

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE NEIMAN MARCUS GROUP, INC.;
BERGDORF GOODMAN, INC.; AND NM
NEVADA TRUST,

Plaintiffs,

v.

DOTSTER, INC. A/K/A REVENUEDIRECT;
AND SCOTT FISH,

Defendants.

Case No.: C06-5292RBL

**ANSWER WITH AFFIRMATIVE
DEFENSES OF DEFENDANTS
DOTSTER INC. AND SCOTT FISH**

Defendants Dotster, Inc. and Scott Fish, by and through its attorneys, Cozen O'Connor and Pepper Hamilton, LLP, hereby answer the Complaint of Plaintiffs, The Neiman Marcus Group, Inc., Bergdorf Goodman, Inc. and NM Nevada Trust, according to the numbered Paragraphs thereof, as follows:

1. Defendants admit only that the Complaint purports to state the causes of action recited in this Paragraph and that the court has subject matter jurisdiction. Except as expressly admitted herein, the allegations of Paragraph 1 of the Complaint are denied. Defendants specifically deny any liability to Plaintiffs.

2. Admitted.

ANSWER WITH AFFIRMATIVE DEFENSES OF
DEFENDANTS DOTSTER INC. AND SCOTT FISH - 1

LAW OFFICES OF
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A PROFESSIONAL CORPORATION
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1 3. Admitted.

2 4. Defendants are without knowledge or information sufficient to form a belief as
3 to the truth of the allegations of Paragraph 4 and they are, therefore, denied.

4 5. Defendants are without knowledge or information sufficient to form a belief as
5 to the truth of the allegations of Paragraph 5 and they are, therefore, denied.

6 6. Defendants are without knowledge or information sufficient to form a belief as
7 to the truth of the allegations of Paragraph 6 and they are, therefore, denied.

8 7. Admitted to the extent that Defendant Dotster, Inc. (“Dotster”) is a corporation
9 located in the Western District of Washington, has a principal place of business located in the
10 Western District of Washington and that it has conducted business in the Western District of
11 Washington. Defendant Dotster denies that it has engaged in unlawful activities and that
12 Plaintiffs have suffered harm from business conducted by Dotster. Except as expressly
13 admitted herein, the allegations of Paragraph 7 of the Complaint are denied.

14 8. Admitted to the extent that Defendant Scott Fish (“Fish”) is an individual who
15 is employed by a business located in the Western District of Washington that has a principal
16 place of business located in the Western District of Washington and that conducts business in
17 the Western District of Washington. Defendant Fish denies that he has engaged in unlawful
18 activities and that Plaintiffs have suffered harm from business conducted by Fish. Except as
19 expressly admitted herein, the allegations of Paragraph 8 of the Complaint are denied.

20 9. Defendants are without knowledge and information sufficient to form a belief
21 as to the truth of the allegations contained in Paragraph 9 and they are, therefore, denied.

22 10. Defendants are without knowledge and information sufficient to form a belief
23 as to the truth of the allegations contained in Paragraph 10 and they are, therefore, denied.

24 11. Defendants are without knowledge and information sufficient to form a belief
25 as to the truth of the allegations contained in Paragraph 11 and they are, therefore, denied.
26

1 12. Defendants are without knowledge and information sufficient to form a belief
2 as to the truth of the allegations contained in Paragraph 12 and they are, therefore, denied.

3 13. Defendants are without knowledge and information sufficient to form a belief
4 as to the truth of the allegations contained in Paragraph 13 and they are, therefore, denied.

5 14. Defendants are without knowledge and information sufficient to form a belief
6 as to the truth of the allegations contained in Paragraph 14 and they are, therefore, denied.

7 15. Defendants are without knowledge and information sufficient to form a belief
8 as to the truth of the allegations contained in Paragraph 15 and they are, therefore, denied.

9 16. Defendants are without knowledge and information sufficient to form a belief
10 as to the truth of the allegations contained in Paragraph 16 and they are, therefore, denied.

