

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

<b>U.S. DIAMOND &amp; GOLD D/B/A</b>	:	
<b>STAFFORD’S JEWELERS,</b>	:	<b>CASE No. C3-06-371</b>
	:	
<b>Plaintiffs,</b>	:	<b>District Judge Thomas M. Rose</b>
	:	
<b>v.</b>	:	<b><u>ANSWER</u></b>
	:	
<b>THE JULIUS KLEIN DIAMONDS LLC :</b>	:	
<b>et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

Defendant Julius Klein Diamonds LLC (“JKD”), as and for its answer to plaintiffs’ complaint herein (the “Complaint”), alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1, 2, 6, 14, 16, 18-22, 29, 30, 33-36, 71, 72, 76-80, and 82-85 of the Complaint.

2. Denies the allegations of paragraph 3 of the Complaint, except (a) admits (i) that JKD is a New York limited liability company, with its principal place of business in New York, New York, (ii) that JKD is a manufacturer of diamonds and diamond jewelry, (iii) that JKD has several associated or affiliated companies, including those named in the third paragraph of said paragraph, (iv) that JKD regularly advertises in various national and international trade magazines, including Rapaport Diamond Report and Jewelers Circular Keystone, and (v) that JKD operates the website described in the last sentence of said paragraph, which is accessible from anywhere an Internet connection is available and on which jewelers can register to view

JKD's inventory; and (b) denies knowledge or information sufficient to form a belief as to whether the national and international trade magazines in which JKD advertises are circulated in Ohio.

3. Makes no response to the allegations of paragraphs 4 and 13 of the Complaint, which were stricken from the Complaint by Order of the Court herein, dated March 29, 2007.

4. Denies the allegations of paragraph 5 of the Complaint, except admits that many transactions in the diamond industry are conducted confidentially and orally.

5. Denies the allegations of paragraphs 7, 38-42, 44-47, 49-51, 53-57, 59-62, 65-69, and 73 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint, except admits, upon information and belief, that Mr. Mesica was the President of Prestige Diamond in or about 1996.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint, except denies that Prestige Diamond "became a part of JKD" or a "newly formed division of JKD."

8. Denies the allegations of paragraph 10 of the Complaint, except admits that, in 2004, Stafford's Jewelers engaged in certain business transactions with JKD in New York, including four purchases made by Stafford's Jewelers with an aggregate purchase price of \$422,067.00, that facsimiles and telephone calls were made between JKD in New York and Stafford's Jewelers in Ohio, and that, on occasion, Mr. Mesica would assist in facilitating the transactions.

9. Denies the allegations of paragraphs 11 and 12 of the Complaint, except admits that in 2005 and 2006, at the request of and as an accommodation to JKD West LLC, JKD shipped from New York to Stafford's Jewelers in Ohio certain goods that Stafford's Jewelers had purchased from JKD West LLC.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint, except denies that Mr. Mesica acted as the agent for JKD in New York at any time relevant to this matter.

11. Admits the allegations of paragraph 17 of the Complaint, except denies that Stafford's Jewelers sent the "Pink Diamond" to JKD in New York, that Stafford's Jewelers advised JKD that it intended to do so, and that JKD was party to any "determination" that Stafford's Jewelers would send the "Pink Diamond" to JKD.

12. Upon information and belief, admits the allegations of paragraph 23 of the Complaint, except denies knowledge or information sufficient to form a belief as to the exact time of the telephone call referred to therein.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Complaint, except (a) admits (i) that an employee of JKD named Chaim (Eichenstein) is in charge of receiving at JKD's New York office, and (ii) that, in a telephone conversation, Mr. Eichenstein told Mr. Stafford that a box sent by Stafford's Jewelers to JKD was empty; and (b) denies (i) that Mr. Eichenstein is in charge of shipping at JKD's New York office, (ii) that Mr. Eichenstein told Mr. Stafford that the box arrived opened, and (iii) the allegations contained in the last sentence of said paragraph.

14. Admits the allegations of paragraph 25 of the Complaint, except denies

knowledge or information sufficient to form a belief as to the truth of the allegation thereof that Mr. Stafford spoke “frantically.”

15. Denies the allegations of paragraph 26 of the Complaint, except (a) admits that, following specific instructions from Mr. Stafford as to where to look for signs of tampering with the shipping bag, Mr. Eichenstein in fact noticed the specific signs of tampering suggested by Mr. Stafford, and so advised Mr. Stafford, and (b) denies knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of said paragraph.

16. Denies the allegations of paragraph 27 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation that Mr. Stafford “was now more upset,” and admits that Mr. Eichenstein advised Mr. Stafford that Mr. Klein had already been notified of the situation and had discussed the situation with Brinks.

17. Denies the allegations of paragraph 28 of the Complaint, except admits that JKD had nothing to do with the missing “Pink Diamond” and that Mr. Eichenstein so advised Mr. Stafford (in substance, if not in those exact words).

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint, except admits, upon information and belief, that Brinks sent a letter to Stafford’s Jewelers dated March 17, 2006, and refers to said letter for the contents thereof.

