

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Zango, Inc., f/k/a 180solutions, Inc.,)
a Washington corporation, a/k/a MetricsDirect,)
)
Plaintiff,)
)
v.)
Mainstream Advertising, a California)
Corporation,)
)
Defendant.)

No. 07-CV-507 MJP

PLAINTIFF ZANGO, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES TO
DEFENDANT MAINSTREAM'S
COUNTERCLAIM

COMES NOW plaintiff Zango, Inc. to admit, deny, and aver in response to defendant Mainstream Advertising's counterclaim as follows:

ANSWER TO COUNTERCLAIM

1. Plaintiff responds to paragraph 1 of the counterclaim by incorporating paragraphs 1-21 of its Complaint filed on April 6, 2007.

2. Answering paragraph 2, Plaintiff is without sufficient information either to admit or deny the allegations in paragraph 2 and therefore it denies the same. Mainstream Advertising asserts in paragraph 9 of its answer to Plaintiff's Complaint that the alleged December 15, 2004 "Mainstream Advertising Contract" is attached to its answer as Exhibit A, but that document is not, in fact, attached as Exhibit A; it is this same alleged contract that is asserted as relevant in Counterclaim paragraph 2.

PLAINTIFF ZANGO, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO DEFENDANT
MAINSTREAM ADVERTISING'S COUNTERCLAIM - 1

Harris & Moure
A Professional Limited Liability Corporation
720 Olive Way, Suite 1000
Seattle, WA 98101
Phone: (206) 224-5657
Fax: (206) 224-5659

1 3. Answering paragraph 3, Plaintiff is without sufficient information either to admit or
2 deny the allegations in paragraph 3 and therefore it denies the same.

3 4. Plaintiff denies the allegations in paragraph 4 of the Counterclaim.

4 5. Answering paragraph 5, Plaintiff is without sufficient information either to admit
5 or deny the allegations in paragraph 5 and therefore it denies the same.

6 6. Plaintiff denies the allegations in paragraph 6 of the Counterclaim.

7 7. Plaintiff denies the allegations in paragraph 7 of the Counterclaim insofar as
8 those allegations purport to relate to Plaintiff.

9 8. Plaintiff responds to paragraph 1.1 of the Counterclaim by incorporating its
10 responses to paragraphs 1-7 of the Counterclaim.

11 9. The allegations in paragraph 1.2 of the Counterclaim are denied.

12 10. Plaintiff responds to paragraph 2.1 of the Counterclaim by incorporating its
13 responses to paragraphs 1-7 of the Counterclaim.

14 11. The allegations in paragraph 2.2 of the counterclaim are denied.

15 12. With regard to the unnumbered section "DEFENDANT'S PRAYER FOR
16 RELIEF" following paragraph 2.2 and prior to "DATED this 22nd day of May, 2007," Plaintiff
17 denies the allegations contained therein and denies Defendant is entitled to any recovery of any
18 damages whatsoever from Plaintiff.

19 13. Plaintiff specifically denies that Defendant has met the proof requirements to
20 prove any elements of its claims asserted in its Counterclaim and asserts that it has failed to
21 establish by relevant credible evidence any of its alleged claims, damages, or right(s) to
22 recovery herein.

23 14. Plaintiff denies any and all allegations of the Counterclaim direct against Plaintiff
24 that have not been otherwise specifically addressed above.

AFFIRMATIVE DEFENSES

1. Failure to State a Claim. Mainstream fails to state a claim upon which relief may be granted.
2. Failure to Mitigate. Mainstream failed to mitigate its damages, if any.
3. Contributory/Comparative Negligence. Mainstream caused its own damages, if any.
4. Counter Claimant's Breach. Mainstream breached the contract on which it is suing.
5. Nonperformance of Condition Precedent. Mainstream has failed to show its full/material compliance with the agreement(s) on which it is suing.
6. Consent. Mainstream consented to all/some of the actions about which it complains.
7. Ratification. Mainstream ratified all/some actions of which it now complains.
8. Unclean Hands. Mainstream's unclean hands, and/or other lack of equity, preclude its recovery.
9. Estoppel. Mainstream is estopped from asserting claims against Plaintiff.
10. Waiver. Mainstream waived its right to assert the claims it is asserting against Plaintiff.
11. Offset. To the extent that the Mainstream is entitled to damages, those damages should be offset by amounts owed to defendant.
12. Plaintiff reserves the right to assert additional affirmative defenses as factual support is developed and discovery in this matter progresses.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREFORE, plaintiff Zango prays for relief as follows:

1. That Defendant's counterclaim be dismissed with prejudice;
2. That Plaintiff be awarded its costs in defense of Defendant's counterclaim, including reasonable attorneys' fees, as allowed by law;
3. That Plaintiff be awarded all of the relief sought in its Complaint;
4. For such other and further relief as the Court deems just and equitable.

DATED this Thursday, June 14, 2007.

HARRIS & MOURE, pllc

/s Charles P. Moure
By _____
Daniel P. Harris, WSBA # 16778
Charles P. Moure, WSBA # 23701

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IT IS HEREBY CERTIFIED that service of plaintiff's Answer and Affirmative Defenses to Defendant Internet Brand's Counterclaim has been made this Thursday, June 21, 2007, by filing a copy of this pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Michael H. Ferring
Daniel D. DeLue
Ferring & DeLue LLP
600 Stewart Street, Suite 1115
Seattle, Washington 98101-1242
T. 206-508-3804
F. 206-508-3817

Signed at Seattle, Washington this Thursday, June 21, 2007.

/s Charles P. Moure

Charles P. Moure