11 17. Defendants are without knowledge and information sufficient to form a belief
12 as to the truth of the allegations contained in Paragraph 17 and they are, therefore, denied.

13 18. Defendants are without knowledge and information sufficient to form a belief
14 as to the truth of the allegations contained in Paragraph 18 and they are, therefore, denied.

15 19. Defendants are without knowledge and information sufficient to form a belief
16 as to the truth of the allegations contained in Paragraph 19 and they are, therefore, denied.

17 20. Defendants are without knowledge and information sufficient to form a belief
18 as to the truth of the allegations contained in Paragraph 20 and they are, therefore, denied.

19 21. Defendants are without knowledge and information sufficient to form a belief
20 as to the truth of the allegations contained in Paragraph 21 and they are, therefore, denied.

21 22. Defendants are without knowledge and information sufficient to form a belief
22 as to the truth of the allegations contained in Paragraph 22 and they are, therefore, denied.

23 23. Defendants are without knowledge and information sufficient to form a belief
24 as to the truth of the allegations contained in Paragraph 23 and they are, therefore, denied.
25
26

1 24. Defendants are without knowledge and information sufficient to form a belief
2 as to the truth of the allegations contained in Paragraph 24 and they are, therefore, denied.

3 25. Denied.

4 26. The allegations of Paragraph 26 of the Complaint are conclusions of law to
5 which no response is required. To the extent a response is required, those allegations are
6 denied.

7 27. Admitted.

8 28. Admitted.

9 29. Admitted in part; denied in part. It is admitted that Dotster has registered
10 domain names for affiliated entities (“Dotster Affiliate Domains”). Except as expressly
11 admitted herein, the allegations of Paragraph 29 of the Complaint are denied.

12 30. It is admitted that Dotster’s affiliates did not have an identifiable customer for
13 certain of the domain names at the time they were registered. Except as expressly admitted
14 herein, the allegations of Paragraph 30 are denied.

15 31. Denied.

16 32. Admitted.

17 33. Admitted in part; denied in part. It is admitted that Dotster Affiliate Domains
18 have been deleted within five days of registering them, and that one of the reasons it has done
19 so is because of lack of traffic. It is specifically denied that lack of traffic is the only reason
20 Dotster Affiliate Domains have been deleted. Except as expressly admitted herein, the
21 allegations of Paragraph 33 of the Complaint are denied.

22 34. Admitted in part; denied in part. It is admitted that Dotster, as an ICANN
23 accredited Registrar, was able to facilitate the registration of domain names without
24 immediately providing WHOIS contact information. Except as expressly admitted herein, the
25 allegations of Paragraph 34 of the Complaint are denied.
26

1 35. Admitted in part; denied in part. It is admitted that on some occasions, full
2 contact information of a domain name Registrant was not immediately provided for some
3 domain names. It is expressly denied that material and false contact information was
4 provided. Except as expressly admitted herein, the allegations of Paragraph 35 are denied.

5 36. Admitted in part; denied in part. It is admitted that the servers identified as
6 ns1.puredns.com and ns2.puredns.com are two of several servers used by Dotster for the
7 registration of domain names. Except as expressly admitted herein, the allegations of
8 Paragraph 36 of the Complaint are denied.

9 37. Admitted in part; denied in part. It is admitted that Dotster hosts a variety of
10 web sites, some of which display HTML links featuring advertisements. Except as expressly
11 admitted herein, the allegations of Paragraph 37 of the Complaint are denied.

12 38. Admitted in part; denied in part. It is admitted that Dotster has sometimes
13 effected use of web sites incorporating pop-up and pop-under advertisements. Except as
14 expressly admitted herein, the allegations of Paragraph 38 of the Complaint are denied.

15 39. Admitted in part; denied in part. It is admitted that on some of its web sites
16 Dotster makes use of technology that permits the owner of a web site to receive payment from
17 advertisers on a “per click” basis. Except as expressly admitted herein, the allegations of
18 Paragraph 39 of the Complaint are denied.

