

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

MyWebGrocer, Inc.	)	
	)	Civil Action No. 5:16-cv-00310-gwc
Plaintiff/Counterclaim Defendant	)	
	)	ANSWER TO COUNTERCLAIM
v.	)	
	)	
Adlife Marketing &	)	
Communications Co., Inc.	)	
	)	
Defendant/Counterclaim Plaintiff	)	

**ANSWER TO AMENDED COUNTERCLAIM**

Plaintiff MyWebGrocer, Inc. (“MyWebGrocer”), answers the Counterclaim filed on March 9, 2017 by Defendant Adlife Marketing & Communications, Co., Inc. (“Adlife”) as follows:

**Nature of Action**

1. Denied that certain photographs of food items were included on supermarket websites without appropriate permission. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

2. Denied. MyWebGrocer provides ecommerce solutions, including customized websites for its grocer customers that may include product images. These images are hosted on MyWebGrocer servers. As to the second sentence of this paragraph, MyWebGrocer’s website speaks for itself.

3. First sentence admitted, except MyWebGrocer did not “supply” the Brisket Photograph to grocery stores since the image remained on MyWebGrocer servers.

MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the

allegations in the second sentence of this paragraph. The remainder of the allegations in this paragraph are admitted, except MyWebGrocer never definitively “claimed” it had acquired rights to the Brisket Photograph from NeXpansion. MyWebGrocer also disagrees with the characterization of Adlife’s effort to resolve the dispute as being in “good faith.”

4. Denied.

5. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first two sentences of this paragraph. The allegations in the third and fourth sentences of this paragraph constitute a request, legal conclusion or statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, MyWebGrocer denies them.

6. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

#### **Parties**

7. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

8. Admitted.

#### **Jurisdiction and Venue**

9. Admitted.

10. Admitted.

11. Admitted.

#### **General Allegations**

12. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

13. Admitted that Adlife is listed in the records of the U.S. Copyright Office as the owner of the Copyright Registrations listed in this paragraph. As to the remainder of the allegations in this paragraph, the records of the U.S. Copyright Office speak for themselves and/or they state legal conclusions to which no response is required. To the extent the allegations constitute factual allegations, MyWebGrocer denies them.

14. The first sentence is admitted, except MyWebGrocer provides ecommerce solutions, including websites. As to the remainder of the allegations in this paragraph, MyWebGrocer's website speaks for itself.

15. Denied. MyWebGrocer's website speaks for itself.

16. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph. The second sentence is admitted. The third sentence is denied.

17. Admitted, except as to the suggestion that MyWebGrocer provided evidence of its license to use the images in response to Adlife's counsel request.

18. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

19. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

20. Admitted as to second sentence. MyWebGrocer lacks knowledge or information sufficient to form a belief about the truth of the remainder allegations in this paragraph.

**COUNT I**

21. Admitted.

22. The allegations in this paragraph constitute a request, legal conclusion or statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, MyWebGrocer denies them.

23. The allegations in this paragraph constitute a request, legal conclusion or statement of opinion to which no response is required. To the extent the allegations constitute factual allegations, MyWebGrocer denies them.

**AFFIRMATIVE DEFENSES**

MyWebGrocer further responds by alleging the following affirmative defenses:

1. The Counterclaim fails to state a claim upon which relief may be granted.
2. Laches.
3. Estoppel.
4. Unclean Hands.
5. Claims for damages are barred by the Statute of Limitations.

**PRAYER FOR RELIEF**

WHEREFORE, MyWebGrocer prays that Adlife takes nothing by its Counterclaim, and the costs of suit and such other and future relief as deemed appropriate by this Court are awarded in favor of MyWebGrocer.

Dated at Burlington, Vermont this 30 day of March, 2017.

DOWNS RACHLIN MARTIN PLLC



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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 30, 2017.

