

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

WE WORE WHAT, LLC and ONIA,  
LLC,

Plaintiffs,  
v.

CV COLLECTION, LLC, d/b/a THE  
GREAT EROS,

Defendants.

CASE NO. 1:20-cv-8623

**ANSWER TO COMPLAINT**

**JURY TRIAL DEMANDED**

Defendant and Counter-Claimant CV Collection LLC (“Defendant,” or “CV”) respectfully submits this Answer to Plaintiff and Counter-Defendants WeWoreWhat, LLC (“WWW”) and Onia, LLC (“Onia,” and collectively, with WWW, “Plaintiffs”) Complaint. Defendant responds to the allegations of the Complaint as follows. The numbered paragraphs below correspond to the numbered paragraphs in the Complaint. All allegations in the Complaint not otherwise specifically admitted by Defendant are hereby denied.

1. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

**THE PARTIES**

2. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

3. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

4. Admit.

**JURISDICTION AND VENUE**

5. Admit.

6. Admit.

7. Admit.

8. Admit.

9. Defendant admits that its counsel sent a letter to Plaintiff asserting violations of the Lanham Act, and copyright infringement. Except as expressly admitted, Defendant denies the allegations in this paragraph.

10. Admit.

11. Admit.

**FACTUAL BACKGROUND**

**WWW**

12. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

13. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

14. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

15. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

16. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

17. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

**Onia**

18. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

19. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

20. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

21. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

22. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

23. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

**The WWW Silhouettes Design**

24. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

25. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

26. Defendant admits that Plaintiff uses the infringing WWW Silhouette Design on swimsuits. Defendant lacks sufficient information to admit or deny the remaining allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

27. Defendant admits that Plaintiff uses the infringing WWW Silhouette Design on wallpaper, scarfs, tops and leggings. Defendant lacks sufficient information to admit or deny the remaining allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

**The Great Eros**

28. Admit.

29. Admit.

**False Allegation of Infringement**

30. Defendant admits that its counsel sent a letter on August 10, 2020 alleging, *inter alia*, that the WWW Silhouettes Design was an “unauthorized reproduction of our client’s famous artwork and trade dress.” Except as expressly admitted, Defendant denies the allegations in this paragraph.

31. Admit.

32. Defendant admits that the August 10, 2020 letter does not allege substantial similarity. Except as expressly admitted, Defendant denies the allegations in this paragraph.

33. Defendant admits that the August 10, 2020 letter did not purport to “provide evidence” of copying. Except as expressly admitted, Defendant denies the allegations in this paragraph.

34. Defendant admits that the August 10, 2020 letter did not purport to “provide evidence” that Ms. Bernstein had access to Defendant’s design. Except as expressly admitted, Defendant denies the allegations in this paragraph.

35. Defendant admits that the August 10, 2020 letter did not purport to “provide evidence” that its designs “are protected by copyright.” Except as expressly admitted, Defendant denies the allegations in this paragraph.

36. Defendant admits that on August 13, 2020 Plaintiff’s counsel sent a letter to Defendant’s counsel; and that a copy of the letter is attached as Exhibit 2 to the Declaration of Robert Salame. Except as expressly admitted, Defendant denies the allegations in this paragraph.

37. Defendant admits that in his August 13, 2020 letter Plaintiff’s counsel claimed to have identified “widely accessible and similar designs in the market place.” Except as expressly admitted, Defendant denies the allegations in this paragraph.

38. Defendant admits that in his August 13, 2020 letter Plaintiff’s counsel claimed to have conducted a “review of the draft designs that resulted in the WWW Figure Overlay Design and interviews with the designers who confirmed they did not have access to The Great Eros’ materials. Except as expressly admitted, Defendant denies the allegations in this paragraph.

39. Deny.

40. Deny.

41. Admit.

42. Deny.

43. Deny.

44. Deny.

- 45. Deny.
- 46. Deny.
- 47. Deny.
- 48. Deny.
- 49. Deny.
- 50. Deny.

**COUNT I**

**DECLARATION OF NON-INFRINGEMENT UNDER THE COPYRIGHT ACT**

51. Defendant incorporates by reference its responses to paragraphs 1-50 of this pleading, as if fully set forth herein.

52. Deny

53. Admit.

54. Deny.

55. Admit.

56. Admit.

57. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

58. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

59. Defendant lacks sufficient information to admit or deny the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

60. Defendant admits that Plaintiffs desire a judicial determination of the parties' rights and duties with respect to Defendant's copyright rights.

61. Defendant admits that Plaintiffs seek a declaratory judgment that Defendant is not entitled to any injunctive relief or damages under the Copyright Act.

