

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

HERMÈS INTERNATIONAL and
HERMÈS OF PARIS, INC.,

Plaintiffs,

v.

MASON ROTHSCHILD,

Defendant.

No. 22-cv-00384-JSR

ECF Case

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT
MASON ROTHSCHILD**

Defendant Mason Rothschild (“Rothschild”), by and through his attorneys, Lex Lumina PLLC, hereby answers the Amended Complaint of Plaintiffs Hermès International and Hermès of Paris, Inc. (“Hermès”) in this action, dated March 2, 2022, as follows:

PARTIES

1. Rothschild admits that he was quoted in a publicly available news story as described in the Amended Complaint. Rothschild admits that his legal name is Sonny Alexander Estival. Rothschild denies that he is a “digital speculator” who is “seeking to get rich quick.” Rothschild denies the remainder of the allegations in paragraph 1.

2. Rothschild admits that the term “MetaBirkins” adds “meta” to “birkins.” Rothschild denies the remainder of the allegations in paragraph 2.

3. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and on that basis denies those allegations in full.

4. Rothschild admits that he made the public statements described in the paragraph, and also that NFTs associated with the *MetaBirkins* artworks may be bought and sold. Rothschild denies the remainder of the allegations in paragraph 4.

5. Rothschild denies the allegations in paragraph 5.

6. Rothschild admits that he has used the term “MetaBirkins” in association with accounts on Twitter, Instagram, and Discord, and with the Metabirkins.com website. Rothschild denies the remainder of the allegations in paragraph 6.

7. Rothschild admits that he sponsored a “Build-a-MetaBirkin” contest. Rothschild denies the remainder of the allegations in paragraph 7.

8. Rothschild denies the allegations in paragraph 8.

9. Rothschild admits that the digital images associated with NFTs “reflect artistic creativity.” Rothschild denies the remainder of the allegations in paragraph 9.

10. Rothschild denies the allegations in paragraph 10.

11. Rothschild denies the allegations in paragraph 11.

12. Rothschild admits that he made the public statements described in the paragraph. Rothschild denies the remainder of the allegations in paragraph 12.

13. Rothschild admits that Hermès sued him on January 14, 2022. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 respecting communications between Hermès and third parties and on that basis denies those allegations in full. Rothschild denies the remainder of the allegations in paragraph 13.

14. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 respecting Hermès’ activities or plans concerning NFTs, or as to consumers’ understanding of the extent to which luxury brands participate in the NFT space, and on that basis denies those allegations in full. Rothschild denies the remainder of the allegations in paragraph 14.

15. Rothschild denies the allegations in paragraph 15.

JURISDICTION AND VENUE

16. Paragraph 16 asserts conclusions of law as to which no responsive pleading is required.

17. Paragraph 17 asserts conclusions of law as to which no responsive pleading is required.

18. Paragraph 18 asserts conclusions of law as to which no responsive pleading is required.

19. Paragraph 19 asserts conclusions of law as to which no responsive pleading is required. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 respecting the activities of consumers within the State and City of New York, and on that basis denies those allegations in full. Rothschild denies the remaining allegations in paragraph 19.

20. Rothschild denies the allegations in paragraph 20.

21. Paragraph 21 asserts conclusions of law as to which no responsive pleading is required. To the extent a response is necessary Rothschild does not contest that venue is proper in this judicial district.

THE PARTIES

22. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and on that basis denies those allegations in full.

23. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and on that basis denies those allegations in full.

24. Rothschild admits that his legal name is Sonny Alexander Estival, that he lives in Los Angeles, CA, and that he is the owner and operator of the website at www.metabirkins.com.

Rothschild denies the remaining allegations in paragraph 24.

25. Rothschild admits that he is associated with Terminal 27. Rothschild denies the remaining allegations in paragraph 25.

26. Rothschild denies the allegations in paragraph 26.

FACTUAL ALLEGATIONS

27. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and on that basis denies those allegations in full.

28. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and on that basis denies those allegations in full.

29. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and on that basis denies those allegations in full.

30. Paragraph 30 asserts conclusions of law as to which no responsive pleading is required. To the extent any response is required, Rothschild does not contest that Hermès has registered the trademarks that it references in this paragraph.

31. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and on that basis denies those allegations in full.

32. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and on that basis denies those allegations in full.

33. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 and on that basis denies those allegations in full.

34. Paragraph 34 asserts conclusions of law as to which no responsive pleading is required. To the extent any response is required, Rothschild does not contest that Hermès has registered the trademarks that it references in this paragraph.

35. Paragraph 35 asserts conclusions of law as to which no responsive pleading is required. To the extent any response is required, Rothschild does not contest that Hermès has registered the trademarks that it references in this paragraph.

36. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 and on that basis denies those allegations in full.

37. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and on that basis denies those allegations in full.

38. Rothschild admits that he made the public statements described in the paragraph. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 38 and on that basis denies those allegations in full.

39. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and on that basis denies those allegations in full.

40. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and on that basis denies those allegations in full.

41. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and on that basis denies those allegations in full.

42. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and on that basis denies those allegations in full.

43. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 and on that basis denies those allegations in full.

44. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 and on that basis denies those allegations in full.

45. Rothschild lacks knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph 45 and on that basis denies those allegations in full.

46. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and on that basis denies those allegations in full.

47. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 and on that basis denies those allegations in full.

48. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and on that basis denies those allegations in full.

49. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and on that basis denies those allegations in full.

50. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and on that basis denies those allegations in full.

51. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and on that basis denies those allegations in full.

52. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and on that basis denies those allegations in full.

53. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and on that basis denies those allegations in full.

54. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 and on that basis denies those allegations in full.

55. Paragraph 55 asserts conclusions of law as to which no responsive pleading is required. To the extent any response is required, Rothschild does not contest that Hermès has registered the trademarks that it references in this paragraph.

56. Paragraph 56 asserts conclusions of law as to which no responsive pleading is

required. To the extent any response is required, Rothschild does not contest that Hermès has registered the trademarks that it references in this paragraph.

57. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 and on that basis denies those allegations in full.

58. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 and on that basis denies those allegations in full.

59. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 and on that basis denies those allegations in full.

60. Rothschild admits that NFTs, or non-fungible tokens, are digital tokens that exist on a blockchain. Rothschild denies the remainder of the allegations in paragraph 60.

61. Rothschild admits that many NFTs are associated with the Ethereum blockchain. Rothschild denies the remainder of the allegations in paragraph 61.

62. Rothschild admits that digital media and NFTs are generally stored separately. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 62 and on that basis denies those allegations in full.

63. Rothschild lacks knowledge or information sufficient to form a belief as to whether the NYSE is taking steps to establish an NFT trading platform, or whether listings on marketplaces like OpenSea are “just like” the stock of a company listed on a stock exchange. Rothschild denies the remainder of the allegations in paragraph 63.

64. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and on that basis denies those allegations in full.

65. Rothschild admits that creators can earn money on both initial and subsequent sales of artworks associated with NFTs. Rothschild lacks knowledge or information sufficient to

form a belief as to the truth of the remainder of the allegations in paragraph 65 and on that basis denies those allegations in full.

66. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 and on that basis denies those allegations in full.

67. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 and on that basis denies those allegations in full.

68. Rothschild admits that he made the public statements described in the paragraph. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 68 and on that basis denies those allegations in full.

69. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 and on that basis denies those allegations in full.

70. Rothschild admits that he made the public statements described in the paragraph. Rothschild denies the remainder of the allegations in paragraph 70.

71. Rothschild admits that Figure 4 contains illustrations of the Baby Birkin artwork. Rothschild denies the remainder of the allegations in paragraph 71.

72. Rothschild admits that he sold a digital artwork titled *Baby Birkin*, and that he employed an NFT as a certificate of ownership of that artwork. Rothschild denies the allegations in paragraph 72.

