1 2 3 4 5 6 7	DAVID R. OWENS, State Bar No. 180 dowens@owenstarabichi.com BRUNO W. TARABICHI, State Bar N btarabichi@owenstarabichi.com OWENS TARABICHI LLP 111 N. Market St., Suite 730 San Jose, California 95113 Telephone: 408.298.8200 Facsimile: 408.521.2203 Attorneys for Defendant Yvonne Young	
8	UNITED S	TATES DISTRICT COURT
9	NORTHERN	DISTRICT OF CALIFORNIA
10	SA	N JOSE DIVISION
11		
12 13	BRIDGET BROWN and BELLA BRIDESMAID, LLC,	Case No. 5:11-cv-02517-HRL
13	Plaintiffs, vs.	DEFENDANT YVONNE YOUNG'S ANSWER TO COMPLAINT AND COUNTERCLAIMS
15	YVONNE YOUNG,	JURY TRIAL DEMANDED
16	Defendant.	Case Filed: May 24, 2011
17		Judge: Hon. Howard R. Lloyd
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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.
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 7. In response to paragraph 7, Defendant responds that she lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies each and every allegation in paragraph 7. 8. In response to paragraph 8, Defendant responds that she lacks sufficient knowledge or information to form a belief as to the truth of such allegations in paragraph 8 and, therefore, denies each and every allegation in paragraph 8. 9. In response to paragraph 9, Defendant admits that Plaintiffs contacted her, wrongly accused her of infringement, and asked her to change the name of her business. Except as expressly admitted, Defendant denies each and every allegation in paragraph 9. 10. In response to paragraph 10, Defendant admits that she and Plaintiff Bridget
 therefore, denies each and every allegation in paragraph 7. 8. In response to paragraph 8, Defendant responds that she lacks sufficient knowledge or information to form a belief as to the truth of such allegations in paragraph 8 and, therefore, denies each and every allegation in paragraph 8. 9. In response to paragraph 9, Defendant admits that Plaintiffs contacted her, wrongly accused her of infringement, and asked her to change the name of her business. Except as expressly admitted, Defendant denies each and every allegation in paragraph 9.
 8. In response to paragraph 8, Defendant responds that she lacks sufficient knowledge or information to form a belief as to the truth of such allegations in paragraph 8 and, therefore, denies each and every allegation in paragraph 8. 9. In response to paragraph 9, Defendant admits that Plaintiffs contacted her, wrongly accused her of infringement, and asked her to change the name of her business. Except as expressly admitted, Defendant denies each and every allegation in paragraph 9.
 knowledge or information to form a belief as to the truth of such allegations in paragraph 8 and, therefore, denies each and every allegation in paragraph 8. 9. In response to paragraph 9, Defendant admits that Plaintiffs contacted her, wrongly accused her of infringement, and asked her to change the name of her business. Except as expressly admitted, Defendant denies each and every allegation in paragraph 9.
 therefore, denies each and every allegation in paragraph 8. 9. In response to paragraph 9, Defendant admits that Plaintiffs contacted her, wrongly accused her of infringement, and asked her to change the name of her business. Except as expressly admitted, Defendant denies each and every allegation in paragraph 9.
9. In response to paragraph 9, Defendant admits that Plaintiffs contacted her, wrongly accused her of infringement, and asked her to change the name of her business. Except as expressly admitted, Defendant denies each and every allegation in paragraph 9.
accused her of infringement, and asked her to change the name of her business. Except as expressly admitted, Defendant denies each and every allegation in paragraph 9.
expressly admitted, Defendant denies each and every allegation in paragraph 9.
10. In response to paragraph 10, Defendant admits that she and Plaintiff Bridget
Brown did meet in person. With regard to the remaining allegations in paragraph 10, Defendant
denies each and every remaining allegation in paragraph 10. Except as expressly admitted,
Defendant denies each and every allegation in paragraph 10.
11. In response to paragraph 11, Defendant denies each and every allegation in
paragraph 11.
12. In response to paragraph 12, Defendant denies that she assured Plaintiffs that she
always answered the phone as "Yve's Bella Bride." With regard to the remaining allegations in
paragraph 12, Defendant responds that she lacks sufficient knowledge or information to form a
belief as to the truth of the allegations in paragraph 12 and, therefore, denies each and every
allegation in paragraph 12.
13. In response to paragraph 13, Defendant responds that she lacks sufficient
knowledge or information to form a belief as to the truth of the allegations in paragraph 13 and,
therefore, denies each and every allegation in paragraph 13.
FIRST COUNT
(Trademark Infringement)
14. In response to paragraph 14, Defendant denies each and every allegation in
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 resp	onse 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		(False Advartiging) § 42(a) of the London Act)
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.	
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1	24. In response to paragraph 24, Defendant denies each and every allegation in
2	paragraph 24.
3	25. In response to paragraph 25, Defendant denies each and every allegation in
4	paragraph 25.
5	26. In response to paragraph 26, Defendant denies each and every allegation in
6	paragraph 26.
7	FOURTH COUNT
8	(Unfair Competition, Cal. Bus. & Prof. § 17200 et seq.)
9	27. In response to paragraph 27, Defendant denies each and every allegation in
10	paragraph 27.
11	28. In response to paragraph 28, Defendant denies each and every allegation in
12	paragraph 28.
13	29. In response to paragraph 29, Defendant denies each and every allegation in
14	paragraph 29.
15	30. In response to paragraph 30, Defendant denies each and every allegation in
16	paragraph 30.
17	31. In response to paragraph 31, Defendant denies each and every allegation in
18	paragraph 31.
19	FIFTH COUNT
20	(Promise Made Without Intention)
21	32. In response to paragraph 32 (misnumbered as paragraph 33 in the Complaint),
22	Defendant denies each and every allegation in paragraph 32 (misnumbered as paragraph 33 in the
23	Complaint)
24	33. In response to paragraph 33 (misnumbered as paragraph 32 in the Complaint),
25	Defendant denies each and every allegation in paragraph 33 (misnumbered as paragraph 32 in the
26	Complaint).
27	34. In response to paragraph 34 (misnumbered as paragraph 33 in the Complaint),
28	Defendant denies each and every allegation in paragraph 34 (misnumbered as paragraph 33 in the
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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).

