

THE HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BROOKS SPORTS, INC., a Washington
corporation,

Plaintiff,

v.

SPARC Group, LLC, a Delaware limited
liability company, AUTHENTIC BRANDS
GROUP, LLC, a Delaware limited liability
company, BB IPCO, LLC, a Delaware limited
liability company, BB OPCO LLC, a
Delaware limited liability company

Defendants.

Case No. 2:20-cv-1491-RSM

**DEFENDANT AUTHENTIC BRANDS
GROUP LLC'S ANSWER AND
DEFENSES**

JURY DEMAND

Authentic Brands Group LLC (“ABG”), by and through its attorneys, Lane Powell PC and Hodgson Russ LLP, for its Answer to the First Amended Complaint (the “Complaint”) of Brooks Sports, Inc. (“Brooks Sports”) and for its Defenses, states as follows:

1. ABG acknowledges that Brooks Sports has filed a trademark infringement lawsuit, denies that the lawsuit has any merit, and denies the remaining allegations in that paragraph.
2. ABG denies the allegations in paragraph 2.
3. ABG denies the allegations in paragraph 3.
4. With respect to the allegations in paragraph 4, ABG admits that Brooks Brothers Group, Inc. (“Brooks Brothers”) filed a trademark application on or about December 30, 2019,

1 states that the trademark application speaks for itself, and denies the remaining allegations in that
2 paragraph.

3 5. With respect to the allegations in paragraph 5, ABG admits that Brooks Sports
4 filed a lawsuit against Brooks Brothers in this Court in February 2020, admits that Brooks Sports
5 filed a motion for a preliminary injunction in that lawsuit, admits that Brooks Brothers filed
6 counterclaims in that lawsuit, states that those counterclaims speak for themselves, admits that
7 Brooks Brothers filed for Chapter 11 bankruptcy protection and that the Brooks Sports/ Brooks
8 Brothers litigation was stayed as a result, and denies the remaining allegations in that paragraph.

9 6. With respect to the allegations in paragraph 6, ABG admits that SPARC Group
10 LLC (“SPARC”) purchased certain Brooks Brothers assets out of bankruptcy, admits that
11 SPARC is a joint venture between ABG and Simon Property Group, Inc. (“SPG”), and denies the
12 remaining allegations in that paragraph.

13 7. With respect to the allegations in paragraph 7, ABG admits that BB IPCO owns
14 certain intent-to-use trademark application filed by Brooks Brothers on or about December 30,
15 2019, admits that BB IPCO continued to lawfully oppose Brooks Sports’ trademark applications
16 filed in violation of the parties’ 1980 Agreement, and denies the remaining allegations in that
17 paragraph.

18 8. With respect to the allegations in paragraph 8, ABG states that any press releases
19 or press statements issued or made by its representatives speak for themselves, states that Brooks
20 Sports has misrepresented press releases and press statements, and denies the remaining
21 allegations in that paragraph.

22 9. With respect to the allegations in paragraph 9, ABG states that any press releases
23 or press statements issued or made by its representatives speak for themselves, states that Brooks
24 Sports has misrepresented press releases and press statements, and denies the remaining
25 allegations in that paragraph.

26 10. With respect to the allegations in paragraph 10, ABG acknowledges that Brooks
27 Sports’ Complaint includes several causes of action relating to purported trademark

1 infringement, dilution, and unfair competition, states that the causes of action are meritless, and
2 denies the remaining allegations in that paragraph.

3 11. With respect to the allegations in paragraph 11, ABG lacks knowledge and
4 information sufficient to form a belief as to the truth of Brooks Sports' allegations regarding its
5 state of incorporation and principal place of business, and denies the remaining allegations in
6 that paragraph.

7 12. With respect to the allegations in paragraph 12, ABG admits that SPARC is a
8 Delaware limited liability company, admits that SPARC is a joint venture between ABG and
9 SPG, admits that SPARC purchased certain Brooks Brothers assets out of bankruptcy in or
10 around August 2020, and denies the remaining allegations in that paragraph.

