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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

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

Case No. 07-cv-05378 RJB

v.

**DEFENDANT THE BRADFORD
EXCHANGE, LTD.’S ANSWER TO
PLAINTIFF’S COMPLAINT**

ACTIVE RESPONSE GROUP, a New
York company; THE BRADFORD
EXCHANGE, LTD., an Illinois
corporation, QUINSTREET, INC., a
California corporation; VISION CARE
HOLDINGS, LLC, a Florida limited
liability company; NAUTILUS, INC., a
Washington corporation; and JOHN
DOES, I-CC,

Defendants.

Defendant THE BRADFORD EXCHANGE, LTD (“Bradford Exchange”) answers
Plaintiff’s Complaint and asserts affirmative defenses as follows:

I. ANSWER

1. Bradford Exchange is without knowledge and information sufficient to
form a belief as to the veracity of the allegations in Paragraph 1 of Plaintiff’s Complaint
and on that basis DENIES those allegations.

2. Bradford Exchange is without knowledge and information sufficient to
form a belief as to the veracity of the allegations in Paragraph 2 of Plaintiff’s Complaint

1 and on that basis DENIES those allegations.

2 3. Bradford Exchange ADMITS that it is a corporation with its principal place
3 of business in Illinois. Bradford Exchange DENIES all remaining allegations in
4 Paragraph 3 of Plaintiff's Complaint.

5 4. Bradford Exchange is without knowledge and information sufficient to
6 form a belief as to the veracity of the allegations in Paragraph 4 of Plaintiff's Complaint
7 and on that basis DENIES those allegations.

8 5. Bradford Exchange is without knowledge and information sufficient to
9 form a belief as to the veracity of the allegations in Paragraph 5 of Plaintiff's Complaint
10 and on that basis DENIES those allegations.

11 6. Bradford Exchange is without knowledge and information sufficient to
12 form a belief as to the veracity of the allegations in Paragraph 6 of Plaintiff's Complaint
13 and on that basis DENIES those allegations.

14 7. Paragraph 7 of Plaintiff's Complaint is a legal conclusion to which no
15 response is necessary and the statutes cited in Paragraph 7 of Plaintiff's Complaint speak
16 for themselves. Plaintiff's interpretation of those statutes is not a factual allegation which
17 must be admitted or denied. Bradford Exchange DENIES all remaining allegations in
18 Paragraph 7 of Plaintiff's Complaint.

19 8. Paragraph 8 of Plaintiff's Complaint is a legal conclusion to which no
20 response is necessary and the statute cited in Paragraph 8 of Plaintiff's Complaint speaks
21 for itself. Plaintiff's interpretation of that statute is not a factual allegation which must be
22 admitted or denied. Bradford Exchange DENIES all remaining allegations in Paragraph 8
23 of Plaintiff's Complaint.

24 9. Paragraph 9 of Plaintiff's Complaint is a legal conclusion to which no
25 response is necessary and the statute cited in Paragraph 9 of Plaintiff's Complaint speaks
26 for itself. Plaintiff's interpretation of that statute is not a factual allegation which must be
27 admitted or denied. Bradford Exchange DENIES all remaining allegations in Paragraph 9
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1 of Plaintiff's Complaint.

2 10. Bradford Exchange is without knowledge and information sufficient to
3 form a belief as to the veracity of the allegations in Paragraph 10 of Plaintiff's Complaint
4 and on that basis DENIES those allegations.

5 11. Bradford Exchange DENIES all allegations in Paragraph 11 of Plaintiff's
6 Complaint.

7 12. Bradford Exchange DENIES all allegations in Paragraph 12 of Plaintiff's
8 Complaint.

9 13. Bradford Exchange is without knowledge and information sufficient to
10 form a belief as to the veracity of the allegations in Paragraph 13 of Plaintiff's Complaint
11 and on that basis DENIES those allegations.

12 14. To the extent that the allegations in Paragraph 14 of Plaintiff's Complaint
13 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Bradford
14 Exchange is without knowledge and information sufficient to form a belief as to the
15 veracity of the remaining allegations in Paragraph 14 of Plaintiff's Complaint and on the
16 basis DENIES those allegations.

