

United States District Court
for the
Southern District of Indiana

CLERK OF COURT
FEDERAL JUDICIAL DIVISION
2012 DEC -3 AM 11:13
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

Malibu Media, LLC.
Plaintiff(s)

V.

Derick Brooks
Defendant(s)

)
)
)
) Civil Action No. 1:12-cv-00845-TWP-MJD
)
)
)

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Defendants DERICK BROOKS hereby responds to plaintiff's complaint with the answers as follows:

1. Defendant avers that Paragraph 1 of the complaint makes legal conclusions that do not require a response except that Defendant agrees that Plaintiff is seeking relief under the Copyright Act (Title 17 U.S.C. §§ 101 et. Seq).
2. Defendant denies the allegations in Paragraph 2 that they are liable to Plaintiff for direct, or contributory copyright infringement, or any other claim under the Copyright Act.
3. Defendant denies Plaintiff's allegations in Paragraph 3, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
4. Defendant denies Plaintiff's allegations in Paragraph 4. Even if the IP address in question was associated with the router or network located at Defendant residence on or about April 14, 2012, those facts still do not give rise to personal jurisdiction over Defendant. An IP address is not a person, rather it is merely a series of numbers assigned to a computer or device, which can be accessed by multiple individuals over time. Moreover, an IP address can be simulated from a separate location by an unscrupulous individual, meaning that Plaintiff's software could inadvertently flag an innocent IP address if it is being simulated or "spoofed" by another.
5. Defendant Denies Plaintiff's allegations in Paragraph 5, because Defendant does not have

- sufficient knowledge or information to form a belief about the truth of the allegations.
6. Defendant Denies Plaintiff's allegations in Paragraph 6, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 7. Defendant Denies Plaintiff's allegations in Paragraph 7, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 8. Defendant Denies Plaintiff's allegations in Paragraph 8, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 9. Defendant Denies Plaintiff's allegations in Paragraph 9, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 10. Defendant Denies Plaintiff's allegations in Paragraph 10, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 11. Defendant Denies Plaintiff's allegations in Paragraph 11, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 12. Defendant Denies Plaintiff's allegations in Paragraph 12, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 13. Defendant Denies Plaintiff's allegations in Paragraph 13, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 14. Defendant Denies Plaintiff's allegations in Paragraph 14, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 15. Defendant Denies Plaintiff's allegations in Paragraph 15, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 16. Defendant Denies Plaintiff's allegations in Paragraph 16, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 17. Defendant Denies Plaintiff's allegations in Paragraph 17, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
 18. Defendant Denies Plaintiff's allegations in Paragraph 18, because Defendant does not have

sufficient knowledge or information to form a belief about the truth of the allegations.

19. Defendant Denies Plaintiff's allegations in Paragraph 19, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

20. Defendant Denies Plaintiff's allegations in Paragraph 20, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

21. Defendant Denies Plaintiff's allegations in Paragraph 21, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

22. Defendant Denies Plaintiff's allegations in Paragraph 22, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

23. Defendant Denies Plaintiff's allegations in Paragraph 23, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

24. Defendant Denies Plaintiff's allegations in Paragraph 24, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

25. Defendant admits to the allegations in Paragraph 25.

26. Defendant Denies Plaintiff's allegations in Paragraph 26, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

27. Defendant denies the allegations in Paragraph 27. The ISP to which each alleged Defendant subscribes can correlate the flagged IP address to a subscriber that may or may not be the actual Defendant responsible for the alleged infringing activity.

28. Defendant denies the allegations in Paragraph 28. Plaintiff's Exhibit A in Plaintiff's Complaint states a series of dates across the span of several months, which shows that the individual Defendants could not have been involved in the exact same torrent file or have acted in concert with one another. The facts behind each defendant are individual, separate, and unique.