11 13. With respect to the allegations in paragraph 13, ABG admits that it is a Delaware
12 limited liability company, and denies the remaining allegations in that paragraph.

13 14. ABG lacks knowledge and information sufficient to form a belief as to the truth of
14 the allegations in paragraph 14.

15 15. ABG lacks knowledge and information sufficient to form a belief as to the truth of
16 the allegations in paragraph 15.

17 16. With respect to the allegations in paragraph 16, ABG admits that its principal
18 place of business is located at 1411 Broadway, New York, New York 10018, admits that BB
19 IPCO's principal place of business is located at 1411 Broadway, New York, New York 10018,
20 and denies the remaining allegations in that paragraph.

21 17. ABG lacks knowledge and information sufficient to form a belief as to the truth
22 of the allegations in paragraph 17.

23 18. The allegations in paragraph 18 are legal conclusions to which no response is
24 required, and to the extent that a response is required, ABG denies the allegations.

25 19. The allegations in paragraph 19 are legal conclusions to which no response is
26 required, and to the extent that a response is required, ABG denies the allegations.

27 20. The allegations in paragraph 20 are legal conclusions to which no response is

1 required, and to the extent that a response is required, ABG denies the allegations.

2 21. ABG denies the allegations in paragraph 21.

3 22. ABG denies the allegations in paragraph 22.

4 23. ABG denies the allegations in paragraph 23.

5 24. ABG denies the allegations in paragraph 24.

6 25. ABG denies the allegations in paragraph 25.

7 26. ABG denies the allegations in paragraph 26.

8 27. ABG denies the allegations in paragraph 27.

9 28. The allegations in paragraph 28 are legal conclusions to which no response is
10 required, and to the extent that a response is required, ABG denies the allegations.

11 29. The allegations in paragraph 29 are legal conclusions to which no response is
12 required, and to the extent that a response is required, ABG denies the allegations.

13 30. The allegations in paragraph 30 are legal conclusions to which no response is
14 required, and to the extent that a response is required, ABG denies the allegations.

15 31. ABG lacks knowledge and information sufficient to form a belief as to the truth of
16 the allegations in paragraph 31.

17 32. The allegations in paragraph 32 are legal conclusions to which no response is
18 required, and to the extent that a response is required, ABG denies the allegations.

19 33. The allegations in paragraph 33 are legal conclusions to which no response is
20 required, and to the extent that a response is required, ABG denies the allegations.

21 34. ABG lacks knowledge and information sufficient to form a belief as to the truth of
22 the allegations in paragraph 34.

23 35. ABG denies the allegations in paragraph 35.

24 36. ABG lacks knowledge and information sufficient to form a belief as to the truth of
25 the allegations in paragraph 36.

26 37. ABG lacks knowledge and information sufficient to form a belief as to the truth of
27 the allegations in paragraph 37.

1 38. ABG lacks knowledge and information sufficient to form a belief as to the truth of
2 the allegations in paragraph 38.

3 39. ABG lacks knowledge and information sufficient to form a belief as to the truth of
4 the allegations in paragraph 39.

5 40. ABG lacks knowledge and information sufficient to form a belief as to the truth of
6 the allegations in paragraph 40.

7 41. ABG lacks knowledge and information sufficient to form a belief as to the truth of
8 the allegations in paragraph 41.

9 42. ABG denies the allegations in paragraph 42.

10 43. ABG lacks knowledge and information sufficient to form a belief as to the truth of
11 the allegations in paragraph 43.

12 44. ABG lacks knowledge and information sufficient to form a belief as to the truth of
13 the allegations in paragraph 44.

14 45. ABG lacks knowledge and information sufficient to form a belief as to the truth of
15 the allegations in paragraph 45.

16 46. With respect to the allegations in paragraph 46, ABG denies that the purported
17 “Brooks Marks” are distinctive, and lacks knowledge and information sufficient to form a belief
18 as to the truth of the remaining allegations in that paragraph.

19 47. ABG lacks knowledge and information sufficient to form a belief as to the truth of
20 the allegations in paragraph 47.

