

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and)
ROBERT A MAGINN, JR.,)

Plaintiffs,)

CIVIL ACTION NO. 07-2075-H

v.)

LONG BOW GROUP, INC.,)

Defendant.)

ANSWER OF DEFENDANT LONG BOW GROUP, INC.

Pursuant to Rules 8 and 13 of the Massachusetts Rules of Civil Procedure, defendant Long Bow Group, Inc. (“Long Bow”) responds to the allegations set forth in the Complaint, as follows:

General Denial of Allegations Contained in Introduction

Long Bow generally denies each and every allegation contained in the “Introduction” section of the Complaint.

Specific Responses to Allegations Contained in Numbered Paragraphs

1. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 1.

2. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 2.

3. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3.

4. Long Bow admits that it is a non-profit corporation organized under the laws of Massachusetts, with a principal place of business at 55 Newton Street, Brookline, Massachusetts 02445. Long Bow denies each and every remaining allegation in Paragraph 4.

5. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 5.

6. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 6.

7. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 7.

8. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 8.

9. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 9.

10. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 10.

11. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 11

12. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 12.

13. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 13.

14. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 14.

15. Long Bow admits the allegations contained in Paragraph 15, except that the name of the Film is *The Gate of Heavenly Peace*, not *The Gates of Heavenly Peace*.

16. Long Bow admits that its website makes the following statement about the Film: “*The Gate of Heavenly Peace* is a feature-length documentary about the 1989 protest movement, reflecting the drama, tension, humor, absurdity, heroism, and many tragedies of the six weeks from April to June in 1989. The film reveals how the hard-liners within the government marginalized moderates among the protesters (including students, workers and intellectuals), while the actions of radical protesters undermined moderates in the government. Moderate voices were gradually cowed and then silenced by extremism and emotionalism on both sides.” Long Bow denies each and every remaining allegation in Paragraph 16.

17. Denied.

18. Denied.

19. Long Bow admits that it maintains a website located at <http://www.tsquare.tv/film/jenzabar.html> (the “Site”). Long Bow denies each and every remaining allegation in Paragraph 19.

20. Long Bow admits that the Site contains links to a variety of news articles about Jenzabar and Chai Ling. Long Bow denies each and every remaining allegation in Paragraph 20.

21. Long Bow admits that Chai Ling has been the subject of significant media attention. Long Bow denies each and every remaining allegation in Paragraph 21.

22. Denied.

23. Denied.

24. Long Bow admits that it has used the terms “Jenzabar” and “Jenzabar.com” as keywords for the Site. Long Bow denies each and every remaining allegation in Paragraph 24.

25. Long Bow denies that the content of the Site is false and defamatory. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 25.

26. Denied.

27. Long Bow admits that the Site has contained excerpts from an August 2003 *Boston Globe* column. Long Bow denies each and every remaining allegation in Paragraph 27.

28. Denied.

29. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 29.

30. Denied.

31. Long Bow admits that Jenzabar sent a letter dated February 9, 2007, which alleged that the Site contained defamatory information and made unauthorized use of Jenzabar trademarks, and which demanded that Long Bow cease and desist from such activities. Long Bow denies each and every remaining allegation in Paragraph 31.

32. Long Bow admits that Jenzabar sent a letter dated March 22, 2007, which demanded that Long Bow take various actions, and which referred to a letter dated September 22, 2006 from Joseph G. DiLorenzo. Long Bow denies each and every remaining allegation in Paragraph 32.

33. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 33.

34. Long Bow admits that the DiLorenzo letter stated, in part, that with respect to claims against Chai Ling and Robert Maginn personally, “subsequent and extensive discovery that was conducted demonstrated that the information provided to me by others that led to the allegations was not warranted and not supported by the evidence.” Long Bow denies each and every remaining allegation in Paragraph 34

35. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegation in Paragraph 35 that “DiLorenzo’s allegations that Chai and Maginn were involved in ‘unethical, inappropriate, and/or illegal actions’ are demonstrably false.” Long Bow denies each and every remaining allegation in Paragraph 35.

36. Long Bow admits that it continues to use the Jenzabar Marks as keywords for the Site. Long Bow denies each and every remaining allegation in Paragraph 36.