19 40. Admitted in part; denied in part. It is admitted that in limited circumstances,
20 Dotster hosted web sites containing URLs embedded with the programming code “client-ca
21 dp dotster”. Except as expressly admitted herein, the allegations of Paragraph 40 of the
22 Complaint are denied.

23 41. Admitted in part; denied in part. It is admitted only that certain domain names
24 registered by Dotster include a link entitled “Offer to Buy This Domain Name” which, if
25 clicked, results in the opening of a form that upon completion could be emailed to a Dotster
26

1 affiliate. Except as expressly admitted herein, the allegations of Paragraph 41 of the
2 Complaint are denied.

3 42. Admitted in part; denied in part. It is admitted only that Scott Fish is an
4 employee of Dotster who has received emails sent to the address domainsale@gmail.com.
5 Except as expressly admitted herein, the allegations of Paragraph 42 of the Complaint are
6 denied.

7 43. Admitted.

8 44. Admitted in part; denied in part. It is admitted that the referenced
9 correspondence is attached. It is admitted that Dotster or its affiliates have facilitated the
10 purchase of certain domain names. Except as expressly admitted herein, the allegations of
11 Paragraph 44 of the Complaint are denied.

12 45. Admitted in part; denied in part. It is admitted that a Paypal account is one of
13 several ways in which payment is accepted for the purchase of domain names. Except as
14 expressly admitted herein, the allegations of Paragraph 45 of the Complaint are denied.

15 46. Admitted in part; denied in part. It is admitted that checks are one of several
16 ways in which Dotster has accepted payment for the purchase of domain names. Except as
17 expressly admitted herein, the allegations of Paragraph 46 of the Complaint are denied.

18 47. Admitted.

19 48. Denied. The allegation that some of the "Dotster Domain Names" are
20 confusingly similar to famous or distinctive trademarks is a conclusion of law to which no
21 response is required. It is specifically denied that Internet users would intentionally enter any
22 of the Dotster Domain Names to locate web sites sponsored by any of the Plaintiffs and that
23 any web sites hosted on the Dotster Domain Names in any manner purported to be any of the
24 Plaintiffs' web sites. By way of a further response, to the extent Dotster has registered a
25 domain name for an affiliated entity that was confusingly similar to a registered trademark,
26

1 this was inadvertent and, where it has received a good faith complaint, Dotster has offered to
2 transfer the domain name to the trademark owner at no cost.

3 49. Denied.

4 50. Admitted in part; denied in part. It is admitted that Exhibit "7" to the
5 Complaint contains an email from Plaintiffs' counsel to Dotster. The substance of the email
6 from Plaintiffs' counsel is denied. Except as expressly admitted herein, the allegations of
7 Paragraph 50 of the Complaint are denied.

8 51. Admitted in part; denied in part. It is admitted that Dotster uses servers
9 identified as ns1.puredns.com and ns2.puredns.com. Except as expressly admitted herein, the
10 allegations of Paragraph 51 of the Complaint are denied.

11 52. Denied.

12 53. Denied.

13 54. Admitted in part; denied in part. It is admitted that Dostster hosts various web
14 sites, which incorporate pop-up and pop-under advertisements. Except as expressly admitted
15 herein, the allegations of Paragraph 54 of the Complaint are denied. It is specifically denied
16 any domain names at which this occurs are confusingly similar to any of Plaintiffs'
17 trademarks or trade names.

18 55. Admitted in part; denied in part. It is admitted that Dotster hosts various web
19 sites, some of which may display some HTML links featuring advertisements, for which the
20 owner of a web site may receive payment. Except as expressly admitted herein, the
21 allegations of Paragraph 55 of the Complaint are denied.

22 56. Admitted in part; denied in part. It is admitted that Dotster hosts various web
23 sites, some of which may display HTML links containing the programming "client=ca dp
24 dotster." Except as expressly admitted herein, the allegations of Paragraph 56 of the
25 Complaint are denied.
26

1 57. Denied. It is denied that Dotster has offered to sell or sold any domain names
2 that are confusingly similar to Plaintiffs' trademarks. It is further denied that Dotster has
3 intentionally offered to sell or sold any domain names that are confusingly similar to
4 trademarks or trade names owned by non-parties to this litigation.