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

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AFFIRMATIVE DEFENSES

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

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 (No Injury or Damage)
22	(NO Injury of 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 (Waiver)
26	(waiver)
27	42. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.
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1	FIFTH AFFIRMATIVE DEFENSE
2	(Laches)
3	43. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.
4	SIXTH AFFIRMATIVE DEFENSE
5	(Acquiescence)
6	44. Plaintiffs' claims are barred, in whole or in part, by the doctrine of acquiescence.
7	SEVENTH AFFIRMATIVE DEFENSE (Estoppel)
8	(LStopper)
9	45. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.
10	EIGHTH AFFIRMATIVE DEFENSE (Unclean Hands)
11	
12	46. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.
13	NINTH AFFIRMATIVE DEFENSE (No Trademark Rights)
14	(100 Trademark Rights)
15	47. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have no $\frac{1}{\sqrt{7}}$
16	trademark rights in the claimed BELLA BRIDESMAID mark or claimed design mark.
17	48. Both the claimed BELLA BRIDESMAID mark and the claimed design
18	mark are merely descriptive of Plaintiffs' goods and/or services, such that the marks are not
19	distinctive and do not function as trademarks. In this regard, the English translation of the word
20	BELLA is beautiful, which is a merely descriptive term. Likewise, the term BRIDESMAID is
21	merely descriptive of Plaintiff's goods and/or services, which consist of bridesmaids gowns and
22	accessories. In fact, the U.S. Patent and Trademark Office required Plaintiff(s) to disclaim
23	BRIDESMAID as merely descriptive in U.S. Registration No. 3,114,088. Furthermore, the
24	design of the bridesmaid gown in the design mark is also merely descriptive of Plaintiffs' goods
25	and/or services. As such, not only do Plaintiffs have no trademark rights in the claimed marks,
26	but Defendant has counterclaimed to cancel Plaintiffs' asserted U.S. Registration No. 3,114,088
27	for the BELLA BRIDESMAID design mark.

