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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Richard "Rick" Paul Astley

Plaintiff,

vs.

Matthew Hauri PKA Yung Gravy; Nick Seeley
PKA Popnick; Dillon Francis; David Wilson
PKA dwilly; Republic Records;

Defendants.

Case Number:

**COMPLAINT FOR VIOLATION OF
RIGHT OF PUBLICITY; VIOLATION
OF THE LANHAM ACT (FALSE
DESIGNATION OF ORIGIN; FALSE
ENDORSEMENT); UNFAIR
COMPETITION; VIOLATION OF
STATUTE; AND DAMAGES**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. “A voice is as distinctive and personal as a face. The human voice is one of the most palpable ways identity is manifested. We are all aware that a friend is at once known by a few words on the phone. At a philosophical level it has been observed that with the sound of a voice, ‘the other stands before me.’ D. Ihde, *Listening and Voice* 77 (1976). A fortiori, these observations hold true of singing, especially singing by a singer of renown. The singer manifests themselves in the song. To impersonate their voice is to pirate their identity. See W. Keeton, D. Dobbs, R. Keeton, D. Owen, *Prosser & Keeton on Torts* 852 (5th ed. 1984).” *Midler v. Ford Motor Co.*, 849 F.2d 460, 463 (1988). The *Bette Midler* case, quoted above, has been the law in California now for more than 30 years. It is well known in the music industry and forbids someone from imitating a singer’s voice from an original recording in a new recording absent specific permission to do so. This is true even where, like in the *Bette Midler* case, the impersonators obtained a license to use the musical composition to the song the singer’s voice is found in.¹ As the *Bette Midler* court explained, “Copyright protects ‘original works of authorship fixed in any tangible medium of expression.’ 17 U.S.C. § 102(a). A voice is not copyrightable. The sounds are not ‘fixed.’ What is put forward as protectible here is more personal than any work of authorship.” *Id* at 462.

2. As mentioned, this is no secret, everyone in the music industry knows this, and, despite this, as described at length in this Complaint, Defendants flagrantly impersonated Plaintiff Rick Astley’s voice (“Plaintiff” or “Mr. Astley”) and falsely stated he endorsed them with no request, forewarning, or remorse, causing significant and continuing damage to Plaintiff. In so doing, Defendants have literally stolen Plaintiff’s voice causing immense damage.

¹ Like in *Midler*, upon information and belief, Defendants did obtain a license to the underlying musical composition of “Never Gonna Give You Up”. Mr. Astley is not a writer of “Never Gonna Give You Up” and neither therefore gave permission to use the underlying musical composition nor received any compensation for the license granted. Mr. Astley owns in part the sound recording of “Never Gonna Give You Up” and neither he nor his co-owners gave permission to Defendants for the use of it. Most importantly, Mr. Astley never gave permission to Defendants to copy, imitate or recreate his voice.

3. As such, Mr. Astley brings this Complaint to seek relief from Defendant's unauthorized, intentional, theft of his voice for commercial purposes.

PARTIES & JURISDICTION

4. Plaintiff Rick Astley is a musical artist primarily admired for his instantly recognizable voice known the world over. He was born and continues to reside in England.

5. Defendant, Matthew Hauri, professionally known as Yung Gravy (“Gravy”) is a hip-hop artist who commonly uses samples (the digital lifting of the actual sounds from a prior sound recording) in his work. He tours across the United States including in Los Angeles, most recently on December 4, 2022 at the Hollywood Palladium and often records in Los Angeles. Gravy’s newest single is called “Betty (Get Money)”. This court has general personal jurisdiction over Gravy due to the continuous, repeated, and ongoing business he conducts in Los Angeles. This Court has specific personal jurisdiction over Gravy as his suit related conduct arises out of and relates to actions which took place in Los Angeles, since “Betty (Get Money),” and the unauthorized use of Mr. Astley’s voice in “Betty (Get Money)”, was recorded in Los Angeles, California.

