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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.,

Plaintiffs,

v.

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

Defendants.

Case No.:

**DECLARATION OF ALAN REBHUN IN
SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION
AND ORDER OF SEIZURE, WITH
TEMPORARY RESTRAINING ORDER**

I, ALAN REBHUN hereby declare as follows:

1. I am the Senior Director of Production for plaintiff Bravado International Group Merchandising Services, Inc. ("Bravado"), and am responsible for merchandising with respect to the current the current WATCH THE THRONE joint concert tour (the "Tour") of the musical performers publicly known as KANYE WEST and JAY-Z (collectively the "Artists"). I am authorized by Bravado to make this declaration in support of plaintiffs Bravado, Mascotte Holdings, Inc. ("Mascotte") and Live Nation Merchandise, Inc.'s ("Live Nation") (collectively "Plaintiffs") application for a temporary restraining order, order of seizure, and preliminary

injunction, enjoining the sale of, and permitting the seizure of, unauthorized “bootleg” merchandise (the “Bootleg Merchandise”) bearing the Artists’ names, images, likenesses, logos, or trademarks (collectively, the “Trademarks”).

2. Pursuant to an agreement with trademark owner Kanye West, Mascotte possesses the exclusive rights to use and license the use of KANYE WEST’S name, likeness, images and trademarks. Pursuant to an agreement with trademark owner Shawn Carter, who is p/k/a Jay-Z (“Jay-Z”), Live Nation possesses the exclusive merchandising rights to use and license the use of JAY-Z’s name, likeness, images and trademarks.

3. By license agreements between Bravado, Mascotte, Kanye West, Jay-Z and Live Nation, Bravado has been granted the exclusive rights to distribute tour merchandise bearing the Artists’ 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 their current concert Tour.

4. 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”).

5. The United States portion of the Tour commenced in Atlanta, Georgia on October 28 and 29, 2011. The Tour will include performances at major venues throughout the United States, including 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”). As part of the Tour, the Artists will appear in concerts at major venues in cities throughout the United States, including Auburn Hills, Baltimore, Boston, Chicago, Dallas, Fort Lauderdale, Greensboro, Houston, Kansas City, Las

Vegas, Los Angeles, Miami, New Orleans, New York City, Philadelphia, Pittsburgh, San Jose, Sunrise, Tacoma, Uncasville and Washington DC. The United States portion of the Tour will continue through December 16, 2011 in Tacoma, Washington.

6. At past concerts held by Kanye West, bootleggers sold and offered for sale, unauthorized Bootleg Merchandise, in violation of Plaintiffs' rights and property interests. Specifically, on a prior KANYE WEST tour that began in 2008, I observed individuals attempting to sell bootleg merchandise. Consequently, Bravado applied for and obtained a temporary restraining order, preliminary injunction and order of seizure enjoining the sale and permitting the seizure of unauthorized "bootleg" merchandise on that tour.

7. Kanye West is a prominent and successful musical performer who began releasing albums and touring in 2004. He has released five solo albums, all of which have gone platinum and has received numerous awards and critical acclaim.

8. Jay-Z is a prominent and successful musical performer who began releasing albums and touring in 1996. He has sold approximately 50 million albums worldwide and has received numerous Grammy Awards and other awards for his musical work.

9. In August 2011, Kanye West and Jay-Z released a collaborative album, WATCH THE THRONE. The album debuted at number one on the US Billboard 200 chart, selling 436,000 copies its first week and has been certified platinum by the Recording Industry Association of America. The Artists are promoting the album at the WATCH THE THRONE concert at issue in this matter and during these concerts, the Artists will be appearing as the featured musical performers.

10. The Artists' current WATCH THE THRONE Tour is expected to be attended by hundreds of thousands of fans as the Artists' audiences span a large portion of the total concert-

going public. The Artists' careers are firmly established and they enjoy a large following by their audience. Typically, the Artists' concert venues are "sold out" several weeks before the Artists' scheduled performances. Indeed, several upcoming concerts on the Tour are already sold out. Due to the Artists' status among popular music enthusiasts, the Tour is expected to be a very successful live performance tour.

11. For over 25 years, Bravado has been engaged in the business of manufacturing, distributing, and selling authorized clothing, accessories, posters and similar merchandise bearing the names, logos, likenesses, and trademarks of popular musical groups and performers. Bravado conducts such activities pursuant to license agreements with music performers.

12. Through a license agreement with Mascotte, Kanye West, Jay-Z, and Live Nation Entertainment, Inc., Bravado has obtained the exclusive right to use the Artists' Trademarks on Tour Merchandise sold at concerts on the Artists' Tour. During the course of the Tour, the Artists will perform for thousands of fans in the United States. Unfortunately, such concert tours attract bootleggers and counterfeiters who manufacture, distribute, and sell, without authority, Bootleg Merchandise bearing the Artists' Trademarks.

13. I have extensive experience with the sale of merchandise on concert tours and the problem of bootlegging. Over the past 25 years, I have attended, in a supervisory capacity, numerous concerts of artists performing in the same markets as the Artists will be performing on the Tour.

