

SELECTED READINGS

ETHICS

American Bar Association, *Model Rules of Professional Conduct*, Rule 1.1 (Competence) and Rule 2.1 (Advisor).

New York Unified Court System, *Rules of Professional Conduct*, Rule 1.1 (Competence), Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), Rule 1.6(b) (Confidentiality of Information), Rule 1.7 (Conflicts of Interest: Current Clients), and Rule 5.7 (Responsibilities Regarding Nonlegal Services).

CULTURAL APPROPRIATION

Susan Scafidi, *Who Owns Culture* (2005).

Alia E. Dastagir, *Is It OK for a White Kid to Dress Up as Moana for Halloween? And Other Cultural Appropriation*, USA Today, October 23, 2017.

Marc Jacobs, *Instagram Comment on Cultural Appropriation*, September 15, 2016.

Maeve McDermott, *Marc Jacobs Challenges Appropriation Claims with Hip Hop-Inspired Line*, USA Today, February 16, 2017.

Hilary Bird, *Cultural Appropriation: Make It Illegal Worldwide, Indigenous Advocates Say*, CBC News, June 13, 2017.

Assemblies of Member States of WIPO, 57th Session, *Decision: Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore*, October 2-11, 2017.

Monica Kim, *Spring 2018 Ready-to-Wear: Bibhu Mohapatra*, Vogue, September 8, 2017.

Liana Satenstein, *Spring 2018 Ready-to-Wear: Bibhu Mohapatra*, Vogue, September 11, 2016.

Marjorie Harvey, *Designer Dialogues: Mimi Plange*, The Lady Loves Couture, December 2015.

Indian Arts and Crafts Act (as amended), 25 USC 305e (Cause of Action for Misrepresentation of Indian Produced Goods).

Second Amended Complaint, *Navajo Nation v. Urban Outfitters*, April 4, 2013.

POSTMORTEM RIGHTS OF PUBLICITY

New York Civil Rights Law §§ 50-51 (Right of Privacy).

California Civil Code § 3344 (Celebrities Rights Act) and § 3344.1 (Astaire Celebrity Image Protection Act).

West's Revised Code of Washington Annotated § 63.60.010 (Property Right – Use of Name, Voice, Signature, Photography, or Likeness).

Onassis v. Christian Dior, 122 Misc. 603 (New York County, January 11, 1984).

Bikila v. Vibram USA, 218 F.Supp.3rd 1206 (W.D. Washington, October 31, 2016).

Complaint, *Joes Jean's v. Brando Enterprises* (Los Angeles Superior Court, May 4, 2010).

Complaint, *Burberry v. Bogart* (S.D.N.Y., May 2, 2012).

Complaint, *Kim Kardashian v. The Gap* (C.D. California, July 20, 2011).

First Amended Complaint, *Reese Witherspoon v. Marketing Advantages International* (Los Angeles Superior Court, July 15, 2013).

Nerisha Penrose, *Michael Jackson Tops Forbes' 2016 Top-Earning Dead Celebrities List*, Forbes, October 12, 2016.

New York Assembly Bill 8155, *An Act to Amend the Civil Rights Law, in Relation to the Right of Publicity*, May 31, 2017.

SEXUAL HARASSMENT

Title VII of the Civil Rights Act of 1964, § 2000e.

Title 8 of the Administrative Code of the City of New York, § 8-101 (excerpts).

New York State Division of Human Rights, *New York State Human Rights Law Protects Interns from Discrimination*, May 7, 2015.

Elizabeth Wurtzel, *Women are Angry Because of Men. Again.*, Washington Post, October 17, 2017.

Lisa Lockwood, Rosemary Feitelberg, and Alexandra Steigrad, *Sexual Abuse in Modeling: The Outcry Grows*, WWD, October 17, 2017.

Alberto Luperon, *You are Being a Hypocrite: LawNewz EIC Takes on Lisa Bloom for Representing Harvey Weinstein*, LawNewz.com, October 6, 2017.

Here We Go Again: Harvey Weinstein, Lisa Bloom, and the Thing About Lawyer Ethics That the Public and the News Media Just Cannot Seem to Grasp, Ethics Alarms, October 8, 2017.

Vanessa Friedman, Jacob Bernstein, and Matthew Schneier, *Fashion Breaks Its Silence on Harvey Weinstein Scandal*, New York Times, October 13, 2017.

Gabriel Bell, *Donna Karan Defends Weinstein, Says Women Are "Asking for It"*, Salon, October 10, 2017.

Lisa Lockwood, *G-III Stock Drops as Calls Grow for Boycott of Donna Karan Brands*, WWD, October 11, 2017.

Marc Bain, *Harvey Weinstein Allegedly Used "Project Runway" to Meet Models*, Quartz, October 23, 2017.

James Riswick, *Lexus Ends Partnership with Weinstein Co. and "Project Runway"*, Autoblog, October 24, 2017.

Samantha Conti, *Terry Richardson Falls Foul of Condé Nast in the U.S. and the U.K.*, WWD, October 24, 2017.

Dominic Patten, *Weinstein Company Hit with \$5M Suit for Harvey Weinstein's "Sexual Misconduct"*, October 24, 2017.

Complaint, *Huett v. The Weinstein Company*, (Los Angeles Superior Court, October 24, 2017).

Jodi Kantor and Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, New York Times, October 5, 2017.

Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, The New Yorker, October 23, 2017.

Deborah Tuerkheimer, *What If Only One Woman Had Accused Harvey Weinstein?* The Guardian, October 22, 2017.

Kering and LVMH, *The Charter on the Working Relations with Fashion Models and their Well-Being* (2017).

California Assembly Bill 2539, *An Act to Add Chapter 6 (Commencing with Section 1707) to Part 6 of Division 2 of the Labor Code, Relating to Modeling Agencies*, February 19, 2016.

New York Assembly Bill 8752, *An Act to Amend the Executive Law, in Relation to Establishing Unlawful Discriminatory Practices Relating to Models*, October 25, 2017.

ETHICS



**Center for
Professional Responsibility**

Model Rules of Professional Conduct

Client-Lawyer Relationship

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Client-Lawyer Relationship

Rule 1.1 Competence - Comment Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

Counselor

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Counselor

Rule 2.1 Advisor - Comment Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and

ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

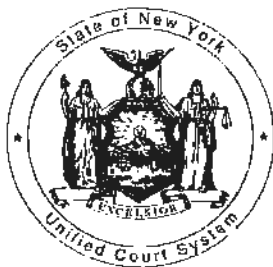
Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

NEW YORK STATE UNIFIED COURT SYSTEM

PART 1200

RULES OF PROFESSIONAL CONDUCT



Dated: January 1, 2017

These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and amended on several occasions thereafter. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

The New York State Bar Association has issued a Preamble, Scope and Comments to accompany these Rules. They are not enacted with this Part, and where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls.

This unofficial compilation of the Rules provided for informational purposes only. The official version of Part 1200 is published by the New York State Department of State. An unofficial on-line version is available at www.dos.ny.gov/info/nycrr.html (Title 22 [Judiciary]; Subtitle B Courts; Chapter IV Supreme Court; Subchapter E All Departments; Part 1200 Rules of Professional Conduct; § 1200.0 Rules of Professional Conduct).

RULE 1.1.**Competence**

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

(c) lawyer shall not intentionally:

- (1)** fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or
- (2)** prejudice or damage the client during the course of the representation except as permitted or required by these Rules.

RULE 1.2.**Scope of Representation and Allocation of Authority Between Client and Lawyer**

(a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, except that the lawyer may discuss the legal consequences of any proposed course of conduct with a client.

(e) A lawyer may exercise professional judgment to waive or fail to assert a right or position of the client, or accede to reasonable requests of opposing counsel, when doing so does not prejudice the rights of the client.

(f) A lawyer may refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime;
- (3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;
- (4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;
- (5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or
 - (ii) to establish or collect a fee; or
- (6) when permitted or required under these Rules or to comply with other law or court order.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, information protected by Rules 1.6, 1.9(c), or 1.18(b).

RULE 1.7.

Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

- (1) the representation will involve the lawyer in representing differing interests; or

- (2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

RULE 1.8.

Current Clients: Specific Conflict of Interest Rules

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

- (1) the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including

whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not:

- (1)** solicit any gift from a client, including a testamentary gift, for the benefit of the lawyer or a person related to the lawyer; or
- (2)** prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any gift, unless the lawyer or other recipient of the gift is related to the client and a reasonable lawyer would conclude that the transaction is fair and reasonable.

For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to conclusion of all aspects of the matter giving rise to the representation or proposed representation of the client or prospective client, a lawyer shall not negotiate or enter into any arrangement or understanding with:

- (1)** a client or a prospective client by which the lawyer acquires an interest in literary or media rights with respect to the subject matter of the representation or proposed representation; or
- (2)** any person by which the lawyer transfers or assigns any interest in literary or media rights with respect to the subject matter of the representation of a client or prospective client.

(e) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that:

- (1)** a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

- (2) a lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; and
- (3) a lawyer, in an action in which an attorney's fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred.

(f) A lawyer shall not accept compensation for representing a client, or anything of value related to the lawyer's representation of the client, from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship; and
- (3) the client's confidential information is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

- (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or
- (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee in a civil matter subject to Rule 1.5(d) or other law or court rule.

(j) (1) A lawyer shall not:

- (i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer's firm, require or demand sexual relations with any person;
 - (ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer's firm; or
 - (iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.
- (2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.

(k) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this Rule solely because of the occurrence of such sexual relations.

RULE 5.7.**Responsibilities Regarding Nonlegal Services**

(a) With respect to lawyers or law firms providing nonlegal services to clients or other persons:

- (1)** A lawyer or law firm that provides nonlegal services to a person that are not distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the provision of both legal and nonlegal services.
- (2)** A lawyer or law firm that provides nonlegal services to a person that are distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.
- (3)** A lawyer or law firm that is an owner, controlling party or agent of, or that is otherwise affiliated with, an entity that the lawyer or law firm knows to be providing nonlegal services to a person is subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.
- (4)** For purposes of paragraphs (a)(2) and (a)(3), it will be presumed that the person receiving nonlegal services believes the services to be the subject of a client-lawyer relationship unless the lawyer or law firm has advised the person receiving the services in writing that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the nonlegal services, or if the interest of the lawyer or law firm in the entity providing nonlegal services is de minimis.

(b) Notwithstanding the provisions of paragraph (a), a lawyer or law firm that is an owner, controlling party, agent, or is otherwise affiliated with an entity that the lawyer or law firm knows is providing nonlegal services to a person shall not permit any nonlawyer providing such services or affiliated with that entity to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person, or to cause the lawyer or law firm to compromise its duty under Rule 1.6(a) and (c) with respect to the confidential information of a client receiving legal services.

(c) For purposes of this Rule, “nonlegal services” shall mean those services that lawyers may lawfully provide and that are not prohibited as an unauthorized practice of law when provided by a nonlawyer.

CULTURAL APPROPRIATION

WHO OWNS CULTURE?

APPROPRIATION AND AUTHENTICITY
IN AMERICAN LAW



SUSAN SCAFIDI

PREFACE AND ACKNOWLEDGMENTS

IN WRITING *Who Owns Culture?*, I have found that questioning the ownership and authenticity of “cultural products”—whether cuisine, dress, music, dance, folklore, handicrafts, images, healing arts, rituals, performances, natural resources, or language—seems guaranteed to produce the sort of mild indignation often caused by the discussion of politics over a holiday dinner. One outraged soul will demand immediate justification: “Hold on! Why exactly doesn’t the legal system protect our community against cultural appropriation? We’ve given a lot to this country, and we deserve to benefit from our contributions.” At the other end of the table, someone is certain to interrupt: “Wait a second—it’s the mix of cultures that makes America great! Are you telling me I can’t borrow from other groups?” (In this vein, one of my more fashion-conscious students was overheard telling classmates in a horrified whisper, “I’ve read one of Professor Scafidi’s articles. I don’t think she believes in accessorizing!”) From the family intellectual provocateur may come a semi-historical factoid such as, “You know, Marco Polo really brought spaghetti from China,” a remark likely to spark debate over which aunt or uncle makes the best old-style tomato sauce to accompany the pasta—cooked *al dente*, of course. The practical peacemaker at the dinner table, level-headed and eager to move on to dessert, will remind everyone that culture is fluid and evolving, and, in any case, it would be quite difficult to establish restrictive forms of ownership or to police cultural borrowing of everyday art forms. And so back to the particular fish or fowl, sweets or savories, and especially family recipes that mark a particular cultural occasion. Whether they are called objects of cultural elaboration, traditional knowledge, folklore, cultural heritage, or intangible cultural

property, it is far easier to consume cultural products than to analyze them.

To address the threshold challenge of nomenclature, I have chosen the term “cultural products,” which emphasizes the ongoing nature of the products’ creation and the often controversial but significant role of the market in their life cycles. International interest in this category of cultural goods, in particular the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention for the Safeguarding of the Intangible Cultural Heritage, adopted on October 17, 2003, has emphasized documentation, education, and preservation.¹ If this convention is ratified, it will become the first binding multinational instrument for the protection of intangible expressions of culture. While the values associated with protection are of tremendous importance, especially given the current state of international and domestic law, the benefits of interaction and exchange in the service of cultural understanding are similarly compelling. Although the United States should strongly consider joining the UNESCO convention, mechanisms such as national inventories speak to the warehousing rather than the evolution of living culture. Ratification of the convention or a similar initiative is more likely if it appears sympathetic to concerns regarding trade and commercial interaction, while avoiding misappropriation or exploitation. In exploring possibilities for the balanced protection of cultural products, American law should be tailored to facilitate the initiative of old and new source communities—whether directed toward commodification or preservation of their cultural products—and their participation in the life of the nation as self-defining cultural groups.

The concept of “culture” itself, particularly as an object of ownership or as a locus of authenticity, offers an additional challenge. According to one literary theorist, “‘Culture’ is said to be one of the two or three most complex words in the English language. . . .”² Among academic disciplines, the concept of culture is originally the anthropologists’ turf and even there is subject to widespread agnosticism.³ Such persistent ambiguity is not necessarily a barrier to lawyers, judges, or even legal academics, however, as the law itself evolves along with understanding of its terms of art, as in the case of reasonableness, pri-

vacy, and even justice itself.⁴ Although a definitive ruling must await another day, a working legal definition of culture might begin in the Habermasian “lifeworld” of everyday actions and beliefs.⁵ Self-defined subsets of individuals who share particular beliefs, practices, experiences, or forms of expression thus form cultural groups.

Despite these complexities, *Who Owns Culture?* attempts to open a wider public, interdisciplinary conversation about the importance of cultural products in American life, as well as their nearly invisible status within our legal system. Now, more than ever, we are eager to bind ourselves into one nation—but, at the same time, to preserve our separate traditions and cultures. The early twenty-first century may be an *e pluribus unum* moment, and we may all love New York, but few of us wish to bring the homogenizing melting pot to a rapid boil. We instead celebrate our diversity (and demonstrate our individual savoir-faire) through consumer culture, as we eat, dress, dance, and speak in the idiom of our neighbors. Indeed, the tension-filled history of American immigration and even internal migration indicates that the cultural products of others are often easier to accept and assimilate than the individuals (or huddled masses) themselves.

When it comes to disagreement about the ownership and authenticity of cultural products, however, or about their appropriate context and uses, there are few rules or even guideposts to ensure quality, prevent faux pas, or give credit where it is due. Although public awareness of the value of creative enterprise rose dramatically with the Internet Revolution, the legal protections of copyright, patent, and trademark do not ordinarily extend to cultural creations. In fact, group authorship creates legal unease, and communal or traditional artistry often goes unrecognized.

This lack of protection for cultural products does not automatically suggest that more laws are the answer, however. As both a legal historian and a professor of intellectual property, I share the concern of many of my colleagues that, in some areas, intellectual property protection has over the years expanded to a degree that threatens to impoverish the public domain and strangle creative enterprise.⁶ This is not to suggest that intellectual property protection is unnecessary; even Hobbes warned that in the state of nature “there is no place for

Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth . . . no Arts; no Letters; no Society . . .”⁷ Nevertheless, community-based artworks, and the informal networks that produce them, receive no such expansive protection. It would be unfortunate if, in the rush to denounce congressional extension of copyright term limits or the judicial expansion of patentable subject matter, we were to overlook the lack of protection for cultural products—without even asking ourselves why. The choice to forego legal protection is as socially significant as the choice to expand protection, and the unregulated freedom to engage in cultural appropriation may be as powerful a stimulus to creativity as the promise of protected economic rewards.

When we consider the protection of cultural products, moreover, we must concurrently remain aware of the effect of such protection on the source communities themselves. International discussion regarding indigenous heritage underscores the importance of this inquiry.⁸ Culture is naturally fluid and evolving, and well-intentioned legal protections may provoke ossification of a culture and its artifacts. In addition, a source community may include dissenting voices, and a grant of legal protection to those who speak on behalf of the community may silence those voices—always an issue when rights are vested in a group rather than an individual. Any determination regarding the ownership and protection of cultural products must thus proceed with caution, taking into account both cultural and economic effects on the source community, as well as the interests of the nation and world community as a whole.

National pride, communal identity, law, tradition, value, consumerism, appreciation, and habit all play a role in the production and adaptation of cultural products in the ongoing search for an authentic America.⁹ At the end of the day, however, the central question, “Who owns culture?”, can be answered only by its creators—all of us.

CHAPTER 1

*The Commodification
of Culture*

[S]he was surrounded by her garments as by the delicate and spiritualized machinery of a whole civilization.

—Marcel Proust

AMERICA IS A nation of nations. Our imagined community rests not only on a unifying mythology of freedom and independence but also on intertwined tales of regional and ethno-cultural character.¹ We are Italian-American mafiosi and African-American gangsta rappers, WASP country clubbers and Jewish intellectuals, gay decorators and Latin lovers, rednecks and computer geeks. These labels reek of stereotype and foment prejudice, yet they remain the signposts of multicultural America—often (although not always) with the advice and consent of the labeled.²

The origins of the ethnic, regional, social, and cultural groups that make up the American landscape are as diverse as the groups themselves. Some are the product of waves of immigration, as economic opportunity, war, natural disaster, the quest for religious freedom, and the rise and fall of immigration quotas prompted the relocation of groups large enough to form new communities on U.S. shores. Other groups, like African-American slaves and their descendants, Native Americans forced onto reservations, and gay and lesbian activists fighting for civil rights, take shape through domestic adversity. Still other communities, like the Daughters of the Confederacy or Maine lobstermen, coalesce through shared regional and historical ties; more recently, the poverty and violence of urban areas have produced a

distinctive culture of their own. Personal hardship, such as losing a loved one in the 9/11 terrorist attacks or living with a physical disability, can also bring individuals together as a recognizable group. Even shared avocations may produce distinctive cultural groups, such as science fiction enthusiasts, opera buffs, and sports-team fans.

While some cultural groups remain largely invisible to outsiders, others occupy significant territory in the majority consciousness. An announcement of Bavarian heritage or of support for a local badminton team is likely to draw a blank stare or, at best, a polite nod. By contrast, mentioning a childhood in Pennsylvania Dutch country or wearing a Yankees baseball cap leads to immediate recognition—in the latter case, not always positive.

Many characteristics affect public recognition or ignorance of particular cultural groups. These include the size of the group, its geographic concentration or distribution, its historical significance, the physical appearance or behavioral characteristics of group members, the group's collective interaction with the majority public, and its economic or political influence. The public identity of a cultural group and its variation over time are determined by a complex range of circumstances and interactions.

CULTURAL APPRECIATION

One of the most significant differences between recognizable and invisible cultural groups, and the most relevant factor for purposes of this study, is the degree to which a particular group has been commodified. As a nation of consumers, we define many of our experiences and associations through acquisition. When we travel, we purchase miniature replicas of Mount Rushmore or the Statue of Liberty; when we graduate, we collect diplomas; when we enjoy a concert or a sports event, we buy the T-shirt. Similarly, when we encounter other cultural groups, we are most likely to pay attention to those that offer us the potential to acquire distinctive merchandise, experiences, or souvenirs. If these cultural products are not readily available, we collectively lose interest and move on to the next opportunity for interaction.

Consumers respond to cultural products in the marketplace and

elsewhere much the way that decorator crabs gather seaweed and adorn their shells. In an educational exhibit at the Monterey Bay Aquarium, the marine biologists placed decorator crabs in separate tanks with different materials—not only the seaweed ordinarily found growing on the ocean floor but also brightly colored yarn available at local craft shops. Skilled in the art of camouflage, the crabs living with the yarn affixed bits of the foreign material to their shells in lieu of seaweed. When we decorate our homes, dinner tables, and persons with others' cultural products, we exhibit behavior similar to that of the decorator crabs, albeit with more complex motives.³ Distinguished anthropologist Clifford Geertz notes that human intellectual capacities evolved in the presence of culture and require the presence of significant symbols in order to function; he concludes, "We are, in sum, incomplete or unfinished animals who complete or finish ourselves through culture."⁴

Similarly, when bohemians in 1920s Manhattan visited Italian restaurants in Greenwich Village or when modern gastronomes comb Chinatown for the perfect dim sum, the goal is not only to procure lunch but to add cosmopolitan luster to the identity of the diner.⁵ In his critique of the role of taste in enforcing social-class distinctions, French sociologist Pierre Bourdieu refers to this selective version of cultural appreciation as the acquisition of "cultural capital."⁶ When the transaction is voluntary, it may benefit both the source community and the general public.

In order for an ethnic, regional, social, or cultural group to register upon the American mental landscape, then, the nation as a whole first extracts what might be termed an identity tax. This tax is payable to the public domain in the form of distinctive cultural products, including cuisine, dress, music, dance, folklore, handicrafts, healing arts, language, and images. Chinese medicine, Ethiopian restaurants, Australian Aboriginal instruments used in the theme of the *Survivor* reality television series, and Andean street musicians all contribute to the national culture. In many cases, consumption of these cultural products is the first—or indeed only—contact that many Americans have with cultural groups other than their own. Were it not for their cultural products, many groups would remain largely invisible.

When cultural products enter the marketplace or otherwise become accessible to outsiders, society at large claims the right to sample them and in return recognizes a group identity constructed from a simplified set of defining characteristics. This identity is necessarily limited—an entire culture cannot be read in the gold embroidery of an Indian woman's sari or illuminated by the flames from a dish of American-style Greek *saganaki*. Cultural products do, however, provide a starting point for recognition of the source community as well as a means of allowing outsiders a degree of participation in and appreciation of that community.

Although the commercial availability of cultural products is one means of cultural exchange, payment of the identity tax can also involve the informal or even inadvertent contribution of images, aromas, superstitions, melodies, or spoken phrases. The locus of this exchange might be the street festivals and family-owned restaurants of immigrant America, the society columns and shelter magazines of urban society, or the home pages and bulletin boards of cyberspace. Wherever cultural groups or their everyday art forms come into contact with the general public, they enrich the public domain of American culture and work to establish their own communal identities within it.

The perceived advantage to American consumers of an ever-expanding range of cultural products is fairly straightforward. Nativist sentiments or certain strains of extreme social conservatism aside, we are cultural gourmands. The more parades, radio stations, publications, and decorative housewares are available, the greater our pleasure in the diversity of choice. This sentiment has echoes in classical antiquity: Herodotus praised ancient Greek society for its cultural acquisitiveness, noting that Greek and Libyan armies copied elements of one another's armor and that the Greeks borrowed many of their gods from Egypt. Even manners and morals could be borrowed, according to one scholar who notes that "nearly all the people on Herodotus's map shop around for the *nomoi* they find most useful or pleasurable."⁷ Similarly, the European Renaissance owed much to open trade routes with the Islamic world and Asia. From the point of view of the American majority public today, the appreciation of others' cultural products—

although not necessarily the presence of the others themselves—is a fringe benefit of globalization, integration, and the commodification of culture.

CULTURAL APPROPRIATION

Far from an uncontested process, however, the movement of cultural products from subculture to public domain provokes both majority-minority struggles and fraternal conflict. Outsiders attracted by particular art forms are seldom content to limit themselves to recognition and appreciation of the source community or even to limited consumption at the invitation of the community. Instead, members of the public copy and transform cultural products to suit their own tastes, express their own creative individuality, or simply make a profit. This “taking—from a culture that is not one’s own—of intellectual property, cultural expressions or artifacts, history, and ways of knowledge” is often termed “cultural appropriation.”⁸

Some cultural products can be freely shared with the public; others are devalued when appropriated by the majority culture: consider the distinction between popularizing a Caribbean dance rhythm and secretly recording and distributing a Native American sacred chant. German philosopher Jürgen Habermas addresses the problem of cultural commodification and the distorting effects of commerce on tradition and culture, stating, “The media of money and power can regulate the interchange relations between system and lifeworld only to the extent that the products of the lifeworld have been abstracted, in a manner suitable to the medium in question, into input factors for the corresponding subsystem, which can relate to its environment only via its own medium.”⁹ The abstraction of a dance rhythm from its cultural lifeworld, whether via a market system or an intellectual property system that permits unfettered copying, may not severely harm either the source community or the cultural product itself. By contrast, the appropriation of a secret or sacred cultural product is much more likely to cause damage.

Even when voluntary, contributions to popular culture are subject to gross distortion: can Mexican national cuisine be faithfully represented by Taco Bell? The large-scale culture industry is perennially

under attack for its tendency to simplify and standardize, to the detriment of “authentic” culture or artistry. German scholars Max Horkheimer and Theodor Adorno, writing from Los Angeles during World War II, noted, “Pseudo individuality is rife: from the standardized jazz improvisation to the exceptional film star whose hair curls over her eye to demonstrate originality.”¹⁰ For Horkheimer and Adorno, cultural conformity raised the specter of fascism. In the realm of cultural appropriation, replacement of homemade tortillas or the small neighborhood *taquería* with a mass-market product or chain store may create a barrier to cultural identity and national diversity.

Within a cultural group, members may debate the authenticity of particular cultural products, a difficulty exacerbated by their constantly evolving nature. Which version of a recipe or folktale is the “real” one? In some cases, there may be a reasonably clear ur-product, like Neapolitan pizza, and competing regional versions, like those made with a thin crust in New York, in a deep-dish style in Chicago, and with unusual gourmet toppings in California. In other cases, the origin of a cultural product may lie in an obscure past, or splinter groups may exert competing claims to the true tradition. When claims of originality or authenticity move beyond good-natured rivalry, which may actually spur creativity, they can hamper the ability of certain members of a cultural group to participate in the creation of cultural products or distort the identity of the group as a whole.

Perhaps the most contentious internal issue of all is how to regulate the general public’s access to the cultural goods of a particular community—and who should benefit economically from their distribution. Since cultural groups are often loosely organized networks with shifting membership or degrees of affiliation, they tend to lack a single authoritative voice that might channel cultural appreciation or prevent cultural appropriation. The power to control economic exploitation of cultural products is similarly decentralized; while source communities may lament the loss of profits to outsiders or the uneven sharing of economic benefits within the community, they cannot remedy the situation.

The commodification of culture, and especially the role of cultural products, is a mixed blessing for the general public and for source

communities. If the identity tax were not involuntary and automatic, cultural groups might choose to forego the benefits of potential public recognition in favor of protection against appropriation. Alternatively, they might exercise greater influence over the copying and reinterpretation of their cultural products, offering the public a guarantee of quality, historical knowledge, and the elusive promise of authenticity. At present, however, cultural products that catch the public eye circulate in a largely unregulated sphere of mixed appreciation and appropriation.

LEGAL CULTURE

Despite the significance of artistic and social conflicts over the nature of cultural products in American life, these disputes occur in a legal vacuum. Other forms of creative production receive extensive, even excessive, protection against copying under our system of intellectual property law. Cultural products, however, are indefinite works of unincorporated group authorship, and they present a particular challenge.

Intellectual property law is a relatively young discipline with a distinguished family tree. From its Romantic ancestry, intellectual property derives an emphasis on individual genius. From its Enlightenment parentage, it inherits a tremendous confidence in the ability of the rational mind to create, to solve, to progress, to assign value. So great is this confidence in the power of intellectual creation that intellectual property law challenges the market itself, granting limited monopolies and blocking access to otherwise public goods in order to ensure continued "Progress of Science and useful Arts," in the constitutional phrase.¹¹ With the late twentieth-century rise of the Information Age and the recognition of ideas as wealth-generating capital, intellectual property protection has risen dramatically in importance. Its limitations, consequently, are becoming apparent.

One of the limitations of our current scheme of intellectual property protection, besides the often-cited narrow scope and great expense, is the treatment of group authorship. From high tech to low tech, from the Linux operating system to Native American folklore, our system struggles to assign intellectual property rights to authors

who fail to evoke the Romantic image of the solitary artist scribbling away in an unheated garret or the unkempt scientist waking from a fitful nap on a cot in the laboratory with a sudden flash of insight. Even a patent “owned” by a multinational conglomerate must list its humble human inventor. Lawmakers have been subjected to extensive criticism and even legal challenge for their expansions of intellectual property protection in other areas, yet our system continues to neglect the intellectual property rights of a group, especially one without a preestablished corporate identity.

This legal neglect of cultural products may be ascribed to the history of intellectual property law, the complex nature of cultural products and the concomitant difficulty of providing a legal framework, or simply cultural bias. Before proposing an extensive system of protection for cultural products, however, we should consider the possibility that the relative absence of law—like law itself—may spark creativity or even preserve national character. As we strive to maintain the rich texture and common goals of our heterogeneous polity, we must attempt to balance the tension between the public domain and private property, cultural appreciation and cultural appropriation.

CHAPTER 11

*The Civic Role of
Cultural Products*

To steal a book is an elegant offense.

—Chinese epigram

Steal This Book

—Title of a work by Abbie Hoffman

ACROSS AMERICA, INTELLECTUAL property professors are having a dystopian moment. It started positively enough when the Internet Revolution, sparked by advances in technology, produced a tremendous outpouring of creative artistry and commerce. Because the new technologies encouraged ordinary folks to engage in cutting and pasting, sampling, downloading, and otherwise copying preexisting works, however, this madcap digital quilting bee made some large, powerful content owners quite nervous. As a result, efforts to enforce the protections granted through copyright, trademark, and patent law increased, both by fighting technology with technology and by waging legal battles. Congress, federal courts, law professors, and editorial writers all debated how best to adapt intellectual property law to the new Information Age. Along the way, some policymakers arguably forgot that the law is supposed to promote creativity, not merely to build fences around existing creations. The law thus placed too much control in the hands of content owners and of giant corporations, who now control and police the very infrastructure that made our creative revolution possible in the first place.

Today, public intellectuals gather to lament the shrinking public domain, those freely available ideas and creations that should serve as

grist for our (soon to be silenced) mills. Joining legal scholars such as Jessica Litman, James Boyle, Pamela Samuelson, Yochai Benkler, Mark Lemley, Eugene Volokh, David Lange, and many others, Lawrence Lessig warns that unless the children of the Internet Revolution take action to secure its freedoms for a new generation, the "future of ideas" is a bleak one.¹ In his words, "The promise of many-to-many communication that defined the early Internet will be replaced by a reality of many, many ways to buy things and many, many ways to select among what is offered. What gets offered will be just what fits within the current model of the concentrated systems of distribution: cable television on speed, addicting a much more manageable, malleable, and sellable public."² Although concerned parties differ as to the extent of the danger, virtual portraits of Aldous Huxley and George Orwell nevertheless grace the halls of the academy.

WHY DOESN'T THE LAW ABHOR THE CULTURAL PROTECTION VACUUM?

This overprotection of intellectual property makes the systemic lack of protection for cultural products all the more curious. The artistic expressions of source communities circulate freely; indeed, unless they are sequestered as secret or sacred, they are nearly always discovered and swept into the public domain. Given the increased public awareness of the value of intangible goods, why does this differential treatment of intellectual property and cultural products persist?

One solution to this puzzle might rest with the historical conceptualization of intellectual property law according to the paradigm of Romantic genius rather than communal creation.³ Not only is the vesting of authorship in an individual simply more efficient than the acknowledgment of multiple contributions, especially those of an unincorporated cultural group, but it also satisfies a particular conception of human creativity.⁴ Individual authorship emphasizes an initial moment of inspiration, while cultural production is perceived as emerging and developing organically over time. As a result of their extended agency and temporal scope, society may take cultural products for granted and remain unaware of the potential need for protection.

The relative fluidity of culture also provides an excuse for the

failure to protect cultural products. Since “culture” is an ever-shifting construct and societies have borrowed from one another from time immemorial, the argument goes, the vesting of legal rights in a source community would artificially halt cultural development on a national scale and produce frivolous lawsuits.⁵ “Authenticity,” if defined by slavish adherence to the styles or practices of a particular time and place, is an anachronism unworthy of legal protection; the law of a heterogeneous, inmobile polity should not reify and privilege cultural boundaries as they might have existed in 1492.⁶ Indeed, the market in local and tribal handicrafts already exerts substantial pressure on source communities to cling to a storied past and produce commercial versions of their artifacts. From this point of view, the protection of cultural products and their source communities would be an exercise in misguided political correctness.

A more activist political response to the legal vacuum might point out that cultural appropriation is often a prerogative of majority groups, colonial powers, and affluent individuals.⁷ Destructive misappropriation, in particular, is most likely to occur when the source community has relatively little political power or is otherwise outside of mainstream culture. Under these circumstances, lawmakers have little incentive to address the issue.

The strength of liberal political theory suggests an additional explanation for the lack of protection of cultural products. Civil and political rights in modern Western cultures are the domain of autonomous individuals rather than heads of household or other communal groups, as was often the case less than a century ago—a shift that has allowed greater equality and personal self-determination as well as a more fluid social structure. In the interests of preserving individual rights as a precondition of democratic discourse, liberal theorists may overlook the significance of cultural groups. Jürgen Habermas, for example, challenges the communitarian arguments of Michael Walzer and Charles Taylor that the law is nonneutral, that the current system of individual rights is unable to ensure the survival of certain minority groups, and that the law must therefore intervene to provide protection.⁸ Unlike fellow liberals John Rawls and Ronald Dworkin, Habermas does not rest his argument on the assertion of an

ethically neutral legal order, but relies on a proceduralist conception of rights intended to safeguard both public and private autonomy.⁹ Political liberalism, then, tends to view the recognition of cultural groups, as opposed to individuals who may belong to those groups, as both unnecessary and potentially dangerous to democratic unity. In a thoughtful discussion of multiculturalism, Will Kymlicka acknowledges the concern that the recognition of ethnic and national differences could undermine democracy but argues that only self-government rights pose a threat to social unity.¹⁰ Nevertheless, liberal theorists might logically tend to overlook or resist communitarian efforts to locate property rights in cultural groups rather than exclusively in individuals. The protection of cultural products is not incompatible with liberal theory, but neither is such protection its natural consequence.

Freedom of expression and intellectual property exist in tension with one another, a factor that may also contribute to the extralegal status of cultural products.¹¹ When intellectual property law protects a particular creation, the rights holder owns a limited monopoly over it. Since a significant aspect of property ownership is the right to exclude others, those who wish to use a protected creation to express themselves may face legal constraints. Sampling someone else's music to create a new recording, borrowing and transforming a ubiquitous advertising slogan, or writing fan fiction all run the risk of infringement. While doctrines such as fair use and parody theoretically protect some forms of expression, the threat of legal action is often enough to deter or silence a speaker.¹² By remaining outside the scope of intellectual property protection, cultural products neither challenge the First Amendment nor limit the availability of their own expressive use.

Perhaps the most pragmatic explanation for the lack of cultural-product protection is that it would be quite difficult. This suggestion may be deceptively simple, however. Laws against speeding, drug use, and littering are next-to-impossible to enforce, yet they remain in force because society disapproves of these activities. If unlimited cultural appropriation were recognized as similarly harmful, the law would at least attempt to assign rights and set guidelines for behavior. Nevertheless, the complexity of the task is a logical deterrent to legislative activity.

While these negative theories have clear explanatory force and assist in maintaining the current legal vacuum, it may also be the case that unfettered appropriation of intangible cultural products plays a positive role in society. Sociological interpretations as diverse as Max Weber's Protestant ethic and Pierre Bourdieu's description of cultural capital affirm the socially constitutive function of markets and acquisition of resources.¹³ In a heterogeneous society that seeks to harmonize and reproduce itself, the material cultures and rituals of diverse source communities can be domesticated through market exchange. An ethnoreligious devotional procession honoring the patron saint of a foreign city lacks resonance with a constructed "American" life, but the opportunity to eat—or, better yet, to sell and profit from—*zeppole* or sausage and peppers at the publicly advertised Festival of San Genaro is a civic act. From this perspective, legal protection is not simply absent but is outweighed by other civic virtues.

FROM AMERICANS TO AMERICA

Many different processes can contribute to the forging of individuals and peoples into a nation with a common myth of origin and shared values.¹⁴ These processes may involve deliberate or dramatic action, such as a struggle for freedom from outside domination or the creation of a constitution. Collective response to a crisis, such as a natural disaster or a terrorist attack, also promotes national solidarity. On an ongoing basis, public education may be a medium for inculcating national values. Even regular economic interaction and interdependence offer incremental steps toward unity, a function exploited by the creation of the European Economic Community as a mechanism for regional stability and a precursor of the European Union. Consumerism facilitates the performance of national identity, as tastes in entertainment, fashion, cuisine, decor, and other indicia of culture come to be shared or experienced in common. From a cultural-products perspective, those that are made available in the marketplace and then widely adopted, whether through voluntary contribution or appropriation, become part of the fabric of the nation.

In the United States and other countries defined by immigration, the political apparatus of the state precedes the formation of a subjective nation. While some nationally celebrated holidays, for example,

are the product of underlying majority religious tradition, others are created by law. The normative composition and definition of the nation, moreover, is a subject of ongoing debate and evolution. In each generation, historic events and organic processes, including interactions among cultural groups, combine to influence the tenor of the nation. Public debate further defines the parameters of nationhood: questions regarding the participation of homosexual, Muslim, and apocalyptic communities challenge the limits of citizenship in our era, much as the presence of abolitionist, Jewish, and Amish communities did in the past.

From melting pot to salad bowl, assimilation to multiculturalism, public intellectuals have sought metaphors and theories to describe the desired transformation of Americans into America. Historian David Hollinger, arguing for a new conception of "postethnic America," refocuses attention from rigid cultural categorization to individual agency. According to his definition, "A postethnic perspective favors voluntary over involuntary affiliation, balances appreciation for communities of descent with a determination to make room for new communities, and promotes solidarities of wide scope that incorporate people with different ethnic and racial backgrounds."¹⁵

The availability of multiple options facilitates this modern shift from destiny to choice, from being to becoming part of one or more culture groups, all of which are in some sense American.¹⁶ Indeed, the range of cultural affiliations continues to widen beyond ethnoracial classifications, as apparent in Hollinger's call for attention to religiously defined cultures and sociologist Nathan Glazer's description of the inclusion of women and homosexuals in the multicultural canon.¹⁷ Even changing fashions within the academy that might appear to diminish the realm of culture, such as the disappearance of "class" as a frequently invoked category, do not preclude individual self-identification with a still-extant group.¹⁸ The experience of culture beyond the ivory tower is broader still, as individuals form associations on the basis of shared profession, avocation, age, geographical region, political commitment, disability, and multiple combinations of these and other cultural markers. Although as yet not all Americans have equal freedom to choose or to reject association with an ethnic

or racial group, all have the opportunity to select additional cultural affiliations.¹⁹ Postethnic America is still aspirational, but it offers a useful model of modern (or postmodern) nationhood.

CIVIC BENEFITS OF CULTURAL APPROPRIATION

Material culture provides access to a myriad of embodied cultural products and thus facilitates the voluntary selection of cultural affiliation that Hollinger envisions. Source communities are (figuratively) taxed to secure the contribution of artifacts, rituals, practices, and styles. Outside individuals may then enter the bazaar, examine the merchandise, and adopt what suits them. Such exchange, whether voluntary or involuntary on the part of the source community, creates a series of potential civic benefits.

As anthropologists and sociologists have noted in studies of individuals and their relationships to and through material objects, each source community can employ cultural products to communicate its identity and values, albeit simplified for public consumption.²⁰ Such community self-expression may take the form of either direct communication with the public or indirect symbolic statements. Religious tracts or party campaign buttons convey a direct message; a Japanese bento lunchbox or a teenager's extreme hairstyle and multiple body piercings embody cultural values or aesthetics without verbal explanation.²¹ In both cases, the public is invited to recognize the existence of a cultural group through its distinctive cultural products and to associate it with a particular embodied expression of viewpoint or identity. This recognition may remain closer to an "orientalist" stereotype than to a nuanced, comprehensive understanding of the source community, but it is at least formulated with a modicum of contribution from the source community rather than cut from the whole cloth of mainstream ignorance.²² By sharing their cultural products, many source communities are able to have an impact on the popular culture.

Another civic benefit of cultural appropriation is that otherwise xenophobic outsiders may develop the preeminent postmodern virtue of toleration or even respect for the source communities.²³ As Walzer has described, the concept of toleration at the state level encompasses

a variety of approaches, from indifference to cultural engagement.³⁴ In the context of cultural products, the promotion of toleration depends more on outside appropriation over time than on mere acknowledgment or Rawlsian recognition of reasonable differences.³⁵

In many cases, the passage from intolerance to toleration of a cultural group may be charted in the wake of appropriation. During the late nineteenth and early twentieth centuries, social reformers sought to assimilate Native Americans, Latinos, and new immigrants by encouraging them to abandon their respective "inferior" cultures and cuisines.³⁶ These reformers measured success according to the distance an individual had traveled from his or her non-Anglo culture of origin, as illustrated by *Life* magazine's approval of baseball star Joe DiMaggio: "Although he learned Italian first, Joe, now 24, speaks English without an accent, and is otherwise well adapted to most U.S. mores. Instead of olive oil or smelly bear grease he keeps his hair slick with water. He never reeks of garlic and prefers chicken chow mein to spaghetti."³⁷ Americans, it seems, were willing to adopt the baseball hero, but not his language or cuisine. Efforts at culinary (though not linguistic) assimilation declined between 1920 and 1940, and wartime meat shortages further cemented the acceptance of previously "foreign" cuisines.³⁸ Today, Mueller's elbow macaroni shares shelf space with gourmet "pasta," pizza graces school lunch trays, nutritionists extol the virtues of the Mediterranean diet, and the historical denigration of Italian Americans as "spaghetti benders" is a quaint anachronism. Even the great DiMaggio's role as a symbol of successful assimilation may have given way to an affirmation of ethnic roots, as suggested by his postretirement return to the public eye as a spokesperson for Mr. Coffee.³⁹ Acceptance of the source community has apparently followed acceptance of its cultural products.

An unlikely example of this toleration effect appears in an interview with white rap artist Eminem, known for his virulently homophobic lyrics. The performer defended his use of a derogatory label for homosexuals, but when asked whether he would use a similarly negative slur against African Americans on a recording, he responded, "That word is not even in my vocabulary. . . . Those are two completely different things. . . . And I do black music, so out of respect,

why would I put that word in my vocabulary?"³⁰ While Eminem achieved celebrity through uncompensated appropriation of an urban, African-American cultural product, he at least recognizes publicly the importance of the source community.

Even fashion trends that turn to the street in search of authenticity claim to do so out of respect. Like hip-hop before it, cholo style originated in an urban, ethnic context. The Mexican-American gangster image, which evolved in East Los Angeles, incorporates gothic letters, bandanas, Roman Catholic religious imagery, tank tops, and cropped trousers. In the course of cholo style's move from the streets to pop stars to upscale department stores, it has drawn attention to its community of origin. According to the owner of one clothing line, "That's our way of giving props—respect—to the West Coast."³¹ If the law were to impose prohibitions on cultural appropriation, it might also limit the range of source-community influence on public discourse and over individual nonmembers.

In its strongest form, the argument that cultural products promote toleration suggests that community groups most in need of protection also stand to gain the most by allowing cultural appropriation. A source community with little social standing or political influence, or even one toward which the majority culture is hostile, might advance its cause by feeding, clothing, instructing, or entertaining the general public with distinctive cultural products. If this result can be achieved without undue harm to the source community or its cultural products, then both community identity and the discursive foundation of a liberal democracy are strengthened.

An additional civic benefit of cultural appropriation is a complex mutual assimilation or homogenization that might best be described as a form of cultural syncretism, or the Reese's peanut-butter-cup effect. Assimilation to American life has traditionally involved the loss of non-Anglo cultural characteristics in order to conform to a mainstream norm, which is perceived as the absence of ethnic culture. White, Anglo-Saxon, Protestant, educated, healthy, straight males from reasonably affluent Mid-Atlantic or Midwestern backgrounds allegedly have "no" accents, eat "normal" food, wear "regular" clothes, play "popular" music, engage in the "usual" pastimes, share "common"

opinions, and have “ordinary” tastes. Newly minted or socially disenfranchised Americans once aspired to embody this paragon of citizenship, or so some would claim.

Today, the basic force of American culture flows in the same channel; John Q. Citizen, however, is as likely to absorb new cultural influences as he is to set a uniform standard. The live audience for the State of the Union address is still largely a sea of white men in dark suits, but “everybody” now eats Thai food, listens to the Gypsy Kings, and incorporates urban slang into daily conversation. The gay community offers a particularly vivid example of mutual transformation. Since the mid-1980s, homosexual men and women have metamorphosed from an alien threat to American “family values” into a source of urbane wit and style, while at the same time embracing traditional images of domesticity. Middle America applauds the five gay superheroes who each week rescue a different hapless heterosexual from his sloppy, unkempt ways on *Queer Eye for the Straight Guy*, and promotional material for the *Ellen DeGeneres Show* touts the lesbian comedian’s “approachability and relatability” as well as her “‘everywoman’ approach to everyday situations.”³² Meanwhile, gay Americans turn to the venerable *New York Times* Sunday Styles section to read notices of gay and lesbian commitment ceremonies alongside the marriage announcements of heterosexual women and men, or at least those who have escaped the reported epidemic of straight-male commitment phobia. Formal marital status and the associated legal benefits may be generally denied to same-sex couples, but the mimetic nature of rituals surrounding such unions indicates that something more than inheritance rights or state recognition is at stake. While many heterosexuals have internalized a stereotypical gay aesthetic, many homosexuals now imitate and celebrate a family structure based on traditional marriage bonds.

This serendipitous chocolate-meets-peanut-butter model of civic evolution through the exchange of cultural products can have concrete effects on formal expressions of national identity. In *Lawrence v. Texas*, the Supreme Court declared unconstitutional a Texas law prohibiting certain homosexual conduct and overruled its own 1986 precedent, noting, “When sexuality finds overt expression in intimate

conduct with another person, the conduct can be but one element in a personal bond that is more enduring."³³ Rather than allowing Texas to continue to label homosexual individuals as criminals and thus impaired citizens, the Court interpolated a necessary link between sexual activity and personal relationships, perhaps including modern companionate marriage.

Justice Antonin Scalia, in a scathing dissent, accused his brethren of cooing about homosexual relationships and paving the way for a constitutional defense of same-sex marriage.³⁴ Although Justice Scalia couched his argument in terms of the Court's proper role, he was apparently livid about what he perceives as a misappropriation of matrimony. In the language of cultural products, a fraternal dispute is taking place over the correct source-community response to the appropriation of a ritual that instantiates certain core values—and the forces that favor inclusive use of the contested cultural product have won this round, with definite civic effect. Same-sex marriage has blossomed overnight into a grass-roots movement, sparking intense political debate and widespread civil disobedience with respect to restrictive, traditional marriage laws. Whether this trend will continue and result in national recognition of same-sex marriage, or even whether the gay and lesbian community as a whole would have previously endorsed this goal, remains an unanswered question. Whatever the legal result of this burgeoning civil rights contest, it has permanently altered the American cultural landscape. One might ask whether the cultural syncretism that has produced a breed of suspiciously well-dressed and coifed heterosexual men, dubbed "metrosexuals," will provoke a similar examination of national (or at least masculine) identity.

Among the occasional civic benefits of cultural appropriation is the preservation of certain cultural products themselves. While misappropriation may destroy fragile communal creations, and unrestrained commodification may denature others in the eyes of both the source group and the public, some cultural products continue to exist primarily through the medium of appropriation. The audience for jazz remains more robust in Europe than in the United States and includes more whites than African Americans. The quilts of Gee's Bend would

long since have been replaced by inexpensive coverlets from Wal-Mart or Target were it not for the interest of collectors in the women's labor-intensive communal art form. Even indigenous languages around the world are at risk of disappearing in the face of encroaching modernity, save for the efforts of linguists dedicated to their study. Assuming that abundance and variety are positive values, the role of appropriation in saving certain cultural products from extinction enriches the life of the nation.

Viewed from the perspective of utility rather than simple quantity, those cultural products that circulate among outsiders provide raw material for further creation. While few young Indian-American women wear saris on a daily basis, and even fewer Japanese-American or even Japanese women wear kimonos regularly, the exposure of Western designers to elaborate Asian textiles and shapes inspires the creation of new fashions.³⁵ Similarly, the flavors of South America, Africa, Asia, and Europe appear on cutting-edge restaurant tables as fusion cuisine. Far from lost, the public domain mourned by many intellectual property professors receives a continual infusion of cultural products, and a source of creative ferment is refreshed. To the extent that creation itself is a Judeo-Christian religious value expressed in the Hebrew Bible or Old Testament and thence throughout Western culture, as Roberta Rosenthal Kwall and David Noble have insightfully suggested, any such enhancement of creative potential provides a clear civic benefit.³⁶

The absence of legal protection against unrestrained cultural appropriation, then, may not be merely the result of historical oversight or a Foucaultian exercise of power via knowledge of a subaltern other.³⁷ Cultural products, moreover, are not merely the neglected half-siblings of intellectual property, lacking the requisite spark of genius that would inspire legislative action. Instead, cultural appropriation has the potential to deliver civic benefits to the nation as a whole, as well as to the source communities within it. While the harms of misappropriation are present realities in need of evaluation and corrective measures, the positive contributions of cultural appropriation are important constitutive elements of an expansive and malleable American society.

CHAPTER 12

An Emerging Legal Framework

Life is not a having and a getting, but a being and
a becoming. —Matthew Arnold

SHAKESPEARE FAMOUSLY LIKENED the world to a stage, and its inhabitants to players on it. Had he been a modern visual artist, however, he might have imagined instead an interactive art installation and a steady stream of visitors—or at least remembered to thank the set and costume designers. Society does not continually reinvent itself on an empty platform but is instead enmeshed in systems of property rights, market exchange, and material culture, tangible and intangible. The cultural contribution of voluntary immigrants, involuntary immigrants, and indigenous peoples to the American national project not only asserts the presence of those cultural groups, often well before their members are considered full citizens in a civil or political sense, but also serves as a catalyst for the construction of an “authentic” American culture.

This quest for authenticity in an era of impeccable, immediate copies reveals a peculiar anxiety of our age, to once again invoke T. J. Jackson Lears.¹ The invention of the printing press bypassed monastic scriptoria and ecclesiastical control over the reproduction of texts, prefiguring the Protestant Revolution. The Industrial Revolution removed production of everyday objects from craftsmen and created mass markets, prompting a yen for nature that produced both the Boy Scouts and the Arts and Crafts movement.² Our own Internet Revolution gives us ever-increasing access to commodified culture and digital clones of creative works, yet we remain suspicious of the value of these too-perfect, acontextualized forgeries even as we consume

them. The market recognizes our ambivalence and promises us goods that are “authentic,” “original,” “genuine,” and even “retro.” Meanwhile, starlets with unlimited access to couture creations tap into the *zeitgeist* by wearing “vintage” gowns on the red carpet, and world-class chefs offer “home cooking” in the form of gourmet mashed potatoes, meatloaf, and macaroni and cheese. A taste for the “cultural” joins this emphasis on the venerable, as we associate the products of communities outside the mainstream with more genuine, organic lifeways. We do not collectively aspire to belong to working-class, foreign, or transgendered communities, but we congratulate ourselves on our easy familiarity with trucker hats, sushi, and RuPaul.

No less an observer than Alexis de Tocqueville has noted that American society is defined by a central tension between individual and community, independence and interdependence.³ In the arena of cultural appropriation, existing legal structures have focused on individual rights and on the nation as a whole at the expense of the sub-communities that constitute the American polity. It might be said that American law embraces the principles of *liberté* and *égalité* but neglects *fraternité*. Only through private means or the awkward invocation of analogous legal principles have source communities been able to protect their cultural products against misappropriation. At the same time, proponents and practitioners of cultural appropriation have overlooked its civic benefits and focused instead on individual autonomy and negative rationales for the exclusion of cultural products from legal notice. Perhaps it is time the law move to correct these omissions by striking a balance between protection and appropriation of cultural products in American life.

BEYOND THE LIMITS OF INTELLECTUAL PROPERTY

Extending limited intellectual property protection to intangible cultural products would involve several stages. To begin, the law must reconceive the concept of “authorship” or creation to reflect the reality of unincorporated group collaboration, malleable Foucaultian notions of authorship, and the value of cultural products.⁴ This process would

harmonize with both utilitarian and ethical theories of intellectual property protection. Cultural products would fall under the utilitarian constitutional classification of “Science and useful Arts,” which Congress is empowered to promote by securing exclusive rights to their “Authors and Inventors,” the source communities.⁵ Similarly, “moral rights” would as easily apply to a source community as to an individual genius; claims of authenticity, in particular, could easily be assimilated to a limited moral right of attribution. Under either theory, source communities would receive a bundle of property rights similar to those of their individual counterparts, albeit with more robust exceptions for fair use designed to promote the civic benefits of limited appropriation.

Next, the law must alter its temporal restrictions on intellectual property protection. The maximum term of protection could reflect the life span of a source community, in place of the life of the author or a simple term of years, or could be divided into shorter terms renewable on a periodic basis. While many source communities endure almost infinitely, some disband or expire. Any cultural products left behind by the American Whig party are long abandoned; likewise, Minnesota Vikings fans need not seek permission to don horned helmets. The novelty and originality requirements of patent and copyright law, respectively, are meaningless in the case of continually evolving cultural products. Instead, the law might adopt a trademark-like emphasis on current use, drawn from the Commerce Clause, or a trade secret-like requirement that the source community continue to derive benefit from the cultural product. In order to preserve the flow of creations and inventions into the public domain, especially in light of the longevity of source communities, the exclusiveness of ownership should be established in rough inverse proportion to the duration of protection, taking into account the relative cultural significance of particular artifacts or rituals.

In addition, the legal system must revise its common law emphasis on the reduction of cultural products to concrete form as a requirement for protection. While individual or defined groups of authors and inventors generally anticipate embodiment or reduction of their work to tangible form prior to its legal recognition, cultural groups may have longstanding preferences and practices regarding intangibil-

ity and orality. Since material form is a useful but not strictly necessary precursor to intellectual property protection, as apparent from the protection of aural and olfactory trademarks and the absence in civil law of any requirement of tangibility in copyright, source-group election in favor of intangibility should not affect the availability of protection for cultural products.

These modifications to the class of beneficiaries, as well as to the temporal and material limitations of intellectual property law, would serve to establish the broad outlines of a category of cultural-product protection. This is not necessarily to suggest that current intellectual property law statutes be modified to include cultural products, a process that might result in overprotection of cultural products at the expense of beneficial cultural exchange, particularly in light of current international minimum standards for the established categories of intellectual property protection. Instead, the current system of intellectual property law provides a functional template that can be modified to address the concerns of source communities regarding intellectual property protection and societal concerns regarding cultural development and the public domain. Such protection would complement the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, which calls upon nations to engage in protective and educational activities such as documentation and education.⁶

DEGREES OF CULTURAL-PRODUCT PROTECTION

Protection of cultural products ideally should involve not merely the expansion of intellectual property law, but also an institutionalized mechanism to facilitate cultural exchange. One method of promoting a balance between source-community interests and the civic role of intangible cultural products might be for intellectual property law to develop multiple levels of protection corresponding to the nature of the protected good. Such differentiation among protected works within the separate intellectual property categories of copyright, trademark, and patent occurs in only a few cases, and it is generally disfavored or forbidden by international treaty. Cultural products as yet enjoy no such worldwide recognition, despite growing global

concern. A *sui generis* legal regime of cultural-product protection could therefore be more narrowly tailored to different types of cultural production on a national basis. As indicated in the table, the type of protection afforded each cultural product would depend on its source-community classification as a private good or public good (in the sense of a product voluntarily released outside the community, rather than a noncompetitive good) and on whether or not the source community has voluntarily commodified the product. As in defining the scope of property itself, the law may choose to exclude elements such as human life and aspects of human sexuality from the rubric of cultural-product ownership altogether.

Cultural-Product Protection

	Private	Public
Noncommodified	Enhanced trade secret-style protection	©/Patent-style protection
Commodified	©/Patent-style protection	®-style/"Authenticity-mark" protection

Private, Noncommodified Cultural Products

Sacred, secret, or exclusive products that would otherwise risk destruction through cultural appropriation, such as the ceremonial dance of the Pueblo of Santo Domingo described in Chapter Eight, could receive a high level of protection in a manner similar to that of trade secrets. The source community would bear reasonable responsibility for excluding the general public from the cultural product or placing strict limitations on access, and outside appropriation in violation of these community restrictions would be strictly forbidden. A sacred song entrusted to a particular individual, a set of scriptures intended only for initiates, or the use of a particular plant ingested in the context of a religious ritual could each be protected in this manner. Unlike trade secrets, however, disclosure of the private, noncommodified product by a single dissenting or careless insider should not result in loss of protection and thus harm the entire community.

Private, Commodified Cultural Products

Cultural products intended for use and market exchange primarily among members of the source community, or private, commodified products, could receive a slightly lesser degree of protection analogous to patent or copyright. This category might include an object used in the practice of religion, like a menorah, rosary, or prayer rug. In such cases, it is important that the form of the cultural product and perhaps even the process of its creation follow community specifications. The source community could exercise the usual rights to exclude, to transfer, and to use or possess its embodied cultural products, subject to limited outside appropriation analogous to the fair use of copyrighted material or experimental use of a patented invention. Outsiders might legitimately possess, display, or critique these objects, or even copy or use them in an expressive fashion to invoke or criticize the source community. This limited appropriation, however, would not extend to outside commodification of the cultural products, which must retain a degree of purity or objective authenticity in order to instantiate the values of the source community.

Public, Noncommodified Cultural Products

As in the example of open-source code discussed in Chapter Nine, some source communities choose to make their cultural products public without commodifying them. While the principal open-source standards organization, OSI, has worked within existing trademark law to create a certification mark, and the use of licenses to protect the free distribution of open-source software is commonplace, hackers and similarly situated source communities could have significantly more control over their cultural products if a regime similar to copyright or patent law were to protect those products. The open-source software community's situation is unusual in that few outsiders have the technical capacity to appropriate and commodify its cultural products. If that circumstance were to change, or if other source communities wished to share their cultural products on the condition that they remain uncorrupted and virtually free of charge, stronger protection could assist in both enforcing the creators' wishes and ensuring the continued vitality of their cultural products. Source communities

would not have absolute control under such a regime, which would be subject to broad limitations analogous to fair use, but would retain an affiliation with their products.

Public, Commodified Cultural Products

The largest category of cultural products, those both deliberately commodified and made available to the public, should theoretically enjoy the least protection against outside appropriation. These intangible goods are likely to be more durable than their protected, private counterparts, and their appropriation is least likely to seriously damage the source communities. The pervasive civic benefits bestowed on a heterogeneous polity through cultural group contributions in the form of distinctive cuisine, popular music, habits of dress, and elements of language, moreover, are too extensive to support legal elimination of cultural appropriation.

Nevertheless, the law should not continue to deny source-community interest in these creations. The Australian Aboriginal didgeridoo, for example, is a sacred instrument traditionally made from a tree hollowed out by insects and painted with designs that vary according to region and intended ceremonial use. Knockoffs for the tourist trade are made of artificial materials and incorporate non-Aboriginal designs, to the distress of the source community. While the Australian government makes no attempt to halt the trade in didgeridoo copies, it has instituted a program for the labeling of authentic Aboriginal art destined for the market, including musical instruments.⁷

A general program for the creation, registration, and placement of "authenticity marks" on commodified, tangible cultural products that originate from within the source community would preserve the relationship between community and product and create an affiliative ownership without halting the fertile exchange inherent in much cultural appropriation. This balance could be facilitated through specially designed laws or programs, as in the case of protection of indigenous handicrafts in the United States and Australia, or through source-community adaptation of existing trademark provisions.⁸ Periodic renewal of the grant of an authenticity mark according to evolving community standards could avoid reifying the communal culture.

Even fraternal disputes over authenticity could be addressed through a trademark-style system of authentication. The possibility of multiple or competing grants of product recognition analogous to kosher certifications would permit the public expression of multiple points of view from within the source community. As with each suggested degree of cultural-product protection, existing federal administrative agencies would provide a suitable forum for source communities seeking the assistance of law.

BOTH OUR DIVERSE nation and our postmodern consciousness have taught us to appreciate commodified cultural products. Intellectual property law should reinforce this lesson not by allowing unlimited appropriation of these intangible goods, but instead by protecting them. While the above schema represents only one attempt to balance the interests of communal creation and the public domain and to systematize a complex pattern of exchange steeped in history and habit, culture and pride, it is a balance central to the past and the future of American national culture.

THE ROLE OF LAW IN CULTURAL PERSPECTIVE

The problem of unincorporated group authorship invokes issues of cultural evolution versus authenticity, constructed communal identity versus free expression, ownership versus appropriation, privacy versus collaboration. Resolution of these tensions now occurs on an ad hoc basis, if at all. Absent a jurisprudence of cultural protection or even the shared understandings that undergird customary law, each source community and its intangible cultural products are largely subject to the values of the general public. Although the social cohesion of a heterogeneous nation rests in part on cultural groups' payment of an identity tax in the form of these cultural products, the social contract that should in turn protect cultural groups resembles instead an exaction of tribute. Intellectual property law may provide the mechanism to balance the scales, to temper cultural contribution with cultural protection.

The suggestion that law cease to ignore cultural products, what-

ever the benefits of unregulated cultural appropriation, should not be interpreted as tantamount to an encouragement of more lawsuits or other means of formal dispute resolution. Contrary to popular belief, not all lawyers aspire to run late-night commercials informing unsuspecting members of the public that they may have been harmed and should pursue (potentially lucrative) justice. Except in cases of demonstrable harm to a source community, courts should not be at the forefront of the everyday business of regulating culture.

Admittedly, the association of even limited, associative property rights with cultural products bears the risk of distorting relations within source communities and altering cultural products, as their value as both signifiers and economic resources increases. In cases of misappropriation, outside intervention may already have harmed communal artistry, and the law is less likely to do additional damage. For examples of cultural appropriation more generally, the proposed creation of authenticity marks attempts to avoid trapping culture in the corridors of legal formalism by establishing ownership rights only in the marks themselves rather than in the cultural products they legitimate. Still, even this *via media* is not free of risk.

The function of law is nevertheless not only to decide cases, but also to establish values and reasonable expectations around which citizens can order their interactions. If the law states that cultural products are valued creations of their source communities, should be treated with respect according to the norms of those source communities, and yet should in most cases be accessible in the public domain for civic reasons, then well-intentioned members of society are afforded guidelines for civil interaction. Similarly, internal community disputes regarding cultural products may not be resolved through the application of statutes, but the law can at least provide a vocabulary and framework for discussion that acknowledges the significance of the matters at hand. This role of law as pedagogue, rather than exclusively as judge and jury, is a feature of Western jurisprudence dating back at least to Aquinas, who attributes many of his insights on this matter to Aristotle. Humanity “has a natural aptitude for virtue, but the perfection of virtue must be acquired by man by means of some kind of training,” whether through social interaction or the mechanisms of law.⁹ For a

heterogeneous polity in which differing community norms may exist in relative ignorance of one another, law is called upon to facilitate the development of a national culture, not least in the matter of cultural appropriation.

According to Oscar Wilde, “‘Know thyself’ was written over the portal of the antique world. Over the portal of the new world, ‘Be thyself’ shall be written.”¹⁰ An authentic American society in the subjective philosophical sense consists not only of autonomous individuals or of separate communities defined by consanguinity or a multitude of affinities, but also of a would-be nation continually striving to create itself. Much of this interaction takes place in the world of material culture, property, and now virtual property, as we exchange, borrow, create, and construct a common—or at least aspirational—identity. Legal recognition of cultural products is a totemic element of this project.

WHEN I FIRST concluded a series of arguments for the limited regulation of cultural appropriation, I was sitting in a West Coast café named for an Italian city. Outside the window, the sun shone on a university campus where the student body no longer includes a majority of any single cultural group. Around me were patrons of every race and multiple nationalities, several displaying symbols or head coverings of different religious groups and many with T-shirts proclaiming additional cultural affiliations. The multilingual buzz of conversation competed with the periodic hiss of the industrial-strength espresso machine downstairs, expertly operated by a Latino and a woman of northern European descent. At the time I blithely concluded, if this scene were to any extent a dividend of the appropriation of one of my ancestral cultural products, “Let them drink coffee!”

Since that time, the postmodern era in America has ended—or rather, we are all postmodernists now. The watershed moment of our generation is, of course, 9/11. While the liberal project of toleration and the postmodern emphasis on diverse perspective still pervade our national consciousness, perhaps with more urgency than before, we aspire to reclaim a unity of purpose that would fulfill the promises of our national myth. Whether through the adoption of a prophetic

pragmatism, a revival of nineteenth-century idealism, or some other emergent projection of unity in diversity, America seeks not only to absorb the authenticities of its constituent communities but also to achieve its own internal authenticity.¹¹ As Lionel Trilling reminds us in the context of artistic culture, the quest for authenticity is an inherently powerful and even violent project, requiring an extreme exercise of personal will to overcome the sentiment of nonbeing.¹² If we are to succeed, our collective performance of America will both appropriate and preserve its constituent cultures and their contributions to the project of nationhood. And, as companions in this quest, we will not only break bread or matzoh or pita or naan or tortillas or *injera* together, but also share that cup of coffee.

Is it OK for a white kid to dress up as Moana for Halloween? And other cultural appropriation questions

Alia E. Dastagir, USA TODAY Published 4:18 p.m. ET Oct. 23, 2017 | Updated 6:01 p.m. ET Oct. 23, 2017



(Photo: Disney, AP)

In America's war between cultural sensitivity and free expression, Halloween is a familiar battleground.

The holiday, which originated with people dressed in costume to ward off evil spirits, has morphed into a day that celebrates all kinds of creative self-expression. It means not only do people dress up as witches and monsters, but also as one another. This is where things get complicated, and why you keep hearing the term "cultural appropriation" in a heated debate each October.

On one side of the controversy are minorities and their allies who say they experience prejudice all year long, so seeing the people who discriminate against them (intentionally or not) dressing up *as them* on Halloween

can be deeply offensive.

On the other side are those who believe "political correctness" has gone too far.

Susan Scafidi, author of *Who Owns Culture: Appropriation and Authenticity in American Law*, said the debate really took off in 2015 when Yale ([/story/opinion/2015/11/18/campus-speech-yale-missouri-race-freedom-editorials-debates/76005634/](http://story/opinion/2015/11/18/campus-speech-yale-missouri-race-freedom-editorials-debates/76005634/)) warned its students not to wear certain costumes on Halloween, provoking "a moment of outrage on both sides that really polarized the issue," she said.

"I think that the argument has absolutely become politicized," Scafidi said, "but it doesn't need to be. We can all learn to be polite and respectful without being political. And, in fact, I think most people want to be."

Scafidi spoke with USA TODAY about the debate, and how adults and children alike can be fun, creative and even subversive on Halloween without unexpectedly picking a fight.

What exactly is cultural appropriation?

"Very simply put, we're talking about taking elements of someone else's culture without permission."

But how can we live in America and not take bits and pieces of one another's cultures? Aren't we built on multi-culturalism?

"It would be terrible if we had to all remain in our own cultural lanes and only eat those exact same cuisines that our parents and grandparents and so forth ate, and never be able to travel the world by going from one restaurant to another or to experience other languages and movies and novels, and yes, modes of dress.

But it comes down to respect and context. I think that if we're from cultures that have not been historically — especially recently — attacked, oppressed, discriminated against, it might be a little harder to understand. But I think part of Halloween is being creative, and creatively imagining yourself in another form, as another character. So I think we just need the imagining to start early and imagine how someone else would feel if you dressed [like them]."

Opinion: [When cultural appropriation hurts \(http://college.usatoday.com/2014/10/22/voices-costumes-candy-and-cultural-appropriation/\)](http://college.usatoday.com/2014/10/22/voices-costumes-candy-and-cultural-appropriation/)

What is the line between experiencing someone's culture in a positive way (cultural appreciation), and disrespecting it (cultural appropriation)?

Cultural appreciation is what Scafidi calls "good borrowing" (making a Moroccan soup for dinner and talking with your family about it). Cultural appropriation can "be offensive" (turning a hijab into a costume can mock the person who wears it everyday as part of their religion).

Cultural appropriation can also be offensive when the person doing the borrowing is privileged, while the person who is being borrowed from is oppressed. For example, a white person wearing dreadlocks on Halloween when a black man wearing dreadlocks on a regular Monday gets told "you can't work here," (<http://www.orlandosentinel.com/business/consumer/os-bz-publix-dreadlocks-20171002-story.html>)

How cultural appropriation gets especially tricky on Halloween

"What happens with Halloween costumes is people start to dress up as individuals from other cultures, and it makes people from those other cultures almost feel dehumanized. 'Like what am I? A ghost? Am I a unicorn? I'm really just another human being.' ... [It can] make people feel as though they're essentially degraded."



Ryan Foster
@ryanfosterPR

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The news is covering Julianne Hough's dream wedding but I don't care because that time she happily dressed in blackface.



8:05 AM - Jul 12, 2017

2

So what is OK?

"There are many people who will say 'ah, stop taking the fun out of everything.' But every culture has sacred items that it doesn't want to be demeaned. ...

"If you're caricaturing Hillary Clinton or Donald Trump, that's fine, those are public figures. Those masks are always fair game. Your traditional skeletons and demons and devils, fine, that's also fair game. More fanciful archetypes — unicorns and princesses and fairies — fine, great. But when you start dressing up in something your neighbor might wear everyday — a sari, or a kimono, or hijab — then maybe that starts to cross the line."

Guide: [A list of costumes you can pretty much always avoid \(http://college.usatoday.com/2016/10/24/9-halloween-costumes-to-avoid-2016/\)](http://college.usatoday.com/2016/10/24/9-halloween-costumes-to-avoid-2016/)

Some basic ground rules

"Do your homework. Put yourself in someone else's shoes figuratively, before you do so actually. And think about how someone else might feel if you were dressed up as the sexy or slutty version of them for Halloween. ... Think about whether or not you're turning someone's everyday 21st century culture into a caricature."

The three S's

Scafidi said she encourages people to follow these three rules:

- **Source:** Think first about the source culture. Is this a culture that has been historically discriminated against or oppressed (blacks, American Indians). If so, proceed with caution.
- **Significance (or sacredness):** What's the significance of what you're taking? Is it something that is of major cultural significance, or maybe even something sacred, or is it just a run-of-the-mill ordinary item, an everyday commodity? (American Indian headdresses, Scafidi said, are the "equivalent of military medals. They're not just decoration or hats or jewelry or something ornamental. They mean something.")
- **Similarity:** And finally, think about the similarity of what you're doing. Are you interpreting or being inspired by someone else's culture, or are you just making an exact copy?

Are the rules different for kids?

"It's never too early to start teaching your child to say please and thank you, so it's never too early to teach your child to be respectful in other ways."

OK, but what about the thousands of white kids who want to dress up like a character from Moana for Halloween?

Scafidi said to determine whether you may be crossing a line, look at the Maui costume Disney pulled off its shelves.

"This costume was essentially his brown skin with the tattoos and the little loincloth in the middle. And people looked at it and said, 'you know, I'm not sure if having a child of some other color wearing this character's brown skin to masquerade is necessarily very respectful or a good idea.'"



Eugene Ramirez CBS4
@EugeneRamirez

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COSTUME CONTROVERSY: Disney apologizes for Moana movie Maui costume, some Pacific Islanders compare dark skin tone to blackface. Thoughts?
4:39 AM - Sep 23, 2016

Scafidi said it's hard to give definitive "yes" or "no" answers on every case (some Pacific Islanders defended https://twitter.com/Konami_Ai/status/778133208131072001 the Maui costume), but "whether a particular costume constitutes cultural misappropriation should involve asking the source community."

The hardest thing for parents on Halloween may be trying to navigate the complex world they know, while still acknowledging the more idealistic one their children see.

"Ultimately, where a concerned adult might see a specific culture, her daughter may simply have chosen as a role model a fictional character who is adventurous, courageous, determined, and yes, a bit disobedient — a universally becoming set of values to be worn by the women of tomorrow."

Moral of the story

"If we lived in a perfect world, we could all dress up as one another without giving offense. But there are historical realities and ongoing social issues and we just have to respect that that's part of where America is right now, and maybe pull back from that kind of masquerade."

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marcjacobs

Hammerstein Ballro...

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3d

themarcjacobs @radical.lizeth
@emmelephant and all who cry "cultural appropriation" or whatever nonsense about any race or skin color wearing their hair in any particular style or manner- funny how you don't criticize women of color for straightening their hair. I respect and am inspired by people and how they look. I don't see color or race- I see people. I'm sorry to read that so many people are so narrow minded... Love is the answer. Appreciation of all and inspiration from anywhere is a beautiful thing. Think about it

simone.sullivan Problematic

nothereforcaucasiantears Anyone comparing locs (a cultural hairstyle) to straight hair (literally anyone can be born with this) is a moron of epic proportions
fashionfindersnz cool!!

Marc Jacobs challenges appropriation claims with hip hop-inspired line

Maeve McDermott (<http://www.usatoday.com/story/21587/maeve-mcdermott/>), USATODAY Published 5:48 p.m. ET Feb. 16, 2017 | Updated 7:41 a.m. ET Feb. 17, 2017

One season after Marc Jacobs caused an uproar by [featuring models in faux-dreadlocks](http://www.usatoday.com/story/21587/maeve-mcdermott/) ([/story/life/entertainthis/2016/09/15/marc-jacobs-nyfw-show-receives-backlash-over-models-in-dreadlocks/90438338/](http://www.usatoday.com/story/21587/maeve-mcdermott/)) in his New York Fashion Week show, the designer isn't shying away from interpreting different cultures on the runway.

Jacobs' Fall collection, which he debuted Thursday, was openly hip hop-inspired, as models paraded tracksuits, puffer jackets, shearling coats and heavy gold chains. The models all wore oversized hats which were "inspired by the haberdashery and elegance of Andre 3000," according to Jacobs' press notes.

Titled "Respect," Jacobs' notes made a deliberate attempt to recognize the roots of the culture he interpreted in his collection.

"Several months ago I watched a documentary called *Hip-Hop Evolution*," he wrote, referencing the 2016 four-part series that traces the genre's first 20 years and, according to Jacobs, "gave way to a whole new language of style."



Marc Jacobs greet his models outside of his NYFW show. (Photo: Jamie McCarthy, Getty Images for Marc Jacobs)

Jacobs described his upbringing in NYC, where he first witnessed "the influence of hip-hop on other music as well as art and style."

"This collection is my representation of the well-studied dressing up of casual sportswear," he wrote. "It is an acknowledgement and gesture of my respect for the polish and consideration applied to fashion from a generation that will forever be the foundation of youth culture street style."

Unlike last season, where his models wearing the faux dreads were largely white, the casting for Thursday's show was far more inclusive, closer to a 50/50 split between white and nonwhite women.

