

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

G. LOOMIS, INC., a Washington State corporation,)

Plaintiff,)

v.)

GARY A. LOOMIS, an individual; NORTH FORK COMPOSITES LLC, a Washington State limited liability company; and DOES 1-10, inclusive,)

Defendants.)

No. 3:09-cv-05787-BHS
ANSWER TO COMPLAINT FOR:
(1) FALSE DESIGNATION OF ORIGIN, ETC. (VIOLATION OF LANHAM ACT, 15 U.S.C. § 1125(a));
(2) FEDERAL TRADEMARK INFRINGEMENT (VIOLATION OF LANHAM ACT, 15 U.S.C. § 1114);
(3) BREACH OF WRITTEN CONTRACT
(4) STATE INFRINGEMENT OF TRADE NAME (WASHINGTON COMMON LAW);
(5) WASHINGTON STATE CONSUMER PROTECTION ACTION VIOLATION BASED ON TRADE NAME INFRINGEMENT (RCW CH. 19.86); AND
(6) INDUCEMENT OF

1) TRADEMARK INFRINGEMENT
2)
3) DEMAND FOR JURY TRIAL

4 In response to the Complaint for *inter alia* federal trademark infringement and
5 breach of contract, Gary A. Loomis (“Mr. Loomis”) and North Fork Composites LLC¹
6 (collectively, “Defendants”) state as follows:

7 **INTRODUCTION**

8 1. Paragraph 1 of the Complaint requires no response because it is not a
9 “simple, concise, and direct” allegation as required by Fed. R. Civ. P. 8(d)(1).

10 2. Paragraph 2 of the Complaint requires no response because it is not a
11 “simple, concise, and direct” allegation as required by Fed. R. Civ. P. 8(d)(1).

12 3. Defendants admit that Plaintiff previously filed suit and in September 2009
13 and the parties resolved the matter by written Settlement Agreement. Defendants deny all
14 other allegations set forth in paragraph 3 of the Complaint.

15 4. Defendants deny the allegations set forth in paragraph 4 of the Complaint.

16 5. Paragraph 5 of the Complaint requires no response because it is not a
17 “simple, concise, and direct” allegation as required by Fed. R. Civ. P. 8(d)(1). Defendants
18 specifically deny that they have committed any infringing activity or used any infringing
19 marks.

20 **JURISDICTION AND VENUE**

21 6. Defendants admit that the Complaint purports to assert various federal and
22 state claims. Defendants further admit that this Court has subject matter jurisdiction over

23 ¹ To the extent that the complaint alleges acts taken by Does 1-10, Defendants Gary A. Loomis and North Fork Composites state generally that they lack knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

1 the federal question claims and this Court has supplemental jurisdiction over the claims
2 alleging violations of state law.

3 7. Defendants admit venue is proper in this Court. Defendants admit that Mr.
4 Loomis and NFC reside in this District and offer services under the GARY LOOMIS mark
5 in this District. To the extent that paragraph 7 of the Complaint alleges that Defendants
6 have used an infringing trademark or committed any wrongful acts, Defendants deny the
7 allegations.

8 **THE PARTIES**

9 8. Defendants lack knowledge or information sufficient to form a belief as to
10 the truth or falsity of the allegations set forth in paragraph 8 of the Complaint and therefore
11 deny them.

12 9. Defendants admit the allegations set forth in paragraph 9 of the Complaint.

13 10. Defendants admit the allegations set forth in paragraph 10 of the Complaint.

14 11. Paragraph 11 of the Complaint makes no allegations and so no response is
15 needed.

16 12. Defendants deny the allegations set forth in paragraph 12 of the Complaint.

17 **FACTS COMMON TO ALL CLAIMS FOR RELIEF** 18 **GLI Owns the G. Loomis Mark**

19 13. Defendants admit Gary Loomis founded the company, G. Loomis, Inc., in
20 1982. Defendants lack knowledge or information sufficient to form a belief as to the truth
21 or falsity of the remaining allegations in paragraph 13 of the Complaint and therefore deny
22 them.
23

1 14. Defendants lack knowledge or information sufficient to form a belief as to
2 the truth or falsity of the allegations set forth in paragraph 14 of the Complaint and
3 therefore deny them.

