

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

WORLD COLOR (USA) CORP. fka
QUEBECOR WORLD,

Plaintiff,

VERIFIED
ANSWER

-against-

JOHN MCAULIFFE, MICHAEL DESISTO,
COMPENDIUM SYSTEMS, and BEAUTY
HANDBOOK,

Index No.:
29936/09

Defendants.

-----X

Defendants, JOHN MCAULIFFE (referred to as "McAuliffe"), MICHAEL DESISTO (referred to as "Desisto"), COMPENDIUM SYSTEMS (referred to as "Compendium"), and BEAUTY HANDBOOK (referred to as "Beauty"), (collectively referred to as "Defendants") by and through their attorneys, PENACHIO MALARA, LLP, hereby answer Plaintiff's WORLD COLOR (USA) CORP. fka QUEBECOR WORLD (or referred to as "Plaintiff") complaint and set forth affirmative defenses as follows:

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the complaint.
2. Defendant McAuliffe denies the allegations set forth in paragraph 2 of the complaint with respect to his residences.
3. Defendant McAuliffe, denies the allegations set forth in paragraph 3 of the complaint as to the characterization of the business activity.

4. Defendant McAuliffe, admits the allegations set forth in paragraph 4 of the complaint.
5. Defendant Desisto denies the allegations set forth in paragraph 5 of the complaint.
6. Defendant Desisto denies the allegations set forth in paragraph 6 of the complaint.
7. Defendant Desisto denies the allegations set forth in paragraph 7 of the complaint.
8. Referring to paragraph 8, Defendant Compendium neither admits nor denies the allegations thereof for lack of sufficient information or belief as to the use of the term “registered to do business” by Plaintiff.
9. Referring to paragraph 8, Defendant Compendium neither admits nor denies the allegations thereof for lack of sufficient information or belief as to the term “trade name” as used by the Plaintiff.
10. Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 10 of the complaint.
11. Defendants deny each and every allegation contained in paragraph 11 of the complaint.
12. Defendants deny each and every allegation contained in paragraph 12 of the complaint.
13. Defendants neither admit or deny the allegations in paragraph 13 of the

complaint as the “invoices” speak for themselves and call for no response. In particular, Defendants deny the existence of any obligations to the Plaintiff.

14. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 14 of the complaint as the documents referred to speak for themselves and require no response, except to the extent paragraph 14 contains legal conclusions which also require no response.

15. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 15 of the complaint as the documents referred to speak for themselves and require no response, except to the extent paragraph 15 contains legal conclusions which also require no response.

16. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 16 of the complaint as the documents referred to speak for themselves and require no response, except to the extent paragraph 16 contains legal conclusions which also require no response.

17. Defendants deny each and every allegation contained in paragraph 17 of the complaint.

18. Defendants deny each and every allegation contained in paragraph 18 of the complaint.

19. Defendants lack knowledge or information sufficient to admit or deny the allegations set forth in paragraph 19 of the complaint as the documents referred to speak for themselves and require no response, except to the extent paragraph 19 contains legal conclusions which also require no response.

20. Defendants deny the allegations set forth in paragraph 20 of the complaint and assert that no answers are due to the Plaintiff.

21. Defendants deny the allegations set forth in paragraph 21 of the complaint and assert that no answers are due to the Plaintiff.

22. Defendants deny each and every allegation contained in paragraph 22 of the complaint.

23. Defendants deny each and every allegation contained in paragraph 23 of the complaint.

24. Defendants neither admit or deny the allegations in paragraph 24 of the complaint as the “invoices” speak for themselves and call for no response. In particular, Defendants deny the existence of any obligations to the Plaintiff.

25. Defendants deny the allegations set forth in paragraph 25 of the complaint and the existence of any obligation to the Plaintiff

26. Defendants deny the allegations set forth in paragraph 26 of the complaint and the existence of any obligation to Plaintiff.

27. Defendants deny each and every allegation contained in paragraph 27 of the complaint.

28. Defendants deny each and every allegation contained in paragraph 28 of the complaint.

29. Defendants deny the allegations in paragraph 29 of the complaint and the existence of any obligations to the Plaintiff.