73. Rothschild admits that he knew of the existence of the Birkin handbag. Rothschild lacks knowledge or information sufficient to form a belief as to whether Birkins enjoy a “famous” status among consumers and on that basis denies that allegation and the remainder of the allegations in paragraph 73 paragraph.

74. Rothschild admits that he made the public statements described in the paragraph.

75. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 and on that basis denies those allegations in full.

76. Rothschild admits that he made the public statements described in the paragraph. Rothschild lacks knowledge or information sufficient to form a belief as to whether Birkins enjoy a “famous” status among consumers and on that basis denies that allegation. Rothschild denies the remainder of the allegations in paragraph 76.

77. Rothschild admits that he made the public statements described in the paragraph. Rothschild denies the remainder of the allegations in paragraph 77.

78. Rothschild denies the allegations in paragraph 78.

79. Rothschild admits that Figure 5 shows several of Rothschild’s *MetaBirkins* artworks. Rothschild denies the remainder of the allegations in paragraph 79.

80. Rothschild denies the allegations in paragraph 80.

81. Rothschild denies the allegations in paragraph 81.

82. Rothschild admits that he controls the Twitter account from which the tweet depicted in Exhibit AA originated. Rothschild denies the remainder of the allegations in paragraph 82.

83. Rothschild admits that he controls the Instagram account with the handle @MetaBirkins, and that paragraph 83 depicts a screenshot from that account. Rothschild denies the remainder of the allegations in paragraph 83.

84. Rothschild denies the allegations in paragraph 84, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

85. Rothschild admits that he posted images to Instagram on November 18, 2021, and that the post included the hashtag #MetaBirkins. Rothschild denies the remaining allegations in

paragraph 85.

86. Rothschild denies the allegations in paragraph 86; the Instagram post mentioned in the paragraph makes clear that the creator is Mason Rothschild.

87. Rothschild admits that paragraph 87 depicts a screenshot from the @MetaBirkins Twitter account. Rothschild denies the allegations in paragraph 87.

88. Rothschild denies the allegations in paragraph 88, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

89. Rothschild denies the allegations in paragraph 89, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

90. Rothschild admits the allegations in paragraph 90, but denies that the domain is infringing.

91. Rothschild denies the allegations in paragraph 91, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

92. Rothschild denies the allegations in paragraph 92.

93. Rothschild denies the allegations in paragraph 93.

94. Rothschild admits that he made the public statements described in the paragraph, and that paragraph 94 depicts a screenshot from the MetaBirkins website. Rothschild denies the remainder of the allegations in paragraph 94.

95. Rothschild denies the allegations in paragraph 95, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks and that paragraph 95 depicts a screenshot from the MetaBirkins website.

96. Rothschild denies the allegations in paragraph 96, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

97. Rothschild denies the allegations in paragraph 97, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

98. Rothschild denies the allegations in paragraph 98, except that Rothschild admits that he made the public statements described in the paragraph and that he uses the word “Birkin” descriptively in the titles of his artworks.

99. Rothschild admits that he made the public statements described in the paragraph. Rothschild denies the remainder of the allegations in paragraph 99, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

100. Rothschild denies the allegations in paragraph 100.

101. Rothschild admits that paragraph 101 depicts a screenshot from the OpenSea website. Rothschild denies the remainder of the allegations in paragraph 101.

102. Rothschild denies the allegations in paragraph 102.

103. Rothschild denies the allegations in paragraph 103.

104. Rothschild admits that paragraph 104 depicts a screenshot from the MetaBirkins website. Rothschild denies the remainder of the allegations in paragraph 104.

105. Rothschild denies the allegations in paragraph 105.

106. Rothschild denies the allegations in paragraph 106; all channels in which Rothschild has discussed his *MetaBirkins* artworks have made clear that Mason Rothschild is the creator of those artworks.

107. Rothschild denies the allegations in paragraph 107.

108. Rothschild admits that he made the public statements described in the paragraph. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 108 and on that basis denies those allegations in full.

