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Attorneys for Plaintiffs  
Promotion In Motion, Inc. and PIM Brands, LLC

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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PROMOTION IN MOTION, INC.	:	
and PIM BRANDS, LLC,	:	Civil Action No. 09-1228 (WJM) (MF)
 Plaintiffs,	:	<b>REPLY TO COUNTERCLAIM</b>
 v.	:	
 BEECH-NUT NUTRITION	:	
CORPORATION, a HERO	:	
GROUP COMPANY,	:	
 Defendant.	:	

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Plaintiffs Promotion In Motion, Inc. and PIM Brands, LLC (“the Plaintiffs”), by and through their counsel McCarter & English, LLP, respond to the Defendant’s Counterclaim as follows:

**BACKGROUND**

1. The allegations contained in the paragraph are admitted.
2. The Plaintiffs are without knowledge or information sufficient to respond to the allegations contained in this paragraph.

3. At the parties' initial meeting, the Plaintiffs made no representation concerning the manufacturing of a product that had not yet been developed and thus the allegations contained in this paragraph are denied.

4. The allegations contained in the paragraph are admitted.

5. The allegations contained in the paragraph are admitted.

6. The Plaintiffs are without knowledge or information sufficient to form a belief as to the general allegation concerning "At every stage of the process", and deny the remaining allegations contained in this paragraph.

7. The allegations contained in this paragraph are admitted, except to deny the allegation that the formula for the Fruit Nibbles product was created solely by Promotion In Motion.

8. The allegations contained in this paragraph are denied.

9. The allegations contained in the first sentence are admitted, and the remaining allegations contained in this paragraph are denied.

10. The Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the allegation of "a random sample check in late September 2008" and its results, and deny the remaining allegations contained in this paragraph.

11. The allegations contained in this paragraph are denied.

12. The Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, except to deny the allegation that the Plaintiffs' breached "express and implied warranties and agreement."

13. The allegations contained in this paragraph are denied.

14. The Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, except to deny the allegation that PIM “admitted it had failed to resolve its quality control issues remained.”

15. The allegations contained in this paragraph are denied.

16. The Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

17. The allegations contained in this paragraph are denied.

18. The allegations contained in this paragraph are denied.

19. The Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

**COUNT ONE**

20. The Plaintiffs repeat and restate their prior responses to the Reply to Counterclaim.

21. The allegation contained in this paragraph sets forth a legal conclusion to which no response is required.

22. The allegations contained in this paragraph are denied.

23. The allegations contained in this paragraph are denied.

24. The allegations contained in this paragraph are denied.

25. The allegations concerning breach by the Plaintiffs and defective product are denied, and the Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

**COUNT TWO**

26. The Plaintiffs repeat and restate their prior responses to the Reply to Counterclaim.

27. The allegations contained in this paragraph are denied.

28. The allegations contained in this paragraph are denied.

29. The allegations concerning breach by the Plaintiffs and defective product are denied, and the Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

**COUNT THREE**

30. The Plaintiffs repeat and restate their prior responses to the Reply to Counterclaim.

31. The allegations contained in this paragraph are denied.

32. The allegations contained in this paragraph are denied.

33. The allegations concerning breach by the Plaintiffs and defective product are denied, and the Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

**COUNT IV**

34. The Plaintiffs repeat and restate their prior responses to the Reply to Counterclaim.

35. The allegations contained in this paragraph are denied.

36. The allegations contained in this paragraph are denied.

37. The allegations concerning breach by the Plaintiffs and defective product are denied, and the Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

38. The allegations contained in this paragraph are denied.

**AFFIRMATIVE DEFENSES**

1. The Counterclaim fails to state a claim in whole or in part upon which relief can be granted.

2. The Plaintiffs breached no warranties, express or implied, and therefore the Counterclaim fails to state a claim in whole or in part upon which relief can be granted.

3. The parties operated in accordance with an oral agreement and therefore the Counterclaim's allegations of negligence fails to state a claim in whole or in part upon which relief can be granted.

4. The Counterclaim fails to state a claim in whole or in part upon which relief can be granted due to the Defendant's failure to mitigate its alleged damages.

5. The Counterclaim fails to state a claim in whole or in part upon which relief can be granted due to the conduct of the Defendant.

WHEREFORE, the Plaintiffs request the dismissal of the Defendant's Counterclaim with prejudice, together with costs, expenses, and such other relief as the Court deems proper.

McCARTER & ENGLISH, LLP  
Attorneys for Plaintiffs

By:                     /s/                      
WILLIAM D. WALLACH  
A Member of the Firm

Dated: May 12, 2009