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15 CV 1394

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JUDGE SULLIVAN

HOLLA'BACK RECORDS, ENTERTAINMENT &
MANAGEMENT, LLC. A GEORGIA LLC.

Plaintiff,

vs.

GWEN STEFANI, PHARRELL L.

WILLIAMS, EMI MUSIC PUBLISHING,

WATERS OF NAZARETH PUBLISHING,

HARAJUKU LOVER MUSIC, CHASE CHAD

MUSIC, INTERSCOPE RECORDS,

UNIVERSAL MUSIC AND VIDEO

DISTRIBUTION, BMG RIGHTS MANAGEMENT

LLC

HOLLABACK!, ROB BLISS CREATIVE,

LLC.

Defendants

) CASE NO.

) COMPLAINT FOR TRADEMARK INFRINGEMENT;
) FALSE DESCRIPTION; INJURY TO
) BUSINESS REPUTATION

) JURY TRIAL DEMANDED

FILED
U.S. DISTRICT COURT
2015 FEB 25 PM 3:36
S.D. OF N.Y.

Plaintiff, HOLLA'BACK RECORDS, ENTERTAINMENT AND MANAGEMENT, LLC (hereinafter called "Plaintiff"), representing itself, on a Pro-Se basis, as and for their complaint against Defendants Gwen Stefani ("Stefani"), Pharrell Williams ("Williams") and their record labels, publishers and distributors in addition to Hollaback!, a New York organization, and Rob Bliss Creative ("Bliss") a Michigan LLC. (hereinafter collectively referred to as "Defendants" or individually by Last Name) alleges the following:

II. JURISDICTION AND VENUE

1. This is a Complaint for Trademark Infringement, Unfair Competition and False Description arising under §§32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114 (1) (Trademark Infringement) and 1125 (a) (Unfair Competition and False Description) and for Injury to Business Reputation.
2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 (a), 15 U.S.C. §1121 and 28 U.S.C. §1121 . This Court has related claim jurisdiction over the state law tort claim pursuant to 28 U.S.C. §1138 (b) and 28 U.S.C. § 32 as controversy exceeds \$75,000.
3. This Court has personal jurisdiction over all Defendants aside from "Stefani" and her publishers & "Bliss" because their principal place of businesses are in the State of New York.
4. Venue is proper in this district under 28 U.S.C. §§ 1391 (a), in that all of the Defendants (except Stefani and her publishers & "Bliss") are subject to personal jurisdiction in this district at

the time the action is commenced and under 28 U.S.C. § 1391 (b) and (c) for Defendant Hollaback!, Pharrell Williams, Chad Hugo and EMI because, upon information and belief, a substantial part of the events giving rise to the claims occurred in this district, a substantial part of the property that is subject to the claims occurred in this district and each Defendant maintains a principal place of business in this district.

THE PARTIES

5. Since 1998, Plaintiff Holla'back Records Entertainment and Management, LLC, was a Limited Liability Corporation organized and existing under the laws of the State of New York, initially, having a principal address of 1007 President Street, Brooklyn, NY 11225. The principal address for Plaintiff is now 255 Newfield Drive, Tyrone, GA 30290. Plaintiff is and has always been in the business of producing, promoting, selling hip hop/rap & r&b music, recording/managing/consulting musical artists, including but not limited to musical and recording artists in the hip hop and rap genre.

6. Plaintiff also sells merchandise including CD's, t-shirts, and apparel and creates/markets/promotes Entertainment videos via all available media since 1998.

7. Plaintiff also sells its merchandise and advertises its products/services via the Internet website hollaback.org since approximately 1998.

Defendant Pharrell L. Williams ("Williams")

8. Upon information and belief, defendant PHARRELL L. WILLIAMS ("WILLIAMS") is a resident of the state of New York and is a popular musical producer in the hip hop or rap genre, recording and producing hip hop music and artists with defendant Hugo under the name The Neptunes.

9. Defendant Williams is one of the co-authors, together with defendants Gwen Stefani ("Stefani") and Chad Hugo ("Hugo"), of the Infringing Song at issue herein as indicated in the ASCAP song registry.

