

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TERRENCE DAVIDSON,)	
)	
Plaintiff,)	Civil Action
)	File No: 1:14-cv-00507-RLV
v.)	
)	
ONIKA MARAJ, an individual,)	DEMAND FOR JURY TRIAL
and PINK PERSONALITY, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, TERRENCE DAVIDSON, by and through his undersigned counsel, and hereby files this First Amended Complaint against the Defendants, ONIKA MARAJ and PINK PERSONALITY, LLC, and alleges as follows:

PARTIES, JURISDICTION & VENUE

1.

Plaintiff Terrence Davidson (“Plaintiff” or “Davidson”) is a resident of the State of Georgia and resides in this judicial district.

2.

Upon information and belief, Defendant Onika Maraj (“Maraj”) is a resident of the State of California. At all times material hereto, Defendant Maraj, who is known by her stage name “Nicki Minaj,” transacted and continues to transact business in Georgia and specifically in this judicial district. Defendant Maraj is subject to personal jurisdiction of this Court under Georgia’s Long Arm Statute (O.C.G.A. § 9-10-91).

3.

Upon information and belief, Defendant Pink Personality, LLC (“Pink Personality”) is a Delaware limited liability company with its principal place of business in Los Angeles, California. At all times material hereto, Defendant Pink Personality transacted and continues to transact business in Georgia and specifically in this judicial district. Defendant Pink Personality is subject to personal jurisdiction of this Court under Georgia’s Long Arm Statute (O.C.G.A. § 9-10-91).

4.

Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this judicial district.

5.

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

FACTS

I. The Beginning of Mr. Davidson’s Business Relationship with Maraj.

6.

In or around January 2010, Mr. Davidson entered into a business relationship with Maraj to serve as her hair stylist. Specifically, over the course of the next few years, Mr. Davidson designed a number of wigs, presented them to Maraj, and Maraj would then choose her preferred wig design for a particular event. Maraj was to use the wigs for her personal use only.

7.

Prior to working with Maraj, Mr. Davidson worked with numerous renowned entertainers that had global brands including Patti Labelle and Jennifer Hudson. Maraj, on the other hand, was hardly known in the entertainment industry and had no brand value prior to working with Mr. Davidson.

8.

In the years following the commencement Mr. Davidson's business relationship with Maraj, his wig designs aided greatly in developing the appearance that "Nicki Minaj" is now widely known for. Indeed, Nicki Minaj is arguably known just as well for her use of Davidson's wigs as she is her music.

9.

The wig designs that Mr. Davidson presented to Maraj, were fresh, unique and highly distinguishable.

II. Specific Wigs Created by Mr. Davidson That Were Worn by Miraj at Certain High Profile Events.

10.

As set forth above, Mr. Davidson created countless fresh, unique, innovative and fashion forward wigs from which Maraj could choose a style depending on the event.

11.

For example, in or around September of 2010, Mr. Davidson created several pink wigs for Maraj to wear in her performance on the MTV Network VMA's preshow.

12.

Of these pink wigs designed by Mr. Davidson, Maraj chose a pink wig with an upper bun (the “Pink Upper Bun Wig”):



(Available at <http://celebsalon.sheknows.com/long-hairstyles/nicki-minajs-neon-pink-hairstyle-at-the-vmas/>)

13.

In or around December 2010, Mr. Davidson created several wigs for Maraj to wear during a performance for the New York radio station, Hot 97’s Christmas Concert on December 25, 2010.

14.

Of these wigs designed by Mr. Davidson, Maraj chose a wig with patterns and colors of a fox fur (the “Fox Fur Wig”):



(Available at <http://urbanislandz.com/2010/12/28/nicki-minaj-rocks-the-mic-in-leopard-print-on-christmas-day-photo/>).

15.

In or around January 2011, Mr. Davidson created several new pink wigs for Maraj to wear for press appearances in London.

16.

Of these wigs designed by Mr. Davidson, Maraj chose a tall, high top inspired wig (the “Pink High Top Wig”):



(Available at <http://foxync.com/1919541/fab-or-fug-nicki-minajs-cotton-candy-hi-top-wig-photos>)

17.

In or around April 2011, Mr. Davidson created several wigs for Maraj to wear for her music video for the song “Super Bass.”

18.

Of these wigs designed by Mr. Davidson, Maraj chose a split two-tone wig (the “Super Bass Wig”):



(Available at <http://nickiminajcostume.blogspot.com/2013/01/get-nicki-minajs-most-sought-after-wigs.html>)

19.

In or around September 2011, Mr. Davidson created several wigs for Maraj to wear during The Mercedes Benz Fashion Week in New York City.

20.

For this event, Maraj chose the half blonde – half pink wig designed by Mr. Davidson (the “Half Blonde-Half Pink Wig”):



(Available at http://www.peoplestylewatch.com/people/stylewatch/package/gallery/0,,20222041_20527304_21052338,00.html)

21.

In or around November 2011, Mr. Davidson created several pink wigs for Maraj to wear during a performance for a Victoria’s Secret special aired on CBS.

