

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRUCE KIRBY, INC. and BRUCE KIRBY,)
)
 Plaintiffs,)
)
 v.) CIVIL ACTION NO. 3:13-CV-00297-RNC
)
 LASERPERFORMANCE (EUROPE))
 LIMITED, QUARTER MOON,)
 INCORPORATED, KARAYA (JERSEY))
 LIMITED, VERUM LIMITED ITM SA)
 (ANTIGUA AND BARBUDA),)
 INTERNATIONAL SAILING FEDERATION)
 LIMITED, INTERNATIONAL LASER)
 CLASS ASSOCIATION, and FARZAD)
 RASTEGAR,)
 Defendants.)

**ANSWER AND JURY CLAIM OF DEFENDANT
INTERNATIONAL LASER CLASS ASSOCIATION TO
THE PLAINTIFFS' FIRST AMENDED COMPLAINT**

FIRST DEFENSE

Introduction

The Defendant states that the plaintiffs' preamble and introduction require no response, but in the event that a response is required, the defendant denies the allegations contained in these introductory paragraphs.

Jurisdiction and Venue

1. The defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent the Court requires a response; the defendant denies the allegations set forth in Paragraph 1.

2. The defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent the Court requires a response; the defendant denies the allegations set forth in Paragraph 2.

3. The defendant states that this paragraph contains a conclusion of law to which no response is necessary. To the extent the Court requires a response; the defendant denies the allegations set forth in Paragraph 3.

4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

5. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

6. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

7. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

8. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

9. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

10. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

12. The defendant admits that it is a British organization having a mailing address of PO Box 26, Falmouth, Cornwall, United Kingdom TR11 3TN. The defendant otherwise denies the remaining allegations contained in this paragraph.

Background

13. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of this paragraph and calls upon the plaintiffs to prove the same. The defendant otherwise denies the remaining allegations contained in this paragraph.

14. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

15. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

16. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

17. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

18. The defendant states that it can neither admit nor deny the plaintiffs' statements, since such statements are legal conclusions. However, to the extent that an answer is required, the defendant denies the allegations contained in this paragraph.

ISAF Agreement

19. The defendant admits that it was a party to the agreement attached as Exhibit 3. Defendant states that the agreement speaks for itself.

20. The defendant denies the allegations contained in this paragraph and further states that the agreement speaks for itself.

21. The defendant denies the allegations contained in this paragraph and further states that the agreement speaks for itself.

22. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

1983 Builder Agreement

23. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

24. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

25. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

26. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

27. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

28. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

29. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

30. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

31. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

32. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

33. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

1989 Builders Agreement

34. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

35. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

36. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

37. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

38. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

39. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

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41. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

42. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

43. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

44. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

LASER Trademark

45. The defendant admits the allegations contained in this paragraph.

46. The defendant admits the allegations contained in this paragraph.

47. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

48. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

49. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

50. The defendant denies the allegations contained in this paragraph.

Termination of the 1989 Builder Agreement

51. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

52. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

53. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

54. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

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58. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

59. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

60. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

Termination of the 1983 Builder Agreement

61. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

62. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

63. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

64. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

65. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

66. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

67. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

68. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

69. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

Issuance of ISAF Plaques to Terminated Builders

70. The defendant admits that it received Exhibit 15 and that the contents of the letter speak for itself.

71. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

72. The defendant admits that Exhibit 16 is a true and accurate copy of sample of a previously issued ISAF plaque. Defendant otherwise denies the allegations contained in this paragraph.

73. The defendant denies the allegations contained in this paragraph.

74. The defendant denies the allegations contained in this paragraph.

- 75. The defendant denies the allegations contained in this paragraph.
- 76. The defendant denies the allegations contained in this paragraph.
- 77. The defendant denies the allegations contained in this paragraph.
- 78. The defendant denies the allegations contained in this paragraph.
- 79. The defendant denies the allegations contained in this paragraph.

ILCA Rule Change

- 80. The defendant denies the allegations contained in this paragraph.
- 81. The defendant denies the allegations contained in this paragraph.
- 82. The defendant denies the allegations contained in this paragraph.
- 83. The defendant denies the allegations contained in this paragraph.
- 84. The defendant denies the allegations contained in this paragraph.
- 85. The defendant denies the allegations contained in this paragraph.

CLAIM I
Counterfeiting of the Kirby Sailboat

86. The defendant repeats and incorporates herein by reference its answer to paragraphs 1 through 85, and makes that its answer to this paragraph.

- 87. The defendant denies the allegations contained in this paragraph.
- 88. The defendant denies the allegations contained in this paragraph.
- 89. The defendant denies the allegations contained in this paragraph.
- 90. The defendant denies the allegations contained in this paragraph.
- 91. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

92. The defendant denies the allegations contained in this paragraph.

93. The defendant denies the allegations contained in this paragraph.

94. The defendant denies the allegations contained in this paragraph.

CLAIM II
Infringement of BRUCE KIRBY Trademark,
Unfair Competition and False Designation of Origin

95. The defendant repeats and incorporates herein by reference its answer to paragraphs 1 through 94, and makes that its answer to this paragraph.

96. The defendant denies the allegations contained in this paragraph.

97. The defendant denies the allegations contained in this paragraph.

98. The defendant denies the allegations contained in this paragraph.

99. The defendant denies the allegations contained in this paragraph.

100. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

101. The defendant denies the allegations contained in this paragraph.

102. The defendant denies the allegations contained in this paragraph.

103. The defendant denies the allegations contained in this paragraph.

CLAIM III
Unfair Competition Under the Connecticut Unfair Trade Practices Act

104. The defendant repeats and incorporates herein by reference its answer to paragraphs 1 through 103, and makes that its answer to this paragraph.

