

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DONNA DOUGLAS

Plaintiff,

v.

MATTEL, INC. and CBS CONSUMER  
PRODUCTS, INC.

Defendants.

Civil Action No. 3:11-cv-00297-FJP -CN

**AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, Donna Douglas, for her Amended Complaint against Defendants, Mattel, Inc. (“Mattel”) and CBS Consumer Products, Inc. (“CBS”), alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff, Donna Douglas, is the actor who played Elly May Clampett in all 274 episodes of the iconic television series *The Beverly Hillbillies*. Mattel recently introduced an “Elly May” Barbie Doll under a purported license from CBS. However, Ms. Douglas never granted to either CBS or Mattel the right to use her name, likeness or distinctive attributes in association with the licensing, promotion, marketing or sale of the doll. Defendants’ unauthorized conduct constitutes Lanham Act false endorsement, violation of Plaintiff’s right of publicity, misappropriation and unjust enrichment.

**PARTIES**

2. Plaintiff, Donna Douglas, resides in Zachary, Louisiana.
3. Defendant, Mattel, Inc., is a Delaware corporation with its principal place of business at 333 Continental Boulevard, El Segundo, California.
4. Defendant, CBS Consumer Products, Inc., is a Delaware corporation with its principal place of business at 1700 Broadway, New York, New York.

## **JURISDICTION AND VENUE**

5. This Court has original subject matter jurisdiction over the false endorsement claim in this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, because the amended complaint states claims for violation of the federal Lanham Act, 15 U.S.C. § 1051 et seq. The Court has jurisdiction over the related state right of publicity, misappropriation and unjust enrichment claims pursuant to 28 U.S.C. § 1367. The Court also has diversity jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1332.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Ms. Douglas resides here.

## **FACTS**

7. Ms. Douglas is the actor who played Elly May Clampett in all 274 episodes of *The Beverly Hillbillies*. The show, which was broadcast for nine seasons on CBS from 1962 through 1971, ranked among the most watched on television during its initial run, and has been broadcast in syndication around the world ever since.

8. Ms. Douglas is recognized throughout the world for her portrayal of Elly May Clampett, and continues to make public appearances in association with the role 40 years after the show's final season.

9. In approximately December 2010, Defendant, Mattel, introduced and began to promote and sell an "Elly May" Barbie doll designed to resemble the Elly May Clampett character as portrayed by Ms. Douglas. The packaging for the "Elly May" doll features a photo of Ms. Douglas portraying the character. (A photo of the "Elly May" Barbie is attached hereto as Exhibit A). In promotional materials, Mattel describes the doll's association with Ms. Douglas's portrayal of Elly May Clampett: "[T]he Elly May

Barbie doll portrayed by Donna Douglas in the TV show captures the essence of the classic 60s TV character and show, The Beverly Hillbillies.” (A copy of the promotional description of the doll from Amazon.com is attached hereto as Exhibit B.)

10. Mattel purports to have the right to use Ms. Douglas’s name, likeness and distinctive attributes in association with the doll pursuant to a license from CBS.

11. Despite the fact that the doll is designed to resemble the Elly May character as portrayed by Ms. Douglas, and is marketed using Ms. Douglas’s name and photograph, Ms. Douglas never endorsed the doll and never gave either Mattel or CBS her permission to use her name, image, likeness or distinctive attributes in association with the licensing, promotion or sale of the doll.

**FIRST CAUSE OF ACTION**  
**(Lanham Act False Endorsement against Mattel)**

12. Plaintiff repeats the allegations in Paragraphs 1 through 11 as if fully set forth herein.

13. Mattel’s unauthorized use of Ms. Douglas’s name, image, likeness, and distinctive attributes in the portrayal of the Elly May character creates the false public impression that Ms. Douglas has endorsed the “Elly May” Barbie or otherwise approved the use of her name, image, likeness and distinctive attributes in association with the marketing and sale of the product.

14. Mattel’s unauthorized use of Ms. Douglas’s name, likeness, image and distinctive attributes constitutes false endorsement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

15. Through Mattel’s violation of the Lanham Act, Ms. Douglas has been damaged in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(Lanham Act Contributory False Endorsement Against CBS)**

16. Plaintiff repeats the allegations in Paragraphs 1 through 15 as if fully set forth herein.

17. CBS's purported license to Mattel induced Mattel to present the false public impression that Ms. Douglas endorsed the "Elly May" Barbie or otherwise approved the use of her name, image, likeness and distinctive attributes in association with the marketing and sale of the product.

18. Upon information and belief, CBS knew or should have known that Mattel lacked the rights to use Ms. Douglas's name, image, likeness and distinctive attributes in association with the marketing and sale of the product.

19. CBS's conduct constitutes contributory false endorsement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

20. Through CBS's violation of the Lanham Act, Ms. Douglas has been damaged in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(Right of Publicity)**

21. Plaintiff repeats the allegations in Paragraphs 1 through 20 as if fully set forth herein.

22. By their unauthorized commercial use of Ms. Douglas's name, photograph, and distinctive attributes in the portrayal of the Elly May character, Mattel and CBS have violated Ms. Douglas's right of publicity.

23. Through Mattel and CBS's violation of Ms. Douglas's right of publicity, Ms. Douglas has been damaged in an amount to be determined at trial, but presently estimated to be not less than \$75,000.

**FOURTH CAUSE OF ACTION**  
**(Misappropriation)**

24. Plaintiff repeats the allegations in Paragraphs 1 through 23 as if fully set forth herein.

25. By their unauthorized commercial use of Ms. Douglas's name, likeness, image and distinctive attributes in the portrayal of the Elly May character, Mattel and CBS have misappropriated Ms. Douglas's identity for their commercial advantage in licensing, marketing and selling the "Elly May" Barbie.

26. Through Defendants' misappropriation of Ms. Douglas's identity, Ms. Douglas has been damaged in an amount to be determined at trial, but presently estimated to be not less than \$75,000.

**FIFTH CAUSE OF ACTION**  
**(Unjust Enrichment)**

27. Plaintiff repeats the allegations in Paragraphs 1 through 26 as if fully set forth herein.

28. By their unauthorized commercial use of Ms. Douglas's name, likeness, image and distinctive attributes in the portrayal of the Elly May character, Mattel and CBS have been enriched at the direct expense of Ms. Douglas without any justification for their conduct.

29. By their conduct, Defendants have been unjustly enriched in an amount to be determined at trial, but presently estimated to be not less than \$75,000.

WHEREFORE, Plaintiff, Donna Douglas, seeks an order of this Court:

1. Preliminarily and permanently enjoining Mattel and CBS from the use of Plaintiff's name, likeness, image and distinctive attributes in the portrayal of the Elly May character.

2. Awarding Plaintiff damages in an amount to be determined at trial.
3. Awarding Plaintiff her reasonable attorneys' fees and costs incurred in prosecuting this action.
4. Awarding Plaintiff such other relief as to the Court appears just and proper.

A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE

Dated: Baton Rouge, Louisiana  
May 26, 2011

s/Philip J. Shaheen  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2011, a copy of the foregoing Amended Complaint was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Mattel, Inc. and CBS Consumer Products, Inc. by operation of the Court's electronic filing system.

s/Philip J. Shaheen

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Bar Roll No. 11580

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