29. Defendant Denies Plaintiff's allegations in Paragraph 29, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

30. Defendant Denies Plaintiff's allegations in Paragraph 30, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
31. In response to Paragraph 31, Defendant admits they have received a copy of Plaintiff's alleged copyright registration as Exhibit B.
32. Defendant Denies Plaintiff's allegations in Paragraph 32, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
33. Defendant Denies Plaintiff's allegations in Paragraph 33. Plaintiff states "Each Defendant installed a BitTorrent client onto his or her computer." Plaintiff has failed to show any factual evidence that proves the Defendant installed any BitTorrent client.
34. Defendant Denies Plaintiff's allegations in Paragraph 34. Plaintiff states "Each Defendant installed a BitTorrent client onto his or her computer." Plaintiff has failed to show any factual evidence that proves the Defendant installed any BitTorrent client.
35. Defendant Denies Plaintiff's allegations in Paragraph 35, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
36. Defendant Denies Plaintiff's allegations in Paragraph 36, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
37. Defendant Denies Plaintiff's allegations in Paragraph 37, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
38. Defendant Denies Plaintiff's allegations in Paragraph 38, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
39. Defendant Denies Plaintiff's allegations in Paragraph 39, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
40. Defendant Denies Plaintiff's allegations in Paragraph 40, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
41. Defendant Denies Plaintiff's allegations in Paragraph 41, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

42. Defendant Denies Plaintiff's allegations in Paragraph 42, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
43. Defendant Denies Plaintiff's allegations in Paragraph 43, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
44. Defendant Denies Plaintiff's allegations in Paragraph 44, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
45. Defendant Denies Plaintiff's allegations in Paragraph 45, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
46. Defendant Denies Plaintiff's allegation in Paragraph 46. Plaintiff states that "Each Defendant went to a torrent site to upload and download Plaintiff's Copyrighted work." Plaintiff has failed to show any factual evidence that proves the Defendant visited a torrent site.
47. Defendant Denies Plaintiff's allegations in Paragraph 47, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
48. Defendant Denies Plaintiff's allegations in Paragraph 48, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
49. Defendant Denies Plaintiff's allegations in Paragraph 49, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
50. Defendant Denies Plaintiff's allegations in Paragraph 50, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
51. Defendant denies Plaintiff's allegations in paragraph 51.
52. Defendant Denies Plaintiff's allegations in Paragraph 52, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
53. Defendant Denies Plaintiff's allegation in Paragraph 53.
54. Defendant Denies Plaintiff's allegations in Paragraph 54, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Defendant questions the practices and legitimacy of IPP Limited, due to the lack of evidence

in the Plaintiff's complaint. The Plaintiff has not produced any evidence, logs, methods, or algorithms that IPP Limited used to come to their conclusions.

55. Defendant Denies Plaintiff's allegations in Paragraph 55, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Defendant Denies the use and legitimacy of "INTERNATIONAL IPTRACKER v1.2.1", due to lack of evidence in Plaintiff's complaint. The Plaintiff has not produced any evidence, logs, methods or algorithms the software uses to "track" IP addresses.

56. Defendant Denies Plaintiff's allegations in Paragraph 56, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Plaintiff states that "file Identified by the SHA-1 value of DC01C9734D05EC1F58F0F17E72AB2F363F0017A4 (The "Unique Hash Number").

Plaintiff has not produced any factual evidence that links the "hash" number listed in Plaintiff's complaint to the alleged copyrighted work.

57. Defendant Denies any infringing distributions of copyrighted material. Plaintiff states that Exhibit A contains "hash" information. The exhibit A contained in Plaintiff's complaint does not contain any "hash" information.

58. Defendant Denies Plaintiff's allegations in Paragraph 58.

59. Defendant Denies Plaintiff's allegations in Paragraph 59, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

60. Defendant Denies Plaintiff's allegations in Paragraph 60, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

61. Defendant Denies Plaintiff's allegations in Paragraph 61, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

62. Defendant Denies Plaintiff's allegations in Paragraph 62, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

63. The answers contained in Paragraphs 1-62 are hereby re-answered as if fully set forth

herein.

64. Defendant Denies Plaintiff's allegations in Paragraph 64, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

65. Defendant Denies Plaintiff's allegations in Paragraph 65. Defendant Denies having participated in any activity involving infringement of Plaintiff's copyrights.

66. Defendant Denies Plaintiff's allegations in Paragraph 66, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

67. Defendant Denies Plaintiff's allegations in Paragraph 67. Defendant Denies having participated in any activity involving infringement of Plaintiff's copyrights.

