

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA**

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JEREMY SCHOEMAKER,

CASE NO. 8:09-cv-441

Plaintiff,

v.

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S COMPLAINT**

DAVID SULLIVAN, INDIVIDUALLY AND  
D/B/A BIG BLUE DOTS LLC,

Defendant.

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Defendants David Sullivan and Big Blue Dots, LLC ("BBD")<sup>1</sup> for their Answer to Plaintiff's Complaint, state and allege as follows:

In answering the Complaint, Defendants deny each and every allegation of the Complaint, and each paragraph therein, not herein specifically and expressly admitted.

**PARTIES**

1. Upon information and belief, Defendants admit the allegations in Paragraph 1.

2. Regarding the allegations in Paragraph 2, Sullivan admits that he is a California resident. Defendants deny the remaining allegations in Paragraph 2. Sullivan does not conduct business under his "personal name" and BBD is a separate legal entity under Nevada law.

**JURISDICTION AND VENUE**

3. Regarding the allegations in Paragraph 3 of the Complaint, Defendants

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<sup>1</sup> Plaintiff combined two separate legal entities, Sullivan (an individual) and BBD (a Nevada limited liability company), into a single "Defendant." Plaintiff's Complaint does not allege any basis for piercing BBD's corporate veil to hold Sullivan liable for BBD's actions or vice versa. Thus, this Answer assumes that Plaintiff intended to name both Sullivan and BBD as Defendants.

admit that subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338. Defendants deny that subject matter jurisdiction is proper under 28 U.S.C § 1332 because although Defendants admit that Defendants and Plaintiff are citizens of different states, Defendants deny that the value of the matter in controversy herein exceeds \$75,000.

4. Regarding the allegations in Paragraph 4 of the Complaint, Defendants admit that if the Court has personal jurisdiction over Defendants, venue is proper in Nebraska.

### **BACKGROUND**

5. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 5 of the Complaint and, therefore, deny them.

6. Regarding the allegations in Paragraph 6, Defendants admit that Plaintiff operates a blog. Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 6 of the Complaint and, therefore, deny them.

7. Regarding the allegations in Paragraph 7, the blog speaks for itself. Defendants admit that Sullivan has visited Plaintiff's website multiple times, but not prior to November 6, 2009.

8. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 8 of the Complaint and, therefore, deny them.

9. Defendants are without information sufficient to form a belief as to the

truth or falsity of the allegations in Paragraph 9 of the Complaint and, therefore, deny them.

10. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10 of the Complaint and, therefore, deny them.

11. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11 of the Complaint and, therefore, deny them.

12. Regarding the allegations in Paragraph 12, the blog speaks for itself. Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 12 of the Complaint and, therefore, deny them.

13. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 13 of the Complaint and, therefore, deny them.

14. Regarding the allegations in Paragraph 14 of the Complaint, BBD admits that it briefly used the photograph depicted in the Complaint's Exhibit A (hereinafter, the "photograph-at-issue") in thumbnail form in an advertisement on a website. Sullivan denies that he used the photograph-at-issue in his individual capacity for any purpose.

15. Regarding the allegations in Paragraph 15 of the Complaint, Exhibit A speaks for itself. Sullivan denies that he used the photograph-at-issue in his individual capacity for any purpose.

16. Regarding the allegations in Paragraph 16 of the Complaint, Plaintiff identifies <http://world-jobs-report.com> as "Defendant's web site". Sullivan denies that

<http://world-jobs-report.com> is “his” web site, as he does not operate the website in his individual capacity. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations in Paragraph 17 of the Complaint.

18. Defendants deny the allegations in Paragraph 18 of the Complaint.

19. Regarding the allegations in Paragraph 19 of the Complaint, Defendants admit that Plaintiff does not support or promote the products or services offered by BBD. Defendants deny the remaining allegations contained in Paragraph 19 of the Complaint.

20. Regarding the allegations in Paragraph 20 of the Complaint, Sullivan denies that he used the photograph-at-issue in his individual capacity for any purpose. Defendants deny the remaining allegations in Paragraph 20.

21. Defendants deny the allegations in Paragraph 21 of the Complaint.

**CAUSE OF ACTION NO. 1**  
**COPYRIGHT INFRINGEMENT**

22. Paragraph 22 requires no response.

23. Regarding the allegations in Paragraph 23 of the Complaint, Sullivan denies that he “used, displayed, reproduced, and/or distributed Schoemaker’s copyrighted photograph” in his individual capacity for any purpose. Therefore, Sullivan denies the allegations in Paragraph 23. BBD admits that it used the photograph-at-issue without knowing that the photograph was subject to a registered copyright or that it depicted Plaintiff.

