

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PLAYBOY ENTERPRISES)	
INTERNATIONAL, INC.)	
)	
Plaintiff,)	No. 07 C 1111
v.)	
)	Judge Shadur
3E TRADING, LLC,)	Magistrate Judge Keys
)	TRIAL BY JURY DEMANDED
Defendant.)	

ANSWER TO COMPLAINT

Defendant, 3E Trading, LLC, by and through its attorneys, Michael A. Stiegel, Steven E. Cyranoski, and Raymond M. Krauze of Michael Best & Friedrich, LLP, answers Plaintiff's Complaint as follows:

The Parties

1. Plaintiff, Playboy Enterprises International, Inc. ("Playboy"), is a Delaware corporation, having its principal executive offices and place of business at 680 North Lake Shore Drive, Chicago, Illinois. Playboy is an international multimedia entertainment company.

ANSWER: Defendant admits that Playboy has offices and a place of business in Chicago. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1.

2. 3E Trading, LLC ("3E Trading") is, upon information and belief, a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 461 Melwood Avenue, Pittsburgh, Pennsylvania. 3E Trading is engaged in the business of, *inter alia*, acquiring licensing agreements with prominent consumer brands for the purpose of commercial distribution of various consumer items through sales to retailers. Upon information and belief, Tommy Wang ("Wang") is a member of 3E Trading and its Manager, and Eva Wang is the other member of 3E Trading. Upon information and belief, both Wang and Eva Wang are residents and citizens of the State of Pennsylvania, and are all of the members of 3E Trading. Upon information and belief, Wang conducts the affairs of 3E Trading principally from 3E Trading's principal place of business in Pittsburgh, Pennsylvania.

ANSWER: The Defendant denies that Tommy Wang or Eva Wang are members of 3E Trading. Defendant admits the remaining allegations in Paragraph 2.

Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(2), the matter in controversy exceeding the sum or value of \$75,000, exclusive of interest and costs, and the dispute being one between a citizen of the State of Delaware and a limited liability company whose members, Wang and Eva Wang, are citizens of the State of Pennsylvania. The Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as certain of the claims asserted herein arise under the laws of the United States.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to whether the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(2). Defendant admits that the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(a)(3), as it is the judicial district in which defendant 3E Trading is subject to personal jurisdiction at the time of the commencement of this action.

ANSWER: Defendant admits the allegations in Paragraph 4.

Facts Common to All Counts

5. Playboy is a brand-driven, international multimedia entertainment company that publishes an internationally circulated magazine, operates television networks, and distributes programming through DVDs and via Internet and wireless platforms. Playboy licenses its trademarks – including PLAYBOY and the Rabbit Head Design, and other images, marks and artwork – for worldwide manufacture, sale and distribution of products that range from apparel and accessories to slot machines and video games. More than 1,500 Playboy-branded products are sold in more than 130 countries and territories with current global retail sales exceeding approximately \$700 million.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5.

6. Playboy owns the registered trademarks for PLAYBOY and the Rabbit Head Design, as well as PLAYMATE, PLAYMATE OF THE YEAR, BUNNY and MR. PLAYBOY, and owns the rights to images from its art and photo archives (hereinafter, the “Playboy Property”). Through longstanding use and promotion and through Playboy’s ingenuity, the PLAYBOY and Rabbit Head Design trademarks “are among the most famous and well-recognized trademarks in the entire world, *Playboy Enterprises International, Inc. v. Muller*, 314 F. Supp.2d 1037, 1038 (Dist. Nev. 2004), and contribute significantly to Playboy’s well-known and valuable international consumer brand. These marks and the goodwill they have come to represent are extremely valuable corporate assets of Playboy, the threatened and actual infringement of which 3E Trading is causing, and unless enjoined, will continue to cause Playboy irreparable harm.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

7. Due to extensive advertising and promotion by Playboy, both the PLAYBOY and the Rabbit Head Design trademarks have achieved particularly widespread acceptance and recognition among the consuming public. As a result, Playboy has developed and acquired extremely valuable goodwill symbolized by those marks.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7.