22.

Maraj chose the pink curls wig (the “VS Wig”) designed by Mr. Davidson for her performance:



(Available at <http://urbanislandz.com/2011/11/30/nicki-minaj-performs-live-at-victorias-secret-fashion-show-video/nicki-minaj-victorias-secret-2/>).

III. Various Business Opportunities Arise for Mr. Davidson as a Result of his Fresh and Unique Wig Designs.

23.

As “Nicki Minaj” and her associated wig hair styles became more popular, by November 2011, Al Branch, the brand manager for Maraj, began discussing various business ventures with Mr. Davidson for Maraj’s brand-specific wigs that were created by him.

24.

In or around November 2011, Mr. Davidson informed Al Branch that he had a television contract on the table for a reality television show searching for the next top celebrity hairstylist.

25.

Nevertheless, Al Branch, as an agent of Maraj, told Mr. Davidson to “hold off” on the reality television. Al Branch and Maraj promised that Mr. Davidson and Maraj would appear on a reality show together.

26.

On or around November 9, 2011, there was a conference call, which included Al Branch, Aaliyah Taylor (Mr. Davidson’s broker), and Joseph Barrett (Davidson’s manager), to discuss joint business ventures between Mr. Davidson and Maraj, and specifically, the creation of a wig line from Mr. Davidson’s designs and a reality TV show featuring Mr. Davidson and Maraj. During this call, the parties agreed that they would continue to pursue the joint wig and reality TV show ventures.

27.

Thus, on or around November 10, 2011, Mr. Davidson met with certain television executives to discuss the hair reality television show involving Mr. Davidson and Maraj.

28.

Following the meeting, the television executives requested certain “footage” mentioned during their meeting and Mr. Davidson subsequently sent the “footage” to them.

29.

Additionally, in regards to the wig venture, on or around November 21, 2011, a representative from a hair company emailed Joseph Barrett and Al Branch a full business proposal for the proposed wig line, which included full profit and loss and a budget overview for the joint wig venture between Davidson and Maraj.

30.

On or about November 21, 2011, Barrett informed Mr. Davidson of the proposed wig deal. Mr. Davidson then informed Maraj of the proposal and stated that Mr. Branch should be contacting her soon about the venture.

IV. Maraj and her Agents Shun Mr. Davidson and Take Active Steps Toward Hurting his Career.

31.

By the end of 2011, many promising business ventures were on the table for Mr. Davidson and Maraj to pursue together. Nevertheless, beginning in 2012, Maraj and her agents became mum about the business ventures and took active steps to isolate Mr. Davidson and preclude him from the notoriety he deserved for his wig designs.

32.

For example, in January 2012, Joseph Barrett's office emailed The New York Times Newspaper after reading an article in the newspaper written about Maraj's wigs.

33.

To Mr. Barrett and Mr. Davidson's surprise, on or about January 21, 2012, the writer of the article informed Mr. Barrett's office that the newspaper had reached-out to interview Mr. Davidson, but a representative from Maraj's team stated that Mr. Davidson declined to be interviewed.

34.

Mr. Davidson was not informed about this interview, however, and thus, neither he nor his representatives declined the interview.

35.

Many months passed and neither Maraj nor her team responded to Mr. Davidson's requests regarding the wig and reality TV business ventures.

36.

Indeed, in or around September of 2012, Al Branch emailed Mr. Davidson asking for his hair care expertise about a possible hair care business deal. Mr. Davidson asked Mr. Branch about their previous wig deal proposal, but again, did not receive a response.

V. Maraj's Unlawful Use of Mr. Davidson's Wig Designs is Discovered.

37.

In January 2013, Mr. Davidson ceased working as Maraj's hair stylist.

38.

Yet, just as Mr. Davidson was attempting to move-on with his career, to his surprise, later in 2013, he discovered that Maraj took a number of his popular wig designs, without his consent, and used them to start her own wig line.

39.

Indeed, the following wig styles designed by Mr. Davidson are now being sold on numerous retail websites, as well as Maraj's website, www.mypinkfriday.com:

The Pink Upper Bun Wig



(Available at http://www.target.com/p/nicki-minaj-pink-bun-wig/-/A-14715501?ref=tgt_adv_XSG10001&AFID=Google_PLA_df&LNM=%7C14715501&CPNG=Seasonal&kpid=14715501&LID=PA&ci_src=17588969&ci_sku=14715501&gclid=CN68-fGd2bwCFQ1o7AodZBgAe)

The Fox Fur Wig



(Available at <http://www.halloweencostumes.com/nicki-minaj-leopard-look-wig.html>)

The Pink High Top Wig



(Available at <http://nickiminaj.shop.bravadousa.com/Product.aspx?pc=BGAMNM19>)

The Super Bass Wig



(Available at <http://www.spirithalloween.com/product/rap-star-wig/>)

The VS Wig



(Available at http://nickiminaj.shop.bravadousa.com/Product.aspx?cp=56249_58072&pc=BGAMNM16).

40.

