

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CONAN DOYLE ESTATE LTD.,

Plaintiff,

v.

NANCY SPRINGER, PENGUIN RANDOM
HOUSE LLC, LEGENDARY PICTURES
PRODUCTIONS, LLC, NETFLIX, INC.,
PCMA MANAGEMENT AND
PRODUCTIONS LLC, EH PRODUCTIONS
UK LTD., JACK THORNE, and HARRY
BRADBEER,

Defendants.

Case No. 1:20-cv-00610-KG-KK

FILM DEFENDANTS' ANSWER TO COMPLAINT

Defendants Legendary Pictures Productions, LLC (“Legendary”), Netflix, Inc. (“Netflix”), EH Productions UK Ltd. (“EH Productions”), PCMA Management and Productions LLC (“PCMA”), Jack Thorne, and Harry Bradbeer (collectively, the “Film Defendants”) answer the complaint of plaintiff Conan Doyle Estate Ltd. (the “Estate”) as follows:

PRELIMINARY STATEMENT

This case arises from the Estate’s well-known and long-established unlawful business practice of falsely claiming ownership over material that is in the public domain and demanding licensing fees to which it is not entitled for the use of such material. As the Seventh Circuit concluded years ago, the objective of this “business model” is “the hope that the ‘rational’ writer or publisher asked for the fee will pay it rather than incur a greater cost, in legal expenses, in challenging the legality of the demand.” *Klinger v. Conan Doyle Estate, Ltd.*, 761 F.3d 789, 792

(7th Cir. 2014). The Film Defendants – which created, produced, and will soon distribute the film *Enola Holmes* – now challenge the legality of the Estate’s demand.

INTRODUCTION

1. The Film Defendants deny the allegations in Paragraph 1. This action does not arise from the unauthorized copying of copyrighted expression, but instead from the Estate’s unlawful business practices.

2. The Film Defendants admit that Arthur Conan Doyle’s last ten stories about Sherlock Holmes were published between 1921 and 1927, and republished in the 1927 book *The Case-Book of Sherlock Holmes* (the “Case-Book Stories”). The Film Defendants admit that the Case-Book Stories would be entitled to 95 years of copyright protection in the United States if each of the stories were properly registered and renewed with the U.S. Copyright Office, which the Film Defendants deny. The Film Defendants further deny that the Case-Book Stories constitute “copyrighted stories” – in fact, at least four of the ten stories are in the public domain. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 2.

3. The Film Defendants admit that Conan Doyle created Sherlock Holmes and Dr. John Watson and that those characters first appeared in the 1887 novella *A Study in Scarlet*. The Film Defendants further agree that the world is free to use and adapt the public domain characters of Sherlock Holmes and Dr. John Watson. The Film Defendants lack sufficient knowledge or information to form a belief as to the deaths of Conan Doyle’s father and brother or the impact, if any, that World War I had on Conan Doyle or his writing. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 3.

4. The Film Defendants admit that they refused to pay the Estate to use a public domain character in a manner that does not infringe any rights belonging to the Estate. The Film Defendants further admit that they offered to mention the Estate in the credits of their film *Enola Holmes* (the “Film”) in an attempt to avoid baseless litigation. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 4.

PARTIES AND JURISDICTION

5. The Film Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5.

6. The Film Defendants admit that Nancy Springer is the author of *The Enola Holmes Mysteries* (the “Book Series”). The Film Defendants also admit that the Film is adapted from the first book in the Book Series, *The Case of the Missing Marquess*, that the Film includes the public domain character Sherlock Holmes, and that the Film will be released nationwide. The Film Defendants lack sufficient knowledge or information to form a belief as to Nancy Springer’s residence or where the Book Series has been distributed. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 6.

7. The Film Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7.

8. The Film Defendants admit that Legendary is an entertainment company headquartered in Los Angeles that is involved in the development and production of films for distribution in the United States and throughout the world. The Film Defendants admit that Legendary is one of the production entities involved with the Film, along with defendants EH Productions and PCMA. The Film Defendants admit that the Film will be distributed throughout

the United States by Netflix. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 8.