6. Defendant Nick Seeley professionally known as Popnick (“Nick”) is a music producer who has worked with Gravy on multiple recordings, including the song “Betty (Get Money)”. Nick resides in Los Angeles, California and primarily works from his recording studio in Los Angeles. As Nick is a resident of Los Angeles, this court has general personal jurisdiction over him. Furthermore, this Court has specific jurisdiction over Nick as his suit related conduct arises out of and relates to actions, the recording of “Betty (Get Money),” and the unauthorized use of Mr. Astley’s voice in “Betty (Get Money),” which took place in Los Angeles as mentioned above.

7. Defendant Dillon Francis professionally known as DJ Hanzel (“Dillon”) is a music producer who worked with Gravy on the song “Betty (Get Money)”. Francis resides in Los Angeles, California. As Francis is a resident of Los Angeles, this court has general personal jurisdiction over him. Furthermore, this Court has specific jurisdiction over Dillon as his suit

1 related conduct, the recording of “Betty (Get Money),” and the unauthorized use of Mr. Astley’s
2 voice in “Betty (Get Money),” arises out of and relates to actions which took place in Los Angeles
3 as mentioned above.

4 8. Defendant David Wilson professionally known as dwilly (“Wilson”) is a music
5 producer who worked with Gravy on the song “Betty (Get Money)”. Wilson resides in Los
6 Angeles, California. As Wilson is a resident of Los Angeles, this court has general personal
7 jurisdiction over him. Furthermore, this Court has specific jurisdiction over Wilson, as his suit
8 related conduct, the recording of “Betty (Get Money),” and the unauthorized use of Mr. Astley’s
9 voice in “Betty (Get Money)” arises out of and relates to actions which took place in Los Angeles
10 as mentioned above.

11 9. Defendant Republic Records (“Republic”) is a prominent record label and
12 Gravy’s record label who released the song “Betty (Get Money)”. Republic has an office located
13 at 2220 Colorado Avenue, Santa Monica, CA 90404 and conducts ongoing business in this
14 District. This court has general personal jurisdiction over Republic due to the continuous,
15 repeated and ongoing business it conducts in Los Angeles. This court has specific personal
16 jurisdiction over Republic as its suit related conduct, the recording of “Betty (Get Money),” and
17 the unauthorized use of Mr. Astley’s voice in “Betty (Get Money),” arises out of and relates to
18 actions which took place in Los Angeles as mentioned above, and because Republic entered into
19 agreements with the other Defendants knowing that the recording would be performed in Los
20 Angeles, California. Furthermore, “Betty (Get Money)” was then distributed by Republic, and
21 marketed and performed throughout California, and to California citizens, with all Defendants
22 receiving royalties and other compensation for such performance, distribution, and sales of
23 “Betty (Get Money).”
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FACTS COMMON TO ALL CLAIMS

10. Mr. Astley's storied musical career began in the mid 1980's. In 1985 Mr. Astley was the drummer for the soul band, FBI. When FBI's singer left the band, Mr. Astley became the groups new lead singer and, due to his signature voice, was quickly recruited by record producer Pete Waterman to pursue a career as a solo artist.

11. Over the course of his career, Mr. Astley has released multiple multi-platinum albums and has had numerous chart-topping songs.

12. Mr. Astley's most well-known song, "Never Gonna Give You Up" was released in August 1987 and became a worldwide number one hit. To this day the song remains embedded in the cultural zeitgeist.

13. Because of this, Mr. Astley had been looking to collaborate with another artist and/or Producer to create something new with his voice from "Never Gonna Give You Up" that he would be intimately involved in and, for which he would have creative control over in order to protect his brand, name, image, and likeness as well as the artistic integrity of his premier hit record. However, due to Defendants' actions described herein, they have obliterated the opportunity for Mr. Astley to successfully pursue such an endeavor.

