

STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

STELOR PRODUCTIONS, LLC )

Plaintiff )

v. )

OOGLES N GOOGLES FRANCHISING LLC )

*et. al.* )

Defendants. )

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

Jury Demanded

**CARI OUGHTON, LINDA OUGHTON AND HEATHER GRIPKA'S ANSWER TO  
PLAINTIFF'S THIRD AMENDED COMPLAINT**

Cari Oughton, Linda Oughton and Heather Gripka, by counsel, for their Answer to Plaintiff's Third Amended Complaint states as follows:

**FIRST DEFENSE**

1. Cari Oughton, Linda Oughton and Heather Gripka 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 Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton, Linda Oughton and Heather Gripka 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 Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton,

Linda Oughton and Heather Gripka deny said allegations.

4. Paragraph 4 makes no allegations against Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton, Linda Oughton and Heather Gripka 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 Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 5.

6. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 6.

7. Paragraph 7 makes no allegations against Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton, Linda Oughton and Heather Gripka 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 Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 8.

9. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 9.

10. Cari Oughton, Linda Oughton and Heather Gripka admit that Plaintiff makes claims for trademark infringement, unfair competition, and dilution, but deny liability for such claims of paragraph 10.

11. Cari Oughton, Linda Oughton and Heather Gripka admit this Court has subject

matter jurisdiction but deny any remaining allegations in paragraph 11.

12. Cari Oughton, Linda Oughton and Heather Gripka admit venue is proper in this district, but deny any remaining allegations of paragraph 12.

13. Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 13.

14. Cari Oughton, Linda Oughton and Heather Gripka deny the allegations of paragraph 14.

15. Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 15.

16. Cari Oughton, Linda Oughton and Heather Gripka deny the allegations of paragraph 16.

17. Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 17.

18. Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 18.

19. Cari Oughton, Linda Oughton and Heather Gripka deny the allegations of paragraph 19.

20. Paragraph 20 makes no allegations against Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton,

Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 20.

21. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 21.

22. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 22.

23. Cari Oughton, Linda Oughton and Heather Gripka deny the allegations of paragraph 23.

24. Paragraph 24 makes no allegations against Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton, Linda Oughton and Heather Gripka 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 Cari Oughton, Linda Oughton and Heather Gripka. To the extent an answer is required to this paragraph, Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 25.

26. Cari Oughton, Linda Oughton and Heather Gripka are without sufficient knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 26.

27. Cari Oughton, Linda Oughton and Heather Gripka deny the allegations of paragraph 27.

28. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 28.

29. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 29.

30. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 30.

31. Cari Oughton, Linda Oughton and Heather Gripka are without sufficient

knowledge to form a belief as to the truth of, and therefore deny the allegations of paragraph 31.

32. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 32.

33. Cari Oughton, Linda Oughton and Heather Gripka deny paragraph 33.

34 - 43. Cari Oughton, Linda Oughton and Heather Gripka deny paragraphs 34 through 43.

44 – 49. Cari Oughton, Linda Oughton and Heather Gripka deny paragraphs 44 through 49.

50 – 54. Cari Oughton, Linda Oughton and Heather Gripka deny paragraphs 50 through 54.

55 – 57. Cari Oughton, Linda Oughton and Heather Gripka deny paragraphs 55 through 57.

58 – 69. Paragraphs 58 through 69 comprise a prayer for judgment by the Plaintiff. To the extent that Cari Oughton, Linda Oughton and Heather Gripka 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**

Cari Oughton, Linda Oughton and Heather Gripka 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 Cari Oughton, Linda Oughton and Heather Gripka 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**

Cari Oughton, Linda Oughton and Heather Gripka 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, Cari Oughton, Linda Oughton and Heather Gripka pray for judgment in their favor, costs of this action including attorney fees, and all other just and proper relief.

**JURY DEMAND**

Cari Oughton, Linda Oughton and Heather Gripka 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 Cari Oughton, Linda Oughton and Heather Gripka'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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