Thus, without Mr. Davidson’s knowledge and consent, Maraj surreptitiously cut Mr. Davidson out of their wig venture and misappropriated his wig designs to pursue the wig venture on their own.

41.

Additionally, many of the aforementioned wigs designed by Mr. Davidson were misappropriated and used by Maraj to design bottle tops for her fragrance line.

42.

Indeed, the Davidson designed wig bottle tops are the focal point of Maraj's fragrance line:



(available at <http://style.mtv.com/2013/07/29/nicki-minaj-minajesty/>).

43.

Thus, without Mr. Davidson's knowledge and consent, Maraj surreptitiously used Mr. Davidson's wigs and wig designs to further her fragrance venture.

COUNT I

QUANTUM MERUIT
(Breach of Implied Contract)

44.

Plaintiff realleges the allegations of Paragraphs 1 through 43 as if fully set forth herein.

45.

Defendants understood and agreed that Maraj could only use Plaintiff's wig designs for Maraj's personal use and attire for her appearances at various entertainment and publicity events, consistent with Maraj's use of Plaintiff's wigs since 2010.

46.

To the extent Mr. Davidson's wigs and wig designs were used by Defendants other than for Maraj's personal use for appearances, Mr. Davidson expected to be compensated for such additional uses. Such expectation of compensation existed since Mr. Davidson first began working with Defendants in January 2010.

47.

Despite this mutual understanding and agreement under which the parties

operated since 2010, Defendants wrongfully misappropriated Plaintiff's wig designs and wigs, and entered into contracts with third parties for the sole commercial purpose of profit and self-dealing.

48.

More specifically, Defendants have sold Mr. Davidson's wigs on numerous retail websites, in addition to Maraj's website, www.mypinkfriday.com, without the knowledge and consent of Mr. Davidson.

49.

Defendants also unilaterally misappropriated Mr. Davidson's wigs and wig designs and used them to pursue a fragrance venture.

50.

Without the knowledge and consent of Mr. Davidson, Mr. Davidson's wig designs are prominently featured on the bottles used for Maraj's fragrance line.

51.

Defendants knew the popularity, demand for and commercial value of Mr. Davidson's innovative and fashion forward wigs and wig designs. Indeed, Defendants were aware of various hair companies' demand for Mr. Davidson's wigs for a wig line. Moreover, in regards to the wigs used for her fragrance line, Maraj stated in numerous interviews that there is nothing more synonymous with

her commercial appeal than a pink wig designed by Davidson and subsequently used as a centerpiece on one of Maraj's fragrance bottles.

52.

Thus, fully aware of the commercial value of Mr. Davidson's wigs and wig designs, following Maraj's personal use of Mr. Davidson's wigs at specific appearances, Defendants did not return the wigs, accepted them into their permanent possession and subsequently used Mr. Davidson's wigs and wig designs for the sole commercial purpose of profit and self-dealing.

53.

Mr. Davidson's prior discussions with Defendants and/or their agents about various wig deals and other ventures in which he would receive compensation made clear that Mr. Davidson expected to be compensated for any commercial use of his wigs and wig designs. Thus, Defendants were aware of Mr. Davidson's expectation of compensation from them for any commercial use by them of his wigs and wig designs.

54.

Defendants have benefitted from the commercial use of Mr. Davidson's wigs and wig designs and, upon information and belief, received profits in excess of \$1,000,000.00 as a direct result of their unlawful conduct.

55.

Nevertheless, Mr. Davidson has not received any compensation for Defendants' commercial use of his wigs and wig designs.

56.

Plaintiff is entitled to damages for the reasonable value of his services and/or property rendered to Defendants, in an amount to be determined by the enlightened conscience of a jury.

COUNT II

UNJUST ENRICHMENT

57.

Plaintiff realleges the allegations of Paragraphs 1 through 43 as if fully set forth herein.

58.

To the extent there is no enforceable contract between Plaintiff and Defendants, Plaintiff asserts his claim against Defendants for unjust enrichment as Defendants were enriched by obtaining a financial advantage of Plaintiff.

59.

More specifically, from 2010 until 2013, Mr. Davidson worked as Defendant Maraj's hair stylist. During this time, Mr. Davidson created countless, fresh,

innovative and fashion forward wigs solely for her celebrity appearances throughout the world.

60.

Mr. Davidson and Defendants understood that the wigs designed by Mr. Davidson and used by Maraj were solely for Maraj's personal use during specific celebrity appearances. Thus, to the extent Mr. Davidson received any compensation from Defendants for his work, such compensation was solely for his services to provide a personal hair style for a specific celebrity appearance by Maraj on a specific date.

61.

Mr. Davidson neither agreed to nor authorized Defendants' use of the wigs designed by him outside of Maraj's personal use of the wig during a specific celebrity appearance. Mr. Davidson certainly did not authorize Defendants to unilaterally use the wigs designed by him for Defendants' commercial financial advantage.

62.