109. Rothschild denies the allegations in paragraph 109.

110. Rothschild admits that he made the public statements described in the paragraph.

111. Rothschild denies the allegations in paragraph 111.

112. Rothschild admits that the first *MetaBirkins* artwork and associated NFT sold on the date specified in paragraph 112 for the amount specified. Rothschild denies the remainder of the allegations in paragraph 112.

113. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 113 and on that basis denies those allegations in full.

114. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 114 and on that basis denies those allegations in full.

115. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 115 and on that basis denies those allegations in full.

116. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 116 and on that basis denies those allegations in full.

117. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 117 and on that basis denies those allegations in full.

118. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 118 and on that basis denies those allegations in full.

119. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 119 and on that basis denies those allegations in full.

120. Rothschild admits that *MetaBirkins* artworks and associated NFTs sold on the dates and in the amounts specified in paragraph 120 for the amount specified. Rothschild denies the remainder of the allegations in paragraph 120.

121. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 121 and on that basis denies those allegations in full.

122. Rothschild admits that, on the date specified in paragraph 122, OpenSea removed from its website auctions for *MetaBirkins* artworks and associated NFTs. Rothschild denies the remainder of the allegations of paragraph 122.

123. Rothschild admits that paragraph 123 depicts a screenshot from the MetaBirkins website. Rothschild denies the remainder of the allegations of paragraph 123.

124. Rothschild denies the allegations of paragraph 124.

125. Rothschild admits that paragraph 125 depicts a screenshot from the Rarible website. Rothschild denies the remainder of the allegations of paragraph 125, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

126. Rothschild denies the allegations of paragraph 126, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

127. Rothschild denies the allegations of paragraph 127.

128. Rothschild denies the allegations of paragraph 128.

129. Rothschild admits that he made the public statements described in the paragraph. Rothschild denies the remainder of the allegations in paragraph 129, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

130. Rothschild admits that paragraph 130 depicts a screenshot from the LooksRare website. Rothschild denies the remainder of the allegations of paragraph 130, except that Rothschild admits that he uses the word “Birkin” descriptively in the titles of his artworks.

131. Rothschild admits that paragraph 131 depicts a screenshot from the Zora website. Rothschild denies the remainder of the allegations of paragraph 131, except that Rothschild

admits that he uses the word “Birkin” descriptively in the titles of his artworks.

132. Rothschild denies the allegations of paragraph 132.

133. Rothschild admits that paragraph 133 depicts a screenshot from the MetaBirkins website. Rothschild denies the remainder of the allegations of paragraph 133.

134. Rothschild admits that he conducted a “Build a MetaBirkin” contest on Discord. He denies the remainder of the allegations in paragraph 134.

135. Rothschild denies the allegations in paragraph 135.

136. Rothschild denies the allegations in paragraph 136; except that Rothschild admits that he promoted his “I Like You You’re Weird” artworks on his Discord channel.

137. Rothschild admits that he co-created the “I Like You You’re Weird” artworks with Amber Park. Rothschild denies the remainder of the allegations in paragraph 137.

138. Rothschild admits the allegations in paragraph 138, which refers to *MetaBirkins* images—i.e., *MetaBirkins* artworks.

139. Rothschild admits the allegations in paragraph 130 insofar as they refer to *MetaBirkins* images—i.e., *MetaBirkins* artworks. Rothschild denies the remainder of the allegations in paragraph 139.

140. Rothschild admits that *MetaBirkins* images—i.e., *MetaBirkins* artworks—were posted on the dates specified in the paragraph. Rothschild denies the remainder of the allegations in paragraph 140.

141. Rothschild denies the allegations in paragraph 141.

142. Rothschild denies the allegations in paragraph 142.

143. Rothschild denies the allegations in paragraph 143.

144. Rothschild denies the allegations in paragraph 144.

145. Rothschild denies the allegations in paragraph 145.

146. Rothschild denies the allegations in paragraph 146.

147. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 147 and on that basis denies those allegations in full.

