

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

~~FULFILLMENT CENTRAL, Division~~
of WORD2NET, INC., by and through
~~its authorized representative,~~
BRENDA ZIMBARDI

CIVIL ACTION
NUMBER 08A-1055-2

PLAINTIFF

VS.

STOMPERNET, LLC and
BRAD FALLON, individually and as
Registered Agent

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of Said Court and serve upon the Plaintiff's attorney, whose name and address is:

Donna Crosby Sloan, Esquire
Blackburn, Sloan & Adair, LLC
1570 Warsaw Road
Roswell, Georgia 30076
(770) 642-0815

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 1 day of December, 2008.

Tom Lawler
Clerk of Superior Court

By: Christina LaBeau
Deputy Clerk

Instructions: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

IN THE SUPERIOR COURT OF GWINNETT COUNTY

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

STATE OF GEORGIA

2008 DEC -1 AM 10:55

FULFILLMENT CENTRAL, DIVISION :
OF WORD2NET, INC., by and :
through its authorized :
representative, BRENDA ZIMBARDI, :

TOM LAWLER, CLERK

Plaintiff, :

vs. :

STOMPERNET, LLC, a domestic :
Georgia Limited Liability :
Company, and BRAD FALLON, :
individually and in his :
capacity as its Registered :
Agent of Service, jointly :
and severally, :

Defendants. :

COMPLAINT

COMES NOW, FULFILLMENT CENTRAL, DIVISION OF WORD2NET, INC., by and through its authorized representative and CEO, BRENDA ZIMBARDI, and files this Complaint against Defendants STOMPERNET, LLC and BRAD FALLON, individually and in his capacity as Registered Agent of Service, and shows this Court as follows:

1.

STOMPERNET, LLC, the Defendant (hereinafter referred to as "Stomper"), is a domestic limited liability company with its principal office and place of business located at 6420 Atlantic Blvd, Norcross, Gwinnett County, Georgia 30071. This Defendant can be served at the

principal office address by and through its Personal Agent of Service, BRAD FALLON.

2.

Defendant BRAD FALLON is a resident of Gwinnett County, Georgia, and is subject to the jurisdiction of this Court and venue is proper. This Defendant can be personally served at his address of 3012 Adriatic Court, Norcross, Gwinnett County, Georgia 30071, or at his principal place of business located at 6420 Atlantic Blvd., Norcross, Gwinnett County, Georgia.

3.

The Plaintiff (hereinafter "FC") is a division of a corporation authorized to do business in Georgia, and the instant lawsuit is authorized by the Plaintiff's CEO and representative, BRENDA ZIMBARDI.

4.

Jurisdiction is properly established in Gwinnett County, Georgia.

COUNT I

BREACH OF CONTRACT

5.

On or about May 14, 2007, Brad Fallon signed a contract on behalf of Stomper in which Brad Fallon, individually, and in his capacity as authorized representative for Stomper, agreed to pay for product manufacturing, fulfillment services, distribution and shipping by FC for Stomper, such products including, but not limited to, CDs, DVDs,

and books. A copy of the May 14, 2007 contract is attached hereto as Exhibit "A" and incorporated herein by reference.

6.

In compliance with the terms of its contract, FC began shipping product for Stomper in May 2007.

7.

Stomper accepted the products and services of FC without complaint.

8.

In October 2007, Stomper requested the addition of another product from FC. FC prepared a second contract, which included the pricing for the additional product, and updated the terms of the May 2007 contract accordingly. A copy of the October 2007 contract is attached hereto as Exhibit "B" and incorporated herein by reference.

9.

The October 2007 contract was signed by the company Comptroller on October 22, 2007, in the presence of a witness.

10.

In June 2008, FC again updated the contract with Stomper, adding three products with pricing terms, as agreed upon between the parties. A copy of the June 2007 contract is attached hereto as Exhibit "C" and incorporated herein by reference.

11.

On September 10, 2008, the final contract pricing was confirmed and Stomper paid its deposit on or about September 17, 2008, in the amount of \$144,910.

12.

