

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

HAUNTED THINGS, LLC  
 9891 Montgomery Road, Suite 273  
 Cincinnati, OH 45242

Plaintiff/Counterclaim-Defendant,

-v-

HALLOWEEN PRODUCTIONS, INC.  
 1525 South 8th Street  
 St. Louis, MO 63129

Defendant/Counterclaim-Plaintiff.

Civil No.: 1:09-cv-677

Chief Judge Susan J. Dlott

**PLAINTIFF’S ANSWER TO  
 DEFENDANT’S COUNTERCLAIM**

**JURY TRIAL DEMANDED**

**PLAINTIFF’S ANSWER TO DEFENDANT’S COUNTERCLAIM**

Plaintiff/Counterclaim-Defendant Haunted Things, LLC (“Haunted Things”) for its Answer to the Counterclaim of Defendant/Counterclaim-Plaintiff Halloween Productions, Inc. (“Halloween Productions”) states as follows:

**NATURE OF THE ACTION**

1. Haunted Things denies that the trademarks Haunted Attraction and Haunted Attraction Magazine as used by Haunted Things as source-identifiers for its magazine, both in print and on-line, are generic and/or are used in their common descriptive sense and thus denies the same.

## **THE PARTIES**

2. Haunted Things is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Counterclaim and therefore denies the same.

3. Haunted Things admits that it is a corporation organized and existing under the laws of the state of Ohio and admits that it is in the business of publishing a magazine, both in print and on-line, directed to all aspects of the haunted house and haunted entertainment industry.

## **JURISDICTION AND VENUE**

4. Haunted Things admits the allegations of paragraph 4 of the Counterclaim.

5. Haunted Things admits the allegations of paragraph 5 of the Counterclaim.

6. Haunted Things admits the allegations of paragraph 6 of the Counterclaim.

7. Haunted Things admits that it has instituted litigation against Halloween Productions and asserted that Halloween Productions' registration and use of the domain names [hauntedattractionmagazine.com](http://hauntedattractionmagazine.com) and [hauntedattractionsmagazine.com](http://hauntedattractionsmagazine.com) constitutes trademark infringement.

## **GENERAL ALLEGATIONS**

8. Haunted Things denies the allegations that the trademark Haunted Attraction is a "common, generic and popular" term as used by Haunted Things as a source-identifier for its magazine. Haunted Things is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8 of the Counterclaim and therefore denies the same.

9. Haunted Things denies the allegations that the trademark Haunted Attraction is "highly descriptive and pervasively used" by the haunted entertainment industry to describe a class of magazines about the haunted entertainment industry. Haunted Things denies that the

trademark Haunted Attraction is not uniquely associated with Haunted Things' goods and services by the consumers for Haunted Things' goods and services, namely members of the haunted entertainment industry.

10. Haunted Things is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Counterclaim and therefore denies same.

11. Haunted Things admits that in 2005 Halloween Productions registered a number of domain names including Haunted Things trademarks therein, including [hauntedattractionmagazine.com](http://hauntedattractionmagazine.com) and [hauntedattractionsmagazine.com](http://hauntedattractionsmagazine.com). Haunted Things denies that those domain names are generic when used in connection with Halloween Productions' goods and/or services and denies that Halloween Productions registered those domain names with the intent of using them to "generically, accurately, and plainly identify" the genre or category of Halloween Productions' goods and/or services.

12. Haunted Things denies that it alleged that it is the only entity in the haunted entertainment industry allowed to use the term "haunted attraction" in connection with "promoting, discussing, and reviewing" haunted entertainment sites. Haunted Things admits that it sent the letter attached as Exhibit 3 to Halloween Productions' Counterclaim on September 8, 2009 to Halloween Productions. Haunted Things submits that the contents of the letter speaks for itself. Haunted Things admits that it filed the Complaint in the present action on September 15, 2009 and that it included claims under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114, and 1125(a) and (d), and analogous Ohio law claims. Haunted Things admits that it does not own federal registrations for its Haunted Attraction trademarks and will seek to

amend its Complaint to remove and/or dismiss the claims made under Section 32(1) of the Lanham Act.