Yet, despite the foregoing, Defendants unilaterally misappropriated Mr. Davidson's wig designs and pursued a commercial wig venture on their own. Notably, Defendants have sold Mr. Davidson's wigs on numerous retail websites,

in addition to Maraj's website, www.mypinkfriday.com, without the knowledge and consent of Mr. Davidson.

63.

Defendants also unilaterally misappropriated Mr. Davidson's wig designs and used them to pursue a fragrance venture.

64.

Without the knowledge and consent of Mr. Davidson, Mr. Davidson's wig designs are prominently featured on the bottles used for Maraj's fragrance line.

65.

Defendants knew the demand for and commercial value of Mr. Davidson's unique, innovative and fashion forward wigs. Indeed, Defendants were aware of various hair companies' demand for Mr. Davidson's wigs for a wig line. Moreover, in regards to the wigs used for her fragrance line, Maraj stated in numerous interviews that there is nothing more synonymous with her commercial appeal than a pink wig designed by Davidson and subsequently used as a centerpiece on one of Maraj's fragrance bottles.

66.

Thus, fully aware of the commercial value of Mr. Davidson's wigs and wig designs, following Maraj's use of Mr. Davidson's wigs at specific appearances,

Defendants did not return the wigs, accepted them into their permanent possession and subsequently used Mr. Davidson’s wigs for the sole commercial purpose of profit and self-dealing, to the exclusion of Mr. Davidson.

67.

Mr. Davidson’s prior discussions with Defendants and/or their agents about various wig deals and other ventures in which he would receive compensation made clear that Mr. Davidson expected to be compensated for any commercial use of his wigs and wig designs. In fact, the Defendants fully expected to compensate Mr. Davidson for any and all commercial uses of his wigs and wig designs. Thus, Defendants were aware of Mr. Davidson’s expectation of compensation from them for any commercial use by them of his wigs and wig designs.

68.

Nevertheless, Mr. Davidson has not received any compensation or profits for Defendants’ commercial use of his wigs and wig designs, yet Defendants have unfairly profited from same.

69.

Defendants have benefitted from the commercial use of Mr. Davidson’s wigs and wig designs and, upon information and belief, received profits in excess of \$1,000,000.00 as a direct result of their unlawful conduct.

70.

Plaintiff is entitled to damages for the benefit conferred upon Defendants as a result of their use, duplication, marketing and sale of Mr. Davidson’s wigs and wig designs in the consumer marketplace, in an amount to be determined by the enlightened conscience of a jury.

COUNT III

PROMISSORY ESTOPPEL

71.

Plaintiff realleges the allegations of Paragraphs 1 through 43 as if fully set forth herein.

72.

As the wig hair styles created by Terrence Davidson became more popular, various television and wig “deals” were being presented to Mr. Davidson.

73.

Similarly, by November 2011, Al Branch, an agent for Maraj, began discussing various business ventures with Mr. Davidson for Maraj’s brand-specific wigs that were created by him.

74.

In or around November 2011, Mr. Davidson informed Al Branch that he had a television contract on the table for a reality television show searching for the next top celebrity hairstylist.

75.

Al Branch, as an agent of Maraj, told Mr. Davidson to “hold off” on the reality television. Al Branch and Maraj promised that Mr. Davidson and Maraj would appear on a reality show together.

76.

Thus, reasonably relying on representations made by and/or on behalf of Maraj, Mr. Davidson declined the opportunity to appear on a reality television show individually so he and Maraj could appear on a reality television show together.

77.

In furtherance of Maraj’s promise to appear on a TV show with Mr. Davidson, on or around November 10, 2011, Mr. Davidson met with certain television executives to discuss a hair reality television show involving Mr. Davidson and Maraj.

78.

In addition to Maraj's promise to appear on a reality TV show with Mr. Davidson, in November 2011, Maraj also promised to pursue a wig venture with Mr. Davidson.

79.

Although there was much demand for Mr. Davidson's wigs and wig designs, reasonably relying on the promise made by Maraj to pursue a joint wig venture, Mr. Davidson no longer pursued any wig deals on his own.

80.

In regards to the promised wig venture, on or around November 21, 2011, a representative from a hair company emailed Joseph Barrett and Al Branch a full business proposal for the proposed wig line, which included full profit and loss and a budget overview for the joint wig venture between Davidson and Maraj.

81.

On or about November 21, 2011, Barrett informed Mr. Davidson of the proposed wig deal. Mr. Davidson then informed Maraj of the proposal and stated that Mr. Branch should be contacting her soon about the venture.

82.

Despite Maraj's promises to pursue a wig venture and a reality TV show contract, upon which Mr. Davidson reasonably relied given his prior relationship with Maraj since 2010, Defendants cut Mr. Davidson out of their wig venture and misappropriated his wig designs to pursue the wig venture on their own.

83.

Additionally, Defendants cut Mr. Davidson out of a reality TV show deal and Maraj took the opportunity for herself.

84.

Given Defendants conduct and Mr. Davidson's detrimental reliance upon the same, injustice can only be avoided by enforcing the aforementioned promises made by Defendants and/or on Defendants' behalf.

85.

