

1 **DAVID R. OWENS**, State Bar No. 180829
 dowens@owenstarabichi.com
 2 **BRUNO W. TARABICHI**, State Bar No. 215129
 btarabichi@owenstarabichi.com
 3 **OWENS TARABICHI LLP**
 111 N. Market St., Suite 730
 4 San Jose, California 95113
 Telephone: 408.298.8200
 5 Facsimile: 408.521.2203

6 Attorneys for Defendant
 Yvonne Young

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

12 BRIDGET BROWN and BELLA
 BRIDESMAID, LLC,

13 Plaintiffs,

14 vs.

15 YVONNE YOUNG,

16 Defendant.

Case No. 5:11-cv-02517-HRL

**DEFENDANT YVONNE YOUNG'S
 ANSWER TO COMPLAINT AND
 COUNTERCLAIMS**

JURY TRIAL DEMANDED

Case Filed: May 24, 2011
 Judge: Hon. Howard R. Lloyd

1 Defendant Yvonne Young (“Defendant”), through her attorneys, hereby answers Plaintiffs
2 Bridget Brown and Bella Bridesmaid, LLC’s Complaint as follows:

3 1. In response to paragraph 1, Defendant denies that any conduct or omission giving
4 rise to any claim has occurred. Defendant further responds that Plaintiffs’ allegations in
5 paragraph 1 regarding subject matter jurisdiction are legal conclusions and jurisdictional
6 allegations that do not require a response. Except as expressly admitted, Defendant denies each
7 and every allegation in paragraph 1.

8 2. In response to paragraphs 2a.–2c., Defendant responds as follows:

9 a. In response to paragraph 2a., Defendant responds that she lacks sufficient
10 knowledge or information to form a belief as to the truth of the allegations in paragraph 2a. and,
11 therefore, denies each and every allegation in paragraph 2a.

12 b. In response to paragraph 2b., Defendant responds that she lacks sufficient
13 knowledge or information to form a belief as to the truth of the allegations in paragraph 2b. and,
14 therefore, denies each and every allegation in paragraph 2b.

15 c. In response to paragraph 2c., Defendant admits that she is a natural person
16 who resides at 321 El Bonito Way, Millbrae, California 94030. Except as expressly admitted,
17 Defendant denies each and every allegation in paragraph 2c.

18 3. In response to paragraph 3, Defendant responds that she lacks sufficient
19 knowledge or information to form a belief as to the truth of the allegations in paragraph 3 and,
20 therefore, denies each and every allegation in paragraph 3.

21 4. In response to paragraph 4, Defendant responds that she lacks sufficient
22 knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and,
23 therefore, denies each and every allegation in paragraph 4.

24 5. In response to paragraph 5, Defendant denies each and every allegation in
25 paragraph 5.

26 6. In response to paragraph 6, Defendant responds that she lacks sufficient
27 knowledge or information to form a belief as to the truth of the allegations in paragraph 6 and,
28 therefore, denies each and every allegation in paragraph 6.

1 7. In response to paragraph 7, Defendant responds that she lacks sufficient
2 knowledge or information to form a belief as to the truth of the allegations in paragraph 7 and,
3 therefore, denies each and every allegation in paragraph 7.

4 8. In response to paragraph 8, Defendant responds that she lacks sufficient
5 knowledge or information to form a belief as to the truth of such allegations in paragraph 8 and,
6 therefore, denies each and every allegation in paragraph 8.

7 9. In response to paragraph 9, Defendant admits that Plaintiffs contacted her, wrongly
8 accused her of infringement, and asked her to change the name of her business. Except as
9 expressly admitted, Defendant denies each and every allegation in paragraph 9.

10 10. In response to paragraph 10, Defendant admits that she and Plaintiff Bridget
11 Brown did meet in person. With regard to the remaining allegations in paragraph 10, Defendant
12 denies each and every remaining allegation in paragraph 10. Except as expressly admitted,
13 Defendant denies each and every allegation in paragraph 10.

