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FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT CRAIG "EVEL" KNieVEL,

Plaintiff,

v.

Case No.: 8:06-cv-02269-T-27EAJ

KANYE WEST, ROC-A-FELLA
RECORDS, LLC, a New York corporation,
CHRIS MILK, and AOL LLC, a Delaware
corporation,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL
(Injunctive Relief Sought)

Plaintiff, Robert Craig Knievel, a/k/a "Evel Knievel" ("Evel Knievel"), sues
Defendants Kanye West ("West"), Roc-A-Fella Records, LLC ("Roc-A-Fella"), Chris
Milk ("Milk"), and AOL LLC ("AOL"), and alleges:

JURISDICTION AND VENUE

1. This is an action brought by Evel Knievel, pursuant to 15 U.S.C. §§1114,
1116, 1117, and 1125, and also under Section 540.08, Florida Statutes, for preliminary
and permanent injunctive relief, other equitable relief, damages, costs, expert fees, and
attorneys' fees resulting from the trademark infringement, trademark dilution, unfair
competition, and unauthorized use of Evel Knievel's likeness by West, Roc-A-Fella,
AOL, and Milk.

2. This Court has subject matter jurisdiction over this action pursuant to 15

\$350.00
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U.S.C. §1121 and 28 U.S.C. §§1331, 1338(a), and 1367.

3. Defendants are subject to jurisdiction in Florida pursuant to the Florida Long Arm Statute, Section 48.193, Florida Statutes, and jurisdiction in this Court over the person of Defendants comports with the requirements of due process.

4. Defendants have committed intentional tortious acts in Florida within the meaning of Florida's Long Arm Statute by distributing the music video at issue within this judicial district.

5. This Court has jurisdiction over Defendants under Florida's Long Arm Statute, Section 48.193, Florida Statutes, as Defendants have caused injury to Evel Knievel, a citizen of the State of Florida, by distributing the music video at issue within the State of Florida.

6. Venue is proper in this district and in this division under 28 U.S.C. §§1391(b).

PARTIES

7. Plaintiff, Evel Knievel, is a resident of Clearwater, Pinellas County, Florida and, therefore, a resident of this judicial district.

8. Defendant, Kanye West, is, upon information and belief, a resident of Los Angeles, California.

9. Defendant, Roc-A-Fella Records, LLC, is a New York corporation with its principal place of business in New York, New York.

10. Defendant, Chris Milk, is, upon information and belief a resident of West Los Angeles, California.

11. Defendant, AOL LLC, is a Delaware corporation with its principal place of business in Dulles, Virginia. AOL is registered with the Florida Secretary of State, and upon information and belief does, transact business within the State of Florida.

COMMON ALLEGATIONS

12. Evel Knievel is an internationally famous motorcycle daredevil who has been a household name since the late 1960s. Evel Knievel's highly publicized motorcycle jumps, including his attempt to jump over the Snake River Canyon, claim four (4) of the top 20 most-watched Wide World of Sports® events of all time.

13. Evel Knievel is the owner of the federally-registered trademark, "Evel Knievel," specifically covered by U. S. Registration Nos. 2450740, issued on May 15, 2001; 2481629, issued on August 28, 2001; and 2864119, issued on July 20, 2004 (the "Evel Knievel® Trademark").

14. Evel Knievel's likeness in his public performance attire, the world-famous personalized white jumpsuit, with "V"-shaped blue stripe emblazoned with white stars in the middle and red piping on each side on the front of the jacket, a similar stripe running down the side of each pant leg, and oval "EK" belt buckle, is instantly recognized by millions of people in the United States and world-wide.

15. Evel Knievel's famous jumpsuit (the "Evel Knievel Jumpsuit") is inherently distinctive, enjoys secondary meaning, is recognized both in the United States and world-wide as being associated with Evel Knievel. Examples of the Evel Knievel Jumpsuit are featured in the Smithsonian Institution's "Legacies" exhibition and in the Museum of American History in Washington, D.C. Thus, the Evel Knievel Jumpsuit

enjoys trade dress protection. A copy of the cover of Sports Illustrated magazine showing Evel Knievel wearing the Evel Knievel Jumpsuit is attached to this Complaint as Exhibit "A."

16. The Evel Knievel® Trademark, Evel Knievel's likeness, and the Evel Knievel Jumpsuit possess and generate tremendous interest and commercial value. The sales of Evel Knievel toys, bicycles, watches and other products have grossed over \$300,000,000.00 and are currently enjoying new sales, as well as sales of the original toys in the collectables market.

