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Bravado International Group
Merchandising Services, Inc.,
Mascotte Holdings, Inc.
and Live Nation Merchandise, Inc.

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

BRAVADO INTERNATIONAL GROUP
MERCHANDISING SERVICES, INC.,
MASCOTTE HOLDINGS, INC. and LIVE
NATION MERCHANDISE, INC.,

Case No.:

Plaintiffs,

COMPLAINT

v.

JOHN DOES 1-100, JANE DOES 1-100,
and XYZ COMPANIES 1-100,

Defendants.

Plaintiffs Bravado International Group Merchandising Services, Inc. (“Bravado”), Mascotte Holdings, Inc. (“Mascotte”) and Live Nation Merchandise, Inc. (“Live Nation”) (collectively “Plaintiffs”) by and through their counsel Wolff & Samson PC, complaining of defendants herein, alleges as follows:

NATURE OF THE ACTION

1. This action arises under the Lanham Trademark Act of 1946, 15 U.S.C. § 1051 et seq. (the “Lanham Act”), the New Jersey Fair Trade Act, N.J.S.A. 56:4-1, the New Jersey

Consumer Fraud Act, N.J.S.A. 56:8-2 and for misappropriation and unfair competition under New Jersey common law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims herein pursuant to 28 U.S.C. §§ 1331 and 1338, and through the Court's pendent jurisdiction. Venue is proper under 28 U.S.C. § 1391 because the defendants are subject to personal jurisdiction in this district.

PARTIES

3. Plaintiff Bravado International Group Merchandising Services, Inc. is a corporation duly organized under the laws of the State of California with its principal place of business in New York.

4. Plaintiff Mascotte Holdings, Inc. is a corporation duly organized under the laws of the State of California. Mascotte has the exclusive trademark rights to the name, likeness and merchandise of the musical performer known as KANYE WEST, having obtained such rights by contract from the trademark owners, Kanye West.

5. Plaintiff Live Nation Merchandise, Inc. is a corporation duly organized under the laws of the State of Delaware. Live Nation has the exclusive merchandising rights to the name, likeness and trademarks of the musical performer known as JAY-Z, having obtained such rights by contract from the trademark owner, Shawn Carter, who is publically known as Jay-Z ("Jay-Z").

6. The musical performer Kanye West, has used the KANYE WEST names and trademark since the 1990s to identify himself as a music artist, rapper, singer, songwriter, producer, actor, artist, performer and entertainer in all phases of the entertainment industry and to distinguish himself from all other such artists. Kanye West has authorized Mascotte to grant

to Bravado the exclusive right to distribute tour merchandise bearing Kanye West's name, logos, likeness, images, artwork and trademarks on and in connection with various types of music-related merchandise sold and offered for sale in the vicinity of Kanye West's concert performances on his current WATCH THE THRONE joint concert tour with the musical artist publically known as Jay-Z (the "Tour"). Kanye West and Jay-Z are referred to herein collectively as the "Artists".

7. The musical performer Jay-Z has used the JAY-Z trademark since the 1990s to identify himself as a music artist, rapper, singer, songwriter, producer, actor, artist, performer and entertainer in all phases of the entertainment industry and to distinguish himself from all other such artists. Jay-Z has authorized Live Nation as to grant to Bravado the exclusive right to distribute tour merchandise bearing Jay-Z's name, logos, likeness, images, artwork and trademarks on and in connection with various types of music-related merchandise sold and offered for sale in the vicinity of the Tour.

8. In other words, by license agreements among Bravado, Mascotte, Kanye West, Jay-Z and Live Nation Entertainment, Inc., Bravado has been granted the exclusive rights to distribute tour merchandise bearing the Artists' names, logos, likenesses, images, artwork and trademarks (collectively, the "Trademarks") on and in connection with various types of music-related merchandise sold and offered for sale in the vicinity of the Artists' concert performances on the Tour. The merchandise that will be offered for sale by Bravado at the Artists' concerts includes, without limitation, tour and program books, T-shirts, jerseys, sweatshirts, hats, stickers, accessories, posters and other merchandise (collectively, the "Tour Merchandise").

9. The identities of defendants, various John Does, Jane Does and XYZ Companies, are not presently known and this Complaint will be amended to include the names of such individuals and entities when identified. Upon information and belief, defendants were present at the Artists' previous concerts in Atlanta, Georgia and Greensboro, North Carolina. Upon information and belief, defendants will be present in New Jersey in connection with the Artists' concerts scheduled to be held at the Izod Center in East Rutherford, New Jersey on November 5 and 6, 2011 and at Boardwalk Hall in Atlantic City, New Jersey on November 19, 2011 (the "New Jersey Shows"). Defendants, therefore, will be subject to this Court's jurisdiction.

