

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STILLWATER LAKES CIVIC	:	NO. 3:08 CV 02264
ASSOCIATION, INC.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
NOREEN GORKA,	:	
MICHAEL GLASSIC,	:	
STILLWATER LAKES CITIZENS, and	:	
STILLWATER LAKES COMMUNITY	:	
ACTIVIST, a Pennsylvania Corporation,	:	
	:	
Defendants.	:	

NOTICE TO PLEAD

TO: STILLWATER LAKES CIVIC ASSOCIATION, INC.
c/o Nicholas C. Haros, Esquire
802 Main Street
Stroudsburg, PA 18360

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS OF SERVICE HEREOF OR A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.

ANDERS & MASINGTON, L.L.C.

By: 

MARSHALL E. ANDERS, ESQUIRE
Attorney ID #17724.
18 North 8th Street
Stroudsburg, PA 18360
(570) 424-1117
Attorney for Defendants.

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STILLWATER LAKES CIVIC ASSOCIATION, INC.,	:	NO. 3:08 CV 02264
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
NOREEN GORKA, MICHAEL GLASSIC, STILLWATER LAKES CITIZENS, and STILLWATER LAKES COMMUNITY ACTIVIST, a Pennsylvania Corporation,	:	
	:	
Defendants.	:	

**ANSWER AND NEW MATTER TO PLAINTIFF’S MOTION TO
VOLUNTARILY DISMISS CASE WITH PREJUDICE**

AND NOW, come the Defendants, Noreen Gorka, Michael Glassic, Stillwater Lakes Citizens, and Stillwater Lakes Community Activist, by their attorneys, Anders & Masington, L.L.C., upon this Answer and New Matter to Plaintiff’s Motion to Voluntarily Dismiss Case With Prejudice, upon the following representations, to wit:

1. It is admitted that the Plaintiff, in attempting to bring this litigation in bad faith, averred in the Complaint and Amended Complaint, that the Defendants impermissibly misappropriated the Association’s trade name on their website and effectively confused the consumer. By way of further answer, the allegations

contained in Paragraphs 11 through 22 of New Matter are incorporated herein by reference, as if same were more fully set forth.

2. Admitted. By way of further answer, this action was commenced on December 18, 2008. The homepage referenced as Exhibit "A" of Plaintiff's Complaint was changed on October 20, 2008, the day after the Association's Board voted to give legal counsel authority to use legal action to protect the corporate name.

3. Admitted. By way of further answer, Exhibit "B" existed for almost two (2) full months prior to the time this action was initiated, the homepage being posted on the 20th day of October, 2008.

4. It is specifically denied that since the initiation of this action, the Defendants have made changes to the website's home page which decrease the chance of confusion regarding Plaintiff's involvement and/or affiliation with the website, since the changes to the website were made prior to the institution of this lawsuit and this lawsuit was instituted in bad faith. By way of further answer, the allegations contained in Paragraphs 11 through 22 of New Matter are incorporated herein by reference, as if same were more fully set forth.

5. Admitted. By way of further answer, the changes to the website page were made prior to the institution of this lawsuit, which was brought in bad faith. By way of further answer, the allegations contained in Paragraphs 11 through 22 of

New Matter are incorporated herein by reference, as if same were more fully set forth.

6. It is admitted that the homepage contains disclosures. By way of further answer, the disclosures were placed on the homepage prior to the institution of this litigation, which was brought in bad faith, same being placed on the homepage on the 28th day of February, 2009.

7. It is specifically denied that there was a decrease in the risk of confusion subsequent to the institution of this lawsuit. As to the remainder of the averments contained in Paragraph 7 of the Motion, the Respondents are without knowledge or information sufficient to form a belief as to the truth thereof, after reasonable investigation, since the exclusive means of proof are within the control of an adverse party.

8. No answer is required to the allegations contained in Paragraph 8 of the Motion, since same constitutes a request or prayer for relief, as opposed to an averment of material fact.

9. No answer is required to the allegations contained in Paragraph 8 of the Motion, since same constitutes a request or prayer for relief, as opposed to an averment of material fact. By way of further answer, it is averred that when the Plaintiff instituted this action, it had no desire to spare the parties the cost of litigation and, in fact, based upon information and belief, one of the reasons, if not

the sole reason the litigation was instituted, was to harm the Respondents financially.

10. The Respondents are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 10 of the Motion, after reasonable investigation, since the exclusive means of proof are within the control of an adverse party. By way of further answer, counsel for the Plaintiff is well aware that counsel for the Respondents would oppose such a Motion.

NEW MATTER

11. That the allegations contained in Paragraphs 1 through 10 of this Answer are incorporated herein by reference, as if same were more fully set forth.