Stomper's payment terms required payment to be received by FC no later than 14 days after invoice. After paying the deposit, Stomper failed to pay for FC's products and services as agreed upon in the contracts entered into between Stomper and FC. However, FC continued to provide product and shipping in a timely manner.

13.

Brenda Zimbardi contacted Stomper in an effort to collect past due payments.

14.

Stomper's representatives threatened and accused Zimbardi and demanded that pricing, heretofore agreed upon, be changed.

15.

Disregarding payment obligations, Stomper continued to send in orders for product to FC.

16.

FC has fulfilled the terms of all of its contracts and updated agreements and has incurred costs of production, labor, and materials to comply with the terms as agreed upon between the parties.

17.

Stomper is obligated to pay for all products, services, and materials provided by FC, and has a duty to comply with the terms of its written and verbal agreements.

18.

Stomper has failed and refused to pay the sums that are due to FC, and is in breach of its contracts and agreements.

19.

Stomper owes FC a principal sum in the amount of \$345,767.09, plus interest and additional costs arising out of the Defendants' breach of contract.

COUNT II

UNJUST ENRICHMENT

20.

Beginning in 2007, and continuing through 2008, FC has provided products, services, and materials, along with shipping and delivery, for the benefit of Stomper.

21.

Stomper has failed and refused to pay FC upon receipt of invoices.

22.

As a result of FC's efforts, Stomper has had the benefit of products and materials that have enabled it to do business and to generate income.

23.

FC has invoiced and priced its products and services based on reasonable and customary rates routinely charged in the ordinary course of its business.

24.

Without payment for work performed and products manufactured solely and exclusively for the benefit of Stomper, at its request and at the initial request of Brad Fallon, Stomper will be unjustly enriched.

25.

FC is entitled to receive from Stomper compensation in full for its services preformed and its products designed and manufactured in the amount of no less than \$345,767.09.

COUNT III

MISREPRESENTATION

26.

Stomper, by and through its agents and Brad Fallon, in his individual capacity and in his capacity as Registered Agent, have intentionally and knowingly solicited business and services from FC with no intention of paying the contract price.

27.

After services have been initiated and products have been designed and prepared, Stomper has purposely tried to leverage its

position with FC by bargaining for lower prices, knowing that FC had already incurred the production expenses.

28.

Stomper and Fallon induced FC to continue to produce for the benefit of Stomper, with assurances and continuing orders for more products in an effort to misleading FC into incurring further expenses for which Stomper had no intention to pay.

29.

FC reasonably relied on Stomper's representations, to its detriment.

30.

FC suffered monetary damages and other damages to be shown at trial to which it is entitled to receive relief.

COUNT IV

ATTORNEYS' FEES

31.

FC has incurred legal fees and costs in order to collect payment that is due FC as a result of Defendants' bad faith.


32.

FC is entitled to receive an award of attorneys' fees and cost of litigation from Defendants, jointly and severally.

WHEREFORE, Plaintiff demands:

- (a) that summons and process issue as required by law;
- (b) that it have a judgment against Defendants, jointly and severally, for the principal amount owed, interest, attorneys' fees, and costs of litigation;
- (c) that it be awarded such other and further relief to which it is entitled.

Respectfully submitted,


DONNA CROSBY SLOAN
Attorney for Plaintiff
(Georgia Bar No. 652590)

Blackburn, Sloan & Adair, LLC
1570 Warsaw Road
Roswell, Georgia 30076
(770) 642-0815

FILED IN OFFICE
CLERK OF SUPERIOR COURT
GWINNETT COUNTY, GA

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

14 JAN 23 PM 2:29

TOM LAWLER, CLERK

FULFILLMENT CENTRAL DIVISION OF)	
WORD2NET, INC., by and through its authorized)	
representative, BRENA ZIMBARDI,)	
)	CIVIL ACTION
Plaintiff,)	
)	FILE NO. 08A-105532
vs.)	
)	
STOMPERNET, LLC, a domestic Georgia Limited)	
Liability Company,)	
)	
Defendant.)	

ANSWER AND COUNTERCLAIM

Defendant StomperNet, LLC (hereinafter "StomperNet") files this answer to Plaintiff's Complaint and its counterclaim against the Plaintiff, and respectfully shows the court as follows:

AFFIRMATIVE DEFENSES

1.

