

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**BUFF CITY SOAP LLC, ET AL. PLAINTIFFS**

**VS. CIVIL ACTION NO. 3:20cv55-NBB-RP**

**MAGEN BYNUM, ET AL. DEFENDANTS**

**MAGNOLIA SOAP & BATH HOLDING  
CO. LLC, ET AL. COUNTER-CLAIMANTS**

**VS. CIVIL ACTION NO. 3:20cv55-NBB-RP**

**BUFF CITY SOAP LLC, ET AL. COUNTER-DEFENDANTS**

**DEFENDANTS/COUNTER-CLAIMANTS' FIRST AMENDED  
ANSWER AND AFFIRMATIVE DEFENSES AND  
COUNTERCLAIM**

**DEFENDANTS' FIRST AMENDED ANSWER AND  
AFFIRMATIVE DEFENSES**

Defendants, Magen Bynum, Buff City New Albany, LLC, Magnolia Soap & Bath Co. of Oxford, LLC, Magnolia Soap & Bath Co. of New Albany, LLC, Magnolia Soap & Bath Co. of Tupelo, LLC, and Magnolia Soap & Bath Holding Co., LLC (collectively "*Defendants*"), by and through counsel, and for their response to Plaintiffs' Complaint, state as follows:

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs have not been damaged by Defendants' alleged actions.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs have given no consideration for the Operating Agreement.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs did not justifiably rely on any representations by Bynum.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs engaged in trademark misuse by having wrongfully asserted, or attempted to extend the scope of, the alleged trademarks or trade dress.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to register at least some of the trademarks that are the subject of their complaint and thus are not permitted to file this suit or maintain this action with respect to such unregistered marks.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendants' alleged conduct was innocent, non-infringing, and not a willful infringement of trademark or trade dress.

**EIGHTH AFFIRMATIVE DEFENSE**

The trademarks and trade dress that are the subject of Plaintiffs' trademark infringement claims are not all original to Plaintiffs.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs failed to take reasonable steps to mitigate their alleged damages.

**TENTH AFFIRMATIVE DEFENSE**

Any damages that Plaintiffs allege incurred are limited and/or barred by the equitable doctrines of laches, estoppel, waiver, acquiescence, unclean hands, and/or other equitable doctrines.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendants plead all applicable statutes of limitations.

**TWELFTH AFFIRMATIVE DEFENSE**

Any use by Defendants of the trademarks or trade dress that are the subject of the Complaint is a fair use.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Some or all of the trademarks or trade dress that are the subject of the Complaint are jointly owned by some or all of the Defendants.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Some or all of the alleged trademarks or trade dress that are the subject of the Complaint are generic and subject to cancellation.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Some or all of the trademarks or trade dress that are the subject of the Complaint are merely descriptive, without having secondary meaning, and are subject to cancellation.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Some or all of the alleged trademarks that are the subject of the Complaint are tradenames and are subject to cancellation.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Some or all of the alleged trademarks or trade dress that are the subject of the Complaint do not have priority over confusingly similar trademarks or trade dress owned by others, and are subject to cancellation.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

To the extent any affirmative defenses pled herein are contradictory, mutually exclusive, or otherwise inconsistent, Defendants plead such contradictory, mutually exclusive, or inconsistent affirmative defenses in the alternative.

Defendants reserve the right to amend their Affirmative Defenses should facts obtained in discovery so warrant.

**GENERAL ALLEGATIONS**

1. Defendants admit Plaintiff Buff City Soap LLC is a limited liability company. Defendants are without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 1 of the Complaint and, therefore, they are denied.

2. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 2 of the Complaint and, therefore, they are denied.

3. Defendants admit the allegations contained in Paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.

5. Defendants admit to being structured as a Mississippi limited liability company, but deny the remaining allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. Defendants admit the allegations contained in Paragraph 11 of the Complaint.

12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

13. Defendants admit that Plaintiffs are based in Memphis and sell soap and bath products. Defendants are without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 13 of the Complaint and, therefore, they are denied.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendant Bynum admits she was recruited and induced to operate an independent Buff City retail location. Defendants deny the remaining allegations contained in Paragraph 15 of the Complaint.

16. Defendants admit BCNA entered into an agreement with Plaintiff Buff City Soap LLC to operate a retail location in New Albany, Mississippi. Defendants deny the remaining allegations contained in Paragraph 16 of the Complaint.

17. Defendant BCNA admits it operated a Buff City location in New Albany. Defendants deny the remaining allegations contained in Paragraph 17 of the Complaint.

