

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNIVERSAL TUBE & ROLLFORM
EQUIPMENT CORPORATION,

Case No. 06-2628

Plaintiff,

Judge: James G. Carr

-vs-

CHAD HURLEY,

Defendant

and

STEVE CHEN,

Defendant

and

YOUTUBE, INC.,

*Defendants /
Counterclaimants*

-vs-

UNIVERSAL TUBE & ROLLFORM
EQUIPMENT CORPORATION,

*Counterclaim
Defendants*

**REPLY OF UNIVERSAL TUBE & ROLLFORM EQUIPMENT CORPORATION
TO COUNTERCLAIMS OF YOUTUBE, INC.**

Universal Tube & Rollform Equipment Corporation's ("Universal") ("counterclaim defendant"), for its Answer and Affirmative Defenses to the Counterclaims of YouTube, Inc. alleges of its own knowledge as to itself and upon information and belief, as follows:

1. Universal admits the allegations of paragraph 1 of the Counterclaims.

2. Universal admits the allegations of paragraph 2 of the Counterclaims.

3. Universal states that the allegations contained in paragraph 3 of the Counterclaims are conclusions of law to which no response is required. To the extent a response is required, Universal states that the pleadings speak for themselves and therefore denies the same.

4. Universal states that the allegations contained in paragraph 4 of the Counterclaims are conclusions of law to which no response is required. To the extent a response is required, Universal states that the pleadings speak for themselves and therefore denies the same.

5. Universal admits that Universal is subject to personal jurisdiction in this District. Universal admits that it sells used tube, pipe, and rollform machinery from its principal place of business in Perrysburg, Ohio. Universal admits that it filed the present lawsuit and denies the remaining allegations contained in paragraph 5 as they call for legal conclusions and require no response.

6. Universal states that the allegations contained in paragraph 6 of the Counterclaims are conclusions of law to which no response is required. To the extent a response is required, Universal states that the pleadings speak for themselves and therefore denies the same.

GENERAL ALLEGATIONS

7. Universal admits that YouTube has been and now is engaged in operating a service for watching and sharing videos and that people can watch, upload, and share original videos worldwide through websites, mobile devices, blogs, and email. Universal denies YouTube provides a related online search service because it is without knowledge or information sufficient to form a belief as to the truth or falsity of that allegation because it is not clear what is being referred to.

8. Universal admits the allegations of paragraph 8 of the Counterclaims.

9. Universal admits YouTube has offered and marketed services and that it has

attempted to brand its service with the mark “YouTube” but denies the remaining allegations contained in paragraph 9.

10. Universal is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 10 of the Counterclaims as it is not clear what service is being referred to.

11. Universal is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 11 of the Counterclaims and therefore denies the same.

12. Universal admits the allegations of paragraph 12 of the Counterclaims.

13. Universal admits the allegations of paragraph 13 of the Counterclaims.

14. Universal denies the allegations of paragraph 14 of the Counterclaims.

15. Universal admits the allegations of paragraph 15 of the Counterclaims.

16. Universal denies the allegations of paragraph 16 of the Counterclaims.

17. Universal admits that it changed its website in November 2006. Universal admits that it added the statement “The Original Tube and Pipe Machinery Site, UTUBE™” to its website. Universal admits that it added an online search service at the top of the website, adjacent to a newly added graphic displaying “utube”. Universal denies the remaining allegations of paragraph 17.

18. Universal denies that it is “hosting” an online search service and therefore denies the remaining allegations of paragraph 18.

19. Universal admits Universal’s president is Ralph Girkins. Universal admits Ralph Girkins has made statements that the online search service provided by another company, which is linked to by Universal, provides revenue which exceeds the costs of hosting the <utube.com> website. Universal denies the remaining allegations of paragraph 19 of the Counterclaims.

