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6 **SERENITY TECHNOLOGIES**
INCORPORATED and SERENITY
7 **ARYAMOND LLC**

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **WHOLESALE MOISSANITE LLC, a**
12 **North Carolina Limited Liability**
Company,

13 **Plaintiff,**

14 **vs.**

15 **SERENITY TECHNOLOGIES**
16 **INCORPORATED, an Oregon**
17 **Corporation; SERENITY ARYAMOND**
18 **LLC, a Delaware Limited Liability**
Company; and DOES 1 through 20,
inclusive,

19 **Defendants.**

20
21 **SERENITY TECHNOLOGIES**
22 **INCORPORATED; SERENITY**
ARYAMOND LLC,

23 **Counterclaimants,**

24 **vs.**

25 **WHOLESALE MOISSANITE LLC,**

26 **Counterdefendant.**

Case No: 5:17-CV-01628-DMG-SP

ANSWER TO COMPLAINT FOR
DAMAGES AND PERMANENT
INJUNCTION; COUNTERCLAIMS

DEMAND FOR JURY TRIAL

District Judge: Dolly M. Gee
Magistrate Judge: Sheri Pym

Action filed: August 14, 2017
Trial Date: None Set

1 Defendants Serenity Technologies Incorporated (“STI”) and Serenity
2 Aryamond LLC (“SA”) for their answer to Plaintiff Wholesale Moissanite LLC’s
3 (“Wholesale Moissanite”) Complaint for Damages and Permanent Injunction
4 (“Complaint”), state and allege as follows:

5 1. The allegations set forth in Paragraph 1 of the Complaint state
6 conclusions of law to which no response is required. To the extent a response is
7 required, STI and SA admit the Complaint purports to set forth an action for
8 trademark infringement and unfair competition under Title 15 of the United States
9 Code and this Court has subject matter jurisdiction trademark infringement and unfair
10 competition actions pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1121. STI and SA
11 further admit this Court has supplemental jurisdiction over Wholesale Moissanite’s
12 state law claims under 28 U.S.C. § 1367(a).

13 2. The allegations set forth in Paragraph 2 of the Complaint state
14 conclusions of law to which no response is required. To the extent a response is
15 required, STI and SA are presently without sufficient knowledge to admit or deny the
16 allegations set forth in paragraph 2 of the Complaint and, therefore, deny the same.

17 3. STI and SA are presently without sufficient knowledge to admit or deny
18 the allegations set forth in paragraph 3 of the Complaint and, therefore, deny the same.

19 4. STI and SA admit the allegations set forth in paragraph 4 of the
20 Complaint.

21 5. STI and SA admit the allegations set forth in paragraph 5 of the
22 Complaint.

23 6. STI and SA are presently without sufficient knowledge to admit or deny
24 the allegations set forth in paragraph 6 of the Complaint and, therefore, deny the same.

25 7. STI and SA are presently without sufficient knowledge to admit or deny
26 the allegations set forth in paragraph 7 of the Complaint and, therefore, deny the same.

27 8. STI and SA admit Suneeta Neogi and Jayant Neogi (collectively,
28 “Neogis”) are principals of STI and SA and the Neogis met in person with Guy

1 Stimpson and Steve Johns at the Serenity Technologies, Inc. offices on September 21,
2 2015. STI and SA are presently without sufficient knowledge to admit or deny the
3 remaining allegations set forth in paragraph 8 of the Complaint and, therefore, deny
4 the same.

5 9. SSTI and SA admit the allegations set forth in paragraph 9 of the
6 Complaint.

7 10. STI and SA admit a potential business venture was discussed and the
8 Neogis provided an explanation of how STI produced moissanite. STI and SA deny
9 the remaining allegations set forth in paragraph 10 of the Complaint.

10 11. STI and SA deny Guy Stimpson and Steve Johns informed the Neogis
11 branding was necessary for a joint venture to be successful. STI and SA deny they
12 had no experience how moissanite could be marketed or sold. STI and SA deny
13 Wholesale Moissanite would develop the brand of any joint venture product or that
14 any joint venture was ever discussed by the parties. STI and SA are presently without
15 sufficient knowledge to admit or deny the remaining allegations set forth in paragraph
16 11 of the Complaint and, therefore, deny the same.

