

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NBC UNIVERSAL, INC. and
BRAVO MEDIA LLC,

Plaintiffs-Counterclaim Defendants,

-against-

THE WEINSTEIN COMPANY, LLC,

Defendant-Counterclaim Plaintiff,

-and-

LIFETIME ENTERTAINMENT
SERVICES,

Defendant-Intervenor.

08-CV-8911 (PKC)

**ANSWER AND
COUNTERCLAIMS OF
DEFENDANT-COUNTERCLAIM
PLAINTIFF THE WEINSTEIN
COMPANY, LLC**

ECF Case

Defendant The Weinstein Company, LLC (“TWC”) responds to Plaintiffs NBC Universal, Inc.’s (“NBCU”) and Bravo Media LLC’s (“Bravo”) (collectively, “Plaintiffs”) Complaint (dated April 7, 2008) as follows:

1. To the extent this paragraph of the Complaint purports to state conclusions of law, or otherwise characterize the nature of the claims alleged in the Complaint, no responsive pleading is required. To the extent this paragraph of the Complaint contains factual allegations, TWC denies or is without knowledge or information sufficient to form a belief as to their truth.

2. To the extent this paragraph of the Complaint purports to state conclusions of law, or otherwise characterize the enforceability of Plaintiffs’ purported agreement with TWC, no responsive pleading is required. TWC admits the existence of a draft license agreement dated as of November 11, 2003 between Bravo and Miramax Film

Corp. (“Miramax”) and respectfully refers the Court to that document for its true, complete and accurate terms. TWC denies that it “granted Plaintiffs a right of first refusal to acquire additional Cycles of the Program beyond the Fifth Cycle, as well as rights of first negotiation and first refusal with respect to spin-offs of the Program.” TWC admits that Bravo paid it sums of money but denies that it was “in exchange for these exclusive rights.” To the extent that this paragraph characterizes the nature of the dispute, no responsive pleading is needed.

3. TWC is without knowledge of the amount of “time, energy and money” expended by Bravo “in the development, production and promotion of the Program.” TWC admits that five cycles of the Program have now aired on Bravo.

4. TWC admits that it spent a period of time negotiating with Plaintiffs over the acquisition of additional cycles of the Program. TWC denies that it did not negotiate with Plaintiffs in good faith. TWC admits that it had discussions with Plaintiffs about a package deal but that Plaintiffs were unwilling to pay a competitive amount. TWC admits that on February 7, 2008 it entered into an agreement with Lifetime regarding future seasons of the Program. TWC denies that Plaintiffs have a right of first refusal to future cycles of the Program or to any spin-offs. TWC admits that it did not inform Plaintiffs of its deal with Lifetime on February 7, 2008, because it had no obligation to do so and out of a concern that Plaintiffs would take retributive actions. TWC denies that it deceived Plaintiffs in order to delay them from seeking redress. TWC admits that Lifetime intended to publicly announce its deal with TWC. TWC denies the remaining allegations in this paragraph of the Complaint except to the extent this paragraph of the

Complaint purports to state conclusions of law, or otherwise characterize the nature of the claims alleged in the Complaint, for which no responsive pleading is required.

5. To the extent this paragraph of the Complaint purports to state conclusions of law, or otherwise characterize the nature of the claims alleged in the Complaint, no responsive pleading is required. To the extent this paragraph of the Complaint contains factual allegations, TWC denies or is without knowledge or information sufficient to form a belief as to their truth.

6. TWC admits on information and belief that NBCU is a corporation organized under the laws of Delaware and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

7. TWC is without knowledge or information sufficient to form a belief as to the allegations in this paragraph of the Complaint except that it admits that *Project Runway* aired on Bravo's cable network.

8. Admitted.

9. Denied to the extent that TWC and Miramax have been involved in the production of numerous award winning television shows.

10. TWC admits that it regularly does business within the State of New York. To the extent this paragraph of the Complaint purports to state conclusions of law no responsive pleading is required.

11. To the extent this paragraph of the Complaint purports to state conclusions of law no responsive pleading is required.

