

1 Robert A. Schroeder (SBN 73913)
A. Eric Bjorgum (SBN 198393)
2 SHELDON MAK ROSE & ANDERSON
100 Corson Street, 3rd Floor
3 Pasadena, California 91103-3842
Telephone: 626.796.4000
4 Facsimile: 626.795.6321
Email: robert.schroeder@usip.com

5 Attorneys for Defendants
6 MILK STUDIOS, LLC and DRIVE-IN 24, LLC

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 BRIESE USA, INC., a California
corporation,

12 Plaintiff,

13 v.

14 MILK STUDIOS, LLC, etc., et al.

15 Defendants.
16

Case No. CV 07-7631 GHK (CWx)

FIRST AMENDED ANSWER OF
MILK STUDIOS LLC AND DRIVE-IN
24, LLC TO FIRST AMENDED
COMPLAINT

REQUEST FOR JURY TRIAL

17 AND RELATED ACTIONS.
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1 Defendants Milk Studios, LLC and Drive In 24, LLC (collectively
2 “Defendants”), by and through their attorneys, Sheldon Mak Rose & Anderson, for
3 their amended answer respond to the first amended complaint of Briese USA, Inc.
4 (“Plaintiff”) as follows:

5 1. The allegations as to the nature of the action are admitted. It is
6 admitted that this Court has subject matter jurisdiction and supplemental
7 jurisdiction as alleged. The other allegations of paragraph 1 are denied.

8 2. Admitted that venue is proper in this District and that there is personal
9 jurisdiction over Defendants. The other allegations of paragraph 2 are denied.

10 3. Defendants are without knowledge or information sufficient to form a
11 belief as to the truth of the allegations of paragraph 3 and, therefore, deny those
12 allegations.

13 4. Admitted.

14 5. Admitted.

15 6. The Defendants are without knowledge or information sufficient to
16 form a belief as to the truth of the allegations of paragraph 6 and, therefore, deny
17 those allegations.

18 7. Denied that Plaintiff is a “leading developer and supplier of
19 specialized lighting equipment for the motion picture and entertainment
20 industries.” The Defendants are without knowledge or information sufficient to
21 form a belief as to the truth of the other allegations of paragraph 7 and, therefore,
22 deny those allegations.

23 8. The Defendants are without knowledge or information sufficient to
24 form a belief as to the truth of the allegations of paragraph 8 and, therefore, deny
25 those allegations.

26 9. The Defendants are without knowledge or information sufficient to
27 form a belief as to the truth of the allegations of paragraph 9 and, therefore, deny
28 those allegations.

1 10. The Plaintiff's allegations contained in the final sentence of paragraph
2 10 are denied. As to the other allegations, Defendants are without knowledge or
3 information sufficient to form a belief as to the truth of the allegations of paragraph
4 10 and, therefore, deny those allegations.

5 11. The Defendants are without knowledge or information sufficient to
6 form a belief as to the truth of the allegations of paragraph 11 and, therefore, deny
7 those allegations.

8 12. The allegation that Defendants associate the mark Briese with
9 Plaintiff is denied. As to the other allegations, Defendants are without knowledge
10 or information sufficient to form a belief as to the truth of the allegations of
11 paragraph 12 and, therefore, deny those allegations.

12 13. The Defendants are without knowledge or information sufficient to
13 form a belief as to the truth of the other allegations of paragraph 13 and, therefore,
14 deny those allegations.

15 14. The Defendants are without knowledge or information sufficient to
16 form a belief as to the truth of the allegations of paragraph 14 and, therefore, deny
17 those allegations.

18 15. The Defendants admit having received the letter attached as an
19 Exhibit A and admit that various actions are pending as alleged. As to the other
20 allegations, Defendants are without knowledge or information sufficient to form a
21 belief as to the truth of the allegations of paragraph 15 and, therefore, deny those
22 allegations.

23 16. Defendants admit that they are "selling and/or renting equipment,
24 including umbrellas "obtained from Briese GmbH and Hans-Werner Briese." All
25 other allegations of paragraph 16 are denied.

26 17. In response to the allegations of paragraph 17, Defendants repeat and
27 reallege their responses to paragraphs 1 through 16 herein.

28 18. The Defendants are without knowledge or information sufficient to

1 form a belief as to the truth of the allegations of paragraph 18 and, therefore, deny
2 those allegations.

3 19. Denied.

4 20. Denied.

5 21. Denied.

6 22. In response to the allegations of paragraph 22, Defendants repeat and
7 reallege their responses to paragraphs 1 through 21 herein.

8 23. Denied.

9 24. Denied.

10 25. Denied.

11 26. In response to the allegations of paragraph 26, Defendants repeat and
12 reallege their responses to paragraphs 1 through 25 herein.