17 12. STI and SA deny the allegations set forth in paragraph 12 of the
18 Complaint.

19 13. STI and SA are without sufficient knowledge and information to form a
20 belief as to the meaning of “[d]uring this time” as contained in paragraph 13 of the
21 Complaint and, therefore, deny the same. STI and SA deny the remaining allegations
22 set forth in paragraph 13 of the Complaint.

23 14. STI and SA deny the allegations set forth in paragraph 14 of the
24 Complaint.

25 15. STI and SA admit Suneeta Neogi sent an email to Guy Stimpson on
26 September 25, 2015 stating “[w]e are considering the NEO brand name and are in
27 discussion with our partner at Serenity Aryamond to finalize.” STI and SA deny the
28 remaining allegations set forth in paragraph 15 of the Complaint.

1 16. STI and SA deny Guy Stimpson “created” the mark “NEO
2 MOISSANITE” or they agreed the mark would be used solely for use with Wholesale
3 Moissanite customers. STI and SA are presently without sufficient knowledge to
4 admit or deny the remaining allegations set forth in paragraph 16 of the Complaint
5 and, therefore, deny the same.

6 17. STI and SA admit there were communications between STI and SA and
7 Wholesale Moissanite regarding the design of the NEO mark. STI and SA are
8 presently without sufficient knowledge to admit or deny the remaining allegations set
9 forth in paragraph 17 of the Complaint and, therefore, deny the same.

10 18. STI and SA are presently without sufficient knowledge to admit or deny
11 the allegations set forth in paragraph 18 of the Complaint and, therefore, deny the
12 same.

13 19. STI and SA deny Wholesale Moissanite created, designed, or developed
14 the NEO mark. STI and SA are presently without sufficient knowledge to admit or
15 deny the remaining allegations set forth in paragraph 19 of the Complaint and,
16 therefore, deny the same.

17 20. STI and SA admit Wholesale Moissanite purchased moissanite gems
18 from Serenity Technologies in September and October 2015. STI and SA deny Guy
19 Stimpson, Steve Johns, or Wholesale Moissanite created the NEO mark and deny STI
20 and SA did not conceive of the NEO or NEO THE ONE marks or first use the marks
21 NEO and NEO THE ONE in commerce. STI and SA are presently without sufficient
22 knowledge to admit or deny the remaining allegations set forth in paragraph 20 of the
23 Complaint and, therefore, deny the same.

24 21. STI and SA are without sufficient knowledge and information to form a
25 belief as to the meaning of “the product” as contained in paragraph 21 of the
26 Complaint and, therefore, deny the same. STI and SA are presently without sufficient
27 knowledge to admit or deny the remaining allegations set forth in paragraph 21 of the
28 Complaint and, therefore, deny the same.

1 22. STI and SA are presently without sufficient knowledge to admit or deny
2 the allegations set forth in paragraph 22 of the Complaint and, therefore, deny the
3 same.

4 23. STI and SA admit the moissanite gems sold to Wholesale Moissanite
5 were of good quality. STI and SA are presently without sufficient knowledge to admit
6 or deny the remaining allegations set forth in paragraph 23 of the Complaint and,
7 therefore, deny the same.

8 24. STI and SA admit Wholesale Moissanite negotiated a written distributor
9 agreement with Suneeta Neogi and Jayant Neogi. STI and SA deny the remaining
10 allegations set forth in paragraph 24 of the Complaint.

11 25. STI and SA admit Serenity Aryamond LLC executed the Authorized
12 Distributor Agreement attached as Exhibit 5 to the Complaint on November 30, 2015.
13 STI and SA are presently without sufficient knowledge to admit or deny the remaining
14 allegations set forth in paragraph 25 of the Complaint and, therefore, deny the same.