10. Aside from Plaintiff's alleged infringement, upon information and belief, Defendant Williams has been alleged to have engaged in multiple copyright infringement allegations and is herein alleged to be a serial Intellectual Property thief/infringer. Aside from Defendants's alleged copyright infringement allegation of her Holla'back song vs. their Young'N (Holla back) song, the pending trial against Defendant for the alleged infringement of the late, great, Marvin Gaye's (Got to Give it Up v. Blurred Lines), as well as this trademark infringement claim, Williams has been alleged to have infringed upon the copyrights of multiple and numerous Artists including, but not limited to: David and Peter Currin, Frank Zaconi, Geggy Tah, Franz Ferdinand (originally alleged yet later retracted), Monte \$ (Twerk It), Anne Marsden (Happy Video), and a trademark inquiry by Will.i. AM; acts which allowed to continue to remain unchallenged and unpunished can only lead to continued prey upon the

artistic community at the hands of this alleged serial offender and what we believe is unwarranted praise, accolades and financial gain/opportunities typically and rightfully deserved of the alleged original trademark/copyright holder(s)/creators of these pieces.

11. Upon information and belief, defendant Williams is also the owner of and does business as a music publisher under the name Waters of Nazareth Publishing, with offices at c/o EMI Blackwood Music, 810 Seventh Avenue, New York, NY 10019, as indicated in the registry of Broadcast Music ("BMI").

Defendant Gwen Stefani ("Stefani")

12. Upon information and belief, defendant Gwen Stefani ("Stefani") is a resident of the State of California. Stefani is an American recording artist and debuted her first solo album in 2004.

13. Upon information and belief, defendant Stefani is also the owner of and does business as a music publisher under the name HARAJUKU LOVER MUSIC, located at 1800 Century Park East, 10th Floor, Los Angeles, CA 90067.

Defendant Chad Hugo ("Hugo")

14. Upon information and belief, defendant CHARLES E. HUGO ("HUGO") is a resident of the State of New York and is a popular musical producer in the hip hop or rap genre, recording and producing hip hop music and artists with defendants Williams under the professional name of the Neptunes.

15. Defendant Hugo is one of the co-authors, together with defendants Stefani and Williams, of the Infringing Song at issue herein, as indicated in the ASCAP song registry.

16. Upon information and belief, defendant Hugo is also the owner of and does business as a music publisher under the name of Chase Chad Music, with offices at c/o Sony/ATV Music Publishing, 424 Church Street, Suite 1200, Nashville, TN 37219.

Defendant Hugo is one of the co-authors, together with defendants Williams and Stefani of the Infringing Song at issue herein, as indicated in the ASCAP song registry.

Defendant Universal Music

17. Upon information and belief, defendant Universal Music is the distributor of the infringing song and has offices located at 1775 Broadway, NY 10019.

Defendant Interscope Records

18. Interscope Records is a major US record label authorized to do business in the State of New York, at 1755 Broadway, NY NY 10019.

Defendant BMG Music Publishing

19. Upon information and belief, Defendant BMG Music Publishing is a major US publisher doing business in the State of New York, at 1745 Broadway, NY NY 10019

Defendant EMI Music Publishing

20. Upon information and belief, defendant EMI is the publisher of the musical composition and songs defendant Williams through

Williams' d/b/a Waters of Nazareth Music, including the Infringing Song at issue herein.

21. EMI Music Publishing, a Connecticut corporation duly authorized to do business in the State of New York with offices at 550 Madison Avenue, New York, NY 10022.

22. Upon information and belief, defendant EMI is the publisher of the musical composition of defendant Williams and the Infringing Song at issue herein.

Defendant Hollaback!

23. On information and belief, Defendant Hollaback! was formed under the laws of the state of New York on July 26, 2010 with offices located at 30 Third Avenue, 800B, Brooklyn, New York 11217. Although there is no Agent of Service listed, Emily May is listed as the Co-Founder and Executive Director.

24. **Defendant Rob Bliss Creative**

Upon information and belief, Defendant Rob Bliss Creative is an online viral video Marketing Agency with its principal offices located at 50 Louis N. W. Suite 601, Grand Rapids, MI 49503.