19. Admits the allegations of paragraph 32 of the Complaint.

20. Denies the allegations of paragraph 64 of the Complaint, except admits that Mr. Eichenstein advised Mr. Stafford, truthfully, that JKD had nothing to do with the loss of the “Pink Diamond.”

21. Makes no response to the allegation of paragraph 74 of the Complaint, which purports to set forth only a legal conclusion, and not any facts, and is based upon a hypothetical situation (i.e., JKD's possession of the "Pink Diamond") which is not true.

22. In response to the allegations of the Complaint repeated and realleged in paragraphs 37, 43, 48, 52, 58, 63, 70, 75, and 81 of the Complaint, repeats and realleges its responses to said paragraphs as set forth in paragraphs 1-21 above, as if fully set forth hereat.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

23. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

24. Any damages plaintiffs may have sustained as a result of the occurrences alleged in the Complaint, all of which are denied by JKD, were caused in whole or in part by plaintiffs' own tortious or culpable conduct, including comparative negligence.

25. To the extent that Ohio law governs this defense, because plaintiffs' tortious conduct was greater than the combined allegedly tortious conduct of all other persons from which plaintiffs' damages directly and proximately resulted, plaintiffs are barred from the relief sought herein against JKD.

26. In the alternative, to the extent that New York law governs this defense, the amount of plaintiffs' damages recoverable, if any, must be diminished in the proportion which the culpable conduct attributable to plaintiffs bears to the culpable conduct which caused said damages.

**AS AND FOR A COUNTERCLAIM**

27. Repeats and realleges the allegations of paragraphs 1-21 above, as if fully set forth hereat.

28. Plaintiffs John Stafford (“Stafford”) and U.S. Diamond & Gold d/b/a Stafford’s Jewelers (“Stafford’s Jewelers”) made false representations to JKD concerning the pink diamond which is the subject of this action (the “Pink Diamond”), which plaintiffs allegedly shipped to JKD, unsolicited and on approval, from their jewelry store in Ohio to JKD’s offices in New York City.

29. Specifically, on February 14, 2006, after a Brink’s shipping bag was delivered to JKD’s offices in New York City, and the UPS box inside it proved to be empty when JKD opened it, plaintiff Stafford (acting individually and on behalf of plaintiff Stafford’s Jewelers) falsely represented to JKD, in a telephone conversation with JKD’s employee Chaim Eichenstein, that plaintiffs had placed the Pink Diamond inside the UPS box, and had placed the UPS box containing the Pink Diamond inside the Brink’s shipping bag, prior to shipment, and falsely suggested to JKD that the Brink’s shipping bag had been tampered with during the shipment process.

30. Upon information and belief, plaintiffs knew the falsity of these representations when they were made.

31. Upon information and belief, plaintiffs made these false representations to JKD pursuant to an insurance fraud scheme, and made them with the intent of deceiving and defrauding JKD, and/or plaintiffs’ insurer, and/or Brink’s.

32. JKD justifiably and rightly relied upon plaintiffs’ false representations to

their detriment, by undertaking various actions and incurring various expenses that they would not have undertaken or incurred absent plaintiffs' false representations.

33. Plaintiffs' false representations have caused JKD to suffer actual damages in an amount to be determined at trial, but believed to be in excess of \$25,000.00.

34. Plaintiffs' false representations to JKD were intentional, knowing, malicious, reckless, and in conscious disregard of JKD's rights. Accordingly, JKD is entitled to recover punitive damages against plaintiffs in an amount to be determined at trial, but in excess of \$25,000.00, as well as attorneys' fees and costs and pre- and post-judgment interest.

#### **PRAYER FOR RELIEF**

WHEREFORE, defendant JKD prays for judgment as follows:

- A. Dismissing the Complaint in its entirety;
- B. On its counterclaim, awarding JKD compensatory damages in an amount in excess of \$25,000.00 as will be further proved at trial, together with punitive and/or exemplary damages in a just and proper amount to be determined at trial, but reasonably believed substantially to exceed \$25,000.00, as well as pre- and post-judgment interest, and attorneys' fees and costs;
- C. Awarding JKD its costs and disbursements herein; and
- D. Granting JKD such other and further relief as the Court may deem just and proper.

OF COUNSEL:

/s/ Robert Fryd

Robert Fryd  
Donna M. Levinsohn  
Warshaw Burstein Cohen  
Schlesinger & Kuh, LLP  
555 Fifth Avenue  
New York, New York 10017  
Tel.: (212) 984-7700  
Fax: (212) 972-9150  
Email: rfryd@wbsk.com

Respectfully submitted,

/s/Stephen E. Chappellear  
Stephen E. Chappellear (0012205)  
Trial Attorney  
Hahn Loeser + Parks LLP  
65 East State Street, Suite 1400  
Columbus, Ohio 43215  
Tel.: (614) 221-0240  
Fax: (614) 233-5149  
Email: [sechappellear@hahnlaw.com](mailto:sechappellear@hahnlaw.com)

Attorneys for Defendant  
Julius Klein Diamonds, LLC (s/h/a The  
Julius Klein Diamonds LLC)

### CERTIFICATE OF SERVICE

This is to certify that on the 12th day of April, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to counsel of record.

/s / Robert Fryd