21 48. With respect to the allegations in paragraph 48, ABG admits that the Brooks
22 Brothers business traces its founding to 1818, and denies the remaining allegations in that
23 paragraph.

24 49. ABG denies the allegations in paragraph 49.

25 50. With respect to the allegations in paragraph 50, ABG admits that Brooks Brothers
26 owned a family of registered and unregistered trademarks that it used in connection with various
27 products, and denies the remaining allegations in that paragraph.

1 51. With respect to the allegations in paragraph 51, ABG admits that Brooks
2 Brothers' registered trademarks include trademarks that combine the word "Brooks" with other
3 words, states that the registered trademarks speak for themselves, and denies the remaining
4 allegations in that paragraph.

5 52. ABG lacks knowledge and information sufficient to form a belief as to the truth of
6 the allegations in paragraph 52.

7 53. With respect to the allegations in paragraph 53, ABG admits that Brooks Brothers
8 opposed a trademark application filed by Brooks Sports for "BROOKS," admits that Brooks
9 Brothers and Brooks Sports entered into a settlement agreement in 1980 (the "1980
10 Agreement"), states that the 1980 Agreement speaks for itself, states that the 1980 Agreement
11 precludes Brooks Sports' claims in this case, and denies the remaining allegations in that
12 paragraph.

13 54. ABG denies the allegations in paragraph 54.

14 55. ABG denies the allegations in paragraph 55.

15 56. ABG denies the allegations in paragraph 56.

16 57. ABG denies the allegations in paragraph 57.

17 58. ABG denies the allegations in paragraph 58.

18 59. ABG denies the allegations in paragraph 59.

19 60. ABG denies the allegations in paragraph 60.

20 61. With respect to the allegations in paragraph 61, ABG admits that Brooks Brothers
21 filed Opposition No. 91243962 as a result of Brooks Sports' breach of the 1980 Agreement, and
22 denies the remaining allegations in that paragraph.

23 62. With respect to the allegations in paragraph 62, ABG admits that, on or about
24 December 30, 2019 and January 3, 2020, Brooks Brothers filed Trademark Application Nos.
25 88/742,542 and 88/746,602, states that the applications speak for themselves, and denies the
26 remaining allegations in that paragraph.

27 63. With respect to the allegations in paragraph 63, ABG admits that Brooks Sports

1 filed a lawsuit against Brooks Brothers on February 10, 2020, admits that Brooks Sports sought
2 injunctive relief for meritless allegations of trademark infringement, and denies the remaining
3 allegations in that paragraph.

4 64. With respect to the allegations in paragraph 64, ABG admits that Brooks Brothers
5 filed an Answer and Counterclaims in *Brooks Sports, Inc. v. Brooks Brothers Group, Inc.* (20-cv-
6 207-TSZ), states that Brooks Brothers' Answer and Counterclaims speak for themselves, and
7 denies the remaining allegations in that paragraph.

8 65. ABG denies the allegations in paragraph 65.

9 66. ABG denies the allegations in paragraph 66.

10 67. ABG denies the allegations in paragraph 67.

11 68. ABG denies the allegations in paragraph 68.

12 69. With respect to the allegations in paragraph 69, ABG admits that Brooks Sports
13 unlawfully tried to terminate the 1980 Agreement, states that Brooks Sports' attempt to terminate
14 the 1980 Agreement is of no legal effect because Brooks Sports cannot unilaterally cancel a
15 binding contract, and denies the remaining allegations in that paragraph.

16 70. With respect to the allegations in paragraph 70, ABG admits that Brooks Sports
17 filed a motion for a preliminary injunction in *Brooks Sports, Inc. v. Brooks Brothers Group, Inc.*
18 (20-cv-207-TSZ), and denies the remaining allegations in that paragraph.

19 71. With respect to the allegations in paragraph 71, ABG admits that Brooks Brothers
20 filed for bankruptcy protection on or about July 8, 2020, and denies the remaining allegations in
21 that paragraph.

22 72. With respect to the allegations in paragraph 72, ABG admits that it purchased
23 certain Brooks Brothers assets out of bankruptcy, admits that BB IPCO is the assignee of Brooks
24 Brothers' trademark rights, and denies the remaining allegations in that paragraph.