One of those faces was Winnie Harlow, the model who has become the public face of vitiligo, from walking in [previous fashion weeks](https://www.aol.com/article/2015/02/17/winnie-harlow-isnt-letting-her-skin-disease-get-in-the-way-of-h/21143665/) (<https://www.aol.com/article/2015/02/17/winnie-harlow-isnt-letting-her-skin-disease-get-in-the-way-of-h/21143665/>) to appearing in [Beyonce's *Lemonade*](http://www.usatoday.com/story/2016/04/25/winnie-harlow-lemonade-set-pretty-much-family-reunion/83500986/) ([/story/life/entertainthis/2016/04/25/winnie-harlow-lemonade-set-pretty-much-family-reunion/83500986/](http://www.usatoday.com/story/2016/04/25/winnie-harlow-lemonade-set-pretty-much-family-reunion/83500986/)).



Harlow's Marc Jacobs look. (Photo: Dimitrios Kambouris, Getty Images for Marc Jacobs)

The show saved its musical references for the end, as models paraded through the silent Park Avenue Armory before assembling outside, posing in front of an enormous speaker system.

Maeve McDermott @maeve_modermott 16 Feb
 One season after getting slammed for appropriation...these are the notes for the @marcjacobs show today 📝
pic.twitter.com/RzuzGeieAj

Maeve McDermott @maeve_modermott [Follow](#)

No photography inside...so the @marcjacobs models all waited for us outside pic.twitter.com/COVwu5WokJ

4:10 PM - Feb 16, 2017



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Thanks to his more diverse casting and more purposeful acknowledgement of the cultural inspirations behind his collection, Jacobs won't likely meet the same waves of criticism he battled last year. However, it's worth noting that the streetwear that Jacobs and other designers pay homage to on their runways was once maligned as "ghetto" by fashion's mainstream.

Alongside brands like FUBU and Rocawear, Kimora Lee Simmons created her Baby Phat line in 1999. In an interview with *the Fader* (<http://www.thefader.com/2016/10/11/kimora-lee-simmons-baby-phat-black-fashion-interview>) last year, Simmons criticized the fashion industry for its current infatuation with "urban" looks after spending the previous decade marginalizing her designs.

"Maybe they call it American fashion but at the time it was 'ghetto fabulous,' it was 'urban', it was 'hip-hop culture,' it was "streetwear," she said.

"Now, they're doing the baggy silhouettes, the layering of pieces, all of the Afrocentric hairstyles like a real afro. Now you're seeing it on the runway. You'll see dreads, big braids, and on and on with the make-up trends. You'll see braids on some celebrity and it's like, 'Oh, they started that trend.' No, they really didn't."



Lil' Kim and Katy Perry outside the show. (Photo: AP/Getty)

Among the famous names present for Jacobs' Thursday show was Lil' Kim, who walked the runway (<https://www.youtube.com/watch?v=1ClhN8U-5lk>) for Simmons' Baby Phat collection in 2008.

Katy Perry, an artist who has also faced criticisms of cultural appropriation in the past, also attended the presentation.

"I guess I'll just stick to baseball and hot dogs, and that's it," she told Rolling Stone (<http://www.rollingstone.com/music/news/the-unbreakable-katy-perry-inside-rolling-stones-new-issue-20140730>) in 2014, after coming under fire for appearing as a geisha at the 2014 AMAs. "I know that's a quote that's gonna come to (hurt me), but can't you appreciate a culture? I guess, like, everybody has to stay in their lane? I don't know."

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Cultural appropriation: Make it illegal worldwide, Indigenous advocates say

Delegates in Geneva from 189 countries are looking at the issue, and some want UN to speed it up

By Hilary Bird, [CBC News](#) Posted: Jun 13, 2017 8:13 AM CT Last Updated: Jun 13, 2017 11:09 AM CT

Indigenous advocates from around the world are calling on a UN committee to ban the appropriation of Indigenous cultures — and to do it quickly.

Delegates from 189 countries, including Canada, are in Geneva this week as part of a specialized international committee within the World Intellectual Property Organization (WIPO), a United Nations agency.

- Canadian law doesn't protect Indigenous culture, lawyers say

Since it began in 2001, the committee has been working on creating and finishing three pieces of international law that would expand intellectual-property regulations to protect things like Indigenous designs, dances, words and traditional medicines.

The meeting takes place as concern grows worldwide about the rights of cultures to control their own materials. In the U.S. this week, designer Tory Burch agreed to change the description of one of her coats for women after Romanians protested that it had been described as African-inspired when it actually appropriated a traditional Romanian garment.

Speaking to the committee Monday, James Anaya, dean of law at the University of Colorado, said the UN's negotiated document should "obligate states to create effective criminal and civil enforcement procedures to recognize and prevent the non-consensual taking and illegitimate possession, sale and export of traditional cultural expressions."

Anaya said the document should also look at products that are falsely advertised as Indigenous-made or endorsed by Indigenous groups.

That would mean products like those in U.S.-based retailer Urban Outfitters "Navajo" line, Anaya said, including "Navajo hipster panties," a "peace treaty feather necklace" and a "Navajo print flask."

The Navajo Nation launched a legal battle against the company for trademark infringement in 2012. The case was settled out of court late last year.

Anaya is one of several Indigenous leaders at this round of negotiations who are questioning just how seriously some member states are taking the negotiations.

The committee has been working on three draft documents for 16 years, and member states are now going through them line by line.

It is a painstaking, slow process, and some Indigenous leaders say they are frustrated and disenchanted about the committee's future.

"We are only halfway through 2017 and yet the number of occurrences of misappropriation happening to Indigenous Peoples in all regions of the world seems relentless with no relief in sight," said Aroha Te Pareake Mead, a member of the Ngati Awa and Ngati Porou tribes in Wellington, New Zealand.

"We asked the international community to help deal with a problem that traverses international boundaries and are still waiting."

Low participation

Mead said part of the problem is that Indigenous groups around the world have no idea about the committee's work and often aren't being consulted by member states.

"People at a national level don't know what's going on, and there aren't many processes where you can get information about this or contribute to the positions that are being taken here."

Mead also noted that WIPO has what she called "one of the lowest" rates of Indigenous participation.

"The issues being discussed at the [Intergovernmental Committee] are also being discussed in Indigenous organizations and communities all around the world on a regular basis. So why are there not more Indigenous representatives here?"

Indigenous participation 'crucial'

There are Indigenous groups from around the world taking part in this round of negotiations, including groups from New Zealand, Kenya, Mexico, Colombia and the United States.

There is no Indigenous representation in the Canadian delegation.

Officials with Global Affairs Canada, Innovation, Science and Economic Development Canada and Canadian Heritage are taking part in this round of negotiations, but the lack of Canadian Indigenous representatives is drawing criticism from the Assembly of First Nations.

"The elders and knowledge keepers are the authorities who should oversee the creation of guidelines and a process for utilizing Indigenous knowledge in any activities," Assembly of First Nations National Chief Perry Bellegarde told CBC in a written statement.

"We welcome the investigation of such topics on an international stage like the United Nations, but it's crucial that Indigenous knowledge keepers are part of the dialogue."

There was no word on whether the federal government plans to consult with the AFN after this round of negotiations wraps up on Friday.

Assemblies of Member States of WIPO Fifty-Seventh Session

October 2 to 11, 2017

Agenda Item 18

**Matters Concerning the Intergovernmental Committee on Intellectual Property
and Genetic Resources, Traditional Knowledge and Folklore**

DECISION

Bearing in mind the Development Agenda recommendations, affirming the importance of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Committee), noting the different nature of these issues and acknowledging the progress made, the WIPO General Assembly agrees that the mandate of the Committee be renewed, without prejudice to the work pursued in other fora, as follows:

- (a) The Committee will, during the next budgetary biennium 2018/2019, continue to expedite its work, with the objective of reaching an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs).
- (b) The Committee's work in the 2018/2019 biennium will build on the existing work carried out by the Committee, including text-based negotiations, with a primary focus on narrowing existing gaps and reaching a common understanding on core issues, including definitions, beneficiaries, subject matter, objectives, scope of protection, and what TK/TCEs subject matter is entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain.
- (c) The Committee will follow, as set out in the table below, a work program based on sound working methods for the 2018/2019 biennium, including an evidence-based approach as set out in paragraph (d). This work program will make provision for 6 sessions of the Committee in 2018/2019, including thematic, cross-cutting and stocktaking sessions. The Committee may establish *ad hoc* expert group(s) to address a specific legal, policy or technical issue¹. The results of the work of such group(s) will be submitted to the Committee for consideration.
- (d) The Committee will use all WIPO working documents, including WIPO/GRTKF/IC/34/4, WIPO/GRTKF/IC/34/5 and WIPO/GRTKF/IC/34/8, as well as any other contributions of member states, such as conducting/updating studies covering, inter alia, examples of national experiences, including domestic legislation, impact assessments, databases, and examples of

¹ The expert group(s) will have a balanced regional representation and use an efficient working methodology. The expert group(s) will work during the weeks of the sessions of the IGC.

protectable subject matter and subject matter that is not intended to be protected; and outputs of any expert group(s) established by the Committee and related activities conducted under Program 4. The Secretariat is requested to update the 2008 gap analyses on the existing protection regimes related to TK and TCEs. The Secretariat is also requested to produce a report(s) compiling and updating studies, proposals and other materials relating to tools and activities on databases and on existing disclosure regimes relating to GR and associated TK, with a view to identify any gaps. However, studies or additional activities are not to delay progress or establish any preconditions for the negotiations.

- (e) In 2018, the Committee is requested to provide to the General Assembly a factual report along with the most recent texts available of its work up to that time with recommendations, and in 2019, submit to the General Assembly the results of its work in accordance with the objective reflected in paragraph (a). The General Assembly in 2019 will take stock of progress made, and based on the maturity of the texts, including levels of agreement on objectives, scope and nature of the instrument(s), decide on whether to convene a diplomatic conference and/or continue negotiations.
- (f) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding, in the most efficient manner, of the participation of experts from developing countries and LDCs, taking into account the usual formula for the IGC.

Work Program – 6 Sessions

Indicative Dates	Activity
February/March 2018	(IGC 35) Undertake negotiations on GRs with a focus on addressing unresolved issues and considering options for a draft legal instrument Duration 5 days.
May/June 2018	(IGC 36) Undertake negotiations on GRs with a focus on addressing unresolved issues and considering options for a draft legal instrument Expert group(s) Duration 5/6 days.
September 2018	(IGC 37) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Possible recommendations as mentioned in paragraph (e) Duration 5 days.
October 2018	WIPO General Assembly Factual report and consider recommendations.
November/December 2018	(IGC 38) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Expert group(s) Duration 5/6 days.
March/April 2019	(IGC 39) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Duration 5 days.
June/July 2019	(IGC 40) Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s) Expert group(s) Stocktaking on GRs/TK/TCEs and making a recommendation Duration 5/6 days.
October 2019	WIPO General Assembly will take stock of the progress made, consider the text(s) and make the necessary decision(s).

VOGUE

SPRING 2018 READY-TO-WEAR

NEW YORK, SEPTEMBER 8, 2017

by MONICA KIM

Bibhu Mohapatra has been considering the state of the world today—specifically travel bans and how they have made cross-cultural exchange more difficult. A few months back, the designer stumbled across an article on famous women explorers. “When we talk about explorers, it’s always male names, but there were so many female explorers from this country alone: Nellie Bly, of course Amelia Earhart,” he said.

From there, Mohapatra made a creative leap. He imagined a woman heading to Japan in the early 20th century and absorbing the culture she found there. (Notable were the photographs from Park Chan-wook’s *The Handmaiden* pinned to his mood board; though Japanese dress does appear in the film, it is set in Japanese-occupied Korea.) Despite the surprising concept, Mohapatra hoped to honor Japan in a fresh way and did study the history. Instead of the kimono, he reinterpreted the underpinnings that traditionally stayed hidden beneath it. The idea was nice, but the execution could have been smoother in some places; the subtle tube-shaped accentuation of the waist worked better than sporadic shapewear strapped over dresses. There were nods to kimono shapes with wrapped fronts and dramatic off-the-shoulder pieces. Many of the fabrics were made in Japan; a few were ramie linens from India. Among the mature women in the front row, a lace inset sheath and wine-color beaded gown drew audible gasps. They were craving something for a special occasion, and Mohapatra delivered.

VOGUE

SPRING 2018 READY-TO-WEAR

NEW YORK, SEPTEMBER 11, 2017

by LIANA SATENSTEIN

There's no doubt that diversity is under attack in the United States. Yeohlee Teng—who wore a T-shirt emblazoned with a raised fist to her show—made it clear that her collection would be a melting pot of cultures. The “melange” of different societies, as Teng described it, was visible in the prints and silhouettes. She combined Southeast Asia and its history with the Arab traders who entered the region over six centuries ago. Here, standouts included an X-Acto knife-cut jacquard cheongsam jacket with a pretty blue cherry blossom print. Bold prints worked well among Teng's solid looks, too, such as a natty geometric-print jacquard vest, which broke up the combination of a white button-up, light blue trousers, and an oatmeal-hue rain jacket.

The prints were striking, but the more solid items are what structurally stood out. A pair of trousers from Look 1 ever so slightly curved outward and tapered toward the ankles to twist the lower body into an interesting silhouette. Outerwear was strong, especially a waxed linen raincoat with oversize panels that nicely buffed up the chest, giving the body a structured, boyish form.

Of course, Teng always infuses her signature zero-waste philosophy into her design. One of the pieces that included the technique was a microfiber dress that was trimmed with scraps of Aztec jacquard—the same fabric seen in Looks 11 and 8. The addition of the detail added some needed contrast to the black dress and, of course, enforced the chic possibilities of Teng's waste-free theme.

LIVING LAMISHLY ON ANY BUDGET

THE LADY LOVES COUTURE

By Majestic Henry

Designer Dialogues: Mimi Plange

Luxurious, elegant, multi-textured glamour with impeccable architectural precision: These are the thoughts that come to mind when examining Mimi Plange's collection. New York's It Girl by way of Ghanaian origin has been characterized by patriarchal figure Andre Leon Talley as "one to watch" and one with "great promise."

Her private label, ready-to-wear journey began in 2010. But the path that set her on course for being one of the industry's burgeoning elite of new designers started long before. When Plange was just a little girl with a passion for fashion, her mom, a professional model in Ghana, and her uncle, an accomplished architect, help to foster her dream.

We caught up with the rising talent to discuss her personal principles of design and what she sees ahead in her ever-so-bright future.

The Lady Loves Couture: Describe the Mimi Plange design formula...

Mimi Plange: Most of my time is spent researching. I'm always looking for images of African bodies before colonization, because I am interested in the decorated body—different forms of adornment, scarification, piercings and old rituals. I'm interested in former ideals of beauty and how they have changed over time and become predominantly western. Though I was born in Ghana, I now live in America, a huge melting pot of cultures. Growing up in America has deeply influenced my work as far as creating my own real and surreal melting pot of different cultures and tribes across the Continent of Africa and the Diaspora. There is no specific country I am particularly drawn to, I want to know about them all. I am mixing and merging different influences together, with the goal of creating modern American fashion. I'm looking for geometric patterns that can inform my seam lines and details. I do not want to replicate anything from the past, I want to make something entirely new that is very modern and in some ways forward. I am referencing beauty that is most often times overlooked. There is so much rich history and beauty from the lost civilizations of Africa, and we want to celebrate it in a subtle way that touches all women across the globe.

TLLC: What moment would you describe as the real genesis of your career?

MP: I don't think there has been one moment I can describe, but there for sure have been a series of moments that have let me know we are on the right path. We know for sure that at the end of the day, it's about our products. Our collections are what has helped us grow over the years. We have had many blessings, the first, getting the opportunity to collaborate with famed shoe designer Manolo Blahnik, then dressing Rihanna first for her birthday and second on her world tour in 2012, and probably one of the most motivating moments was when the First Lady, Michelle Obama wore Mimi Plange, such a huge honor, I still don't quite have the words to express the huge thrill it gave us, it was such an honor—mind blowing. Over the course of 5

years we have dressed some of the world's most amazing women and been named both Emerging and Designer of the Year International by AFI and Mercedes Benz Fashion Week South Africa. We still have a long way to go, but every day we take a step closer to our ultimate goal, of building a global lifestyle brand that engages and empowers.

TLLC: Explain the Democratization of Luxury...

MP: Luxury is no longer the token of social status.

The Democratization of luxury in my point of view means taking care of yourself, loving yourself, in order to improve your quality of your life, your personal satisfaction. It has become more of a personal experience than a social one, and it is becoming more and more available for a large amount of people. Luxury isn't anything that any one person or institution owns or dictates to the masses. Luxury is personal, and anyone can create it, not just a select few. We can find value in new things and buy into things that we love for what they are and how they make us feel, not a logo or monogram that is needed to prove status. It's about freedom to make the best choices that reflect who you are as an individual and not what you think you should be. Anyone can be part of the experience, but as a creator, in order to define your work as luxury it must be of the highest quality, with the best fabrics and finished by the most skilled artisans. You must be able to compete in the luxury goods market. It's not about bringing luxury down, it's about redefining luxury on new terms.

TLLC: It's known that your Accra heritage influences your designs. From your perspective with visionaries like yourself, Olivier Rousteing, and Reuben Reuel pulling from African origins, describe the vibrancy/influence you believe Africa's cultural influence has on fine apparel?

MP: All design principles come from Africa. It is the birth place of modern design. It is the birth place of all design. The most beautiful creations come from nature. I would say that almost if not all designers reference nature for color, patterns, and textures. Culturally, different tribes from the West, East, South and North African countries have always looked to nature to dress and adorn themselves using leathers, body modification, various dyeing techniques, plants, flowers and meticulous embroideries. Africa has a rich history of couture. Everything was handmade, and everything is always about individuality. That is the essence of representation, how can I stand out? How can I look different. In fine apparel and high fashion designer goods, it's all about finding a distinctive voice, something new and something inspiring. There is no better place to look than Africa. There is so much to pull from and so many things that have yet to be explored. Africa as a whole is untapped and an endless source of inspiration for all designers throughout the world. Africa today is the new and final frontier for Couture.

TLLC: Do you have a favorite design... if so what and who wore it?

MP: I do not have one favorite design, but I do have a very special love for any garment that we do our signature quilting pattern on. Though it is signature and recognizable, it varies from garment to garment, no two are ever the same. The geometric lines are based off of African Scarifications. There are so many versions of Scarifications that I find beautiful, I especially love the fine lines of those from the Benin culture. We often do it on leather, though we have also ventured out and done it on other fabrications as well, but I love the idea of it coming from skin and being done on skin. The scarified leather pieces we make are all done by hand, each line stitched individually on designs I hand draw onto the patterns. It takes a lot of patience to draw and sew each line that varies from 1/8" to 3/8" apart. Our pieces featuring this technique have been on display in various museums here in the US and in Hong Kong. They are definitely special.

TLLC: What is your approach to developing a new collection? How do you keep designs fresh?

MP: At this stage of our company, it's about expressing our story. We try to remain consistent by layering on from the previous seasons. We take a look back at items that did well and had a great reaction and think about how to improve them and evolve them. I need to think about having a distinctive look that is recognizable all the time, and that becomes the foundation. The fun part is researching what the inspiration will be. Though, there is always this underlying idea of Scarification, I also look at clothing, other types of body adornment and sometimes even the Victorian period, because it was a defining time when Africans changed their dress dramatically adopting more western styles. I'm never bored. If you have strong inspirations, you will always have fresh new ideas. It's also important to look at what's going on in the world. For instance, our take on evening wear is more about separates. What is the modern woman interested in? I think she is really busy, and needs clothing that is not fussy, but makes a statement. Those things have to influence design as well. I'm always thinking, where is she going in that? That helps me edit out the noise. The clothes have to be beautiful and functional. I try to stay on top of world events, even like climate change. 2016 is supposed to be one of the hottest seasons ever, that will change my outlook on the way I design outerwear. It's about reading and being informed about history and the world around you today.

TLLC: You've already dressed some serious A-listers, but is there anyone left on your wish-list that you'd love to see in your designs?

MP: There are so many! I don't even think I can name them all!

For style and individuality I love Cate Blanchett, Naomi Harris, Kerry Washington, Angelina Jolie, Zendaya, Charlize Theron, Ann Hathaway, Meryl Streep, Nicole Kidman, Julianne Moore, Marion Cotillard, Zoe Saldana, Cameron Diaz, Salma Hayek, Taylor Swift, Madonna, Katy Perry, Adele, Lady Gaga, Jennifer Lopez, Tina Turner, Janet Jackson, Rihanna (again)! The list goes on and on, and of course Marjorie Harvey and the other amazing women who are not on the screen or the red carpet but A listers in real life!

TLLC: What advice would you give an emerging designer about beginning a label and the fundamentals of fashion as a business?

MP: I highly recommend working for someone else first, especially a start up if you can unless you have a GREAT deal of capital to begin with-but even then, I still would recommend it. Learning the business of fashion is just as important as learning how to design for the women or men you want to dress. A design company involves many people in order for it to work correctly. You have to understand how to work with buyers, merchandisers, stylists, salespeople, seamstresses, showrooms, your customers, the list goes on and on. This requires learning how to do business with people, understanding different personalities and being able to navigate through them. It's not just about design, that's the fun part, but that is only a small portion of what you will actually be doing as a designer on a day to day basis. Have a point of view that is distinctive. There is no reason for you to exist if you are creating something that is already there. Have a story that is genuine and remain humble, the learning never stops. Learn about the industry, voids in the market and the craft of design before you do ANYTHING.

TLLC: How do you feel you have been able to create a niche for yourself in this industry?

MP: By staying focused. When you carve out a niche for yourself, you understand that what you are doing isn't for everybody, and that's ok. Everyone isn't going to love what you do, and that's ok too. But you have to be able to speak to the people who do love what you do. You have to be flexible enough to adapt to change but also be firm enough to stick to your core story. I look at it like layers. Every season, I have to build on top of the previous season. Make the story tighter and express the message clearer. You simply can't be satisfied, I'm never satisfied with my work, which doesn't mean I don't like what I do, it just means I'm always striving to do more. Ultimately, people have to trust you, see your quality and be seduced by your story.

TLLC: Can you tell us about any future collaborations/projects you are working on? What's next from Mimi Plange?

MP: We are currently working on our new collection which will debut in early 2016. Next year, we are super excited to be collaborating with the UN's ITC Ethical Fashion Initiative with the launch of our new handbags. We will also begin production in Ethiopia and Kenya. We currently make all of our garments in New York, but it has been a dream to be able to manufacture in Africa as well. We will continue to grow our business organically and beautifully one design at a time. There is no destination for us, only evolution

<https://theladylovescouture.com/designer-dialogues-mimi-plange/>.

§ 305e. Cause of action for misrepresentation of Indian produced goods, 25 USCA § 305e

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 7A. Promotion of Social and Economic Welfare

25 U.S.C.A. § 305e

§ 305e. Cause of action for misrepresentation of Indian produced goods

Effective: July 29, 2010

Currentness

(a) Definitions

In this section:

(1) Indian

The term "Indian" means an individual that--

(A) is a member of an Indian tribe; or

(B) is certified as an Indian artisan by an Indian tribe.

(2) Indian product

The term "Indian product" has the meaning given the term in any regulation promulgated by the Secretary

(3) Indian tribe

(A) In general

§ 305e. Cause of action for misrepresentation of Indian produced goods, 25 USCA § 305e

The term "Indian tribe" has the meaning given the term in section 5304 of this title.

(B) Inclusion

The term "Indian tribe" includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by--

(i) a State legislature;

(ii) a State commission; or

(iii) another similar organization vested with State legislative tribal recognition authority.

(4) Secretary

The term "Secretary" means the Secretary of the Interior.

(b) Injunctive or equitable relief; damages

A person specified in subsection (d) may, in a civil action in a court of competent jurisdiction, bring an action against a person who, directly or indirectly, offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to--

(1) obtain injunctive or other equitable relief; and

(2) recover the greater of--

(A) treble damages; or

§ 305e. Cause of action for misrepresentation of Indian produced goods, 25 USCA § 305e

(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than \$1,000 for each day on which the offer or display for sale or sale continues.

For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.

(c) Punitive damages; attorney's fee

In addition to the relief specified in subsection (b), the court may award punitive damages and the costs of the civil action and a reasonable attorney's fee.

(d) Persons that may initiate civil actions

(1) In general

A civil action under subsection (b) may be initiated by--

(A) the Attorney General, at the request of the Secretary acting on behalf of--

(i) an Indian tribe;

(ii) an Indian; or

(iii) an Indian arts and crafts organization;

(B) an Indian tribe, acting on behalf of--

(i) the Indian tribe;

(ii) a member of that Indian tribe; or

§ 305e. Cause of action for misrepresentation of Indian produced goods, 25 USCA § 305e

(iii) an Indian arts and crafts organization;

(C) an Indian; or

(D) an Indian arts and crafts organization.

(2) Disposition of amounts recovered

(A) In general

Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

(B) Exceptions

(i) Attorney General

In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount--

(I) the amount of the cost of the civil action and reasonable attorney's fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and

(II) the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.

(ii) Indian tribe

In the case of a civil action initiated under paragraph (1)(B), the Indian tribe may deduct from the amount--

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(I) the amount of the cost of the civil action; and

(II) reasonable attorney's fees.

(e) Savings provision

If any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

(f) Regulations

Not later than 180 days after November 9, 2000, the Board shall promulgate regulations to include in the definition of the term "Indian product" specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act.

CREDIT(S)

(Aug. 27, 1935, c. 748, §6, as added Nov. 29, 1990, Pub.L. 101-644, Title I, § 105, 104 Stat. 4664; amended Nov. 9, 2000, Pub.L. 106-497, § 2, 114 Stat. 2219; July 29, 2010, Pub.L. 111-211, Title I, § 102(b), 124 Stat. 2259.)

Notes of Decisions (21)

25 U.S.C.A. § 305e, 25 USCA § 305e
Current through P.L. 115-68.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE NAVAJO NATION, a sovereign Indian Nation, DINÉ DEVELOPMENT CORPORATION, a corporation wholly-owned by and formed under the laws of the Navajo Nation, and NAVAJO ARTS AND CRAFTS ENTERPRISE, a wholly-owned instrumentality of the Navajo Nation,

Plaintiffs,

v.

URBAN OUTFITTERS, INC., UO.COM, L.L.C., URBAN OUTFITTERS WHOLESALE, INC., ANTHROPOLOGIE, INC., ANTHROPOLOGIE.COM, L.L.C., and FREE PEOPLE of PA, L.L.C., Pennsylvania Corporations, and FREEPEOPLE.COM, L.L.C., a Delaware Corporation,

Defendants.

CIVIL ACTION NO:

No. 1:12-cv-00195-LH-WDS

**SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES
(JURY TRIAL DEMANDED)**

I. INTRODUCTION

1. The Navajo Nation brings this Second Amended Complaint against Urban Outfitters, Inc., and its wholly-owned and controlled subsidiaries, entities, and retail brands (collectively “Urban Outfitters” or “Defendant”) for trademark infringement, trademark dilution, unfair competition, false advertising, commercial practices laws violations, and for violation of the Indian Arts and Crafts Act. The Navajo Nation seeks to protect its famous and inherently distinctive NAVAJO trademark, and to ensure that consumers in

New Mexico and throughout the United States are not deceived, confused, or misled as they seek authentic and genuine NAVAJO products.

2. Since at least March 16, 2009, Urban Outfitters has advertised, promoted, and sold its goods under the “Navaho” and “Navajo” names and marks. Urban Outfitters offers these goods on the Internet and in stores across the United States, and they compete directly with the Navajo Nation’s goods.

3. The Navajo Nation and the Navajo People¹ have been known by the name “Navajo” since at least 1849; have continuously used the NAVAJO trademark in commerce; and had made the NAVAJO name and trademarks famous in New Mexico and throughout the United States.² The NAVAJO name and trademarks have been used with numerous products, including clothing, accessories, blankets, jewelry, foods, tools, decorations, crafts, gaming establishments, tourism, educational institutions, retail services, fairs and events, and a news publication. Since 1941, the Navajo Nation has marketed and retailed clothing, house-wares, and jewelry using its NAVAJO name and marks. Furthermore, since at least 1943, the Navajo Nation has marketed and sold its goods under its registered NAVAJO trademark (hereinafter, “NAVAJO”). The Navajo

¹ The “Navajo People” means enrolled members of the Navajo Nation. In 1969, the sovereign governmental institution formerly known as “The Navajo Tribe of Indians” officially became known as “The Navajo Nation.” The Navajo Nation is the official institutional name now for purposes of Navajo law, 1 N.N.C. § 501 (2008), and Federal law, e.g., Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 153, 40218 (Aug. 11, 2009). One may only be an enrolled member of the Navajo Nation through meeting the substantive and procedural criteria at 1 N.N.C. §§ 701, 751-759 (2008). Further, enrollment in a federally-acknowledged Indian tribe confers a unique political status on an individual, see generally *Morton v. Mancari*, 417 U.S. 535 (1974), and *United States v. Antelope*, 430 U.S. 641 (1977), which is the case with the Navajo People.

² Although long-thought to be an acceptable alternative spelling, the spelling “Navaho” with an ‘h’ has been declared by the Navajo Nation to be unacceptable, and Navajo Nation law requires that “the name ‘Navajo’ [shall be used, with] the spelling ‘j’, not ‘h’.” 1 N.N.C. § 502 (2008). Under trademark law, the spellings are confusingly similar.

Nation has currently registered 86 trademarks using the NAVAJO component with the United States Patent and Trademark Office (“USPTO”) on the Principal Register.

4. The Navajo Nation has invested substantial capital in promoting and protecting its NAVAJO trademarks,³ resulting in more than \$500 million in sales of NAVAJO-branded goods, and making the famous NAVAJO mark a “source identifier” for the Navajo Nation. A “source identifier” is a trademark. The trademark lets the public know the source of particular goods or services offered under a trademark. The strength of the NAVAJO name and trademarks is one of the Navajo Nation’s most valuable assets.

5. Defendant’s use of “Navajo,” and “Navaho” (which is confusingly similar to Navajo), as names and marks is in direct competition with NAVAJO-branded goods. Authentic NAVAJO goods and Defendant’s inauthentic goods compete with each other. Defendant offers identical types of goods as those marketed and sold by the Navajo Nation—except, of course, that these products are not genuine NAVAJO products. Similarly, the goods compete in many of the same channels of trade as the Navajo Nation’s own products, and this competition between authentic and inauthentic goods deceives and confuses consumers. Defendant’s conduct is designed to convey to consumers a false association or affiliation with the Navajo Nation, and to unfairly trade off of the fame, reputation, and goodwill of the Navajo Nation’s trademarks.

6. Consumers have been misled as to the source, origin, sponsorship, or affiliation of Defendant’s products sold under the “Navajo” and “Navaho” names and

³ The Navajo Nation has demanded that misappropriators of the NAVAJO trademark cease-and-desist such conduct, *e.g.*, Exhibit B, which is the Navajo Nation’s cease-and-desist demand letter to Urban Outfitters, and has secured cancellation of the registration of the confusingly similar “Navaho” mark. *The Navajo Nation v. Big Bang Co.*, Reg. No. 3872159, Cancellation No. 92053327 (T.T.A.B. Mar. 22, 2011).

trademarks. If Defendants are permitted to continue to market and retail its products under marks that are identical and confusingly similar in appearance, sight, sound, meaning, and overall impression, many consumers will conclude that the goods sold by Urban Outfitters were jointly developed by, licensed, certified, supported by, or are otherwise affiliated with the Navajo Nation, which they are not.

7. In addition, Urban Outfitters' display and sale of its goods in its stores and on the Internet in manners that falsely suggest they are the product of the Navajo Nation, a Navajo arts and crafts organization, an Indian Tribe, an Indian arts and crafts organization, or an Indian artisan, and that such goods are Indian-produced or the product of an Indian Tribe, American Indian arts and crafts organization, or Indian artisan violates the Indian Arts and Crafts Act.

8. Simply put, the Navajo Nation, as a direct competitor should not be allowed to benefit from the Navajo Nation's substantial investment in its marks, and to the detriment of deceived, confused, or misled consumers who seek authentic and genuine NAVAJO products. The Navajo Nation seeks damages, and seeks to enjoin Urban Outfitters from using the "Navajo" and "Navaho" as trademarks for the marketing and sale of goods that directly compete with the Navajo Nation's genuine products.

II. THE PARTIES

A. PLAINTIFFS

9. The Navajo Nation is a sovereign Indian Nation, and federally-acknowledged Indian Tribe. The Navajo Nation has over 300,000 enrolled members. The Navajo Nation owns, controls, and exercises jurisdiction over a semi-autonomous territory

spanning more than 27,000 square miles in northeastern Arizona, the southeastern portion of Utah, and northwestern New Mexico. The Navajo Reservation shares territory with the District of New Mexico, occupying 4 million acres of land in the New Mexico portion of the Navajo Reservation. Approximately 112,000 members of the Nation reside in New Mexico. The eastern edge of the Tohajiilee portion of the Navajo Reservation is approximately 17 miles from downtown Albuquerque. The Navajo Nation is an institution, which acts through its political subdivisions (*e.g.*, the Division of Economic Development); wholly-owned instrumentalities (*e.g.*, Navajo Arts and Crafts Enterprise and Diné Development Corporation); officers, employees, and authorized agents; and on behalf of its members as *parens patriae*. Hereinafter, the Navajo Nation's political subdivisions, instrumentalities, officers, employees, authorized agents, and the Navajo People are collectively referred to as "the Navajo Nation."

10. Diné Development Corporation ("DDC") is a corporation wholly owned by the Navajo Nation and formed under the laws of the Navajo Nation. DDC owns, and is authorized to issue, licenses of the NAVAJO trademark.

11. Navajo Arts and Crafts Enterprise is a wholly owned instrumentality of the Navajo Nation. The Navajo Arts and Crafts Enterprise also owns, and is authorized to issue, licenses of the NAVAJO trademark.

12. The Navajo Nation possesses sovereign immunity, and brings this Second Amended Complaint without waiving any of its immunities from counter-claims and cross-claims, defenses, or objections available as a sovereign.

B. DEFENDANTS

13. Defendant Urban Outfitters, Inc. is an international retail company, with its headquarters located at 5000 South Broad Street, Philadelphia, Pennsylvania 19112-1495. Urban Outfitters operates under the Urban Outfitters, Anthropologie, Free People, Terrain and BHLDN brands. Urban Outfitters, Inc., Annual Report (Form 10-K) at 1 (Apr. 2, 2012) (hereinafter, “UO 2012 10-K”). Defendant markets and retails its merchandise in its more than 200 stores located internationally and throughout the United States, including in New Mexico. Defendant also maintains a significant presence on the World Wide Web or Internet, and markets and retails its products online at its websites: www.urbanoutfitters.com, www.freepeople.com, and www.anthropologie.com. *Id.*

14. Defendant UO.com, L.L.C. is a wholly-owned subsidiary of Urban Outfitters, Inc. UO 2012 10-K at Ex. 21.1.

15. Defendant Urban Outfitters Wholesale, Inc. is a wholly-owned subsidiary of Urban Outfitters, Inc. *Id.*

16. Defendant Anthropologie, Inc. and Anthropologie.com, L.L.C. are wholly-owned subsidiaries of Urban Outfitters, Inc. *Id.*

17. Defendant Free People of PA, L.L.C. and FreePeople.com, L.L.C. are wholly-owned subsidiaries of Urban Outfitters, Inc. *Id.*

18. Urban Outfitters, Inc. wholly owns and controls the above-listed subsidiaries. The actions alleged in this Second Amended Complaint are committed by Urban Outfitters, Inc. through itself and its subsidiaries. Urban Outfitters, Inc.’s subsidiaries are not separate autonomous entities, but rather are referred to as “brands” of

Urban Outfitters, Inc. in its Form 10-K Annual Reports, and are grouped together as one “business segment” in these same Reports. (*E.g.*, UO 2012 10-K at 23).⁴ Moreover, the consolidated financial reports refer to Urban Outfitters, Inc. and its subsidiaries collectively as “the Company” and pool finances for purposes of its filings with the United States Securities and Exchange Commission. Given the unity of purpose, and the fact that the companies do not operate as separate legal entities, but rather as “brands” of Urban Outfitters, Inc., Urban Outfitters and its subsidiaries are instrumentalities and alter-egos of each other.

19. These subsidiaries are accordingly included collectively in the definition of “Urban Outfitters, Inc.,” and are referred to collectively herein as “Defendant” or “Urban Outfitters.”

III. JURISDICTION AND VENUE

20. This Court has personal jurisdiction over Defendant, because Defendant transacts business in the State of New Mexico, operates a store in Albuquerque, New Mexico, and transacts business through the Internet into New Mexico. The Internet is an instrument of commerce which Defendant uses to reach into this district.

21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, because one or more of the claims at issue arises under federal law, specifically the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, including 1121, 1125(a) and (c), and the Indian Arts and Crafts Act, 25 U.S.C. §§ 305e(b), (c), and (d)(1)(B)(i) and (iii).

⁴ Some of the corporate names and corporate forms of the retail brands have changed through mergers. UO.com L.L.C. is the successor to UrbanOutfitters.com L.P. Anthropologie.com L.L.C. is the successor to Anthropologie.com, L.P. Free People of PA L.L.C. is the successor to Free People L.L.C. UO 2012 10-K at Ex. 21.1.

Furthermore, the Navajo Nation is an Indian Nation or Tribe recognized by the Secretary of the Interior, and this matter arises under the “Constitution, laws, or treaties of the United States” for purposes of jurisdiction pursuant to 28 U.S.C. § 1362.

22. This Court has supplemental jurisdiction over the state law claims at issue in this action pursuant to 28 U.S.C. § 1367, because these claims are so related to the federal law claims as to form part of the same case or controversy; that is, they arise out of a common nucleus of operative facts.

23. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because a substantial portion of the events giving rise to the claims in this action occurred in this District, the injuries presented in this action occurred in this District, Plaintiff resides in this District, and Defendant may be found in this District.

IV. FACTUAL BACKGROUND

A. The Navajo Nation and the use of the NAVAJO name and trademarks

24. The Navajo Nation has used the NAVAJO name and trademark in commerce for over 150 years with a variety of goods and services, including goods such as clothing, footwear, bags, jewelry, and house-wares.

25. At least as early as 1941, the Navajo Nation began using the NAVAJO name and mark to market and sell goods through Navajo Arts and Crafts Enterprise, which has two stores located in New Mexico, one in Shiprock, Navajo Nation, New Mexico, and another in Alamo, Navajo Nation, New Mexico. Shiprock is approximately 230 miles northwest of Albuquerque, and Alamo is about 80 miles southwest of Albuquerque. The

Navajo Arts and Crafts Enterprise has also sold, and sells products through several trade shows in New Mexico.

26. At least as early as 1943, the Navajo Nation registered the NAVAJO trademark with the USPTO in connection with the sale of its goods and services in commerce in the United States and New Mexico.

27. The Navajo Nation has currently registered 86 trademarks with the USPTO that include the NAVAJO component and title for a variety of different classes of goods and services; including clothing, jewelry, house-wares, and accessories. See the illustrative, and not exhaustive, chart containing some of the NAVAJO trademarks registered with the USPTO located below at paragraph 54.

28. The NAVAJO trademark is an inherently distinctive mark. Many of its 86 registered trademarks have become incontestable under 15 U.S.C. § 1065, including Trademark Registration Nos. 2,237,848; 2,976,666; 3,602,907; 3,787,515, 3,787,518, and 3,793,381.

29. The trademark NAVAJO is inherently distinctive, and given the incontestable status of its registration, the trademark may not be challenged as merely descriptive. The NAVAJO mark is immediately recognized and associated with the Navajo Nation. It serves as an identifier of source from the moment it is used, because its source is immediately recognizable as being the Navajo Nation. The NAVAJO mark is an inherently distinctive mark, being either suggestive, arbitrary or fanciful. "Navajo" is not a generic name for a class of products such as clothing, jewelry or accessories. "Navajo" is not the name of any genus of products, such as clothing, jewelry or accessories. Customers

do not go into an Urban Outfitters store, and ask for “a Navajo.” If they did, a sales person would not know how to assist them.

30. The Navajo Nation’s investment in its trademarks is significant, and the Navajo Nation has accumulated goodwill in its marks over the years. The “Navajo” name and the NAVAJO marks are the symbol of the sovereign entity, the Navajo Nation, or as it has been known, the Navajo Tribe of Indians; including its wholly owned commercial enterprises, DDC and Navajo Arts and Crafts Enterprise. The NAVAJO marks are also prominently featured on the Navajo Nation’s websites, and its authorized agents’ websites, which include, among others, www.navajo.org, www.navajobusiness.com, www.navajobusinessdevelopment.com, www.gonavajo.com, and www.discovernavajo.com. Two of the Navajo silversmiths identified on the www.gonavajo.com website, Ronald Coan and Howard Begay, reside in New Mexico and sell their goods in New Mexico. The Navajo Arts and Crafts Enterprise also sells its products using the NAVAJO trademark within New Mexico, and through the www.temeinc.com website. Three Navajo silversmiths identified on that website, Jimmy Brown, Jerry Cowboy, and Christopher Tom, also reside within New Mexico. And at least two other enrolled members of the Navajo Nation, Virginia Ballenger and Artie Yellowhorse, who use the NAVAJO trademark in connection with their clothing and jewelry sales, also sell their goods within New Mexico.

31. Indeed, the NAVAJO trademark is broadly recognized by purchasers of consumer goods, including clothing, jewelry, and house-wares, and by the United States’ and New Mexico’s general public as a trademark for the Navajo Nation’s Indian-styled and

Indian-produced goods. The NAVAJO trademark is a famous mark in New Mexico and throughout the United States, and has been famous for decades before Defendant's use.

B. Urban Outfitters, its business, and its development

32. Urban Outfitters, which was founded in 1970 and originally operated by a predecessor partnership, was incorporated in the Commonwealth of Pennsylvania in 1976. The principal business activity of Urban Outfitters is the operation of a general consumer product retail and wholesale business. Urban Outfitters markets and sells its products to customers through various channels, including retail stores, three catalogs, and ten Internet websites. As of January 31, 2012, and January 31, 2011, Defendant operated 429 and 372 stores, respectively. UO 2012 10-K at F-7. Defendant's stores located within the United States totaled 381 as of January 31, 2012, and 334 as of January 31, 2011. *Id.* Defendant's operations in Europe and Canada included 33 and 15 stores as of January 31, 2012, respectively; and 24 and 14 stores as of January 31, 2011. *Id.* In addition, Defendant's wholesale segment sold and distributed apparel to approximately 1,400 better department and specialty retailers worldwide during the time period it has used the "Navajo" and "Navaho" names and marks. *Id.*

33. Defendant is a leading lifestyle specialty retail company that operates under the Urban Outfitters, Anthropologie, Free People, Terrain and BHLDN brands. UO 2012 10-K at 1. Defendant also operates a wholesale segment under its Free People brand. *Id.* Defendant has over 41 years of experience creating and managing retail stores that offer highly differentiated collections of fashion apparel, accessories, and home goods, which according to Defendant are marketed and sold in inviting and dynamic store settings. *Id.*

According to Defendant, its core strategy is to provide “unified store environments that establish emotional bonds with the customer.” *Id.* In addition to its retail stores, Defendant offers its products and markets its brands directly to consumers through its e-commerce web sites, as well as through its Urban Outfitters, Anthropologie, and Free People catalogs. *Id.*

34. Urban Outfitters had sales of approximately \$2.5 billion in fiscal year 2012. UO 2012 10-K at 1. According to its 10-K, “[w]e have established a reputation with these young adults [specifically, persons 18 to 28], who are culturally sophisticated, self-expressive, and concerned with acceptance by their peer group. The product offering includes . . . an eclectic mix of apartment wares and gifts.” UO 2012 10-K at 2.

35. Urban Outfitters also offers a direct-to-consumer catalog that markets select merchandise, and Defendant operates a web site that accepts orders directly from customers. Urban Outfitters purchases merchandise from numerous foreign and domestic vendors; and during fiscal year 2012, Urban Outfitters did business with approximately 3,400 vendors. UO 2012 10-K at 7. Accordingly, it would be reasonable for consumers to conclude, based on Urban Outfitters’ business model, that Defendant contracts with the Navajo Nation to sell its goods under the Navajo Nation’s NAVAJO mark—despite the fact that Urban Outfitters has not entered into any license or sponsorship relationship whatsoever with the Navajo Nation for the proper use of any trademark.

36. Urban Outfitters operates a wholesale division to oversee the wholesale operations of the Free People brand. UO 2012 10-K at 23. The Free People wholesale division sells goods worldwide through approximately 1,400 department and specialty

stores, including Bloomingdale's, Nordstrom, Lord & Taylor, Belk, and their own Free People and Urban Outfitters stores. UO 2012 10-K at 25.

C. Urban Outfitters' use of the "Navajo" and "Navaho" names and trademarks

37. At least as early as March 16, 2009, Urban Outfitters started using the "Navajo" and "Navaho" names in its product line, or in connection with the sale of its goods, online, in its catalogs, and in its physical stores. Defendant's use has included, and includes (but is not limited to): clothing, jewelry, footwear, handbags, caps, scarves, gloves, undergarments, and flasks. Defendant's items sold under the "Navajo" and "Navaho" names and marks evoke the Navajo Nation's tribal patterns, including geometric prints and designs fashioned to mimic and resemble Navajo Indian-made patterned clothing, jewelry and accessories. Urban Outfitters has sold and is selling over 20 products using the "Navajo" and "Navaho" trademarks in its retail stores, its catalogs, and its online stores.

38. Free People, a brand of Urban Outfitters, also sells goods using the "Navajo" name and marks in its stores, catalogs, and online, and uses the search term "Navajo" in its online catalog search engine to display products on its website. For example, see <http://www.freepeople.com/index.cfm?fuseaction=search.results&searchString=navajo>.

39. Urban Outfitters has distributed and sold items through its Free People wholesale division to other retailers using the "Navajo" name to label or describe its products.

40. Urban Outfitters has also used the NAVAJO mark in its internal search engine to divert the customer to its products, thus engaging in initial interest confusion. Urban Outfitters also used the NAVAJO mark as a trademark in its stores, catalogs and websites to enhance the salability of its products. While customers may have created online “collections” on the freepeople.com website that include the term “Navajo,” the Navajo Nation is not alleging that Urban Outfitters violated the law due to its customer actions. Collections are groupings of products that a customer can tag, and have other customers view on the freepeople.com website. The Navajo Nation is challenging the use of the NAVAJO trademark by Urban Outfitters in its stores, catalogs, websites and internal website search engine, not the customer collections.

41. Urban Outfitters began offering retail clothing and accessories as early as March 2009 with the “Navajo” and “Navaho” as trademarks to label or describe its products. For example, a “Leather Navaho cuff” was offered on Urban Outfitters’ website in January 2010. Sometime in early 2011, and possibly earlier, Urban Outfitters started a product line of 20 or more items containing the NAVAJO trademark, which Defendant sold on its website and in its retail stores. True and correct copies of Defendants’ more than 20 items comprising the “Navajo Collection” sold at Urban Outfitters, as they are or have been displayed for online marketing and retailing at Defendant’s website, are attached hereto collectively as Exhibit A.⁵ Exhibit A is an illustrative, and not exhaustive, list of Urban Outfitters infringing activity. Indeed, Exhibit A only includes screen shots from

⁵ These PDF images were copied from Defendant’s website on October 16, 2011.

online shopping websites. Urban Outfitters sold its goods in physical stores and in catalogs, and this has also infringed on the Navajo Nation's marks.

42. The following is an illustrative, and not exhaustive, list of Defendant's products:

- Deter Navajo Tee
- Navajo Nations Crew Pullover
- Title Unknown Techno Navajo Quilt Oversized Crop Tee
- Navajo Feather Earrings
- Navajo Sock
- Navajo Hipster Panty
- Ecote Navajo Wool Tote Bag

43. Urban Outfitters sold these products despite the Navajo Nation's NAVAJO trademarks, which cover clothing, footwear, online retail sales, household products, and textiles.

44. Urban Outfitters knowingly and intentionally used the "Navajo" and "Navaho" names and marks for its retail goods to compete directly with the sale of the Navajo Nation's goods, which are sold using the NAVAJO trademarks.

45. Urban Outfitters has not, and is not, using the term "Navajo" descriptively because "Navajo" means of or pertaining to the Navajo Nation. The dictionary definition of "Navajo" is primarily "1. a member of the principal tribe of the southern division of the Athabaskan stock of North American Indians, located in New Mexico and Arizona, and now constituting the largest tribal group in the U.S." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1282 (2d Ed. 1987). While the "Navajo" word may be commonly used to describe an Indian tribe, it is not a generic term for jewelry, clothing and accessories. Thus Urban Outfitters is using the term "Navajo," as a trademark.

46. Urban Outfitters is using the term “Navajo” as a source identifier, i.e. a trademark. The placement of the word “Navajo” is made prominently in the title of its items, as an attention getting symbol. It is used, consistent with its stated business model, to “establish emotional bonds with the customer.” UO 2012 10-K at 1. Urban Outfitters could have used other descriptive words, such as “geometric” or “southwestern” to describe its goods. Still, it chose the trademark “Navajo” in order to trade off of the cachet and romanticism associated with the Navajo People, who form the Navajo Nation. Urban Outfitters uses no disclaimer in its stores or on its websites that its goods are not associated or affiliated with the Navajo Nation. In fact, quite the opposite: Urban Outfitters falsely advertises its “Navajo” Necklace, for example, as “Vintage” and “Handmade.” Urban Outfitters is making an express claim that its goods are made by members of the Navajo Nation. *See e.g.* Ex. A. However, as discussed *supra.*, in footnote 1, only enrolled members of the Navajo Nation may sell its goods under the NAVAJO trademark.

47. Urban Outfitters used the term “Navajo” with full knowledge of the Navajo Nation’s federally registered trademarks, at least as early as when it received the Navajo Nation’s cease and desist letter, dated June 30, 2011. *See* Ex. B. Urban Outfitters was and is using Plaintiffs’ trademarks to wrongfully infringe on Plaintiff’s NAVAJO mark and trade upon and dilute the goodwill of the Plaintiffs’ NAVAJO mark so as to give Urban Outfitters’ products bearing the term “Navajo” a salability which they would not otherwise have. The word “Navajo” has cachet and value based on its valuable trademark. Urban Outfitters use of the trademark, including using it to sell hip flasks and panties, also dilutes

the Navajo Nation's goodwill in its trademarks. Urban Outfitters also did not use the term "Navajo" fairly and in good faith.

48. On information and belief, Defendant will continue to sell its goods under the "Navajo" and "Navaho" names and marks in its stores and online, and will continue to use "Navajo" as a search term on its websites to market and sell its products online.

49. The Navajo Nation demanded that Urban Outfitters cease and desist using the "Navajo" trademark in connection with the sale of Urban Outfitters' retail goods. A true and correct copy of this letter is attached hereto as Exhibit B.

50. As reported by the Associated Press on October 24, 2011, Urban Outfitters removed the word "Navajo" from its product names on its website, and replaced "Navajo" with the term "Printed" in response to the Navajo Nation's cease-and-desist letter.

51. Although Urban Outfitters purported to have stopped using "Navajo" and "Navaho" with its products, Defendant actually continued to sell its products in its retail stores under the "Navajo" and "Navaho" names and marks. Moreover, Defendant also continued to use the word "Navajo" on its sales receipts.

52. Defendant has sold, and continued to sell, its goods with the "Navajo" name and mark on its websites, www.freepeople.com, and Anthropologie.com. Free People was selling jewelry under the "Navajo" trademark, and has used "Navajo" as a search term to display its retail goods. Anthropologie has sold items using the Navajo trademark as well. True and correct copies of illustrative examples of Defendant's items as they are or have been displayed for online marketing and retailing at Defendant's Free People and Anthropologie websites under the "Navajo" trademark are attached hereto as Exhibit A.

True and correct copies of Defendant's webpages showing Free People's use of the "Navajo" mark as a search term on its Free People website are attached hereto as Exhibit

C. This Court may also see

<http://www.freepeople.com/index.cfm?fuseaction=search.results&searchString=navajo>.

The pages of this exhibit are an illustrative, and not exhaustive list, of Urban Outfitters' infringing activity. Indeed Urban Outfitters also has and is using the "Navajo" name in its stores and catalogs, which are not included in the exhibits attached to this Second Amended Complaint.

53. Urban Outfitters has knowingly and intentionally used the "Navajo" and "Navaho" names and marks for its retail products in stores and through online shopping to directly compete with the Navajo Nation's retail goods.

54. Urban Outfitters' "Navajo" mark and the Navajo Nation's federally registered NAVAJO trademarks are identical in appearance, sight, sound, meaning, and overall impression. And Urban Outfitters' "Navaho" mark is phonetically identical, confusingly similar in sight and appearance, and identical in meaning and overall impression to the Navajo Nation's registered trademarks. The following is an illustrative, and not exhaustive, chart showing the Navajo Nation's trademarks that Urban Outfitters has infringed:

#	REG. No.	SERIAL No.	MARK	CLASS: GOODS AND SERVICES
1	3793381		NAVAJO	Class 18: Backpacks, baby backpacks, book bags, shoulder bags, and tote bags.
2	3829700		NAVAJO ARTS & CRAFTS GUILD	Class 8: Tableware sold only within the territory of the Navajo Nation, namely, knives, forks and spoons made of silver, or of silver combined with turquoise or petrified wood settings; flatware made of silver, or of silver combined with turquoise or petrified wood settings. Class 14: Decorative bells, decorative boxes, bracelets, cuff links, cups, earrings, lavalier pendants, mugs, necklaces, pins, rings being jewelry, napkin rings, salt holders and trays, all made of silver, or of silver combined with turquoise or petrified wood settings.
3	3846651		NAVAJO	Class 8: Tableware sold only within the territory of the Navajo Nation, namely, knives, forks and spoons made of silver, or of silver combined with turquoise or petrified wood settings; flatware made of silver, or of silver combined with turquoise or petrified wood settings. Class 14: Decorative bells, decorative boxes, bracelets, cuff links, cups, earrings, lavalier pendants, mugs, necklaces, pins, rings being jewelry, napkin rings, salt holders and trays, all made of silver, or of silver combined with turquoise or petrified wood settings.
4	3787515		NAVAJO ARTS & CRAFTS GUILD	Class 25: Neckties and leather belts of plain leather, and of leather ornamented with silver, and of leather ornamented with silver and turquoise, or other trimmings for personal wear.
5	3787518		NAVAJO	Class 25: Neckties and leather belts of plain leather, and of leather ornamented with silver, and of leather ornamented with silver and turquoise or other trimmings, for personal wear.
6	2237848		NAVAJO	Class 25: clothing; namely, tops, vests, shirts, sport shorts, polo shirts, golf shirts, * jackets, * T-shirts, sweat shirts.

#	REG. NO.	SERIAL NO.	MARK	CLASS: GOODS AND SERVICES
7	2573986		NAVAJO	Class 18: luggage; namely, suitcases, overnight bags and carry-on bags.
8	2976666		NAVAJO	Class 25: footwear, boots, beachwear, blouses, overalls, rain wear, sweaters, jackets, coats, ski wear, caps, hats.
9	3602907		NAVAJO	Class 35: online retail store services; namely, on-line ordering services in the field of clothing—specifically, men's and women's sportswear, namely, jeans, tops, shirts, sport shorts, polo shirts, golf shirts, T-shirts and sweatshirts.

The Navajo Nation's Registrations for the nine trademarks in the chart above are attached hereto collectively as Exhibit D.

55. On information and belief, Urban Outfitters has knowingly and intentionally chosen the "Navajo" and "Navaho" names and marks for its retail products that will directly compete with the Navajo Nation's retail goods to trade on the fame and goodwill associated with the Navajo Nation's federally registered NAVAJO trademarks.

56. Defendant has illegally and unlawfully profited from its sale of its various brands' goods under the "Navajo" and "Navaho" names and marks.

57. The fame or reputation of the NAVAJO name and marks is such that, when Defendant uses the "Navajo" and "Navaho" marks with its goods and services, a connection with the Navajo Nation is falsely presumed.

58. Defendant's wrongful conduct, which falsely suggests a connection with the Navajo Nation as an institution, undermines the fame and distinction of the NAVAJO

trademarks, confuses or deceives reasonable consumers, harms the Navajo Nation, and must accordingly be declared unlawful and enjoined from continuing.

59. The Lanham Act defines “dilution by blurring” as “association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark,” 15 U.S.C. § 1125(c)(2)(B); and “dilution by tarnishment” as such an association “that harms the reputation of the famous mark.” 15 U.S.C. § 1125(c)(2)(C).

60. Defendant’s misappropriation of the “Navajo” name and mark to promote its thematic marketing of its “Navajo Collection” and retailing of its 23 “Navajo” products, as well as its use of the confusingly similar “Navaho” name and mark, makes it very likely that consumers will incorrectly believe that the “Navajo” name is an indistinct term.

61. However, the “Navajo” name, or for that matter the confusingly similar “Navaho” name, is not a general term used for descriptive purposes. Instead, Navajo Nation’s NAVAJO name and trademarks are unique and inherently distinctive, and the Navajo Nation uses the NAVAJO trademarks in commerce to distinguish its authentic and genuine products from other products.

62. Accordingly, to maintain the NAVAJO name and marks’ uniqueness in conjunction with distinct products that are authentically and genuinely originating, associated, or affiliated with the famous Navajo Nation, Defendant’s wrongful conduct must be enjoined.

63. The Navajo Nation does not use the NAVAJO name and trademarks in conjunction with alcohol, or items with alcoholic connotations. Indeed, the Navajo Nation

has long banned the sale, manufacture, possession, transport, delivery, and consumption of alcohol within its borders. 17 N.N.C. §§ 410-411 (2008). Defendant's use of the "Navajo" name and trademark with products such as its "Navajo Flask," (*see* Ex. A), is derogatory and scandalous. Defendant's use of the "Navajo" name and mark as such is derogatory and contrary to the Navajo Nation's principles, and such use is inconsistent with the Lanham Act.

64. Defendant's sale of products of significantly lower quality than the Navajo Nation's own authentic and genuine comparable products, for example, Defendant's "Navajo Feather Earring," (*see* Ex. A), will likely harm the reputation of the NAVAJO name and mark when affixed and used in commerce, in many of the same channels, and in direct competition with, the Navajo Nation's genuine and authentic NAVAJO products.

65. Defendant's marketing and retailing of such relatively low-quality products in commerce, no less in the same channels of trade, with the "Navajo" and "Navaho" marks affixed to them will likely harm the reputation of the NAVAJO name and mark. Consumers will come to associate the Navajo Nation's NAVAJO marks, and validly associated products, with Defendant's lower-quality products that are in direct competition with the Navajo Nation's genuine and authentic NAVAJO products.

66. Defendant's misspelling of the "Navajo" name is contrary to established Navajo Nation law and is scandalous. The Navajo Nation Code provides that "[a]ll use of the name 'Navajo' shall use the spelling 'j', not 'h'." 1 N.N.C. § 502 (2008). Defendant's use of the "Navaho" mark differs from the NAVAJO mark only in that the second-to-last letter consists of an "h" instead of a "j," and is confusingly similar to the Navajo Nation's

own NAVAJO marks. Defendant's use of a "Navaho" mark should be enjoined as scandalous and derogatory in violation of Navajo Nation law and the Lanham Act.

67. Further, because Defendant has or is engaged in the sale of products that the Navajo Nation may attempt to provide in the normal expansion of the Navajo Nation's business, Defendant's use of the "Navaho" mark is also deceptive under the Lanham Act.

68. The Navajo Nation will be damaged by Defendant's continued use of the "Navaho" mark, as it grants Defendant a claim to a right to use this "Navaho" mark, despite the Navajo Nation's priority of rights over Defendant's uses of "Navajo," prohibition against the use of "Navaho," and the likelihood of confusion, dilution, and injury to the Navajo Nation's goodwill that will be caused by Defendant's use of the "Navaho" mark. Thus, in addition to its use of "Navajo," Defendant's use of a "Navaho" mark is also incorrect and improper in light of the requirements of the Lanham Act, as amended, including, but not limited to, the provisions concerning scandalous or derogatory material, deception, confusion, and dilution.

69. Defendant's use of the "Navajo" name and mark and the "Navaho" mark in conjunction with its products that are part of its "Navajo Collection," and elsewhere, is derogatory and scandalous, has damaged the Navajo Nation, and will continue to damage the Navajo Nation if not declared wrongful and enjoined.

D. Urban Outfitters' acts and omissions falsely suggest Defendant is displaying and selling Indian products

70. Urban Outfitters is not a Native American or an American Indian enterprise, entity, or instrumentality. Nor is Defendant an Indian arts and crafts association or an Indian artisan. Further, Urban Outfitters has no affiliation, relationship, or valid connection

with the Navajo Nation, its political subdivisions, instrumentalities, officers, employees, or authorized agents, nor any other federally-acknowledged Indian Tribe.

71. Defendant is a non-Indian that has offered for sale and sold products in an Indian style, motif, or design using the terms “Native American,” “American Indian,” “Tribal,” and the name of a particular Indian Tribe without qualifying the usage of such terms, confusing consumers and causing consumers to believe they are being offered or purchasing authentic Indian-made products when in fact the Defendant’s products are not authentic Indian-made products.

72. Defendant has offered, advertised, marketed, displayed for sale and sold its goods via its catalogs, websites, and retail stores by falsely suggesting that Defendant’s products are an Indian product, Indian produced, or the product of an American Indian Tribe, or the product of an Indian arts and crafts organization within the United States. Many of the products, including clothing, house-wares, and jewelry, feature a traditional Indian style, motif, or medium, adding to confusion in the marketplace and making it difficult for Plaintiffs to sell their authentic goods.

73. Urban Outfitters did not qualify its use of “Indian,” “Navajo,” and other particular names of Indian Tribes in connection with the sale of its retail goods, whether on websites, in catalogs, and/or in retail stores.

74. On its website, Defendant used or uses search or identifier terms such as “Native American,” “Indian,” “Navajo,” or the name of a particular Indian Tribe, harming Plaintiffs, and consumers falsely suggesting its products are authentic Indian-made products, and creating confusion in the marketplace. True and correct copies of a small

sample of products from Defendant's website webpages is attached as Exhibit E. These exhibits are illustrative, not exhaustive. For instance, they include only webpages or websites, but Plaintiff alleges Defendant engaged in its unlawful acts in its physical stores and in catalogs in addition to its online stores. Further violations will be found through discovery.

75. Examples of Defendant's retail products that convey the false suggestion that they are Indian products include, but are not limited to, Defendant's "Navajo Bracelet," "Navajo Glove," "Vintage Men's Woolrich Navajo Jacket," and "Navajo Feather Earring." Additional products were and/or are being sold in Defendant's stores, in its catalogs, and on its website. True and correct copies of these examples of Defendant's products as they are or have been displayed for online marketing and retailing at Defendant's website are attached as Exhibits A, C and E.

76. Urban Outfitters' sale of its retail goods under the "Native American," "Indian," "Tribal," or the name of a particular Indian Tribe, such as Navajo, falsely suggests Defendant's products are Indian products of the Navajo Nation, an Indian Tribe, an Indian arts and crafts association, or an Indian artisan, when in-fact Defendant's products are not Indian products of the Navajo Nation, an American Indian Tribe, an Indian arts and crafts organization, or an Indian artisan.

77. Defendant's products which are the subject of this Second Amended Complaint are in a traditional Indian style, and are composed of Indian motifs and Indian designs, but are without identifier terms or labels. A consumer may find these products using the search terms "Indian," "Native American," "Tribal," or "Navajo," which also

falsely suggests they are Indian products. Defendant's marketing, displaying, and retailing such products, which include, but are not limited to, Defendant's "Saddle Blanket Bag" and "Magical Feather Bag" with its overall line of suggested Indian products, and without any qualification, further suggests that Defendant's products are Indian products. True and correct copies of Defendant's products, as they are or have been displayed for online marketing and retailing at Defendant's website in such a manner to convey these false suggestions, are attached hereto collectively as Exhibit E. The exhibits attached to Exhibit E are illustrative, not exhaustive, and only include webpages. Plaintiff alleges Defendant engaged in its unlawful acts in its stores and catalogs in addition to its online stores. Further violations will be found through discovery.

78. At least since March 16, 2009, and possibly earlier as discovery will confirm, and continuously thereafter to the present date, Defendant has advertised, marketed, offered, displayed for sale, and sold goods in manners that falsely suggested they are Indian-made, an Indian product, a product of an Indian Tribe, or the product of an Indian arts and crafts organization resident within the United States, including Indian products consisting of jewelry and clothing in a traditional Indian style, printed design, or medium.

79. The Indian-style goods Defendant has advertised, displayed, offered for sale, and sold, including those advertised, sold, displayed, and offered for sale are not Indian produced, an Indian product made by an Indian, or the product of an Indian arts and crafts organization in the United States, or any non-member Indian artisan properly certified by an Indian Tribe.

80. Defendant's goods compete with goods produced by members of the Navajo Nation, and Defendant's sale of goods that falsely suggest they are Indian-made has caused and continues to cause loss of sales to the Navajo Nation and its members. Defendant's actions have also driven down the price of authentic Navajo goods and harmed the goodwill and reputation of producers of authentic Navajo-made and Indian-made goods.

V. COUNTS

COUNT ONE

DEFENDANT IS LIABLE TO THE NAVAJO NATION FOR TRADEMARK INFRINGEMENT PURSUANT TO THE LANHAM ACT'S SECTION 32.

81. The Navajo Nation realleges the previous paragraphs of this Second Amended Complaint as if fully set forth herein.

82. Urban Outfitters' use of the identical "Navajo" and the confusingly similar "Navaho" name and marks is intended to trade on the good will established by the Navajo Nation through years of the Navajo Nation's use of the NAVAJO name and marks.

83. Defendant's use of the identical "Navajo" mark and confusingly similar "Navaho" mark has created actual confusion in the market place, and continues to create a likelihood of confusion.

84. Defendant's intentional use of the identical "Navajo" and confusingly similar "Navaho" mark in connection with the sale of clothing, jewelry, house-wares, footwear, and similar such items is likely to cause confusion, mistake, or deception of others, as to the affiliation, connection, or association of Defendant and Defendant's products with the Navajo Nation.

85. Defendant's conduct also causes, and is likely to continue to cause, confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and commercial activities.

86. The use of the Navajo Nation's registered trademarks constitutes trademark infringement in violation of 15 U.S.C. § 1114.

87. Defendant knew of the Navajo Nation's trademark rights, and knowingly, willfully, and deliberately infringed on them, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

88. The Navajo Nation has been, and will continue to be, damaged by Defendant's willful trademark infringement in the manner, and in the amount, that will be proved at trial.

89. The Navajo Nation has been, and will continue to be, damaged by Defendant's willful trademark infringement in a manner, and in an amount, that cannot be fully measured or compensated in economic terms.

90. Defendant's actions damaged, and will continue to damage, the Navajo Nation's market, reputation, goodwill, and reputation, and may well discourage current and potential customers from dealing economically with the Navajo Nation.

91. Such irreparable harm will continue unless Defendant's acts are restrained and enjoined during the pendency of this action, and permanently thereafter.

COUNT TWO**DEFENDANT IS LIABLE TO THE NAVAJO NATION FOR TRADEMARK DILUTION PURSUANT TO THE LANHAM ACT'S SECTION 43.**

92. The Navajo Nation realleges the previous paragraphs of this Second Amended Complaint as if fully set forth herein.

93. The Navajo Nation's trademark is a famous mark.

94. Defendant's use of the "Navajo" and "Navaho" names and marks to promote, market, and sell its retail items constitutes willful Trademark Dilution by blurring, and willful Trademark Dilution by tarnishment pursuant to 15 U.S.C. 1125(c).

95. Urban Outfitters' intentional and willful dilution and tarnishment of the Navajo Nation's registered NAVAJO trademark has caused, and will continue to cause, damage and irreparable harm to the Navajo Nation, for which there is no adequate remedy otherwise available at law.

96. Such irreparable harm will continue unless Defendant's acts are restrained and enjoined during the pendency of this action, and permanently thereafter.

COUNT THREE**DEFENDANT IS LIABLE TO THE NAVAJO NATION FOR UNFAIR COMPETITION AND FALSE ADVERTISING PURSUANT TO THE LANHAM ACT'S SECTION 43.**

97. The Navajo Nation realleges the previous paragraphs of this Second Amended Complaint as if fully set forth herein.

98. Urban Outfitters' use of the "Navajo" and "Navaho" names and marks to promote, market, and sell its retail items in competition with the Navajo Nation's NAVAJO trademarks constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a),

both through false advertising and infringement of the Navajo Nation's unregistered NAVAJO trademarks.

99. Moreover, Defendant has used false or misleading descriptions of fact in interstate commerce in connection with its goods in commercial advertising where the description or representation misrepresents the nature, qualities and/or origin of the Defendant's goods.

100. Urban Outfitters' unfair competition and false advertising has caused, and will continue to cause, damage to the Navajo Nation; and further, Defendant's conduct is causing irreparable harm to the Navajo Nation for which there is no adequate remedy otherwise available at law.

101. Such irreparable harm will continue unless Defendant's acts are restrained and enjoined during the pendency of this action, and permanently thereafter.

COUNT FOUR

DEFENDANT IS LIABLE TO THE NAVAJO NATION FOR VIOLATIONS OF THE INDIAN ARTS AND CRAFTS ACT, 25 U.S.C. § 305 *et seq.*

102. The Navajo Nation realleges the previous paragraphs of this Second Amended Complaint as if fully set forth herein.

103. The Indian Arts and Crafts Act ("IACA") prohibits non-Indian businesses and individuals from misrepresenting that their goods are the product of an Indian tribe, or American Indian or Native American person(s) through selling any good "in a manner that falsely suggests it is . . . an Indian product." 25 U.S.C. § 305e(a).

104. The IACA prohibits non-Indians from engaging in “unqualified use” of the name of an Indian Tribe in connection with products they market and sell – such as bracelets, earrings, coats, jackets, and gloves – to suggest such goods are Indian products.

105. Defendant’s “Navajo Collection” includes the “Navajo Bracelet,” “Navajo Feather Earring,” “Navajo Glove,” and “Vintage Men’s Woolrich Navajo Jacket.” These products are specifically contemplated by, or very close to those specifically contemplated by, the IACA.

106. Defendant has offered, advertised, marketed, displayed for sale, and sold goods that falsely suggest Defendant’s products are Indian products pursuant to the IACA. These actions were taken in Defendant’s catalogs, and retail stores. Among the products Defendant has falsely suggested are authentic Indian and/or Navajo products include clothing, house-wares, and jewelry reflecting traditional Indian styles, motifs, and/or mediums.

107. Defendant’s advertisement, display, offering for sale, and sale of Indian style goods in a manner that falsely suggests Defendant’s goods are Indian products is illegal, and must be enjoined, because no adequate remedy at law is otherwise available.

108. By marketing and retailing, having marketed and retailed, or having caused to be marketed and retailed, products under the “Navajo,” “Native American,” and “Indian” names, and using Indian designs and motifs without qualification, Defendant is misrepresenting that its products are Indian products within the meaning of the IACA.

109. Defendant offered and offers for sale goods by falsely suggesting they are the products of an Indian Tribe, when in fact Defendant's products are not the products of any Indian Tribe.

110. The Navajo Nation has been injured and damaged as a result of Defendant's actions alleged herein.

111. Defendant's false suggestions has caused, and will continue to cause, damage to the Navajo Nation for which there is no adequate remedy otherwise available at law.

112. The Navajo Nation is a competitor of Defendant, which sells similar products, and the Navajo Nation has suffered competitive injuries as a result of Defendant's actions alleged herein, as well as other damages including: (1) Members of the Navajo Nation have lost sales as the direct and indirect result of Defendant's offer, display, and sale of similar Indian-style products to those offered, displayed, and sold by these American Indian People through similar media and markets; (2) Defendant's imitation products have driven down prices of authentic Indian products, forcing the Navajo Nation and American Indian People to offer and garner revenues for authentic products at lower prices; (3) the Navajo Nation and American Indian People have suffered a loss of goodwill and reputation because of Defendant's counterfeit products; and (4) Defendant has made a gross profit on all of the products alleged herein by its unlawful and unprivileged conduct.

113. The Navajo Nation advertises, markets, and sells authentic Indian-made products similar to those products advertised, offered, displayed, and sold by Defendant,

by which Defendant has falsely suggested to be Indian-made products; including, but not limited to, crafts, jewelry, clothing, and accessories in a traditional Indian style or medium.

114. The Navajo Nation, through its commercial subdivisions, advertises, offers, markets, and sells authentic Indian-made products through various media, including, but not limited to, newspaper advertisements, radio, signs, catalogs, brochures, internet, mailed solicitations, miscellaneous ads and displays, and in-store retail displays.

115. The injuries suffered by the Navajo Nation include, but are not limited to, advertising injuries arising out of Defendant's misappropriation of the Navajo Nation's advertising ideas and styles of doing business.

116. The injuries suffered by the Navajo Nation include, but are not limited to, disparagement of its products and advertising injuries arising out of Defendant's disparagement of the Navajo Nation's products.

117. The injuries suffered by the Navajo Nation include, but are not limited to, advertising injuries arising out of Defendant's infringement of title by falsely suggesting and misrepresenting that its products are Indian made, when they were not.

118. The injuries suffered by the Navajo Nation include but, are not limited to, advertising injuries arising out of Defendant's use of another's advertising ideas.

119. The injuries suffered by Navajo Nation include, but are not limited to, advertising injuries and web-site injuries arising out of Defendant's infringing upon the Navajo Nation's identity, culture, and cache associated with being a producer of authentic Indian products.

120. Liability for compensatory damages pursuant to the IACA is strict liability and not dependent upon intentional conduct.

121. The IACA provides for damages that are the greater of treble damages or \$1,000 for each day on which the offer or display for sale for each type of good falsely suggests or suggested to be Indian-produced, an Indian product, or the product of an Indian, an Indian Tribe, or an Indian arts and crafts organization continues at the time of filing.

122. The Navajo Nation is entitled to compensation via monetary damages and injunctive relief being imposed on Defendant for the acts stated herein.

COUNT FIVE

DEFENDANT IS LIABLE TO THE NAVAJO NATION FOR VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT, N.M. STAT. ANN. § 57-12-3.

123. The Navajo Nation realleges the previous paragraphs of this Second Amended Complaint as if fully set forth herein.

124. Defendant knowingly made false, misleading, and deceptive representations that its goods were, and are “Indian” in connection with their sale.

125. Defendant knowingly made these false and misleading representations in connection with the sales of its goods, Defendant knew that its goods were not made by, in connection, or in any way associated with the Navajo Nation, another Indian Tribe, nor any other Indian organization or person.

126. Defendant’s sale of its goods under the “Navajo” and “Navaho” names and trademarks, as well as its sale of other goods falsely represented as authentic Indian goods, was made in the regular course of Defendant’s businesses.

127. Defendant's representations tend to, or do, deceive and mislead consumers.

128. The Navajo Nation requests both monetary and injunctive relief pursuant to its causes of action.

COUNT SIX

DEFENDANT IS LIABLE TO THE NAVAJO NATION FOR VIOLATIONS OF THE N.M. TRADEMARK ACT, N.M. STAT. ANN. § 57-3B-15

129. The Navajo Nation realleges the previous paragraphs of this Second Amended Complaint as if fully set forth herein.

130. The Navajo Nation owns the NAVAJO trademarks, which are widely recognized and famous in New Mexico.

131. Defendant's acts and omissions alleged herein caused and continue to cause dilution and/or tarnishment of the distinctive quality of the Navajo Nation's NAVAJO marks.

