

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

JESSICA ROCKWELL,

PLAINTIFF,

Case No. _____

vs.

HONEY DELRAY, INC d/b/a
HONEY DELRAY a/d/b/a HONEY,

DEFENDANT.

PLAINTIFF'S COMPLAINT FOR DAMAGES

Plaintiff JESSICA ROCKWELL ("Plaintiff" or "Model"), by and through undersigned counsel, and for her Complaint against Defendant HONEY DELRAY, INC doing business as HONEY DELRAY also doing business as HONEY ("Defendant" or "Honey"), states as follows:

INTRODUCTION

1. Defendant pirated the image, likeness and/or identity of Plaintiff for self-serving commercial purposes, to wit: to advertise, promote and market Honey's business interests on a social media account owned, operated, hosted, or controlled by Defendant.
2. Defendant did not negotiate or purchase the image.
3. Defendant did not seek or obtain consent or authority to use Plaintiff's image for any purpose.
4. Plaintiff did not agree to Defendant's use of her image, likeness and/or identity.
5. Defendant's conduct is therefore misleading and deceptive by falsely representing that Plaintiff depicted in the misappropriated image is somehow affiliated with Honey; has been contracted to perform at and/or participate in events at Honey; has been hired to

promote, advertise, market or endorse Honey's events and other activities offered at Honey; and/or that the Plaintiff depicted in the advertisement has attended or will attend the event and has participated in or intends to participate in the activities advertised.

6. Defendant's conduct is also injurious to Plaintiff.

7. Defendant circumvented the typical arms-length negotiation process entirely and pirated Plaintiff's image. In doing so, **Defendant has utterly deprived Plaintiff the right and ability to say "no."**

8. Defendant has prevented Plaintiff from engaging in arms-length negotiations regarding the terms and conditions of use of her image, including the term of any release, remuneration per image or use, or the ability to decline the business opportunity entirely. In short, Defendant deprived Plaintiff of the ability to protect her image, brand and reputation.

9. In the end, Defendant gained an economic windfall by using an image of a professional and successful model for its own commercial purposes, luring and enticing patrons worldwide to view the image and visit the nightclub, without having to compensate Plaintiff a single penny for such usage. The Plaintiff, however, sustained injury to her image, brand and marketability by sheer affiliation with Honey.

10. Having operated its business in the entertainment industry, Defendant is well aware of the standard negotiation process over terms of use, conditions of release, licensing issues, and other contractual incidences related to use and exploitation of images for Defendant's commercial benefit.

11. Plaintiff seeks, among other relief, Defendant to appropriately compensate her for

the conversion and piracy of her image, likeness and/or identity.

PARTIES

A. Plaintiff

12. Plaintiff Jessica Rockwell (“Rockwell”) is, and at all times relevant to this action was, a professional model and resident of Los Angeles County, California.

B. Defendant

13. Based on publicly available records, and further upon information and belief, Defendant HONEY DELRAY, INC doing business as HONEY DELRAY also doing business as HONEY, is a Florida corporation organized and existing under the laws of the State of Florida, with a principal place of business at 16 East Atlantic Avenue, Delray Beach, Florida 33444.

14. Defendant HONEY DELRAY, INC operates a nightclub named HONEY DELRAY or HONEY.

15. Based on publicly available records, and further upon information and belief, Defendant holds, and at all times relevant, has held itself out as a nightclub that engages in the business of entertaining its patrons with music, dancing, and alcohol.

16. Based on publicly available records, and further upon information and belief, Defendant owns and/or operates a social media account with the following URL: Facebook <https://www.facebook.com/honeydelray>, through which it advertises its business, and frequently and continuously posts imagery to depict events at Honey.

JURISDICTION AND VENUE

17. This is an action for damages and (a) violation of Fla. Stat. § 540.08; (b) common

law invasion of privacy - misappropriation; (c) common law conversion; (d) unjust enrichment; and in excess of \$50,000.00 exclusive of interest, attorneys' fees and costs.

18. Pursuant to Fla. Stat. § 47.021, venue is proper in Palm Beach County as Defendant operates Honey and does business in Palm Beach County, Florida.