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

2.

Plaintiff's claims are barred by its own contributory negligence.

3.

Plaintiff's claims are barred by its assumption of the risk.

4.

Plaintiff's claims are barred because Plaintiff failed to perform its duties and obligations under any agreement with Defendant.

5.

Defendant's liability to Plaintiff, if any, is limited to those commercially reasonable costs incurred by Plaintiff.

6.

The agreements cited by Plaintiff in its Complaint are in violation of the Statute of Frauds, O.C.G.A. §13-5-30.

7.

Plaintiff's claims fail as a result of an accord and satisfaction between the parties.

8.

Plaintiff's claims fail for lack of consideration.

9.

Plaintiff's claims are estopped by Plaintiff's own conduct.

10.

Plaintiff's claims fail because of Plaintiff's own unclean hands.

11.

Plaintiff's claims are barred by Plaintiff's own fraud.

12.

Plaintiff's claims fail because Plaintiff failed to mitigate its alleged damages.

13.

Plaintiff's claims are barred by payment by Defendant.

14.

Plaintiff's claims fail because Plaintiff never executed any of the claimed contracts.

15.

Defendant demands a trial by jury of twelve (12) persons.

ANSWER

In response to these specific numbered paragraphs to Plaintiff's Complaint, Defendant responds

1.

Admitted.

2.

Denied, but Brad Fallon has been dismissed from this action.

3.

Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegation contained in paragraph 3 of Plaintiff's Complaint.

4.

Admitted.

COUNT I – BREACH OF CONTRACT

5.

Denied.

6.

Denied.

7.

Denied.

8.

Denied.

9.

Denied.

10.

Denied.

11.

StomperNet admits that it paid Plaintiff \$144,910.00 on or about September 18, 2008, but denies the remaining allegations contained in paragraph 11 of Plaintiff's Complaint.

12.

Denied.

13.

StomperNet admits that there have been a number of conversations between the parties regarding the alleged amount owed by Defendant to the Plaintiff, but Defendant StomperNet denies the remaining allegations contained in paragraph 13 of Plaintiff's Complaint.

14.

Denied.

15.

Denied.

16.

Denied.

17.

Denied.

18.

Denied.

19.

Denied.

COUNT II – UNJUST ENRICHMENT

20.

Defendant admits paragraph 20 of Plaintiff's Complaint but denies any liability to Plaintiff because of prior payments from Defendant to Plaintiff and Plaintiff's failure to perform its obligations.

21.

Defendant StomperNet admits that Plaintiff has submitted invoices to StomperNet, but Defendant StomperNet denies that those invoices were accurate or that it owes Plaintiff any sum for those invoices and denies any remaining allegations contained in paragraph 21 of Plaintiff's Complaint.

22.

Defendant StomperNet admits that Plaintiff has provided some products and materials to Defendant in the past but denies that it is liable to Plaintiff in any amounts and denies any remaining allegations contained in paragraph 22 of Plaintiff's Complaint.

23.

Denied.

24.

Denied.

25.

Denied.

COUNT III – MISREPRESENTATION

26.

Denied.

27.

Denied.

28.

Denied.

29.

Denied.

30.

Denied.

COUNT IV – ATTORNEY’S FEES

31.

Denied.

32.

Denied.

33.

Defendant denies each and every allegation of Plaintiff’s Complaint not previously responded to above.

COUNTERCLAIM

Defendant StomperNet submits the following counterclaim against Plaintiff and respectfully shows the Court as follows:

1.

Plaintiff Fulfillment Central is subject to the jurisdiction and venue of this Court by virtue of its filing this lawsuit.

2.

Prior to September 2008, Plaintiff agreed to assist Defendant with the production and shipping of Defendant's magazine, *The Net Effect* and certain digital media products (the "Products") to be encoded on DVD media.

3.

Plaintiff failed to produce and ship the Products in a timely fashion.

4.

Plaintiff failed to produce and ship the Products as it had promised to do.

5.

Plaintiff made errors in the production and shipment of the Products and failed to timely rectify said errors.

6.

Plaintiff shipped several customers' orders as CDs instead of DVDs as promised.