17. Two major motion pictures have featured Evel Knievel and his likeness: "Evel Knievel," starring George Hamilton as Evel Knievel, and "Viva Knievel," the life story of Evel Knievel, starring Evel as himself. Additionally, Viacom Productions produced a made-for-TV movie starring Sam Elliot as Evel Knievel, and Evel starred as himself on an episode of the popular 1980's series, "Bionic Woman."

18. More recently, Evel Knievel has been the subject of numerous one-hour documentaries. These include, "Evel Knievel E! True Hollywood Story," "A&E Biography – Hell On Wheels," and the BBC's documentary "Touch of Evel." The History Channel has also broadcast a 2-hour documentary entitled, "Absolute Evel – The Evel Knievel Story." In 2004, Mel Gibson served as Executive Producer of the made-for-TV movie, "Evel Knievel," starring George Eads as Evel Knievel. Thus, the commercial use of Evel Knievel's likeness in movies, television programs, and in video format is well-established.

19. Evel Knievel's commercial use of his likeness, the Evel Knievel® Trademark, and the Evel Knievel Jumpsuit provide Evel Knievel with significant sources of revenue.

20. In 2006, Kanye West starred in a music video entitled, "Touch the Sky," in which Kanye West stars as daredevil "Evel Kanyevel" (the "Infringing Music Video"). The primary purpose and direct use of the Infringing Music Video was, and is, to advertise and promote Kanye West's song of the same title, and the compact disc upon which that song appears. Thus, the Infringing Music Video is directly used for commercial and advertising purposes and its distribution furthered, and continues to further, such purposes.

21. The Infringing Music Video, lasting nearly five and one half minutes, features Kanye West as a daredevil named "Evel Kanyevel," dressed in the Evel Knievel Jumpsuit, using a "Evel Kanyevel" trailer/dressing room, and riding a vehicle, which is visually indistinguishable from Evel Knievel's world famous skycycle, in an attempted jump over a canyon. On the Infringing Music Video, the attempt by "Evel Kanyevel" to jump the canyon is covered by look-a-like Wide World of Sports® broadcasters.

22. The Infringing Music Video mimics Evel Knievel's world-famous attempt to jump the Snake River Canyon, which was one of the all time most watched events on ABC's Wide World of Sports®, and which earned Evel Knievel the coveted cover story for Sports Illustrated magazine.

23. The Infringing Music Video also contains vulgar and offensive sexual images, language, and conduct involving "Evel Kanyevel" and women apparently trying

to gain his sexual interest. The Infringing Music Video also contains racially-charged language apparently related to the sexual relationship portrayed between "Evel Kanyevel" and Pamela Anderson. The vulgar, sexual, and racially-charged nature of the Infringing Music Video is directly counter to Evel Knievel's long-established public persona, utterly inconsistent with his toy products and appeal to children, and harms the reputation of the Evel Knievel® Trademark, and the Evel Knievel Costume.

24. West, Roc-A-Fella, and Milk all contributed to the creation of the Infringing Music Video. West stars in and is believed to have participated in the development of the Infringing Music Video, Roc-A-Fella is believed to have produced the Infringing Music Video, and Milk is the director of the Infringing Music Video.

25. West, Roc-A-Fella, Milk, AOL, and others currently unknown to Evel Knievel have distributed, and caused to be distributed, the Infringing Music Video through interstate commerce. Roc-A-Fella, through its website, www.rocafella.com, and Milk, through his website at www.chrismilk.com, are still distributing the Infringing Music Video.

26. The distribution of the Infringing Music Video is occurring without the implied or express consent of Evel Knievel, and despite his specific demands to West, Roc-A-Fella, and AOL that such distribution stop.

27. The Infringing Music Video, by its featuring of the lead character with the name "Evel Kanyevel," the repeated use of the name "Evel Kanyevel" in the distinctive gold-colored script writing used by Evel Knievel, and the portrayal of West garbed in the

Evel Knievel Jumpsuit, creates a likelihood of confusion between the Infringing Music Video and products and performances of, authorized by, or affiliated with, Evel Knievel.

28. Use of AOL's own search engine for a video of "Evel Knievel" returned the Infringing Music Video as the second "hit" generated by the search. Thus, a person using AOL's search engine to locate a video about Evel Knievel was directed to the Infringing Music Video.