12. To the extent this paragraph of the Complaint purports to state conclusions of law, or otherwise characterizes the enforceability of the parties' purported agreement, no responsive pleading is required.

13. To the extent this paragraph of the Complaint purports to state conclusions of law no responsive pleading is required.

14. TWC admits that in or about 2003 it "pitched" the Program to Plaintiffs and other television networks and that in or about November 2003 Plaintiffs decided to move forward with production of the Program. TWC admits the existence of a draft license agreement dated as of November 11, 2003 between Bravo and Miramax and respectfully refers the Court to that document for its true, complete and accurate terms. TWC denies the remaining allegations in this paragraph of the Complaint.

15. TWC denies breaching any agreement with the Plaintiffs. TWC admits the existence of a draft license agreement dated as of November 11, 2003 between Bravo and Miramax. TWC admits the existence of a signed indemnity agreement dated as of November 11, 2003 and actually dated November 22, 2004 between Bravo and Miramax. TWC admits the existence of a signed indemnity agreement dated as of February 15, 2005 and actually dated March 28, 2006 between Bravo and TWC. TWC denies that the parties "amended the Agreement in January 2007." TWC admits that the parties executed a letter agreement dated July 13, 2007. TWC respectfully refers the Court to the documents for their true, complete and accurate terms. To the extent this paragraph of the Complaint purports to state conclusions of law, or otherwise characterizes the enforceability of the parties' purported agreement, no responsive pleading is required.

16. TWC admits the existence of a draft license agreement dated as of November 11, 2003 between Bravo and Miramax and respectfully refers the Court to that document for its true, complete and accurate terms. TWC admits that it has now produced five seasons of the Program for airing on Bravo. TWC denies the remaining allegations in this paragraph of the Complaint except to the extent this paragraph of the Complaint purports to state conclusions of law, or otherwise characterizes the enforceability of the parties' purported agreement, for which no responsive pleading is required.

17. Admitted except to the characterization of "[u]nder Bravo's auspices." Additionally, since the filing of the Complaint, Season 5 of the Program has been produced and has completed airing on Bravo.

18. TWC is without knowledge or information about Plaintiffs' investment in the Program. TWC admits that the Program has been a success.

19. TWC admits that in 2006 disputes arose regarding the parties' respective rights and obligations. TWC admits that the parties met on January 15, 2007. TWC denies any discussions about "amendments to the Agreement." TWC admits the final sentence of this paragraph of the Complaint.

20. TWC denies the allegations in this paragraph the Complaint.

21. TWC admits that on January 15, 2007 the parties discussed a schedule whereby Plaintiffs would agree to finish airing Season 5 of the Program by March 2008. TWC denies the remaining allegations in this paragraph of the Complaint.

22. TWC admits that on January 15, 2007, Weinstein told Zucker that one has about 15 friends in the business world and that he considered Zucker one of those friends. TWC denies the remaining allegations in this paragraph of the Complaint.

23. TWC admits that Marc Graboff sent an email to Jim Wiatt on January 19, 2007 and respectfully refers the Court to that document for its true, complete and accurate terms. TWC admits that Mark Itkin sent an email to Marc Graboff on February 22, 2007 and respectfully refers the Court to that document for its true, complete and accurate terms. TWC denies the remaining allegations in this paragraph of the Complaint.

24. TWC admits the existence of a draft license agreement dated as of November 11, 2003 between Bravo and Miramax. TWC admits that the parties executed a letter agreement dated July 13, 2007. TWC respectfully refers the Court to the documents for their true, complete and accurate terms. TWC denies the remaining allegations in this paragraph of the Complaint.

25. TWC admits that Bravo exhibited Season 4 of the Program from November 14, 2007 to March 5, 2008 and has now exhibited Season 5 of the Program. TWC is without knowledge regarding time and money Bravo spent for production of Cycle Five. TWC admits that Bravo has paid monies to TWC for Cycles One through Four. TWC denies the remaining allegations in this paragraph of the Complaint.