18. Paragraph 18 of the Complaint references a written agreement which speaks for itself. Defendants deny all allegations of Paragraph 18 which are inconsistent with the written terms of the agreement.

19. Paragraph 19 of the Complaint references a written agreement which speaks for itself. Defendants deny all allegations of Paragraph 18 which are inconsistent with the written terms of the agreement.

20. Paragraph 20 of the Complaint references a written agreement which speaks for itself. Defendants deny all allegations of Paragraph 18 which are inconsistent with the written terms of the agreement.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 22 of the Complaint and, therefore, they are denied.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Defendants admit they began operating a competing business. Defendants deny the remaining allegations contained in Paragraph 29 of the Complaint.

30. Defendant Bynum admits she operated a booth for Buff City at an Atlanta wholesale market. Defendant Bynum admits that she obtained wholesale orders through Buff City New Albany, LLC. Defendants deny all remaining allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny that the “Operating Agreement” with Buff City New Albany, LLC was terminated by letter dated August 8, 2018, or any time thereafter, but said agreement was terminated by mutual agreement at the end of July 2018. With respect to any allegations contained in Paragraph 31 regarding the contents of the August 8, 2018 letter, the letter is a written document which speaks for itself. Defendants deny all remaining allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendant BCNA admits that it did not pay a monthly 5% fee. Defendants deny the remaining allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants admit that formation documents were submitted to the Mississippi Secretary of State for each of the Magnolia Soap Defendants on the date recorded by the Mississippi Secretary of State.

37. Defendants admit they filed a trademark registration application with the U.S. Patent and Trademark Office for the mark “Magnolia Soap and Bath Co” (words and letters in

stylized form), which application is a written document that speaks for itself, and the mark was not registered by the U.S. Patent and Trademark Office. Allegations which are inconsistent with the application are denied.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. Defendants admit the table included in Paragraph 43 of the Complaint lists products sold at Magnolia Bath and Soap Co. Defendants deny the remaining allegations contained in Paragraph 43 of the Complaint.

44. Defendants admit the existence of U.S. Trademark Reg. No. 5,684,101.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Defendants admit that a Magnolia Soap & Bath Co. location has opened in Southaven, Mississippi. Defendants deny all remaining allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. In response to Paragraph 51 of the Complaint, Defendants incorporate paragraphs 1-50.

52. Defendants admit the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. In response to Paragraph 58 of the Complaint, Defendants incorporate Paragraphs 1-57.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

Defendants further deny that Tennessee law applies.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in Paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. In response to Paragraph 65 of the Complaint, Defendants incorporate Paragraphs 1-64.

66. Defendant Bynum admits that she was the managing member of BCNA.

Defendant denies the remaining allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

70. Defendants deny the allegations contained in Paragraph 70 of the Complaint.

71. Defendants deny the existence of any competing interests before or during the term of the Operating Agreement. Defendants deny any remaining allegations contained in Paragraph 71 of the Complaint.



72. Defendants deny the allegations contained in Paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

76. In response to Paragraph 76 of the Complaint, Defendants incorporate Paragraphs 1-76.

77. Defendants admit Plaintiff Buff City Soap LLC represented to Bynum that she would be part of the company. Defendants deny the remaining allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the existence of any competing interests before or during the term of the Operating Agreement. Defendants deny any remaining allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Complaint.

82. Defendants deny the allegations contained in Paragraph 82 of the Complaint.

83. Defendants deny the allegations contained in Paragraph 83 of the Complaint.

84. Defendants deny the allegations contained in Paragraph 84 of the Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of the Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Complaint.

88. Defendants deny the allegations contained in Paragraph 88 of the Complaint.

89. In response to Paragraph 89 of the Complaint, Defendants incorporate Paragraphs 1-88.

90. Defendants deny the allegations contained in Paragraph 90 of the Complaint.

91. The allegations contained in Paragraph 91 reference a federal trademark registration which speaks for itself. Defendants deny all remaining allegations contained in Paragraph 91 of the Complaint.

92. Defendants deny the allegations contained in Paragraph 92 of the Complaint.

93. Defendants deny the allegations contained in Paragraph 93 of the Complaint.

94. Defendants deny the allegations contained in Paragraph 94 of the Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of the Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Complaint.