5 58. Denied.

6 59. Denied.

7 60. Admitted in part; denied in part. It is admitted that Dotster registered the
8 Internet domain name neimanmarqus.com for an affiliate which was the registrant. Except as
9 expressly admitted herein, the allegations of Paragraph 60 of the Complaint are denied.

10 61. The allegation that the neimanmarqus.com Internet domain name is
11 confusingly similar to the famous Neiman Marcus Mark is a conclusion of law to which no
12 response is required. To the extent a response is required, that allegation is denied.

13 62. Admitted in part; denied in part. It is admitted that Dotster's affiliate did not
14 have an identifiable customer when the neimanmarqus.com domain name was registered.
15 Except as expressly admitted herein, the allegations of Paragraph 62 of the Complaint are
16 denied.

17 63. Denied.

18 64. It is admitted that, at the time the neimanmarqus.com domain name was
19 registered, the WHOIS information was offline. Except as expressly admitted herein, the
20 allegations of Paragraph 64 of the Complaint are denied.

21 65. Denied.

22 66. Admitted in part; denied in part. It is admitted that Dotster previously hosted a
23 web site at neimanmarqus.com. Except as expressly admitted herein, the allegations of
24 Paragraph 66 of the Complaint are denied.

1 67. Admitted in part; denied in part. It is admitted that, when Dotster hosted a web
2 site at neimanmarqus.com, a pop-up and pop-under advertisements were displayed. Except as
3 expressly admitted herein, the allegations of Paragraph 67 of the Complaint are denied.

4 68. Admitted in part; denied in part. It is admitted that a Dotster affiliate received
5 minimal payments when Internet users clicked on one of the displayed pop-up or pop-under
6 advertisements on the web site hosted at neimanmarqus.com. Except as expressly admitted
7 herein, the allegations of Paragraph 68 of the Complaint are denied.

8 69. It is admitted that Dotster received the letter attached as Exhibit 7 to the
9 Complaint. The remaining allegations of Paragraph 69 are conclusions of law to which no
10 response is required.

11 70. Admitted in part; denied in part. It is admitted that Dotster registered the
12 domain names identified in Paragraph 70 for an affiliate, which was the registrant. Except as
13 expressly admitted herein, the allegations of Paragraph 70 of the Complaint are denied.

14 71. Admitted in part; denied in part. It is admitted that some of the domain names
15 set forth in Paragraph 70 were deleted within five days in accordance with the provisions of
16 ICANN. Dotster denies that it facilitated the sale of any of the above domain names to
17 another Registrant within the aforementioned five day period. Except as expressly admitted
18 herein, the allegations of Paragraph 71 of the Complaint are denied.

19 72. Denied. The allegations set forth in Paragraph 72 are conclusions of law to
20 which no response is required. To the extent a response is required, it is denied that Internet
21 users would intentionally enter any of the purported Neiman Marcus Related Domain Names
22 while searching for a Neiman Marcus web site and that any of the web sites hosted at the so-
23 called Neiman Marcus Related Domain Names in any manner purported to be a Neiman
24 Marcus sponsored web site.

1 73. Denied. The allegations set forth in Paragraph 73 are conclusions of law to
2 which no response is required. To the extent a response is required, it is denied that Internet
3 users would intentionally enter any of the purported Bergdorf Goodman Related Domain
4 Names while searching for a Bergdorf Goodman web site, and that any of the web sites hosted
5 at the so-called Bergdorf Goodman Related Domain Names in any manner purported to be a
6 Bergdorf Goodman sponsored web site.

7 74. Admitted in part; denied in part. It is admitted that, at the time Dotster
8 registered the domain names at issue, Dotster's affiliate did not have an identifiable customer
9 for the domain names. Except as expressly admitted herein, the allegations of Paragraph 74
10 of the Complaint are denied.

