

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

IHOP IP, LLC and INTERNATIONAL)
HOUSE OF PANCAKES, LLC)

Plaintiffs,)

Case No: 11-CV-00548-NKL

vs.)

INTERNATIONAL HOUSE OF)
PRAYER, et. al.)

Defendants.)

ANSWER OF DEFENDANT THE PRAYER FURNACE, INC.

COMES NOW Defendant The Prayer Furnace, Inc., by and through counsel, Diane L. Waters of the law firm Bennett, Bodine & Waters, P.A., 11125 Johnson Drive, Suite A, Shawnee, Kansas 66203, 913-948-7900, 913-948-7901(Fax), and for its Answer to Plaintiffs' Second Amended Complaint (hereinafter "Complaint"), hereby states and alleges as follows:

1. Defendant is currently without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 1, 2, 3, and 5 and therefore denies the same and holds plaintiffs to strict proof thereof.

2. Defendant denies the allegations contained in paragraph 4 and holds plaintiffs to strict proof thereof.

3. As to paragraph 6, Defendant admits plaintiff is asserting an action under the Lanham Act. Defendant denies violation of the Lanham Act and denies personal jurisdiction in this matter.

4. Defendant is without sufficient information or records with which to admit or deny the allegations contained in paragraphs 7 and 9 and therefore denies the same and holds plaintiffs to strict proof thereof.

5. As to paragraphs 8 and 10, this answering Defendant denies personal jurisdiction in this judicial district and further denies in engaging in any wrongful or infringing acts in any judicial district. Defendant further denies any remaining allegations contained in paragraphs 8 and 10 and holds plaintiffs to strict proof thereof.

6. Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 11, 12, 13, 14, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 38, 39, 40 and 41 and therefore denies the same and holds plaintiffs to strict proof thereof.

7. As to paragraph 15, Defendant admits that Exhibit A attached to the complaint appears to be copies of registered trademarks. Defendant denies that such trademarks are enforceable and further denies violating such trademarks. Defendant is currently without sufficient information or records with which to admit or deny the remaining allegations contained in paragraph 15 and therefore denies the same and holds plaintiffs to strict proof thereof.

8. Defendant denies any and all allegations contained in paragraphs 18, 19, 30, 31, 32, 33, 34, 35, 36, 37, 42, 43, and 44 and holds plaintiffs to strict proof thereof.

COUNT I

9. As to paragraph 45, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 44 as if fully set forth herein.

10. Paragraphs 46 – 51 are not applicable to this answering Defendant and no answer is therefore necessary. To the extent an answer from this Defendant is deemed necessary, Defendant is without sufficient information or records with which to admit or deny the allegations contained in paragraphs 46 – 51 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT II

11. As to paragraph 52, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 51 as if fully set forth herein.

12. Paragraphs 53 – 59 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 53 through 59 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT III

13. As to paragraph 60, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 59 as if fully set forth herein.

14. Paragraphs 61 – 66 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 61 through 66 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT IV

15. As to paragraph 67, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 66 as if fully set forth herein.

16. Paragraphs 68 – 73 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 68 through 73 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT V

17. As to paragraph 74, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 73 as if fully set forth herein.

18. Paragraphs 75 – 81 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 75 through 81 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT VI

19. As to paragraph 82, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 81 as if fully set forth herein.

20. Paragraphs 83 – 88 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 83 through 88 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT VII

21. As to paragraph 89, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 88 as if fully set forth herein.

22. Paragraphs 90 – 95 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 90 through 95 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT VIII

23. As to paragraph 96, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 95 as if fully set forth herein.

24. Paragraphs 97 – 103 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 97 through 103 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT IX

25. As to paragraph 104, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 103 as if fully set forth herein.

26. Paragraphs 105 – 110 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 105 through 110 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT X

27. As to paragraph 111, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 110 as if fully set forth herein.

28. Paragraphs 112 – 117 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 112 through 117 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT XI

29. As to paragraph 118, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 117 as if fully set forth herein.

30. Paragraphs 119 – 125 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 119 through 125 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT XII

31. As to paragraph 126, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 125 as if fully set forth herein.

32. Paragraphs 127 – 132 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 127 through 132 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT XIII

33. As to paragraph 133, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 132 as if fully set forth herein.

34. Defendant denies any and all allegations contained in paragraphs 134, 135, 136, 137, 138, and 139 and holds plaintiffs to strict proof thereof.

COUNT XIV

35. As to paragraph 140, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 139 as if fully set forth herein.

36. Defendant denies any and all allegations contained in paragraphs 141, 142, 143, 144, 145, 146, and 147 and holds plaintiffs to strict proof thereof.

