

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X Index No.: 600283/13

NYMP ACQUISITION, LLC as acquirer of
substantially all of the assets of
NEW YORK MERCHANTS PROTECTIVE CO., INC.,

**VERIFIED ANSWER
AND COUNTERCLAIMS**

Plaintiffs,

-against-

PETTWAY DIGITAL LLC,
"JOHN DOE NO.1 through JOHN DOE NO.5",
the name of said defendant being fictitious and unknown
to plaintiff, person intended being as described herein,

Defendants.

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Defendant, PETTWAY DIGITAL LLC, by its attorneys Ruta Soulios & Stratis LLP,
answering the Complaint of the plaintiff herein, respectfully alleges as follows:

1. Denies knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraphs "1", "3", "5", "6", "10", and "23" of the plaintiff's Complaint.
2. Denies each and every allegation contained in paragraphs "4", "7", "9", "11", "12", "14", "15", "16", "17", "18", "19", "21", "22", "24", "25", "26", "27", "28", "30", "31", "32", "33", "34", "35", "36", "37", "38", "40", "41", "42", "43", "44", and "45" of the plaintiff's Complaint.
3. As to the allegations in paragraphs "8", "13", "20", "29", and "39" of the plaintiff's complaint, defendant repeats and realleges each and every allegation as contained above.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THIS ACTION

4. The complaint fails to state any claims upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THIS ACTION

5. The claims are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THIS ACTION

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

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THIS ACTION

7. Defendant did not cause the alleged damages; damages, if any, are entirely attributable to other persons or entities and/or intervening causes.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THIS ACTION

8. Throughout the complaint plaintiff makes reference to certain conduct as being performed by all "defendants," uses the collective term "defendants" and otherwise improperly attempts to affix liability against all defendants without particularly describing the act or omission of the individual party against whom the liability is being sought. Accordingly, to the extent allegations supporting causes of action are based on the conduct of parties other than defendants, the complaint must be dismissed as against defendants for failure to state a claim upon which relief may be granted.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THIS ACTION

9. Defendant is a good faith purchaser in the ordinary course of business and not liable for the alleged improper or tortious acts of others.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO THIS ACTION

10. Defendant is a competitor of the plaintiff and has every legal right to compete for business with the plaintiff.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE TO THIS ACTION

11. Plaintiff's claims are barred by the application of the business judgment rule.

AS AND FOR A FIRST COUNTERCLAIM
(Tortious Interference with Contract)

12. Defendant, Pettway Digital LLC (“Pettway”) is a domestic limited liability company existing under the laws of the State of New York with its principal office locate in Nassau County, State of New York.

13. Pettway is engaged in the business of providing security and fire alarm installation and monitoring as well as related services.

14. As part of Pettway’s marketing strategy it purchases lists of potential customers for its business.

15. In early December of 2012, Pettway called Marilyn Stern, a potential customer, from a list of potential customers it had purchased in good faith and in the ordinary course of business.

16. During the telephone call, Ms. Stern confirmed that she had not had monitoring or security services for a very long time and was not under any contract for such services.

17. On December 10, 2012, Ms. Stern signed an agreement with Pettway for the installation of a security and fire monitoring system and monitoring services.

18. On December 26, 2012, plaintiff contacted and told Pettway that Ms. Stern was a customer that was under contract with plaintiff and that Pettway should remove all monitoring equipment from her home.

19. Plaintiff provided Pettway with an alleged contract (“NYMP Contract”) signed by Ms. Stern with plaintiff, dated December 1, 2012 for monitoring services.

20. Plaintiff obtained the NYMP Contract after Ms. Stern signed the agreement with Pettway on December 10, 2012 and back dated the agreement to December 1, 2012.

21. Upon information and belief, plaintiff has engaged in other activity to unfairly

compete with Pettway.

22. Plaintiff's conduct is a departure from the standards of fair dealing and fair dealing.

23. Plaintiff intentionally intended to harm Pettway by having Ms. Stern sign a contract with plaintiff when it was aware that Ms. Stern was already under contract with Pettway and that Pettway had installed monitoring equipment in Ms. Stern's home.

24. Plaintiff intended that its improper and fraudulent conduct would cause harm to Pettway.

25. Plaintiff intended that its false statements made to third parties would cause harm to Pettway.

26. Plaintiff's unjustifiable complained of conduct was the cause of Pettway's harm.

27. Plaintiff's conduct was outrageous and extreme in character, beyond all reasonable bounds of decency and intolerable in a civilized society.

28. As a result of plaintiff's tortious and actionable conduct, Pettway was damaged in an amount to be determined at trial, with interest, at the maximum amount permitted by law.

AS AND FOR A SECOND COUNTERCLAIM AGAINST PLAINTIFF
(Unfair Competition)

29. Defendant Pettway repeats, reiterates and realleges each and every allegation set forth above in paragraphs 12 through 28 as if set forth more fully herein at length.

30. As a result of plaintiff's actionable conduct, which constitutes unfair competition, Pettway was damaged in an amount to be determined at trial, with interest, at the maximum amount permitted by law.

AS AND FOR A THIRD COUNTERCLAIM AGAINST PLAINTIFF
(Unjust Enrichment)

31. Defendant Pettway repeats, reiterates and realleges each and every allegation set

forth above in paragraphs 12 through 30 as if set forth more fully herein at length.

32. As a result of plaintiff's actionable conduct, equity and good conscience demand that plaintiff make restitution to Pettway for the benefit that it has unjustly received at Pettway's expense.

WHEREFORE, the answering defendants demand judgment dismissing the complaint herein; together with the attorneys fees, costs and disbursements of this action and granting defendant Pettway Digital LLC judgment on his First, Second and Third Counterclaims herein.

Dated: New York, New York
March 4, 2013

Yours, etc.


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VERIFICATION

The undersigned, an attorney admitted to practice in the Courts of New York State, shows: affirmant is JOSEPH A. RUTA, attorney for the defendant Pettway Digital LLC, in the within action; affirmant has read the foregoing Answer and Counterclaims and knows the contents thereof; that the same is true to affirmant's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters affirmant believes it to be true and the reason that this verification is not made by defendant and is made by affirmant is that defendant is not presently in the county where the attorney for the defendants has his office.

Affirmant further says that the source of affirmant's information and the grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are from investigations made on behalf of said defendants.

The undersigned affirms that the foregoing statements are true, under penalties of perjury:

Dated: New York, New York
March 4, 2013


JOSEPH A. RUTA