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11 LIVE NATION MERCHANDISE, INC.,
12 BRAVADO INTERNATIONAL GROUP
13 MERCHANDISING SERVICES, INC.

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 F.E.A. MERCHANDISING, INC.; LIVE
17 NATION MERCHANDISE, INC.;
18 BRAVADO INTERNATIONAL
19 GROUP MERCHANDISING
20 SERVICES, INC.,
21 Plaintiffs,
22 vs.
23 WENNER MEDIA, LLC; HYBRID
24 APPAREL,
25 Defendants.

26 CASE NO.
27 **CV 09-06474** *WB (PRZ)*
28 **COMPLAINT FOR LANHAM ACT
VIOLATIONS, VIOLATION OF
COMMON LAW AND
STATUTORY RIGHT OF
PUBLICITY, UNFAIR
COMPETITION, DECLARATORY
RELIEF, AND ACCOUNTING
DEMAND FOR JURY TRIAL**

29 For their Complaint, plaintiffs F.E.A. MERCHANDISING, INC., LIVE
30 NATION MERCHANDISE, INC., and BRAVADO INTERNATIONAL GROUP
31 MERCHANDISING SERVICES, INC. ("Plaintiffs") allege:

32 **JURISDICTION AND VENUE**

33 1. The Court has subject matter jurisdiction over Plaintiffs' claims
34 pursuant to 28 U.S.C. § 1331 in that Plaintiffs seek relief against Defendants under
35 the Lanham Act, 15 U.S.C. § 1114 *et seq.*, and the Declaratory Judgment Act, 28
36 U.S.C. § 2201, and the Court has supplemental jurisdiction under 28 U.S.C. § 1367
37 over any claims arising under state law because those claims are so related to the
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1 claims in the action within the Court's original jurisdiction that they form part of the
2 same case or controversy under Article III of the United States Constitution.

3 2. The Court has personal jurisdiction over Defendants because they
4 transact, operate, and solicit business in this District, and because Defendant Hybrid
5 Apparel has its principal place of business in this District.

6 3. Venue is proper in this District because Defendants reside here, and
7 because a substantial part of the events or omissions giving rise to Plaintiffs' claims
8 occurred in this District.

9 THE PLAINTIFFS

10 4. Plaintiff F.E.A. MERCHANDISING, INC. ("F.E.A.") is a corporation
11 engaged in the business, among other things, of producing, distributing and selling
12 music-related merchandise, including t-shirts and posters, featuring the names,
13 trademarks, and likenesses of various popular musical artists.

14 5. F.E.A. is the exclusive licensee of all rights in and to the names,
15 trademarks, likenesses, and rights of publicity for numerous well-known musical
16 artists ("F.E.A. Artists") in connection with merchandise throughout the world.

17 6. F.E.A. acquired the merchandising rights for the F.E.A. Artists through
18 exclusive license agreements with the respective F.E.A. Artists, or their successors-
19 in-interest, who own and control the merchandising rights described above.

20 7. Under these agreements, F.E.A. has acquired the exclusive right to use
21 and exploit the F.E.A. Artists' names, trademarks, and likenesses on merchandise
22 worldwide. F.E.A. carefully controls its uses of the F.E.A. Artists' names,
23 trademarks, and likenesses on merchandise and zealously guards and maintains the
24 integrity and substantial commercial value of same on merchandise.

25 8. Plaintiff LIVE NATION MERCHANDISE, INC., a wholly-owned
26 subsidiary of Live Nation, Inc. ("Live Nation"), is a corporation engaged in the
27 business, among other things, of producing, distributing and selling music-related
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1 merchandise, including t-shirts and posters, featuring the names, trademarks, and
2 likenesses of various popular musical artists.

3 9. Live Nation is the exclusive licensee of all rights in and to the names,
4 trademarks, likenesses, and rights of publicity for numerous well-known musical
5 artists (“Live Nation Artists”) in connection with merchandise throughout the world.