11 75. Denied.

12 76. Admitted in part; denied in part. It is admitted that WHOIS information for
13 some domain names registered by Dotster were not regularly updated until March 16, 2006.
14 Except as expressly admitted, the allegations of Paragraph 76 are denied.

15 77. Denied.

16 78. Denied.

17 79. Admitted in part; denied in part. It is admitted that the URL code "client=ca
18 dp dotster" may be embedded within various HTML links. Except as expressly admitted
19 herein , the allegations of Paragraph 79 of the Complaint are denied.

20 80. Denied.

21 81. Denied.

22 82. Admitted in part; denied in part. It is admitted that certain of the domain
23 names Dotster registered provides a HTML link titled "Offer to Buy this Domain Name" and
24 that clicking on this link creates an email to a Dotster affiliate at domainsale@gmail.com.
25
26

1 Except as expressly admitted herein, the allegations of Paragraph 82 of the Complaint are
2 denied.

3 83. Admitted in part; denied in part. It is admitted that, in response to an offer to
4 purchase, an email was sent by Scott fish with a sale price of \$1,000 for the
5 bergmangoodman.com domain name. Except as expressly admitted herein, the allegations of
6 Paragraph 83 of the Complaint are denied.

7 84. Admitted in part; denied in part. It is admitted that the domain name
8 bergmangoodman.com was sold for \$800. Except as expressly admitted herein, the
9 allegations of Paragraph 84 of the Complaint are denied.

10 85. Admitted in part; denied in part. It is admitted that a Paypal account is one of
11 several ways in which payment is accepted for the sale of domain names. Except as expressly
12 admitted herein, the allegations of Paragraph 85 of the Complaint are denied.

13
14 **COUNT I**
(Cybersquatting of the Neiman Marcus Marks)

15 86. Defendants incorporate by reference their answers to Paragraphs 1 through 85
16 as if fully set forth herein.

17 87. Admitted in part; denied in part. It is admitted that Dotster registered the
18 domain names identified in Paragraph 70 of the Complaint. Except as expressly admitted
19 herein, the allegations of Paragraph 87 of the Complaint are denied.

20 88. Admitted in part; denied in part. It is admitted that a Dotster affiliate is the
21 registrant for the domain names identified in Paragraph 70 of the Complaint. Except as
22 expressly admitted herein, the allegations of Paragraph 88 of the Complaint are denied.

23 89. Denied.

24 90. Admitted in part; denied in part. It is admitted that a Dotster affiliate used
25 certain of the domain names identified in Paragraph 70 of the Complaint. Except as expressly
26 admitted herein, the allegations of Paragraph 90 of the Complaint are denied. It is specifically

1 denied that Dotster's affiliate used all of the domain names identified in Paragraph 70 of the
2 Complaint.

3 91. The allegations of Paragraph 91 are conclusions of law to which a response is
4 not required. To the extent a response is required, Defendants are without knowledge and
5 information sufficient to form a belief as to the truth of the allegations contained in Paragraph
6 91 and therefore deny same, leaving Plaintiffs to strict proof thereof.

7 92. The allegations of Paragraph 92 are conclusions of law to which a response is
8 not required. To the extent a response is required, Defendants are without knowledge and
9 information sufficient to form a belief as to the truth of the allegations contained in Paragraph
10 92 and therefore deny same, leaving Plaintiffs to strict proof thereof.

11 93. The allegations of Paragraph 93 are conclusions of law to which a response is
12 not required. To the extent a response is required, those allegations are denied.

13 94. Denied.

14 95. Denied.

15 96. The allegations that Defendants do not have any intellectual property rights in
16 the Neiman Marcus Marks is a conclusion of law to which no response is required. It is
17 denied that Defendants have used the so-called Neiman Marcus Marks.

18 97. Admitted.

19 98. Denied.

