

1 HARVEY SISKIND LLP
2 D. PETER HARVEY (SBN 55712)
3 e-mail: pharvey@harveysiskind.com
4 SETH I. APPEL (SBN 233421)
5 e-mail: sappel@harveysiskind.com
6 Four Embarcadero Center, 39th Floor
7 San Francisco, California 94111
8 Telephone: (415) 354-0100
9 Facsimile: (415) 391-7124

10 Attorneys for Defendants and Counterclaimants
11 SEOK KI KIM and STV ASIA, LTD.

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 FRANK NEMIROFSKY,

16 Plaintiff,

17 v.

18 SEOK KI KIM; STV ASIA, LTD., a British
19 Virgin Islands corporation; and DOES 1
20 through 20, inclusive,

21 Defendants.

22 SEOK KI KIM and STV ASIA, LTD., a
23 British Virgin Islands corporation,

24 Counterclaimants,

25 v.

26 FRANK NEMIROFSKY,

27 Counterdefendant.

Case No.: C 07 2769 JL

ANSWER

28 Seok Ki Kim and STV Asia, LTD. (collectively, "Defendants"), for their Answer to the
Complaint of Frank Nemirofsky ("Plaintiff"), respond as follows:

1 1. Answering the allegations of Paragraph 1 of the Complaint, Defendants are informed and
2 believe that Plaintiff is an individual residing in Alamo, California. Defendants are without sufficient
3 information to admit or deny the remaining allegations of Paragraph 1, and on that basis deny the same.

4 2. Answering the allegations of Paragraph 2 of the Complaint, Defendants admit that Seok
5 Ki Kim (“Kim”) is a South Korean citizen residing in Hong Kong and/or Japan. Except as expressly
6 admitted herein, Defendants deny the remaining allegations of Paragraph 2.

7 3. Answering the allegations of Paragraph 3 of the Complaint, Defendants admit that STV
8 Asia, Ltd. (“STV”) is a British Virgin Islands corporation with its principal place of business in Hong
9 Kong, that STV has done business in California, and that STV is owned and/or controlled by Kim.
10 Except as expressly admitted herein, Defendants deny the remaining allegations of Paragraph 3.

11 4. Answering the allegations of Paragraph 4 of the Complaint, Defendants deny each and
12 every such allegation.

13 5. Answering the allegations of Paragraph 5 of the Complaint, Defendants deny each and
14 every such allegation.

15 6. Answering the allegations of Paragraph 6 of the Complaint, Defendants are without
16 sufficient information to admit or deny such allegations, and on that basis deny the same.

17 7. Answering the allegations of Paragraph 7 of the Complaint, Defendants are informed and
18 believe that Plaintiff filed Application No. 07/926,664 in the United States Patent and Trademark Office
19 (USPTO), for the product noted, on August 7, 1992, and that the USPTO issued U.S. Patent No.
20 5,412,416 to Plaintiff for that invention on May 2, 1995. Defendants are without sufficient information
21 to admit or deny the remaining allegations of Paragraph 7, and on that basis deny the same.

22 8. Answering the allegations of Paragraph 8 of the Complaint, Defendants are informed and
23 believe that the USPTO issued U.S. Patent No. 5,983,069, entitled “Point of Purchase Video Distribution
24 System,” on November 9, 1999. Defendants are without sufficient information to admit or deny the
25 remaining allegations of Paragraph 8, and on that basis deny the same.

26 9. Answering the allegations of Paragraph 9 of the Complaint, Defendants admit that STV
27 is the assignee of Patent Nos. 5,412,416 and 5,983,069.

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1 10. Answering the allegations of Paragraph 10 of the Complaint, Defendants admit that Kim
2 is, among other things, an investor and investment banker. Except as expressly admitted herein,
3 Defendants deny the remaining allegations of Paragraph 10.

4 11. Answering the allegations of Paragraph 11 of the Complaint, Defendants admit that
5 Defendants discovered that PRN Corporation (“PRN”) was unlawfully infringing STV’s patents to
6 develop “Premier Retail Networks” at more than 5,000 retail stores located within and throughout the
7 United States. Defendants are informed and believe that PRN is a Delaware Corporation with its
8 principal place of business in San Francisco, California.