132. Defendant willfully intended to trade on the Navajo Nation's reputation and/or to cause dilution to the NAVAJO marks.

133. The Navajo Nation is entitled to an injunction and, given the willful intent on the part of the Defendant, all remedies set forth in the New Mexico Trademark Act.

PRAYER FOR RELIEF

WHEREFORE, the Navajo Nation prays for judgment and relief as follows:

1. That Defendant's conduct be declared improper and unlawful pursuant to common law, the Indian Arts and Crafts Act, and the Lanham Act;
2. That Defendant's, its subsidiaries, subdivisions, affiliates, officers, employees, agents, and all other persons associated, or in concert with Defendant be

permanently enjoined from using the “Navajo” name and mark in advertising, marketing, retailing, promoting, and associating the “Navajo” name and marks with Defendant in any manner validly performed by the Nation, its political subdivisions, instrumentalities, officers, employees, People, and authorized agents;

3. That Defendant’s be permanently enjoined from passing off, diluting, blurring, falsely designating, and falsely associating its corporation, subsidiaries, subdivisions, affiliates, officers, employees, agents, and products with the NAVAJO name and marks, or otherwise from performing any other act likely to create the appearance or belief that Defendant its subsidiaries, subdivisions, affiliates, officers, employees, agents, and all other persons associated with Defendant are in any way supported, in any manner tacit or active, licensed, assigned, sponsored, endorsed, or otherwise associated with the Navajo Nation, its political subdivisions, instrumentalities, officers, employees, People, or authorized agents;

4. That Defendant’s be ordered to pay the Navajo Nation all profits made as a result of Defendant’s wrongful conduct;

5. That Defendant’s be ordered to pay the Navajo Nation three times all profits generated by the marketing and retailing of Defendant’s “Navajo” products;

6. That Defendant’s be ordered to pay the Navajo Nation all profits made as a result of Defendants’ wrongful conduct pursuant to the trademark dilution section of the New Mexico Trademark Act;

7. That Defendant's be ordered to pay the Navajo Nation three times all profits generated as a result of Defendant's wrongful conduct and the Navajo Nation's attorneys' fees pursuant to the trademark dilution section of the New Mexico Trademark Act;

8. That Defendant's be ordered to pay the Navajo Nation the greater amount of either \$1,000.00 per item for every day for each type of product that is, or has, offered, or displayed for sale, or three times all profits generated by the marketing and retailing of Defendant's Navajo, Indian, and Native American products pursuant to the Indian Arts and Crafts Act;

9. That Defendant's be ordered to pay the Navajo Nation for all of its reasonable costs and attorneys' fees;

10. That the Navajo Nation be awarded exemplary damages for Defendant's willful and intentional conduct, and Punitive damages based on Defendant's willful actions pursuant to 25 U.S.C. § 305(e);

11. All other remedies available pursuant to the Indian Arts and Crafts Act, the Lanham Act, and the New Mexico Unfair Practices Act, and New Mexico Trademark Act including treble damages, disgorgement of profits, costs, and attorneys' fees;

12. That Defendant's be ordered to file a written report with this Court, made under oath within 30 days of this Court's judgment, which sets forth in detail the manner that Defendant's has fully complied with the permanent injunction pursuant to 15 U.S.C. § 1116; and

13. All additional and further relief this Court believes just and proper.

JURY DEMAND

The Navajo Nation requests its causes of action be tried by jury.

RESPECTFULLY SUBMITTED this 4th day of April, 2013.

NAVAJO NATION DEPARTMENT OF JUSTICE
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Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of April, 2013, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel to be served by electronic means:

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The following parties have not yet appeared or registered with ECF and will be served via U.S. Mail:

Michael Silbert
Deputy General Counsel for Urban Outfitters, Inc.

/s/ B. L. Lewis
Brian L. Lewis
Office of the Attorney General
The Navajo Nation

/s/ Karin B. Swope
Karin B. Swope
Keller Rohrback L.L.P.

Attorneys for the Navajo Nation

Exhibit A



You Might Like These, Too...



Deter Navajo Tee
\$28.00

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Ecote Navajo Surplus Jacket

\$89.00

Overall Rating



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Overall Rating ★★★★★

Based on 6 reviews.



You Might Like These, Too...



Ecote Navajo Wool Tote Bag
\$39.00

Overall Rating

★★★★☆

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★★★★☆

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URBAN OUTFITTERS



You Might Like These, Too...



Jeffrey Campbell Navajo
Fringe Crossbody Bag
Online Only

\$169.00

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You Might Like These, Too...



Lucca Couture Navajo
Pullover Sweater
Online Only

\$49.99 (Was \$79.00)

Overall Rating

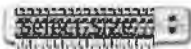
★★★★★

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[Size](#)

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You Might Like These, Too...



Navajo Bracelet - 2 Pack

\$8.00

Overall Rating



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Reviewer Photos



You Might Like These, Too...



Navajo Feather Earring

\$16.99 (Was \$24.00)

Overall Rating

★★★★★

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QUANTITY:



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Overall Rating

★★★★★

Based on 8 reviews.

URBAN OUTFITTERS



You Might Like These, Too...



Navajo Hipster Panty
5 for \$25

\$8.00

Overall Rating



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COLORS:



SIZE:



[Size](#)

QUANTITY:



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Overall Rating



Fit





You Might Like These, Too...



Navajo Print Fabric Wrapped
Flask
\$18.00

Overall Rating

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★★★★★

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URBAN OUTFITTERS



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OBEY Navajo Glove

\$38.00

★★★★★

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QUANTITY:



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OBEY Navajo Nations Crew
Pullover

\$58.00

Overall Rating

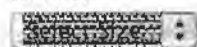


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Overall Rating



Fit



URBAN OUTFITTERS



You Might Like These, Too...



OBEY Navajo Painters Jacket

\$99.99 (Was \$139.00)

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You Might Like These, Too...



OBEY Navajo Print Tank Top

\$50.00

Overall Rating



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COLORS:



SIZE:



QUANTITY:



[Size](#)

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Reviews

Product Details

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Social

Overall Rating



Based on 1 reviews.

URBAN OUTFITTERS



OBEY Navajo Scarf

\$64.00

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URBAN OUTFITTERS



You Might Like These, Too...



OBEY Wool Navajo 5-Panel Cap

\$34.00

Overall Rating

★★★★★

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COLORS:



SIZE:

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QUANTITY:



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Reviews

Product Details

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Overall Rating ★★★★★

Based on 1 reviews.



You Might Like These, Too...



Pendleton Navajo Weekender
Bag

\$239.00



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You Might Like These, Too...



Red Navajo Plimsoll Sneaker
2 for \$30

\$20.00

Overall Rating

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QUANTITY:



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Reviews

Product Details

Ask & Answer

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Reviewer Photos

Overall Rating

★★★★★

Fit



URBAN OUTFITTERS



You Might Like These, Too...



Staring at Stars Strapless
Navajo Dress
New Colors Available

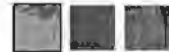
\$69.00

Overall Rating



[Read Reviews \(40\)](#) [Write a review](#)

COLORS:



SIZE:



[Size](#)

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You Might Like These, Too...



Title Unknown Techno Navajo
Quilt Oversized Crop Tee

\$29.00

Overall Rating

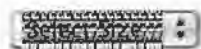
★★★★★

[Read Reviews \(11\)](#) [Write a review](#)

COLORS:



SIZE:



QUANTITY:



[Size](#)

[Check Availability](#)

Reviews

[Product Details](#)

[Ask & Answer](#)

[Social](#)

Overall Rating

★★★★★

Fit



Reviewer Photos

URBAN OUTFITTERS



You Might Like These, Too...



Navajo Sock

\$6.99 (Was \$12.00)

Overall Rating

★★★★☆

[Read Reviews \(1\)](#) [Write a review](#)

COLORS:



SIZE:

ONE SIZE

QUANTITY:



[Size](#)

[Check Availability](#)

Reviews

Product Details

Ask & Answer

Social

Overall Rating

★★★★☆

Based on 1 reviews.

Fit

Runs True to Runs



You Might Like These, Too...



Vintage Men's Woolrich
Navajo Jacket
Online Only

\$249.00



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COLORS:



SIZE:
XLARGE

QUANTITY:



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SKU #23575129

TAGS [?]

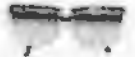
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BE THE FIRST TO TAG THIS ITEM!

URBAN OUTFITTERS



You Might Like These, Too...



Vintage Woolrich Navajo
Jacket
Online Only

\$349.00

Be the first to [Write a Review](#)

COLORS:



SIZE:

ONE SIZE

QUANTITY:



[Size](#)

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SKU #23574601

TAGS [?]

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You Might Like These, Too...



Wide Navajo Scarf
\$29.00

Be the first to [Write a Review](#)

COLORS:



SIZE:
ONE SIZE

QUANTITY:



[Size](#)

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SKU #22558878

TAGS [2]

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DETAILS & SHOPPING

REVIEWS & FEEDBACK

Joplin Fringe Bag

Style: 23778962

Write the 1st Review

Unique Navajo patterned blanket fringe bag with tan suede trimming and strap. Metal stud embellishment and contrasting zip zag leather trimming around the top. Inside has leopard printed fabric inserts, two pouches, and zipper pocket.

*By Jose

*Navajo Blankets, Lamb Skin, Gun Metal

*Made in USA

*9 1/4" wide across front, 17" deep, 28" strap rise (at longest and to the bottom of the opening)

SHOP ALL: Bags & Wallets

price: \$358.00

color: natural multi

availability

size: one size

chart

One Size

quantity: 1

ADD TO BASKET

ADD TO WISHLIST

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Like

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you may also be interested in one of these...









joplin fringe bag is included in 3 collections including...



big bags

by shanaphear

Created 3 days ago



The 60's

by MOVY

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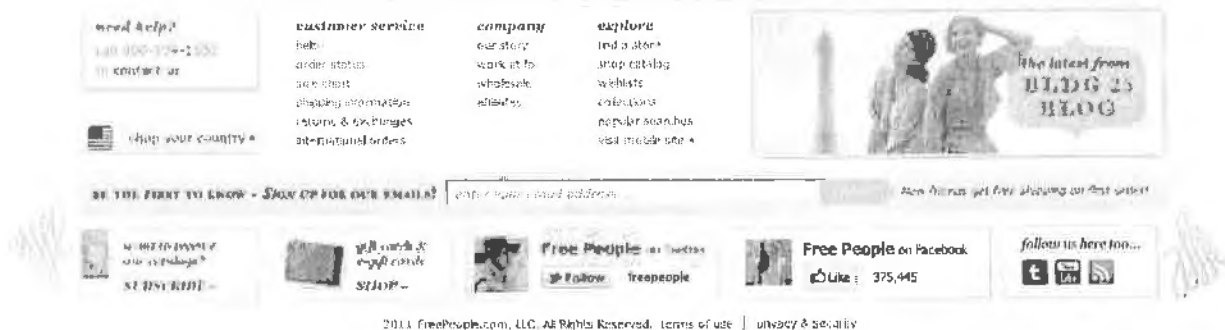
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by colorist1986

Created 53 days ago



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Vintage Handmade Navajo Necklace

10" chain link necklace with beautiful turquoise stone details, adjustable hook closure

PRICE: \$328.00

PLEASE NOTE

Vintage Loves items are not returnable.

Highly

QUESTIONS AND ANSWERS

discussion about this product:

Review: 04/03/12 PM on 09/08/2011

Is the metal silver plated?

visit www.freepeople.com at 11:00 PM on 09/13/2011

"Hello, we don't believe that it is, we think that is earlier, but are unable to post specifics since it is not clearly documented on the piece. Since we don't have more detail, but we would never want to be misleading."

ask a question:

Name: _____ Email: _____

SUBMIT

color: turquoise

size: one size

QUANTITY: 1

ADD TO CART

LIKE

OR TELL A FRIEND

size:

length: 10 1/2"

condition:

fair good poor

condition details:

In good condition

Has the item been used?

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VINTAGE LOVES

More Vintage Love

Vintage Navajo Handmade Necklace

Style: 2120998

Authentic Navajo Handmade necklace with hand-beaded and traditional beautiful stone pendants.

PRICE: \$328.00

PLEASE NOTE

Vintage Loves items are not returnable.

Make Offer

Questions and Answers

ask a question:

Name: _____ Email: _____

Submit

color: turquoise

shape: one size

quantity: 1

ADD TO WISHT

Like ON TELL A FRIEND

size: _____

length: 18"

condition:

size: good none

condition details:

In great condition

How to rate condition:

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VINTAGE LOVES
New Free People Loves

Vintage Navajo Cuff
NEW ARRIVAL

Vintage Navajo cuff with intricate stamped designs and a wide turquoise stone.

PRICE: \$298.00

PLEASE NOTE
Vintage Loves items are NOT RETURNABLE.

QUESTIONS AND ANSWERS

ask a question:

Name: Email:

SUBMIT

color: turquoise

size: one size

quantity: 1

☐ LIKE | [OR TELL A FRIEND](#)

sizing:
Unisex 2 1/2"

condition:
☐ fair ☒ good ☐ mint

condition details:
In good condition with some minor signs of wear.
View image condition

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navajo

WHAT'S NEW CLOTHING ACCESSORIES SHOES INTIMACY & VINTAGE LOVES! DOLCE & GABBANA sale FEATURES

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Vintage Navajo Cuff
SKU: 23551070
A hand-crafted Navajo cuff with two turquoise stones.

PRICE: \$298.00

PLEASE NOTE
Vintage Loves items are not returnable.

0 reviews

QUESTIONS AND ANSWERS

ask a question:
Name _____ Email _____

Submit

color: hippie/azul

size: one size

quantity: 1
ADD TO BASKET

☐ Like ☐ Gift a friend

size:
Diameter 3"
Width 4"

condition:
Excellent condition
Good
Fair
Poor

condition details:
Overall condition:
How would you rate this item?

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1 of 1

11/8/2011 5:03 PM



Vintage Navajo Handmade Cuff

Ref: 23545569

Handmade Navajo cuff originally sold as a trading post. Features caribou nose design and etched arrow details.

PRICE: \$148.00

PLEASE NOTE

VINTAGE LOVES ITEMS ARE NOT RETURNABLE.

10/10/11

QUESTIONS AND ANSWERS

discussion about this product:

Morgan at 4:01 PM PST on 08/18/2011

"Would this fit around an arm like an arm cuff?"

vintage@freepeople.com at 4:24 PM PST on 08/20/2011

"Hello, This is more of a bangle. The diameter is only 2 1/2" so it would probably not fit very tight on the wrist. Hope this helps."

ask a question:

name: _____ email: _____

Submit

color: antique

size: one size

quantity: 1

ADD TO BASKET

☐ Use

OR TRY A FRIEND

sizing:

length: 2 1/2"

width: 1/2"

condition:

fair good mint

condition details:

In good condition

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VINTAGE LOVES

Vintage Navajo Squash Necklace

Style: 2525652

100% squash necklace made from trading post and commercial-grade beads

PRICE: \$698.00

PLEASE NOTE

Vintage Loves items are not returnable.

Maple

QUANTITY AND ANSWERS

ask a question:

Name

Email

SEND

color: white

size: one size

QUANTITY: 1

ADD TO WISHLIST

Like

OR TELL A FRIEND

string:

length: 0"

condition:

fair

good

mint

condition details:

Some discoloration

Has some early fraying

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WHAT'S NEW CLOTHES ACCESSORIES SHOES INTIMATELY PP VINTAGE LOVES KNOLVES SUMMER sale FEATURES

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Vintage Navajo Squash Necklace
 sku: 23550858

navajo handwoven Navajo squash necklace with long hand beaded and turquoise and turquoise pendant. Black stone.

PRICE: \$398.00

PLEASE NOTE
 Vintage Loves items are not returnable.

QUANTITY: 1

ADD TO CART

OR TELL A FRIEND

size: length 35" (2' 11")

condition: fair

condition details: lightest condition

ask a question:

name: email:

message:

Submit

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Navajo Blossom Pin

STYLE # 20733879

★★★★★ 2 reviews Write a review

We're sorry. This product is no longer available.

DETAILS

Buttons of lustrous metallic flora for the mane of any maiden.

Turquoise, bronze plated iron, wood, brass, mother-of-pearl,
rhinestone
3"L, 1.5"W
USA

you may
also like

Customer Reviews Review This Product

Filters

Star Rating

Age range

Height (feet)

Height (Inches)

Body type

Style

Review This Product

Sort by

neatpetite

★★★★★

AESTHETIC/DESIGN: *****

QUALITY: *****

Vintage,

March 13, 2011

I got the gold version to avoid looking "southwestern". I like the vinty look. It looks like it was made of antique brass findings. It was not too heavy for my hair as I have very thick hair. For finer hair, this might be a problem.

1 of 1 people found this review helpful.

Was this review helpful to you? Yes No

(Report Inappropriate Review)

Share this review:

March 6, 2011

EllaA

Age Range: 25-29

★★★★★

AESTHETIC/DESIGN: *****

Super cute idea, but the actual square part just looked too heavy in my hair, no matter where I put it. The bobby pin blended with my hair, and then it looked like there was a small block in my hair. Maybe others can make it work -- like those with thick, curly hair. I couldn't -- with my straight hair pulled back. Love the colors and design, though.

QUALITY: *****

1 of 1 people found this review helpful.

Was this review helpful to you? Yes No

(Report Inappropriate Review)

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Navajo Blossom Pin

STYLE # 20733879

★★★★★ 2 reviews Write a review

We're sorry. This product is no longer available.

DETAILS

Buttons of lustrous metallic flora for the mane of any maiden.

Turquoise, bronze plated iron, wood, brass, mother-of-pearl,
rhinestone
3"L, 1.5"W
USA

you may
also like

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Height (feet)

Height (inches)

Body type

Style

Review This Product

Sort by

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★★★★★

AESTHETIC/DESIGN: *****

QUALITY: *****

Vintage,

March 13, 2011

I got the gold version to avoid looking "southwestern". I like the vinty look, it looks like it was made of antique brass findings. It was not too heavy for my hair as I have very thick hair. For finer hair, this might be a problem.

1 of 1 people found this review helpful.

Was this review helpful to you? Yes No

(Report Inappropriate Review)

Share this review: [f](#) [t](#)

March 8, 2011

ElleA

Age Range: 25-29

★★★★★

AESTHETIC/DESIGN: *****

Super cute idea, but the actual square part just looked too heavy in my hair, no matter where I put it. The bobby pin blended with my hair, and then it looked like there was a small block in my hair. Maybe others can make it work -- like those with thick, curly hair. I couldn't - with my straight hair pulled back. Love the colors and design, though.

QUALITY: *****

1 of 1 people found this review helpful.
Was this review helpful to you? Yes No
(Report Inappropriate Review)

Share this review:  

Exhibit B



**NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

HARRISON TSOSIB
Attorney General

DANA BOBROFF
Deputy Attorney General

SENT VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 30, 2011

Mr. Glen T. Senk
Chief Executive Officer
Urban Outfitters Incorporated
5000 South Broad Street
Philadelphia, Pennsylvania 19112-1495

RE: Cease and Desist Marketing Products Using "Navajo"

Dear Mr. Senk:

Please immediately cease and desist using the "Navajo" name on, and in relation to your products. The Navajo Nation ("Nation") is aware that your corporation is marketing and selling clothing and accessories using the Navajo name and trademark.¹ The Nation cannot accept its unique and well-known name being displayed on and in relation to your products, which have absolutely no connection to the Nation, its entities, its people, and their products. Your company's use of the Navajo name damages the Nation's government and commercial entities.

The Navajo name and trademark are famous. The Nation's name is the symbol of a sovereign entity in all of its governmental and commercial forms. The Nation and its people have used the Navajo formative name and Navajo trademarks in commerce for over 150 years with a wide variety of goods and services. The Nation's use of the Navajo name and trademarks has created a notable legacy and distinct association between the Nation, its entities, its people, and their products.

The Navajo name and trademarks have an unmistakable contemporary presence in the market. Furthermore, the Navajo name and trademark have widespread secondary meaning in the marketplace. The Nation and its entities have made substantial investments in advertising and promoting Navajo goods and services under the Navajo name and trademarks. The Nation has extensively used, advertised, promoted, offered, rendered and sold its goods and services to consumers through various channels of trade in commerce including national online and print media. The Navajo name and trademarks are prominently featured on the Nation's website, www.navajo.org, and throughout major media. Furthermore, the Navajo name and trademarks, and the products and services associated with therewith, have received a significant amount of unsolicited press coverage, and have been the subject of numerous television broadcasts and articles in major publications. As a result of the Nation's historical legacy, contemporary efforts, and concomitant results, the Navajo name and trademarks have become assets of substantial value and symbols of the Nation's and its entities' goodwill.

¹ See the following address for examples of your corporation's use of the Navajo name and mark to market and your products:
<http://www.urbanoutfitters.com/urban/search/search.jsp?searchPhrase=navajo&listViewSize=&indexStart=0&sortBy=&sortOrder=&categories=&categories2=&categories3=&categories4=&skuColor=&priceLow=&priceHigh=&skuSize=&brand=&maxPrice=&minPrice>


Mr. Glen T. Senk

RE: Cease and Desist Marketing Products Using "Navajo"

June 30, 2011

Page 2

The Nation and its entities own the famous and distinctive Navajo name and trademarks, which associate products and services solely with the Nation, its instrumentalities, and its agents. The Nation and its entities have numerous federal registrations for the Navajo trademarks, and applications for those federal registrations were filed as early as 1996. Furthermore, the Nation's entities (e.g., Navajo Nation Gaming Enterprise, Dine' Development Corporation, Navajo Arts & Crafts Enterprise) own numerous federal registrations incorporating the Navajo component. These registered marks are conclusive evidence of Nation's exclusive right to use the Navajo name and trademarks in connection with the specified goods and services. Demonstrative registrations include:

<u>Registration</u>	<u>Mark</u>	<u>Use</u>
2061748	NAVAJO	Sportswear; namely, slacks, shorts, skirts and jeans.
2237848	NAVAJO	Clothing; namely, tops, vests, shirts, sport shorts, polo shirts, golf shirts, * jackets, * T-shirts and sweat shirts.
2573987	NAVAJO	Towels, wash cloths, bath linens, fabric bath mats, bed sheets, pillow cases and bed linens.
2976666	NAVAJO	Footwear; namely, shoes and boots; beachwear, blouses, overalls, rain wear, sweaters, jackets, coats, ski wear, caps, visors, berets and hats.
3602907	NAVAJO	Online retail store services; namely, on-line ordering services in the field of clothing—specifically, men's and women's sportswear, namely, jeans, tops, shirts, sport shorts, polo shirts, golf shirts, T-shirts and sweatshirts.
3789271	FIREROCK NAVAJO CASINO 	Clothing; namely, shirts, sweatshirts and jackets; headwear.
3960633	NAVAJO	Tobacco pouches manufactured by the Navajo Nation or its individual members and sold within the Navajo Nation through Navajo Nation retail outlets.
3548345	NAVAJO	Paintings and drawings.
3548344	NAVAJO	Hand-spun yarn for textile use.
3787518	NAVAJO	Neckties and leather belts of plain leather, and of leather ornamented with silver, and of leather ornamented with silver and turquoise or other trimmings, for personal wear.
3787517	NAVAJO	Hand-woven blankets, namely woolen blankets, bed blankets, children's blankets, blanket throws.

Your corporation's use of the Navajo name and trademarks falsely suggests a connection with the Nation as an institution. The Nation is a federally-acknowledged Indian tribe, which is an institution as defined in Section 2(a) of the Trademark Act. The term "Navajo" points uniquely and unmistakably to the Navajo Nation. The fame or reputation of the Nation is such that when a corporation uses "Navajo" with its goods or services, a connection with the Nation is falsely presumed.

Mr. Glen T. Senk

RE: Cease and Desist Marketing Products Using "Navajo"

June 30, 2011

Page 3

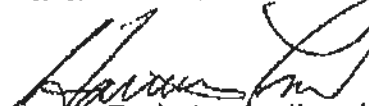
Although your corporation's use of the Navajo name and trademark falsely suggests a connection with the Navajo Nation, your corporation is not connected with the Nation's goods or services. Your corporation's use of "Navajo" is identical in appearance, meaning, and commercial impression to the Nation's name and trademarks. Thus, this falsely suggests a connection with the Nation in violation of the Trademark Act.

Your corporation's use of Navajo will cause confusion in the market and society concerning the source or origin of your corporation's products. Consumers will incorrectly believe that the Nation has licensed, approved, or authorized your corporation's use of the Navajo name and trademarks for its products - when the Nation has not - or that your corporation's use of Navajo is an extension of the Nation's family of trademarks - which it is not. This is bound to cause confusion, mistake, or deception with respect to the source or origin of your goods. This undermines the character and uniqueness of the Nation's long-standing distinctive Navajo name and trademarks, which—because of its false connection with the Nation—dilutes and tarnishes the name and trademarks. Accordingly, please immediately cease and desist using the Navajo name and trademark with your products.

As a Nation with a distinguished legacy and unmistakable contemporary presence, the Nation is committed to retaining this distinction and preventing any confusion in society and the market. The Nation must maintain distinctiveness and prevent any association with its government, its institutions, its entities, its people, and their products in commerce. When an entity attempts to falsely associate its products with the Nation and its products, the Nation does not regard this as benign or trivial. The Nation remains firmly committed to the cancellation of all marks that attempt to falsely associate with the institution, its entities, its people or its products. Accordingly, immediately cease and desist using Navajo with your products.

Respectfully yours,

NAVAJO NATION DEPARTMENT OF JUSTICE



Harrison Tsosie, Attorney General
Office of the Attorney General

HT/242

Exhibit C



your search: navajo - 23 matches

Sort: none price, low to high price, high to low

narrow results

categories

- + what's new (1)
- + clothes
- + accessories
- + shoes
- + Vintage Loves (7)
- + endless summer
- + catalog
- + sale
- + features

price

- Under \$50.00 (1)
- Under \$75.00 (3)
- Under \$100.00 (5)
- Under \$150.00 (11)
- Under \$200.00 (13)
- Under \$250.00 (13)
- Over \$250.00 (10)

color

- grey (3)
- tan (3)
- brown (2)
- multi (2)
- blue (1)
- yellow (1)
- green (1)
- black (1)
- pink/purple (1)
- red (1)

size

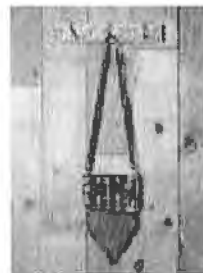
- XS/0-2 (2)
- S/4-6 (4)
- M/8-10 (5)
- L/12 (4)
- 7 - 7.5 (1)
- 8 - 8.5 (1)
- 9 - 9.5 (2)
- 10 - 11 (1)



Vermont Knit
Sweater Shorts
\$148.00



Margarita Shorts
\$258.00



Lones Crossbody
Clutch
\$98.00



Tye Dye to the Max
Dress
\$168.00



Pallas Sandal
\$268.00 \$169.95



Feather Clip
\$58.00



Striped Boxy
Pullover
\$108.00



Kona Pointelle
Poncho
\$148.00



On the V Crochet
Tunic
\$99.00 \$69.95



Bedouir Leather
Bag
\$575.00 \$349.95



Southwest Mega
Duffle Bag
\$128.00



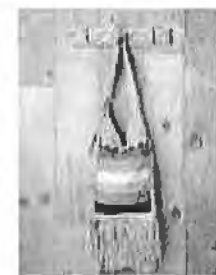
Arizona Blanket
Wrap
\$78.00 \$49.95



Nacilenda Bag
New color!
\$78.00



Rebecca Side
Laceup Moc Boot
\$138.00



Joplin Fringe Bag
\$358.00



One of a Kind
Needlepoint Hobo
\$698.00



Vintage Handmade
Navajo Necklace
\$328.00



Vintage Navajo
Squash Necklace
\$398.00



Vintage Navajo
Handmade Necklace
\$328.00



Vintage Navajo
Cuff
\$298.00



Vintage Navajo
Squash Necklace
\$698.00



Vintage Navajo
Handmade Cuff
\$148.00



Vintage Navajo
Cuff
\$298.00

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order status
see chart
shipping information
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international orders

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our story
work at fp
wholesale
affiliates

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find a store
shop catalog
wishlist
collections
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what's new



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Exhibit D



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Word Mark NAVAJO
Goods and Services IC 018. US 001 002 003 022 041. G & S: backpacks, baby backpacks, book bags, shoulder bags, and tote bags. FIRST USE: 20100105. FIRST USE IN COMMERCE: 20100105

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code SHAPES-MISC Miscellaneous shaped designs

Serial Number 76660867
Filing Date May 31, 2006
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition May 1, 2007
Registration Number 3793381
Registration Date May 25, 2010
Owner (REGISTRANT) NAVAJO BRANDS HOLDING, INC. CORPORATION TEXAS 119 LONGWOOD AVENUE AUSTIN TEXAS 78734
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Jeff A. McDaniel
Prior Registrations 2061748;2237648;2573986;2573987;2976666;3151212;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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NAVAJO ARTS & CRAFTS GUILD

Word Mark NAVAJO ARTS & CRAFTS GUILD

Goods and Services IC 008. US 023 028 044. G & S: Tableware sold only within the territory of the Navajo Nation, namely, knives, forks and spoons made of silver, or of silver combined with turquoise or petrified wood settings; flatware made of silver, or of silver combined with turquoise or petrified wood settings. FIRST USE: 19430501. FIRST USE IN COMMERCE: 19430501

IC 014. US 002 027 028 050. G & S: Decorative bells, decorative boxes, bracelets, cuff links, cups, earrings, lavalier pendants, mugs, necklaces, pins, rings being jewelry, napkin rings, salt holders and trays, all made of silver, or of silver combined with turquoise or petrified wood settings. FIRST USE: 19430501. FIRST USE IN COMMERCE: 19430501

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters, punctuation and mathematical signs, zodiac signs, prescription marks

Serial Number 78863416

Filing Date April 18, 2006

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition September 30, 2008

Registration Number 3829700

Registration Date August 3, 2010

Owner (REGISTRANT) Navajo Arts & Crafts Enterprise FEDERALLY RECOGNIZED INDIAN TRIBE UNITED STATES Highway 264 and Route 12 Window Rock NEW MEXICO 86515

Attorney of Record Benjamin Allison

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ARTS & CRAFTS GUILD" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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NAVAJO

**Word Mark
Goods and
Services**

NAVAJO

IC 008, US 023 028 044, G & S: Tableware sold only within the territory of the Navajo Nation, namely, knives, forks and spoons made of silver, or of silver combined with turquoise or petrified wood settings; flatware made of silver, or of silver combined with turquoise or petrified wood settings. FIRST USE: 19430501, FIRST USE IN COMMERCE: 19430501

IC 014, US 002 027 028 050, G & S: Decorative bells, decorative boxes, bracelets, cuff links, cups, earrings, lavalier pendants, mugs, necklaces, pins, rings being jewelry, napkin rings, salt holders and trays, all made of silver, or of silver combined with turquoise or petrified wood settings. FIRST USE: 19430501, FIRST USE IN COMMERCE: 19430501

**Standard
Characters
Claimed****Mark Drawing
Code**

(4) STANDARD CHARACTER MARK

Serial Number

78883232

Filing Date

May 15, 2006

**Current Filing
Basis**

1A

**Original Filing
Basis**

1B

**Published for
Opposition**

October 7, 2008

**Registration
Number**

3846651

Registration Date

September 7, 2010

Owner

(REGISTRANT) Navajo Arts & Crafts Enterprise TRIBAL ENTERPRISE OF THE NAVAJO NATION, A FEDERALLY RECOGNIZED INDIAN TRIBE UNITED STATES Highway 264 and Route 12 Window Rock ARIZONA 86515

**Attorney of
Record**

Benjamin Allison

Type of Mark

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Indicator**

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NAVAJO ARTS & CRAFTS GUILD

Word Mark NAVAJO ARTS & CRAFTS GUILD
Goods and Services IC 025, US 022 039, G & S: Neckties and leather belts of plain leather, and of leather ornamented with silver, and of leather ornamented with silver and turquoise, or other trimmings for personal wear. FIRST USE: 19430501. FIRST USE IN COMMERCE: 19430501

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks

Serial Number 78863419
Filing Date April 18, 2006
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition February 23, 2010
Registration Number 3787515
Registration Date May 11, 2010
Owner (REGISTRANT) Navajo Arts & Crafts Enterprise Tribal Enterprise of the Navajo Nation, a Federally Recognized Indian Tribe UNITED STATES Highway 264 and Route 12 Window Rock ARIZONA 86515
Attorney of Record Benjamin Allison
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ARTS & CRAFTS GUILD" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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NAVAJO

Word Mark NAVAJO

Goods and Services IC 025, US 022 039, G & S: Neckties and leather belts of plain leather, and of leather ornamented with silver, and of leather ornamented with silver and turquoise or other trimmings, for personal wear. FIRST USE: 19430501. FIRST USE IN COMMERCE: 19430501

Standard
Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78883241

Filing Date May 15, 2006

Current Filing Basis 1A

Original Filing Basis 1B

Published for
Opposition February 23, 2010Registration
Number 3787518

Registration Date May 11, 2010

Owner (REGISTRANT) Navajo Arts & Crafts Enterprise Tribal Enterprise of the Navajo Nation, a Federally Recognized Indian Tribe UNITED STATES Highway 264 and Route 12 Window Rock ARIZONA 86515

Attorney of Record Benjamin Allison

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	NAVAJO
Goods and Services	IC 025. US 022 039. G & S: clothing, namely, tops, vests, shirts, sport shorts, polo shirts, golf shirts, * jackets, * T-shirts, sweat shirts. FIRST USE: 19950901. FIRST USE IN COMMERCE: 19950901
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75977971
Filing Date	December 19, 1996
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	February 10, 1998
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	2237848
Registration Date	April 6, 1999
Owner	(REGISTRANT) Navajo Jeans, Inc. CORPORATION TEXAS 119 Longwood Ave. Austin TEXAS 78734 (LAST LISTED OWNER) DINE DEVELOPMENT CORPORATION CORPORATION ARIZONA P.O. BOX 307 WINDOW ROCK ARIZONA 86515
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Stella Saunders
Type of Mark Register	TRADEMARK PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20090422.

Renewal 1ST RENEWAL 20090422
Live/Dead
Indicator LIVE

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Typed Drawing

Word Mark	NAVAJO
Goods and Services	IC 018. US 001 002 003 022 041. G & S: LUGGAGE, SUITCASES, OVERNIGHT BAGS, AND CARRY-ON BAGS. FIRST USE: 20010331. FIRST USE IN COMMERCE: 20010331
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75217546
Filing Date	December 19, 1996
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	February 10, 1998
Registration Number	2573986
Registration Date	May 28, 2002
Owner	(REGISTRANT) Native American Products, Inc. CORPORATION TEXAS 119 Longwood Ave. Austin TEXAS 78734 (LAST LISTED OWNER) DINE DEVELOPMENT CORPORATION CORPORATION ARIZONA P.O. BOX 307 WINDOW ROCK ARIZONA 86515
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Siella Saunders
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark NAVAJO
Goods and Services IC 025, US 022 039, G & S: Footwear, [shoes,] boots, beachwear, blouses, overalls, rain wear, sweaters, jackets, coats, ski wear, caps, [visors, berets,] hats. FIRST USE: 20050218, FIRST USE IN COMMERCE: 20050218
Mark Drawing Code (1) TYPED DRAWING
Serial Number 76253718
Filing Date May 7, 2001
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition December 11, 2001
Registration Number 2976666
Registration Date July 26, 2005
Owner (REGISTRANT) Navajo Jeans, Inc. CORPORATION TEXAS 119 Longwood Ave. Austin TEXAS 78734

(LAST LISTED OWNER) DINE DEVELOPMENT CORPORATION CORPORATION ARIZONA P.O. BOX 307 WINDOW ROCK ARIZONA 86515
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Stella Saunders
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15, SECT 8 (6-YR).
Live/Dead Indicator LIVE

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NAVAJO

Word Mark
Goods and
Services

NAVAJO

IC 035. US 100 101 102. G & S: Online retail store services, namely, on-line ordering services, in the field of clothing, namely, men's, and women's sportswear, namely, jeans, tops, shirts, sport shorts, polo shirts, golf shirts, T-shirts, and sweatshirts. FIRST USE: 20050920. FIRST USE IN COMMERCE: 20050920

Standard
Characters
Claimed**Mark Drawing**
Code

(4) STANDARD CHARACTER MARK

Serial Number 76646510**Filing Date** September 9, 2005**Current Filing**
Basis 1A**Original Filing**
Basis 1B**Published for**
Opposition May 8, 2007**Registration**
Number 3602907**Registration**
Date April 7, 2009**Owner** (REGISTRANT) NAVAJO BRANDS HOLDING, INC. CORPORATION TEXAS 119 LONGWOOD AVENUE AUSTIN TEXAS 78734

(LAST LISTED OWNER) DINE DEVELOPMENT CORPORATION, NAVAJO NATION CORPORATION ARIZONA P.O. BOX 307 WINDOW ROCK ARIZONA 86515

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Stella Saunders
Prior Registrations 2061748;2237848;2573986;2573987;2976666;3151212;AND OTHERS
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Indian

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VINTAGE LOVES

*About Vintage Loves***Vintage Woven Bag**

Style: 23819915

Vintage Native American Indian woven bag with yarn tassels at all corners. Flap closure with button. Inside lined with floral printed fabric. One outside zipper pocket.

color: multi**size:** one size**quantity:** 1**PRICE:** \$228⁰⁰[OR TELL A FRIEND](#)[Help/Info](#)**sizing:**

Length: 11"

Width: 12"

Depth: 1"

Strap Length: 31 1/2"

condition:**discussion about this product:**

Shirine at 5:04 PM on 02.12.2012

"could you by any chance please send me photos of the inside of this bag? would greatly appreciate it."

Vintage Loves at 2:11 PM on 02.14.2012

"Hello, this item is packaged for shipping in our warehouse at this time, so our photo studio cannot take new images. However, I can confirm that the lining is floral and plaid. Hope this helps!"

condition details:

The threading around zipper is loose. Shows some wear. In good condition overall.

How we rate condition

ask a question:

Name:

Email:

need help?

call 800-309-1500
or contact us

customer service

help
order status
size chart
shipping information
returns & exchanges
international orders

company

our story
work at fp
wholesale
affiliates
site map

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VINTAGE LOVES

About Vintage Loves

Vintage Heishi Bead Earrings

Style: 24530903

Vintage pair of Heishi bead earrings with hooks.

Heishi are small discs or tubes shaped beads made of organic shells or ground and polished stones. They originate from the Santo Domingo Pueblo Indians in New Mexico.

PRICE: \$228⁰⁰[Help/Info](#)

color: multi

size: one size

quantity: 1

[OR TELL A FRIEND](#)

sizing:

Total Length: 2 1/2"

condition:

condition details:

In mint condition.

How we rate condition

ask a question:

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Email:

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vintage loves

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VINTAGE LOVES

About Vintage Loves

Vintage Woven Bag

Style: 23619915

Vintage Native American Indian woven bag with yarn tassels at all corners. Flap closure with button. Inside lined with floral printed fabric. One outside zipper pocket.

color: multi

size: one size

quantity: 1

PRICE: \$228.00

OR TELL A FRIEND

Help/Info

sizing:

Length: 11"

Width: 12"

Depth: 1"

Strap Length: 31 1/2"

condition:

discussion about this product:

Shelene at 5:04 PM on 02.12.2012

"could you by any chance please send me photos of the inside of this bag? would greatly appreciate it."

Vintage Loves at 2:11 PM on 02.14.2012

"Hello, this item is packaged for shipping in our warehouse at this time, so our photo studio cannot take new images. However, I can confirm that the lining is floral and plaid. Hope this helps!"

condition details:

The threading around zipper is loose. Shows some wear. In good condition overall.

How we rate condition

ask a question:

Name:

Email:

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"native american" we found 2 results.

price (USD)

\$ 148 \$ 228

relevance ▼



Vintage Beaded
Belt Buckle
\$148.00



Vintage Woven Bag
\$228.00

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 Tops Graphics Tees & Tanks Shirts Hoodies & Sweatshirts Cardigans & Sweaters Henleys & Polos
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 Women's Sale Dresses Tops Jackets & Blazers Bottoms Intimates Shoes Accessories
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 Apartment Sale

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1 products found



Printed Bracelet - 2 Pack

\$8.00

Now \$6

x

REFINE BY

Categories

☐ Mens



DETAILS & SHOPPING

Palmcdo Blanket Bag
Style: 23406044

Overall Rating
★★★★☆
3 reviews | write a review

Beautiful blanket flap bag with leather fringe and trim. Adjustable leather buckle closure. Strap is a vintage leather belt.

*By McFadin
*Wool, Leather Trim
*Made in the USA
*14" long, 14" wide, 37 1/2" long shoulder strap
*9 1/2" fringe length

SHOP ALL: Bags & Wallets

price: **\$488.00**

availability (web & store)

color: red

size: one size

quantity: 1



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15 7 38 2 0 17

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palmcdo blanket bag is included in 15 collections including...

Collection no. 1
I Want It
Created 6 days ago by FrankieGut

Navajo Beauty
1 person wants this
I Want It
Created 18 days ago by indiehipplepale

Turquoise
I Want It
Created 27 days ago by mand

For Nobody Esle But You
I Want It
Created 34 days ago by darkhorse

Want It
I Want It
Created 39 days ago by Miss Lau

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DETAILS & SHOPPING

REVIEWS & FITTING (1)

Palmedo Blanket Bag

Style: 23406044

Overall Rating

 ★ ★ ★ ★ 1
 3 reviews | write a review

Beautiful blanket flap bag with leather fringe and trim. Adjustable leather buckle closure. Strap is a vintage leather belt.

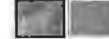
* By McFadin
 * Wool, Leather trim
 * Made in the USA
 * 14" long, 14" wide, 37 1/2" long shoulder strap
 * 9 1/2" fringe length

SHOP ALL: Bags & Wallets

price: \$488.00

availability
(web & stores)

color: turquoise



size: one size

chart

One Size

quantity: 1

you may also be interested in one of these...



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15

7

38

2

0

17

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palmedo blanket bag is included in 15 collections including...

 Collection no. 1 I Want It Created 6 days ago by FrankieGul	 Navajo Beauty 1 person wants this I Want It Created 18 days ago by indiehippiepic	 Turquoise I Want It Created 27 days ago by mand	 For Nobody Else But You I Want It Created 34 days ago by darkhorsee	 Want It I Want It Created 39 days ago by Miss Lau
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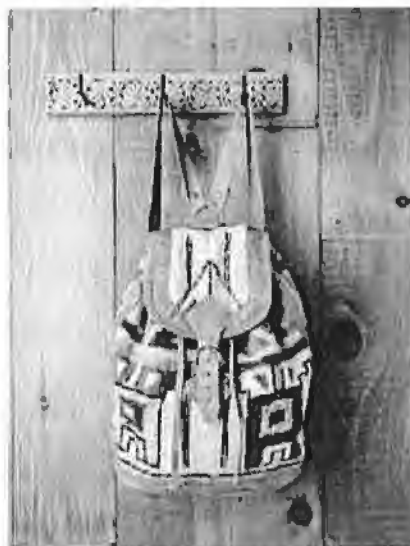
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DETAILS & SHOPPING

REVIEWS & FITTING (0)

Vintage Cherokee Backpack

Style: 23781560

price: \$598.00

availability
(web & stores)

Overall Rating

WRITE A REVIEW

Beautiful patterned woven drawstring backpack with distressed leather trimming. Adjustable straps. Fully lined with canvas. Zipper pocket inside. Buckle closure. Woven part is made from one-of-a-kind blankets, so each backpack will vary.

*By Totem

*Textile, Leather

*14" deep, 11 1/4" wide, 7 1/4" thick on the side

SHOP ALL: Bags & Backpacks

color: tan

size: one size

One Size

chart

quantity: 1

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9

4

20

0

1

32

like

Tweet

vintage cherokee backpack is included in 9 collections including...



Gypsy Love

I want it

Created 52 days ago
by Zeezi

the world traveler

1 person wants this
I want itCreated 63 days ago
by alliemeyer

Stuff

I want it

Created 80 days ago
by Sathania

campfires and ukeleles

I want it

Created 81 days ago
by chrisecross

big bags

I want it

Created 114 days ago
by ahazmanbear

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DETAILS & SHOPPING

11 VIEWS & 8 ITEMS



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Magical Feather Bag
Style: 24572471

Overall Rating
WRITE A REVIEW

Canvas satchel bag with leather flap and studded trimming around front of bag and on leather. Hand painted feather on front flap. Adjustable leather buckle strap. Canvas and leather strap is made from 30 year old vintage material. Twist clasp closure. Inside is fully lined with zipper compartment. Back of bag has large pocket. Metal Native American pendant hanging on leather chord near strap.

By Dukes

*Leather, Canvas

*10 1/2" deep, 14" long across front, 1 3/4" thick on bottom

*Approx. 19" strap drop (can be adjusted to be shorter or longer)

SHOP ALL: Bags & Wallets

price: **\$858.00**

availability (web & stores)









color: **olive**

size: **one size** click
One Size

only a few left in stock!

quantity:

you may also be interested in one of these...



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3

0

4

0

0

1

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magical feather bag is included in 3 collections including...



summer bliss
1 week 0
 Created 2 days ago by Loto34



Muse
1 person wants this
1 want it
 Created 81 days ago by Kazuo



Buck
4 people want this
1 want it
 Created 5 days ago by MolindaMarie

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**POSTMORTEM
RIGHTS OF PUBLICITY**

NY Civ Rights L § 50 (2014)

§ 50. Right of privacy. A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.

NY Civ Rights L § 51 (2014)

§ 51. Action for injunction and for damages. Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages. But nothing contained in this article shall be so construed as to prevent any person, firm or corporation from selling or otherwise transferring any material containing such name, portrait, picture or voice in whatever medium to any user of such name, portrait, picture or voice, or to any third party for sale or transfer directly or indirectly to such a user, for use in a manner lawful under this article; nothing contained in this article shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this article shall be so construed as to prevent any person, firm or corporation from using the name, portrait, picture or voice of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait, picture or voice used in connection therewith; or from using the name, portrait, picture or voice of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait, picture or voice used in connection therewith. Nothing contained in this section shall be construed to prohibit the copyright owner of a sound recording from disposing of, dealing in, licensing or selling that sound recording to any party, if the right to dispose of, deal in, license or sell such sound recording has been conferred by contract or other written document by such living person or the holder of such right. Nothing contained in the foregoing sentence shall be deemed to abrogate or otherwise limit any rights or remedies otherwise conferred by federal law or state law.

California Code, Civil Code - CIV § 3344

(a) Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of products, merchandise, goods or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of sevenhundred fifty dollars (\$750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

(b) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

(1) A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

(2) If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: a crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

(3) A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

(c) Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

(d) For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(e) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or

with the paid advertising as to constitute a use for which consent is required under subdivision (a).

(f) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

(g) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

California Code, Civil Code - CIV § 3344.1

(a)(1) Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subdivision (c), shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by the injured party or parties, as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use, and the person who violated the section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorney's fees and costs.

(2) For purposes of this subdivision, a play, book, magazine, newspaper, musical composition, audiovisual work, radio or television program, single and original work of art, work of political or newsworthy value, or an advertisement or commercial announcement for any of these works, shall not be considered a product, article of merchandise, good, or service if it is fictional or nonfictional entertainment, or a dramatic, literary, or musical work.

(3) If a work that is protected under paragraph (2) includes within it a use in connection with a product, article of merchandise, good, or service, this use shall not be exempt under this subdivision, notwithstanding the unprotected use's inclusion in a work otherwise exempt under this subdivision, if the claimant proves that this use is so directly connected with a product, article of merchandise, good, or service as to constitute an act of advertising, selling, or soliciting purchases of that product, article of merchandise, good, or service by the deceased personality without prior consent from the person or persons specified in subdivision (c).

(b) The rights recognized under this section are property rights, freely transferable or descendible, in whole or in part, by contract or by means of any trust or any other testamentary instrument, executed before or after January 1, 1985. The rights recognized under this section shall be deemed to have existed at the time of death of any deceased personality who died prior

to January 1, 1985, and, except as provided in subdivision (o), shall vest in the persons entitled to these property rights under the testamentary instrument of the deceased personality effective as of the date of his or her death. In the absence of an express transfer in a testamentary instrument of the deceased personality's rights in his or her name, voice, signature, photograph, or likeness, a provision in the testamentary instrument that provides for the disposition of the residue of the deceased personality's assets shall be effective to transfer the rights recognized under this section in accordance with the terms of that provision. The rights established by this section shall also be freely transferable or descendible by contract, trust, or any other testamentary instrument by any subsequent owner of the deceased personality's rights as recognized by this section. Nothing in this section shall be construed to render invalid or unenforceable any contract entered into by a deceased personality during his or her lifetime by which the deceased personality assigned the rights, in whole or in part, to use his or her name, voice, signature, photograph, or likeness, regardless of whether the contract was entered into before or after January 1, 1985.

(c) The consent required by this section shall be exercisable by the person or persons to whom the right of consent, or portion thereof, has been transferred in accordance with subdivision (b), or if no transfer has occurred, then by the person or persons to whom the right of consent, or portion thereof, has passed in accordance with subdivision (d).

(d) Subject to subdivisions (b) and (c), after the death of any person, the rights under this section shall belong to the following person or persons and may be exercised, on behalf of and for the benefit of all of those persons, by those persons who, in the aggregate, are entitled to more than a one-half interest in the rights:

(1) The entire interest in those rights belongs to the surviving spouse of the deceased personality unless there are any surviving children or grandchildren of the deceased personality, in which case one-half of the entire interest in those rights belongs to the surviving spouse.

(2) The entire interest in those rights belongs to the surviving children of the deceased personality and to the surviving children of any dead child of the deceased personality unless the deceased personality has a surviving spouse, in which case the ownership of a one-half interest in rights is divided among the surviving children and grandchildren.

(3) If there is no surviving spouse, and no surviving children or grandchildren, then the entire interest in those rights belongs to the surviving parent or parents of the deceased personality.

(4) The rights of the deceased personality's children and grandchildren are in all cases divided among them and exercisable in the manner provided in Section 240 of the Probate Code according to the number of the deceased personality's children represented. The share of the children of a dead child of a deceased personality can be exercised only by the action of a majority of them.

(e) If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary instrument, and there are no surviving persons as described in subdivision (d), then the rights set forth in subdivision (a) shall terminate.

(f)(1) A successor in interest to the rights of a deceased personality under this section or a licensee thereof shall not recover damages for a use prohibited by this section that occurs before the successor in interest or licensee registers a claim of the rights under paragraph (2).

(2) Any person claiming to be a successor in interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee as set forth in subdivision (d) of Section 12195 of the Government Code. The form shall be verified and shall include the

name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

(3) Upon receipt and after filing of any document under this section, the Secretary of State shall post the document along with the entire registry of persons claiming to be a successor in interest to the rights of a deceased personality or a registered licensee under this section upon the Secretary of State's Internet Web site. The Secretary of State may microfilm or reproduce by other techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State 70 years after the death of the personality named therein.

(4) Claims registered under this subdivision shall be public records.

(g) An action shall not be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of 70 years after the death of the deceased personality.

(h) As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, or because of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services. A "deceased personality" shall include, without limitation, any such natural person who has died within 70 years prior to January 1, 1985.

(i) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph if one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

(j) For purposes of this section, the use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(k) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing the use is commercially sponsored or contains paid advertising. Rather, it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subdivision (a).

(l) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit advertisements, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that the owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

(m) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

(n) This section shall apply to the adjudication of liability and the imposition of any damages or other remedies in cases in which the liability, damages, and other remedies arise from acts occurring directly in this state. For purposes of this section, acts giving rise to liability shall be limited to the use, on or in products, merchandise, goods, or services, or the advertising or selling, or soliciting purchases of, products, merchandise, goods, or services prohibited by this section.

(o) Notwithstanding any provision of this section to the contrary, if an action was taken prior to May 1, 2007, to exercise rights recognized under this section relating to a deceased personality who died prior to January 1, 1985, by a person described in subdivision (d), other than a person who was disinherited by the deceased personality in a testamentary instrument, and the exercise of those rights was not challenged successfully in a court action by a person described in subdivision (b), that exercise shall not be affected by subdivision (b). In that case, the rights that would otherwise vest in one or more persons described in subdivision (b) shall vest solely in the person or persons described in subdivision (d), other than a person disinherited by the deceased personality in a testamentary instrument, for all future purposes.

(p) The rights recognized by this section are expressly made retroactive, including to those deceased personalities who died before January 1, 1985.

63.60.010. Property right--Use of name, voice, signature,...., WA ST 63.60.010

West's Revised Code of Washington Annotated

Title 63. Personal Property (Refs & Annos)
--

Chapter 63.60. Personality Rights (Refs & Annos)
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RCWA 63.60.010

63.60.010. Property right--Use of name, voice, signature, photograph, or likeness

Effective: June 12, 2008

Currentness

Every individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness. Such right exists in the name, voice, signature, photograph, or likeness of individuals or personalities deceased before, on, or after June 11, 1998. This right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will or other testamentary instrument, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, whether the will or other testamentary instrument, trust, contract, community property agreement, or cotenancy document is entered into or executed before, on, or after June 11, 1998, by the deceased individual or personality or by any subsequent owner of the deceased individual's or personality's rights as recognized by this chapter; or, if none is applicable, then the owner of the rights shall be determined under the laws of intestate succession applicable to interests in intangible personal property. The property right does not expire upon the death of the individual or personality, regardless of whether the law of the domicile, residence, or citizenship of the individual or personality at the time of death or otherwise recognizes a similar or identical property right. The right exists whether or not it was commercially exploited by the individual or the personality during the individual's or the personality's lifetime. The rights recognized under this chapter shall be deemed to have existed before June 11, 1998, and at the time of death of any deceased individual or personality or subsequent successor of their rights for the purpose of determining the person or persons entitled to these property rights as provided in RCW 63.60.030. This chapter is intended to apply to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death.

Credits

[2008 c 62 § 1, eff. June 12, 2008; 1998 c 274 § 1.]

Notes of Decisions (6)

West's RCWA 63.60.010, WA ST 63.60.010

The statutes are current through the 2017 Third Special Session of the Washington legislature.



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ONASSIS v. CHRISTIAN DIOR

View Case Cited Cases Citing Case

122 Misc.2d 603 (1984)

Jacqueline K. Onassis, Plaintiff, v. Christian Dior — New York, Inc., et al., Defendants.

Supreme Court, Special Term, New York County.

January 11, 1984

Attorney(s) appearing for the Case

Milbank, Tweed, Hadley & McCloy for plaintiff. Windels, Marx, Davies & Ives for Christian Dior — New York, Inc., defendant. Breed, Abbott & Morgan for Lansdowne Advertising, Inc., defendant. Proskauer, Rose, Goetz & Mendelsohn for Richard Avedon, defendant. Lowen & Abut (Charles C. Abut of counsel), for Ron Smith Celebrity Look-Alikes, defendant.

EDWARD J. GREENFIELD, J.

This case poses for judicial resolution the question of whether the use for commercial purposes of a "lookalike" of a well-known personality violates the right of privacy legislatively granted by enactment of sections 50 and 51 of the Civil Rights Law. Put another way, can one person enjoin the use of someone else's face? The questions appear not to have been definitively answered before.

Plaintiff, Jacqueline Kennedy Onassis, former First Lady of the United States, widow of President John F. Kennedy, one of the world's most powerful men, and of Aristotle Onassis, one of the world's wealthiest men, but a well-known personality in her own right, moves for a

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preliminary injunction under the Civil Rights Law to restrain defendants, all of whom were associated with an advertising campaign to promote the products and the image of Christian Dior — New York, Inc., from using or distributing a certain advertisement, and for associated relief. She alleges simply in her complaint that defendants have knowingly caused the preparation and publication of an advertisement for Dior products which includes her likeness in the form of a photograph of lookalike Barbara Reynolds; that Reynolds' picture causes her to be identified with the ad to which she has not given her consent; that this was a violation of her rights of privacy and that it caused her irreparable injury.

Defendant, Christian Dior — New York, Inc., is the corporate entity which controls advertising and publicity for the 35 United States licensees who sell varied lines of merchandise under the coveted Dior label. The use of a well-known designer name in marketing goods is to render the product distinctive and desirable, to impart to the product a certain cachet, and to create in the public a mindset or over-all impression so that the designer names are readily associated and become synonymous with a certain status and class of qualities.

So it was that J. Walter Thompson's Lansdowne Division, in conjunction with noted photographer Richard Avedon, hit upon the idea of a running series of ads featuring a trio known as the Diors (one female and two males), who were characterized by an article in *Newsweek* magazine as idle rich, suggestively decadent, and aggressively chic. Indeed, it was suggested that this menage a trois, putatively inspired by the characters portrayed by Noel Coward, Alfred Lunt and Lynn Fontanne in Coward's 1933 play "Design for Living", would become the most notorious personae in advertising since Brooke Shields refused to let anything come between her and her Calvins (for the uninitiated, blue jeans advertised under designer Calvin Klein's label). To emphasize the impression of the unconventional, the copy for one ad had read, "When the Diors got away from it all, they brought with them nothing except 'The Decline of the West' and one toothbrush." Evidently, to stir comment, the relationship portrayed in the ad campaign

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was meant to be ambiguous, "to specify nothing but suggest everything." The 16 sequential ads would depict this steadfast trio in varying situations leading to the marriage of two (but not the exclusion of the third), birth of a baby, and their ascent to Heaven (subject to resurrection on demand).

Thus, the Diors, and by association their products, would be perceived as chic, sophisticated, elite, unconventional, quirky, audacious, elegant, and unorthodox. The advertisement for the wedding, which is the one challenged here, is headed "Christian Dior: Sportswear for Women and Clothing for Men." Portrayed in the ad are the happy Dior trio attended by their ostensible intimates, all ecstatically beaming — Gene Shalit, the television

for men. Portrayed in the ad are the happy Diors and attended by their ostensible intimates, an elegantly beaming — Gene Shalit, the television personality, model Shari Belafonte, actress Ruth Gordon, and Barbara Reynolds, a secretary who bears a remarkable resemblance to plaintiff Jacqueline Onassis. The copy, in keeping with the desired attitude of good taste and unconventionality, reads: "The wedding of the Diors was everything a wedding should be: no tears, no rice, no in-laws, no smarmy toasts, for once no Mendelssohn. Just a legendary private affair." Of course, what stamps it as "legendary" is the presence of this eclectic group, a frothy mix, the most legendary of which would clearly be Jacqueline Kennedy Onassis, shown discreetly behind Gordon and Shalit, obviously delighted to be in attendance at this "event".

That the person behind Gordon and Shalit bore a striking resemblance to the plaintiff was no mere happenstance. Defendants knew there was little or no likelihood that Mrs. Onassis would ever consent to be depicted in this kind of advertising campaign for Dior. She has asserted in her affidavit, and it is well known, that she has never permitted her name or picture to be used in connection with the promotion of commercial products. Her name has been used sparingly only in connection with certain public services, civic, art and educational projects which she has supported. Accordingly, Lansdowne and Avedon, once the content of the picture and the makeup of the wedding party had been determined, contacted defendant Ron Smith Celebrity Look-Alikes to provide someone who could pass for Jacqueline Kennedy Onassis. That agency, which specializes

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in locating and providing persons who bear a close resemblance to well-known personalities on request (and for a fee), came up with defendant Barbara Reynolds, regularly an appointments secretary to a Congressman, who, with appropriate coiffure and appointments, looks remarkably like Mrs. Onassis, and has made this resemblance an adjunct to her career.

The ad was run in September and October of 1983 in several upscale publications including *Esquire*, *Harper's Bazaar*, the *New Yorker*, and the *New York Times Magazine*. It received widespread circulation, and apparently was the subject of considerable comment, as was the entire series. Dior reportedly committed \$2.5 million to the campaign, and boasted that as a result, sales went through the roof. In opposition to the application for an injunction, defendants urge, among other things, that it is unnecessary because the ad has already appeared, and it is not scheduled for republication. However, they declined to enter into any formal stipulation to that effect, and trade papers are abuzz with speculation about the resurrection and reincarnation of the campaign, with possible television showings to reach an even wider audience. Moreover, the case presents an important question under the privacy law, and it is appropriate that it be judicially resolved. (*Matter of Baumann & Son Buses v Board of Educ.*, 46 N.Y.2d 1061, 1063; *Le Drugstore Etats Unis v New York State Bd. of Pharmacy*, 31 N.Y.2d 298, 301.)

Section 50 of the New York Civil Rights Law provides: "A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person * * * is guilty of a misdemeanor."

Having defined the offense, and declaring it to be criminal, section 51 of the Civil Rights Law goes on to provide civil remedies for violation as well, including injunction and damages. "Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm

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or corporation so using his name, portrait or picture, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages".

Once the violation is established, the plaintiff may have an absolute right to injunction, regardless of the relative damage to the parties. (*Blumenthal v Picture Classics*, 235 App Div 570, affd 261 N.Y. 504; *Loftus v Greenwich Lithographing Co.*, 192 App Div 251; *Durgoin v Columbia Broadcasting Systems*, 29 Misc.2d 394, 395.)

Is there a violation? Defendants, urging a strict and literal compliance with the statute, say that there is not. Plaintiff, arguing for a broader interpretation, insists that there is. As a general proposition, sections 50 and 51 of the Civil Rights Law, which created a new statutory right, being in derogation of common law, receive a strict, if not necessarily a literal construction. (*Shields v Gross*, 58 N.Y.2d 338, 345; *Arrington v New York Times Co.*, 55 N.Y.2d 433, 439.) However, "[s]ince its purpose 'is remedial * * * to grant recognition to the newly expounded right of an individual to be immune from commercial exploitation' (*Flores v Mosler Safe Co.*, 7 N.Y.2d 276, 280-281; see *Lahiri v Daily Mirror*, 162 Misc. 776, 779), section 51 of the Civil Rights Law has been liberally construed over the ensuing years." (*Stephano v News Group Pub.*, 98 A.D.2d 287, 295.)

Plaintiff's name appears nowhere in the advertisement. Nevertheless, the picture of a well-known personality, used in an ad and instantly recognizable, will still serve as a badge of approval for that commercial product. It is designed to "catch the eye and focus it on the advertisement". (*Negri v Schering Corp.*, 333 F.Supp. 101, 105.) That is why the use of a person's "portrait or picture" without consent is also proscribed. Just what is comprehended by the term "portrait or picture"?

In *Negri v Schering Corp.* (*supra*), plaintiff, the well-known movie actress of the 1920's, Pola Negri, objected to the publication of an advertisement in 1969 showing a

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scene from one of her early movies with words issuing from her mouth in the balloon caption suggesting the use of the antihistamine drug Polaramine. To defendant's contention that the picture did not really show plaintiff as she was then, the Southern District Court, applying New York law, held (p 105) that as long as the ad portrayed a recognizable likeness, it was actionable, declaring, "If a picture so used is a clear and identifiable likeness of a living person, he or she is entitled to recover damages suffered by reason of such use".

In *Ali v Playgirl, Inc.* (447 F.Supp. 723), the portrait or picture was not an actual photo, but a composite photodrawing depicting a naked black man in a boxing ring, with the recognizable facial features of the former world's heavyweight champion. The Southern District Court, again applying New York law, held that the phrase "portrait or picture" as used in section 51 of the Civil Rights Law is not restricted to actual photographs, but comprises any representations which are recognizable as likenesses of the complaining individual. In that case, the picture represented something short of actuality — somewhere between representational art and a cartoon.

In *Loftus v Greenwich Lithographing Co.* (192 App Div 251, *supra*), the objection again was not to an actual picture of the plaintiff, but to an advertising poster for a movie called "Shame" which showed a sketch of a female figure in a costume plaintiff had popularized in a Ziegfeld production. The court rejected defendant's contention that the poster was not an actual depiction of plaintiff. Despite changes that were made as between plaintiff's actual picture and defendant's drawing, the court found it evident that the drawing took plaintiff's appearance as its starting

point, and declared that slight changes or deviations would not thwart the application of the wholesome provisions of the Civil Rights Law.

In *Young v Greneker Studios* (175 Misc. 1027), this court extended the literal definition of portrait or picture to include a manikin or sculpture for which plaintiff was the model. The words "portrait or picture" were construed to be broad enough to cover any likeness or representation of the plaintiff, whether two or three dimensional. On the other

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hand, conveying the likeness of a person, not graphically, but through sound, by means of the imitation of a distinctive voice, does not come within the prohibition of the statute (possibly an oversight, since the possibility of reproducing and disseminating the sound of a voice was not contemplated in 1903 when sections 50 and 51 of the Civil Rights Law were first enacted). (See *Lahr v Adell Chem. Co.*, 300 F.2d 256, 258.) This is not because the portrayal of plaintiff's distinctive vocal delivery was by an imitator, but because a voice was not construed as the equivalent of a name or picture, and the picture used was that of a duck.

The Court of Appeals, 70 years ago, in *Binns v Vitagraph Co.* (210 N.Y. 51), dealt with the question of whether the use of the picture of another person suggestive of the plaintiff is a prohibited use of a plaintiff's portrait or picture. The plaintiff was a wireless operator on a sinking ship, whose radioed distress signal, "COD", resulted in the rescue of hundreds of passengers, and made him a hero. Defendant, attempting to capitalize on the widespread public interest in the story, did a photoplay based on the event (what we would today call a "docudrama"). A professional actor was employed to portray the plaintiff, and was photographed playing the part. The court declared (p 57), "A picture within the meaning of the statute is not necessarily a photograph of the living person, but includes any representation of such person. The picture * * * was intended to be, and it was, a representation of the plaintiff." The court expressly rejected (p 57) the contention of the defendant that all it used "was an actual picture of a person made up to look like and impersonate the plaintiff." While we might take a different view today as to whether a depiction of a newsworthy event (see *Murray v New York Mag. Co.*, 27 N.Y.2d 406) or a dramatized re-enactment or even a satirical portrayal is a commercial statement or protected comment (*University of Notre Dame v Twentieth Century-Fox Film Corp.*, 22 A.D.2d 452, aff'd 15 N.Y.2d 940), the court was clear that the photographic portrayal by one person to simulate another without consent was forbidden by the statute.

Defendants urge as controlling *Lombardo v Doyle, Dane & Bernbach* (58 A.D.2d 620), in which there was a dismissal

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of an invasion of privacy action (by a vote of three to two) against a television commercial which showed an actor conducting a band at a New Year's Eve party playing "Auld Lang Syne" similar to the way plaintiff bandleader had done for decades, and with which he was associated in the public mind. However, there the majority of court was refusing to equate a person's style or characteristics or musical arrangements with a "name, portrait or picture" where plaintiff's name was not mentioned and the actor did not physically resemble the plaintiff. Similarly, in *Shaw v Time-Life Records* (38 N.Y.2d 201), plaintiff bandleader was denied the right to make claim under sections 50 and 51 of the Civil Rights Law against defendant for simulating the "sound" and style of arrangements of his swing era band. And in *Toscani v Hersey* (271 App Div 445), where the plaintiff was portrayed in the book and play "A Bell for Adano", but under a different and fictionalized name, the court held that a work inspired by the acts, events and experiences of a living person is not an unauthorized use of his "name, portrait or picture".

The principle to be distilled from a study of the statute and of the cases construing it is that all persons, of whatever station in life, from the relatively unknown to the world famous, are to be secured against rapacious commercial exploitation. While the statute may not, by its terms, cover voice or movement, characteristics or style, it is intended to protect the essence of the person, his or her identity or persona from being unwillingly or unknowingly misappropriated for the profit of another. Shakespeare may not have been aware of advertising techniques, media hard-sell, or personal endorsements for product promotion, but the words he put in Iago's mouth were right on target:

"Good name in man or woman, dear my lord, Is the immediate jewel of their souls; Who steals my purse steals trash; 'tis something, nothing; 'Twas mine, 'tis his, and has been slave to thousands; But he that filches from me my good name Robs me of that which not enriches him, And makes me poor indeed."

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In those days, as the touchstone of recognition, name was all, conveyed in writing or by word of mouth. Today, the visual have superseded the verbal arts, and news photography, television, and motion pictures can accord instant world-wide recognition to a face. For some people, even without their American Express cards, the face is total identification, more than a signature or a coat of arms. (Cf. *Orsini v Eastern Wine Corp.*, 190 Misc. 235, aff'd 273 App Div 947.) The unauthorized use of a person's signature would not pass muster under the statute because it was claimed merely to be a facsimile. Is a picture or portrait intended to look like someone not that person's picture if it is similarly a facsimile or a simulation?

The dictionary defines a "picture" as: "1. An image or likeness of an object, person or scene produced on a flat surface, especially by painting, drawing, or photography. 2. a printed reproduction of any of these. 3. anything closely resembling or strikingly typifying something else; perfect likeness; image" (Webster's New Twentieth Century Dictionary (unabridged, 2d ed)).

A "portrait" is defined as: "1. A painting, photograph or other likeness of a person, especially one showing the face. 2. A verbal picture or description, especially of a person. 3. Any close likeness of one thing to another." (American Heritage Dictionary of the English Language (new college ed, 1976).)

The statute is in the disjunctive. There need not be, as defendants suggest, a coupling of name and picture. The essence of what is prohibited, as the statute, the cases, and the dictionary definitions make clear, is the exploitation of one's identity as that is conveyed verbally or graphically. A photograph may be a depiction only of the person before the lens, but a "portrait or picture" gives wider scope, to encompass a representation which conveys the essence and likeness of an individual, not only actuality, but the close and purposeful resemblance to reality. That is how it was defined in *Binns v Vitagraph Co.* (supra) as any representation, including the picture of another, which was intended to be, and did, in fact, convey the idea that it was the plaintiff.

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We are dealing here with actuality and appearance, where illusion often heightens reality and all is not quite what it seems. Is the illusionist to be free to step aside, having reaped the benefits of his creation, and be permitted to disclaim the very impression he sought to create? If we were to permit it, we would be sanctioning an obvious loophole to evade the statute. If a person is unwilling to give his or her endorsement to help sell a product, either at an offered price or at any price, no matter — hire a double and the same effect is achieved. The essential purpose of the statute must be carried out by giving it a commonsense reading which bars easy evasion. If we truly value the right of privacy in a world of exploitation, where every mark of distinctiveness becomes grist for the mills of publicity, then we must give it more than lip service and grudging recognition. Let

the word go forth — there is no free ride. The commercial hitchhiker seeking to travel on the fame of another will have to learn to pay the fare or stand on his own two feet.

There are many aspects of identity. A person may be known not only by objective indicia — name, face, and Social Security number — but by other characteristics as well — voice, movement, style, coiffure, typical phrases, as well as by his or her history and accomplishments. Thus far, the Legislature has accorded protection only to those aspects of identity embodied in name and face. Imitators are free to simulate voice or hairdo, or characteristic clothing or accessories, and writers to comment on and actors to re-enact events. No one is free to trade on another's name or appearance and claim immunity because what he is using is similar to but not identical with the original.

Defendant, Barbara Reynolds, protests that she cannot be prevented from using her own face. Where, however, that use is done in such a way as to be deceptive or promote confusion, that use can be enjoined. The use of one's own name can be restrained. (See *Sullivan v Sullivan Radio & T. V.*, 1 A.D.2d 609; *David B. Findlay, Inc. v Findlay*, 18 N.Y.2d 12, cert den 385 U.S. 930; *Higgins Co. v Higgins Soap Co.*, 144 N.Y. 462; *Harvey Mach. Co. v Harvey Aluminum Corp.*, 9 Misc.2d 1078.) Even variants of a name can be enjoined where confusion may ensue. (*Sullivan v Sullivan Radio & T. V.*, *supra*, p 611;

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Astor v Williams, 1 Misc.2d 1026, affd 272 App Div 1052; *Albro Metal Prods. Corp. v Alper*, 281 App Div 68.) Similarly, it appears to me, the use of one's own picture can be limited if it is contrived to convey the appearance of someone else — someone much better known. Barbara Reynolds was an unknown secretary. Her appearance at the "wedding" of the Diors would not have made it "legendary". Provide her, however, with the appropriate makeup, hairdo, accessories and expression and behold — she is the very image of one of the most instantly recognizable and most respected women in the world — a legend in her own time. Norman Mailer, writing in the December, 1983 issue of *Esquire* magazine on "Fifty Who Made the Difference", so characterized plaintiff: "Jackie Kennedy Onassis is not merely a celebrity, but a legend. Not a legend, but a myth. No, more than a myth. She is now an historic archetype, virtually a demiurge." (P 186.) It is the apparent presence of the Jacqueline Kennedy Onassis figure which makes the event "legendary", and endows it with the qualities of charisma, sophistication, elegance, trend-setting and uniqueness which the advertising campaign seeks to convey. The juxtaposition of the counterfeit figure just behind the real-life figures of a veteran actress, a television personality, and a well-known model lends to the whole ensemble an air of verisimilitude and accentuates the grievance, for it imparts an aura of authenticity to the trumped-up tableau.

Some of the contentions raised by the defendants are palpably feeble, for example, that there is a recognized exception for artistic as distinguished from commercial endeavors, and that defendant Barbara Reynolds is somehow going to be impeded in her artistic career. While some imitators may employ artistry in the use of voice, gesture and facial expression, a mere similarity of features is no more artistry than the mimicry of the Monarch butterfly by its lookalike, the Viceroy butterfly. To paint a portrait of Jacqueline Kennedy Onassis is to create a work of art; to look like Jacqueline Kennedy Onassis is not. Miss Reynolds may capitalize on the striking resemblance of facial features at parties, television appearances, and dramatic works, but not in commercial advertisements. Similarly,

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defendant Ron Smith Celebrity Look-Alikes can market its clients for fun and profit in various areas, but may not capitalize on natural resemblance to a well-known person for trade or advertisement. No one has an inherent or constitutional right to pass himself off for what he is not.

The fact that even as between people who resemble one another there are variances and points of dissimilarity is of no moment. It is the over-all impression being made that counts. The statute necessarily contemplates that a depiction may not be precise, for the words "portrait or picture" comprehend a sketch, a cartoon, or a caricature which selectively omits some features and accentuates others. There are then points of resemblance and points of difference and distortion, but if done well there is instant recognition. What difference if a sketch is used instead of a lookalike model in connection with a commercial promotion? The end result is the same — trading on the name or features of another and the unwarranted commercial exploitation of a person who has not consented to be commercially exploited.

Little more heed need be given to the contention that somehow this advertisement is privileged as a protected form of free speech. It deals with the sale of goods, and not with the promulgation of ideas. "The factual reporting of newsworthy persons and events is in the public interest and is protected. The fictitious is not." (*Spahn v Julian Messner, Inc.*, 18 N.Y.2d 324, 328.)

Similarly, the notion that having Jacqueline Kennedy Onassis attend the wedding of the Diors is "no more than a touch of humor" wholly incidental to the commercial message and therefore permissible. (Reference is also made in this regard to the presence of a model resembling the late General de Gaulle as part of the "romp", but only part of his nose and chin are visible at the cropped left edge of the picture, and he is not readily recognizable.) The fact that plaintiff is a public figure permits comment or photography concerning her, or even cartoons or caricatures. She may be shown as a character in re-enactments of the recent past, favorably or unsympathetically. But, as a public figure she has not forfeited her right of privacy and does not become a subject for commercial exploitation. (*Reilly v Rapperswill Corp.*, 50 A.D.2d 342.)