As a result of Defendants' conduct described herein, Mr. Davidson is entitled to recover from Defendants all damages that are equitable and necessary to prevent injustice.

COUNT IV

VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICES ACT

86.

Plaintiff realleges the allegations of Paragraphs 1 through 43 as if fully set forth herein.

87.

Defendants have engaged in unfair and deceptive practices by selling Mr. Davidson’s wigs and wig designs in the consumer marketplace at retailers, on retail websites, and additionally on Maraj’s own website, www.mypinkfriday.com, without the knowledge and consent of Davidson. The general consuming public and unwitting third parties who enter into contracts with Defendants for the purchase and/or use of Davidson’s wigs and wig designs are essentially unaware of the fraudulent misrepresentation that the wigs and wig designs belong to Defendants.

88.

Defendants’ unlawful business practices have the tendency or capacity to deceive and thus violate the Georgia Fair Business Practices Act (hereinafter “GFPBA”), set forth at O.C.G.A. § 10-1-390, et seq.

89.

More specifically, Defendants are causing confusion or actual misunderstanding as to the source, affiliation, connection and/or association of the wigs and wig designs being marketed by Defendants and used in the marketing of Defendants' fragrance line. Indeed, Defendants are openly marketing wigs and using wig designs created by Mr. Davidson as if they are sourced or created by, and/or associated with Defendants, and Defendants alone, when in fact they are not.

90.

Based on the general appearance of the wigs and wig designs shown on various retail websites, including Maraj's own website, Plaintiff has reason to believe that the consuming public, of which he is a part, will conclude that the wigs and wig designs and/or representation of same are, in fact, a distinctive product belonging to, and created by Maraj, rather than Mr. Davidson, the true inventor and source of the wigs and wig designs.

91.

Defendants' outward and volitional act of placing the wigs and wig designs in the consumer marketplace in this manner leads the consuming public to justifiably rely on the fraudulent misrepresentation that the source, origin,

connection and affiliation of the wigs and wig designs lies with Defendants alone, which is an unlawful and deceptive business practice under the GFBPA.

92.

Defendants' unlawful business practices cause confusion in the consumer marketplace concerning the true source, affiliation, connection and origin of the wigs and wig designs. Indeed, several retailers selling the wigs that were designed by Davidson state that such product is an officially licensed Nicki Minaj product. *See, e.g.*, <http://www.spirithalloween.com/product/nicki-minaj-pink-bun-adult-wig/> (“Let your imagination take flight when you create or complete your costume with this officially licensed adult's Nicki Minaj pink bun wig. [W]ear it with the famous spacesuit costume or use it to create your own take on this famous and stylish rapper's look.”) (last visited June 4, 2014).

93.

Mr. Davidson was not and is not a commercial competitor of Defendants in the wig and/or fragrance marketplace. Rather, the commercial sale and commercial use of Mr. Davidson's wigs and wig designs was a joint venture that was to be undertaken by Mr. Davidson and Defendants.

94.

A written pre-suit demand for relief from Mr. Davidson to Defendants was

not required in this case as Defendants neither maintain a place of business within Georgia nor keep any assets within Georgia. O.C.G.A. § 10-1-399.

95.

As a proximate cause of Defendants' GFPBA violations, Plaintiff has suffered damages in an amount to be determined at trial and he is entitled to recover his reasonable attorneys' fees and expenses of litigation.

96.

Defendant's actions set forth above were an intentional violation of the GFPBA therefore entitling Plaintiff to an award of three times his actual damages.

97.

Defendant's actions set forth above were conducted willfully, maliciously, fraudulently, and with wantonness, oppression, and an entire want of care which would raise the presumption of indifference to the consequence and entitle Mr. Davidson to punitive damages in an amount sufficient to punish and deter such conduct in the future.

COUNT V

TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT

98.

Plaintiff realleges the allegations of Paragraphs 1 through 43 as if fully set

forth herein.

99.

This count arises under Sec. 43 (a) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1125 (a).

100.

After retaining possession of several wigs and wig designs created by Mr. Davidson, namely, the Pink Upper Bun Wig, the Fox Fur Wig, the Pink High Top Wig, the Super Bass Wig, and the VS Wig, Defendants surreptitiously and intentionally replicated these wigs for commercial purposes and have marketed, advertised and placed these knock offs for sale in the consumer marketplace with various retailers and retail websites, including her own website, www.mypinkfriday.com.

101.

Each of the foregoing wigs is inherently distinctive because they are unique, unusual and unexpected. As will be detailed below, Mr. Davidson claims trade dress protection in discrete elements in each of the wigs. Further, the intrinsic nature of the wigs serves to identify a particular source, Mr. Davidson, the creator.

102.

Defendants surreptitiously and intentionally replicated Mr. Davidson's wigs

and wig designs for their sole purpose of commercial activity, self-dealing, and self-profit, contrary to the implied agreement between the parties regarding the limited personal use of the wigs and wig designs and contrary to Maraj's promise to pursue a joint venture with Mr. Davidson.

103.

