

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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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.,
ALLBRITTON COMMUNICATIONS
COMPANY, CBS BROADCASTING
INC., CBS STUDIOS INC., and
GANNETT CO., INC.,

Plaintiffs/Counter-Defendants,

v.

AEREOKILLER LLC, FILMON.TV
NETWORKS, INC., FILMON.TV,
INC., FILMON.COM, INC, and DOES
1 through 3, inclusive,

Defendants/Counter-Plaintiffs.

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Civil Action No. 13-cv-00758-RMC

**FOX TELEVISION STATIONS,
INC., TWENTIETH CENTURY
FOX FILM CORPORATION, AND
FOX BROADCASTING
COMPANY'S ANSWER TO
AMENDED COUNTERCLAIM AND
AFFIRMATIVE DEFENSES**

ANSWER TO COUNTERCLAIM

Plaintiffs Fox Television Stations, Inc. (“FTS”), Twentieth Century Fox Film Corporation (“TCFFC”) and Fox Broadcasting Company (“FBC”) (collectively, “Fox” or “Plaintiffs”) hereby answer the Amended Counterclaim of Defendants and Counterclaim Plaintiffs Aereokiller, LLC, FilmOn.TV Networks, Inc., FilmOn.TV, Inc. and FilmOn.Com, Inc. (collectively, “Defendants” or “FilmOnX”) (the “Counterclaim”), by paragraph, as follows. Plaintiffs deny all allegations contained in the Counterclaim (including headings and captions) not specifically admitted in this Answer.

1. Fox denies the factual allegations in Paragraph 1 and alleges that FilmOnX is a commercial service that illegally captures and retransmits Plaintiffs’ broadcast signals to FilmOnX users and subscribers over the Internet. FilmOnX’s further arguments, opinions or legal conclusions in Paragraph 1 require no response.

2. In Paragraph 2, TCFFC and FTS admit that they “have already been denied a preliminary injunction against Aereo[.]” FBC denies that it has been denied a preliminary injunction against Aereo. Fox denies all other factual allegations in Paragraph 2 and asserts that any arguments, opinions or legal conclusions require no response.

3. In Paragraph 3, Fox admits that it has broadcast licenses and can access broadcast frequencies. Fox otherwise denies all other factual allegations in Paragraph 3 and asserts that any arguments, opinions or legal conclusions require no response.

4. Admit that the Court has jurisdiction.

5. Admit that the Court has jurisdiction.

6. Admit that venue is proper in this district.

7. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

8. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

9. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

10. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

11. Fox admits the factual allegations in this paragraph.

12. Fox admits the factual allegations in this paragraph.

13. Fox admits the factual allegations in this paragraph.

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

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

16. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

17. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

18. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

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

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

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

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

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

24. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

25. In answering Paragraph 25, Fox states that it contains arguments, opinions and legal conclusions that require no response.

26. In answering Paragraph 26 and the related footnote, Fox states that they contain arguments, opinions and legal conclusions that require no response.

27. Fox admits that FTS receives “the right to demand carriage by cable systems, 47 U.S.C. § 534; [is] guaranteed placement on the ‘basic tier,’ 47 U.S.C. § 543(b)(8); and [has] the legal right to ‘consent’ to the retransmission by cable systems of programming [it] may not own the copyright to, 47 U.S.C. § 325(b).” Fox otherwise states that this paragraph contains arguments, opinions and legal conclusions that require no response.

28. In answering Paragraph 28, Fox states that it contains arguments, opinions and legal conclusions that require no response.

29. In answering Paragraph 29, to the extent it asserts factual allegations about how FilmOnX’s technology functions, Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph. Fox otherwise denies all other factual allegations in Paragraph 29 and asserts that any arguments, opinions or legal conclusions require no response.

30. In answering Paragraph 30, Fox states that it contains arguments, opinions and legal conclusions that require no response.

31. In answering Paragraph 31, Fox states that it contains arguments, opinions and legal conclusions that require no response.

32. As the majority of the purported factual allegations in Paragraph 32 pertain to NBC and Comcast, not to Fox, Fox is without sufficient knowledge or information to form a belief as to the truth of those parts of this paragraph. Fox otherwise denies all the other factual allegations in Paragraph 32 and states that Paragraph 32 contains arguments, opinions and legal conclusions that require no response.

33. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

34. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph.

35. Fox is without sufficient knowledge or information to form a belief as to the truth of this paragraph or the related footnote.

36. Fox admits that FTS and TCFFC, along with other various parties, “brought suit against Aereo in March 2012 in the District Court for the Southern District of New York” and that they alleged “that Aereo violated [their] asserted public performance and reproduction rights under the Copyright Act[.]” Fox also admits that FTS and TCFFC, along with other various parties, “moved for a preliminary injunction against Aereo” and admits that “the District Court denied

the motion” in *Am. Broad. Cos., Inc. v. Aereo*, 874 F. Supp. 2d 373 (S.D.N.Y. 2012).” Fox otherwise denies all the other factual allegations in Paragraph 36 and states that Paragraph 36 contains arguments, opinions and legal conclusions that require no response.

