

UNITED 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

**LARRY AND KAREN BERNIER'S ANSWER TO PLAINTIFF'S THIRD
AMENDED COMPLAINT**

Larry and Karen Bernier, by counsel, for their Answer to Plaintiff's Third Amended
Complaint states as follows:

FIRST DEFENSE

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

an answer is required to this paragraph, Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 4.

5. Paragraph 5 makes no allegations against Larry and Karen Bernier. To the extent an answer is required to this paragraph, Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 5.

6. Larry and Karen Bernier deny paragraph 6.

7. Paragraph 7 makes no allegations against Larry and Karen Bernier. To the extent an answer is required to this paragraph, Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 7.

8. Paragraph 8 makes no allegations against Larry and Karen Bernier. To the extent an answer is required to this paragraph, Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 8.

9. Larry and Karen Bernier deny paragraph 9.

10. Larry and Karen Bernier admit that Plaintiff makes claims for trademark infringement, unfair competition, and dilution, but deny liability for such claims of paragraph 10.

11. Larry and Karen Bernier admit this Court has subject matter jurisdiction but deny any remaining allegations in paragraph 11.

12. Larry and Karen Bernier admit venue is proper in this district, but deny any

remaining allegations of paragraph 12.

13. Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 13.

14. Larry and Karen Bernier deny the allegations of paragraph 14.

15. Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 15.

16. Larry and Karen Bernier deny the allegations of paragraph 16.

17. Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 17.

18. Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 18.

19. Larry and Karen Bernier deny the allegations of paragraph 19.

20. Paragraph 20 makes no allegations against Larry and Karen Bernier. To the extent an answer is required to this paragraph, Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 20.

21. Larry and Karen Bernier deny paragraph 21.

22. Larry and Karen Bernier deny paragraph 22.

23. Larry and Karen Bernier deny the allegations of paragraph 23.

24. Paragraph 24 makes no allegations against Larry and Karen Bernier. To the extent an answer is required to this paragraph, Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 24.

25. Paragraph 25 makes no allegations against Larry and Karen Bernier. To the extent an answer is required to this paragraph, Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 25.

26. Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 26.

27. Larry and Karen Bernier deny the allegations of paragraph 27.

28. Larry and Karen Bernier deny paragraph 28.

29. Larry and Karen Bernier deny paragraph 29.

30. Larry and Karen Bernier deny paragraph 30.

31. Larry and Karen Bernier are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 31.

32. Larry and Karen Bernier deny paragraph 32.

33. Larry and Karen Bernier deny paragraph 33.

34 - 43. Larry and Karen Bernier deny paragraphs 34 through 43.

44 – 49. Larry and Karen Bernier deny paragraphs 44 through 49.

50 – 54. Larry and Karen Bernier deny paragraphs 50 through 54.

55 – 57. Larry and Karen Bernier deny paragraphs 55 through 57.

58 – 69. Paragraphs 58 through 69 comprise a prayer for judgment by the Plaintiff. To the extent that Larry and Karen Bernier are required to admit or deny such a prayer for judgment, they deny 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

Larry and Karen Bernier have made no representations whatsoever regarding Plaintiff's alleged goods and services, nor have they falsely represented any facts pertaining the origin, sponsorship, approval, quality, characteristics, or geographic origin Oogles n Googles own 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 Larry and Karen Bernier have 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

Larry and Karen Bernier 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.

TWENTIETH DEFENSE

Process and service of process is insufficient with respect to Larry Bernier.

Wherefore, Larry and Karen Bernier pray for judgment in their favor, costs of this action including attorney fees, and all other just and proper relief.

JURY DEMAND

Larry and Karen Bernier demand trial by jury.

Respectfully submitted by:

/s/ Stephen L. Vaughan
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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2008, a copy of the foregoing Larry and Karen Bernier'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
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