29. Defendants were and are undoubtedly familiar with Evel Knievel, his likeness, the Evel Knievel® Trademark, and the Evel Knievel Jumpsuit. Thus, Defendants' actions described above must have been, and must continue to be, undertaken knowingly and intentionally without any regard for the legal rights of Evel Knievel, including his federal trademark rights and the rights to control and direct the use of his image and likeness.

30. Upon information and belief, the distribution of the Infringing Music Video by West, Roc-A-Fella, and Milk will continue unless enjoined by this Court. Upon information and belief, AOL stopped distributing the Infringing Music Video in response to Evel Knievel's demand that it do so.

31. Evel Knievel has suffered irreparable injury and has been damaged by the Defendants' conduct described above, and he will suffer continued damages and irreparable injury unless the distribution of the Infringing Video by West, Roc-A-Fella, and Milk is enjoined by this Court.

32. Evel Knievel has no adequate remedy at law to prevent the injuries caused by the continuing unlawful conduct of West, Roc-A-Fella, and Milk.

33. Given the clear and willful violation of Evel Knievel's rights by Defendants, Evel Knievel will likely prevail on the merits of this action.

34. The balance of the hardships and the public interest require that Defendants immediately cease their distribution of the Infringing Video.

35. Evel Knievel has retained the law firm of Fee & Jeffries, P.A. to vindicate his rights against Defendants, and Evel Knievel is obligated to pay his attorneys reasonable attorneys' fees for their services.

COUNT I
(Trademark Infringement in Violation of the Lanham Act)

36. Evel Knievel realleges the allegations contained in paragraphs 1 through 35 above as if fully set forth herein.

37. The use of the name "Evel Kanyevel" in, and in connection with, the Infringing Music Video is likely to cause confusion, mistake and deception with regard to the Evel Knievel® Trademark, infringes upon Evel Knievel's federally protected rights in his Evel Knievel® Trademark, and constitutes trademark infringement under the Lanham Act, 15 U.S.C. §1114.

38. Evel Knievel has suffered, and continues to suffer, damages as a result of the Defendants' infringing activities.

39. Upon information and belief, Defendants' infringement of Evel Knievel's federally-registered trademark rights was undertaken willfully and deliberately and with the intent of causing confusion, mistake, or deception and to reap the benefit of Evel

Knievel's good will, so as to justify the assessment of increased and treble damages against Defendants.

WHEREFORE, Evel Knievel respectfully requests this Court to enter judgment in his favor and against Defendants:

a) Decreeing that Defendants, their agents, licensees, representatives, employees, attorneys, successors and assigns, and all those in active concert or participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined from infringing the Evel Knievel® Trademark, and from using, or aiding, assisting or abetting any other party from using Evel Knievel® Trademark or the name "Evel Kanyevel" in any fashion without the prior written consent of Evel Knievel;

b) Directing such other relief as the Court may deem appropriate to prevent the relevant public from deriving the erroneous impression that the Infringing Music Video or any goods or services provided by or promoted by Defendants, are authorized by, or related in any way to, Evel Knievel;

c) Awarding Evel Knievel:

(i) All of the Defendants' profits, gains and advantages derived from the Infringing Music Video, and that such sums be trebled pursuant to 15 U.S.C. §1117;

(ii) All damages sustained by Evel Knievel by reason of Defendants' acts of trademark infringement, and that such damages be trebled pursuant to 15 U.S.C. §1117; and

(iii) Interest, including prejudgment interest, on the foregoing sums;

f) Awarding to Evel Knievel his attorneys' fees and costs incurred by reason of Defendants' infringement; and

g) Directing such other relief as the Court may deem appropriate.

COUNT II
(Dilution in Violation of the Lanham Act)

40. Evel Knievel realleges the allegations contained in paragraphs 1 through 35 above as if fully set forth herein.

41. The Evel Knievel® Trademark, and the Evel Knievel Jumpsuit each constitute famous marks within the meaning of 15 U.S.C. §1125(c), as they each are widely recognized by the public at large as designating goods and services provided or sponsored by, or affiliated with, Evel Knievel.

42. The Defendants' acts described above constitute dilution by blurring as well as dilution by tarnishment of the Evel Knievel® Trademark, and the Evel Knievel Jumpsuit.

WHEREFORE, Evel Knievel respectfully requests this Court to enter judgment in his favor and against Defendants:

a) Decreeing that Defendants, their agents, licensees, representatives, employees, attorneys, successors and assigns, and all those in active concert or participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined from diluting by blurring or by tarnishment the Evel Knievel® Trademark or the Evel Knievel Jumpsuit, and from using, or aiding, assisting or abetting any other party from using or distributing any media depicting the Evel Knievel®

Trademark, the name "Evel Kanyevel," or the Evel Knievel Jumpsuit without the prior written consent of Evel Knievel;

- b) Awarding to Evel Knievel his costs incurred by reason of Defendants' dilution; and
- c) Directing such other relief as the Court may deem appropriate.