6 10. Live Nation acquired the merchandising rights for the Live Nation
7 Artists through exclusive license agreements with the respective Live Nation Artists,
8 or their successors-in-interest, who own and control the merchandising rights
9 described above.

10 11. Under these agreements, Live Nation has acquired the exclusive right
11 to use and exploit the Live Nation Artists’ names, trademarks, and likenesses on
12 merchandise worldwide. Live Nation carefully controls its uses of the Live Nation
13 Artists’ names, trademarks, and likenesses on merchandise and zealously guards and
14 maintains the integrity and substantial commercial value of same on merchandise.

15 12. Plaintiff BRAVADO INTERNATIONAL GROUP
16 MERCHANDISING SERVICES, INC. (“Bravado”) is a corporation engaged in the
17 business, among other things, of producing, distributing and selling music-related
18 merchandise, including t-shirts and posters, featuring the names and likenesses of
19 various popular musical artists.

20 13. Bravado is the exclusive licensee of all rights in and to the names,
21 trademarks, likenesses, and rights of publicity for numerous well-known musical
22 artists (“Bravado Artists”) in connection with merchandise throughout the world.

23 14. Bravado acquired the merchandising rights for the Bravado Artists
24 through exclusive license agreements with the respective Bravado Artists, or their
25 successors-in-interest, who own and control the merchandising rights described
26 above.

27 15. Under these agreements, Bravado has acquired the exclusive right to
28 use and exploit the Bravado Artists’ names, trademarks, and likenesses on

1 merchandise worldwide. Bravado carefully controls its uses of the Bravado Artists'
2 names, trademarks, and likenesses on merchandise and zealously guards and
3 maintains the integrity and substantial commercial value of same on merchandise.

4 16. The F.E.A. Artists, Live Nation Artists, and Bravado Artists are
5 referred to collectively herein as the "Artists."

6 **DEFENDANTS' INFRINGING CONDUCT**

7 17. On information and belief, Defendant WENNER MEDIA, LLC
8 ("Wenner") is a limited liability company duly organized under the laws of the State
9 of Delaware with its principal place of business in New York, New York. Wenner
10 owns and publishes *Rolling Stone Magazine* ("Rolling Stone").

11 18. On information and belief, Defendant HYBRID APPAREL ("Hybrid")
12 is an entity of unknown form with its principal place of business in Cypress,
13 California, that manufactures and distributes apparel.

14 19. Wenner and Hybrid are referred to collectively herein as "Defendants."

15 20. Rolling Stone has cultivated an image as a champion of artists' rights
16 and supporter of musician's causes. Yet, Defendants are and for some period of
17 time have been marketing, distributing, and selling merchandise, including t-shirts,
18 tote bags, and posters, featuring the names, trademarks, and likenesses of a number
19 of the Artists ("Infringing Merchandise"). Defendants have done so without any
20 input, approval, or quality control from the Artists. Further, Defendants have
21 profited from the sales of their bootleg merchandise without in any way
22 compensating the Artists for the use of their names, likenesses, or other rights.

23 21. Defendants have distributed and sold the Infringing Merchandise
24 through programs at Macy's and Wal-Mart. The Infringing Merchandise includes,
25 without limitation, merchandise featuring the names, likenesses, and trademarks of
26 Nirvana (an F.E.A. Artist), Kurt Cobain and Beyoncé (Bravado Artists), and
27 Run-DMC (a Live Nation Artist).

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1 22. The images on the Infringing Merchandise are copies of Rolling Stone
2 covers, but in each case, the respective Artist's name, likeness, and/or trademark is
3 prominently displayed and is intended to be and is the selling tool for the product.

4 23. Plaintiffs did not approve or authorize any of the Infringing
5 Merchandise featuring their respective Artists' names, trademarks, or likenesses that
6 Defendants manufactured, reproduced, marketed, distributed, advertised, and/or sold
7 at any time, including through Defendants' programs at Macy's and Wal-Mart.