14. Given the Artists' popularity and their status among popular music enthusiasts, I have no doubt that more bootlegging will occur on the Tour, including at the New Jersey Shows. Based upon my experience, I further believe that the same bootleggers who appear at

the New Jersey Shows will continue to “work” the Tour, i.e., follow the Artists from city to city selling their bootleg goods.

15. In my experience the problem of bootlegging has grown with the popularity of concert tours. On previous tours, I have recognized individual bootleggers from venue to venue as they follow the artist or group. In many instances, the bootleggers sell identical shirts, which indicates that they are supplied from a common source. Organized bootleggers generally “work the route” themselves or arrange to have local individuals sell the infringing merchandise for them. Bootleggers follow a tour from concert to concert to maximize their illegal profits, since bootlegging at only one or a small number of concerts generally is not financially worthwhile.

16. In these circumstances, it is not difficult to understand the bootleggers’ motives. I anticipate that all future concerts on the Tour will be heavily attended. By the end of the Tour, the Artists will have performed before hundreds of thousands of fans. Typically, these fans seek to purchase souvenirs at the concerts, including tour and program books, T-shirts, jerseys, sweatshirts, hats, stickers, jewelry, accessories, posters, calendars and other merchandise. Without protection from the courts, the bootleggers located outside the concert venues have the first and last opportunity to make these sales. Indeed, most of the Bootleg Merchandise is sold prior to the concert, before the fans have a chance to reach Bravado’s authorized vending areas. Thus, each of the counterfeit sales represents a lost sale to Plaintiffs and lost income to the Artists and venues.

17. Bootlegging and counterfeiting greatly injure musical performing groups and entertainers, including Plaintiffs, in two ways. First, the bootleggers are not bound by contract to provide first-quality apparel and graphic designs, as is required of the licensed merchandiser.

18. Second, with no obligation to pay royalties to the Artists, and because they do not pay any part of their gross sales receipts to the concert venue, the bootleggers can drastically undersell the legitimate merchandiser. This ability to undersell the legitimate merchandiser is enhanced by the fact that bootleggers do not collect or pay sales or income taxes. In short, bootlegging results in severe economic harm to the Artists, the Plaintiffs and the public.

19. The fans also suffer because they are buying inferior imitations which rarely last very long. The fans are disappointed and, in their confusion as to the source of the merchandise, blame the artists and the licensed merchandisers. Bravado has received complaints and refund requests from purchasers of bootleg merchandise due to quality defects or outrageous price differentials, all of which reflect unfavorably on the artist whose rights have been infringed. This adversely affects future legitimate sales and tends to create a negative feeling by the fans directed against the artist and merchandiser, which in turn results in decreased record sales and concert attendance.

20. The persistence and severity of bootlegging activity experienced by entertainers such as the Artists attest to the economic importance of tour merchandising rights in connection with musical performing artists and groups. Absent the relief requested, the loss of merchandising income at even a single venue could range in the thousands or tens of thousands of dollars.

21. Absent significant protection from the courts, the bootleggers have an insurmountable advantage over the artists and legitimate merchandisers. Left unprotected, merchandisers will be unable to offer performers appropriate sums for merchandising rights,

which in turn limits the Artists' ability to stage unique and exciting concerts for their fans. In some instances, the artist is prevented from touring altogether.

22. Plaintiffs need effective relief on a nationwide basis similar to orders issued by this District Court for NEW KIDS ON THE BLOCK, BACKSTREET BOYS, NICKELBACK, ROGER WATERS, VAN HALEN, GENESIS, GUNS N' ROSES, FAITH NO MORE, METALLICA, BOSTON and other concert tours, and by other Federal District Courts in cases involving the musical groups and performers known as LADY GAGA, BEYONCE KNOWLES, R KELLEY, PUBLIC ENEMY, THE WHO, CHRIS BROWN, B2K, IRON MAIDEN, BON JOVI, DEPECHE MODE, LIL BOW WOW, SHANIA TWAIN, THE SPICE GIRLS, BONE THUGS-N-HARMONY, ROBERT PLANT AND JIMMY PAGE, WHITE ZOMBIE, JOHN MELLENCAMP, ZZ TOP, BILLY RAY CYRUS, TWISTED SISTER, AEROSMITH, JUDAS PRIEST, MOLLY HATCHET, BLACKFOOT, ROGER DALTRY, MOTLEY CRUE, DURAN DURAN, THE CLASH and many others.

23. Legitimate merchandise is sold exclusively through the legitimate concessionaires in booths either inside the facility or immediately surrounding the facility, and accordingly, it is easy to recognize the unlicensed merchandise because all merchandise sold outside of the aforesaid area is infringing.

24. In conclusion, there is no question that bootleggers and counterfeiters, large and small, have targeted, and will continue to target, the Artists' Tour, including the New Jersey Shows. There is also no question that these bootleggers and counterfeiters have no right to sell their Bootleg Merchandise. If they are not enjoined and their infringing merchandise seized, Plaintiffs will continue to suffer severe economic harm, and will be irreparably harmed by the inferior product these bootleggers are disseminating.

25. For these reasons, I respectfully request that the Court grant Plaintiffs' application.

26. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28 day of October, 2011.



ALAN REBHUN