13. Haunted Things admits, on information and belief, that prior to September 8, 2009, no representative of Haunted Things (or its predecessor in interest) explicitly advised any representative of Halloween Productions of Haunted Things' exclusive rights in the Haunted Attraction and Haunted Attraction Magazine trademarks or that Halloween Productions was infringing Haunted Things rights.

14. Haunted Things admits that it has never taken any affirmative steps to enforce its trademark rights against any third parties infringing those rights other than the current action against Halloween Productions. Haunted Things further admits that it is unaware of any third party infringement of its trademark rights other than the infringement thereof by Halloween Productions complained of in the current action.

15. Haunted Things admits the allegations of paragraph 15 of the Counterclaim.

16. On information and belief, Haunted Things admits that it has not used a superscript TM or ® in connection with its use of the Haunted Attraction and Haunted Attraction Magazine trademarks.

17. Haunted Things admits that third parties use the term "haunted attraction" in a non-trademark, descriptive manner to fairly describe their respective goods and/or services. Haunted Things denies that any third parties use the trademarks Haunted Attraction and/or Haunted Attraction Magazine as source-identifiers for magazines in the haunted entertainment industry.

18. Haunted Things denies the allegations of paragraph 18 of the Counterclaim.

19. Haunted Things denies the allegations of paragraph 19 of the Counterclaim.

20. Haunted Things denies the allegations of paragraph 20 of the Counterclaim.

21. Haunted Things denies the allegations of paragraph 21 of the Counterclaim.

### **COUNTERCLAIM**

22. Haunted Things restates and realleges its answers, admissions, and denials set forth in Paragraphs 1 through 21 as though fully set forth herein.

23. Paragraph 23 of the Counterclaim states legal conclusions to which no response is required. To the extent paragraph 23 is deemed to contain allegations of fact, Haunted Things denies those allegations.

24. Paragraph 24 of the Counterclaim states legal conclusions to which no response is required. To the extent paragraph 24 is deemed to contain allegations of fact, Haunted Things denies those allegations.

25. Haunted Things denies all allegations set forth in the Counterclaim that are not specifically admitted herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Haunted Things prays that this Court declare the rights and legal relations of the parties in respect of the controversy set forth above and to that end adjudge and decree:

A. That the trademarks Haunted Attraction and Haunted Attraction Magazine, when used in connection with magazines, both print and on-line, directed to the haunted entertainment industry are not generic and/or that those trademarks have acquired distinctiveness in the relevant consuming public sufficient for protection as source-identifying trademarks;

B. That Haunted Things' rights in the Haunted Attraction and Haunted Attraction Magazine trademarks are valid;

C. That Haunted Things is entitled to the exclusive right to use the trademarks Haunted Attraction and Haunted Attraction Magazine as source-identifiers in connection with magazines directed to the haunted entertainment industry;

D. That Halloween Productions' registration and use of the [hauntedattractionmagazine.com](http://hauntedattractionmagazine.com) and [hauntedattractionsmagazine.com](http://hauntedattractionsmagazine.com) domain names is likely to and has caused confusion in the relevant consuming public, constitutes a false designations of origin, and is a false representation;

Counterclaim Defendant Haunted Things respectfully requests that the Court will further:

A. Permanently enjoin Halloween Productions from infringing uses of Haunted Things' Haunted Attraction and Haunted Attraction Magazine trademarks;

B. Permanently enjoin Halloween Productions from interfering in any manner with Haunted Things' exclusive use of its Haunted Attraction and Haunted Attraction Magazine trademarks;

C. Award Haunted Things its costs and fees, including its reasonable attorneys' fees incurred in this action; and

E. Award such other further relief to which Counterclaim Defendant Haunted Things may be entitled to as a matter of law or equity, or which the Court determines to be just and proper.

Dated: November 19, 2009

By: /s/ John M. Mueller  
John M. Mueller(0068876)  
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Defendant  
Haunted Things, LLC

**JURY DEMAND**

Plaintiff hereby demands a trial by jury for all issues in this action triable of right by jury.

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Trial Attorneys for Plaintiff/Counterclaim  
Defendant  
Haunted Things, LLC



**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2009, the foregoing PLAINTIFF'S ANSWER TO DEFENDANT'S COUNTERCLAIM was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ John M. Mueller*

Trial Attorney for Haunted Things, LLC