4 15. Defendants lack knowledge or information sufficient to form a belief as to
5 the truth or falsity of the allegations set forth in paragraph 15 of the Complaint and
6 therefore deny them.

7 16. Defendants lack knowledge or information sufficient to form a belief as to
8 the truth or falsity of the allegations set forth in paragraph 16 of the Complaint and
9 therefore deny them.

10 17. Defendants admit that the trademark G. LOOMIS was registered on
11 March 12, 1991, under the Registration No. 1,637,672 and that Exhibit A is a true and
12 correct copy of the registration. Defendants lack knowledge or information sufficient to
13 form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 17
14 of the Complaint and therefore deny them.

15 18. Defendants lack knowledge or information sufficient to form a belief as to
16 the truth or falsity of the allegations set forth in paragraph 18 of the Complaint and
17 therefore deny them.

18 19. Defendants lack knowledge or information sufficient to form a belief as to
19 the truth or falsity of the allegations set forth in paragraph 19 of the Complaint and
20 therefore deny them.

21 **Defendants' Infringing Conduct**

22 20. Paragraph 20 of the Complaint requires no response because it is not a
23 "simple, concise, and direct" allegation as required by Fed. R. Civ. P. 8(d)(1). Defendants

1 admit that a true and correct copy of the Logo appearing on the North Fork Composites
2 website, as of the date of filing, is attached to the Complaint as Exhibit B.

3 21. To the extent that the allegations in Paragraph 21 of the Complaint purports
4 to quote or paraphrase Defendants' website, Defendants answer that the website speaks for
5 itself.

6 22. Defendants deny the allegations set forth in paragraph 22 of the Complaint.

7 23. Defendants deny the allegations set forth in paragraph 23 of the Complaint.

8 24. Defendants deny the allegations set forth in paragraph 24 of the Complaint.

9 25. Defendants deny the allegations set forth in paragraph 25 of the Complaint.

10 **Previous Infringing Conduct**

11 26. Paragraph 26 of the Complaint requires no response because it is not a
12 "simple, concise, and direct" allegation as required by Fed. R. Civ. P. 8(d)(1).

13 27. Paragraph 27 of the Complaint requires no response because it is not a
14 "simple, concise, and direct" allegation as required by Fed. R. Civ. P. 8(d)(1). Defendants
15 specifically deny the allegation that Defendants used "a variety of infringing marks,
16 including, *inter alia*, the infringing trademark GARY LOOMIS."

17 28. Defendants admit that on or about September 3, 2008, Plaintiff, through
18 counsel, sent a letter to Mr. Loomis and answer that the letter speaks for itself. Defendants
19 also admit that Plaintiff filed a lawsuit against Mr. Loomis and other defendants for, *inter*
20 *alia*, trademark infringement, false designation or origin, breach of fiduciary duty, and
21 breach of contract (the "First Lawsuit"). Defendants lack knowledge or information
22 sufficient to form a belief as to the truth or falsity of the remaining allegations in
23 paragraph 28 of the Complaint and therefore deny them.

1 **Settlement of the First Lawsuit**

2 29. Defendants admit that in September 2009 Plaintiff and Mr. Loomis resolved
3 the prior trademark dispute and entered into a Settlement Agreement. Defendants admit
4 that a true and correct copy of the Settlement Agreement is attached to the Complaint as
5 Exhibit C and state that the document speaks for itself. Defendants deny that Mr. Loomis
6 commenced any infringing activity.

7 30. Defendants answer that the Settlement Agreement speaks for itself.

8 31. Defendants answer that the Settlement Agreement speaks for itself.

9 32. Defendants answer that the Settlement Agreement speaks for itself.

10 33. Defendants answer that the Settlement Agreement speaks for itself.

11 Defendants specifically deny the allegation in paragraph 33 of the Complaint that
12 Mr. Loomis could not use his signature as a mark, a corporate name, or as a trade name
13 used to offer for sale any sporting equipment, product or service.

14 34. Defendants deny the allegations set forth in paragraph 34 of the Complaint.

