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Milk Studios, LLC and Drive In 24, LLC

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Briese USA, Inc.,

Plaintiff,

v.

Milk Studios, LLC, Drive In 24, LLC  
and Does 1-10 inclusive,

Defendants.

07 Civ 8316 (RJH)

**ANSWER OF  
DEFENDANTS MILK STUDIOS, LLC  
AND DRIVE IN 24, LLC**

**DEMAND FOR JURY TRIAL**

Filed Electronically

Defendants Milk Studios, LLC and Drive In 24, LLC (collectively “Defendants”), by and through their attorneys, Bingham McCutchen LLP, for their answer respond to the complaint by Briese USA, Inc. (“Plaintiff”) as follows:

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

2. Admitted that venue is proper in this District and that there is personal jurisdiction

over Defendants. The other allegations of paragraph 2 are denied.

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

4. Admitted.

5. Admitted.

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

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

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

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

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

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

12. The allegation that Defendants associate the mark Briese with Plaintiff is denied. As to the other allegations, Defendants are without knowledge or information sufficient to form

a belief as to the truth of the allegations of paragraph 12 and, therefore, deny those allegations.

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

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

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

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

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

18. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 and, therefore, deny those allegations.

19. Denied.

20. Denied.

21. Denied.

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

23. Denied.

24. Denied.

25. Denied.

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

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

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

**FIRST AFFIRMATIVE DEFENSE**

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

**SECOND AFFIRMATIVE DEFENSE**

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

**THIRD AFFIRMATIVE DEFENSE**

35. Plaintiff's claims are barred by the doctrines of laches, waiver, acquiescence, and/or estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

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

**FIFTH AFFIRMATIVE DEFENSE**

37. Plaintiff's claims are barred because Plaintiff fraudulently obtained any trademark

rights at issue.

**SIXTH AFFIRMATIVE DEFENSE**

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

**SEVENTH AFFIRMATIVE DEFENSE**

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

WHEREFORE, the Defendants pray for Judgment as follows:

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

Defendants demand a jury trial.

Dated: New York, New York.  
October 15, 2007

Bingham McCutchen LLP

By: s/ Philip L. Blum

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