62. Admit.

**COUNT II**

**DECLARATION OF NO UNFAIR COMPETITION OR OTHER TORTIOUS  
ACTIVITY IN VIOLATION OF ANY FEDERAL, STATE, OR COMMON LAW**

63. Defendant incorporates by reference its responses to paragraphs 1-62 of this pleading, as if fully set forth herein.

64. Admit.

65. Defendant admits that the draft complaint its counsel sent to Plaintiffs' counsel on or about October 13, 2020, states that Plaintiffs' use of the design constitutes unfair competition under federal, state and common law; and that Defendant demands that Plaintiffs cease and desist selling such goods in US commerce. Except as expressly admitted, Defendant denies the allegations in this paragraph.

66. Deny.

67. Deny.

68. Defendant admits that Plaintiffs seek a declaratory judgment from this Court that the use of the infringing WWW Silhouettes Design is not likely to cause confusion as to the source of Plaintiffs' goods with those of Defendant. Except as otherwise admitted, Defendant denies the allegations in this paragraph.

69. Deny.

70. Deny.

71. Defendant admits that Plaintiffs seek a declaratory judgment that Defendant has suffered no, and will not suffer any, damages or loss of goodwill as a result of the sale of goods using the infringing WWW Silhouettes Design. Except as otherwise admitted, Defendant denies the allegations in this paragraph.

72. Defendant admits that Plaintiffs seek a declaratory judgment that Defendant is not entitled to any injunctive relief or damages under the Lanham Act or the common law of the State of New York. Except as otherwise admitted, Defendant denies the allegations in this paragraph.

**DEMAND FOR JURY TRIAL**

73. Defendant admits that Plaintiff demands a jury trial. Except as otherwise admitted, Defendant denies the allegations in this paragraph.

**PRAYER FOR RELIEF**

Defendant denies each and every allegation contained in Plaintiffs' prayer for relief, and specifically denies that Plaintiffs have been injured or threatened with injury in any way whatsoever, and specifically denies that Plaintiffs are entitled to relief of any kind whatsoever. Defendant requests this Court enter judgment in favor of Defendant and against Plaintiffs.

**AFFIRMATIVE DEFENSES**

Without assuming any burden of proof or production to which it is not otherwise subject under the law, Defendant asserts the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

Defendant alleges that any recovery or relief to which Plaintiffs may be entitled (if any) is barred, in whole or in part, under the doctrine of unclean hands.

**SECOND AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

Plaintiffs' Complaint fails to state a claim against Defendant upon which relief may be granted and therefore it should be dismissed with prejudice.

**THIRD AFFIRMATIVE DEFENSE**

**(Vague/Uncertain/Speculative Claims)**

Plaintiffs' Complaint is barred, in whole or in part, because Plaintiffs' claims, if any, are vague, uncertain, imaginary, and speculative.

**FOURTH AFFIRMATIVE DEFENSE**

**(Good Faith)**

The Complaint is barred, in whole or in part, because Defendant's conduct was



reasonable, justified, in good faith and/or innocent.

**FIFTH AFFIRMATIVE DEFENSE**

**(Jurisdiction)**

Plaintiff's declaratory judgment claim fails to present a justiciable controversy between the parties. Assuming there is a justiciable controversy—which there is not—this Court should decline to exercise its discretionary jurisdiction over Plaintiff's declaratory judgment claim.

**SIXTH AFFIRMATIVE DEFENSE**

**(Improper Preemptive Declaratory Relief Action)**

Plaintiffs declaratory relief action was filed in anticipation of an infringement action to be filed by Defendant, while settlement negotiations were pending and with deception, in an effort to gain a tactical advantage.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Unjust enrichment)**

Plaintiffs' claims are barred in whole or in part by the doctrine of unjust enrichment, as Plaintiffs' use of Defendant's intellectual property resulted in wrongfully obtained profits.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Waiver, Estoppel, and Acquiescence)**

Plaintiff's claims are all barred by the doctrines of waiver, estoppel, and acquiescence.

**NINTH AFFIRMATIVE DEFENSE**

**(Lack of Standing)**

Plaintiff's claims are all barred because Plaintiff has no standing to assert any claim or cause of action, herein, as Plaintiff is not legal or beneficial owner of any intellectual property rights asserted in this action.

**TENTH AFFIRMATIVE DEFENSE**

**(Acts of Third Parties)**

Plaintiff is not entitled to any recovery against Defendant because any harm incurred by Plaintiff was the result of conduct by third parties for whom Defendant was not responsible.

**RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES**

**(Reservation of Right to Amend)**

Defendant reserves the right to amend this answer and assert additional affirmative defenses based on facts obtained through investigation and/or discovery.

A jury trial is demanded on all issues so triable.

Respectfully submitted,

Dated: January 4, 2021

By: /s/ Scott Alan Burroughs  
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