15 35. Defendants deny the allegations set forth in paragraph 35 of the Complaint.

16 36. Paragraph 36 of the Complaint makes no allegations and so no response is
17 needed.

18 **FIRST CLAIM FOR RELIEF**

19 **(Lanham Act - False Designation of Origin, False Representation and False
20 Endorsement – 15 U.S.C. § 1125(a) as against all Defendants)**

21 37. Paragraph 37 makes no allegations and so no response is needed.

22 38. Defendants deny the allegations set forth in paragraph 38 of the Complaint.

23 39. Defendants deny the allegations set forth in paragraph 39 of the Complaint.

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

1 41. Defendants admit there is no connection or association or licensing
2 relationship between Plaintiff and Defendants. Defendants deny the remaining allegations
3 set forth in paragraph 41 of the Complaint.

4 42. Defendants deny the allegations set forth in paragraph 42 of the Complaint.

5 43. Defendants deny the allegations set forth in paragraph 43 of the Complaint.

6 44. Defendants deny the allegations set forth in paragraph 44 of the Complaint.

7 45. Defendants deny the allegations set forth in paragraph 45 of the Complaint.

8 **SECOND CLAIM FOR RELIEF**
9 **(Lanham Act - Federal Trademark Infringement 15 U.S.C. § 1114**
10 **as against all Defendants)**

11 46. Paragraph 46 makes no allegations and so no response is needed.

12 47. Defendants lack knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations set forth in paragraph 47 of the Complaint and
14 therefore deny them.

15 48. Defendants lack knowledge or information sufficient to form a belief as to
16 the truth or falsity of the allegations set forth in paragraph 48 of the Complaint and
17 therefore deny them.

18 49. Defendants deny the allegations set forth in paragraph 49 of the Complaint.

19 50. Defendants deny the allegations set forth in paragraph 50 of the Complaint.

20 51. Defendants deny the allegations set forth in paragraph 51 of the Complaint.

21 52. Defendants deny the allegations set forth in paragraph 52 of the Complaint.

22 53. Defendants deny the allegations set forth in paragraph 53 of the Complaint.

23 **THIRD CLAIM FOR RELIEF**
(Breach of Written Contract as against all Defendants)

54. Paragraph 54 makes no allegations and so no response is needed.

1 55. Defendants refer to the answers provided above in Paragraphs 10 and 29.
2 Defendants deny the remainder of the allegations set forth in paragraph 55 of the
3 Complaint.

4 56. Defendants lack knowledge or information sufficient to form a belief as to
5 the truth or falsity of the allegations set forth in paragraph 56 of the Complaint and
6 therefore deny them.

7 57. Defendants deny the allegations set forth in paragraph 57 of the Complaint.

8 58. Defendants deny the allegations set forth in paragraph 58 of the Complaint.

9 59. Defendants allege that the Settlement Agreement speaks for itself. Further,
10 Defendants lack knowledge or information sufficient to form a belief as to the truth or
11 falsity of the allegations set forth in paragraph 59 of the Complaint and therefore deny
12 them.

13 **FOURTH CLAIM FOR RELIEF**
14 **(State Infringement of Trade Name - Washington Common Law**
 as against all Defendants)

15 60. Paragraph 60 makes no allegations and so no response is needed.

16 61. Defendants lack knowledge or information sufficient to form a belief as to
17 the truth or falsity of the allegations set forth in paragraph 61 of the Complaint and
18 therefore deny them.

19 62. Defendants deny the allegations set forth in paragraph 62 of the Complaint.

20 63. Defendants deny the allegations set forth in paragraph 63 of the Complaint.

21 64. Defendants deny the allegations set forth in paragraph 64 of Complaint.

22 65. Defendants deny the allegations set forth in paragraph 65 of the Complaint.