13 27. The Defendants are without knowledge or information sufficient to
14 form a belief as to the truth of the allegations of paragraph 27 and, therefore, deny
15 those allegations.

16 28. Denied.

17 29. Denied.

18 30. Dnied.

19 31. Denied.

20 32. Denied.

21 **FIRST AFFIRMATIVE DEFENSE**

22 33. Plaintiff fails to state a claim on which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 34. Plaintiff's claims are barred by the doctrine of unclean hands,
25 plaintiff's purported use of the mark BRIESE having been in the course of conduct
26 that was unlawful, unethical and fraudulent.

27 **THIRD AFFIRMATIVE DEFENSE**

28 35. Plaintiff's claims are barred by the doctrines of laches, waiver,

1 acquiescence, and/or estoppel.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 36. Plaintiff's claims are barred because any use of the alleged trademark
4 during the course of Defendants business was a fair use of the mark.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 37. Plaintiff's claims are barred because Plaintiff fraudulently obtained
7 any trademark rights at issue.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 38. Plaintiff's claims are barred because of Defendants' prior use of the
10 alleged trademark.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 39. Plaintiff's claims are barred because the applicable statute of
13 limitations has expired.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 40. Plaintiff's claims are barred by the statute of frauds.

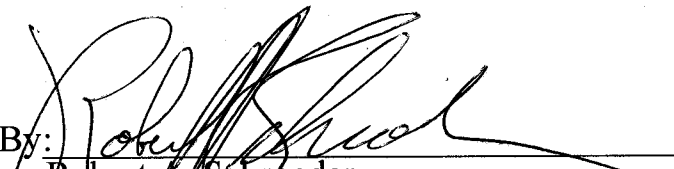
16 WHEREFORE, the Defendants pray for Judgment as follows:

- 17 1. A Judgment in favor of the Defendants as to all causes of action.
- 18 2. An order for costs and attorneys' fees under 15 U.S.C. § 1117.
- 19 3. A Judgment granting the Defendants such other and further relief as

20 the Court deems just and proper.

21 DATED: April 14, 2008

SHELDON MAK ROSE & ANDERSON

22
23
24 By: 
25 Robert A. Schroeder
A. Eric Bjorgum


26 Attorneys for Defendant Milk Studios, LLC
27 and Drive-In 24, LLC
28

REQUEST FOR JURY TRIAL

Milk Studios, LLC and Drive-In 24, LLC request a trial by jury of all issues properly triable to a jury.

DATED: April 14, 2008

SHELDON MAK ROSE & ANDERSON

By: 
Robert A. Schroeder
B. Eric Bjorgum

Attorneys for Defendant Milk Studios, LLC
and Drive-In 24, LLC

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PROOF OF SERVICE

CCP §§ 1013, 1013a (New January 1, 2005)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was over 18 years of age and **not a party to this action**.
2. My business address is: 100 East Corson Street, Third Floor, Pasadena, CA 91103-3842.
3. On **May 19, 2008**, I served the following document(s):

**FIRST AMENDED ANSWER OF MILK STUDIOS, LLC AND DRIVE-IN 24, LLC TO
FIRST AMENDED COMPLAINT; REQUEST FOR JURY TRIAL**

The documents are listed on Attachment "A."

4. I served the documents on the **persons** below, as follows:

- a. **Name** of person served:
- b. **Address** of person served:
- c. **Fax Number** or **e-mail address** of person served, if service was by fax or e-mail:
- d. Time of service, if personal service was used:

The names, addresses, and other applicable information about the persons served is on Attachment "B."

5. The documents were served by the following means (specify):

a. **By personal service.** I personally delivered the documents to the persons at the addresses listed in Item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in Item 4 and (specify one):

(1) **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) **placed** the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.


I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Pasadena, California.

c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in Item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in Item 4 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in Item 4. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in Item 4. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- g. **By E-FILING.** Pursuant to Central District of California court order this case is designated for E-Filing as of November 1, 2007. The document will be so E-Filed and a "Notification of E-Filing" will be e-mailed by the Court to all registered attorneys.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I further declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

Executed on **May 19, 2008** at Pasadena, California.



Donald K. Piper

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in Item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on **May 19, 2008** at Pasadena, California.

(Name of Declarant)

(Signature of Declarant)

ATTACHMENT "B" TO PROOF OF SERVICE**NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:**

Name of Person Served	Address (business or residential), Fax, or E-mail (as applicable) Where Served	Manner of Service
Edward C. Schewe, Esq. Robert J. Lauson, Esq.	LAUSON AND SCHEWE 880 Apollo Street, Suite 301 El Segundo, CA 90245 Tel: 310-726-0892 Fax: 310-726-0893 ed@lauson.com	ECF