

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-23291-CIV-COOKE/BANDSTRA

ESYS LATIN AMERICA, INC.,and
ESYS TECHNOLOGIES PTE. LTD.

Plaintiffs,

vs.

AUTOMATTIC, INC.

Defendant.

**DEFENDANT'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT, AND COUNTERCLAIM**

Defendant, Automattic, Inc. ("Automattic"), hereby submits this Answer and Affirmative Defenses to Plaintiff's Complaint, and Counterclaim, and states and alleges as follows:

ANSWER

1. Denies for want of knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in paragraph 1 of the Complaint.
2. Denies for want of knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in paragraph 2 of the Complaint.
3. Admits that it maintains offices in San Francisco California, and a registered agent in Delaware, but denies each and every other allegation set forth in paragraph 3.
4. Admits that this Court has subject matter jurisdiction over this dispute, but denies each and every other allegation set forth in paragraph 4 of the Complaint.
5. Denies each and every allegation set forth in paragraph 5 of the Complaint.
6. Denies each and every allegation set forth in paragraph 6 of the Complaint.

7. Denies for want of knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in paragraph 7 of the Complaint.

8. Admits that Automattic owns “WordPress.com” which provides an interactive computer service and blogging platform, but denies each and every other allegation set forth in paragraph 8 of the Complaint.

9. Denies each and every allegation set forth in paragraph 9 of the Complaint.

10. States that WordPress.com provides an interactive computer service for third party users to create their own blogs which are hosted on the site, and denies each and every allegation set forth in paragraph 10 of the Complaint.

11. States that WordPress.com provides an interactive computer service for third party users to create their own blogs which are hosted on the site, and denies each and every allegation set forth in paragraph 11 of the Complaint.

12. States that WordPress.com provides an interactive computer service for third party users to create their own blogs which are hosted on the site, and denies each and every allegation set forth in paragraph 12 of the Complaint.

13. Denies that Automattic has any involvement in either the third party user’s work creating the blogs or their content, and denies each and every allegation set forth in paragraph 13 of the Complaint.

14. Denies that Automattic has any involvement in either the user’s work creating the blogs or their content, including the blogs referenced in the Complaint, and denies each and every allegation set forth in paragraph 14 of the Complaint.

15. Denies that Automattic has any involvement in either the third party user's work creating the blogs or their content, and denies each and every allegation set forth in paragraph 15 of the Complaint.

16. States that a complaint procedure is described at WordPress.com/complaints, but there is no record of receiving any communication via the complaint procedure with respect to the blogs referenced in the Complaint; and denies each and every allegation set forth in paragraph 16 of the Complaint.

17. States that all policies and procedures are accurately described at WordPress.com, and denies each and every other allegation set forth in paragraph 17 of the Complaint.

18. Denies that Automattic has any involvement in either the third party user's work in creating the blogs or their content, and denies each and every other allegation set forth in paragraph 18 of the Complaint.

19. Denies for want of knowledge or information sufficient to form a belief as to the truth or accuracy of each and every allegation set forth in paragraph 19 of the Complaint.

20. Admits that certain editorial functions may be implemented at Automattic's sole discretion, and denies each and every other allegation set forth in paragraph 20 of the Complaint.

21. Denies each and every allegation set forth in paragraph 21 of the Complaint.

22. Denies each and every allegation set forth in paragraph 22 of the Complaint.

23. Denies each and every allegation set forth in paragraph 23 of the Complaint.

24. Denies each and every allegation set forth in paragraph 24 of the Complaint.

25. Repeats the responses to paragraphs 1 through 24, above, as if fully restated in responding to the allegations incorporated in paragraph 25 of the Complaint.

26. Denies each and every allegation set forth in Paragraph 26 of the Complaint.

27. Denies each and every allegation set forth in paragraph 27 of the Complaint.
28. Denies each and every allegation set forth in paragraph 28 of the Complaint.
29. Repeats the responses to paragraphs 1 through 28, above, as if fully restated in responding to the allegations incorporated in paragraph 29 of the Complaint.
30. Denies for want of knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of each and every allegation set forth in paragraph 30 of the Complaint.
31. Denies each and every allegation set forth in paragraph 31 of the Complaint.
32. Denies each and every allegation set forth in paragraph 32 of the Complaint.
33. Repeats the responses to paragraphs 1 through 32, above, as if fully restated in responding to the allegations incorporated in paragraph 33 of the Complaint.
34. Denies each and every allegation set forth in paragraph 34 of the Complaint.
35. Repeats the responses to paragraphs 1 through 34, above, as if fully restated in responding to the allegations incorporated in paragraph 35 of the Complaint.
36. Denies each and every allegation set forth in paragraph 36 of the Complaint.
37. Denies each and every allegation in the Complaint not admitted, denied, or otherwise fully addressed above.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Since Automattic is a provider of an interactive computer service and has no involvement in either the third party user's work creating the blogs or their content, including the blogs referenced in the Complaint, this Court lacks personal jurisdiction over Automattic with respect to claims asserted against it in this action.

Second Affirmative Defense

Venue is improper in the United States District Court for the Southern District of Florida for the claims asserted with the Complaint.

Third Affirmative Defense

Automattic provides an interactive computer service. Thus, under §230 of the Communication Decency Act of 1996, 47 U.S.C. §230, Automattic has a statutory immunity defense to each of the claims asserted in the Complaint.