20. Universal admits the allegations of paragraph 20 of the Counterclaims.

21. Universal denies the allegations of paragraph 21 of the Counterclaims that there are visitors looking for YouTube that type the term “YouTube” into the search bar on Universal’s website as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that such people exist. Universal denies the allegation of paragraph 21 of the Counterclaims that visitors looking for YouTube have been directed to a webpage entitled “Top Search Results for youtube at uTube.com” as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that such people exist. Universal denies the remaining allegations of paragraph 21 as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

22. Universal denies the allegations of paragraph 22 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

23. Universal denies the allegations of paragraph 23 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

24. Universal denies the allegations of paragraph 24 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

25. Universal denies the allegations of paragraph 25 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

26. Universal denies the allegations of paragraph 26 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

27. Universal denies the allegations of paragraph 27 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

28. Universal denies the allegations of paragraph 28 of the Counterclaims that it obtains revenues from internet users. Universal denies the allegations of paragraph 28 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of where the revenues it obtains are derived from or which results pages do not

provide links to YouTube.

FIRST CLAIM FOR RELIEF
(Federal Unfair Competition)

29. Universal restates and realleges paragraphs 1 through 28 of this Reply in response to paragraph 29 of the Counterclaims as if fully re-written herein.

30. Universal states that the allegations contained in paragraph 30 of the Counterclaims are conclusions of law to which no responsive pleading is required. To the extent a response is required, Universal denies the allegations.

31. Universal denies the allegations of paragraph 31 of the Counterclaims as it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

32. Universal admits the allegations of paragraph 32 of the Counterclaims.

33. Universal admits the allegations of paragraph 33 of the Counterclaims.

34. Universal denies the allegations of paragraph 34 of the Counterclaims.

35. Universal is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 35 of the Counterclaims and therefore denies the same.

36. Universal denies the allegations of paragraph 36 of the Counterclaims.

37. Universal denies the allegations of paragraph 37 of the Counterclaims.

38. Universal denies the allegations of paragraph 38 of the Counterclaims.

39. Universal denies the allegations of paragraph 39 of the Counterclaims.

40. Universal denies the allegations of paragraph 40 of the Counterclaims.

41. Universal denies the allegations of paragraph 41 of the Counterclaims.

SECOND CLAIM FOR RELIEF
(Federal Trademark Dilution)

42. Universal restates and realleges paragraphs 1 through 41 of this Reply in response to paragraph 42 of the Counterclaims as if fully re-written herein.

43. Universal denies the allegations of paragraph 43 of the Counterclaims.

44. Universal is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 44 of the Counterclaims as it is not clear what is meant by “well-recognized” and therefore denies the same.

45. Universal denies the allegations of paragraph 45 of the Counterclaims.

46. Universal denies the allegations of paragraph 46 of the Counterclaims.

47. Universal denies the allegations of paragraph 47 of the Counterclaims.

48. Universal denies the allegations of paragraph 48 of the Counterclaims.

49. Universal denies the allegations of paragraph 49 of the Counterclaims.

THIRD CLAIM FOR RELIEF
(Ohio Deceptive Trade Practices Act)

50. Universal restates and realleges paragraphs 1 through 49 of this Reply in response to paragraph 50 of the Counterclaims as if fully re-written herein.

51. Universal states that the allegations contained in paragraph 51 of the Counterclaims are conclusions of law to which no response is required. To the extent a response is required, Universal denies the same.

52. Universal states that the allegations contained in paragraph 52 of the Counterclaims are conclusions of law to which no response is required. To the extent a response is required, Universal denies the same.

53. Universal denies the allegations of paragraph 53 of the Counterclaims.

54. Universal denies the allegations of paragraph 54 of the Counterclaims.

55. Universal denies the allegations of paragraph 55 of the Counterclaims.

56. Universal denies the allegations of paragraph 56 of the Counterclaims.

57. Universal denies the allegations of paragraph 57 of the Counterclaims.

FOURTH CLAIM FOR RELIEF
(Dilution under Ohio Law)

58. Universal restates and realleges paragraphs 1 through 57 of this Reply in response to paragraph 58 of the Counterclaims as if fully re-written herein.

