

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

STELOR PRODUCTIONS, INC., )  
a Delaware corporation, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case Number: 1:05-CV-0354-DFH-TAB  
 )  
 )  
 OOGLES N GOOGLES, an Indiana )  
 corporation; KEVIN MENDELL, an )  
 individual; DANYA MENDELL, an )  
 individual; and X, Y, Z CORPORATIONS, )  
 )  
 Defendants. )

**ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES AND JURY DEMAND**

Come now the Defendants, Oogles N Googles, Kevin Mendell, Danya Mendell, and X, Y, and Z Corporations (collectively referred to as “Oogles N Googles”), by counsel, and responds to Plaintiff’s Complaint for (1) Federal Trademark Infringement; (2) Unfair Competition; and (3) Dilution as follows:

1. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 1.

2. Defendants, Oogles N Googles, admit the allegations found in Plaintiff's Complaint in Paragraph 2.

3. Defendants, Oogles N Googles, admit that Kevin Mendell is an individual residing in Indianapolis but denies generally that he is an owner of Oogles, rather he is a shareholder of Oogles, as alleged in Plaintiff's Complaint in Paragraph 3.

4. Defendants, Oogles N Googles, admit that Danya Mendell is an individual residing in Indianapolis but denies generally that he is an owner of Oogles, rather she is a shareholder of Oogles and is married to Kevin Mendell, as alleged in Plaintiff's Complaint in Paragraph 4.

5. Defendants, Oogles N Googles, deny the overbroad and general allegations found in Plaintiff's Complaint in Paragraph 5.

6. Defendants, Oogles N Googles, admit that it has franchisees but denies all other allegations found in Plaintiff's Complaint in Paragraph 6.

7. Defendants, Oogles N Googles, admit the allegations found in Plaintiff's Complaint in Paragraph 7.

8. Defendants, Oogles N Googles, admit subject matter jurisdiction and diversity but denies that the amount in controversy exceeds \$75,000.00 as found in Plaintiff's Complaint in Paragraph 8.

9. Defendants, Oogles N Googles, admits the allegations found in Plaintiff's Complaint in Paragraph 9.

10. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 10.

11. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 11.

12. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 12.

13. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 13.

14. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 14.

15. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 15.

16. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 16.

17. Defendants, Oogles N Googles, admit that it provides party services but denies that those services are directed exclusively to young children as found in Plaintiff's Complaint in Paragraph 17.

18. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 18.

19. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 19.

20. Defendants, Oogles N Googles, admits the existence and ownership of the website "ooglesngogles.com" but denies the remaining allegations found in Plaintiff's Complaint in Paragraph 20.

21. Defendants, Oogles N Googles, admit the allegations found in Plaintiff's Complaint in Paragraph 21.

22. Defendants, Oogles N Googles, admits to having franchisees, but denies the remaining allegations found in Plaintiff's Complaint in Paragraph 22.

23. Defendants, Oogles N Googles, admits to having franchisees, but denies the remaining allegations found in Plaintiff's Complaint in Paragraph 23.

24. Defendants, Oogles N Googles, denies the allegations found in Plaintiff's Complaint in Paragraph 24.

25. Defendants, Oogles N Googles, denies the claims of joint and several liability found in Plaintiff's Complaint in Paragraph 25.

26. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in

Paragraph 26.

27. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 27.

28. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 28.

29. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 29.

30. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 30.

31. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 31.

32. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 32.

33. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 33.

34. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 34.

35. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 35.

36. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 36.

37. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in

Paragraph 37.

38. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 38.

39. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 39.

40. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 40.

41. Defendants, Oogles N Googles, are without sufficient information to either admit or deny the allegations found in Plaintiff's Complaint in Paragraph 41.

42. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 42.

43. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 43.

44. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 44.

45. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 45.

46. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 46.

47. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 47.

48. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in

Paragraph 48.

49. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 49.

50. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 50.

51. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 51.

52. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 52.

53. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraph 53.

54. Defendants, Oogles N Googles, deny the allegations found in Plaintiff's Complaint in Paragraphs 54 through, and including, Paragraph 64 (titled Prayer for Judgment).

WHEREFORE, Defendants, Oogles N Googles, Kevin Mendell, Danya Mendell, and X, Y, and Z Corporations, pray that Plaintiff take nothing by way of their Complaint and for all relief just and proper in the premises.

#### **AFFIRMATIVE DEFENSES**

55. Plaintiff's Complaint fails to state claims upon which relief can be granted;

56. Plaintiff's claims are barred because there is no likelihood of confusion;

57. Plaintiff's claims are barred because there is no false designation or description;

58. Plaintiff's claims are barred by non-use regarding alleged goods and services;

59. Plaintiff's claims are barred because Defendants have done nothing to mislead, deceive or

confusing consumers or to generate likelihood of confusion;

60. Plaintiff's claims are barred by the doctrine of unclean hands;
61. Plaintiff's claims are barred by fair use;
62. Plaintiffs' claims are barred by laches and estoppel;
63. Plaintiff's claims are barred by the fact that Plaintiff's mark is not famous;
64. Plaintiff's claims are barred by the fact that even if famous, Defendant's use of the mark preceeded such infamy;
65. Plaintiff's claims are barred because no dilution has occurred;
66. Plaintiff's claims are barred because they have suffered no damages;
67. Defendants reserve the right to add additional affirmative defenses relevant to this litigation or that may arise through the course of this litigation.

**JURY DEMAND**

Defendants pray that all matters triable before a jury be heard as such.

COHEN GARELICK & GLAZIER

By: s/ Bryan S. Redding  
Bryan S. Redding, #18127-49  
Attorneys for Defendants

Bryan S. Redding  
COHEN GARELICK & GLAZIER  
8888 Keystone Crossing, Suite 800  
Indianapolis, Indiana 46240  
(317) 573-8888

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was served upon John David Hoover, Hoover Hull Baker & Heath, LLP, 111 Monument Circle, Suite 4400, Post Office Box 44989, Indianapolis, Indiana 44989 and Kevin C. Kaplan, Burlington, Weil, Schwiep, Kaplan & Blonsky, P.A. 2699 S. Bayshore Drive -PH, Miami, Florida 33133 by depositing a copy of same in the United States Mail, postage prepaid, this 4 day of May, 2005.

s/ Bryan S. Redding  
Bryan S. Redding

Bryan S. Redding  
COHEN GARELICK & GLAZIER  
8888 Keystone Crossing, Suite 800  
Indianapolis, Indiana 46240  
(317) 573-8888