8. On or about October 29, 2002, Playboy and 3E Trading entered into a detailed and comprehensive license agreement (“Gifts and Collectible Products License Agreement”) under which Playboy granted 3E Trading the right to use the Playboy Property in connection with the sale in the United States and Canada of certain narrowly defined products, specifically: (i) key chains, money clips and shadow boxes of PLAYBOY Magazine Covers; and (ii) neon lights, table lamps, billiard lights, wall clocks and desk clocks. Additional Playboy trademarks – MISS JANUARY, MISS FEBRUARY, MISS MARCH, MISS APRIL, MISS MAY, MISS JUNE, MISS JULY, MISS AUGUST, MISS SEPTEMBER, MISS OCTOBER, MISS NOVEMBER, and MISS DECEMBER – were added as additional licensed trademarks by amendment dated June 3, 2005, and string lights were added as an authorized Product by amendment dated October 10, 2005.

ANSWER: Defendant admits that Playboy and 3E Trading entered into a License Agreement under which Playboy granted 3E Trading the right to use certain Playboy trademarks and copyrights in connection with the sale of certain products which included, key chains, money clips and shadow boxes of Playboy Magazine covers and neon lights, table lamps, billiard lights, wall clocks and desk clocks. Defendant admits that the commencement date for the License Agreement was November 1, 2002. Defendant admits that additional trademarks and products were added to the agreement by subsequent amendments. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 8.

9. On or about January 1, 2004, Playboy and 3E Trading entered into a second detailed and comprehensive license agreement (“Barware Products License Agreement”) under which Playboy granted 3E Trading the right to use the Playboy Property (exclusive of its trademarks PLAYMATE, PLAYMATE OF THE YEAR, BUNNY and MR. PLAYBOY) in connection with the sale in the United States and Canada of certain narrowly defined products, specifically: (i) screen-printed decorated glassware and etched glass barware, shakers, pitchers, buckets, coasters, stirrers, and serving trays (all of which are to be made of glass, crystal and/or acrylic); (ii) martini shakers, flasks, stirrers, picks, coasters, ice buckets and serving trays, all

made of metal; (iii) bar accessories, as specifically identified, including corkscrews and bottle openers, all made of metal; (iv) coffee mugs, espresso sets, and teapots, all made of ceramic; (v) and other bar-related items as specifically identified. Additional Playboy trademarks – BUNNY and BUNNY COSTUME – were added as additional licensed trademarks by amendment dated March 17, 2005. (The Barware Products License Agreement and the Gifts and Collectible Products License Agreement are sometimes referred to collectively hereinafter as the “License Agreements,” and the products, or any of them, which 3E Trading was authorized to manufacture and sell, as provided by the License Agreements, are collectively hereinafter referred to as “Products.”)

ANSWER: Defendant admits that in 2004 Playboy and 3E Trading entered into a second License Agreement under which Playboy granted 3E Trading the right to use certain Playboy property in connection with the sale of certain products including those products listed in Paragraph 9. Defendant admits that additional Playboy trademarks, including BUNNY and BUNNY COSTUME, were added as additional licensed trademarks by subsequent amendment to the agreement. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 9.

10. By executing the License Agreements, 3E Trading agreed, in Paragraph 13 of each of those agreements, that it submitted to personal jurisdiction in Cook County, Illinois, and that “any and all disputes arising out of or relating in any way to [the agreement] shall be litigated only in courts sitting in Cook County, Illinois.”

ANSWER: Defendant admits the allegations in Paragraph 10.

11. Each of the License Agreements provided that, upon the expiration of the agreement: (i) all rights granted to 3E Trading under the agreement would immediately revert to Playboy (Paragraph 8.a); (ii) following expiration of the agreement, so long as 3E Trading was not in arrears in the payment of any amounts due Playboy, 3E Trading could for a period of ninety (90) days following expiration of the agreement (defined as the “Sell-Off Period”), sell through its existing network of distributors or accounts any of the Products that were in process or on hand upon expiration of the agreement, and 3E Trading was obligated to pay all royalties and furnish reports relating to such sales to Playboy, in accordance with the terms of the agreement as if it were still in effect (Paragraph 8.c); (iii) 3E Trading was obligated to furnish to Playboy an “Inventory Statement,” as defined by each of the License Agreements, not more than thirty (30) days after expiration of the Sell-Off Period (Paragraph 8.d(i)); (iv) if Playboy chose not to purchase 3E Trading’s remaining inventory, 3E Trading was obligated to provide Playboy with a certificate of destruction of all inventory of the Products on hand or in process (Paragraph 8.d(iv)); and (v) Playboy and its agents would “have the right to conduct physical inspections to ascertain [3E Trading’s] compliance with” Paragraph 8.d of each of the License Agreements. (Paragraph 8.d(v).)

