

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

AMERIGAS PROPANE, L.P.,	:	CIVIL ACTION
	:	NO. 12 cv 00713 (RB)
Plaintiff,	:	
	:	
v.	:	
	:	
OPINION CORP. <i>d/b/a</i>	:	
PISSEDCONSUMER.COM,	:	
	:	
Defendant.	:	

ANSWER AND JURY DEMAND OF DEFENDANT OPINION CORP.

Defendant Opinion Corp. d/b/a PissedConsumer.com (“defendant”), by and through its undersigned counsel, for its answer to the Complaint by plaintiff, defends and says as follows:

RESPONSES TO THE ALLEGATIONS OF THE COMPLAINT

1. Denied.
2. Denied.

PARTIES

3. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.
4. Denied except admitted that defendant is a New York corporation.

JURISDICTION AND VENUE

5. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

6. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

7. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

8. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

FACTUAL ALLEGATIONS

9. After reasonable investigation, defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

10. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

11. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

12. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

13. Admitted.

14. Admitted.

15. Denied.

16. Denied, except admitted that defendant publishes press releases.

17. Admitted.

18. Admitted.

19. Denied.

20. Denied.

21. Denied.

22. Admitted.

23. Admitted.

24. Denied.

25. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

26. Admitted as to first sentence of this paragraph of the Complaint. Defendant denies knowledge and information sufficient to admit or deny the remaining allegations of the paragraph.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted that PissedConsumer displays advertisements for third parties' products and services, but defendant denies knowledge and information sufficient to admit or deny the remaining allegations of the paragraph.

34. Denied, except admitted that Google AdSense compensates PissedConsumer by click-throughs.

35. Denied.

36. Denied, except admitted that Google AdSense compensates PissedConsumer by click-throughs.

37. Denied that the "focus of PissedConsumer's webpages is the third-party advertisements," and denies knowledge and information sufficient to admit or deny the remaining allegations of this paragraph of the Complaint.

38. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

39. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint, except admit that they utilize search engine optimization.

40. Denied.

41. Denied.

42. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

43. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

44. Admitted that the PissedConsumer website does or did state the words quoted.

45. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint, except admit that the PissedConsumer website does or did state the words quoted.

46. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint, except admits that it made statements to the effect of the statements quoted in the paragraph.

47. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

48. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint, except deny that “PissedConsumer deleted AmeriGas’ messages from PissedConsumer’s website.”

49. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

50. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

51. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies the allegations of this paragraph of the Complaint.

52. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies the allegations of this paragraph of the Complaint.

53. Denied.

FIRST CLAIM FOR RELIEF

54. Defendant repeats and incorporates its responses to the corresponding allegations of the Complaint as if set forth in full.

55. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

56. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

57. Denied, except admitted that PissedConsumer profits from third-party advertisements appearing on its website.

58. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

59. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

60. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

61. Denied.

62. Denied.

63. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

64. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

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67. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

SECOND CLAIM FOR RELIEF

68. Defendant repeats and incorporates its responses to the corresponding allegations of the Complaint as if set forth in full.

69. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

70. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

71. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

72. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

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74. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

75. It is admitted that AmeriGas is making the request for relief set forth in this paragraph of the Complaint. It is specifically denied that defendant has engaged in any of the

wrongdoing alleged in the Complaint and further denied that AmeriGas is entitled to or should receive any relief whatsoever.

THIRD CLAIM FOR RELIEF

76. Defendant repeats and incorporates its responses to the corresponding allegations of the Complaint as if set forth in full.

77. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

78. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

79. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

80. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

81. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is

necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

82. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

83. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

FOURTH CLAIM FOR RELIEF

84. Defendant repeats and incorporates its responses to the corresponding allegations of the Complaint as if set forth in full.

85. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

86. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

87. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

88. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

89. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

90. It is admitted that AmeriGas is making the request for relief set forth in this paragraph of the Complaint. It is specifically denied that defendant has engaged in any of the wrongdoing alleged in the Complaint and further denied that AmeriGas is entitled to or should receive any relief whatsoever.

FIFTH CLAIM FOR RELIEF

91. Defendant repeats and incorporates its responses to the corresponding allegations of the Complaint as if set forth in full.

92. Defendant denies knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

93. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

94. Denied.

95. Denied.

96. Denied.

97. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

98. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

99. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

100. It is admitted that AmeriGas is making the request for relief set forth in this paragraph of the Complaint. It is specifically denied that defendant has engaged in any of the wrongdoing alleged in the Complaint and further denied that AmeriGas is entitled to or should receive any relief whatsoever.