9. The Film Defendants admit that Netflix is a Delaware corporation that produces and distributes films. The Film Defendants further admit that Netflix acquired global distribution rights (excluding China) for the Film and will distribute the Film. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 9.

10. The Film Defendants admit that PCMA is a Georgia limited liability company. The Film Defendants admit that PCMA is one of the production entities involved with the Film, along with defendants Legendary and EH Productions. The Film Defendants admit that the Film will be distributed throughout the United States by Netflix. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 10.

11. The Film Defendants admit that EH Productions is a United Kingdom company. The Film Defendants admit that EH Productions is one of the production entities involved with the Film, along with defendants Legendary and PCMA. The Film Defendants deny that EH Productions has produced many films distributed in New Mexico. The Film Defendants admit that the Film will be distributed throughout the United States by Netflix. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 11.

12. The Film Defendants admit that Jack Thorne resides in London, England, and has written films and television episodes released in the United States. The Film Defendants admit that Mr. Thorne is the screenwriter of the Film. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 12.

13. The Film Defendants admit that Harry Bradbeer resides in London, England, and has directed, produced, and acted in television series released in the United States. The Film Defendants admit that Mr. Bradbeer directed the Film.

14. The Film Defendants deny the allegations in Paragraph 14.

15. The Film Defendants deny the allegations in Paragraph 15.

GENERAL ALLEGATIONS

16. The Film Defendants admit that Conan Doyle wrote sixty works featuring the characters of Sherlock Holmes and Dr. Watson, which were published between 1887 and 1927. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 16.

17. The Film Defendants deny the allegations in Paragraph 17.

18. The Film Defendants admit that the character of Sherlock Holmes is famous for his great powers of observation and logic. The Film Defendants admit that the excerpt quoted in Paragraph 18 is from “The Adventure of the Greek Interpreter” by Conan Doyle. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 18.

19. The Film Defendants admit that Dr. Watson was Sherlock Holmes’s closest companion and that Dr. Watson admired Holmes. The Film Defendants admit that the excerpts quoted in Paragraph 19 are from “The Man with the Twisted Lip” and “The Sign of Four.” Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 19.

20. The Film Defendants lack sufficient knowledge or information to form a belief as to the impact World War I had on Conan Doyle or his writing. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 20.

21. The Film Defendants deny the allegations in Paragraph 21.

22. The Film Defendants admit that Sherlock Holmes and Dr. Watson’s friendship is one of the most well known in modern literature. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 22.

23. The Film Defendants deny the allegations in Paragraph 23.

24. The Film Defendants admit that the line quoted in Paragraph 24 is from “The Adventure of the Blanched Soldier.” Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 24.

25. The Film Defendants admit that there are original elements in Conan Doyle’s works, but deny that the four examples in Paragraph 25 are protectable. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 25.

26. The Film Defendants admit that Nancy Springer wrote the Book Series and created the character of Enola Holmes. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 26.

27. The Film Defendants admit the allegations in Paragraph 27.

28. The Film Defendants deny the allegations in Paragraph 28.

29. The Film Defendants admit that Enola Holmes is the central character in the Book Series. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 29.

30. The Film Defendants deny that “The Adventure of the Three Garridebs” is copyrighted – it is actually in the public domain. The Film Defendants admit that the excerpt quoted in Paragraph 30 is from “The Adventure of the Three Garridebs.” Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 30.

31. The Film Defendants lack sufficient knowledge or information to form a belief as to the allegations in Paragraph 31.

32. The Film Defendants lack sufficient knowledge or information to form a belief as to the allegations in Paragraph 32.

33. The Film Defendants deny that Sherlock Holmes and Dr. Watson's friendship is original to Conan Doyle's final ten stories. Except as otherwise answered, the Film Defendants lack sufficient knowledge or information to form a belief as to the allegations in Paragraph 33.

