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Attorneys for Defendant SPENCER GIFTS, LLC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JSW ENTERPRISES, INC. d/b/a
OPENERS PLUS, a California
corporation

Plaintiff,

v.

BIOWORLD MERCHANDISING,
INC., a Texas corporation, and
SPENCER GIFTS, LLC, a limited
liability company formed in the State
of Delaware,

Defendants.

SPENCER GIFTS, LLC.

Counterclaimant,

v.

JSW ENTERPRISES, INC., dba
OPENERS PLUS, a California
corporation,

Counterdefendants.

Case No. CV 07-6878 DDP (FMOx)

**ANSWER TO FIRST AMENDED
COMPLAINT, AFFIRMATIVE
DEFENSES, COUNTERCLAIMS
AND CROSS-COMPLAINT**

JURY TRIAL DEMANDED

1 SPENCER GIFTS, LLC

2 Cross-Complainant,

3
4 v.

5 BIOWORLD MERCHANDISING,
6 INC., a Texas corporation,

7 Cross-Defendants.
8

9 Defendant Spencer Gifts, LLC, ("Spencer Gifts") hereby responds to the
10 allegations set forth in the First Amended Complaint for Patent Infringement
11 ("Amended Complaint"), by plaintiff JSW Enterprises, Inc. ("JSW") and asserts its
12 affirmative defenses, counterclaims and cross-complaint as set forth below.

13 **THE PARTIES**

14 1. Spencer Gifts lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations contained in Paragraph 1 of the Amended
16 Complaint, and on that basis denies them.

17 2. Spencer Gifts lacks knowledge or information sufficient to form a
18 belief as to the truth of the allegations contained in Paragraph 2 of the Amended
19 Complaint, and on that basis denies them.

20 3. Spencer Gifts admits that it is a limited liability company formed
21 under the laws of the State of Delaware with a principal place of business at 6826
22 Black Horse Pike, Egg Harbor Township, NJ 08234. Spencer Gifts admits that it is
23 doing business in the State of California. Spencer Gifts denies the remaining
24 allegations in paragraph 3.

25 **JURISDICTION AND VENUE**

26 4. Paragraph 4 of the Amended Complaint contains conclusions of law
27 to which no response is required.
28

1 sufficient to form a belief as to the truth of the remaining allegation contained in
2 Paragraph 10 of the Amended Complaint, and on that basis denies them.

3 11. Spencer Gifts lacks knowledge or information sufficient to form a
4 belief as to the truth of the allegations contained in Paragraph 11 of the Amended
5 Complaint, and on that basis denies them.

6 **CLAIM 1: INFRINGEMENT OF U.S. PATENT NO. D503,516**

7
8 12. Spencer Gifts repeats and incorporates herein the responses to
9 Paragraphs 1 through 11 above.

10 13. Paragraph 13 of the Amended Complaint contains conclusions of law
11 to which no response is required.

12 14. Denied.

13 15. Spencer Gifts lacks knowledge or information sufficient to form a
14 belief as to the truth of the allegations contained Paragraph 15 of the Amended
15 Complaint, and on that basis denies them.

16 16. Denied.

17 17. Denied.

18 18. Denied.

19 **CLAIM 2: INFRINGEMENT OF U.S. PATENT NO. D540,130**

20 19. Spencer Gifts repeats and incorporates herein the responses to
21 Paragraphs 1 through 18 above.

22 20. Paragraph 20 of the Amended Complaint contains conclusions of law
23 to which no response is required.

24 21. Denied.

25 22. Spencer Gifts lacks knowledge or information sufficient to form a
26 belief as to the truth of the allegations contained Paragraph 22 of the Amended
27 Complaint, and on that basis denies them.

28 23. Denied.

1 24. Denied.

2 25. Denied.

3 **CLAIM 3: INFRINGEMENT OF U.S. PATENT NO. 7,284,284**

4 26. Spencer Gifts repeats and incorporates herein the responses to
5 Paragraphs 1 through 25 above.

6 27. Paragraph 27 of the Amended Complaint contains conclusions of law
7 to which no response is required.

8 28. Denied.

9 29. Denied.

10 30. Denied.

11 31. Denied.

12 **AFFIRMATIVE DEFENSES**

13 Spencer Gifts hereby pleads the following affirmative defenses in response
14 to the Amended Complaint.

15 **First Affirmative Defense**

16 1. Spencer Gifts has not infringed, and is not infringing, U.S. Patent No.
17 D503,516, directly or by contribution or by inducement.

18 **Second Affirmative Defense**

19 2. Spencer Gifts has not infringed, and is not infringing, U.S. Patent No.
20 D540,130, directly or by contribution or by inducement.

21 **Third Affirmative Defense**

22 3. Spencer Gifts has not infringed, and is not infringing, U.S. Patent
23 7,284,284, directly or by contribution or by inducement.

24 **Fourth Affirmative Defense**

25 4. The claims of U.S. Patent No. D503,516 are invalid for failure to
26 comply with the requirements of 35 U.S.C. §101 *et seq.*

Fifth Affirmative Defense

5. The claims of U.S. Patent No. D540,130 are invalid for failure to comply with the requirements of 35 U.S.C. §101 *et seq.*

Sixth Affirmative Defense

6. The claims of U.S. Patent No. 7,284,284 are invalid for failure to comply with the requirements of 35 U.S.C. §101 *et seq.*

COUNTERCLAIMS AGAINST JSW ENTERPRISES INC.

