

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WILLIAM V. AGUIAR, III,)	
)	
Plaintiff,)	
)	
v.)	C.A. NO. 07-11673 MLW
)	
FLOYD WEBB,)	
)	
Defendant.)	
)	

**PLAINTIFF WILLIAM V. AGUIAR, III'S
ANSWER TO RESTATEMENT OF COUNTERCLAIM**

Plaintiff and Defendant-in-Counterclaim William V. Aguiar, III responds to the Restatement of Counterclaim of Defendant and Plaintiff-in-Counterclaim Floyd Webb, dated April 10, 2008, as follows:

20. This paragraph is introductory in nature and contains conclusions of law to which no response is required. To the extent a response is required, Aguiar denies such allegations.

21. This paragraph is introductory in nature and contains conclusions of law to which no response is required. To the extent a response is required, Aguiar denies such allegations.

22. Aguiar is without knowledge or information sufficient to form a belief as to truth of the allegations contained in this paragraph.

23. Admitted.

24. The allegation contained in this paragraph is a conclusion of law to which no response is required.

25. The allegation contained in this paragraph is a conclusion of law to which no response is required.

26. The allegation contained in this paragraph is a conclusion of law to which no response is required. To the extent a response is required, Aguiar admits that he is a resident of Massachusetts. Aguiar otherwise denies the allegations contained in this paragraph.

27. The allegation contained in this paragraph is a conclusion of law to which no response is required. To the extent a response is required, Aguiar admits that he is a resident of Massachusetts. Aguiar otherwise denies the allegations contained in this paragraph.

28. Aguiar admits that John Keehan was a martial arts expert who changed his name in the 1960s to Count Juan Raphael Dante. Aguiar also admits that Count Dante had been described as the “Deadliest Man Alive” and “Crown Prince of Death,” co-founded the United States Karate Association (USKA), and founded an organization he called the Black Dragon Fighting Society. Aguiar is otherwise without knowledge or sufficient information to form a belief as to the truth of the allegations contained in this paragraph.

29. Aguiar admits that this paragraph describes matters alleged by others concerning Count Dante. Aguiar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

30. Aguiar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

31. Aguiar admits that Webb has created at least one trailer previewing his movie. Aguiar is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

32. Aguiar admits that a trailer is available on the website www.thesearchforcountdante.com. Aguiar further states that the contents of the website speaks

for itself. Aguiar otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

33. Aguiar admits that he currently serves as the Grand Master of the Black Dragon Fighting Society. To the extent the allegations contained in this paragraph characterize the claims asserted in the Complaint and/or Amended Complaint, such claims speak for themselves. The Second Amended Complaint contains the current articulation of Aguiar's claims against Webb. Aguiar denies the remaining allegations contained in this paragraph.

34. Aguiar admits that in 2007 a trailer was available on a website on the internet known as "YouTube" (www.youtube.com) and was posted by user archangjo88. Aguiar also admits that YouTube is a video-sharing site where Internet users post videos and make them available to others for viewing. Aguiar is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

35. Aguiar is without knowledge or information sufficient to form a belief about what Webb was informed of or believes. Aguiar admits that he caused YouTube to be notified that a trailer posted by user archangjo88 contained certain features he believed infringed upon copyrights and trademarks owned or controlled by himself and/or the Black Dragon Fighting Society. The remaining allegations are conclusions of law to which no response is required. To the extent a response is required, Aguiar denies such allegations.

36. Aguiar admits generally that YouTube restricted access to the trailer for period of time. Aguiar is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

37. Aguiar admits that at least one trailer for Webb's film concerning Count Dante is currently accessible on the YouTube website. Aguiar is otherwise without knowledge or

information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

38. Aguiar is without knowledge or information to form a belief about what Webb was informed of or believes. Aguiar admits that on or about June 26, 2007, Aguiar, through his attorney, delivered a cease and desist letter to Network Solutions, LLC, the registrar for Webb's website (www.thesearchforcountdante.com) stating that Webb's website contained features he believed infringed upon copyrights and trademarks owned or controlled by himself and/or the Black Dragon Fighting Society. To the extent the allegations contained in this paragraph characterize the correspondence, such correspondence speaks for itself. Aguiar denies the remaining allegations contained in this paragraph.

39. Aguiar is without knowledge or information to form a belief about what Webb was informed of or believes. Aguiar admits that on or about July 10, 2007, Aguiar, through his attorney, delivered a cease and desist letter to The Planet, the company that hosts Webb's website (www.thesearchforcountdante.com) stating that Webb's website contained features he believed infringed upon copyrights and trademarks owned or controlled by himself and/or the Black Dragon Fighting Society. To the extent the allegations contained in this paragraph characterize the correspondence, such correspondence speaks for itself. Aguiar denies the remaining allegations contained in this paragraph.