25 73. With respect to the allegations in paragraph 73, ABG states that the ITU
26 Application and Brooks Brothers' Answer and Counterclaims in *Brooks Sports, Inc. v. Brooks*
27 *Brothers Group, Inc.* (20-cv-207-TSZ) speaks for themselves, and denies the remaining

1 allegations in that paragraph.

2 74. ABG denies the allegations in paragraph 74.

3 75. ABG denies the allegations in paragraph 75.

4 76. ABG denies the allegations in paragraph 76.

5 77. ABG denies the allegations in paragraph 77.

6 78. With respect to the allegations in paragraph 78, ABG states that any public
7 statements made by its representatives speak for themselves, and denies the remaining
8 allegations in that paragraph.

9 79. With respect to the allegations in paragraph 79, ABG states that any public
10 statements made by its representatives speak for themselves, and denies the remaining
11 allegations in that paragraph.

12 80. With respect to the allegations in paragraph 80, ABG states that any public
13 statements made by its representatives speak for themselves, and denies the remaining
14 allegations in that paragraph.

15 81. With respect to the allegations in paragraph 81, ABG states that the Brooks
16 Brothers' website speaks for itself, and denies the remaining allegations in that paragraph.

17 82. ABG denies the allegations in paragraph 82.

18 83. ABG denies the allegations in paragraph 83.

19 84. ABG denies the allegations in paragraph 84.

20 85. ABG denies the allegations in paragraph 85.

21 86. ABG repeats its responses to the allegations incorporated by reference in
22 paragraph 86.

23 87. ABG denies the allegations in paragraph 87.

24 88. ABG denies the allegations in paragraph 88.

25 89. ABG denies the allegations in paragraph 89.

26 90. ABG denies the allegations in paragraph 90.

27 91. ABG denies the allegations in paragraph 91.

1 92. ABG denies the allegations in paragraph 92.

2 93. ABG denies the allegations in paragraph 93.

3 94. ABG denies the allegations in paragraph 94.

4 95. ABG denies the allegations in paragraph 95.

5 96. ABG denies the allegations in paragraph 96.

6 97. ABG repeats its responses to the allegations incorporated by reference in
7 paragraph 97.

8 98. ABG denies the allegations in paragraph 98.

9 99. ABG denies the allegations in paragraph 99.

10 100. ABG denies the allegations in paragraph 100.

11 101. ABG denies the allegations in paragraph 101.

12 102. ABG denies the allegations in paragraph 102.

13 103. ABG denies the allegations in paragraph 103.

14 104. ABG denies the allegations in paragraph 104.

15 105. ABG denies the allegations in paragraph 105.

16 106. ABG denies the allegations in paragraph 106.

17 107. ABG repeats its responses to the allegations incorporated by reference in
18 paragraph 107.

19 108. ABG denies the allegations in paragraph 108.

20 109. ABG denies the allegations in paragraph 109.

21 110. ABG denies the allegations in paragraph 110.

22 111. ABG denies the allegations in paragraph 111.

23 112. ABG denies the allegations in paragraph 112.

24 113. ABG denies the allegations in paragraph 113.

25 114. ABG denies the allegations in paragraph 114.

26 115. ABG denies the allegations in paragraph 115.

27 116. ABG denies the allegations in paragraph 116.

1 117. ABG denies the allegations in paragraph 117.

2 118. ABG repeats its responses to the allegations incorporated by reference in
3 paragraph 118.

4 119. ABG denies the allegations in paragraph 119.

5 120. ABG denies the allegations in paragraph 126.

6 121. ABG denies the allegations in paragraph 121.

7 122. ABG denies the allegations in paragraph 122.

8 123. ABG denies the allegations in paragraph 123.

9 124. ABG denies the allegations in paragraph 124.

10 125. ABG denies the allegations in paragraph 125.

11 126. ABG denies the allegations in paragraph 126.

12 127. ABG repeats its response to the allegations incorporated by reference in
13 paragraph 127.