COUNT XV

37. As to paragraph 148, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 147 as if fully set forth herein.

38. Defendant denies any and all allegations contained in paragraphs 149, 150, 151, 152, and 153 and holds plaintiffs to strict proof thereof.

COUNT XVI

39. As to paragraph 154, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 153 as if fully set forth herein.

40. Paragraphs 155 – 160 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 155 through 160 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT XVII

41. As to paragraph 161, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 160 as if fully set forth herein.

42. Paragraphs 162 – 168 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 162 through 168 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT XVIII

43. As to paragraph 169, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 168 as if fully set forth herein.

44. Paragraphs 170 – 174 are not applicable to this answering Defendant and therefore no response is necessary. To the extent a response from this Defendant is deemed necessary, Defendant is without sufficient information or knowledge with which to admit or deny the allegations contained in paragraphs 170 through 174 and the same are therefore denied and plaintiffs are held to strict proof thereof.

COUNT XIX

44. As to paragraph 175, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 174 as if fully set forth herein.

45. Defendant denies any and all allegations contained in paragraphs 176 and 177 and holds plaintiffs to strict proof thereof.

COUNT XX

46. As to paragraph 178, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 177 as if fully set forth herein.

47. Defendant denies any and all allegations contained in paragraphs 179 and 180 and holds plaintiffs to strict proof thereof.

COUNT XXI

48. As to paragraph 181, Defendant hereby incorporates by reference any and all answers and responses provided herein to paragraphs 1 through 180 as if fully set forth herein.

49. Defendant denies any and all allegations contained in paragraphs 182 and 183 and holds plaintiffs to strict proof thereof.

RELIEF SOUGHT

50. Defendant denies that plaintiffs are entitled to any relief as requested in paragraphs a. – l. and further denies that plaintiffs are entitled to any relief whatsoever.

ADDITIONAL AND AFFIRMATIVE DEFENSES

51. All allegations in Plaintiffs' Complaint are hereby denied except those expressly admitted herein.

52. The Complaint filed herein fails to state a claim upon which relief may be granted.

53. This answering Defendant denies proper service of process and suggests ineffective, defective and insufficient service and process of service.

54. This answering Defendant denies that a proper return of service has been filed relevant to this Defendant.

55. This Court lacks personal jurisdiction over The Prayer Furnace, Inc. in that it was not properly served and a proper return of service has not been filed relevant to The Prayer Furnace, Inc.

56. The Prayer Furnace, Inc., has insufficient contact with this judicial district to provide personal jurisdiction. Further, exercise of personal jurisdiction over this answering Defendant violates the due process clauses of the Missouri and the United States Constitution.

57. Missouri law and claims, including by not limited to claims under Mo.Rev.Stat. 417.061, are inapplicable to this answering Defendant in that Defendant has insufficient contacts with Missouri and is not subject to Missouri laws or jurisdiction.

58. Defendant is not using the "IHOP" designation and use of "Ihopeastbay" does not infringe on any rights of plaintiffs.

59. Defendant has not used names or marks that are confusingly similar to the "IHOP Marks" or the "International House of Pancake" designation.

60. None of the INTERNATIONAL HOUSE OF PANCAKES or IHOP Marks are famous.

61. None of the INTERNATIONAL HOUSE OF PANCAKES or IHOP Marks are exclusively famous to Plaintiffs.

63. Plaintiffs do not have substantial exclusive use of the terms "International House of" or "IHOP".

64. Further, there are significant third-party uses, including, but not limited to:

IHOP Media

IHOP Computer Concepts

International House of Pets

International House of Ale

International House of Philadelphia

International House of Properties

International House of Pizza

International House of Platinum

The Infinite House of Praise (IHOP)

IHOP Brewery System

IHOP.net

International House of Porn

International House of Wives

65. Other “international house of” trademarks have been registered, including, but not limited to:

“INTERNATIONAL HOUSE OF BLUES FOUNDATION” (US PTO)

“INTERNATIONAL HOUSE OF COFFEE” (US PTO)

“INTERNATIONAL HOUSE OF SAUCES AND SEASONINGS” (US PTO)

“IHOPE USA” (US PTO)

“IHOOPS” (US PTO)

“IHOOP” (US PTO)

“INTERNATIONAL HOUSE OF CATALOGS” (state trademark)

“INTERNATIONAL HOUSE OF OTIS” (state trademark)

“INTERNATIONAL HOUSE OF PRAYER” (not owned by Prayer) (state trademark)

“INTERNATIONAL HOUSE OF WINE AND CHEESE” (state trademark)

“INTERNATIONAL HOUSE CLUB” (state trademark)

“INTERNATIONAL HOUSE.” (state trademark)

66. Use of the “International House of” and the “IHOP” acronym is widespread among third-parties and it is clear that Plaintiffs do not have substantial exclusive use of such terms and the marks are not famous so as to subject them to dilution or blurring.

