

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEREMY LEBEWOHL,
UNCLE ABIES DELI INC. d/b/a 2nd AVE DELI,
UNCLE ABIES DELI ON FIRST INC., and
UNCLE ABIES DELI SANDWICH TRADEMARKS LLC,

**PLAINTIFFS' ANSWER
TO COUNTERCLAIM**

Plaintiffs,

Index No. 11-CIV-3153

-against-

HEART ATTACK GRILL LLC, HAG LLC, and
JON BASSO,

Defendants.

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Plaintiffs JEREMY LEBEWOHL, UNCLE ABIES DELI INC. d/b/a 2nd AVE DELI,
UNCLE ABIES DELI ON FIRST INC., and UNCLE ABIES DELI SANDWICH
TRADEMARKS LLC., (collectively, "Plaintiffs" or "2nd Ave Deli"), hereby answers the
Counterclaim filed by Defendants HEART ATTACK GRILL LLC, HAG LLC, and
JON BASSO:

JURISDICTION AND VENUE

1. The allegations of Paragraph 1 constitute Plaintiffs' characterization of their lawsuit, to which no response is required.
2. The allegations of Paragraph 2 constitute conclusions of law, to which no response is required.
3. The allegations of Paragraph 3 constitute conclusions of law, to which no response is required.

THE PARTIES

4. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 of the Counterclaim, and on the basis, denies the same.
5. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 of the Counterclaim, and on the basis, denies the same.
6. Admit the allegations of Paragraph 6.
7. Plaintiffs deny each and every allegation in Paragraph 7 and state that Uncle Abies Deli Sandwich Trademarks LLC is a New York limited liability company with a principal place of business at 157 East Houston St., New York, NY 10002.
8. Plaintiffs admit that Uncle Abies Deli On First Inc. is a New York corporation with a principal place of business at 1442 First Ave., New York, NY 10016, and deny each and every other allegation of Paragraph 8.
9. Plaintiffs deny the allegations of Paragraph 9.
10. Plaintiffs avers that Jeremy Lebewohl aids in the operation of the 2nd Ave Deli, but denies each and every other allegation in Paragraph 10.
11. Plaintiffs admit the allegations of Paragraph 11.
12. Plaintiffs avers that Jack Lebewohl aids in the operation of the 2nd Ave Deli, but denies each and every other allegation in Paragraph 12.

FACTS RELATIVE TO ALL COUNTS

13. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 13 of the Counterclaim, and on the basis, denies the same.

14. Plaintiffs deny that the marks in Paragraph 14 are either distinctive or famous. Plaintiffs lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 14 of the Counterclaim, and on the basis, denies the same.
15. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 15 of the Counterclaim, and on the basis, denies the same.
16. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 16 of the Counterclaim, and on the basis, denies the same.
17. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 17 of the Counterclaim, and on the basis, denies the same.
18. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 18 of the Counterclaim, and on the basis, denies the same.
19. Plaintiffs lack knowledge or information sufficient to form a belief as to the allegations in Paragraph 19 of the Counterclaim, and on the basis, denies the same.
20. Plaintiffs deny that the marks in Paragraph 20 are famous. Plaintiffs lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 20 of the Counterclaim, and on the basis, denies the same.
21. Plaintiffs contend that the contents of the trademark application with serial no. 85140751 speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain meaning are denied.
22. Plaintiffs contend that the Office Action speaks for itself and is the best evidence of its contents. Any allegations contrary to their plain meaning are denied.
23. Plaintiffs contend that the Office Action speaks for itself and is the best evidence of its contents. Any allegations contrary to their plain meaning are denied.

24. Plaintiffs contend that the Office Action speaks for itself and is the best evidence of its contents. Any allegations contrary to their plain meaning are denied.
25. Plaintiffs contend that the contents of the trademark application with serial no. 85140776 speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain meaning are denied.
26. Plaintiffs contend that the Office Action speaks for itself and is the best evidence of its contents. Any allegations contrary to their plain meaning are denied.
27. Plaintiffs contend that the Office Action speaks for itself and is the best evidence of its contents. Any allegations contrary to their plain meaning are denied.
28. Plaintiffs contend that the Office Action speaks for itself and is the best evidence of its contents. Any allegations contrary to their plain meaning are denied.

