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

MUHAMMAD ALI ENTERPRISES, LLC,

Plaintiff,

v.

KOBO, INC.,

Defendant.

Civil Action No.: 11-4825
 (SAS) (HP)

ECF Case

**ANSWER AND AFFIRMATIVE
 DEFENSES**

Defendant Kobo, Inc. (“Kobo” or “Defendant”), by and through its attorneys Reed Smith LLP, answers the Complaint (the “Complaint”) of Plaintiff Muhammad Ali Enterprises, LLC (“MAE” or “Plaintiff”) as follows:

Nature of Action and Relief Sought

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.
2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.
3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.
4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. Defendant admits that it markets and sells the Kobo e-Reader, which is an electronic book reader.

7. Defendant admits only that it took out an advertisement in the New York Times on June 17, 2011 and that said advertisement contained Muhammad Ali's name and the quotation, "Float Like A Butterfly, Sting Like A Bee." The remaining allegations contained in paragraph 7 contain conclusions of law to which no response is required. Defendant denies the truth of all other allegations contained in paragraph 7 that are not admitted.

8. Paragraph 8 contains conclusions of law to which no response is required. Defendant denies the truth of all other allegations contained in paragraph 8.

The Parties

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint.

10. Defendant admits that Kobo is a Canadian corporation that markets and sells e-book readers.

Jurisdiction and Venue

11. In response to the allegations in paragraph 11 of the Complaint, Defendant admits that this Court has jurisdiction pursuant to 28 U.S.C. § 1332 but otherwise denies the truth of the allegations contained in this paragraph.

12. In response to the allegations in paragraph 12 of the Complaint, Defendant admits that this Court has personal jurisdiction over it but otherwise denies the truth of the allegations contained in this paragraph.

13. In response to the allegations in paragraph 13 of the Complaint, Defendant admits that venue is proper pursuant to 28 U.S.C. § 1391.

Facts Common to All Claims

Muhammad Ali and Muhammad Ali's Identity

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint.

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint.

16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint.

17. Paragraph 17 contains conclusions of law to which no response is required. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17 of the Complaint.

18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint.

20. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint.

23. Defendant respectfully refers to the writings referenced within the allegations of paragraph 23 for their full and complete terms, and otherwise denies the truth of the remaining allegations contained in this paragraph.

24. Paragraph 24 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24.

25. Paragraph 25 of the Complaint contains a legal conclusion to which no response is required. Defendant respectfully refers to the writings referenced within the allegations of paragraph 25 for their full and complete terms, and otherwise denies the truth of the remaining allegations contained in this paragraph.

26. Paragraph 26 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. Paragraph 27 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.

28. Paragraph 28 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant respectfully refers to the writing referenced within the allegations of paragraph 28 for its full and complete terms, and otherwise denies the truth of the remaining allegations contained in this paragraph.

29. Paragraph 29 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant respectfully refers to the writings referenced within the allegations of paragraph 29 for their full and complete terms.

Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 29.

30. Paragraph 30 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.

31. Paragraph 31 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 31.

Kobo's Unauthorized Use of the Muhammad Ali Name and Muhammad Ali Slogan

32. Defendant admits the allegations contained in paragraph 32 of the Complaint.

33. Defendant respectfully refers to the writing referenced within the allegations of paragraph 33 for its full and complete terms, and otherwise denies the truth of the remaining allegations contained in this paragraph.

34. Paragraph 34 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant admits that the purpose of the advertisement was to market its product and denies the truth of the remaining allegations contained in this paragraph.

35. Paragraph 35 of the Complaint contains a legal conclusion to which no response is required. To the extent a further response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. Defendant denies the truth of the allegations contained in paragraph 36 of the Complaint.

37. Defendant denies the truth of the allegations contained in paragraph 37 of the Complaint.

38. Defendant denies the truth of the allegations contained in paragraph 38 of the Complaint.

39. Defendant denies the truth of the allegations contained in paragraph 39 of the Complaint.

40. Paragraph 40 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 40.

41. Paragraph 41 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 41.

42. Paragraph 42 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 42.

43. Paragraph 43 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 43.

44. Paragraph 44 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 44.

45. Paragraph 45 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 45.

46. Paragraph 46 of the Complaint contains a legal conclusion to which no response is required.

COUNT I

Trademark Infringement, Unfair Competition and False Designation of Origin under Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)

47. Defendant repeats and re-alleges its responses to Paragraphs 1 through 46 as if each were fully stated and set forth herein.

