

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

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Vadim Mikhlyn, Inga Mikhlyn, and	:
ABC All Consulting, Inc.	:
	:
Plaintiffs	:
	:
-against-	: 08 CV. 03367 (CPS)
	:
Ana Bove, Polina Dolginov	: REPLY AND AFFIRMATIVE
Anna Bove Company, LLC,	: DEFENSES
Anna Bove Collections, Inc.	:
and Anna Bove Embroidery Supplies, Inc.	:
	:
Defendants.	:
	:
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Plaintiff and Counterclaim Defendants, Vadim Mikhlyn, Inga Mikhlyn and ABC All Consulting, Inc., through their attorneys, Val Mandel, P.C., by way of reply to the Counterclaims of Defendants Ana Bove, Anna Bove Company, LLC, Anna Bove Collections, Inc. and Anna Bove Embroidery Supplies, Inc., alleges as follows:

I. JURISDICTION AND VENUE

1. Plaintiffs admit, upon information and belief, the allegations contained in paragraph 1 of the Counterclaims.
2. Plaintiffs admit the allegations contained in paragraph 2 of the Counterclaims.
3. Plaintiffs admit the allegations contained in paragraph 3 of the Counterclaims.

4. Plaintiffs admit the allegations contained in paragraph 4 of the Counterclaims.

II. THE PARTIES

5. Plaintiffs admit the allegations contained in paragraph 5 of the Counterclaims.

6. Plaintiffs admit the allegations contained in paragraph 6 of the Counterclaims.

7. Plaintiffs admit the allegations contained in paragraph 7 of the Counterclaims.

III. COPYRIGHT INFRINGEMENT

8. Plaintiffs deny the allegations contained in paragraph 8 of Counterclaims.

9. Plaintiffs admits the allegations contained in paragraph 9 of the Counterclaims only to the extent that Counterclaimant Ana Bove applied and was granted copyright registration, but deny the allegations contained in the rest of paragraph 8 of Counterclaims.

10. Plaintiffs admit the allegations contained in paragraph 10 of the Counterclaims.

11. Plaintiffs deny the allegations contained in paragraph 11 of the Counterclaims.

CLAIM I
(Copyright Infringement)

12. Plaintiffs do not have sufficient information to deny or admit the allegations contained in paragraph 12 of the Counterclaims. Paragraph 12 also states a conclusion of law, and Plaintiffs deny it to the extent an answer is necessary.

13. Plaintiffs deny the allegations contained in paragraph 13 of the Counterclaims.

14. Plaintiffs deny the allegations contained in paragraph 14 of the Counterclaims.

15. Plaintiffs admit the allegations contained in paragraph 15 of the Counterclaims but deny that the letter accurately described Counterclaimant's rights or trademarks, if any.

16. Plaintiffs deny the allegations contained in paragraph 16 of the Counterclaims.

17. Plaintiffs deny the allegations contained in paragraph 17 of the Counterclaims.

18. Plaintiffs deny the allegations contained in paragraph 18 of the Counterclaims.

19. Plaintiffs deny the allegations contained in paragraph 19 of the Counterclaims.

20. Plaintiffs deny the allegations contained in paragraph 20 of the Counterclaims.

COUNTERCLAIM II
(Violation of the Lanham Act - 15 U.S.C. Section 1125(a))

21. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 20 of the Reply.

22. Plaintiffs admit that Counterclaimant is engaged in the embroidery design and cross-stitch design business in interstate commerce but otherwise deny the allegations contained in paragraph 22 of the Counterclaims.

23. Plaintiffs admit the allegations contained in paragraph 23 of the Counterclaims only to the extent that they are currently engaged in the business of the sale of embroidery designs and cross stitch patterns, but deny the allegations contained in the rest of paragraph 23 of Counterclaims.

24. Plaintiffs admit the allegations contained in paragraph 24 of the Counterclaims except deny using "confusing similar variants thereof."

25. Plaintiffs deny the allegations contained in paragraph 25 of the Counterclaims.

26. Plaintiffs deny the allegations contained in paragraph 26 of the Counterclaims.

27. Plaintiffs deny the allegations contained in paragraph 27 of the Counterclaims.

28. Plaintiffs deny the allegations contained in paragraph 28 of the Counterclaims.

29. Plaintiffs deny the allegations contained in paragraph 29 of the Counterclaims.

CLAIM III

SECTION 43(a) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)

30. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 29 of the Reply.

31. Plaintiffs deny the allegations contained in paragraph 31 of the Counterclaims.

32. Plaintiffs deny the allegations contained in paragraph 32 of the Counterclaims.

33. Plaintiffs deny the allegations contained in paragraph 33 of the Counterclaims.

34. Plaintiffs deny the allegations contained in paragraph 34 of the Counterclaims.

35. Plaintiffs deny the allegations contained in paragraph 35 of the Counterclaims.

CLAIM IV

ANTI-CYBERSQUATTING - 15 USC § 1152(d)

36. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 36 of the Reply.

37. Plaintiffs deny the allegations contained in paragraph 37 of the Counterclaims.

38. Plaintiffs deny the allegations contained in paragraph 38 of the Counterclaims.

CLAIM V

**VIOLATION OF NEW YORK LAW OF TRADEMARK
INFRINGEMENT AND UNFAIR COMPETITION**

39. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 39 of the Reply.