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Whether she is an appropriate figure for social satire is an open question. (See *University of Notre Dame v Twentieth Century-Fox Film Corp.*, 22 A.D.2d 452, *supra*.) As this court had occasion to say in *Salomone v Macmillan Pub. Co.* (97 Misc.2d 346, 349-350, revd on other grounds 77 A.D.2d 501), "Humor is a protected form of free speech, just as much to be given full scope, under appropriate circumstances, as the political speech, the journalistic expose, or the religious tract." However, "the mere assertion that a statement was meant to be funny does not automatically absolve the utterer. Humor is intensely subjective. Blank looks or even active loathing may be engendered by a statement or cartoon that evokes howls of laughter from another. What is amusing or funny in the eyes of one person may be cruel and tasteless to someone else. There is always a thin line between laughter and tears. Risibility and sensitivity must go hand in hand." (*Supra*, p 350.) The question of whether a matter is harmless humor or cruel and vicious derision may be for the trier of facts, but where, as here, the humor allegedly employed is solely in connection with promoting the sale of goods (some of our best commercials are tongue in cheek), no issue of fact is presented as to a privileged use.

It is somewhat ironic that the principal defendant, Christian Dior — New York, Inc., should be advocating the permissibility of passing off the counterfeit as a legitimate marketing device, when it (or its predecessor) has itself vigorously policed the market to prevent persons by fraud and deception obtaining the fruits of another's labors and using them commercially. (*Dior v Milton*, 9 Misc.2d 425, affd 2 A.D.2d 878.) There plaintiff complained bitterly (and effectively) that there had been a misappropriation of its name and reputation. Now the shoe is on the other foot.

In essence, this court finds on the undisputed facts, that plaintiff's identity was impermissibly misappropriated for the purposes of trade and advertising, and that it makes no difference if the picture used to establish that identity was genuine or counterfeit. The violation being clear, plaintiff is entitled to preliminary injunctive relief, but not in as broad a form as she seeks. The advertisement having been published, it is not

plaintiff is entitled to preliminary injunctive relief, but not in as broad a form as she seeks. The advertisement having been published, it is not subject to recall. (*Albert v New York Tel. Co.*, 28 Misc.2d 296, affd 11 A.D.2d 656.) [122 Misc.2d 616]

Plaintiff is to be reassured against any further publication, but she is not entitled to obtain possession of all the prints, plates, and negatives used in preparing the ad. Miss Reynolds may be enjoined only from appearing in commercial advertisements masquerading as the plaintiff. If plaintiff claims she has been damaged by the publication of the advertisement, she can pursue those claims when the matter is set down for trial.

In view of the fact that the court has found ample basis for the granting of injunctive relief under the right of privacy laws, it is unnecessary at this time to reach the question proffered as to violation of her rights of publicity. While there would appear to be serious doubts as to whether such a right is recognized by the State courts in the common law of New York (see *Brinkley v Casablancas*, 80 A.D.2d 428, 435; *Wojtowicz v Delacorte Press*, 43 N.Y.2d 858, 860; *Frosch v Grosset & Dunlap*, 75 A.D.2d 768), the question of the scope and applicability of such a claimed right to the facts presented here need not be here resolved. Plaintiff's statutory right to privacy has been trampled upon, and that is all that need be shown. The motion is granted; the cross motion is denied.

218 F.Supp.3d 1206
United States District Court,
W.D. Washington,
at Tacoma.

Teferi Abebe BIKILA, et al., Plaintiffs,
v.
VIBRAM USA INC., et al., Defendants.

CASE NO. C15-5082-RBL

Signed October 31, 2016

Synopsis

Background: Heirs of Ethiopian Olympic marathoner brought action against running shoe company, alleging company trademarked name of marathoner without requesting or receiving heirs' permission, in violation of Lanham Act, Washington's Personality Rights Act (WPRA), and Washington Consumer Protection Act (WCPA), and seeking injunction preventing company from using name and restitution under law of unjust enrichment. Company moved for summary judgment.

Holdings: The District Court, Ronald B. Leighton, J., held that:

^[1] company did not deliberately infringe rights of heirs, and thus unclean hands doctrine did not preclude company from asserting laches as defense to Lanham Act claim;

^[2] five-year delay in filing Lanham Act claim by heirs was unreasonable and prejudiced company, and thus claim was barred by laches; and

^[3] cause of action for unjust enrichment under Washington law and violation of WPRA and WCPA accrued, and limitations periods began to run, when heirs knew that company was marketing shoe.

Motion granted.

Attorneys and Law Firms

*1208 Troy G. Sexton, Alexander C. Trauman, Motschenbacher & Blattner, Portland, OR, for Plaintiff.

Jeffrey Charles Johnson, Joanne M. Hepburn, Kendra Nickel-Nguy, K & L Gates LLP, Seattle, WA, for Defendants.

ORDER

Ronald B. Leighton, United States District Judge

THIS MATTER is before the Court on defendants' motion for summary judgment [Dkt. # 49]. This case involves a running shoe Vibram named after Abebe Bikila, the late Ethiopian Olympic marathoner. Vibram trademarked the name without requesting or receiving his heirs' permission. Bikila's heirs claim Vibram violated the Lanham Act (15 U.S.C. § 1125(a)), Washington's Personality Rights Act (RCW 63.60 *et seq.*), and the Washington Consumer Protection Act (RCW 19.86.020). They also assert a state law unjust enrichment claim.

Vibram seeks summary judgment on the Lanham Act claim, arguing that it is barred by laches. It seeks summary judgment on the state law claims, arguing they are time-barred. It also argues the plaintiffs lack standing to assert Lanham Act, Washington Consumer Protection Act, or unjust enrichment claims¹.

Bikila's widow and his three surviving children are his sole heirs and the plaintiffs in this case. Yewebdar W. Giorgese, his widow, is an Ethiopian citizen residing in Ethiopia. Yetnayet Abebe Bikila and Tsige Abebe, his son and daughter, also reside in Ethiopia and are German and American citizens, respectively. Teferi Abebe Bikila, another son, is an American citizen residing in Oregon. Vibram disputes that Ethiopian law permits heirs to inherit publicity rights, but it does not dispute that the named plaintiffs—the Bikilas—are Abebe Bikila's heirs to the extent the law permits.

I. BACKGROUND

A. Abebe Bikila

Running barefoot after sponsors could not find him shoes that fit, Ethiopian runner Abebe Bikila achieved instant fame when he won marathon gold at the 1960 Rome Olympic Games. Bikila cemented his legendary status when he won the 1964 Olympic marathon in Tokyo (this time with shoes) and seemed poised to achieve even greater success, though a last-minute injury forced him to sit out the 1968 games. Tragedy struck in 1969 when a car crash left him paralyzed. Bikila died from complications four years later, leaving behind his wife and four children.

Although tragedy cut short his career, Bikila is remembered as one of the great runners of the twentieth century and probably the most famous barefoot runner. A stadium in Addis Ababa is named for him. A 2009 Ethiopian biopic, *Atletu (The Athlete)*, traces Bikila's running career—¹²⁰⁹ though the filmmakers did not seek the family's permission, and the family unsuccessfully sought to block its release. Outside Ethiopia, Bikila has been honored as the namesake of numerous marathons, including one in Washington, D.C., and the New York Road Runners have presented the Abebe Bikila Award annually to long-distance runners since 1978. Comedian Robin Williams referenced Bikila in a 2010 stand-up routine, and family members twice met Japanese Prime Minister Shinzo Abe in connection with the 50th anniversary of the Tokyo Olympics.

The Bikilas have attempted to safeguard and profit from Bikila's legacy. From 1980 to 2001, they operated a sporting goods store bearing his name in Ethiopia, and they have helped sponsor Ethiopia's Abebe Bikila International Marathon since 1985. With the family's permission, the Ethiopian government has also issued stamps and lottery tickets bearing Bikila's image. Tsige Abebe wrote a book about her father and claims to have sold copies in Atlanta during the 1996 Olympics (though she has not provided documentary evidence to support this claim). Members of the family started monitoring the Internet for unauthorized uses of Bikila's likeness in 2003, and by 2009 conducted biweekly Web searches for his name. In 2007, Japanese beverage company Suntory paid the family €200,000 to use Bikila's name and image in a television advertisement. The Bikilas argue they entertained (and denied) 2007 and 2008 requests from Nike, Visa, and Coca-Cola, among others, for permission to use Bikila's likeness in TV advertising, though they have lost access to the email accounts they used for these negotiations. Since 2010, they have maintained a website devoted to telling Bikila's story.

B. Vibram FiveFingers Bikila

Defendant Vibram (through its subsidiary, defendant Vibram FiveFingers) introduced the FiveFingers shoe line in 2006. FiveFingers shoes are unique in that they have individual toe compartments, much like gloves for the feet. They are designed to mimic the experience of being barefoot. The shoes grew popular with “barefoot running” adherents who sought minimalist shoes, and in 2009 VFF sought to capitalize on this popularity by designing a model specifically for runners.

Tony Post, then VFF’s CEO, knew about Abebe Bikila’s barefoot running legacy and identified “Bikila” as a potential name for the new shoe. He contacted outside counsel, Curt Krechevsky of Cantor Colburn LLP, to explore whether VFF could trademark the Bikila name for use in connection with footwear, clothing, and headwear, among other uses. Krechevsky conducted a trademark search and concluded the “Bikila” mark was available with reasonable risk, “subject to any potential claims based on publicity rights from heirs, assignees, or licensees of the deceased individual Abebe Bikila.” Hcpbrn Decl., Dkt. # 52, Ex. D. There is no evidence that Post or anyone else at VFF investigated further.

VFF applied to register the Bikila trademark with the U.S. Patent and Trademark Office (PTO) on May 19, 2009. The PTO published the trademark for opposition in its Official Gazette on September 29, 2009. VFF released the Bikila running shoes in April 2010. Three months later (July 20), after receiving no opposition, the PTO registered the Bikila trademark.

The Bikilas actually knew about the VFF Bikila no later than January 10, 2011, when Yetnayet Bikila emailed Teferi Bikila requesting him to seek advice on the family’s rights from a U.S. lawyer. Teferi and Tsige Bikila contacted three attorneys to discuss suing Vibram but did not retain any of them. From 2012 to 2014, the Bikilas continued to discuss legal action ***1210** against Vibram but did not contact other attorneys, and they did not attempt to inform Vibram of their objections to its use of the Bikila name.

While the Bikilas considered their options, Vibram continued marketing the VFF Bikila. It sponsored a showing of the *Atletu* documentary at the St. Louis Film Festival in 2011, and it posted at least one reference to Abebe Bikila on Twitter. VFF also introduced several other shoe models using the Bikila name: the Bikila LS in spring 2011, the Bikila EVO in spring 2014, and the Bikila EVO WP in fall 2014. Vibram and its parent company, Italy’s Vibram S.p.A., registered the “Bikila” trademark in other countries, and numerous personnel left VFF during this time—including CEO Tony Post.

C. 2015 Lawsuit

The Bikilas sued in 2015. They seek damages, an injunction preventing Vibram from using the Bikila name, and attorneys’ fees. They claim Vibram violated the Lanham Act, 15 U.S.C. § 1125(a), by creating a false designation of origin likely to confuse and deceive the consuming public. The Bikilas also claim Vibram infringed on Abebe Bikila’s personality rights, which they inherited, in violation of the Washington Personality Rights Act (WPRA), RCW 63.60 *et seq.* They claim Vibram’s actions are unfair or deceptive acts that violate the Washington Consumer Protection Act (WCPA), RCW § 19.86.020. Finally, they seek restitution under the common law of unjust enrichment.

Vibram moves for summary judgment on each claim. It argues the plaintiffs unreasonably delayed in filing their Lanham Act claim, subjecting Vibram to evidentiary and economic prejudice, and accordingly that their federal claim is barred by laches. The plaintiffs argue that Vibram’s unclean hands and willful infringement preclude a laches defense. Vibram claims it relied in good faith on the advice of counsel. The Bikilas also argue that a jury could find their delay in filing reasonable under the circumstances, and that their delay in filing has not prejudiced Vibram.

Vibram argues that the Bikilas’ state law claims are time-barred and that there is no basis to apply a “continuing wrong” theory to circumvent this defense. The Bikilas argue that a jury should evaluate whether they should have discovered the basis for a state cause of action before the applicable limitations periods expired.

Vibram also argues that the Bikilas do not have standing to assert Lanham Act, WCPA, or unjust enrichment claims. The plaintiffs seek summary judgment on their standing to assert Lanham Act claims, or under Ethiopian law, claiming they have a commercial interest in Abebe Bikila’s name and likeness.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is proper “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). In determining whether an issue of fact exists, the Court views all evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996).

A genuine issue of material fact exists where there is sufficient evidence for a reasonable fact-finder to find for the nonmoving party. *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505. The inquiry is “whether the evidence presents a sufficient disagreement *1211 to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52, 106 S.Ct. 2505. The moving party bears the initial burden of showing that there is no evidence which supports an element essential to the nonmovant’s claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant has met this burden, the nonmoving party then must show that there is a genuine issue for trial. *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505. If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323–24, 106 S.Ct. 2548.

B. Laches as a Defense to a Lanham Act Claim.

Vibram claims that the Bikilas’ Lanham Act claim is barred as a matter of law by their unreasonable delay in bringing it, causing it prejudice. The Bikilas claim that laches cannot apply because Vibram’s infringement was willful.

[1] [2] [3] Laches “embodies the principle that a plaintiff cannot sit on the knowledge that another company is using its trademark, and then later come forward and seek to enforce its rights.” It is available as an equitable defense to trademark claims. *Internet Specialties W., Inc. v. Milon-DiGiorgio Enterprises, Inc.*, 559 F.3d 985, 989–90 (9th Cir. 2009). To establish a laches defense, a defendant must prove both (1) unreasonable delay and (2) resulting prejudice. See *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 951 (9th Cir. 2001). However, a party with unclean hands may not assert laches. *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 841 (9th Cir. 2002). A plaintiff may demonstrate the defendant has unclean hands by showing he or she willfully infringed on the plaintiff’s mark. See *Danjaq*, 263 F.3d at 956–57.

1. Deliberate Infringement

[4] The Bikilas argue that Vibram willfully infringed on their rights and thus has unclean hands, precluding it from asserting the equitable defense of laches. Specifically, they argue that Vibram did not rely in good faith on the advice of counsel: Vibram’s attorneys specifically told it that going forward would be subject to “any potential claims based on publicity rights from heirs, assignees, or licensees of the deceased individual Adebé Bikila.” They point to similar internal discussions which, they claim, find support a jury’s finding that Vibram knew there were other potential rights.

[5] The deliberate infringement bar to laches derives from the unclean hands doctrine, which “closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” *Jarrow*, 304 F.3d at 841 (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945)). In the copyright context, the Ninth Circuit has adopted a willful infringement standard to determine unclean hands—creating a laches exception when conduct occurs “with knowledge that the defendant’s conduct constitutes copyright infringement.” *Danjaq*, 263 F.3d at 957 (quoting *Columbia Pictures Television v. Krypton Broad.*, 106 F.3d 284, 293 (9th Cir. 1997)).

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Similar principles apply to trademark, as other districts in this circuit have concluded. *See, e.g., FLIR Sys., Inc. v. Sierra Media, Inc.*, 965 F.Supp.2d 1184, 1210 (D. Or. 2013); *accord Fitbug Ltd. v. Fitbit, Inc.*, 78 F.Supp.3d 1180, 1195 (N.D. Cal. 2015). Thus, to assert an unclean hands defense on the basis of willful infringement, the Bikila Family must show Vibram knew its *1212 conduct constituted trademark infringement.

A California District court inferred willfulness from evidence showing a defendant acted with “an aura of indifference” to a plaintiff’s trademark rights, or with willful blindness to facts she had cause to suspect would put her on notice that she was infringing another’s trademarks. *Philip Morris USA Inc. v. Liu*, 489 F.Supp.2d 1119, 1123 (C.D. Cal. 2007); *see also Louis Vuitton S.A. v. Lee*, 875 F.2d 584, 590 (7th Cir. 1989) (“[I]t is enough...that the defendant failed to inquire...because he was afraid of what the inquiry would yield.”).

The Bikilas claim that Vibram and its attorneys knew that they had claims and that it acted in conscience disregard of them. Vibram argues that it relied in good faith on the advice of counsel, as a matter of law, and that reliance is a defense to the claim it acted willfully.

This is a close question.

Vibram obtained a certificate of registration from the PTO for the Bikila trademark. The Bikilas did not object. In doing so, it sought, obtained, and relied on the informed advice of its attorney, Curt Krechevsky. It is true that Krechevsky did not advise it that there were not and could not be impediments to their efforts to obtain trademark protection in the Bikila name. But competent attorneys rarely give those sorts of blanket blessings—instead, Krechevsky, armed with Vibram’s full disclosure of facts, correctly advised that there were no current competing marks, but there could be a publicity rights claim. It is undisputed that Krechevsky did a “full search” to determine whether the term Bikila was available to trademark.

Vibram correctly points out that while this may be factual support for their *publicity rights* claim, it does not support their Lanham Act claim, which is based instead on “confusion to the consuming public.” It claims that to establish the willfulness required to defeat Vibram’s laches defense, the Bikilas must show “fraudulent intent with respect to its registration and use of the Bikila trademark. *Citing Jarrow*, 304 F.3d at 841–42. It argues that laches applies unless the Bikilas can demonstrate that it had knowledge that its conduct *constituted trademark infringement*—not that it might violate the Bikilas publicity rights.

Krechevsky’s advice was not erroneous, and Vibram did not ignore it. *See State Indus. Inc. v. Mor-Flo Indus. Inc.*, 948 F.2d 1573 (Fed. Cir. 1991). Vibram relied on its attorneys’ advice, in good faith. There is no evidence from which a jury could find that Vibram acted in anything short of good faith.

Vibram’s assertion of laches as a defense to the Bikilas’ Lanham Act claim is not barred by its own conduct.

2. Delay

¹⁶¹Two factors determine whether the plaintiffs’ delay in bringing suit supports a laches defense. First is “the length of delay, which is measured from the time the plaintiff knew or should have known about its potential cause of action.” *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 838 (9th Cir. 2002). Second, the Court must “decide whether the plaintiff’s delay was unreasonable.” *Id.*

a. Length

¹⁷¹¹⁶¹The Bikilas knew or should have known about their potential Lanham Act claim for more than five years before they filed suit. The limitations period begins to run from the time a plaintiff knew or should have known about his or her claim. *Id.* at 837. A court may consider actual or constructive knowledge in making this determination. *Grupo Gigante Sa De CV v. Dallo & Co., Inc.*, 391 F.3d 1088, 1102 (9th Cir. 2004) (emphasis omitted).

***1213** Registration of a trademark on the principal register constitutes constructive notice of a registrant's claim. 15 U.S.C. § 1072. The Bikilas had constructive notice of Vibram's claim on July 20, 2010, when the PTO registered the Bikila mark on the principal register.

The Bikilas had actual knowledge of the potential infringement of their rights no later than January 10, 2011 when one of them sent an email to another, including a link to Vibram's "Bikila" website¹ and discussing exploring the legal options triggered by it.

b. Reasonableness

¹⁹¹ ¹¹⁰ To determine whether a delay is unreasonable, court looks to the limitations period for an analogous action at law. See *Jarrow*, 304 F.3d at 838. Where a plaintiff files suit outside an analogous statutory limitations period, there is a rebuttable presumption that both elements of a laches defense are satisfied. *Id.* at 837. The analogous limitations period in Washington is three years, for trade name infringement. See RCW 4.16.080(2).

The Bikilas did not file their claim within this period. They ask the Court to apply the *E-Systems* six part balancing test to evaluate the reasonableness of its delay in filing suit. See *E-Systems, Inc. v. Monitek, Inc.*, 720 F.2d 604 (9th Cir. 1983): (1) the strength and value of the trademark rights asserted; (2) the plaintiff's diligence in enforcing the mark; (3) harm to the senior user if relief is denied; (4) good faith ignorance by the junior user; (5) competition between the senior and junior users; and (6) the extent of harm suffered by the junior user because of the senior user's delay. They claim the applicable factors support a jury question as to the reasonableness of their delay, particularly as to their diligence and Vibram's good faith.

Vibram disagrees that this specific test applies here, and argues that it is not materially different than the traditional evaluation of unreasonable delay and prejudice. See *Ormsby v. Barrett*, Cause No. 07-cv-5305RBL (2008 WL 53119) (W.D. Wash. 2008). It also argues that even if the factors are used, the Bikilas' mark (if they have one) is weak because the Bikilas have never used it in commerce; they were not diligent as evidenced by the four year delay; and have no evidence of harm. It reiterates that it did not act willfully and it is prejudiced by the Bikilas delay.

Vibram's good faith is addressed above. The Bikilas' diligence is really a question of when they knew there was an infringement. The Bikilas claim they have been diligent, given limited resources, and they claim that they later discovered additional information about the scope of Vibram's use. But this does not change the undeniable fact that they were aware of the use more than four years prior to filing suit. Under either test, their delay in filing their Lanham Act claim was unreasonable as a matter of law.

3. Prejudice to Vibram

¹¹¹ Vibram argues that it was prejudiced by the Bikilas' unreasonable delay, in two relevant ways. First, it claims it has suffered evidentiary prejudice as the result of the delay. The Bikilas concede that they have lost or destroyed evidence (primarily email accounts and evidence related to film licensing) that would be relevant to their claim and Vibram's defense of it. Vibram argues without serious opposition that key witnesses on its own side are no longer ***1214** employed or no longer have detailed recollections.

Second, and more measurably, Vibram claims that it has suffered economic or expectations-based prejudice from the delay in the form of its continued financial investment in the Bikila shoe, which it has used since 2010.

The Bikilas argue that Vibram's claims of evidentiary prejudice present jury questions, claiming that they have good faith excuses for the lost evidence, and that some of the evidence could be obtained through discovery to third parties. They claim Vibram's lack of access to its own witnesses and their recollections are largely due to their witnesses lack of preparation.

They argue that Vibram's claim of economic prejudice fails because Post admitted that they did not "build a brand" around

the Bikila shoe and that its claim that it incurred marketing expenses is insufficient. Vibram points out that the claim it did not suffer expectations-based prejudice based on Post's testimony is flatly inconsistent with their simultaneous claim that "Vibram made tens of millions of dollars selling shoes at the expense of their deceased patriarch." Vibram invested in its trademark, and exploited it. And as they point out, the presumption is that they were prejudiced because the claim was filed outside the limitations period.

Vibram has established the requisite prejudice as a matter of law.

C. The Bikilas' State Law Claims are Time-Barred.

¹¹²Vibram argues that the Bikilas' state law Personality Rights, CPA, and unjust enrichment are barred by the applicable limitations periods. See RCW 4.16.080 (three years for Personality Rights and unjust enrichment claims) and RCW 19.86.120 (four years for CPA claim). These arguments are based on the same accrual date as the Lanham Act/laches claim, discussed above.

The Bikilas claim the discovery rule applies, and that they are entitled to have a jury determine as a factual matter whether they "knew or should have known" the essential elements of their (state law) causes of action. *Citing Green v. A.P.C.*, 136 Wash.2d 87, 960 P.2d 912 (1998).

But they provide no evidence from which a jury could determine that they did not know that Vibram was seeking to exploit the Bikila name by January 2011, or that they did not know of the essential elements of any of their state law claims until some later date. While the accrual date may be a factual question on disputed facts, it is not a jury question where there is no factual dispute. There is no material question of fact about when the Bikilas knew that Vibram was marketing the Bikila shoe. Each of their state law claims is untimely as a matter of law.

D. Standing

Because laches bars the Bikilas' Lanham Act claim, and the applicable limitations periods bar their state law claims, it need not and therefore does not reach the question of whether they have standing to assert them.

III. CONCLUSION

Vibram did not deliberately infringe on the Bikilas' trademark and may thus invoke laches. The Bikilas unreasonably delayed in seeking to enforce their rights, and this unreasonable delay prejudiced Vibram. Vibram's motion for summary judgment the Bikilas Lanham Act claims is GRANTED and those claims are DISMISSED with prejudice.

The Bikilas' state law claims are barred by the applicable limitations periods. Vibram's motion for summary judgment on *1215 those claims is GRANTED, and they are DISMISSED with prejudice.

IT IS SO ORDERED.

All Citations

218 F.Supp.3d 1206

Footnotes

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- ¹ Vibram has since filed a second, “substantive” motion for summary judgment [Dkt. # 77]. Given the resolution of this “procedural” Motion, that Motion is **DENIED** as moot.
- ² Vibram points out that the Bikilas initially denied this earlier knowledge, and claimed instead they did not have actual notice of Vibram’s mark until October 2014. The email demonstrating prior knowledge surfaced in discovery.

COPY

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: JOE'S JEANS INC., a Delaware
(AVISO AL DEMANDADO): corporation, and DOES 1-10,
inclusive,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 04 2010

John A. Clarke, Executive Officer/Clerk

By Jennifer Denham, Deputy

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRANDO ENTERPRISES, L.P., a Delaware limited
partnership

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de extensión de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

LOS ANGELES COUNTY SUPERIOR COURT

West District

1725 Main St.

Santa Monica, CA 90401

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jeffrey I. Abrams (SBN 162735)

(310) 478-4100

Wolf, Rifkin, Shiro, Schulman & Raskin, LLP

11400 W. Olympic Blvd., Suite 900

Los Angeles, CA 90064

DATE:

(Fecha)

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

JEFFREY I. ABRAMS (State Bar No. 162735)
 CHARLES J. HARDER (State Bar No. 184593)
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Attorneys for Plaintiff
 Brando Enterprises, L.P.

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 Los Angeles Superior Court

MAY 04 2010

John A. Clarke, Executive Officer/Clerk

By Jennifer Denham, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – WEST DISTRICT

BRANDO ENTERPRISES, L.P., a
 Delaware limited partnership;

Plaintiff,

v.

JOE'S JEANS INC., a Delaware
 corporation, and DOES 1-20, inclusive,
 Defendants.

Case No.

SC107840

COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF FOR:

1. VIOLATION OF CALIFORNIA
 CIVIL CODE § 3344.1; and
2. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

CASE MANAGEMENT CONFERENCE

AUG 23 2010

Date

LINDA K. LEFKOWITZ

8:30

Plaintiff Brando Enterprises, L.P. hereby alleges as follows:

SUMMARY OF THE ACTION

1. Plaintiff Brando Enterprises, L.P. ("Brando Enterprises" or "Plaintiff") owns all of the intellectual property rights, including all publicity rights, of and associated with the legendary late actor Marlon Brando, whose name and identity have tremendous commercial value. Among other things, Plaintiff recently has entered into licensing agreements with such leading companies as MasterCard, Dolce & Gabbana and Triumph Motorcycle, as well as a multi-year, multi-million dollar licensing agreement in connection with a hotel and resort on the French Polynesian atoll of Tetiaroa called "The Brando."

1 2. Defendant Joe's Jeans Inc. has used the name and mark "The Brando" in
2 marketing and promotional materials for Defendant's line of high-end apparel products, namely
3 a line of leather jackets called "The Brando." (Copies of representative samples of these
4 marketing and promotional materials are attached hereto as Exhibit "A.").

5 3. Defendant Joe's Jeans Inc., a publicly traded company that describes itself as one
6 of the most-recognized premium denim brands in the world, and which each year licenses its
7 own intellectual property to third parties for millions of dollars, used the Marlon Brando name,
8 identity and persona for commercial purposes without seeking or obtaining the approval of
9 Brando Enterprises, and without paying any compensation to Brando Enterprises for the use of
10 such rights, let alone compensation commensurate with the substantial commercial value of
11 such rights. Brando Enterprises therefore seeks monetary damages, statutory damages, punitive
12 damages and a preliminary and permanent injunction to stop all future uses of the Marlon
13 Brando publicity rights.

14 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 **The Parties**

16 4. Plaintiff Brando Enterprises is a Delaware limited partnership organized and
17 existing under the laws of the State of Delaware, with its principal place of business located in
18 the County of Los Angeles, State of California.

19 5. Plaintiff is informed and believes and based thereon alleges that defendant Joe's
20 Jeans Inc. ("Joe's Jeans" or "Defendant") is, and at all times relevant hereto was, a corporation
21 organized and existing under the laws of the State of Delaware, and doing business in the
22 County of Los Angeles, State of California.

23 6. Plaintiff is informed and believes and based thereon alleges that the fictitiously-
24 named Defendants sued herein as Does 1 through 20, and each of them, are in some manner
25 responsible or legally liable for the actions, events, transactions and circumstances alleged
26 herein. The true names and capacities of such fictitiously-named Defendants, whether
27 individual, corporate, associate or otherwise, are presently unknown to Plaintiff, and Plaintiff
28 will seek leave of Court to amend this Complaint to assert the true names and capacities of such

1 fictitiously-named Defendants when the same have been ascertained. For convenience, each
2 reference to a named Defendant herein shall also refer to Does 1 through 20. All defendants,
3 including both the named defendants and those referred to herein as Does 1 through 20, are
4 sometimes collectively referred to herein as "Defendants."

5 7. Plaintiff is informed and believes and based thereon allege that Defendants, and
6 each of them, were and are the agents, employees, partners, joint-venturers, co-conspirators,
7 owners, principals and employers of the remaining Defendants, and each of them are, and at all
8 times herein mentioned were, acting within the course and scope of that agency, partnership,
9 employment, conspiracy, ownership or joint venture. Plaintiff further is informed and believes
10 and based thereon alleges that the acts and conduct herein alleged of each of the Defendants
11 were known to, authorized by and/or ratified by the other Defendants, and each of them.

12 **Marlon Brando Intellectual Property Rights**

13 8. On July 1, 2004, Marlon Brando died in Los Angeles, California.

14 9. Upon his death, all of Mr. Brando's intellectual property rights, including his rights
15 of publicity (collectively, the "Brando IP Assets"), were first transferred to Mr. Brando's estate
16 and then to a trust, and were subsequently transferred to plaintiff Brando Enterprises, which
17 owns and controls the Brando IP Assets.

18 10. The name, identity and persona of Marlon Brando are instantly recognized by the
19 public and have substantial commercial value.

20 11. Plaintiff exercises careful consideration before permitting the commercial use of
21 the Marlon Brando publicity rights to ensure that they are associated with high quality products,
22 entertainment, services and/or companies, and to ensure that the value of the name, mark and
23 publicity rights are not diminished, either by association with products, entertainment, services
24 and/or companies that Plaintiff does not desire to support, and/or by over-saturation of the
25 name, mark and publicity rights. Plaintiff will not voluntarily allow the name, mark or publicity
26 rights of Marlon Brando to be used for commercial purposes unless Plaintiff carefully selects
27 the product or service, and unless the compensation paid for such use is both commensurate
28 with the value of the exploitation of the name, mark and publicity rights, and sufficient to

compensate Plaintiff for any potential diminution in value resulting from the commercial use of the name, mark and publicity rights.

12. The name, image, identity and persona of Marlon Brando are highly valuable. Marlon Brando is regarded as one of the greatest actors of all time by film critics, motion picture trade associations, major media organizations, and the public. Marlon Brando won numerous acting awards throughout his long and successful acting career including, among many others, two Academy Awards for Best Actor in a Leading Role in 1955 for his portrayal of "Terry Malloy" in *On the Waterfront*, and in 1973 for his portrayal of "Don Vito Corleone" in *The Godfather*. The following is a list of films starring Marlon Brando during his 50 year career:

<i>The Score</i> (2001)	<i>The Countess From Hong Kong</i> (1967)
<i>Free Money</i> (1998)	<i>The Appaloosa</i> (1966)
<i>The Brave</i> (1997)	<i>The Chase</i> (1966)
<i>The Island of Dr. Moreau</i> (1996)	<i>Morituri</i> (1965)
<i>Don Juan DeMarco</i> (1994)	<i>Bedtime Story</i> (1964)
<i>Christopher Columbus:</i>	<i>The Ugly American</i> (1963)
<i>The Discovery</i> (1992)	<i>Mutiny on the Bounty</i> (1962)
<i>The Freshman</i> (1990)	<i>One-Eyed Jacks</i> (1961)
<i>A Dry White Season</i> (1989)	<i>The Fugitive Kind</i> (1960)
<i>The Formula</i> (1980)	<i>The Young Lions</i> (1958)
<i>Apocalypse Now</i> (1979)	<i>Sayonara</i> (1957)
<i>Superman</i> (1978)	<i>The Teahouse of the August Moon</i>
<i>The Missouri Breaks</i> (1976)	(1956)
<i>Last Tango in Paris</i> (1972)	<i>Guys and Dolls</i> (1955)
<i>The Godfather</i> (1972)	<i>Desirée</i> (1954)
<i>The Nightcomers</i> (1971)	<i>On the Waterfront</i> (1954)
<i>Burn!</i> (1969)	<i>The Wild One</i> (1953)
<i>The Night of the Following Day</i> (1968)	<i>Julius Caesar</i> (1953)
<i>Good Grief It's Candy</i> (1968)	<i>Viva Zapata!</i> (1952)
<i>Reflections in a Golden Eye</i> (1967)	<i>A Streetcar Named Desire</i> (1951)
<i>Woman Times Seven</i> (1967)	<i>The Men</i> (1950)

13. Among many other honors and awards, Marlon Brando received a Star on the "Hollywood Walk of Fame" located at 1777 Vine Street. Mr. Brando also was awarded the Golden Globe awards for World Film Favorite, Male, for 1955, 1972 and 1973, respectively.

14. The American Film Institute ("AFI") periodically surveys 1,800 leaders throughout the film industry to determine their collective opinion regarding the greatest acting legends of all time, and also the greatest motion pictures of all time. According to its latest surveys, Marlon

Brando ranks fourth (4th) on the AFI list of the All-Time Greatest Male Acting Legends. Moreover, four of the films in which Mr. Brando starred rank within AFI's Top 100 of all-time greatest motion pictures: *The Godfather* (#2), *On the Waterfront* (#19), *Apocalypse Now* (#30) and *A Streetcar Named Desire* (No. 47). Quotes from three (3) of Mr. Brando's films are ranked within AFI's Top 100 Movie Quotes of all time, including:

<u>Film</u>	<u>Rank</u>	<u>Quote</u>
<i>The Godfather</i>	2	"I'm going to make him an offer he can't refuse."
<i>On The Waterfront</i>	3	"You don't understand! I coulda had class. I coulda been a contender. I could've been somebody, instead of a bum, which is what I am."
<i>Streetcar Named Desire</i>	45	"Stella! Hey, Stella!"

15. On June 14, 1999, *Time* magazine listed Marlon Brando as one of the "Time 100 Persons of the Century."

16. Marlon Brando and the successors of the Brando IP Assets, including Brando Enterprises, have, on limited occasions, agreed to license certain of Mr. Brando's publicity rights for commercial purposes after careful evaluation of the product or service that would be advertised, and only when the monetary compensation and other benefits were sufficient for the rights being exploited, and only when the use fit within an overall publicity strategy for the commercialization of Marlon Brando's name, image, identity, persona and legacy.

17. Among other commercial uses, Plaintiff recently has entered into licensing agreements with such companies as MasterCard, Dolce & Gabbana and Triumph Motorcycles, and has licensed certain of the Brando IP Assets for use in conjunction with a hotel and resort on the French Polynesian atoll of Tetiaroa called "The Brando," which will result in millions of dollars being paid to Plaintiff once the hotel and resort, which are currently under construction, open for business in 2012.

Defendants' Wrongful Conduct

18. Plaintiff is informed and believes and on that basis alleges that defendant Joe's Jeans is a company publicly traded on NASDAQ which designs, sources and distributes high-

1 end branded apparel products sold through over 1,200 retail outlets in the United States and
2 throughout the world.

3 19. Plaintiff is informed and believes and on that basis alleges that Defendants
4 intentionally and prominently used the name, identity and persona of Marlon Brando, and the
5 mark "THE BRANDO," in advertisements, marketing and promotional materials (collectively,
6 "Advertisements") for high-end leather jackets (the "Infringing Product") offered for sale by
7 Defendants. The Advertisements consistently and repeatedly use the name and mark "The
8 Brando." One of the Advertisements, an e-newsletter, expressly referred to "The Wild One,"
9 one of Mr. Brando's most famous motion pictures, and featured a shoe called the "Stella," the
10 leading female character in "Streetcar Named Desire" and the subject of Mr. Brando's famous
11 quote – "Stella. Hey, Stella!" – recognized by AFI as one of the most famous movie quotes of all
12 time. Defendants used the Brando name, identity and persona for the purpose of attracting
13 attention to the Infringing Product, and enhancing the advertising and marketing thereof, as it is
14 irrefutable that Defendants' use of the name and mark "Brando" was intended to refer to actor
15 Marlon Brando, and not to any other person or thing.

16 20. At no time did Plaintiff ever give permission to Defendants to use the name and
17 mark "Brando" or "The Brando," or the identity or persona of Marlon Brando, in the
18 Advertisements, or in association with the Infringing Product, nor has Plaintiff ever received any
19 compensation for such unauthorized commercial use of the Brando publicity rights.

20 21. Plaintiff is informed and believes and based thereon alleges that Defendants
21 intentionally, negligently and/or knowingly used the Marlon Brando name, identity and persona
22 in the Advertisements for the purpose of advertising and promoting the Infringing Product.

23 22. Plaintiff has developed and cultivated the name, identity and persona of Marlon
24 Brando to create celebrity and universal recognition and Defendants have, without any right, title
25 or authorization, misappropriated Plaintiff's valuable rights and the resulting success and
26 popularity of Marlon Brando by unlawfully using his name, identity and persona for the
27 aforesaid commercial purposes.

28

FIRST CAUSE OF ACTION

(Misappropriation of Right of Publicity – California Civil Code §3344.1

Against All Defendants, including Does 1 through 20)

23. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 22, inclusive, as though fully set forth herein.

24. The conduct of Defendants, as alleged hereinabove, constitutes a violation of Section 3344.1 of the California Civil Code due to the knowing and unauthorized use of Marlon Brando's name, identity and persona for commercial purposes, which have substantial commercial value.

25. As a direct and proximate result of the aforesaid wrongful acts of Defendants, Plaintiff has been damaged in an amount that is not yet fully ascertainable, but which exceeds the jurisdictional minimum of this Court. When Plaintiff has ascertained the full amount of its damages, it will seek leave of Court to amend this Complaint accordingly.

26. As a direct and proximate result of the aforesaid wrongful acts of Defendants, Plaintiff has incurred, and will continue to incur, substantial attorneys' fees and costs. Plaintiff is entitled to an award of its attorneys' fees and costs incurred in connection with this action pursuant to Section 3344.1(a)(1) of the California Civil Code.

27. By reason of the aforesaid wrongful acts of Defendants, in addition to the relief sought hereinabove, Plaintiff is entitled to an accounting of all of Defendants' revenues and profits associated with the unauthorized use of Marlon Brando's name, identity and persona, and to an award of all such sums. By reason of Defendants' wrongful acts as alleged hereinabove, Defendants are involuntary trustees holding all such sums in their possession under a constructive trust for the benefit of Plaintiff with a duty to transfer the same to Plaintiff forthwith.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants, in doing the things herein alleged, acted willfully, maliciously and oppressively, and with full knowledge of the adverse effect of their actions on Plaintiff and with willful and deliberate disregard for the consequences to Plaintiff. By reason thereof, Plaintiff is entitled to recover

1 punitive and exemplary damages from Defendants in an amount to be determined at the time of
2 trial.

3 29. Plaintiff also seeks a preliminary and permanent injunction to prohibit Defendants
4 from any further commercial use of Plaintiff's publicity rights, including Mr. Brando's name,
5 photograph, likeness, image, voice, sound-alike voice, signature, identity and persona.

6 **SECOND CAUSE OF ACTION**

7 (For Unjust Enrichment Against

8 All Defendants, including Does 1 through 20)

9 30. Plaintiffs repeat, re-allege, adopt and incorporate each and every allegation
10 contained in Paragraphs 1 through 22, inclusive, as though fully set forth herein.

11 31. As a result of the wrongful acts of Defendants, and each of them, as hereinabove
12 alleged, Defendants, and each of them, have been unjustly enriched and benefited. Such unjust
13 enrichment and benefits include, but are not limited to: (1) the value of the use of Marlon
14 Brando's name, identity and persona for the commercial purposes made thereof by Defendants;
15 and (2) the amount of Defendants' revenues and profits attributable to the use of Marlon
16 Brando's name, identity and persona as alleged herein.

17 32. Defendants, and each of them, are under an obligation to pay Plaintiff, forthwith,
18 the entire amount by which they have been unjustly enriched, and Plaintiff is entitled to the
19 imposition of a constructive trust, such that Defendants, and each of them, are involuntary
20 trustees holding all such sums in their possession for the benefit of Plaintiff with a duty to
21 transfer the same to Plaintiff forthwith.

22 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally,
23 as follows:

24 **AS TO THE FIRST CAUSE OF ACTION:**

25 1. General and special damages in accordance with proof at trial, together with
26 interest thereon at the legal rate;

27 2. An award of the revenues and profits received by Defendants as a result of the
28 unauthorized use of Marlon Brando's name, identity and persona and/or other publicity rights;

3. Exemplary and punitive damages in an amount according to proof at the time of trial;

4. An award of Plaintiff's attorneys' fees;

5. Preliminary and permanent injunction prohibiting Defendants and their affiliated companies from any further use of the Marlon Brando publicity rights (including without limitation name, image, identity, persona, voice, or signature) without Plaintiff's express written permission in advance.

AS TO THE SECOND CAUSE OF ACTION:

6. General and special damages in an amount according to proof at trial, together with interest thereon at the legal rate;

7. Imposition of a constructive trust on all monies and sums received by Defendants as a result of their misappropriation of the Marlon Brando publicity rights (including without limitation name, image, identity, persona, voice, or signature), with interest thereon at the legal rate;

8. Preliminary and permanent injunction prohibiting Defendants and their affiliated companies from any further use of the Marlon Brando publicity rights (including without limitation name, image, identity, persona, voice, or signature) without Plaintiff's express written permission in advance.

AS TO ALL CAUSES OF ACTION:

9. For all costs of suit incurred herein; and

10. For such other and further relief as the Court may deem to be just and proper.

Dated: May 4, 2010

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: 

JEFFREY I. ABRAMS
Attorneys for Plaintiff
BRANDO ENTERPRISES, L.P.

Plaintiff Brando Enterprises, L.P. hereby demands a trial by jury.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By:

~~JEFFREY L ABRAMS~~

Attorneys for Plaintiff

BRANDO ENTERPRISES, L.P.

EXHIBIT “A”

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all they need is love...

A SUCCESSFUL DEBUT
THE SHOE BY JOE'S HAS ARRIVED!



The Brando

JOE'S'S

The Ballet is a Hit!

Beautifully hand worked ballet flats from JOE'S with embellished studding and rhinestone details on soft leather everyone wants to Swan Lake in these...

Do not pirouette too fast and miss the rest of the collection *Coming Soon!* - The Wedges, essential for Spring and Summer denim pair with our famous Whites...

JOE'S The Sandal, a chic solution for the casual Summer flat wrapping your feet in the softest leather.

The Ballet's at \$120-\$145 per pair
Treat your feet to JOE'S Love...because all they really need is LOVE...The Shoe

Meet The Brando by JOE'S

Be The Wild One in JOE'S modern design to a vintage classic. This supple lambskin motorcycle jacket rides well in both Jet Black and Taupe.

Be Inspired by Brando's brooding style...pair with the Sawyer or Evan wash and The Tee in Maverick

The Shoe from JOE'S

The Bands

5/3/10 3:03 AM



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Joe's Jeans offers a full line of Men's and Women's denim and collection. Joe's continuously introduces new rinses, denim grades, and hand finished jeans each season. Joe's Jeans, a leader in Denim.

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looks

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my account - login - register - free shipping

search JOE'S®

WOMEN
THE JEANS
NEW - THE PANT
THE LEGGING
NEW - THE T
NEW - THE SHOE
THE BAG
THE BELT
THE SHIRT

MEH
THE JEANS
NEW - THE PANT
THE BRANDO jacket
THE JAKOB FLAP POCKET shorts
NEW - THE T
THE BELT
THE SHIRT
JOE'S SALE



THE BRANDO

jacket

STYLE#M2051039-JET1

The Brando Motor Jacket in JET BLACK.
100% Lamb Skin

\$539.00

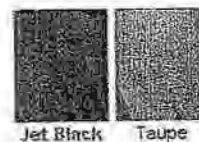
SIZE

S M L

QUANTITY

1

OTHER COLORS



Jet Black

Taupe

Add to cart

Add to wishlist

FAQ

Customer Service

JOE'S ALSO SUGGESTS...





shop

retail locations

looks

blog

search

company

my account - login - register - free shipping



JOE'S JEANS

WOMEN

THE JEANS

NEW - THE PANT

THE LEGGING

NEW - THE T

NEW - THE SHOE

THE BAG

THE BELT

THE SHIRT

MEN

THE JEANS

NEW - THE PANT

THE BRANDO jacket

THE JAKOB FLAP POCKET shorts

NEW - THE T

THE BELT

THE SHIRT

JOE'S SALE



THE BRANDO

jacket

STYLE#M2051039-TAU1

The Brando Motor Jacket in TAUPE
100% Lamb Skin

\$539.00

SIZE

S

QUANTITY

1

OTHER COLORS



Jet Black



Taupe

Add to cart

Add to wishlist

FAQ

Customer Service

JOE'S ALSO SUGGESTS...



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Los Angeles Superior Court

MAY 04 2010

John A. Clarke, Executive Officer/Clerk

By Jennifer Denham, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, S.B.N. number and address)
Jeffrey I. Abrams (SBN 162735)
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
11400 W. Olympic Blvd., Suite 900

Los Angeles, CA 90064
TELEPHONE NO.: (310) 478-4100 FAX NO.: (310) 479-1422
ATTORNEY FOR (Name): Plaintiff, Brando Enterprises, L.P.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 1725 Main St.
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Monica, CA 90401
BRANCH NAME: WEST DISTRICT

CASE NAME: BRANDO ENTERPRISES, L.P., a Delaware limited partnership v. JOE'S JEANS INC., a Delaware corporation, and DOES 1-10, inclusive

CIVIL CASE COVER SHEET

☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER SC107840

JUDGE: LINDA K. LEFKOWITZ
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☒ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (08)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): Two (Right of Publicity & Unjust Enrichment)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 4, 2010

Jeffrey I. Abrams (SBN 162735)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SHORT TITLE: Brando Enterprises, Inc. v. J. J. Jeans Inc.

CASE NUMBER

SC107840

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 5 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons : See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 2., 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 2., 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review
Unlawful Detainer

SHORT TITLE: Brando Enterprises, Inc. v. Joe's Jeans Inc.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1., 2., 3.
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1., 2., 3., 5.
	<input type="checkbox"/> A6031 Tortious Interference	1., 2., 3., 5.
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2., 6.
	<input type="checkbox"/> A6032 Quiet Title	2., 6.
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6106 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

218 F.Supp.3d 1206
United States District Court,
W.D. Washington,
at Tacoma.

Teferi Abebe BIKILA, et al., Plaintiffs,
v.
VIBRAM USA INC., et al., Defendants.

CASE NO. C15-5082-RBL

Signed October 31, 2016

Synopsis

Background: Heirs of Ethiopian Olympic marathoner brought action against running shoe company, alleging company trademarked name of marathoner without requesting or receiving heirs' permission, in violation of Lanham Act, Washington's Personality Rights Act (WPRA), and Washington Consumer Protection Act (WCPA), and seeking injunction preventing company from using name and restitution under law of unjust enrichment. Company moved for summary judgment.

Holdings: The District Court, Ronald B. Leighton, J., held that:

^[1] company did not deliberately infringe rights of heirs, and thus unclean hands doctrine did not preclude company from asserting laches as defense to Lanham Act claim;

^[2] five-year delay in filing Lanham Act claim by heirs was unreasonable and prejudiced company, and thus claim was barred by laches; and

^[3] cause of action for unjust enrichment under Washington law and violation of WPRA and WCPA accrued, and limitations periods began to run, when heirs knew that company was marketing shoe.

Motion granted.

Attorneys and Law Firms

*1208 Troy G. Sexton, Alexander C. Trauman, Motschenbacher & Blattner, Portland, OR, for Plaintiff.

Jeffrey Charles Johnson, Joanne M. Hepburn, Kendra Nickel-Nguy, K & L Gates LLP, Seattle, WA, for Defendants.

ORDER

Ronald B. Leighton, United States District Judge

THIS MATTER is before the Court on defendants' motion for summary judgment [Dkt. # 49]. This case involves a running shoe Vibram named after Abebe Bikila, the late Ethiopian Olympic marathoner. Vibram trademarked the name without requesting or receiving his heirs' permission. Bikila's heirs claim Vibram violated the Lanham Act (15 U.S.C. § 1125(a)), Washington's Personality Rights Act (RCW 63.60 *et seq.*), and the Washington Consumer Protection Act (RCW 19.86.020). They also assert a state law unjust enrichment claim.

Vibram seeks summary judgment on the Lanham Act claim, arguing that it is barred by laches. It seeks summary judgment on the state law claims, arguing they are time-barred. It also argues the plaintiffs lack standing to assert Lanham Act, Washington Consumer Protection Act, or unjust enrichment claims¹.

Bikila's widow and his three surviving children are his sole heirs and the plaintiffs in this case. Yewebdar W. Giorgese, his widow, is an Ethiopian citizen residing in Ethiopia. Yetnayet Abebe Bikila and Tsige Abebe, his son and daughter, also reside in Ethiopia and are German and American citizens, respectively. Teferi Abebe Bikila, another son, is an American citizen residing in Oregon. Vibram disputes that Ethiopian law permits heirs to inherit publicity rights, but it does not dispute that the named plaintiffs—the Bikilas—are Abebe Bikila's heirs to the extent the law permits.

I. BACKGROUND

A. Abebe Bikila

Running barefoot after sponsors could not find him shoes that fit, Ethiopian runner Abebe Bikila achieved instant fame when he won marathon gold at the 1960 Rome Olympic Games. Bikila cemented his legendary status when he won the 1964 Olympic marathon in Tokyo (this time with shoes) and seemed poised to achieve even greater success, though a last-minute injury forced him to sit out the 1968 games. Tragedy struck in 1969 when a car crash left him paralyzed. Bikila died from complications four years later, leaving behind his wife and four children.

Although tragedy cut short his career, Bikila is remembered as one of the great runners of the twentieth century and probably the most famous barefoot runner. A stadium in Addis Ababa is named for him. A 2009 Ethiopian biopic, *Atletu (The Athlete)*, traces Bikila's running career—¹²⁰⁹ though the filmmakers did not seek the family's permission, and the family unsuccessfully sought to block its release. Outside Ethiopia, Bikila has been honored as the namesake of numerous marathons, including one in Washington, D.C., and the New York Road Runners have presented the Abebe Bikila Award annually to long-distance runners since 1978. Comedian Robin Williams referenced Bikila in a 2010 stand-up routine, and family members twice met Japanese Prime Minister Shinzo Abe in connection with the 50th anniversary of the Tokyo Olympics.

The Bikilas have attempted to safeguard and profit from Bikila's legacy. From 1980 to 2001, they operated a sporting goods store bearing his name in Ethiopia, and they have helped sponsor Ethiopia's Abebe Bikila International Marathon since 1985. With the family's permission, the Ethiopian government has also issued stamps and lottery tickets bearing Bikila's image. Tsige Abebe wrote a book about her father and claims to have sold copies in Atlanta during the 1996 Olympics (though she has not provided documentary evidence to support this claim). Members of the family started monitoring the Internet for unauthorized uses of Bikila's likeness in 2003, and by 2009 conducted biweekly Web searches for his name. In 2007, Japanese beverage company Suntory paid the family €200,000 to use Bikila's name and image in a television advertisement. The Bikilas argue they entertained (and denied) 2007 and 2008 requests from Nike, Visa, and Coca-Cola, among others, for permission to use Bikila's likeness in TV advertising, though they have lost access to the email accounts they used for these negotiations. Since 2010, they have maintained a website devoted to telling Bikila's story.

B. Vibram FiveFingers Bikila

Defendant Vibram (through its subsidiary, defendant Vibram FiveFingers) introduced the FiveFingers shoe line in 2006. FiveFingers shoes are unique in that they have individual toe compartments, much like gloves for the feet. They are designed to mimic the experience of being barefoot. The shoes grew popular with “barefoot running” adherents who sought minimalist shoes, and in 2009 VFF sought to capitalize on this popularity by designing a model specifically for runners.

Tony Post, then VFF’s CEO, knew about Abebe Bikila’s barefoot running legacy and identified “Bikila” as a potential name for the new shoe. He contacted outside counsel, Curt Krechevsky of Cantor Colburn LLP, to explore whether VFF could trademark the Bikila name for use in connection with footwear, clothing, and headwear, among other uses. Krechevsky conducted a trademark search and concluded the “Bikila” mark was available with reasonable risk, “subject to any potential claims based on publicity rights from heirs, assignees, or licensees of the deceased individual Abebe Bikila.” Hcpbrn Decl., Dkt. # 52, Ex. D. There is no evidence that Post or anyone else at VFF investigated further.

VFF applied to register the Bikila trademark with the U.S. Patent and Trademark Office (PTO) on May 19, 2009. The PTO published the trademark for opposition in its Official Gazette on September 29, 2009. VFF released the Bikila running shoes in April 2010. Three months later (July 20), after receiving no opposition, the PTO registered the Bikila trademark.

The Bikilas actually knew about the VFF Bikila no later than January 10, 2011, when Yetnayet Bikila emailed Teferi Bikila requesting him to seek advice on the family’s rights from a U.S. lawyer. Teferi and Tsige Bikila contacted three attorneys to discuss suing Vibram but did not retain any of them. From 2012 to 2014, the Bikilas continued to discuss legal action ***1210** against Vibram but did not contact other attorneys, and they did not attempt to inform Vibram of their objections to its use of the Bikila name.

While the Bikilas considered their options, Vibram continued marketing the VFF Bikila. It sponsored a showing of the *Atletu* documentary at the St. Louis Film Festival in 2011, and it posted at least one reference to Abebe Bikila on Twitter. VFF also introduced several other shoe models using the Bikila name: the Bikila LS in spring 2011, the Bikila EVO in spring 2014, and the Bikila EVO WP in fall 2014. Vibram and its parent company, Italy’s Vibram S.p.A., registered the “Bikila” trademark in other countries, and numerous personnel left VFF during this time—including CEO Tony Post.

C. 2015 Lawsuit

The Bikilas sued in 2015. They seek damages, an injunction preventing Vibram from using the Bikila name, and attorneys’ fees. They claim Vibram violated the Lanham Act, 15 U.S.C. § 1125(a), by creating a false designation of origin likely to confuse and deceive the consuming public. The Bikilas also claim Vibram infringed on Abebe Bikila’s personality rights, which they inherited, in violation of the Washington Personality Rights Act (WPRA), RCW 63.60 *et seq.* They claim Vibram’s actions are unfair or deceptive acts that violate the Washington Consumer Protection Act (WCPA), RCW § 19.86.020. Finally, they seek restitution under the common law of unjust enrichment.

Vibram moves for summary judgment on each claim. It argues the plaintiffs unreasonably delayed in filing their Lanham Act claim, subjecting Vibram to evidentiary and economic prejudice, and accordingly that their federal claim is barred by laches. The plaintiffs argue that Vibram’s unclean hands and willful infringement preclude a laches defense. Vibram claims it relied in good faith on the advice of counsel. The Bikilas also argue that a jury could find their delay in filing reasonable under the circumstances, and that their delay in filing has not prejudiced Vibram.

Vibram argues that the Bikilas’ state law claims are time-barred and that there is no basis to apply a “continuing wrong” theory to circumvent this defense. The Bikilas argue that a jury should evaluate whether they should have discovered the basis for a state cause of action before the applicable limitations periods expired.

Vibram also argues that the Bikilas do not have standing to assert Lanham Act, WCPA, or unjust enrichment claims. The plaintiffs seek summary judgment on their standing to assert Lanham Act claims, or under Ethiopian law, claiming they have a commercial interest in Abebe Bikila’s name and likeness.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is proper “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). In determining whether an issue of fact exists, the Court views all evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996).

A genuine issue of material fact exists where there is sufficient evidence for a reasonable fact-finder to find for the nonmoving party. *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505. The inquiry is “whether the evidence presents a sufficient disagreement *1211 to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52, 106 S.Ct. 2505. The moving party bears the initial burden of showing that there is no evidence which supports an element essential to the nonmovant’s claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant has met this burden, the nonmoving party then must show that there is a genuine issue for trial. *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505. If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323–24, 106 S.Ct. 2548.

B. Laches as a Defense to a Lanham Act Claim.

Vibram claims that the Bikilas’ Lanham Act claim is barred as a matter of law by their unreasonable delay in bringing it, causing it prejudice. The Bikilas claim that laches cannot apply because Vibram’s infringement was willful.

[1] [2] [3] Laches “embodies the principle that a plaintiff cannot sit on the knowledge that another company is using its trademark, and then later come forward and seek to enforce its rights.” It is available as an equitable defense to trademark claims. *Internet Specialties W., Inc. v. Milon-DiGiorgio Enterprises, Inc.*, 559 F.3d 985, 989–90 (9th Cir. 2009). To establish a laches defense, a defendant must prove both (1) unreasonable delay and (2) resulting prejudice. *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 951 (9th Cir. 2001). However, a party with unclean hands may not assert laches. *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 841 (9th Cir. 2002). A plaintiff may demonstrate the defendant has unclean hands by showing he or she willfully infringed on the plaintiff’s mark. *See Danjaq*, 263 F.3d at 956–57.

1. Deliberate Infringement

[4] The Bikilas argue that Vibram willfully infringed on their rights and thus has unclean hands, precluding it from asserting the equitable defense of laches. Specifically, they argue that Vibram did not rely in good faith on the advice of counsel: Vibram’s attorneys specifically told it that going forward would be subject to “any potential claims based on publicity rights from heirs, assignees, or licensees of the deceased individual Adebé Bikila.” They point to similar internal discussions which, they claim, find support a jury’s finding that Vibram knew there were other potential rights.

[5] The deliberate infringement bar to laches derives from the unclean hands doctrine, which “closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” *Jarrow*, 304 F.3d at 841 (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945)). In the copyright context, the Ninth Circuit has adopted a willful infringement standard to determine unclean hands—creating a laches exception when conduct occurs “with knowledge that the defendant’s conduct constitutes copyright infringement.” *Danjaq*, 263 F.3d at 957 (quoting *Columbia Pictures Television v. Krypton Broad.*, 106 F.3d 284, 293 (9th Cir. 1997)).

Similar principles apply to trademark, as other districts in this circuit have concluded. *See, e.g., FLIR Sys., Inc. v. Sierra Media, Inc.*, 965 F.Supp.2d 1184, 1210 (D. Or. 2013); *accord Fitbug Ltd. v. Fitbit, Inc.*, 78 F.Supp.3d 1180, 1195 (N.D. Cal. 2015). Thus, to assert an unclean hands defense on the basis of willful infringement, the Bikila Family must show Vibram knew its *1212 conduct constituted trademark infringement.

A California District court inferred willfulness from evidence showing a defendant acted with “an aura of indifference” to a plaintiff’s trademark rights, or with willful blindness to facts she had cause to suspect would put her on notice that she was infringing another’s trademarks. *Philip Morris USA Inc. v. Liu*, 489 F.Supp.2d 1119, 1123 (C.D. Cal. 2007); *see also Louis Vuitton S.A. v. Lee*, 875 F.2d 584, 590 (7th Cir. 1989) (“[I]t is enough...that the defendant failed to inquire...because he was afraid of what the inquiry would yield.”).

The Bikilas claim that Vibram and its attorneys knew that they had claims and that it acted in conscience disregard of them. Vibram argues that it relied in good faith on the advice of counsel, as a matter of law, and that reliance is a defense to the claim it acted willfully.

This is a close question.

Vibram obtained a certificate of registration from the PTO for the Bikila trademark. The Bikilas did not object. In doing so, it sought, obtained, and relied on the informed advice of its attorney, Curt Krechevsky. It is true that Krechevsky did not advise it that there were not and could not be impediments to their efforts to obtain trademark protection in the Bikila name. But competent attorneys rarely give those sorts of blanket blessings—instead, Krechevsky, armed with Vibram’s full disclosure of facts, correctly advised that there were no current competing marks, but there could be a publicity rights claim. It is undisputed that Krechevsky did a “full search” to determine whether the term Bikila was available to trademark.

Vibram correctly points out that while this may be factual support for their *publicity rights* claim, it does not support their Lanham Act claim, which is based instead on “confusion to the consuming public.” It claims that to establish the willfulness required to defeat Vibram’s laches defense, the Bikilas must show “fraudulent intent with respect to its registration and use of the Bikila trademark. *Citing Jarrow*, 304 F.3d at 841–42. It argues that laches applies unless the Bikilas can demonstrate that it had knowledge that its conduct *constituted trademark infringement*—not that it might violate the Bikilas publicity rights.

Krechevsky’s advice was not erroneous, and Vibram did not ignore it. *See State Indus. Inc. v. Mor-Flo Indus. Inc.*, 948 F.2d 1573 (Fed. Cir. 1991). Vibram relied on its attorneys’ advice, in good faith. There is no evidence from which a jury could find that Vibram acted in anything short of good faith.

Vibram’s assertion of laches as a defense to the Bikilas’ Lanham Act claim is not barred by its own conduct.

2. Delay

¹⁶¹Two factors determine whether the plaintiffs’ delay in bringing suit supports a laches defense. First is “the length of delay, which is measured from the time the plaintiff knew or should have known about its potential cause of action.” *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 838 (9th Cir. 2002). Second, the Court must “decide whether the plaintiff’s delay was unreasonable.” *Id.*

a. Length

¹⁷¹¹⁶¹The Bikilas knew or should have known about their potential Lanham Act claim for more than five years before they filed suit. The limitations period begins to run from the time a plaintiff knew or should have known about his or her claim. *Id.* at 837. A court may consider actual or constructive knowledge in making this determination. *Grupo Gigante Sa De CV v. Dallo & Co., Inc.*, 391 F.3d 1088, 1102 (9th Cir. 2004) (emphasis omitted).

***1213** Registration of a trademark on the principal register constitutes constructive notice of a registrant's claim. 15 U.S.C. § 1072. The Bikilas had constructive notice of Vibram's claim on July 20, 2010, when the PTO registered the Bikila mark on the principal register.

The Bikilas had actual knowledge of the potential infringement of their rights no later than January 10, 2011 when one of them sent an email to another, including a link to Vibram's "Bikila" website¹ and discussing exploring the legal options triggered by it.

b. Reasonableness

¹⁹¹ ¹¹⁰ To determine whether a delay is unreasonable, court looks to the limitations period for an analogous action at law. See *Jarrow*, 304 F.3d at 838. Where a plaintiff files suit outside an analogous statutory limitations period, there is a rebuttable presumption that both elements of a laches defense are satisfied. *Id.* at 837. The analogous limitations period in Washington is three years, for trade name infringement. See RCW 4.16.080(2).

The Bikilas did not file their claim within this period. They ask the Court to apply the *E-Systems* six part balancing test to evaluate the reasonableness of its delay in filing suit. See *E-Systems, Inc. v. Monitek, Inc.*, 720 F.2d 604 (9th Cir. 1983): (1) the strength and value of the trademark rights asserted; (2) the plaintiff's diligence in enforcing the mark; (3) harm to the senior user if relief is denied; (4) good faith ignorance by the junior user; (5) competition between the senior and junior users; and (6) the extent of harm suffered by the junior user because of the senior user's delay. They claim the applicable factors support a jury question as to the reasonableness of their delay, particularly as to their diligence and Vibram's good faith.

Vibram disagrees that this specific test applies here, and argues that it is not materially different than the traditional evaluation of unreasonable delay and prejudice. See *Ormsby v. Barrett*, Cause No. 07-cv-5305RBL (2008 WL 53119) (W.D. Wash. 2008). It also argues that even if the factors are used, the Bikilas' mark (if they have one) is weak because the Bikilas have never used it in commerce; they were not diligent as evidenced by the four year delay; and have no evidence of harm. It reiterates that it did not act willfully and it is prejudiced by the Bikilas delay.

Vibram's good faith is addressed above. The Bikilas' diligence is really a question of when they knew there was an infringement. The Bikilas claim they have been diligent, given limited resources, and they claim that they later discovered additional information about the scope of Vibram's use. But this does not change the undeniable fact that they were aware of the use more than four years prior to filing suit. Under either test, their delay in filing their Lanham Act claim was unreasonable as a matter of law.

3. Prejudice to Vibram

¹¹¹ Vibram argues that it was prejudiced by the Bikilas' unreasonable delay, in two relevant ways. First, it claims it has suffered evidentiary prejudice as the result of the delay. The Bikilas concede that they have lost or destroyed evidence (primarily email accounts and evidence related to film licensing) that would be relevant to their claim and Vibram's defense of it. Vibram argues without serious opposition that key witnesses on its own side are no longer ***1214** employed or no longer have detailed recollections.

Second, and more measurably, Vibram claims that it has suffered economic or expectations-based prejudice from the delay in the form of its continued financial investment in the Bikila shoe, which it has used since 2010.

The Bikilas argue that Vibram's claims of evidentiary prejudice present jury questions, claiming that they have good faith excuses for the lost evidence, and that some of the evidence could be obtained through discovery to third parties. They claim Vibram's lack of access to its own witnesses and their recollections are largely due to their witnesses lack of preparation.

They argue that Vibram's claim of economic prejudice fails because Post admitted that they did not "build a brand" around

the Bikila shoe and that its claim that it incurred marketing expenses is insufficient. Vibram points out that the claim it did not suffer expectations-based prejudice based on Post's testimony is flatly inconsistent with their simultaneous claim that "Vibram made tens of millions of dollars selling shoes at the expense of their deceased patriarch." Vibram invested in its trademark, and exploited it. And as they point out, the presumption is that they were prejudiced because the claim was filed outside the limitations period.

Vibram has established the requisite prejudice as a matter of law.

C. The Bikilas' State Law Claims are Time-Barred.

¹¹²Vibram argues that the Bikilas' state law Personality Rights, CPA, and unjust enrichment are barred by the applicable limitations periods. See RCW 4.16.080 (three years for Personality Rights and unjust enrichment claims) and RCW 19.86.120 (four years for CPA claim). These arguments are based on the same accrual date as the Lanham Act/laches claim, discussed above.

The Bikilas claim the discovery rule applies, and that they are entitled to have a jury determine as a factual matter whether they "knew or should have known" the essential elements of their (state law) causes of action. *Citing Green v. A.P.C.*, 136 Wash.2d 87, 960 P.2d 912 (1998).

But they provide no evidence from which a jury could determine that they did not know that Vibram was seeking to exploit the Bikila name by January 2011, or that they did not know of the essential elements of any of their state law claims until some later date. While the accrual date may be a factual question on disputed facts, it is not a jury question where there is no factual dispute. There is no material question of fact about when the Bikilas knew that Vibram was marketing the Bikila shoe. Each of their state law claims is untimely as a matter of law.

D. Standing

Because laches bars the Bikilas' Lanham Act claim, and the applicable limitations periods bar their state law claims, it need not and therefore does not reach the question of whether they have standing to assert them.

III. CONCLUSION

Vibram did not deliberately infringe on the Bikilas' trademark and may thus invoke laches. The Bikilas unreasonably delayed in seeking to enforce their rights, and this unreasonable delay prejudiced Vibram. Vibram's motion for summary judgment the Bikilas Lanham Act claims is GRANTED and those claims are DISMISSED with prejudice.

The Bikilas' state law claims are barred by the applicable limitations periods. Vibram's motion for summary judgment on *1215 those claims is GRANTED, and they are DISMISSED with prejudice.

IT IS SO ORDERED.

All Citations

218 F.Supp.3d 1206

Footnotes

Bikila v. Vibram USA Inc., 218 F.Supp.3d 1206 (2016)

- ¹ Vibram has since filed a second, “substantive” motion for summary judgment [Dkt. # 77]. Given the resolution of this “procedural” Motion, that Motion is **DENIED** as moot.
- ² Vibram points out that the Bikilas initially denied this earlier knowledge, and claimed instead they did not have actual notice of Vibram’s mark until October 2014. The email demonstrating prior knowledge surfaced in discovery.

COPY

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: JOE'S JEANS INC., a Delaware
(AVISO AL DEMANDADO): corporation, and DOES 1-10,
inclusive,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 04 2010

John A. Clarke, Executive Officer/Clerk

By Jennifer Denham, Deputy

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRANDO ENTERPRISES, L.P., a Delaware limited
partnership

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de extensión de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

LOS ANGELES COUNTY SUPERIOR COURT

West District

1725 Main St.

Santa Monica, CA 90401

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jeffrey I. Abrams (SBN 162735)

(310) 478-4100

Wolf, Rifkin, Shapiro, Schulman & Raskin, LLP

11400 W. Olympic Blvd., Suite 900

Los Angeles, CA 90064

DATE:

(Fecha)

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under:
- | | |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

- ☐ by personal delivery on (date):

JEFFREY I. ABRAMS (State Bar No. 162735)
 CHARLES J. HARDER (State Bar No. 184593)
 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
 11400 West Olympic Boulevard, Ninth Floor
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 Telephone: (310) 478-4100
 Facsimile: (310) 479-1422

Attorneys for Plaintiff
 Brando Enterprises, L.P.

CONFORMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

MAY 04 2010

John A. Clarke, Executive Officer/Clerk

By Jennifer Denham, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – WEST DISTRICT

BRANDO ENTERPRISES, L.P., a
 Delaware limited partnership;

Plaintiff,

v.

JOE'S JEANS INC., a Delaware
 corporation, and DOES 1-20, inclusive,
 Defendants.

Case No.

SC107840

COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF FOR:

1. VIOLATION OF CALIFORNIA
 CIVIL CODE § 3344.1; and
2. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

CASE MANAGEMENT CONFERENCE

AUG 23 2010

Date

LINDA K. LEFKOWITZ

8:30

Plaintiff Brando Enterprises, L.P. hereby alleges as follows:

SUMMARY OF THE ACTION

1. Plaintiff Brando Enterprises, L.P. ("Brando Enterprises" or "Plaintiff") owns all of the intellectual property rights, including all publicity rights, of and associated with the legendary late actor Marlon Brando, whose name and identity have tremendous commercial value. Among other things, Plaintiff recently has entered into licensing agreements with such leading companies as MasterCard, Dolce & Gabbana and Triumph Motorcycle, as well as a multi-year, multi-million dollar licensing agreement in connection with a hotel and resort on the French Polynesian atoll of Tetiaroa called "The Brando."

1 2. Defendant Joe's Jeans Inc. has used the name and mark "The Brando" in
2 marketing and promotional materials for Defendant's line of high-end apparel products, namely
3 a line of leather jackets called "The Brando." (Copies of representative samples of these
4 marketing and promotional materials are attached hereto as Exhibit "A.").

5 3. Defendant Joe's Jeans Inc., a publicly traded company that describes itself as one
6 of the most-recognized premium denim brands in the world, and which each year licenses its
7 own intellectual property to third parties for millions of dollars, used the Marlon Brando name,
8 identity and persona for commercial purposes without seeking or obtaining the approval of
9 Brando Enterprises, and without paying any compensation to Brando Enterprises for the use of
10 such rights, let alone compensation commensurate with the substantial commercial value of
11 such rights. Brando Enterprises therefore seeks monetary damages, statutory damages, punitive
12 damages and a preliminary and permanent injunction to stop all future uses of the Marlon
13 Brando publicity rights.

14 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 **The Parties**

16 4. Plaintiff Brando Enterprises is a Delaware limited partnership organized and
17 existing under the laws of the State of Delaware, with its principal place of business located in
18 the County of Los Angeles, State of California.

19 5. Plaintiff is informed and believes and based thereon alleges that defendant Joe's
20 Jeans Inc. ("Joe's Jeans" or "Defendant") is, and at all times relevant hereto was, a corporation
21 organized and existing under the laws of the State of Delaware, and doing business in the
22 County of Los Angeles, State of California.

23 6. Plaintiff is informed and believes and based thereon alleges that the fictitiously-
24 named Defendants sued herein as Does 1 through 20, and each of them, are in some manner
25 responsible or legally liable for the actions, events, transactions and circumstances alleged
26 herein. The true names and capacities of such fictitiously-named Defendants, whether
27 individual, corporate, associate or otherwise, are presently unknown to Plaintiff, and Plaintiff
28 will seek leave of Court to amend this Complaint to assert the true names and capacities of such

1 fictitiously-named Defendants when the same have been ascertained. For convenience, each
2 reference to a named Defendant herein shall also refer to Does 1 through 20. All defendants,
3 including both the named defendants and those referred to herein as Does 1 through 20, are
4 sometimes collectively referred to herein as "Defendants."

5 7. Plaintiff is informed and believes and based thereon allege that Defendants, and
6 each of them, were and are the agents, employees, partners, joint-venturers, co-conspirators,
7 owners, principals and employers of the remaining Defendants, and each of them are, and at all
8 times herein mentioned were, acting within the course and scope of that agency, partnership,
9 employment, conspiracy, ownership or joint venture. Plaintiff further is informed and believes
10 and based thereon alleges that the acts and conduct herein alleged of each of the Defendants
11 were known to, authorized by and/or ratified by the other Defendants, and each of them.

12 **Marlon Brando Intellectual Property Rights**

13 8. On July 1, 2004, Marlon Brando died in Los Angeles, California.

14 9. Upon his death, all of Mr. Brando's intellectual property rights, including his rights
15 of publicity (collectively, the "Brando IP Assets"), were first transferred to Mr. Brando's estate
16 and then to a trust, and were subsequently transferred to plaintiff Brando Enterprises, which
17 owns and controls the Brando IP Assets.

18 10. The name, identity and persona of Marlon Brando are instantly recognized by the
19 public and have substantial commercial value.

20 11. Plaintiff exercises careful consideration before permitting the commercial use of
21 the Marlon Brando publicity rights to ensure that they are associated with high quality products,
22 entertainment, services and/or companies, and to ensure that the value of the name, mark and
23 publicity rights are not diminished, either by association with products, entertainment, services
24 and/or companies that Plaintiff does not desire to support, and/or by over-saturation of the
25 name, mark and publicity rights. Plaintiff will not voluntarily allow the name, mark or publicity
26 rights of Marlon Brando to be used for commercial purposes unless Plaintiff carefully selects
27 the product or service, and unless the compensation paid for such use is both commensurate
28 with the value of the exploitation of the name, mark and publicity rights, and sufficient to

compensate Plaintiff for any potential diminution in value resulting from the commercial use of the name, mark and publicity rights.

