

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	:
Anna Bove Company, LLC,	: REPLY TO AMENDED
Anna Bove Collections, Inc.	: ANSWER AFFIRMATIVE
and Anna Bove Embroidery Supplies, Inc.	: DEFENSES AND
	: COUNTERCLAIMS
	:
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 Amended Answer Affirmative Defenses and 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, except to say that the zip code is 11214 not 11229.

III. COPYRIGHT INFRINGEMENT

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

9. Plaintiffs admit 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. The allegations of Paragraph 10 are the subject of a motion pending before the Court.

11. The allegations of Paragraph 11 are the subject of a motion pending before the Court.

12. The allegations of Paragraph 10 are the subject of a motion pending before the Court.

13. Plaintiffs do not have sufficient information to deny or admit the allegations contained in paragraph 13 of the Counterclaims.

14. Plaintiffs admit the allegations contained in paragraph 14 except denies the characterization of their activities as doing business throughout the United States.

15. Plaintiffs admit that ABC All Consulting, Inc. owns the domain names in Exhibit 3 and that the website design for www.abc-machine-embroidery-designs.com is set forth in Exhibit 4, but otherwise deny the allegations of paragraph 15.

CLAIM I
(Copyright Infringement)

16. Plaintiffs do not have sufficient information to deny or admit the allegations contained in paragraph 16 of the Counterclaims. Paragraph 16 also states a conclusion of law, and Plaintiffs deny it to the extent an answer is necessary.

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 admit the allegations contained in paragraph 19 of the Counterclaims but deny that the letter accurately described Counterclaimant's rights or trademarks, if any.

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

21. Plaintiffs deny the allegations contained in paragraph 21 of the Counterclaims.

22. Plaintiffs deny the allegations contained in paragraph 22 of the Counterclaims.

23. Plaintiffs deny the allegations contained in paragraph 23 of the Counterclaims.

24. Plaintiffs deny the allegations contained in paragraph 24 of the Counterclaims.

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

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

26. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 25 of the Reply.

27. 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 27 of the Counterclaims.

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

29. Plaintiffs admit the allegations contained in paragraph 29 of the Counterclaims except deny using "confusing similar variants thereof."

30. Plaintiffs deny the allegations contained in paragraph 30 of the Counterclaims.

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.

CLAIM III

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

35. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 34 of the Reply.

36. Plaintiffs deny the allegations contained in paragraph 36 of the Counterclaims.

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

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

39. Plaintiffs deny the allegations contained in paragraph 39 of the Counterclaims.

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

CLAIM IV

ANTI-CYBERSQUATTING - 15 USC § 1152(d)

41. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 40 of the Reply.

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

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

CLAIM V

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

44. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 43 of the Reply.

45. Plaintiffs deny the allegations contained in paragraph 45 of the Counterclaims.

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

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

48. Plaintiffs deny the allegations contained in paragraph 48 of the Counterclaims.

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

CLAIM VI

NEW YORK RIGHTS OF PRIVACY STATUTE

50. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 49 of the Reply.

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

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

CLAIM VII

BAILMENT AND CONVERSION

53. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 52 of the Reply.

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.

60. Plaintiffs deny the allegations contained in paragraph 60 of the Counterclaims.

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 VIII

BREACH OF CONTRACT

65. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 64 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.

CLAIM IX

UNJUST ENRICHMENT

70. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 69 of the Reply.

71. Plaintiffs deny the allegations contained in paragraph 71 of the Counterclaims.

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.

CLAIM X

MONEY HAD AND RECEIVED

76. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 75 of the Reply.

77. Plaintiffs deny the allegations contained in paragraph 77 of the Counterclaims.

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.

81. Plaintiffs deny the allegations contained in paragraph 81 of the Counterclaims.

CLAIM XI

VIOLATION OF GBL §349

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

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

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

85. Plaintiffs deny the allegations contained in paragraph 85 of the Counterclaims.

CLAIM XII

ACCOUNTING

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

87. Plaintiffs deny the allegations contained in paragraph 87 of the Counterclaims, except that Plaintiff's admit to possessing some ABC All Consulting, Inc. records.

88. Plaintiffs deny the allegations contained in paragraph 88 of the Counterclaims.

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

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

CLAIM XIII

CONSTRUCTIVE TRUST

91. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 90 of the Reply.

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.

CLAIM XIV

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

95. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 95 of the Reply.

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

97. Plaintiffs deny the allegations contained in paragraph 97 of the Counterclaims.

98. Plaintiffs deny the allegations contained in paragraph 98 of the Counterclaims.

99. Plaintiffs deny the allegations contained in paragraph 99 of the Counterclaims.

100. Plaintiffs deny the allegations contained in paragraph 100 of the Counterclaims.

101. Plaintiffs deny the allegations contained in paragraph 101 of the Counterclaims.

102. Plaintiffs deny the allegations contained in paragraph 102 of the Counterclaims.

CLAIM XV

RECISSION

103. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 102 of the Reply.