9 12. Answering the allegations of Paragraph 12 of the Complaint, Defendants admit that on or
10 about March 2, 2006, at Kim’s direction, STV filed a patent infringement action (Case No. C 06 1664
11 JCS) against PRN in the United States District Court for the Northern District of California, and that this
12 action was assigned to the San Francisco division.

13 13. Answering the allegations of Paragraph 13 of the Complaint, Defendants admit that Kim
14 contacted Plaintiff several months prior to the filing of Case No. C 06 1664 JCS. Except as expressly
15 admitted herein, Defendants deny the remaining allegations of Paragraph 13.

16 14. Answering the allegations of Paragraph 14 of the Complaint, Defendants deny each and
17 every such allegation.

18 15. Answering the allegations of Paragraph 15 of the Complaint, Defendants deny each and
19 every such allegation.

20 16. Answering the allegations of Paragraph 16 of the Complaint, Defendants admit that in
21 April and May 2007, the parties to Case No. C 06 1664 JCS participated in a mediation in San
22 Francisco, California. Except as expressly admitted herein, Defendants deny the remaining allegations
23 of Paragraph 16.

24 17. Answering the allegations of Paragraph 16 of the Complaint, Defendants admit that on
25 approximately May 16, 2007, STV and PRN entered into an agreement whereby, among other things,
26 the parties settled Case No. C 06 1664 JCS.
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1 18. Answering the allegations of Paragraph 18 of the Complaint, Defendants incorporate by
2 this reference each and every response set forth above in Paragraphs 1-17, inclusive, as though fully set
3 forth herein.

4 19. Answering the allegations of Paragraph 19 of the Complaint, Defendants deny each and
5 every such allegation.

6 20. Answering the allegations of Paragraph 20 of the Complaint, Defendants deny each and
7 every such allegation.

8 21. Answering the allegations of Paragraph 21 of the Complaint, Defendants deny each and
9 every such allegation.

10 22. Answering the allegations of Paragraph 22 of the Complaint, Defendants deny each and
11 every such allegation.

12 23. Answering the allegations of Paragraph 23 of the Complaint, Defendants incorporate by
13 this reference each and every response set forth above in Paragraphs 1-22, inclusive, as though fully set
14 forth herein.

15 24. Answering the allegations of Paragraph 24 of the Complaint, Defendants deny each and
16 every such allegation.

17 25. Answering the allegations of Paragraph 25 of the Complaint, Defendants deny each and
18 every such allegation.

19 26. Answering the allegations of Paragraph 26 of the Complaint, Defendants deny each and
20 every such allegation.

21 27. Answering the allegations of Paragraph 27 of the Complaint, Defendants deny each and
22 every such allegation.

23 28. Answering the allegations of Paragraph 28 of the Complaint, Defendants incorporate by
24 this reference each and every response set forth above in Paragraphs 1-27, inclusive, as though fully set
25 forth herein.

1 29. Answering the allegations of Paragraph 29 of the Complaint, Defendants admit that all
2 contracts include an implied covenant of good faith and fair dealing. Except as expressly admitted
3 herein, Defendants deny the remaining allegations of Paragraph 29.

4 30. Answering the allegations of Paragraph 30 of the Complaint, Defendants deny each and
5 every such allegation.

6 31. Answering the allegations of Paragraph 31 of the Complaint, Defendants deny each and
7 every such allegation.

8 32. Answering the allegations of Paragraph 32 of the Complaint, Defendants incorporate by
9 this reference each and every response set forth above in Paragraphs 1-31, inclusive, as though fully set
10 forth herein.

11 33. Answering the allegations of Paragraph 33 of the Complaint, Defendants deny each and
12 every such allegation.

13 34. Answering the allegations of Paragraph 34 of the Complaint, Defendants deny each and
14 every such allegation.

15 35. Answering the allegations of Paragraph 35 of the Complaint, Defendants deny each and
16 every such allegation.