III. FACTUAL BACKGROUND

25. The name Holla'back Records,... LLC has been associated with quality Independent rap and r&b songs/artists and promotional products since early 1998. On January 22, 2002 and May 18, 2010,

Plaintiff was officially granted registration numbers 2,534,501 and 3,789,864 for the words and mark Holla'back Records, Entertainment and Management for audio and video recordings featuring images of artists, audio recordings featuring music, blank cd-roms for sound or video recording, blank Recorded disks, blank recorded cdrs and dvd-rs, blank recordable dvds, downloadable mp3files and mp3 recordings featuring music, webcasts and podcasts featuring music, audio books and news broadcasts; downloadable musical sound recordings, downloadable video recordings featuring music and images of artists, electric phonographs; phonograph record sleeves; phonograph records featuring music; phonograph records featuring artists music, images and names. For gloves as clothing; headbands for clothing, hoods, jackets, tops, wearable garments and clothing, namely shirts; Management of Performing Artists, namely models, singers and/or actors and for Entertainment marketing services, namely, marketing, promotion and advertising for independent recording artists as registered by the United States Patent and Trademark Office ("USPTO), see Exhibits A & B. Holla'back Records, Entertainment and Talent Management LLC. Plaintiff has, at all times, continuously used this name Holla'back...in commerce, within the rap/r&b/hip-hop music/entertainment industry/fields, including but not limited to promotion of its Entertainment services, placing artists in videos, motion pictures/television shows/print ads, music showcases, selling its merchandise, phonograph records, CDs's etc.

A. Defendants Rob Bliss Creative and Holla'back

26. On or around August 2014, Defendants Hollaback! and Rob Bliss Creative began distributing and marketing, via Internet and various Entertainment mediums including Entertainment Tonight/Access Hollywood, various news outlets television channels, "10 hours of walking in New York City" featuring an Actress/Model Shoshana Roberts as "a woman walks around New York City for 10 hours, as she gets street called 100 times by men."

27. The video was, subsequently, highly criticized as editing out non-minorities originally filmed doing such cat-calls and while leaving in and including only minorities. The creator, defendant Rob Bliss, apologized on Reddit for the editing by admitting "We got a fair amount of white guys, but for whatever reason, a lot of what they said was in passing, or off camera." This post, however, was later deleted.

28. After "10 hours Of Walking" was shown with the Hollaback name included at the end of the production piece on Access Hollywood/Entertainment Tonight, Plaintiff received numerous telephone calls inquiring about the association of the Actress/model in this Entertainment piece and questioning why, as a minority who has advocated for equality, Holla'back would produce and subsequently edit such an inflammatory piece.

29. Plaintiff then began researching this issue and divulged that Holla'back's trademark was being used to market this piece as well as promote its hollaback song, t-shirts and website (in addition to soliciting numerous donations/speaking engagements, paying salaried employees and other financial windfalls) through the Hollaback trademark. Defendant Rob Bliss Creative has also acknowledged the numerous internet hits he has received from this video which Plaintiff believes has resulted in other profitable advertising situations for Defendants.

30. A cease and desist letter followed to Defendants Hollaback and Bliss. Additional telephone calls were not returned and thus the lawsuit was immediately filed.

31. Defendants Hollaback! and Rob Bliss creative's use of the Hollaback trademark throughout the course of business, to attract donors and to market and promote its products is both deceptively and confusingly similar to Holla'back's longstanding trademark.

32. Defendants Hollaback! and Rob Bliss Creative marketed their "10 Hours of Walking" video under the ihollaback.org website

B. Defendants Gwen Stefani, Pharrell Williams, Chad Hugo

33. Chad Hugo and Pharrell Williams promoted, produced and release the song Holla'back girl in 2004/2005 along with a video promoting the song.

34. This song is listed as a rap/rnb/swing style and was one of the first songs to create over 1,000,000 digital downloads.

35. Plaintiff recently became aware of infringing song and, upon further research, discovered that it was produced by the same producers who, allegedly, infringed upon her Holla'back song in 2003 in the copyright infringement lawsuit Boone v. Jackson et al. Holla'back vs. Young'N Holla back when she received a telephone call from a colleague who asked if this Holla'back song was the original song infringed due to its feature in a documentary released featuring said alleged infringed song.

36. This revelation only came to light after Pharrell Williams was being promoted as the new host of the hit TV show The Voice in or around September 2014 and a new infringement occurred while promoting his arrival as one of the new coaches and their playing the infringing song, Holla'back Girl, as part of the promotion for his appearance on this/Stefani's appearance(s) on the show in or around September of 2014 along with their continued promotion and performance of the the alleged infringed song "Hollaback Girl" live on the Voice May 8, 2014.