8 24. Defendants improperly are trading on the goodwill, fame, and
9 reputation of the Artists' names, likenesses, and trademarks to sell the Infringing
10 Merchandise, including by falsely representing to consumers that the Infringing
11 Merchandise in some fashion is authorized, approved, endorsed, sponsored,
12 connected or affiliated with the Artists or Plaintiffs. Defendants, by their conduct,
13 have appropriated the Artists' names, likenesses, trademarks, and rights of publicity
14 for Defendants' commercial advantage, without permission or consent from the
15 respective Plaintiffs.

16 25. Defendants have refused to comply with demands from Plaintiffs that
17 Defendants cease marketing, distributing, and selling the Infringing Merchandise.

18 26. Defendants' marketing, distribution, and sales of the Infringing
19 Merchandise unfairly and illegally compete and interfere with Plaintiffs' marketing,
20 distribution, and sales of merchandise featuring the Artists' names, trademarks, and
21 licenses as the respective exclusive licensees of those Artists.

22 27. Defendants' wrongful conduct as described herein is ongoing and will
23 continue until and unless enjoined by this Court.

24 **FIRST CLAIM FOR RELIEF**

25 **(By All Plaintiffs Against All Defendants**

26 **for False Advertising -- Lanham Act, 15 U.S.C. § 1125(a))**

27 28. Plaintiffs reallege and incorporate by reference each allegation set forth
28 in paragraphs 1 through 27 inclusive above, as though fully set forth herein.

1 29. Defendants' use of the Artists' names, trademarks, and likenesses on
2 and in connection with the marketing, distribution, and sale of the Infringing
3 Merchandise is and was likely to, intended to, did, and will continue to confuse and
4 mislead the public and misrepresent and create the false impression that the
5 Infringing Merchandise was authorized, approved, endorsed, sponsored, connected
6 or affiliated with the respective Artists or their exclusive licensees, Plaintiffs.

7 30. Plaintiffs never authorized, approved, endorsed, or sponsored the
8 Infringing Merchandise and never authorized, approved, or consented to
9 Defendants' use of the respective Artists' names, likenesses, or trademarks on or in
10 connection with the Infringing Merchandise, or at all.

11 31. As a direct and proximate result of Defendants' conduct, Plaintiffs have
12 been damaged and will continue to be damaged in an amount to be proven at trial.

13 32. Pursuant to 15 U.S.C. §§ 1116(a), 1118, and 1125(a), Plaintiffs are
14 entitled to an Order enjoining Defendants from marketing, distributing, or selling
15 the Infringing Merchandise, and impounding and destroying all copies of the
16 Infringing Merchandise and all marketing materials pertaining to the Infringing
17 Merchandise.

18 33. Pursuant to 15 U.S.C. § 1117(a), Plaintiffs are entitled to an Order:
19 (a) requiring Defendants to account for and pay to Plaintiffs all profits derived by
20 Defendants from their conduct, to be increased according to applicable provisions of
21 law, and (b) awarding all damages sustained by Plaintiffs and caused by Defendants.

22 34. Defendants' conduct alleged herein was intentional, egregious, and
23 without foundation in law and, therefore, under 15 U.S.C. § 1117(a), Plaintiffs are
24 entitled to an award of treble damages against Defendant.

25 35. Defendants' acts make this an exceptional case under 15 U.S.C.
26 § 1117(a), and hence Plaintiffs are entitled to an award of reasonable attorneys' fees.

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SECOND CLAIM FOR RELIEF

(By All Plaintiffs Against All Defendants

for Trademark Infringement -- Lanham Act, 15 U.S.C. § 1114)

36. Plaintiffs reallege and incorporate by reference each allegation set forth in paragraphs 1 through 35 inclusive above, as though fully set forth herein.