7.

Plaintiff double and triple shipped the Products to numerous customers of Defendant.

8.

Because of Plaintiff's actions, Defendant was forced to make a public apology to its customers.

9.

Because of Plaintiff's actions, a number of Defendant's customers filed Better Business Bureau complaints against Defendant.

10.

Because of Plaintiff's actions a large number of Defendant's customers cancelled their orders.

11.

Plaintiff attempted to invoice Defendant for shipping charges which were not commercially reasonable.

12.

Plaintiff attempted to invoice Defendant for production charges which were not commercially reasonable.

COUNT I – BREACH OF CONTRACT

13.

Defendant StomperNet restates and realleges paragraphs 1 through 12 of its counterclaim as if fully set forth herein.

14.

As a result of Plaintiff's actions set forth above, Plaintiff has breached its agreement with Defendant to timely produce and ship Defendant's product.

15.

As a result of Defendant's actions set forth above, Defendant has suffered damages including lost profits and injury to business reputation, in an amount to be established at trial for Plaintiff's breach of contract.

COUNT II – NEGLIGENCE

16.

Defendant StomperNet restates and realleges the allegations contained in paragraphs 1 through 15 of its counterclaim as if fully set forth herein.

17.

Defendant's actions set forth above breached the applicable standard of care required of persons like Plaintiff under similar circumstances.

18.

As a result of Plaintiff's breach of the applicable standard of care, Plaintiff has proximately caused Defendants damages including lost profits and injury to business reputation, in an amount to be established at trial.

COUNT III – DAMAGES PURSUANT TO O.C.G.A. § 13-6-11

19.

Defendant StomperNet restates and realleges the allegations contained in paragraphs 1 through 18 of its Counterclaim as if fully set forth herein.

20.

Plaintiff's actions in the underlying transaction described in this Complaint and in Defendant's Answer and Counterclaim are in violation of O.C.G.A. §13-6-11.

Defendant is entitled to an award of its attorney's fees and legal expenses pursuant to O.C.G.A. §13-6-11 in an amount to be established at trial.

WHEREFORE, Defendant StomperNet, LLC requests that it be granted judgment against Plaintiff in the amount of damages determined by the enlightened conscience of a fair and

impartial jury as show by the evidence introduced at trial and for such other and further relief as this Court may deem just and proper.

Respectfully submitted this 22nd day of January, 2009.

Respectfully submitted,



LAWRENCE B. DOMENICO

Georgia Bar No. 003260

MEGAN E. BOYD

Georgia Bar No. 211079

Attorneys for Defendant StomperNet, LLC

MOZLEY, FINLAYSON & LOGGINS LLP

One Premier Plaza, Suite 900

5605 Glenridge Drive, NE

Atlanta, Georgia 30342-1386

(404) 256-0700

(404) 250-9355 Facsimile

266538

Mozley, Finlayson
& Loggins LLP

Limited Liability Partnership

One Premier Plaza

Suite 900

5605 Glenridge Drive

Atlanta, Georgia 30342

**IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

FULFILLMENT CENTRAL DIVISION OF
WORD2NET, INC., by and through its authorized
representative, BRENA ZIMBARDI,

Plaintiff,

vs.

STOMPERNET, LLC, a domestic Georgia Limited
Liability Company,

Defendant.

CIVIL ACTION

FILE NO. 08A-105532

VERIFICATION

I am Andy Jenkins, and I am the Manager and a Member of StomperNet, LLC. I have reviewed the foregoing Verified Answer and Counterclaim and state under oath that the contents of the Verified Answer and Counterclaim are true and correct to the best of my knowledge, information gathered at my request, and belief.

STOMPERNET, LLC

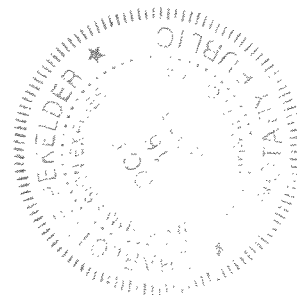
By: _____

Andy Jenkins
Manager and Member

Sworn to and subscribed before me
this 22 day of January, 2009.