30. Defendants deny the allegations set forth in paragraph 30 of the complaint and the existence of any obligation to the Plaintiff.

31. Defendants deny the allegations set forth in paragraph 31 of the complaint and the existence of any obligation to the Plaintiff

32. Defendants deny the allegations set forth in paragraph 32 of the complaint and the existence of any obligation to the Plaintiff.

33. Defendants deny each and every allegation contained in paragraph 33 of the complaint.

34. Defendants deny each and every allegation contained in paragraph 34 of the complaint

35. Defendants deny the allegations contained in paragraph 35 of the complaint and the existence of any obligation to the Plaintiff

36. Defendants deny the allegations contained in paragraph 36 of the complaint and the existence of any obligation to the Plaintiff

37. Defendants deny each and every allegation set forth in paragraph 37 of the complaint.

38. Defendants deny the allegations set forth in paragraph 38 of the complaint.

39. Defendants deny the allegations set forth in paragraph 39 of the complaint and that they are liable for any obligation to the Plaintiff.

40. Defendants deny the allegations set forth in paragraph 40 of the complaint.

Count I
Breach of Contract/Account stated

41. Defendants repeat and reiterate each of their responses set forth in the preceding paragraph as if fully set forth herein at length.

42. Defendants deny the allegations set forth in paragraph 42 of the complaint.

43. Defendants deny the allegations set forth in paragraph 43 of the complaint.

44. Defendants deny the allegations set forth in paragraph 44 of the complaint.

45. Defendants deny the allegations set forth in paragraph 45 of the complaint.

Count II
Quantum Merit

46. Defendants repeat and reiterate each of their responses set forth in the preceding paragraph as if fully set forth herein at length.

47. Defendants deny the allegations set forth in paragraph 47 of the complaint.

Count III
Unjust Enrichment

48. Defendants repeat and reiterate each of their responses set forth in the preceding paragraph as if fully set forth herein at length.
49. Defendants deny each and every allegation set forth in paragraph 49 of the complaint.
50. Defendants deny the allegations set forth in paragraph 50 of the complaint.
51. Defendants deny the allegations set forth in paragraph 51 of the complaint.
52. Defendants deny the allegations set forth in paragraph 52 of the complaint.

Affirmative Defenses

Defendants state the following defenses without assuming the burden of proof on such defenses that would otherwise rest on Plaintiff.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

53. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 52 hereof as if set forth in their entirety.
54. Upon information and belief, The Court is without personal jurisdiction over the Defendants.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

55. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 54 hereof as if set forth in their entirety.
56. The complaint fails to state a cause of action upon which relief can be granted.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

57. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 56 hereof as if set forth in their entirety.

58. Each cause of action alleged in the complaint is barred and precluded by operation of the applicable statute of limitations.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

59. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 58 hereof as if set forth in their entirety.

60. Each cause of action alleged in the complaint is barred and precluded by operation of the applicable statute of frauds.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

61. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 60 hereof as if set forth in their entirety.

62. Plaintiff is barred and precluded from obtaining any of the relief requested in the complaint, in whole or in part, by virtue of application of the doctrines of waiver, estoppel, acquiescence, surrender, abandonment, laches, ratification and/or unclean hands.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

63. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 62 hereof as if set forth in their entirety.

64. The injuries and/or damages alleged in the complaint, if any were sustained by Plaintiff, were proximately caused, in whole or in part, by the culpable conduct of plaintiff and/or persons other than Defendants in connection with the circumstances alleged in the complaint.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

65. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 64 hereof as if set forth in their entirety.

66. Plaintiff is barred and precluded from obtaining any of the relief requested in the complaint, in whole or in part, by virtue of his own unreasonable failure under the circumstances to avoid, minimize and/or mitigate the injuries or damages, if any, that were allegedly sustained.

**AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE**

67. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 66 hereof as if set forth in their entirety.

