

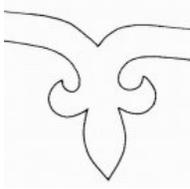
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Filing date: **01/25/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055070
Party	Defendant RCRV, Inc.
Correspondence Address	RCRV INC 4715 S ALAMEDA ST LOS ANGELES, CA 90058 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	John Maltbie
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Signature	/John Maltbie/
Date	01/25/2012
Attachments	Motion to Suspend - Final.pdf (35 pages)(1159282 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

-----X	:	
LA IDOL FASHION, INC.	:	Cancellation No. 92055070
	:	
<i>Petitioner,</i>	:	Registration No. 3,581,968
	:	Registration Date: February 24, 2009
- against -	:	Mark:
	:	
RCRV, INC.	:	
	:	
<i>Registrant.</i>	:	
-----X	:	

MOTION TO SUSPEND PROCEEDING

Registrant RCRV, Inc. (“RCRV”) by and through its undersigned counsel and pursuant to 37 C.F.R. § 2.117(a), hereby moves the Trademark Trial and Appeal Board (the “Board”) to suspend the above-captioned cancellation proceeding (the “Proceeding”) filed by Petitioner LA Idol Fashion, Inc. (“LA Idol”) pending resolution of a lawsuit captioned *Sweet People Apparel, Inc. et al. v. LA Idol Fashion, Inc.* 11-cv-06849, currently pending in the United States District Court for the Central District of California (the “Civil Action”).

RCRV respectfully asserts that the Board should suspend the Proceeding until the Civil Action is resolved because the Civil Action will have a bearing on, if not definitively resolve, the legal and factual issues presented in the Proceeding. RCRV filed the Civil Action seeking, among other relief, damages arising from LA Idol’s infringement of its INVERTED FLEUR DE LIS DESIGN trademark rights, which is the subject of Registration No. 3,581,968, and which is the mark at issue in this Proceeding.

LA Idol’s counterclaims in the Civil Action seeking cancellation of Registration No. 3,581,968 (*see* Exhibit A attached hereto), raise the same salient legal and factual issues as those

that must be addressed in the Proceeding, namely, the validity of RCRV's INVERTED FLEUR DE LIS DESIGN trademark. In view of the identical legal and factual issues present in the Civil Action and this Proceeding, resolution of the Civil Action will almost certainly dispose of the issues in this Proceeding. *See generally* Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 510.02(a) ("To the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is often binding upon the Board, while the decision of the Board is not binding upon the court."); *Daimler Chrysler Corp. v. Maydak*, 86 U.S.P.Q.2d 1945, 1950 (T.T.A.B. 2008). Where this is the case, "[o]rdinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board." TBMP § 510.02(a); *see also Gen. Motors Corp. v. Cadillac Club Fashions Inc.*, 22 U.S.P.Q.2d 1933, 1936-37 (T.T.A.B. 1992).

Accordingly, in the interests of avoiding the burden associated with maintaining two parallel proceedings involving the same factual and legal issues, RCRV respectfully requests suspension of the Proceeding until resolution of the Civil Action.

Dated: January 25, 2012

Respectfully submitted,

ARNOLD & PORTER LLP

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EXHIBIT A

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10 Attorney for Defendant and Counter-claimant,
11 L.A. IDOL FASHION, INC.,

12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE WESTERN DISTRICT OF CALIFORNIA**

15 **SWEET PEOPLE APPAREL, INC.,**) **Case No.: 11-Civ-06849 (SVW)**
16 **d/b/a MISS ME, a California**) **(FFMx)**
17 **Corporation and RCRV, INC., d/b/a**) **[Hon, Stephen V. Wilson]**
18 **ROCK REVIVAL, a California**) **DEFENDANT L.A. IDOL FASHION,**
19 **Corporation,**) **INC.'S ANSWER AND FIRST**
20) **AMENDED COUNTERCLAIM**
21) **AGAINST PLAINTIFFS**

22 **Plaintiffs,**

23 **vs.**

24 **LA IDOL FASHION, INC., a**
25 **California Corporation**

26 **Defendant.**

27 Pretrial Conference: February 27, 2012
28 Trial: March 9, 2012

1 Comes Now Defendant LA Idol Fashion, Inc. (“LA Idol” or “Counter-
2 claimant”) to answer, admit, deny and allege as follows:

3 1. In response to Paragraph 1 of the First Amended Complaint, LA Idol
4 admits that Plaintiffs SWEET PEOPLE APPAREL, INC., d/b/a MISS ME, and
5 RCRV, INC., d/b/a ROCK REVIVAL (hereinafter collectively referred to as
6 “Plaintiffs” or “Counter-defendants”) LA Idol admits that this Court has
7 jurisdiction over the purported claims contained in the First Amended Complaint.
8 Except as expressly admitted herein, LA Idol denies the averments contained in
9 Paragraph 1.

10 2. LA Idol lacks sufficient knowledge or information to form a belief
11 as to the truth of the averments contained in Paragraph 2 of the First Amended
12 Complaint, and on that basis deny the same.

13 3. In response to Paragraph 3 of the First Amended Complaint, LA Idol
14 admits that Plaintiffs purport to aver violations of copyright infringement under
15 federal law, trademark infringement and unfair competition under federal law, and
16 trademark infringement and unfair competition under California law. LA Idol lacks
17 sufficient knowledge or information to form a belief as to the truth of the
18 remaining averments contained therein, and on that basis deny the same.

19 4. In response to Paragraph 4 of the First Amended Complaint, LA Idol
20 admits that Plaintiffs purport to aver violations of copyright infringement under
21 federal law, trademark infringement and unfair competition under federal law, and
22 trademark infringement and unfair competition under California law. LA Idol lacks
23 sufficient knowledge or information to form a belief as to the truth of the
24 remaining averments contained therein, and on that basis deny the same.

