

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-cv-02707-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

vs.

JOHN BUTLER,

Defendant.

DEFENDANT'S ANSWER and AFFIRMATIVE DEFENSES

Defendant, John Butler, by and through his undersigned attorneys, Hanes & Bartels LLC, answers Plaintiff's Amended Complaint and admits, denies and avers as follows:

Introduction

1. Admits the allegations of paragraph 1.
2. Denies the allegations of paragraph 2.
3. Does not have knowledge or information on which to form a belief as to the allegations of paragraph 3 and therefore denies the same.

Jurisdiction and Venue

4. Admits the subject matter jurisdiction of the Court, except as to any of the alleged copyrighted works that were not registered in the United States Copyright Office at the time of filing the Amended Complaint, and denies all other allegations of paragraphs 4 - 6.

Parties

5. Does not have knowledge or information on which to form a belief as to the allegations of paragraph 7 and therefore denies the same.
6. Admits the allegations of paragraph 8.

Factual Background

7. Does not have knowledge or information on which to form a belief as to the allegations of paragraphs 9 -15 and therefore denies the same.
8. Denies the allegations of paragraphs 16 - 22.

Miscellaneous

9. Denies the allegations of paragraphs 23 and 24.

Count I

10. Defendant incorporates by reference his answers to paragraph 1- 24.
11. Does not have knowledge or information on which to form a belief as to the allegations of paragraph 26 and therefore denies the same.
12. Denies the allegations of paragraphs 27 - 30 and all of their sub parts.

Affirmative Defenses

13. Failure to State a Claim. Plaintiff's Amended Complaint fails to state a claim on which relief can be granted.
14. Assumption of the Risk. Plaintiff assumed the risk that its movies might be copied or reproduced when the movies were published on the internet.
15. Estoppel. Plaintiff is estopped from making the Amended Complaint claims because the claims are the result of Plaintiff's establishment and use of a system for luring and inducing unsuspecting internet and BitTorrent users into an unintentional act of alleged copyright infringement for the express purpose of suing the users and extracting quick settlements to avoid embarrassment and the cost of litigating the claims.
16. Copyright Misuse. Plaintiff has misused the copyright statutes of the United States and is therefore not entitled to profit from such misuse or enforce its alleged copyrights.
17. Intervening Cause. The alleged distribution of copyrighted works, if any, was the action or result of a third party instrumentality over which this Defendant had no control.

WHEREFORE, having fully answered Plaintiff's Amended Complaint the Defendant prays that the same be dismissed and that Plaintiff take nothing thereby.

Respectfully submitted this 17th day of July, 2014.

HANES & BARTELS LLC

/s/Richard W. Hanes

Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2014, I electronically filed the foregoing **DEFENDANT'S ANSWER and AFFIRMATIVE DEFENSES** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Plaintiff:

Jason Kotzker, Esq.

KOTZKER LAW GROUP

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Highlands Ranch, CO 80163

/s/ Lynne R. Krause

Lynne R. Krause, Paralegal