14. Mr. Astley is frequently approached by brands wanting to use his name, image, and likeness in connection with their products and producers and artists wanting to feature him and his voice on their own songs.

15. Mr. Astley is extremely protective over his name, image, and likeness and highly selective over what he chooses to endorse and who he affiliates with.

16. In an effort to capitalize off of the immense popularity and goodwill of Mr. Astley, Defendants recorded and released the song "Betty (Get Money)" which interpolates "Never Gonna Give You Up" and conspired to include a deliberate and nearly indistinguishable imitation of Mr. Astley's voice throughout the song. This was a deliberate theft of Mr. Astley's voice because, admittedly, Defendants were unable to obtain a license for a sample (a digital copy of the actual sound of Mr. Astley's voice) from the sound recording of "Never Gonna Give You

Up”. All of the Defendants conspired to do so in the recording of “Betty (Get Money),” as all were involved in the recording and imitation of Mr. Astley’s voice, and were publicly open about what they were doing. There is also no way that either the individual Defendants or Defendant Republic Records would not know what was being done, and would certainly be aware of the fact that it was illegal to do so in California given the notoriety of *Midler* in the music business for the last 30 years, and the fact that no permission was received to imitate Astley’s voice.

17. Indeed, on or around May 18, 2022, Defendant Gravy wrote that he had “literally been trying to clear the sample [of “Never Gonna Give You Up”] for years lol.” However, he knew the sample was not cleared, and Mr. Astley would not have cleared it.

18. Despite knowing that they had no legal basis to deliberately imitate Mr. Astley’s distinctive voice or digitally copy his voice from the sound recording of “Never Gonna Give You Up”, Defendants, as Gravy put it to Billboard, “basically remade” “Never Gonna Give You Up” to use like a sample, “because it makes it easier legally.”

19. Defendant Nick was tasked with imitating Mr. Astley’s signature voice for use in “Betty (Get Money)”. In his Los Angeles recording studio, Nick recorded this imitation, “from the ground up to sound identical to the original recording.” In a video posted on Instagram, Nick stated that “I needed someone who sounded like Rick Astley. Truth be told, I auditioned people for two weeks before I just decided to do it myself.” In the same video Nick switches between the actual recording of “Never Gonna Give You Up” and his recreation and asks, “can you tell the difference?”

20. The public could not tell the difference. The imitation of Mr. Astley’s voice was so successful the public believed it was actually Mr. Astley singing and/or a direct sample (digital lifting of the actual sounds of Mr. Astley’s voice from the sound recording) of “Never Gonna Give You Up”.

21. The Wikipedia page for “Betty (Get Money)” states that the song uses a “prominent sample of Rick Astley’s “Never Gonna Give You Up.”

22. An article published by Billboard states that “Betty (Get Money)” “samples” “Never Gonna Give You Up”.

23. Gravy’s biography on AllMusic.com states that “Yung Gravy offered up the Rick Astley-sampling ‘Betty (Get Money),’ which became his first Hot 100 hit, landing at number 30.”

24. SongFacts.com states that “Betty (Get Money)” “samples” “Never Gonna Give You Up”.

25. WhoSampled.com states a “sample” of “Never Gonna Give You Up” appears in “Betty (Get Money)”.

26. Countless other music media outlets and individuals have stated and believe that it is indeed Mr. Astley’s voice on “Betty (Get Money)”.

27. This is not surprising that the public would falsely believe this as Gravy fraudulently and publicly stated that he has spoken with Mr. Astley and that Mr. Astley, “fucks with the song,” “digs the song,” “approved it” and is a “fan,” all creating further consumer confusion. These statements were all false.

28. To be clear, again, as the “*Bette Midler*” court found, more than 30 years ago, in one of the most famous cases in the music business, a license to use the original underlying musical composition does not authorize the stealing of the artist’s voice in the original recording. To use the artist’s voice, the creators of a new recording need a license to copy the actual sounds of the voice from the sound recording, a so-called “sample” license of the actual sounds of the voice from the sound recording. As stated, Defendants absolutely knew that to be the case, as Gravy said he tried but failed for years to obtain a sound recording sample license. So, instead, they resorted to theft of Mr. Astley’s voice without a license and without agreement.