25 5. In response to Paragraph 5 of the First Amended Complaint,
26 LA Idol denies each and every averment contained therein.

27 6. LA Idol lacks sufficient knowledge or information to form a belief
28 as to the truth of the averments contained in Paragraph 6 of the First Amended

1 Complaint, and on that basis denies the same.

2 7. LA Idol lacks sufficient knowledge or information to form a belief
3 as to the truth of the averments contained in Paragraph 7 of the First Amended
4 Complaint, and on that basis denies the same.

5 8. In response to Paragraph 8 of the First Amended Complaint,
6 LA Idol admits that this it is a corporation duly organized and existing under the
7 laws of the State of California, and maintains its principal place of business within
8 this judicial district at 1100 S. San Pedro St., #K8, Los Angeles, CA 90015. Except
9 as expressly admitted herein, LA Idol denies the averments contained in Paragraph

10 9. LA Idol lacks sufficient knowledge or information to form a belief
11 as to the truth of the averments contained in Paragraph 9 of the First Amended
12 Complaint, and on that basis denies the same.

13 10. LA Idol lacks sufficient knowledge or information to form a belief
14 as to the truth of the averments contained in Paragraph 10 of the First Amended
15 Complaint, and on that basis denies the same.

16 11. LA Idol lacks sufficient knowledge or information to form a belief
17 as to the truth of the averments contained in Paragraph 11 of the First Amended
18 Complaint, and on that basis denies the same.

19 12. LA Idol lacks sufficient knowledge or information to form a belief
20 as to the truth of the averments contained in Paragraph 12 of the First Amended
21 Complaint, and on that basis denies the same.

22 13. In response to Paragraph 13 of the First Amended Complaint,
23 LA Idol lacks sufficient knowledge or information to form a belief as to
24 whether Exhibit A to the First Amended Complaint constitutes a true and correct
25 copy of Registration Certificate number VA 1-733-502 and Supplemental
26 Registration No. 1-432-644 from the U.S. Copyright Office and on that basis
27 denies each and every averment to that effect. LA Idol lacks sufficient knowledge
28 or information to form a belief as to the truth of the remaining averments contained

1 in Paragraph 13 of the First Amended Complaint, and on that basis denies the
2 same.

3 14. LA Idol denies that the Wing Design was created in 2009 and that
4 Sweet People owns all right title and interest to the Wing Design Copyright and
5 that the Wing Design constitutes original and copyrightable subject matter under
6 the US Copyright Act. As to the other averments in paragraph 14, LA Idol lacks
7 sufficient knowledge or information to form a belief as to the truth of the
8 averments and on that basis denies the same.

9 15. LA Idol lacks sufficient knowledge or information to form a belief
10 as to the truth of the averments contained in Paragraph 15 of the First Amended
11 Complaint, and on that basis denies the same.

12 16. In response to Paragraph 16 of the First Amended Complaint,
13 LA Idol lacks sufficient knowledge or information to form a belief as to
14 whether Exhibit B to the First Amended Complaint constitutes a true and correct
15 copy of Registration Certificate number VA 1-418-846 from the U.S. Copyright
16 Office and on that basis denies each and every averment to that effect. LA Idol
17 lacks sufficient knowledge or information to form a belief as to the truth of the
18 remaining averments contained in Paragraph 16 of the First Amended Complaint,
19 and on that basis denies the same.

20 17. LA Idol denies that the Fleur de Lis Design was created by Sweet
21 People in 2006 and that Sweet People owns all right title and interest to the Fleur
22 de Lis Design Copyright and that the Fleur de Lis Design constitutes original and
23 copyrightable subject matter under the US Copyright Act. As to the other
24 averments in paragraph 17, LA Idol lacks sufficient knowledge or information to
25 form a belief as to the truth of the averments and on that basis denies the same.

26 18. LA Idol lacks sufficient knowledge or information to form a belief
27 as to the truth of the averments contained in Paragraph 18 of the First Amended
28 Complaint, and on that basis denies the same.

1 19. In response to Paragraph 19 of the First Amended Complaint,
2 LA Idol lacks sufficient knowledge or information to form a belief as to
3 whether Exhibit C to the First Amended Complaint constitutes a true and correct
4 copy of Registration Certificate number VA 1-716-852 from the U.S. Copyright
5 Office and on that basis denies each and every averment to that effect. LA Idol
6 lacks sufficient knowledge or information to form a belief as to the truth of the
7 remaining averments contained in Paragraph 19 of the First Amended Complaint,
8 and on that basis denies the same.

9 20. LA Idol denies that the Sparkle Cross-Design was created by Sweet
10 People in 2006 and that Sweet People owns all right title and interest to the Sparkle
11 Cross Design Copyright and that the Sparkle Cross Design constitutes original and
12 copyrightable subject matter under the US Copyright Act. As to the other
13 averments in paragraph 20, LA Idol lacks sufficient knowledge or information to
14 form a belief as to the truth of the averments and on that basis denies the same.

15 21. LA Idol lacks sufficient knowledge or information to form a belief
16 as to the truth of the averments contained in Paragraph 21 of the First Amended
17 Complaint, and on that basis denies the same

18 22. In response to Paragraph 22 of the First Amended Complaint,
19 LA Idol lacks sufficient knowledge or information to form a belief as to
20 whether Exhibit D to the First Amended Complaint constitutes a true and correct
21 copy of Registration Certificate number VA 1-741-621 from the U.S. Copyright
22 Office and on that basis denies each and every averment to that effect. LA Idol
23 lacks sufficient knowledge or information to form a belief as to the truth of the
24 remaining averments contained in Paragraph 22 of the First Amended Complaint,
25 and on that basis denies the same.

