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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

CLIFF ELECTRONIC COMPONENTS, LTD.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 08C 1820
)	
CLIFF ELECTRONIC COMPONENTS, INC.,)	
and ANDREW BRUNT,)	
)	
Defendants.)	
)	

ANSWER AND COUNTERCLAIMS OF DEFENDANT ANDREW BRUNT
(Pursuant to Chapter 60 of the Kansas Statutes Annotated)

COMES NOW Defendant, Andrew Brunt, by and through his counsel, Wayne T. Stratton and Richard J. Raimond, of Goodell, Stratton, Edmonds & Palmer, L.L.P., and for his answer to Plaintiff's Petition states as follows:

1. Any statements not herein admitted are denied.
2. Paragraphs 1 and 2 are admitted.
3. Admit that Andrew Brunt is a citizen of the United Kingdom and president of Cliff USA. Deny that he can be individually served at Cliff USA's place of business.
4. Admit that Plaintiff markets a variety of electronic components. Deny that Cliff USA was solely Plaintiff's "distributor." Deny further that U.S. Trademark Registration No. 1,858,355 was duly and legally issued or that Cliff UK is the lawful owner of the CLIFF mark in the United States.

5. Paragraph 5 is denied.

6. Admit that Andrew Brunt was, and still is, Cliff USA's president. Deny, however, that Andrew Brunt was an employee of Plaintiff at the time of Cliff USA's establishment. Deny further that Andrew Brunt exercises total control of Cliff USA, as joint control is exercised by Andrew Brunt and Kevin Murphy as directors.

7. Admit that Andrew Brunt established Cliff Hong Kong with contacts based in Hong Kong. Deny that his purpose in establishing Cliff Hong Kong was to make allegedly infringing products or that he sells any infringing or counterfeit line of CLIFF products.

8. Admit that Andrew Brunt owns a 60% share of Cliff Hong Kong. Deny both that Cliff Hong Kong was created in 2004, and that its purpose was to introduce allegedly counterfeit goods into the United States. Deny further that Andrew Brunt sells any infringing or counterfeit line of CLIFF products or that there has been any consumer confusion created through its use of the CLIFF mark.

9. Admit Cliff USA's affiliation with Cliff UK. Deny that Andrew Brunt has denied Plaintiff the right to control the quality of products sold to US customers.

10. Paragraph 10 does not contain any assertions regarding Andrew Brunt. To the extent a response is required, however, it is denied.

11. Andrew Brunt lacks sufficient knowledge to either affirm or deny the allegations made in ¶ 11, and therefore, denies the same.

12. Paragraph 12 is denied.

13. Paragraph 13 is denied.

14. Paragraph 14 does not contain any assertions regarding Andrew Brunt. To the extent a response is required, however, it is denied.

15. Paragraph 15 is denied.
16. Paragraph 16 is denied. Andrew Brunt further asserts that he owed no fiduciary duty to Plaintiff.
17. Paragraph 17 is denied.
18. Paragraph 18 is denied.
19. Paragraph 19 is denied.
20. Paragraph 20 is denied.
21. Paragraph 21 is denied. Andrew Brunt further states that he has no individual responsibility to pay Cliff UK for deliveries made to Cliff USA.
22. Admit that Cliff USA notified Plaintiff that it would discontinue making payments on the payment plan. Andrew Brunt would again note, however, that he has no individual responsibility to pay Cliff UK for deliveries made to Cliff USA.
23. Paragraph 23 is denied. Andrew Brunt again states that he has no individual responsibility to pay Cliff UK for deliveries made to Cliff USA.
24. Paragraph 24 is denied.
25. Paragraph 25 is denied.
26. Paragraph 26 is denied.
27. Admit Cliff USA claims affiliation with CliffGroup. Otherwise, denied.
28. Paragraph 28 is denied.
29. Paragraph 29 is denied.
30. Paragraph 30 is denied.
31. Paragraph 31 is denied.
32. Paragraph 32 is denied.

33. Paragraph 33 is denied.

AFFIRMATIVE DEFENSES

1. Plaintiff's Petition fails to state a claim upon which relief can be granted as a matter of law and therefore must be dismissed.

2. Plaintiff's Petition fails due to the doctrine of laches, estoppel, acquiescence, waiver, and unclean hands.

3. Plaintiff's Petition fails because any alleged damages it has suffered are a result of Plaintiff's own actions, omissions, or other faults.

4. Andrew Brunt is immune from Plaintiff's claims as he was acting within the scope of his agency or employment by Cliff USA at all times relevant to the events alleged in Plaintiff's petition.