20 99. Admitted in part; denied in part. It is admitted only that certain of the domain
21 names identified in Paragraph 70 of the Complaint included a link entitled "Offer to Buy This
22 Domain Name, which, if clicked, results in the opening of a form that could be emailed to a
23 Dotster affiliated company. Except as expressly admitted herein, the allegations of Paragraph
24 99 of the Complaint are denied. It is specifically denied that any of the Defendants offered to
25 sell a domain name.
26

1 100. Denied.

2 101. Denied.

3 102. Denied.

4 103. Denied.

5 104. The allegations of Paragraph 104 are conclusions of law to which a response is
6 not required. To the extent a response is required, Defendants are without knowledge and
7 information sufficient to form a belief as to the truth of the allegations contained in Paragraph
8 104 and therefore deny same, leaving Plaintiffs to strict proof thereof.

9 105. Denied.

10 106. Denied.

11 107. Denied.

12 108. Denied.

13 109. Denied.

14 110. Denied.

15
16 **COUNT II**
(Cybersquatting of the Bergdorf Goodman Marks)

17 111. Defendants incorporate by reference their answers to Paragraphs 1 through 110
18 as if fully set forth herein.

19 112. Admitted in part; denied in part. It is admitted that Dotster registered the
20 domain names identified in Paragraph 70 of the Complaint. Except as expressly admitted
21 herein, the allegations of Paragraph 112 of the Complaint are denied.

22 113. Admitted in part; denied in part. It is admitted that a Dotster affiliate is the
23 registrant for the domain names identified in Paragraph 70 of the Complaint. Except as
24 expressly admitted herein, the allegations of Paragraph 113 of the Complaint are denied.

25 114. Denied.

1 115. Admitted in part; denied in part. It is admitted that a Dotster affiliate used
2 certain of the domain names identified in Paragraph 70 of the Complaint. Except as expressly
3 admitted herein, the allegations of Paragraph 115 of the Complaint are denied. It is
4 specifically denied that Dotster's affiliate used all of the domain names identified in
5 Paragraph 70 of the Complaint.

6 116. The allegations of Paragraph 116 are conclusions of law to which a response is
7 not required. To the extent a response is required, Defendants are without knowledge and
8 information sufficient to form a belief as to the truth of the allegations contained in Paragraph
9 116 and therefore deny same, leaving Plaintiffs to strict proof thereof.

10 117. The allegations of Paragraph 117 are conclusions of law to which a response is
11 not required. To the extent a response is required, Defendants are without knowledge and
12 information sufficient to form a belief as to the truth of the allegations contained in Paragraph
13 117 and therefore deny same, leaving Plaintiffs to strict proof thereof.

14 118. The allegations of Paragraph 118 are conclusions of law to which a response is
15 not required. To the extent a response is required, those allegations are denied.

16 119. Denied.

17 120. Denied.

18 121. The allegations that Defendants do not have any intellectual property rights in
19 the Bergdorf Goodman Marks is a conclusion of law to which no response is required.
20 Defendants deny that they have used the Bergdorf Goodman marks.

21 122. Admitted.

22 123. Denied.

23 124. Admitted in part; denied in part. It is admitted that, in response to an offer to
24 purchase, an email was sent with a purchase price. Except as expressly admitted herein, the
25 allegations of Paragraph 124 of the Complaint are denied.
26

1 125. Denied.

2 126. Denied.

3 127. Denied.

4 128. Denied.

5 129. The allegations of Paragraph 129 are conclusions of law to which no response
6 is required. To the extent a response is required, Defendants are without knowledge and
7 information sufficient to form a belief as to the truth of the allegations contained in Paragraph
8 129 and therefore deny same, leaving Plaintiffs to strict proof thereof.

9 130. Denied.

10 131. Denied.

11 132. The allegations of Paragraph 132 are conclusions of law to which no response
12 is required. To the extent a response is required, those allegations are denied.

13 133. Denied.

14 134. Denied.

15 135. Denied.

16
17 **COUNT III**
(Trademark Infringement of the Neiman Marcus Marks)

18 136. Defendants incorporate by reference their answers to Paragraphs 1 through 135
19 as if fully set forth herein.