14 11. In response to paragraph 11, Defendant denies each and every allegation in
15 paragraph 11.

16 12. In response to paragraph 12, Defendant denies that she assured Plaintiffs that she
17 always answered the phone as “Yve’s Bella Bride.” With regard to the remaining allegations in
18 paragraph 12, Defendant responds that she lacks sufficient knowledge or information to form a
19 belief as to the truth of the allegations in paragraph 12 and, therefore, denies each and every
20 allegation in paragraph 12.

21 13. In response to paragraph 13, Defendant responds that she lacks sufficient
22 knowledge or information to form a belief as to the truth of the allegations in paragraph 13 and,
23 therefore, denies each and every allegation in paragraph 13.

24 **FIRST COUNT**
25 (Trademark Infringement)

26 14. In response to paragraph 14, Defendant denies each and every allegation in
27 paragraph 14.

1 15. In response to paragraph 15, Defendant denies each and every allegation in
2 paragraph 15.

3 16. In response to paragraph 16, Defendant denies each and every allegation in
4 paragraph 16.

5 17. In response to paragraph 17, Defendant denies each and every allegation in
6 paragraph 17.

7 18. In response to paragraph 18, Defendant denies each and every allegation in
8 paragraph 18.

9 19. In response to paragraph 19, Defendant denies each and every allegation in
10 paragraph 19.

11 In response to Plaintiffs' WHEREFORE and prayer for relief paragraph following
12 paragraph 19, Defendant denies that there is any basis for judgment against her, damages of any
13 kind for any reason, and prays that Plaintiffs take nothing by the Complaint, that the Complaint
14 be dismissed with prejudice, and that the Court order such further relief as it deems just and
15 proper.

16 **SECOND COUNT**
17 (False Advertising; § 43(a) of the Lanham Act)

18 20. In response to paragraph 20, Defendant denies each and every allegation in
19 paragraph 20.

20 21. In response to paragraph 21, Defendant denies each and every allegation in
21 paragraph 21.

22 22. In response to paragraph 22, Defendant denies each and every allegation in
23 paragraph 22.

24 **THIRD COUNT**
25 (Cybersquatting)

26 23. In response to paragraph 23, Defendant denies each and every allegation in
27 paragraph 23.

28

1 Complaint).

2 35. In response to paragraph 35 (misnumbered as paragraph 34 in the Complaint),
3 Defendant denies each and every allegation in paragraph 35 (misnumbered as paragraph 34 in the
4 Complaint).

5 36. In response to paragraph 36 (misnumbered as paragraph 35 in the Complaint),
6 Defendant denies each and every allegation in paragraph 36 (misnumbered as paragraph 35 in the
7 Complaint).

8 37. In response to paragraph 37 (misnumbered as paragraph 36 in the Complaint),
9 Defendant denies each and every allegation in paragraph 37 (misnumbered as paragraph 36 in the
10 Complaint).

11 38. In response to paragraph 38 (misnumbered as paragraph 37 in the Complaint),
12 Defendant denies each and every allegation in paragraph 38 (misnumbered as paragraph 37 in the
13 Complaint).

14 In response to Plaintiffs' WHEREFORE and prayer for relief paragraphs a–i, Defendant
15 denies that there is a basis for judgment against her, damages of any kind for any reason,
16 prejudgment interest, exemplary, punitive and/or treble damages, statutory damages, attorneys'
17 fees, litigation expenses, costs, liquidated damages, injunctive relief, penalties, restitution, or any
18 other relief. Defendant further prays that Plaintiffs take nothing by the Complaint, that the
19 Complaint be dismissed with prejudice, that Defendant be awarded her attorneys' fees and costs,
20 and that the Court order such further relief as it deems just and proper.