5. Plaintiff is not the owner of the trademark(s) at issue.

6. Defendant Cliff USA is the rightful owners of the trademark(s) at issue.

7. Plaintiff is equitably estopped from claiming sole ownership of the CLIFF trademark and patents.

8. Any use of the trademark(s) at issue by Andrew Brunt constitutes fair use.

9. Defendants have the lawful right to sell goods bearing the CLIFF trademark.

10. Should the Court find that sole ownership in the trademark and patents resides in Plaintiff, Plaintiff's subsequent course of conduct grants Defendants an implied license to manufacture and sell trademarked and/or patented parts.

11. Plaintiff does not have priority to the CLIFF mark in the United States.

12. To the extent Plaintiff has any rights to the CLIFF mark in the United States, Plaintiff has abandoned said rights by failing to control the quality of goods and services provided in association with the mark.

13. Plaintiff's damages, if any, should be set off and/or recouped against the damages sustained by Cliff USA and Andrew Brunt as set out in Andrew Brunt's counterclaim, *infra*.

14. Andrew Brunt reserves the right to plead additional defenses which may become evident during the course of these proceedings.

WHEREFORE, Andrew Brunt prays that the petition be dismissed, that Plaintiff take nothing by way of its petition, for his costs and expenses incurred herein, and for any and all other relief which the court deems just and equitable.

**DEFENDANT ANDREW BRUNT'S COUNTERCLAIMS AND
REQUEST FOR INJUNCTION**

COMES NOW, Defendant Cliff Andrew Brunt, and for its counterclaims further alleges and states:

1. CliffGroup, Ltd., the originator of the CLIFF line of products, was formed in the United Kingdom in 1964.

2. Plaintiff, Cliff UK, was then formed in 1977 to distribute *CliffGroup's* products. CliffGroup continues to hold the trademark rights to the CLIFF name in the United Kingdom.

3. In February 1991, Plaintiff approached Andrew Brunt and offered him a position as sales manager at their Houston, Texas office. Andrew Brunt and his wife therefore gave up their jobs in the United Kingdom, rented out their house, and moved to the United States.

4. Upon arrival in the United States, however, Andrew Brunt discovered that the work visas Plaintiff claimed to have arranged were non-existent and that relations between

Plaintiff and its Houston office had deteriorated to the point of being unworkable. Without the ability to work, Andrew Brunt and his wife therefore had to return to the United Kingdom unpaid after three months when their tourist visas expired.

5. Plaintiff thereafter disbanded its Houston office and invited Andrew Brunt to establish Defendant Cliff USA, which he did in 1992 with a \$75,000.00 investment from Plaintiff, plus funds of his own. It was further left to Andrew Brunt to organize his own work visa which was approved based upon a business plan that he formulated and presented to the US immigration services.

6. At formation, Cliff USA had three directors: Robert Taylor, the director and CEO of Plaintiff, Andrew Brunt, and Kevin Murphy, another of Cliff UK's directors. Ownership was initially split 50/50 between Taylor and Murphy. Andrew Brunt was appointed President.

7. Taylor and Murphy transferred ten percent (10%) of Cliff USA's shares to Andrew Brunt each year from 1993 to 1995, and a further ten percent (10%) in 1997. This was in spite of the original agreement, formed in 1992, in which ownership would continue to be transferred to Andrew Brunt at the rate of ten percent (10%) annually, which agreement was reneged on. Cliff USA's ownership since 1997 has therefore been: Forty percent (40%), Brunt; thirty percent (30%), Taylor; and thirty percent (30%), Murphy.

8. From its formation in 1992 onwards, Plaintiff assured Cliff USA that it was free to select the suppliers it worked with and sourced its components from. Plaintiff did not claim that Cliff USA was its "distributor," or that it could only buy products from Plaintiff, until the relationship broke down in 2008.

9. From 1992 to the present, Andrew Brunt and Cliff USA were actively involved in the research, design, and manufacturing of all CLIFF products. Moreover, Cliff USA

contributed approximately £163,000.00 to the costs of tooling and manufacturing, which expenses Plaintiff refuses to acknowledge.

10. In 1994, without consulting Cliff USA or CliffGroup, Plaintiff filed a United States trademark registration for the CLIFF mark, U.S. Registration No. 1,858,355. Plaintiff assured Cliff USA and Andrew Brunt at this time that it had trademarked the name "CLIFF" to protect Cliff USA's interests and Cliff USA understood the trademark to be jointly owned.