20 137. Denied.

21 138. Denied.

22 139. Denied.

23 140. Denied.

24 141. Denied.

25 142. Denied.

1 143. Denied.

2 144. Denied.

3 145. Denied.

4 **COUNT IV**

5 **(Trademark Infringement of the Bergdorf Goodman Marks)**

6 146. Defendants incorporate by reference their answers to Paragraphs 1 through 145
7 as if fully set forth herein.

8 147. Denied.

9 148. Denied.

10 149. Denied

11 150. Denied.

12 151. Denied.

13 152. Denied.

14 153. Denied.

15 154. Denied.

16 155. Denied.

17 **COUNT V**

18 **(False Designation of Origin of the Neiman Marcus Marks)**

19 156. Defendants incorporate by reference their answers to Paragraphs 1 through 155
20 as if fully set forth herein.

21 157. Denied.

22 158. Denied.

23 159. Denied.

24 160. Denied.

25 161. Denied.

1 162. Denied.

2 163. Denied.

3 164. Denied.

4 165. Denied.

5
6 **COUNT VI**
(False Designation of Origin of the Bergdorf Goodman Marks)

7 166. Defendants incorporate by reference their answers to Paragraphs 1 through 165
8 as if fully set forth herein.

9 167. Denied.

10 168. Denied.

11 169. Denied.

12 170. Denied.

13 171. Denied.

14 172. Denied.

15 173. Denied.

16 174. Denied.

17 175. Denied.

18
19 **COUNT VII**
(Federal Dilution of the Neiman Marcus Marks)

20 176. Defendants incorporate by reference their answers to Paragraphs 1 through 175
21 as if fully set forth herein.

22 177. Defendants are without knowledge and information sufficient to form a belief
23 as to the truth of the allegations contained in Paragraph 177 and therefore deny same, leaving
24 Plaintiffs to strict proof thereof.

25 178. Denied.

1 179. Denied.

2 180. Denied.

3 181. Denied.

4 182. Denied.

5 183. Denied.

6 184. Denied.

7 185. Denied.

8
9 **COUNT VIII**
10 **(Federal Dilution of the Bergdorf Goodman Marks)**

11 186. Defendants incorporate by reference their answers to Paragraphs 1 through 185
12 as if fully set forth herein.

13 187. Defendants are without knowledge and information sufficient to form a belief
14 as to the truth of the allegations contained in Paragraph 187 and therefore deny same, leaving
15 Plaintiffs to strict proof thereof.

16 188. Denied.

17 189. Denied.

18 190. Denied.

19 191. Denied.

20 192. Denied.

21 193. Denied.

22 194. Denied.

23 195. Denied.

1 **COUNT IX**
2 **(Dilution of the Neiman Marcus Marks under Washington Law)**

3 196. Defendants incorporate by reference their answers to Paragraphs 1 through 195
4 as if fully set forth herein.

5 197. Denied.

6 198. Denied.

7 199. Denied.

8 200. Denied.

9 201. Denied.

10 202. Denied.

11 203. Denied.

12 204. Denied.

13 205. Denied.

14 206. Denied.

15 **COUNT X**
16 **(Dilution of the Bergdorf Goodman Marks under Washington Law)**

17 207. Defendants incorporate by reference their answers to Paragraphs 1 through 206
18 as if fully set forth herein.

19 208. Denied.

20 209. Denied.

21 210. Denied.

22 211. Denied.

23 212. Denied.

24 213. Denied.

25 214. Denied.

26 215. Denied.

ANSWER WITH AFFIRMATIVE DEFENSES OF
DEFENDANTS DOTSTER INC. AND SCOTT FISH - 19

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1 216. Denied.

2 217. Denied.

3 **COUNT XI**

4 **(Violation of Washington Consumer Protection Act - Neiman Marcus Marks)**

5 218. Defendants incorporate by reference their answers to Paragraphs 1 through 217
6 as if fully set forth herein.

7 219. Denied.