48. Paragraph 48 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 48.

49. Paragraph 49 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 49.

50. Paragraph 50 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 50.

51. Paragraph 51 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 51.

52. Paragraph 52 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 52.

COUNT II

Trademark Dilution under Section 43(c) of the Lanham Act, 15 U.S.C. §§ 1125(c)

53. Defendant repeats and re-alleges its responses to Paragraphs 1 through 53 as if each were fully stated and set forth herein.

54. Paragraph 54 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 54.

55. Paragraph 55 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 55.

56. Paragraph 56 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 56.

57. Paragraph 57 of the Complaint contains legal conclusions to which no response is required.

COUNT III

Violation of the Right to Publicity under New York Civil Rights Law § 51 and the Law of Every State in Which Kobo Engaged in the Unlawful Conduct Alleged Herein

58. Defendant repeats and re-alleges its responses to Paragraphs 1 through 57 as if each were fully stated and set forth herein.

59. Paragraph 59 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 59.

60. Paragraph 60 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 60.

COUNT IV

Violation of the Right to Publicity under California Common Law and California Civil Code § 3344 and the Law of Every State in Which Kobo Engaged in the Unlawful Conduct Alleged Herein

61. Defendant repeats and re-alleges its responses to Paragraphs 1 through 60 as if each were fully stated and set forth herein.

62. Paragraph 62 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 62.

63. Paragraph 63 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 63.

COUNT V

Trademark Infringement, Unfair Competition, and Deceptive Acts and Practices under New York Common and Statutory Law, and of the Law of Every State in Which Kobo Engaged in the Unlawful Conduct Alleged Herein

64. Defendant repeats and re-alleges its responses to Paragraphs 1 through 63 as if each were fully stated and set forth herein.

65. Paragraph 65 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 65.

66. Paragraph 66 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 66.

67. Paragraph 67 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 67.

68. Paragraph 68 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 68.

COUNT VI

Trademark Infringement, Unfair Competition, and Deceptive Acts and Practices under California Common and Statutory Law, and of the Law of Every State in Which Kobo Engaged in the Unlawful Conduct Alleged Herein

69. Defendant repeats and re-alleges its responses to Paragraphs 1 through 68 as if each were fully stated and set forth herein.

70. Paragraph 70 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 70.

71. Paragraph 71 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 71.

72. Paragraph 72 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 72.

COUNT VII

Dilution and Injury to Business Reputation under New York Statutory Law N.Y. Gen. Bus. Law § 360(1)

73. Defendant repeats and re-alleges its responses to Paragraphs 1 through 72 as if each were fully stated and set forth herein.

74. Paragraph 74 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 74.

75. Paragraph 75 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the truth of all other allegations contained in paragraph 75.

PRAYER FOR RELIEF

Defendant denies the allegations contained in the “WHEREFORE” paragraph following paragraph 75 of the Complaint and further states that Defendant is not indebted or liable to Plaintiffs in any manner or amount.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted or for which the damages sought can be awarded.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. Plaintiff’s claims are barred in whole or in part by the doctrines of equity, estoppel, waiver, laches and unclean hands.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. The Plaintiff's claims are barred in whole or in part by their failure to act reasonably to mitigate their damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff's claims are barred in whole or part because Kobo acted reasonably, properly, innocently, and in good faith at all times.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. Kobo reserves the right to assert additional affirmative defenses, at such time, and to such extent as warranted by discovery and factual developments in this case.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

6. Kobo's use of the Ali name and slogan were a "fair use" of each, and therefore, not infringing of any of Plaintiff's rights.

WHEREFORE, Defendant respectfully demands judgment:

- A. dismissing each of Plaintiff's claims in the Complaint;
- B. awarding Defendant its costs, disbursements and reasonable attorneys' fees incurred in this action; and
- C. awarding Defendant such other and further relief in its favor as this Court may deem just and proper.

Dated: September 23, 2011
New York, New York

REED SMITH LLP

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