

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

FIREFLY DIGITAL, INC.

CIVIL ACTION NO. 10-0133

VERSUS

JUDGE MELANCON

GOOGLE, INC.

MAG. JUDGE HANNA

**ANSWER TO COUNTERCLAIM**

NOW INTO COURT, through undersigned counsel, comes plaintiff/counterclaim defendant, Firefly Digital, Inc. (“Firefly”), which files its affirmative defenses and answer in response to the Counterclaim filed by defendant/counterclaim plaintiff, Google, Inc. (“Google”), as follows:

**FIRST DEFENSE**

Google’s counterclaims fail to state a claim or cause of action against Firefly upon which relief can be granted.

**SECOND DEFENSE**

Google’s counterclaims are barred by waiver, laches, and/or estoppel.

**THIRD DEFENSE**

Google’s counterclaims are barred on grounds of unclean hands.

**FOURTH DEFENSE**

Firefly pleads and incorporates herein all of the allegations in its Complaint as a complete bar and defense to Google’s counterclaims.

**FIFTH DEFENSE**

Google is not entitled to an award of attorney’s fees, costs, and expenses.

AND NOW, Firefly denies each and every allegation of the Counterclaim unless expressly admitted herein, and further responds to the numbered paragraphs of the Counterclaim as follows:

1. Paragraph 63 of the Counterclaim re-alleges all of Google's answers and affirmative defenses set forth in paragraphs 1-62 of its answer and therefore violates Rule 10(b) of the Federal Rules of Civil Procedure that provides, "[a] party must state its claims . . . as far as practicable to a single set of circumstances." Because paragraph 63 contravenes Rule 10(b), an answer is not required; however, to the extent an answer is required, Google's answers admitting the allegations of Firefly's Complaint are admitted, and Google's answers denying, commenting on, or modifying the allegations of Firefly's Complaint as well as Google's affirmative defenses are denied.

2. The allegations contained in paragraph 64 of the Counterclaim are denied. Further answering, the online dictionary Webopedia is the best evidence of its contents.

3. The allegations contained in paragraph 65 of the Counterclaim are denied for lack of sufficient information to justify a belief therein.

4. The allegations contained in paragraph 66 of the Counterclaim are denied. Further answering, the marks GADGET and WEBSITE GADGET are source identifiers for goods and services originating with Firefly.

5. The allegation contained in paragraph 67 of the Counterclaim that "[t]hese counterclaims arise under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.*, and Louisiana's trademark laws, La. R.S. 51:211 *et seq.*" is admitted. The allegation contained in paragraph 67 of the Counterclaim that "[t]his Court has jurisdiction over the subject matter of the federal counterclaim under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121" is admitted but

only to the extent an actual controversy presently exists between the parties supporting a jurisdictional basis under 28 U.S.C. §§ 2201. The allegation contained in paragraph 67 that “[t]his Court has jurisdiction over the state law counterclaim pursuant to 28 U.S.C. § 1367, as that claim is so related to the federal claim that they form part of the same case or controversy” is admitted but only to the extent that counterclaim plaintiff’s federal claim remains pending in this action and an actual controversy presently exists between the parties supporting a jurisdictional basis under 28 U.S.C. §§ 2201. Further answering, Firefly denies that Google is entitled to the declaratory relief sought in the Counterclaim.

6. The allegation contained in paragraph 68 of the Counterclaim that “Defendant/Counterclaimant Google is a Delaware corporation with its principal place of business in Mountain View, California” is denied for lack of sufficient information to justify a belief therein. The remaining allegations contained in paragraph 68 of the Counterclaim are admitted.

7. In answer to the allegations contained in paragraph 69 of the Counterclaim, Firefly adopts and incorporates by reference its answers set forth in paragraphs 1-6 hereinabove.

8. The allegations contained in paragraph 70 of the Counterclaim that “[a] real and actual controversy exists between Firefly Digital, Inc. (“Firefly”) and Google” and “[t]he controversy is of sufficient immediacy and reality” are admitted but only to the extent an actual controversy presently exists between the parties supporting a jurisdictional basis under 28 U.S.C. §§ 2201. The remaining allegations of paragraph 70 are denied. Further answering, Firefly denies that Google is entitled to the declaratory relief sought in the Counterclaim.

