

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

VOGUE TYRE & RUBBER COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 14 C 5839
)	
FERNANDO BOLO MENDEZ,)	
)	
Defendant.)	

MEMORANDUM ORDER

Fernando Bolo Mendez ("Mendez") has filed his Answer, coupled with an affirmative defense ("AD"), to the Complaint brought against him by Vogue Tyre & Rubber Company ("Vogue"), charging him with trademark infringement and asserting other related intellectual property claims. This memorandum order is issued sua sponte because of some problematic aspects of that responsive pleading.

To begin with, Answer ¶ 4's attempted invocation of the Fed. R. Civ. P. ("Rule") 8(b)(5) disclaimer provision is flawed because it omits an essential part of that disclaimer: Mendez' inability to form a belief as to the truth of Vogue's allegations. That apart, that paragraph and Answer ¶¶ 7 through 11 and 24 (each of which does contain the necessary disclaimer of "belief") are separately flawed by following the disclaimer or attempted disclaimer language with "and therefore denies the same." But it is of course oxymoronic for a party to assert (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation, then proceed to deny it. Because such a denial is at odds with the pleader's obligations under Rule 11(b), the quoted language is stricken from each of those paragraphs of the Answer.

As for Mendez' purported AD, it simply says without support that the "Complaint is barred, in whole or in part, by the doctrine of laches." Although "laches" is part of the laundry list of potential ADs set out in Rule 8(c), that generic assertion provides no clue as to the basis for Mendez' contention. Federal practice operates under the principle of notice pleading rather than fact pleading, and that principle applies to defendants and plaintiffs alike. Hence Mendez' AD is stricken without prejudice, although it may be reasserted on an appropriately fleshed-out basis.



Milton I. Shadur
Senior United States District Judge

Date: October 27, 2014