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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-10202 (ALG)
)	(Jointly Administered)
Debtors.)	
SHUTTERFLY, INC.,)	
)	
v.)	Adv. Proc. No. 13-01310 (ALG)
KODAK IMAGING NETWORK, INC. and)	
EASTMAN KODAK COMPANY,)	
Defendants.)	
)	

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO THE COMPLAINT
FOR DAMAGES AND INJUNCTIVE RELIEF FILED BY SHUTTERFLY, INC.**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors' corporate headquarters is: 343 State Street, Rochester, NY 14650.



Defendants Eastman Kodak Company (“EKC”) and Kodak Imaging Network, Inc. (“KIN”, and together with EKC, “Kodak”), by and through their attorneys, Sullivan & Cromwell LLP and Young Conaway Stargatt & Taylor, LLP, respectfully submit this Answer and Affirmative Defenses to the Complaint for Damages and Injunctive Relief Filed by Shutterfly, Inc. (“Plaintiff”). Allegations not expressly admitted are hereby denied.

NATURE OF THE ACTION

1. Paragraph 1 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak denies the allegations of the first sentence of paragraph 1, and avers that it entered into the Transfer Agreement between Kodak and Plaintiff, dated March 1, 2012 (and Amendment No. 1 to Transfer Agreement, dated March 30, 2012 (together, the “Transfer Agreement”)), and that the provisions of the Transfer Agreement speak for themselves. Kodak respectfully refers the Court to the Transfer Agreement for a complete and accurate statement of its contents.

2. Kodak admits that the Kodak Gallery business, which is now closed, among other things, allowed customers to share images on the Internet and create photo books for purchase on the Internet from Kodak. Kodak admits that the Kodak Gallery business allowed customers to order prints from mobile devices for pick-up at retail stores. Kodak avers that Plaintiff did not acquire the Kodak Gallery business in its entirety or any technology related to that business. Kodak lacks knowledge or information sufficient to form a belief as to whether the services previously provided by the Kodak Gallery business were similar to services provided by Plaintiff, and therefore denies this allegation.

3. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 3, and therefore denies them. The second and third sentence of paragraph 3 state legal conclusions to which no answer is required. To the extent an answer is required, Kodak denies the allegations in the second and third sentences of paragraph 3, and avers that the provisions of the Transfer Agreement speak for themselves. Kodak respectfully refers the Court to Section 5.6 of the Transfer Agreement for a complete and accurate statement of its contents.

4. The first and fourth sentences of paragraph 4 state legal conclusions to which no answer is required. To the extent an answer is required, Kodak denies the allegations in the first and fourth sentences of paragraph 4. Kodak denies the remaining allegations of paragraph 4 and avers that, since November 2011, EKC's Retail Systems Solutions business ("RSS") has operated a service marketed as the "My Kodak Moments App." Kodak avers that the service currently allows consumers, *inter alia*, to (i) create photo books from images posted on Facebook and purchase those photo books from EKC, and (ii) order prints of photos stored on their mobile devices for printing at EKC Picture Kiosks located at Target stores. Kodak further avers that the My Kodak Moments App, which was conceived in December 2010, was developed and brought to market entirely by RSS personnel, and operates on the same software and uses the same source code as RSS's Picture Kiosks. Kodak further avers that the My Kodak Moments App was publicly launched on November 15, 2011—four months before Kodak and Plaintiff entered into the Transfer Agreement—and that launch was accompanied by a high profile EKC marketing campaign designed to publicize the service.

5. The first sentence of paragraph 5 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak admits that prior to commencing the instant action, Plaintiff purported to put Kodak on notice of alleged violations of the Transfer Agreement and demanded that Kodak cease the activities that allegedly violate the Transfer Agreement. Kodak admits that it has denied that the My Kodak Moments App violates the Transfer Agreement and has refused to cease operation of the service. Kodak avers that Plaintiff first raised its assertions in an email to Kodak on July 24, 2012—more than eight months after RSS publicly launched the My Kodak Moments App and more than two months after the Court entered the sale order approving the Transfer Agreement—and that Kodak responded by letter dated August 13, 2012, rejecting Plaintiff’s assertions and stating that the My Kodak Moments App in no way violates the terms of the Transfer Agreement because, *inter alia*, the service is and has always been operated by and in furtherance of RSS, which is explicitly exempted from the non-compete provision in the Transfer Agreement. Kodak further avers that Plaintiff went silent for more than six months, doing nothing with respect to Kodak’s purported breach of the Transfer Agreement, until responding by letter dated February 19, 2013, demanding that Kodak voluntarily shut down the service within four days. The third sentence of paragraph 5 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak denies the allegations of the third sentence of paragraph 5.