12. The name, image, identity and persona of Marlon Brando are highly valuable. Marlon Brando is regarded as one of the greatest actors of all time by film critics, motion picture trade associations, major media organizations, and the public. Marlon Brando won numerous acting awards throughout his long and successful acting career including, among many others, two Academy Awards for Best Actor in a Leading Role in 1955 for his portrayal of "Terry Malloy" in *On the Waterfront*, and in 1973 for his portrayal of "Don Vito Corleone" in *The Godfather*. The following is a list of films starring Marlon Brando during his 50 year career:

<i>The Score</i> (2001)	<i>The Countess From Hong Kong</i> (1967)
<i>Free Money</i> (1998)	<i>The Appaloosa</i> (1966)
<i>The Brave</i> (1997)	<i>The Chase</i> (1966)
<i>The Island of Dr. Moreau</i> (1996)	<i>Morituri</i> (1965)
<i>Don Juan DeMarco</i> (1994)	<i>Bedtime Story</i> (1964)
<i>Christopher Columbus:</i>	<i>The Ugly American</i> (1963)
<i>The Discovery</i> (1992)	<i>Mutiny on the Bounty</i> (1962)
<i>The Freshman</i> (1990)	<i>One-Eyed Jacks</i> (1961)
<i>A Dry White Season</i> (1989)	<i>The Fugitive Kind</i> (1960)
<i>The Formula</i> (1980)	<i>The Young Lions</i> (1958)
<i>Apocalypse Now</i> (1979)	<i>Sayonara</i> (1957)
<i>Superman</i> (1978)	<i>The Teahouse of the August Moon</i>
<i>The Missouri Breaks</i> (1976)	(1956)
<i>Last Tango in Paris</i> (1972)	<i>Guys and Dolls</i> (1955)
<i>The Godfather</i> (1972)	<i>Desirée</i> (1954)
<i>The Nightcomers</i> (1971)	<i>On the Waterfront</i> (1954)
<i>Burn!</i> (1969)	<i>The Wild One</i> (1953)
<i>The Night of the Following Day</i> (1968)	<i>Julius Caesar</i> (1953)
<i>Good Grief It's Candy</i> (1968)	<i>Viva Zapata!</i> (1952)
<i>Reflections in a Golden Eye</i> (1967)	<i>A Streetcar Named Desire</i> (1951)
<i>Woman Times Seven</i> (1967)	<i>The Men</i> (1950)

13. Among many other honors and awards, Marlon Brando received a Star on the "Hollywood Walk of Fame" located at 1777 Vine Street. Mr. Brando also was awarded the Golden Globe awards for World Film Favorite, Male, for 1955, 1972 and 1973, respectively.

14. The American Film Institute ("AFI") periodically surveys 1,800 leaders throughout the film industry to determine their collective opinion regarding the greatest acting legends of all time, and also the greatest motion pictures of all time. According to its latest surveys, Marlon

Brando ranks fourth (4th) on the AFI list of the All-Time Greatest Male Acting Legends. Moreover, four of the films in which Mr. Brando starred rank within AFI's Top 100 of all-time greatest motion pictures: *The Godfather* (#2), *On the Waterfront* (#19), *Apocalypse Now* (#30) and *A Streetcar Named Desire* (No. 47). Quotes from three (3) of Mr. Brando's films are ranked within AFI's Top 100 Movie Quotes of all time, including:

<u>Film</u>	<u>Rank</u>	<u>Quote</u>
<i>The Godfather</i>	2	"I'm going to make him an offer he can't refuse."
<i>On The Waterfront</i>	3	"You don't understand! I coulda had class. I coulda been a contender. I could've been somebody, instead of a bum, which is what I am."
<i>Streetcar Named Desire</i>	45	"Stella! Hey, Stella!"

15. On June 14, 1999, *Time* magazine listed Marlon Brando as one of the "Time 100 Persons of the Century."

16. Marlon Brando and the successors of the Brando IP Assets, including Brando Enterprises, have, on limited occasions, agreed to license certain of Mr. Brando's publicity rights for commercial purposes after careful evaluation of the product or service that would be advertised, and only when the monetary compensation and other benefits were sufficient for the rights being exploited, and only when the use fit within an overall publicity strategy for the commercialization of Marlon Brando's name, image, identity, persona and legacy.

17. Among other commercial uses, Plaintiff recently has entered into licensing agreements with such companies as MasterCard, Dolce & Gabbana and Triumph Motorcycles, and has licensed certain of the Brando IP Assets for use in conjunction with a hotel and resort on the French Polynesian atoll of Tetiaroa called "The Brando," which will result in millions of dollars being paid to Plaintiff once the hotel and resort, which are currently under construction, open for business in 2012.

Defendants' Wrongful Conduct

18. Plaintiff is informed and believes and on that basis alleges that defendant Joe's Jeans is a company publicly traded on NASDAQ which designs, sources and distributes high-

1 end branded apparel products sold through over 1,200 retail outlets in the United States and
2 throughout the world.

3 19. Plaintiff is informed and believes and on that basis alleges that Defendants
4 intentionally and prominently used the name, identity and persona of Marlon Brando, and the
5 mark "THE BRANDO," in advertisements, marketing and promotional materials (collectively,
6 "Advertisements") for high-end leather jackets (the "Infringing Product") offered for sale by
7 Defendants. The Advertisements consistently and repeatedly use the name and mark "The
8 Brando." One of the Advertisements, an e-newsletter, expressly referred to "The Wild One,"
9 one of Mr. Brando's most famous motion pictures, and featured a shoe called the "Stella," the
10 leading female character in "Streetcar Named Desire" and the subject of Mr. Brando's famous
11 quote – "Stella. Hey, Stella!" – recognized by AFI as one of the most famous movie quotes of all
12 time. Defendants used the Brando name, identity and persona for the purpose of attracting
13 attention to the Infringing Product, and enhancing the advertising and marketing thereof, as it is
14 irrefutable that Defendants' use of the name and mark "Brando" was intended to refer to actor
15 Marlon Brando, and not to any other person or thing.

16 20. At no time did Plaintiff ever give permission to Defendants to use the name and
17 mark "Brando" or "The Brando," or the identity or persona of Marlon Brando, in the
18 Advertisements, or in association with the Infringing Product, nor has Plaintiff ever received any
19 compensation for such unauthorized commercial use of the Brando publicity rights.

20 21. Plaintiff is informed and believes and based thereon alleges that Defendants
21 intentionally, negligently and/or knowingly used the Marlon Brando name, identity and persona
22 in the Advertisements for the purpose of advertising and promoting the Infringing Product.

23 22. Plaintiff has developed and cultivated the name, identity and persona of Marlon
24 Brando to create celebrity and universal recognition and Defendants have, without any right, title
25 or authorization, misappropriated Plaintiff's valuable rights and the resulting success and
26 popularity of Marlon Brando by unlawfully using his name, identity and persona for the
27 aforesaid commercial purposes.

28

FIRST CAUSE OF ACTION

(Misappropriation of Right of Publicity – California Civil Code §3344.1

Against All Defendants, including Does 1 through 20)

23. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 22, inclusive, as though fully set forth herein.

24. The conduct of Defendants, as alleged hereinabove, constitutes a violation of Section 3344.1 of the California Civil Code due to the knowing and unauthorized use of Marlon Brando's name, identity and persona for commercial purposes, which have substantial commercial value.

25. As a direct and proximate result of the aforesaid wrongful acts of Defendants, Plaintiff has been damaged in an amount that is not yet fully ascertainable, but which exceeds the jurisdictional minimum of this Court. When Plaintiff has ascertained the full amount of its damages, it will seek leave of Court to amend this Complaint accordingly.

26. As a direct and proximate result of the aforesaid wrongful acts of Defendants, Plaintiff has incurred, and will continue to incur, substantial attorneys' fees and costs. Plaintiff is entitled to an award of its attorneys' fees and costs incurred in connection with this action pursuant to Section 3344.1(a)(1) of the California Civil Code.

27. By reason of the aforesaid wrongful acts of Defendants, in addition to the relief sought hereinabove, Plaintiff is entitled to an accounting of all of Defendants' revenues and profits associated with the unauthorized use of Marlon Brando's name, identity and persona, and to an award of all such sums. By reason of Defendants' wrongful acts as alleged hereinabove, Defendants are involuntary trustees holding all such sums in their possession under a constructive trust for the benefit of Plaintiff with a duty to transfer the same to Plaintiff forthwith.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants, in doing the things herein alleged, acted willfully, maliciously and oppressively, and with full knowledge of the adverse effect of their actions on Plaintiff and with willful and deliberate disregard for the consequences to Plaintiff. By reason thereof, Plaintiff is entitled to recover

1 punitive and exemplary damages from Defendants in an amount to be determined at the time of
2 trial.

3 29. Plaintiff also seeks a preliminary and permanent injunction to prohibit Defendants
4 from any further commercial use of Plaintiff's publicity rights, including Mr. Brando's name,
5 photograph, likeness, image, voice, sound-alike voice, signature, identity and persona.

6 **SECOND CAUSE OF ACTION**

7 (For Unjust Enrichment Against

8 All Defendants, including Does 1 through 20)

9 30. Plaintiffs repeat, re-allege, adopt and incorporate each and every allegation
10 contained in Paragraphs 1 through 22, inclusive, as though fully set forth herein.

11 31. As a result of the wrongful acts of Defendants, and each of them, as hereinabove
12 alleged, Defendants, and each of them, have been unjustly enriched and benefited. Such unjust
13 enrichment and benefits include, but are not limited to: (1) the value of the use of Marlon
14 Brando's name, identity and persona for the commercial purposes made thereof by Defendants;
15 and (2) the amount of Defendants' revenues and profits attributable to the use of Marlon
16 Brando's name, identity and persona as alleged herein.

17 32. Defendants, and each of them, are under an obligation to pay Plaintiff, forthwith,
18 the entire amount by which they have been unjustly enriched, and Plaintiff is entitled to the
19 imposition of a constructive trust, such that Defendants, and each of them, are involuntary
20 trustees holding all such sums in their possession for the benefit of Plaintiff with a duty to
21 transfer the same to Plaintiff forthwith.

22 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally,
23 as follows:

24 **AS TO THE FIRST CAUSE OF ACTION:**

25 1. General and special damages in accordance with proof at trial, together with
26 interest thereon at the legal rate;

27 2. An award of the revenues and profits received by Defendants as a result of the
28 unauthorized use of Marlon Brando's name, identity and persona and/or other publicity rights;

3. Exemplary and punitive damages in an amount according to proof at the time of trial;

4. An award of Plaintiff's attorneys' fees;

5. Preliminary and permanent injunction prohibiting Defendants and their affiliated companies from any further use of the Marlon Brando publicity rights (including without limitation name, image, identity, persona, voice, or signature) without Plaintiff's express written permission in advance.

AS TO THE SECOND CAUSE OF ACTION:

6. General and special damages in an amount according to proof at trial, together with interest thereon at the legal rate;

7. Imposition of a constructive trust on all monies and sums received by Defendants as a result of their misappropriation of the Marlon Brando publicity rights (including without limitation name, image, identity, persona, voice, or signature), with interest thereon at the legal rate;

8. Preliminary and permanent injunction prohibiting Defendants and their affiliated companies from any further use of the Marlon Brando publicity rights (including without limitation name, image, identity, persona, voice, or signature) without Plaintiff's express written permission in advance.

AS TO ALL CAUSES OF ACTION:

9. For all costs of suit incurred herein; and

10. For such other and further relief as the Court may deem to be just and proper.

Dated: May 4, 2010

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: 

JEFFREY I. ABRAMS
Attorneys for Plaintiff
BRANDO ENTERPRISES, L.P.

Plaintiff Brando Enterprises, L.P. hereby demands a trial by jury.

Dated: May 4, 2010

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By:

JEFFREY L ABRAMS

Attorneys for Plaintiff
BRANDO ENTERPRISES, L.P.

EXHIBIT “A”

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all they need is love...

A SUCCESSFUL DEBUT
THE SHOE BY JOE'S HAS ARRIVED!



The Brando

JOE'S'S

The Ballet is a Hit!

Beautifully hand worked ballet flats from JOE'S with embellished studding and rhinestone details on soft leather everyone wants to Swan Lake in these...

Do not pirouette too fast and miss the rest of the collection *Coming Soon!* - The Wedges, essential for Spring and Summer denim pair with our famous Whites...

JOE'S The Sandal, a chic solution for the casual Summer flat wrapping your feet in the softest leather.

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Meet The Brando by JOE'S

Be The Wild One in JOE'S modern design to a vintage classic. This supple lambskin motorcycle jacket rides well in both Jet Black and Taupe.

Be Inspired by Brando's brooding style...pair with the Sawyer or Evan wash and The Tee in Maverick

The Shoe from JOE'S

The Bands

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Joe's Jeans offers a full line of Men's and Women's denim and collection. Joe's continuously introduces new rinses, denim grades, and hand finished jeans each season. Joe's Jeans, a leader in Denim.

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WOMEN
THE JEANS
NEW - THE PANT
THE LEGGING
NEW - THE T
NEW - THE SHOE
THE BAG
THE BELT
THE SHIRT

MEH
THE JEANS
NEW - THE PANT
THE BRANDO jacket
THE JAKOB FLAP POCKET shorts
NEW - THE T
THE BELT
THE SHIRT
JOE'S SALE



THE BRANDO

jacket

STYLE#M2051039-JET1

The Brando Motor Jacket in JET BLACK.
100% Lamb Skin

\$539.00

SIZE

S M L

QUANTITY

1

OTHER COLORS



Jet Black



Taupe

Add to cart

Add to wishlist

FAQ

Customer Service

JOE'S ALSO SUGGESTS...





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looks

blog

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company

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JOE'S JEANS

WOMEN

THE JEANS

NEW - THE PANT

THE LEGGING

NEW - THE T

NEW - THE SHOE

THE BAG

THE BELT

THE SHIRT

MEN

THE JEANS

NEW - THE PANT

THE BRANDO jacket

THE JAKOB FLAP POCKET shorts

NEW - THE T

THE BELT

THE SHIRT

JOE'S SALE



THE BRANDO

jacket

STYLE#M2051039-TAU1

The Brando Motor Jacket in TAUPE
100% Lamb Skin

\$539.00

SIZE

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QUANTITY

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OTHER COLORS



Jet Black



Taupe

Add to cart

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FAQ

Customer Service

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Los Angeles Superior Court

MAY 04 2010

John A. Clarke, Executive Officer/Clerk

By Jennifer Denham, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, S.B.N. number and address)
Jeffrey I. Abrams (SBN 162735)
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
11400 W. Olympic Blvd., Suite 900

Los Angeles, CA 90064
TELEPHONE NO.: (310) 478-4100 FAX NO.: (310) 479-1422
ATTORNEY FOR (Name): Plaintiff, Brando Enterprises, L.P.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 1725 Main St.
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Monica, CA 90401
BRANCH NAME: WEST DISTRICT

CASE NAME: BRANDO ENTERPRISES, L.P., a Delaware limited partnership v. JOE'S JEANS INC., a Delaware corporation, and DOES 1-10, inclusive

CIVIL CASE COVER SHEET

☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER SC107840

JUDGE: LINDA K. LEFKOWITZ
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☒ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (08)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): Two (Right of Publicity & Unjust Enrichment)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 4, 2010

Jeffrey I. Abrams (SBN 162735)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SHORT TITLE: Brando Enterprises, Inc. v. J. J. Jeans Inc.

CASE NUMBER

SC107840

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 5 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons : See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review
Unlawful Detainer

SHORT TITLE: Brando Enterprises, Inc. v. Joe's Jeans Inc.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1., 2., 3.
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1., 2., 3., 5.
	<input type="checkbox"/> A6031 Tortious Interference	1., 2., 3., 5.
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2., 6.
	<input type="checkbox"/> A6032 Quiet Title	2., 6.
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6106 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: Brando Enterprises, Inc. v. Joe's Jeans Inc.

CASE NUMBER

Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
	<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
Other Judicial Review (39)	<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
	<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
	<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.
	<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
	<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
	<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
	<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
	<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
	<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
	<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
	<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
	<input type="checkbox"/> A6190 Election Contest	2.
	<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
	<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
	<input type="checkbox"/> A6100 Other Civil Petition	2., 9.

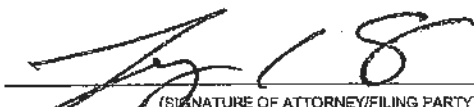
SHORT TITLE: Brando Enterprises, Inc. v. Joe's Jeans Inc.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			ADDRESS: 10390 Santa Monica Blvd., Suite 360
CITY: Los Angeles	STATE: CA	ZIP CODE: 90025	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Santa Monica courthouse in the West District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: May 4, 2010


 (SIGNATURE OF ATTORNEY/FILING PARTY)
 Jeffrey I. Abrams (SBN 162735)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SC107840

CASE NO. _____

NOTICE OF CASE ASSIGNMENT TO INDIVIDUAL CALENDAR COURT**TO PLAINTIFFS AND PLAINTIFFS' ATTORNEYS OF RECORD or PLAINTIFFS
IN PRO PER:****IT IS HEREBY ORDERED AND YOU ARE HEREBY NOTIFIED** that this action shall be assigned to a Judge for all purposes, including trial, as follows:LINDA K. LEFKOWITZDepartment: m☒Santa Monica Courthouse
1725 Main Street
Santa Monica, CA 90401☐ Judge Richard A. Stone
Beverly Hills Courthouse
Department WE-X
9355 Burton Way
Beverly Hills, CA 90210

IT IS FURTHER ORDERED THAT PLAINTIFF OR COUNSEL FOR PLAINTIFF SHALL GIVE NOTICE OF THIS ALL-PURPOSE CASE ASSIGNMENT by serving a copy of this Notice on all parties to this action at the time the Summons and Complaint are served, or, if not a served party, then when such party (including any cross-defendant or complainant-in-intervention) appears in the action.

CASE MANAGEMENT REVIEW AND CONFERENCE: Upon the filing of the Complaint, a Case Management Review and Conference will be calendared for hearing in the Court to which the case is assigned. The hearing date will be stamped upon the face of the Complaint. Plaintiff shall give notice of the Case Management Review and Conference to all named parties in conjunction with service of the Summons and Complaint and include any later appearing party such as a cross-defendant or complainant-in-intervention served within this time period. Proof of service must be brought to the hearing if not previously filed. Failure to timely file proof of service of Summons and Complaint within 60 days after filing the Complaint (CRC 3.110) may result in an Order to Show Cause re sanctions being issued. (CRC 3.110(f).)

If a case is assigned to Department X, located in the Beverly Hills Courthouse, all documents, pleadings, motions, and papers filed subsequent to the original Complaint shall be filed directly in the courtroom stamped upon the Complaint.

TIME STANDARDS: Cases will be subject to processing under the following time standards:

COMPLAINTS: All Complaints shall be served on all named defendants and proof of service filed within 60 days after the filing of the Complaint. The Court may set an OSC re failure to file proof of service of Summons and Complaint if not timely filed. (CRC 3.110(b).)

CROSS-COMPLAINTS: No Cross-Complaint may be filed by any party after its answer is filed without first obtaining leave of court. Cross-Complaints shall be served and proof of service filed within 30 days of the filing date, unless a party has appeared in the action. (CRC 3.110(c).)

APPLICABLE RULES: Counsel as well as self-represented parties are directed to familiarize themselves with the Local Rules for the County of Los Angeles, particularly Chapter 7 (Trial Court Delay Reduction), Chapter 8 (Civil Trial Procedure), Chapter 9 (Civil Law and Motion), and California Rules of Court relating to civil case management. These Rules apply to all general civil cases and shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE: A challenge under Code of Civil Procedure Section 170.6 must be made within 15 days after notice of assignment of the Judge, or if a party has not yet appeared, within 15 days of the first appearance of that party. (Government Code Section 68616, subdivision (i); Local Rule 7.5.)

PREPARATION AND PROCEDURES FOR CASE MANAGEMENT REVIEW AND CONFERENCE: Pursuant to CRC 3.724, no later than 30 calendar days before the date set for the Case Management Conference, the parties must meet and confer, in person or by telephone, to consider each of the issues identified in Rule 3.727 and, in addition, to consider the following:

- (1) Resolving any discovery disputes and setting a discovery schedule;
- (2) Identifying and, if possible, informally resolving any anticipated motions;
- (3) Identifying the facts and issues in the case that are uncontested and may be the subject of stipulation;
- (4) Identifying the facts and issues in the case that are in dispute;
- (5) Determining whether the issues in the case can be narrowed by eliminating any claims or defenses by means of a motion or otherwise;
- (6) Determining whether settlement is possible;
- (7) Identifying the dates on which all parties and their attorneys are available or not available for trial, including the reasons for unavailability; and
- (8) Other relevant matters.

Pursuant to CRC 3.725, no later than 15 calendar days before the date set for the Case Management Conference or Review, each party must file a Case Management Statement and serve it on all other parties in the case. In lieu of each party's filing a separate Case Management Statement, any two or more parties may file a joint Statement.


The subjects to be considered at the Case Management Conference shall include the following (CRC Rule 3.727):

- (1) Whether there are any related cases;
- (2) Whether all parties named in the Complaint or Cross-Complaint have been served, have appeared, or have been dismissed;
- (3) Whether any additional parties may be added or the pleadings may be amended;
- (4) Whether, if the case is a limited civil case, the economic litigation procedures under Code of Civil Procedure Section 90 et seq. will apply to it or the party intends to bring a motion to exempt the case from these procedures;
- (5) Whether any other matters (e.g., the bankruptcy of a party) may affect the Court's jurisdiction or processing of the case;
- (6) Whether the parties have stipulated to, or the case should be referred to, judicial arbitration in courts having a judicial arbitration program or to any other form of alternative dispute resolution (ADR) process and, if so, the date by which the judicial arbitration or other ADR process must be completed;
- (7) Whether an early settlement conference should be scheduled and, if so, on what date;
- (8) Whether discovery has been completed and, if not, the date by which it will be completed;
- (9) What discovery issues are anticipated;
- (10) Whether the case should be bifurcated or a hearing should be set for a motion to bifurcate under Code of Civil Procedure Section 598;
- (11) Whether there are any Cross-Complaints that are not ready to be set for trial and, if so, whether they should be severed;
- (12) Whether the case is entitled to any statutory preference and, if so, the statute granting the preference;
- (13) Whether a jury trial is demanded and, if so, the identity of each party requesting a jury trial;

- (14) If the trial date has not been previously set, the date by which the case will be ready for trial and the available trial dates;
- (15) The estimated length of trial;
- (16) The nature of the injuries;
- (17) The amount of damages, including any special or punitive damages;
- (18) Any additional relief sought;
- (19) Whether there are any insurance coverage issues that may affect the resolution of the case; and
- (20) Any other matters that should be considered by the Court or addressed in its Case Management Order.

SANCTIONS: The Court has authority to impose appropriate sanctions for the failure or refusal to comply with provisions of the California Rules of Court and Local Rules governing time standards and case management conference requirements or deadlines. Such sanctions may be imposed upon counsel, a party, or both, as permitted by rule, statute, or law.

This is not a complete representation of the applicable Local Rules or California Rules of Court, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under the Trial Court Delay Reduction Rules. Careful reading and compliance with the Local Rules and California Rules of Court are absolutely imperative.



 GERALD ROSENBERG, Supervising Judge
 Los Angeles Superior Court, West District

NAME, ADDRESS AND PHONE NUMBER
OF ATTORNEYS

FILE STAMP

Attorney(s) for:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

CASE NUMBER

PLAINTIFF(S).

vs.

DEFENDANT(S).

STIPULATION AND ORDER
RE BINDING ARBITRATION

Status Conference Date:

At _____ a.m. in Department _____

THE PARTIES SHOULD CONSIDER BINDING ARBITRATION. BINDING ARBITRATION PROVIDES FINALITY AND ELIMINATES COURT APPEARANCES. THE ARBITRATION IS PROVIDED AT NO COST TO THE PARTIES. IF THIS STIPULATION IS SIGNED AND FILED DIRECTLY IN THE ABOVE DEPARTMENT, FIVE COURT DAYS PRIOR TO THE DATE SET FOR THE STATUS CONFERENCE, NO APPEARANCE IS REQUIRED AT THE STATUS CONFERENCE.

The parties and their attorneys, hereby stipulate as follows:

1. The matter shall be submitted to binding arbitration and the parties waive their right to a trial de novo as provided in California Code of Civil Procedure, Section 1141.20.
2. _____, a member of The Superior Court Arbitration panel, shall serve as arbitrator.
3. All cross complaints have been filed.
4. All fictitious and named defendants/cross-defendants who have not filed an answer are dismissed.
5. The court retains jurisdiction over motions to enforce the arbitration award and other post-arbitration motions.

Executed this _____ day of _____, 20__.

Plaintiff_____
Attorney for Plaintiff_____
Defendant_____
Attorney for DefendantORDER

It is so ordered:

DATE: _____

JUDGE _____

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at www.lasuperiorcourt.org (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (Civil only).

What is ADR:

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

Mediation:

In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate

Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate

Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration:

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate

If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation:

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate

Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate

Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences:

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

LOS ANGELES SUPERIOR COURT ADR PROGRAMS

CIVIL:

- **Civil Action Mediation** (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.870-3.878, Evidence Code sections 1116-1128, and Los Angeles Superior Court Rules, chapter 12.)
- **Retired Judge Settlement Conference**
- **Neutral Evaluation** (Governed by Los Angeles Superior Court Rules, chapter 12.)
- **Judicial Arbitration** (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- **Eminent Domain Mediation** (Governed by Code of Civil Procedure section 1250.420.)
- **Civil Harassment Mediation**
- **Small Claims Mediation**

FAMILY LAW (non-custody):

- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

PROBATE:

- **Mediation**
- **Settlement Conference**

NEUTRAL SELECTION

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the **Random Select Mediation or Arbitration Panel**, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

COURT ADR PANELS

- Party Select Panel** The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Random Select Panel** The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Private Neutral** The market rate for private neutrals can range from \$300-\$1,000 per hour.

ADR ASSISTANCE

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

COURTHOUSE	ADDRESS	ROOM	CITY	PHONE	FAX
Antonovich	42011 4th St. West	None	Lancaster, CA 93534	(661)974-7275	(661)974-7060
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8565	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)803-3072	(310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91206	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	316	Long Beach, CA 90802	(562)491-6272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243	(562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)356-5685	(626)666-1774
Pomona	400 Civic Center Plaza	106	Pomona, CA 91766	(909)620-3183	(909)629-6283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-6151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)260-1829	(310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425	(213)633-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7326
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program

A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CV 3491

BURBERRY LIMITED and
BURBERRY GROUP PLC

Plaintiffs,

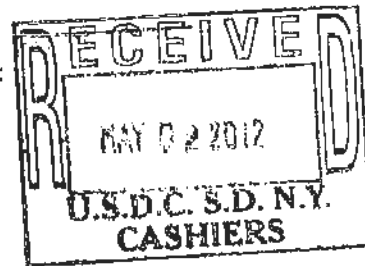
v.

BOGART, LLC

Defendant.

Civil Action No.:

**JURY TRIAL
DEMANDED**



**COMPLAINT FOR DECLARATORY JUDGMENT OF
TRADEMARK NON-INFRINGEMENT, TRADEMARK NON-DILUTION
AND FOR NON-INFRINGEMENT OF ANY RIGHT OF PUBLICITY**

Plaintiffs Burberry Group PLC and Burberry Limited (hereinafter "Plaintiffs" or "Burberry"), by and through their attorneys of record, complaining of defendant Bogart, LLC ("Bogart" or "Defendant"), allege as follows:

STATEMENT OF THE CASE

1. Plaintiffs bring this action for a judgment declaring that their use of or reference to Humphrey Bogart's name, image, likeness, voice, celebrity identity and trademarks related to the late Humphrey Bogart in connection with Plaintiffs' heritage and history on various social media platforms do not infringe Defendant's trademark rights and/or rights of publicity. This action arises out of repeated allegations by the Defendant that Plaintiffs infringe one or more of Defendant's trademarks and Defendant's ownership of publicity rights related to the late Humphrey Bogart.

JURISDICTION AND VENUE

2. This is an action for, *inter alia*, declaratory relief under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* This Court has subject matter jurisdiction over Plaintiffs' declaratory judgment claim pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202, and pursuant to 15 U.S.C. § 1121. This Court has supplemental jurisdiction for Plaintiffs' claims for non-infringement of right of publicity, no unjust enrichment and no quantum meruit pursuant to 28 U.S.C. 1367(a) because these claims is so related to the federal claims brought herein as to form part of the same case or controversy.

3. Upon information and belief, this Court has personal jurisdiction over Defendant because it regularly conducts business within the state of New York and this judicial district.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

THE PARTIES

5. Plaintiff Burberry Group, PLC is a corporation duly organized and existing under the laws of the United Kingdom with an office and principal place of business at Horseferry House, Horseferry Road, London SW1P 2AW, United Kingdom.

6. Plaintiff Burberry Limited is a New York corporation with an office and principal place of business at 444 Madison Avenue, New York, New York 10022.

7. Upon information and belief, defendant Bogart, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located in Pasadena, California.

8. Upon information and belief, Defendant is aware that Plaintiff Burberry Limited is located in this judicial district and purposefully directed its conduct at issue in this case at Plaintiffs in this judicial district.

FACTS COMMON TO ALL COUNTS

9. Burberry is a global luxury brand with a distinctive British sensibility and strong international recognition. The Company designs and sources apparel and accessories distributed through a diversified network of retail, wholesale and licensing channels worldwide. Burberry's corporate heritage is rooted in Hampshire, United Kingdom, where its predecessor in interest, Mr. Thomas Burberry, first opened an outfitters shop in 1856. While Burberry was first famous for its iconic outerwear heritage and world famous Burberry Check trademark, since its founding, Burberry has been synonymous with quality, innovation and style and has become the leading British luxury brand globally.

10. In early 2012, Burberry launched a historical timeline depicting the evolution of Burberry's culture, products and people. This historical timeline was made available by Burberry on the Facebook social networking platform. Images and portions of Burberry's history found in the historical timeline were also distributed by Burberry through various social media sites, including Twitter and Instagram.

11. Burberry's timeline provides an interesting and historical summary of its evolution beginning with an image of the first Burberry store in 1856. Visitors to the timeline are able to view pieces of Burberry's history such as "The Burberry Plane" landing in 1937 and images of pilots from the 1910s wearing Burberry aviator suits.

12. Burberry's timeline included an image of Humphrey Bogart from 1942 wearing a Burberry trench coat from the final scene of the motion picture, "Casablanca." In connection with this image, Burberry included the following description: Humphrey Bogart wearing a Burberry trench coat in the final scene of Casablanca (1942).

13. Burberry licensed this image of Humphrey Bogart from Corbis for editorial use.

14. Burberry's use of this photo and description were intended to reflect on the long history, significance and influence of Burberry fashion in society.

15. Burberry's use of the image of Humphrey Bogart from "Casablanca" within its historical timeline was not directly connected to the sale of any merchandise, but rather was a historical positioning of the image within an educational project along with numerous other photographs of people wearing Burberry apparel over the last century.

16. On April 10, 2012, Defendant Bogart, LLC contacted Burberry indicating that it exclusively owns and controls the name, image, likeness, voice and celebrity identity of the late Humphrey Bogart (the "Bogart Publicity Rights") and numerous federal, international and common law trademarks related to the late Humphrey Bogart, including the name and trademarks "HUMPHREY BOGART" and "BOGART" (the "Bogart Trademarks"). Defendant also indicated that Burberry's use of the Bogart Publicity Rights and the Bogart Trademarks implies an endorsement by or affiliation with Humphrey Bogart and Defendant, and constitutes misappropriation, false association and dilution of Defendant's intellectual property rights. Defendant also demanded, among other things, that Burberry cease and desist from all commercial uses of the name, image, likeness and celebrity identity of the late Humphrey Bogart.

17. Thereafter, Defendant contacted Plaintiffs on at least two additional occasions regarding the same rights and demands and made a significant monetary demand.

18. Defendant's repeated assertion of its alleged rights against Burberry, its repeated assertions that Burberry's historical timeline exposes Burberry to liability for trademark infringement, trademark dilution, violation of Defendant's right of publicity, unjust enrichment and quantum meruit, and its repeated monetary demands have created an actual, substantial and

justiciable controversy between Burberry and Defendant within the meaning of 28 U.S.C. §§ 1331, 1338, 2201 and 2202, concerning Defendants' purported rights in the Bogart Trademarks and the Bogart Publicity Rights.

19. This Court's determination of the issues presented by the actual controversy between Plaintiffs and Defendant will afford relief from the uncertainty, insecurity and controversy with respect to the rights, status and legal relations between the parties. A declaration of the parties' respective rights will settle the conflicting and disputed claims of the parties and will afford them the security of knowing precisely the respective rights that each possess. Declaratory relief is equitable, necessary and proper under the circumstances presented by this case.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment of Non-Infringement)
[15 U.S.C. § 1125(a)]

20. Burberry incorporates all prior allegations as if set forth fully herein.

21. Defendant has repeatedly claimed that it possesses protectable trademark rights in the Bogart Trademarks and that Plaintiffs' use of the Bogart Trademarks in connection with Burberry's historical timeline implies an endorsement or affiliation with Humphrey Bogart or Defendant.

22. Burberry asserts that its use of Humphrey Bogart's name, image, likeness, celebrity identity and the Bogart Trademarks is a lawful use that is not infringing Defendant's claimed rights in any way, is not an infringing use of Defendant's purported right in the Bogart Trademarks, and is squarely protected under the First Amendment to the United States Constitution.

23. Defendant is attempting to exert and assert against Burberry rights which it does not possess and rights that are beyond the bounds of its rights in the Bogart Trademarks in a manner that violates the basic rights of Burberry to tell the history of its brand through its historical timeline.

24. No representations as to Humphrey Bogart's or Defendant's endorsement, affiliation, connection, association, participation, sponsorship or approval of Burberry's historical timeline have been made by Burberry to the public.

25. No sufficient and adequate alternative means to the use of the Bogart Trademarks in Plaintiffs' historical timeline exist.

26. By reason of the existence of an actual and justiciable controversy, Burberry is entitled to a declaratory judgment that its use of the Bogart Trademarks does not infringe Defendant's claimed federal, international or common law rights in the Bogart Trademarks and do not violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

SECOND CLAIM FOR RELIEF
(Declaratory Judgment of Non-Dilution)
[15 U.S.C. § 1125(c)]

27. Burberry incorporates all prior allegations as if set forth fully herein.

28. Defendant has claimed that Burberry's use of the Bogart Trademarks has caused and will continue to cause dilution of the distinctive quality of the Bogart Trademarks by lessening and diluting their capacity to identify and distinguish the products and services associated with Defendant and/or Humphrey Bogart.

29. Burberry asserts that its use of Humphrey Bogart's name, image, likeness, celebrity identity and the Bogart Trademarks is a lawful use that is not infringing nor does it blur

or tarnish in any way Defendant's claimed rights in, among other things, the Bogart Trademarks and is squarely protected under the First Amendment to the United States Constitution.

30. Defendant is attempting to exert and assert against Burberry, through its allegations of blurring or tarnishment, rights which it does not possess and rights that are beyond the bounds of its rights in the Trademarks in a manner that violates the basic rights of Burberry to tell the history of its brand through its historical timeline.

31. No representations as to Humphrey Bogart's or Defendant's endorsement, affiliation, connection, association, participation, sponsorship or approval of Burberry's historical timeline have been made by Burberry to the public.

32. No sufficient and adequate alternative means to the use of the Bogart Trademarks in Plaintiffs' historical timeline exist.

33. By reason of the existence of an actual and justiciable controversy, Burberry is entitled to a declaratory judgment that its use of the Bogart Trademarks do not violate Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

THIRD CLAIM FOR RELIEF

(Declaratory Judgment for Non-Infringement of Defendant's Right of Publicity)

34. Burberry incorporates all prior allegations as if set forth fully herein.

35. Defendant has claimed that Burberry's alleged use of Humphrey Bogart's name, identity and persona constitutes a willful and intentional infringement of the Bogart Publicity Rights.

36. Burberry has not made any representation to the public as to Humphrey Bogart's endorsement, affiliation, connection, association, participation, sponsorship or approval of Burberry. Instead, any reference to Humphrey Bogart by Burberry has been purely factual and

historical in connection with a historical timeline and no sufficient and adequate alternative means to reference Humphrey Bogart exists.

37. Burberry asserts that it makes no use of Humphrey Bogart's name, image, persona, likeness and/or celebrity identity that infringes any of Defendant's claimed rights in any way, including Defendant's statutory right of publicity under New York Civil Rights Law § 51, California Civil Code § 3344.1, or any other law of a state in the United States.

38. Any reference to Humphrey Bogart by Burberry is squarely protected under the First Amendment to the United States Constitution.

39. By reason of the existence of an actual or justiciable controversy, Burberry is entitled to a declaratory judgment that its use of or reference to Humphrey Bogart's name, image, likeness and/or celebrity identity in connection with its historical timeline do not violate Defendant's statutory right of publicity provided by New York Civil Rights Law § 51, California Civil Code § 3344.1, or any other law of a state in the United States.

FOURTH CLAIM FOR RELIEF
(Declaratory Judgment of No Unjust Enrichment)

40. Burberry incorporates all prior allegations as if set forth fully herein.

41. Defendant has claimed the Burberry has unjustly enriched by the acts as described above.

42. Burberry asserts that Burberry has not been unjustly enriched by the actions described above.

43. By reason of the existence of an actual or justiciable controversy, Burberry is entitled to a declaratory judgment that it has not been unjustly enriched by the use of or reference to Humphrey Bogart's name, image, likeness and/or celebrity identity in connection with its

historical timeline under the common law of New York, or any other law of a state in the United States.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment of No Quantum Meruit)

44. Burberry incorporates all prior allegations as if set forth fully herein.

45. Defendant has claimed that Burberry is entitled to monetary compensation by Burberry for the acts as described above.

46. Burberry asserts that Burberry lawfully referenced Humphrey Bogart's name, image, likeness and/or celebrity identity in connection with its historical timeline and is thus not obligated to pay Defendant any fees or compensation in connection therewith.

47. By reason of the existence of an actual or justiciable controversy, Burberry is entitled to a declaratory judgment that it is not liable on a quantum meruit basis by the use of or reference to Humphrey Bogart's name, image, likeness and/or celebrity identity in connection with its historical timeline under the common law of New York, or any other law of a state in the United States.

PRAYER FOR RELIEF

WHEREFORE, Burberry requests judgment against the Defendant as follows:

A. Declaring that Burberry's use of or reference to Humphrey Bogart's name, image, likeness, voice, celebrity identity and trademarks related to the late Humphrey Bogart, including the name and trademarks "HUMPHREY BOGART" and "BOGART," in connection with its historical timeline do not:

- (1) Infringe Defendant's registered or unregistered Trademarks;
- (2) Violate any provision in Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

- (3) Violate any provision of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c);
- (4) Violate any provision in New York Civil Rights Law § 51.
- (5) Violate any provision in California Civil Code § 3344.1.
- (6) Violate any other federal or state law.

B. Declaring that Burberry has the right to proceed with the use of or reference to Humphrey Bogart's name, image, likeness, voice, celebrity identity and trademarks related to the late Humphrey Bogart in connection with Plaintiffs' historical timeline through any and all social media platforms;

C. Awarding damages, including treble damages, in an amount to be determined at trial;

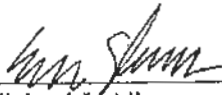
D. Awarding costs of suit herein and reasonable attorneys' fees; and

E. Awarding to Burberry such other and further relief as the Court may deem just and proper, together with the costs and disbursements which Burberry has incurred in connection with this action.

JURY DEMAND

Burberry demands a trial by jury on all issues so triable.

STEPTOE & JOHNSON LLP

By: 
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Evan Glassman
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New York, New York 10036
(212) 506-3900

*Attorneys for Burberry Limited and
Burberry Group PLC*

Of Counsel

Anthony M. Keats
David K. Caplan
Tara D. Rose
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9720 Wilshire Boulevard
Beverly Hills, California 90212
(310) 248-3830

Dated: May 2, 2012

FILED

2011 JUL 20 AM 10:07

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

1 **GARY A. HECKER, ESQ.** (State Bar No. 099008)
 2 **JAMES M. SLOMINSKI, ESQ.** (State Bar No. 166357)
 3 **THE HECKER LAW GROUP**
 4 1925 Century Park East, Suite 2300
 5 Los Angeles, California 90067
 6 Telephone: [REDACTED]
 7 Facsimile: [REDACTED]
 8 Email: [REDACTED]

9 Attorneys for Plaintiff
 10 **Kim Kardashian**

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **LACV11-5960** DSF(MANx)
 14 Civil Action No.

15 **KIM KARDASHIAN, an**
 16 **individual,**

17 **Plaintiff,**

18 **vs.**

19 **THE GAP, INC., a Delaware**
 20 **Corporation; OLD NAVY, LLC,**
 21 **a Delaware Limited Liability**
 22 **Company; OLD NAVY**
 23 **(APPAREL), LLC, a California**
 24 **Limited Liability Company;**
 25 **GAP (APPAREL), LLC, a**
 26 **California Limited Liability**
 27 **Company; and DOES 1 - 10**

28 **Defendants.**

COMPLAINT FOR:

1. **VIOLATION OF THE LANHAM ACT; 15 U.S.C. § 1125(a) (UNFAIR COMPETITION)**
2. **VIOLATION OF THE CALIFORNIA COMMON LAW RIGHT OF PUBLICITY**
3. **VIOLATION OF THE CALIFORNIA STATUTORY RIGHT OF PUBLICITY; CIVIL CODE § 3344**

DEMAND FOR JURY TRIAL

1 Plaintiff, Kim Kardashian, by and through her attorneys The Hecker Law
2 Group, hereby alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff, Kim Kardashian, is an individual and a resident of Los Angeles,
5 California.

6 2. Defendant, The Gap, Inc. ("The Gap"), is a Delaware corporation with its
7 principal place of business located at 2 Folsom Street, San Francisco, California
8 94105.

9 3. Defendant, Old Navy, LLC ("Old Navy"), is a Delaware Limited
10 Liability Company and a subsidiary of The Gap, with its principal place of business
11 located at 2 Folsom Street, San Francisco, California 94105.

12 4. Defendant, Old Navy (Apparel), LLC ("Old Navy Apparel"), is a
13 California Limited Liability Company and a subsidiary of The Gap, with its principal
14 place of business located at 2 Folsom Street, San Francisco, California 94105.

15 5. Defendant, Gap (Apparel), LLC ("Gap Apparel") is a California Limited
16 Liability Company and a subsidiary of The Gap, with its principal place of business
17 located at 2 Folsom Street, San Francisco, California 94105.

18 6. Plaintiff is currently unaware of the true names and capacities of DOES 1
19 through 20, inclusive, and therefore sues them by those fictitious names. Plaintiff will
20 amend this Complaint to allege their true names and capacities when they are
21 ascertained.

22 7. Defendants, and each of them, are, and at all terms herein were, the alter-
23 ego, principal, agent, employee, employer, joint venturer, customer, and/or otherwise
24 affiliated with one another so as to be liable in such capacity for the acts alleged
25 herein.

26 **JURISDICTION & VENUE**

27 8. This is an action for, *inter alia*, violation of 15 U.S.C. § 1125(a) and
28 violation of the California common law and statutory right of publicity.

1 9. This Court has subject matter jurisdiction over the federal cause of action
2 pursuant to 28 U.S.C. § 1331. This Court has jurisdiction over the state law claims
3 pursuant to 28 U.S.C. § 1367(a).

4 10. Venue for this action is proper in this judicial district pursuant to 28
5 U.S.C. §§ 1391(b) and (c) in that the acts alleged against Plaintiff occurred in this
6 judicial district.

7 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

8 **KIM KARDASHIAN**

9 11. Kim Kardashian ("Plaintiff") is an internationally known celebrity,
10 model, television personality, actress, entrepreneur and pop culture icon.

11 12. Plaintiff has attained an extraordinary level of popularity and fame in the
12 United States and around the world, and is the subject of pervasive public interest and
13 attention in contemporary mainstream media, including television, web-based media
14 and print media. She is highly sought after to endorse commercial products and
15 services using her name, likeness, identity and persona.

16 13. Plaintiff is widely recognized as the star of the hit television series
17 "*Keeping Up with the Kardashians*", the most watched television series in the history
18 of E! Entertainment Television.

19 14. Plaintiff is among the top celebrities who drive the most consumer traffic
20 to brand advertisers' websites, according to the celebrity endorsement website Ad.ly.
21 Plaintiff's official website, kimkardashian.com, receives tens of millions of page
22 views per month and is ranked among the highest of any celebrity.

23 15. Plaintiff has more than eight million followers on Twitter; more than five
24 million "likes" on Facebook, and is among the top personalities searched on the
25 Internet. Microsoft has reported that the term "Kim Kardashian" was the most
26 frequently searched term on Microsoft's Bing Search engine in 2010, exceeding all
27 other searched terms by 20%.

28 16. Plaintiff has been featured on the covers of dozens of popular and widely

1 circulated magazines, including Cosmopolitan, Glamour, Allure, Harpers Bazaar,
2 People, W, and Shape, and is well known for her distinctive and consistent look,
3 fashion and style.

4 17. Plaintiff has appeared as a guest on numerous television shows, including
5 The Today Show, Regis and Kelly, The View, The Rachel Ray Show, The Tyra
6 Banks Show, America's Next Top Model, Piers Morgan Tonight, The Larry King
7 Show, Late Night With David Letterman, The Tonight Show with Jay Leno, Jimmy
8 Kimmel Live!, Late Night with Jimmy Fallon, and many others. She also has been
9 featured in widely viewed musical performances, including as a celebrity contestant
10 on the hit television series "*Dancing with the Stars*" and in music video productions.

11 18. Plaintiff has selectively endorsed, and continues to selectively endorse, a
12 variety of products and services, including clothing, shoes, fashion accessories,
13 athletic wear, jewelry, perfume, skin care products and fashion styling services.

14 19. Plaintiff is the co-owner, chief fashion stylist and celebrity endorser of
15 ShoeDazzle®, a fashion apparel and stylist service company. She is the co-owner and
16 a celebrity endorser of the *DASH* designer boutiques which sell fashion clothing and
17 accessories. She is a co-creator and celebrity endorser of the *Kardashian Kollection*
18 for Sears, which includes apparel, accessories, handbags, lingerie, shoes, jewelry and
19 shoes, as well as for the brand *K-Dash by Kardashian* for QVC. Further, she has
20 produced, promoted and endorsed a popular fitness series, "Fit in Your Jeans by
21 Friday", which has held the number one spot on the popular merchandise website
22 Amazon.com.

23 20. Plaintiff has invested substantial time, energy, finances and
24 entrepreneurial effort in developing her considerable professional and commercial
25 achievements and success, as well as in developing her popularity, fame, and
26 prominence in the public eye.

27 21. Plaintiff's name, likeness, identity and persona have come to be
28 associated in the minds of the consuming public with products and services she

1 endorses, including apparel products and entertainment services.

2 22. Plaintiff's name, likeness, identity and persona have become widely
3 known by a substantial segment of the public in the United States and internationally,
4 and thereby have become, and are, valuable commercial assets that symbolize Plaintiff
5 and the level of quality associated with Plaintiff's products, services and entertainment
6 performances, and the goodwill that is associated with them.

7 23. Plaintiff regularly receives substantial financial offers requesting
8 permission for, and seeking the use of, her name, likeness, identity and persona for
9 licensing, endorsing, marketing and promoting products, services and performances.

10 24. Plaintiff maintains strict control over the manner in which her name,
11 likeness, identity and persona are used. Plaintiff exercises careful consideration in
12 selecting and approving products, services or performances that she will permit to
13 license or use her name, likeness, identity or persona. Plaintiff restricts such use and
14 licensing to products, services and performances that are of acceptably high quality to
15 Plaintiff, and for which compensation is commensurate with the exploitation and
16 value thereof.

17 DEFENDANTS' WRONGFUL CONDUCT

18 25. In February 2011, Defendants launched a multimedia advertising
19 campaign to sell their products, including apparel and fashion accessories, using the
20 likeness, identity and persona of Plaintiff for commercial purposes without her
21 consent.

22 26. Defendants broadcast, displayed and otherwise publicized advertisements
23 for Defendants' products, including apparel and fashion accessories, using, centered
24 around, and focused on, the likeness, identity, and persona of Plaintiff ("The
25 Infringing Ads").

26 27. Defendants used Plaintiff's likeness in the form of a celebrity "look-
27 alike" in the Infringing Ads.

28 28. Defendants incorporated and used qualities, attributes and traits

1 associated with Plaintiff's likeness, identity, and persona in the Infringing Ads to 248
2 further evoke Plaintiff's likeness, identity and persona.

3 29. Defendants incorporated a storyline associated with the Plaintiff's
4 likeness, identity and persona in the Infringing Ads to further evoke Plaintiff's
5 likeness, identity and persona.

6 30. Defendants' Infringing Ads immediately received substantial attention
7 and interest from the media and the consuming public as a direct and proximate result
8 of Defendants' unlawful use and misappropriation of Plaintiff's likeness, identity and
9 persona.

10 31. The Infringing Ads are likely to cause confusion, and have caused actual
11 confusion, in the minds of the consuming public as to an association of Kim
12 Kardashian with Defendants' products and services.

13 32. Following the release of the Infringing Ads, Defendants knowingly and
14 intentionally took steps to exacerbate and perpetuate the likelihood of confusion and
15 actual confusion in the minds of the consuming public, and to perpetuate their
16 unlawful exploitation of Kim Kardashian's likeness, identity and persona for
17 Defendants' commercial gain, including by Defendants' unlawful use of Kim
18 Kardashian's name.

19 33. The Infringing Ads were repeatedly broadcast and prominently displayed
20 and distributed in various media, including on cable and broadcast television, on the
21 World Wide Web, on mobile devices, and in Defendants' retail stores.

22 34. The Infringing Ads continue to be broadcast, shown and publicly
23 displayed by Defendants.

24 35. The Infringing Ads falsely represent that Kim Kardashian sponsors,
25 endorses, or is associated with, Defendants.

26 36. Plaintiff did not authorize Defendants, or any of them, to use her name,
27 likeness, identity or persona in connection with the Infringing Ads, or otherwise.

28 37. Plaintiff was not contacted by Defendants to seek or to obtain her

1 permission, nor was she compensated by Defendants, for the use of her name,
2 likeness, identity or persona.

3 38. The use of Plaintiff's name, likeness, identity and persona by Defendants
4 was, and is, in conscious disregard of Plaintiff's right of privacy and publicity, and of
5 her exclusive right to control the use and exploitation of her name, likeness, identity
6 and persona.

7 39. The aforementioned misappropriation and use of Kim Kardashian's
8 name, likeness, identity and persona by Defendants was intentional. Defendants'
9 misappropriation was purposefully designed and intended to confuse, to cause
10 mistake, and to deceive the public into believing that Plaintiff was appearing in the
11 Infringing Ads, and/or that Plaintiff sponsored, endorsed or was associated with
12 Defendants' products, services and performances.

13 40. Defendants have created a likelihood of confusion in the minds of the
14 consuming public as to the source, sponsorship, endorsement, or association of Kim
15 Kardashian with Defendants, and with their goods, services and performances.

16 41. Defendants have profited, and will continue to profit, from their unlawful
17 and intentional misappropriation and use of Kim Kardashian's name, identity, likeness
18 and persona.

19 FIRST CLAIM FOR RELIEF

20 (Violation of the Lanham Act 15 USC § 1125(a); Unfair Competition)

21 42. Plaintiff incorporates by reference the allegations of paragraphs 1
22 through 41 as though fully set forth herein.

23 43. In doing the acts alleged herein, Defendants have engaged in commercial
24 activity that is likely to cause confusion and/or mislead consumers into believing that
25 Plaintiff has endorsed, sponsored, or otherwise approved of their products, services
26 and performances when in fact she has not.

27 44. Defendants' acts as set forth herein have, in fact, misled and confused
28 consumers, and continue to mislead and confuse consumers.

1 45. Defendants' conduct constitutes a willful violation of 15 U.S.C. §
2 1125(a).

3 46. As a result of Defendants' actions, Plaintiff has suffered, and will
4 continue to suffer, damages in an amount to be proven at trial.

5 **SECOND CLAIM FOR RELIEF**

6 **(Violation of the California Common Law Right of Publicity)**

7 47. Plaintiff incorporates by reference the allegations of paragraphs 1
8 through 41 as though fully set forth herein.

9 48. In doing the acts alleged herein, Defendants have used for commercial
10 purposes Plaintiff's name, likeness, identity and persona without her consent.

11 49. The commercial use and misappropriation of Plaintiff's name, likeness,
12 identity and persona is a violation of the California common law right of privacy,
13 which includes the right of publicity.

14 50. As a proximate result of Defendants' acts alleged herein, Plaintiff has
15 suffered and will continue to suffer damages in an amount to be proven at trial.

16 **THIRD CLAIM FOR RELIEF**

17 **(Violation of the California Statutory Right of Publicity; Civil Code § 3344)**

18 51. Plaintiff incorporates by reference paragraphs 1 through 41 as though
19 fully set forth herein.

20 52. In doing the acts alleged herein, Defendants have knowingly, willfully,
21 and unlawfully used and misappropriated Plaintiff's name and likeness in connection
22 with the Infringing Ads for their own commercial purposes.

23 53. Defendants' misappropriation of Plaintiff's name and likeness for their
24 own commercial purposes is a violation of California Civil Code § 3344.

25 54. As a result of Defendants' actions, Plaintiff has suffered, and will
26 continue to suffer, damages in an amount to be proven at trial.

PRAYER FOR RELIEF

251

WHEREFORE, Plaintiff requests entry of judgment against Defendants, and each of them, as follows:

1. A preliminary and permanent injunction requiring Defendants and their agents, servants, and employees, and all other persons with whom they are acting in concert to refrain from using Kim Kardashian's name, likeness, identity, or persona in any promotion, advertising, or marketing activities;
2. Compensatory damages, consequential damages, lost profits, and/or disgorgement of Defendants' profits;
3. An award of attorney's fees and costs;
4. Enhanced damages;
5. Punitive damages; and
6. Any other relief that is just and proper under the law.

Respectfully submitted,

DATED: July 20, 2011

THE HECKER LAW GROUP

By: 

Gary A. Hecker, Esq.
James M. Slominski, Esq.
THE HECKER LAW GROUP
1925 Century Park East, Suite 2300
Los Angeles, California 90067
Telephone: (310) 286-0377
Facsimile: (310) 286-0488

Attorneys for Plaintiff
KIM KARDASHIAN

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial.

Respectfully submitted,

DATED: July 20, 2011

THE HECKER LAW GROUP

By: 

Gary A. Hecker, Esq.

James M. Slominski, Esq.

THE HECKER LAW GROUP

1925 Century Park East, Suite 2300

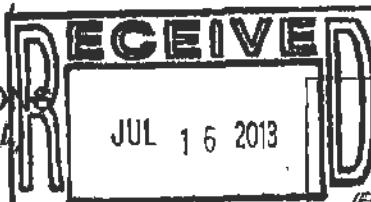
Los Angeles, California 90067

Telephone: (310) 286-0377

Facsimile: (310) 286-0488

Attorneys for Plaintiff
KIM KARDASHIAN

**FIRST AMENDED SUMMONS
(CITACION JUDICIAL)**



Via Process Server.

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

MARKETING ADVANTAGES INTERNATIONAL, INC., a California corporation; AU-OO MAI, an individual; BEARS HOLDINGS MANAGEMENT CORPORATION, a Delaware corporation; BEARS BRANDS, L.L.C., an Illinois limited liability company; LNT-ACQUISITION, LLC, a Delaware limited liability company; REBECCA ELADEN, an individual; GEMVARA INC., a Delaware corporation; LAUTREQ CORPORATION, a Wyoming corporation; OVERSTOCK SILVER LLP, a Maryland limited liability partnership; MICHAEL ROBERT COOKE, an individual; SKYE ASSOCIATES, LLC, a Maryland limited liability company; CENTERBROOK SALES, LLC, a Connecticut limited liability company; RAYMOND GALEOTTI, an individual; MOTIF ENTERPRISE LLC, a Florida limited liability company; POLYVORE, INC., a Delaware corporation with its principal place of business located in Mountain View, California; FRAGRANCE HUT, a/k/a "FragranceHut.com," an entity of unknown form and origin; GEORGE LAFPLIN, an individual; THE BEST LIFESTYLES, a/k/a "TheBestLifestyles.com," an entity of unknown form and origin; WAMBUI QITHIRE-MBURU, an individual; and DOES 1-100, inclusive

**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

JUL 15 2013

John A. Clarke, Executive Officer/Clerk
M. Vandeman

By _____

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
REESE WITHERSPOOD, an individual

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a point form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandado. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de refutación de abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a retener las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor cobrada mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahogar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
LOS ANGELES SUPERIOR COURT, WEST DISTRICT
Santa Monica Courthouse
1725 Main Street
Santa Monica, CA 90401

CASE NUMBER:
(Número del Caso):
SC120883

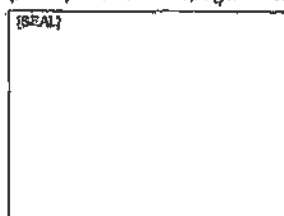
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Charles J. Harder (State Bar Number 184593) Telephone: (424) 203-1600 Facsimile: (424) 203-1601
HARDER MIRELL & ABRAMS LLP
1801 Avenue of the Stars, Suite 1120 Los Angeles, CA 90067 JOHN A. CLARKE, CLERK

DATE:
(Fecha) JUL 15 2013

Clerk, by
(Secretario) M. Vandeman

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): **MARKETING ADVANTAGES INTERNATIONAL, INC.**
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☒ by personal delivery on (date): 7/16/13

COPY

1 CHARLES J. HARDER (State Bar No. 184593)
2 JEFFREY I. ABRAMS (State Bar No. 162735)
3 HARDER MURRELL & ABRAMS LLP
4 1801 Avenue of the Stars, Suite 1120
5 Los Angeles, California 90067
6 Telephone: (424) 203-1600
7 Facsimile: (424) 203-1601

8 Attorneys for Plaintiff
9 REESE WITHERSPOON

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OF ORIGINAL FILED
for Angeles Superior Court

JUL 15 2013

John A. Clarke, Executive Officer/Clerk
M. Vandeman

By _____

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

REESE WITHERSPOON, an individual,

Plaintiff,

v.

MARKETING ADVANTAGES
INTERNATIONAL, INC., a California
corporation; AU-CQ MAI, an individual;
SEARS HOLDINGS MANAGEMENT
CORPORATION, a Delaware corporation;
SEARS BRANDS, L.L.C., an Illinois limited
liability company; LNT ACQUISITION, LLC,
a Delaware limited liability company;
REBECCA BLADEN, an individual;
GEMVARA INC., a Delaware corporation;
LAUTREC CORPORATION, a Wyoming
corporation; OVERSTOCK SILVER LLP, a
Maryland limited liability partnership;
MICHAEL ROBERT COOKE, an individual;
SKYE ASSOCIATES, LLC, a Maryland
limited liability company; CENTERBROOK
SALES, LLC, a Connecticut limited liability
company; RAYMOND GALEOTTI, an
individual; MOTIF ENTERPRISE LLC, a
Florida limited liability company;
POLYVORE, INC., a Delaware corporation
with its principle place of business located in
Mountain View, California; FRAGRANCE
HUT, a/k/a "FragranceHut.com," an entity of
unknown form and origin;

Case No.: SC120883

FIRST AMENDED COMPLAINT FOR:

1. VIOLATION OF COMMON LAW
RIGHT OF PUBLICITY
2. VIOLATION OF COMMON LAW
RIGHT OF PRIVACY
3. COMMON LAW TRADEMARK /
TRADE NAME INFRINGEMENT
4. COMMON LAW TRADE DRESS
INFRINGEMENT
5. COMMON LAW SLOGAN
INFRINGEMENT

DEMAND FOR JURY TRIAL

1 GEORGE LAFFLIN, an individual;
2 THE BEST LIFESTYLES, a/k/a
3 "TheBestLifestyles.com", an entity of
4 unknown form and origin; WAMBUI
GITHIRE-MBURU, an individual; and
DOES 1-100, inclusive,

5 Defendants.

6
7 Plaintiff Reese Witherspoon alleges as follows:

8 **INTRODUCTION**

9 1. Reese Witherspoon is a worldwide motion picture star and celebrity, and her name,
10 image, identity and persona have tremendous commercial value. Defendants used Ms.
11 Witherspoon's name and image, without her permission, in advertising and marketing jewelry
12 products, including, among others, a so-called "Reese Witherspoon" branded engagement ring.
13 Defendants did not seek or obtain Ms. Witherspoon's approval before using her name and image
14 in connection with the advertising, marketing and sales at issue, nor did Defendants pay Ms.
15 Witherspoon any compensation for such unauthorized use, let alone compensation commensurate
16 with the substantial commercial value of the use of her name and image for such commercial
17 purposes. Defendants' actions constitute a violation of Ms. Witherspoon's common law right of
18 publicity, as well as a violation of her right of privacy, and infringement of her common law
19 trademark, trade dress and slogan, thereby entitling her to an award of substantial monetary
20 damages and a permanent injunction prohibiting Defendants from any further use of her name or
21 image for commercial purposes.

22 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

23 **THE PARTIES**

24 2. Plaintiff REESE WITHERSPOON is an individual and domiciliary of the State of
25 California, County of Los Angeles.

26 3. Plaintiff is informed and believes and based thereon alleges that defendant
27 MARKETING ADVANTAGES INTERNATIONAL, INC. is, and at all times relevant hereto
28 was, a corporation organized and existing under the laws of the State of California, with its

1 principal place of business located in the State of California, County of San Diego, and doing
2 business in the County of Los Angeles, among other counties in the State of California.

3 4. Plaintiff is informed and believes and based thereon alleges that defendant
4 AIL-CO MAI is an individual, and a domiciliary of the State of California.

5 5. Plaintiff is informed and believes and based thereon alleges that defendant
6 SEARS HOLDINGS MANAGEMENT CORPORATION is, and at all times relevant hereto was,
7 a corporation organized and existing under the laws of the State of Delaware, with its principal
8 place of business located in Hoffman Estates, Illinois, and doing business in the County of Los
9 Angeles, State of California.

10 6. Plaintiff is informed and believes and based thereon alleges that defendant
11 SEARS BRANDS, L.L.C. is, and at all times relevant hereto was, a limited liability company
12 organized and existing under the laws of the State of Illinois, with its principal place of business
13 located in Hoffman Estates, Illinois, and doing business in the County of Los Angeles, State of
14 California.

15 7. Plaintiff is informed and believes and based thereon alleges that defendant
16 LNT ACQUISITION, LLC is, and at all times relevant hereto was, a limited liability company
17 organized and existing under the laws of the State of Delaware, with its principal place of business
18 located in Northbrook, Illinois, and doing business in the County of Los Angeles, State of
19 California.

20 8. Plaintiff is informed and believes and based thereon alleges that defendant
21 REBECCA BLADEN is an individual, a domiciliary of the State of Illinois, and doing business in
22 the County of Los Angeles, State of California.

23 9. Plaintiff is informed and believes and based thereon alleges that defendant
24 GEMVARA, INC. is, and at all times relevant hereto was, a corporation organized and existing
25 under the laws of the State of Delaware, with its principal place of business located in Lexington,
26 Massachusetts, and doing business in the County of Los Angeles, State of California.

27 10. Plaintiff is informed and believes and based thereon alleges that defendant
28 LAUTREC CORPORATION, doing business as "DiamondNexus.com" is, and at all times

1 relevant hereto was, a corporation organized and existing under the laws of the State of Wyoming,
2 with its principal place of business located in Franklin, Wisconsin, and doing business in the
3 County of Los Angeles, State of California.

4 II. Plaintiff is informed and believes and based thereon alleges that defendant
5 OVERSTOCK SILVER LLP, doing business as "OverstockSilver.com" is, and at all times
6 relevant hereto was, a limited liability partnership organized and existing under the laws of the
7 State of Maryland, with its principal place of business located in Cockeysville, Maryland, and
8 doing business in the County of Los Angeles, State of California.

9 12. Plaintiff is informed and believes and based thereon alleges that defendant
10 MICHAEL ROBERT COOKE is an individual, a domiciliary of the State of Maryland, and doing
11 business in the County of Los Angeles, State of California.

12 13. Plaintiff is informed and believes and based thereon alleges that defendant
13 SKYE ASSOCIATES, LLC, doing business as "FantasyJewelryBox.com" is, and at all times
14 relevant hereto was, a Maryland limited liability company with its principal place of business
15 located in Bethesda, Maryland, and doing business in the County of Los Angeles, State of
16 California.

17 14. Plaintiff is informed and believes and based thereon alleges that defendant
18 CENTERBROOK SALES, LLC, doing business as "EvesAddiction.com" is, and at all times
19 relevant hereto was, a limited liability company organized and existing under the laws of the State
20 of Connecticut, with its principal place of business located in Deep River, Connecticut, and doing
21 business in the County of Los Angeles, State of California.

22 15. Plaintiff is informed and believes and based thereon alleges that defendant
23 RAYMOND GALEOTTI is an individual, a domiciliary of the State of Connecticut, and doing
24 business in the County of Los Angeles, State of California.

25 16. Plaintiff is informed and believes and based thereon alleges that defendant MOTIF
26 ENTERPRISE LLC, doing business as "AmberDesire.com" is, and at all times relevant hereto
27 was, a limited liability company organized and existing under the laws of the State of Florida, with
28 its principal place of business located in Cooper City, Florida, and doing business in the County of

1 Los Angeles, State of California.

2 17. Plaintiff is informed and believes and based thereon alleges that defendant
3 POLYVORE, INC., doing business as "Polyvore.com" is, and at all times relevant hereto was, a
4 corporation organized and existing under the laws of the State of Delaware, with its principal place
5 of business located in the State of California, County of Santa Clara, and doing business in the
6 County of Los Angeles, State of California.

7 18. Plaintiff is informed and believes and based thereon alleges that defendant
8 FRAGRANCE HUT a/k/a "FragranceHut.com" is, and at all times relevant hereto was, an entity
9 of unknown form and origin with its principal place of business located in Vineland, New Jersey,
10 and doing business in the County of Los Angeles, State of California.

11 19. Plaintiff is informed and believes and based thereon alleges that defendant
12 GEORGE LAFFLIN is an individual, a domiciliary of the State of New Jersey, and doing business
13 in the County of Los Angeles, State of California.

14 20. Plaintiff is informed and believes and based thereon alleges that defendant THE
15 BEST LIFESTYLES a/k/a "TheBestLifestyles.com" is, and at all times relevant hereto was, an
16 entity of unknown form and origin with its principal place of business located in the State of New
17 York, and doing business in the County of Los Angeles, State of California.

18 21. Plaintiff is informed and believes and based thereon alleges that defendant
19 WAMBUI GITHIRE-MBURU is an individual, a domiciliary of the State of New York, and doing
20 business in the County of Los Angeles, State of California.

21 22. Plaintiff is informed and believes and based thereon alleges that the fictitiously-
22 named Defendants sued herein as Does 1 through 100, and each of them, are in some manner
23 responsible or legally liable for the actions, events, transactions and circumstances alleged herein.
24 The true names and capacities of such fictitiously-named Defendants, whether individual,
25 corporate, associate or otherwise, are presently unknown to Plaintiff, and Plaintiff will seek leave
26 of Court to amend this Complaint to assert the true names and capacities of such fictitiously-
27 named Defendants when the same have been ascertained. For convenience, each reference to a
28 named Defendant herein shall also refer to Does 1 through 100. All defendants, including both the

1 named defendants and those referred to herein as Does 1 through 100, are sometimes collectively
2 referred to herein as "Defendants."

3 23. Plaintiff is informed and believes and based thereon alleges that Defendants, and
4 each of them, were and are the agents, employees, partners, joint-venturers, co-conspirators,
5 owners, principals, and employers of the remaining Defendants, and each of them are, and at all
6 times herein mentioned were, acting within the course and scope of that agency, partnership,
7 employment, conspiracy, ownership or joint venture. Plaintiff is further informed and believes
8 and based thereon alleges that the acts and conduct herein alleged of each such Defendant were
9 known to, authorized by and/or ratified by the other Defendants, and each of them.

10 REESE WITHERSPOON

11 24. Plaintiff Reese Witherspoon is a worldwide motion picture star and celebrity who
12 has starred in and received critical acclaim for her performances in motion pictures that have been
13 viewed by millions of people throughout the United States and the world. Ms. Witherspoon has
14 starred in more than twenty-five (25) motion pictures including, among others: *Mud* (2012), *This*
15 *Means War* (2012), *Water for Elephants* (2011), *How Do You Know* (2010), *Monsters vs. Aliens*
16 (2009), *Four Christmases* (2008), *Rendition* (2006), *Just Like Heaven* (2005), *Walk the Line*
17 (2005), *Vanity Fair* (2004), *Legally Blonde 2: Red, White & Blonde* (2003), *Sweet Home*
18 *Alabama* (2002), *The Importance of Being Earnest* (2002), *Legally Blonde* (2001), *The Trumpet*
19 *of the Swan* (2001), *Little Nicky* (2000), *American Psycho* (2000), *Best Laid Plans* (1999),
20 *Election* (1999), *Cruel Intentions* (1999), *Pleasantville* (1998), *Overnight Delivery* (1998),
21 *Twilight* (1998), *Fear* (1996), *Freeway* (1996), *S.F.W.* (1994), *Jack the Bear* (1993), *A Far Off*
22 *Place* (1993), and *The Man in the Moon* (1991).

23 25. Ms. Witherspoon has received numerous honors, awards and recognitions for her
24 work. Among many others, she received the 2006 Academy Award Oscar for Best Actress, the
25 2006 Golden Globe Award for Best Actress in a Motion Picture, and the Screen Actors Guild
26 Award for Best Actress, for her performance as June Carter in *Walk the Line* (2005).

27 ///

28 ///

1 26. As a testament to her substantial and enduring popularity and commercial value
2 over the course of the past 16 years, Ms. Witherspoon has received the following People's Choice
3 Awards and nominations:

4 2005 People's Choice Award nominee for "Favorite Female Movie Star"
5 2006 People's Choice Award winner for "Favorite Leading Lady"
6 2008 People's Choice Award winner for "Favorite Female Movie Star"
7 2009 People's Choice Award winner for "Favorite Female Movie Star"
8 2012 People's Choice Award nominee for "Favorite Movie Actress"
9 2013 People's Choice Award nominee for "Favorite Comedy Movie Actress"

10 27. Ms. Witherspoon has received the following additional awards, among many
11 others:

12 a. Broadcast Film Critics Association Award
13 b. Blockbuster Entertainment Award
14 c. British Academy of Film and Television Arts Award
15 d. Two (2) National Society of Film Critics Awards
16 e. Three (3) Teen Choice Awards including the Extraordinary Achievement
17 Award; and
18 f. Four (4) MTV Movie Awards from 2001 through 2011 including the
19 MTV Generation Award.

20 28. Ms. Witherspoon also was honored with a Star on the "Hollywood Walk of Fame"
21 in December 2010, located at 6262 Hollywood Boulevard in Hollywood, California.

22 29. Plaintiff's name, image, identity, and persona are recognized instantly by the public
23 and have substantial commercial value. She exercises careful consideration prior to permitting the
24 commercial use of her name, image, identity or persona to ensure that they are associated with
25 products, entertainment, services and/or companies in which she believes and to ensure that the
26 value of her name, image, identity and persona is not diminished, either by association with
27 products, entertainment, services and/or companies which she does not personally desire to
28 support and/or by over-saturation of her name and image. Ms. Witherspoon will not voluntarily

1 appear in print or other media for a company or product unless she carefully selects and believes
2 in the company and product, and unless the compensation she receives is both commensurate with
3 the value of the exploitation of her name, image, identity and persona, and sufficient to
4 compensate her for any potential diminution in value resulting from the commercial use of her
5 publicity rights, intellectual property rights and privacy rights.

6 **DEFENDANTS' WRONGFUL CONDUCT**

7 30. Plaintiff is informed and believes and on that basis alleges that Defendants are, and
8 at all times relevant hereto were, primarily engaged in the business of manufacturing, distributing,
9 marketing and/or selling jewelry and other products, and advertising, marketing and selling their
10 products in the State of California, and throughout the United States and the world.

11 31. Defendants intentionally and prominently used Ms. Withaspoon's name,
12 photograph, likeness, identity and state common law trademark, trade name, trade dress and
13 slogan (collectively herein "Plaintiff's Rights") in advertising, marketing and/or promotion
14 (collectively, the "Advertisements") to sell jewelry and other products (collectively, the
15 "Advertised Products").

16 32. Within certain of the Advertisements, Plaintiff's Rights were used immediately
17 adjacent or in close proximity to the Advertised Products, other products for sale, and particular
18 Defendants' company names, logos, trademarks, trade names, trade dress and slogans, so as to
19 create an unauthorized and false association with Plaintiff, and infringement of Plaintiff's Rights.

20 33. At no time did Plaintiff ever give her permission to Defendants, or any of them, to
21 use Plaintiff's Rights in the Advertisements, or to advertise, market, promote or sell the
22 Advertised Products, or in any other manner, nor has any Plaintiff been compensated for such
23 unauthorized commercial use of her publicity rights or privacy rights.

24 34. Plaintiff is informed and believes and based thereon alleges that Defendants
25 intentionally, negligently and/or knowingly caused Plaintiff's Rights to appear in the
26 Advertisements for the purpose of advertising and promoting Defendants and their products,
27 including the Advertised Products.

28 ///

1 35. Plaintiff has developed and cultivated her name, image, identity and persona to
2 create celebrity and universal recognition, and Defendants have, without any right, title or
3 authorization, misappropriated Plaintiff's Rights including her valuable right of publicity and the
4 associated success and popularity of Plaintiff, by unlawfully using her name, photograph, image,
5 identity and persona for the aforesaid commercial purposes.

6 **FIRST CAUSE OF ACTION**

7 **(For Violation of Common Law Right of Publicity Against All Defendants)**

8 36. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation
9 contained in Paragraphs 1 through 35 inclusive, as though fully set forth herein.

10 37. Based on her hard work and use of her talents in the entertainment field, Plaintiff's
11 name, photograph, image, identity and persona have become, and are, very valuable worldwide
12 and are invested with substantial goodwill in the eyes of the public. Accordingly, Plaintiff has a
13 valuable right of publicity, a right with substantial commercial value, which she has not agreed to
14 license or transfer, in whole or in part, to Defendants, or any of them, for any purpose whatsoever.

15 38. The wrongful acts of Defendants, and each of them, as alleged hereinabove,
16 constitute a violation and misappropriation of Plaintiff's rights of publicity because Defendants
17 have misappropriated Plaintiff's name, photograph, image, identity and persona, and used them,
18 without permission, for Defendants' advantage including, without limitation, to advertise and
19 promote Defendants' businesses in general, and promote and sell their products and, in particular,
20 the Advertised Products.

21 39. As a direct and proximate result of the aforesaid wrongful acts of Defendants,
22 Plaintiff has been damaged in an amount that exceeds the jurisdictional minimum of this Court, to
23 be determined at the time of trial.

24 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
25 each of them, in doing the things herein alleged, acted willfully, maliciously and oppressively, and
26 with full knowledge of the adverse effect of their actions on Plaintiff and with willful and
27 deliberate disregard for the consequences to Plaintiff. By reason thereof, Plaintiff is entitled to
28 recover punitive and exemplary damages from Defendants, and each of them, in an amount to be

1 determined at the time of trial.

2 **SECOND CAUSE OF ACTION**

3 **(For Violation of Common Law Right of Privacy Against All Defendants)**

4 41. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation
5 contained in Paragraphs 1 through 40 inclusive, as though fully set forth herein.

6 42. Defendants' wrongful acts, as alleged hereinabove, constitute a violation of
7 Plaintiff's common law right of privacy because Defendants, without Plaintiff's permission, used
8 Plaintiff's name and photograph to advertise and promote Defendants' companies and products.

9 43. Defendants have infringed Plaintiff's right to be left alone and her right to control
10 the use of her image, identity and persona, in direct violation of applicable privacy laws.

11 44. As a direct and proximate result of the aforesaid wrongful acts of Defendants,
12 Plaintiff has been damaged in an amount that exceeds the jurisdictional minimum of this Court, to
13 be determined at the time of trial.