SIXTH CLAIM FOR RELIEF

101. Defendant repeats and incorporates its responses to the corresponding allegations of the Complaint as if set forth in full.

102. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

103. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

104. Denied.

105. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Complaint.

SEVENTH CLAIM FOR RELIEF

106. Defendant repeats and incorporates its responses to the corresponding allegations of the Complaint as if set forth in full.

107. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies the allegations of this paragraph of the Complaint.

108. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies the allegations of this paragraph of the Complaint.

109. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies the allegations of this paragraph of the Complaint.

110. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies the allegations of this paragraph of the Complaint.

111. The allegations contained in this paragraph of the Complaint constitute legal conclusions or legal statements to which no response is necessary. To the extent a response is necessary, defendant denies the allegations of this paragraph of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver, based on, *inter alia*, the fact that plaintiff utilizes, through its employees, the PissedConsumer.com website to interact with commenters, including as follows:

- (a) By logging onto the site from Amerigas' offices, identifying themselves as Amerigas employees or customer service representatives, sometimes by name, and uploading cheerful, helpful advice or contact information in order to assist commenters, who upon information and belief are *bona fide* Amerigas customers, or other Internet users, with their problems;
- (b) By logging onto the site from Amerigas' offices, identifying themselves generally as Amerigas employees, and uploading comments that contradict or criticize such commenters; and
- (c) By logging onto the site from Amerigas' offices, either identifying themselves generally as Amerigas employees, implying that they are Amerigas employees or without identifying themselves at all, and uploading comments that mock, belittle and abuse such commenters; including, by way of example only, by uploading the following comments on the PissedConsumer.com website:

- (i) “u r stupid”
- (ii) “You people need to take responsibility for your [own] actions or lack of action. Pay your bill! Stop being an idiot! JAR1953, you may be the biggest idiot of all!”
- (iii) “Actually they still do bill their customers who pay on time. Deadbeat customer[s] have to pay prior to getting a delivery. Can't blame amerigas for your bad credit rating.”
- (iv) “It amazing. Every complaint I read on this site about Amerigas has to do with an idiot running out of gas and then they are pissed that Amerigas wont just drop everything, screw all their other customers that called when they were supposed to and rush a delivery out to them at 3:00AM without any additional charges applied. Are you idiots brain dead? . . . I have a real simple solution, get your lazy ass of[f] of your couch and check your tank regularly and quit looking for handouts!! They are trying to run a business and it is amazing they can successfully do it with morons like you!”
- (v) “Are you for real, Amerigas charges you for propane once no matter how much you use. Are you really that dumb that you think they are charging you twice for your propane[?] By the way, I have a bridge for sale if you are interested regardless of how much you have used up out of it.”

- (vi) “Do you expect ANYONE to believe you or that you missed just one payment or is it more realistic that you are a fucking deadbeat that with way too much free time on your hands? Get a job and pay your bills and you don't have to worry about the price they are charging you. As for you Competition, you were in the meeting when they discussed underfilling tanks intentionally? you and this moron from Cape Cod should move in together and share whoa is me stories. It is obvious that you do not have a job since you are here at all hours of the night. See the times he is posting everyone. Someone with a job is not up at 1:53AM or 12:15AM. Maybe if you had a job you would be less bitter about decent people trying to make a living.”
- (vii) “Instead of wasting your time on here bitching about their prices go out and find another company. It's pretty simple.”
- (viii) “Propane expands! If you fill it to the max the thing is going to explode!
YOU ARE AN IDIOT!”
- (ix) “Whoa is me, quit [whining] about the free handouts you are not getting!!!! Amerigas is not a charity they are a for profit company but I know, they should give you propane for free [because] you had a heart attack or you have 8 kids. give me a break, take responsibility for your own actions for once in your life!!”