FIRST CLAIM
(Lanham Act)

10. Plaintiffs repeat and reallege each allegation set forth in the above paragraphs as if set forth fully herein.

11. The Artists have used their inherently distinctive names and Trademarks to identify officially authorized goods and services and to distinguish the Artists from other musical performers. The Artists have, among other things, prominently displayed the Trademarks in advertising and promotional material and on compact disc and audiotape packaging and merchandise, including Tour Merchandise. Plaintiffs and the Artists have realized, and expect to realize, substantial income from the sale of merchandise bearing the Artists' Trademarks (including the Tour Merchandise), and thousands of such items have been sold throughout the United States.

12. As a result of the foregoing, the Artists' Trademarks have developed and now possess secondary and distinctive meaning to purchasers of the Tour Merchandise.

13. The Artists have achieved wide renown during their careers in the music industry. The Artists' Trademarks have been used in interstate commerce on and for the purpose of identifying, among other things, Tour Merchandise, including T-shirts and other apparel.

14. The Artists have a decidedly strong and loyal following among concert-goers, radio listeners and music purchasers. The Artists have appeared, and will appear, in concerts at major arenas and stadiums in the United States and around the world, and have been seen and heard in concert by millions of popular music enthusiasts.

15. The Tour began with performances in Atlanta, Georgia on October 28 and 29, 2011 and will continue with shows at major venues throughout the United States and Canada through December 18, 2011, including the New Jersey Shows.

16. Bravado intends to sell Tour Merchandise at or near the site of the Artists' concerts, including at the New Jersey Shows.

17. Upon information and belief, defendants have engaged, and will continue to engage, in the unauthorized manufacture, distribution and sale of inferior merchandise bearing the Artists' Trademarks (the "Bootleg Merchandise") in the vicinity of the Artists' concerts. Plaintiffs believe that the defendant bootleggers and counterfeiters will sell, or attempt to sell, Bootleg Merchandise at the New Jersey Shows and at subsequent concerts during the Tour.

18. The Bootleg Merchandise is of the same general appearance as the Tour Merchandise and is likely to confuse prospective purchasers as to the source or sponsorship of such Bootleg Merchandise.

19. Upon information and belief, the Bootleg Merchandise is generally of inferior quality. The sale of such merchandise is likely to injure the reputation of the Artists and

Plaintiffs, which have developed by virtue of the Artists' public performances and the reputation for high quality associated with the Tour Merchandise.

20. The manufacture, distribution and sale of Bootleg Merchandise by defendants, and those acting in concert with defendants, constitutes a false designation of the source of origin of such goods and falsely describes and represents such merchandise, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

21. The aforesaid acts by defendants, and those acting in concert with defendants, are likely to cause confusion or mistake and/or to deceive, and likely to cause the purchasing public to believe that the sale of such Bootleg Merchandise is authorized, sponsored or approved by the Artists and Plaintiffs, and that such Bootleg Merchandise is subject to the same quality control and regulation required by the Artists and Plaintiffs.

22. The use by defendants and others of the Artists' Trademarks constitutes an attempt to palm off and appropriate to themselves the Artists' and Plaintiffs' exclusive rights therein.

23. Upon information and belief, defendants, and those acting in concert with defendants, have engaged, and will continue to engage, in such unauthorized activities in this State and elsewhere in interstate commerce and, unless enjoined, are likely to continue such activities throughout the Tour, to the great injury of Plaintiffs and the Artists.

24. Plaintiffs have no adequate remedy at law and have suffered, and will continue to suffer, irreparable harm and damage as a result of defendants' aforesaid acts, which, if not enjoined, will cause injury and monetary loss in an amount presently incalculable.

SECOND CLAIM
**(Common Law Trademark
Infringement)**

25. Plaintiffs repeat and reallege each allegation set forth in the above paragraphs as if set forth fully herein.

26. Defendants' aforesaid acts constitute infringement of Plaintiffs and the Artists' rights in their common law trademark WATCH THE THRONE and tend to falsely describe or represent that the Bootleg Merchandise is provided by, or sponsored by, or approved by, or licensed by, or affiliated with or in some other way legitimately connected to Plaintiffs and the Artists and are of the same character, nature and quality as the Tour Merchandise of Plaintiffs and the Artists, thereby damaging Plaintiff and the Artists and their reputations.

27. By reason of the aforesaid acts, defendant has caused damage to Plaintiffs and the Artists and to the goodwill associated with Plaintiffs' and the Artists' mark.

THIRD CLAIM
(Unfair Competition)

28. Plaintiffs repeat and reallege each allegation set forth in the above paragraphs as if set forth fully herein.

29. Upon information and belief, the aforesaid acts by defendants and others have been, and will continue to be, committed with full knowledge of the rights of Plaintiffs and the Artists, and have the effect of misleading and confusing the public and misappropriating and trading upon the property rights, goodwill and reputation inhering to the names and likenesses of the Artists.

30. Such misappropriation and unfair competition will interfere with Plaintiffs' rights and ability to exploit the commercial value of the Artists' Trademarks.