14 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants, in
15 doing the things herein alleged, acted willfully, maliciously and oppressively, and with full
16 knowledge of the adverse effect of its actions on Plaintiff and with willful and deliberate disregard
17 for the consequences to Plaintiff. By reason thereof, Plaintiff is entitled to recover punitive and
18 exemplary damages from Defendants in an amount to be determined at the time of trial.

19 **THIRD CAUSE OF ACTION**

20 **(For Common Law Trademark / Trade Name Infringement Against All Defendants)**

21 46. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation
22 contained in Paragraphs 1 through 45, inclusive, as though fully set forth herein.

23 47. Plaintiff's name and image constitute common law trademarks, and her name
24 constitutes a common law trade name, all of which are owned by Plaintiff, and have been
25 extensively advertised and promoted throughout the world for more than twenty (20) years. As a
26 result of this advertising and promotion, Plaintiff's common law trademarks and trade name are
27 recognized throughout worldwide trading areas and channels of trade as famous and distinctive,
28 and are identified by the purchasing public with Plaintiff. Plaintiff's common law trademarks and

1 trade name are famous and distinctive within the meaning of applicable common law.

2 48. Notwithstanding Plaintiff's rights, Defendants, without Plaintiff's authorization,
3 advertised, distributed, offered to sell and sold products and services that unlawfully utilize
4 Plaintiff's common law trademarks and trade name.

5 49. Defendants' use, and continuing use, of Plaintiff's common law trademarks and
6 trade name in connection with Defendants' companies, products and services constitutes a
7 violation of applicable common law in that it creates a false association between Plaintiff and her
8 common law trademarks and trade name, on the one hand, and Defendants' companies, products
9 and services, on the other hand, and a false designation of origin as to the goods and services
10 advertised, marketed, promoted, distributed, offered for sale and sold by Defendants. Defendants'
11 use of Plaintiff's common law trademarks and trade name is likely to confuse, mislead and/or
12 deceive the consuming public and trade by creating the false impression that Defendants'
13 companies, products and services are or were approved, authorized, sponsored, endorsed,
14 guaranteed by and/or are in some way affiliated or associated with Plaintiff.

15 50. Defendants' use, and continuing use, of the Plaintiff's common law trademarks and
16 trade name in connection with Defendants' companies, products, and services also constitutes a
17 false or misleading description or representation in violation of applicable common law.

18 51. As a direct and proximate result of Defendants' wrongful conduct described herein,
19 Plaintiff is entitled to the recovery of: (1) any and all damages sustained by Plaintiff as a result of
20 Defendants' conduct; (2) Defendants' profits associated with the use of Plaintiff's common law
21 trademarks and trade name; and (3) Plaintiff's costs of suit.

22 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants, in
23 doing the things herein alleged, acted willfully, maliciously and oppressively, and with full
24 knowledge of the adverse effect of their actions on Plaintiff and with willful and deliberate
25 disregard for the consequences to Plaintiff. By reason thereof, Plaintiff is entitled to recover
26 punitive and exemplary damages from Defendants in an amount to be determined at the time of
27 trial.

28 ///

1 53. Plaintiff also seeks a preliminary and permanent injunction to prohibit Defendants
2 from any further commercial use of Plaintiff's common law trademarks and trade name, or any
3 iterations thereof.

4 **FOURTH CAUSE OF ACTION**

5 **(For Common Law Trade Dress Infringement Against All Defendants)**

6 54. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation
7 contained in Paragraphs 1 through 53, inclusive, as though fully set forth herein.

8 55. Defendants, without Plaintiff's authorization, advertised, distributed, offered to sell,
9 and sold products that unlawfully utilize Plaintiff's common law trade dress, namely, her name,
10 image and identity as used in commerce for more than twenty (20) years.

11 56. Defendants use, and continuing use, of Plaintiff's common law trade dress, in
12 connection with Defendants' companies, products and services constitutes a violation of
13 applicable common law in that it creates a false association between Plaintiff, on the one hand, and
14 Defendants' companies, products and services, on the other hand, and a false designation of origin
15 as to the goods and services advertised, marketed, promoted, distributed, offered for sale, and sold
16 by Defendants. Defendants' use of Plaintiff's common law trade dress is likely to confuse,
17 mislead and/or deceive the consuming public and trade by creating the false impression that
18 Defendants' companies, products and services are or were approved, authorized, sponsored,
19 endorsed, guaranteed by and/or are in some way affiliated or associated with Plaintiff.

20 57. Defendants' use, and continuing use, of Plaintiff's common law trade dress in
21 connection with Defendants' companies, products and services also constitutes a false or
22 misleading description or representation in violation of applicable common law.

23 58. As a direct and proximate result of Defendants' wrongful conduct described herein,
24 Plaintiff is entitled to the recovery of: (1) any and all damages sustained by Plaintiff as a result of
25 Defendants' conduct; (2) Defendants' profits associated with the use of Plaintiff's common law
26 trade dress; and (3) Plaintiff's costs of suit.

27 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants, in
28 doing the things herein alleged, acted willfully, maliciously and oppressively, and with full

1 knowledge of the adverse effect of its actions on Plaintiff and with willful and deliberate disregard
2 for the consequences to Plaintiff. By reason thereof, Plaintiff is entitled to recover punitive and
3 exemplary damages from Defendants in an amount to be determined at the time of trial.

4 60. Plaintiff also seeks a preliminary and permanent injunction to prohibit Defendants
5 from any further commercial use of Plaintiff's common law trade dress.

6 **FIFTH CAUSE OF ACTION**

7 **(For Common Law Slogan Infringement Against All Defendants)**

8 61. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation
9 contained in Paragraphs 1 through 60, inclusive, as though fully set forth herein.

10 62. Defendants, without Plaintiff's authorization, advertised, distributed, offered to sell,
11 and sold products that unlawfully utilize Plaintiff's common law slogan, namely, her name "Reese
12 Witherspoon," which Plaintiff has used in commerce for more than twenty (20) years.

13 63. Defendants' use, and continuing use, of Plaintiff's common law slogan, in
14 connection with Defendants' companies, products and services constitutes a violation of
15 applicable common law in that it creates a false association between Plaintiff, on the one hand, and
16 Defendants' companies, products and services, on the other hand, and a false designation of origin
17 as to the goods and services advertised, marketed, promoted, distributed, offered for sale, and sold
18 by Defendants. Defendants' use of Plaintiff's common law slogan is likely to confuse, mislead
19 and/or deceive the consuming public and trade by creating the false impression that Defendants'
20 companies, products and services are or were approved, authorized, sponsored, endorsed,
21 guaranteed by and/or are in some way affiliated or associated with Plaintiff.

22 64. Defendants' use, and continuing use, of Plaintiff's common law slogan in
23 connection with Defendants' companies, products and services also constitutes a false or
24 misleading description or representation in violation of applicable common law.

25 65. As a direct and proximate result of Defendants' wrongful conduct described herein,
26 Plaintiff is entitled to the recovery of: (1) any and all damages sustained by Plaintiff as a result of
27 Defendants' conduct; (2) Defendants' profits associated with the use of Plaintiff's common law
28 slogan; and (3) Plaintiff's costs of suit.

1 66. Plaintiff is informed and believes, and based thereon alleges, that Defendants, in
2 doing the things herein alleged, acted willfully, maliciously and oppressively, and with full
3 knowledge of the adverse effect of its actions on Plaintiff and with willful and deliberate disregard
4 for the consequences to Plaintiff. By reason thereof, Plaintiff is entitled to recover punitive and
5 exemplary damages from Defendants in an amount to be determined at the time of trial.

6 67. Plaintiff also seeks a preliminary and permanent injunction to prohibit Defendants
7 from any further commercial use of Plaintiff's common law slogan, namely, her name "Reese
8 Witherspoon," or any iteration thereof.

9 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
10 follows:

11 1. General and special damages in an amount not less than Fifteen Million Dollars
12 (\$15,000,000) in accordance with proof at trial, together with interest thereon at the legal rate;

13 2. Exemplary and punitive damages in an amount according to proof at the time of
14 trial;

15 3. Preliminary and permanent injunction prohibiting Defendants and their affiliated
16 companies from any further use of Plaintiff's Rights, including without limitation her name,
17 photograph, likeness, image, identity, persona, voice, sound-alike voice or signature in a manner
18 that violates her common law publicity rights, trademarks, trade name, trade dress and/or slogan
19 rights, and also prohibiting Defendants and their affiliated companies from any further violations
20 of Plaintiff's privacy rights;

21 4. For all costs of suit incurred herein; and

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1 5. For such other and further relief as the Court may deem proper.

2
3 Dated: July 15, 2013

HARDER MIRELL & ABRAMS LLP

4
5
6 By: 

CHARLES J. HARDER

Attorneys for Plaintiff REESE WITHERSPOON

7
8
9 DEMAND FOR JURY TRIAL

10
11 Plaintiff hereby demands a trial by jury.

12
13 Dated: July 15, 2013

HARDER MIRELL & ABRAMS LLP

14
15
16 By: 

CHARLES J. HARDER

Attorneys for Plaintiff REESE WITHERSPOON

Michael Jackson Tops Forbes' 2016 Top-Earning Dead Celebrities List

10/12/2016 by Nerisha Penrose



Terry Lott/Sony Music Archive/Getty Images

Michael Jackson accepts a gold disc for "Thriller" in London in 1983.

Although it's been nine years since his passing, the King of Pop's lucrative empire only continues to grow, as Michael Jackson earns another No. 1 spot, this time on Forbes' 2016 Top-Earning Dead Celebrities list.

<http://www.billboard.com/articles/news/7541068/michael-jackson-forbes-2016-top-earning-dead-celebrities-list>

Sony paid the singer \$115 million for a 50/50 partnership for Sony/ATV Publishing after Jackson initially bought the Sony/ATV publishing company for \$47 million back in 1985 (the equivalent to \$160 million today). Earlier this year, Sony bought Jackson's half for \$750 million, giving the pop legend his highest payout to date.

READ MORE

Michael Jackson's Top 50 Billboard Hits

Cartoonist Charles Schulz -- known best for his iconic Peanuts franchise -- bows in at No. 2 with \$48 million. The 2015 Peanuts' reboot *The Peanuts Movie* pulled in \$45 million during its weekend debut. Golf veteran Arnold Palmer, who passed away just last month, claims the No. 3 spot with \$40 million.

Music legends Elvis Presley and Prince close out the top 5, racking in \$27 million and \$25 million. Prince's Paisley Park recently opened its doors to the public, and patrons paid anywhere from \$38.50 to \$100 to tour the recording studio, according to *International Business Times*.

Check out the top ten of Forbes' highest-paid dead celebrities list here.

10. Bettie Page - \$11 million
9. Albert Einstein - \$11.5 million
8. John Lennon - \$12 million
7. Theodor Geisel "Dr. Seuss" - \$20 million
6. Bob Marley - \$21 million
5. Prince - \$25 million
4. Elvis Presley - \$27 million
3. Arnold Palmer - \$40 million
2. Charles Schulz - \$48 million
1. Michael Jackson - \$825 million



Bill Text: NY A08155 | 2017-2018 | General Assembly | Amended New York Assembly Bill 8155

Bill Title: Establishes the right of publicity for both living and deceased individuals; provides that an individual's name, voice, signature and likeness is the personal property of the individual and is freely transferable and descendible; provides for the registration with the department of state of such rights of a deceased individual; and establishes a 1 year statute of limitations for commencing a cause of action for the violation of such right.

Spectrum: Partisan Bill (Democrat 4-0)

Status: (Introduced) 2017-06-20 - ordered to third reading rules cal.564 [A08155 Detail]

Download: [New_York-2017-A08155-Amended.html](#)

STATE OF NEW YORK

8155--A

2017-2018 Regular Sessions

IN ASSEMBLY

May 31, 2017

Introduced by M. of A. MORELLE, WEINSTEIN -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to the right of publicity; and to amend the civil practice law and rules, in relation to the timeliness of commencement of an action for violation of the right of publicity

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 50 of the civil rights law is renumbered section
2 50-f and a new section 50 is added to read as follows:

3 § 50. Definitions. For the purposes of sections fifty-f, fifty-g,
4 fifty-h, fifty-i and fifty-one of this article, the following terms
5 shall have the following meanings:

6 1. "Characteristic" means a distinctive appearance, gesture or manner-
7 ism recognized as an identifying attribute of an individual.

8 2. "Deceased individual" means any individual, including his or her
9 name, voice, signature or likeness, regardless of the individual's place
10 of domicile, residence or citizenship at the time of death or otherwise,
11 who has died.

12 3. "Secretary" means the secretary of state.

13 4. "Fund-raising" means an organized activity to solicit donations of
14 money or other goods or services from persons or entities by an organ-
15 ization, company or public entity.

16 5. "Individual" means a natural person, living or dead.

17 6. "Likeness" means an image, digital replica, photograph, painting,
18 sketching, model, diagram, or other recognizable representation of an
19 individual's face or body, and includes a characteristic. A digital
20 replica is a computer-generated or electronic, photo-realistic reproduc-
21 tion of an individual's likeness, whether animated or static.

EXPLANATION--Matter in *italics* (underscoring) is new; matter in brackets
[-] is old law to be omitted.

LBD11384-04-7

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7. "Name" means the actual or assumed name, or nickname, of a living or deceased individual that identifies that individual.

8. "Person" means any natural person, firm, association, partnership, corporation, company, syndicate, receiver, common law trust, conservator, statutory trust, or any other entity by whatever name known or however organized, formed or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic or other organizations.

9. "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, in which the individual is readily identifiable.

10. "Registration to establish a claim of right" means a registration by a person claiming to be a successor in interest in the right of publicity of a deceased individual with the department of state.

11. "Right of publicity" includes the right of privacy, and means an individual's name, voice, signature and likeness, individually and collectively known as his or her right of publicity.

12. "Signature" means a handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all other individuals.

§ 2. Section 50-f of the civil rights law, as renumbered by section one of this act, is amended to read as follows:

§ 50-f. Right of [privacy] publicity for living and deceased individuals. ~~[A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.] A living or deceased individual's name, voice, signature and likeness, individually and collectively known as his or her right of publicity, is personal property, freely transferable or descendible, in whole or in part, by contract or by means of any trust or testamentary instrument, whether such contract, trust or testamentary instrument was entered into or executed before or after the effective date of the chapter of the laws of two thousand seventeen which amended this section. Such right of publicity shall not be used without obtaining the written consent of the individual, his or her successors or assigns as provided for in the provisions of this article pertaining to the right of publicity or, in the case of a minor, of his or her parent or guardian.~~

§ 3. The civil rights law is amended by adding three new sections 50-g, 50-h and 50-i to read as follows:

§ 50-g. Duration of an individual's right of publicity. Every individual's right of publicity shall continue to exist for forty years after his or her death, and does not expire upon the death of the individual, regardless of whether the law of the domicile, residence or citizenship of the individual at the time of death or otherwise recognizes a similar or identical property right.

§ 50-h. Methods of transfer and conveyance. 1. The rights recognized under the provisions of this article pertaining to the right of publicity are freely transferable and descendible, in whole or in part, by the following:

(a) contract;

(b) license;

(c) gift;

(d) trust;

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1 (e) testamentary document. The rights shall vest in the persons enti-
2 led to the right of publicity under the testamentary instrument of the
3 deceased individual effective as of the date of that individual's death.
4 In the absence of an express transfer in a testamentary instrument of
5 the deceased individual's right of publicity, a provision in the testa-
6 mentary instrument that provides for the disposition of the residue of
7 the deceased individual's assets shall be effective to transfer the
8 rights recognized under this article in accordance with the terms of
9 that provision; and

10 (f) intestate succession. The right to publicity of an individual
11 dying intestate shall be distributed under the laws of intestate
12 succession, and the rights and remedies of this article may be exercised
13 and enforced by a person or persons who possess at least a fifty-one
14 percent interest of the individual's right of publicity. Such persons
15 shall make a proportional accounting to, and shall act at all times in
16 good faith with respect to, any other person in whom the rights being
17 enforced have vested.

18 2. The rights established by the provisions of this article pertaining
19 to the right of publicity shall also be freely transferable or descendi-
20 ble by any subsequent owner of the deceased individual's right to
21 publicity as recognized by this article. Nothing in the provisions of
22 this article pertaining to the right of publicity shall be construed to
23 render invalid or unenforceable any contract entered into by a deceased
24 individual during his or her lifetime by which the deceased individual
25 assigned the rights, in whole or in part, to use his or her right of
26 publicity as defined in this article.

27 3. If any deceased individual does not transfer his or her rights
28 under this section by contract, license, gift, trust or testamentary
29 document, and there are no surviving persons as described in paragraph
30 (f) of subdivision one of this section, then the property rights associ-
31 ated with the deceased individual's right of publicity shall terminate.

32 4. Any person claiming to be a successor in interest to the right of
33 publicity of a deceased individual under this article or a licensee of a
34 deceased individual's right of publicity shall register that claim with
35 the secretary on a form prescribed by the secretary and upon payment of
36 a fee of fifty dollars. The form shall include the name and date of
37 death of the deceased individual, the name and address of the claimant,
38 the basis of the claim, and a sworn affidavit under penalty of perjury
39 as to the rights claimed. Claims registered under this registry and
40 information regarding such successors in interest to the deceased indi-
41 vidual's right of publicity shall be public records.

42 5. Upon receipt and after filing of any document pursuant to this
43 section, the secretary shall post the document along with the entire
44 registry of persons claiming to be successors in interest to the
45 deceased individual's right of publicity or a registered licensee under
46 this section upon an internet website developed by the secretary for
47 such purpose. The secretary may reproduce by digital or other means any
48 of the filings or documents and destroy the original filing or document.

49 6. The secretary is authorized to promulgate such regulations as he or
50 she shall deem necessary to implement the provisions of subdivisions
51 four and five of this section.

52 7. No action shall be brought under the provisions of this article
53 pertaining to the right of publicity by reason of any use of a deceased
54 individual's right of publicity occurring after the expiration of the
55 duration of the right of publicity as provided in section fifty-g of
56 this article. Furthermore, no action may be brought under the provisions

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1 of this article pertaining to the right of publicity for a violation of
2 a deceased individual's right of publicity unless the claim is regis-
3 tered and posted on the secretary's public internet website within forty
4 years of such individual's death.

5 8. If there is a right of publicity registration for a deceased indi-
6 vidual, any person seeking to license right of publicity for the indi-
7 vidual shall have the right to rely upon such registration and posting
8 and thereby presume that the person who has registered and posted his or
9 her claim on the secretary's public internet website has the right to
10 assign or license the deceased individual's right of publicity. The
11 registration and posting of a person's claim to a deceased individual's
12 right of publicity on the secretary's public internet website shall
13 constitute a defense to an action brought under the provisions of this
14 article pertaining to the right of publicity.

15 9. Any person who knowingly makes a false or fraudulent representation
16 in connection with a registration with the secretary to establish a
17 claim to a deceased individual's right of publicity pursuant to this
18 section shall be liable for any damages sustained as a result of the
19 false or fraudulent registration as determined by a court of competent
20 jurisdiction.

21 10. Any document filed with the secretary, whether such document is a
22 reproduction or an original, may be destroyed by the secretary forty-
23 seven years after the death of the individual whose right of publicity
24 has been registered therein. The secretary shall remove any document
25 registered and posted upon the public internet website upon showing of a
26 court order from a court of competent jurisdiction that a person claim-
27 ing to be a successor in interest to a deceased individual's right of
28 publicity has no property rights in the right of publicity of the
29 deceased.

30 § 50-i. No abrogation of rights and remedies. Nothing contained in the
31 provisions of this article related to the right of publicity shall be
32 deemed to abrogate or otherwise limit any rights or remedies otherwise
33 conferred by federal or state law.

34 § 4. Section 51 of the civil rights law, as amended by chapter 674 of
35 the laws of 1995, is amended to read as follows:

36 § 51. Action for injunction and for damages. 1. Applicability. The
37 provisions of this article related to the right of publicity apply to an
38 act or event that occurs within New York, regardless of a deceased indi-
39 vidual's domicile, residence or citizenship. Furthermore, the rights
40 recognized under the provisions of this article pertaining to the right
41 of publicity, shall be deemed to exist at the time of death regardless
42 of the domicile, residence or citizenship of any deceased individual.

43 2. Exceptions. Consent for use of another individual's right of
44 publicity as provided in the provisions of this article pertaining to
45 the right of publicity shall not be required when used in connection
46 with the following:

47 (a) news, public affairs or sports broadcast, including the promotion
48 of and advertising for a public affairs or sports broadcast, an account
49 of public interest or a political campaign;

50 (b) in:

51 (i) a play, book, magazine, newspaper, musical composition, visual
52 work, work of art, audiovisual work, radio or television program if it
53 is fictional or nonfictional entertainment, or a dramatic, literary or
54 musical work;

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(ii) a work of political, public interest or newsworthy value including a comment, criticism, parody, satire or a transformative creation of a work of authorship; or

(iii) an advertisement or commercial announcement for any of the works described in paragraph (a) of this subdivision or this paragraph; or

(c) use of the right of publicity of a deceased individual where the licensee or successor in interest has failed to register and post a claim of right under section fifty-h of this article until such time as a claim of right has been registered and posted as required under such section.

(d) however, subject to the First Amendment of the United States Constitution and section eight of article one of the New York state constitution, a work that is exempt under this subdivision that includes a commercial use and replicates the professional performance or activities rendered by an individual, shall not be exempt under this subdivision where the replication is inextricably intertwined with the right of publicity of such individual.

3. Limited immunity. Owners or employees of any medium used for advertising including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any use of an individual's right of publicity for commercial purposes in violation of that individual's right of publicity is published or disseminated, shall not be liable under the provisions of this article pertaining to the right of publicity unless it is established that the owners or employees had knowledge of the unauthorized use as prohibited by the provisions of this article pertaining to the right of publicity.

4. Action for injunction and for damages. Any [person] individual either living or deceased whose [name, portrait, picture or voice] right of publicity is used within this state for advertising purposes [or], for the purposes of trade or for purposes of fund-raising or solicitation of donations, without the written consent first obtained as [above] provided [may] in the provisions of this article pertaining to the right of publicity is entitled to maintain an equitable action for violation of the individual's right of publicity in the supreme court of this state against the person[, firm or corporation] so using his [name, portrait, picture or voice] or her right of publicity, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained including an amount equal to the greater of seven hundred fifty dollars or compensatory damages by reason of such use and if the defendant shall have knowingly used such person's [name, portrait, picture or voice] right of publicity in such manner as is forbidden or declared to be unlawful by [section fifty] the provisions of this article relating to the right of publicity, the [jury] finder of fact, in its discretion, may award exemplary damages. [But nothing] A violation of an individual's right of publicity may occur without regard to whether the use or activity is for profit or not-for-profit with the exception of the use of an individual's right of publicity for fund-raising purposes by not-for-profit radio and television stations licensed by the Federal Communications Commission of the United States.

5. No defense. It shall not constitute a defense to an action for violation of an individual's right of publicity that such violation includes more than one individual.

6. Use and transfer. Nothing contained in this article shall be so construed as to prevent any [person, firm or corporation] individual or person from selling or otherwise transferring any material containing

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1 such ~~[name, portrait, picture or voice]~~ right of publicity as provided
2 in the provisions of this article relating to the right of publicity in
3 whatever medium to any user of such [name, portrait, picture or voice]
4 right of publicity, or to any third party for sale or transfer directly
5 or indirectly to such a user, for use in a manner lawful under this
6 article[~~; nothing~~].

7 7. Photographers. Nothing contained in this article shall be so
8 construed as to prevent any person[~~, firm or corporation,~~] practicing
9 the profession of photography, from exhibiting ~~[in or about his or its~~
10 ~~establishment]~~ specimens of the work of such ~~[establishment] photogra-~~
11 ~~pher,~~ unless the same is continued by such person[~~, firm or corporation~~]
12 after written notice objecting thereto has been given by the ~~[person]~~
13 ~~individual portrayed[; and nothing]~~.

14 8. Manufacturers, writers, composers and artists. Nothing contained in
15 this article shall be so construed as to prevent any person[~~, firm or~~
16 ~~corporation~~] from using the ~~[name, portrait, picture or voice of]~~ right
17 of publicity owned by any manufacturer or dealer in connection with the
18 goods, wares and merchandise manufactured, produced or dealt in by ~~[him]~~
19 the manufacturer which ~~[he]~~ has been sold or disposed of with such
20 ~~[name, portrait, picture or voice]~~ right of publicity used in connection
21 therewith; or from using the ~~[name, portrait, picture or voice]~~ right of
22 publicity of any author, composer or artist in connection with his or
23 her literary, musical or artistic productions which he or she has sold
24 or disposed of with such ~~[name, portrait, picture or voice]~~ right of
25 publicity used in connection therewith.

26 9. Copyright owners of a sound recording. Nothing contained in this
27 section shall be construed to prohibit the copyright owner of a sound
28 recording from disposing of, dealing in, licensing or selling that sound
29 recording to any party, if the right to dispose of, deal in, license or
30 sell such sound recording has been conferred by contract or other writ-
31 ten document by such living person or the holder of such right. ~~[Nothing~~
32 ~~contained in the foregoing sentence shall be deemed to abrogate or~~
33 ~~otherwise limit any rights or remedies otherwise conferred by federal~~
34 ~~law or state law.]~~

35 10. Termination of post mortem right of publicity. Nothing in the
36 provisions of this article pertaining to the right of publicity shall be
37 construed as prohibiting the use of the deceased individual's right of
38 publicity that occurs after the expiration of forty years following his
39 or her death. Nor shall anything in the provisions of this article
40 pertaining to the right of publicity be construed as creating liability
41 or giving rise to any remedy for any actions or conduct involving the
42 use of a deceased individual's right of publicity that occurred prior to
43 the effective date of the chapter of the laws of two thousand seventeen
44 which amended this section.

45 11. Statute of Limitations. Actions brought under the provisions of
46 this article pertaining to the right of publicity shall be commenced
47 within one year of the date of discovery of the injury to the plaintiff
48 or from the date through the exercise of due diligence such injury
49 should have been discovered by the plaintiff, whichever is earlier.

50 § 5. The section heading and subdivision 3 of section 215 of the civil
51 practice law and rules are amended to read as follows:

52 Actions to be commenced within one year: against sheriff, coroner or
53 constable; for escape of prisoner; for assault, battery, false imprison-
54 ment, malicious prosecution, libel or slander; for violation of right of
55 ~~[privacy]~~ publicity; for penalty given to informer; on arbitration
56 award.

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1 3. an action to recover damages for assault, battery, false imprison-
2 ment, malicious prosecution, libel, slander, false words causing special
3 damages, or a violation of the right of [privacy] publicity under
4 [section forty-one] article five of the civil rights law;
5 § 6. This act shall take effect on the one hundred eightieth day after
6 it shall have become a law, and shall apply to deceased individuals who
7 died on or after such date.

SEXUAL HARASSMENT

Title VII of the Civil Rights Act of 1964

DEFINITIONS

SEC. 2000e. *[Section 701]*

For the purposes of this subchapter-

(a) The term “person” includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 *[originally, bankruptcy]*, or receivers.

(b) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 *[United States Code]*), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 *[the Internal Revenue Code of 1986]*, except that during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term “employment agency” means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person. ...

(f) The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. *[Section 703]*

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Title 8 of the Administrative Code of the City of New York

Chapter 1 - Commission on Human Rights

§ 8-101. Policy.

In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, partnership status, caregiver status, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking, whether children are, may be or would be residing with a person or conviction or arrest record. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination, bias-related violence or harassment and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, discrimination and bias-related violence or harassment as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

23. The provisions of this chapter relating to employees shall apply to interns.

28. The term "intern" shall mean an individual who performs work for an employer on a temporary basis whose work: (a) provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced; (b) provides experience for the benefit of the individual performing the work; and (c) is performed under the close supervision of existing staff. The term shall include such individuals without regard to whether the employer pays them a salary or wage.



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**NEW YORK STATE HUMAN RIGHTS LAW PROTECTS
INTERNS FROM DISCRIMINATION**

Provisions cover unpaid interns in the private and public sectors.

As we approach the beginning of summer internship season, Commissioner Helen Diane Foster wants to remind all New Yorkers that interns are protected from discrimination in the workplace under the New York State Human Rights Law. Unpaid interns are protected from harassment and other unlawful discrimination based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status.

"Internships play a crucial role by providing vital experience that can guide an individual to professional success," said Commissioner Foster. "Whether a regular employee or an intern, everyone is entitled to a workplace free of discrimination and harassment in the State of New York. This measure ensures that all workers are afforded their full rights under the law."

The Human Rights Law defines "intern" as a person who performs work for an employer for the purpose of training under certain circumstances. Among them, that the employer is not committed to hire the person performing the work at the conclusion of the internship and that the person performing the work agrees with the employer that they are not entitled to wages for the work performed. The work performed by the intern is to provide or supplement training that may enhance the intern's employability, provide experience for the intern's benefit, be performed under close supervision of existing staff and not displace regular employees. If an individual is called an "intern" but paid, that person will likely be considered a regular employee under the Human Rights Law.

These provisions explicitly protect interns from sexual harassment, which under the Human Rights Law is considered a form of sex discrimination, as well as other forms of harassment

For their part, employers cannot discriminate against interns in selection, retention or terms, conditions and privileges of the internship or when advertising for the internship. It is also unlawful for employers to discriminate against pregnant interns or retaliate against an intern for opposing discriminatory behavior or for filing a complaint.

The Human Rights Law prohibits discrimination in employment, housing, credit, and other jurisdictions, based on age, race, national origin, sex, sexual orientation, marital status, disability, military status, and other specified classes. Complaints with the Division must be filed within one year of the most recent incident of discrimination. For more information about the law and the work of the agency, please visit the Division of Human Rights' website at www.dhr.ny.gov.

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Women are angry because of men. Again.

Villains like Harvey Weinstein aren't new. Villains getting caught is.



By Elizabeth Wurtzel October 17

Elizabeth Wurtzel is the author of "Prozac Nation," "Bitch" and "More, Now, Again." She is a lawyer in New York City.

Harvey Weinstein is the villain we were waiting for.

He used to run the studio that brought us "Pulp Fiction," a movie that taught everyone about redemption, but he is now the guy in the bathrobe. Harvey Weinstein is every woman's piggish boss. He is the creep who corners you at the company Christmas party and demands a kiss under the mistletoe.

Harvey Weinstein is that guy.

After eight exhausting months of Trumpdom, the Weinstein news broke a year after the "Access Hollywood" tape first dropped, almost to the day. Now Weinstein is the cathexis for our rage at living under the harasser in chief.

Donald Trump got away with it, like he gets away with everything. Most women — even battle-hardened feminists — have given up on making anything stick to him. But now here is Harvey Weinstein, and his long-running show in the hotel room bathtub has been canceled. Right here, right now, in Trump's America, a powerful man has been taken to the cleaners and put out on a wire hanger.

Women are thrilled. Gobsmacked. I did not see this coming. No women's issue has hit this high on the outrage thermometer since Trump took office. There was a women's march the day after the inauguration, and then a quiescent resistance. Hope for 2018. Then for 2020. Then just for someday. Someday, maybe, it won't be 1958 anymore.

But now: Wow! The Weinstein scandal is the sound of blowback.

Sexual harassment has done it. This is the thing that disgusts women. My iPhone is screaming at me with text messages from friends:

I hope a group of women armed with clubs beats him black and blue. And leaves him on the steps of the New York Courthouse, naked in the cold.

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Happy to see the blame fall on the perp and not the victim for a change

Like, wake me when anything structural changes

There is no such thing as a woman who has not experienced sexual harassment. Sexual harassment is a lifestyle. It is just dating for powerful men. Most of them don't know they are doing it. They don't believe they are engaging in bad behavior. They are sure they are the handsomest men in the world — why else would they be so successful? They think every woman is dying to get with them.

Men who do this sort of thing think they are just being friendly. They are just asking the girl out who — so what? — happens to work for them.

Asking again and again and again.

Cornering her.

Pushing her against the wall.

Threatening her — of course not meaning it, because *that would be totally wrong*.

Over and over again. But, no, not seriously, *of course*.

We're all grown-ups.

But asking again and again. And again.

Until it is unbearable and someone has to leave, usually her. No: always her.

She has to go.

It was her fault for not being easygoing. Maybe — this has to be it — she had her period. Women are so touchy. Why can't they take a joke? Why can't they laugh about it? He was not serious about the whole throwing her against the wall thing. This is an office, so *of course not*.

Oh, whatever. Women just suck.

That is what women are almost always up against with sexual harassment. No one listens to them. They are stuck. They put up or shut up. There is no point reporting it. Nothing changes. It makes matters worse to tell. Then not only are you a grouch, you are also a tattler.

Yet in the doom and gloom of the Trump presidency, Weinstein was fired by a board of directors of nine white men, who for years enabled him and who are now running for cover themselves.

Women love this story. We are in a frenzy of hashtags. People keep asking me who I think should be investigated next. There is all this excitement, as if consciousness is change.

But it is not even a precursor to it most of the time. We are mostly frogs wishing we were tadpoles. The forward march of time is a crawl.

Sexual harassment is not about sex or love. It is about power. It thrives among cults of personality, because rock stars have groupies, and so do CEOs. Weinstein's wretched behavior was a tribute to his dominance. Through years of lawsuits and settlements, at his closely held concern, aberrance was tolerated like some fringe eccentricity, because — because why? Because they told themselves this day was never coming. Plainly Weinstein was impossible to challenge. That is power.

Sexual harassment is the result of the male-dominated power structure. It will take more than awareness to topple that.

We have been through this before, with Clarence Thomas, in televised hearings that we all watched, and with Bill Clinton, on and on, and of course with Trump.

Nothing changed after those long nights of the soul.

Of course not.

Powerful men do not believe the rules apply to them.

Do powerful men know what they are like? They do not. It is that lack of self-consciousness that allows them to propel forth. Stop wondering if Donald Trump knows what he is like. A rainbow does not see it has color.

Hollywood is a minor offender when it comes to sexual harassment. Things are really bad in New York and Silicon Valley. Hello, Fox News! Hailing Uber! And a special shout out to D.C., intern central, where politics makes strange bedfellows.

Sexual harassment is bad *everywhere* that men and women work together. The workplace is a steam bath. What can we do? It is a hotbed of hot beds. It is where so much dating action happens. It is where men and women meet. It is difficult to police. If you get the feeling it is total chaos, you are catching on. Young people getting in one another's pants is the cost of doing business. But powerful old men are supposed to stay in the corner suite where they belong.

Women are angry. We should be. About all of it. We are a failed revolution. Sexism is bad. We notice it now. Where did all these white men come from, and when will they go away? Because of Trump, I don't even like listening to Bob Dylan anymore, because I am so sick of what any man has to say about anything at all. And I am trying to be reasonable. It is unbelievable to be a woman with Trump as president, such a profound insult that all men are implicated. This week it's Weinstein, but moving right along. We need to fix the whole thing.

Or as my favorite text message put it: *Men. Again.*

WWD

BUSINESS / MEDIA

Sexual Abuse in Modeling: The Outcry Grows

Model Cameron Russell is shedding light on decades of sexual abuse in the modeling industry.

By Lisa Lockwood and Rosemary Feitelberg and Alexandra Steigrod on October 17, 2017



 Cameron Russell
Jonah Koch

Could modeling — and fashion photography — be the next sector that's put under the spotlight for sexual abuse?

While rumors about abuse and sexual harassment of female and male models — and the photographers, agents and others who perpetrated it — have circulated within the fashion world for years, Cameron Russell, a well-known model, started posting

stories from models on Instagram last week about abusive situations they've encountered — from sexual harassment and molestation to attempted rape. Over 75 models have weighed in so far.

The anonymous comments posted on Russell's Instagram describe a myriad of scenarios, with models describing photographers propositioning them, physically grabbing them, exposing themselves and sending nude photographs. There are also accounts of underage models unknowingly winding up in unchaperoned situations or being asked if they were a virgin.

Another commenter described how at the age of 17, midway through a normal shoot, she was "basically forced" to take her clothes off to get in the shower so the photographer could take photos and he took advantage of her in many ways.

Russell advised her 89,300 followers, "If you have been a victim of rape or assault 24/7 support is available from rainn.org," referring to the Rape, Abuse & Incest National Network.

Executives at The Lions Model Management LLC, which represents the 30-year-old Russell, did not respond to a request for comment, nor did Russell.

"I think what Cameron is doing is very important. All models deserve the right to feel safe and respected. Unsafe environments should not be tolerated and abusers should be reported," said Steven Kolb, chief executive officer of the Council of Fashion Designers of America.

"CFDA puts its support behind Cameron and others who are speaking out. I also applaud the Model Alliance and their efforts," he continued. "We started the CFDA Health Initiative in 2007 to address eating disorders and underage models. In recent years we have encouraged more diversity on the runway as part of our fashion week outreach to the industry. I believe we've been able to impact positive change with our work. While we have not been specific on sexual harassment, our Health Initiative is committed to the notion of a healthy mind in a healthy body, and there cannot be one without the other. I do think it important that we expand our Health Initiative guidelines to be more specific on harassment and it is something we will do."

When James Scully, a casting director, posted on Instagram in February allegations that models were being abused during a Balenciaga casting, it set off a firestorm. He said he received almost 10,000 responses in the first two hours about abuses models had endured in their careers.

He said he got e-mails from girls saying that a stylist touched her. "I discovered in speaking with other agents and other girls, I started to hear more stories like this....It was in the air, and we knew it. I didn't know the extent. Especially with these test photographers and those that kind of prey and take advantage of these girls. You always hear an isolated thing....You hear the stories and I was getting stories about stylists and a couple of photographers," he said. He said he would hear about sexual harassment and how a haircut destroyed a girl's sense of self-esteem, and the agency dropped her.

"To get these e-mails from these boys and these girls is really devastating. Three days after it happened, I went home to 1,300 e-mails. From the girls and the boys and from their parents. The abuse overall is rampant, and the fact that it has become rampant is because it all became about power," said Scully.

The reason people don't speak out is because they're afraid they'll be blackballed, he contended. "That's where the double standard is the worst," said Scully.

This fall, Kering and LVMH Moët Hennessy Louis Vuitton issued a charter to ensure the well-being of models. The charter, which has been implemented by both groups' brands worldwide, requires models to present a recent medical certificate proving their overall health, and bans the hiring of models below the age of 16 in shows or shoots representing an adult, among other measures. Models ages 16 to 18 must have a chaperone or guardian on the set during the shoot.

François-Henri Pinault, chairman and chief executive officer of Kering, said at the time that the group had been working on the topic since 2015, but was moved to act quickly after Scully blew the whistle on several brands, including Balenciaga, Hermès and Elie Saab, for allegedly abusing models.

Concerning Russell's Instagram with all the models' stories, Scully said it was "incredibly brave" for the models to post their stories. "I think what she did is awe-inspiring [and] brave. She's opened a door that was never opened," said Scully, noting that many of the girls who weighed in were under 18.

Faith Kates, president of Next Model Management, said she personally doesn't hear that much about abusive behavior, and when an abuse has occurred over the years, she would call the photographer directly. "I think Next is pretty powerful and the girls don't get hit [on] that much anymore. I think the ones that do are the ones that don't have great representation. We have a voice," she insisted.

She recalled an incident that happened many years ago when someone was giving a girl drugs. "I went to the guy's office with a bag of goodies that he was giving her and I said, 'if you ever see me on the street, you should cross it.' And if he ever did it again, I would put him in jail," she said.

"I've made a lot of phone calls over the years," she continued. She said she tells her girls: "If you think ever that somebody's bothering you on the set, you call us and somebody will be there in 15 minutes. We do what we can do to protect our people," she said.

Michael Gross, author of "Focus: The Secret, Sexy, Sometimes Sordid World of Fashion Photographers" and "Model: The Ugly Business of Beautiful Women," addressed the abuse that has occurred in the modeling industry for years.

"I think that among the people who understand how the sausage gets made, there has always been an understanding that there are industries in which the bodies of attractive young men and women are treated as commodities. It has been a 'below the surface of the ocean' phenomena not for weeks or months or years but for decades," he said. In his 1995 book "Model," he called the industry "legalized flesh peddling, equating modeling agents as pimps."

"Within the trade that [statement] wasn't considered as a revelation....it's because there's a sense that that's the way things are," he added.

Addressing why the Harvey Weinstein scandal has blown up and the issue of abuse in the modeling industry has not despite copious examples over the years, he said, “Models are fungible. Models don’t get the respect that actors and actresses do. Because they are seen with no skill other than being born with lucky chromosomes, whereas people are attached to actors and actresses,” he said. “The public doesn’t care as much. Photographers do not have the kind of power that a movie mogul has.”

He suggested several reasons why sexual harassment stories from such industries as media, entertainment and modeling are coming out now. “A crack develops, instead of being patched, it opens wider. In fits and starts we have been moving toward a culture that is not tolerant of this behavior,” he said. “Despite the election of Donald Trump, it doesn’t mean that society isn’t more woke. It is two steps forward, two steps back,” he said.

Gross said he decided to open and close “Focus” on Terry Richardson, whose sexual abuse of models has been widely alleged. “It was made because I got on the phone with a lot of people who deal with fashion photographers on a daily basis....I asked who matters most right now?...Not unanimously, but overwhelmingly it came down to Terry.”

Asked whether he believes the industry will change based on the outpouring of testimonials on Russell’s Instagram, he said, “I don’t think fashion can resist the tide of changing times because it’s fashion’s job to reflect the times.”

If more models come out and the industry pays attention and changes its culture, “maybe it [the response] won’t be, ‘clean that girl up and get her back on the set.’ Maybe it will be ‘get that photographer the f–k off the set.’”

Susan Scafidi, founder and director of the Fashion Law Institute at Fordham Law School, said, “Every model has a story of sexual harassment or abuse, whether her own experience or someone else’s. Perhaps that’s not surprising, given that the same is probably true of most professional women — and given that female models frequently start working especially young, with little supervision, and in a profession that focuses on their

bodies. Most fashion professionals are just that — professional — but the very nature of the modeling industry can attract predators.

“Combating sexual abuse calls for a combination of louder voices, brighter light and better laws. The megaphone of social media can be effective in certain instances, in particular when either a serial harasser or a target of abuse has a recognized name or thousands of followers. Most of the time, however, the subject is a whisper in the shadows, inconsistent with the fantasy and glamour of the fashion industry. Models, like other victims of harassment or abuse, tend to be ashamed to speak or afraid of losing work. There’s always another young aspirant waiting in the wings.

“Legally, many models who experience sexual harassment have no recourse unless they are actually threatened or physically violated, in which case criminal law may apply, assuming enough evidence to bring a case. Since models are considered independent contractors, sexual harassment laws designed to protect employees typically do not apply. New York State’s inclusion of models under 18 in its child performer protection law starting in 2013 was a victory, but more legal support is necessary. In fact, in an era when traditional employer-employee relationships are giving way to the gig economy more generally, society as a whole could benefit from studying the problems experienced by models and creating structures to combat sexual harassment and abuse in every context,” said Scafidi.

As for the timing of these abuses coming to light, she said, “Why now? The political disappointment of many women has given rise to a trend toward female empowerment, amplified by social media, which enables the aggregation of stories and joining of voices. Ideally this will translate to structural change, not just the dismissal of a handful of marquee male predators, but there’s more work to be done.”

At work on the second season of “Food Quest,” Kim Alexis recalled her modeling days and some of the trouble she had at that time, mostly with photographers. “I had to set a healthy boundary right away. Harassment is when you set the boundary and they don’t respect it anyway,” she said. “They would make it very apparent that it would be fun to go in the next room and

roll in the hay. Verbal comments I would get a lot. But when they were trying to get you to go to bed with them, I knew that that was abuse. That was a ‘No.’

“That’s what makes women get that tough exterior sometimes. You have to walk around like, ‘Don’t mess with me...’ It’s tough because in the business, people have access to your body, your makeup and your hair. People are touching you all the time. You yourself at 18 have to decide this is inappropriate, or the wrong time, wrong person or wrong comment,” Alexis said. “Now I’m not sure that parents are teaching young models where their boundaries are and what’s appropriate and what’s not.”

Referring to the Weinstein controversy, a former casting agent and magazine editor, who requested anonymity, said, “It’s the same in fashion — some really powerful people know things, but they’re not going to jeopardize their career or reputations to speak out about it. It took a Rose McGowan to stir the whole conversation. Harvey Weinstein wasn’t just a predator — he was a bully. There are a lot of bullies in our industry. I know that people get silenced because I have experienced that. There is kind of this cabal in our industry who know *exactly* what’s going on, but will never say anything. Anywhere there is powerful people, beautiful things, ‘creative’ minds, you’re going to have crazy, abusive behavior.”

Further complicating the situation is the hiring of teenage models. “We need to look at why we’re using models who are 14, 15, 16 in advertising for big brands that a 14, 15, 16-year-old could never afford to buy? I just looked at the shows again and there are girls who are really young — 16. Why are we perpetuating these images of these young girls as women?” the former agent said. “If you read Cameron’s Instagram, there are girls who had experiences when they were 15, 16 because they were sent on casting calls and go-sees. The mom might be in the other room, but they are having a bad experience with some photographer. Maybe we have to say girls need to be 18 or older to start modeling.”

Bethann Hardison, who ran her own agency at one time, said no agency would send a girl out knowing she could be in a situation she could be compromised. That was even more so the case in the Eighties. “With Eileen Ford, it was don’t f-k around. Wilhelmina [Cooper], Zoli [Zoltan Rendessy] — they were hard-

core,” she said. “But I know that boys have been told, ‘Do what you have to do to get the job.’ With boys, there’s less care with them.”

While she allowed that “surely” girls have faced incidents, Hardison said the problem of harassment leans more toward photographers and casting directors than fashion designers. Strict as an agent, Hardison said she believed that models seen out at night never got booked during the day. “That was my philosophy, so you make your choices. I was so strict. I didn’t hang out with people where we had to do drugs with my clients and stuff like that. My agency was a whole other style,” she said. “There’s no doubt girls were compromised in the Eighties and Nineties for sure. But I’ve never had anyone who I represented tell me that happened to them. But I’ve talked to boys who have said sometimes things were expected. They could be compromised for sexual advances.”

Former “America’s Next Top Model” judge Kelly Cutrone said she has never witnessed anything on set, but stressed the importance of women speaking up for themselves. “There is a lot of fine-line stuff. If a designer wants somebody to wear a sheer blouse, it’s part of the job. You have to speak up for yourself or you’re going to be expected to do certain things that could be seen as marginal. They’re selling illusion and sex a lot.”

Speaking in general terms, not specific to the fashion industry, Cutrone said, “There are plenty of women who have gone to work and it’s been made very clear that if you make yourself sexually available, you’re going to get extra things. Or they have gone to work and been physically exposed or visually raped,” she said. “...On one hand, you want to say, ‘If you’re tall enough to be a model, be careful because there are people looming who are sexually inappropriate and they’re predators.’ But guess what? They’re in the hospital, the fire department, the accounting department, in the courts — wherever there is male culture there are sexual predators. They come in all different shapes and sizes and they work in all different places. They do not discriminate based on race, ethnicity or economics. That is a really huge issue.”

Cutrone said what she finds most troubling is the online responses of women who said they didn’t know what to do. So much so that she is considering starting an online community

with a group to teach women about sexual harassment. “If women are in a situation where their boss is asking them to watch them shower and they don’t know what to do....they don’t have the confidence of their voice or whatever — there is a huge problem here. It’s the same problem my daughter is going to have if she goes to a rock concert and she is not prepared for a terrorist act or a shootout. Women really need to be taught the seriousness of it and it happens every single day — everywhere.”

Former model Jennifer Sky is at work on a memoir about her three years of modeling in New York and abroad in the Nineties. Recalling her modeling days between the ages of 14 and 17, she said, “I was physically assaulted. Not only was I belittled by men and women on fashion sets, I was made to feel like just a prop. The thing is, maybe actors sign up for that. You sign up for a job that’s tough and you’re getting paid a certain amount, but these are little kids....The adults on the set should have been looking at us as children and thinking, ‘Oh my gosh, we can’t let this photographer talk to that little girl like that.’”

She argued that the look that many designers present is the same one that couture houses put forward in the Thirties. “Just in the few past years, we’re seeing people of color on the runways and other body types,” Sky said. “I was able to see the difference between a workplace that was unionized and one that wasn’t because at 15 I also became an actor. The way I was treated on sets that were overseen by SAG were completely different. The fight that we are having now [is like] the one that actors had against the studios in the Thirties. When I returned to New York to finish my education at 30, the fashion industry hadn’t innovated. The same archetype was on the runway — these very young, thin, teenage white women,” she said. “The one change that would make the biggest difference would be if they made a requirement that 18 [became the required age] to model.”

Suzanne Lanza, a model whose career spans 30 years, recently posted, “When was your first experience of sexual harassment? What happened?” Reached Monday, Lanza said, “There are all these people saying that it’s not an issue in the fashion industry. That’s a total joke. I don’t know anyone who I know personally who hasn’t had some form of harassment in the fashion business.”

Recalling her first modeling trip to Europe as a high schooler, Lanza was taken by her agents one afternoon to go swimming at a house in Italy. “Fortunately, I had my own bathing suit, which was like a turtleneck one-piece. But some of the other girls didn’t. They said, ‘Oh, we have bathing suits.’ But somehow they only had bottoms and no tops. Things like that were presented as really normal. I was 18, but there were a lot of 14-year-olds,” Lanza said. “And I was made fun of. I also remember walking off a job because they wanted me to take my top off. They called my agent and tried to intimidate me.”

Having modeled for 30 years since her first major job with Herb Ritts, Lanza said, “Everybody knew there are ‘The Playboys’ — these predators and I’m sure a lot of the agents were complicit, too, bringing young girls to these villas to go swimming, not protecting them in a way they should have.”

As naïve as she was as a teenager, Lanza said she knew enough not to go anywhere alone. Depending on their work schedule and financial needs, some models may need a free meal or job prospect so they will run with similar crowds or go out at night (to events organized by club promoters.)

“God bless Eileen Ford. She was known for being so strict — for a reason. Hearing that tape of Harvey Weinstein [with model Ambra Battilana, who wore a wiretap for the New York Police Department to try to catch Weinstein, but charges never materialized], that’s the way that they are. They try to make you feel bad about it, and you’re not the cool one if you don’t do what they want you to do. It really affected me so much hearing that,” Lanza said. “Even women asked, ‘Well, why was she in that situation?’ Why shouldn’t you be able to go to a hotel room with a man and then say ‘no’? We need to not judge women.”



cameronrussell

Following

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Your last two posts just pulled up a memory I'd buried. I'd just moved to New York and was sent to a test shoot with some photographer. I'd been living in NYC for 3 weeks. I was told to bring a nude thong and black heels. He kept asking me to take my top off - that it was high fashion. I refused. I remember thinking it was weird he had no assistants and we were just in his apartment. At one point he got on top of me like that scene from Blow Up.

1,413 likes 30 comments

Trigger warning ! #MyJobShouldNotIncludeAbuse
OCTOBER 14

‘You are Being a Hypocrite’: *LawNewz* EIC Takes on Lisa Bloom For Representing Harvey Weinstein

by [Alberto Luperon](#) | 3:09 pm, October 6th, 2017

Lisa Bloom, the high-profile attorney known for going after sexual harassers, is now working with an alleged sexual harasser. What's up with that? *LawNewz* Editor-in-Chief **Rachel Stockman** interviewed her Friday to learn why this feminist attorney is on the other side now.

Bloom is working with movie mogul **Harvey Weinstein** after a *bombshell New York Times* report that claims that he has a history of sexually harassing women for almost three decades. It's quite a dramatic turn for her, especially after she played a public role in the downfall of former Fox News host **Bill O'Reilly**—another man who the Times said settled with sexual harassment accusers.

But in Friday's interview, she said she actually wanted to take the opportunity to start a meaningful conversation with an alleged harasser. "Well, this was an opportunity to do that," Bloom said.

Stockman pressed Bloom on this: "A lot of people would say you are being a hypocrite by changing sides. Your reaction?"

"There are many different ways to get to a goal. I litigate cases, I write books, I speak out at conferences, I go to marches, he was an opportunity to actually be in the room of someone accused of this stuff, and change the pattern," Bloom said.

"I do have a problem with your statement that you sent out yesterday," Stockman said. (Bloom had described Weinstein as "an old dinosaur learning

new ways.”) Stockman pressed the attorney on how differently she’s treating him from other alleged harassers. Bloom argued that what makes Weinstein different is the movie mogul’s willingness to become a better person, and show respect to the women making allegations.

“I’m going to be an old dinosaur by the end of this interview,” Bloom quipped, after claiming Stockman spent too much time on the statement’s phrasing.

Stockman also brought up the docuseries. Months ago, Weinstein brought the rights to one of Bloom’s books for a show. On Friday, Bloom argued she’s not being unscrupulous or out of character here, even saying she turned down most sexual harassment cases because they’re not “winnable.”

So would Bloom work with O’Reilly if he acted like Weinstein, and asked her for advice? “Maybe,” she told Stockman.

Bloom, who insists she is not “representing” Weinstein because she’s not involved in litigation, says the mogul only admits to “rude talk” and inappropriate behavior, but wouldn’t specify which claims against him were false.

Weinstein is also threatening to file a defamation lawsuit against the Times, but Bloom didn’t say much about it, saying that another attorney, **Charles Harder**, is handling that case. Nonetheless, she said the Times didn’t give Weinstein enough time to respond to the allegations against him.

Ethics Alarms

OCTOBER 8, 2017 · 5:47 AM

Here We Go Again: Harvey Weinstein, Lisa Bloom And The Thing About Lawyer Ethics That The Public And The News Media Just Cannot Seem To Grasp



LawNewz writes, and in so doing wins a Legal Ethics Dnnce so easily that I'm not even going to bother,

Feminist attorney **Lisa Bloom**, who has represented dozens of women against accnsed sexual harassers like Donald Trump and Bill O'Reilly, is now representing an alleged sexual harasser. In, quite frankly, a shocking move, Bloom agreed to give her "advising" services to film studio executive Harvey Weinstein, who is accused of harassing women over a thirty-year timespan. Immediately, many in the legal world wondered what would motivate such a principled women's rights advocate to represent a man facing such sordid accusations.

Weird! I have the strangest feeling I have been here before...it's Ethics Alarms *déjà vu*!

No, I **have** been here before, and if you've read the blog regularly, so have you, like [here](#), for example, when the post was called, [No, There Is Nothing Unethical Or Hypocritical About A Feminist Lawyer Defending Roger Ailes](#), or [here](#), when I defended Hillary Clinton....yes, you read that right...when she was being called a hypocrite for once defending not only a child rapist, but a guilty child rapist. Then there was [this post](#), when liberal icon Larry Tribe was representing a coal company. Bloom, Tribe, Estrich and Hillary all have the same defense, not that lawyers should need a defense for being lawyers.

Let's see...I think I'll quote myself from the Hillary piece this time...

...I tell all my legal ethics seminar classes to start teaching their non-lawyer neighbors and relatives **ABA Model Rule 1.2 b**, which reads,

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

This, combined with the principle of zealous representation of one's client, as expressed, for example, in D.C. **Rule of Professional Conduct Rule 1.3...**

(a) A lawyer shall represent a client zealously and diligently within the bounds of the law.

(b) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or

(2) Prejudice or damage a client during the course of the professional relationship....

...means that lawyers represent *clients*, and are bound to seek those clients' objectives when those objectives are legal, whether the lawyer likes or agrees with those objectives or not.

It means that it is ignorant, wrong and dangerous to the rule of law as well as the right of citizens to be the *beneficiaries* of laws in a democracy, and not the *servants* of them, for unscrupulous political opponents to attack lawyers for the positions, objectives and needs of the *clients* they represented...

Lawyers do not have to agree with or like their clients' positions, objectives or character, is that clear? Everybody? **Lawyers are not to be held accountable for their client's motives, conduct or legal objectives.** Bill Cosby's lawyers do not approve of rapists. Johnnie Cochran did not support the hobby of ex-wife knifing.

And Lisa Bloom (she is the daughter of Gloria Allred, following in her feminist muckraking mother's footsteps) was not violating her principles or being hypocritical when she agreed to be an "advisor" to Harvey Weinstein, also known as "being his attorney." Bloom, as an attorney, was being faithful to the professional principles on which the practice of law in America is based. Her personal beliefs and principles are subordinate to those.

Nevertheless, LawNewz, a legal issues website, cross-examined Bloom as if she was engaging in a breach of integrity rather than doing what the legal ethics rules direct lawyers to do. The site's Editor-in-Chief, Rachel Stockman, acted as if she had never heard of the concept of a lawyer who doesn't necessarily like, admire or sympathize with a client, and whose personal values the client's alleged actions seem to defy. "A lot of people would say you are being a hypocrite by changing sides," asked Stockman, who also pressed Bloom on how differently she's treating the beleaguered independent film tycoon from other alleged harassers. "Your reaction?"

Bloom's reaction, in a setting where she was not constrained by the fact that she was representing Weinstein as she spoke and therefore her response had to be in *his* best interests, not *hers*, should have been something like,

'My reaction is that "a lot of people" don't understand what lawyers do and why they are important. I'm treating Harvey differently from other accused sexual harassers because *he's my client*, and in other cases accused sexual harassers were being *accused* by my clients. I'm not "switching sides." Lawyers don't have "sides," their clients do. The lawyers on both sides of any case, criminal or civil, are acting on the best traditions of their profession by helping a client have full access to the law. Lawyers don't judge their clients, they advocate for them and advise them. I'm advocating and advising Mr. Weinstein. He has every right to my professional services, and I have every right to provide them to anyone willing to pay my fee.'

Then she could have added this...

'And I must say, Rachel, I am shocked that you are even asking these question. I know you've never practiced law, but you did get a Masters of Law at Yale, and I would think this concept was basic. Didn't Yale *teach* you this? If not, you should get your tuition back. Or maybe LawNewz should get *your salary* back. The Editor in Chief of a website devoted to the law should at least understand what lawyers *do*, and not mislead its readers that there is something hypocritical about representing clients with diametrically opposed interests at different times.'

But wait...there's more!

There is a twist to this tale, for it appears that Bloom may have violated at least the spirit of a different ethics principle in representing Weinstein. In April, she tweeted,

"BIG ANNOUNCEMENT: My book SUSPICION NATION is being made into a miniseries, produced by Harvey Weinstein and Jay Z!"

I don't know when Weinstein hired Bloom, but whenever it was, it defies credulity to believe that this arrangement isn't a key to the relationship. This, and not the fact that Bloom took on a client that her previous clients would find repulsive, makes me question her motives and integrity.

The ABA cautions against going into business with clients:

"A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client...When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable...The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will ... give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction...."

I believe that Lisa Bloom's arrangement with Weinstein *does* breach Rule 1.7, which involves, among other things, unwaivable personal conflicts of interest. It looks like members of Weinstein's board made the same point to the lawyer: "You have a commercial relationship with TWC via a TV deal so how can you possibly provide impartial advice to Harvey or address this group with any credibility?" one board members wrote her in an e-mail.

Yesterday, Lisa Bloom withdrew as Weinstein's lawyer.

STYLE

Fashion Breaks Its Silence on Harvey Weinstein Scandal

By VANESSA FRIEDMAN, JACOB BERNSTEIN and MATTHEW SCHNEIER OCT. 13, 2017

In the days since The New York Times broke the story of allegations of decades of harassment and assault by Harvey Weinstein, torrents of heart-wrenching stories have poured forth from at least 30 women who say they were victimized by Mr. Weinstein. So have unstinting condemnations from many who worked with Mr. Weinstein or benefited from their relationship with him, both in film and in Democratic political circles.

“Behavior like this is appalling and unacceptable,” said Anna Wintour, the artistic director of Condé Nast, breaking her silence on the issue. “I feel horrible about what these women have experienced and admire their bravery in coming forward. My heart goes out to them, as well as to Georgina and the children. We all have a role to play in creating safe environments where everyone can be free to work without fear.”

Ms. Wintour has put stars of Mr. Weinstein’s films on more than a dozen of her Vogue covers over the years; prominently featured Marchesa, the label co-founded by his wife, Georgina Chapman, in her magazine; and hosted political fund-raisers with him. Her words make all the more stark the realization that from fashion, the third pillar of Mr. Weinstein’s power base, an industry in which he made major investments going back more than 15 years, and with which he hoped to burnish his empire, the overwhelming response has been a ringing silence.

“I’ve been struck by it,” Steven Kolb, the chief executive of the Council of Fashion Designers of America, said on Tuesday. After all, many fashion stakeholders spoke out vociferously earlier this year against President Trump’s policies on women’s rights.

But aside from Donna Karan, who gave statements that first defended and then criticized Mr. Weinstein, few designers have ventured as much. Nor have any of the major retailers who sell Marchesa spoken up, not even to offer support to Ms. Chapman, who has announced she is separating from her husband. (Ms. Chapman was not available for comment for this story.)

In a statement on Tuesday, Mr. Weinstein’s spokeswoman, Sallie Hofmeister, said: “Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein. Mr. Weinstein has further confirmed that there were never any acts of retaliation against any women for refusing his advances.”

For his part, Mr. Weinstein acknowledged, in a larger statement to The New York Post, that his actions could have a negative impact on Ms. Chapman’s company. Marchesa’s public profile depended largely on its connection to Hollywood — the label does not advertise — and, fair or not, Ms. Chapman and her line are now swept up in this unfolding story.

The refrain from major department stores in response to requests for comment? “We just don’t want to be part of this story.”

But that is unavoidable. Fashion is already deeply involved.

Not just because on Tuesday a petition was begun by Care2 asking Nordstrom to drop the Donna Karan and DKNY lines in response to Ms. Karan’s comments (though she herself is no longer involved with either label).

And not just because fashion has its own history with sexual harassment and the poor treatment of young women, including increasingly documented abuses of models and the many claims against the photographer Terry Richardson (who, after some time away, is still working in the industry).

Mr. Weinstein, more than perhaps any film executive of the modern era, seemed to understand the role fashion could play as he built an upmarket brand in which box office performance was important, but so were glitter and good reviews.

He introduced “Project Runway.” Along with the shoe designer Tamara Mellon he was instrumental in the revival of Halston, for which he corralled Sarah Jessica Parker, the celebrity stylist Rachel Zoe (who often dressed her clients in Marchesa) and the private equity firm Hilco as partners. He licensed the option to revive the Charles James brand the same year the Costume Institute of the Metropolitan Museum of Art featured a Charles James exhibition.

When actresses from his films campaigned for Oscars, there and elsewhere, guess whose dresses they often wore?

“We all knew celebrities were asked to wear Marchesa if they were in a Weinstein movie,” said the co-owner of a fashion communications company who asked not to be identified. “They were supposed to wear it at least once. We all knew that cycle.”

Going all the way back to his days at Miramax, the first of two studios Mr. Weinstein co-founded, he put out fashion-themed films.

In 1994, Mr. Weinstein released Robert Altman’s “Prêt-à-Porter.” In 2009, he acquired the North American distribution rights for “A Single Man,” the designer Tom Ford’s debut film. In 2011, he acquired Madonna’s “W.E.,” a period drama about Wallis Simpson in which the gowns were almost the only thing that got good notices.

Mr. Ford would never have held up Mr. Weinstein as the poster boy for how to treat women.

Still, Mr. Ford said Thursday, it was a far cry from what was revealed over the last week and a half, through two exposés in The New York Times outlining allegations of a pattern of sexual harassment and assault and a third from The New Yorker detailing accusations of rape.

“What Harvey has done is shocking, indefensible and disturbing on many levels,” Mr. Ford said. “I knew that Harvey certainly liked beautiful young women.” But, he added: “I had no idea of his predatory and abusive behavior or that he had paid settlements to anyone.” Mr. Ford noted that since he himself is a gay man, Mr. Weinstein’s “sex life would certainly not have been something that he would have felt the need to share with me.”

Ms. Parker collaborated with Mr. Weinstein at Halston. “Over the last two decades, through various projects, I’ve always maintained a relationship with him that I was, for the most part, comfortable with,” she said. “Now I feel he is a stranger, that I didn’t know him at all. And desperately sad to hear how so many women have suffered.”

And Ms. Mellon, referring to sexual predation, concurred: “I never saw anything like that. That behavior usually happens when no else is watching and in private. If I had seen it, I would have stopped it. I only ever witnessed raging and threats, but that was toward me and I pushed back when he did that.”

Mr. Weinstein’s increased presence on the fashion circuit seemed to coincide with his shrinking presence in the film world. Optics had always been essential to his prestige brand, so it made some sense that he leaned on an industry selling illusions to help maintain his myth. The razzle-dazzle of Harvey and his wife on red carpets all over the world was a good distraction when fewer awards were coming his way.

“Project Ruuway” helped, too. It made stars out of the designer Michael Kors, the model Heidi Klum and the editor Nina Garcia. Lauren Zalaznick, then the head of the Bravo unction, where the show debuted, said: “On the surface, of course, it was a logical extension into TV. But what it really did was help build a firmer network withiu the fashion and publishing industries. It lent even more proximity to the power of relationships with designers, editors and models, and the scepter of magazine covers, more and different awards, political and socially minded fund-raisers, and the attendant money, glamour and even more power that comes along with that territory.”

A spinoff, “Project Runway All Stars,” which debuted in 2012, features Ms. Chapman as a judge; the next season has already been filmed.

Mr. Weinstein was a key fund-raiser for amfAR, whose gala during the Cannes Film Festival is the most fashion-centric event on the movie festival circuit. Ms. Klum was honored by the organization in 2013.

LVMH, the French luxury conglomerate, has a 1 percent stake in the Weinstein Company. In 2007, Mr. Weinstein wrote the profile of Mr. Arnault for the Time 100 most influential people list. In 2011, he told *The Wall Street Journal*, “When I wasn’t doing so well, Anna would give a party and put me next to Bernard Arnault.”

A person familiar with LVMH said the two men barely knew each other.

Mr. Weinstein was also a regular at the Met Gala, which has been co-chaired by Ms. Wintour since 1999, and at the Council of Fashion Designers of America awards. (In 2016, there were plans for the Weinstein Company to produce a television special on the CFDA awards, but it fell through, Mr. Kolb said, when they realized that the event was not paced for television.) Mr. Weinstein appeared in front rows, including those of Marchesa, Dior, Louis Vuitton and Burberry.

It was at a fashion show that the actress Léa Seydoux met Mr. Weinstein, she wrote in *The Guardian*. He then requested a private meeting with her, she said, which quickly turned inappropriate. (She also wrote about watching him pursue another woman at the Met Gala.) The model turned actress Cara Delevingne recently accused Mr. Weinstein of pursuing her and repeating to her details of her personal life as reported in the tabloids.

Trish Goff, a model who was a regular in the pages of *Vogue* and appeared in campaigns for Chanel and Dior, said she met Mr. Weinstein at a cocktail party at Ms. Wintour’s house in 2003 when she was 25. “He came in and someone said, ‘Oh, there’s Harvey Weinstein,’ so I turned to look at him, and he was looking at me,” she said. Shortly thereafter her agent got a call from his office inviting her to lunch.

She recalled: “This was at a time in my career when I was starting to think about what’s next. I was nervous about it, because he had a reputation, but I was equally nervous about not going because I was a single mother, and what if he made it so I didn’t work anymore? So I said, ‘O.K., tell him I’ll have lunch.’”

They ended up at the Tribeca Grill. “When I arrived, I discovered we were seated in a private room,” she said. “I asked him why he had wanted to have lunch, and he said ‘You were looking at me’ — as if to imply I was interested. I said, ‘Yes, I was looking at you because you are Harvey Weinstein, and I had never seen you before.’

“Then he started asking me if I had a boyfriend, and if we had an open relationship. I said I wasn’t interested in an open relationship, but he was relentless, and I kept trying to shut that down and move on. Then he started putting his hands on my legs, and I said, ‘Can you stop doing that?’ When we finally stood up to go, he really started groping me, grabbing my breasts, grabbing my face and trying to kiss me. I kept saying, ‘Please stop, please stop, but he didn’t until I managed to get back into the public space.

“The horrible thing is, as a model, it wasn’t that unusual to be in a weird situation where a photographer or someone feels they have a right to your body.”

Ms. Hofmeister, Mr. Weinstein’s spokeswoman, said he could not be reached for comment on Ms. Goff’s allegations and directed a reporter to a previous statement denying allegations of nonconsensual sex.

Now Marchesa has become yet another symbol of Mr. Weinstein’s abuse of power, a brand he helped mastermind and support. There is now a #boycottmarchesa hashtag on Twitter. Helzberg Diamonds, which held the license for Marchesa’s bridal jewelry, announced it had delayed the planned line.

“The relationship helped the business tremendously,” said Stellene Volandes, the editor of *Town & Country*. “Marchesa had such great success on the red carpet and became known for that.” (Ms. Chapman appeared on the cover of the magazine in 2009.)

The label, which was founded in 2004 by Ms. Chapman and Keren Craig, first received real attention that same year, when Renée Zellweger, the star of the Miramax film “*Bridget Jones: The Edge of Reason*,” appeared on the red carpet in a Marchesa dress. She was followed shortly thereafter by Cate Blanchett, who wore Marchesa to the Rome premiere of “*The Aviator*,” also produced by Miramax.

In recent years, Marchesa's red-carpet magic has dimmed and its celebrity placements have lost a bit of their star power, yet the label's princess-y dresses still found eager takers. In 2017, Octavia Spencer, who has appeared in movies produced by Mr. Weinstein, wore a custom Marchesa gown to the Academy Awards, when she was nominated for her role in "Hidden Figures."

When stars did wear the label, there was often a connection to Mr. Weinstein. Jennifer Jason Leigh wore Marchesa to the Academy Awards in 2016, when she was a nominee for her role in "The Hateful Eight," directed by Quentin Tarantino (and executive-produced by the Weinstein brothers).

But Hollywood stylists who work with such stars and fashion houses to find dresses for premieres, award shows and red carpet events, appear to be taking a wait-and-see approach on the label. Of a half-dozen top stylists who have used Marchesa, not one would comment on how the Weinstein revelations would have an impact on their use of Marchesa.

"There's a mob mentality that has developed," said Lauren Santo Domingo, a founder of Moda Operandi, an online fashion retailer, who said she was standing behind Marchesa. On Wednesday, the brand postponed a planned preview of its spring 2018 collection to an unspecified "later date." The company is hunkering down, and could not be reached for comment.

"I think the issue is no one knows what to say to Georgina, or the words to use," Mr. Kolb said. "But as a creative power and as a CFDA member, she is someone who deserves the industry's support and backing."

Indeed, said Julie Gilhart, a fashion consultant and the former fashion director of Barneys New York: "We are living in a time right now when we should try to find the words."

Valeriya Safranova and Joanna Nikas contributed reporting.



SALON

Donna Karan defends Weinstein, says women are “asking for it”

“How do we present ourselves as women?” Karan said. “What are we asking?”

GABRIEL BELL (/WRITER/GABRIEL-BELL)
10.10.2017 • 11:49 AM • 0 COMMENTS

Even as a celebrities line up to take their turns commenting on The New York Times exposé of Harvey Weinstein with lashing denouncements, fashion icon Donna Karan offered up a crude — if familiar — defense of the ~~battled~~ producer Sunday night.

Speaking to the Daily Mail at the CinéFashion Film Awards, the founder of DKNY and her namesake label said that Weinstein “has done some amaz-ing things” and he and his wife, Marchesa designer Georgina Chapman, were “wonderful people.” She is personal friends with the couple.

It did not, alas, end there.

Speaking to a reporter, Karan commented generally about the problems of sexual harass-ment on a global scale. “I think we have to look at ourselves,” she said.

“Obviously, the treatment of women all over the world is something that has always had to be identi ed. Certainly in the country of Haiti where I work, in Africa, in the developing world, it’s been a hard time for women.” Indeed, it has been.

Choosing not to end on that high note, Karan then took a 50-foot dive into the shallow end of the pool. “To see it here in our own country is very di cult,” she said, “but I also think how do we display ourselves? How do we present ourselves as women? What are we asking? Are we asking for it by presenting all the sensuality and all the sexuality?”

She added, “And what are we throwing out to our children today about how to dance and how to perform and what to wear? How much should they show?” Karan continued, “You look at everything all over the world today and how women are dressing and what they are asking by just presenting themselves the way they do. What are they asking for? Trouble.”

Title VII of the Civil Rights Act of 1964

DEFINITIONS

SEC. 2000e. *[Section 701]*

For the purposes of this subchapter-

(a) The term “person” includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 *[originally, bankruptcy]*, or receivers.

(b) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 *[United States Code]*), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 *[the Internal Revenue Code of 1986]*, except that during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term “employment agency” means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person. ...

(f) The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. *[Section 703]*

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Title 8 of the Administrative Code of the City of New York

Chapter 1 - Commission on Human Rights

§ 8-101. Policy.

In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, partnership status, caregiver status, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking, whether children are, may be or would be residing with a person or conviction or arrest record. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination, bias-related violence or harassment and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, discrimination and bias-related violence or harassment as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

23. The provisions of this chapter relating to employees shall apply to interns.

28. The term "intern" shall mean an individual who performs work for an employer on a temporary basis whose work: (a) provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced; (b) provides experience for the benefit of the individual performing the work; and (c) is performed under the close supervision of existing staff. The term shall include such individuals without regard to whether the employer pays them a salary or wage.



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**NEW YORK STATE HUMAN RIGHTS LAW PROTECTS
INTERNS FROM DISCRIMINATION**

Provisions cover unpaid interns in the private and public sectors.

As we approach the beginning of summer internship season, Commissioner Helen Diane Foster wants to remind all New Yorkers that interns are protected from discrimination in the workplace under the New York State Human Rights Law. Unpaid interns are protected from harassment and other unlawful discrimination based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status.

"Internships play a crucial role by providing vital experience that can guide an individual to professional success," said Commissioner Foster. "Whether a regular employee or an intern, everyone is entitled to a workplace free of discrimination and harassment in the State of New York. This measure ensures that all workers are afforded their full rights under the law."

The Human Rights Law defines "intern" as a person who performs work for an employer for the purpose of training under certain circumstances. Among them, that the employer is not committed to hire the person performing the work at the conclusion of the internship and that the person performing the work agrees with the employer that they are not entitled to wages for the work performed. The work performed by the intern is to provide or supplement training that may enhance the intern's employability, provide experience for the intern's benefit, be performed under close supervision of existing staff and not displace regular employees. If an individual is called an "intern" but paid, that person will likely be considered a regular employee under the Human Rights Law.

These provisions explicitly protect interns from sexual harassment, which under the Human Rights Law is considered a form of sex discrimination, as well as other forms of harassment

For their part, employers cannot discriminate against interns in selection, retention or terms, conditions and privileges of the internship or when advertising for the internship. It is also unlawful for employers to discriminate against pregnant interns or retaliate against an intern for opposing discriminatory behavior or for filing a complaint.

The Human Rights Law prohibits discrimination in employment, housing, credit, and other jurisdictions, based on age, race, national origin, sex, sexual orientation, marital status, disability, military status, and other specified classes. Complaints with the Division must be filed within one year of the most recent incident of discrimination. For more information about the law and the work of the agency, please visit the Division of Human Rights' website at www.dhr.ny.gov.

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Women are angry because of men. Again.

Villains like Harvey Weinstein aren't new. Villains getting caught is.



By Elizabeth Wurtzel October 17

Elizabeth Wurtzel is the author of "Prozac Nation," "Bitch" and "More, Now, Again." She is a lawyer in New York City.