ANSWER: Defendant denies the allegations in Paragraph 11.

12. The Barware Products License Agreement expired by its terms on March 31, 2006, with an inventory Sell-Off Period continuing to and including June 30, 2006. The Gifts and Collectible Products License Agreement expired by its terms on December 31, 2005, with an inventory Sell-Off Period continuing to and including March 31, 2006, except for certain “Additional Products – that is, tables, chairs and rugs – as provided by that certain letter amendment, dated November 3, 2003, to the Gifts and Collectible Products License Agreement, providing that the “Additional Products Term” expired December 31, 2004.

ANSWER: Defendant admits that the Barware Products License Agreement contained an expiration date of March 31, 2006, and that the Gifts and Collectible Products License Agreement contained an expiration date of December 31, 2005. Defendant denies the remaining allegations in this paragraph.

13. Despite the expiration of each of the License Agreements, and the applicable Sell-Off Period specified in each, 3E Trading continued to sell the licensed Products, including but not limited to neon lights, key chains and barware, in violation of the terms of each of the License Agreements. These sales have been made to retailers, including TJ Maxx, Marshalls and Ross Stores, Inc., d/b/a dd’s Discounts, from at least August, 2006, to December, 2006, and Playboy is informed, and upon such information believes, that such sales continued after December, 2006 and are continuing.

ANSWER: Defendant admits that it sold licensed products from August 2006 to December 2006 to certain retailers, including Ross Stores, Inc. Defendant denies the remaining allegations contained in Paragraph 13.

14. 3E Trading has repeatedly violated the terms of the License Agreements by continuing to sell and distribute Products, bearing Playboy’s valuable Playboy Property, even though all applicable Sell-Off Periods under the License Agreements have long since expired. In addition, 3E Trading has failed to provide Playboy with a full and complete written accounting of the sale, distribution or disposition of any and all Products since March 31, 2006 – that is, the date on which the Barware Products License Agreement expired, and the date on which the Sell-Off Period under the Gifts and Collectible Products License Agreement expired.

ANSWER: Defendant denies the allegations contained in Paragraph 14.

15. On or about January 19, 2007, as a result of 3E Trading’s ongoing violation of the License Agreements, Playboy, through its counsel, demanded that 3E Trading cease and desist from its continuing use of the Playboy Property, its sale, distribution or disposition of any and all Products, and that it provide a full and complete written accounting as required by the License Agreements, including but not limited to reports of inventory of Products on hand and sale of such Products following the expiration of each of the License Agreements. A true and correct copy of that letter is attached hereto as Exhibit A and made a part hereof.

ANSWER: Defendant denies the allegations contained in Paragraph 15.

16. It was not until February 16, 2007, that Playboy received a response to its letter. In its response, 3E denied any wrongdoing and stated it was willing to provide the required accounting. Notwithstanding such denials, various third-party purchase orders and 3E Trading invoices clearly demonstrate that 3E “dumped” merchandise bearing the Playboy Property well beyond the applicable Sell-Off Periods.

ANSWER: Defendant denies the allegations contained in Paragraph 16.

17. Since the expiration of each of the License Agreements, 3E Trading has embarked on a campaign of willful infringement and counterfeiting of Playboy’s trademarks, and has continued to disregard its obligations under the License Agreements. By way of example only, following expiration of the applicable Sell-Off Periods, 3E Trading continued to promote, sell, offer to sell and distribute products that use the Playboy Property and to which the Playboy Property is affixed. Additionally, 3E Trading never has accounted for its inventory using or incorporating any of the Playboy Property.

ANSWER: Defendant denies the allegations contained in Paragraph 17.