40. Plaintiffs deny the allegations contained in paragraph 40 of the Counterclaims.

41. Plaintiffs deny the allegations contained in paragraph 41 of the Counterclaims.

42. Plaintiffs deny the allegations contained in paragraph 42 of the Counterclaims.

43. Plaintiffs deny the allegations contained in paragraph 43 of the Counterclaims.

44. Plaintiffs deny the allegations contained in paragraph 44 of the Counterclaims.

CLAIM VI

NEW YORK RIGHTS OF PRIVACY STATUTE

45. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 45 of the Reply.

46. Plaintiffs deny the allegations contained in paragraph 46 of the Counterclaims.

47. Plaintiffs deny the allegations contained in paragraph 47 of the Counterclaims.

CLAIM VII

BAILMENT AND CONVERSION

48. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 48 of the Reply.

49. Plaintiffs deny the allegations contained in paragraph 49 of the Counterclaims.

50. Plaintiffs deny the allegations contained in paragraph 50 of the Counterclaims.

51. Plaintiffs deny the allegations contained in paragraph 51 of the Counterclaims.

52. Plaintiffs deny the allegations contained in paragraph 52 of the Counterclaims.

53. Plaintiffs deny the allegations contained in paragraph 53 of the Counterclaims.

54. Plaintiffs deny the allegations contained in paragraph 54 of the Counterclaims.

55. Plaintiffs deny the allegations contained in paragraph 55 of the Counterclaims.

56. Plaintiffs deny the allegations contained in paragraph 56 of the Counterclaims.

57. Plaintiffs deny the allegations contained in paragraph 57 of the Counterclaims.

58. Plaintiffs deny the allegations contained in paragraph 58 of the Counterclaims.

59. Plaintiffs deny the allegations contained in paragraph 59 of the Counterclaims.

CLAIM VIII

BREACH OF CONTRACT

60. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 60 of the Reply.

61. Plaintiffs deny the allegations contained in paragraph 61 of the Counterclaims.

62. Plaintiffs deny the allegations contained in paragraph 62 of the Counterclaims.

63. Plaintiffs deny the allegations contained in paragraph 63 of the Counterclaims.

64. Plaintiffs deny the allegations contained in paragraph 64 of the Counterclaims.

CLAIM IX

UNJUST ENRICHMENT

65. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 65 of the Reply.

66. Plaintiffs deny the allegations contained in paragraph 66 of the Counterclaims.

67. Plaintiffs deny the allegations contained in paragraph 67 of the Counterclaims.

68. Plaintiffs deny the allegations contained in paragraph 68 of the Counterclaims.

69. Plaintiffs deny the allegations contained in paragraph 69 of the Counterclaims.

70. Plaintiffs deny the allegations contained in paragraph 70 of the Counterclaims.

CLAIM X

MONEY HAD AND RECEIVED

71. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 71 of the Reply.

72. Plaintiffs deny the allegations contained in paragraph 72 of the Counterclaims.

73. Plaintiffs deny the allegations contained in paragraph 73 of the Counterclaims.

74. Plaintiffs deny the allegations contained in paragraph 74 of the Counterclaims.

75. Plaintiffs deny the allegations contained in paragraph 75 of the Counterclaims.

76. Plaintiffs deny the allegations contained in paragraph 76 of the Counterclaims.

CLAIM XI

VIOLATION OF GBL §349

77. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 76 of the Reply.

78. Plaintiffs deny the allegations contained in paragraph 78 of the Counterclaims.

79. Plaintiffs deny the allegations contained in paragraph 79 of the Counterclaims.

80. Plaintiffs deny the allegations contained in paragraph 80 of the Counterclaims.

CLAIM XII

ACCOUNTING

81. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 81 of the Reply

82. Plaintiffs deny the allegations contained in paragraph 82 of the Counterclaims, except that Plaintiff's admit to possessing some ABC All Consulting, Inc. records.

83. Plaintiffs deny the allegations contained in paragraph 83 of the Counterclaims.

84. Plaintiffs deny the allegations contained in paragraph 84 of the Counterclaims.

CLAIM XIII

CONSTRUCTIVE TRUST

85. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 85 of the Reply.

86. Plaintiffs deny the allegations contained in paragraph 86 of the Counterclaims.

87. Plaintiffs deny the allegations contained in paragraph 87 of the Counterclaims.

CLAIM XIV

**DECLARATORY JUDGMENT OF COUNTERCLAIMANTS'
OWNERSHIP INTEREST IN THE INTELLECTUAL PROPERTY AND INJUNCTION**

88. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 88 of the Reply.

89. Plaintiffs deny the allegations contained in paragraph 89 of the Counterclaims.

90. Plaintiffs deny the allegations contained in paragraph 90 of the Counterclaims.

91. Plaintiffs deny the allegations contained in paragraph 91 of the Counterclaims.

92. Plaintiffs deny the allegations contained in paragraph 92 of the Counterclaims.

93. Plaintiffs deny the allegations contained in paragraph 93 of the Counterclaims.

94. Plaintiffs deny the allegations contained in paragraph 94 of the Counterclaims.

95. Plaintiffs deny the allegations contained in paragraph 95 of the Counterclaims.

96. Plaintiffs deny the allegations contained in paragraph 96 of the Counterclaims.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants claims are barred by the doctrine of estoppel.

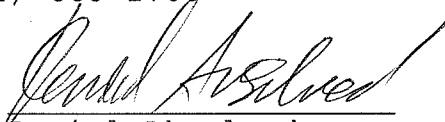
THIRD AFFIRMATIVE DEFENSE

Defendants claims are barred by the doctrine of waiver.

WHEREFORE, Plaintiffs respectfully requests judgment dismissing the Counterclaims in their entirety and granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 13, 2008

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By: 
Daniel Akselrod