Count I (Business Defamation)

37. No response to Paragraph 37 is necessary because Count I has been dismissed.

38. No response to Paragraph 38 is necessary because Count I has been dismissed.

39. No response to Paragraph 39 is necessary because Count I has been dismissed.

40. No response to Paragraph 40 is necessary because Count I has been dismissed.

41. No response to Paragraph 41 is necessary because Count I has been dismissed.

42. No response to Paragraph 42 is necessary because Count I has been dismissed.

Count II (Defamation)

43. No response to Paragraph 43 is necessary because Count II has been dismissed.

44. No response to Paragraph 44 is necessary because Count II has been dismissed.

45. No response to Paragraph 45 is necessary because Count II has been dismissed.

46. No response to Paragraph 46 is necessary because Count II has been dismissed.

47. No response to Paragraph 47 is necessary because Count II has been dismissed.

48. No response to Paragraph 48 is necessary because Count II has been dismissed.

Count III (False Designation of Origin – 15 U.S.C. §§ 1114 and 1125(a))

49. Long Bow incorporates by reference its responses in the paragraphs above.

50. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 50.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

Count IV (Federal Trademark Dilution)

55. Long Bow incorporates by reference its responses in the paragraphs above.

56. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 56.

57. Long Bow admits that it has used and continues to use the Jenzabar Marks, but not as trademarks. As summarized in Long Bow's First Affirmative Defense, Long Bow's use of the Marks is not a trademark use. Long Bow does not use the Marks to indicate source or origin of any product, good or service. Instead, Long Bow uses the name "Jenzabar" as a keyword in order to refer to Jenzabar and to index and describe the contents of a webpage that reports information about Jenzabar. Long Bow denies each and every remaining allegation in Paragraph 57.

58. Denied.

59. Denied.

60. Denied.

Count V (Common Law Trademark Infringement)

61. Long Bow incorporates by reference its responses in the paragraphs above.

62. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 62.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

Count VI (Trademark Infringement Under State Law)

67. Long Bow incorporates by reference its responses in the paragraphs above.

68. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 68.

69. Denied.

70. Denied.

71. Denied.

Count VII (Trademark Dilution Under State Law)

72. Long Bow incorporates by reference its responses in the paragraphs above.

73. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 74.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

Count VIII (Violation of Mass. Gen. Law c. 93A)

78. Long Bow incorporates by reference its responses in the paragraphs above.

79. Long Bow lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 79.

80. Denied.

81. Denied.

AFFIRMATIVE DEFENSES

1. The claims are barred because Long Bow's use of the Marks is not a trademark use. Long Bow does not use the Marks to indicate source or origin of any product, good or service. Instead, Long Bow uses the name "Jenzabar" as a keyword in order to refer to Jenzabar and to index and describe the contents of a webpage that reports information about Jenzabar.

2. The claims are barred because Long Bow's use of the Marks is not a "use in commerce." The Site is an information source; it is not a commercial web page. The Site offers no products or services, proposes no commercial transactions, and contains no advertisements or other revenue-generating features. The Site reports information about Jenzabar. All the Marks do is refer to Jenzabar and help index and describe the content of the Site.

3. The claims are barred because Long Bow's use of the Marks is not "on or in connection with any goods or services." Long Bow does not affix the Marks to any goods or services or otherwise use the Marks in any respect in connection with any goods or services. Long Bow uses the Marks to index and describe the content of a web page that reports information about Jenzabar.

4. The claims are barred because Long Bow's use of the Marks does not cause consumer confusion. Long Bow does not compete with Jenzabar in any respect, and no reasonable person could believe any connection exists between Long Bow and Jenzabar. Long

Bow is a non-profit producer of documentary films; Jenzabar is a for-profit software company. They have no relevant similarities, and Long Bow is not aware of any evidence of actual confusion. Moreover, Long Bow's website makes it plain to all viewers that Long Bow has no connection with Jenzabar.

5. The claims are barred because Long Bow's use of the Marks does not cause dilution. Long Bow's use of the Marks to identify Jenzabar and to index and describe the content of a web page about Jenzabar does not lessen the capacity of the Marks to identify Jenzabar's goods and services; if anything, Long Bow's use of the Marks in this fashion enhances their capacity to identify Jenzabar's goods and services. Nor does Long Bow's use of the Marks as keywords cause tarnishment, because Long Bow does not use them to identify any goods or services, much less inferior goods or services. Moreover, since its founding, Jenzabar has used Chai Ling's involvement in the 1989 Tiananmen Square protests extensively for promotional and marketing purposes. Jenzabar therefore has chosen to associate itself – and its goods, services, and Marks – closely with Chai Ling's biography, especially her involvement in the protests. Jenzabar has exploited Chai Ling's biography for profit, apparently with Chai Ling's permission. But having done so for years, it is inextricably bound to all of the associations – both positive and negative – that Chai Ling's biography entails. Jenzabar has chosen to tie its corporate identity and reputation to Chai Ling, her public biography, and her public awards and recognition. But by the same token, Jenzabar also has chosen to associate itself with Chai Ling's public controversies and all public reporting about her, whether glowing or critical. Jenzabar has no basis to blame Long Bow for the negative consequences of that decision.