26. TWC admits that it had discussions with NBCU regarding potential deals, including for the Program, throughout 2007. TWC denies that Plaintiffs have a right of first refusal for the Program. TWC denies the remaining allegations in this paragraph of the Complaint.

27. TWC is without knowledge as to Plaintiffs intentions. TWC denies that Plaintiffs have a right of first refusal for the Program. TWC denies the remaining allegations in this paragraph of the Complaint.

28. TWC admits that it entered into an agreement with Lifetime dated February 7, 2008. TWC denies that Plaintiffs have a right of first refusal for the Program. TWC denies the remaining allegations in this paragraph of the Complaint.

29. TWC denies the allegations in this paragraph of the Complaint.

30. TWC is without knowledge regarding goodwill that Plaintiffs may have with “viewers, critics, advertisers and owners of other entertainment projects looking for distribution partners.” TWC denies the remaining allegations in this paragraph of the Complaint.

31. TWC incorporates by reference herein each of its responses set forth in paragraphs 1 through 30, above.

32. This paragraph of the Complaint contains legal argument to which no response is required. To the extent this paragraph of the Complaint contains factual allegations, TWC denies those allegations.

33. TWC denies the allegations in this paragraph of the Complaint.

34. TWC denies the allegations in this paragraph of the Complaint.

35. TWC denies the allegations in this paragraph of the Complaint.

36. TWC incorporates by reference herein each of its responses set forth in paragraphs 1 through 30, above.

37. TWC denies the allegations in this paragraph of the Complaint.

38. TWC denies the allegations in this paragraph of the Complaint.

39. TWC admits the first three sentences of this paragraph of the Complaint. TWC denies the remaining factual allegations. This paragraph of the Complaint also contains legal argument to which no response is required.

40. TWC incorporates by reference herein each of its responses set forth in paragraphs 1 through 30, above.

41. TWC denies the allegations in this paragraph of the Complaint.

42. TWC denies the allegations in this paragraph of the Complaint.

43. TWC denies the allegations in this paragraph of the Complaint.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses to the Complaint, and each and every claim asserted therein, TWC asserts the following:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' causes of action and claims are barred by reason of the Statute of Frauds.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' causes of action and claims are barred by reason of the Federal Copyright Act.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' causes of action and claims are barred because any modification or amendments to the parties' agreement is required to be in a writing signed by the parties.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action and claims are barred by reason of Plaintiffs' repudiation.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action and claims have been waived or are barred by reason of Plaintiffs' breaches of its prior agreements with TWC.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for equitable relief are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action and claims have been waived or are barred by reason of Plaintiffs' failure to discharge its obligations under its agreements with TWC.

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiffs suffered any damage or loss, such damage or loss was caused in whole or in part by its own acts, omissions, or conduct, or by the acts, omissions, or conduct of persons other than TWC or persons over whom TWC had control and for whom TWC is legally responsible.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' alleged damages, if any, were not proximately caused by TWC.

TENTH AFFIRMATIVE DEFENSE

Any and all damage to Plaintiffs was caused by Plaintiffs' own actions.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate any damages that they may have suffered.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for specific performance is barred by the availability of an adequate remedy at law.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' failed to elect between the mutually exclusive and inconsistent remedies of specific performance and breach of contract damages.

Wherefore, TWC respectfully requests that the court enter judgment against the Plaintiffs.

COUNTERCLAIMS

Preliminary Statement

1. This action arises from Plaintiffs' concerted efforts to damage TWC by failing to perform its duty to promote Season 5 of "*Project Runway*" (the "Program"), and by affirmatively employing counterproductive promotional measures designed to diminish the future value of the Program.

2. Plaintiffs began to air the Program on Bravo's cable network in December 2004 under a season-by-season agreement between the parties. This agreement granted Plaintiffs the right to air the Program on Bravo. It also required that Plaintiffs treat the elements of the Program as strictly confidential, and not disclose them to any third party without TWC's consent. Like all agreements, this agreement contained an implied covenant of good faith and fair dealing. Under New York state law, this implied covenant imposed a duty on Plaintiffs to sufficiently promote and advertise the Program so that both parties could reap the benefits of their arrangement.

