AFFIRMATIVE DEFENSE, this answering
17 defendant alleges pursuant to RCW 4.22.070(1) that any alleged damages were caused in
18 whole or in part by the fault of another entity and/or a nonparty.

19 17. AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, this answering
20 defendant alleges that plaintiff’s Complaint and each cause of action contained therein is
21 barred in whole or in part by one or more statutes of limitations including, but not limited to,
22 RCW 4.16.130 and RCW 19.86.120.

1 CERTIFICATE OF SERVICE

2 I hereby certify that I electronically filed the foregoing with the Clerk of the Court
3 using the CM/ECF system, which will send notification of such filing to the following:

4 PLAINTIFF'S COUNSEL:

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7 DEFENDANT NAUTILUS INC.'S COUNSEL:

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DEFENDANT ACTIVE RESPONSE GROUP'S COUNSEL:

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11 DATED this 26th day of September, 2007.

13 s/Todd R. Sorensen

14 Todd R. Sorensen, WSBA #35403
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