Harvey Weinstein is the villain we were waiting for.

He used to run the studio that brought us "Pulp Fiction," a movie that taught everyone about redemption, but he is now the guy in the bathrobe. Harvey Weinstein is every woman's piggish boss. He is the creep who corners you at the company Christmas party and demands a kiss under the mistletoe.

Harvey Weinstein is that guy.

After eight exhausting months of Trumpdom, the Weinstein news broke a year after the "Access Hollywood" tape first dropped, almost to the day. Now Weinstein is the cathexis for our rage at living under the harasser in chief.

Donald Trump got away with it, like he gets away with everything. Most women — even battle-hardened feminists — have given up on making anything stick to him. But now here is Harvey Weinstein, and his long-running show in the hotel room bathtub has been canceled. Right here, right now, in Trump's America, a powerful man has been taken to the cleaners and put out on a wire hanger.

Women are thrilled. Gobsmacked. I did not see this coming. No women's issue has hit this high on the outrage thermometer since Trump took office. There was a women's march the day after the inauguration, and then a quiescent resistance. Hope for 2018. Then for 2020. Then just for someday. Someday, maybe, it won't be 1958 anymore.

But now: Wow! The Weinstein scandal is the sound of blowback.

Sexual harassment has done it. This is the thing that disgusts women. My iPhone is screaming at me with text messages from friends:

I hope a group of women armed with clubs beats him black and blue. And leaves him on the steps of the New York Courthouse, naked in the cold.

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Happy to see the blame fall on the perp and not the victim for a change

Like, wake me when anything structural changes

There is no such thing as a woman who has not experienced sexual harassment. Sexual harassment is a lifestyle. It is just dating for powerful men. Most of them don't know they are doing it. They don't believe they are engaging in bad behavior. They are sure they are the handsomest men in the world — why else would they be so successful? They think every woman is dying to get with them.

Men who do this sort of thing think they are just being friendly. They are just asking the girl out who — so what? — happens to work for them.

Asking again and again and again.

Cornering her.

Pushing her against the wall.

Threatening her — of course not meaning it, because *that would be totally wrong*.

Over and over again. But, no, not seriously, *of course*.

We're all grown-ups.

But asking again and again. And again.

Until it is unbearable and someone has to leave, usually her. No: always her.

She has to go.

It was her fault for not being easygoing. Maybe — this has to be it — she had her period. Women are so touchy. Why can't they take a joke? Why can't they laugh about it? He was not serious about the whole throwing her against the wall thing. This is an office, so *of course not*.

Oh, whatever. Women just suck.

That is what women are almost always up against with sexual harassment. No one listens to them. They are stuck. They put up or shut up. There is no point reporting it. Nothing changes. It makes matters worse to tell. Then not only are you a grouch, you are also a tattler.

Yet in the doom and gloom of the Trump presidency, Weinstein was fired by a board of directors of nine white men, who for years enabled him and who are now running for cover themselves.

Women love this story. We are in a frenzy of hashtags. People keep asking me who I think should be investigated next. There is all this excitement, as if consciousness is change.

But it is not even a precursor to it most of the time. We are mostly frogs wishing we were tadpoles. The forward march of time is a crawl.

Sexual harassment is not about sex or love. It is about power. It thrives among cults of personality, because rock stars have groupies, and so do CEOs. Weinstein's wretched behavior was a tribute to his dominance. Through years of lawsuits and settlements, at his closely held concern, aberrance was tolerated like some fringe eccentricity, because — because why? Because they told themselves this day was never coming. Plainly Weinstein was impossible to challenge. That is power.

Sexual harassment is the result of the male-dominated power structure. It will take more than awareness to topple that.

We have been through this before, with Clarence Thomas, in televised hearings that we all watched, and with Bill Clinton, on and on, and of course with Trump.

Nothing changed after those long nights of the soul.

Of course not.

Powerful men do not believe the rules apply to them.

Do powerful men know what they are like? They do not. It is that lack of self-consciousness that allows them to propel forth. Stop wondering if Donald Trump knows what he is like. A rainbow does not see it has color.

Hollywood is a minor offender when it comes to sexual harassment. Things are really bad in New York and Silicon Valley. Hello, Fox News! Hailing Uber! And a special shout out to D.C., intern central, where politics makes strange bedfellows.

Sexual harassment is bad *everywhere* that men and women work together. The workplace is a steam bath. What can we do? It is a hotbed of hot beds. It is where so much dating action happens. It is where men and women meet. It is difficult to police. If you get the feeling it is total chaos, you are catching on. Young people getting in one another's pants is the cost of doing business. But powerful old men are supposed to stay in the corner suite where they belong.

Women are angry. We should be. About all of it. We are a failed revolution. Sexism is bad. We notice it now. Where did all these white men come from, and when will they go away? Because of Trump, I don't even like listening to Bob Dylan anymore, because I am so sick of what any man has to say about anything at all. And I am trying to be reasonable. It is unbelievable to be a woman with Trump as president, such a profound insult that all men are implicated. This week it's Weinstein, but moving right along. We need to fix the whole thing.

Or as my favorite text message put it: *Men. Again.*

WWD

BUSINESS / MEDIA

Sexual Abuse in Modeling: The Outcry Grows

Model Cameron Russell is shedding light on decades of sexual abuse in the modeling industry.

By Lisa Lockwood and Rosemary Feitelberg and Alexandra Steigrod on October 17, 2017



 Cameron Russell
Jonah Koch

Could modeling — and fashion photography — be the next sector that's put under the spotlight for sexual abuse?

While rumors about abuse and sexual harassment of female and male models — and the photographers, agents and others who perpetrated it — have circulated within the fashion world for years, Cameron Russell, a well-known model, started posting

stories from models on Instagram last week about abusive situations they've encountered — from sexual harassment and molestation to attempted rape. Over 75 models have weighed in so far.

The anonymous comments posted on Russell's Instagram describe a myriad of scenarios, with models describing photographers propositioning them, physically grabbing them, exposing themselves and sending nude photographs. There are also accounts of underage models unknowingly winding up in unchaperoned situations or being asked if they were a virgin.

Another commenter described how at the age of 17, midway through a normal shoot, she was "basically forced" to take her clothes off to get in the shower so the photographer could take photos and he took advantage of her in many ways.

Russell advised her 89,300 followers, "If you have been a victim of rape or assault 24/7 support is available from rainn.org," referring to the Rape, Abuse & Incest National Network.

Executives at The Lions Model Management LLC, which represents the 30-year-old Russell, did not respond to a request for comment, nor did Russell.

"I think what Cameron is doing is very important. All models deserve the right to feel safe and respected. Unsafe environments should not be tolerated and abusers should be reported," said Steven Kolb, chief executive officer of the Council of Fashion Designers of America.

"CFDA puts its support behind Cameron and others who are speaking out. I also applaud the Model Alliance and their efforts," he continued. "We started the CFDA Health Initiative in 2007 to address eating disorders and underage models. In recent years we have encouraged more diversity on the runway as part of our fashion week outreach to the industry. I believe we've been able to impact positive change with our work. While we have not been specific on sexual harassment, our Health Initiative is committed to the notion of a healthy mind in a healthy body, and there cannot be one without the other. I do think it important that we expand our Health Initiative guidelines to be more specific on harassment and it is something we will do."

When James Scully, a casting director, posted on Instagram in February allegations that models were being abused during a Balenciaga casting, it set off a firestorm. He said he received almost 10,000 responses in the first two hours about abuses models had endured in their careers.

He said he got e-mails from girls saying that a stylist touched her. "I discovered in speaking with other agents and other girls, I started to hear more stories like this....It was in the air, and we knew it. I didn't know the extent. Especially with these test photographers and those that kind of prey and take advantage of these girls. You always hear an isolated thing....You hear the stories and I was getting stories about stylists and a couple of photographers," he said. He said he would hear about sexual harassment and how a haircut destroyed a girl's sense of self-esteem, and the agency dropped her.

"To get these e-mails from these boys and these girls is really devastating. Three days after it happened, I went home to 1,300 e-mails. From the girls and the boys and from their parents. The abuse overall is rampant, and the fact that it has become rampant is because it all became about power," said Scully.

The reason people don't speak out is because they're afraid they'll be blackballed, he contended. "That's where the double standard is the worst," said Scully.

This fall, Kering and LVMH Moët Hennessy Louis Vuitton issued a charter to ensure the well-being of models. The charter, which has been implemented by both groups' brands worldwide, requires models to present a recent medical certificate proving their overall health, and bans the hiring of models below the age of 16 in shows or shoots representing an adult, among other measures. Models ages 16 to 18 must have a chaperone or guardian on the set during the shoot.

François-Henri Pinault, chairman and chief executive officer of Kering, said at the time that the group had been working on the topic since 2015, but was moved to act quickly after Scully blew the whistle on several brands, including Balenciaga, Hermès and Elie Saab, for allegedly abusing models.

Concerning Russell's Instagram with all the models' stories, Scully said it was "incredibly brave" for the models to post their stories. "I think what she did is awe-inspiring [and] brave. She's opened a door that was never opened," said Scully, noting that many of the girls who weighed in were under 18.

Faith Kates, president of Next Model Management, said she personally doesn't hear that much about abusive behavior, and when an abuse has occurred over the years, she would call the photographer directly. "I think Next is pretty powerful and the girls don't get hit [on] that much anymore. I think the ones that do are the ones that don't have great representation. We have a voice," she insisted.

She recalled an incident that happened many years ago when someone was giving a girl drugs. "I went to the guy's office with a bag of goodies that he was giving her and I said, 'if you ever see me on the street, you should cross it.' And if he ever did it again, I would put him in jail," she said.

"I've made a lot of phone calls over the years," she continued. She said she tells her girls: "If you think ever that somebody's bothering you on the set, you call us and somebody will be there in 15 minutes. We do what we can do to protect our people," she said.

Michael Gross, author of "Focus: The Secret, Sexy, Sometimes Sordid World of Fashion Photographers" and "Model: The Ugly Business of Beautiful Women," addressed the abuse that has occurred in the modeling industry for years.

"I think that among the people who understand how the sausage gets made, there has always been an understanding that there are industries in which the bodies of attractive young men and women are treated as commodities. It has been a 'below the surface of the ocean' phenomena not for weeks or months or years but for decades," he said. In his 1995 book "Model," he called the industry "legalized flesh peddling, equating modeling agents as pimps."

"Within the trade that [statement] wasn't considered as a revelation....it's because there's a sense that that's the way things are," he added.

Addressing why the Harvey Weinstein scandal has blown up and the issue of abuse in the modeling industry has not despite copious examples over the years, he said, “Models are fungible. Models don’t get the respect that actors and actresses do. Because they are seen with no skill other than being born with lucky chromosomes, whereas people are attached to actors and actresses,” he said. “The public doesn’t care as much. Photographers do not have the kind of power that a movie mogul has.”

He suggested several reasons why sexual harassment stories from such industries as media, entertainment and modeling are coming out now. “A crack develops, instead of being patched, it opens wider. In fits and starts we have been moving toward a culture that is not tolerant of this behavior,” he said. “Despite the election of Donald Trump, it doesn’t mean that society isn’t more woke. It is two steps forward, two steps back,” he said.

Gross said he decided to open and close “Focus” on Terry Richardson, whose sexual abuse of models has been widely alleged. “It was made because I got on the phone with a lot of people who deal with fashion photographers on a daily basis....I asked who matters most right now?...Not unanimously, but overwhelmingly it came down to Terry.”

Asked whether he believes the industry will change based on the outpouring of testimonials on Russell’s Instagram, he said, “I don’t think fashion can resist the tide of changing times because it’s fashion’s job to reflect the times.”

If more models come out and the industry pays attention and changes its culture, “maybe it [the response] won’t be, ‘clean that girl up and get her back on the set.’ Maybe it will be ‘get that photographer the f–k off the set.’”

Susan Scafidi, founder and director of the Fashion Law Institute at Fordham Law School, said, “Every model has a story of sexual harassment or abuse, whether her own experience or someone else’s. Perhaps that’s not surprising, given that the same is probably true of most professional women — and given that female models frequently start working especially young, with little supervision, and in a profession that focuses on their

bodies. Most fashion professionals are just that — professional — but the very nature of the modeling industry can attract predators.

“Combating sexual abuse calls for a combination of louder voices, brighter light and better laws. The megaphone of social media can be effective in certain instances, in particular when either a serial harasser or a target of abuse has a recognized name or thousands of followers. Most of the time, however, the subject is a whisper in the shadows, inconsistent with the fantasy and glamour of the fashion industry. Models, like other victims of harassment or abuse, tend to be ashamed to speak or afraid of losing work. There’s always another young aspirant waiting in the wings.

“Legally, many models who experience sexual harassment have no recourse unless they are actually threatened or physically violated, in which case criminal law may apply, assuming enough evidence to bring a case. Since models are considered independent contractors, sexual harassment laws designed to protect employees typically do not apply. New York State’s inclusion of models under 18 in its child performer protection law starting in 2013 was a victory, but more legal support is necessary. In fact, in an era when traditional employer-employee relationships are giving way to the gig economy more generally, society as a whole could benefit from studying the problems experienced by models and creating structures to combat sexual harassment and abuse in every context,” said Scafidi.

As for the timing of these abuses coming to light, she said, “Why now? The political disappointment of many women has given rise to a trend toward female empowerment, amplified by social media, which enables the aggregation of stories and joining of voices. Ideally this will translate to structural change, not just the dismissal of a handful of marquee male predators, but there’s more work to be done.”

At work on the second season of “Food Quest,” Kim Alexis recalled her modeling days and some of the trouble she had at that time, mostly with photographers. “I had to set a healthy boundary right away. Harassment is when you set the boundary and they don’t respect it anyway,” she said. “They would make it very apparent that it would be fun to go in the next room and

roll in the hay. Verbal comments I would get a lot. But when they were trying to get you to go to bed with them, I knew that that was abuse. That was a ‘No.’

“That’s what makes women get that tough exterior sometimes. You have to walk around like, ‘Don’t mess with me...’ It’s tough because in the business, people have access to your body, your makeup and your hair. People are touching you all the time. You yourself at 18 have to decide this is inappropriate, or the wrong time, wrong person or wrong comment,” Alexis said. “Now I’m not sure that parents are teaching young models where their boundaries are and what’s appropriate and what’s not.”

Referring to the Weinstein controversy, a former casting agent and magazine editor, who requested anonymity, said, “It’s the same in fashion — some really powerful people know things, but they’re not going to jeopardize their career or reputations to speak out about it. It took a Rose McGowan to stir the whole conversation. Harvey Weinstein wasn’t just a predator — he was a bully. There are a lot of bullies in our industry. I know that people get silenced because I have experienced that. There is kind of this cabal in our industry who know *exactly* what’s going on, but will never say anything. Anywhere there is powerful people, beautiful things, ‘creative’ minds, you’re going to have crazy, abusive behavior.”

Further complicating the situation is the hiring of teenage models. “We need to look at why we’re using models who are 14, 15, 16 in advertising for big brands that a 14, 15, 16-year-old could never afford to buy? I just looked at the shows again and there are girls who are really young — 16. Why are we perpetuating these images of these young girls as women?” the former agent said. “If you read Cameron’s Instagram, there are girls who had experiences when they were 15, 16 because they were sent on casting calls and go-sees. The mom might be in the other room, but they are having a bad experience with some photographer. Maybe we have to say girls need to be 18 or older to start modeling.”

Bethann Hardison, who ran her own agency at one time, said no agency would send a girl out knowing she could be in a situation she could be compromised. That was even more so the case in the Eighties. “With Eileen Ford, it was don’t f-k around. Wilhelmina [Cooper], Zoli [Zoltan Rendessy] — they were hard-

core,” she said. “But I know that boys have been told, ‘Do what you have to do to get the job.’ With boys, there’s less care with them.”

While she allowed that “surely” girls have faced incidents, Hardison said the problem of harassment leans more toward photographers and casting directors than fashion designers. Strict as an agent, Hardison said she believed that models seen out at night never got booked during the day. “That was my philosophy, so you make your choices. I was so strict. I didn’t hang out with people where we had to do drugs with my clients and stuff like that. My agency was a whole other style,” she said. “There’s no doubt girls were compromised in the Eighties and Nineties for sure. But I’ve never had anyone who I represented tell me that happened to them. But I’ve talked to boys who have said sometimes things were expected. They could be compromised for sexual advances.”

Former “America’s Next Top Model” judge Kelly Cutrone said she has never witnessed anything on set, but stressed the importance of women speaking up for themselves. “There is a lot of fine-line stuff. If a designer wants somebody to wear a sheer blouse, it’s part of the job. You have to speak up for yourself or you’re going to be expected to do certain things that could be seen as marginal. They’re selling illusion and sex a lot.”

Speaking in general terms, not specific to the fashion industry, Cutrone said, “There are plenty of women who have gone to work and it’s been made very clear that if you make yourself sexually available, you’re going to get extra things. Or they have gone to work and been physically exposed or visually raped,” she said. “...On one hand, you want to say, ‘If you’re tall enough to be a model, be careful because there are people looming who are sexually inappropriate and they’re predators.’ But guess what? They’re in the hospital, the fire department, the accounting department, in the courts — wherever there is male culture there are sexual predators. They come in all different shapes and sizes and they work in all different places. They do not discriminate based on race, ethnicity or economics. That is a really huge issue.”

Cutrone said what she finds most troubling is the online responses of women who said they didn’t know what to do. So much so that she is considering starting an online community

with a group to teach women about sexual harassment. “If women are in a situation where their boss is asking them to watch them shower and they don’t know what to do....they don’t have the confidence of their voice or whatever — there is a huge problem here. It’s the same problem my daughter is going to have if she goes to a rock concert and she is not prepared for a terrorist act or a shootout. Women really need to be taught the seriousness of it and it happens every single day — everywhere.”

Former model Jennifer Sky is at work on a memoir about her three years of modeling in New York and abroad in the Nineties. Recalling her modeling days between the ages of 14 and 17, she said, “I was physically assaulted. Not only was I belittled by men and women on fashion sets, I was made to feel like just a prop. The thing is, maybe actors sign up for that. You sign up for a job that’s tough and you’re getting paid a certain amount, but these are little kids....The adults on the set should have been looking at us as children and thinking, ‘Oh my gosh, we can’t let this photographer talk to that little girl like that.’”

She argued that the look that many designers present is the same one that couture houses put forward in the Thirties. “Just in the few past years, we’re seeing people of color on the runways and other body types,” Sky said. “I was able to see the difference between a workplace that was unionized and one that wasn’t because at 15 I also became an actor. The way I was treated on sets that were overseen by SAG were completely different. The fight that we are having now [is like] the one that actors had against the studios in the Thirties. When I returned to New York to finish my education at 30, the fashion industry hadn’t innovated. The same archetype was on the runway — these very young, thin, teenage white women,” she said. “The one change that would make the biggest difference would be if they made a requirement that 18 [became the required age] to model.”

Suzanne Lanza, a model whose career spans 30 years, recently posted, “When was your first experience of sexual harassment? What happened?” Reached Monday, Lanza said, “There are all these people saying that it’s not an issue in the fashion industry. That’s a total joke. I don’t know anyone who I know personally who hasn’t had some form of harassment in the fashion business.”

Recalling her first modeling trip to Europe as a high schooler, Lanza was taken by her agents one afternoon to go swimming at a house in Italy. “Fortunately, I had my own bathing suit, which was like a turtleneck one-piece. But some of the other girls didn’t. They said, ‘Oh, we have bathing suits.’ But somehow they only had bottoms and no tops. Things like that were presented as really normal. I was 18, but there were a lot of 14-year-olds,” Lanza said. “And I was made fun of. I also remember walking off a job because they wanted me to take my top off. They called my agent and tried to intimidate me.”

Having modeled for 30 years since her first major job with Herb Ritts, Lanza said, “Everybody knew there are ‘The Playboys’ — these predators and I’m sure a lot of the agents were complicit, too, bringing young girls to these villas to go swimming, not protecting them in a way they should have.”

As naïve as she was as a teenager, Lanza said she knew enough not to go anywhere alone. Depending on their work schedule and financial needs, some models may need a free meal or job prospect so they will run with similar crowds or go out at night (to events organized by club promoters.)

“God bless Eileen Ford. She was known for being so strict — for a reason. Hearing that tape of Harvey Weinstein [with model Ambra Battilana, who wore a wiretap for the New York Police Department to try to catch Weinstein, but charges never materialized], that’s the way that they are. They try to make you feel bad about it, and you’re not the cool one if you don’t do what they want you to do. It really affected me so much hearing that,” Lanza said. “Even women asked, ‘Well, why was she in that situation?’ Why shouldn’t you be able to go to a hotel room with a man and then say ‘no’? We need to not judge women.”



cameronrussell

Following

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Your last two posts just pulled up a memory I'd buried. I'd just moved to New York and was sent to a test shoot with some photographer. I'd been living in NYC for 3 weeks. I was told to bring a nude thong and black heels. He kept asking me to take my top off - that it was high fashion. I refused. I remember thinking it was weird he had no assistants and we were just in his apartment. At one point he got on top of me like that scene from Blow Up.

1,413 likes 30 comments

Trigger warning ! #MyJobShouldNotIncludeAbuse
OCTOBER 14

‘You are Being a Hypocrite’: *LawNewz* EIC Takes on Lisa Bloom For Representing Harvey Weinstein

by [Alberto Luperon](#) | 3:09 pm, October 6th, 2017

Lisa Bloom, the high-profile attorney known for going after sexual harassers, is now working with an alleged sexual harasser. What’s up with that? *LawNewz* Editor-in-Chief **Rachel Stockman** interviewed her Friday to learn why this feminist attorney is on the other side now.

Bloom is working with movie mogul **Harvey Weinstein** after a bombshell *New York Times* report that claims that he has a history of sexually harassing women for almost three decades. It’s quite a dramatic turn for her, especially after she played a public role in the downfall of former Fox News host **Bill O’Reilly**—another man who the Times said settled with sexual harassment accusers.

But in Friday’s interview, she said she actually wanted to take the opportunity to start a meaningful conversation with an alleged harasser. “Well, this was an opportunity to do that,” Bloom said.

Stockman pressed Bloom on this: “A lot of people would say you are being a hypocrite by changing sides. Your reaction?”

“There are many different ways to get to a goal. I litigate cases, I write books, I speak out at conferences, I go to marches, he was an opportunity to actually be in the room of someone accused of this stuff, and change the pattern,” Bloom said.

“I do have a problem with your statement that you sent out yesterday,” Stockman said. (Bloom had described Weinstein as “an old dinosaur learning

new ways.”) Stockman pressed the attorney on how differently she’s treating him from other alleged harassers. Bloom argued that what makes Weinstein different is the movie mogul’s willingness to become a better person, and show respect to the women making allegations.

“I’m going to be an old dinosaur by the end of this interview,” Bloom quipped, after claiming Stockman spent too much time on the statement’s phrasing.

Stockman also brought up the docuseries. Months ago, Weinstein brought the rights to one of Bloom’s books for a show. On Friday, Bloom argued she’s not being unscrupulous or out of character here, even saying she turned down most sexual harassment cases because they’re not “winnable.”

So would Bloom work with O’Reilly if he acted like Weinstein, and asked her for advice? “Maybe,” she told Stockman.

Bloom, who insists she is not “representing” Weinstein because she’s not involved in litigation, says the mogul only admits to “rude talk” and inappropriate behavior, but wouldn’t specify which claims against him were false.

Weinstein is also threatening to file a defamation lawsuit against the Times, but Bloom didn’t say much about it, saying that another attorney, **Charles Harder**, is handling that case. Nonetheless, she said the Times didn’t give Weinstein enough time to respond to the allegations against him.

Ethics Alarms

OCTOBER 8, 2017 · 5:47 AM

Here We Go Again: Harvey Weinstein, Lisa Bloom And The Thing About Lawyer Ethics That The Public And The News Media Just Cannot Seem To Grasp



LawNewz writes, and in so doing wins a Legal Ethics Dnnce so easily that I'm not even going to bother,

Feminist attorney **Lisa Bloom**, who has represented dozens of women against accnsed sexual harassers like Donald Trump and Bill O'Reilly, is now representing an alleged sexual harasser. In, quite frankly, a shocking move, Bloom agreed to give her "advising" services to film studio executive Harvey Weinstein, who is accused of harassing women over a thirty-year timespan. Immediately, many in the legal world wondered what would motivate such a principled women's rights advocate to represent a man facing such sordid accusations.

Weird! I have the strangest feeling I have been here before...it's Ethics Alarms *déjà vu*!

No, I **have** been here before, and if you've read the blog regularly, so have you, like [here](#), for example, when the post was called, [No, There Is Nothing Unethical Or Hypocritical About A Feminist Lawyer Defending Roger Ailes](#), or [here](#), when I defended Hillary Clinton....yes, you read that right...when she was being called a hypocrite for once defending not only a child rapist, but a guilty child rapist. Then there was [this post](#), when liberal icon Larry Tribe was representing a coal company. Bloom, Tribe, Estrich and Hillary all have the same defense, not that lawyers should need a defense for being lawyers.

Let's see...I think I'll quote myself from the Hillary piece this time...

...I tell all my legal ethics seminar classes to start teaching their non-lawyer neighbors and relatives **ABA Model Rule 1.2 b**, which reads,

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

This, combined with the principle of zealous representation of one's client, as expressed, for example, in D.C. **Rule of Professional Conduct Rule 1.3...**

(a) A lawyer shall represent a client zealously and diligently within the bounds of the law.

(b) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or

(2) Prejudice or damage a client during the course of the professional relationship....

...means that lawyers represent *clients*, and are bound to seek those clients' objectives when those objectives are legal, whether the lawyer likes or agrees with those objectives or not.

It means that it is ignorant, wrong and dangerous to the rule of law as well as the right of citizens to be the *beneficiaries* of laws in a democracy, and not the *servants* of them, for unscrupulous political opponents to attack lawyers for the positions, objectives and needs of the *clients* they represented...

Lawyers do not have to agree with or like their clients' positions, objectives or character, is that clear? Everybody? **Lawyers are not to be held accountable for their client's motives, conduct or legal objectives.** Bill Cosby's lawyers do not approve of rapists. Johnnie Cochran did not support the hobby of ex-wife knifing.

And Lisa Bloom (she is the daughter of Gloria Allred, following in her feminist muckraking mother's footsteps) was not violating her principles or being hypocritical when she agreed to be an "advisor" to Harvey Weinstein, also known as "being his attorney." Bloom, as an attorney, was being faithful to the professional principles on which the practice of law in America is based. Her personal beliefs and principles are subordinate to those.

Nevertheless, LawNewz, a legal issues website, cross-examined Bloom as if she was engaging in a breach of integrity rather than doing what the legal ethics rules direct lawyers to do. The site's Editor-in-Chief, Rachel Stockman, acted as if she had never heard of the concept of a lawyer who doesn't necessarily like, admire or sympathize with a client, and whose personal values the client's alleged actions seem to defy. "A lot of people would say you are being a hypocrite by changing sides," asked Stockman, who also pressed Bloom on how differently she's treating the beleaguered independent film tycoon from other alleged harassers. "Your reaction?"

Bloom's reaction, in a setting where she was not constrained by the fact that she was representing Weinstein as she spoke and therefore her response had to be in *his* best interests, not *hers*, should have been something like,

'My reaction is that "a lot of people" don't understand what lawyers do and why they are important. I'm treating Harvey differently from other accused sexual harassers because *he's my client*, and in other cases accused sexual harassers were being *accused* by my clients. I'm not "switching sides." Lawyers don't have "sides," their clients do. The lawyers on both sides of any case, criminal or civil, are acting on the best traditions of their profession by helping a client have full access to the law. Lawyers don't judge their clients, they advocate for them and advise them. I'm advocating and advising Mr. Weinstein. He has every right to my professional services, and I have every right to provide them to anyone willing to pay my fee.'

Then she could have added this...

'And I must say, Rachel, I am shocked that you are even asking these question. I know you've never practiced law, but you did get a Masters of Law at Yale, and I would think this concept was basic. Didn't Yale *teach* you this? If not, you should get your tuition back. Or maybe LawNewz should get *your salary* back. The Editor in Chief of a website devoted to the law should at least understand what lawyers *do*, and not mislead its readers that there is something hypocritical about representing clients with diametrically opposed interests at different times.'

But wait...there's more!

There is a twist to this tale, for it appears that Bloom may have violated at least the spirit of a different ethics principle in representing Weinstein. In April, she tweeted,

"BIG ANNOUNCEMENT: My book SUSPICION NATION is being made into a miniseries, produced by Harvey Weinstein and Jay Z!"

I don't know when Weinstein hired Bloom, but whenever it was, it defies credulity to believe that this arrangement isn't a key to the relationship. This, and not the fact that Bloom took on a client that her previous clients would find repulsive, makes me question her motives and integrity.

The ABA cautions against going into business with clients:

"A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client...When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable...The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will ... give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction...."

I believe that Lisa Bloom's arrangement with Weinstein *does* breach Rule 1.7, which involves, among other things, unwaivable personal conflicts of interest. It looks like members of Weinstein's board made the same point to the lawyer: "You have a commercial relationship with TWC via a TV deal so how can you possibly provide impartial advice to Harvey or address this group with any credibility?" one board members wrote her in an e-mail.

Yesterday, Lisa Bloom withdrew as Weinstein's lawyer.

STYLE

Fashion Breaks Its Silence on Harvey Weinstein Scandal

By VANESSA FRIEDMAN, JACOB BERNSTEIN and MATTHEW SCHNEIER OCT. 13, 2017

In the days since The New York Times broke the story of allegations of decades of harassment and assault by Harvey Weinstein, torrents of heart-wrenching stories have poured forth from at least 30 women who say they were victimized by Mr. Weinstein. So have unstinting condemnations from many who worked with Mr. Weinstein or benefited from their relationship with him, both in film and in Democratic political circles.

“Behavior like this is appalling and unacceptable,” said Anna Wintour, the artistic director of Condé Nast, breaking her silence on the issue. “I feel horrible about what these women have experienced and admire their bravery in coming forward. My heart goes out to them, as well as to Georgina and the children. We all have a role to play in creating safe environments where everyone can be free to work without fear.”

Ms. Wintour has put stars of Mr. Weinstein’s films on more than a dozen of her Vogue covers over the years; prominently featured Marchesa, the label co-founded by his wife, Georgina Chapman, in her magazine; and hosted political fund-raisers with him. Her words make all the more stark the realization that from fashion, the third pillar of Mr. Weinstein’s power base, an industry in which he made major investments going back more than 15 years, and with which he hoped to burnish his empire, the overwhelming response has been a ringing silence.

“I’ve been struck by it,” Steven Kolb, the chief executive of the Council of Fashion Designers of America, said on Tuesday. After all, many fashion stakeholders spoke out vociferously earlier this year against President Trump’s policies on women’s rights.

But aside from Donna Karan, who gave statements that first defended and then criticized Mr. Weinstein, few designers have ventured as much. Nor have any of the major retailers who sell Marchesa spoken up, not even to offer support to Ms. Chapman, who has announced she is separating from her husband. (Ms. Chapman was not available for comment for this story.)

In a statement on Tuesday, Mr. Weinstein’s spokeswoman, Sallie Hofmeister, said: “Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein. Mr. Weinstein has further confirmed that there were never any acts of retaliation against any women for refusing his advances.”

For his part, Mr. Weinstein acknowledged, in a larger statement to The New York Post, that his actions could have a negative impact on Ms. Chapman’s company. Marchesa’s public profile depended largely on its connection to Hollywood — the label does not advertise — and, fair or not, Ms. Chapman and her line are now swept up in this unfolding story.

The refrain from major department stores in response to requests for comment? “We just don’t want to be part of this story.”

But that is unavoidable. Fashion is already deeply involved.

Not just because on Tuesday a petition was begun by Care2 asking Nordstrom to drop the Donna Karan and DKNY lines in response to Ms. Karan’s comments (though she herself is no longer involved with either label).

And not just because fashion has its own history with sexual harassment and the poor treatment of young women, including increasingly documented abuses of models and the many claims against the photographer Terry Richardson (who, after some time away, is still working in the industry).

Mr. Weinstein, more than perhaps any film executive of the modern era, seemed to understand the role fashion could play as he built an upmarket brand in which box office performance was important, but so were glitter and good reviews.

He introduced “Project Runway.” Along with the shoe designer Tamara Mellon he was instrumental in the revival of Halston, for which he corralled Sarah Jessica Parker, the celebrity stylist Rachel Zoe (who often dressed her clients in Marchesa) and the private equity firm Hilco as partners. He licensed the option to revive the Charles James brand the same year the Costume Institute of the Metropolitan Museum of Art featured a Charles James exhibition.

When actresses from his films campaigned for Oscars, there and elsewhere, guess whose dresses they often wore?

“We all knew celebrities were asked to wear Marchesa if they were in a Weinstein movie,” said the co-owner of a fashion communications company who asked not to be identified. “They were supposed to wear it at least once. We all knew that cycle.”

Going all the way back to his days at Miramax, the first of two studios Mr. Weinstein co-founded, he put out fashion-themed films.

In 1994, Mr. Weinstein released Robert Altman’s “Prêt-à-Porter.” In 2009, he acquired the North American distribution rights for “A Single Man,” the designer Tom Ford’s debut film. In 2011, he acquired Madonna’s “W.E.,” a period drama about Wallis Simpson in which the gowns were almost the only thing that got good notices.

Mr. Ford would never have held up Mr. Weinstein as the poster boy for how to treat women.

Still, Mr. Ford said Thursday, it was a far cry from what was revealed over the last week and a half, through two exposés in The New York Times outlining allegations of a pattern of sexual harassment and assault and a third from The New Yorker detailing accusations of rape.

“What Harvey has done is shocking, indefensible and disturbing on many levels,” Mr. Ford said. “I knew that Harvey certainly liked beautiful young women.” But, he added: “I had no idea of his predatory and abusive behavior or that he had paid settlements to anyone.” Mr. Ford noted that since he himself is a gay man, Mr. Weinstein’s “sex life would certainly not have been something that he would have felt the need to share with me.”

Ms. Parker collaborated with Mr. Weinstein at Halston. “Over the last two decades, through various projects, I’ve always maintained a relationship with him that I was, for the most part, comfortable with,” she said. “Now I feel he is a stranger, that I didn’t know him at all. And desperately sad to hear how so many women have suffered.”

And Ms. Mellon, referring to sexual predation, concurred: “I never saw anything like that. That behavior usually happens when no else is watching and in private. If I had seen it, I would have stopped it. I only ever witnessed raging and threats, but that was toward me and I pushed back when he did that.”

Mr. Weinstein’s increased presence on the fashion circuit seemed to coincide with his shrinking presence in the film world. Optics had always been essential to his prestige brand, so it made some sense that he leaned on an industry selling illusions to help maintain his myth. The razzle-dazzle of Harvey and his wife on red carpets all over the world was a good distraction when fewer awards were coming his way.

“Project Ruuway” helped, too. It made stars out of the designer Michael Kors, the model Heidi Klum and the editor Nina Garcia. Lauren Zalaznick, then the head of the Bravo unction, where the show debuted, said: “On the surface, of course, it was a logical extension into TV. But what it really did was help build a firmer network withiu the fashion and publishing industries. It lent even more proximity to the power of relationships with designers, editors and models, and the scepter of magazine covers, more and different awards, political and socially minded fundraisers, and the attendant money, glamour and even more power that comes along with that territory.”

A spinoff, “Project Runway All Stars,” which debuted in 2012, features Ms. Chapman as a judge; the next season has already been filmed.

Mr. Weinstein was a key fund-raiser for amfAR, whose gala during the Cannes Film Festival is the most fashion-centric event on the movie festival circuit. Ms. Klum was honored by the organization in 2013.

LVMH, the French luxury conglomerate, has a 1 percent stake in the Weinstein Company. In 2007, Mr. Weinstein wrote the profile of Mr. Arnault for the Time 100 most influential people list. In 2011, he told *The Wall Street Journal*, “When I wasn’t doing so well, Anna would give a party and put me next to Bernard Arnault.”

A person familiar with LVMH said the two men barely knew each other.

Mr. Weinstein was also a regular at the Met Gala, which has been co-chaired by Ms. Wintour since 1999, and at the Council of Fashion Designers of America awards. (In 2016, there were plans for the Weinstein Company to produce a television special on the CFDA awards, but it fell through, Mr. Kolb said, when they realized that the event was not paced for television.) Mr. Weinstein appeared in front rows, including those of Marchesa, Dior, Louis Vuitton and Burberry.

It was at a fashion show that the actress Léa Seydoux met Mr. Weinstein, she wrote in *The Guardian*. He then requested a private meeting with her, she said, which quickly turned inappropriate. (She also wrote about watching him pursue another woman at the Met Gala.) The model turned actress Cara Delevingne recently accused Mr. Weinstein of pursuing her and repeating to her details of her personal life as reported in the tabloids.

Trish Goff, a model who was a regular in the pages of *Vogue* and appeared in campaigns for Chanel and Dior, said she met Mr. Weinstein at a cocktail party at Ms. Wintour’s house in 2003 when she was 25. “He came in and someone said, ‘Oh, there’s Harvey Weinstein,’ so I turned to look at him, and he was looking at me,” she said. Shortly thereafter her agent got a call from his office inviting her to lunch.

She recalled: “This was at a time in my career when I was starting to think about what’s next. I was nervous about it, because he had a reputation, but I was equally nervous about not going because I was a single mother, and what if he made it so I didn’t work anymore? So I said, ‘O.K., tell him I’ll have lunch.’”

They ended up at the Tribeca Grill. “When I arrived, I discovered we were seated in a private room,” she said. “I asked him why he had wanted to have lunch, and he said ‘You were looking at me’ — as if to imply I was interested. I said, ‘Yes, I was looking at you because you are Harvey Weinstein, and I had never seen you before.’

“Then he started asking me if I had a boyfriend, and if we had an open relationship. I said I wasn’t interested in an open relationship, but he was relentless, and I kept trying to shut that down and move on. Then he started putting his hands on my legs, and I said, ‘Can you stop doing that?’ When we finally stood up to go, he really started groping me, grabbing my breasts, grabbing my face and trying to kiss me. I kept saying, ‘Please stop, please stop, but he didn’t until I managed to get back into the public space.

“The horrible thing is, as a model, it wasn’t that unusual to be in a weird situation where a photographer or someone feels they have a right to your body.”

Ms. Hofmeister, Mr. Weinstein’s spokeswoman, said he could not be reached for comment on Ms. Goff’s allegations and directed a reporter to a previous statement denying allegations of nonconsensual sex.

Now Marchesa has become yet another symbol of Mr. Weinstein’s abuse of power, a brand he helped mastermind and support. There is now a #boycottmarchesa hashtag on Twitter. Helzberg Diamonds, which held the license for Marchesa’s bridal jewelry, announced it had delayed the planned line.

“The relationship helped the business tremendously,” said Stellene Volandes, the editor of *Town & Country*. “Marchesa had such great success on the red carpet and became known for that.” (Ms. Chapman appeared on the cover of the magazine in 2009.)

The label, which was founded in 2004 by Ms. Chapman and Keren Craig, first received real attention that same year, when Renée Zellweger, the star of the Miramax film “*Bridget Jones: The Edge of Reason*,” appeared on the red carpet in a Marchesa dress. She was followed shortly thereafter by Cate Blanchett, who wore Marchesa to the Rome premiere of “*The Aviator*,” also produced by Miramax.

In recent years, Marchesa's red-carpet magic has dimmed and its celebrity placements have lost a bit of their star power, yet the label's princess-y dresses still found eager takers. In 2017, Octavia Spencer, who has appeared in movies produced by Mr. Weinstein, wore a custom Marchesa gown to the Academy Awards, when she was nominated for her role in "Hidden Figures."

When stars did wear the label, there was often a connection to Mr. Weinstein. Jennifer Jason Leigh wore Marchesa to the Academy Awards in 2016, when she was a nominee for her role in "The Hateful Eight," directed by Quentin Tarantino (and executive-produced by the Weinstein brothers).

But Hollywood stylists who work with such stars and fashion houses to find dresses for premieres, award shows and red carpet events, appear to be taking a wait-and-see approach on the label. Of a half-dozen top stylists who have used Marchesa, not one would comment on how the Weinstein revelations would have an impact on their use of Marchesa.

"There's a mob mentality that has developed," said Lauren Santo Domingo, a founder of Moda Operandi, an online fashion retailer, who said she was standing behind Marchesa. On Wednesday, the brand postponed a planned preview of its spring 2018 collection to an unspecified "later date." The company is hunkering down, and could not be reached for comment.

"I think the issue is no one knows what to say to Georgina, or the words to use," Mr. Kolb said. "But as a creative power and as a CFDA member, she is someone who deserves the industry's support and backing."

Indeed, said Julie Gilhart, a fashion consultant and the former fashion director of Barneys New York: "We are living in a time right now when we should try to find the words."

Valeriya Safranova and Joanna Nikas contributed reporting.



SALON

Donna Karan defends Weinstein, says women are “asking for it”

“How do we present ourselves as women?” Karan said. “What are we asking?”

GABRIEL BELL (/WRITER/GABRIEL-BELL)
10.10.2017 • 11:49 AM • 0 COMMENTS

Even as a celebrities line up to take their turns commenting on The New York Times exposé of Harvey Weinstein with lashing denouncements, fashion icon Donna Karan offered up a crude — if familiar — defense of the ~~battled~~ producer Sunday night.

Speaking to the Daily Mail at the CinéFashion Film Awards, the founder of DKNY and her namesake label said that Weinstein “has done some amaz-ing things” and he and his wife, Marchesa designer Georgina Chapman, were “wonderful people.” She is personal friends with the couple.

It did not, alas, end there.

Speaking to a reporter, Karan commented generally about the problems of sexual harassment on a global scale. “I think we have to look at ourselves,” she said.

“Obviously, the treatment of women all over the world is something that has always had to be identi ed. Certainly in the country of Haiti where I work, in Africa, in the developing world, it’s been a hard time for women.” Indeed, it has been.

Choosing not to end on that high note, Karan then took a 50-foot dive into the shallow end of the pool. “To see it here in our own country is very di cult,” she said, “but I also think how do we display ourselves? How do we present ourselves as women? What are we asking? Are we asking for it by presenting all the sensuality and all the sexuality?”

She added, “And what are we throwing out to our children today about how to dance and how to perform and what to wear? How much should they show?” Karan continued, “You look at everything all over the world today and how women are dressing and what they are asking by just presenting themselves the way they do. What are they asking for? Trouble.”

And yet, the designer did not *deny* that Weinstein may have committed sexual assault, as alleged. When asked if the producer had been "busted," Karan smiled and said, "I don't think it's only Harvey Weinstein."

She turned the conversation back to less narrow, more global issues again, saying, "I don't think we're only looking at him. I think we're looking at a world much deeper than that." Indeed Weinstein *is* a symbol, not only for the way Hollywood treats women, but how the world treats women. That said, he's also earned himself a spot on the hot plate in his own right.

"Yes, I think he's being looked at right now as a symbol, not necessarily as him," she said. "I think we have to look at our world and what we want to say and how we want to say it as well."

Quick on the draw, Karan has already released an apology for some comments and claimed that they were — say it all together now — "taken out of context."

A statement to the Daily Mail from Karan reads, "Last night, I was honored Fashion Film Awards in Hollywood and while answering a question on the red carpet I made a statement that unfortunately is not representative of how I feel or what I believe. I have spent my life championing women. My life has been dedicated to dressing and addressing the needs of women, empowering them and promoting equal rights." Karan has, yes, been quite active in charities and causes benefiting people in the developing world and women everywhere.

"My statements were taken out of context and do not represent how I feel about the current situation concerning Harvey Weinstein," the statement continued. "I believe that sexual harassment is NOT acceptable and this is an issue that MUST be addressed once and for all regardless of the individual. I am truly sorry to anyone that I offended and everyone that has ever been a victim."

Outside of this isolated incident, there's been almost universal constant in the entertainment industry. Stars who have worked with Weinstein, including (but not limited to) Kate Winslet, George Clooney, Meryl Streep and Judi Dench, have lambasted the producer over the Times' allegations. Others, including Lena Dunham, Jennifer Lawrence and Jessica Chastain, have offered their two cents. Other actors and individuals, including Romola Garai, have added to the growing list of allegations against Weinstein. With The New Yorker's own exposé (<https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>) having been published Tuesday morning, the group of accusers and detractors is sure to expand.

Already, Weinstein has been fired by the board of The Weinstein Company, and the firm he founded and which still bears his name is considering rebranding itself entirely. This, despite a series of messages Weinstein sent to other Hollywood executives in an attempt to save his job.

<https://www.salon.com/2017/10/10/donna-karan-defends-weinstein-says-women-are-asking-for-it>

/

FASHION / FASHIONSCOOPS

G-III Stock Drops as Calls Grow for Boycott of Donna Karan Brands

Karan hasn't been affiliated with the Donna Karan and DKNY brands since 2015.

By Lisa Luckwood on October 11, 2017

G-III Apparel Group's stock, owner of the Donna Karan and DKNY labels, fell Wednesday following designer Donna Karan's remarks over the Harvey Weinstein scandal, which she later retracted and apologized for. The stock declined 4.11 percent to close at \$26.61 on the Nasdaq.

At the same time, there were growing calls for a boycott of the Donna Karan and DKNY brands, even though Karan is no longer affiliated with them. A Care2 petition also is demanding Nordstrom drop designer Donna Karan's products. Some 4,939 people have signed the petition.

Julie Mastrine, a spokeswoman for Care2, said they haven't presented the petition to Nordstrom yet, and expect to keep the petition up for about a week to gather signatures. When told that Karan is no longer involved in the company, Mastrine wasn't aware of that but said she saw that Nordstrom's web site sells the Donna Karan Cashmere Mist perfume. "It's about them being associated with her brand when she's made these comments," she said.

G-III acquired Donna Karan International for \$650 million from LVMH Moët Hennessy Louis Vuitton in December 2016. Morris Goldfarb, chairman and chief executive officer of G-III, has declined comment on the controversy. The first DKNY and

Donna Karan collections under G-III were shipped to stores this fall. DKNY, which is sold exclusively in the U.S. at Macy's, is featured in the retailer's Herald Square's 34th Street windows.

Soon after Karan made comments in support of Weinstein Sunday night to the U.K.'s Daily Mail, she issued an apology, saying her statement "unfortunately is not representative of how I feel or what I believe."

"I have spent my life championing women. My life has been dedicated to dressing and addressing the needs of women, empowering them and promoting equal rights. My statements were taken out of context and do not represent how I feel about the current situation concerning Harvey Weinstein. I believe that sexual harassment is NOT acceptable and this is an issue that MUST be addressed once and for all regardless of the individual. I am truly sorry to anyone that I offended and everyone that has ever been a victim," she said.



THE CHORUS GROWS LOUDER

Harvey Weinstein allegedly used "Project Runway" to meet models

Marc Bain | October 23, 2017



📷 Harvey Weinstein watches the models at the Marchesa spring-summer 2014 runway show. (Reuters/Lucas Jackson)

The accusations of sexual harassment and other misconduct against Harvey Weinstein keep mounting.

A new Los Angeles Times investigation alleges that Weinstein used his extensive fashion ties as a “pipeline” for models. Among those ties—which include his backing of Marchesa, the fashion line cofounded by Weinstein’s wife, Georgina Chapman, and his past investment in the brand Halston, which he helped to revive—is his connection to the long-running show *Project Runway*. The Weinstein Company produces the show, though its name was recently scrubbed from the credits after the allegations against Weinstein began to surface.

According to the Times, which spoke with nearly a dozen people tied to the fashion industry, including executives and publicists connected to the show, Weinstein used his links to fashion and his company’s ownership of *Project Runway* “as enticements or pretexts for meetings.”

In multiple instances, models claimed Weinstein tried to coerce them into unwanted sexual situations. Former model Juliana De Paula told the Times that Weinstein “groped her and forced her to kiss other models that he had taken to his loft in New York a decade ago. When she tried to leave, she said, he chased her through the apartment, naked. She fended him off with a broken glass.”

Another model, Samantha Panagrosso, said she encountered Weinstein at a hotel pool during the 2003 Cannes Film Festival. He began touching her legs, and when she rejected his advances he pointed to another model and said, “Look at her, I’m going to have her come to my room for a screen test.”

The stories echo those that other models and actresses have now told about Weinstein. Former actress Lucia Evans told the New Yorker that, in 2004, the year *Project Runway* launched, Weinstein worked persistently to arrange casting meetings with her. Weinstein mentioned to her that she’d “be great in ‘Project Runway,’” but only if she lost weight, and also discussed two film scripts. Then he allegedly forced her to perform oral sex on him.

In an Instagram post, model and actress Cara Delevingne described how when she started acting she met Weinstein at a hotel lobby to talk about an upcoming film. Weinstein pressured her to go to his room, where she found another woman there. Weinstein asked them to kiss, and when Delevingne tried to leave, he stood in front of the door and tried to kiss her.

We've reached out to the Weinstein Company and Harvey Weinstein's spokesperson, Sallie Hofmeister, for comment and will update this story with any reply. Hofmeister has already said that Weinstein has "unequivocally denied" allegations of rape, and that he recalls events very differently than many of his accusers, including some of the women interviewed by the Times.

To those in the fashion industry, stories of models being abused are all too common. Often models are young and travel far from home for work, leaving them feeling uncertain and vulnerable.

Different groups have begun responding. Recently, luxury labels LVMH and Kering introduced a charter with guidelines for how their brands are to hire and treat models. Today (Oct. 23), New York State Assemblywoman Nily Rozic announced a plan (paywall) that would amend her state's anti-discrimination laws to include protections for models that would make sure those hiring and working with them are held accountable for any abuses.

"The horrible thing is, as a model, it wasn't that unusual to be in a weird situation where a photographer or someone feels they have a right to your body," model Trish Goff told the New York Times (paywall). Goff is among those who say Weinstein sexually assaulted her.

UTAH

Lexus ends partnership with Weinstein Co. and 'Project Runway'

Move comes only a week after the brand sponsored a specific episode challenge

JAMES RISWICK

Oct 24th 2017 at 3:50PM



Lexus has been a long-time sponsor of fashion reality competition show *Project Runway*, providing a car to the contest's winner and sponsoring at least one specific "challenge" per season. Only last week, a Lexus NX 200t was featured and used as inspiration for the remaining group of fashion designers.

This would seem to be the last season that will happen, however, as Lexus has ended its partnership with the show's production company, Weinstein Co., after sexual harassment allegations leveled at Harvey Weinstein.

"Lexus has chosen to terminate its agreement with The Weinstein Company that saw the luxury automaker working with the film studio on certain film and television projects," a company spokesperson wrote in a statement to Reuters.

Last week, Lexus indicated it was "evaluating" its relationship with Weinstein Company. One would imagine this delay was the result of that week's episode featuring Lexus substantially more than usual.

BUSINESS / MEDIA

Terry Richardson Falls Foul of Condé Nast in the U.S. and the U.K.

Richardson can no longer work with Condé Nast titles.

By Samantha Conti
with contributions from Lorelei Marfil
on October 24, 2017



 Terry Richardson
BFA/REX/Shutterstock

OUT OF FASHION: Terry Richardson is persona non grata at Condé Nast on both ends of the Atlantic.

The U.S. and international arms of the publisher have issued separate statements distancing themselves from the controversial photographer, who is well-known for his hypersexualized shoots and allegations of misconduct on and off-set.

“Condé Nast has nothing planned with Terry going forward,” according to a statement from Condé in the U.S. “Sexual harassment of any kind is unacceptable and should not be tolerated.”

It won't be a big drama on either side. It's been about seven years since American Vogue worked with Richardson and the other Condé titles do not use him.

In London, Condé Nast International spent most of Tuesday declining to comment on an article that appeared in The Daily Telegraph citing an internal e-mail saying that Richardson could no longer work for any of the CNI titles, which include British Vogue, other international Vogue titles, and GQ Style.

On Tuesday, the Telegraph quoted an internal CNI e-mail sent by James Woolhouse, executive vice president and chief operating officer, to CNI international country presidents.

It said: "I am writing to you on an important matter. Condé Nast would like to no longer work with the photographer Terry Richardson. Any shoots that have been commissioned or any shoots that have been completed but not yet published, should be killed and substituted with other material."

Toward the end of the day a CNI spokesman issued the following statement: "I can confirm that the content of the e-mail has been correctly quoted and that Condé Nast International has no further comment to make."

In response to The Telegraph leak, a representative for Richardson told WWD: "Terry is disappointed to hear about this e-mail, especially because he has previously addressed these old stories. He is an artist who has been known for his sexually explicit work, so many of his professional interactions with subjects were sexual and explicit in nature, but all of the subjects of his work participated consensually."

The CNI e-mail was leaked to The Telegraph about 48 hours after The Sunday Times of London ran a long feature asking "Why is Terry Richardson Still Feted by Fashionistas?" It quoted a former editor of i-D saying that Richardson's behavior had long been an open secret.

The Condé condemnations come amid a widening sexual harassment scandal sparked by accusations of grossly inappropriate by Harvey Weinstein, who's now jobless and in

rehab. Scores of women — and men — have been coming forward telling their stories of abuse by Weinstein and other powerful figures in the film and fashion industries.

On Oct. 18, WWD quoted Neil Kraft, owner and creative director at KraftWorks, who said: “I think sexual harassment exists in every business that remotely touches pretty women and men. It’s out there. I’ve only witnessed really bad things once in 25 years. The difference between my kind of thing and a runway model is we travel with the models. We go to Hawaii and travel all over the world.”

He said that during one of his campaign shoots, he walked in on Richardson having sex with a girl in a bathroom. “I don’t know what the relationship was,” Kraft said. “It was during the day and he came back to work a half hour later. It’s fairly well-known that the models tend to sleep with the assistants. That’s more youthful attraction. Herb Ritts was known to use his boyfriends as models. They were guys he was attracted to,” he alleged.

[Condé Nast](#)[Condé Nast International](#)[Terry Richardson](#)

DEADLINE

>

BUSINESS

Weinstein Company Hit With \$5M Suit For Harvey Weinstein's "Sexual Misconduct"

by Dominic Patten

• October 24, 2017 4:32pm

As yet another woman went public today with claims that Harvey Weinstein sexually assaulted her, The Weinstein Company itself has been hit with a \$5 million civil suit over the alleged misconduct of its former co-chairman and its alleged knowledge of his behavior.

"Prior to the incident involving Plaintiff, Defendant TWC's executives, officers and employees had actual knowledge of Weinstein's repeated acts of sexual misconduct with women," says the negligence complaint filed Tuesday by actress Dominique Huett in Los Angeles Superior Court, regarding a November 2010 incident at the Peninsula Hotel in Beverly Hills.

"In particular, Defendant was aware of Weinstein's pattern of using his power to coerce and force young actresses to engage in sexual acts with him," the jury-seeking document (read it [here](#)) from attorneys at sexual abuse case specialists HermanLaw adds of TWC. "This knowledge was possessed by Defendant's Board of Directors including, upon information and belief, Bob Weinstein."

In a M.O. that has become familiar in recent weeks after the *New York Times* first published its exposé into sexual harassment claims against Weinstein on October 5, after asking "her to show him her breasts," the now disgraced Oscar-winning producer allegedly invited Huett, the one-time *Blue Bloods* actress, to a meeting. Then, in his attempt to help her career but then asked for a massage and to perform oral sex on her.

Huett says in the seven-page complaint that after repeatedly saying no to Weinstein, she agreed to both requests.

"After performing oral sex on Plaintiff, Weinstein masturbated in front of Plaintiff until he reached orgasm," the filing notes, adding that Weinstein gave her "contact information for an executive producer with *Project Runaway*, a television program produced by Defendant, and offered to secure a role for Plaintiff on the program." It is unclear if she did end up with a role on the fashion competition series.

"Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein," said a spokesperson for the producer today in response to this latest claim. Reps for TWC or Bob Weinstein, who himself was accused of



With projects and talent dropping in droves since the scandal surfaced earlier this month, TWC received a cash injection from Colony Capital on October 16. The Tom Barrack-run investment firm is said to be looking into buying up part or all of TWC — a proposition that likely just became even more toxic with this complaint.

“This is the casting couch at the extreme level,” Huett’s lead lawyer Jeff Herman told Deadline today on the matter, ahead of a planned press conference tomorrow in Los Angeles. “Whether it is a criminal case is not for me to say; we are saying that the company knew he was doing this to women,” the Florida-based attorney added of the multi-damages complaint. “What [Huett] wants to do is take on Hollywood, force a change of its attitude towards women.”

Herman also said he had not been contacted nor had contacted the LAPD on the matter. Like the NYPD and London Metro police, the LAPD is conducting an investigation into possible criminal charges against Weinstein that, if convicted, could see him behind bars for up to eight years in the Golden State. In the Empire State, Attorney General Eric Schneiderman on Monday subpoenaed TWC over potential civil rights violations in relation to Weinstein’s alleged behavior and settlements that have been paid out.

Back on this coast and looking at this latest matter, the statute of limitations in California on a charge of negligence, retention and supervision is two years. However, that clock can be reset to start whenever the injured party gains knowledge of such negligence and then restarts to one year from that point, which would put Huett within the statute of limitations, according to Herman.

“Plaintiff did not discover, and a reasonable and diligent investigation would not have disclosed, that prior to her incident Defendant was aware of numerous allegations of sexual misconduct involving Weinstein,” the complaint notes. “Plaintiff was unable to discover Defendant’s knowledge of Weinstein’s propensity to engage in sexual misconduct until the story of Weinstein’s pattern of sexual misconduct with young actresses broke in October 2017.”

Bob Weinstein and other TWC executives have claimed they had no knowledge of such behavior on Harvey Weinstein’s part. The latter Weinstein was terminated by the TWC board on October 8 and formally resigned after calling into to board meeting last week.

Attorney Patricia Glaser is representing Weinstein in coming to a settlement with the company, of which Harvey Weinstein owns a 23% stake.

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Attorneys for Plaintiff, Dominique Huett

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

DOMINIQUE HUETT,)	CASE NO: BC680869
)	
Plaintiff,)	CIVIL COMPLAINT ALLEGING
vs.)	DAMAGES FOR NEGLIGENCE
)	
THE WEINSTEIN COMPANY LLC,)	<u>DEMAND FOR JURY TRIAL</u>
)	
Defendant.)	
)	
)	
)	
)	

PARTIES AND JURISDICTION

1. Plaintiff Dominique Huett is a citizen and resident of New York.
2. Defendant The Weinstein Company LLC (hereinafter referred to as "TWC") is a Delaware limited liability company whose principle place of business is in New York, New York.
3. Venue properly lies in this county in that Defendant regularly conducts business

1 in this county, and the torts described herein were committed in this county. This Court has
2 jurisdiction in that this is a claim for damages of not less than \$5 million, well in excess of the
3 jurisdictional minimum of \$25,000.

4 FACTUAL ALLEGATIONS

5 4. In or about November 2010, Plaintiff Dominique Huett and Harvey Weinstein
6 arranged to meet each other at The Peninsula Beverly Hills hotel in Beverly Hills, California.
7 Plaintiff was an aspiring actress at the time and the purpose of the meeting was to discuss
8 Weinstein's offer to assist Plaintiff in procuring future television and/or film roles. The
9 communications to arrange this meeting included e-mails from the e-mail address of
10 Weinstein's assistant at TWC.
11

12 5. Plaintiff and Weinstein initially met at the bar of The Peninsula hotel, where they
13 discussed Weinstein's interest in assisting Plaintiff with her acting career. During their
14 conversation, Plaintiff noticed Weinstein staring at her breasts. Weinstein asked Plaintiff if she
15 had ever had a "boob job" and asked her to show him her breasts. Plaintiff refused and was
16 made uncomfortable by the question and the request. However, Weinstein informed Plaintiff
17 that the purpose of the questioning was that it would be beneficial for securing future roles if
18 she did not have breast augmentation.
19

20 6. At some point during their conversation, Weinstein, who was at the time living at
21 the hotel, invited Plaintiff to his room under the guise of continuing their business meeting.
22 Plaintiff agreed to move the meeting to his hotel room, believing they were to continue their
23 discussion regarding her career.
24

25 7. While in Weinstein's room, the two continued their conversation regarding
26 Plaintiff's career. At some point, Weinstein excused himself to use the restroom. After several
27 minutes, Weinstein returned from the restroom wearing only a bathrobe.
28

1 8. Upon returning, Weinstein asked Plaintiff to perform a massage on him. Plaintiff
2 said, "No," and that she did not feel comfortable by his request. However, Weinstein persisted
3 and would not take "no" for an answer. Weinstein laid on the bed and demanded that Plaintiff
4 perform a massage on him. Plaintiff ultimately complied with his demands and performed the
5 massage.
6

7 9. Subsequently, Weinstein requested to perform oral sex on Plaintiff. Plaintiff was
8 shocked and alarmed by the request and initially refused. Again, Weinstein displayed
9 persistence and would not take "no" for an answer. Weinstein initiated and Plaintiff froze as
10 Weinstein removed her clothing and performed oral sex on her. Weinstein performed oral sex
11 on Plaintiff for several minutes. After performing oral sex on Plaintiff, Weinstein masturbated
12 in front of Plaintiff until he reached orgasm.
13

14 10. At some point during their communications, Weinstein gave Plaintiff the contact
15 information for an executive producer with *Project Runaway*, a television program produced by
16 Defendant, and offered to secure a role for Plaintiff on the program.
17

18 11. Prior to the incident involving Plaintiff, Defendant TWC's executives, officers
19 and employees had actual knowledge of Weinstein's repeated acts of sexual misconduct with
20 women. In particular, Defendant was aware of Weinstein's pattern of using his power to coerce
21 and force young actresses to engage in sexual acts with him. This knowledge was possessed by
22 Defendant's Board of Directors including, upon information and belief, Bob Weinstein.
23

24 12. Upon information and belief, Defendant was aware of allegations of sexual
25 misconduct against Weinstein going back to the 1990s. Upon information and belief, prior to
26 the incident involving Plaintiff, Defendant was aware of multiple claims of sexual misconduct
27
28

1 which were settled with the victims prior to the filing of suit. This knowledge was possessed by
2 Defendant's Board of Directors including, upon information and belief, Bob Weinstein.

3
4 13. Prior to the incident involving Plaintiff, Defendant often aided and abetted
5 Weinstein in the commission of his sexual misconduct. For example, female Weinstein
6 Company employees were often used as "honeypots" to lure his victims into a false sense of
7 security. The "honeypots" would initially join a meeting along with a woman Weinstein was
8 interested in, but then Weinstein would dismiss them, leaving him alone with the woman.

9
10 14. Plaintiff did not discover, and a reasonable and diligent investigation would not
11 have disclosed, that prior to her incident Defendant was aware of numerous allegations of
12 sexual misconduct involving Weinstein. Upon information and belief, the allegations of sexual
13 misconduct involving Weinstein that Defendant was aware of were subject to nondisclosure
14 agreements and/or confidential settlements, and were otherwise only known inside TWC. Upon
15 information and belief, the nondisclosure agreements and/or confidential settlements legally
16 prohibited Defendant TWC, Weinstein, and the victims of the sexual misconduct from
17 discussing the allegations and Defendant's knowledge thereof. As such, even if Plaintiff had
18 conducted a timely and reasonable investigation, she could not have discovered Defendant's
19 prior knowledge of Weinstein's sexual misconduct. Plaintiff was unable to discover
20 Defendant's knowledge of Weinstein's propensity to engage in sexual misconduct until the
21 story of Weinstein's pattern of sexual misconduct with young actresses broke in October 2017.

22 COUNT I

23 (Negligence)

24 15. Plaintiff repeats and realleges the allegations in paragraphs 1 through 14 above.

25
26 16. At all relevant times, Defendant owed a duty to use reasonable care in the
27 retention and supervision of its employee Harvey Weinstein.
28

1 17. This included a duty to control Weinstein in his interactions with women during
2 meetings taking place within the course and scope of his employment in order to prevent
3 foreseeable harm.

4 18. Prior to the sexual misconduct with Plaintiff, Defendant knew or had reason to
5 believe Weinstein was likely to engage in sexual misconduct with women he came into contact
6 with during the course and scope of his employment. In particular, upon information and belief,
7 Defendant knew or should have known that Weinstein would lure young aspiring actresses into
8 compromising situations under the guise of business meetings. Prior to the incident involving
9 Plaintiff, Defendant's Board of Directors possessed knowledge of Weinstein's propensity to
10 engage in sexual misconduct. Knowledge of Weinstein's propensity to engage in sexual
11 misconduct was additionally possessed by Defendant's executives, officers and employees. At
12 all relevant times Defendant's Board of Directors maintained a supervisory position over
13 Weinstein.
14
15

16 19. By possessing knowledge of Weinstein's prior sexual misconduct, Defendant
17 knew or should have known that Weinstein was unfit and that this unfitness created a particular
18 risk to others.
19

20 20. Defendant did not act in a reasonable manner by failing to terminate Weinstein
21 and instead continued to allow him to meet with prospective actresses in private areas with the
22 knowledge that there was a substantial likelihood for sexual misconduct.
23

24 21. Weinstein's meeting with Plaintiff at the Peninsula hotel occurred within the
25 course and scope of his employment. The contact between Plaintiff and Weinstein was
26 generated by the employment relationship between Defendant and Weinstein.
27
28

22. Defendant's negligence in supervising and/or retaining Weinstein was a substantial factor in causing Plaintiff's harm.

23. It was foreseeable that Weinstein would engage in sexual misconduct if Defendant continued to allow Weinstein to have private business meetings with actresses. At all relevant times, Defendant knew Weinstein was using his power and position to coerce women into engaging in sexual contact and knew that this sexual misconduct would cause harm.

24. Defendant failed to institute corrective measures to protect women coming into contact with Weinstein, including Plaintiff, from sexual misconduct despite the Board of Directors possessing actual notice of Weinstein's sexually inappropriate behavior. Such acts and omissions demonstrate a conscious disregard of the safety of others. The Board of Directors was aware of the probable dangerous consequences of failing to remove or adequately supervise Weinstein. In failing to do so, Defendant acted with actual malice and with conscious disregard to Plaintiff's safety.

25. As a direct and proximate result of Defendant's negligence, Plaintiff was a victim of Weinstein's sexual misconduct. The sexual misconduct has caused Plaintiff to suffer continuing, severe and permanent psychological and emotional issues, and the loss of enjoyment of life.

PRAYER FOR RELIEF

26. General damages in an amount to be shown according to proof at the time of trial.

27. Special damages including medical and psychological care expenses in an amount to be shown according to proof at the time of trial.

30. Such other and further relief as this Court deems just and proper.

Plaintiff hereby demands a jury trial in this action.

HERMAN LAW

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U.S.

Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades

By JODI KANTOR and MEGAN TWOHEY OCT. 5, 2017

Update: The Weinstein Company's board has fired Harvey Weinstein after reports of sexual harassment complaints against him. Find more coverage here.

Two decades ago, the Hollywood producer Harvey Weinstein invited Ashley Judd to the Peninsula Beverly Hills hotel for what the young actress expected to be a business breakfast meeting. Instead, he had her sent up to his room, where he appeared in a bathrobe and asked if he could give her a massage or she could watch him shower, she recalled in an interview.

"How do I get out of the room as fast as possible without alienating Harvey Weinstein?" Ms. Judd said she remembers thinking.

In 2014, Mr. Weinstein invited Emily Nestor, who had worked just one day as a temporary employee, to the same hotel and made another offer: If she accepted his sexual advances, he would boost her career, according to accounts she provided to colleagues who sent them to Weinstein Company executives. The following year, once again at the Peninsula, a female assistant said Mr. Weinstein badgered her into giving him a massage while he was naked, leaving her "crying and very distraught," wrote a colleague, Lauren O'Connor, in a searing memo asserting sexual harassment and other misconduct by their boss.

"There is a toxic environment for women at this company," Ms. O'Connor said in the letter, addressed to several executives at the company run by Mr. Weinstein.

An investigation by The New York Times found previously undisclosed allegations against Mr. Weinstein stretching over nearly three decades, documented through interviews with current and former employees and film industry workers, as well as legal records, emails and internal documents from the businesses he has run, Miramax and the Weinstein Company.

During that time, after being confronted with allegations including sexual harassment and unwanted physical contact, Mr. Weinstein has reached at least eight settlements with women, according to two company officials speaking on the condition of anonymity. Among the recipients, The Times found, were a young assistant in New York in 1990, an actress in 1997, an assistant in London in 1998, an Italian model in 2015 and Ms. O'Connor shortly after, according to records and those familiar with the agreements.

In a statement to The Times on Thursday afternoon, Mr. Weinstein said: "I appreciate the way I've behaved with colleagues in the past has caused a lot of pain, and I sincerely apologize for it. Though I'm trying to do better, I know I have a long way to go."

He added that he was working with therapists and planning to take a leave of absence to "deal with this issue head on."

Lisa Bloom, a lawyer advising Mr. Weinstein, said in a statement that "he denies many of the accusations as patently false." In comments to The Times earlier this week, Mr. Weinstein said that many claims in Ms. O'Connor's memo were "off base" and that they had parted on good terms.

He and his representatives declined to comment on any of the settlements, including providing information about who paid them. But Mr. Weinstein said that in addressing employee concerns about workplace issues, "my motto is to keep the peace."

Ms. Bloom, who has been advising Mr. Weinstein over the last year on gender and power dynamics, called him "an old dinosaur learning new ways." She said she had "explained to him that due to the power difference between a major studio head

like him and most others in the industry, whatever his motives, some of his words and behaviors can be perceived as inappropriate, even intimidating.”

Though Ms. O'Connor had been writing only about a two-year period, her memo echoed other women's complaints. Mr. Weinstein required her to have casting discussions with aspiring actresses after they had private appointments in his hotel room, she said, her description matching those of other former employees. She suspected that she and other female Weinstein employees, she wrote, were being used to facilitate liaisons with “vulnerable women who hope he will get them work.”

The allegations piled up even as Mr. Weinstein helped define popular culture. He has collected six best-picture Oscars and turned out a number of touchstones, from the films “Sex, Lies, and Videotape,” “Pulp Fiction” and “Good Will Hunting” to the television show “Project Runway.” In public, he presents himself as a liberal lion, a champion of women and a winner of not just artistic but humanitarian awards.

In 2015, the year Ms. O'Connor wrote her memo, his company distributed “The Hunting Ground,” a documentary about campus sexual assault. A longtime Democratic donor, he hosted a fund-raiser for Hillary Clinton in his Manhattan home last year. He employed Malia Obama, the oldest daughter of former President Barack Obama, as an intern this year, and recently helped endow a faculty chair at Rutgers University in Gloria Steinem's name. During the Sundance Film Festival in January, when Park City, Utah, held its version of nationwide women's marches, Mr. Weinstein joined the parade.

“From the outside, it seemed golden — the Oscars, the success, the remarkable cultural impact,” said Mark Gill, former president of Miramax Los Angeles when the company was owned by Disney. “But behind the scenes, it was a mess, and this was the biggest mess of all,” he added, referring to Mr. Weinstein's treatment of women.

Dozens of Mr. Weinstein's former and current employees, from assistants to top executives, said they knew of inappropriate conduct while they worked for him. Only a handful said they ever confronted him.

Mr. Weinstein enforced a code of silence; employees of the Weinstein Company have contracts saying they will not criticize it or its leaders in a way that could harm

its “business reputation” or “any employee’s personal reputation,” a recent document shows. And most of the women accepting payouts agreed to confidentiality clauses prohibiting them from speaking about the deals or the events that led to them.

Charles Harder, a lawyer representing Mr. Weinstein, said it was not unusual to enter into settlements to avoid lengthy and costly litigation. He added, “It’s not evidence of anything.”

At Fox News, where the conservative icons Roger E. Ailes and Bill O’Reilly were accused of harassment, women have received payouts well into the millions of dollars. But most of the women involved in the Weinstein agreements collected between roughly \$80,000 and \$150,000, according to people familiar with the negotiations.

In the wake of Ms. O’Connor’s 2015 memo, some Weinstein Company board members and executives, including Mr. Weinstein’s brother and longtime partner, Bob, 62, were alarmed about the allegations, according to several people who spoke on the condition of anonymity. In the end, though, board members were assured there was no need to investigate. After reaching a settlement with Mr. Weinstein, Ms. O’Connor withdrew her complaint and thanked him for the career opportunity he had given her.

“The parties made peace very quickly,” Ms. Bloom said.

Through her lawyer, Nicole Page, Ms. O’Connor declined to be interviewed. In the memo, she explained how unnerved she was by what she witnessed or encountered while a literary scout and production executive at the company. “I am just starting out in my career, and have been and remain fearful about speaking up,” Ms. O’Connor wrote. “But remaining silent is causing me great distress.”

In speaking out about her hotel episode, Ms. Judd said in a recent interview, “Women have been talking about Harvey amongst ourselves for a long time, and it’s simply beyond time to have the conversation publicly.”

A Common Narrative

Ms. Nestor, a law and business school student, accepted Mr. Weinstein's breakfast invitation at the Peninsula because she did not want to miss an opportunity, she later told colleagues. After she arrived, he offered to help her career while boasting about a series of famous actresses he claimed to have slept with, according to accounts that colleagues compiled after hearing her story and then sent on to company executives.

"She said he was very persistent and focused though she kept saying no for over an hour," one internal document said. Ms. Nestor, who declined to comment for this article, refused his bargain, the records noted. "She was disappointed that he met with her and did not seem to be interested in her résumé or skill set." The young woman chose not to report the episode to human resources personnel, but the allegations came to management's attention through other employees.

Across the years and continents, accounts of Mr. Weinstein's conduct share a common narrative: Women reported to a hotel for what they thought were work reasons, only to discover that Mr. Weinstein, who has been married for most of three decades, sometimes seemed to have different interests. His home base was New York, but his rolling headquarters were luxury hotels: the Peninsula Beverly Hills and the Savoy in London, the Hôtel du Cap-Eden-Roc near the Cannes Film Festival in France and the Stein Eriksen Lodge near the Sundance Film Festival.

Working for Mr. Weinstein could mean getting him out of bed in the morning and doing "turndown duty" late at night, preparing him for sleep. Like the colleague cited in Ms. O'Connor's memo, some junior employees required to perform those tasks said they were disturbing.

In interviews, eight women described varying behavior by Mr. Weinstein: appearing nearly or fully naked in front of them, requiring them to be present while he bathed or repeatedly asking for a massage or initiating one himself. The women, typically in their early or middle 20s and hoping to get a toehold in the film industry, said he could switch course quickly — meetings and clipboards one moment, intimate comments the next. One woman advised a peer to wear a parka when summoned for duty as a layer of protection against unwelcome advances.

Laura Madden, a former employee who said Mr. Weinstein prodded her for massages at hotels in Dublin and London beginning in 1991, said he had a way of making anyone who objected feel like an outlier. “It was so manipulative,” she said in an interview. “You constantly question yourself — am I the one who is the problem?”

“I don’t know anything about that,” Mr. Weinstein said.

Most women who told *The Times* that they experienced misconduct by Mr. Weinstein had never met one another. They range in age from early 20s to late 40s and live in different cities. Some said they did not report the behavior because there were no witnesses and they feared retaliation by Mr. Weinstein. Others said they felt embarrassed. But most confided in co-workers.

Ms. Madden later told Karen Katz, a friend and colleague in the acquisitions department, about Mr. Weinstein’s overtures, including a time she locked herself in the bathroom of his hotel room, sobbing. “We were so young at the time,” said Ms. Katz, now a documentary filmmaker. “We did not understand how wrong it was or how Laura should deal with it.”