67. Plaintiffs’ claims for dilution fail because the marks are not famous.

68. Defendant has not caused dilution or tarnishment of the INTERNATIONAL HOUSE OF PANCAKE or IHOP marks.

69. Plaintiffs’ claims are herein barred by the doctrine of unclean hands.

70. Plaintiffs' claims are herein barred by the equitable doctrine of laches.

71. Plaintiffs unreasonably delayed in bringing this suit against Co-Defendants resulting in undue prejudice as a result of the delay.

72. While defendant denies any and all allegations asserted herein, Plaintiffs unreasonably delayed in asserting the claims against this Answering Defendant and therefore Defendant has been unduly prejudiced as a result of the delay.

73. Plaintiffs have had constructive and/or actual knowledge of the use of INTERNATIONAL HOUSE OF PRAYER and IHOP since as early as 1999.

74. Co-Defendants INTERNATIONAL HOUSE OF PRAYER was founded in 1999 and they apparently began to use the marks of INTERNATIONAL HOUSE OF PRAYER and IHOP at that time.

75. In 1999, Co-Defendants began using the website www.IHOPKC.com.

76. Co-Defendants apparently filed two United States Trademark Applications in 2000 for INTERNATIONAL HOUSE OF PRAYER, which were eventually abandoned. Plaintiffs did not file any opposition to those applications.

77. On information and belief, Plaintiffs monitored the use of marks including the phrase "INTERNATIONAL HOUSE OF".

78. On information and belief, Plaintiffs regularly monitor PTO filings and files oppositions to police its marks. For example, Plaintiff filed an opposition in 2008 against "International House of Sauces and Seasoning" and an opposition in 2004 against "International House of Coffee."

79. On information and belief, Plaintiff had actual knowledge of the abandoned application for “International House of Prayer” and of Co-Defendant’s use of the acronym “IHOP” as early as 2002.

80. Co-Defendant registered the domain name <http://www.ihop.org> in or about April of 2002 and has used it continually since then.

81. It is this Answering Defendant’s understanding that, at a minimum, as of 2002, Plaintiffs were on constructive notice of Co-Defendant’s use of INTERNATIONAL HOUSE OF PRAYER and IHOP because a reasonable inquiry would have discovered either the website www.ihop.org or www.IHOPKC.com.

82. Defendant herein registered the domain name <http://www.ihopeastbay.org> and <http://www.ihopeastbay.com> in or about September of 2006 and has used it continually through early 2011 at which time they discontinued use of those domain names.

83. At a minimum, Plaintiffs were on constructive notice of Defendants’ use of INTERNATIONAL HOUSE OF PRAYER EAST BAY, IHOPEB, IHOP EAST BAY and/or IHOPEASTBAY because a reasonable inquiry would have discovered as such.

84. Despite Plaintiffs actual knowledge of Defendant’s use of the INTERNATIONAL HOUSE OF PRAYER, IHOP EAST BAY, IHOPEB and/or IHOPEASTBAY, Plaintiffs took no action until 2011 to assert the alleged trademark and infringements and dilution.

85. Plaintiffs' delay in bringing this suit was unreasonable and Defendants have been unduly prejudiced by the delay.

86. Plaintiffs' claims are barred by the doctrine of equitable estoppel and laches in that Plaintiffs failed to seek enforcement of its alleged trademarks, Defendants relied on such abandonment and plaintiffs should not be entitled at this point to seek enforcement to the extreme prejudice of the Defendants.

87. Plaintiffs' claims under Mo.Rev.Stat. 417.061 are barred by the applicable statute of limitations including, but not limited to, Mo.Rev.Stat. 516.120.

WHEREFORE, having fully answered, Defendant The Prayer Furnace, Inc., prays that the plaintiffs take naught by way of their Complaint and that this Defendant go hence with its costs and attorneys' fees herein incurred and expended as allowed under 15 USC 1117(a). Defendant further prays for such other and further relief as the Court deems just and equitable.

Respectfully Submitted,

BENNETT, BODINE & WATERS, P.A.

/s/Diane L. Waters

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**ATTORNEY FOR DEFENDANT
THE PRAYER FURNACE, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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/s/ Diane L. Waters _____
Diane L. Waters