21 **AFFIRMATIVE DEFENSES**

22 By way of further answer, Defendant alleges and asserts the following defenses in
23 response to the allegations contained in the Complaint. In this regard, Defendant undertakes the
24 burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless
25 of how such defenses are denominated in the instant Answer. Defendant reserves the right to
26 assert other affirmative defenses as this action proceeds based on further discovery, legal
27 research, or analysis that may supply additional facts or lend new meaning or clarification to
28

1 Plaintiffs' claims in the Complaint.

2 **FIRST AFFIRMATIVE DEFENSE**

3 (Lack of Standing)

4 39. Plaintiffs' claims are barred, in whole or in part, because either Plaintiff Bridget
5 Brown or Plaintiff Bella Bridesmaid, LLC lacks standing to sue Defendant. On information and
6 belief, according to the U.S. Patent and Trademark Office's records, Plaintiff Bella Bridesmaid,
7 LLC is the purported owner of U.S. Registration No. 3,114,088 for the BELLA BRIDESMAID
8 design mark, not Plaintiff Bridget Brown. As such, it appears Plaintiff Bridget Brown lacks
9 standing to assert the claims in the Complaint. However, to the extent Plaintiff Bridget Brown is
10 proven to be the owner of the claimed BELLA BRIDESMAID mark, then Plaintiff Bella
11 Bridesmaid, LLC lacks standing to assert the claims in the Complaint.

12 **SECOND AFFIRMATIVE DEFENSE**

13 (Failure to State a Claim)

14 40. Plaintiffs' second claim for false advertising is barred, in whole or in part, because
15 Plaintiffs have failed to state a claim for relief. In this regard, Plaintiffs have failed to plead the
16 requisite elements, or fact supporting the requisite elements, of claim for false advertising under §
17 43(a) of the Lanham Act, namely, (1) a false statement of fact in a commercial advertisement, (2)
18 the false statement actually deceived or has the tendency to deceive a substantial segment of its
19 audience, (3) the deception is material, (4) the false statement was made in interstate commerce,
20 and (5) injury as a result of the false statement.

21 **THIRD AFFIRMATIVE DEFENSE**

22 (No Injury or Damage)

23 41. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not and
24 will not suffer any injury or damage.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 (Waiver)

27 42. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH AFFIRMATIVE DEFENSE
(Laches)

43. Plaintiffs’ claims are barred, in whole or in part, by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE
(Acquiescence)

44. Plaintiffs’ claims are barred, in whole or in part, by the doctrine of acquiescence.


SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)


45. Plaintiffs’ claims are barred, in whole or in part, by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

46. Plaintiffs’ claims are barred, in whole or in part, by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE
(No Trademark Rights)

47. Plaintiffs’ claims are barred, in whole or in part, because Plaintiffs have no trademark rights in the claimed BELLA BRIDESMAID mark or claimed  design mark.

48. Both the claimed BELLA BRIDESMAID mark and the claimed  design mark are merely descriptive of Plaintiffs’ goods and/or services, such that the marks are not distinctive and do not function as trademarks. In this regard, the English translation of the word BELLA is beautiful, which is a merely descriptive term. Likewise, the term BRIDESMAID is merely descriptive of Plaintiff’s goods and/or services, which consist of bridesmaids gowns and accessories. In fact, the U.S. Patent and Trademark Office required Plaintiff(s) to disclaim BRIDESMAID as merely descriptive in U.S. Registration No. 3,114,088. Furthermore, the design of the bridesmaid gown in the design mark is also merely descriptive of Plaintiffs’ goods and/or services. As such, not only do Plaintiffs have no trademark rights in the claimed marks, but Defendant has counterclaimed to cancel Plaintiffs’ asserted U.S. Registration No. 3,114,088 for the BELLA BRIDESMAID design mark.

