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MEMOLINK, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEVI STRAUSS & CO.,)	CASE NO. C 05 4994 JL
Plaintiff,)	ANSWER TO COMPLAINT
vs.)	DEMAND FOR JURY TRIAL
MEMOLINK, INC.,)	
Defendants.)	[Electronic digital signatures permitted]

Defendant, MEMOLINK, Inc. (hereinafter referred to as “MemoLink”), answers the Complaint of plaintiff, LEVI STRAUSS & CO. (hereinafter referred to as “LS&CO”), as follows:

PRELIMINARY STATEMENT

1. In response to Paragraph 1 of the Complaint, MemoLink denies each and all of the allegations stated therein, and further states that the subject of such allegations are the product of conjecture and/or subjective characterizations by LS&CO.

2. In response to Paragraph 1 of the Complaint, MemoLink denies each and all of the allegations stated therein, and further states that the subject of such allegations are the product of conjecture and/or subjective characterizations by LS&CO.

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1 to the allegations therein, and, for that reason, denies each and all of the allegations stated
2 therein, and further states that the documents referenced in subparts a. through o., inclusive
3 thereof, each speak for themselves.

4 10. In response to Paragraph 10 of the Complaint, MemoLink is without knowledge
5 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
6 each and all of the allegations stated therein.

7 11. In response to Paragraph 11 of the Complaint, MemoLink is without knowledge
8 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
9 each and all of the allegations stated therein.

10 12. In response to Paragraph 12 of the Complaint, MemoLink is without knowledge
11 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
12 each and all of the allegations stated therein.

13 **Defendant's Infringing and Deceptive Practices**

14 13. In response to Paragraph 13 of the Complaint, MemoLink denies that it sends
15 "unsolicited email messages", and that it is "falsely promising consumers" anything. Except as
16 so expressly denied, MemoLink is without knowledge or information sufficient to form a belief
17 as to the balance of the allegations therein, and, for that reason, denies each and all of the
18 balance of the allegations stated therein, further states that whatever was or is offered by
19 MemoLink speaks for itself absent any allegations that are the product of conjecture and/or
20 subjective characterizations by LS&CO, and further states that the documents attached as
21 Exhibits A and B to the Complaint speak for themselves.

22 14. In response to Paragraph 14 of the Complaint, MemoLink denies that it sends
23 "unsolicited email". Except as so expressly denied, MemoLink is without knowledge or
24 information sufficient to form a belief as to the balance of the allegations therein, and, for that
25 reason, denies each and all of the balance of the allegations stated therein, and further states that
26 whatever was or is offered by MemoLink speaks for itself absent any allegations that are the
27 product of conjecture and/or subjective characterizations by LS&CO.

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1 15. In response to Paragraph 15 of the Complaint, MemoLink is without knowledge
2 or information sufficient to form a belief as to the balance of the allegations therein, and, for that
3 reason, denies each and all of the balance of the allegations stated therein.

4 16. In response to Paragraph 16 of the Complaint, MemoLink denies that it sent an
5 “unsolicited email advertisement”. Except as so expressly denied, MemoLink is without
6 knowledge or information sufficient to form a belief as to the balance of the allegations therein,
7 and, for that reason, denies each and all of the balance of the allegations stated therein, and
8 further states that whatever was or is offered by MemoLink speaks for itself absent any
9 allegations that are the product of conjecture and/or subjective characterizations by LS&CO.

10 17. In response to Paragraph 17 of the Complaint, MemoLink is without knowledge
11 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
12 each and all of the allegations stated therein, and further states that whatever was or is offered by
13 MemoLink speaks for itself absent any allegations that are the product of conjecture and/or
14 subjective characterizations by LS&CO.

15 18. In response to Paragraph 18 of the Complaint, MemoLink denies each and all of
16 the allegations stated therein, and further denies that any damage or harm has been caused as
17 alleged or at all by reason of any acts or omissions to act of MemoLink.

18 19. In response to Paragraph 19 of the Complaint, MemoLink is without knowledge
19 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
20 each and all of the allegations stated therein.

21 20. In response to Paragraph 20 of the Complaint, MemoLink is without knowledge
22 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
23 each and all of the allegations stated therein, and further denies that LS&CO has been damaged
24 as alleged or at all by reason of any acts or omissions to act of MemoLink.

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COUNT I

Federal Trademark Infringement
(15 U.S.C. §§ 1114-1117)

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4 21. In response to Paragraph 21 of the Complaint, MemoLink re-alleges and
5 incorporates by reference Paragraphs 1 through 20, inclusive, of this Answer as though fully set
6 forth herein.

7 22. In response to Paragraph 22 of the Complaint, MemoLink is without knowledge
8 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
9 each and all of the allegations stated therein.