8 220. Denied.

9 221. Denied.

10 222. Denied.

11 **COUNT XII**

12 **(Violation of Washington Consumer Protection Act Bergdorf Goodman Marks)**

13 223. Defendants incorporate by reference their answers to Paragraphs 1 through 222
14 as if fully set forth herein.

15 224. Denied.

16 225. Denied.

17 226. Denied.

18 227. Denied.

19 **COUNT XIII**

20 **(Unfair Competition with Neiman Marcus Marks under Washington State Common**
21 **Law)**

22 228. Defendants incorporate by reference their answers to Paragraphs 1 through 227
23 as if fully set forth herein.

24 229. Denied.

25 230. Denied.

26
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DEFENDANTS DOTSTER INC. AND SCOTT FISH - 20

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1 **COUNT XIV**
2 **(Unfair Competition with Bergdorf Goodman Marks under**
3 **Washington State Common Law)**

4 231. Defendants incorporate by reference their answers to Paragraphs 1 through 230
5 as if fully set forth herein.

6 232. Denied.

7 233. Denied.

8 **Jury Demand**

9 234. Denied. Defendants decline their right to a jury trial.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 235. The complaint fails to set forth a cause of action upon which relief may be
13 granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 236. Upon being made aware of Plaintiffs' claim to rights to the neimanmarcus.com
16 Internet domain name, Dotster promptly effected the transfer of ownership of the Internet
17 domain name without any charge.

18 **THIRD AFFIRMATIVE DEFENSE**

19 237. Plaintiffs have failed to meet their duty to mitigate damages.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 238. With respect to Causes of Action Nos. II, IV, VI, VII, X, XII and XIV,
22 Defendants submit that Plaintiffs' allegations are based upon and rely upon a conclusion that
23 the transfer and purchase of the domain name *bergmangoodman.com* is evidence of
24 Defendants' wrongful actions. The foregoing domain name cannot be characterized as being
25
26

1 confusingly similar due to the unrelated surname connotations of the names Bergdorf and
2 Goodman.

3 **FIFTH AFFIRMATIVE DEFENSE**

4
5 239. With respect to Causes of Action III and IV, Plaintiffs have failed to assert and
6 demonstrate actual instances of dilution as required by Under 15 U.S.C. §1114(1).

7 **SIXTH AFFIRMATIVE DEFENSE**

8 240. Plaintiffs have not made a statutory use in commerce of one or more of the
9 domain names designated as the Neiman Marcus and/or Bergdorf Goodman Domain Names.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11
12 241. Defendant Scott Fish acted within the scope of his employment by Dotster and
13 therefore he is not subject to liability for the complained of actions.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 242. Any use that can be attributed to Dotster of any Neiman Marcus or Bergdorf
16 Goodman domain name was in good faith and not made with the intention of infringing upon
17 Plaintiffs' trademark rights.

18 **NINTH AFFIRMATIVE DEFENSE**

19
20 243. Any act or omission on the part of Defendants were in good faith and
21 Defendants possessed reasonable grounds for believing that such acts or omissions were not
22 in violation of and were in conformity with any federal or Washington State laws.

23 **TENTH AFFIRMATIVE DEFENSE**

24
25 244. Plaintiffs' claims and/or remedies are barred by their unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

245. The imposition of statutory damages for each registered domain name as Plaintiffs' demand would constitute a denial of due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution because it would not bear any reasonable relationship to the losses Plaintiffs' claim to have sustained from Defendants' alleged conduct or the profits Plaintiffs have earned and would otherwise be arbitrary and capricious.

TWELFTH AFFIRMATIVE DEFENSE

246. Defendants reserve the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the Plaintiffs' claims. These additional defenses cannot be articulated at this time due to the Plaintiffs' failure to properly describe its claims with sufficient particularity in the complaint.

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

DATED this 20th day of July, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2006, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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ANSWER WITH AFFIRMATIVE DEFENSES OF
DEFENDANTS DOTSTER INC. AND SCOTT FISH - 25

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