6. The claims are barred because Long Bow's use of the Marks is fair use. Long Bow has the right to use the name "Jenzabar" to refer to Jenzabar and to index and describe the contents of a web page that is about Jenzabar. Long Bow is not "diverting" or "confusing" internet users looking for Jenzabar's website or Jenzabar's products or services; if anything, Long Bow merely is attracting internet users who wish to view the information about Jenzabar that is reported on the Long Bow site. This use of the Marks by Long Bow is common and lawful. At least CNN (at <http://www.cnn.com/TECH/computing/9906/23/revolutionary.idg/>) and Forbes (at http://www.forbes.com/work/free_forbes/2003/0217/114.html) engage in the very same use of the Jenzabar name as a keyword for web pages that report information about Jenzabar.

7. The claims are barred because Long Bow's use of the Marks is in connection with criticism and commentary about Jenzabar and Chai Ling. According to Jenzabar, the Site presents articles that are critical of Chai Ling's "past, her political activism, and her business ventures," namely Jenzabar. The law plainly permits Long Bow to use the Jenzabar name in connection with criticism of or commentary about Jenzabar.

8. The claims are barred because Long Bow's alleged use of the Marks is in connection with news reporting or news commentary. Long Bow and the Site are entitled to the same protections afforded to other media entities, as the Site clearly provides news reporting and news commentary about Jenzabar and Chai Ling, among many other subjects. Long Bow's use of the Marks in connection with news reporting and commentary is lawful.

9. The claims are barred in whole or part because Long Bow's alleged use of the Marks is non-commercial. Long Bow does not use the Marks for commercial purposes. The Marks are not used in connection with any products or services offered by Long Bow, much less

to identify and promote such products or services. Long Bow does not use the Marks to propose any commercial transaction, and Long Bow does not derive any revenues or profits from its use of the Marks. Long Bow uses the Marks for descriptive, referential, nominative, and expressive purposes, not for commercial purposes.

10. The claims are barred in whole or part by the First Amendment. Jenzabar cannot use the Massachusetts courts and state and federal trademark law to infringe the freedoms of speech and the press that Long Bow exercises through its website. Long Bow's use of the Marks to refer to Jenzabar and to index and describe the contents of a webpage about Jenzabar are core First Amendment activities.

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

12. The claims are barred in whole or part by the doctrine of laches.

13. The claims are barred in whole or part by the doctrine of estoppel.

14. The claims are barred in whole or part by the doctrine of waiver.

15. The claims are barred in whole or part by the doctrine of unclean hands.

16. The claims are barred in whole or part by the applicable statutes of limitation.

17. If Jenzabar has suffered any injury, which Long Bow expressly denies, any such injury is not a trademark injury, but rather results from negative publicity, bad press, and other forms of criticism or commentary for which Long Bow is not responsible and, in any event, for which trademark law provides no relief.

18. If Jenzabar has suffered any damages, which Long Bow expressly denies, any such damages were caused by Jenzabar's own acts or omissions.

19. If Jenzabar has suffered any damages, which Long Bow expressly denies, Jenzabar has failed to act in a reasonable and timely matter to mitigate them.

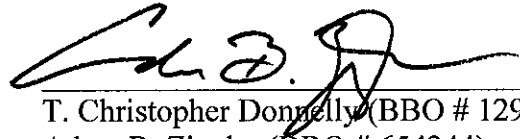
20. If Jenzabar has suffered any damages, which Long Bow expressly denies, Long Bow's conduct was not the proximate cause of Jenzabar's damages.

21. If Jenzabar has suffered any damages, which Long Bow expressly denies, any such damages were caused by someone other than Long Bow.

22. Long Bow hereby gives notice that it may rely on other defenses as they may become apparent or available during discovery. Long Bow accordingly reserves the right to assert any such additional defenses.

A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE

LONG BOW GROUP, INC.



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Dated: April 23, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail by hand

Date: April 23, 2009
