

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CORBIN BERNSEN,

Plaintiff and Counterclaim Defendant,

v.

Civil Action No. 2:11cv546
Jury Trial is Demanded.

INNOVATIVE LEGAL MARKETING, LLC,

Defendant and Counterclaim Plaintiff.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIM TO COMPLAINT**

NOW COMES Defendant Innovative Legal Marketing ("ILM"), by counsel, for its Answer, Affirmative Defenses and Counterclaim to the Complaint in this matter, states as follows:

Answer

The Parties

1. ILM can neither admit nor deny the allegations contained in Paragraph 1 of the Complaint; therefore ILM denies all allegations therein.
2. ILM admits the allegations contained in Paragraph 2 of the Complaint.

Jurisdiction and Venue

3. ILM admits the allegations contained in Paragraph 3 of the Complaint.
4. ILM admits the allegations contained in Paragraph 4 of the Complaint.
5. ILM admits the allegations contained in Paragraph 5 of the Complaint.

General Allegations

6. ILM admits the allegations contained in Paragraph 6 of the Complaint.
7. ILM admits the allegations contained in Paragraph 7 of the Complaint.
8. ILM states that the Agreement speaks for itself, any allegations contained in Paragraph 8 of the Complaint inconsistent therewith are specifically denied.
9. ILM states that the Agreement speaks for itself, any allegations contained in Paragraph 9 of the Complaint inconsistent therewith are specifically denied.
10. ILM states that the Agreement speaks for itself, any allegations contained in Paragraph 10 of the Complaint inconsistent therewith are specifically denied.
11. ILM denies the allegations contained in Paragraph 11 of the Complaint.
12. ILM admits the allegations contained in Paragraph 11 of the Complaint.
13. ILM admits the allegations contained in Paragraph 12 of the Complaint.
14. ILM denies the allegations contained in Paragraph 14 of the Complaint stating specifically that ILM terminated the Agreement because of plaintiff, Corbin Bernsen's ("Bernsen") breach of the terms thereof and, pursuant to the terms of the Agreement, stopped making payments thereunder.
15. ILM denies the allegations contained in Paragraph 15 of the Complaint and calls for strict proof thereof.
16. ILM denies the allegations contained in Paragraph 16 of the Complaint.
17. ILM denies the allegations contained in Paragraph 17 of the Complaint.

Count I Breach of Contract

18. Paragraph 18 of the complaint does not require a response; therefore none is given.

19. ILM hereby incorporates its responses to Paragraphs 1 -17 as if fully set forth herein.

20. ILM states that the Agreement speaks for itself, any allegations contained in Paragraph 20 of the Complaint inconsistent therewith are specifically denied.

21. ILM denies the allegations contained in Paragraph 21 of the Complaint.

22. ILM denies the allegations contained in Paragraph 22 of the Complaint.

23. ILM denies the allegations contained in Paragraph 23 of the Complaint.

WHEREFORE for the foregoing reasons, Innovative Legal Marketing, LLC states that Plaintiff is not entitled to judgment in any amount, and hereby moves the Court for dismissal of this action.

Count II
Unjust Enrichment

24. Paragraph 24 of the complaint does not require a response; therefore none is given.

25. ILM hereby incorporates its responses to Paragraphs 1 -17 as if fully set forth herein.

26. ILM denies the allegations contained in Paragraph 26 of the Complaint.

27. ILM denies the allegations contained in Paragraph 27 of the Complaint.

28. ILM denies the allegations contained in Paragraph 28 of the Complaint.

Affirmative Defenses

1. Plaintiff was first to breach and not entitled to enforce the Agreement.

2. ILM has not breached any duty due and owing to Plaintiff.

WHEREFORE for the foregoing reasons, Innovative Legal Marketing, LLC, by counsel, hereby moves the court to dismiss the plaintiff's Complaint with prejudice and to award it its costs herein expended.

Counterclaim

1. On or about October 8, 2009, ILM and Bernsen entered into a Spokesperson Agreement (“Agreement”) attached to the Complaint (Docket #1) as Exhibit 1.

2. In the Agreement, Bernsen specifically “agrees to not commit any act or do anything which may tend to bring [Bernsen] into public disrepute, contempt, scandal or ridicule or which might tend to reflect unfavorably on [ILM] their clients or on [Bernsen].” *Id.* At Clause VI.

3. Unbeknownst to ILM, Mr. Bernsen had previously appeared on the nationally televised program, “Tim and Eric Awesome Show Great Job!,” and participated in a sketch that was in very poor taste and reflected negatively on ILM’s clients, all of whom are plaintiff’s personal injury attorneys. Mr. Bernsen’s ridicule of personal injury attorneys diminished Mr. Bernsen’s effectiveness as a spokesman for ILM.

4. Mr. Bernsen publicly criticized ILM client Hughes and Coleman, PC when he attended a legal marketing conference in the Dominican Republic and proclaimed to the attendees that the conference was “disorganized” and “poorly run.” As Hughes and Coleman, PC had organized the conference, such public criticism would “tend to reflect unfavorably” on one of ILM’s clients.

5. In January of 2011, Mr. Bernsen appeared on a nationally televised program, “Celebrity Ghost Stories,” and publically disclosed prior instances of premarital sex and illegal drug usage.

6. During the course of the Agreement, the national media reported Mr. Bernsen was involved in a dispute with taxing authorities regarding unpaid taxes.

7. In August 2010, the media reported Mr. Bernsen was injured because of his participation in a bar fight.

8. Most recently, The Wall Street Journal, reported on the bankruptcy filing of Public Media Works of which Mr. Bernsen was formerly the Chief Executive and is a current stockholder.

9. All of this conduct tended to place Mr. Bernsen in public disrepute, contempt, scandal, and ridicule and reflected negatively on ILM and its clients.

10. Because of this pattern of repeated violations, ILM terminated the Agreement in June 2011.

11. These violations of Mr. Bernsen's obligations under Clause VI of the Agreement constitute a breach of the Agreement and are grounds to terminate the Agreement.

Breach of Contract

12. ILM hereby adopts and restates the allegations contained in Paragraphs 1 through 11, of its Counterclaim as if fully set forth herein.

13. Pursuant to the terms of the Agreement, Bernsen, *inter alia*, had the duty to "not commit any act or do anything which may tend to bring [Bernsen] into public disrepute, contempt, scandal or ridicule or which might tend to reflect unfavorably on [ILM] their clients or on [Bernsen]."

14. By Bernsen's course of action set forth in Paragraphs 1 through 11 of the Counterclaim *supra*, Bernsen breached the Agreement.

15. As direct and proximate result of Bernsen's actions, ILM has been damaged in an amount not less than \$595,791.77.

16. Additionally, the Agreement provides for an award of attorneys' fees and costs, to which ILM is entitled.

WHEREFORE for the foregoing reasons, Innovative Legal Marketing, LLC, by counsel, moves for Judgment in the amount of \$595,791.77, plus its costs and attorneys' fees incurred herein and for such other and further relief that justice may require.

Done this 9th day of November 2011.

INNOVATIVE LEGAL MARKETING, LLC

/s/ Richard H. Ottinger

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CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, November 09, 2011, I will I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing (NEF) to the following registered users:

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