26 23. LA Idol denies that the Beaded Cross Design was created by Sweet
27 People in 2008 and that Sweet People owns all right title and interest to the Beaded
28 Cross Design Copyright and that the Beaded Cross Design constitutes original and

1 copyrightable subject matter under the US Copyright Act. As to the other
2 averments in paragraph 23, LA Idol lacks sufficient knowledge or information to
3 form a belief as to the truth of the averments and on that basis denies the same.

4 24. LA Idol lacks sufficient knowledge or information to form a belief
5 as to the truth of the averments contained in Paragraph 24 of the First Amended
6 Complaint, and on that basis denies the same

7 25. In response to Paragraph 25 of the First Amended Complaint,
8 LA Idol lacks sufficient knowledge or information to form a belief as to
9 whether Exhibit E to the First Amended Complaint constitutes a true and correct
10 copy of Registration Certificate number VA 1-740-392 from the U.S. Copyright
11 Office and on that basis denies each and every averment to that effect. LA Idol
12 lacks sufficient knowledge or information to form a belief as to the truth of the
13 remaining averments contained in Paragraph 25 of the First Amended Complaint,
14 and on that basis denies the same.

15 26. LA Idol denies that the Cross Wing Design was created by Sweet
16 People in 2009 and that Sweet People owns all right title and interest to the Cross
17 Wing Design Copyright and that the Cross Wing Design constitutes original and
18 copyrightable subject matter under the US Copyright Act. As to the other
19 averments in paragraph 26, LA Idol lacks sufficient knowledge or information to
20 form a belief as to the truth of the averments and on that basis denies the same.

21 27. LA Idol lacks sufficient knowledge or information to form a belief
22 as to the truth of the averments contained in Paragraph 27 of the First Amended
23 Complaint, and on that basis denies the same

24 28. In response to Paragraph 28 of the First Amended Complaint,
25 LA Idol lacks sufficient knowledge or information to form a belief as to
26 whether Exhibit F to the First Amended Complaint constitutes a true and correct
27 copy of Registration Certificate number VA 1-739-882 from the U.S. Copyright
28 Office and on that basis denies each and every averment to that effect. LA Idol

1 lacks sufficient knowledge or information to form a belief as to the truth of the
2 remaining averments contained in Paragraph 28 of the First Amended Complaint,
3 and on that basis denies the same.

4 29. LA Idol denies that the Wing Cross Design was created by Sweet
5 People in 2009 and that Sweet People owns all right title and interest to the Wing
6 Cross Design Copyright and that the Wing Cross Design constitutes original and
7 copyrightable subject matter under the US Copyright Act. As to the other
8 averments in paragraph 29, LA Idol lacks sufficient knowledge or information to
9 form a belief as to the truth of the averments and on that basis denies the same.

10 30. LA Idol lacks sufficient knowledge or information to form a belief
11 as to the truth of the averments contained in Paragraph 30 of the First Amended
12 Complaint, and on that basis denies the same

13 31. In response to Paragraph 31 of the First Amended Complaint,
14 LA Idol lacks sufficient knowledge or information to form a belief as to
15 whether Exhibit G to the First Amended Complaint constitutes a true and correct
16 copy of Registration Certificate number VA 1-785-057 from the U.S. Copyright
17 Office and on that basis denies each and every averment to that effect. LA Idol
18 lacks sufficient knowledge or information to form a belief as to the truth of the
19 remaining averments contained in Paragraph 31 of the First Amended Complaint,
20 and on that basis denies the same.

21 32. LA Idol denies that the Cross Roads Design was created by Sweet
22 People in 2009 and that Sweet People owns all right title and interest to the Cross
23 Roads Design Copyright and that the Cross Roads Design constitutes original and
24 copyrightable subject matter under the US Copyright Act. As to the other
25 averments in paragraph 32, LA Idol lacks sufficient knowledge or information to
26 form a belief as to the truth of the averments and on that basis denies the same.

27 33. LA Idol lacks sufficient knowledge or information to form a belief
28 as to the truth of the averments contained in Paragraph 33 of the First Amended

1 Complaint, and on that basis denies the same

2 34. In response to Paragraph 34 of the First Amended Complaint,
3 LA Idol lack sufficient knowledge or information to form a belief as to
4 whether Plaintiffs have filed a trademark application or owns any trademark rights
5 and on that basis denies the averment. LA Idol denies each and every of the
6 remaining averments contained in Paragraph 34.

7 35. LA Idol denies that the Wing Design Trademark was created by
8 Sweet People in 2009 and that Sweet People has owned the Wing Design
9 Trademark since 2009. As to the other averments in paragraph 35, LA Idol lacks
10 sufficient knowledge or information to form a belief as to the truth of the
11 averments and on that basis denies the same.

12 36. LA Idol denies that the Fluer de Lis Design Trademark was created by
13 Sweet People in 2006 and that Sweet People has owned the Fluer de Lis Design
14 Trademark since 2006. As to the other averments in paragraph 36, LA Idol lacks
15 sufficient knowledge or information to form a belief as to the truth of the
16 averments and on that basis denies the same.

17 37. LA Idol denies that the Fabric Cut Out Design Trademark was created
18 by Sweet People in 2005 and that Sweet People has owned the Fabric Cut Out
19 Design Trademark since 2005. LA Idol lacks sufficient knowledge or information
20 to form a belief as to whether Exhibit H to the First Amended Complaint
21 constitutes a true and correct copy of US Trademark Registration No. 3,494, 338
22 Certificate and on that basis denies each and every averment to that effect. LA Idol
23 lacks sufficient knowledge or information to form a belief as to the truth of the
24 remaining averments contained in Paragraph 37 of the First Amended Complaint,
25 and on that basis denies the same.