17 36. Answering the allegations of Paragraph 36 of the Complaint, Defendants deny each and
18 every such allegation.

19 37. Answering the allegations of Paragraph 37 of the Complaint, Defendants deny each and
20 every such allegation.

21 38. Answering the allegations of Paragraph 38 of the Complaint, Defendants deny each and
22 every such allegation.

23 39. Answering the allegations of Paragraph 39 of the Complaint, Defendants incorporate by
24 this reference each and every response set forth above in Paragraphs 1-38, inclusive, as though fully set
25 forth herein.

26 40. Answering the allegations of Paragraph 40 of the Complaint, Defendants deny each and
27 every such allegation.
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1 41. Answering the allegations of Paragraph 41 of the Complaint, Defendants deny each and
2 every such allegation.

3 42. Answering the allegations of Paragraph 42 of the Complaint, Defendants deny each and
4 every such allegation.

5 43. Answering the allegations of Paragraph 43 of the Complaint, Defendants deny each and
6 every such allegation.

7 44. Answering the allegations of Paragraph 44 of the Complaint, Defendants deny each and
8 every such allegation.

9 45. Answering the allegations of Paragraph 45 of the Complaint, Defendants deny each and
10 every such allegation.

11 46. Answering the allegations of Paragraph 46 of the Complaint, Defendants incorporate by
12 this reference each and every response set forth above in Paragraphs 1-45, inclusive, as though fully set
13 forth herein.

14 47. Answering the allegations of Paragraph 47 of the Complaint, Defendants deny each and
15 every such allegation.

16 48. Answering the allegations of Paragraph 48 of the Complaint, Defendants deny each and
17 every such allegation.

18 49. Answering the allegations of Paragraph 49 of the Complaint, Defendants deny each and
19 every such allegation.

20 50. Answering the allegations of Paragraph 50 of the Complaint, Defendants deny each and
21 every such allegation.

22 51. Answering the allegations of Paragraph 51 of the Complaint, Defendants incorporate by
23 this reference each and every response set forth above in Paragraphs 1-50, inclusive, as though fully set
24 forth herein.

25 52. Answering the allegations of Paragraph 52 of the Complaint, Defendants deny each and
26 every such allegation.

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1 53. Answering the allegations of Paragraph 53 of the Complaint, Defendants deny each and
2 every such allegation.

3 54. Answering the allegations of Paragraph 54 of the Complaint, Defendants deny each and
4 every such allegation.

5 **AFFIRMATIVE DEFENSES**

6 **FIRST AFFIRMATIVE DEFENSE**
7 **(Failure to State a Claim)**

8 55. The Complaint, and each purported count or claim for relief therein, fails to state a claim
9 upon which relief may be granted against Defendants.

10 **SECOND AFFIRMATIVE DEFENSE**
11 **(Unclean Hands)**

12 56. Plaintiff's own conduct bars this action through the doctrine of unclean hands.

13 **THIRD AFFIRMATIVE DEFENSE**
14 **(Estoppel)**

15 57. Plaintiff is estopped from asserting each purported count or claim asserted in the
16 Complaint.

17 **FOURTH AFFIRMATIVE DEFENSE**
18 **(Waiver)**

19 58. Plaintiff has waived each purported count or claim asserted in the Complaint.

20 **FIFTH AFFIRMATIVE DEFENSE**
21 **(Offset)**

22 59. Any claim for damages by Plaintiff should be offset by the damages Defendants have
23 sustained as a result of Plaintiff's conduct, acts or omissions.

24 WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

- 25 1. That Plaintiff take nothing by way of the Complaint;
- 26 2. That judgment be entered in favor of Defendants;
- 27 3. For reasonable attorneys' fees and costs of suit as incurred; and
- 28 4. For such other and further relief as the Court may deem just and proper.

1 Dated: June 13, 2007

Respectfully submitted,

2 HARVEY SISKIND LLP

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4 By: _____ /s/
Seth I. Appel

5 Attorneys for Defendants and Counterclaimants
6 SEOK KI KIM and STV ASIA, LTD.
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