37. The continued rap utterance of the trademark Hollaback in the Stefani song Hollaback girl is confusingly similar to the Holla'back's longstanding trademark for "for audio and video recordings featuring images of artists, audio recordings featuring music, blank cd-roms for sound or video recording, , blank Recorded disks, blank recorded cd[rs and dvd-rs, blandk recordable dvds, downloadable mp3files and mp3 recordings featuring music, webcasts and podcasts featuring music, audio books and news broadcasts; downloadable musical sound recordings, downloadable video recordings featuring music and images of artists, electric phonographs; phonograph record sleeves; phonograph records featuring music; phonograph records featuring artists music, images and names.

FIRST CLAIM

TRADEMARK INFRINGEMENT UNDER LANHAM ACT §32

38. Plaintiff repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations in 1-37.

39. Defendants' wrongful use of the name Holla'back comprises an infringement of Holla'back's registered trademark and has and will continue to cause confusion, mistake and deception of the public as to identify and origin of Holla'backs songs, goods/services causing irreparable harm to Holla'back for which there is no adequate remedy at law. , blank Recorded disks, blank recorded cd[rs and dvd-rs, blandk recordable dvds, downloadable mp3files and mp3 recordings featuring music, webcasts and podcasts featuring music, audio books and news broadcasts; downloadable musical sound recordings,

downloadable video recordings featuring music and images of artists, electric phonographs; phonograph record sleeves; phonograph records featuring music; phonograph records featuring artists music, images and names. For gloves as clothing; headbands for clothing, hoods, jackets, tops, wearable garments and clothing, namely shirts; Management of Performing Artists, namely models, singers and/or actors and for Entertainment marketing services, namely, marketing, promotion and advertising for independent recording artists

40. By reason of the foregoing acts, Defendants are liable to Holla'back Records, Ent. & Mgt. LLC for Trademark Infringement under 15 U.S.C. §1114

SECOND CLAIM

UNFAIR COMPETITION UNDER THE LANHAM ACT §43

41. Plaintiff repeats and herein incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1-40.

42. Defendants' use of the Holla'back mark to promote, market, sell its products or services in direct competition with Holla'back products and services constitutes Unfair Competition pursuant to 15 U.S.C §1125 (a). Defendants use of the Holla'back trademark has caused and is likely to continue to cause damage to Holla'back, and is causing irreparable harm to Holla'back for which there is no adequate remedy at law.

THIRD CLAIM

FALSE DESCRIPTION

43. Plaintiff repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraph 1-42.

44. Defendants' wrongful use of Holla'back's mark is such a colorable imitation and copy of Holla'back's trademark in the Entertainment/music field for consumer hip/hop songs, promotion of artists, promotional material that Defendants' use thereof in the context of entertainment is likely to cause continued confusion or to cause mistake, or to deceive consumers as to the affiliation, connection or association of Holla'backs products, or to deceive consumers as to the origin, sponsoring or association by Holla'back of the Defendants' products.

45. Holla'back avers that Defendants' use of the mark "Hollaback" comprises false description or representation of Defendants' business or products under 15 U.S.C. §1125(a) (Section 43(a) of the Lanham Act).

FOURTH CLAIM

COMMON LAW INJURY TO BUSINESS REPUTATION

46. Plaintiff repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraph 1-45.

47. Holla'back alleges that Defendants' wrongful use of Holla'backs trademark inures and creates a likelihood of injury to Holla'backs business reputation because persons encountering Hollaback! and its

products and services will believe that Hollaback Records is affiliated with or related to or has the approval of Defendants, and any adverse reaction by the public to Defendants and the quality of their products or nature of its business/editing of future videos will injure the business reputation of Holla'back Records...LLC and the goodwill that it enjoys in connection with its mark "Holla'back Records, Ent. & Management, South, LLC."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

- a) The Defendants, Hollaback!, Rob Bliss Creative, Pharrell Williams, Gwen Stefani and all of their agents, officers, employees, representative, distributors, assigns, attorneys and all other persons acting for, with, by, through or under authority from Defendants, and each of them, be preliminarily and permanently enjoining from:
- b) Using Holla'back Records..LLC's trademark depicted in Exhibits A&B or any colorable imitation thereof;
- c) Using any trademark that imitates or is confusingly similar to or in any way similar to Holla'backs trademark or that is likely to cause confusion, mistake, deception or public misunderstanding as to the origin of Holla'backs products/services or their connections to Defendants.
- d) That Defendants be required to file with the Court and serve on Holla'back within thirty (30) days after entry of the Injunction,

a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the InJunction;

e) That, pursuant to 15 U.S. C. § 1117, Defendants be held liable for all damages suffered by Holla'back Records resulting from the acts alleged herein;

f) That, pursuant to 15 U. S. C. §117, Defendants be compelled to account to Holla'back Records..LLC for any and all donations/profits derived by it from its illegal acts complained of herein;

g) That the Defendants be ordered, pursuant to 15 U.S.C §1118 to deliver up for destruction all containers, labels, signs, phonograph records, t-shirts, promotional ites, Cd's, delete fro Internet circulation any mp3 solicitation or any item, promotional material or the like in possession, custody or under the control of Defendants bearing a trademark found to infringe on Holla'back Recors' rights.