104. Plaintiffs deny the allegations contained in paragraph 104 of the Counterclaims.

105. Plaintiffs deny the allegations contained in paragraph 105 of the Counterclaims.

CLAIM XVI

DECLARATORY JUDGMENT THAT COUNTERCLAIMANT IS THE EQUITABLE OWNER OF ABC ALL CONSULTING, INC.

106. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 105 of the Reply.

107. Plaintiffs deny the allegations contained in paragraph 107 of the Counterclaims.

108. Plaintiffs deny the allegations contained in paragraph 108 of the Counterclaims.

109. Plaintiffs deny the allegations contained in paragraph 109 of the Counterclaims.

110. Plaintiffs deny the allegations contained in paragraph 110 of the Counterclaims.

111. Plaintiffs deny the allegations contained in paragraph 111 of the Counterclaims.

112. Plaintiffs deny the allegations contained in paragraph 112 of the Counterclaims.

CLAIM XVII

DECLARATORY JUDGMENT THAT THE MIKHLYNYS WERE BOVE'S EMPLOYEES

113. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 112 of the Reply.

114. Plaintiffs deny the allegations contained in paragraph 114 of the Counterclaims.

115. Plaintiffs deny the allegations contained in paragraph 115 of the Counterclaims.

116. Plaintiffs deny the allegations contained in paragraph 116 of the Counterclaims.

117. Plaintiffs deny the allegations contained in paragraph 117 of the Counterclaims.

CLAIM XVIII

**JUDICIAL OF ABC ALL CONSULTING, INC.; OPPRESSIVE ACTIONS AND
WASTING OF ASSETS**

118. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 117 of the Reply.

119. Plaintiffs admit the allegations contained in paragraph 119 of the Counterclaims.

120. Plaintiffs admit the allegations contained in paragraph 120 of the Counterclaims.

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

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

123. Plaintiffs admit the allegations contained in paragraph 93 of the Counterclaims.

124. Plaintiffs admit the allegations contained in paragraph 124 of the Counterclaims.

125. Plaintiffs admit the allegations contained in paragraph 125 of the Counterclaims.

126. Paragraph 126 of the Counterclaims is not an allegation.

127. Plaintiffs deny the allegations contained in paragraph 127 of the Counterclaims.

128. Plaintiffs deny the allegations contained in paragraph 128 of the Counterclaims.

129. Plaintiffs deny the allegations contained in paragraph 129 of the Counterclaims.

130. Plaintiffs deny the allegations contained in paragraph 130 of the Counterclaims.

131. Plaintiffs deny the allegations contained in paragraph 131 of the Counterclaims.

132. Plaintiffs deny the allegations contained in paragraph 132 of the Counterclaims.

133. Paragraph 133 of the Counterclaims is not an allegation.

CLAIM XIX

DERIVATIVE CLAIM FOR WASTE AND DISSIPATION OF ASSETS

134. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 133 of the Reply.

135. Plaintiffs deny the allegations contained in paragraph 135 of the Counterclaims.

136. Plaintiffs deny the allegations contained in paragraph 136 of the Counterclaims.

137. Plaintiffs deny the allegations contained in paragraph 137 of the Counterclaims.

138. Plaintiffs deny the allegations contained in paragraph 138 of the Counterclaims.

139. Plaintiffs deny the allegations contained in paragraph 139 of the Counterclaims.

140. Plaintiffs deny the allegations contained in paragraph 140 of the Counterclaims.

141. Plaintiffs deny the allegations contained in paragraph 141 of the Counterclaims.

142. Plaintiffs deny the allegations contained in paragraph 142 of the Counterclaims.

143. Plaintiffs deny the allegations contained in paragraph 143 of the Counterclaims.

144. Plaintiffs deny the allegations contained in paragraph 144 of the Counterclaims.

145. Plaintiffs deny the allegations contained in paragraph 145 of the Counterclaims.

146. Plaintiffs deny the allegations contained in paragraph 146 of the Counterclaims.

CLAIM XX

BREACH OF FIDUCIARY DUTY

147. Plaintiffs repeat and reallege each and every answer set forth in paragraphs 1 through 146 of the Reply.

148. Plaintiffs deny the allegations contained in paragraph 148 of the Counterclaims.

149. Plaintiffs deny the allegations contained in paragraph 149 of the Counterclaims.

150. Plaintiffs deny the allegations contained in paragraph 150 of the Counterclaims.

151. Plaintiffs deny the allegations contained in paragraph 151 of the Counterclaims.

152. Plaintiffs deny the allegations contained in paragraph 152 of the Counterclaims.

153. Plaintiffs deny the allegations contained in paragraph 153 of the Counterclaims.

154. Plaintiffs deny the allegations contained in paragraph 154 of the Counterclaims.

155. Plaintiffs deny the allegations contained in paragraph 155 of the Counterclaims.

156. Plaintiffs deny the allegations contained in paragraph 156 of the Counterclaims.

157. Plaintiffs deny the allegations contained in paragraph 157 of the Counterclaims.

158. Plaintiffs deny the allegations contained in paragraph 158 of the Counterclaims.

159. Plaintiffs deny the allegations contained in paragraph 159 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.

FOURTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over copyright claims based upon pending copyright applications

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
March 30, 2009

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By: 
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