1	TENTH AFFIRMATIVE DEFENSE	
2	(No Likelihood of Confusion)	
3	49. Defendant's YVE'S BELLA BRIDES mark, as well as Defendant's prior and	
4	discontinued use of THE BELLA BRIDE mark, differs in terms of sight, sound, and meaning	
5	from Plaintiffs' claimed mark(s) and has commercial impression that is distinctly different from	
6	Plaintiffs' claimed mark(s). Defendant's use of her mark does not create a likelihood of	
7	confusion among consumers that her goods and/or services are offered by, are sponsored by, or	
8	are otherwise endorsed by Plaintiffs. Nor does Defendant's use of her mark create a likelihood	
9	that consumers falsely will believe that Defendant and Plaintiffs are affiliated in any way	
10	50. Furthermore, the adoption and use of the terms BELLA (or its English translation),	
11	BRIDE, and BRIDESMAID are part of numerous federally registered and common law third	
12	party marks for wedding and bridal related goods and services. The existence of such third party	
13	marks requires that Plaintiffs' claimed mark be very narrowly construed, such that Plaintiffs'	
14	claimed mark cannot—as a matter of law—form the basis of a trademark infringement claim	
15	against Defendant. By way of example, such third party marks include, but are not limited to, LA	
16	BELLA BRIDE (U.S. Registration No. 3,363,430); BEAUTIFUL BRIDE (U.S. Application No.	
17	85/267,262); ONLY THE BRIDE IS MORE BEAUTIFUL (U.S. Registration No. 3,268,049);	
18	BEAUTIFUL BRIDE (U.S. Registration No. 3,160,118); BELLA BRIDE (bridal shop –	
19	www.bellabrideshop.com); LA BELLA BRIDE (magazine and blog –	
20	www.labellabridemagazine.com); BELLA BRIDAL SHOPPE (bridal shop – www.bella-	
21	bride.com); LA BELLE BRIDE (bridal guide – www.labellebride.com); BELLA BRIDAL	
22	FORMAL WEAR (bridal shop – <u>www.bellabridallandformal.com</u>); BELLA BRIDAL	
23	GALLERY (bridal shop - www.bellabridal.com); BELLA BRIDES (bridal shop -	
24	www.bellabridesbend.com); and so on.	
25	ELEVENTH AFFIRMATIVE DEFENSE	
26	(Truth)	
27	51. Plaintiffs' claim for false advertising, as well as any claims premised on false	
28	advertising, are barred, in whole or in part, because any relevant statements are true	
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1	<u>TWELFTH AFFIRMATIVE DEFENSE</u> (Conduct Not Unlawful, Unfair, or Fraudulent)
2	
3	52. Plaintiffs' claim for unfair competition is barred, in whole or in part, because
4	Defendant's conduct was not unlawful, unfair, or fraudulent.
5	<u>THIRTEENTH AFFIRMATIVE DEFENSE</u> (Right to Assert Additional Affirmative Defenses)
6	(Tught to Theorem Tught on at Theorem (Tught to Theorem)
7	53. Defendant expressly reserves the right to amend her answer and to assert
8	additional affirmative defenses upon the revelation of more definitive facts by Plaintiffs and upon
9	Defendant's taking of discovery and investigation of this matter.
10	<u>COUNTERCLAIMS</u>
11	Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant counterclaims
12	against Plaintiff as follows:
13	FIRST COUNTERCLAIM
14	(Cancellation of U.S. Trademark Registration No. 3,114,088 for Descriptiveness)
15	54. Defendant believes that she is and will be damaged by the continued registration of $\frac{1}{27}$
16	U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such
17	registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088
18	as basis for their claim for trademark infringement.
19	55. Plaintiffs' U.S. Registration No. 3,114,088 should be cancelled pursuant to 15
20	U.S.C. § 1064 and 15 U.S.C. § 1052(e) because the is merely descriptive of the services
21	listed in U.S. Registration No. 3,114,088, as well as the goods and services that Plaintiffs provide
22	in the marketplace.
23	SECOND COUNTERCLAIM
24	(Cancellation of U.S. Trademark Registration No. 3,114,088 as Void Ab Initio)
25	56. Defendant believes that she is and will be damaged by the continued registration of $\frac{1}{2}$
26	U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such
27	registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088
28	as basis for their claim for trademark infringement.
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1	57. On June 10, 2005, Plaintiff Bridget Brown filed U.S. Application No. 78/648,680
2	(which later issued as U.S. Registration No. 3,114,088) for the design mark in connection
3	with "retail store services featuring bridal clothing and accessories" in International Class 35.
4	When the initial application was filed on June 10, 2005, the Applicant was listed as Bridget
5	Brown, an individual.
6	58. According to the California Secretary of State's online records, Bridget Brown
7	formed a limited liability company called Bella Bridesmaid LLC on May 18, 2005.
8	59. On information and belief, at the time Plaintiff Bridget Brown filed U.S.