29. “Betty (Get Money)” is the lead single for Gravy’s third studio album “Marvelous”.

30. Since the release of “Betty (Get Money)” by Republic Records on June 10, 2022 the song has been certified Gold in the United States, Canada and Australia.

1 **CAUSES OF ACTION**

2 **Violation of Right of Publicity**

3 31. Plaintiff repeats and re-alleges the foregoing paragraphs as if fully set forth herein.

4 32. By reason of Mr. Astley's lifetime of efforts to successfully build worldwide
5 recognition as an artist, he has developed a proprietary interest in his public personality, and, in
6 particular, his unique, instantly recognizable voice, the most significant attribute of his public
7 identity.

8 33. Before the acts of Defendants complained herein, Mr. Astley enjoyed his common
9 law right of publicity to exploit his proprietary interest in his voice as he saw fit.

10 34. Defendants' imitation of Mr. Astley's voice in "Betty (Get Money)" is an intentional
11 and deliberate imitation of Mr. Astley's internationally recognized and distinctive sound and
12 identity, used for Defendants to profit, and appropriates Mr. Astley's property right in his
13 distinctive voice in violation of his right of publicity.

14 35. By reason of defendants' theft of Mr. Astley's right of publicity, Defendants, and
15 each of them, have realized substantial profits and other benefits which rightfully belong to Mr.
16 Astley.

17 36. Defendants, knowing that they did not have an agreement to use the actual sounds
18 of Mr. Astley's voice from the sound recording of "Never Gonna Give You Up," conspired
19 among themselves to intentionally steal Mr. Astley's voice from "Never Gonna Give You Up"
20 by creating a near indistinguishable imitation. While such a feat obviously takes an immense
21 amount of talent and skill, it also blatantly spits in the face of Mr. Astley's rights. Each of the
22 Defendants conspired to do so and each are jointly and severally liable for all damages.

23 37. As a result, Mr. Astley has been damaged in an amount to be determined but believed
24 to be in the millions of dollars. Defendants should also be required to disgorge all profits derived
25 from "Betty (Get Money)" as they all have been unjustly enriched.

38. Defendants, and each of them, have acted with oppression, fraud, and malice, in that they have sought to unjustly enrich themselves by intentionally deceiving the public and trampling on Mr. Astley's rights.

39. Accordingly, Mr. Astley is entitled to an award of exemplary and punitive damages.

False Endorsement; False Designation of Origin – Violation of § 43(1) of the Lanham Act, 15 U.S.C. § 1125

40. Plaintiff repeats and re-alleges the foregoing paragraphs as if fully set forth herein.

41. This claim arises under § 43(a) of the Lanham Act entitled "False Designation of Origin and False Descriptions Forbidden," 15 U.S.C. § 1125(a). Defendants' actions constitute false designation of origin and false representation in commerce.

42. "Betty (Get Money)" has been heard millions of times.

43. The music video for "Betty (Get Money)" has been viewed millions of times. As of January 2023, the music video for the song has over 32 million views on Gravy's official YouTube page.

44. When a performing artist of Mr. Astley's stature, who enjoys world-wide public recognition of his immediately identifiable and unique voice, appears, is heard, or is closely imitated, his real or apparent presence is inevitably going to be interpreted by the general public as an endorsement of whatever or whomever is utilizing his voice. Defendants' utilization of a deliberate and eerily indistinguishable imitation of Mr. Astley's voice on "Betty (Get Money)" without his approval violates § 43(a) by creating an overwhelming likelihood of consumer confusion over whether Mr. Astley indeed endorsed or is otherwise associated with Defendants and their song "Betty (Get Money)".