11. Again in 1996, Plaintiff took it upon itself to file a U.S. patent application for one of the parties' products that had been researched and developed jointly by Plaintiff and Cliff USA and its employees. United States Patent No. 5,719,753 was then issued to Plaintiff in February 1998.

12. Likewise in 1997, Plaintiff took it upon itself to file a further U.S. patent application for another of the parties' products that had been similarly researched and developed jointly by Plaintiff and Cliff USA and its employees. United States Patent No. 6,116,959 was then issued to Plaintiff in September 2000.

13. Although Cliff USA and CliffGroup protested Plaintiff's deception at the time, they concluded that it was not in any party's interest to pursue costly litigation to assert the correct ownership rights given the close working relationship between the companies.

14. Since 2000, Cliff USA has paid over \$122,000.00 in defending these patents, which Plaintiff now claims as its alone, against infringing competitors.

15. Following the successful defense of these patents, Plaintiff split with Cliff USA the royalty payments the infringing competitor agreed to pay.

16. Prior to 1998, all CLIFF products were manufactured by CliffGroup in the United Kingdom. In 1998, Plaintiff established a duplicate production line in China, Cliff Plastic &

Metal Products (“CPM”), and asked Cliff USA to contribute to CPM’s tooling costs—which Cliff USA did.

17. From 1998 to 2005, at Plaintiff’s insistence, Cliff USA purchased its products from Cliff UK, which obtained them from CliffGroup and its Chinese factory. This inefficient supply chain caused numerous problems for Cliff USA, and so in 2005 Cliff USA obtained the agreement of Plaintiff and CliffGroup that it would obtain its products from other sources.

18. From 2005 onwards, Cliff USA purchased its products directly from CliffGroup. Due to the increased efficiency in the supply chain, Cliff USA’s profits increased and it was able to reduce its credit line with Plaintiff accordingly.

19. In September 2004, at Plaintiff’s request, Cliff USA contributed fifty percent (50%) of the cost of renewing the CLIFF trademark in the United States, based on Plaintiff’s assertion that it was for Cliff USA’s protection.

20. In October 2004, Kevin Murphy resigned as a director of Cliff UK. Robert Taylor asked Murphy to sell his shares in Cliff USA to Taylor so that Cliff UK could retain “control” of Cliff USA. Murphy declined.

21. In November 2005, Andrew Brunt again used his own money to establish a separate office in Hong Kong, Cliff Hong Kong, in order to manage Cliff USA’s Asian suppliers and customers. Given that Plaintiff had previously assured Cliff USA that it had no say in where Cliff USA obtained its products from, Cliff Hong Kong later started producing some CLIFF products, in order to meet Cliff USA’s customers’ demands.

22. In February 2006, Cliff USA discovered that its Asian sales were being undercut by another CLIFF company with close links to Plaintiff, Cliff Enterprise, which sold products

purchased from CPM. As such, Cliff USA requested a board meeting to discuss its future direction and viability.

23. In response to Cliff USA's request to hold a board meeting, Robert Taylor claimed he did not know he was a director of Cliff USA, that he had no interest in "interfering" with Cliff USA's business, and that his "only concern" with Cliff USA was that it reduce its outstanding debt to Plaintiff.

24. In June 2007, in a further attempt to reduce its overheads and remain a viable enterprise, Cliff USA—again with the agreement of Robert Taylor as director—sold its offices in Benicia, California, and relocated to Topeka, Kansas where it now leases premises.

25. In December 2007, Robert Taylor resigned as a director of Cliff USA.

26. Shortly thereafter, in January 2008, Plaintiff established its own office in the United States headed by a former employee of Cliff USA, Bruce Yeremian.

27. In April 2008, Plaintiff unilaterally accelerated the payment plan agreed upon by the parties and demanded the entire GBP£175,000.00 outstanding. Plaintiff further refused to supply Cliff USA with any further products.

28. In response, Cliff USA requested that Plaintiff account to it for the approximately GBP£163,000.00 that Cliff USA had spent on tooling used to produce the very products that Plaintiff now refused to supply Plaintiff with.

29. In May 2008, Bruce Yeremian, posing as an employee of Cliff USA, transferred Cliff USA's telephone lines and fax lines to Cliff UK so that customers attempting to call Cliff USA would automatically be transferred to Yeremian in Cliff UK's U.S. office. Upon information and belief, Plaintiff then sells its products to these customers without informing

them that it is a different company. Consequently, Cliff USA has had to reprint and replace all its catalogues, brochures, and data sheets at great expense to itself.