3. Plaintiffs have admitted that they were intimately involved in the development and production of the Program, stating that they “nurtured it from a nascent, untested concept to a successful production.” Complaint at ¶ 18. Such involvement familiarized Plaintiffs with enumerable strictly confidential elements of the Program, such as: planning, production talent, contestant selection, production values, sets, lighting, camera work, sound, music, editing, packaging, etc.

4. For the first four seasons of the Program, Plaintiffs promoted the Program by producing high-quality print, radio, television, Internet and other forms of mainstream promotional advertisements.

5. At the end of Season 4, Lifetime Entertainment Services (“Lifetime”), a rival cable network, announced that it entered into a deal with TWC for Season 6 (and future seasons) of the Program to be broadcast on Lifetime. Although Season 6 of the Program was scheduled to air on Lifetime, the Plaintiffs and TWC moved forward with their agreement for Season 5. TWC gave Bravo the right to air the Program on Bravo in return for monetary compensation. Accordingly, Bravo assumed an implied duty of good faith and fair dealing under New York law to promote Season 5 of the Program.

6. Since 2006, when Plaintiffs first sensed the possibility that TWC would move the Program to another network, they began developing other Bravo programs, which copied or mimicked the *Project Runway* format and used *Project Runway* personnel. Plaintiffs’ familiarity with TWC’s “playbook” for creating of *Project Runway*, and its intimate knowledge of the behind-the-scenes elements of *Project Runway* was essential to their ability to develop these new programs.

7. Plaintiffs developed these programs as potential competitors to *Project Runway* should *Project Runway* air on a competing network. Once the Plaintiffs learned of TWC's decision to move the Program, after Season 5, from Bravo to Lifetime, they began to formulate plans to diminish the Program's future value to TWC and Lifetime and thereby increase the value of their copy-cat shows.

8. A television program's value is measured by the strength of its ratings. For the first four seasons Plaintiffs were very concerned about the ratings of the Program because it would determine the advertising revenue that Plaintiffs would be able to command for subsequent season of the Program. For this reason Plaintiffs undertook promotional efforts which included producing high quality advertisements, releasing limited and provoking information to give the Program's fan-base something to discuss and distributing media screeners to encourage coverage of the new season.

9. Once Plaintiffs realized that Season 6 of the Program would not air on their network, they undertook a concerted effort to damage the Program and diminish its future value by inadequately promoting Season 5 of the Program. Plaintiffs did so in at least five different ways: (i) changing the Program's air time; (ii) running a small number of promotional advertisements; (iii) using promotional advertisements that were deliberately mundane and unappealing; (iv) providing little information to the press about the premiere of Season 5; and (v) purposefully revealing spoilers about future episodes of the show.

10. As the producer of *Project Runway*, TWC has a substantial monetary and reputational interest in the success of its show. Therefore, Plaintiffs' scheme to lower the

ratings and value of *Project Runway* caused significant damages to TWC. By this action, TWC seeks compensatory damages for Plaintiffs' breach.

Facts

11. For the first three seasons, TWC licensed the Program's U.S. broadcast rights to Bravo on a season-by-season basis. In July 2007, the parties reached an agreement whereby TWC would produce Seasons 4 and 5 of the Program for Plaintiffs if Plaintiffs agreed to finish airing Season 5 by the Fall of 2008.

12. Over the course of the first four seasons Plaintiffs adequately promoted the Program because increased viewership and ratings for the Program would increase the ad revenue that Plaintiffs would be able to command for subsequent season of the Program. These promotional efforts included producing high quality advertisements, releasing limited and provoking information to give the Program's fan-base something to discuss and distributing media screeners to encourage coverage of the new season.