COUNT I – FEDERAL TRADEMARK DILUTION ACT

29. Plaintiffs repeat each and every allegation of the above Paragraphs 1-28 as if fully set forth herein.
30. The allegations of Paragraph 30 constitute Plaintiffs' characterization of this claim, to which no response is required.
31. Plaintiffs deny the allegations of Paragraph 31.
32. Plaintiffs deny the allegations of Paragraph 32.
33. Plaintiffs deny the allegations of Paragraph 33.
34. Plaintiffs deny the allegations of Paragraph 34.
35. Plaintiffs deny the allegations of Paragraph 35.
36. Plaintiffs deny the allegations of Paragraph 36.
37. Plaintiffs deny the allegations of Paragraph 37.

38. Plaintiffs deny the allegations of Paragraph 38.
39. Plaintiffs contend that the trademark application for the mark “Triple Bypass Sandwich” speaks for itself and is the best evidence of its contents. Any allegations contrary to their plain meaning are denied.
40. Plaintiffs deny the allegations of Paragraph 40.
41. Plaintiffs deny the allegations of Paragraph 41.
42. Plaintiffs deny the allegations of Paragraph 42.
43. Plaintiffs deny the allegations of Paragraph 43.
44. Plaintiffs deny the allegations of Paragraph 44.
45. Plaintiffs deny the allegations of Paragraph 45.

**COUNT II – DECLARATORY JUDGMENT OF PLAINTIFFS’ FEDERAL
TRADEMARK APPLICATIONS**

46. Plaintiffs repeat each and every allegation of the above Paragraphs 1-46 as if fully set forth herein.
47. The first sentence of Paragraph 47 constitutes Defendants’ characterization of Count II, to which no response is required. Plaintiffs admit the allegations of the second sentence of Paragraph 47.
48. Plaintiffs aver that they applied for the trademarks in order to obtain federal registration, and deny the allegations of Paragraph 48.
49. Plaintiffs deny the allegations of Paragraph 49.
50. Plaintiffs deny the allegations of Paragraph 50.
51. Plaintiffs deny the allegations of Paragraph 51.
52. Plaintiffs deny the allegations of Paragraph 52.
53. Plaintiffs admit the allegations of Paragraph 53.

54. Plaintiffs deny the allegations of Paragraph 54.

**COUNT III – DECLARATORY JUDGMENT RELATIVE TO PLAINTIFF’S
EXPANSION OF USE**

55. Plaintiffs repeat each and every allegation of the above Paragraphs 1-54 as if fully set forth herein.

56. The first sentence of Paragraph 56 constitutes Defendants’ characterization of Count III, to which no response is required. Plaintiffs admit the allegations of the second sentence of Paragraph 56.

57. Plaintiffs deny the allegations of Paragraph 57.

58. Plaintiffs deny the allegations of Paragraph 58.

59. Plaintiffs deny the allegations of Paragraph 59.

60. Plaintiffs deny the allegations of Paragraph 60.

61. Plaintiffs deny the allegations of Paragraph 61.

62. Plaintiffs deny the allegations of Paragraph 62.

63. Plaintiffs deny the allegations of Paragraph 63.

64. Plaintiffs admit the allegations of Paragraph 64.

COUNT IV – DECLARATORY JUDGMENT FOR CONCURRENT USE

65. Plaintiffs repeat each and every allegation of the above Paragraphs 1-64 as if fully set forth herein.

66. Paragraph 66 constitutes Defendants’ characterization of Count IV, to which no response is required.

67. Plaintiffs deny the allegations of Paragraph 67.

68. Plaintiffs deny the allegations of Paragraph 68.

69. Plaintiffs deny the allegations of Paragraph 69.

70. Plaintiffs deny the allegations of Paragraph 70.

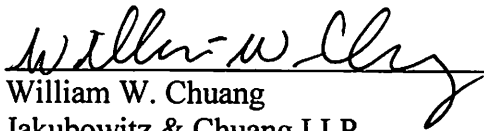
71. Paragraph 71 constitutes the relief sought by Defendants, to which no response is required.

RELIEF REQUESTED

Plaintiffs requests that the Court deny Defendants all the relief sought in their Counterclaim.

Plaintiffs demand trial by jury on all issues so triable.

Dated: September 6, 2011
New York, NY


William W. Chuang
Jakubowitz & Chuang LLP
401 Broadway Suite 408
New York, NY 10013
(347) 542-8529