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5	Attorneys for Defendants Mars, Inc. and BBDO Worldwide, Inc.		
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8		DISTRICT COURT ICT OF CALIFORNIA	
9			
10	ZORRO PRODUCTIONS, INC., a California Corporation,	No. C10-01179-SC	
11	Plaintiff,	DEFENDANTS' ANSWER AND	
12	V.	AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT	
13	MARS, INC., a Delaware corporation; and BBDO WORLDWIDE, INC., a New		
14	York corporation,		
15	Defendants.		
16			
17	Defendants Mars, Inc. ("Mars") and BBDO Worldwide, Inc. ("BBDO")		
18	(collectively "Defendants"), as and for the	eir answer (the "Answer") to plaintiff Zorro	
	Productions, Inc.'s ("Zorro" or "Plaintiff")	Complaint (the "Complaint"), hereby state as	
19	follows: ¹		
20	JURIS	DICTION	
21	1. Paragraph 1 of the Co	omplaint contains legal conclusions, to which no	
22	response should be required. To the exte	ent that the Court determines any response is	
23	required, however, Defendants admit that Pl	aintiff purports to bring this action in this Court	
24	pursuant to the cited statues but deny the v	alidity of the underlying claims set forth in the	
25			
26	¹ The various headings that appear throughout the Corequire an answer, Defendants deny any allegations of	omplaint require no answer. To the extent said headings contained therein.	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES NO. C10-01179-SC – Page 1 Complaint, and otherwise deny each and every allegation contained in paragraph 1 of the Complaint.

INTRADISTRICT ASSIGNMENT

2. Paragraph 2 of the Complaint contains legal conclusions, to which no response is required. To the extent that the Court determines any response is required, however, Defendants admit that Plaintiff purports to bring this action in this Court pursuant to the cited rule and admit that Defendants transact business and purposefully avail themselves of the benefits of being in this judicial district, but lack knowledge or information sufficient to form a belief as to the allegation that a substantial part of the property that is the subject of the action is situated in Alameda county and therefore deny same. Defendants deny the validity of the underlying claims set forth in the Complaint, and otherwise deny each and every allegation contained in paragraph 2 of the Complaint.

VENUE

3. Paragraph 3 of the Complaint contains legal conclusions, to which no response should be required. To the extent that the Court determines any response is required, however, Defendants admit that Plaintiff purports to bring this action in this Court pursuant to the cited statute but deny that a substantial part of the events giving rise to the putative causes of action occurred in Alameda County, and lack knowledge or information sufficient to form a belief as to the allegation that a substantial part of the property that is the subject of the action is situated in Alameda county and therefore deny same. Defendants deny the validity of the underlying claims set forth in the Complaint, and otherwise deny each and every allegation contained in paragraph 3 of the Complaint.

PARTIES

- 4. Defendants Lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the Complaint, and therefore deny same.
- 5. Defendants admit the allegations contained in paragraph 5 of the Complaint.

1	6. Defendants admit the allegations conta	ined in paragraph 6 of the
2	Complaint.	
3	7. Paragraph 7 of the Complaint conta	ins no allegations of fact
4	requiring a response from defendants. To the extent that the Co	ourt determines any response
5	is required, however, Defendants each and every factual allegat	tion contained in paragraph 7
6	of the Complaint.	
7	8 Defendants deny the allegations conta	ined in Paragraph 8 of the
8	Complaint.	
9	FIRST CAUSE OF ACTION	
10		
11	9. Defendants repeat, reallege and incorpor	•
12		•
13	10. Defendants lack knowledge or informati	on sufficient to form a belief
14	as to the allegations contained in paragraph 10 of the Complain	t, and therefore deny same.
15	11. Defendants lack knowledge or informati	on sufficient to form a belief
16	as to the allegations contained in paragraph 11 of the Complain	t, and therefore deny same.
	12. Defendants deny each and every allegation	on contained in paragraph 12
17	of the Complaint.	
18	13. Defendants deny each and every allegate	on contained in paragraph 13
19	of the Complaint.	
20	14. Defendants deny each and every allegation	on contained in paragraph 14
21	of the Complaint.	
22	15. Defendants deny each and every allegation	on contained in paragraph 15
23	of the Complaint.	
24	16. Defendants deny each and every allegation	on contained in paragraph 16
25		
26	SECOND CAUSE OF ACTION Violation of the Lanham Act § 32	
1		

- 27. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 27 of the Complaint, and therefore deny same.
- 28. Defendants deny each and every allegation contained in Paragraph 28 of the Complaint.
- 29. Defendants deny each and every allegation contained in Paragraph 29 of the Complaint.
- 30. Defendants deny each and every allegation contained in Paragraph 30 of the Complaint.
- 31. Defendants deny each and every allegation contained in Paragraph 31 of the Complaint.
- 32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

FOURTH CAUSE OF ACTION Common Law Unfair Competition Under California Law (Against All Defendants)

- 33. Defendants repeat, reallege and incorporate by reference their various responses in paragraphs 1 through 32 of this Answer as if set forth more fully herein.
- 34. Paragraph 34 of the Complaint contains legal conclusions, to which no response should be required. To the extent that the Court determines any response is required, however, Defendants admit that Plaintiff purports to bring this action in this Court pursuant to the cited statutes, but deny the validity of the underlying claims set forth in the Complaint, and otherwise deny each and every allegation contained in paragraph 34 of the Complaint.
- 35. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 35 of the Complaint, and therefore deny same.
- 36. Defendants deny each and every allegation contained in Paragraph 36 of the Complaint.