148. Rothschild denies the allegations in paragraph 148.

149.

Rothschild denies the allegations in paragraph 149.

**FIRST CAUSE OF ACTION
TRADEMARK INFRINGEMENT
15 U.S.C. § 1114**

150. Rothschild repeats and realleges each and every response to Paragraphs 1-149 above as if fully set forth herein.

151. Rothschild denies the allegations in paragraph 151.

152. Rothschild denies the allegations in paragraph 152.

153. Rothschild denies the allegations in paragraph 153.

154. Rothschild denies the allegations in paragraph 154.

155. Rothschild denies the allegations in paragraph 155.

156. Rothschild denies the allegations in paragraph 156.

157. Rothschild denies the allegations in paragraph 157.

158. Rothschild denies the allegations in paragraph 158.

159. Rothschild denies the allegations in paragraph 159.

160. Rothschild denies the allegations in paragraph 160.

161. Rothschild denies the allegations in paragraph 161.

162. Rothschild denies the allegations in paragraph 162.

163. Rothschild denies the allegations in paragraph 163.

**SECOND CAUSE OF ACTION
FALSE DESIGNATIONS OF ORIGIN,
FALSE DESCRIPTIONS AND REPRESENTATIONS
15 U.S.C. § 1125(a)**

164. Rothschild repeats and realleges each and every response to Paragraphs 1-163 above as if fully set forth herein.

165. Rothschild denies the allegations in paragraph 165.

166. Rothschild denies the allegations in paragraph 166.

167. Rothschild denies the allegations in paragraph 167.

168. Rothschild denies the allegations in paragraph 168.

169. Rothschild denies the allegations in paragraph 169.

170. Rothschild denies the allegations in paragraph 170.

171. Rothschild denies the allegations in paragraph 171.

172. Rothschild denies the allegations in paragraph 172.

**THIRD CAUSE OF ACTION
FEDERAL TRADEMARK DILUTION
15 U.S.C. § 1125(c)**

173. Rothschild repeats and realleges each and every response to Paragraphs 1-172 above as if fully set forth herein.

174. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 174 and on that basis denies those allegations in full.

175. Rothschild denies the allegations in paragraph 175.

176. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 176 and on that basis denies those allegations in full.

177. Rothschild lacks knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph 177 and on that basis denies those allegations in full.

178. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 178 and on that basis denies those allegations in full.

179. Rothschild denies the allegations in paragraph 179.

180. Rothschild denies the allegations in paragraph 180.

181. Rothschild denies the allegations in paragraph 181.

182. Rothschild denies the allegations in paragraph 182.

183. Rothschild denies the allegations in paragraph 183.

**FOURTH CAUSE OF ACTION
CYBERSQUATTING UNDER THE ANTI-CYBERSQUATTING CONSUMER
PROTECTION ACT
15 U.S.C. § 1125(d)**

184. Rothschild repeats and realleges each and every response to Paragraphs 1-183 above as if fully set forth herein.

185. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 185 and on that basis denies those allegations in full.

186. Rothschild denies the allegations in paragraph 186.

187. Rothschild denies the allegations in paragraph 187.

188. Rothschild denies the allegations in paragraph 188.

189. Rothschild denies the allegations in paragraph 189.

190. Rothschild denies the allegations in paragraph 190.

191. Rothschild denies the allegations in paragraph 191.

192. Rothschild denies the allegations in paragraph 192.

193. Rothschild denies the allegations in paragraph 193.

**FIFTH CAUSE OF ACTION
INJURY TO BUSINESS REPUTATION AND DILUTION
NEW YORK GENERAL BUSINESS LAW § 360-1**

194. Rothschild repeats and realleges each and every response to Paragraphs 1-193 above as if fully set forth herein.

195. Rothschild perceived there no be no allegation in paragraph 195 for it to deny; to the extent that the paragraph is understood to allege that Rothschild has violated New York General Business Law § 360-1, Rothschild denies that allegation.