Defendants have without permission, wilfully and with the intention of benefitting from the reputation and good will of Mr. Davidson, imitated the Plaintiff's trade dress in the wigs named in Paragraph 100, supra.

104.

Specifically, the Pink Upper-Bun Wig consists of a distinctive pink upper bun symbol, which is artfully placed vertically on top of the lower portion of the head. Mr. Davidson claims protected trade dress in the pink upper-bun.

105.

The symbol reflected in the Fox Fur Wig is another unique, unusual and unexpected design, with the lower tresses symbolizing the color of a fox's fur. Specifically, trade dress is claimed in the lower tresses of the wig, which consists of a burnt orange color graduating and cascading into a light auburn color at the lower end of the hair.

106.

The Pink High Top Wig is symbolized by a fluffy and lightweight pink cotton candy design, cascading asymmetrically above the head in another unique, unusual and unexpected design. The texture is soft, lightweight and evokes the ephemeral nature and sweetness of cotton candy. Below the high top, the lower portion of the wig caresses the face in a darker shade of pink, the combination of which brings out a woman's fun and flirty personality. Trade dress is claimed in the two-tone unique upwardly gravity-free design of the wig, including texture and color.

107.

The Super Bass Wig displays another unique and unusual design which is far from commonplace in the consumer marketplace. The crown of the head splits the colors into white blonde on one side and pink on the other side. Trade dress is claimed in the white blonde and pink colors.

108.

The symbol, graphic design and color reflected in the VS Wig connotes a Raggedy Ann type curl in a cotton candy pink color. The hair caresses the face and evokes fanciful and childlike images based on the fictional character and every young girl's playmate. Mr. Davidson claims trade dress protection in the pink

Raggedy Ann curl and unique curly texture, which covers the entire head.

109.

Each of the foregoing wigs and wig designs created by Mr. Davidson bear a striking and unusual symbol, color, texture, and graphic design, as well as an undefined evocative emotion experienced by both the wearer and the casual observer. These symbols make it likely that prospective purchasers will perceive the designation as an indication of source, namely, Mr. Davidson. Undoubtedly, the wigs are inherently distinctive based on the five senses.

110.

The features of the trade dress claimed in each of the foregoing wigs and wig designs are primarily non-functional.

111.

Defendants volitional and outward acts of placing knock off wigs in commerce is a false and misleading representation of fact, a false and misleading description of fact, which is likely to cause confusion and mistake between the Defendants' trade dress and Plaintiff's trade dress.

112.

Defendants' commercial activities as to the sale, marketing and advertising of knock off wigs for the sole purpose of commercial activity, self-profit and self-

dealing deceives as to the affiliation, connection or association of Minaj's wigs with Mr. Davidson and the origin, sponsorship, or approval of her wigs and commercial activities and sale of her wigs created by Mr. Davidson. Defendants' unlawful business practices cause confusion in the consumer marketplace concerning the true source, affiliation, connection and origin of the wigs and wig designs.

113.

Indeed, several retailers selling the wigs that were designed by Davidson state that such product is an officially licensed Nicki Minaj product. *See, e.g.*, <http://www.spirithalloween.com/product/nicki-minaj-pink-bun-adult-wig/> (“Let your imagination take flight when you create or complete your costume with this officially licensed adult's Nicki Minaj pink bun wig. [W]ear it with the famous spacesuit costume or use it to create your own take on this famous and stylish rapper's look.”) (last visited June 4, 2014).

114.

In sum, Mr. Davidson's wig designs have gained such notoriety because they are so unique, unusual and unexpected in the consumer marketplace, each one is singular from the next. They are famous because Mr. Davidson created them, and Minaj benefitted from his notoriety. By their intrinsic nature, one can assume

without proof that the symbols, colors, and designs of the wigs, individually or as the sum of their parts, together with the emotions they evoke, will automatically be perceived by customers as an indicator of origin – a trademark.

115.

Mr. Davidson’s wig designs are capable of creating a commercial impression distinct from accompanying words or the name of the wig itself. The claimed trade dress is purely aesthetic, evocative, imaginative, and emotional.

116.

Defendants have used in commerce the symbols depicted in each of Davidson's wigs and wig designs mentioned herein by placing the same symbol protectable as trade dress on each of the knock off wigs sold and transported in commerce by Defendants on various retail websites, including Maraj’s own website, www.mypinkfriday.com.

117.

Further, Defendants have used in commerce a false designation of origin, false or misleading description of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of such person with another person, or as to the origin, sponsorship or approval of his or her goods, services, or commercial activities by another person, by labeling

Davidson's wigs and wig designs mentioned herein as official Nikki Minaj licensed products. *See, e.g.*, <http://www.spirithalloween.com/product/nicki-minaj-pink-bun-adult-wig/>.

118.

The conduct of the Defendants as alleged in the foregoing paragraphs constitutes trade dress infringement in violation of Section 43 (a) of the Lanham Act (15 U.S.C. § 1125 (a)).

119.

In addition to resulting in lost sales and lost profits, Defendants' acts have irreparably harmed the reputation of Mr. Davidson.

120.