15 26. STI and SA deny the allegations set forth in paragraph 26 of the
16 Complaint.

17 27. STI and SA deny the allegations set forth in paragraph 27 of the
18 Complaint.

19 28. STI and SA deny any moissanite gems sold to Wholesale Moissanite
20 were of poor quality. STI and SA are presently without sufficient knowledge to admit
21 or deny the remaining allegations set forth in paragraph 28 of the Complaint and,
22 therefore, deny the same.

23 29. STI and SA deny the allegations set forth in paragraph 29 of the
24 Complaint.

25 30. STI and SA deny the allegations set forth in paragraph 30 of the
26 Complaint.

27 31. STI and SA admit selling moissanite gems to Wholesale Moissanite in
28 April 2016 and deny those gems were to replace previously rejected gems.

1 32. STI and SA admit the allegations set forth in paragraph 32 of the
2 Complaint.

3 33. STI and SA deny Wholesale Moissanite placed an order for moissanite
4 gems with Serenity Aryamond on June 21, 2016. STI and SA are presently without
5 sufficient knowledge to admit or deny the remaining allegations set forth in paragraph
6 33 of the Complaint and, therefore, deny the same.

7 34. STI and SA deny the allegations set forth in paragraph 34 of the
8 Complaint.

9 35. STI and SA admit they continue to market and sell moissanite gems
10 under the NEO mark. STI and SA deny Wholesale Moissanite owns the marks NEO,
11 NEO MOISSANITE, or NEO THE ONE or Wholesale Moissanite's consent is
12 required for STI and SA to sell moissanite gems under the NEO mark.

13 36. STI and SA deny Guy Stimpson, Steve Johns, or Wholesale Moissanite
14 created the NEO mark, deny Wholesale Moissanite informed Suneeta Neogi or Jayant
15 Neogi the NEO mark be registered, deny STI and SA had advance knowledge
16 Wholesale Moissanite would be filing an application for registration of the mark NEO
17 MOISSANITE, and deny the NEO mark has been identified with Wholesale
18 Moissanite's products. STI and SA are presently without sufficient knowledge to
19 admit or deny the remaining allegations set forth in paragraph 36 of the Complaint
20 and, therefore, deny the same.

21 37. STI and SA are presently without sufficient knowledge to admit or deny
22 the allegations set forth in paragraph 37 of the Complaint and, therefore, deny the
23 same.

24 38. STI and SA are presently without sufficient knowledge to admit or deny
25 the allegations set forth in paragraph 38 of the Complaint and, therefore, deny the
26 same.

27 39. STI and SA admit they continue to market and sell moissanite gems
28 under the NEO mark. STI and SA deny Guy Stimpson, Steve Johns, or Wholesale

1 Moissanite created the NEO mark and deny infringing any valid trademarks of
2 Wholesale Moissanite.

3 40. STI and SA deny the allegations set forth in paragraph 40 of the
4 Complaint.

5 41. STI and SA deny the allegations set forth in paragraph 41 of the
6 Complaint.

7 42. STI and SA admit SA filed an application for registration of its NEO
8 mark, admit opening a Facebook account on May 24, 2017 to market its moissanite
9 gems, and admit sending emails marketing its moissanite gems. STI and SA deny the
10 remaining allegations set forth in paragraph 42 of the Complaint.

11 43. STI and SA deny the allegations set forth in paragraph 43 of the
12 Complaint.

13 44. STI and SA deny the allegations set forth in paragraph 44 of the
14 Complaint.

15 45. STI and SA deny the allegations set forth in paragraph 45 of the
16 Complaint.

17 46. STI and SA deny the allegations set forth in paragraph 46 of the
18 Complaint.

19 47. STI and SA reallege and incorporate by reference Paragraphs 1 through
20 46 above as though fully set forth herein.

21 48. STI and SA deny the allegations set forth in paragraph 48 of the
22 Complaint.

23 49. STI and SA deny the allegations set forth in paragraph 49 of the
24 Complaint.

25 50. STI and SA deny the allegations set forth in paragraph 50 of the
26 Complaint.

