**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 09-61515-CIV-COOKE/BANDSTRA**

ASPEX EYEWEAR, INC. and
CONTOUR OPTIK, INC.,

Plaintiffs,

vs.

HARDY LIFE, LLC, MARCHON EYEWEAR, INC., NIKE, INC., REVOLUTION EYEWEAR, INC., and GARY MARTIN ZELMAN, an individual,

Defendants.
_____/

**PLAINTIFFS' ANSWER TO COUNTERCLAIMS OF DEFENDANTS REVOLUTION EYEWEAR, INC. AND GARY MARTIN ZELMAN**

Plaintiffs Aspex Eyewear, Inc. and Contour Optik, Inc. (collectively, "Plaintiffs"), by and through counsel, hereby Answer to the Counterclaims (the "Revolution Counterclaims") asserted by defendants Revolution Eyewear, Inc. ("Revolution"), and Gary Martin Zelman ("Zelman"), ("Counterclaimants") as follows:

1. Plaintiffs admit that Counterclaimants' the Revolution Counterclaims purport to arise under the patent laws of the United states , including 35 U.S.C., 28 U.S.C. §§ 2201 and 2202, and Federal Rule Of Civil Procedure 13. The remaining allegations are denied.

**THE PARTIES**

2. Plaintiffs admit to the allegations in paragraph 2 of the Revolution Counterclaims as representing Counterclaimants' admissions to paragraphs 10 and 11 of Complaint.

3. Plaintiffs admit to the allegations in paragraph 3 of the Revolution Counterclaims as representing Counterclaimants' admissions to paragraph 5 of Complaint.

4. Plaintiffs admit to the allegations in paragraph 4 of the Revolution Counterclaims as representing Counterclaimants' admissions to paragraph 6 of Complaint.

5. Plaintiffs admit to the allegations in paragraph 5 of the Revolution Counterclaims as representing Counterclaimants' admissions to paragraph 14 of Complaint.

**JURISDICTION AND VENUE**

6. Plaintiffs admit that 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202 grant district courts powers to declare a judgment in a patent case. The remaining allegations are denied.

. 7. Plaintiff admit the allegations in paragraph 7 of the Revolution Counterclaims, to the extent that personal jurisdiction over Plaintiffs is premised upon their filing of suit in this judicial district.

8. Plaintiff admit the allegations in paragraph 8 of the Revolution Counterclaims, to the extent that venue over the Revolution Counterclaims is premised upon Plaintiffs' filing of suit in this judicial district.

**FIRST COUNTERCLAIM -- DECLARATION OF NON-INFRINGEMENT**

9. Plaintiffs repeat and reallege their responses to each of the preceding paragraphs as if fully set forth herein.

10. Plaintiffs deny that Complaint alleges infringement of "the '545 patent" since, in paragraph 12 of Counterclaimants' answer, "the '545 patent" is identified as RE37,545. As detailed in paragraph 13 of Complaint, Plaintiffs asserted RE37,545 F1 patent in this action. Plaintiffs admit that, in paragraphs 20-24 and 35-44 of Complaint, they alleged an infringement of RE37,545 F1 patent by Counterclaimants. The remaining allegations are denied.

11. Plaintiffs deny the allegations in paragraph 11 of the Revolution Counterclaims.

**SECOND COUNTERCLAIM -- DECLARATION OF INVALIDITY**

12. Plaintiffs repeat and reallege their responses to each of the preceding paragraphs as if fully set forth herein.

13. Plaintiffs deny the allegations in paragraph 13 of the Revolution Counterclaims.

14. Plaintiffs deny the allegations in paragraph 14 of the Revolution Counterclaims.

WHEREFORE, Plaintiffs request that this Court grant Judgment in their favor, and award them the following relief:

1. For a judgment against Revolution and Zelman and in favor of Plaintiffs on the Revolution Counterclaims.

2. Grant all of the relief sought by Plaintiffs in the Complaint, including such other and further relief as the equity of the case may require and as this Court may deem just and proper, together with costs and disbursements of this action, including attorneys' fees.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of November 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/EFC. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/EFC or in some other manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Jacqueline Becerra
Jacqueline Becerra

SERVICE LIST
Aspex Eyewear, Inc., et al., v. Hardy Life, LLC, et al.,
Case No. 09-61515-CIV-Cooke/ Bandstra
United States District Court, Southern District of Florida

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