45. Defendants did not solicit nor were Defendants granted permission by Mr. Astley to imitate his voice, but have falsely suggested to the public that Mr. Astley was endorsing Defendants and "Betty (Get Money)".

46. Defendants have made no attempt to dispel the deliberately false implication of Mr. Astley's endorsement or participation. To the contrary, with no basis in fact, Gravy publicly has

1 stated that he has spoken with Mr. Astley and that Mr. Astley, “fucks with the song,” “digs the
2 song,” “approved it” and is a “fan” all creating further consumer confusion. These statements
3 were false.

4 47. By reason of Defendants’ false representation that Mr. Astley participated, was
5 involved with and/or endorsed Defendants and “Betty (Get Money)”, Defendants, through their
6 conspiracy outlined above, have created consumer confusion in violation of § 43(a) of the
7 Lanham Act and in intentional disregard of Mr. Astley’s rights.

8 48. Defendants have acted with willfulness, fraud and malice, and Mr. Astley is entitled
9 to an award of treble damages, in an amount to be proven at trial, and his reasonable attorneys’
10 fees in bringing this action.

11 **Violation of California Civil Code § 3344**

12 49. Plaintiff repeats and re-alleges the foregoing paragraphs as if fully set forth herein.

13 50. Defendants, on multiple occasions, have falsely asserted that Mr. Astley endorses
14 Gravy and “Betty (Get Money)”.

15 51. In doing so, Defendants have deliberately and without permission used Mr. Astley’s
16 identity for purposes of promoting Defendants and drawing listeners to “Betty (Get Money)”.

17 52. The illegal appropriation by Defendants of Mr. Astley’s property interest in his
18 identity is a violation of California Civil Code § 3344.

19 53. As a result, Mr. Astley has been damaged in an amount to be determined but believed
20 to be in the millions of dollars. Defendants should also be required to disgorge all profits derived
21 from “Betty (Get Money)” as they have been unjustly enriched.

22 54. Defendants have acted with oppression, fraud and malice in doing so and Mr. Astley
23 is entitled to an award of exemplary and punitive damages as well as his attorneys’ fees and costs
24 in bringing this action.

Unfair Competition – California Common Law & the California Unfair Practices Act – California Business and Professions Code § 1700

55. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

56. Defendants have misappropriated valuable property and property rights belonging exclusively to Mr. Astley, causing permanent and significant damage. Defendants' imitation of Mr. Astley's unique and instantly recognizable voice is intended to have the public believe that it is Mr. Astley's actual performance on "Betty (Get Money)", invariably creating public confusion. Defendants' conduct constitutes unfair competition as defined in California Business and Professions Code § 17200 because such conduct directly competes with Mr. Astley's right to perform or otherwise participate in and profit from the use of and association with his voice, resulting in significant damages in an amount to be proven at trial.

57. Defendants have also realized substantial profits and other benefits from such unfair competition, which rightfully belong to Mr. Astley.

58. Defendants have acted with oppression, fraud and malice, as set forth above, in that they have sought to enrich themselves unjustly and at the expense of Mr. Astley. Mr. Astley is therefore entitled to an award of exemplary and punitive damages as well as his attorneys' fees in bringing this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgement and relief, as follows:

1. That Defendants be ordered to account and pay over to Mr. Astley all the gain, profits and advantages derived or realized from their violation of Mr. Astley's rights set forth herein;

2. That Defendants, and each of them, be ordered to pay to Mr. Astley damages in an amount to be proven at trial but believed to be in the millions of dollars sustained by Mr. Astley in consequence of Defendants' wrongful acts, together with punitive and exemplary damages in an amount to be determined at trial;

3. That Mr. Astley receive his costs of suit herein, including reasonable attorneys' fees;

and

4. That the court grant such other and further relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all causes of action.

Dated: January 26, 2023

Respectfully submitted,

By: _____

Richard S. Busch
Attorney for Plaintiff