30. In July 2008, Plaintiff filed a complaint with the National Arbitration Forum asserting that Cliff USA's use of the domain name <cliffusa.com> infringed on its trademark and requesting transfer of the domain name to Plaintiff. The Arbitrator found that Plaintiff had failed to demonstrate the required elements and denied its request.

31. In or around August 2008, Plaintiff began sending false and defamatory letters to Cliff USA's customers asserting that they were receiving "counterfeit" products and that, if they incorporated such products into their own goods, they risked having said good seized by United States Customs. Plaintiff did this despite knowing that Cliff USA continued to assert its legal right to supply CLIFF products and prior to its even filing any lawsuit to determine whether Cliff USA was in fact infringing on its patents and trademark.

32. In December 2008, Plaintiff filed the instant action.

33. On or around January 2, 2009, Plaintiff posted a false and defamatory news item on its website stating that Cliff USA and Andrew Brunt personally are selling "counterfeit CLIFF parts." Plaintiff further makes these allegations against Cliff Hong Kong and Infinium, Inc., a further company in which both Andrew Brunt and CliffGroup have an interest, despite neither party being a defendant in this case.

COUNT ONE:
DECLARATORY JUDGMENT

34. Andrew Brunt incorporates by reference paragraphs 1 to 33 above.

35. Plaintiff purports to be the owner of U.S. Trademark Registration No. 1,858,355 for the CLIFF mark.

36. Plaintiff does not have priority to the CLIFF mark in the United States. Consequently, Plaintiff is not the lawful owner of the CLIFF mark in the United States.

37. U.S. Trademark Registration No. 1,858,355 should be cancelled since Plaintiff does not have priority to the CLIFF mark in the United States.

38. Alternatively, U.S. Trademark Registration No. 1,858,355 should be assigned to CLIFF USA.

39. Plaintiff has failed to control the quality of goods sold in association with the CLIFF mark in the United States. To the extent Plaintiff has any rights in the CLIFF mark in the United States, it has abandoned those rights and Plaintiff has lost its rights in the CLIFF mark in the United States.

COUNT TWO:
DEFAMATION

40. Andrew Brunt incorporates by reference paragraphs 1 to 39 above.

41. Plaintiff's actions in posting a false and defamatory news item on its website regarding Andrew Brunt personally, despite knowing that Cliff USA and Andrew Brunt continue to assert their legal right to supply CLIFF products, has damaged Andrew Brunt's reputation among customers of both Cliff USA and of other companies in which Andrew Brunt has an interest and caused said customers to withdraw orders.

42. Cliff UK is liable to Andrew Brunt in an amount to be determined at trial for defamation.

43. Andrew Brunt further requests that the Court enter an injunction ordering Plaintiff to remove such defamatory statements from its website and prohibiting it from making any


further such defamatory statements prior to court resolution of the instant claims and counterclaims.

WHEREFORE, Andrew Brunt prays for judgment against Plaintiff finding that Plaintiff is equitably estopped from denying Andrew Brunt's right to use the CLIFF trademark and patents, and that Andrew Brunt is not infringing the CLIFF marks or patents at issue in this suit. Andrew Brunt further requests the Court issue an order cancelling U.S. Trademark Registration No. 1,858,355.

Andrew Brunt further requests that the Court issue an injunction ordering Plaintiff to remove all defamatory statements concerning him from its website and prohibiting it from making any further such defamatory statements in any form prior to court resolution of the instant claims and counterclaims.

Andrew Brunt further prays for damages in an amount to be determined at trial, together with prejudgment interest at the rate of 10% pursuant to K.S.A. § 16-201 from October 15, 2008 to the date of judgment, costs of this action pursuant to K.S.A. § 60-2002, with post-judgment interest thereon at the statutory rate until paid in full pursuant to K.S.A. § 16-204(e), and such other and further relief as the court deems just and equitable.

Respectfully submitted,



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DEMAND FOR JURY TRIAL

COME NOW defendant, Andrew Brunt, and request a jury of twelve members for any and all appropriate issues.

Respectfully submitted,

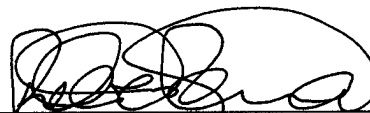


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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2009, a true and correct copy of the above and foregoing Answer of Defendant Andrew Brunt was deposited in the United States mail, postage prepaid and properly addressed to:

Jason E. Geier
Engel & Geier, P.A.
800 SW Jackson, Suite 1000
Topeka, KS 66612



Richard J. Raimond