

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

HEARTBRAND BEEF, INC.	§	
Plaintiff,	§	Civil Action No. 6:08-cv-00062
vs.	§	
LOBEL'S OF NEW YORK, LLC, WORLDWIDE MEDIA, INC., THOUGHT CONVERGENCE, INC. and YAHOO! Inc.	§	
Defendants.	§	
	§	

ANSWER

Defendant Thought Convergence, Inc. ("Thought Convergence") responds as follows to the Amended Complaint filed by plaintiff Heartbrand Beef, Inc. ("Heartbrand"):

PARTIES

1. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, on that basis, denies said allegations.

2. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and, on that basis, denies said allegations.

3. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and, on that basis, denies said allegations.

4. Thought Convergence admits the allegations of Paragraph 4.

5. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and, on that basis, denies said allegations.

JURISDICTION AND VENUE

6. Thought Convergence admits the allegations of Paragraph 6..

7. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and, on that basis, denies said allegations.

FACTS COMMON TO ALL COUNTS

8. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, on that basis, denies said allegations.

9. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and, on that basis, denies said allegations.

10. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and, on that basis, denies said allegations.

11. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, on that basis, denies said allegations.

12. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and, on that basis, denies said allegations.

13. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and, on that basis, denies said allegations.

14. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 and, on that basis, denies said allegations.

15. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 and, on that basis, denies said allegations.

16. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 and, on that basis, denies said allegations.

17. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and, on that basis, denies said allegations.

18. Thought Convergence admits the allegations of Paragraph 18.

19. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19, and on that basis, denies said allegations.

20. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20, and on that basis, denies said allegations.

21. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21, and on that basis, denies said allegations.

22. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22, and on that basis, denies said allegations.

23. Thought Convergence denies the allegation that its acts constitute a clear attempt to "bait and switch" a prospective buyer of Akaushi steaks to some other, lesser quality beef or other meat product sold by Lobel's. Except as so denied, Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 and, on that basis, denies said allegations.

24. Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 and, on that basis, denies said allegations.

COUNT I

False Designation of Origin

25. Thought Convergence repeats and incorporates by reference its responses to the allegations in Paragraph 1 through 19 of the Complaint as though fully set forth herein.

26. Thought Convergence denies the allegations of Paragraph 26.

27. Thought Convergence denies that its acts are in violation of 15 U.S.C. § 1125(a) will continue unless enjoined by this Court. Except as so denied, Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 and, on that basis, denies said allegations.

28. Thought Convergence denies that its acts are in violation of 15 U.S.C. § 1125(a) will continue unless enjoined by this Court. Except as so denied, Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 and, on that basis, denies said allegations.

COUNT II

Common Law Unfair Competition

29. Thought Convergence repeats and incorporates by reference its responses to the allegations in Paragraph 1 through 22 of the Complaint as though fully set forth herein.

30. Thought Convergence denies its complained-of acts constitute common law unfair competition under the laws of the State of Texas. Except as so denied, Thought Convergence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 and, on that basis, denies said allegations.

31. Thought Convergence is without knowledge or information sufficient to

form a belief as to the truth of the allegations of Paragraph 31 and, on that basis, denies said allegations.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. Plaintiff has failed to set forth, or sufficiently allege, a claim upon which relief can be granted in Count I of its Complaint.

Second Affirmative Defense

2. Plaintiff has failed to set forth, or sufficiently allege, a claim upon which relief can be granted in Count II of its Complaint.

Third Affirmative Defense

3. The term "Akaushi" is a descriptive term that has not acquired any distinctiveness or secondary meaning and, therefore, is not a term in which Plaintiffs can claim exclusive property rights.

Fourth Affirmative Defense

4. Thought Convergence's use of the term "Akaushi" constitutes fair use.

WHEREFORE, Thought Convergence prays as follows:

a. That Plaintiff take nothing on its claims and judgment be entered in favor of Thought Convergence thereon;

b. That Thought Convergence be awarded its costs; and

c. That Thought Convergence be awarded such other and further relief as is just and proper.

Dated: October 6, 2008

GEORGE A. YUHAS
ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ George A. Yuhas

GEORGE A. YUHAS
Attorneys for Defendant
Thought Convergence, Inc.