

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

STELOR PRODUCTIONS, LLC)	
)	
)	
Plaintiff/Counterdefendant)	
)	Case Number: 1:05-CV-0354-DFH-TAB
v.)	
)	
OOGLES N GOOGLES FRANCHISING, LLC,)	
<i>et. al.</i>)	
)	
Defendant/Counterclaimant)	
)	
*****)	
)	
OOGLES N GOOGLES FRANCHISING, LLC)	
)	
v.)	
)	
)	
STELOR PRODUCTIONS, LLC and)	
STEVEN A. ESRIG)	

AMENDED COUNTERCLAIM

Oogles n Googles Franchising, LLC, for its Amended Counterclaim against Stelor Productions, LLC., and Steven A. Esrig, states as follows:

1. Plaintiff Stelor Productions, LLC (formerly Stelor Productions, Inc.) alleges that the Defendants have infringed on Plaintiff's trademarks, more specifically a Googles word and design mark, an Oogle word mark, and Oggle word mark, and an Iggle word mark. (See Plaintiff's Second Amended Complaint, Doc. 83-2).

EXHIBIT A

2 The Googles word and design mark issued on August 12, 1997 and was previously owned by The Googles Children's Workshop, Inc., a New Jersey corporation. (Exh. 1).

3. The Googles Children's Workshop went defunct and was dissolved without assets on October 22, 1997. (Exh. 2). Thereafter, at the direction of Steven A. Esrig, attorney Ira Edell of Rockville, Maryland filed a combined Declaration of Use and Incontestability under Sections 8 and 15 of the Trademark Act on or about March 25, 2003. Edell attested that The Googles Children's Workshop, Inc. was located and doing business in Potomac, Maryland on that date and that the Googles word and design mark was in use and had been in continuous use in interstate commerce for more than five (5) consecutive years from June, 1996. (Exh. 3).

4. The renewal for the registration of the Googles word and design mark filed on behalf of The Googles Children's Workshop, Inc. a non-existent corporation, was a misrepresentation to the U. S. Patent and Trademark Office.

5, The filing of the trademark registration renewal for the Googles word and design mark was a fraud on the U.S. Patent and Trademark Office.

6. The Googles word and design mark was abandoned prior to this fraudulent filing.

7. At all times relevant to the renewal of the Googles word and design mark, Edell was acting at the direction of and as the agent of Esrig. Esrig is therefore legally responsible as the principal for Edell's acts and misrepresentations.

8. Plaintiff also alleges infringement of the word marks Oogle, Ogggle, and Iggle.

9. Plaintiff and other purported prior owners or licensees of the Oogle, Oggle, and Iggle word marks have not used and did not continuously use those words in commerce as identifiers of a source of goods or services.

10. The words Oogle, Oggle, and Iggle are not trademarks.

11. Alternatively, the Oogle, Iggle, and Oggle word marks have been abandoned by Stelor Productions, LLC and/or purported prior owners or licensees of these alleged trademarks.

12. The instant litigation was initiated by Stelor Productions, Inc. at the direction of Steven A. Esrig.

13. Esrig knew or should have known with the exercise of ordinary diligence that Stelor Productions, LLC has no trademark rights in the words Oogle, Oggle, and Iggle, and even if it did, Esrig knew or should have known in the exercise of ordinary diligence that the Oogles n Googles name and trademark does not infringe Stelor Productions, LLC's alleged trademarks.

14. The conduct of Esrig and Stelor Productions, LLC is and was frivolous, intended for harassment and this is an exceptional case under the Trademark Act which warrants an award of attorney's fees and costs to Defendants and against Steven A. Esrig and Stelor Productions, LLC.

Wherefore, Oogles n Googles Franchising LLC, by counsel, prays for a declaratory judgment that the Googles word and design mark, the Oogle word mark, the Oggle word mark, and the Iggle word mark are invalid, for an order directing the U. S. Patent and Trademark Office to cancel any registrations for these marks, for attorney's fees and costs pursuant to the Federal Trademark Act and for frivolous litigation, for a judgment that Stelor

Productions, LLC and Steven A. Esrig are jointly and severally liable to Defendants for attorney's fees and costs, and for all other just and proper relief.

Respectfully submitted by:

/s/ Stephen L. Vaughan
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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2008, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Stephen L. Vaughan
Stephen L. Vaughan, #2294-49