Plaintiff has been damaged by the acts of the Defendants in an amount as yet unknown, but on information and belief, Defendants have caused and will continue to cause damages in excess of \$1,000,000.00.

121.

As a result of Defendants' infringement and wrongful actions, Plaintiff is entitled to an injunction permanently enjoining Defendants, their directors, officers, agents, servants, employees, foreign manufacturers, contractors, representatives, successors, licensees, assigns and all persons, firms, companies or

corporations in active concert or participation and/or affiliation with them from directly or indirectly infringing or contributing to the infringement of the trade dress rights of Plaintiff in any manner. Plaintiff is also entitled to an award of damages in the full amount Plaintiff has sustained as a consequence of Defendants' actions, together with any and all profits of Defendants which are attributable to or arise out of or from such infringements or wrongful acts.

122.

Defendants' actions set forth above were conducted willfully, maliciously, fraudulently, and with wantonness, oppression, and an entire want of care which would raise the presumption of indifference to the consequence. As a result of the willful nature of Defendants' actions, Plaintiff is entitled to have the damages that are awarded be trebled.

COUNT VI

VIOLATION OF THE GEORGIA DECEPTIVE TRADE PRACTICES ACT

123.

Plaintiff realleges the allegations of Paragraphs 1 through 43 as if fully set forth herein.

124.

After retaining possession of several wigs and wig designs created by Mr.

Davidson, namely, the Pink Upper Bun Wig, the Fox Fur Wig, the Pink High Top Wig, the Super Bass Wig, and the VS Wig, Defendants surreptitiously and intentionally replicated these wigs for commercial purposes and have marketed, advertised and placed these knock offs for sale in the consumer marketplace with various retailers and retail websites, including her own website, www.mypinkfriday.com.

125.

Each of the foregoing wigs is inherently distinctive because they are unique, unusual and unexpected. As will be detailed below, Mr. Davidson claims trade dress protection in discrete elements in each of the wigs. Further, the intrinsic nature of the wigs serves to identify a particular source, Mr. Davidson, the creator.

126.

Defendants surreptitiously and intentionally replicated Mr. Davidson's wigs and wig designs for their sole purpose of commercial activity, self-dealing, and self-profit, contrary to the implied agreement between the parties regarding the limited personal use of the wigs and wig designs and contrary to Maraj's promise to pursue a joint venture with Mr. Davidson.

127.

Defendants have without permission, wilfully and with the intention of benefitting from the reputation and good will of Mr. Davidson, imitated the Plaintiff's trade dress in the wigs named in Paragraph 124, *supra*.

128.

Specifically, the Pink Upper-Bun Wig consists of a distinctive pink upper bun symbol, which is artfully placed vertically on top of the lower portion of the head. Mr. Davidson claims protected trade dress in the pink upper-bun.

129.

The symbol reflected in the Fox Fur Wig is another unique, unusual and unexpected design, with the lower tresses symbolizing the color of a fox's fur. Specifically, trade dress is claimed in the lower tresses of the wig, which consists of a burnt orange color graduating and cascading into a light auburn color at the lower end of the hair.

130.

The Pink High Top Wig is symbolized by a fluffy and lightweight pink cotton candy design, cascading asymmetrically above the head in another unique, unusual and unexpected design. The texture is soft, lightweight and evokes the ephemeral nature and sweetness of cotton candy. Below the high top, the lower

portion of the wig caresses the face in a darker shade of pink, the combination of which brings out a woman’s fun and flirty personality. Trade dress is claimed in the two-tone unique upwardly gravity-free design of the wig, including texture and color.

131.

The Super Bass Wig displays another unique and unusual design which is far from commonplace in the consumer marketplace. The crown of the head splits the colors into white blonde on one side and pink on the other side. Trade dress is claimed in the white blonde and pink colors.

132.

The symbol, graphic design and color reflected in the VS Wig connotes a Raggedy Ann type curl in a cotton candy pink color. The hair caresses the face and evokes fanciful and childlike images based on the fictional character and every young girl’s playmate. Mr. Davidson claims trade dress protection in the pink Raggedy Ann curl and unique curly texture, which covers the entire head.

133.

Each of the foregoing wigs and wig designs created by Mr. Davidson bear a striking and unusual symbol, color, texture, and graphic design, as well as an undefined evocative emotion experienced by both the wearer and the casual

observer. These symbols make it likely that prospective purchasers will perceive the designation as an indication of source, namely, Mr. Davidson. Undoubtedly, the wigs are inherently distinctive based on the five senses.

134.

The features of the trade dress claimed in each of the foregoing wigs and wig designs are primarily non-functional.

135.

Defendants volitional and outward acts of placing knock off wigs in commerce is a false and misleading representation of fact, a false and misleading description of fact, which is likely to cause confusion and mistake between the Defendants' trade dress and Plaintiff's trade dress.

136.