27 51. STI and SA deny the allegations set forth in paragraph 51 of the
28 Complaint.

1 52. STI and SA deny the allegations set forth in paragraph 52 of the
2 Complaint.

3 53. STI and SA reallege and incorporate by reference Paragraphs 1 through
4 52 above as though fully set forth herein.

5 54. STI and SA deny the allegations set forth in paragraph 55 of the
6 Complaint.

7 55. STI and SA deny the allegations set forth in paragraph 55 of the
8 Complaint.

9 56. STI and SA deny the allegations set forth in paragraph 56 of the
10 Complaint.

11 57. STI and SA deny the allegations set forth in paragraph 57 of the
12 Complaint.

13 58. STI and SA deny the allegations set forth in paragraph 58 of the
14 Complaint.

15 59. STI and SA deny the allegations set forth in paragraph 59 of the
16 Complaint.

17 60. STI and SA reallege and incorporate by reference Paragraphs 1 through
18 59 above as though fully set forth herein.

19 61. STI and SA deny the allegations set forth in paragraph 61 of the
20 Complaint.

21 62. STI and SA deny the allegations set forth in paragraph 62 of the
22 Complaint.

23 63. STI and SA deny the allegations set forth in paragraph 63 of the
24 Complaint.

25 64. STI and SA deny the allegations set forth in paragraph 64 of the
26 Complaint.

27 65. STI and SA reallege and incorporate by reference Paragraphs 1 through
28 64 above as though fully set forth herein.

1 66. STI and SA deny the allegations set forth in paragraph 65 of the
2 Complaint.

3 67. STI and SA deny the allegations set forth in paragraph 66 of the
4 Complaint.

5 68. STI and SA deny the allegations set forth in paragraph 67 of the
6 Complaint.

7 69. STI and SA reallege and incorporate by reference Paragraphs 1 through
8 68 above as though fully set forth herein.

9 70. STI and SA admit the allegations set forth in paragraph 70 of the
10 Complaint.

11 71. STI and SA deny the allegations set forth in paragraph 71 of the
12 Complaint.

13 72. STI and SA deny the allegations set forth in paragraph 72 of the
14 Complaint.

15 73. STI and SA deny the allegations set forth in paragraph 73 of the
16 Complaint.

17 74. STI and SA deny the allegations set forth in paragraph 74 of the
18 Complaint.

19 75. STI and SA reallege and incorporate by reference Paragraphs 1 through
20 74 above as though fully set forth herein.

21 76. STI and SA deny the allegations set forth in paragraph 76 of the
22 Complaint.

23 77. STI and SA deny the allegations set forth in paragraph 77 of the
24 Complaint.

25 78. STI and SA deny the allegations set forth in paragraph 78 of the
26 Complaint.

27 79. STI and SA deny the allegations set forth in paragraph 79 of the
28 Complaint.

1 80. STI and SA deny the allegations set forth in paragraph 80 of the
2 Complaint.

3 81. STI and SA reallege and incorporate by reference Paragraphs 1 through
4 80 above as though fully set forth herein.

5 82. STI and SA admit the allegations set forth in paragraph 82 of the
6 Complaint

7 83. STI and SA deny Wholesale Moissanite is the owner of the NEO mark.
8 The remaining allegations set forth in Paragraph 83 of the Complaint state a request to
9 which no response is required.

10 **GENERAL DENIAL**

11 Except as admitted herein, STI and SA deny all allegations in the Complaint.

12 **DEFENSES AND AFFIRMATIVE DEFENSES**

13 STI and SA assert the following affirmative defenses and reserve the right to
14 raise additional defenses. In asserting these defenses, STI and SA do not assume the
15 burden of proof for any issue with respect to which Wholesale Moissanite bears the
16 burden of proof.

17 A. The Complaint fails to state a claim upon which relief can be granted.

18 B. Wholesale Moissanite's claims are barred in whole or in part by the
19 doctrines of acquiescence, waiver, estoppel, or consent.