23 **FIFTH CLAIM FOR RELIEF**
 (Violation of the Consumer Protection Act by Trade Name Infringement -
 RCW Ch. 19.86 as against all Defendants)

- 1
- 2
- 3
- 4
- 5
66. Paragraph 66 makes no allegations and so no response is needed.
67. Defendants deny the allegations set forth in paragraph 67 of the Complaint.
68. Defendants deny the allegations set forth in paragraph 68 of the Complaint.
69. Defendants deny the allegations set forth in paragraph 69 of the Complaint.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

SIXTH CLAIM FOR RELIEF
(Inducement of Trademark Infringement as against all Defendants)

70. Paragraph 70 makes no allegations and so no response is needed.
71. Defendants deny the allegations set forth in paragraph 71 of the Complaint.
72. Defendants deny the allegations set forth in paragraph 72 of the Complaint.
73. Defendants deny the allegations set forth in paragraph 73 of the Complaint.

AFFIRMATIVE DEFENSES

1. Defendants have not infringed or contributed to infringement by others, or actively induced others, to infringe any of Plaintiff's trademarks.
2. Defendants have made no false or misleading descriptions of fact and/or false or misleading representations of facts regarding its services and products.
3. There is no likelihood of confusion.
4. Plaintiff has failed to state a claim upon which relief can be granted.
5. Plaintiff's claims are barred by the doctrine of unclean hands.
6. The use of the trademarks alleged by plaintiff constitutes a fair use.
7. Plaintiff failed to mitigate its damages, if any, and, as a consequence thereof, plaintiff is not entitled to recover the amount of damages alleged, or any other damages.

1 8. Plaintiff’s damage, if any, was caused in whole or in part by the conduct of
2 third parties, for which Defendants bear no responsibility.

3 9. Defendants reserve the right to add additional defenses as investigation and
4 discovery continue.

5 **COUNTERCLAIM – BREACH OF CONTRACT**

6 74. Defendants incorporate by reference paragraphs 1-73 of this Answer by
7 reference as if fully set forth herein.

8 75. This Court has jurisdiction over the Counterclaim pursuant to 28 USC §
9 1367(a).

10 76. The Settlement Agreement states that GLI “shall assert no claim against
11 Gary Loomis . . . to prevent the use of Gary Loomis’ likeness, voice, signature or
12 photograph, or otherwise take any action to prevent the exploitation of any other rights of
13 publicity afforded Gary Loomis under the laws of any State, the United States, or any other
14 country.”

15 77. GLI breached the Settlement Agreement by filing the present lawsuit and
16 demanding that Defendants cease their use of his signature.

17 **PRAYER**

18
19 WHEREFORE, Defendants pray that:

20 1. The Court enter judgment in favor of Defendants on their breach of contract
21 claim;

1 2.. Plaintiff be required to pay Defendants' reasonable attorneys' fees, expert
2 witness fees and disbursements incurred herein, including costs, pursuant to the Settlement
3 Agreement; and

4 3. Defendants have such other and further relief as this Court deems just and
5 equitable.

6 DATED this 12th day of January, 2010.

7
8 Davis Wright Tremaine LLP
9 Attorneys for Defendants

10 By: s/Warren J. Rheaume
11 Warren J. Rheaume, WSBA #13627
12 Sarah K. Duran, WSBA # 38954
13 1201 Third Avenue, Suite 2200
14 Seattle, WA 98101-3045
15 Telephone: (206) 622-3150
16 Fax: (206) 757-7700
17 E-mail: warrenrheame@dwt.com
18 E-mail: sarahduran@dwt.com
19
20
21
22
23

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 12, 2010, I electronically filed the forgoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to
4 the following:

5 R. Broh Landsman
6 Landsman & Fleming LLP
7 1000 Second Avenue, Suite 3000
8 Seattle, WA 98104
9 Phone: (206) 624-7900
10 Fax: (206) 624-7903
11 Email: broh@LF-law.com

12 Neil C. Erickson
13 Jeffer, Mangels, Butler & Marmaro LLP
14 1900 Avenue of the Stars, 7th Floor
15 Los Angeles, CA 90067
16 Phone: (310) 203-8080
17 Fax: (310) 203-0567
18 Email: nerickson@jmbm.com

19 Davis Wright Tremaine LLP
20 Attorneys for Defendants

21 By: s/Warren J. Rheume
22 Warren J. Rheume, WSBA #13627
23 Sarah K. Duran, WSBA # 38954
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: warrenrheame@dwt.com
E-mail: sarahduran@dwt.com