Defendants' commercial activities as to the sale, marketing and advertising of knock off wigs for the sole purpose of commercial activity, self-profit and self-dealing deceives as to the affiliation, connection or association of Minaj's wigs with Mr. Davidson and the origin, sponsorship, or approval of her wigs and commercial activities and sale of her wigs created by Mr. Davidson. Defendants' unlawful business practices cause confusion in the consumer marketplace concerning the true source, affiliation, connection and origin of the wigs and wig

designs.

137.

Indeed, several retailers selling the wigs that were designed by Davidson state that such product is an officially licensed Nicki Minaj product. *See, e.g.*, <http://www.spirithalloween.com/product/nicki-minaj-pink-bun-adult-wig/> (“Let your imagination take flight when you create or complete your costume with this officially licensed adult’s Nicki Minaj pink bun wig. [W]ear it with the famous spacesuit costume or use it to create your own take on this famous and stylish rapper’s look.”) (last visited June 4, 2014).

138.

Defendants have used in commerce the symbols depicted in each of Davidson’s wigs and wig designs mentioned herein by placing the same symbol protectable as trade dress on each of the knock off wigs sold and transported in commerce by Defendants on various retail websites, including Maraj’s own website, www.mypinkfriday.com.

139.

Further, Defendants have used in commerce a false designation of origin, false or misleading description of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of such

person with another person, or as to the origin, sponsorship or approval of his or her goods, services, or commercial activities by another person, by labeling Davidson's wigs and wig designs mentioned herein as official Nikki Minaj licensed products. *See, e.g.,* <http://www.spirithalloween.com/product/nicki-minaj-pink-bun-adult-wig/>.

140.

In sum, Mr. Davidson's wig designs have gained such notoriety because they are so unique, unusual and unexpected in the consumer marketplace, each one is singular from the next. They are famous because Mr. Davidson created them, and Minaj benefitted from his notoriety. By its intrinsic nature, one can assume without proof that the symbols, colors, and designs of the wigs, individually or as the sum of their parts, together with the emotions they evoke, will automatically be perceived by customers as an indicator of origin – a trademark.

141.

Mr. Davidson's wig designs are capable of creating a commercial impression distinct from accompanying words or the name of the wig itself. The claimed trade dress is purely aesthetic, evocative, imaginative, and emotional.

142.

The conduct of the Defendants as alleged in the foregoing paragraphs

constitutes a violation of the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370, et seq.

143.

In addition to resulting in lost sales and lost profits, Defendants' acts have irreparably harmed the reputation of Mr. Davidson.

144.

Plaintiff has been damaged by the acts of the Defendants in an amount as yet unknown, but on information and belief, has caused and will continue to cause damages in excess of \$1,000,000.00.

145.

Defendants' deceptive actions set forth above were conducted willfully and maliciously.

146.

As a result of Defendants' deceptive conduct, Plaintiff is entitled to injunctive relief on terms the Court considers reasonable, as well as an award of costs and attorneys' fees.

COUNT VII

LITIGATION EXPENSES

147.

Plaintiff realleges the allegations of Paragraphs 1 through 146 as if fully set forth herein.

148.

Defendants have acted in bad faith, have been stubbornly litigious, and/or have caused the Plaintiff unnecessary trouble and expense. As such, Plaintiffs are entitled to attorney's fees and costs pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiff prays this Honorable Court grant the following:

- A. That summons and process be issued and served upon the Defendants;
- B. That Plaintiff have a trial by jury of all issues so triable;
- C. That Plaintiff recovers all damages against the Defendants in such an amount that a jury determines from the evidence he is entitled to recover under applicable law including, but not limited to:
 - 1. General damages for Mr. Davidson in an amount based on the Defendants' conduct, or such other damages as provided by law and established at trial;

2. Damages for the reasonable value of Mr. Davidson's services and/or property rendered to Defendants in an amount to be determined by the enlightened conscience of a jury;
3. Damages for the benefit conferred upon Defendants as a result of their use, duplication, marketing and sale of Davidson's wigs and wig designs in the consumer marketplace, which amount is to be determined by the enlightened conscience of a jury;
4. Damages for Mr. Davidson's economic loss;
5. Damages against all Defendants for the profits and values of the wigs sold on Maraj's website and at other retailers;
6. Treble damages pursuant to O.C.G.A. § 10-1-399;
7. Treble damages pursuant to Sec. 43 (a) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1051, et seq.
8. Punitive damages against all Defendants in an amount to be determined at trial;
9. Attorneys' fees and costs associated with the bringing and prosecuting of this action pursuant to O.C.G.A. § 13-6-11, O.C.G.A. § 10-1-373 and O.C.G.A. § 10-1-399 ;
10. Injunctive relief on terms the Court considers equitable; and

11. For such other relief as this Court deems just and appropriate.

This 5th day of June, 2014.

THE CHESTNUT FIRM, LLC

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on June 5, 2014, I electronically filed the foregoing *First Amended Complaint* with the clerk of court using the CM/ECF system which will automatically send e-mail notification to counsel of record.

s/ Andrae Reneau

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CERTIFICATE OF COMPLIANCE

This is to further certify that the foregoing document was prepared using 14 pt Times New Roman New font.

s/ Andrae Reneau

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