37. Fox admits that FTS, TCFFC and FBC, along with other various parties, brought a suit against FilmOn X, alleging copyright infringement, in the District Court for the Central District of California in August 2012. Fox also admits that the District Court for the Central District of California found against FilmOnX and granted a preliminary injunction against FilmOnX, which is limited to the geographic boundaries of the Ninth Circuit and is currently being appealed in the Ninth Circuit. With respect to FilmOnX’s other characterizations of the Court’s Order, Fox states that the Court’s Order is the best evidence of the Court’s reasoning and ruling and therefore defers to the language contained within that Order. Fox otherwise denies all the other factual allegations in Paragraph 37 and states that Paragraph 37 contains arguments, opinions and legal conclusions that require no response.

38. Fox admits that “organizations filed amicus briefs in the Second Circuit and the Ninth Circuit appeal in support of Aereo and FilmOn X, respectively.” Fox is otherwise without sufficient knowledge or information to form a belief as to the truth of parts of this paragraph, denies all the other factual

allegations in this paragraph, and to the extent that this paragraph contains arguments, opinions and legal conclusions, they require no response.

39. Fox is without sufficient knowledge or information to form a belief as to the truth of parts of this paragraph, and states that this paragraph contains arguments, opinions and legal conclusions that require no response.

40. Fox admits that a split panel of the Second Circuit affirmed the district court's denial of a preliminary injunction in the *Aereo* case, with a dissent filed by The Honorable Denny Chin.

41. As the majority of the purported factual allegations in Paragraph 41 pertain to CBS, and not to Fox, Fox is without sufficient knowledge or information to form a belief as to the truth of parts of this paragraph. Fox denies all the other factual allegations in Paragraph 41 and states that Paragraph 41 contains arguments, opinions and legal conclusions that require no response.

42. Fox admits that its complaint against Defendants alleges copyright infringement claims and seeks injunctive relief and damages. Fox denies all other factual allegations in Paragraph 42.

43. As the majority of the purported factual allegations in Paragraph 43 pertain to CBS, and not to Fox, Fox is without sufficient knowledge or information to form a belief as to the truth of parts of this paragraph. Fox denies all the other

factual allegations in Paragraph 43 and states that Paragraph 43 contains arguments, opinions and legal conclusions that require no response.

44. Fox incorporates paragraphs 1-43 as if set forth fully herein.

45. Fox admits that it contends FilmOnX is engaged in copyright infringement. Fox otherwise states that Paragraph 45 contains arguments, opinions and legal conclusions that require no response.

PRAYER

Wherefore, Fox prays as follows:

1. That Defendants take nothing by reason of their Counterclaim, and that judgment be rendered in favor of Fox;
2. That Fox be awarded its costs of suit incurred in defense of Defendants' Counterclaim, including, but not limited to, Fox's attorneys' fees; and
3. For such other relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

Pursuant to Rule 8(c) of the Federal rules of Civil Procedure, Fox further pleads the following separate and additional defenses. By pleading these defenses, Fox does not in any way agree or concede that it has the burden of proof or

persuasion on any of these issues. Fox reserves the right to assert such additional affirmative defenses as discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

(Failure to State A Claim)

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

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

The Counterclaim is barred, in whole or in part, based on the principles of estoppel.

THIRD AFFIRMATIVE DEFENSE

(Laches)

The Counterclaim is barred, in whole or in part, based on the principles of laches.

FOURTH AFFIRMATIVE DEFENSE

(Failure to State A Claim)

The Counterclaim is barred, in whole or in part, based on the principles of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

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

ADDITIONAL AFFIRMATIVE DEFENSES

(Subsequently Discovered Defense)

Fox 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.

Dated: July 18, 2013

Respectfully submitted

By: /s/ Paul M. Smith
JENNER & BLOCK LLP

Paul M. Smith (D.C. Bar No. 358870)
psmith@jenner.com
1099 New York Avenue NW
Suite 900
Washington, DC 20001
Telephone: (202) 639-6000
Facsimile: (202) 639-6066

Richard L. Stone (admitted *pro hac vice*)
rstone@jenner.com
Julie A. Shepard (admitted *pro hac vice*)
jshepard@jenner.com
Amy M. Gallegos (*pro hac vice* application to be filed)
agallegos@jenner.com
633 West 5th Street, Suite 3600
Los Angeles, CA 90071
Telephone: (213) 239-5100
Facsimile: (213) 239-5199

Attorneys for *Plaintiffs Fox Television Stations, Inc., Twentieth Century Fox Film Corp., and Fox Broadcasting Company*