37. Without Plaintiffs' permission or consent, Defendants have engaged in the unauthorized use in commerce of reproductions, counterfeits, copies and/or imitations of the Artists' registered trademarks in connection with Defendants' advertising, distribution, offering for sale, and sales of the Infringing Merchandise.

38. Defendants' unauthorized use of the Artists' trademarks in commerce on and in connection with the Infringing Merchandise is and was likely to cause confusion, or to cause mistake, or to deceive the public, as described above, in violation of the Lanham Act, 15 U.S.C. § 1114(1). Defendants have committed these acts with the knowledge and intent that its use of the Artists' trademarks would cause confusion, deception, or mistake.

39. As a direct and proximate result of Defendants' willful infringing conduct, as described above, Plaintiffs have been damaged and will continue to be damaged in an amount to be proven at trial. Defendants' infringing conduct entitles Plaintiffs to recover their actual damages, trebled, together with Defendants' profits, and Plaintiffs' attorneys' fees and costs.

40. Plaintiffs are entitled to a permanent injunction to prevent future infringing conduct and to the seizure and return of all Infringing Merchandise.

THIRD CLAIM FOR RELIEF

(By All Plaintiffs Against All Defendants

for Trademark Dilution-- Lanham Act, 15 U.S.C. § 1125(c))

41. Plaintiffs reallege and incorporate by reference each allegation set forth in paragraphs 1 through 40 inclusive above, as though fully set forth herein.

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1 42. Each of the Artists' trademarks that appears on the Infringing
2 Merchandise is a famous and extremely recognizable and distinctive mark used in
3 interstate commerce in the United States. Defendants began selling the Infringing
4 Merchandise after each of the respective Artists' trademarks was famous.

5 43. Defendants' use of the Artists' trademarks on and in connection with
6 the Infringing Merchandise is likely to dilute and detract from the distinctiveness of
7 the Artists' trademarks with resulting damage to Plaintiffs and to the substantial
8 business and goodwill symbolized by the Artists' trademarks for which the
9 respective Plaintiffs are the exclusive licensees in connection with merchandise.

10 44. Defendants' conduct in marketing, distributing, and selling the
11 Infringing Merchandise is and was willfully intended to trade on the Artists'
12 respective reputations or to cause dilution of the Artists' respective trademarks, and
13 hence Plaintiffs are entitled to damages and other remedies under 15 U.S.C.
14 § 1125(c)(2) and to a permanent injunction to prevent future infringing conduct.

15 **FOURTH CLAIM FOR RELIEF**

16 **(By All Plaintiffs Against All Defendants**

17 **for Misappropriation of Common Law Right of Publicity)**

18 45. Plaintiffs reallege and incorporate by reference each allegation set forth
19 in paragraphs 1 through 44 inclusive above, as though fully set forth herein.

20 46. By using the Artists' names, trademarks, and likenesses on and in
21 connection with the Infringing Merchandise, without authority or permission from
22 Plaintiffs, Defendants are and have been improperly trading on the Artists' fame,
23 recognition, and goodwill in order to sell Defendants' products in violation of
24 Plaintiffs' rights as exclusive licensees of their respective Artists' common law
25 rights of publicity for merchandise. Defendants have appropriated the Artists'
26 names and likenesses for its benefit and commercial advantage, without permission
27 or consent from Plaintiffs, and without compensating Plaintiffs for such use.

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1 47. Plaintiffs have been damaged by Defendants' misappropriation of
2 Plaintiffs' common law rights of publicity in and to the Artists' names and
3 likenesses as exclusive licensees thereof in an amount according to proof at the time
4 of trial.

5 48. Plaintiffs seek temporary, preliminary, and permanent injunctive relief
6 in order to stop any further violations of Plaintiffs' rights of publicity.

7 49. In engaging in the foregoing wrongful conduct, Defendants have acted
8 with oppression, fraud, or malice within the context of California Civil Code § 3294,
9 and therefore Plaintiffs are entitled to an award of punitive and exemplary damages
10 in an amount according to proof at the time of trial.