TENTH AFFIRMATIVE DEFENSE
(No Likelihood of Confusion)

49. Defendant's YVE'S BELLA BRIDES mark, as well as Defendant's prior and discontinued use of THE BELLA BRIDE mark, differs in terms of sight, sound, and meaning from Plaintiffs' claimed mark(s) and has commercial impression that is distinctly different from Plaintiffs' claimed mark(s). Defendant's use of her mark does not create a likelihood of confusion among consumers that her goods and/or services are offered by, are sponsored by, or are otherwise endorsed by Plaintiffs. Nor does Defendant's use of her mark create a likelihood that consumers falsely will believe that Defendant and Plaintiffs are affiliated in any way

50. Furthermore, the adoption and use of the terms BELLA (or its English translation), BRIDE, and BRIDESMAID are part of numerous federally registered and common law third party marks for wedding and bridal related goods and services. The existence of such third party marks requires that Plaintiffs' claimed mark be very narrowly construed, such that Plaintiffs' claimed mark cannot—as a matter of law—form the basis of a trademark infringement claim against Defendant. By way of example, such third party marks include, but are not limited to, LA BELLA BRIDE (U.S. Registration No. 3,363,430); BEAUTIFUL BRIDE (U.S. Application No. 85/267,262); ONLY THE BRIDE IS MORE BEAUTIFUL (U.S. Registration No. 3,268,049); BEAUTIFUL BRIDE (U.S. Registration No. 3,160,118); BELLA BRIDE (bridal shop – www.bellabrideshop.com); LA BELLA BRIDE (magazine and blog – www.labellabridemagazine.com); BELLA BRIDAL SHOPPE (bridal shop – www.bella-bride.com); LA BELLE BRIDE (bridal guide – www.labellebride.com); BELLA BRIDAL FORMAL WEAR (bridal shop – www.bellabridallandformal.com); BELLA BRIDAL GALLERY (bridal shop – www.bellabridal.com); BELLA BRIDES (bridal shop – www.bellabridesbend.com); and so on.

ELEVENTH AFFIRMATIVE DEFENSE
(Truth)

51. Plaintiffs' claim for false advertising, as well as any claims premised on false advertising, are barred, in whole or in part, because any relevant statements are true

1 connection with the trademark application. Defendant's information and belief is based on
2 Plaintiffs' own website, which states that Plaintiff Bridget Brown created Bella Bridesmaid in
3 May of 2000.

4 65. Plaintiff Bridget Brown's false representation of fact was material and intended to
5 induce reliance upon the misrepresentation, and the United States Patent and Trademark Office
6 reasonably relied on such false representation of fact in issuing the registration.

7 66. Plaintiff Bridget Brown made the false, material of representation knowingly.
8 This is evidenced in part by her own website.

9 67. Defendant has been damaged by the Plaintiff Bridget Brown's fraud on the United
10 States Patent and Trademark Office, as U.S. Registration No. 3,114,088 is being asserted against
11 her.

12 68. Accordingly, Plaintiffs' U.S. Registration No. 3,114,088 should be cancelled
13 pursuant to 15 U.S.C. § 1064 on the grounds that the registration was obtained fraudulently.

14 **FOURTH COUNTERCLAIM**

15 (Intentional Interference with Prospective Advantage)

16 69. As detailed throughout Defendant's instant Answer and Counterclaims, there is no
17 likelihood of confusion between Defendant's YVE'S BELLA BRIDES mark, as well as
18 Defendant's prior and discontinued use of THE BELLA BRIDE mark, and Plaintiffs' claimed
19 BELLA BRIDESMAID mark.

20 70. On information and belief, in an ill-conceived attempt to create the appearance of
21 confusion, Plaintiffs submitted a business listing to Google for The Bella Bride that intentionally
22 listed Plaintiffs' business address instead of Defendant's business address. The submission was
23 done intentionally and obviously without Defendant's consent or knowledge.

24 71. As a result of Plaintiffs intentionally misleading submission to Google,
25 Defendant's customers were redirected to Plaintiffs' place of business.

