



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LEVITT CORP., a Florida corporation,)	
)	
Plaintiff,)	
)	C.A. No. 3622-VCN
v.)	
)	
OFFICE DEPOT, INC., a Delaware corporation,)	
)	
Defendant.)	
)	
)	
)	

ANSWER OF DEFENDANT OFFICE DEPOT, INC.

Defendant Office Depot, Inc. (“Office Depot”), by and through its undersigned counsel, hereby responds to the Verified Complaint for Declaratory and Injunctive Relief (“Complaint”) filed by Plaintiff Levitt Corp. (“Levitt”), upon knowledge as to its own actions and upon information and belief as to all other matters, as follows:

RESPONSES TO INDIVIDUAL PARAGRAPHS OF THE COMPLAINT

1. Paragraph 1 of the Complaint contains legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 1 of the Complaint, except admits that Levitt Corp. purports to bring this action for relief from the provision of Office Depot’s current corporate bylaws (“Bylaws”) that imposes a 120-day advance notice requirement.

2. Office Depot denies each and every other allegation in Paragraph 2 of the Complaint, except admits that its 2008 Annual Meeting is currently scheduled to be held on April 23, 2008.

3. Paragraph 3 of the Complaint states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 4 of the Complaint, except admits that both Office Depot's 1996 Bylaws, included in Office Depot's 2nd Quarter, August 13, 1996 Form 10-Q filing with the Securities and Exchange Commission (attached hereto as Exhibit A), and Office Depot's 1997 Amended and Restated Bylaws, included in Office Depot's 2nd Quarter, August 12, 1997 Form 10-Q filing with the Securities and Exchange Commission (attached hereto as Exhibit B), contained two provisions, Article II, Section 5 and Article III, Section 3 (the first of which cross-referenced the second) relating to advance notice of nomination of directors, as well as other business to be conducted at the Office Depot annual meeting. Furthermore, Office Depot admits that both of these provisions were removed in a general clean-up of the Bylaws that resulted in Office Depot's 1999 Amended and Restated Bylaws (attached hereto as Exhibit C), and that Article II, Section 14, the provision of the Bylaws in issue in this action was added to the Bylaws in April 2000, and that Office Depot filed its then current Amended and Restated Bylaws, that included the April 2000 changes as well as other changes adopted in August 2000, in connection with its November 2, 2001 Form 10-Q (attached hereto as Exhibit D). Office Depot respectfully refers the Court to the full text of all of these documents for the contents thereof.

5. Office Depot denies each and every allegation in Paragraph 5 of the Complaint, except admits that Levitt Corp. seeks a declaration that its Nominees are entitled to stand for election to the Office Depot Board at the 2008 Annual Meeting.

6. Paragraph 6 of the Complaint states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 6 of the Complaint.

7. Office Depot lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint.

8. Office Depot admits the allegations in Paragraph 8 of the Complaint.

9. Office Depot denies each and every allegation in Paragraph 9 of the Complaint, except admits that the price of Office Depot shares has fallen from a high closing price of over \$44 per share in May 2006 to a closing price over \$11 per share on the last trading day before filing of this Answer; that in October 2007 Office Depot announced that its Audit Committee was conducting a review of its accounting for certain vendor program funds; that in November 2007 Office Depot restated its financial results for 3Q06 through 2Q07 (although this restatement did not affect cash flow and concerned the timing of the recognition of income arising from vendor programs, thereby deferring the recognition of such revenue to later time periods); and that in January 2008 the Securities and Exchange Commission issued a formal order of investigation to determine whether Office Depot has violated federal securities laws. Office Depot lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 9 of the Complaint.

10. Office Depot lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint.

11. Office Depot denies each and every allegation in Paragraph 11 of the Complaint.

12. Office Depot lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint, except admits that Mark Begelman served as President and Chief Operating Officer of Office Depot from 1991 to 1995, and as director of Office Depot from 1991 to 1996.

13. Office Depot denies each and every allegation in Paragraph 13 of the Complaint, except admits that it filed a Proxy Statement, which did not reflect nomination of any non-incumbent candidates for election to the Office Depot Board of Directors, on March 13, 2008 and that Levitt filed a Preliminary Proxy Statement on March 17, 2008.