40. Aguiar admits that subsequent to July 10, 2007, Webb's website (www.thesearchforcountdante.com) was inaccessible for a period of time. Aguiar otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

41. Aguiar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

42. Aguiar admits that HostGator's support personnel corresponded with Webb concerning "The Documentary Filmmaker's Statement of Best Practices" and "The Fair Use Project for Documentary Film." Aguiar is without knowledge or information sufficient to form a belief as to when Webb's access to his website (www.thesearchforcountdante.com) was restored. Aguiar denies the remaining allegations contained in this paragraph.

43. Aguiar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

COUNT I
(Copyright Misrepresentation - 17 U.S.C. § 512(f))

44. Aguiar repeats and reincorporates by reference his responses to Paragraphs 20-43 of the Restatement of Counterclaim, as if fully set forth herein.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

COUNT II
(Declaratory Judgment of Non-Infringement – 17 U.S.C. §§ 101, et seq.)

50. Aguiar repeats and reincorporates by reference his responses to Paragraphs 20-49 of the Restatement of Counterclaim, as if fully set forth herein.

51. Admitted.

52. Denied.

- 53. Denied.
- 54. Admitted.
- 55. Denied.

COUNT III
(Declaratory Judgment of Copyright Fair Use – 17 U.S.C. § 107)

56. Aguiar repeats and reincorporates by reference his responses to Paragraphs 20-55 of the Restatement of Counterclaim, as if fully set forth herein.

- 57. Admitted.
- 58. Denied.
- 59. Denied.
- 60. Denied.
- 61. Admitted.
- 62. Denied.
- 63. Denied.
- 64. Denied.
- 65. Denied.
- 66. Denied.
- 67. Denied.
- 68. Denied.
- 69. Denied.

COUNT IV
(Declaratory Judgment of Copyright Misuse)

70. Aguiar repeats and reincorporates by reference his responses to Paragraphs 20-69 of the Restatement of Counterclaim, as if fully set forth herein.

- 71. Denied.
- 72. Denied.
- 73. Denied.
- 74. Denied.
- 75. Denied.
- 76. Denied.
- 77. Denied.
- 78. Denied.

COUNT V
(Declaratory Judgment under the Lanham Act)

79. Aguiar repeats and reincorporates by reference his responses to Paragraphs 20-78 of the Restatement of Counterclaim, as if fully set forth herein.

80-86. Pursuant to the Court's May 9, 2008 Order, judgment has entered with respect to Count V of the Counterclaim without prejudice to the possibility of Aguiar pleading trademark claims in the future. Accordingly, no response is required.

COUNT VI
(Declaratory Judgment of Trademark Fair Use – 15 U.S.C. § 1115)

87. Aguiar repeats and reincorporates by reference his responses to Paragraphs 20-86 of the Restatement of Counterclaim, as if fully set forth herein.

88-96. Pursuant to the Court's May 9, 2008 Order, judgment has entered with respect to Count VI of the Counterclaim without prejudice to the possibility of Aguiar pleading trademark claims in the future. Accordingly, no response is required.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Restatement of Counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Webb has infringed copyrights owned or controlled by Aguiar and/or the Black Dragon Fighting Society.

THIRD DEFENSE

Aguiar's actions were in good faith, innocent, and not willful.

FOURTH DEFENSE

Counterclaimant's claims are barred, in whole or in part, by unclean hands.

FIFTH DEFENSE

Counterclaimant was not injured by reason of any misrepresentation, omission, or act on the part of Aguiar.

SIXTH DEFENSE

If Counterclaimant has sustained any damages, which is expressly denied, the same is the proximate result of some superseding or intervening cause.

SEVENTH DEFENSE

Counterclaimant has suffered no damages.

EIGHTH DEFENSE

To the extent Counterclaimant has suffered damages, he has failed to mitigate them.

WILLIAM V. AGUIAR, III,

By his attorneys,

/s/ Heather B. Repicky

Ian D. Roffman (BBO# 637564)

Heather B. Repicky (BBO# 663347)

Nutter McClennen & Fish LLP

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Boston, MA 02210

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Dated: May 23, 2008

CERTIFICATE OF SERVICE

I certify that, on May 23, 2008, this document (filed through the ECF system) will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants

/s/ Heather B. Repicky

Heather B. Repicky