

STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

STELOR PRODUCTIONS, LLC )

Plaintiff )

v. )

GOOGLES N GOOGLES FRANCHISING LLC )

*et. al.* )

Defendants. )

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

Jury Demanded

**MARYCLAIRE BALKO'S ANSWER TO PLAINTIFF'S  
THIRD AMENDED COMPLAINT**

Maryclaire Balko, by counsel, for her Answer to Plaintiff's Third Amended Complaint states as follows:

**FIRST DEFENSE**

1. Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 1.
2. Paragraph 2 makes no allegations against Maryclaire Balko. To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 2.
3. Paragraph 3 makes no allegations against Maryclaire Balko. To the extent an answer is required to this paragraph, Maryclaire Balko denies said allegations.
4. Paragraph 4 makes no allegations against Maryclaire Balko. To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to

form a belief as to the truth of, and therefore denies the allegations of paragraph 4.

5. Paragraph 5 makes no allegations against Maryclaire Balko. To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 5.

6. Maryclaire Balko denies paragraph 6.

7. Paragraph 7 makes no allegations against Maryclaire Balko. To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 7.

8. Paragraph 8 makes no allegations against Maryclaire Balko. To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 8.

9. Maryclaire Balko denies paragraph 9.

10. Maryclaire Balko admits that Plaintiff makes claims for trademark infringement, unfair competition, and dilution, but denies liability for such claims of paragraph 10.

11. Maryclaire Balko admits this Court has subject matter jurisdiction but denies any remaining allegations in paragraph 11.

12. Maryclaire Balko admits venue is proper in this district, but denies any remaining allegations of paragraph 12.

13. Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 13.

14. Maryclaire Balko denies the allegations of paragraph 14.

15. Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 15.

16. Maryclaire Balko denies the allegations of paragraph 16.
17. Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 17.
18. Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 18.
19. Maryclaire Balko denies the allegations of paragraph 19.
20. Paragraph 20 makes no allegations against Maryclaire Balko To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 20.
21. Maryclaire Balko denies paragraph 21.
22. Maryclaire Balko denies paragraph 22.
23. Maryclaire Balko denies the allegations of paragraph 23.
24. Paragraph 24 makes no allegations against Maryclaire Balko To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 24.
25. Paragraph 25 makes no allegations against Maryclaire Balko To the extent an answer is required to this paragraph, Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 25.
26. Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 26.
27. Maryclaire Balko denies of paragraph 27.
28. Maryclaire Balko denies paragraph 28.
29. Maryclaire Balko denies paragraph 29.

30. Maryclaire Balko denies paragraph 30.
31. Maryclaire Balko is without sufficient knowledge to form a belief as to the truth of, and therefore denies the allegations of paragraph 31.
32. Maryclaire Balko denies paragraph 32.
33. Maryclaire Balko denies paragraph 33.
- 34 - 43. Maryclaire Balko denies paragraphs 34 through 43.
- 44 – 49. Maryclaire Balko denies paragraphs 44 through 49.
- 50 – 54. Maryclaire Balko denies paragraphs 50 through 54.
- 55 – 57. Maryclaire Balko denies paragraphs 55 through 57.
- 58 – 69. Paragraphs 58 through 69 comprise a prayer for judgment by the Plaintiff. To the extent that Maryclaire Balko is required to admit or deny such a prayer for judgment, she denies paragraphs 58 through 69.

### **SECOND DEFENSE**

Plaintiff's Third Amended Complaint fails to state claim upon which relief can be granted.

### **THIRD DEFENSE**

The Oogles n Googles name and trademark do not infringe Plaintiff's alleged trademarks because there is no likelihood of confusion between the Oogles n Googles name and Plaintiff's alleged trademarks or between Oogles n Googles services and any goods or services allegedly offered for sale by Plaintiff.

#### **FOURTH DEFENSE**

Maryclaire Balko has made no representations whatsoever regarding Plaintiff's alleged goods and services, nor has she falsely represented any facts pertaining the origin, sponsorship, approval, quality, characteristics, or geographic origin of Oogles n Googles services.

#### **FIFTH DEFENSE**

Plaintiff's claims are barred because Plaintiff and prior alleged owners or licensees of the alleged trademarks have not used such marks in commerce as trademarks to identify the source or origin of its alleged goods or services.

#### **SIXTH DEFENSE**

Plaintiff's claims are barred because Maryclaire Balko has done nothing to mislead, deceive or confuse consumers or to generate likelihood of confusion as to the source or origin of Oogles n Googles' services, or the source or origin of Plaintiff's alleged goods and services.

#### **SEVENTH DEFENSE**

Subject to discovery, Plaintiff's claims are barred by doctrine of unclean hands.

### **EIGHTH DEFENSE**

Subject to discovery, Plaintiff's claims are barred by fair use.

### **NINTH DEFENSE**

Subject to discovery, Plaintiff's claims are barred by laches and/or statutes of limitations.

### **TENTH DEFENSE**

Plaintiff's alleged trademarks are not famous except to the extent the Google, Inc., has made the word "Google" famous; Plaintiff has no right to make claims based upon the fame of Google, Inc.'s trademarks.

### **ELEVENTH DEFENSE**

Oogles n Googles use of its name and trademark in commerce preceded any alleged fame of Plaintiff's alleged trademarks.

### **TWELFTH DEFENSE**

Plaintiff's alleged trademarks are not distinctive or famous and in any case no dilution has occurred to Plaintiff's alleged trademarks irrespective of their lack of distinctiveness or fame.

### **THIRTEENTH DEFENSE**

Plaintiff's claims are barred because Plaintiff has incurred no damages.

**FOURTEENTH DEFENSE**

Subject to discovery, Plaintiff's claims are barred because of waiver, acquiescence and/or estoppel.

**FIFTEENTH DEFENSE**

Plaintiff and/or other alleged predecessor owners of the alleged trademarks have abandoned the alleged trademarks.

**SIXTEENTH DEFENSE**

Subject to discovery, Plaintiff has failed to mitigate its damages.

**SEVENTEENTH DEFENSE**

Plaintiff and/or the prior alleged owner(s) of the alleged trademarks committed fraud on the U.S. Patent and Trademark Office.

**EIGHTEENTH DEFENSE**

Plaintiff does not have a federal registration for the word "googles" as a trademark, nor does Plaintiff have any common law or other trademark rights to the word "googles".

**NINETEENTH DEFENSE**

Maryclaire Balko had no knowledge or notice of Plaintiff, Plaintiff's alleged goods and services, or Plaintiff's alleged trademarks prior to being notified of Plaintiff's lawsuit.

Wherefore, Maryclaire Balko prays for judgment in her favor, costs of this action including attorney fees, and all other just and proper relief.

**JURY DEMAND**

Maryclaire Balko demands trial by jury.

Respectfully submitted by:

/s/ Stephen L. Vaughan  
Stephen L. Vaughan, #2294-49  
INDIANO VAUGHAN LLP  
One N. Pennsylvania Street, Suite 1300  
Indianapolis, IN 46204  
Telephone: (317) 822-0033  
Fax: (317) 822-0055  
E-mail: [Steve@IPLawIndiana.com](mailto:Steve@IPLawIndiana.com)



### **CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2008, a copy of the foregoing Maryclaire Balko's Answer to Plaintiff's Third Amended Complaint was filed electronically on all counsel of record. Notice of this filing will be sent to all counsel 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  
INDIANO VAUGHAN LLP  
One N. Pennsylvania Street, Suite 1300  
Indianapolis, IN 46204  
E-mail: [Steve@IPLawIndiana.com](mailto:Steve@IPLawIndiana.com)