105. The defendant denies the allegations contained in this paragraph.

106. The defendant denies the allegations contained in this paragraph.

107. The defendant denies the allegations contained in this paragraph.

108. The defendant denies the allegations contained in this paragraph.

109. The defendant denies the allegations contained in this paragraph.

110. The defendant denies the allegations contained in this paragraph.

111. The defendant denies the allegations contained in this paragraph.

CLAIM IV
Misappropriation of Bruce Kirby's Publicity Rights

112. The defendant repeats and incorporates herein by reference its answer to paragraphs 1 through 111, and makes that its answer to this paragraph.

113. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

114. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

115. The defendant denies the allegations contained in this paragraph.

116. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

117. The defendant denies the allegations contained in this paragraph.

118. The defendant denies the allegations contained in this paragraph.

119. The defendant denies the allegations contained in this paragraph.

CLAIM V
Default of 1983 Builder Agreement

120. The defendant repeats and incorporates herein by reference its answer to paragraphs 1 through 119, and makes that its answer to this paragraph.

121. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

122. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

123. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

124. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

125. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

126. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

127. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

CLAIM VI
Default of 1989 Builder Agreement

128. The defendant repeats and incorporates herein by reference its answer to paragraphs 1 through 127, and makes that its answer to this paragraph.

129. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

130. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

131. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

132. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

133. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

134. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

135. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

CLAIM VII
Inducement To Default the Builder Agreements

136. The defendant repeats and incorporates herein by reference its answer to paragraphs 1 through 135, and makes that its answer to this paragraph.

137. The defendant admits that it is continuing to issue ISAF plaques to the trademark owners/manufacturers of the Laser Class boat. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to unpaid royalties or failure to provide written reports. Defendant otherwise denies the remaining allegations in this paragraph.

138. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiffs to prove the same.

139. The defendant denies the allegations contained in this paragraph.

140. The defendant denies the allegations contained in this paragraph.

141. The defendant denies the allegations contained in this paragraph.

142. The defendant denies the allegations contained in this paragraph.

143. The defendant denies the allegations contained in this paragraph.

WHEREFORE, the defendant says that the plaintiffs' First Amended Complaint against it should be dismissed and that judgment should enter for the defendant, together with its costs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

And further answering, the defendant says that the Complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

And further answering, the defendant says that the court does not have personal jurisdiction over the defendant, wherefore the defendant requests that this action be dismissed pursuant to Rule 12(b) (2).

THIRD AFFIRMATIVE DEFENSE

And further answering, the defendant says that the complaint should be dismissed pursuant to Rule 12(b) (3) for improper venue.

FOURTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that if the plaintiffs were damaged as alleged, the plaintiffs assumed the risk of such damage.

FIFTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that to the extent that it had any obligations to the plaintiffs, such obligations have been fully, completely and properly performed in every respect.

SIXTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that if there was any agreement between the parties, said agreement has been rescinded and/or there has been a novation.

SEVENTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that the acts complained of were done with the knowledge and consent of the plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

And further answering, defendant owed no obligation or duty to the plaintiffs and no claim lies against said defendants.

NINTH AFFIRMATIVE DEFENSE

And further answering, the Complaint should be barred based on failure of the plaintiffs' to mitigate damages.

TENTH AFFIRMATIVE DEFENSE

And further answering, the plaintiffs have no standing to bring this lawsuit, having sold in 2008 whatever intellectual property and contract rights they owned.

ELEVENTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that the plaintiffs Complaint should be dismissed because plaintiffs have not suffered any damage insofar as they received all of the benefits afforded under the language contained in the agreements.

TWELTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that the acts complained of were not committed by a person for whose conduct the defendants were legally responsible.

THIRTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that the cause of action is barred by reason of the Statute of Limitations.

FOURTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that the plaintiff's complaint is barred by Laches in that the defendant has been prejudiced by the excessive delay of the plaintiff in seeking the relief requested.

FIFTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant moves that the complaint be dismissed, insofar as the plaintiffs have participated in the transactions which gave rise to the relief sought by the plaintiffs.

SIXTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that plaintiffs are barred from relief because they failed to join a required party under Fed. R. Civ. P. 19.

SEVENTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that plaintiffs are barred from relief under the doctrine of unclean hands.

EIGHTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that any alleged infringement of plaintiffs' trademarks was permissible as a fair use insofar as it was descriptive only and used in good faith.

NINETEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that any alleged infringement of plaintiffs' publicity rights was incidental.

TWENTIETH AFFIRMATIVE DEFENSE

And further answering, the defendant says that the plaintiffs have used and plan to use their trademark to violate the antitrust laws of the United States.

WHEREFORE, the Defendants pray as follows:

1. That Plaintiffs' Complaint be dismissed with prejudice as to this Defendant; and
2. That such other and further relief be entered as deemed just and proper.

JURY CLAIM

THE DEFENDANT CLAIMS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

The defendant,

INTERNATIONAL LASER CLASS ASSOCIATION,

By its attorneys,

/s/ Kevin C. Cain

Kevin C. Cain, Esq.
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SPAULDING & LAMONTAGNE, P.C.
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CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of July, 2013, a true and correct copy of the foregoing **ANSWER AND JURY CLAIM OF DEFENDANT INTERNATIONAL LASER CLASS ASSOCIATION TO THE PLAINTIFFS' FIRST AMENDED COMPLAINT** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

July 2, 2013
Date

/s/ Kevin C. Cain
Kevin C. Cain