26 38. LA Idol lacks sufficient knowledge or information to form a belief
27 as to the truth of the averments contained in Paragraph 38 of the First Amended
28 Complaint, and on that basis denies the same.

1 39. In response to Paragraph 38 of the First Amended Complaint, LA Idol
2 admits that Sweet People defines its term “Sweet People Design Marks”.

3 40. LA Idol denies that the Sweet People Design Marks were unique at
4 the time of their introduction. The Sweet People Design Marks had no innovative
5 design characteristics and have no inherently distinctive identifiers that became
6 associated with MISS ME brand jeans and Sweet People. LA Idol lacks sufficient
7 knowledge or information to form a belief as to the truth of the remaining
8 averments contained in Paragraph 40 of the First Amended Complaint, and on that
9 basis denies the same.

10 41. LA Idol denies that Sweet People has made continuous and exclusive
11 use of the Sweet People Design Marks since their introduction. LA Idol lacks
12 sufficient knowledge or information to form a belief as to the truth of the
13 remaining averments contained in Paragraph 41 of the First Amended Complaint,
14 and on that basis denies the same.

15 42. LA Idol lacks sufficient knowledge or information to form a belief
16 as to the truth of the averments contained in Paragraph 42 of the First Amended
17 Complaint, and on that basis denies the same.

18 43. LA Idol lacks sufficient knowledge or information to form a belief
19 as to the truth of the averments contained in Paragraph 43 of the First Amended
20 Complaint, and on that basis denies the same.

21 44. LA Idol denies that the Sweet People Design Marks are in and of
22 themselves inherently distinctive, or have acquired distinctiveness, or have
23 developed a strongly secondary meaning among consumers and the trade, or
24 immediately identify Sweet People as the exclusive of the products that bear them,
25 or signify goodwill of incalculable value. LA Idol lacks sufficient knowledge or
26 information to form a belief as to the truth of the remaining averments contained in
27 Paragraph 44 of the First Amended Complaint, and on that basis denies the same.
28

1 45. In response to Paragraph 45 of the First Amended Complaint, LA Idol
2 admits that Sweet People defines its term “Sweet People Protected Designs”.

3 46. LA Idol lacks sufficient knowledge or information to form a belief
4 as to the truth of the averments contained in Paragraph 46 of the First Amended
5 Complaint, and on that basis denies the same

6 47. LA Idol lacks sufficient knowledge or information to form a belief
7 as to the truth of the averments contained in Paragraph 47 of the First Amended
8 Complaint, and on that basis denies the same

9 48. LA Idol denies the averments in paragraph 48 of the First Amended
10 Complaint.

11 49. LA Idol lacks sufficient knowledge or information to form a belief as
12 to whether Exhibit I to the First Amended Complaint constitutes a true and correct
13 copy of US Trademark Registration No. 3,581, 968 Certificate and on that basis
14 denies each and every averment to that effect. LA Idol lacks sufficient knowledge
15 or information to form a belief as to the truth of the remaining averments contained
16 in Paragraph 49 of the First Amended Complaint, and on that basis denies the
17 same.

18 50. LA Idol lacks sufficient knowledge or information to form a belief
19 as to the truth of the averments contained in Paragraph 50 of the First Amended
20 Complaint, and on that basis denies the same.

21 51. LA Idol lacks sufficient knowledge or information to form a belief
22 as to the truth of the averments contained in Paragraph 51 of the First Amended
23 Complaint, and on that basis denies the same.

24 52. LA Idol lacks sufficient knowledge or information to form a belief
25 as to the truth of the averments contained in Paragraph 52 of the First Amended
26 Complaint, and on that basis denies the same.

1 53. LA Idol denies that RCRV's retail customers consistently recognize
2 the INVERTED FLEUR DE LIS DESIGN as RCRV's "signature" and/or
3 "trademark". LA Idol lacks sufficient knowledge or information to form a belief
4 as to the truth of the averments contained in Paragraph 53 of the First Amended
5 Complaint, and on that basis denies the same.

6 54. LA Idol denies the averments in paragraph 54 of the First Amended
7 Complaint.

8 55. LA Idol denies that it manufactures any products. LA Idol admits the
9 other averments in paragraph 55 of the First Amended Complaint.

10 56. LA Idol has never manufactured, distributed, advertised, or offered for
11 sale or sold jeans wear products bearing designs that are studied imitations of
12 Sweet People Protected Designs. LA Idol lacks sufficient knowledge or
13 information to form a belief as to the truth of the averments contained in Paragraph
14 56 of the First Amended Complaint, and on that basis denies the same.

15 57. LA Idol admits that Exhibit J is a picture of a pair of its jeans. LA
16 Idol denies the other averments in paragraph 57 of the First Amended Complaint.

17 58. LA Idol admits that Exhibit K is a picture of a pair of its jeans. LA
18 Idol denies the other averments in paragraph 58 of the First Amended Complaint.

19 59. LA Idol admits that Exhibit L is a picture of a pair of its jeans. LA
20 Idol denies the other averments in paragraph 59 of the First Amended Complaint.

21 60. LA Idol admits that Exhibit M is a picture of a pair of its jeans. LA
22 Idol denies the other averments in paragraph 60 of the First Amended Complaint.

23 61. LA Idol admits that Exhibit N is a picture of a pair of its jeans. LA
24 Idol denies the other averments in paragraph 61 of the First Amended Complaint.

25 62. LA Idol admits that Exhibit O is a picture of a pair of its jeans. LA
26 Idol denies the other averments in paragraph 62 of the First Amended Complaint.

27 63. LA Idol admits that Exhibit P is a picture of a pair of its jeans. LA
28 Idol denies the other averments in paragraph 63 of the First Amended Complaint.