9	Application No. 78/648,680 on June 10, 2005, the actual owner making use of the BELLA
10	BRIDESMAID mark was Bella Bridesmaid LLC, not Bridget Brown.
11	60. Pursuant to 37 CFR § 2.71(d) and Trademark Manual of Examining Procedure
12	§ 803.06, an application is void if it is initially filed in the name of the wrong applicant.
13	61. Accordingly, Plaintiffs' U.S. Registration No. 3,114,088 should be cancelled
14	pursuant to 15 U.S.C. § 1064 and 37 CFR § 2.1(d) because it was wrongly filed in the name of
15	Bridget Brown rather than Bella Bridesmaid LLC.
	6
16	THIRD COUNTERCLAIM
16	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of
16 17	<u>THIRD COUNTERCLAIM</u> (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO)
16 17 18	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the Mathematical Science (Cancellation of U.S. Trademark Registration No. 3,114,088 for the Science (Cancellation No. 3,114,088 for the Science
16 17 18 19	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the Mathematical Sciences
16 17 18 19 20	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088 as basis for their claim for trademark infringement. 63. On June 10, 2005, Plaintiff Bridget Brown filed U.S. Application No. 78/648,680
16 17 18 19 20 21	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the (Cancellation For trademark infringement.
16 17 18 19 20 21 22	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088 as basis for their claim for trademark infringement. 63. On June 10, 2005, Plaintiff Bridget Brown filed U.S. Application No. 78/648,680 (which later issued as U.S. Registration No. 3,114,088) for the design mark in connection 10.
16 17 18 19 20 21 22 23	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088 as basis for their claim for trademark infringement. 63. On June 10, 2005, Plaintiff Bridget Brown filed U.S. Application No. 78/648,680 (which later issued as U.S. Registration No. 3,114,088) for the design mark in connection
 16 17 18 19 20 21 22 23 24 	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088 as basis for their claim for trademark infringement. 63. On June 10, 2005, Plaintiff Bridget Brown filed U.S. Application No. 78/648,680 (which later issued as U.S. Registration No. 3,114,088) for the design mark in connection with "retail store services featuring bridal clothing and accessories" in International Class 35
 16 17 18 19 20 21 22 23 24 25 	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088 as basis for their claim for trademark infringement. 63. On June 10, 2005, Plaintiff Bridget Brown filed U.S. Application No. 78/648,680 (which later issued as U.S. Registration No. 3,114,088) for the design mark in connection with "retail store services featuring bridal clothing and accessories" in International Class 35 based on use in interstate commerce at least as early as March 1, 2000.
 16 17 18 19 20 21 22 23 24 25 26 	THIRD COUNTERCLAIM (Cancellation of U.S. Trademark Registration No. 3,114,088 for Fraud on the PTO) 62. Defendant believes that she is and will be damaged by the continued registration of U.S. Registration No. 3,114,088 for the design mark. Defendant is being damaged by such registration because, among other things, Plaintiffs have asserted U.S. Registration No. 3,114,088 as basis for their claim for trademark infringement. 63. On June 10, 2005, Plaintiff Bridget Brown filed U.S. Application No. 78/648,680 (which later issued as U.S. Registration No. 3,114,088) for the design mark in connection with "retail store services featuring bridal clothing and accessories" in International Class 35 based on use in interstate commerce at least as early as March 1, 2000. 64. On information and belief, Plaintiffs did not use the design mark in

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
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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 (Unfair Competition)
5	(Unran 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
owens tarabichi llp Counselors At Law	12 ANSWER AND COUNTERCLAIMS (5:11-cv-02517-HRL)

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.			
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ichi llp _{At Law}	13 ANSWER AND COUNTERCLAIMS			

1	1 DEMAND FOR A JURY		RIAL
2	Defendant hereby demands a trial by jury on the claims herein.		
3			
4	Dated: July 5, 2011	Respectfull	y submitted,
5		OWENS T	ARABICHI LLP
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7		By David	Z T · S Owens
8		Bruno	W. Tarabichi
9		Yvonne	ys for Defendant e Young
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owens tarabichi llp Counselors At Law		14	ANSWER AND COUNTERCLAIMS (5:11-cv-02517-HRL)
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