24. Defendants admit that Plaintiff did not authorize BBD to use the photograph-at-issue, but deny that BBD knew that the photograph-at-issue was subject

to a registered copyright or that it depicted Plaintiff. Sullivan denies that he used the photograph in his individual capacity for any purpose.

25. Defendants deny the allegations in Paragraph 25 of the Complaint.

26. Defendants deny the allegations in Paragraph 26 of the Complaint.

27. Defendants deny the allegations in Paragraph 27 of the Complaint.

**CAUSE OF ACTION NO. 2**  
**INVASION OF PRIVACY --- NEB. REV. STAT § 20-202**

28. Paragraph 28 does not require a response.

29. Defendants deny the allegations in Paragraph 29 of the Complaint.

30. Defendants deny the allegations in Paragraph 30 of the Complaint.

31. Regarding the allegations in Paragraph 31 of the Complaint, Sullivan denies that he used the photograph-at-issue in his individual capacity for any purpose. BBD admits that Plaintiff did not consent to BBD's use of the photograph.

32. Regarding the allegations in Paragraph 32 of the Complaint, Sullivan denies that he made a profit in his individual capacity from any use of the photograph-at-issue. BBD admits that it made approximately \$560 in revenue from fourteen sales initiated by customers who accessed the hyperlink in the advertisement that contained the photograph-at-issue, but this \$560 in generated revenue did not constitute profit. However, BBD cannot admit Paragraph 32 because it has no way of knowing whether the fourteen customers who purchased products through transactions initiated when they accessed the hyperlink in the advertisement that contained the photograph-at-issue made those purchases as a direct and proximate result of the photograph-at-issue.

33. Defendants deny the allegations in Paragraph 33 of the Complaint.

**CAUSE OF ACTION NO. 3**  
**CONSUMER PROTECTION ACT --- NEB. REV. STAT §§ 59-1601 *et seq.***

34. Paragraph 34 does not require a response.

35. Regarding the allegations in Paragraph 35, the statute speaks for itself.

36. Defendants deny the allegations in Paragraph 36 of the Complaint.

37. Defendants deny the allegations in Paragraph 37 of the Complaint.

38. Regarding the allegations in Paragraph 38 of the Complaint, Sullivan denies that he made a profit in his individual capacity from any use of the photograph-at-issue. BBD admits that it made approximately \$560 in revenue from fourteen sales initiated by customers who accessed the hyperlink in the advertisement that contained the photograph-at-issue, but this \$560 in generated revenue did not constitute profit. However, BBD cannot admit Paragraph 32 because it has no way of knowing whether the fourteen customers who purchased products through transactions initiated when they accessed the hyperlink in the advertisement that contained the photograph-at-issue made those purchases as a direct and proximate result of the photograph-at-issue.

39. Defendants deny the allegations in Paragraph 39 of the Complaint.

**CAUSE OF ACTION NO. 4**  
**UNIFORM DECEPTIVE TRADE PRACTICES ACT ---**  
**NEB. REV. STAT. §§ 87-301 *et seq.***

40. Paragraph 40 does not require a response.

41. Defendants deny the allegations in Paragraph 41 of the Complaint.

42. Defendants deny the allegations in Paragraph 42 of the Complaint.

43. Defendants deny the allegations in Paragraph 43 of the Complaint.

44. Defendants deny the allegations in Paragraph 44 of the Complaint.

**SEPARATE DEFENSES**

**First Separate Defense – Innocent Intent**

BBD denies having any intent to infringe upon any copyright owned by Plaintiff.

**Second Separate Defense – Lack Of Personal Jurisdiction**

The Court lacks personal jurisdiction over Sullivan and BBD.

**Third Separate Defense – Unclean Hands**

Upon information and belief, Plaintiff's claims are barred by the equitable doctrine of unclean hands.

**Fourth Separate Defense –  
Other Separate Defenses Based On Later Discovered Evidence**

Defendants reserve all separate defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Copyright Laws of the United States, and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

**REQUEST FOR JURY TRIAL**

Defendants request trial by jury on all issues so triable.

**RELIEF REQUESTED**

**WHEREFORE**, Defendants pray for entry of judgment as follows:

A. That Plaintiff's Complaint be dismissed with prejudice, and that Plaintiff take nothing thereby;

B. That Defendants be awarded their costs and attorney's fees incurred herein;

C. For such other and further relief as the Court deems just and equitable.

Dated this 24th day of May, 2010.

DEFENDANTS DAVID SULLIVAN AND BIG  
BLUE DOTS LLC

By: s/ John A. Sharp

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the counsel listed below:

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s/ John A. Sharp  
John A. Sharp (NE# 23111)