1 64. LA Idol admits that Exhibit Q is a picture of a pair of its jeans. LA
2 Idol denies the other averments in paragraph 64 of the First Amended Complaint.

3 65. LA Idol admits that Exhibit R is a picture of a pair of its jeans. LA
4 Idol denies the other averments in paragraph 65 of the First Amended Complaint.

5 66. LA Idol denies that it has ever sold jeans that infringe on any of
6 Plaintiffs' copyrights or trademarks. LA Idol admits the other averments in
7 paragraph 66 of the First Amended Complaint.

8 67. LA Idol denies the averments in paragraph 67 of the First Amended
9 Complaint.

10 68. LA Idol denies the averments in paragraph 68 of the First Amended
11 Complaint.

12 69. LA Idol lacks sufficient knowledge or information to form a belief
13 as to the truth of the averments contained in Paragraph 69 of the First Amended
14 Complaint, and on that basis denies the same.

15 70. LA Idol denies that it has ever sold jeans that infringe on any of
16 Plaintiffs' copyrights or trademarks. LA Idol admits the other averments in
17 paragraph 70 of the First Amended Complaint.

18 71. LA Idol denies that at the Magic Show it made prominent use of any
19 design and/or designs that infringe on any copyright or trademark belonging to
20 Plaintiffs'. LA Idol lacks sufficient knowledge or information to form a belief
21 as to the truth of the other averments contained in Paragraph 71 of the First
22 Amended Complaint, and on that basis denies the same.

23 72. LA Idol lacks sufficient knowledge or information to form a belief
24 as to the truth of the averments contained in Paragraph 72 of the First Amended
25 Complaint, and on that basis denies the same.

26 73. LA Idol lacks sufficient knowledge or information to form a belief
27 as to the truth of the averments contained in Paragraph 73 of the First Amended
28 Complaint, and on that basis denies the same.

1 74. LA Idol lacks sufficient knowledge or information to form a belief
2 as to the truth of the averments contained in Paragraph 74 of the First Amended
3 Complaint, and on that basis denies the same.

4 **RESPONSE TO FIRST CLAIM FOR RELIEF**

5 75. In response to Paragraph 75 of the First Amended Complaint,
6 LA Idol incorporates by reference and re-avers its responses to each and every
7 one of the averments contained in the preceding and foregoing paragraphs of this
8 Answer as if fully set forth therein.

9 76. LA Idol lacks sufficient knowledge or information to form a belief
10 as to the truth of the averments contained in Paragraph 76 of the First Amended
11 Complaint, and on that basis denies the same.

12 77. LA Idol denies the averments in paragraph 77 of the First Amended
13 Complaint.

14 78. LA Idol denies the averments in paragraph 78 of the First Amended
15 Complaint.

16 79. LA Idol denies the averments in paragraph 79 of the First Amended
17 Complaint.

18 80. LA Idol denies the averments in paragraph 80 of the First Amended
19 Complaint.

20 81. LA Idol denies the averments in paragraph 81 of the First Amended
21 Complaint.

22 **RESPONSE TO SECOND CLAIM FOR RELIEF**

23 82. In response to Paragraph 82 of the First Amended Complaint,
24 LA Idol incorporates by reference and re-avers its responses to each and every
25 one of the averments contained in the preceding and foregoing paragraphs of this
26 Answer as if fully set forth therein.

27 83. LA Idol lacks sufficient knowledge or information to form a belief
28 as to the truth of the averments contained in Paragraph 83 of the First Amended

1 Complaint, and on that basis denies the same.

2 84. LA Idol denies the averments in paragraph 84 of the First Amended
3 Complaint.

4 85. LA Idol denies the averments in paragraph 85 of the First Amended
5 Complaint.

6 86. LA Idol denies the averments in paragraph 86 of the First Amended
7 Complaint.

8 87. LA Idol denies the averments in paragraph 87 of the First Amended
9 Complaint.

10 88. LA Idol denies the averments in paragraph 88 of the First Amended
11 Complaint.

12 **RESPONSE TO THIRD CLAIM FOR RELIEF**

13 89. In response to Paragraph 89 of the First Amended Complaint,
14 LA Idol incorporates by reference and re-avers its responses to each and every
15 one of the averments contained in the preceding and foregoing paragraphs of this
16 Answer as if fully set forth therein.

17 90. LA Idol lacks sufficient knowledge or information to form a belief
18 as to the truth of the averments contained in Paragraph 90 of the First Amended
19 Complaint, and on that basis denies the same.

20 91. LA Idol denies the averments in paragraph 91 of the First Amended
21 Complaint.

22 92. LA Idol denies the averments in paragraph 92 of the First Amended
23 Complaint.

24 93. LA Idol denies the averments in paragraph 93 of the First Amended
25 Complaint.

26 94. LA Idol denies the averments in paragraph 94 of the First Amended
27 Complaint.

1 95. LA Idol denies the averments in paragraph 95 of the First Amended
2 Complaint.

3 **RESPONSE TO FOURTH CLAIM FOR RELIEF**

4 96. In response to Paragraph 96 of the First Amended Complaint,
5 LA Idol incorporates by reference and re-avers its responses to each and every
6 one of the averments contained in the preceding and foregoing paragraphs of this
7 Answer as if fully set forth therein.

8 97. LA Idol lacks sufficient knowledge or information to form a belief
9 as to the truth of the averments contained in Paragraph 97 of the First Amended
10 Complaint, and on that basis denies the same.

11 98. LA Idol denies the averments in paragraph 98 of the First Amended
12 Complaint.

13 99. LA Idol denies the averments in paragraph 99 of the First Amended
14 Complaint.

15 100. LA Idol denies the averments in paragraph 100 of the First Amended
16 Complaint.

17 101. LA Idol denies the averments in paragraph 101 of the First Amended
18 Complaint.