9. The allegations contained in paragraph 71 of the Counterclaim are denied.

10. The allegations contained in paragraph 72 of the Counterclaim that “[p]ursuant to 15 U.S.C. § 1119, Google seeks a declaration that Firefly’s federal marks are invalid and an order that Firefly’s registrations are cancelled” are admitted. The remaining allegations contained in paragraph 72 are denied. Further answering, Firefly denies that Google is entitled to the declaratory relief sought in the Counterclaim. Firefly further answers that its federal marks are valid and enforceable against Google.

11. In answer to the allegations contained in paragraph 73 of the Counterclaim, Firefly adopts and incorporates by reference its answers set forth in paragraphs 1-10 hereinabove.

12. The allegation contained in paragraph 74 of the Counterclaim that “Firefly’s federal marks are valid” is admitted. The remaining allegations contained in paragraph 74 of the Counterclaim are denied.

13. The allegation contained in paragraph 75 of the Counterclaim that “Google seeks a declaration of non-infringement” is admitted. The remaining allegations contained in paragraph 75 are denied. Further answering, Firefly denies that Google is entitled to the declaratory relief sought in the Counterclaim.

14. In answer to the allegations contained in paragraph 76 of the Counterclaim, Firefly adopts and incorporates by reference its answers set forth in paragraphs 1-13 hereinabove.

15. The allegations contained in paragraph 77 of the Counterclaim that “[a] real and actual controversy exists between Firefly and Google” and “[t]he controversy is of sufficient immediacy and reality” are admitted but only to the extent an actual controversy presently exists between the parties supporting a jurisdictional basis under 28 U.S.C. §§ 2201. The remaining

allegations of paragraph 77 are denied. Further answering, Firefly denies that Google is entitled to the declaratory relief sought in the Counterclaim.

16. The allegations contained in paragraph 78 of the Counterclaim are denied.

17. The allegation contained in paragraph 79 of the Counterclaim that “[p]ursuant to 15 U.S.C. § 1119 and La. R.S. 51:219, Google seeks a declaration that Firefly’s state marks are invalid” is admitted. The remaining allegations contained in paragraph 79 are denied. Further answering, Firefly denies that Google is entitled to the declaratory relief sought in the Counterclaim. Firefly further answers that its state marks are valid and enforceable against Google.

18. In answer to the allegations contained in paragraph 80 of the Counterclaim, Firefly adopts and incorporates by reference its answers set forth in paragraphs 1-17 hereinabove.

19. The allegation contained in paragraph 81 of the Counterclaim that Firefly’s “state marks are valid” is admitted. The remaining allegations contained in paragraph 81 of the Counterclaim are denied.

20. The allegation contained in paragraph 82 of the Counterclaim that “Google seeks a declaration of non-infringement” is admitted. The remaining allegations contained in paragraph 82 are denied. Further answering, Firefly denies that Google is entitled to the declaratory relief sought in the Counterclaim.

21. Firefly denies that Google is entitled to any of the relief sought in its Prayer for Relief.

22. Google’s jury demand contains no factual allegations and therefore does not require an answer.

**JURY DEMAND**

23. Firefly requests a jury trial on all issues so triable herein.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff, Firefly Digital, Inc., prays for judgment in its favor and against defendant, Google, Inc., as follows:

1. For judgment dismissing Google’s Counterclaim with prejudice;
2. For all the relief sought in Firefly’s Complaint;
4. For an award of reasonable attorney’s fees under 15 U.S.C. § 1117;
5. For an award of costs and expenses; and
6. For all other general and equitable relief to which Firefly is entitled.

Respectfully submitted,

/s/ Robert L. Waddell

Robert L. Waddell (#23586)  
Blair B. Suire (#32708)  
JONES, WALKER, WAECHTER,  
POITEVENT, CARRÈRE & DENÈGRE, LLP  
600 Jefferson Street, Suite 1600  
Lafayette, Louisiana 70501  
Telephone: (337) 262-9023  
Facsimile: (337) 262-9001

ATTORNEYS FOR PLAINTIFF,  
FIREFLY DIGITAL, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading has been filed electronically using the CM/ECF System, which will send a Notice of Electronic Filing to all counsel of record, this 31<sup>st</sup> day of March, 2010.

/s/ Robert L. Waddell

Robert L. Waddell (#23586)