18. The express terms of each of the License Agreements clearly manifest 3E Trading’s recognition and acknowledgement of the great value of the goodwill associated with the Playboy Property and the worldwide recognition thereof. In Paragraph 8.e(i) of each of the License Agreements, 3E Trading specifically agreed that its failure to cease the design, manufacture, advertising, promotion, sale or distribution of the Products upon the expiration or termination of each of the License Agreements would result in irreparable harm to Playboy and its business interests for which there would be no adequate remedy at law. In that same paragraph, 3E Trading conceded that in the event that it failed to cease such operations upon the expiration or termination of each of the License Agreements, Playboy would be entitled to equitable relief, in the form of a temporary and/or permanent injunction, without having to post any bond. Thereby, 3E Trading unequivocally has consented to the entry of such injunctive relief in favor of Playboy.

ANSWER: Defendant denies the allegations contained in Paragraph 18.

19. 3E Trading’s manufacturing, promotion, sale and distribution of unlicensed, unapproved and counterfeit products using the Playboy Property is causing irreparable harm to Playboy. 3E Trading’s infringement and counterfeiting of Playboy’s trademarks create the false impression that Playboy has authorized and licensed 3E Trading’s products, and has exercised a degree of control over their quality and appearance, as well as the conditions and controls under which they were manufactured. 3E Trading’s continuing illegal conduct therefore irreparably harms Playboy. It infringes Playboy’s trademarks, diminishes Playboy’s reputation and destroys the goodwill among consumers, and Playboy’s other authorized licenses, that Playboy has devoted years and millions of dollar to develop. 3E Trading’s illegal acts also harm the consuming public, as well as Playboy’s other authorized licensees.

ANSWER: Defendant denies the allegations in Paragraph 19.

20. Unless enjoined, 3E Trading will continue to cause irreparable harm to Playboy, its reputation, goodwill, relationships with authorized licensees and other business interests through the infringement, counterfeiting and other misuse of Playboy’s valuable trademarks.

ANSWER: Defendant denies the allegations in Paragraph 20.

Count I
Lanham Act – Trademark Infringement

21. For its Paragraph 21 of this Complaint, Playboy incorporates by reference and restates the allegations set forth in Paragraphs 1-20 above.

ANSWER: Defendant incorporates by reference as though fully set forth herein its responses to Paragraphs 1-20 as and for its response to this Paragraph 21 of Count I.

22. Section 32 of the Lanham Act, 15 U.S.C. § 1114(1), provides, in pertinent part:

Any person who shall, without the consent of the registrant . . . use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising any of any goods or services on or in connection with which such use it is likely to cause confusion, or to cause mistakes, or to deceive . . . shall be liable in a civil action by the registrant[.]

ANSWER: Defendant admits the allegations in Paragraph 22.

23. 3E Trading's unauthorized use of the Playboy Property in connection with products that 3E Trading continues to manufacture, promote, sell, and/or distribute, directly and indirectly, constitutes trademark infringement in violation of 15 U.S.C. §§ 1114(1) and 1125(a).

ANSWER: Defendant denies the allegations in Paragraph 23.

24. Without the consent of Playboy, 3E Trading is using the Playboy Property in interstate and foreign commerce to manufacture, promote, sell, and distribute products.

ANSWER: Defendant denies the allegations in Paragraph 24.

25. 3E Trading's use of the Playboy Property in connection with its products is likely to cause, and on information and belief has actually caused, confusion in the marketplace by creating the false and erroneous impression that Playboy has authorized or licensed 3E Trading's products, and that Playboy has exercised some degree of control regarding the quality and appearance of the products as well as the conditions and controls under which they were manufactured.

ANSWER: Defendant denies the allegations in Paragraph 25.

26. Playboy has suffered and, unless 3E Trading is enjoined will continue to suffer, irreparable harm from 3E Trading's willful and wrongful conduct.

ANSWER: Defendant denies the allegations in Paragraph 26.

27. 3E Trading has acted maliciously, fraudulently, deliberately and willfully.

ANSWER: Defendant denies the allegations in Paragraph 27.

28. Playboy has no adequate remedy at law.

ANSWER: Defendant denies the allegations in Paragraph 28.

Count II
Lanham Act – Trademark Counterfeiting

29. For its Paragraph 29 of this Complaint, Playboy incorporates by reference and restates the allegations set forth in Paragraphs 1-20 above.

ANSWER: Defendant incorporates by reference as though fully set forth herein its responses to Paragraphs 1-20 as and for its response to this Paragraph 29 of Count II.