h) For damages not less than \$25,000,000 for Defendants Stefani, Williams, their publishers and distributors and \$5,000,000 for Defendants Hollaback! and Rob Bliss Creative, and to the extent permitted by law

i) That the Court declare this to be an exceptional case and award Plaintiff her hourly professional rate and full court costs pursuant to 15 USC § 117.

- j) That the Court grant Holla'back Records...LLC any other remedy to which it may be entitled as provided under 15 U.S.C §§116 and 117 under state law and
- k) For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury for all issues in this action triable of right by jury.

Dated this 23rd day of February, 2015.



(Carla B. Boone, member:
on behalf of Holla'back
Records, Entertainment &
Management, LLC.)

VERIFICATION

I, Carla B. Boone, as a member of Holla'back Records, Ent...LLC, am the Plaintiff in the above entitled action. I have read the foregoing and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters I believe it to be true.

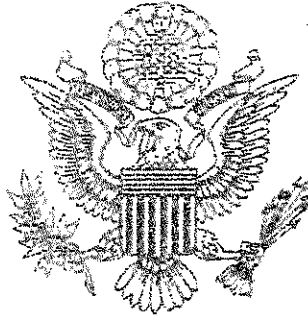
I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Tyrone, Georgia.

Dated _____

Carla B. Boone

EXHIBIT A

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A handwritten signature in black ink, likely of the Director of the United States Patent and Trademark Office, is positioned to the right of the seal.

Director of the United States Patent and Trademark Office

EXHIBIT B

United States of America

United States Patent and Trademark Office

Holla'back Records,
Entertainment & Management

Reg. No. 3,789,864

Registered May 18, 2010

Int. Cls.: 9, 25 and 35

HOLLA'BACK RECORDS, ENT. & MANAGEMENT SOUTH (GEORGIA LIMITED LIABILITY COMPANY)

P. O. BOX 970

TYRONE, GA 30290

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

FOR: AUDIO AND VIDEO RECORDINGS FEATURING IMAGES OF ARTISTS; AUDIO RECORDINGS FEATURING MUSIC; BLANK CD-ROMS FOR SOUND OR VIDEO RECORDING; BLANK RECORD DISKS; BLANK RECORDABLE CD-RS AND DVD-RS; BLANK RECORDABLE DVDS; DOWNLOADABLE MP3 FILES AND MP3 RECORDINGS FEATURING MUSIC; DOWNLOADABLE MP3 FILES, MP3 RECORDINGS, ON-LINE DISCUSSION BOARDS, WEBCASTS AND PODCASTS FEATURING MUSIC, AUDIO BOOKS AND NEWS BROADCASTS; DOWNLOADABLE MUSICAL SOUND RECORDINGS; DOWNLOADABLE VIDEO RECORDINGS FEATURING MUSIC AND IMAGES OF ARTISTS; ELECTRIC PHONOGRAPHS; PHONOGRAPH RECORD SLEEVES; PHONOGRAPH RECORDS FEATURING MUSIC; PHONOGRAPH RECORDS FEATURING ARTISTS MUSIC, IMAGES AND NAMES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-11-1999; IN COMMERCE 1-11-1999.

FOR: GLOVES AS CLOTHING; HEADBANDS FOR CLOTHING; HOODS; JACKETS; TOPS; WEARABLE GARMENTS AND CLOTHING, NAMELY, SHIRTS; WRAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-11-1999; IN COMMERCE 1-11-1999.

FOR: ENTERTAINMENT MARKETING SERVICES, NAMELY, MARKETING, PROMOTION AND ADVERTISING FOR INDEPENDENT RECORDING ARTISTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-11-1999; IN COMMERCE 8-1-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RECORDS, ENTERTAINMENT & MANAGEMENT", APART FROM THE MARK AS SHOWN.

SER. NO. 77-828,293, FILED 9-16-2009.

ARETHA SOMERVILLE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office