14 128. ABG denies the allegations in paragraph 128.

15 129. ABG denies the allegations in paragraph 129.

16 130. ABG denies the allegations in paragraph 130.

17 131. ABG denies the allegations in paragraph 131.

18 132. ABG denies the allegations in paragraph 132.

19 133. ABG denies the allegations in paragraph 133.

20 134. ABG denies the allegations in paragraph 134.

21 135. ABG denies the allegations in paragraph 135.

22 136. ABG repeats its responses to the allegations incorporated by reference in
23 paragraph 136.

24 137. ABG denies the allegations in paragraph 137.

25 138. ABG denies the allegations in paragraph 138.

26 139. ABG denies the allegations in paragraph 139.

27 140. ABG denies the allegations in paragraph 140.

1 141. ABG denies the allegations in paragraph 141.

2 142. ABG denies the allegations in paragraph 142.

3 143. ABG denies the allegations in paragraph 143.

4 144. ABG denies the allegations in paragraph 144.

5 145. ABG repeats its responses to the allegations incorporated by reference in
6 paragraph 145.

7 146. With respect to the allegations in paragraph 146, ABG acknowledges that Brooks
8 Sports seeks a declaratory judgment in this action, denies that the action has any merit, and
9 denies the remaining allegations in that paragraph.

10 147. With respect to the allegations in paragraph 147, ABG admits Brooks Brothers
11 filed counterclaims in *Brooks Sports, Inc. v. Brooks Brothers Group, Inc.* (20-cv-207-TSZ),
12 states that Brooks Brothers' counterclaims speak for themselves, and denies the remaining
13 allegations in that paragraph.

14 148. With respect to the allegations in paragraph 148, ABG admits that BB IPCO owns
15 the Brooks Brothers' s trademark rights, including but not limited to, trademark registrations,
16 applications (including the ITU Applications), and oppositions, and denies the remaining
17 allegations in that paragraph.

18 149. With respect to the allegations in paragraph 149, ABG states that the ITU
19 Applications and the documents filed in connection with the applications speak for themselves,
20 and denies the remaining allegations in that paragraph.

21 150. With respect to the allegations in paragraph 150, ABG states that the ITU
22 Applications and the documents filed in connection with the applications speak for themselves,
23 and denies the remaining allegations in that paragraph.

24 151. ABG denies the allegations in paragraph 151.

25 152. ABG denies the allegations in paragraph 152.

26 153. ABG denies the allegations in paragraph 153.

27 154. ABG denies the allegations in paragraph 154.

1 155. ABG repeats is responses to the allegations incorporated by reference in
2 paragraph 155.

3 156. ABG denies the allegations in paragraph 156.

4 157. ABG repeats is responses to the allegations incorporated by reference in
5 paragraph 157.

6 158. ABG denies the allegations in paragraph 158.

7 159. ABG repeats is responses to the allegations incorporated by reference in
8 paragraph 159.

9 160. ABG denies the allegations in paragraph 160.

10 161. ABG repeats is responses to the allegations incorporated by reference in
11 paragraph 161.

12 162. ABG denies the allegations in paragraph 162.

13 163. ABG repeats is responses to the allegations incorporated by reference in
14 paragraph 163.

15 164. ABG denies the allegations in paragraph 164.

16 165. ABG repeats is responses to the allegations incorporated by reference in
17 paragraph 165.

18 166. ABG denies the allegations in paragraph 166.

19 167. ABG denies the allegations in paragraph 167.

20 168. The allegations in paragraph 168 are legal conclusions to which no response is
21 required, due to the extent that a response is required, ABG denies the allegations.

22 169. ABG denies each and every allegations not expressly addressed in the preceding
23 paragraphs of this Answer.

DEFENSES

First Defense

170. ABG is not subject to personal jurisdiction in this Court. ABG asserts the defenses below subject to this first defense.