Defendant / Counterclaimant Spencer Gifts, LLC ("Spencer Gifts"), hereby sets forth the following Counterclaims against Plaintiff / Counter-defendant JSW Enterprises, Inc. ("JSW").

Nature of the Action

1. This is Spencer Gifts' counterclaim pursuant to 28 U.S.C. §§ 2201 and 2202 for declaratory relief regarding the invalidity and non-infringement of U.S. Patent Nos. D503,516 ("the '516 Patent"); D540,130 ("the '130 patent"); and 7,284,284 ("the '284 Patent"); and an award of costs and reasonable attorneys' fees.

The Parties

2. Spencer Gifts is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 6826 Black Horse Pike, Egg Harbor Township, New Jersey 08234.

3. Upon information and belief, JSW, doing business as Openers Plus, is a corporation organized and existing under the laws of the State of California, having its principal place of business at 245 Fischer Avenue D-3, Costa Mesa, California 92626.

Jurisdiction and Venue

4. An actual controversy exists with regard to the validity and infringement of the '516, '130, and '284 patents by virtue of the Amended Complaint.

5. This Court has jurisdiction over these Counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has jurisdiction over JSW by virtue of the filing of their Complaint and Amended Complaint in this judicial district and because they have a principal place of business in this judicial district.

7. Venue is proper in this judicial district over these Counterclaims.

COUNT I

INVALIDITY, UNENFORCEABILITY, AND/OR

NON-INFRINGEMENT OF THE '516 PATENT

8. Spencer Gifts realleges and incorporates as if fully set forth herein the allegations contained in Paragraphs 1 through 7 of its Counterclaims.

9. The '516 patent is not infringed and has not been infringed by Spencer Gifts.

10. The claims of the '516 patent are invalid for failure to satisfy the requirements of 35 U.S.C. § 101 *et seq.*

COUNT II

INVALIDITY, UNENFORCEABILITY, AND/OR

NON-INFRINGEMENT OF THE '130 PATENT

11. Spencer Gifts realleges and incorporates as if fully set forth herein the allegations contained in Paragraphs 1 through 10 of its Counterclaims.

12. The '130 patent is not infringed and has not been infringed by Spencer Gifts.

1 **CROSS-COMPLAINT AGAINST DEFENDANT BIOWORLD**
2 **MERCHANDISING INC. FOR INDEMNIFICATION**

3 Defendant/Cross-complainant Spencer Gifts, LLC (“Spencer Gifts”) hereby
4 sets forth the following Cross-Complaint against Defendant and Cross-defendant
5 Bioworld Merchandising, Inc. (“Bioworld”).

6 **Nature of the Action**

- 7
8 1. This is an action for indemnity.

9 **The Parties**

10 2. Spencer Gifts is a limited liability company organized and existing
11 under the laws of the State of Delaware, with its principal place of business at 6826
12 Black Horse Pike, Egg Harbor Township, New Jersey 08234.

13 3. Upon information and belief, Bioworld is a corporation organized and
14 existing under the laws of the State of Texas, having its principal place of business
15 at 2730 Southwell Road, Dallas, Texas 75229.

16 **Jurisdiction**

17 4. This Court has jurisdiction over these Counterclaims pursuant to 28
18 U.S.C. § 1367(a).

19 5. On information and belief, Bioworld does business in this district and
20 in the State of California. Personal jurisdiction exists by virtue of Bioworld’s
21 contacts with this district and state, and by virtue of the fact that the acts and injury
22 herein complained of arise in this district and state.

- 23 6. Venue is proper in this judicial district.

24 **First Cause of Action: Indemnity**

25 7. JSW Enterprises, Inc, (“JSW”) has filed a First Amended Complaint
26 against Spencer Gifts, asserting that Spencer Gifts has infringed two design patents
27 and one utility patent owned by JSW (“the patents-in-suit.”).
28

JURY DEMAND

Spencer Gifts demands a trial by jury for any and all issues that are so triable in the Amended Complaint, the Affirmative Defenses, the Counterclaims and Cross-Complaint.

CONNOLLY BOVE LODGE & HUTZ, LLP

Dated: December 12, 2007

By: 

Keith D. Fraser

Attorneys for Defendant, Counterclaimant
and Cross-Complainant
SPENCER GIFTS, LLC

CERTIFICATE OF SERVICE

I, Keith D. Fraser, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is Connolly Bove Lodge & Hutz LLP, 333 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On December 12, 2007, I served the foregoing document described as:
ANSWER TO FIRST AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND CROSS-COMPLAINT AND JURY TRIAL DEMAND on the counsel shown below by placing a true copy thereof enclosed in sealed envelope addressed as follows:

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[X] BY MAIL I am readily familiar with the firm's practice regarding collection and processing of correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] BY FACSIMILE I caused such document to be served via facsimile transmission on the addressees above.

[X] BY E-Mail I caused such document(s) to be served via e-mail to the foregoing firms.

[X] FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on December 12, 2007 at Los Angeles, California.

Keith D. Fraser

Name

//s//

Signature