- 37. Defendants deny each and every allegation contained in Paragraph 37 of the Complaint.
- 38. Defendants deny each and every allegation contained in Paragraph 38 of the Complaint.
- 39. Defendants deny each and every allegation contained in Paragraph 39 of the Complaint.
- 40. Defendants deny each and every allegation contained in Paragraph 40 of the Complaint.

FIFTH CAUSE OF ACTION

Violation of California Business and Professions Code §§ 14245, 14247 and 17200, et seq. (Against All Defendants)

- 41. Defendants repeat, reallege and incorporate by reference their various responses in paragraphs 1 through 40 of this Answer as if set forth more fully herein.
- 42. Paragraph 42 of the Complaint contains legal conclusions, to which no response should required. To the extent that the Court determines that any response is required, however, Defendants admit that Plaintiff purports to bring this action in this Court pursuant to the cited statues but deny the validity of the underlying claims set forth in the Complaint, and otherwise deny each and every allegation contained in paragraph 42 of the Complaint.
- 43. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 43 of the Complaint, and therefore deny same.
- 44. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 44 of the Complaint, and therefore deny same.
- 45. Defendants deny each and every allegation contained in Paragraph 45 of the Complaint.
- 46. Defendants deny each and every allegation contained in Paragraph 46 of the Complaint.

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1	47. Defendants deny each and every allegation contained in Paragraph 47
2	of the Complaint.
3	48. Defendants deny each and every allegation contained in Paragraph 48
4	of the Complaint.
5	49. Defendants deny each and every allegation contained in Paragraph 49.
6	of the Complaint.
7	50. Defendants deny each and every allegation contained in Paragraph 50
8	of the Complaint.
9	51. Defendants deny each and every allegation contained in Paragraph 5
10	of the Complaint.
11	
12	<u>AFFIRMATIVE DEFENSES</u>
13	As further, separate and affirmative defenses, without assuming the burder
14	of proof of any such defense that rests with Plaintiff, Defendants state as follows:
15	FIRST AFFIRMATIVE DEFENSE
16	Plaintiff's claims are barred, in whole or in part, because the Complaint fail
17	to state a claim upon which relief may be granted.
	SECOND AFFIRMATIVE DEFENSE
18	
19	Plaintiff's claims are barred, in whole or in part, by the doctrine of fair use.
20	THIRD AFFIRMATIVE DEFENSE
21	Plaintiff's claims are barred, in whole or in part, by the doctrine of
22	nominative use.
23	
24	FOURTH AFFIRMATIVE DEFENSE
25	Plaintiff's claims are barred, in whole or in part, because Defendants have
26	not used Plaintiff's mark as an identifier of the affiliation, connection, or association of

1	Plaintiff with Defendants' goods, or as to the origin, sponsorship, or approval of
2	Defendants' goods, services, or commercial activities.
3	FIFTH AFFIRMATIVE DEFENSE
4	
5	Plaintiff's claims are barred, in whole or in part, because Defendants have not used
6	Plaintiff's mark in a manner that misrepresents the nature, characteristics, qualities, or
7	geographic origin of either Plaintiff's or Defendants' goods, services, or commercial
8	activities.
9	SIXTH AFFIRMATIVE DEFENSE
10	Plaintiff's claims are barred, in whole or in part, because Defendants'
11	alleged use of Plaintiff's mark has caused no confusion among the public, and is not likely
12	to cause such confusion.
13	SEVENTH AFFIRMATIVE DEFENSE
14	
15	Plaintiff's claims are barred, in whole or in part Plaintiff has not suffered any
16	irreparable injury.
17	EIGHTH AFFIRMATIVE DEFENSE
18	Plaintiff's claims are barred, in whole or in part, because Plaintiff has
19	suffered no damages as a result of any matters alleged in the Complaint.
20	NINTH AFFIRMATIVE DEFENSE
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22	Plaintiff's claims are barred, in whole or in part, because the goods and
	services of Plaintiff and Defendants are noncompetitive and unrelated.
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TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because any alleged use by

Defendants of any mark has created no likelihood that any distinctive quality or goodwill of

Plaintiff's marks will be diluted or that Plaintiff's reputation or goodwill will be injured.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are remote, uncertain, speculative and without basis in law or in fact.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claim for disgorgement of Defendants' alleged profits is barred because Defendants' alleged use of any mark, if proven, was not willfully deceptive, but was instead made in good faith.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorneys' fees pursuant to any applicable laws because Defendants' use of any mark, if proven, was in good faith.

Defendants reserve the right to amend this Answer to raise and rely upon any defenses that become available or apparent during discovery.

1	PRAYER FOR RELIEF
2	WHEREFORE, Defendants respectfully request and pray as follows:
3	1. That Plaintiff take nothing by reason of the Complaint;
4	2. That judgment be entered against Plaintiff and in favor of
5	Defendants, dismissing this action with prejudice; and
6	3. That the Court grant such other and further relief as it deems just and
7	proper.
8	Dated this June 21, 2010
9	
10	KRIEG KELLER SLOAN REILLEY &
11	ROMAN LLP
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