Fourth Affirmative Defense

The Complaint fails to state a claim upon which relief may be granted because there is a complete failure to allege sufficient facts to support a legally cognizable claim that is plausible on its face. Instead, the Complaint merely offers labels and conclusions with a formal recitation of the elements of a cause of action, but fails to show that Plaintiffs are entitled to any relief.

Prayer For Relief

WHEREFORE, Defendant, Automattic, Inc., demands judgment that the Complaint be dismissed, with prejudice, and that Plaintiffs go hence without day; that costs and attorneys' fees be taxed against Plaintiffs; and for such other and further relief as may be just and appropriate under the circumstances.

COUNTERCLAIM

Jurisdiction And Venue

1. This Court has subject matter jurisdiction over this Counterclaim pursuant to 28.U.S.C. §1332, as there is complete diversity of citizenship between the parties and the amount controversy exceeds the sum of \$75,000.00, exclusive of interest and cost, and pursuant to 28 U.S.C. §1367 as the claims in the Counterclaim are so related to the claims in Plaintiff's

Complaint that they form part of the same case or controversy under Article III of the United States Constitution.

2. Venue is proper under 28 U.S.C. §1391(a)(1) in (3) in the United States District Court for the Southern District of Florida.

The Parties

1. Automattic, Inc. (“Automattic”) is a corporation formed under the laws of the State of Delaware, and maintains its principal place of business in San Francisco, California.

2. Automattic owns “WordPress.com” which provides an interactive computer service and is one of the most popular blogging platforms.

3. eSys Latin America, Inc. (“eSys Latin”) is registered as a Florida for profit corporation with its principal address in Miami-Dade County, Florida.

4. eSys Technologies, Pte. Ltd. (“eSys Technologies”) claims to be a private limited liability company, organized under and subject to the laws of Singapore, which conducts business in Florida through an affiliate, eSys Latin.

Nature Of Dispute

5. In this lawsuit, eSys Latin America, Inc. and eSys Technologies claim that:

(a) On or about April 4, 2009, they brought an action against WordPress.com and several of its representatives in the court of civil judge (SR. DVN) Chandigarh, India, to enjoin the publication of defamatory materials which were published prior to the defamatory statements identified in this action;

(b) On April 23, 2009, the Civil Court entered a temporary restraining order against the individuals named in the suite form “further publishing the

defamatory material,” and a copy of the putative order is attached as Exhibit “1” to this Counterclaim; and

(c) WordPress.com is in contempt of the order by choosing “to ignore the Court Proceedings.”

6. In this action, ESys Latin and eSys Technologies also allege that a letter dated August 10, 2009, was sent by counsel for eSys Technologies to WordPress. com, stating that “the punitive Injunction Order earlier passed by the Court continues and in the event any objectionable text regarding our client is published at your end, the same shall amount to contempt of Court orders, punishable with imprisonment.” A copy of the putative August 10, 2009, letter is attached as Exhibit “2” to this Counterclaim.

7. In this action, Esys Latin and eSys Technologies further claim that WordPress.com has ignored the August 10, 2009, letter and the order by subsequently publishing other allegedly defamatory statements.

8. Automattic was never properly served with papers for any legal proceedings commenced in India, and was not provided with notice or any meaningful opportunity to defend itself.

9. Automattic owns WordPress.com, which is the provider of an interactive computer service and blogging platform, and is not the information content provider with respect to the blogs which are the subject of the Complaint.

10. Automattic has no involvement with the content of the blogs posted on WordPress.com’s blogging platform, as all content is created solely by third party users.

COUNT I
(Declaratory Relief)

11. Automattic repeats, with the same force and effect, as if fully restated, the allegations set forth in Paragraphs 1 through 10, inclusive, of the Counterclaim.

12. This is an action by Automattic against eSys Latin and eSys Technologies for declaratory relief, pursuant to 28 U.S.C. §201(a), involving a dispute within the jurisdiction of the Court.

13. There is a substantial controversy between the parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

14. This is a case of actual controversy within the jurisdiction of this Court, which currently exists between Automattic and eSys Latin and eSys Technologies, with respect to the validity and enforceability of the putative foreign decree attached as Exhibit “1” to this Counterclaim.

15. Specifically, Automattic seeks a declaration whether the foreign decree is void, *ab initio*, because: (i) Automattic was denied fundamental due process and the opportunity to be heard and defend, (ii) enforcement of the foreign decree would offend the public policy expressed in §230 of the Communication Decency Act 1996; and (iii) recognizing the foreign decree would be inimical to the interests of the United States because Congress intended §230 of the Communication Decency Act of 1996 to displace and supersede the laws of other states.

16. A declaration of the rights of the parties with respect to the validity and enforceability of the foreign decree will serve the interests of justice.

Prayer For Relief

WHEREFORE, Defendant, Automattic, Inc., requests this Court to declare that the punitive order is unenforceable and void, *ab initio*, and to render such other and further relief as may be just and appropriate.

Reservation Of Rights

Defendant, Automattic, Inc., hereby reserves the right, upon completion of investigation and discovery, to assert such additional defenses or brings such claims as may be just and proper under the circumstances and as may be permitted by the Court.

Respectfully submitted this 15th day of February, 2011.

**BUCKINGHAM, DOOLITTLE & BURROUGHS,
LLP**

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2011, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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SERVICE LIST

**ESYS LATIN AMERICA, INC., and ESYS TECHNOLOGIES PTE. LTD., Plaintiffs,
v. AUTOMATTIC, INC., Defendant
Case No. 10-23291-CIV*Cooke/Bandstra
United States District Court
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