Others in the London office said the same. “I was pretty disturbed and angry,” said Sallie Hodges, another former employee, recalling the accounts she heard from colleagues. “That’s kind of the way things were.”

The human resources operation was considered weak in New York and worse in London, so some employees banded together in solidarity. “If a female executive was asked to go to a meeting solo, she and a colleague would generally double up” so as not to be alone with Mr. Weinstein, recalled Mr. Gill, the former president of Miramax Los Angeles.

Many women who worked with Mr. Weinstein said they never experienced sexual harassment or knew of anyone who did, and recalled him as a boss who gave them valuable opportunities at young ages. Some described long and satisfying careers with him, praising him as a mentor and advocate.

But in interviews, some of the former employees who said they had troubling experiences with Mr. Weinstein asked a common question: How could allegations

repeating the same pattern — young women, a powerful male producer, even some of the same hotels — have accumulated for almost three decades?

“It wasn’t a secret to the inner circle,” said Kathy DeClesis, Bob Weinstein’s assistant in the early 1990s. She supervised a young woman who left the company abruptly after an encounter with Harvey Weinstein and who later received a settlement, according to several former employees.

Speaking up could have been costly. A job with Mr. Weinstein was a privileged perch at the nexus of money, fame and art, and plenty of his former assistants have risen high in Hollywood. He could be charming and generous: gift baskets, flowers, personal or career help and cash. At the Cannes Film Festival, according to several former colleagues, he sometimes handed out thousands of dollars as impromptu bonuses.

Mr. Weinstein was a volcanic personality, though, given to fits of rage and personal lashings of male and female employees alike. When a female guest of his had to wait for a hotel room upgrade, he yelled that Ms. O’Connor would be better off marrying a “fat, rich Jewish” man because she was probably just good for “being a wife” and “making babies,” she wrote in her memo. (He added some expletives, she said.) His treatment of women was sometimes written off as just another form of toxicity, according to multiple former employees.

In the fall of 1998, a 25-year-old London assistant named Zelda Perkins confronted Mr. Weinstein. According to former colleagues, she and several co-workers had been regularly subjected to inappropriate requests or comments in hotel rooms, and she was particularly concerned about the treatment of another woman in the office. She told Mr. Weinstein that he had to stop, according to the former colleagues, and that she would go public or initiate legal action unless he changed his behavior.

Steve Hutensky, one of Miramax’s entertainment lawyers, was dispatched to London to negotiate a settlement with Ms. Perkins and her lawyer. He declined to comment for this article.

Ms. Perkins, now a theater producer in London, also declined to comment for this article, saying that she could not discuss her work at Miramax or whether she had entered into any agreements.

Months after the settlement, Mr. Weinstein triumphed at the Oscars, with “Life Is Beautiful” and “Shakespeare in Love” winning 10 awards. A few years later, Mr. Weinstein, who had produced a series of British-themed movies, was made a Commander of the British Empire, an honorary title just short of knighthood.

‘Coercive Bargaining’

For actors, a meeting with Mr. Weinstein could yield dazzling rewards: scripts, parts, award campaigns, magazine coverage, influence on lucrative endorsement deals. He knew how to blast small films to box office success, and deliver polished dramas like “The King’s Speech” and popular attractions like the “Scary Movie” franchise. Mr. Weinstein’s films helped define femininity, sex and romance, from Catherine Zeta-Jones in “Chicago” to Jennifer Lawrence in “Silver Linings Playbook.”

But movies were also his private leverage. When Mr. Weinstein invited Ms. Judd to breakfast in Beverly Hills, she had been shooting the thriller “Kiss the Girls” all night, but the meeting seemed too important to miss. After arriving at the hotel lobby, she was surprised to learn that they would be talking in his suite; she decided to order cereal, she said, so the food would come quickly and she could leave.

Mr. Weinstein soon issued invitation after invitation, she said. Could he give her a massage? When she refused, he suggested a shoulder rub. She rejected that too, she recalled. He steered her toward a closet, asking her to help pick out his clothing for the day, and then toward the bathroom. Would she watch him take a shower? she remembered him saying.

“I said no, a lot of ways, a lot of times, and he always came back at me with some new ask,” Ms. Judd said. “It was all this bargaining, this coercive bargaining.”

To get out of the room, she said, she quipped that if Mr. Weinstein wanted to touch her, she would first have to win an Oscar in one of his movies. She recalled

feeling “panicky, trapped,” she said in the interview. “There’s a lot on the line, the cachet that came with Miramax.”

Not long afterward, she related what had happened to her mother, the singer Naomi Judd, who confirmed their conversation to a Times reporter. Years later, Ashley Judd appeared in two Weinstein films without incident, she said. In 2015, she shared an account of the episode in the hotel room with “Variety” without naming the man involved.

In 1997, Mr. Weinstein reached a previously undisclosed settlement with Rose McGowan, then a 23-year-old-actress, after an episode in a hotel room during the Sundance Film Festival. The \$100,000 settlement was “not to be construed as an admission” by Mr. Weinstein, but intended to “avoid litigation and buy peace,” according to the legal document, which was reviewed by The Times. Ms. McGowan had just appeared in the slasher film “Scream” and would later star in the television show “Charmed.” She declined to comment.

Increased Scrutiny

Just months before Ms. O’Connor wrote her memo, a young female employee quit after complaining of being forced to arrange what she believed to be assignations for Mr. Weinstein, according to two people familiar with her departure. The woman, who asked not to be identified to protect her privacy, said a nondisclosure agreement prevented her from commenting.

Soon, complaints about Mr. Weinstein’s behavior prompted the board of his company to take notice.

In March 2015, Mr. Weinstein had invited Ambra Battilana, an Italian model and aspiring actress, to his TriBeCa office on a Friday evening to discuss her career. Within hours, she called the police. Ms. Battilana told them that Mr. Weinstein had grabbed her breasts after asking if they were real and put his hands up her skirt, the police report says.

The claims were taken up by the New York Police Department’s Special Victims Squad and splashed across the pages of tabloids, along with reports that the woman

had worked with investigators to secretly record a confession from Mr. Weinstein. The Manhattan district attorney's office later declined to bring charges.

But Mr. Weinstein made a payment to Ms. Battilana, according to people familiar with the settlement, speaking on the condition of anonymity about the confidential agreement.

The public nature of the episode concerned some executives and board members of the Weinstein Company. (Harvey and Bob Weinstein together own 42 percent of the privately held business.) When several board members pressed Mr. Weinstein about it, he insisted that the woman had set him up, colleagues recalled.

Ms. Battilana had testified in court proceedings against associates of former Prime Minister Silvio Berlusconi of Italy who are accused of procuring women for alleged sex parties, and the Italian news media also reported that, years ago, Ms. Battilana accused a septuagenarian boyfriend of sexual harassment, a complaint that was apparently dismissed. Ms. Battilana did not respond to requests for comment. Her lawyer, Mauro Rufini, could not be reached for comment.

After the episode, Lance Maerov, a board member, said he successfully pushed for a code of behavior for the company that included detailed language about sexual harassment.

Then Ms. O'Connor's memo hit, with page after page of detailed accusations. In describing the experiences of women at the company, including her own, she wrote, "The balance of power is me: 0, Harvey Weinstein: 10."

She was a valued employee — Mr. Weinstein described her as "fantastic," "a great person," "a brilliant executive" — so the complaint rattled top executives, including Bob Weinstein. When the board was notified of it by email, Mr. Maerov insisted that an outside lawyer determine whether the allegations were true, he said in an interview.

But the inquiry never happened. Mr. Weinstein had reached a settlement with Ms. O'Connor, and there was no longer anything to investigate.

“Because this matter has been resolved and no further action is required, I withdraw my complaint,” Ms. O’Connor wrote in an email to the head of human resources six days after sending her memo. She also wrote a letter to Mr. Weinstein thanking him for the opportunity to learn about the entertainment industry.

Rachel Abrams and William K. Rashbaum contributed reporting. Grace Ashford contributed research.

A REPORTER AT LARGE OCTOBER 23, 2017 ISSUE

FROM AGGRESSIVE OVERTURES TO SEXUAL ASSAULT: HARVEY WEINSTEIN'S ACCUSERS TELL THEIR STORIES

Multiple women share harrowing accounts of sexual assault and harassment by the film executive.

By Ronan Farrow

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1.

Since the establishment of the first studios, a century ago, there have been few movie executives as dominant, or as domineering, as Harvey Weinstein. He co-founded the production-and-distribution companies Miramax and the Weinstein Company, helping to reinvent the model for independent films with movies including “Sex, Lies, and Videotape,” “The Crying Game,” “Pulp Fiction,” “The English Patient,” “Shakespeare in Love,” and “The King’s Speech.” Beyond Hollywood, he has exercised his influence as a prolific fund-raiser for Democratic Party candidates, including Barack Obama and Hillary Clinton. Weinstein combined a keen eye for promising scripts, directors, and actors with a bullying, even threatening, style of doing business, inspiring both fear and gratitude. His movies have earned more than three hundred Oscar nominations, and, at the annual awards ceremonies, he has been thanked more than almost anyone else in movie history, ranking just after Steven Spielberg and right before God.

For more than twenty years, Weinstein, who is now sixty-five, has also been trailed by rumors of sexual harassment and assault. His behavior has been an open secret to many in Hollywood and beyond, but previous attempts by many publications, including *The*

New Yorker, to investigate and publish the story over the years fell short of the demands of journalistic evidence. Too few people were willing to speak, much less allow a reporter to use their names, and Weinstein and his associates used nondisclosure agreements, payoffs, and legal threats to suppress their accounts. Asia Argento, an Italian film actress and director, said that she did not speak out until now—Weinstein, she told me, forcibly performed oral sex on her—because she feared that Weinstein would “crush” her. “I know he has crushed a lot of people before,” Argento said. “That’s why this story—in my case, it’s twenty years old, some of them are older—has never come out.”

On October 5th, the *New York Times*, in a powerful report by Jodi Kantor and Megan Twohey, revealed multiple allegations of sexual harassment against Weinstein, an article that led to the resignation of four members of the Weinstein Company’s all-male board, and to Weinstein’s firing.

The story, however, is complex, and there is more to know and to understand. In the course of a ten-month investigation, I was told by thirteen women that, between the nineteen-nineties and 2015, Weinstein sexually harassed or assaulted them. Their allegations corroborate and overlap with the *Times*’s revelations, and also include far more serious claims.

Three of the women—among them Argento and a former aspiring actress named Lucia Evans—told me that Weinstein had raped them, forcibly performing or receiving oral sex or forcing vaginal sex. Four women said that they had experienced unwanted touching that could be classified as an assault. In an audio recording captured during a New York Police Department sting operation in 2015, Weinstein admits to groping a Filipina-Italian model named Ambra Battilana Gutierrez, describing it as behavior he is “used to.” Four of the women I interviewed cited encounters in which Weinstein exposed himself or masturbated in front of them.

Sixteen former and current executives and assistants at Weinstein’s companies told me that they witnessed or had knowledge of unwanted sexual advances and touching at events associated with Weinstein’s films and in the workplace. They and others described a pattern of professional meetings that were little more than thin pretexts for sexual advances on young actresses and models. All sixteen said that the behavior was widely known within both Miramax and the Weinstein Company. Messages sent by

Irwin Reiter, a senior company executive, to Emily Nestor, one of the women who alleged that she was harassed, described the “mistreatment of women” as a serial problem that the Weinstein Company had been struggling with in recent years. Other employees described what was, in essence, a culture of complicity at Weinstein’s places of business, with numerous people throughout his companies fully aware of his behavior but either abetting it or looking the other way. Some employees said that they were enlisted in a subterfuge to make the victims feel safe. A female executive with the company described how Weinstein’s assistants and others served as a “honeypot”—they would initially join a meeting along with a woman Weinstein was interested in, but then Weinstein would dismiss them, leaving him alone with the woman. (On October 10th, the Weinstein Company’s board issued a statement, writing that “these allegations come as an utter surprise to the Board. Any suggestion that the Board had knowledge of this conduct is false.”)

Virtually all of the people I spoke with told me that they were frightened of retaliation. “If Harvey were to discover my identity, I’m worried that he could ruin my life,” one former employee told me. Many said that they had seen Weinstein’s associates confront and intimidate those who crossed him, and feared that they would be similarly targeted. Four actresses, including Mira Sorvino and Rosanna Arquette, told me they suspected that, after they rejected Weinstein’s advances or complained about them to company representatives, Weinstein had them removed from projects or dissuaded people from hiring them. Multiple sources said that Weinstein frequently bragged about planting items in media outlets about those who spoke against him; these sources feared similar retribution. Several pointed to Gutierrez’s case: after she went to the police, negative items discussing her sexual history and impugning her credibility began rapidly appearing in New York gossip pages. (In the taped conversation, part of which *The New Yorker* posted online, Weinstein asks Gutierrez to join him for “five minutes,” and warns, “Don’t ruin your friendship with me for five minutes.”)

Several former employees told me that they were speaking about Weinstein’s alleged behavior now because they hoped to protect women in the future. “This wasn’t a one-off. This wasn’t a period of time,” an executive who worked for Weinstein for many years told me. “This was ongoing predatory behavior toward women—whether they consented or not.”

It's likely that the women who spoke to me have recently felt increasingly emboldened to talk about their experiences because of the way the world has changed regarding issues of sex and power. Their disclosures follow in the wake of stories alleging sexual misconduct by public figures, including Donald Trump, Bill O'Reilly, Roger Ailes, and Bill Cosby. In October, 2016, a month before the election, a tape emerged of Trump telling a celebrity-news reporter, "And when you're a star, they let you do it. You can do anything. . . . Grab 'em by the pussy. You can do anything." This past April, O'Reilly, a host at Fox News, was forced to resign after Fox was discovered to have paid five women millions of dollars in exchange for silence about their accusations of sexual harassment. Ailes, the former head of Fox News, resigned in July, 2016, after he was accused of sexual harassment. Cosby went on trial this summer, charged with drugging and sexually assaulting a woman. The trial ended with a hung jury.

In the *Times* piece, Weinstein made an initial effort at damage control by partly acknowledging what he had done, saying, "I appreciate the way I've behaved with colleagues in the past has caused a lot of pain, and I sincerely apologize for it." In an interview with the *New York Post*, he said, "I've got to deal with my personality, I've got to work on my temper, I have got to dig deep. I know a lot of people would like me to go into a facility, and I may well just do that—I will go anywhere I can learn more about myself." He went on, "In the past I used to compliment people, and some took it as me being sexual, I won't do that again." In his written statement to the *Times*, Weinstein claimed that he would "channel that anger" into a fight against the leadership of the National Rifle Association. He also said that it was not "coincidental" that he was organizing a foundation for women directors at the University of Southern California. "It will be named after my mom and I won't disappoint her." (U.S.C. has since rejected his funding pledge.)

Sallie Hofmeister, a spokesperson for Weinstein, issued a new statement in response to the allegations detailed here. It reads in full: "Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein. Mr. Weinstein has further confirmed that there were never any acts of retaliation against any women for refusing his advances. Mr. Weinstein obviously can't speak to anonymous allegations, but with respect to any women who have made allegations on the record, Mr. Weinstein believes that all of these relationships were consensual. Mr. Weinstein has begun counseling, has listened

to the community and is pursuing a better path. Mr. Weinstein is hoping that, if he makes enough progress, he will be given a second chance.”

While Weinstein and his representatives have said that the incidents were consensual, and were not widespread or severe, the women I spoke to tell a very different story.

2.

Lucia Stoller, now Lucia Evans, was approached by Weinstein at Cipriani Upstairs, a club in New York, in 2004, the summer before her senior year at Middlebury College. Evans, who is now a marketing consultant, wanted to be an actress, and although she had heard rumors about Weinstein she let him have her number. Weinstein began calling her late at night, or having an assistant call her, asking to meet. She declined, but said that she would do readings during the day for a casting executive. Before long, an assistant called to set up a daytime meeting at the Miramax office in Tribeca, first with Weinstein and then with a casting executive, who was a woman. “I was, like, Oh, a woman, great, I feel safe,” Evans said.

When Evans arrived for the meeting, the building was full of people. She was led to an office with exercise equipment in it, and takeout boxes on the floor. Weinstein was there, alone. Evans said that she found him frightening. “The type of control he exerted—it was very real,” she told me. “Even just his presence was intimidating.”

In the meeting, Evans recalled, “he immediately was simultaneously flattering me and demeaning me and making me feel bad about myself.” Weinstein told her that she’d “be great in ‘Project Runway’”—the show, which Weinstein helped produce, premiered later that year—but only if she lost weight. He also told her about two scripts, a horror movie and a teen love story, and said one of his associates would discuss them with her.

“At that point, after that, is when he assaulted me,” Evans said. “He forced me to perform oral sex on him.” As she objected, Weinstein took his penis out of his pants and pulled her head down onto it. “I said, over and over, ‘I don’t want to do this, stop, don’t,’ ” she recalled. “I tried to get away, but maybe I didn’t try hard enough. I didn’t want to kick him or fight him.” In the end, she said, “he’s a big guy. He overpowered me.” She added, “I just sort of gave up. That’s the most horrible part of it, and that’s

why he's been able to do this for so long to so many women: people give up, and then they feel like it's their fault."

Weinstein appeared to find the encounter unremarkable. "It was like it was just another day for him," Evans said. "It was no emotion." Afterward, he acted as if nothing had happened. She wondered how Weinstein's staff could not know what was going on.

Following the encounter, she met with the female casting executive, who sent her the scripts, and also came to one of her acting-class readings a few weeks later. (Evans does not believe that the executive was aware of Weinstein's behavior.) Weinstein, Evans said, began calling her again late at night. She told me that the entire sequence of events had a routine quality. "It feels like a very streamlined process," she said. "Female casting director, Harvey wants to meet. Everything was designed to make me feel comfortable before it happened. And then the shame in what happened was also designed to keep me quiet."

Evans said that, after the incident, "I just put it in a part of my brain and closed the door." She continued to blame herself for not fighting harder. "It was always my fault for not stopping him," she said. "I had an eating problem for years. I was disgusted with myself. It's funny, all these unrelated things I did to hurt myself because of this one thing." Evans told friends some of what had happened, but felt largely unable to talk about it. "I ruined several really good relationships because of this. My schoolwork definitely suffered, and my roommates told me to go to a therapist because they thought I was going to kill myself."

In the years that followed, Evans encountered Weinstein occasionally. Once, while she was walking her dog in Greenwich Village, she saw him getting into a car. "I very clearly saw him. I made eye contact," she said. "I remember getting chills down my spine just looking at him. I was so horrified. I have nightmares about him to this day."

3.

Asia Argento, who was born in Rome, played the role of a glamorous thief named Beatrice in the crime drama "B. Monkey," which was released in the U.S. in 1999. The distributor was Miramax. In a series of long and often emotional interviews, Argento told me that Weinstein assaulted her while they were working together.

At the time, Argento was twenty-one and had twice won the Italian equivalent of the Oscar. Argento said that, in 1997, one of Weinstein's producers invited her to what she understood to be a party thrown by Miramax at the Hôtel du Cap-Eden-Roc, on the French Riviera. Argento felt professionally obliged to attend. When the producer led her upstairs that evening, she said, there was no party, only a hotel room, empty but for Weinstein: "I'm, like, 'Where is the fucking party?'" She recalled the producer telling her, "Oh, we got here too early," before he left her alone with Weinstein. (The producer denies bringing Argento to the room that night.) At first, Weinstein was solicitous, praising her work. Then he left the room. When he returned, he was wearing a bathrobe and holding a bottle of lotion. "He asks me to give a massage. I was, like, 'Look, man, I am no fucking fool,'" Argento told me. "But, looking back, I am a fucking fool. And I am still trying to come to grips with what happened."

Argento said that, after she reluctantly agreed to give Weinstein a massage, he pulled her skirt up, forced her legs apart, and performed oral sex on her as she repeatedly told him to stop. Weinstein "terrified me, and he was so big," she said. "It wouldn't stop. It was a nightmare."

At some point, she stopped saying no and feigned enjoyment, because she thought it was the only way the assault would end. "I was not willing," she told me. "I said, 'No, no, no.' . . . It's twisted. A big fat man wanting to eat you. It's a scary fairy tale."

Argento, who insisted that she wanted to tell her story in all its complexity, said that she didn't physically fight him off, something that has prompted years of guilt.

"The thing with being a victim is I felt responsible," she said. "Because, if I were a strong woman, I would have kicked him in the balls and run away. But I didn't. And so I felt responsible." She described the incident as a "horrible trauma." Decades later, she said, oral sex is still ruined for her. "I've been damaged," she told me. "Just talking to you about it, my whole body is shaking."

Argento recalled sitting on the bed after the incident, her clothes "in shambles," her makeup smeared. She said that she told Weinstein, "I am not a whore," and that he began laughing. He said he would put the phrase on a T-shirt. Afterward, Argento said, "He kept contacting me." For a few months, Weinstein seemed obsessed, offering her expensive gifts.

What complicates the story, Argento readily allowed, is that she eventually yielded to Weinstein's further advances and even grew close to him. Weinstein dined with her, and introduced her to his mother. Argento told me, "He made it sound like he was my friend and he really appreciated me." She said that she had consensual sexual relations with him multiple times over the course of the next five years, though she described the encounters as one-sided and "onanistic." The first occasion, several months after the alleged assault, came before the release of "B. Monkey." "I felt I had to," she said. "Because I had the movie coming out and I didn't want to anger him." She believed that Weinstein would ruin her career if she didn't comply. Years later, when she was a single mother dealing with childcare, Weinstein offered to pay for a nanny. She said that she felt "obliged" to submit to his sexual advances.

Argento told me that she knew this contact would be used to attack the credibility of her allegation. In part, she said, the initial assault made her feel overpowered each time she encountered Weinstein, even years later. "Just his body, his presence, his face, bring me back to the little girl that I was when I was twenty-one," she told me. "When I see him, it makes me feel little and stupid and weak." She broke down as she struggled to explain. "After the rape, he won," she said.

In 2000, Argento released "Scarlet Diva," a movie that she wrote and directed. In the film, a heavysset producer corners Anna, the character played by Argento, in a hotel room, asks her for a massage, and tries to assault her. After the movie came out, women began approaching Argento, saying that they recognized Weinstein's behavior in the portrayal. "People would ask *me* about *him* because of the scene in the movie," she said. Some recounted similar details to her: meetings and professional events moved to hotel rooms, bathrobes and massage requests, and, in one other case, forced oral sex.

Weinstein, according to Argento, saw the film after it was released in the U.S., and apparently recognized himself. "Ha, ha, very funny," Argento remembered him saying to her. But he also said that he was "sorry for whatever happened." The movie's most significant departure from the real-life incident, Argento told me, was how the hotel-room scene ended. "In the movie I wrote," she said, "I ran away."

Other women were too afraid to allow me to use their names, but their stories are uncannily similar to these allegations. One, a woman who worked with Weinstein,

explained her reluctance to be identified. “He drags your name through the mud, and he’ll come after you hard with his legal team.”

Like others I spoke to, this woman said that Weinstein brought her to a hotel room under a professional pretext, changed into a bathrobe, and, she said, “forced himself on me sexually.” She told him no, repeatedly and clearly. Afterward, she experienced “horror, disbelief, and shame,” and considered going to the police. “I thought it would be a ‘he said, she said,’ and I thought about how impressive his legal team is, and I thought about how much I would lose, and I decided to just move forward,” she said. The woman continued to have professional contact with Weinstein after the alleged rape, and acknowledged that subsequent communications between them might suggest a normal working relationship. “I was in a vulnerable position and I needed my job,” she told me. “It just increases the shame and the guilt.”

4.

Mira Sorvino, who starred in several of Weinstein’s films, told me that he sexually harassed her and tried to pressure her into a physical relationship while they were working together. She said that, at the Toronto International Film Festival in September, 1995, she found herself in a hotel room with Weinstein, who produced the movie she was there to promote, “Mighty Aphrodite,” for which she later won an Academy Award. “He started massaging my shoulders, which made me very uncomfortable, and then tried to get more physical, sort of chasing me around,” she recalled. She scrambled for ways to ward him off, telling him that it was against her religion to date married men. (At the time, Weinstein was married to Eve Chilton, a former assistant.) Then she left the room.

A few weeks later, in New York City, her phone rang after midnight. It was Weinstein, saying that he had new marketing ideas for the film and asking to get together. Sorvino offered to meet him at an all-night diner, but he said he was coming over to her apartment and hung up. “I freaked out,” she told me. She called a friend and asked him to come over and pose as her boyfriend. The friend hadn’t arrived by the time Weinstein rang her doorbell. “Harvey had managed to bypass my doorman,” she said. “I opened the door terrified, brandishing my twenty-pound Chihuahua mix in front of me, as though that would do any good.” When she told Weinstein that her new boyfriend was on his way, he became dejected and left.

Sorvino said that she struggled for years with whether to come forward with her story, partly because she was aware that it was mild compared with the experiences of other women, including Sophie Dix, an actress she spoke to at the time. (Dix told me that she had locked herself in a hotel bathroom to escape Weinstein, and that he had masturbated in front of her. She said it was “a classic case” of “someone not understanding the word ‘no.’ . . . I must have said no a thousand times.”) The fact that Weinstein was so instrumental in Sorvino’s success also made her hesitate: “I have great respect for Harvey as an artist, and owe him and his brother a debt of gratitude for the early success in my career, including the Oscar.” She had professional contact with Weinstein for years after the incident, and remains a close friend of his brother and business partner, Bob Weinstein. (She never told Bob about his brother’s behavior.)

Sorvino said that she felt afraid and intimidated, and that the incidents had a significant impact on her. When she told a female employee at Miramax about the harassment, the woman’s reaction “was shock and horror that I had mentioned it.” Sorvino appeared in a few more of Weinstein’s films afterward, but felt that saying no to Weinstein and reporting the harassment had ultimately hurt her career. She said, “There may have been other factors, but I definitely felt iced out and that my rejection of Harvey had something to do with it.”

5.

In March, 2015, Ambra Battilana Gutierrez, who was once a finalist in the Miss Italy contest, met Harvey Weinstein at a reception for “New York Spring Spectacular,” a show that he was producing at Radio City Music Hall. Weinstein introduced himself to Gutierrez, who was twenty-two, remarking repeatedly that she looked like the actress Mila Kunis.

Following the event, Gutierrez’s modelling agency e-mailed her to say that Weinstein wanted to set up a business meeting as soon as possible. Gutierrez arrived at Weinstein’s office in Tribeca early the next evening with her modelling portfolio. In the office, she sat with Weinstein on a couch to review the portfolio, and he began staring at her breasts, asking if they were real. Gutierrez later told officers of the New York Police Department’s Special Victims Division that Weinstein then lunged at her, groping her breasts and attempting to put a hand up her skirt while she protested. He finally backed off and told her that his assistant would give her tickets to “Finding

Neverland," a Broadway musical that he was producing. He said he would meet her at the show that evening.

Instead of going to the show, Gutierrez went to the nearest police station and reported the assault. Weinstein telephoned her later that evening, annoyed that she had failed to appear at the show. She picked up the call while sitting with investigators from the Special Victims Division, who listened in and devised a plan: Gutierrez would agree to see the show the following day and then meet with Weinstein. She would wear a wire and attempt to extract a confession or an incriminating statement.

The next day, Gutierrez met Weinstein at the bar of the Tribeca Grand Hotel. A team of undercover officers helped guide her through the interaction. On the recording, which I have heard in full, Weinstein lists actresses whose careers he has helped and offers Gutierrez the services of a dialect coach. Then he presses her to join him in his hotel room while he showers. Gutierrez says no repeatedly; Weinstein persists, and after a while she accedes to his demand to go upstairs. But, standing in the hallway outside his room, she refuses to go farther. In an increasingly tense exchange, he presses her to enter. Gutierrez says, "I don't want to," "I want to leave," and "I want to go downstairs." She asks him directly why he groped her breasts the day before.

"Oh, please, I'm sorry, just come on in," Weinstein says. "I'm used to that. Come on. Please."

"You're used to that?" Gutierrez asks, sounding incredulous.

"Yes," Weinstein says. He adds, "I won't do it again."

After almost two minutes of back-and-forth in the hallway, Weinstein finally agrees to let her leave.

According to a law-enforcement source, Weinstein, if charged, would most likely have faced a count of sexual abuse in the third degree, a misdemeanor punishable by a maximum of three months in jail. But, as the police investigation proceeded and the allegation was widely reported, details about Gutierrez's past began to appear in the tabloids. In 2010, as a young contestant in the Miss Italy beauty pageant, Gutierrez had attended one of Prime Minister Silvio Berlusconi's infamous "Bunga Bunga" parties. She claimed that she had been unaware of the nature of the party before arriving, and

she eventually became a witness in a bribery case against Berlusconi, which is still ongoing. Gossip outlets also reported that Gutierrez, as a teen-ager, had made an allegation of sexual assault against an older Italian businessman but later declined to cooperate with prosecutors.

Two sources close to the police investigation of Weinstein said that they had no reason to doubt Gutierrez's account of the incident. One of them, a police source, said that the department had collected more than enough evidence to prosecute Weinstein. But the other said that Gutierrez's statements about her past complicated the case for the office of the Manhattan District Attorney, Cyrus Vance, Jr. After two weeks of investigation, the D.A.'s office decided not to file charges. The office declined to comment on this story but pointed me to its statement at the time: "This case was taken seriously from the outset, with a thorough investigation conducted by our Sex Crimes Unit. After analyzing the available evidence, including multiple interviews with both parties, a criminal charge is not supported."

"We had the evidence," the police source involved in the operation told me. "It's a case that made me angrier than I thought possible, and I have been on the force a long time."

Gutierrez, when contacted for this story, said that she was unable to discuss the incident. Someone close to the matter told me that, after the D.A.'s office decided not to press charges, Gutierrez, facing Weinstein's legal team, and in return for a payment, signed a highly restrictive nondisclosure agreement with Weinstein, including an affidavit stating that the acts he admits to in the recording never happened.

Weinstein's use of such settlements was reported by the *Times* and confirmed to me by numerous people. A former employee with firsthand knowledge of two settlement negotiations that took place in London in the nineteen-nineties recalled, "It felt like David versus Goliath . . . the guy with all the money and the power flexing his muscle and quashing the allegations and getting rid of them."

6.

The *Times* story disclosed a complaint to the Weinstein Company's office of human resources, filed on behalf of a temporary front-desk assistant named Emily Nestor

in December, 2014. Her own account of Weinstein's conduct is being made public here for the first time. Nestor was twenty-five when she started the job and, after finishing law school and starting business school, was considering a career in the movie industry. On her first day in the position, Nestor said, two employees told her that she was Weinstein's "type" physically. When Weinstein arrived at the office, he made comments about her appearance, referring to her as "the pretty girl." He asked how old she was, and then sent all of his assistants out of the room and made her write down her telephone number.

Weinstein told her to meet him for drinks that night. Nestor invented an excuse. When he insisted, she suggested an early-morning coffee the next day, assuming that he wouldn't accept. He did, and told her to meet him at the Peninsula hotel in Beverly Hills, where he was staying. Nestor said that she had talked with friends in the entertainment industry and employees in the company who had warned her about Weinstein's reputation. "I dressed very frumpy," she said.

Nestor told me that the meeting was "the most excruciating and uncomfortable hour of my life." After Weinstein offered her career help, she said, he began to boast about his sexual liaisons with other women, including famous actresses. "He said, 'You know, we could have a lot of fun,' " Nestor recalled. " 'I could put you in my London office, and you could work there and you could be my girlfriend.' " She declined. He asked to hold her hand; she said no. In Nestor's account of the exchange, Weinstein said, "Oh, the girls always say no. You know, 'No, no.' And then they have a beer or two and then they're throwing themselves at me." In a tone that Nestor described as "very weirdly proud," Weinstein added "that he'd never had to do anything like Bill Cosby." She assumed that he meant he'd never drugged a woman. "It's just a bizarre thing to be so proud of," she said. "That you've never had to resort to doing that. It was just so far removed from reality and normal rules of consent."

"Textbook sexual harassment" was how Nestor described Weinstein's behavior to me. "It's a pretty clear case of sexual harassment when your superior, the C.E.O., asks one of their inferiors, a temp, to have sex with them, essentially in exchange for mentorship." She recalled refusing his advances at least a dozen times. " 'No' did not mean 'no' to him," she said. "I was very aware of how inappropriate it was. But I felt trapped."

Throughout the breakfast, she said, Weinstein interrupted their conversation to yell into his cell phone, enraged over a spat that Amy Adams, a star in the Weinstein movie “Big Eyes,” was having in the press. Afterward, Weinstein told Nestor to keep an eye on the news cycle, which he promised would be spun in his favor. Later in the day, there were indeed negative news items about his opponents, and Weinstein stopped by Nestor’s desk to be sure that she’d seen them.

By that point, Nestor recalled, “I was very afraid of him. And I knew how well connected he was. And how if I pissed him off then I could never have a career in that industry.” Still, she told a friend about the incident, and he alerted the company’s office of human resources, which contacted her. (The friend did not respond to a request for comment.) Nestor had a conversation with company officials about the matter but didn’t pursue it further: the officials said that Weinstein would be informed of anything she told them, a practice not uncommon in businesses the size of the Weinstein Company. Several former Weinstein employees told me that the company’s human-resources department was utterly ineffective; one female executive described it as “a place where you went to when you didn’t want anything to get done. That was common knowledge across the board. Because everything funnelled back to Harvey.” She described the department’s typical response to allegations of misconduct as “This is his company. If you don’t like it, you can leave.”

Nestor told me that some people at the company did seem concerned. Irwin Reiter, a senior executive who had worked for Weinstein for almost three decades, sent her a series of messages via LinkedIn. “We view this very seriously and I personally am very sorry your first day was like this,” Reiter wrote. “Also if there are further unwanted advances, please let us know.” Last year, just before the Presidential election, he reached out again, writing, “All this Trump stuff made me think of you.” He described Nestor’s experience as part of Weinstein’s serial misconduct. “I’ve fought him about mistreatment of women 3 weeks before the incident with you. I even wrote him an email that got me labelled by him as sex police,” he wrote. “The fight I had with him about you was epic. I told him if you were my daughter he would have not made out so well.” (Reiter declined to comment for this article, but his lawyer, Debra Katz, confirmed the authenticity of the messages and said that Reiter had made diligent efforts to raise these issues, to no avail. Katz also noted that Reiter “is eager to coöperate fully with any outside investigation.”)

Though no assault occurred, and Nestor left after completing her temporary placement, she was profoundly affected by the experience. “I was definitely traumatized for a while, in terms of feeling so harassed and frightened,” she said. “It made me feel incredibly discouraged that this could be something that happens on a regular basis. I actually decided not to go into entertainment because of this incident.”

7.

Emma de Caunes, a French actress, met Weinstein in 2010, at a party at the Cannes Film Festival. A few months later, he asked her to a lunch meeting at the Hôtel Ritz, in Paris. In the meeting, Weinstein told de Caunes that he was going to be producing a movie with a prominent director, that he planned to shoot it in France, and that it had a strong female role. It was an adaptation of a book, he said, but he claimed he couldn’t remember the title. “But I’ll give it to you,” Weinstein said, according to de Caunes. “I have it in my room.”

De Caunes replied that she had to leave, since she was already running late for a TV show she was hosting—Eminem was appearing on the show that afternoon, and she hadn’t written her questions yet. Weinstein pleaded with her to retrieve the book with him, and finally she agreed. As they got to his room, she received a telephone call from one of her colleagues, and Weinstein disappeared into a bathroom, leaving the door open. She assumed that he was washing his hands.

“When I hung up the phone, I heard the shower go on in the bathroom,” she said. “I was, like, What the fuck, is he taking a shower?” Weinstein came out, naked and with an erection. “What are you doing?” she asked. Weinstein demanded that she lie on the bed and told her that many other women had done so before her.

“I was very petrified,” de Caunes said. “But I didn’t want to show him that I was petrified, because I could feel that the more I was freaking out, the more he was excited.” She added, “It was like a hunter with a wild animal. The fear turns him on.” De Caunes told Weinstein that she was leaving, and he panicked. “We haven’t done anything!” she remembered him saying. “It’s like being in a Walt Disney movie!”

De Caunes told me, “I looked at him and I said—it took all my courage, but I said, ‘I’ve always hated Walt Disney movies.’ And then I left. I slammed the door.” She was

shaking on the stairs going down to the lobby. A director she was working with on the TV show confirmed that she arrived at the studio distraught and that she recounted what had happened. Weinstein called relentlessly over the next few hours, offering de Caunes gifts and repeating his assertion that nothing had happened.

De Caunes, who was in her early thirties at the time, was already an established actress, but she wondered what would happen to younger and more vulnerable women in the same situation. Over the years, she said, she's heard similar accounts from friends. "I know that everybody—I mean *everybody*—in Hollywood knows that it's happening," de Caunes said. "He's not even really hiding. I mean, the way he does it, so many people are involved and see what's happening. But everyone's too scared to say anything."

8.

One evening in the early nineties, the actress Rosanna Arquette was supposed to meet Weinstein for dinner at the Beverly Hills Hotel to pick up the script for a new film. At the hotel, Arquette was told to meet Weinstein upstairs, in his room.

Arquette recalled that, when she arrived at the room, Weinstein opened the door wearing a white bathrobe. He said that his neck was sore and that he needed a massage. She told him that she could recommend a good masseuse. "Then he grabbed my hand," she said. He put it on his neck. When she yanked her hand away, Weinstein grabbed it again and pulled it toward his penis, which was visible and erect. "My heart was really racing. I was in a fight-or-flight moment," she said. She told Weinstein, "I will never do that."

Weinstein told her that she was making a huge mistake by rejecting him, and named an actress and a model who he claimed had given in to his sexual overtures and whose careers he said he had advanced as a result. Arquette said she responded, "I'll never be that girl," and left.

Arquette said that after she rejected Weinstein her career suffered. In one case, she believes, she lost a role because of it. "He made things very difficult for me for years," she told me. She did appear in one subsequent Weinstein film—"Pulp Fiction." Arquette believes that she only got that role because of its small size and Weinstein's deference to the filmmaker, Quentin Tarantino. (Disputes later arose over her

entitlement to payment out of the film's proceeds.) Arquette said that her silence was the result of Weinstein's power and reputation for vindictiveness. "He's going to be working very hard to track people down and silence people," she explained. "To hurt people. That's what he does."

There are other examples of Weinstein's using the same *modus operandi*. Jessica Barth, an actress who met him at a Golden Globes party in January, 2011, told me that he invited her to a business meeting at the Peninsula. When she arrived, he asked her over the phone to go up to his room. Weinstein assured her it was "no big deal"—because of his high profile, he simply wanted privacy to "talk career stuff." In the room, she found that Weinstein had ordered champagne and sushi.

Barth said that, in the conversation that followed, Weinstein alternated between offering to cast her in a film and demanding a naked massage in bed. "So, what would happen if, say, we're having some champagne and I take my clothes off and you give me a massage?" she recalled him asking. "And I'm, like, 'That's not going to happen.'"

When she moved toward the door to leave, Weinstein lashed out, saying that she needed to lose weight "to compete with Mila Kunis," and then, apparently in an effort to mollify her, promising a meeting with one of his female executives. "He gave me her number, and I walked out and I started bawling," Barth told me. (Immediately after the incident, she spoke with two people; they confirmed to me that she had described her experience to them at the time.) Barth said that the promised meeting at Weinstein's office seemed to be purely a formality. "I just knew it was bullshit," she said. (The executive she met with did not respond to requests for comment.)

9.

Weinstein's behavior deeply affected the day-to-day operations of his companies. Current and former employees described a pattern of meetings and strained complicity that closely matches the accounts of the many women I interviewed. The employees spoke on condition of anonymity because, they said, they feared for their careers in Hollywood and because of provisos in their work contracts.

"There was a large volume of these types of meetings that Harvey would have with aspiring actresses and models," one female executive told me. "He would have them late

at night, usually at hotel bars or in hotel rooms. And, in order to make these women feel more comfortable, he would ask a female executive or assistant to start those meetings with him.” She was repeatedly asked to join such meetings, she said, but she refused.

The executive said that she was especially disturbed by the involvement of other employees. “It almost felt like the executive or assistant was made to be a honeypot to lure these women in, to make them feel safe,” she said. “Then he would dismiss the executive or the assistant, and then these women were alone with him. And that did not feel like it was appropriate behavior or safe behavior.”

One former employee told me that she was frequently asked to join for the beginning of meetings that, she said, had in many cases already been moved from day to night and from hotel lobbies to hotel rooms. She said that Weinstein’s conduct in the meetings was brazen. During a meeting with a model, the former employee said, he turned to her and demanded, “Tell her how good of a boyfriend I am.” She said that when she refused to join one such meeting, Weinstein became enraged. Often, she was asked to keep track of the women, who, in keeping with a practice established by Weinstein’s assistants, were all filed under the same label in her phone: F.O.H., which stood for “Friend of Harvey.” She added that the pattern of meetings was nearly uninterrupted in her years of working for Weinstein. “I have to say, the behavior did stop for a little bit after the groping thing,” she told me, referring to Gutierrez’s allegation to the police. “But he couldn’t help himself. A few months later, he was back at it.”

Two staffers who facilitated these meetings said that they felt morally compromised by them. One male former staffer noted that many of the women seemed “not aware of the nature of those meetings” and “were definitely scared.” He told me that most of the encounters that he saw seemed consensual, but others gave him pause. He was especially troubled by his memory of one young woman: “You just feel terrible because you could tell this girl, very young, not from our country, was now in a room waiting for him to come up there in the middle of the day, and we were not to bother them.” He said that he was never asked to facilitate these meetings for men.

None of the former executives or assistants I spoke to quit because of the misconduct, but many expressed guilt and regret over not having said or done more. They talked

about what they believed to be a culture of silence about sexual assault inside Miramax and the Weinstein Company and across the entertainment industry more broadly.

10.

Weinstein and his legal and public-relations teams have conducted a decades-long campaign to suppress these stories. In recent months, that campaign escalated. Weinstein and his associates began calling many of the women in this article. Weinstein asked Argento to meet with a private investigator and give testimony on his behalf. One actress who initially spoke to me on the record later asked that her allegation be removed from this piece. “I’m so sorry,” she wrote. “The legal angle is coming at me and I have no recourse.” Weinstein and his legal team have threatened to sue multiple media outlets, including the *New York Times*.

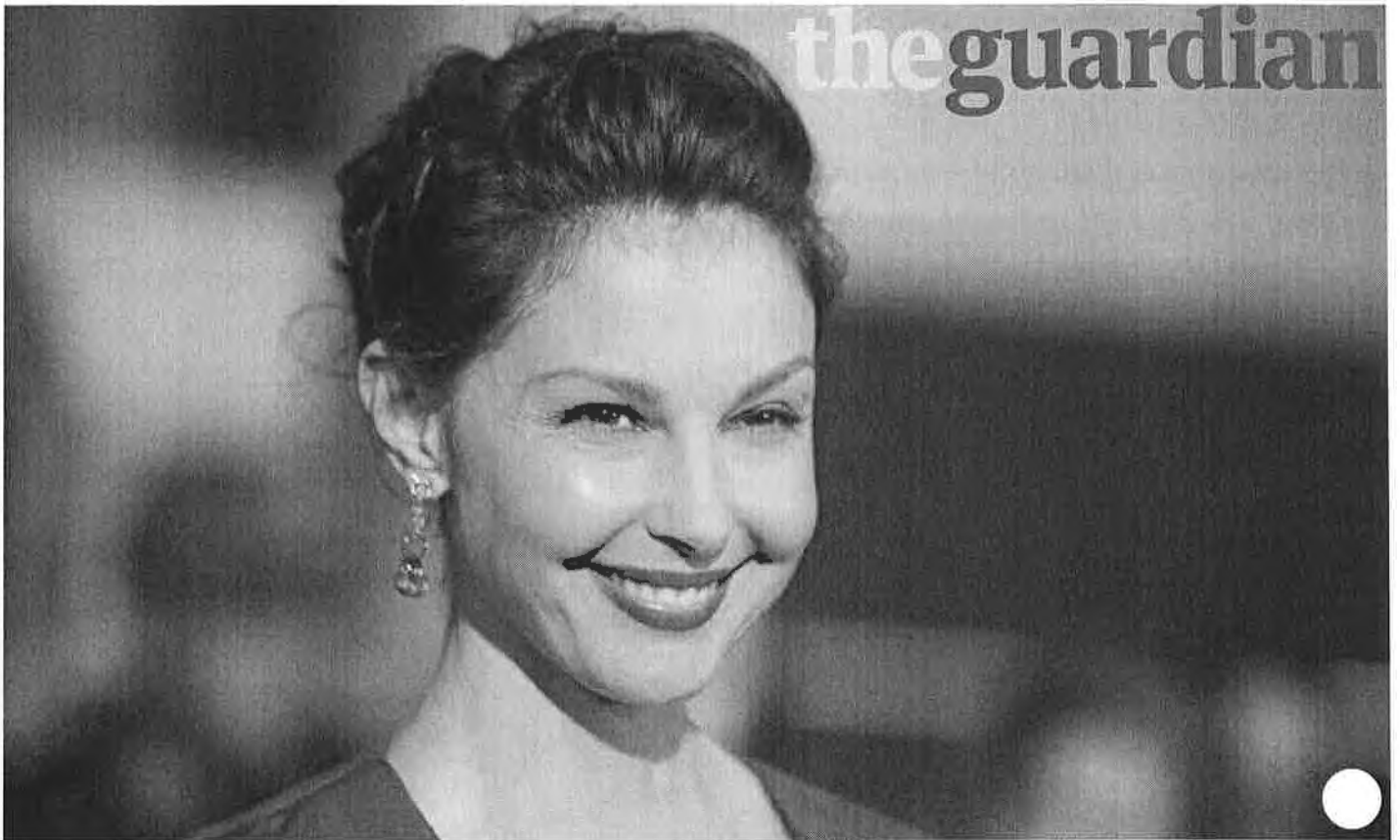
Several of the former executives and assistants in this story said that they had received calls from Weinstein in which he attempted to determine if they had talked to me or warned them not to. These employees continued to participate in the article partly because they felt that there was a growing culture of accountability, embodied in the relatively recent disclosures about high-profile men such as Cosby and Ailes. “I think a lot of us had thought—and hoped—over the years that it would come out sooner,” the former executive who was aware of the two legal settlements in London told me. “But I think now is the right time, in this current climate, for the truth.”

The female executive who declined inappropriate meetings told me that her lawyer advised her that she could be liable for hundreds of thousands of dollars in damages for violating the nondisclosure agreement attached to her employment contract. “I believe this is more important than keeping a confidentiality agreement,” she said. “The more of us that can confirm or validate for these women if this did happen, I think it’s really important for their justice to do that.” She continued, “I wish I could have done more. I wish I could have stopped it. And this is my way of doing that now.”

“He’s been systematically doing this for a very long time,” the former employee who had been made to act as a “honeypot” told me. She said that she often thinks of something Weinstein whispered—to himself, as far as she could tell—after one of his many shouting sprees at the office. It so unnerved her that she pulled out her phone

and tapped it into a memo, word for word: “There are things I’ve done that nobody knows.” ♦ 362

Ronan Farrow, a television and print reporter, is the author of the upcoming book “War on Peace: The End of Diplomacy and the Decline of American Influence.”



What if only one woman had accused Harvey Weinstein?

Deborah Tuerkheimer

Enough women were together able to surmount the barrier of skepticism this time. But what if it had only been one woman?

Sunday 22 October 2017 06.00 EDT

In recent days, as fallout from the Weinstein sexual abuse allegations spreads beyond Hollywood, a decidedly optimistic narrative has taken hold. This is a watershed moment - a tipping point that will come to mark a dramatic change in society's treatment of sexual harassment and sexual assault in the movie industry and beyond.

It is understandable that this moment has taken on a collectively self-congratulatory cast. The swift and nearly universal condemnation of Weinstein following revelations in the New York Times and the New Yorker is undoubtedly a sign of progress, mostly because the women who came forward were believed unlike countless others in the past.

I have a forthcoming paper on “credibility discounting” in sexual violence cases, which gives me a special appreciation for the reaction to Weinstein’s accusers. But this appreciation is tempered by the knowledge that credibility discounting – an undue failure to believe an account due to bias – will continue well after the dust settles on this appalling casting couch.

To be sure, allegations against Weinstein are terribly familiar to the many women who have experienced much the same. Even so, the Weinstein case is also unusual, primarily because of the sheer number of accusers. Until we grapple with this reality, the progress we are celebrating will remain incomplete.

As of this week, more than 40 women have alleged that they were sexually harassed or assaulted by the movie mogul. Originally, when the story first broke, fewer accounts had surfaced. Yet the fact that not just one woman, but many women, came forward to describe Weinstein’s abuse is hugely significant.

We might call this credibility in numbers. The accounts of multiple women are needed to corroborate one another – that is, to show that an accusation which, on its own, would likely be discredited, can be believed when considered along with a constellation of similar allegations.

The Weinstein accusers are not alone in facing this particular hurdle. Credibility in numbers means that men like Bill Cosby – whose accuser ranks now stand at 58 – can be vigorously condemned in the court of public opinion.

Likewise, recent high-profile cases involving Roger Ailes, Bill O’Reilly and Donald Trump featured clusters of women coming forward. At least by the measure of public sentiment, enough women were together able to surmount the barrier of skepticism that remains in place when allegations of sexual misconduct arise.

But what happens, as is typically the case, when a lone woman reports sexual harassment to a supervisor, sexual misconduct to a college administrator, or sexual assault to a law enforcement official? Often nothing – which helps to explain why the vast majority of women opt not to divulge their sexual abuse, whether in the workplace, on campus, or through the criminal justice system.

In the Weinstein case, one woman, alone, did come forward soon after she was abused. In 2015, Ambra Battilana, an Italian model, promptly reported to New York police officers that Weinstein had grabbed her breasts after asking if they were “real”; he then put his hand up her skirt.

After investigation, prosecutors determined that a case was not provable and declined to bring charges, notwithstanding a recorded conversation in which Weinstein admitted to touching Battilana’s breasts. (Disclosure: I worked in the New York County district attorney’s office 15 years ago.) According to reports, Battilana’s credibility became an issue after prosecutors learned that she had backed away from a previous sexual assault complaint and was untruthful about a past consensual relationship.

Along with a fear of retaliation, the prospect of just this reaction – disbelief – for years kept the many other women from disclosing Weinstein’s abuse. As one accuser recently explained: “Telling others meant ‘I’ll never work again and no one is going to care or believe me.’”

In the Cosby case, the deadlocked jury suggests a similar distrust of a lone woman’s accusation. Andrea Constand was the only victim whose allegation resulted in a criminal prosecution. (Due to the passage of time, the statutes of limitations on the other dozens of accusations had lapsed.)

Her account, along with the testimony of a “pattern and practice” witness who described also having been drugged and sexually violated by the actor, was not sufficient to persuade jurors of Cosby’s guilt. Despite a good deal of corroboration of Constand’s account - more than can be gathered in the typical case - it was not ultimately credited.

Since most sexual abuse allegations begin as “he said, she said” contests, credibility in numbers is not a solution to the problem of discounting. Every single accuser deserves a fair assessment of the allegation - that is, one not derived from an unwarranted baseline of skepticism. This means that credibility must be judged without regard for race, socioeconomic class, or immigration status, to name just a few of the factors, apart from gender, known to trigger longstanding biases in sexual violence investigations.

Regardless of how the Weinstein scandal ends, scores of famous actresses have now validated an experience that has long been dismissed as false or trivial. This portends a frontal attack on rampant sexual harassment in Hollywood and perhaps other industries. Without minimizing the significance of this development, we should demand even greater change. Credibility by the numbers cannot be the endpoint. A lone allegation of sexual abuse by even the least powerful among us requires fair treatment.

Deborah Tuerkheimer, a former assistant district attorney in Manhattan, is a professor of law at Northwestern University

Since you’re here ...

... we have a small favour to ask. More people are reading the Guardian than ever but advertising revenues across the media are falling fast. And unlike many news organisations, we haven’t put up a paywall - we want to keep our journalism as open as we can. So you can see why we need to ask for your help. The Guardian’s independent, investigative journalism takes a lot of time, money and hard work to produce. But we do it because we believe our perspective matters - because it might well be your perspective, too.

I appreciate there not being a paywall: it is more democratic for the media to be available for all and not a commodity to be purchased by a few. I’m happy to make a contribution so others with less means still have access to information. *Thomasine F-R.*

If everyone who reads our reporting, who likes it, helps to support it, our future would be much more secure.

THE CHARTER ON THE WORKING RELATIONS WITH FASHION MODELS AND THEIR WELL-BEING

Our groups strongly believe that it is our ethical and social responsibility to ensure the well-being of all models working with our Houses. This belief echoes our strong commitment to human rights, respect for diversity, and gender equality. Therefore, after consulting industry professionals, we have jointly developed guidelines, which go beyond the legal requirements, in order to ensure that fashion models are always provided with proper working conditions. We hope to see the whole fashion industry follow suit. We are putting a monitoring committee in place whose role will be to ensure that all of the following guidelines are implemented effectively. These are the standards we are implementing in order to guarantee the well-being of the models with whom we work:

Working conditions

- The law must be complied with in any aspect of a contract between a brand, an agency and a model
- Models must be treated with respect and professionalism. They must never be exposed to any dangerous, embarrassing or degrading activities

Nudity and appearance

- Models must explicitly accept changes in appearance, nudity or semi-nudity
- In case of nudity during a shooting or whilst getting dressed after or before a show, the model will never be alone with a person linked to the production or a photographer
- Models must have access to a dedicated model zone/private space during shootings or fashion shows, especially when they are held outside, in order to allow them to change in a dignified manner (out of sight of people who do not belong to the production or to the brand). The brands may provide bathrobes in order to preserve privacy, as far as possible, before and after wardrobe changes
- A comfortable temperature should be maintained to safeguard the model's health in the case of nudity or semi-nudity

Health and Care

- The brands commit to working solely with models who are able to present a valid medical certificate, provided by the agencies and obtained less than six months before the shooting or the fashion show, attesting to their good health and ability to work
- The brands commit to ban size 32 for women and size 42 for men (French measurement) from their casting requirements, and will thereby require casting agencies to present women and men models who are respectively size 34 or over, and 44 or over
- The brands agree to put a dedicated psychologist/therapist at the models' disposal during their working time

Food and drinks

- Models must have access to food and drinks that comply with dietary requirements
- The brands shall provide models with useful information to maintain a healthy diet throughout the working day
- Alcoholic beverages are prohibited in the workplace at all times, unless exceptional authorization has been given by the brand (e.g. after-show cocktail). Strong alcohols are forbidden

Transportation and accommodation

- The brands must require the agencies to provide models with a level of accommodation that ensures her/his well-being
- After 8pm, brands must provide transportation for models to return to their place of residence

Young models

- The brands must not hire models under the age of 16 to participate in shows and shootings representing an adult
- Models between 16 and 18 years old are not allowed to work between 10pm and 6am
- Nudity or semi-nudity for models under 18 is only allowed through an agreement signed by both the model and her/his legal representative
- The presence of a chaperon/guardian appointed by their agencies, and who can also be one of the model's parents, is mandatory for models from 16 to 18 years of age
- Any model under the age of 18 must be housed in the same accommodation as her/his chaperon/guardian
- The brands must require agencies to ensure that models meet their school attendance obligations
- Alcohol shall not be served to models under the age of 18

Hours and compensation

- The model's hours must be monitored and comply with local law
- Agencies and brands must coordinate to ensure legal requirements, with regards to time-off, are met
- Specific negotiations must be carried out with the agencies if the "call time" exceeds 4 hours before the show
- The brands must require the agencies to ensure that the contract with the models (or his/her agency) enables her/him to be paid within the timeframe required by law

Complaints and audit

- From the first selection interview to the last performance, the model must have the possibility of making a direct complaint in the case of a dispute with a modeling agency, a casting director or a brand employee (e.g. through the setting up of a hotline or the nomination of a brand representative)
 - The presence of at least one representative of the brand during in-house castings is compulsory
 - The Group/the brand may also carry out unannounced inspections and audits during fashion shows, shootings or recruitment interviews to ensure compliance with this charter
 - A monitoring committee will be dedicated to ensuring the thorough application of the charter. Once a year (once every six months for the first year), the monitoring group will meet with representatives of brands, agencies and models.
-



AB-2539 Modeling agencies: licensure: models: employees. (2015-2016)

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AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE— 2015-2016 REGULAR SESSION

ASSEMBLY BILL

No. 2539

Introduced by Assembly Member Levine

February 19, 2016

An act to add Chapter 6 (commencing with Section 1707) to Part 6 of Division 2 of the Labor Code, relating to modeling agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, as amended, Levine. Modeling agencies: licensure: models: employees.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime. Existing law establishes the Department of Industrial Relations to, among other things, foster, promote, and develop the welfare of the wage earners, to improve their working conditions, and to advance their opportunities for profitable employment.

Existing law provides for the licensure and regulation of talent agencies, as defined, by the Labor Commissioner. Existing law requires moneys collected for licenses and fines collected for violations of these provisions to be paid into the State Treasury and credited to the General Fund.

This bill would require a person engaging in the occupation of a modeling agency, as defined, to be licensed by the Labor Commissioner. ~~Commissioner under the licensing provisions that apply to talent agencies. The bill would require a model, as defined, to be classified as an employee of a modeling agency and require a model to obtain a specified health certification from a licensed physician before being employed as a model. The bill would require a modeling agency to obtain that health certification before hiring a model; to post in a conspicuous place in its office a health advisory relating to eating disorders and sexual harassment or assault, and to maintain specified records relating to its employment of models. The bill would provide that a violation of the certification requirement by a modeling agency is a crime. By creating a new crime, the bill would impose a state-mandated local program: the person for whom the model's services are directly provided. The bill would require the Occupational Safety and Health Standards Board and the State Department of Public Health to draft regulations relating to the modeling profession, as provided: to, no later than December 1, 2017, and in consultation with accredited specialists in the prevention and treatment of eating disorders, adopt an occupational safety and health standard for models, as specified. The bill would impose specified license fees upon modeling agencies to~~

~~be deposited into the State Treasury and credited to the General Fund; exempt a person covered by certain wage orders by the Industrial Welfare Commission from these provisions.~~ The bill would define various terms for its purposes and would make related findings.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes/no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 6 (commencing with Section 1707) is added to Part 6 of Division 2 of the Labor Code, to read:

CHAPTER 6. Modeling Agencies

1707. The Legislature finds and declares all of the following:

(a) Professional fashion models face pervasive and hazardous occupational demands to maintain extreme and unhealthy thinness. These occupational pressures create a dangerous work environment. Models experience a substantially elevated risk of eating disorders and other severe health problems associated with starvation.

(b) The majority of models enter the industry as minors, making them especially vulnerable to mistreatment and to the physical and psychological damage caused by eating disorders. Women working as professional fashion models are more likely to have a diagnosis of anorexia nervosa, dangerously low body mass index, and amenorrhea, which is a serious medical indicator of hormonal dysregulation that can have negative health consequences for life.

(c) As with all workers, professional fashion models are entitled to safe working conditions. The time, place, and means of the services provided by professional models are typically controlled by the company paying their compensation. ~~Therefore, professional models are typically required to be classified as employees rather than independent contractors according to existing federal and state law, and currently do not receive workplace protections.~~ Many models, including minors, are wrongly treated as independent contractors according to existing federal and state law, and currently do not receive workplace protections. Clarifying their classification as employees of the companies paying their compensation will enhance their workplace protections.

(d) The impact of the fashion industry on health reaches far beyond the hazardous occupational conditions that professional models endure. Through its dominant presence in the mass media and pervasive influence on setting cultural standards for apparel, particularly for girls and young women, the fashion industry helps to define, transmit, and reinforce an unrealistic standard of thinness, a well-documented risk factor for eating disorders.

(e) Scientific research has shown that viewing media images of extremely thin models leads to body dissatisfaction in adolescent girls and young women, especially those who already have heightened vulnerability to eating disorders. In addition, scientific studies have shown that body dissatisfaction in adolescence is a strong indicator that a young person may develop an eating disorder.

(f) Improving working conditions to reduce excessive thinness among professional models is likely to lead to healthier images of models' weight. This change in media portrayals of models' weight may help to achieve a larger societal value in making media images more healthful and less damaging to girls' and young women's body image, ultimately reducing their risk for eating disorders.

1707.1. For purposes of this chapter, the following definitions shall apply:

(a) "License" means a license issued by the Labor Commissioner *as a talent agency* to carry on the business of a modeling agency under ~~this chapter, Chapter 4 (commencing with Section 1700).~~

(b) "Licensee" means a modeling agency that holds a valid license *as a talent agency* under ~~this chapter, Chapter 4 (commencing with Section 1700).~~

(c) "Model" means an ~~individual~~ artist under Section 1701 covered under Wage Order 4 of the Industrial Welfare Commission who, in the course of his or her occupation, performs modeling services for, or who consents in writing to the transfer of his or her ~~exclusive~~ legal right to the use of his or her name, portrait, picture, or image

for advertising purposes or for the purposes of trade directly to, a retail store, a manufacturer, an advertising agency, a photographer, a publishing company, or a modeling agency.

(d) "Modeling agency" means a person that ~~compensates a model and that dictates the assignments, hours of work, or performance locations of the model; facilitates an employment opportunity as defined in Section 1701 for a model and that holds a valid license under Chapter 4 (commencing with Section 1700).~~

(e) "Modeling services" means the appearance by a model in photographic sessions or the engagement of a model in runway, live, filmed, or taped performances requiring him or her to pose, provide an example or standard of artistic expression, or to be a representation to show the construction or appearance of some thing or place for purposes of display or advertising.

~~(f) "Person" means any individual, company, society, firm, partnership, association, corporation, limited liability company, manager, or their agents or employees.~~

1707.2. ~~(a) A model shall be classified as an employee of a modeling agency; the person for whom the model's services are directly provided.~~

~~(b)(1) A modeling agency shall not hire a model without first obtaining the health certification described in Section 1707.4.~~

~~(2) Any modeling agency that does not obtain the certification described in subdivision (a) of Section 1707.4 is guilty of a misdemeanor and subject to a fine not to exceed five thousand dollars (\$5,000).~~

1707.3. ~~(a) A person shall not engage in or carry on the occupation of a modeling agency without first procuring a license therefor from the Labor Commissioner. The license shall be posted in a conspicuous place in the office of the licensee. The license number shall be referred to in any advertisement for the purpose of the solicitation of a model for the modeling agency, under Chapter 4 (commencing with Section 1700).~~

~~(b) A filing fee of twenty-five dollars (\$25) shall be paid to the Labor Commissioner at the time the application for issuance of a modeling agency license is filed.~~

~~(c) In addition to the filing fee required for application for issuance of a modeling agency license, every modeling agency shall pay to the Labor Commissioner annually at the time a license is issued or renewed the following:~~

~~(1) A license fee of two hundred and twenty-five dollars (\$225);~~

~~(2) Fifty dollars (\$50) for each branch office maintained by the modeling agency in this state;~~

~~(a) A model shall obtain written certification from a licensed physician that he or she is in healthy physical condition and submit this certification to a modeling agency before being hired by a modeling agency. A model shall make his or her medical records available to the physician, and the physician shall review the model's medical records as part of the certification of the model's physical condition.~~

~~(b) Every modeling agency shall keep records, in a form approved by the Labor Commissioner, that include all of the following:~~

~~(1) A copy of the certification described in subdivision (a) for each model it employs;~~

~~(2) The dates of employment and the amount of compensation paid for each model.~~

~~(c)(1) Every modeling agency shall post in a conspicuous place in its office a health advisory relating to eating disorders that includes a phone number to the Occupational Safety and Health Standards Board, a phone number to an entity where a model can report sexual harassment or assault, and any other information that may be specified by the Labor Commissioner.~~

~~(2) Any modeling agency that violates the requirements of paragraph (1) shall be subject to a fine not to exceed five hundred dollars (\$500) per day that those requirements are violated.~~

1707.4. *This chapter shall not apply to persons covered by Wage Order 11, regulating the Broadcasting Industry, or Wage Order 12, regulating the Motion Picture Industry, of the Industrial Welfare Commission.*

1707.5. (a) ~~The Occupational Safety and Health Standards Board and the State Department of Public Health shall draft regulations, in consultation with physicians and other health professionals with expertise in eating~~

disorders, that do all of the following: shall, no later than December 1, 2017, and in consultation with accredited specialists in the prevention and treatment of eating disorders, adopt an occupational safety and health standard for models, with an operative date of September 1, 2018, to be fully complied with by December 31, 2018. The standard shall apply to services provided in California by models under this chapter and Chapter 4 (commencing with Section 1700). The Occupational Safety and Health Standards Board may update these standards from time to time as it deems necessary.

~~(1) Include detailed requirements of the certification and record retention requirements described in Section 1707.4.~~

~~(2) Require no less than three medical check-ups per year by models.~~

~~(3) Require a model to obtain a nutrition consultation with a qualified health professional.~~

~~(4) Address any medical testing that should be done by a model to determine his or her fitness to perform his or her job duties and provide a model with information about the privacy of these test results.~~

(b) The regulations standard shall be adopted in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code); address issues including, but not limited to, all of the following:

(1) Protection of the model's rights to health care privacy under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and all other provisions of law.

(2) Workplace safety, especially for minors, including protection from sexual exploitation and sexual predators.

(3) Prevention and treatment of eating disorders.

~~1707.6. (a) All books, records, and other papers kept pursuant to this chapter by a modeling agency shall be open at all reasonable hours to the inspection of the Labor Commissioner and his agents. Every modeling agency shall furnish to the Labor Commissioner upon request a true copy of these books, records, and papers or any portion thereof.~~

~~(b) Every modeling agency that violates subdivision (a) shall be subject to a fine of five hundred dollars (\$500).~~

~~1707.7. All moneys collected for licenses and all fines collected for violations of this chapter shall be paid into the State Treasury and credited to the General Fund.~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~



Bill Text: NY A08752 | 2017-2018 | General Assembly | Introduced New York Assembly Bill 8752

Bill Title: Relates to establishing unlawful discriminatory practices relating to models; requires models to be informed of what constitutes an unlawful discriminatory practice and how to file a complaint.

Spectrum: Partisan Bill (Democrat 1-0)

Status: (Introduced) 2017-10-25 - referred to governmental operations [A08752 Detail]

Download: [New_York-2017-A08752-Introduced.html](#)

STATE OF NEW YORK

8752

2017-2018 Regular Sessions

IN ASSEMBLY

October 25, 2017

Introduced by M. of A. ROZIC -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to establishing unlawful discriminatory practices relating to models

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 296-d
2 to read as follows:

3 § 296-d. Unlawful discriminatory practices relating to models. 1. As
4 used in this section, the following terms shall have the following mean-
5 ings:

6 a. "client" means a retail store, a manufacturer, a clothing designer,
7 an advertising agency, a photographer, a publishing company or any other
8 such person or entity that receives modeling services from a model;

9 b. "model" means an individual, regardless of his or her status as an
10 independent contractor or employee, who performs modeling services for a
11 client or consents in writing to the transfer of his or her legal right
12 to the use of his or her name, portrait, picture or image, for advertis-
13 ing purposes or for the purposes of trade, directly to a client or who
14 provides showroom or fit modeling services;

15 c. "modeling entity" means a modeling agency, model management compa-
16 ny, employment agency, and/or any person or entity that: (1) is in the
17 business of managing entertainments, exhibitions or performances, or the
18 models, artists or attractions constituting the same; (2) who, for a
19 fee, procures or attempts to procure: (i) employment or engagements for
20 persons seeking employment or engagements, or (ii) employees or inde-
21 pendent contractors for employers or entities seeking the services of
22 employees or independent contractors; and/or (3) renders vocational
23 guidance or counselling services to models; and

24 d. "modeling services" means the appearance by a model in photographic
25 sessions or the engagement of a model in runway, live, filmed, or taped

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13446-03-7

A. 8752

2

1 performances requiring him or her to pose, provide an example or stand-
2 ard of artistic expression or to be a representation to show the
3 construction or appearance of some thing or place for purposes of
4 display or advertising. Modeling services shall also include the
5 provisions of showroom or fit modeling services.

6 2. It shall be an unlawful discriminatory practice for a client or
7 modeling entity to:

8 a. engage in unwelcome sexual advances, requests for sexual favors, or
9 other verbal or physical conduct of a sexual nature to a model when:

10 (1) submission to such conduct is made either explicitly or implicitly
11 a term or condition of a model's provision of modeling services;

12 (2) submission to or rejection of such conduct by a model is used
13 either explicitly or implicitly as the basis for decisions concerning
14 the individual's provision of modeling services; or

15 (3) such conduct has the purpose or effect of unreasonably interfering
16 with a model's provision of modeling services by creating an intimidat-
17 ing, hostile, or offensive environment; or

18 b. subject a model to harassment based on age, race, creed, color,
19 national origin, sexual orientation, military status, sex, disability,
20 predisposing genetic characteristics, familial status, marital status,
21 or domestic violence victim status, where such harassment has the
22 purpose or effect of unreasonably interfering with an individual's
23 provision of modeling services by creating an intimidating, hostile, or
24 offensive environment.

25 3. a. Each client and modeling entity shall post, in a conspicuous
26 place at their place of business and/or at the site of each job assign-
27 ment, notices to the models hired, to be prepared or approved by the
28 division, setting forth excerpts from, or summaries of, the pertinent
29 provisions of this section and information related to filing a complaint
30 under this article including pro bono and/or legal services contact
31 information.

32 b. Each client shall provide to each model providing modeling
33 services, in writing or electronically, the names and/or offices, and a
34 reliable means of contacting such individuals or offices, to whom a
35 complaint under this article may be made.

36 c. At the initial execution of the contract between the modeling enti-
37 ty and the model, the model shall be informed in writing of the
38 provisions of this article including the procedure for filing a
39 complaint. The model shall demonstrate his or her understanding of the
40 provisions of this article and that such information has been provided
41 to him or her by signing a form, to be prepared or approved by the divi-
42 sion, to that effect.

43 4. Nothing in this section shall be construed or interpreted to limit
44 the rights of models provided under this chapter or any other provisions
45 of law.

46 § 2. Subdivision 4 of section 292 of the executive law, as amended by
47 chapter 97 of the laws of 2014, is amended to read as follows:

48 4. The term "unlawful discriminatory practice" includes only those
49 practices specified in, sections two hundred ninety-six, two hundred
50 ninety-six-a [and], two hundred ninety-six-c and two hundred
51 ninety-six-d of this article.

52 § 3. This act shall take effect on the ninetieth day after it shall
53 have become a law; provided, however, that effective immediately, the
54 addition, amendment and/or repeal of any rule or regulation necessary
55 for the implementation of this act on its effective date are authorized
56 and directed to be made and completed on or before such effective date.

TO ALL OF THE FRIGHTFULLY GENEROUS SOULS
WHO HAVE CONTRIBUTED SO MUCH TO THE WORK
OF THE NONPROFIT FASHION LAW INSTITUTE, ESPECIALLY
THE FOLLOWING INDIVIDUALS AND ORGANIZATIONS:

COUNCIL OF FASHION DESIGNERS OF AMERICA

DIANE VON FURSTENBERG

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LOUISE FIRESTONE

GEMMA REDUX

THE JUDY AND DENNIS KENNY FOUNDATION

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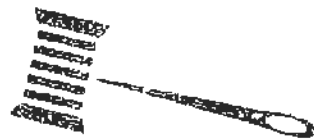
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FRIDAY, APRIL 20, 2018 (ALL DAY)

FASHION LAW BOOTCAMP - NEW YORK EDITION
MAY 29 - JUNE 2, 2018

REYNOLD LEVY

BIO BOOKS MEDIA



AUTHOR

Reynold Levy has most recently served as the president of the Robin Hood Foundation, an innovative philanthropic organization founded in 1988 to alleviate poverty in New York City. During his tenure, Levy devised an ambitious project designed to bridge the gap between the over 800,000 poor New Yorkers eligible for four critical income maintenance programs and those enrolled in them. Called the Start by Asking campaign, it combines big data analytics, behavioral economics, community organization, a wide range of corporate, civic and union partnerships and strong coordination with government, all aimed at improving the standard of living for tens of thousands of disadvantaged in the five boroughs of America's largest city.

Currently, Reynold serves as a consultant to commercial and nonprofit institutions and to benefactors seeking to expand their philanthropy. He is also the lead director of First Republic Bank.

His fourth book, *They Told Me Not To Take That Job: Tumult, Betrayal, Heroics and the Transformation of Lincoln Center*, a *New York Times* best seller, is available wherever books and e-books are sold. Levy now serves on the board of the Charles H. Revson Foundation, the board of overseers of the International Rescue Committee, a member of the Council on Foreign Relations, a trustee of the American Ballet Theatre and a Fellow in the American Academy of Arts and Sciences. In 2014, he was elected to serve a three-year term as a member of the Tony Awards Nominating Committee.

Levy completed a thirteen-year tenure as the President of Lincoln Center for the Performing Arts in January, 2014.

His leadership at Lincoln Center continued a distinguished career of public service. He has been President of the International Rescue Committee, the senior officer of AT&T in charge of government relations, President of the AT&T Foundation, Executive Director of the 92nd Street Y, and Staff Director of the Task Force on the New York City Fiscal Crisis.

During his tenure at Lincoln Center, award winning and critically acclaimed programs flourished. Simultaneously, an unprecedented and much applauded \$1.2 billion physical transformation occurred. It modernized and expanded the 16-acre campus, housing eleven world class performing arts organizations and educational institutions. The multifaceted, comprehensive Lincoln Center redevelopment embraced public spaces, plant infrastructure, and new, renovated, and expanded artistic facilities.

Reynold Levy is a graduate of Hobart College. He was granted a Master's Degree and PhD in Government and Foreign Affairs from the University of Virginia and a law degree from Columbia University, the latter two in 1973.

Levy's alma mater, Hobart College, honored him with its Alumni Medal of Excellence, given to only twenty graduates in the 125 year history of the school. The International Rescue Committee bestowed on him its coveted Freedom Award. Columbia University awarded Levy the highly regarded Lawrence A. Wien Prize for Social Responsibility. Lincoln Center granted him its Laureate Award. Levy has received the 2009 Design Patron Award granted by the Smithsonian's Cooper-Hewitt Museum for his stewardship of Lincoln Center's massive physical transformation. In recognition of Lincoln Center's successful modernization and rejuvenation, the Board of Directors decided to name a sculpturally expressive bridge designed by Diller Scofidio + Renfro as "The President's Bridge: In Honor of Reynold Levy, October 1, 2012."



SPEAKER



CONSULTANT

Levy has authored three other books, *Nearing the Crossroads: Contending Approaches to American Foreign Policy* (1975, Free Press of MacMillan), *Give and Take: A Candid Account of Corporate Philanthropy* (1999, Harvard Business School Press) and *Yours for the Asking: An Indispensable Guide To Fundraising and Management* (2008, John Wiley and Sons). He has written extensively and spoken widely about philanthropy, the performing arts, humanitarian causes and issues, and the leadership and management of nonprofit institutions. Levy has also served as a consultant to many nonprofit institutions and as a Senior Advisor with the private equity firm, General Atlantic.

Levy has held the post of Senior Lecturer at The Harvard Business School and has taught law, political science, and nonprofit management at Columbia and New York Universities and at The City University of New York. He has received honorary degrees from Dickinson College, Macaulay Honors College of The City University of New York, Fordham University and Hobart College.

Levy has served on the Boards of more than a dozen nonprofit organizations including The Independent Sector, The Peterson Institute for International Economics, the Manhattan Theatre Club, and the Nathan Cummings Foundation.



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