34. The Film Defendants deny the allegations in Paragraph 34.

35. The Film Defendants lack sufficient knowledge or information to form a belief as to the allegations in Paragraph 35.

36. Legendary, EH Productions, and PCMA admit that they are production entities involved with the Film. Netflix admits that it plans to release the Film. Mr. Thorne admits that he wrote the screenplay for the Film. Mr. Bradbeer admits that he directed the Film. The Film Defendants admit that the Film is adapted from Ms. Springer's book *The Case of the Missing Marquess*. The Film Defendants admit that Netflix issued a press release on April 21, 2020, which stated: "The film is based on Nancy Springer's Edgar Award-nominated book series, *The Enola Holmes Mysteries*." Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 36.

37. The Film Defendants deny the allegations in Paragraph 37.

38. The Film Defendants admit that the works of Conan Doyle are generally accessible. The Film Defendants lack sufficient knowledge or information to form a belief as to

the contents of every work featuring Sherlock Holmes. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 38.

39. The Film Defendants lack sufficient knowledge or information to form a belief as to the allegations in Paragraph 39.

40. The Film Defendants deny the allegations in Paragraph 40.

41. The Film Defendants deny the allegations in Paragraph 41.

42. The Film Defendants lack sufficient knowledge or information to form a belief as to the allegations in Paragraph 42.

43. To the extent the allegations in Paragraph 43 are legal arguments or conclusions, they require no answer. To the extent that an answer may be required, the Film Defendants deny the allegations in Paragraph 43.

44. To the extent the allegations in Paragraph 44 are legal arguments or conclusions, they require no answer. To the extent that an answer may be required, the Film Defendants deny the allegations in Paragraph 44.

45. The Film Defendants admit that they did not request permission from the Estate in connection with the Film because the Film Defendants did not need any such permission. The Film Defendants lack sufficient knowledge or information to form a belief as to whether other defendants sought permission from the Estate. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 45.

46. The Film Defendants admit that the Estate demanded licensing fees from the Film Defendants even though the Film does not use any copyrighted material that belongs to the Estate. The Film Defendants lack sufficient knowledge or information to form a belief as to

communications between the Estate and other defendants. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 46.

47. The Film Defendants admit that the Estate falsely contended that it owned certain character attributes relating to Sherlock Holmes. The Film Defendants admit that they offered to mention the Estate in the Film's credits in an attempt to avoid baseless litigation. The Film Defendants admit that they or their affiliates own copyrights and, when appropriate, enforce such copyrights. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 47.

48. To the extent the allegations in Paragraph 48 are legal arguments or conclusions, they require no answer. To the extent that an answer may be required, the Film Defendants deny the allegations in Paragraph 48.

COUNT I
COPYRIGHT INFRINGEMENT

49. The Film Defendants incorporate and reallege their responses set forth in the preceding paragraphs of this answer.

50. The Film Defendants deny the allegations in Paragraph 50.

51. The Film Defendants deny the allegations in Paragraph 51.

52. The Film Defendants deny the allegations in Paragraph 52.

53. The Film Defendants deny the allegations in Paragraph 53.

54. The Film Defendants deny the allegations in Paragraph 54.

55. The Film Defendants admit that they did not have permission from the Estate in connection with the Film because the Estate's permission was not required. Except as otherwise answered, the Film Defendants deny the allegations in Paragraph 55.

- 56. The Film Defendants deny the allegations in Paragraph 56.
- 57. The Film Defendants deny the allegations in Paragraph 57.
- 58. The Film Defendants deny the allegations in Paragraph 58.
- 59. The Film Defendants deny the allegations in Paragraph 59.

COUNT II
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

60. The Film Defendants incorporate and reallege their responses set forth in the preceding paragraphs of this answer.

- 61. The Film Defendants deny the allegations in Paragraph 61.
- 62. The Film Defendants deny the allegations in Paragraph 62.
- 63. The Film Defendants deny the allegations in Paragraph 63.
- 64. The Film Defendants deny the allegations in Paragraph 64.
- 65. The Film Defendants deny the allegations in Paragraph 65.

JURY DEMAND

The Film Defendants demand a jury trial.

PRAYER FOR RELIEF

The Estate's prayer for relief does not require a response. To the extent that any response is required, the Film Defendants deny that the Estate is entitled to any of the relief it seeks.