11 **FIFTH CLAIM FOR RELIEF**

12 **(By All Plaintiffs Against All Defendants**

13 **for Violation of California Civil Code §§ 3344, 3344.1)**

14 50. Plaintiffs reallege and incorporate by reference each and every
15 allegation set forth in paragraphs 1 through 49 inclusive above, as though fully set
16 forth herein.

17 51. Defendants are and at all relevant times have been knowingly using the
18 Artists' names and likenesses for its commercial advantage on and in connection
19 with the Infringing Merchandise, without permission or consent from the respective
20 Plaintiffs who control the Artists' publicity rights for merchandise, including for
21 purposes of advertising and marketing the Infringing Merchandise and to promote
22 and solicit sales of the Infringing Merchandise. There is a direct connection
23 between Defendants' unauthorized use of the Artists' names and likenesses and
24 Defendants' commercial purpose in promoting sales of the Infringing Merchandise.

25 52. Plaintiffs have been damaged and will continue to be damaged by
26 Defendants' unauthorized use of the Artists' names and likenesses in an amount
27 according to proof, including statutory damages under Civil Code §§ 3344 and
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1 3344.1, as applicable, or Plaintiffs' actual damages, whichever are greater, plus
2 Defendants' profits from its unauthorized use of the Artists' names and likenesses.

3 53. Plaintiffs also are entitled to an award of punitive and exemplary
4 damages in an amount according to proof at the time of trial.

5 54. Plaintiffs also are entitled to recover their attorneys' fees and costs.

6 **SIXTH CLAIM FOR RELIEF**

7 **(By All Plaintiffs Against All Defendants for**

8 **Unfair Competition, California Bus. & Prof. Code § 17200 *et seq.*)**

9 55. Plaintiffs reallege and incorporate by reference each and every
10 allegation set forth in paragraphs 1 through 54 inclusive above, as though fully set
11 forth herein.

12 56. Defendants' wrongful acts described herein constitute unlawful, unfair,
13 and fraudulent business practices and misleading advertising under California
14 Business & Professions Code § 17200 *et seq.*

15 57. Plaintiffs have been damaged and will continue to be damaged by
16 Defendants' unlawful, unfair, and fraudulent business practices and misleading
17 advertising, as described above.

18 58. Plaintiffs are entitled to an injunction prohibiting Defendants from
19 continuing the practices described above, and to restitution of all amounts acquired
20 by Defendants by means of their acts of unfair competition.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(By All Plaintiffs Against All Defendants**

23 **for Declaratory Relief)**

24 59. Plaintiffs reallege and incorporate by reference each and every
25 allegation set forth in paragraphs 1 through 58 inclusive above, as though fully set
26 forth herein.

27 60. There is an actual and justiciable controversy between Plaintiffs and
28 Defendants concerning Defendants' marketing, sale, and distribution of the

1 Infringing Merchandise in that Plaintiffs contend that Defendants have no right to
2 use, manufacture, reproduce, market, sell, or exploit the Infringing Merchandise
3 and, in so doing, violates Plaintiffs' rights, as alleged herein. Conversely, on
4 information and belief, Defendants deny Plaintiffs' allegations and contend that
5 Defendants have the right to use, manufacture, reproduce, market, sell, and exploit
6 the Infringing Merchandise.

7 61. A judicial declaration of the parties' respective rights and obligations
8 with respect to the Infringing Merchandise is necessary and appropriate.

9 62. Plaintiffs seek a judgment declaring the parties' respective rights with
10 regard to the Infringing Merchandise, including declaring that Defendants'
11 marketing, sale, use, and exploitation of the Infringing Merchandise is unlawful and
12 violates Plaintiffs' rights, as alleged herein, and that Defendants have no right to
13 engage in such use or exploitation of the Artists' names, trademarks, or likenesses.