12. That the Amended Complaint filed in the above captioned matter, which was filed long after the changes to the homepage/website had been made purported to allege the following causes of action:

A. Count I – Lanham Act – Trade Name Infringement Pursuant to Section 1125(a);

B. Count II – Lanham Act – Cyber Squatting Pursuant to Section 1125(d).

C. Count III – Pennsylvania Anti-Dilution of Trade Name;

D. Count IV – Misappropriation of Corporate Name;

- E. Count V – Unfair Competition;
- F. Count VI – Common Law Trade Name Infringement; and
- G. Count VII – Lanham Act – Anti-Dilution of Trade Name

Pursuant to Section 1125(c).

13. That the aforementioned causes of action totally lack merit, since they were devoid of any merit, *inter alia*, for the following reasons, which is not a conclusive list:

- A. Stillwater Lakes is a geographic location;
- B. The Plaintiff does not sell products or services in commerce, since no likelihood of confusion exists as a matter of law;
- C. The Plaintiff does not advertise on its website and, in fact, forfeited or conveyed its own advertising rights.
- D. The parties are not in competition in the sale of goods and services.
- E. No action of the Defendants diluted the name of a Plaintiff.
- F. The Plaintiff, as a matter of law, had no common law trade mark.

14. That during the discovery phase of this case, the Plaintiff produced 15,000 pages of documents, none of which:

- A. Evidenced a loss of profits due to unfair competition of the complained of website;

B. Evidenced the common law right to use their name as a trade mark, using a tm designation.

C. Evidenced that the Plaintiff engaged in the commercial sale of goods and services.

15. That the Plaintiff did not and does not engage in the sale of products or services in commerce.

16. That the Plaintiff instituted this action, in part, as a retaliatory measure after the Defendant, Michael Glassic, filed a Complaint with the Pennsylvania Bureau of Consumer Protection.

17. That the above captioned matter was instituted in bad faith with an improper motive, the Plaintiff knowing that it had no protection pursuant to the Lanham Act and that the other causes of action had no validity.

18. That no reasonable research or investigation was undertaken by the Plaintiff prior to the institution of the said litigation.

19. That the Plaintiff instituted this action not in good faith, but to financially harm and damage the Defendants, particularly the individual Defendants, based upon the Board of Directors' desire to hurt the Defendants in their pocketbooks.

20. That the Respondents will be filing a Motion for Sanctions, pursuant to Rule 11 of the Federal Rules of Civil Procedure.

21. That this case should not be dismissed until this Honorable Court has ruled on the aforementioned Motion.

22. That the Motion for Voluntarily Dismissal should be dismissed until such time as there is a ruling on the aforementioned Motions and, thereafter, the Motion re-filed with a judgment to be entered on behalf of the Defendants.

WHEREFORE, the Defendants/Respondents, by their attorneys, respectfully request this Honorable Court to dismiss the Plaintiff's Motion to Voluntarily Dismiss Case with Prejudice with leave to re-file after this Court rules on the Respondents' Motion for relief, pursuant to Rule 11 of the Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED

ANDERS & MASINGTON, L.L.C.

By:



MARSHALL E. ANDERS, ESQUIRE

Attorney I.D. #17724

18 North 8th Street

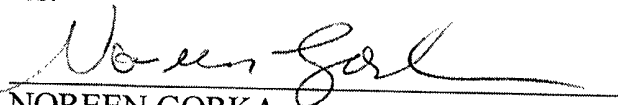
Stroudsburg, PA 18360

(570) 424-1117

Attorney for Defendants.

VERIFICATION

I, NOREEN GORKA, Defendant, in the within action, verify that the statements made in the attached Answer and New Matter are true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



NOREEN GORKA

Date: *May 17, 2011*

VERIFICATION

I, MICHAEL GLASSIC, Defendant, in the within action, verify that the statements made in the attached Answer and New Matter are true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



MICHAEL GLASSIC

Date: *MAY, 19 2011*

VERIFICATION

I, Michael Classic OF STILLWATER LAKES
CITIZENS, Defendant, in the within action, verify that the statements made in the
attached Answer and New Matter are true and correct to the best of my knowledge,
information or belief. I understand that false statements herein are made subject to
the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to
authorities.

STILLWATER LAKES CITIZENS

By: Michael Classic

Date: may 17, 2011

VERIFICATION

I, _____ OF STILLWATER LAKES
COMMUNITY ACTIVISTS, Defendant, in the within action, verify that the
statements made in the attached Answer and New Matter are true and correct to the
best of my knowledge, information or belief. I understand that false statements
herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to
unsworn falsification to authorities.

STILLWATER LAKES COMMUNITY ACTIVIST

By: *Matt J. [Signature]*

Date: *May 17, 2011*