FACTUAL BACKGROUND

A. Standard and Customary Business Practices in the Modeling Industry Require Arms-Length Negotiations over the Terms and Conditions of Usage and Remuneration for any Modeling Images

19. In the modeling industry, reputation is critical. Being vigilant and proactive about protecting one's reputation is therefore of paramount importance.

20. Plaintiff is a professional model who earns a living by promoting her image and likeness to select clients, commercial brands, media entertainment outlets, as well as relying on her reputation and own brand for modeling, acting, hosting, and other opportunities.

21. Plaintiff's career in modeling, acting, and/or private enterprise has value stemming from the goodwill and reputation she has built, all of which is critical to establishing a brand, being selected for jobs and maximizing earnings.

22. Plaintiff has worked to establish herself as reliable, reputable and professional.

23. Plaintiff must necessarily be vigilant in protecting her "brand" from harm, taint, or other diminution.

24. Any improper or unauthorized use of an image, likeness or identity could substantially injure the career and career opportunities of Plaintiff.

25. In the modeling industry, models such as Plaintiff typically do not have a single

employer, but rather work on an independent contractor basis for different agents or entities.

26. Plaintiff is a responsible professional in the ordinary course. Plaintiff seeks to control the use and dissemination of her image and, thus, actively participates in vetting and selecting modeling, acting, brand spokesperson, or hosting engagements.

27. Plaintiff's vetting and selection of a professional engagement involves a multi-tiered assessment, such as, but not limited to the following:

a. determining whether the individual or entity seeking a license and release of a model's image, likeness or identity is reputable, has reputable products or services, and, through affiliation therewith, would either enhance or harm a model's stature or reputation;

b. this reputational information is used in negotiating compensation which typically turns on the work a model is hired to do, the time involved, travel and how her image is going to be used – known as “usage” (among other variables);

c. to protect her reputation and livelihood, Plaintiff and/or her agents carefully and expressly define the terms and conditions of use;

d. the entire negotiated deal is reduced to and memorialized in an integrated, written agreement of limited duration (typically 1-3 years) which defines the parties' relationship.

The terms and conditions of the agreement typically, unless otherwise expressly delineated, bind and are applicable to only the parties to that agreement.

28. Endorsing, promoting, advertising or marketing the “wrong” product, service or corporate venture, or working in or being affiliated with a disreputable industry can

severely impact Plaintiff's career by limiting or foreclosing future modeling or brand endorsement opportunities.

29. Conversely, association with high-end companies, products, or magazines can enhance and amplify Plaintiff's earning potential and career opportunities by making a model more sought after and desirable.

B. Defendant Has Misappropriated Plaintiff's Image, Likeness and/or Identity Without Authority, for Self-Serving Commercial Gain and Without Offering or Paying Compensation to Plaintiff

30. As set forth below, Plaintiff's image, likeness and/or identity has been misappropriated by or at the direction of Defendant. Defendant's conduct creates the false and misleading appearance and impression that the Plaintiff either works for Honey, has appeared and participated or will appear and participate in activities or events at Honey, and/or has agreed and consented to advertise, promote, market or endorse Defendant's business.

31. Plaintiff Rockwell is a model and actress. She is well known for *Angry Video Game Nerd: The Movie* (2014), *Immigrants* (2009), and *A Que No Puedes!* (2007). She has also appeared in films and television shows such as *Sons of Anarchy*, *Entourage*, *Knight Rider*, *Heroes* and has done music videos for Nickelback and Baby Bash. Rockwell was a print model for Dreamgirl, No Fear calendar, Shift Clothing, Hooter's magazine and calendar, Extreme RC Car magazine, and Racer X magazine, among others.

32. In all instances of commercial marketing and promotion of her image, likeness, or identity by third parties, Rockwell negotiated and expressly granted authority for such

use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

33. Rockwell's image, likeness and/or identity is depicted in an advertisement enclosed as **Exhibit A** to the Complaint, which has been used by Defendant to create the false perception that Rockwell has consented or agreed to promote, advertise, market and/or endorse Honey, or is an employee working at Honey.

34. As set forth in **Exhibit A**, on October 22, 2019, Defendant first used Rockwell's image (model posed right in red wig) on its Facebook page to promote and market Honey's "Sexy Superheroes vs. Horror Villains Official Halloween Party" event. Rockwell's image was also used to advertise "music by Bonkers Aron," "complementary drinks 9pm to 11 pm & drink specials until close," "\$5 tickets while they last, so act fast!" and honeyheroesvsvillains.eventbrite.com. The image remained on Defendant's Facebook page for four (4) years and thus was used by Defendant for those four (4) years.