26 72. Defendant and such customers were in an economic relationship that probably
27 would have resulted in an economic benefit to Defendant.

28 73. Plaintiffs knew of the relationship and intended to disrupt the relationship by

1 wrongfully posting a false business submission to Google.

2 74. Plaintiffs' false and fraudulent submission to Google disrupted Defendant's
3 relationship with such customers such that Plaintiffs' wrongful conduct caused Defendant harm.

4 **FIFTH COUNTERCLAIM**
5 (Unfair Competition)

6 75. As detailed throughout Defendant's instant Answer and Counterclaims, there is no
7 likelihood of confusion between Defendant's YVE'S BELLA BRIDES mark, as well as
8 Defendant's prior and discontinued use of THE BELLA BRIDE mark, and Plaintiffs' claimed
9 BELLA BRIDESMAID mark.

10 76. On information and belief, in an ill-conceived attempt to create the appearance of
11 confusion, Plaintiffs submitted a business listing to Google for The Bella Bride that intentionally
12 listed Plaintiffs' business address instead of Defendant's business address. The submission was
13 done intentionally and obviously without Defendant's consent or knowledge.

14 77. As a result of Plaintiffs' intentionally misleading submission to Google,
15 Defendant's customers were redirected to Plaintiffs' place of business to the detriment of
16 Defendant.

17 78. Plaintiffs' aforementioned actions are unlawful in violation of California Business
18 and Professions Code § 17200 *et seq.* as such actions constituted, among other things, an
19 unlawful interference with Defendant's prospective economic advantage.

20 79. Plaintiffs' aforementioned actions constitute an unfair business act or practice in
21 violation of California Business and Professions Code § 17200 *et seq.* as the harm from Plaintiffs'
22 actions clearly outweighs any benefits (and there are none).

23 80. Plaintiffs' aforementioned actions are fraudulent in violation of California
24 Business and Professions Code § 17200 *et seq.* as such actions were intended to and likely to
25 deceive consumers.

26 **SIXTH COUNTERCLAIM**
27 (Declaration of Non-Infringement)

28 81. Pursuant to 28 U.S.C. §§ 2201 and 2202, Defendant seeks a declaration that

1 Defendant's YVE'S BELLA BRIDES mark, as well as Defendant's prior and discontinued use of
2 THE BELLA BRIDE mark, does not infringe Plaintiffs' trademark rights, if any, in the claimed
3 BELLA BRIDESMAID mark. There is an existing and actual controversy between Defendant
4 and Plaintiffs as Plaintiffs have filed the instant lawsuit alleging trademark infringement and
5 related claims against Defendant.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Counterclaimant and Defendant prays for judgment against Plaintiffs and
8 Counterdefendants as follows:

- 9 (i) that the Court order the Director to make an appropriate entry upon the records of
10 the U.S. Patent and Trademark Office cancelling U.S. Trademark Registration No. 3,114,088;
11 (ii) that the Court award Defendant compensatory and punitive damages for Plaintiffs'
12 intentional interference with prospective economic advantage;
13 (iii) that the Court award Defendant restitution and injunctive relief in connection with
14 Defendant's claim for unfair competition against Plaintiffs;
15 (iv) that Plaintiffs take nothing by the Complaint;
16 (v) that Plaintiffs' Complaint be dismissed with prejudice;
17 (vi) that Defendant be awarded her costs of suit and attorneys' fees incurred in the
18 defense of this action, if appropriate; and
19 (vii) that the Court order such further relief as it deems just and proper.
- 20
21
22
23
24
25
26
27
28


DEMAND FOR A JURY TRIAL

Defendant hereby demands a trial by jury on the claims herein.

Dated: July 5, 2011

Respectfully submitted,

OWENS TARABICHI LLP

By 

David R. Owens
Bruno W. Tarabichi
Attorneys for Defendant
Yvonne Young

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28