20 C. Wholesale Moissanite's claims are barred in whole or in part because of
21 Wholesale Moissanite's unclean hands.

22 D. Wholesale Moissanite's claims are barred in whole or in part because of
23 Wholesale Moissanite's failure to mitigate its damages.

24 E. STI and SA are senior users of the NEO mark as to Wholesale
25 Moissanite.

26 F. STI and SA reserve the right to rely on additional defenses to the extent
27 that such defenses are supported by information developed through discovery or at
28 trial.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendants STI and SA pray as follows as to the Complaint:

3 (a) That Plaintiff take nothing by reason of its Complaint, that judgment be
4 rendered in favor of Defendants;

5 (b) That Defendants be awarded their costs of suit and all associated fees
6 incurred in defense of this action; and

7 (c) For such other relief as the Court deems proper.

8 **COUNTERCLAIMS**

9 Counterclaimants Serenity Technologies Incorporated (“STI”) and Serenity
10 Aryamond LLC (“SA”), for their counterclaims against Counterdefendant Wholesale
11 Moissanite LLC (“Wholesale Moissanite”), hereby allege as follows:

12 **THE PARTIES**

13 1. Counterclaimant Serenity Technologies Incorporated is a corporation
14 organized under the laws of Oregon with its principal place of business at Suite B105,
15 43320 Business Park Drive, Temecula, California 92590.

16 2. Counterclaimant Serenity Aryamond LLC is a corporation organized
17 under the laws of Delaware with its principal place of business at Suite B105, 43320
18 Business Park Drive, Temecula, California 92590.

19 3. Upon information and belief, Wholesale Moissanite LLC is a limited
20 liability company with its principal place of business at 5755-B NC Highway 42
21 West, Garner, North Carolina 27529.

22 **JURISDICTION AND VENUE**

23 4. This Court has subject matter jurisdiction with regard to STI’s and SA’s
24 counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338 in that this action arises under
25 the Lanham Act (15 U.S.C. § 1 et seq.) and supplemental jurisdiction pursuant to 38
26 U.S.C. § 1367 in that this action includes breach of a contract for which this Court has
27 continuing jurisdiction to resolve all disputes arising out of prior litigation before this
28 Court.

1 13. Wholesale Moissanite’s use of SA’s NEO trademark is causing, and will
2 continue to cause, STI and SA irreparable injury and harm. Accordingly, SA is
3 entitled to injunctive relief under 15 U.S.C. § 1116.

4 14. Wholesale Moissanite’s trademark infringement entitles SA to recovery
5 pursuant to the remedies set forth in 15 U.S.C. §§ 1117 and 1118; and, having been
6 undertaken deliberately and willfully, and with the knowledge of SA’s trademark,
7 makes this an “exceptional” case within the meaning of 15 U.S.C. § 1117, entitling
8 SA to the remedies set forth therein, including treble damages and reasonable attorney
9 fees.

10 **COUNT II**
11 **DECLARATION OF INVALIDITY OF**
12 **UNITED STATES REGISTRATION NO. 5,079,587**

13 15. STI and SA incorporate and repeat the foregoing paragraphs 1-14 of their
14 Counterclaims.

15 16. There is an actual and justiciable controversy between STI and SA and
16 Wholesale Moissanite about the validity of the U.S. Trademark Registration No.
17 5,079,587.

18 17. The U.S. Trademark Registration No. 5,079,587 is invalid because it was
19 obtained fraudulently by Wholesale Moissanite.

20 18. STI and SA are entitled to a declaration that U.S. Trademark Registration
21 No. 5,079,587 is invalid.

22 **COUNT III**
23 **CALIFORNIA STATUTORY UNFAIR COMPETITION**

24 19. STI and SA incorporate and repeat the foregoing paragraphs 1-18 of their
25 Counterclaims.

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28 ///

1 Moissanite's willfulness and intent to trade on the goodwill STI and SA developed in
2 the NEO trademark and to pass off Wholesale Moissanite's gems as being affiliated,
3 sponsored by, or associated with STI and SA.