30. Without authorization, and in violation of 15 U.S.C. § 1114(a)(1), 3E Trading is using marks or designations that are identical or substantially indistinguishable from the PLAYBOY an Rabbit Head Design registered trademarks, in commerce, to manufacture, promote, sell, and distribute its products. 3E Trading has thus counterfeited the PLAYBOY and Rabbit Head Design trademarks.

ANSWER: Defendant denies the allegations in Paragraph 30.

31. 3E Trading's use of the counterfeit trademarks is likely to cause, and on information and belief, has actually caused, confusion in the marketplace and has deceived consumers.

ANSWER: Defendant denies the allegations in Paragraph 31.

32. 3E Trading has acted maliciously, fraudulently, deliberately, willfully, and with knowledge that its use of counterfeit trademarks would deceive and/or cause confusion and mistake.

ANSWER: Defendant denies the allegations in Paragraph 32.

33. Playboy has suffered and, unless 3E Trading is enjoined will continue to suffer, irreparable harm from 3E Trading's willful and wrongful conduct.

ANSWER: Defendant denies the allegations in Paragraph 33.

34. Playboy has no adequate remedy at law.

ANSWER: Defendant denies the allegations in Paragraph 34.

Count III
Lanham Act – False Designation of Origin

35. For its Paragraph 35 of this Complaint, Playboy incorporates by reference and restates the allegations set forth in Paragraphs 1-20 above.

ANSWER: Defendant incorporates by reference as though fully set forth herein its responses to Paragraphs 1-20 as and for its response to this Paragraph 35 of Count III.

36. Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), provides in part:

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any work, term, name, symbol, or device or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which – (1) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of such person with another person, or as to the origin, sponsorship or approval of his or her goods, services, or commercial activities by another person . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

ANSWER: Defendant admits the allegations in Paragraph 36.

37. 3E Trading's unauthorized use of Playboy Property in connection with the products that 3E Trading continues to manufacture, promote, sell, and/or distribute constitutes false designation or origin and false representation in violation of 15 U.S.C. § 1125(a).

ANSWER: Defendant denies the allegations in Paragraph 37.

38. 3E Trading's use of the Playboy Property in connection with its products is likely to cause, and on information and belief has already caused, confusion in the marketplace.

ANSWER: Defendant denies the allegations in Paragraph 38.

39. Playboy has suffered, and unless 3E Trading is enjoined will continue to suffer, irreparable harm as a result of 3E Trading's illegal conduct.

ANSWER: Defendant denies the allegations in Paragraph 39.

40. 3E Trading has acted maliciously, fraudulently, deliberately and willfully, and with knowledge that its continuing use of counterfeit PLAYBOY and Rabbit Head Design trademarks would deceive and/or cause confusion and mistake.

ANSWER: Defendant denies the allegations in Paragraph 40.

41. Playboy has no adequate remedy at law.

ANSWER: Defendant denies the allegations in Paragraph 41.

Count IV
Breach of Contract

42. For its Paragraph 42 of this Complaint, Playboy incorporates by reference and restates the allegations set forth in Paragraphs 1-20 above.

ANSWER: Defendant incorporates by reference as though fully set forth herein its responses to Paragraphs 1-20 as and for its response to this Paragraph 42 of Count IV.

43. Each of the License Agreements is a valid, binding and legally enforceable contract between 3E Trading and Playboy.

ANSWER: On information and belief, Defendant admits the allegations in Paragraph 43.

44. 3E Trading has breached each of the License Agreements in at least the following ways:

a. upon expiration of each of the License Agreements and applicable Sell-Off Periods, by failing to refrain from any further use of the Playboy Property or any further reference to anything similar to the Playboy Property, in violation of Paragraph 8.a of each of the License Agreements;

b. upon expiration of each of the License Agreements and applicable Sell-Off Periods, by failing to account for all in-process and on-hand inventory using the Playboy Property, in violation of Paragraph 8.d of each of the License Agreements;

c. upon expiration of each of the License Agreements and applicable Sell-Off Periods, by failing to certify to Playboy that 3E Trading has destroyed all inventory of the Products on hand or in process, as required by Paragraph 8.a(iv) of each of the License Agreements;

d. Within ten (10) days after expiration of each of the License Agreements and applicable Sell-Off Periods, by failing to certify to Playboy that 3E Trading has destroyed all equipment capable of recreating the Playboy Property, including, but not limited to, molds, tools, dies and printing screens, as required by Paragraph 8.d(ii) of each of the License Agreements;

e. within thirty (30) days after expiration of each of the License Agreements and applicable Sell-Off Periods, by failing to submit to Playboy an Inventory Statement, as required by Paragraph 8.d(i)(b) of each of the License Agreements; and

f. failing to pay Earned Royalties and furnish statements with respect to the Sell-Off Periods for each of the License Agreements, as required by Paragraph 8.c of each of the License Agreements.