19 102. LA Idol denies the averments in paragraph 102 of the First Amended
20 Complaint.

21 **RESPONSE TO FIFTH CLAIM FOR RELIEF**

22 103. In response to Paragraph 103 of the First Amended Complaint,
23 LA Idol incorporates by reference and re-avers its responses to each and every
24 one of the averments contained in the preceding and foregoing paragraphs of this
25 Answer as if fully set forth therein.

26 104. LA Idol lacks sufficient knowledge or information to form a belief
27 as to the truth of the averments contained in Paragraph 104 of the First Amended
28 Complaint, and on that basis denies the same.

1 **RESPONSE TO SEVENTH CLAIM FOR RELIEF**

2 117. In response to Paragraph 117 of the First Amended Complaint,
3 LA Idol incorporates by reference and re-avers its responses to each and every
4 one of the averments contained in the preceding and foregoing paragraphs of this
5 Answer as if fully set forth therein.

6 118. LA Idol lacks sufficient knowledge or information to form a belief
7 as to the truth of the averments contained in Paragraph 118 of the First Amended
8 Complaint, and on that basis denies the same.

9 119. LA Idol denies the averments in paragraph 119 of the First Amended
10 Complaint.

11 120. LA Idol denies the averments in paragraph 120 of the First Amended
12 Complaint.

13 121. LA Idol denies the averments in paragraph 121 of the First Amended
14 Complaint.

15 122. LA Idol denies the averments in paragraph 122 of the First Amended
16 Complaint.

17 123. LA Idol denies the averments in paragraph 123 of the First Amended
18 Complaint.

19 **RESPONSE TO EIGHTH CLAIM FOR RELIEF**

20 124. In response to Paragraph 124 of the First Amended Complaint,
21 LA Idol incorporates by reference and re-avers its responses to each and every
22 one of the averments contained in the preceding and foregoing paragraphs of this
23 Answer as if fully set forth therein.

24 125. LA Idol denies the averments in paragraph 125 of the First Amended
25 Complaint.

26 126. LA Idol denies the averments in paragraph 126 of the First Amended
27 Complaint.

1 127. LA Idol denies the averments in paragraph 127 of the First Amended
2 Complaint.

3 128. LA Idol denies the averments in paragraph 128 of the First Amended
4 Complaint.

5 129. LA Idol denies the averments in paragraph 129 of the First Amended
6 Complaint.

7 130. LA Idol denies the averments in paragraph 130 of the First Amended
8 Complaint.

9 131. LA Idol denies the averments in paragraph 131 of the First Amended
10 Complaint.

11 132. LA Idol denies the averments in paragraph 132 of the First Amended
12 Complaint.

13 **RESPONSE TO NINTH CLAIM FOR RELIEF**

14 133. In response to Paragraph 133 of the First Amended Complaint,
15 LA Idol incorporates by reference and re-avers its responses to each and every
16 one of the averments contained in the preceding and foregoing paragraphs of this
17 Answer as if fully set forth therein.

18 134. LA Idol denies the averments in paragraph 134 of the First Amended
19 Complaint.

20 135. LA Idol denies the averments in paragraph 135 of the First Amended
21 Complaint.

22 136. LA Idol denies the averments in paragraph 136 of the First Amended
23 Complaint.

24 137. LA Idol denies the averments in paragraph 137 of the First Amended
25 Complaint.

26 138. LA Idol denies the averments in paragraph 138 of the First Amended
27 Complaint.

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1 139. LA Idol denies the averments in paragraph 139 of the First Amended
2 Complaint.

3 140. LA Idol denies the averments in paragraph 140 of the First Amended
4 Complaint.

5 141. LA Idol denies the averments in paragraph 141 of the First Amended
6 Complaint.

7 **RESPONSE TO TENTH CLAIM FOR RELIEF**

8 142. In response to Paragraph 142 of the First Amended Complaint,
9 LA Idol incorporates by reference and re-avers its responses to each and every
10 one of the averments contained in the preceding and foregoing paragraphs of this
11 Answer as if fully set forth therein.

12 143. LA Idol denies the averments in paragraph 143 of the First Amended
13 Complaint.

14 144. LA Idol denies the averments in paragraph 144 of the First Amended
15 Complaint.

16 145. LA Idol denies the averments in paragraph 145 of the First Amended
17 Complaint.

18 146. LA Idol denies the averments in paragraph 146 of the First Amended
19 Complaint.

20 147. LA Idol denies the averments in paragraph 147 of the First Amended
21 Complaint.

22 148. LA Idol denies the averments in paragraph 148 of the First Amended
23 Complaint.

24 149. LA Idol denies the averments in paragraph 149 of the First Amended
25 Complaint.

26 150. LA Idol denies the averments in paragraph 150 of the First Amended
27 Complaint.

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1 **RESPONSE TO ELEVENTH CLAIM FOR RELIEF**

2 151. In response to Paragraph 151 of the First Amended Complaint,
3 LA Idol incorporates by reference and re-avers its responses to each and every
4 one of the averments contained in the preceding and foregoing paragraphs of this
5 Answer as if fully set forth therein.

6 152. LA Idol denies the averments in paragraph 152 of the First Amended
7 Complaint.

8 153. LA Idol denies the averments in paragraph 153 of the First Amended
9 Complaint.

10 154. LA Idol denies the averments in paragraph 154 of the First Amended
11 Complaint.

12 155. LA Idol denies the averments in paragraph 155 of the First Amended
13 Complaint.

14 156. LA Idol denies the averments in paragraph 156 of the First Amended
15 Complaint.

16 157. LA Idol denies the averments in paragraph 157 of the First Amended
17 Complaint.

18 158. LA Idol denies the averments in paragraph 158 of the First Amended
19 Complaint.