17 15. To the extent that the allegations in Paragraph 15 of Plaintiff's Complaint
18 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Bradford
19 Exchange is without knowledge and information sufficient to form a belief as to the
20 veracity of the remaining allegations in Paragraph 15 of Plaintiff's Complaint and on the
21 basis DENIES those allegations.

22 16. To the extent that the allegations in Paragraph 16 of Plaintiff's Complaint
23 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Bradford
24 Exchange is without knowledge and information sufficient to form a belief as to the
25 veracity of the remaining allegations in Paragraph 16 of Plaintiff's Complaint and on the
26 basis DENIES those allegations.

27 17. To the extent that the allegations in Paragraph 17 of Plaintiff's Complaint
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1 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Bradford
2 Exchange is without knowledge and information sufficient to form a belief as to the
3 veracity of the remaining allegations in Paragraph 17 of Plaintiff's Complaint and on the
4 basis DENIES those allegations.

5 18. To the extent that the allegations in Paragraph 18 of Plaintiff's Complaint
6 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Bradford
7 Exchange is without knowledge and information sufficient to form a belief as to the
8 veracity of the remaining allegations in Paragraph 18 of Plaintiff's Complaint and on the
9 basis DENIES those allegations.

10 19. To the extent that the allegations in Paragraph 19 of Plaintiff's Complaint
11 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Paragraph 19
12 of Plaintiff's Complaint also contains legal assertions to which no response is necessary.
13 Bradford Exchange is without knowledge and information sufficient to form a belief as to
14 the veracity of the remaining allegations in Paragraph 19 of Plaintiff's Complaint and on
15 the basis DENIES those allegations.

16 20. To the extent that the allegations in Paragraph 20 of Plaintiff's Complaint
17 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Paragraph 20
18 of Plaintiff's Complaint also contains legal assertions to which no response is necessary.
19 Bradford Exchange is without knowledge and information sufficient to form a belief as to
20 the veracity of the remaining allegations in Paragraph 20 of Plaintiff's Complaint and on
21 the basis DENIES those allegations.

22 21. To the extent that the allegations in Paragraph 21 of Plaintiff's Complaint
23 refer to Bradford Exchange, Bradford Exchange DENIES those allegations. Paragraph 21
24 of Plaintiff's Complaint also contains legal assertions to which no response is necessary.
25 Bradford Exchange is without knowledge and information sufficient to form a belief as to
26 the veracity of the remaining allegations in Paragraph 21 of Plaintiff's Complaint and on
27 the basis DENIES those allegations.

1 knowledge, or knowledge fairly implied on the basis of objective circumstances, of the
2 act or omission that constitutes the violation.

3 11. Plaintiff lacks standing to assert the claims alleged in his Complaint.

4 12. Plaintiffs claims under Washington's Commercial Electronic Marketing
5 Act, WASH. REV. CODE § 19.190.010 *et seq.*, are preempted by CAN-SPAM.

6
7 **III. PRAYER FOR RELIEF**

8 WHEREFORE, Defendant BRADFORD EXCHANGE, LTD. respectfully
9 requests that the Court enter judgment against Plaintiff and in favor of Bradford
10 Exchange as follows:

11 1. Judgment Dismissing Plaintiff's Claims. That the Court enter judgment
12 dismissing Plaintiff's claims against Bradford Exchange alleged in the Complaint and
13 denying Plaintiff's requested relief.

14 2. Attorneys' Fees and Costs. That the Court award Bradford Exchange its
15 reasonable attorneys' fees and costs incurred in defending this lawsuit.

16 3. Other Equitable Relief. That the Court grant such other and further relief to
17 Bradford Exchange as the Court shall deem just and equitable.

18
19 DATED this 14th day of November, 2007.

20 Respectfully Submitted,

21 **NEWMAN & NEWMAN,**
22 **ATTORNEYS AT LAW, LLP**

23
24 BY: 

25 Derek A. Newman, WSBA No. 26967
26 Derek Linke, WSBA No. 38314

27 Attorneys for Defendant
28 THE BRADFORD EXCHANGE, LTD