Second Defense

171. ABG is not a proper party to this action and cannot be held liable for any of the acts alleged in the Complaint.

Third Defense

172. Brooks Sports' Complaint fails to state a claim upon which relief can be granted.

Fourth Defense

173. Brooks Sports' claims are barred by the 1980 Agreement.

Fifth Defense

174. Brooks Sports' claims are barred because Brooks Sports breached the 1980 Agreement.

Sixth Defense

175. Brooks Sports' claims are moot and present no justiciable claim.

Seventh Defense

176. Brooks Brothers' filing of trademark applications does not constitute trademark use or infringement and does not create a justiciable controversy. Brooks Brothers' alleged intent to use trademark applications does not constitute trademark use or infringement and does not create a justiciable controversy.

Eighth Defense

177. Brooks Sports' claims are barred by the doctrines of waiver, laches, acquiescence, and/or estoppel. In addition, Brooks Sports is estopped under the parties' 1980 settlement agreement from pursuing any of its claims.

Ninth Defense

178. Brooks Sports' claims are barred, in whole in part, by the doctrine of unclean

1 hands.

2 **Tenth Defense**

3 179. Brooks Sports has failed to mitigate its alleged damages, if any.

4 **Eleventh Defense**

5 180. ABG's actions alleged in the Complaint were innocent and non-willful.

6 **Twelfth Defense**

7 181. Except with respect to athletic footwear, the BROOKS word mark is primarily
8 merely a surname and has not acquired any secondary meaning that can be claimed by Brooks
9 Sports.

10 **Thirteenth Defense**

11 182. Except with respect to athletic footwear, the BROOKS word mark is
12 unregistrable, invalid, and unprotectable to Brooks Sports.

13 **Fourteenth Defense**

14 183. Brooks Sports is not entitled to injunctive relief because any alleged injury to
15 Brooks Sports is not immediate or irreparable, and Brooks Sports has an adequate remedy at law.

16 **Fifteenth Defense**

17 Brooks Sports' claims are barred because Brooks Brothers (and thus BB IPCO) has trademark
18 priority.

19 **Sixteenth Defense**

20 184. Brooks Sports' claims are barred because Brooks Brothers (and now BB IPCO) is
21 the owner of prior BROOKS and BROOKS-formative registrations, and many of the prior
22 registrations are incontestable.

23 **Seventeenth Defense**

24 185. Brooks Sports' alleged trademarks are not famous or distinctive, and as a result,
25 Brooks Sports' dilution and tarnishment claims are barred.

26 **Eighteenth Defense**

27 186. Brooks Sports' claims are barred because BB IPCO is the owner of prior

1 BROOKS and BROOKS-formative registrations, which cover all types of clothing, without
2 limitation. Brooks Brothers sold all types of clothing using these marks prior to any date that
3 may be claimed by Brooks Sports.

4 **Nineteenth Defense**

5 187. Brooks Sports' claims are barred because Brooks Brothers' goods fall within the
6 natural zone of expansion.

7 **Twentieth Defense**

8 188. Some of Brooks Sports' claims are barred the applicable statutes of limitations.

9 **RESERVATION OF RIGHTS**

10 189. ABG reserves its right to assert other defenses as they may become available or
11 apparent during the course of discovery.

12 **DEMAND FOR JURY TRIAL**

13 190. Brooks Brothers requests a trial by jury on all issues so triable.

14 **WHEREFORE**, ABG seeks judgment as follows:

- 15 (1) an Order dismissing Brooks Sports' Complaint with prejudice;
16 (2) an Order awarding ABG its attorneys' fees and costs; and
17 (3) any other relief that this Court deems just and proper.
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1 DATED: April 14, 2021

2 **LANE POWELL PC**

3
4 By s/ Tiffany S. Connors
5 Tiffany Connors, WSBA No. 41740
6 connorst@lanepowell.com
7 Joseph D. Adamson, WSBA No. 54752
8 adamsonj@lanepowell.com
9 Telephone: 206.223.7000
10 Facsimile: 206.223.7107

11 and

12 Neil B. Friedman
13 Robert J. Fluskey, Jr.
14 HODGSON RUSS LLP
15 Telephone: (716) 848-1688
16 rfluskey@hodgsonruss.com

17 *Attorneys for ABG*