20 159. LA Idol denies the averments in paragraph 159 of the First Amended
21 Complaint.

22 **RESPONSE TO TWELTH CLAIM FOR RELIEF**

23 160. In response to Paragraph 160 of the First Amended Complaint,
24 LA Idol incorporates by reference and re-avers its responses to each and every
25 one of the averments contained in the preceding and foregoing paragraphs of this
26 Answer as if fully set forth therein.

27 161. LA Idol denies the averments in paragraph 161 of the First Amended
28 Complaint.

1 162. LA Idol denies the averments in paragraph 162 of the First Amended
2 Complaint.

3 163. LA Idol denies the averments in paragraph 163 of the First Amended
4 Complaint.

5 164. LA Idol denies the averments in paragraph 164 of the First Amended
6 Complaint.

7 165. LA Idol denies the averments in paragraph 165 of the First Amended
8 Complaint.

9 **RESPONSE TO THIRTEENTH CLAIM FOR RELIEF**

10 166. In response to Paragraph 166 of the First Amended Complaint,
11 LA Idol incorporates by reference and re-avers its responses to each and every
12 one of the averments contained in the preceding and foregoing paragraphs of this
13 Answer as if fully set forth therein.

14 167. LA Idol denies the averments in paragraph 167 of the First Amended
15 Complaint.

16 168. LA Idol denies the averments in paragraph 168 of the First Amended
17 Complaint.

18 169. LA Idol denies the averments in paragraph 169 of the First Amended
19 Complaint.

20 170. LA Idol denies the averments in paragraph 170 of the First Amended
21 Complaint.

22 171. LA Idol denies the averments in paragraph 171 of the First Amended
23 Complaint.

24 172. LA Idol denies the averments in paragraph 172 of the First Amended
25 Complaint.

26 173. LA Idol denies the averments in paragraph 173 of the First Amended
27 Complaint.

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1 **RESPONSE TO FOURTEENTH CLAIM FOR RELIEF**

2 174. In response to Paragraph 174 of the First Amended Complaint,
3 LA Idol incorporates by reference and re-avers its responses to each and every
4 one of the averments contained in the preceding and foregoing paragraphs of this
5 Answer as if fully set forth therein.

6 175. LA Idol denies the averments in paragraph 175 of the First Amended
7 Complaint.

8 176. LA Idol denies the averments in paragraph 176 of the First Amended
9 Complaint.

10 177. LA Idol denies the averments in paragraph 177 of the First Amended
11 Complaint.

12 178. LA Idol denies the averments in paragraph 178 of the First Amended
13 Complaint.

14 179. LA Idol denies the averments in paragraph 179 of the First Amended
15 Complaint.

16 180. LA Idol denies the averments in paragraph 180 of the First Amended
17 Complaint.

18 181. LA Idol denies the averments in paragraph 181 of the First Amended
19 Complaint.

20 182. LA Idol denies the averments in paragraph 182 of the First Amended
21 Complaint.

22 **DEFENDANTS' ADDITIONAL DEFENSES**

23 Without waiving or excusing the burden of proof of Plaintiff or admitting
24 that LA Idol has any burden of proof, LA Idol asserts the following
25 additional defenses:

26 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

27 183. AS A FIRST, SEPARATE AND ADDITIONAL DEFENSE TO
28 THE FIRST AMENDED COMPLAINT, LA Idol avers the Complaint and

1 each claim for relief set forth therein fails to state a claim upon which relief may
2 be granted.

3 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

4 184. AS A SECOND, SEPARATE AND ADDITIONAL DEFENSE TO
5 THE FIRST AMENDED COMPLAINT, LA Idol avers that in the event
6 damages, injuries and/or losses were suffered by Plaintiff, which Defendants
7 deny, such damages, injuries and/or losses resulted from the negligence of parties,
8 persons and/or entities other than Defendants, and the liability of Defendants, if
9 any, is limited in direct proportion to the percentage of fault actually attributable
10 to Defendants pursuant to applicable law(s).

11 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

12 185. AS A THIRD, SEPARATE AND ADDITIONAL DEFENSE TO
13 THE FIRST AMENDED COMPLAINT, LA Idol avers that, to the extent
14 Plaintiff's claims for relief involve conduct that is, or seek remedies that are,
15 governed or regulated by federal law, such claims are preempted.

16 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

17 186. AS A FOURTH, SEPARATE AND ADDITIONAL DEFENSE TO
18 THE FIRST AMENDED COMPLAINT, LA Idol is informed and believe that a
19 reasonable opportunity for investigation and discovery will reveal, and on that
20 basis aver, the First Amended Complaint and each claim for relief set forth
21 therein are barred by the equitable doctrine of laches. LA Idol reserve the right
22 to amend its answer upon further investigation and discovery of facts supporting
23 this defense.

24 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

25 187. AS A FIFTH, SEPARATE AND ADDITIONAL DEFENSE TO
26 THE FIRST AMENDED COMPLAINT, LA Idol is informed and believes
27 that a reasonable opportunity for investigation and discovery will reveal, and on
28 that basis aver, the First Amended Complaint and each claim for relief set forth

1 therein are barred by the equitable doctrine of unclean hands. LA Idol reserves
2 the right to amend its answer upon further investigation and discovery of facts
3 supporting this defense.

4 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

5 188. AS A SIXTH, SEPARATE AND ADDITIONAL DEFENSE TO
6 THE FIRST AMENDED COMPLAINT, LA Idol avers that an award of
7 punitive damages would violate Defendants' right to due process under the United
8 States Constitution, including, without limitation, the Fourth, Fifth, Sixth, Eighth
9 and Fourteenth Amendments, and the California Constitution.