59. Universal denies the allegations of paragraph 59 of the Counterclaims.

60. Universal admits the allegations of paragraph 60 of the Counterclaims.

61. Universal denies the allegations of paragraph 61 of the Counterclaims.

62. Universal denies the allegations of paragraph 62 of the Counterclaims.

63. Universal denies the allegations of paragraph 63 of the Counterclaims.

64. Universal denies the allegations of paragraph 64 of the Counterclaims.

65. Universal denies the allegations of paragraph 65 of the Counterclaims.

66. Universal denies the allegations of paragraph 66 of the Counterclaims.

67. Universal denies the allegations of paragraph 67 of the Counterclaims.

AFFIRMATIVE DEFENSES

As and for defenses against the claims asserted in the Counterclaims, Universal alleges as follows:

First Affirmative Defense

1. The Counterclaims fail to state a claim upon which relief can be granted.

Second Affirmative Defense

2. Universal used UTUBE as a trademark before any use by YouTube Inc., and therefore has senior and paramount rights in said mark over YouTube.

Third Affirmative Defense

3. Universal's use of UTUBE or any variation thereof is not likely to cause, and has not caused, consumer confusion as to the origin of any goods or services.

Fourth Affirmative Defense

4. YouTube has unreasonably delayed any enforcement of its alleged rights in the YOUTUBE trademark. As a result of such delay, YouTube is barred from obtaining relief by the doctrines of waiver, acquiescence, laches, and/or equitable estoppel.

Fifth Affirmative Defense

5. YouTube did not file the instant Counterclaims in good faith but rather to intentionally interfere with Counterclaim defendant's rights in its trademark and therefore its actions constitute trademark misuse.

Sixth Affirmative Defense

6. Universal's use of UTUBE is not likely to dilute any of YouTube's marks.

Seventh Affirmative Defense

7. YouTube is not entitled to seek equitable relief because it comes to the Court with unclean hands.

Eighth Affirmative Defense

8. YouTube has not been damaged in any amount, manner, or at all by reason of any act of Universal and therefore the relief prayed for cannot be granted.

Ninth Affirmative Defense

9. YouTube is not entitled to injunctive relief.

Tenth Affirmative Defense

10. YouTube is not entitled to attorneys' fees and costs.

Eleventh Affirmative Defense

11. YouTube has failed to join a party under Rule 19.

Twelfth Affirmative Defense

12. That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, a fair use, or a nominative use.

Thirteenth Affirmative Defense

13. Universal has insufficient knowledge or information upon which to form a basis as to whether it may have additional, as yet unstated, separate defenses available, and accordingly reserves the right to amend this Answer to add, delete, supplement, or modify these defenses based upon legal theories that may be or will be divulged through clarification of YouTube's counterclaims, through discovery, or through further legal analysis of YouTube's position in this litigation.

Wherefore Universal prays that:

1. The counterclaims be dismissed.
2. This Court award Universal its reasonable attorney's fees, together with the costs and disbursements of this action; and
3. That the Court award such other and further relief as the Court deems just and proper.

Dated: July 10th 2007

Respectfully submitted,

/s/ Anthony J. DeGidio
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L.R. 7.1(f) CERTIFICATION

I hereby certify that the foregoing Reply of Universal Tube & Rollform Equipment Corporation to Counterclaims of Youtube, Inc., meets the page limitations set forth in L.R. 7.1. This case was placed upon the standard track pursuant to Order of this court on 3/8/2007 (Doc. # 18)

/s/ anthony degidio
Anthony J. DeGidio, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of Universal Tube & Rollform Equipment Corporation to Counterclaims of Youtube, Inc., was filed electronically this 10th day of July 2007. Parties may access this filing throughout the Court's system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system or via electronic or U.S. Mail.

/s/ anthony degidio
Anthony J. DeGidio, Esq.