

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DONNA DOUGLAS,

Plaintiff

v.

MATTEL, INC.

Defendant

Civil Action No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Donna Douglas, for her complaint against Defendant, Mattel, Inc. (“Mattel”), alleges as follows:

NATURE OF THE CASE

1. Plaintiff, Donna Douglas, is the actress who played Elly May Clampett in all 274 episodes of the iconic television series *The Beverly Hillbillies*. Mattel has recently introduced an “Elly May” Barbie doll, and is engaging in the unauthorized use of Ms. Douglas’s name, likeness and image, as well as the distinctive attributes of her portrayal of the Elly May character, to promote and sell the “Elly May” Barbie. Mattel’s unauthorized conduct constitutes false endorsement under the federal Lanham Act, violations of Plaintiff’s Louisiana right of publicity, and misappropriation and unjust enrichment under Louisiana law.

PARTIES

2. Plaintiff, Donna Douglas, resides in Zachary, Louisiana.
3. Defendant, Mattel, Inc., is a Delaware corporation with its principal place of business at 333 Continental Boulevard, El Segundo, California.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction over the false endorsement claim in this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, because the complaint states claims for violation of the federal Lanham Act. The Court has jurisdiction over the related State right of publicity, misappropriation and unjust enrichment claims pursuant 28 U.S.C. § 1367. The Court also has diversity jurisdiction over Plaintiff's State law claims pursuant to 28 U.S.C. § 1332.
5. Venue is proper within this district pursuant to 28 U.S.C. § 1391 because Ms. Douglas resides here.

FACTS

6. Ms. Douglas is the actor who played Elly May Clampett in all 274 episodes of *The Beverly Hillbillies*. The show, which was broadcast for nine seasons on CBS from 1962 through 1971, ranked among the most watched on television during its initial run, and has been broadcast in syndication around the world ever since.
7. Ms. Douglas is recognized throughout the world for her portrayal of Elly May Clampett, and continues to make public appearances in association with the role 40 years after the show's final season.

8. In approximately December, 2010, Defendant, Mattel, introduced and began to promote an “Elly May” Barbie doll designed to resemble the Elly May Clampett character as portrayed by Ms. Douglas. The packaging for the “Elly May” doll features a photo of Ms. Douglas portraying the character. (A photo of the “Elly May” Barbie is attached hereto as Exhibit A). In promotional materials, Mattel describes the doll’s association with Ms. Douglas’s portrayal of Elly May Clampett: “[T]he Elly May Barbie doll portrayed by Donna Douglas in the TV show captures the essence of the classic 60’s TV character and show, The Beverly Hillbillies.” (A copy of a promotional description of the doll from Amazon.com is attached hereto as Exhibit B).
9. Despite the fact the doll is designed to resemble Elly May as portrayed by Ms. Douglas and marketed to capitalize on the close association in the public mind between Ms. Douglas and the Elly May character, Ms. Douglas never endorsed the doll and never gave Mattel her permission to use her name, image, or likeness in association with the promotion of the doll.

FIRST CAUSE OF ACTION
(Lanham Act False Endorsement)

10. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 9 as if fully set forth herein.
11. Mattel’s unauthorized use of Ms. Douglas’s name, image, likeness, and distinctive attributes in the portrayal of the Elly May character creates the false public

impression that Ms. Douglas has endorsed the “Elly May” Barbie or otherwise approved the use of her name, image, likeness and attributes in association with the marketing of the product.

12. Mattel’s unauthorized use of Ms. Douglas’s name, likeness, image and attributes constitutes false endorsement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
13. Through Mattel’s violation of Section 43(a) of the Lanham Act, Ms. Douglas has been damaged in an amount to be determined at trial, but presently estimated to be not less than \$75,000.00.

SECTION CAUSE OF ACTION
(Louisiana Right of Publicity)

14. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 13 as if fully set forth herein.
15. By its unauthorized commercial use of Ms. Douglas’s name, photograph and distinctive attributes in the portrayal of the Elly May character, Mattel has violated Ms. Douglas’s Louisiana right of publicity.
16. Through Mattel’s violation of Ms. Douglas’s right of publicity, Ms. Douglas has been damaged in an amount to be determined at trial, but presently estimated to be not less than \$75,000.00.

THIRD CAUSE OF ACTION
(Louisiana Misappropriation)

17. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 16 as if fully set forth herein.
18. By its unauthorized commercial use of Ms. Douglas's name, likeness, image and distinctive attributes in the portrayal of the Elly May character, Mattel has misappropriated Ms. Douglas's identity for its commercial advantage of promoting and selling the "Elly May" Barbie.
19. Through Mattel's misappropriation of Ms. Douglas's identity, Ms. Douglas has been damaged in an amount to be determined at trial, but presently estimated to be not less than \$75,000.00.

FOURTH CAUSE OF ACTION
(Louisiana Unjust Enrichment)

20. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 19 as if fully set forth herein.
21. By its unauthorized commercial use of Ms. Douglas's name, likeness, image and distinctive attributes in the portrayal of the Elly May character, Mattel has been enriched at the direct expense of Ms. Douglas, without any justification for its conduct.
22. By its conduct, Matell has been unjustly enriched in an amount to be determined at trial, but presently estimated to be not less than \$75,000.00.

WHEREFORE, Plaintiff, Donna Douglas, seeks an order of this Court:

- 1) Preliminary and permanently enjoining Mattel from the use of Plaintiff's name, likeness, image and distinctive attributes in the portrayal of the Elly May character.
- 2) Awarding Plaintiff damages in an amount to be determined at trial.
- 3) Awarding Plaintiff her reasonable attorneys' fees and costs incurred in prosecuting this action.
- 4) Awarding Plaintiff such other relief as to the Court appears just and proper.

A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE

Dated: Baton Rouge, Louisiana
May 5, 2011

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2011, a copy of the foregoing Complaint was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Mattel, Inc. by operation of the Court's electronic filing system.

s/Philip J. Shaheen
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