68. Defendant Denies Plaintiff's allegations in Paragraph 68.

69. Defendant Denies Plaintiff's allegations in Paragraph 69.

70. The answers contained in paragraphs 1-62 are hereby re-answered as if fully set forth herein.

71. Defendant Denies Plaintiff's allegations in Paragraph 71, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

72. Defendant Denies Plaintiff's allegations in Paragraph 72.

73. Defendant Denies Plaintiff's allegations in Paragraph 73.

74. Defendant Denies Plaintiff's allegations in Paragraph 74, because Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

75. Defendant Denies Plaintiff's allegations in Paragraph 75.

76. Defendant Denies Plaintiff's allegations in Paragraph 76.

77. Defendant Denies Plaintiff's allegations in paragraph 77.

78. Defendant Denies Plaintiff's allegations in paragraph 78.

79. Defendant Denies Plaintiff's allegations in paragraph 79.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

80. The complaint and each and every purported cause of action contained therein fails to state

facts sufficient to constitute a cause of action against Defendant.

SECOND DEFENSE

81. If plaintiff suffered any damages at all, such damages were proximately caused and are therefore equitably born by plaintiff because it could have, but failed to, properly and adequately mitigate incurring such damages.

THIRD DEFENSE

82. Plaintiff's Claims are barred, in whole or in part, by the doctrine of unclean hands.

FOURTH DEFENSE

83. Plaintiff's claims are barred, in whole or in part, by its License, consent, and acquiescence in that alleged infringing activity.

FIFTH DEFENSE

84. Plaintiff's claims are barred by the doctrine of estoppel.

SIXTH DEFENSE

85. Defendant is exempt from prosecution pursuant to the Online Copyright Infringement Liability Act.

SEVENTH DEFENSE

86. Defendant submits that Plaintiff's claim for copyright infringement is barred by the doctrine of *de minimis non curat lex* (the law cares not for trifle) or *de minimis* use.

EIGHTH DEFENSE

87. The complaint fails to state a claim for which relief can be granted.

NINTH DEFENSE

88. Plaintiff's complaint for statutory and/or equitable relief is barred in that works of obscenity are not copyrightable or protected.

TENTH DEFENSE

89. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

ELEVENTH DEFENSE

90. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

TWELVTH DEFENSE

91. Plaintiff's claims are barred, in whole or in part, by the doctrine of implied license.

THIRTEETH DEFENSE

92. Plaintiff's claims are barred, in whole or in part based on the Unconstitutionally excessive damages it attempts to seek as a recovery in connection with the alleged acts of infringement. Pursuant to applicable law concerning whether statutory damages are constitutional and to what extent, Plaintiff's recovery, if any, must necessarily have a reasonable relationship to the Plaintiff's alleged actual damages caused by the alleged infringement.

FOURTEENTH DEFENSE

93. Defendant asserts the affirmative defense of failure to join an indispensable party, in that Defendant did not engage in any of the downloading and/or infringement alleged by Plaintiff. Plaintiff failed to include all the individual(s) who allegedly engaged in the downloading in question and is/are indispensable parties pursuant to Rule 12(b)(7) and 19 of the Federal Rules of Civil Procedure, and for such failure, Plaintiff's complaint should be dismissed with prejudice as to Defendant.

PRAYER

Therefore, Defendant respectfully requests relief as follows:

1. That the court enter judgement in favor of Defendant that he has not infringed Plaintiff's copyright or otherwise injured the Plaintiff.
2. That Plaintiff take nothing as a result of its complaint.
3. That Defendant be awarded his cost of suit incurred in defense of this action.
4. For such other relief as the Court deems Proper.

MISCELLANIOUS

94. Defendant hereby reserve the right to add, supplement, modify, change or amend any and all

of its Affirmative Defenses as the facts and circumstances become known through further discovery and/or investigation.

95. Defendant will file answer with the Southern District of Indiana courts and will send a copy of the Defendants answer via certified USPS to:

Nicoletti & Associates, PLLC
Paul J. Nicoletti, Esq.
36880 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304

Respectfully Submitted:

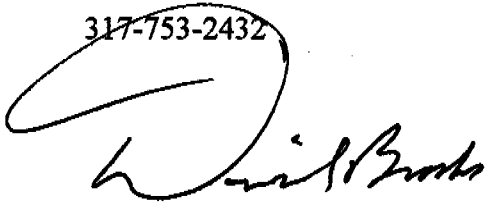
Derick Brooks

Pro Se Defendant

529 South 9th street

Lafayette, IN 47901

317-753-2432

A handwritten signature in black ink, appearing to read "Derick Brooks", is written over the printed name and phone number. The signature is fluid and cursive, with a large loop at the beginning.