14. Paragraph 14 of the Complaint states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 14 of the Complaint.

15. Paragraph 15 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 15 of the Complaint, except admits that Levitt Corp. filed the Complaint herein seeking a declaration that the Bylaws contain no advance notice requirement as to the nomination of directors.

16. Office Depot admits that the Bylaws contain the language quoted in Paragraph 16 of the Complaint, as well as relevant language not quoted in the Complaint, and respectfully refers the Court to the current Bylaws (attached as Exhibit E) for the full text thereof.

17. Paragraph 17 of the Complaint states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 17 of the Complaint, except admits that it is Office Depot's position that Article II, Section 14 of the Office Depot Bylaws applies to the nomination of directors. Office Depot lacks

knowledge and information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 17 of the Complaint concerning Levitt Corp.'s beliefs.

18. Office Depot denies each and every allegation in paragraph 18 of the Complaint, except admits that both Article II, Section 5 and Article III, Section 3 (the first of which cross-referenced the other) in both the 1996 and 1997 Office Depot Bylaws contained advance notice provisions for nomination of directors, as well as other business to be conducted at the Office Depot annual meeting, and respectfully refers the Court to the full versions of these prior Bylaws (attached hereto as Exhibits A and B respectively) for the full text thereof.

19. Paragraph 19 of the Complaint states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 19 of the Complaint, except admits that both of the provisions of the 1996 and 1997 Bylaws that provided for advance notice for nomination of directors, as well as for other business to be conducted at the Office Depot annual meeting, were removed in a general clean-up of the Bylaws that resulted in Amended and Restated Bylaws adopted in 1999 (attached hereto as Exhibit C); that Article II, Section 14, the Bylaw at issue in this action, was then added to the Bylaws in April 2000; and that Office Depot filed Amended and Restated Bylaws, with other changes adopted in August 2000, in connection with its November 2, 2001 Form 10-Q (attached hereto as Exhibit D). Office Depot respectfully refers the Court to these documents for the full text thereof.

20. Paragraph 20 of the Complaint states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 20 of the Complaint.

21. Paragraph 21 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 21 of the Complaint, except that Office Depot admits it included in the notice of its 2008 Annual Meeting that there would be an election of directors at the 2008 Annual Meeting.

22. Paragraph 22 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 22 of the Complaint.

23. With respect to Paragraph 23 of the Complaint, Office Depot repeats and reasserts its response to each of the foregoing paragraphs as if fully set forth herein.

24. Office Depot denies each and every allegation in Paragraph 24 of the Complaint, except admits that Article II, Section 14 of the Office Depot Bylaws requires that any stockholder wishing to nominate a candidate or candidates for director at an Office Depot annual meeting must have made such request in writing by the notice date contained therein.

25. Paragraph 25 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 25 of the Complaint.

26. Paragraph 26 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 26 of the Complaint.

27. Paragraph 27 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 27 of the Complaint.

28. Paragraph 28 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 28 of the Complaint.

29. Paragraph 29 states legal conclusions to which no response is required; to the extent a response is required, Office Depot denies each and every allegation in Paragraph 29 of the Complaint.

30. Office Depot denies each and every allegation in Paragraph 30 of the Complaint.

AFFIRMATIVE DEFENSES

Office Depot asserts the following affirmative defenses and reserves the right to assert other defenses or claims when and if they become appropriate and/or available in this action:

First Affirmative Defense

The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The Complaint should be dismissed for want of ripeness.

Third Affirmative Defense

The Complaint is barred by virtue of Levitt's laches and unclean hands.

* * * * *

WHEREFORE, Office Depot respectfully requests that the Court enter an Order:

- A. Denying Levitt the relief sought in the Complaint;
- B. Declaring that the Bylaws validly impose a notice requirement that Plaintiff has failed to satisfy and that Office Depot is entitled to exclude Plaintiff's nominees from standing for election at the Office Depot 2008 Annual Meeting;
- C. Dismissing the Complaint with prejudice;
- D. Awarding Office Depot its costs and expenses in this action, including an award of reasonable attorneys' fees, as applicable; and
- E. Awarding Office Depot such other and further relief as the Court deems just and proper.

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Dated: March 24, 2008

/s/ John D. Hendershot

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