68. Defendants are entitled to an offset and/or reduction in damages, if any, assessed against them in proportion to the injuries, if any, caused by the culpable conduct of Plaintiff and/or other persons in connection with the circumstances alleged in the complaint.

**AS AND FOR A NINTH
AFFIRMATIVE DEFENSE**

69. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 68 hereof as if set forth in their entirety.

70. Plaintiff is precluded from obtaining any of the relief requested in the complaint because it lacks standing to object the claims set forth in the complaint.

**AS AND FOR A TENTH
AFFIRMATIVE DEFENSE**

71. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 70 hereof as if set forth in their entirety.

72. Defendants are entitled to an offset for damages if they suffered as a result of the Plaintiff's culpable conduct.

**AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE**

73. Defendants repeat and reiterate the assertions set forth in paragraphs 1 through 72 hereof as if set forth in their entirety.

74. Upon information and belief, Plaintiff is currently the subject of a Chapter 11 proceeding pending in the Southern District of New York entitled Quebecor World (USA), Inc. et al. As such, this Court may lack the requisite subject matter jurisdiction over the action. Counsel is currently investigating whether or not this case was brought in the proper forum.

WHEREFORE, Defendants JOHN MCAULIFFE, MICHAEL DESISTO ,
COMPENDIUM SYSTEMS, and BEAUTY HANDBOOK demand judgment as follows:

- and
1. Dismissing the complaint against defendant on the merits and with prejudice;
 2. Granting defendant such other and further relief as the Court may deem just and

proper, including without limitation the costs and reasonable attorneys' fees of the action.

Dated: White Plains, New York
March 24, 2010

FRANCIS J. MALARA

By: 

Francis J. Malara
Anne Penachio
Penachio Malara, LLP
Counsel for Defendants'
235 Main Street
White Plains, NY 10603
(914) 946-2889

TO: BEATTIE PADOVANO, LLC
Vanessa R. Elliot, Esq.
Counsel for Plaintiff
50 Chestnut Ridge Road
Montvale, NJ 07645

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
WORLD COLOR (USA) CORP. fka
QUEBECOR WORLD,

Plaintiff,

-against-

JOHN MCAULIFFE, MICHAEL DESISTO,
COMPENDIUM SYSTEMS, and BEAUTY
HANDBOOK,

Defendants.
-----X

Index No.: 29936/09

VERIFICATION OF
JOHN MCAULIFFE

JOHN MCAULIFFE, duly sworn deposes and says:

I am the defendant in the above-captioned action. I have read the attached answer and know the contents thereof to be true and correct based upon my own knowledge, except as the matters therein stated to be alleged on information and belief; and as to those matters, I believe them to be true.

Florida
Dated: ~~White Plains, NY~~
March 24, 2010


JOHN MCAULIFFE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

WORLD COLOR (USA) CORP. fka
QUEBECOR WORLD,

Index No.:29936/09

Plaintiff,

-against-

ATTORNEY VERIFICATION

JOHN MCAULIFFE, MICHAEL DESISTO,
COMPENDIUM SYSTEMS, and BEAUTY
HANDBOOK,

Defendants.

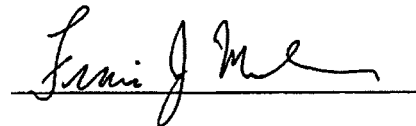
-----X

The undersigned, an attorney duly admitted to practice in the State of New York, affirms:

That I am the attorney of record for the Defendants' JOHN MCAULIFFE, MICHAEL DESISTO , COMPENDIUM SYSTEMS and BEAUTY HANDBOOK, in the within action; that I have read the attached and know the contents thereof; that same are true and correct based upon my own knowledge except as the matters therein stated to be alleged on information and belief; and as to those matters, I believe them to be true.

The undersigned further states that the reason this affirmation is made by the undersigned and not by the Defendant is that the Defendant does not reside in the County where the undersigned maintains her office.

Dated: White Plains, NY
March 26, 2010



Francis J. Malara

Penachio Malara, LLP
Counsel for Defendants'
235 Main Street
White Plains, NY 10603
(914) 946-2889