Notary Public, State of Georgia
My Commission Expires:



IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

FULFILLMENT CENTRAL DIVISION OF)	
WORD2NET, INC., by and through its authorized)	
representative, BRENA ZIMBARDI,)	
)	CIVIL ACTION
Plaintiff,)	
)	FILE NO. 08A-105532
vs.)	
)	
STOMPERNET, LLC, a domestic Georgia Limited)	
Liability Company,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE


This is to certify that I have, this date, served a true and correct copy of **ANSWER AND COUNTERCLAIM** upon counsel as follows:

Donna Crosby Sloan, Esq.
Blackburn, Sloan & Adair, LLC
1570 Warsaw Road
Roswell, Georgia 30076

by placing a copy of same in the United States Mail with adequate postage affixed thereto to ensure delivery.

This 22nd day of January, 2009.

MOZLEY, FINLAYSON & LOGGINS LLP


LAWRENCE B. DOMENICO
Georgia Bar No. 003260

124
Stomper launch 2008 revised

Totals	Description - details on tabs
\$ 25,300.12	First 2,000
\$ 99,064.46	2001-7999
\$ 99,390.12	8000-11999
\$ 105,809.28	12,000 plus
\$ 1,868.86	UPS aftercharges
\$ 6,549.60	Other shipping prior to launch
\$ 337,982.44	
\$ (144,910.00)	Amount Paid
\$ 193,072.44	Amount Due

Defendant Exhibit

7/6/09 TRC

21

Fulfillment Central

INVOICE

935 Hwy 124 Suite 212
Braselton, GA 30517
Phone 678-633-3737 Fax 678-633-3736

DATE: July 9, 2009
INVOICE # 10052
FOR: *Fulfillment
Services
August 08 to
June 30 2008*

Bill To:
StomperNet, LLC
Andy Jenkins

DESCRIPTION				AMOUNT
Description	Production f	Handling fee	Quantity	
Stomping the Search Engines 2.0 and Magazine, 2 CD set with Magazine	\$4.91	\$2.20	17,992	\$127,923.12
StomperNet Advanced Courses Mega Pack, 1 DVD set	\$1.86	\$1.20	5,910	\$18,084.60
StomperNet Home Study Course: Slim Line Version, 2 DVD set	\$3.12	\$1.20	1,159	\$5,006.88
Home Study Course: Full Version, 15 DVD set	\$29.01	\$3.35	1,576	\$50,999.36
StomperNet DVD of the Month, 1 DVD set	\$1.86	\$1.20	10,403	\$31,833.18
Shipping costs for all packages				\$223,852.42
Other Shipments				\$7,977.80
Storage				\$1,800.00
UPS adjustments				\$1,868.86
Returns Handling				\$1,547.00
Attorney fees to date				\$18,790.00
Inventory ordered not shipped				\$17,590.37
Deposit Paid				-\$144,910.00
TOTAL				\$362,363.59

Make all checks payable to **Fulfillment Central**

If you have any questions concerning this invoice, Brenda Zimbardi, 678-633-3737 x2,
brenda@fulfillmentcentral.com

Number of total orphans	1244	
Orphans showing as shipped by FFC and reshipped	1183	95%
Cases:		
Total cases citing shipping probs and delays	4768	
Unique customers with these cases (excludes orphans)	1648	
Customers who complained who are canceled	1080	66%
Cancel data:		
Total subscriptions canceled	15638	
Total customers canceled	9327	
TNE cancels	9202	
DVD cancels	5182	
MP Returns	588	
Full HSC Returns	200	
Slim line HSC Returns	188	
Calculations:		
Customers not rebilled due to shipping delays/ errors	1244	
<u>Subscriptions months before able to rebil again</u>	<u>2</u>	
Revenue lost for orphan packages	\$99,520	
<u>Additional costs to reship and dupe</u>	<u>\$12,328</u>	
Total damages for orphan customers	#####	
Customers who complained who are canceled	1080	
Monthly revenue lost due to TNE cancels citing shipping prob	\$43,200	
<u>Monthly revenue lost due to DVD cancels citing shipping prot</u>	<u>\$12,960</u>	
	\$56,160 monthly	