- (x) “Yea get rid of them now, you see all 100 pissed customers on this website in the last 5 years. I mean come on they only have what, 1.3 million customers and for 100 to complain. That is[almost] .0000001% of their entire customer base. or maybe it is just you idiots with nothing better to do but bitch and complain that AmeriGas wouldn't just drop everything when you say so and come out and service your tank, screw the other 1,299,998 [customers] they have because you too are obviously more important than everyone else. Maybe if you had a job you would spend more time earning a living instead of expecting everything to be handed to you!!!!”
- (xi) “To all the morons posting on this page, Amerigas did not let you run out of gas, your own cheap lazy a\$\$es [*sic*] selves did. Because you are too lazy to check your tank [regularly] to see it was low or to broke to have the money to order when you should have you let it get down to fumes then expect Amerigas to drop everything for you! They tell you to order with plenty left in your tank, especially in the winter when they are in the middle of their busiest season, but you do not listen! Then you run out and blame them. They do have a forecast plan where they come out and fill your tank according to your usage and those customer NEVER run out of gas but that would require you deadbeats to have money available for heating your homes all the time but you obviously can't manage your finances well enough to do this so you go without heat. Now really, who's fault is it that your tank runs out, the company that is in business to sell

propane or the idiots who forget to call? Get a life and stop blaming others for your stupidity!”

- (xii) “Really a-hole? with everything going on in the world, Earthquakes, Tsunami's, War, famine, Etc. your stupid a\$\$ is worried about only getting your propane tank filled to 65% instead of 80%. Maybe you should spend your spare time brushing up on your grammar or your english instead of subjecting the rest of the world to your self-centered, idiotic comments!”
- (xiii) “Like you would honestly get anywhere by taking them to court. They make billions. What lawyer could you possibly get that could match theirs? And if it their asset, they can step onto your property anytime they want to. Idiot.”

SECOND AFFIRMATIVE DEFENSE

Plaintiff fails to set forth a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claimed damages, if any, are the result of intervening or superseding conduct by plaintiff or third parties over which defendant had no responsibility or control.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff would be unjustly enriched if permitted to recover against defendant on the claims set forth in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of equitable estoppel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that plaintiff is seeking to recover costs or damages that are unreasonable, duplicative or otherwise inappropriate.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is barred, in whole or in part, from obtaining any recovery from defendant given plaintiff's failure to mitigate its alleged damages, if any.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has incurred no damages cognizable by law.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by plaintiff's failure to join indispensable parties to this action.

ELEVENTH AFFIRMATIVE DEFENSE

47 USC § 230

Plaintiff's state law claims are barred by 47 USC § 230, which provides that "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" and "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

TWELFTH AFFIRMATIVE DEFENSE

Failure to State a Claim—Trademark Fair Use

Plaintiff has failed to state a claim for which relief can be granted as to all the claims in the Complaint sounding in trademark, including unjust enrichment, unfair competition, etc, because defendant's use of any trademarks owned by plaintiff was and is fair use as a matter of law.

THIRTEENTH AFFIRMATIVE DEFENSE
Failure to State a Claim—Initial Interest Confusion

Plaintiff has failed to state a claim for which relief can be granted as to all the claims in the Complaint sounding in trademark to the extent any such claims are based on the specious doctrine of initial interest confusion.

FOURTEENTH AFFIRMATIVE DEFENSE
Failure to State a Claim—Interference with Contract

Plaintiff has failed to state a claim for tortious interference with contract because it has not alleged:

- (a) the existence of a specific valid contract between plaintiff and an identified third party;
- (b) defendant's knowledge of that contract; or
- (c) defendant's intentional procuring of
- (d) the breach of that contract.

FIFTHTEENTH AFFIRMATIVE DEFENSE
Failure to State a Claim—Interference with Prospective Contractual Relations

Plaintiff has failed to state a claim for tortious interference with prospective contractual relations because it has not alleged that:

- (a) it had a business relationship with a specified third party;
- (b) defendant knew of that relationship; or
- (c) defendant intentionally interfered with that specific relationship.

WHEREFORE, defendant demands that plaintiff's Complaint be dismissed, with prejudice, in its entirety, and that defendant be granted its attorneys' fees and costs in connection with this suit.

JURY DEMAND

Opinion Corp. hereby demands a jury trial on all the issues raised in this action so amenable to trial.

HANGLEY ARONCHICK SEGAL PUDLIN
& SCHILLER

By: /s/ Daniel Segal

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*Attorneys for Defendant Opinion Corp.,
d/b/a PissedConsumer.com*

Dated: July 13, 2012

CERTIFICATE OF SERVICE

I, Daniel Segal, hereby certify that a true and correct copy of the foregoing Answer and Jury Demand of Defendant Opinion Corp. was served on the following via ECF:

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/s/ Daniel Segal
Daniel Segal

Dated: July 13, 2012