4 28. Wholesale Moissanite's actions are likely to cause confusion or deceive
5 consumers of moissanite gems as to the origin of Wholesale Moissanite's gems and
6 constitutes unfair competition in violation of the common law of the State of
7 California.

8 29. Wholesale Moissanite's acts of unfair competition have caused STI and
9 SA to suffer economic damage, resulted in unjust enrichment to Wholesale
10 Moissanite, resulted in the misappropriation of valuable property rights of STI and
11 SA, and caused and will continue to cause substantial and irreparable damage and
12 injury to STI and SA and the public, for which STI and SA has no adequate remedy at
13 law.

14 **COUNT V**
BREACH OF CONTRACT

15
16 30. STI and SA incorporate and repeat the foregoing paragraphs 1-29 of their
17 Counterclaims.

18 31. Serenity Aryamond LLC and Wholesale Moissanite entered into a
19 written distributor agreement on or about November 30, 2015.

20 32. SA performed all of its obligations under the written distributor
21 agreement.

22 33. Wholesale Moissanite breached the agreement between the parties by
23 failing to promptly notify Serenity Aryamond LLC of alleged or suspected product
24 defects, by returning gems to Serenity Aryamond LLC without following contractual
25 requirements, by returning inferior non-Serenity Aryamond gems and claiming they
26 were Serenity Aryamond gems rejected by customers, by claiming ownership of SA's
27 NEO trademark, and by other acts or omissions that have yet to be discovered.

28 ///

1 (d) Grant STI and SA injunctive relief, preliminarily and permanently
2 enjoining and restraining Wholesale Moissanite and Wholesale Moissanite’s
3 subsidiaries, parents, officers, directors, servants, distributors, employees, agents,
4 affiliates, attorneys and all other persons in active concert or participation with
5 Wholesale Moissanite from using SA’s NEO trademark, pursuant to 15 U.S.C. §
6 1116;

7 (e) Grant STI and SA injunctive relief, preliminarily and permanently
8 enjoining and restraining Wholesale Moissanite and Wholesale Moissanite’s
9 subsidiaries, parents, officers, directors, servants, distributors, employees, agents,
10 affiliates, attorneys and all other persons in active concert or participation with
11 Wholesale Moissanite from unfairly competing with STI and SA;

12 (f) Enter judgment awarding STI and SA their costs and attorney fees, in
13 accordance with Section 35 of the Lanham Act, 15 U.S.C. §§ 1117(a), and otherwise
14 according to law;

15 (g) Enter judgment awarding damages to STI and SA of pre-judgment and
16 post-judgment interest on its damages as allowed by law; and

17 (h) Grant STI and SA such other relief as the Court may deem just and
18 equitable.

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Dated: September 22, 2017

FOLEY & MANSFIELD, PLLP

By: /s/ Peter B. Langbord
Peter B. Langbord (SBN 144319)
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INCORPORATED and SERENITY
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JURY DEMAND

Pursuant to Federal Rules of Civil Procedure, Rule 38, Counterclaimants Serenity Technologies Incorporated and Serenity Aryamond LLC hereby demand a jury trial for all issues so triable.

Dated: September 22, 2017

FOLEY & MANSFIELD, PLLP

By: /s/ Peter B. Langbord
Peter B. Langbord (SBN 144319)
FOLEY & MANSFIELD, PLLP
Attorneys for Defendants/Counterclaimants
**SERENITY TECHNOLOGIES
INCORPORATED and SERENITY
ARYAMOND LLC**

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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 300 South Grand Avenue, Suite 2800, Los Angeles, CA 90071.

I filed and served the foregoing document described as: **ANSWER TO COMPLAINT FOR DAMAGES AND PERMANENT INJUNCTION; COUNTERCLAIMS; DEMAND FOR JURY TRIAL.**

VIA CM/ECF Notification System

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(BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF systems, to the parties and/or counsel who are registered CM/ECF Users set forth in the service list that is located on the PACER website.

Executed on **September 22, 2017**, Los Angeles, California.

[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.


Sara Rodriguez