PARTIES, JURISDICTION, AND VENUE

6. Kodak admits on information and belief the allegations of paragraph 6.
7. Kodak admits the allegation of paragraph 7.
8. Kodak admits the allegation of paragraph 8.

9. Paragraph 9 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak admits that this Court has jurisdiction over this adversary proceeding.

10. Paragraph 10 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak admits that venue is proper in this Court.

11. Paragraph 11 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak admits that this is a core proceeding. The second sentence of paragraph 11 does not contain allegations and no response is required.

GENERAL ALLEGATIONS

12. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, and therefore denies them.

13. Kodak admits the allegations of paragraph 13.

14. Kodak admits the allegations of paragraph 14.

15. Kodak admits the allegations of paragraph 15, and avers that the provisions of the Transfer Agreement speak for themselves. Kodak respectfully refers the Court to the Transfer Agreement for a complete and accurate statement of its contents.

16. Kodak admits the allegations of paragraph 16.

17. Kodak admits the allegations of paragraph 17.

18. Kodak admits the allegations of the first and second sentences of paragraph 18. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of paragraph 18, and therefore denies them. As to the remaining allegations of paragraph 18 (including footnote 1), Kodak avers that the provisions of

the Transfer Agreement speak for themselves, and respectfully refers the Court to the Transfer Agreement for a complete and accurate statement of its contents.

19. Kodak denies the allegations of paragraph 19, and avers that, since November 2011, RSS has operated a service marketed as the “My Kodak Moments App.” Kodak avers that the service currently allows consumers, *inter alia*, to (i) create photo books from images posted on Facebook and purchase those photo books from EKC, and (ii) order prints of photos stored on their mobile devices for printing at EKC Picture Kiosks located at Target stores.

20. Kodak denies the allegations of paragraph 20.

21. Kodak denies the allegations of the first sentence of paragraph 21. Kodak admits that Plaintiff has requested that Kodak cease alleged violations of the Transfer Agreement, and that Kodak has denied that operation of the My Kodak Moments App is prohibited under the Transfer Agreement.

COUNT I
(Breach of Contract)

22. Kodak repeats and incorporates by reference the answers provided to paragraphs 1 through 21 as if fully set forth herein.

23. Paragraph 23 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak admits that the Transfer Agreement is an enforceable contract between Kodak and Plaintiff.

24. Paragraph 24 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Kodak denies the allegations of paragraph 25.

26. Kodak denies the allegations of paragraph 26, and denies that Plaintiff is entitled to the requested relief.

COUNT II
(Injunction)

27. Kodak repeats and incorporates by reference the answers provided to paragraphs 1 through 26 as if fully set forth herein.

28. Paragraph 28 states legal conclusions to which no answer is required. To the extent an answer is required, Kodak denies the allegations of paragraph 28.

29. Kodak denies the allegations of paragraph 29.

30. Kodak denies the allegations of paragraph 30, and denies that Plaintiff is entitled to the requested relief. Kodak respectfully refers the Court to the Transfer Agreement for a complete and accurate statement of its contents.

ANSWER TO PRAYER FOR RELIEF

Kodak has not violated the Transfer Agreement and EKC's continued operation of the My Kodak Moments App will not violate the Transfer Agreement. Kodak denies that Plaintiff is entitled to any of the relief requested in its Prayer for Relief. The Prayer for Relief should be denied in its entirety, and Plaintiff's claims should be dismissed with prejudice.

AFFIRMATIVE DEFENSES

For its asserted affirmative and other defenses, Kodak does not assume the burden of proof where such burden is not legally imposed upon Kodak. Kodak asserts the following affirmative and other defenses and reserves the right to amend its answer to assert any other defense that facts developed during discovery may disclose.

FIRST AFFIRMATIVE DEFENSE – FAILURE TO STATE A CLAIM

Plaintiff's claims fail to state a claim upon which relief can be granted for at least the reason that Plaintiff fails to provide factual allegations to support the relief it seeks.

SECOND AFFIRMATIVE DEFENSE – FAILURE TO MITIGATE DAMAGES

Plaintiff's breach of contract claim for damages is barred in whole or in part by Plaintiff's failure to make reasonable efforts to minimize its damages.

THIRD AFFIRMATIVE DEFENSE – EQUITABLE BAR

Plaintiff's claim for injunctive relief is barred in whole or in part by equity, including the equitable doctrines of laches and equitable estoppel.

Dated: April 24, 2013
New York, New York

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