10 23. In response to Paragraph 23 of the Complaint, MemoLink is without knowledge
11 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
12 each and all of the allegations stated therein, and further denies that any damage or harm has
13 been caused as alleged or at all by reason of any acts or omissions to act of MemoLink.

14 24. In response to Paragraph 24 of the Complaint, MemoLink is without knowledge
15 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
16 each and all of the allegations stated therein, and further denies that LS&CO has been damaged
17 as alleged or at all by reason of any acts or omissions to act of MemoLink.

18 25. In response to Paragraph 25 of the Complaint, MemoLink is without knowledge
19 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
20 each and all of the allegations stated therein, and further denies that any damage or harm has
21 been caused as alleged or at all by reason of any acts or omissions to act of MemoLink.

22 26. In response to Paragraph 26 of the Complaint, MemoLink denies each and all of
23 the allegations stated therein and further states that the subject of such allegations are the product
24 of pure conjecture by LS&CO.

25 27. In response to Paragraph 27 of the Complaint, MemoLink is without knowledge
26 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
27 each and all of the allegations stated therein, further denies that any damage or harm has been
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1 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
2 denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

3 **COUNT II**

4 **Federal Unfair Competition**
5 **(15 U.S.C. § 1125)**

6 28. In response to Paragraph 28 of the Complaint, MemoLink re-alleges and
7 incorporates by reference Paragraphs 1 through 27, inclusive, of this Answer as though fully set
8 forth herein.

9 29. In response to Paragraph 31 of the Complaint, MemoLink is without knowledge
10 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
11 each and all of the allegations stated therein, and further states that the subject of such
12 allegations are the product of pure conjecture by LS&CO.

13 30. In response to Paragraph 30 of the Complaint, MemoLink is without knowledge
14 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
15 each and all of the allegations stated therein.

16 31. In response to Paragraph 31 of the Complaint, MemoLink is without knowledge
17 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
18 each and all of the allegations stated therein, further denies that any damage or harm has been
19 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
20 states that the subject of such allegations of harm are the product of conjecture and/or subjective
21 characterizations by LS&CO.

22 32. In response to Paragraph 32 of the Complaint, MemoLink denies each and all of
23 the allegations stated therein, and further states that the subject of such allegations are the
24 product of pure conjecture by LS&CO.

25 33. In response to Paragraph 33 of the Complaint, MemoLink is without knowledge
26 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
27 each and all of the allegations stated therein, further denies that any damage or harm has been
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1 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
2 denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

3 34. In response to Paragraph 34 of the Complaint, MemoLink is without knowledge
4 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
5 each and all of the allegations stated therein, further denies that any damage or harm has been
6 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
7 denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

8 **COUNT III**

9 **Federal Trademark Dilution**
10 **(15 U.S.C. § 1125(c))**

11 35. In response to Paragraph 35 of the Complaint, MemoLink re-alleges and
12 incorporates by reference Paragraphs 1 through 34, inclusive, of this Answer as though fully set
13 forth herein.

14 36. In response to Paragraph 37 of the Complaint, MemoLink is without knowledge
15 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
16 each and all of the allegations stated therein, and further states that the subject of such
17 allegations are the product of conjecture and/or subjective characterizations by LS&CO.

18 37. In response to Paragraph 37 of the Complaint, MemoLink is without knowledge
19 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
20 each and all of the allegations stated therein, and further denies that any damage or harm has
21 been caused as alleged or at all by reason of any acts or omissions to act of MemoLink.

22 38. In response to Paragraph 38 of the Complaint, MemoLink is without knowledge
23 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
24 each and all of the allegations stated therein, further denies that any damage or harm has been
25 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
26 denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

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COUNT IV

Violation of California's Can-Spam Act
(Cal. Bus. & Prof. Code § 17529)

39. In response to Paragraph 39 of the Complaint, MemoLink re-alleges and incorporates by reference Paragraphs 1 through 38, inclusive, of this Answer as though fully set forth herein.

40. In response to Paragraph 40 of the Complaint, MemoLink is without knowledge or information sufficient to form a belief as to the allegations therein, and, for that reason, denies each and all of the allegations stated therein, and further states that the subject of such allegations are the product of conjecture and/or subjective characterizations by LS&CO.

41. In response to Paragraph 41 of the Complaint, MemoLink is without knowledge or information sufficient to form a belief as to the allegations therein, and, for that reason, denies each and all of the allegations stated therein, further denies that LS&CO has been damaged as alleged or at all by reason of any acts or omissions to act of MemoLink, and further denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

42. In response to Paragraph 42 of the Complaint, MemoLink is without knowledge or information sufficient to form a belief as to the allegations therein, and, for that reason, denies each and all of the allegations stated therein, and further denies that any damage or harm has been caused as alleged or at all by reason of any acts or omissions to act of MemoLink.

