

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

STELOR PRODUCTIONS, INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
OOGLES N GOOGLES, an Indiana)
corporation; KEVIN MENDELL, an)
individual; DANYA MENDELL, an)
individual; and X, Y, Z CORPORATIONS,)
)
Defendants.)

Case Number: 1:05-CV-0354-DFH-TAB

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 "ooglesngoogles.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 preceded 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
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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

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