13. In 2006, the relationship between Bravo and TWC deteriorated and Plaintiffs prepared for the possibility that TWC would take *Project Runway* to a rival network. One of the ways Plaintiffs prepared for this possibility was by developing a series of rival programs that copied or mimicked the *Project Runway* format. These copycat shows would allow Plaintiffs to keep the *Project Runway* format on Bravo so that they could compete with the actual *Project Runway* show when it aired on another network.

a. On March 8, 2006, Bravo began airing the program *Top Chef*, which used *Project Runway* production personnel and had a near-identical format

as *Project Runway*, but with cooking instead of fashion design: 12 cooks, meeting weekly challenges until a winner was ultimately successful.

b. On January 31, 2007, Bravo premiered *Top Design*, a reality show copying the *Project Runway* format in which interior designers competed to win cash and a spot in New York's Designer showcases.

c. On April 11, 2007, Bravo began airing *Shear Genius*, another reality series with a *Project Runway*-like format that focused on hairstyling.

d. On January 10, 2008, Bravo premiered *Make Me a Supermodel* containing numerous material elements in common with *Project Runway*.

e. On September 6, 2007, Bravo first aired *Tim Gunn's Guide to Style*, a reality series starring *Project Runway*'s Tim Gunn, who has served as the on-air fashion mentor to *Project Runway* competitors since the first season of the Program.

f. On July 20, 2008, Bravo announced a new fashion reality series, *Fashion House*, in which fashion designers again compete to create the best designs.

14. On February 7, 2008, TWC entered into an agreement with Lifetime, which among other things, granted Lifetime the broadcast rights to Season 6 (and beyond) of the Program. TWC had no obligation to tell Plaintiffs about its agreement with Lifetime and could not talk publicly about the agreement until key talents associated with the Program were signed. Notwithstanding, on February 22, 2008, Harvey Weinstein, co-chairman of TWC, called Jeff Zucker, CEO of NBCU, and informed him that he had a deal with another network for the Program.

15. Upon receiving confirmation from Weinstein that the Program was going to another network, Zucker emailed Jeff Gaspin, President and COO of the Universal Television Group, that “We’re just gonna have to run the repeats like crazy to confuse the marketplace.” In explaining his comments, Zucker stated in sworn testimony that “we are incredibly competitive” and if *Project Runway* “went to a competitor, because of our competitive nature we would run the repeats on Bravo.”

16. On April 7, 2008 TWC and Lifetime publicly announced their deal.

Bravo Attempts to Blunt the Future Competitive Value of the Program

17. Upon hearing that their hit show soon would be their competition on a rival network, Plaintiffs began to formulate plans to diminish the future value of the Program.

18. Bravo was responsible for the marketing and publicity of Season 5 of *Project Runway*. Under New York law, by contracting with TWC for the rights to broadcast Season 5 of the Program, Bravo assumed an implied duty of good faith and fair dealing to adequately promote *Project Runway*. Plaintiffs decided to breach this duty and inadequately promote Season 5 of the Program to hurt the future value of the Program. In addition, Plaintiffs affirmatively employed counterproductive promotional measures designed to diminish the future value of the Program once it moved to a competing network.

19. To achieve these ends, Plaintiffs designed a grossly inadequate promotional plan for Season 5. This promotional plan, which was a departure from Plaintiffs’ past practices, was affirmatively harmful to the Program.

Plaintiffs Moved Project Runway's Timeslot

20. For its first four seasons, *Project Runway* occupied the 10:00 to 11:00 p.m. timeslot on Wednesday nights. For Season 5, Bravo inexplicably moved the Program to the 9:00 to 10:00 p.m. timeslot. This schedule change made it more difficult for viewers who had grown accustomed to the Program's consistent schedule for its first four seasons to find the Program.

Plaintiffs' Promotional Scheme Featured Too Few Advertisements

21. On June 26, 2008, Bravo first announced the date and time of the premiere of Season 5 – Wednesday, July 16, 2008, at 9:00 p.m. Upon information and belief, this 20 day notice was the shortest in *Project Runway's* history, providing only a short amount of time for Plaintiffs to promote the new season.

22. Because Plaintiffs changed *Project Runway's* timeslot for Season 5, they had even more of a duty to promote the Program and alert fans about the new time slot. The Plaintiffs failed to do so.