ADDITIONAL DEFENSES

The Film Defendants assert the following additional and affirmative defenses in response to the allegations in the complaint. The Film Defendants reserve the right to amend this answer with additional defenses as further information is obtained. By alleging these additional

defenses, the Film Defendants are not in any way agreeing or conceding that they have the burden of proof or persuasion on any of these issues.

First Additional Defense

1. The Estate's complaint and each of its causes of action fail to state a claim upon which relief can be granted.

Second Additional Defense

2. The Estate's claims are barred, in whole or in part, because venue in the District of New Mexico is improper or inconvenient.

Third Additional Defense

3. The Estate's claims are barred, in whole or in part, because the Estate does not own the allegedly infringed works and/or elements.

Fourth Additional Defense

4. The Estate's claims are barred, in whole or in part, because the allegedly infringed works and/or elements are in the public domain.

Fifth Additional Defense

5. The Estate's claims are barred, in whole or in part, because the Film does not contain any protectable expression owned by the Estate.

Sixth Additional Defense

6. The Estate's claims are barred, in whole or in part, because the allegedly infringed elements are not protectable under copyright law.

Seventh Additional Defense

7. The Estate's claims are barred, in whole or in part, by the doctrine of copyright misuse.

Eighth Additional Defense

8. The Estate's trademark claim is a disguised copyright claim barred by *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003).

Ninth Additional Defense

9. The Estate's trademark claim fails because the Estate does not own valid and protectable trademarks.

Tenth Additional Defense

10. The Estate's trademark claim fails because there is no likelihood of confusion between the Film and the Estate's purported marks.

Eleventh Additional Defense

11. The Estate's trademark claim fails, in whole or in part, because the Film does not use the Estate's purported trademarks in any infringing manner.

Twelfth Additional Defense

12. The Estate's trademark claim fails because holding the Film Defendants liable in this instance would violate the First Amendment to the United States Constitution.

Thirteenth Additional Defense

13. The Estate's complaint is barred, in whole or in part, by the equitable doctrines of waiver, estoppel, and laches.

Fourteenth Additional Defense

14. The Estate's claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

Fifteenth Additional Defense

15. The Estate's complaint is barred, in whole or in part, because the Film Defendants have not acted with the requisite degree of knowledge, intent, or fault.

Sixteenth Additional Defense

16. The Estate's complaint, to the extent that it seeks injunctive relief, is barred because the injury or damage allegedly suffered by the Estate, if any, would be adequately compensated in an action at law for damages, and therefore the Estate is not entitled to seek equitable relief.

Seventeenth Additional Defense

17. The Estate's complaint, to the extent that it seeks injunctive relief, is barred because an injunction would be an unconstitutional prior restraint.

Eighteenth Additional Defense

18. The Estate's complaint, to the extent that it seeks punitive damages against the Film Defendants, violates the Film Defendants' rights under the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 7 and Article IV, § 16 of the California Constitution, and Article II, § 18 of the New Mexico Constitution.

The Film Defendants pray for relief as follows:

1. A judgment in favor of the Film Defendants denying the Estate all requested relief against them and dismissing the complaint with prejudice;
2. That the Film Defendants be awarded their costs of suit, including reasonable attorneys' fees; and
3. That the Court award the Film Defendants such other and further relief as the Court deems just and proper.

Date: August 14, 2020

DAVIS WRIGHT TREMAINE LLP

By: /s/ Nicolas A. Jampol
Nicolas A. Jampol (CA Bar No. 244867)
Cydney Swofford Freeman (CA Bar No. 315766)
Camila Pedraza (CA Bar No. 329984)
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Email: nicolasjampol@dwt.com
cydneyfreeman@dwt.com
camilapedraza@dwt.com

RODEY, DICKASON, SLOAN, AKIN &
ROBB, P.A.
Charles K. Purcell
Post Office Box 1888
Albuquerque, NM 87103
Tel: (505) 765-5900
Fax: (505) 768-7395
Email: kpurcell@rodey.com

*Attorneys for Defendants Legendary Pictures
Productions, LLC, Netflix, Inc., PCMA
Management and Productions LLC, EH
Productions UK Ltd., Jack Thorne, and Harry
Bradbeer*