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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

STELOR PRODUCTION, INC.,

CASE NO. 04-80954-CIV-HURLEY
Magistrate Judge James M. Hopkins

Plaintiff,

v.

STEVEN A. SILVERS,

Defendant.

STEVEN A. SILVERS,

Counter-Plaintiff,

v.

STELOR PRODUCTIONS, INC.

Counter-Defendant.

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

STELOR PRODUCTIONS, INC. v. SILVERS & SILVERS et al

Doc. 287 Att. 25

Defendant, Steven A. Silvers ("Silvers"), responds to the Complaint filed by Stelor Productions, Inc. ("Stelor") and states:

ANSWER

1. In response to the allegations in paragraph 1 of the Complaint, Silvers admits that Stelor has breached the alleged two contracts. Silvers denies the remaining allegations in paragraph 1.

2. In response to the allegations in paragraph 2 of the Complaint, Silvers admits he authored a book entitled "Googles and the Planet of Goo" and that he initially had a relationship with Aurora Collection, Inc. Silvers denies the remaining allegations in paragraph 2.

provide Silvers with samples of any promotional materials to be used with the Licensed Products.

16. The License Agreement provides that Stelor may obtain trademark, copyright and domain name registrations relating to the GOOGLES Intellectual Property but, as Silvers owns such rights, Stelor is required to obtain such registrations solely in Silvers' name.

17. The License Agreement requires Stelor to obtain insurance covering potential liability from sales of Licensed Products, and provide Silvers with a certificate of such insurance.

18. Stelor is obligated under the License Agreement to provide quarterly reports to Silvers detailing Stelor's marketing and sales of the Licensed Products, including the identity of any sub-licensees, and to pay royalties to Silvers based on such sales. Stelor is also required, upon Silvers' request, to make its records available for Silvers to audit Stelor's activity.

19. Stelor is obligated, on behalf of Silvers as owner of the GOOGLES Intellectual Property, to take all steps necessary to maintain and protect the Intellectual Property against infringement by third parties, including but not limited to contesting third parties using confusingly similar trademarks and domain names.

20. Stelor has breached the License Agreement by:

a. Failing to use commercially reasonable efforts to promote, market and sell the Licensed Products. According to incomplete quarterly reports Stelor has provided (the accuracy of which has yet to be verified), Stelor has not sold a single Licensed Product, or entered into any agreements to do so in the 30 months it has had the benefits of the License Agreement.

b. Failing to sell or distribute any Licensed Products, despite Silver's having developed the process for the manufacture and production of such products.

c. Failing to include appropriate legal notices reflecting Silvers' ownership with respect to the GOOGLES Intellectual Property, Licensed Products and related promotional, packaging and advertising materials.

d. Failing to maintain the high quality of Licensed Products; for example, Stelor's prototype stuffed GOOGLES characters are of poor quality, and Stelor's illustrations of the GOOGLES characters are not true to, and do not look like the original, copyrighted versions of the characters.

e. Failing to provide Silvers with samples of Licensed Products and promotional materials used with the Licensed Products.

f. Failing to obtain registrations for the GOOGLES Intellectual Property in Silvers' name. For example, Stelor has claimed and/or obtained copyrights in its name. Stelor and Stelor's President, Steven Esrig, have also obtained as many as 19 domain name registrations with the phrase "Goo" or "GOOGLES" in their names, not Silvers' name.

g. Failing to, upon information and belief, obtain the requisite insurance or provide a certificate reflecting such insurance to Silvers.

h. Failing to provide quarterly reports to Silvers; as of this date, Stelor has yet to provide proper reports covering the second and third quarters of 2004.

i. Failing to pay royalties; while Silvers cannot verify the amount of sales and royalties due because Stelor has not provided the required reports and has refused Silvers' request for an audit, Silvers has information and belief that Stelor has offered for sale and/or sub-licensed music recordings encompassed by the GOOGLES Intellectual Property in connection with offering GOOGLES music compact discs through Apple Computer Company's I-Tunes program.

j. Failing to allow Silvers access to Stelor's books and records for purposes of auditing Stelor's activities, despite Silvers' request.

k. Failing to take reasonable steps to maintain and protect the GOOGLES Intellectual Property. For example, Stelor allowed a third party to obtain a federal trademark registration for the "Googles" mark, and failed to renew numerous domain names using the phrase "Goo," allowing third parties to claim the domain names. Stelor also allowed a third party to obtain the "Googles.org" domain name.

21. Stelor has also breached the License Agreement by acting beyond the authority granted by Silvers under the License Agreement.

a. For example, Stelor created new characters for the GOOGLES concept, and used the phrase "Goo" to name these characters, without the authorization and consent of Silvers.

b. Upon information and belief Stelor has formed affiliated companies and used the phrase "Goo" to name such companies, without Silvers' knowledge or consent. Moreover, Stelor has failed to reveal or provide any information about these affiliated companies in the required quarterly reports.

c. Stelor has also filed claims before the United States Patent and Trademark Office and ICANN's National Arbitration Forum purportedly on behalf of Silvers, and hired counsel for Silvers, without Silvers' knowledge and consent.

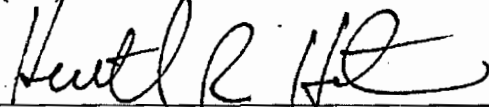
22. As a result of Stelor's breach of the License Agreement, Silvers has the right to terminate the Licensing Agreement.

WHEREFORE, Silvers requests that this Court enter judgment in his favor and against Stelor, and:

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
via first class mail this 15th day of November, 2004, on the following:

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