35. Rockwell's image was used without her consent and engineered to give the impression that Rockwell was either working as an employee at Honey and/or that she endorses Honey.

36. Rockwell has never been employed by Defendant or contracted with Defendant to participate in events at Honey.

37. Rockwell has never been hired by Defendant or contracted with Defendant to advertise, promote, market or endorse Honey.

38. Defendant never sought permission or authority to use Rockwell's image, likeness and/or identity to advertise, promote, market or endorse Honey.

39. Rockwell never gave permission, or assigned, licensed or otherwise consented to Defendant using her image, likeness or identity to advertise, promote, market or endorse Honey.

40. Defendant neither offered nor paid any remuneration to Rockwell for the unauthorized use of her image, likeness and/or identity.

41. Upon information and belief, Defendant's improper use of Rockwell's image, likeness and/or identity described herein permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Rockwell's image, likeness and identity in their market activities and business. In doing so, Defendant has further damaged Rockwell.

Plaintiff's Causes of Action

COUNT I - VIOLATION OF FLA. STAT. § 540.08 – UNAUTHORIZED PUBLICATION OF IMAGE, LIKENESS AND/OR IDENTITY

42. Plaintiff has a statutory right of publicity under Section 540.08, Florida Statutes.

43. Section 540.08, Florida Statutes, provides that: “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.”

44. Despite the clear language of Section 540.08, Defendant published Plaintiff's image, likeness and/or identity on its social media outlet, among others, in order to promote, advertise and market Honey.

45. Defendant never sought permission nor authority to use Plaintiff's image, likeness and/or identity to advertise, promote, market or endorse Honey.

46. Plaintiff has never consented to, permitted, assigned, licensed, or otherwise agreed to Defendant's use of her image, likeness and/or identity to advertise, promote, market or endorse Honey.

47. Defendant intentionally or, at a minimum, recklessly published, printed, displayed, or otherwise publicly disseminated or used Plaintiff's image, likeness and/or identity without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this Complaint.

48. Defendant had actual or constructive knowledge of the wrongfulness of its conduct and acted with intent or with reckless disregard to deprive Plaintiff of a property interest during the entire time period in which the unauthorized use took place.

49. At a minimum, Defendant's conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Plaintiff's rights.

50. Alternatively, Defendant acted negligently towards Plaintiff in using and disseminating, without authority, Plaintiff's image, likenesses and/or identity on Defendant's social media outlet in order to promote, advertise and market Honey.

51. Defendant has also damaged Plaintiff as a direct and proximate result of its unauthorized use of Plaintiff's image, likenesses and/or identity without compensating Plaintiff.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant for all remedies available under Fla. Stat. §540.08, including but not limited to, both actual loss and damages, costs, interest, royalties, and restitution of Defendant's unlawful proceeds, including Defendant's profits and other relief deemed just and proper by this Court.

COUNT II - COMMON LAW INVASION OF PRIVACY – MISAPPROPRIATION

52. Plaintiff has a common law right to privacy.

53. Defendant may not publish, print, display or publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of Plaintiff without express written or oral consent to such use.

54. Defendant published, printed, displayed and/or publicly used Plaintiff's image, likeness and/or identity on its social media outlet, among others, for purposes of trade and/or commercial advertising including, but not limited to, promoting, advertising and marketing Honey.

55. Defendant took these actions without Plaintiff's permission, consent or authority. In fact, Defendant never sought permission nor authority to use Plaintiff's image, likeness and/or identity to advertise, promote, market or endorse Honey.

56. Plaintiff has never consented to, permitted, assigned, licensed, or otherwise agreed to Defendant's use of her image, likeness and/or identity to advertise, promote, market or endorse Honey.

57. Defendant intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Plaintiff's image, likeness and/or identity without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this Complaint.

58. Defendant had actual or constructive knowledge of the wrongfulness of its conduct and acted with intent or reckless disregard to deprive Plaintiff of a property interest during the entire time period in which the unauthorized use took place.

