

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

WIRELESS INK CORPORATION,

Plaintiff,

v.

FACEBOOK, INC.; GOOGLE, INC.;  
YOUTUBE, INC.; YOUTUBE, LLC; and  
MYSPACE, INC.

Defendants.

**No. 11 Civ. 1751 (PKC)**

**WIRELESS INK CORPORATION'S ANSWER  
TO MYSPACE, INC.'S COUNTERCLAIMS TO PLAINTIFF WIRELESS INK  
CORPORATION'S COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Wireless Ink Corporation ("Wireless Ink"), by and through its undersigned attorneys, hereby responds to MySpace, Inc.'s ("MySpace") Counterclaims and asserts its affirmative defenses thereto as follows:

**COUNTERCLAIMS**

**Jurisdiction and Venue**

1. Admitted.
2. Admitted.
3. Admitted.

**The Parties**

4. Admitted.
5. Admitted.

**Factual Background**

6. Admitted.
7. Admitted.

**Count One**

**(Declaratory Judgment of Invalidity of the '342 Patent)**

8. Wireless Ink incorporates its responses to paragraphs 1-7 of MySpace's Counterclaims as though restated herein in their entirety.
9. Wireless Ink admits that it has alleged that MySpace is infringing one or more claims of U.S. Patent No. 7,908,342. The claims of the patent are presumed valid and/or enforceable under 35 U.S.C. § 282. MySpace has not pleaded any allegations which give rise to an actual controversy regarding the validity and/or enforceability of any claim of U.S. Patent No. 7,908,342, and on that basis Wireless Ink denies the remainder of the allegations in paragraph 9.
10. Denied.

**Count Two**

**(Declaratory Judgment of Non-Infringement)**

11. Wireless Ink incorporates its responses to paragraphs 1-10 of MySpace's Counterclaims as though restated herein in their entirety.
12. Wireless Ink admits that it has alleged that MySpace is infringing one or more claims of the U.S. Patent No. 7,908,342 and/or actively induces or contributes to others' infringement of the '342 patent. However, MySpace has not pleaded any facts that would support a finding that it does not infringe the claims of the patent. Wireless Ink denies all other allegations in this paragraph.

**DEFENSES**

Pursuant to Federal Rule of Federal Procedure 8(c), Wireless Ink asserts the following defenses:

### **First Defense**

MySpace's Counterclaims, in whole or in part, fail to state a claim upon which relief can be granted, as no factual allegations have been pleaded in support of the Counterclaims under Federal Rule of Civil Procedure 8.

### **Second Defense**

MySpace infringes the claims of U.S. Patent No. 7,908,342, as alleged in Plaintiff's Complaint. MySpace has alleged no facts which would support a finding of noninfringement of any claim of the patent.

### **Third Defense**

The claims of the patent are presumed valid by statute and MySpace cannot meet its burden to prove by clear and convincing evidence that any claim of the patent is invalid, and has alleged no facts to supports such a claim or affirmative defense.

### **Fourth Defense**

The claims of the patent are presumed enforceable and MySpace cannot meet its burden to prove by clear and convincing evidence that any claim of the patent is unenforceable, and has alleged no facts to supports such a claim or affirmative defense.

### **Fifth Defense**

Defendant MySpace's Counterclaims are barred, in whole or in part, by the doctrine of unclean hands. MySpace's infringement has been knowing and willful, as alleged in the Complaint, and MySpace has failed to allege any facts which support its purported counterclaims or affirmative defenses to Wireless Ink's claims of infringement. Thus, any equitable claims or defenses asserted by MySpace are barred.

**ADDITIONAL DEFENSES**

As Wireless Ink’s investigation is ongoing and discovery has not yet been taken, and as many facts are likely in the possession of Defendant MySpace and other third parties, Wireless Ink reserves the right to amend its Answer to the Counterclaims, including defenses.

**PRAYER FOR RELIEF**

WHEREFORE, having answered the allegations of MySpace’s Counterclaims and asserted its affirmative defenses thereto, Wireless Ink prays for the following relief:

- a. that MySpace’s Counterclaims be dismissed, with prejudice, with costs and interest taxed against MySpace;
- b. that Wireless Ink be awarded its attorneys’ fees with interest incurred in defending against MySpace’s Counterclaims;
- c. that Wireless Ink be awarded the relief against MySpace prayed for in its Complaint;
- d. that Wireless Ink be granted such other and further relief against MySpace as the Court deems just and proper.

Dated: May 16, 2011

Respectfully submitted,

/s/ Jeremy S. Pitcock  
Jeremy S. Pitcock (JP-4954)  
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