14 **EIGHTH CLAIM FOR RELIEF**

15 **(By All Plaintiffs Against All Defendants**
16 **for an Accounting)**

17 63. Plaintiffs reallege and incorporate by reference each and every
18 allegation set forth in paragraphs 1 through 62 inclusive above, as though fully set
19 forth herein.

20 64. Plaintiffs are entitled to recover as damages and restitution all profits
21 derived by Defendants from their sale and exploitation of the Infringing
22 Merchandise. The exact amounts due are unknown and cannot be ascertained
23 without an accounting of Defendants' financial records. Plaintiffs seek an
24 accounting in order to determine the precise amount of Defendants' profits or other
25 ill-gotten gains.

26 **PRAYER**

27 WHEREFORE, Plaintiffs, and each of them, respectfully request judgment
28 against Defendants, jointly and severally, as follows:

1 1. For the damages suffered by Plaintiffs as a result of Defendants' false
2 advertising, trademark infringement, and trademark dilution in violation of the
3 Lanham Act, including an award of treble damages, and for an accounting and
4 disgorgement of all of Defendants' profits that are attributable to their trademark
5 violations, as increased by applicable law;

6 2. That Defendants, and each of their officers, agents, and employees, and
7 all persons acting in concert with them, be enjoined preliminarily, during the
8 pendency of this action, and permanently thereafter, from manufacturing,
9 distributing, selling, advertising, or displaying in the United States the Infringing
10 Merchandise and any marketing, advertising, or other materials that are likely to or
11 do mislead the consuming public to believe that the Infringing Merchandise is
12 authorized, approved, endorsed, or sponsored by the Artists or Plaintiffs, or that they
13 are connected or affiliated with the Infringing Merchandise or Defendants, and that
14 all copies of the Infringing Merchandise be recalled, impounded, and destroyed;

15 3. For general, special, and compensatory damages suffered by Plaintiffs
16 as a result of Defendants' violation of Plaintiffs' common law rights of publicity,
17 according to proof;

18 4. For statutory damages under Civil Code §§ 3344 and 3344.1, as
19 applicable, or Plaintiffs' actual damages, whichever are greater, plus Defendants'
20 profits from their unauthorized use of the Artists' identities, names, and likenesses
21 in connection with the Infringing Merchandise, according to proof;


22 5. For a declaration of the parties' respective rights and obligations in
23 regard to the Infringing Merchandise, including declaring that Defendants'
24 marketing, sale, use, and exploitation of the Infringing Merchandise is unlawful and
25 violates Plaintiffs' rights, and that Defendants have no right to engage in any such
26 use or exploitation of the Infringing Merchandise or any other merchandise using
27 the Artists' names, trademarks, or likenesses;

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- 1 6. For an accounting of all profits and gains realized by Defendants as a
- 2 result of the wrongful conduct complained of herein;
- 3 7. For restitution of all profits and gains received by Defendants as a
- 4 result of their acts of unfair competition;
- 5 8. For punitive and exemplary damages according to proof;
- 6 9. For prejudgment interest;
- 7 10. For reasonable attorney fees and costs of suit incurred herein; and
- 8 11. For such other and further relief in favor of Plaintiffs as the Court
- 9 deems just and proper.

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DATED: September 3, 2009 Respectfully submitted,
KING, HOLMES, PATERNO & BERLINER, LLP

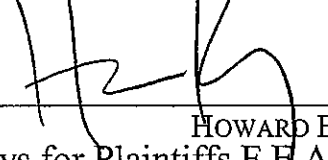
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MERCHANDISING, INC.; LIVE NATION
MERCHANDISE, INC.; BRAVADO
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SERVICES, INC.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues triable to a jury.

DATED: September 3, 2009 Respectfully submitted,
KING, HOLMES, PATERNO & BERLINER, LLP

By: 

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Attorneys for Plaintiffs F.E.A.
MERCHANDISING, INC.; LIVE NATION
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