97. Defendants deny the allegations contained in Paragraph 97 of the Complaint.

98. Defendants deny the allegations contained in Paragraph 98 of the Complaint.

99. Defendants deny the allegations contained in Paragraph 99 of the Complaint.

100. Defendants deny the allegations contained in Paragraph 100 of the Complaint.

101. Defendants deny the allegations contained in Paragraph 101 of the Complaint.

102. Defendants deny the allegations contained in Paragraph 102 of the Complaint.

103. In response to Paragraph 103 of the Complaint, Defendants incorporate Paragraphs 1-102.

104. Defendants deny the allegations contained in Paragraph 104 of the Complaint.

105. Defendants deny the allegations contained in Paragraph 105 of the Complaint.

106. Defendants deny the allegations contained in Paragraph 106 of the Complaint.

107. Defendants deny the allegations contained in Paragraph 107 of the Complaint.

108. Defendants deny the allegations contained in Paragraph 108 of the Complaint.

109. Defendants deny the allegations contained in Paragraph 109 of the Complaint.

110. Defendants deny the allegations contained in Paragraph 110 of the Complaint.

111. Defendants deny the allegations contained in Paragraph 111 of the Complaint.

112. Defendants deny the allegations contained in Paragraph 112 of the Complaint.

113. Defendants deny the allegations contained in Paragraph 113 of the Complaint.

114. Defendants deny the allegations contained in Paragraph 114 of the Complaint.

115. In response to Paragraph 115 of the Complaint, Defendants incorporate Paragraphs 1-114.

116. Defendants Bynum and BCNA admit that they entered into an agreement with Buff City Soap, LLC. Defendants deny the remaining allegations contained in Paragraph 116 of the Complaint.

117. Defendants deny the allegations contained in Paragraph 117 of the Complaint.

118. Defendants deny the allegations contained in Paragraph 118 of the Complaint.

119. Defendants deny the allegations contained in Paragraph 119 of the Complaint.

120. In response to Paragraph 120 of the Complaint, Defendants incorporate Paragraphs 1-119.

121. Defendants deny the allegations contained in Paragraph 121 of the Complaint.

122. Defendants deny the allegations contained in Paragraph 122 of the Complaint.

123. Defendants deny the allegations contained in Paragraph 123 of the Complaint.

124. Defendants deny the allegations contained in Paragraph 124 of the Complaint.

125. In response to Paragraph 125 of the Complaint, Defendants incorporate Paragraphs 1-124.

126. Defendants deny the allegations contained in Paragraph 126 of the Complaint.

127. Defendants deny the allegations contained in Paragraph 127 of the Complaint.

128. Defendants deny the allegations contained in Paragraph 128 of the Complaint.

129. With regard to the final unnumbered paragraph of the Complaint beginning “WHEREFORE,” Defendants deny Plaintiffs are entitled to the relief requested or any relief whatsoever.

130. Defendants deny all allegations contained in the Complaint not expressly admitted herein.

131. Defendants reserve the right to amend this pleading.

**DEFENDANTS’ PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that Plaintiffs’ Complaint be dismissed in all respects and that Defendants be awarded attorney’s fees and costs incurred in defending this action pursuant to federal and state law, and for all other relief that is proper.

**COUNTER-CLAIMANTS’ COUNTERCLAIM  
FOR MONEY DAMAGES AND INJUNCTIVE RELIEF**

Counter-Claimants Magnolia Soap & Bath Holding Co., LLC, Magnolia Soap & Bath Co. of Oxford, LLC, Magnolia Soap & Bath Co. of Tupelo, LLC, and Magnolia Soap & Bath Co. of New Albany, LLC (collectively “*Counter-Claimants*”) by and through counsel for their counterclaim against Counter-Defendants Buff City Soap, LLC and Buff City Soap Holdings, LLC (collectively “*Counter-Defendants*”) state as follows:

1. Upset with Counter-Claimants competing with them in the marketplace, Counter-Defendants have repeatedly and intentionally interfered with Counter-Claimants’ business relationships.

2. During the pendency of this litigation, Counter-Defendants have contacted Counter-Claimants’ vendors. Counter-Defendants have threatened to stop purchasing supplies from vendors that continue to work with Counter-Claimants. Additionally, upon information and belief, Counter-Defendants have made false and/or misleading claims about Counter-Claimants

including statements that Counter-Claimants are violating the law in operating their businesses. These statements serve no legitimate business purpose, but instead were made with the unlawful purpose of causing damage to Counter-Claimants. The Counter-Defendants willful and intentional acts are designed solely to interfere with Counter-Claimants' business relationships and to harm Counter-Claimants and have, in fact, caused harm to Counter-Claimants.

3. For instance, Counter-Defendants actions have resulted in the breaking of the relationship between Counter-Claimants and Columbus Vegetable Oils.

