

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FOX TELEVISION STATIONS, INC., et al.

Plaintiffs/Counter-Defendants,

v. Civil No. 1:13-cv-00758 (RMC)

AEREOKILLER LLC, et al.

Defendants/Counter-Plaintiffs.

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ANSWER

Defendants FilmOn X, LLC, formerly Aereokiller LLC (“FilmOn X”), FilmOn.TV, Inc., FilmOn.TV Networks, Inc., and FilmOn.com, Inc. (collectively, “Defendants”) hereby answer Plaintiffs Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, Fox Broadcasting Company, NBC Subsidiary (WRC-TV) LLC, NBC Studios LLC, Universal Network Television LLC, Open 4 Business Productions LLC, Telemundo Network Group LLC, American Broadcasting Companies, Inc., Disney Enterprises, Inc., and Allbritton Communications Company (collectively, “the Networks”) Complaint, by paragraph, as follows:

1. Deny.
2. In answering Paragraph 2, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 2.
3. In answering Paragraph 3, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 3.

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4. In answering Paragraph 4, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 4.

5. In answering Paragraph 5, Defendants admit that “[t]he district court in the California Actions limited the injunction to the Ninth Circuit” and “declined to enjoin preliminarily Defendants’ activities in all circuits other than the Ninth Circuit.” Defendants otherwise deny all other allegations of Paragraph 5.

6. In answering Paragraph 6, Defendants admit that “Plaintiffs in *Aereo* appealed the district court’s decision” and that “on April 1, 2013, a...panel of the Second Circuit Court of Appeals affirmed the *Aereo* decision. *See WNET Thirteen v. Aereo, Inc.*, 712 F.3d 676 (2d Cir. Apr. 1, 2013) (“*Aereo*”).” Defendants otherwise deny all allegations of Paragraph 6.

7. In answering Paragraph 7, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 7.

8. Contains no allegation that requires an admission or denial.

9. Admit that the Court has jurisdiction.

10. Admit that the Court has jurisdiction.

11. Deny.

12. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

13. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

14. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

15. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

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19. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

20. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

21. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

22. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

23. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

24. In answering Paragraph 24, Defendants admit that “Defendant Aereokiller LLC is a Delaware limited liability corporation.” Defendant otherwise deny all allegations of Paragraph 24.

25. In answering Paragraph 25, Defendants admit that “Defendant FilmOn.TV, Inc. is a Delaware corporation.” Defendants otherwise deny all allegations of Paragraph 25.

26. In answering Paragraph 26, Defendants admit that “Defendant FilmOn.TV Networks, Inc. is a Delaware corporation” and “FilmOn.TV Networks, Inc.’s business address is 301 N. Canon Drive, Beverly Hills, California.” Defendants otherwise deny all allegations of Paragraph 26.

27. In answering Paragraph 27, Defendants admit that “Defendant FilmOn.com, Inc. is a Delaware corporation.” Defendants otherwise deny all allegations of Paragraph 27.

28. Deny.

29. Deny.

30. In answering Paragraph 30, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 30.

31. In answering Paragraph 31, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 31.

32. In answering Paragraph 32, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 32.

33. Deny.

34. Defendants incorporate paragraphs 1-33 as if set forth fully herein.

35. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

36. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

37. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

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39. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

40. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

41. Defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph.

42. In answering Paragraph 42, Defendants state that it contains arguments, opinions and legal conclusions that require no response. Defendants otherwise deny the allegations of Paragraph 42.

43. Deny.

AFFIRMATIVE DEFENSES

Pursuant to Rule 8(c) of the Federal rules of Civil Procedure, Defendants further plead the following separate and additional defenses. By pleading these defenses, Defendants do not in any way agree or concede that it has the burden of proof or persuasion on any of these issues. Defendants reserve the right to assert such additional affirmative defenses as discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

(Failure to State A Claim)

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Comparative Fault)

The Complaint is barred, in whole or in part, based on the doctrine of comparative fault.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

The Complaint is barred, in whole or in part, based on Plaintiffs' failure to mitigate damages.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

The Complaint is barred, in whole or in part, based on the principles of estoppels.

FIFTH AFFIRMATIVE DEFENSE

(Fair Use)

The Complaint is barred, in whole or in part, by the doctrine of fair use.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

The Complaint is barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Complaint is barred, in whole or in part, by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

The Complaint is barred, in whole or in part, by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

(First Amendment)

The Complaint is barred, in whole or in part, because application of the Copyright Act to impose liability in this case would violate the First Amendment to the United States Constitution.

TENTH AFFIRMATIVE DEFENSE

(Copyright Abandonment)

The Complaint is barred, in whole or in part, to the extent any Plaintiffs have forfeited or abandoned copyright or failed to comply with all necessary formalities.

ELEVENTH AFFIRMATIVE DEFENSE

(Innocent Infringers)

The Complaint is barred, in whole or in part, to the extent any persons, based on whose behavior seek to hold Defendants liable, are innocent infringers.

TWELFTH AFFIRMATIVE DEFENSE

(Supervening Events)

The Complaint is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was caused by intervening or supervening events over which Defendants had and have no control.

THIRTEENTH AFFIRMATIVE DEFENSE

(Responsibility of Third Parties)

The Complaint is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was the fault and responsibility of third parties over whom Defendants had and have no control, and for whose actions Defendants had and have no responsibility.

FOURTEENTH AFFIRMATIVE DEFENSE

(Express or Implied License)

The Complaint is barred, in whole or in part, because Plaintiffs have granted an express or implied license in some or all of their copyrighted works to Defendants.

ADDITIONAL AFFIRMATIVE DEFENSES

(Subsequently Discovered Defense)

Defendant has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses, and reserves the right to assert additional defenses if and as it learns of facts that may support such defenses.

June 24, 2013

Respectfully submitted,

By: /s/ Jaime W. Marquart

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