196. Rothschild denies the allegations in paragraph 196.

197. Rothschild denies the allegations in paragraph 197.

198. Rothschild denies the allegations in paragraph 198.

199. Rothschild denies the allegations in paragraph 199.

200. Rothschild denies the allegations in paragraph 200.

**SIXTH CAUSE OF ACTION
COMMON LAW TRADEMARK INFRINGEMENT**

201. Rothschild repeats and realleges each and every response to Paragraphs 1-200 above as if fully set forth herein.

202. Rothschild denies the allegations in paragraph 202.

203. Rothschild denies the allegations in paragraph 203.

204. Rothschild denies the allegations in paragraph 204.

205. Rothschild denies the allegations in paragraph 205.

206. Rothschild denies the allegations in paragraph 206.

207. Rothschild denies the allegations in paragraph 207.

**SEVENTH CAUSE OF ACTION
MISAPPROPRIATION AND UNFAIR COMPETITION
UNDER NEW YORK COMMON LAW**

208. Rothschild repeats and realleges each and every response to Paragraphs 1-207 above as if fully set forth herein.

209. Rothschild lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 209 and on that basis denies those allegations in full.

210. Rothschild denies the allegations in paragraph 210.

211. Rothschild denies the allegations in paragraph 211.

212. Rothschild denies the allegations in paragraph 212.

GENERAL DENIAL

Each numbered paragraph in this Answer responds to the identically numbered paragraph in Hermès' Amended Complaint. Rothschild denies all allegations, declarations, claims, or assertions in the Amended Complaint that are not specifically admitted in this Answer.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where such burden properly rests with Hermès and without waiving, and hereby expressly reserving, the right to assert any and all such defenses at such time and to such extent as discovery and factual or legal developments may establish a basis therefore, Rothschild hereby asserts, as and for separate and additional defenses to the Amended Complaint, as follows:

First Defense

The Amended Complaint fails to state a claim upon which relief may be granted or for which the damages sought can be awarded.

Second Defense

Hermès' claims pursuant to the Lanham Act and all other federal and state law claims are barred by the First Amendment to the United States Constitution, under the standards set out by the United States Court of Appeals for the Second Circuit in *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), and its progeny.

Third Defense

Hermès' Lanham Act and state law trademark claims are barred by the Supreme Court's decision in *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003).

Fourth Defense

Hermès' Lanham Act and state law trademark dilution claims are barred by the First Amendment to the United States Constitution, under the standards specified by the United States Supreme Court's decision in *Matal v. Tam*, 137 S. Ct. 1744 (2017).

Fifth Defense

Hermès' Lanham Act and state law trademark claims are barred because any use made by Rothschild is descriptive and therefore a fair use.

Sixth Defense

Hermès' claims fail, in whole or in part, because Hermès has incurred no ascertainable loss caused by any action or omission of Rothschild.

Seventh Defense

Hermès' claims are barred, in whole or in part, on the basis that Hermès would be unjustly enriched if allowed to recover all or any portion of the damages alleged in the Amended Complaint.

Eighth Defense

Hermès is not entitled to injunctive relief because any alleged injury is not immediate or irreparable and it has an adequate remedy at law.

RESERVATION OF RIGHTS

Rothschild reserves his right to amend and supplement his Answer to assert any other defenses as may appear during the course of this action.

* * *

WHEREFORE, Rothschild hereby demands judgment against Hermès, dismissing the Amended Complaint in its entirety with prejudice, and awarding to Rothschild his attorneys' fees, costs, interest, and such other and further relief as the Court deems equitable and just.

TRIAL BY JURY

Rothschild demands trial by jury on all issues so triable.

Dated: May 19, 2022

LEX LUMINA PLLC

/s/ Rhett O. Millsaps II

Rebecca Tushnet

Mark P. McKenna (*pro hac vice*)

Rhett O. Millsaps II

Christopher J. Sprigman

745 Fifth Ave, Suite 500

New York, NY 10151

(646) 898-2055

rhett@lex-lumina.com

Attorneys for Defendant Mason Rothschild