4. Vegetable oils are an essential part of many of the products Counter-Claimants manufacture and sell. In order to have an adequate supply of vegetable oils to manufacture its products, Counter-Claimants entered a business relationship with Columbus Vegetable Oils.

5. Columbus Vegetable Oils is a wholesale distributor of vegetable oils. Columbus Vegetable Oils markets its services to makers of soap through its Soapers' Choice brand. It is the largest and most cost competitive distributor in the soap making marketplace.

6. In November 2019, Counter-Claimants began purchasing wholesale oils from Columbus Vegetable Oils.

7. Counter-Claimants eventually ordered more than \$15,000 worth of oils per month from Columbus Vegetable Oils.

8. Counter-Defendants told Columbus Vegetable Oils that they would stop purchasing products from Columbus Vegetable Oils if Columbus Vegetable Oils continued to supply Counter-Claimants.

9. Additionally, in order to explain this stance, Counter-Defendants made false and/or misleading statements regarding Counter-Claimants to Columbus Vegetable Oils. Counter-Defendants told Columbus Vegetable Oils that Counter-Claimants were violating the law in operating their businesses.

10. Because of the actions of Counter-Defendants, on October 6, 2020, Paulette M. Gagliardo, the President of Columbus Vegetable Oils, sent a letter to Magen Bynum which stated:

Please be advised that effective today, Columbus Vegetable Oils and its Soaper's Choice brand will cease doing business with all entities related to Magnolia Soap & Bath Company. This includes all corporate and franchised locations.

11. Following receipt of this letter, Columbus Vegetable Oils has refused to sell products to Counter-Claimants. This refusal has weakened Counter-Claimants' supply chain, caused Counter-Claimants to expend time and money to find additional suppliers and create a new internal ordering system, and ultimately forced Counter-Plaintiffs to pay higher prices for products that were previously supplied by Columbus Vegetable Oils.

### **COUNT ONE**

#### **INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS**

12. Paragraphs 1 through 11 of the instant Counterclaim are incorporated as if set forth fully herein.

13. Counter-Claimants had an ongoing business relationship with Columbus Vegetable Oils.

14. Counter-Defendants learned of this business relationship, and intentionally and willfully interfered with the relationship.

15. Counter-Defendants threatened Columbus Vegetable Oils with the loss of business if Columbus Vegetable Oils continued its business relationship with Counter-Claimants.

16. Counter-Defendants made false and misleading statements regarding Counter-Claimants to Columbus Vegetable Oils. Counter-Defendants claimed that Counter-Plaintiffs were operating their businesses illegally.

17. Counter-Defendants intentionally took these actions for the unlawful purpose of interfering with Counter-Plaintiffs' business relationship in order to cause Counter-Plaintiffs harm.

18. Counter-Defendants' intentional conduct did actually cause Counter-Plaintiffs harm by weakening Counter-Plaintiffs supply chain, by causing Plaintiffs to expend time and money to find additional suppliers and to create a new internal ordering system, and by forcing Counter-Plaintiffs to pay higher prices for the products previously purchased from Columbus Vegetable Oils.

19. Counter-Defendants' intentional conduct is the actual and legal cause of one-time or short-term expenses related to the loss of Columbus Vegetable Oils as a supplier and the ongoing loss of revenue from the sales of end products which contain oils Counter-Claimants can no longer purchase from Columbus Vegetable Oils.

**COUNTER-CLAIMANTS' PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Counter-Claimants respectfully request a judgment on their counterclaim including, but not limited to:

- A. Damages in an amount to be proven at trial;
- B. A permanent injunction prohibiting Counter-Defendants from interfering with Counter-Claimants' business;
- C. Reasonable attorneys' fees, as provided by common law, statute, or equity, including court costs;
- D. Pre-judgment and post-judgment interest as provided by common law, statute or rule, or equity; and
- E. All other relief to which Counter-Claimants are entitled.

RESPECTFULLY SUBMITTED, this the 16<sup>th</sup> day of December, 2020.

PHELPS DUNBAR LLP

BY: /s/Mark N. Halbert

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ATTORNEYS FOR DEFENDANTS/COUNTER-  
CLAIMANTS



**CERTIFICATE OF SERVICE**

This will certify that the undersigned has this day filed the above and foregoing document with the Clerk of this Court using the CM/ECF filing system which sent notification of same to the following:

Zachary B. Busey, Esq.  
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DATED, this the 16<sup>th</sup> day of December, 2020.

*/s/Mark N. Halbert*

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Mark N. Halbert