59. At a minimum, Defendant's conduct was so reckless or wanton in care that it constituted a conscious disregard of or indifference to Plaintiff's rights.

60. Alternatively, Defendant acted negligently towards Plaintiff in using and disseminating, without authority, Plaintiff's image, likeness, and/or identity on Defendant's social media outlet in order to promote, advertise and market Honey.

61. Defendant has also damaged Plaintiff as a direct and proximate result of its unauthorized use of Plaintiff's image, likeness and/or identity without compensating Plaintiff.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendant's unlawful proceeds, including Defendant's profits and other relief deemed just and proper by this Court.

COUNT III - CONVERSION

62. Plaintiff is, and at relevant times was, the exclusive owner of all rights, title, and interest to her image, likeness and/or identity unlawfully converted by Defendant for its own commercial benefit.

63. Plaintiff has, and for all times relevant herein had, a property interest in her image, likeness and/or identity unlawfully converted by Defendant for its own commercial benefit.

64. By its acts and conduct alleged above, Defendant has converted Plaintiff's property rights, including without limitation, Plaintiff's image, likenesses and/or identity for Defendant's use and wrongful disposition for financial gain.

65. Plaintiff is informed and believes, and on such information, alleges that Defendant has continued to exercise ownership illegally and unlawfully of said property, through it rightfully belongs to Plaintiff.

66. Plaintiff is informed and believes, and on such information, alleges that Defendant has refused to return Plaintiff's property to them or pay for the deprivation of that property.

67. As a result, Plaintiff has suffered compensatory and exemplary damages to be determined according to proof at trial; but Plaintiff alleges that the same are within the jurisdiction of the Court.

68. Further, Plaintiff is informed and believes and thereon alleges that in engaging in the conduct described above, Defendant acted with oppression and/or malice. Defendant's conduct has been despicable and taken in conscious disregard of Plaintiff's rights.

WHEREFORE, Plaintiff respectfully requests this Court to issue a judgment against Defendant and for all remedies available under the common law claim for conversion, including but not limited to actual damages, costs, interest, and restitution of Defendant's unlawful proceeds, including Defendant's profits and other relief deemed just and proper by this Court.

COUNT IV - UNJUST ENRICHMENT

69. Plaintiff has conferred a benefit upon Defendant by virtue of Defendant's usage of Plaintiff's image, likeness and/or identity without compensation.

70. Defendant was aware that Plaintiff's image, likeness and/or identity were valuable.

71. Defendant was aware of the resulting benefit from the usage of Plaintiff's image, likeness and/or identity.

72. Defendant has retained profits and other benefits conferred upon it by using Plaintiff's image, likeness and/or identity to promote and advertise Honey.

73. It would be inequitable for Defendant to retain the benefits conferred upon it by using Plaintiff's image, likeness and/or identity without paying fair value for the image.

WHEREFORE, Plaintiff respectfully requests that the Court issue a judgment against Defendant for damages, including but not limited to actual damages, costs, interest, imposition of a constructive trust, restitution of unlawful proceeds, including Defendant's gross profits and such other and further relief in law or equity as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court grant Judgment to Plaintiff, and against Defendant, in an amount to be determined at trial and as follows:

1. For damages as provided in Fla. Stat. §540.08;
2. For general damages according to proof;
3. For special damages according to proof;
4. For consequential damages according to proof;
5. For reasonable attorneys' fees and costs as permitted by law;
6. For prejudgment interest and royalties at the legal rate;
7. For such other relief as this Court deems just and proper; and
8. Plaintiff requests a jury trial.

Dated: October 13, 2023

Respectfully Submitted,

THE CASAS LAW FIRM, P.C.

By: /s/ Ludmila Khomiak
Ludmila Khomiak, Esq.
mila@talentrights.law
80 S. W. 8th Street, Suite 2000
Miami, FL 33130
Phone: (786) 671-3244
Fax: (786) 671-3243
Attorney for Plaintiff

NOT A CERTIFIED COPY

EXHIBIT A

NOT A CERTIFIED COPY



Honey

October 22, 20 9 · 🌐



This Thursday, Heroes & Villains Collide ⚡ \$5 tickets while they last, so act fast! honeyuheroesvsvillains.eventbrite.com

👍❤️ 32

2

Like

Comment

Share



Write a comment...