10 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

11 189. AS A SEVENTH, SEPARATE AND ADDITIONAL DEFENSE TO
12 THE FIRST AMENDED COMPLAINT, LA Idol avers that Plaintiff's First
13 Amended Complaint, to the extent it seeks punitive or exemplary damages,
14 violates Defendants' rights to procedural due process under the Fourteenth
15 Amendment to the United States Constitution and the Constitution of the State of
16 California and, therefore, fails to state a claim for relief upon which either
17 punitive or exemplary damages can be awarded.

18 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

19 190. AS AN EIGHTH, SEPARATE AND ADDITIONAL DEFENSE TO
20 THE FIRST AMENDED COMPLAINT, LA Idol avers Plaintiff's claims are
21 barred to the extent that any award to them in this action, or on their behalf, would
22 constitute unjust enrichment.

23 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

24 191. AS A NINTH, SEPARATE AND ADDITIONAL DEFENSE TO
25 THE FIRST AMENDED COMPLAINT, LA Idol avers that Plaintiff's claims
26 for relief are barred, in whole or in part, to the extent that Plaintiff seeks a multiple
27 recovery for the same averred wrong or wrongs.

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1 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

2 192. AS A TENTH, SEPARATE AND ADDITIONAL DEFENSE TO
3 THE FIRST AMENDED COMPLAINT, LA Idol's aver the First Amended
4 Complaint, and the claims asserted therein, are uncertain.

5 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

6 193. AS AN ELEVENTH, SEPARATE AND ADDITIONAL DEFENSE
7 TO THE FIRST AMENDED COMPLAINT, LA Idol avers the First
8 Amended Complaint, and each claim for relief set forth therein, is barred
9 because Defendants acted in good faith at all times relevant to the First Amended
10 Complaint.

11 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

12 194. AS A TWELFTH, SEPARATE AND ADDITIONAL DEFENSE TO
13 THE FIRST AMENDED COMPLAINT, LA Idol avers the First Amended
14 Complaint does not describe the claims or facts being averred with sufficient
15 particularity to permit Defendants to ascertain what other defenses may exist.
16 Defendants will rely on any and all further defenses that become available during
17 discovery in this action and specifically reserves the right to amend this Answer
18 for purposes of asserting such additional defenses.

19 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

20 195. AS A THIRTEENTH, SEPARATE AND ADDITIONAL DEFENSE
21 TO THE FIRST AMENDED COMPLAINT, Defendants allege that the conduct
22 alleged in the First Amended Complaint to have been committed or sanctioned
23 by defendants does not constitute copyright infringement because there was no
24 copying.

25 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

26 196. AS A FOURTEENTH, SEPARATE AND ADDITIONAL DEFENSE
27 TO THE FIRST AMENDED COMPLAINT, Defendants allege that the claims of
28 copyright infringement alleged in the First Amended Complaint are barred by the

1 first sale doctrine.

2 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

3 197. AS A FIFTEENTH, SEPARATE AND ADDITIONAL DEFENSE
4 TO THE FIRST AMENDED COMPLAINT, Defendants allege that the claims of
5 copyright infringement alleged in the First Amended Complaint are barred
6 because the purportedly copyrightable subject matter is not original and not of an
7 original design.

8 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

9 198. AS A SIXTEENTH, SEPARATE AND ADDITIONAL DEFENSE
10 TO THE FIRST AMENDED COMPLAINT, Defendants allege that Plaintiff's
11 allegedly copyrighted works consist of matter that is not copyrightable.

12 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

13 199. AS A SEVENTEENTH, SEPARATE AND ADDITIONAL
14 DEFENSE TO THE FIRST AMENDED COMPLAINT, Defendants allege that
15 Plaintiff's designs have acquired no secondary meaning.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Defendants pray for judgment as follows:

- 18 1. That the First Amended Complaint be dismissed in its entirety and
19 with prejudice, and that Plaintiff takes nothing by reason thereof;
- 20 2. That judgment be entered in favor of LA Idol and against Plaintiffs
21 on all Claims for Relief;
- 22 3. That LA Idol be awarded reasonable attorney's fees according to
23 proof, provided by law;
- 24 4. That LA Idol be awarded its costs of suit incurred therein; and

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1 **SECOND COUNTERCLAIM: CANCELLATION OF**
2 **U.S. REGISTRATION NO. 3,581,968**

3 205. LA Idol realleges and incorporates by reference herein the
4 allegations of Paragraphs 200 through 204 of the Counterclaim as if fully set forth
5 herein.

6 206. This is a counterclaim for cancellation of U.S. Supplemental
7 Trademark Registration No. 3,581,968 and/or any associated applications for the
8 Principal Register which may register for this mark, under 15 U.S.C. § 1119.

9 207. U.S. Supplemental Trademark Registration No. 3,581,968 for
10 INVERTED FLEUR DE LIS DESIGN has a registration date of February 24,
11 2009.

12 208. The mark INVERTED FLEUR DE LIS DESIGN is generic, is not
13 capable of becoming distinctive of Counter-defendants' goods in commerce and
14 has not otherwise acquired any secondary meaning among consumers. Thus, the
15 mark is not entitled to registration under 15 U.S.C. § 1052(e).

16 209. LA Idol is being competitively harmed by the continued registration
17 of the INVERTED FLEUR DE LIS DESIGN mark, U.S. Supplemental
18 Registration No. 3,581,968.

19 210. In view of the foregoing, U.S. Trademark Registration No. 3,581,968
20 should be cancelled pursuant to 15 U.S.C. § 1119.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, LA Idol prays for judgment as follows:

- 23 1. Judgment in favor of LA Idol on the First Amended Complaint;
24 2. For compensatory damages on the Counterclaims in an amount to be
25 proven at the time of trial;
26 3. For punitive damages in an amount sufficient to punish Plaintiffs and
27 make an example of them;
28

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