31. Plaintiffs have no adequate remedy at law and have suffered, and will continue to suffer, irreparable harm and damage as a result of defendants' aforesaid acts, which, if not enjoined, will cause injury and monetary loss in an amount presently incalculable.

FOURTH CLAIM
(Right of Publicity)

32. Plaintiffs repeat and reallege each allegation set forth in the above paragraphs as if set forth fully herein.

33. By virtue of the expenditures of time, effort and talent by the Artists and Plaintiffs in advertising, publicizing and promoting the accomplishments of the Artists and through extensive commercial exploitation of their public personas, the Artists and Plaintiffs have created rights of publicity in the Artists' names and likenesses.

34. By virtue of assignment from the Artists, Plaintiffs are the owner of the Artists' rights of publicity in their names and likenesses.

35. Defendants have used, and will continue to use, the Artists' Trademarks without authorization and for purposes of trade and for other commercial purposes.

36. The aforesaid uses of the Trademarks by defendants constitute infringements of such rights of publicity.

37. Plaintiffs have no adequate remedy at law and have suffered, and will continue to suffer, irreparable harm and damage as a result of defendants' aforesaid acts, which, if not enjoined, will cause injury and monetary loss in an amount presently incalculable.

FIFTH CLAIM
(Misappropriation of the Right of Publicity)

38. Plaintiffs repeat and reallege each allegation set forth in the above paragraphs as if set forth fully herein.

39. By virtue of assignment from the Artists, Plaintiffs are the owner of the Artists' rights of publicity in their names and likenesses.

40. Defendants have used, and will continue to use, the Artists' Trademarks without authorization and for purposes of trade and for other commercial purposes.

41. The aforesaid uses of the Trademarks by defendants constitute a misappropriation of Plaintiffs' rights of publicity.

42. Plaintiffs have no adequate remedy at law and have suffered, and will continue to suffer, irreparable harm and damage as a result of defendants' aforesaid acts, which, if not enjoined, will cause injury and monetary loss in an amount presently incalculable.

SIXTH CLAIM
(Violation of the New Jersey Fair Trade Act)

43. Plaintiffs repeat and reallege each allegation set forth in the above paragraphs as if set forth fully herein.

44. Plaintiffs' claim hereunder arises under the New Jersey Fair Trade Act, N.J.S.A. 56:4-1 (the "Fair Trade Act").

45. The aforesaid acts by defendants constitute the appropriation of Plaintiffs' names, brands, trademarks, reputations and goodwill in violation of the Fair Trade Act.

46. Plaintiffs have no adequate remedy at law and have suffered, and will continue to suffer, irreparable harm and damage as a result of defendants' aforesaid acts, which, if not enjoined, will cause injury and monetary loss in an amount presently incalculable.

SEVENTH CLAIM
(Violation of the New Jersey Consumer Fraud Act)

47. Plaintiffs repeat and reallege each allegation set forth in the above paragraphs as if set forth fully herein.

48. Plaintiffs' claim hereunder arises under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2 ("Consumer Fraud Act").

49. The aforesaid acts by defendants constitute unconscionable commercial practices, deception, fraud, and misrepresentation in connection with the sale of merchandise in violation of the Consumer Fraud Act.

50. Plaintiffs have no adequate remedy at law and have suffered, and will continue to suffer, irreparable harm and damage as a result of defendants' aforesaid acts, which, if not enjoined, will cause injury and monetary loss in an amount presently incalculable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seeks relief as follows:

51. That defendants, their agents, servants, employees, officers, attorneys, successors, and assigns, and all persons acting in concert with defendants, or on their behalf, be enjoined, in this and all other judicial districts in the United States, preliminarily during the course of this litigation and permanently, from:

(a) manufacturing, distributing, selling, offering for sale, holding for sale or advertising any products bearing the names, trademarks, or likenesses of the Artists or any colorable variation thereof; and

(b) representing that any article of merchandise manufactured, distributed, sold, held for sale or advertised by them is sponsored or authorized by Plaintiffs in this district or in any other district in which Plaintiffs seek to enforce this Court's injunction order.

52. That this Court authorize the United States Marshal, authorized agents of Plaintiffs, the local and state police, and/or any persons acting under their supervision, to seize and impound any and all Bootleg Merchandise which the defendants attempt to sell, distribute

or hold for sale at, within, or in the vicinity of the arenas at which the Artists are performing, before, during or after said concerts.

53. That defendants deliver up for destruction all Bootleg Merchandise bearing the names, trademarks, or likenesses of the Artists.

54. That defendants pay to Plaintiffs damages in an amount to be determined based upon Plaintiffs' loss of income from defendants' unauthorized activities.

55. That Plaintiffs have such other and further relief as the Court deems to be reasonable, necessary and just.

WOLFF & SAMSON PC
Attorneys for Plaintiffs

By: 

RONALD L. ISRAEL

Dated: October 31, 2011