

1 BINGHAM McCUTCHEN LLP
JAMES G. SNELL (SBN 173070)
2 1900 University Avenue
East Palo Alto, CA 94303
3 Telephone: (650) 849-4400

4 Attorneys for Defendant
BVWebTies, LLC
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 HYPERTOUCHE, INC.,
13 Plaintiff,
14 v.
15 BVWEBTIES, LLC, BLUESTREAM MEDIA,
16 Defendants.

No. C 04 0880 MMC

ANSWER OF DEFENDANT
BVWEBTIES, LLC

DEMAND FOR JURY TRIAL

17 Defendant BVWebTies, LLC (“BVWebTies”), through its attorneys, answers and
18 responds to Plaintiff Hypertouch, Inc.’s (“Hypertouch’s”) Complaint as follows:

19 **JURISDICTION, VENUE, AND PARTIES**

20 1. BVWebTies admits that Plaintiff purports to bring this action pursuant to
21 the Court’s original jurisdiction under the CAN-SPAM Act of 2003 – 15 U.S.C. §7701, et seq.,
22 15 U.S.C. §7707(g)(1). BVWebTies denies the remaining allegations in Paragraph 1.

23 2. BVWebTies denies that it has committed any unlawful acts in this judicial
24 district of the Court or in the State of California. BVWebTies is without knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2
26

1 and therefore denies them.

2 3. BVWebTies is without knowledge or information to form a belief as to the
3 truth of the allegations in Paragraph 3 and therefore denies them.

4 4. BVWebTies admits that it is a Delaware limited liability company.
5 BVWebTies denies the remaining allegations in Paragraph 4.

6 5. BVWebTies is without knowledge or information sufficient to form a
7 belief as to the truth of the allegations in Paragraph 5 and therefore denies them.

8 **FIRST CAUSE OF ACTION**
9 **(Violation of CAN-SPAM Act of 2003 – 15 U.S.C. § 7705)**

10 6. BVWebTies realleges and incorporates herein its responses to Paragraphs
11 1 through 5 as set forth above.

12 7. BVWebTies denies the allegations in Paragraph 7 with respect to
13 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 7 and therefore denies them.

15 8. BVWebTies is without knowledge or information sufficient to form a
16 belief as to the truth of the allegations in Paragraph 8 and therefore denies them.

17 9. To the extent the allegations in Paragraph 9 constitute legal conclusions no
18 answer is required. BVWebTies denies the allegations in Paragraph 9 with respect to
19 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
20 the truth of the remaining allegations in Paragraph 9 and therefore denies them.

21 10. To the extent the allegations in Paragraph 10 constitute legal conclusions
22 no answer is required. BVWebTies denies the allegations in Paragraph 10 with respect to
23 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
24 the truth of the remaining allegations in Paragraph 10 and therefore denies them.

25 11. To the extent the allegations in Paragraph 11 constitute legal conclusions
26 no answer is required. BVWebTies denies the allegations in Paragraph 11 with respect to

1 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
2 the truth of the remaining allegations in Paragraph 11 and therefore denies them.

3 12. To the extent the allegations in Paragraph 12 constitute legal conclusions
4 no answer is required. BVWebTies denies the allegations in Paragraph 12 with respect to
5 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
6 the truth of the remaining allegations in Paragraph 12 and therefore denies them.

7 13. To the extent the allegations in Paragraph 13 constitute legal conclusions
8 no answer is required. BVWebTies denies the allegations in Paragraph 13 with respect to
9 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
10 the truth of the remaining allegations in Paragraph 13 and therefore denies them.

11 14. To the extent the allegations in Paragraph 14 constitute legal conclusions
12 no answer is required. BVWebTies denies the allegations in Paragraph 14 with respect to
13 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
14 the truth of the remaining allegations in Paragraph 14 and therefore denies them.

15 15. To the extent the allegations in Paragraph 15 constitute legal conclusions
16 no answer is required. BVWebTies denies the allegations in Paragraph 15 with respect to
17 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
18 the truth of the remaining allegations in Paragraph 15 and therefore denies them.

19 16. To the extent the allegations in Paragraph 16 constitute legal conclusions
20 no answer is required. BVWebTies denies the allegations in Paragraph 16 with respect to
21 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
22 the truth of the remaining allegations in Paragraph 16 and therefore denies them.

23 17. BVWebTies denies the allegations in Paragraph 17 with respect to
24 BVWebTies. BVWebTies is without knowledge or information sufficient to form a belief as to
25 the truth of the remaining allegations in Paragraph 17 and therefore denies them.

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AFFIRMATIVE DEFENSES

Further answering, BVWebTies asserts the following defenses to the claims for relief pleaded in the Complaint:

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each cause of action therein, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint and each cause of action therein are vague, ambiguous, and uncertain.

THIRD AFFIRMATIVE DEFENSE

BVWebTies has substantially complied with the requirements of the law as they pertain to this lawsuit and such substantial compliance bars plaintiff’s claims.

FOURTH AFFIRMATIVE DEFENSE

No threat of immediate or irreparable harm exists sufficient to support a grant of injunctive relief.

FIFTH AFFIRMATIVE DEFENSE

The Complaint fails to state a sufficient basis for injunctive relief, in that any such injunctive relief would be inconsistent with requirements of, or orders issued by, federal, state and/or local agencies.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff acknowledged, ratified, consented to, and acquiesced in the alleged acts or omissions, if any, of defendants, thus barring plaintiff from any relief as prayed for herein.

SEVENTH AFFIRMATIVE DEFENSE

The claims are barred as the Court lacks personal jurisdiction over BVWebTies.

PRAAYER

WHEREFORE, BVWebTies prays for judgment in this action as follows:

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1. That plaintiff takes nothing by reason of its Complaint;
2. That the Court dismiss the Complaint with prejudice and enter judgment for BVWebTies;
3. For all costs in defending this action incurred herein;
4. For such other and further relief as the Court may deem just and proper.

DATED: March 29, 2004

BINGHAM McCUTCHEN LLP

By: _____
James G. Snell
Attorney for Defendants
BVWebTies, LLC

DEMAND FOR JURY TRIAL

Defendant BVWebTies, LLC. hereby demands trial by jury of all issues in this action that may be so tried.

DATED: March 29, 2004

BINGHAM McCUTCHEN LLP

By: _____
James G. Snell
Attorney for Defendants
BVWebTies, LLC