COUNT V

Violation of California's Unfair Competition Act
(Cal. Bus. & Prof. Code §§ 17533, 17537)

43. In response to Paragraph 43 of the Complaint, MemoLink re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, of this Answer as though fully set forth herein.

44. In response to Paragraph 44 of the Complaint, MemoLink is without knowledge or information sufficient to form a belief as to the allegations therein, and, for that reason, denies each and all of the allegations stated therein, and further states that whatever was or is offered by

1 MemoLink speaks for itself absent any allegations that are the product of conjecture and/or
2 subjective characterizations by LS&CO.

3 45. In response to Paragraph 45 of the Complaint, MemoLink is without knowledge
4 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
5 each and all of the allegations stated therein, and further states that whatever was or is offered by
6 MemoLink speaks for itself absent any allegations that are the product of conjecture and/or
7 subjective characterizations by LS&CO.

8 46. In response to Paragraph 46 of the Complaint, MemoLink is without knowledge
9 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
10 each and all of the allegations stated therein, further denies that any damage or harm has been
11 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
12 denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

13 **COUNT VI**

14 **Violation of California's False Advertising Act**
15 **(Cal. Bus. & Prof. Code § 17500)**

16 47. In response to Paragraph 47 of the Complaint, MemoLink re-alleges and
17 incorporates by reference Paragraphs 1 through 46, inclusive, of this Answer as though fully set
18 forth herein.

19 48. In response to Paragraph 48 of the Complaint, [TO BE DISCUSSED], and further
20 states that whatever was or is offered by MemoLink speaks for itself absent any allegations that
21 are the product of conjecture and/or subjective characterizations by LS&CO.

22 49. In response to Paragraph 49 of the Complaint, [TO BE DISCUSSED], and further
23 states that whatever was or is offered by MemoLink speaks for itself absent any allegations that
24 are the product of conjecture and/or subjective characterizations by LS&CO.

25 50. In response to Paragraph 50 of the Complaint, MemoLink denies each and all of
26 the allegations stated therein and further states that the subject of such allegations are the product
27 of pure conjecture by LS&CO.

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1 51. In response to Paragraph 51 of the Complaint, MemoLink is without knowledge
2 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
3 each and all of the allegations stated therein, further denies that any damage or harm has been
4 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
5 denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

6 **COUNT VI (sic. VII)**

7 **Violation of California’s Unfair Competition Act**
8 **(Cal. Bus. & Prof. Code § 17200)**

9 52. In response to Paragraph 52 of the Complaint, MemoLink re-alleges and
10 incorporates by reference Paragraphs 1 through 51, inclusive, of this Answer as though fully set
11 forth herein.

12 53. In response to Paragraph 53 of the Complaint, MemoLink is without knowledge
13 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
14 each and all of the allegations stated therein, and further states that whatever was or is offered by
15 MemoLink speaks for itself absent any allegations that are the product of conjecture and/or
16 subjective characterizations by LS&CO.

17 54. In response to Paragraph 54 of the Complaint, MemoLink is without knowledge
18 or information sufficient to form a belief as to the allegations therein, and, for that reason, denies
19 each and all of the allegations stated therein, further denies that any damage or harm has been
20 caused as alleged or at all by reason of any acts or omissions to act of MemoLink, and further
21 denies that LS&CO is entitled to any relief against MemoLink as alleged or at all.

22 **Demand for Judgment**

23 With respect to LS&CO’s prayers for relief and for judgment, MemoLink denies that
24 LS&CO has been or will be damaged as alleged or at all by reason of any acts or omissions to
25 act of MemoLink, and further denies that LS&CO is entitled to any relief against MemoLink as
26 alleged or at all.

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1 In addition to the responses to the numbered Paragraphs of the Complaint and to the
2 Demand for Judgment, MemoLink denies each and every other allegation therein not admitted
3 by it.

4 **AFFIRMATIVE DEFENSES**

5 Without waiving the foregoing Answer and as further separate and additional defenses to
6 the allegations set forth in the Complaint, MemoLink sets forth the following affirmative
7 defenses:

8 **FIRST AFFIRMATIVE DEFENSE**

9 The Complaint, and each purported claim for relief therein, fails to state facts sufficient
10 to constitute a cause of action against MemoLink upon which relief can be granted, and the
11 Complaint should thereby be dismissed pursuant to Fed.R.Civ.P. Rule 12(b)(6).

12 **SECOND AFFIRMATIVE DEFENSE**

13 The Complaint, and each purported claim for relief therein, fails to state facts sufficient
14 to establish that LS&CO has been or will be damaged all by reason of any acts or omissions to
15 act of MemoLink, and the Complaint should thereby be dismissed pursuant to Fed.R.Civ.P. Rule
16 12(b)(6).