ANSWER: Defendant denies the allegations in Paragraph 44.

45. Playboy has performed all of its obligations under each of the License Agreements.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45.

46. Playboy has suffered and continues to suffer damages in an amount to be proven at trial.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46.

Count V **Unjust Enrichment**

47. For its paragraph 47 of this Complaint, Playboy incorporates by reference and restates the allegations set forth in Paragraphs 1-20 above.

ANSWER: Defendant incorporates by reference as though fully set forth herein its responses to Paragraphs 1-20 as and for its response to this Paragraph 47 of Count V.

48. After each of the License Agreements expired, well as their applicable Sell-Off Periods, 3E Trading has continued to hold itself out as a Playboy licensee, and has used the Playboy Property to manufacture, promote, sell, and/or distribute goods.

ANSWER: Defendant denies the allegations in Paragraph 48.

49. 3E Trading has received, accepted, and derived benefits by using the Playboy Property and by holding itself out as a Playboy licensee.

ANSWER: Defendant denies the allegations in Paragraph 49.

50. 3E Trading has been unjustly enriched at Playboy's expense, by an amount equal to the profits that 3E Trading has earned using the Playboy Property since the License Agreements and applicable Sell-Off Periods expired.

ANSWER: Defendant denies the allegations in Paragraph 50.

Count VI **Accounting**

51. For its Paragraph 51 of this Complaint, Playboy incorporates by reference and restates the allegations set forth in Paragraphs 1-20 above.

ANSWER: Defendant incorporates by reference as though fully set forth herein its responses to Paragraphs 1-20 as and for its response to this Paragraph 51 of Count VI.

52. Pursuant to Paragraph 2.d of the Gifts and Collectible Products License Agreement, 3E Trading was required to provide Playboy with detailed sale and distribution “Statements” within forty-five (45) days after each License Quarter, as defined, and the conclusion of the Sell-Off Period. Pursuant to Paragraph 2.d of the Barware Products License Agreement, 3E trading was required to provide Playboy with such “Statements” within thirty (30) days after each License Quarter and the conclusion of the Sell-Off Period. Pursuant to the terms of each of the License Agreements, the Statements had to include the following information: (i) a listing of 3E Trading’s (and its affiliate’s) accounts; (ii) the number of units and a description of all products sold and distributed to each such account or otherwise disposed of by 3E Trading or its affiliates; (iii) computations of the Net Sales on all such sales; (iv) computation of the Earned Royalties due and owing from 3E Trading to Playboy; and (v) an accounting of the advertising and promotion expenditures made by 3E Trading pursuant to each of the License Agreements, as well as documents verifying those expenditures.

ANSWER: Defendant denies the allegations in Paragraph 52.

53. 3E Trading has failed to provide Playboy with complete and adequate information as required by Paragraph 2.d of each of the License Agreements, including but not limited to the Statements.

ANSWER: Defendant denies the allegations in Paragraph 53.

WHEREFORE, Defendant respectfully requests that this Court dismiss each of the counts against it, enter judgment in its favor and against Plaintiff, award Defendant its costs and attorney fees and award Defendant any further relief that the Court deems just and proper.¹

Dated: April 17, 2007

Respectfully submitted,

3E TRADING, LLC.

/s/ Steven E. Cyranoski

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¹ By agreement of the parties, Defendant reserves the right to file affirmative defenses and a counterclaim if the parties are unable to resolve the instant claims during their present and ongoing settlement negotiations.

CERTIFICATE OF SERVICE

I, Steven E. Cyranoski, an attorney, certify that on April 17, 2007, I filed the foregoing **Answer to Complaint** with the Clerk of the District Court, using the CM/ECF system which will send electronic notification of such filing to the following counsel of record:

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/s/ Steven E. Cyranoski