23. Typically, in the weeks leading up to the premiere of a new season, a television network will produce a significant amount of advertisements to promote the show and maximize ratings. These advertisements are geared to inform viewers of the timeslot and airdate of the premiere, excite and entice viewers about the new season, and increase the "buzz" and media attention around the show.

24. Upon information and belief, Plaintiffs purposefully and wantonly failed to produce such an extensive amount of advertisements. In announcing and promoting the Premiere, Bravo did not produce as many print, radio, television, and Internet

advertisements as it had in the past. The lack of advertisements left many fans of the show unaware or confused about the details of Season 5.

25. The day of the Season 5 premiere, *Chicago Tribune* television critic Maureen Ryan reported on Bravo's failure to promote the Program: "At the moment, I'm in Los Angeles at a convention of TV critics. Some of them didn't know a new season of 'Runway' was about to begin. ... [I]t seems clear that the show is no longer Bravo's baby. Maybe the network is not interested in promoting 'PR' anymore?" (Maureen Ryan, "Why all the mystery, 'Project Runway'?" *Chicago Tribune*, July 16, 2008, p. 1.)

26. The limited advertising that Plaintiffs did eventually produce was also designed to be confusing, mundane, and unappealing. For the first four seasons Bravo produced extensive articles, blog postings and banner advertisements on its website where fans could go in the days and weeks leading up to the new season and get updated "insider" information about the Program. By constantly adding new, fresh, and stimulating information to their website, Plaintiffs built an excited audience for the premieres.

27. However, as of July 9, 2008, there were no promotional photos for Season 5 on Bravo's website. Instead, Bravo's website had a mere countdown to Season 5, and it had no news on the details of the new season, including contestant names. Fans going to Bravo's website were confused about the details of the upcoming season and were left bored and unsatisfied in their pursuit for "insider" information. Even looking at Bravo's own website, it was difficult for Internet users to ascertain that *Project Runway* was close to airing a new season.

28. Until July 14, 2007, just two days before the premiere, Bravo did not release the names, pictures, and biographies of the Season 5 designers and models. In prior seasons, Bravo released this information much earlier, allowing anticipation of the start of the season to build among the show's fan base. By knowing the names of the designers, fans of *Project Runway* in previous seasons were able to look up the portfolios, resumes, and biographies of the designers before the start of the season. This activity increased the "buzz" around the show, and, consequently, it boosted its ratings.

29. In previous seasons, Bravo promoted the new premieres with tantalizing clips of that season's designers in action. Rather than using any of these images of the Season 5 models or designers in their promotional advertisements, Bravo's commercials promoting the premiere were comprised almost entirely of highlight clips from previous seasons. Accordingly, the commercials were disparaged by critics and fans of the show. Rather than being enticed by clips of a new, unseen season, viewers were left bored by old images.

30. Because Bravo did not include images of the new season in its promotional advertisements for Season 5, viewers were potentially confused as to whether there was actually a new season about to air or whether Bravo was promoting the Program's re-runs. This is consistent with Zucker's desire to "confuse the marketplace." Additionally, Bravo did "run repeats like crazy" in form of multiple *Project Runway* marathons on Bravo before the start of Season 5; this airing of repeats confused fans about whether Bravo was promoting a new season or just trying to recycle its re-runs.

Promotion Insufficiently Addressed Press Needs

31. Also on July 14, Bravo finally released limited “screeners” (advance copies of episodes) to the press for the premiere. Members of the Press use screeners for two predominant reasons: first, to review and potentially critique or recommend a show before its premiere; and second, to review a show the morning after its premiere.

32. Well in advance of previous seasons’ premieres, Bravo has released “screeners” of the show’s first few episodes to writers to allow them time to review the show before its air date, thus allowing them to write about the new season before it aired. This publicity increased ratings for the show by raising audience awareness.

33. For Season 5, Bravo did not release any such screeners until July 14, just two days before the premiere, resulting in less critical publicity for the premiere.