17 **THIRD AFFIRMATIVE DEFENSE**

18 The Complaint, and each purported claim for relief therein, fails to state facts sufficient
19 to establish that LS&CO is now or will be entitled to any relief against MemoLink, and the
20 Complaint should thereby be dismissed pursuant to Fed.R.Civ.P. Rule 12(b)(6).

21 **FOURTH AFFIRMATIVE DEFENSE**

22 The Complaint, and each purported claim for relief therein, is uncertain, ambiguous,
23 unintelligible, and the product of conjecture and/or subjective characterizations by LS&CO, and
24 the Complaint should thereby be dismissed pursuant to Fed.R.Civ.P. Rule 12(b)(6).

25 **FIFTH AFFIRMATIVE DEFENSE**

26 The Complaint, and each purported claim for relief therein, is uncertain, ambiguous,
27 unintelligible, and the product of conjecture and/or subjective characterizations by LS&CO, and
28 the Complaint should thereby be dismissed pursuant to Fed.R.Civ.P. Rule 12(b)(6).

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SIXTH AFFIRMATIVE DEFENSE

Venue is not proper against MemoLink in this district in that it does not regularly transact business within such district.

SEVENTH AFFIRMATIVE DEFENSE

Any commerce engaged in by MemoLink concerning any trademark or other interest of LS&CO was conducted in such a manner that the goods emanating from such commerce are solely those goods of the manufacture of LS&CO, the trademark associated with such goods is descriptive of and used fairly and in good faith only to describe the goods of LS&CO, and such commerce is thereby subject to the fair use doctrine established under the Lanham Act, 15 USC § 1115(b)(4).

EIGHTH AFFIRMATIVE DEFENSE

The fair use doctrine established under the Lanham Act, 15 USC § 1115(b)(4), is an absolute defense to any commerce engaged in MemoLink concerning any trademark or other interest of LS&CO.

NINTH AFFIRMATIVE DEFENSE

Where the fair use doctrine established under the Lanham Act, 15 USC § 1115(b)(4) is asserted, the obligation is solely that of LS&CO to establish confusion in the minds of the purchasing public, and it is not the obligation of MemoLink to establish the absence of such confusion in the minds of the purchasing public.

TENTH AFFIRMATIVE DEFENSE

Any commerce engaged in by MemoLink concerning any trademark or other interest of LS&CO was conducted in such a manner that the goods emanating from such commerce could not create any confusion in the minds of the purchasing public with regard to the source or origin of such goods.

ELEVENTH AFFIRMATIVE DEFENSE

Any commerce engaged in by MemoLink concerning any trademark or other interest of LS&CO was conducted in such a manner that the goods could not be mistaken for other than the goods of LS&CO thereby nullifying any confusion in the minds of the purchasing public.

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TWELFTH AFFIRMATIVE DEFENSE

Any commerce engaged in by MemoLink concerning any trademark or other interest of LS&CO was conducted in such a manner that there was no derogation of any good will connected with the business or the trademark of LS&CO.

THIRTEENTH AFFIRMATIVE DEFENSE

Any commerce engaged in by MemoLink concerning any trademark or other interest of LS&CO was conducted in such a manner that there was no imitation of either the goods or the trademark of LS&CO that was calculated to mislead or cause confusion in the minds of the purchasing public.

FOURTEENTH AFFIRMATIVE DEFENSE

Any acts or omissions to act by MemoLink concerning an interest in any trademark of LS&CO were done with an innocent intent.

FIFTEENTH AFFIRMATIVE DEFENSE

Any recovery by LS&CO under the Complaint is barred because the Complaint was commenced by LS&CO against MemoLink in bad faith.

MemoLink reserves the right to amend this Answer to assert other defenses as they may become available or apparent during discovery and preparation for trial.

WHEREFORE, MemoLink prays for judgment as follows:

1. That the relief sought in the Complaint against MemoLink be denied;
2. That LS&CO take nothing from MemoLink by reason of the Complaint;
3. That the Complaint be dismissed in its entirety with prejudice;
4. That MemoLink be awarded the attorneys' fees and costs it incurred in defending this action;
5. That MemoLink be granted its costs of suit; and
6. For such other and further relief as the Court may deem just and proper.

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DATED: February 24, 2006

BUSINESS & TECHNOLOGY LAW GROUP

By: /s/ Stephen N. Hollman
Stephen N. Hollman,
Attorneys for Defendant,
MEMOLINK, INC.

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JURY DEMAND

Defendant, MemoLink, Inc., respectfully demands a jury trial.

DATED: February 24, 2006

BUSINESS & TECHNOLOGY LAW GROUP

By: /s/ Stephen N. Hollman
Stephen N. Hollman,
Attorneys for Defendant,
MEMOLINK, INC.