COUNT III
(Trade Dress Infringement in Violation of the Lanham Act)

43. Evel Knievel realleges the allegations contained in paragraphs 1 through 35 above as if fully set forth herein.

44. The Defendants' actions described above constitute trade dress infringement of Evel Knievel's federally-protected trade dress rights in the Evel Knievel Jumpsuit in violation of 15 U.S.C. § 1125(a).

45. Evel Knievel has suffered, and continues to suffer, damages as a result of the Defendants' infringement of the protected Evel Knievel Jumpsuit trade dress.

46. Upon information and belief, Defendants' infringement of Evel Knievel's federally-protected trade dress rights in the Evel Knievel Jumpsuit was undertaken willfully and deliberately and with the intent of causing confusion, mistake, or deception and to reap the benefit of Evel Knievel's good will, so as to justify the assessment of increased and treble damages against Defendants.

WHEREFORE, Evel Knievel respectfully requests this Court to enter judgment in its favor and against Defendants:

a) Decreeing that Defendants, their agents, licensees, representatives, employees, attorneys, successors and assigns, and all those in active concert or participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined from infringing the trade dress of the Evel Knievel Jumpsuit, and from using, or aiding, assisting or abetting any other party from using the trade dress of the Evel Knievel Jumpsuit in any fashion without the prior written consent of Evel Knievel;

b) Directing such other relief as the Court may deem appropriate to prevent the relevant public from deriving the erroneous impression that the Infringing Music Video or any goods or services provided by or promoted by Defendants, are authorized by, or related in any way to, Evel Knievel;

c) Awarding Evel Knievel:

(i) All of the Defendants' profits, gains and advantages derived from the Infringing Music Video, and that such sums be trebled pursuant to 15 U.S.C. §1117;

(ii) All damages sustained by Evel Knievel by reason of Defendants' acts of trade dress infringement, and that such damages be trebled pursuant to 15 U.S.C. §1117; and

(iii) Interest, including prejudgment interest, on the foregoing sums;

f) Awarding to Evel Knievel his attorneys' fees and costs incurred by reason of Defendants' infringement; and

g) Directing such other relief as the Court may deem appropriate.

COUNT IV
(Unauthorized Use of Likeness in Violation of Section 540.08, Florida Statutes)

47. Evel Knievel realleges the allegations contained in paragraphs 1 through 35 above as if fully set forth herein.

48. The Infringing Music Video constitutes the unauthorized public use of Evel Knievel's likeness for commercial and advertising purposes by:

- a) featuring a lead character with the name "Evel Kanyevel,"
- b) the repeated use of the name "Evel Kanyevel" in the distinctive gold-colored script writing used by Evel Knievel;
- c) portraying West garbed in the Evel Knievel Jumpsuit, and,
- d) depicting all of the above in conjunction with the "Evel Kanyevel" character acting out an attempted televised jump over a canyon in a vehicle virtually identical to the "sky cycle" used by Evel Knievel in his attempt to jump the Snake River Canyon.

49. Defendants' actions described above violate Section 540.08, Florida Statutes.

50. Evel Knievel has suffered, and continues to suffer damages, as a result of the Defendants' unauthorized public use of his likeness.

WHEREFORE, Evel Knievel respectfully requests this Court to enter judgment in its favor and against Defendants:

- a) Decreeing that Defendants, their agents, licensees, representatives, employees, attorneys, successors and assigns, and all those in active concert or

participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined from the unauthorized public use of Evel Knievel's likeness for trade, commercial or advertising purposes, and from using, or aiding, assisting or abetting any other party from using Evel Knievel's likeness for trade, commercial or advertising purposes without the prior written consent of Evel Knievel;

b) Awarding Evel Knievel:

(i) A reasonable royalty for the unauthorized public use of Evel Knievel's likeness;

(ii) All damages sustained by Evel Knievel by reason of Defendants' violations of Section 540.08, Florida Statutes; and

(iii) Interest, including prejudgment interest, on the foregoing sums;

and


c) Directing such other relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Evel Knievel hereby demands a trial by jury on all issues so triable.

Dated: December 8, 2006.

Respectfully submitted,



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