

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

ACHTE/NEUNTE BOLL KINO
BETEILIGUNGS GMBH & CO KG,
Plaintiff,

v.

KIM ZIMMERMAN,
Defendant.

Case No. 2:11-cv-00071-JES-DNF

ANSWER AND AFFIRMATIVE DEFENSES

DEFENDANT KIM ZIMMERMAN, by and through the undersigned counsel answers the Complaint [Dkt. 1] and states as follows.

PARTIES, JURISDICTION AND VENUE

1. Defendant is without knowledge and therefore denies the allegation.
2. Admitted.
3. Admitted Defendant resides within this District; otherwise denied.
4. Denied as the allegation constitutes a legal conclusion.
5. Denied as the allegation constitutes a legal conclusion.

FACTUAL BACKGROUND

6. Defendant is without knowledge and therefore denies the allegation.
7. Defendant is without knowledge and therefore denies the allegation.
8. Defendant is without knowledge and therefore denies the allegation.
9. Defendant is without knowledge and therefore denies the allegation.
10. Defendant is without knowledge and therefore denies the allegation.

11. Defendant is without knowledge and therefore denies the allegation.
12. Defendant is without knowledge and therefore denies the allegation.
13. Defendant is without knowledge and therefore denies the allegation.
14. Defendant is without knowledge and therefore denies the allegation.
15. Defendant is without knowledge and therefore denies the allegation.
16. Defendant is without knowledge and therefore denies the allegation.
17. Defendant is without knowledge and therefore denies the allegation.
18. Defendant is without knowledge and therefore denies the allegation.
19. Defendant is without knowledge and therefore denies the allegation.
20. Denied.
21. Denied.
22. Denied.
23. Denied.

COUNT I – COPYRIGHT INFRINGEMENT

24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As her first affirmative defense, Defendant alleges that Plaintiff fails to state a claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

As her second affirmative defense, Defendant alleges that Plaintiff has unclean hands.

THIRD AFFIRMATIVE DEFENSE

As her third affirmative defense, Defendant alleges that Plaintiff's actions with respect to its use of and monitoring of BitTorrent traffic to allegedly identify Defendant were and are illegal.

FOURTH AFFIRMATIVE DEFENSE

As her fourth affirmative defense, Defendant alleges additionally and alternatively that to the extent Defendant's purported conduct constituted an upload or download of some amount of allegedly infringing material other than a complete copy of the alleged Copyrighted Motion Picture, Defendant asserts she is subject to the affirmative defense of fair use.

FIFTH AFFIRMATIVE DEFENSE

As her fifth affirmative defense, Defendant asserts additionally and alternatively that any conduct of Defendant was not willful.

SIXTH AFFIRMATIVE DEFENSE

As her sixth affirmative defense, Defendant asserts that Plaintiff's claim does not support an award of treble damages.

SEVENTH AFFIRMATIVE DEFENSE

As her seventh affirmative defense, Defendant asserts that Plaintiff's claim does not support an award of attorneys fees.

EIGHTH AFFIRMATIVE DEFENSE

As her eighth affirmative defense, Defendant asserts that Plaintiff's claim, specifically including but not limited to its collection of IP data and BitTorrent evidence, is contrary to public policy.

NINTH AFFIRMATIVE DEFENSE

As her ninth affirmative defense, Defendant asserts additionally and alternatively that liability, if any, is the fault of another person.

WHEREFORE Defendant Kim Zimmerman prays

- (i) that judgment enter against Plaintiff and in favor of Defendant;
- (ii) that Plaintiff take nothing;
- (iii) that an award of statutory damages be denied;
- (iv) that an award of treble damages be denied;
- (v) that an award of attorneys fees be denied;
- (vi) that no injunction enter against this Defendant; and
- (vii) for such other and further relief as the interests of justice may so require.

DATED: March 25, 2011.

/s/ Bradford A. Patrick
Bradford A. Patrick, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 25, 2011, a true and correct copy of the foregoing was served on all counsel or parties of record on the attached service list by the means set forth on the Service List.

/s/ Bradford A. Patrick
Bradford A. Patrick, Esq.

SERVICE LIST

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