Bravo Revealed Too Much Information about Future Episodes

34. Even the limited information that Bravo did release was designed to injure the Program. In prior seasons, Bravo was tightlipped about the subjects of future episodes, leaving fans wanting more and encouraging them to tune in. For the first four seasons, tantalizing information about the next episode would be gradually released during the week before its premiere. This was done in a cyclical fashion designed to peak viewer interest. The cycle would begin with a short “teaser” clip at the end of the previous week’s episode and would progress through the week with the releasing of additional information about the next challenge throughout the week. This cyclical scheme allowed interest in the upcoming episode to peak just before the airing of the episode, thus maximizing ratings.

35. Unlike prior seasons, for Season 5 Plaintiffs released plot descriptions of *every episode* before the start of the season. In addition, Plaintiffs also released the names of *all the celebrity guest judges* for *every episode* before the start of the season. For the first four seasons, Plaintiffs generally only revealed the identity of the celebrity guest judges in the week leading up to the airing of that guest judge's episode. By making this information public so early, Plaintiffs prevented the Program from obtaining additional press attention each week with the announcement of the surprise guest judge.

Promotion Stifled Ratings, Resulting in Monetary Damages to TWC

36. Although Season 5 averaged several million viewers, this achievement was in spite of, and not a result of, Bravo's tactics. The overall goal and effect of Bravo's marketing scheme was to lower the ratings of the Season 5 from what could have been otherwise reached.

37. By attempting to lower the ratings for Season 5, Plaintiffs caused a reduction in the value of *Project Runway*. Advertisers will purchase product integration for Season 6 and beyond based upon their predictions of the Program's future ratings. These predictions are based upon the Program's ratings history. Because of Plaintiffs' inadequate promotional scheme, TWC will not be able to exact as much revenue from product integration as it otherwise would have had Bravo followed its promotional scheme from previous seasons.

FIRST COUNTERCLAIM

(Breach of Implied Duty of Good Faith and Fair Dealing)

38. TWC repeats and re-alleges paragraphs 1 through 37 above, as if set forth here in full.

39. The Plaintiffs entered into an agreement with TWC to air Season 5 of *Project Runway*. Within the bounds of this agreement, the Plaintiffs had an implied duty of good faith and fair dealing to adequately promote the start of the new season.

40. TWC performed on this contractual agreement by producing Season 5 of *Project Runway* for Bravo.

41. NBCU/Bravo harbored a deep animus towards Weinstein and TWC because of their decision to move *Project Runway* from Bravo to Lifetime. NBCU/Bravo also saw their control over the promotion of Season 5 of *Project Runway* as an opportunity to diminish the value of the Program, now that it was a future competitor to programs such as *Top Chef*, *Shear Genius*, *Top Design*, *Make Me a Supermodel*, *Tim Gunn's Guide to Style*, and *Fashion House* which Bravo copied from the *Project Runway* formula using confidential information about *Project Runway* and its elements.

42. Upon finding out that TWC was moving *Project Runway* from Bravo to Lifetime, NBCU/Bravo engaged in bad faith actions, without just cause, and solely to further its own business interests by inadequately promoting Season 5 of *Project Runway*. With its meager promotional campaign, Bravo attempted to “confuse the marketplace” about the new season, prevent TWC from building weekly press attention before the airing of each new episode, and limit media coverage of the new season. As such, Bravo breached its implied covenant of good faith and fair dealing with TWC.

43. Because of the inadequate promotion by NBCU and Bravo, the ratings for Season 5 of *Project Runway* were lower than they otherwise would have been. As a direct and proximate result of Plaintiffs' breach, TWC has been monetarily damaged.

SECOND COUNTERCLAIM

(Intentional Infliction of Temporal Damages)

44. TWC repeats and re-alleges paragraphs 1 through 37 above, as if set forth here in full.

45. Under New York law, a broadcast entity which, without justification, fails to promote a product *with the intention of causing injury*, and thereby depreciates the value of that product, diminishes its revenue, and impairs its business prestige, commits the tort of intentional infliction of temporal damages.

46. Plaintiffs here failed to promote Season 5 of *Project Runway* without justification, and with the intent to injure both TWC and its Program. The Plaintiffs' motivation for their intent to injure was both animus toward TWC and a desire to devalue a future competitor, once *Project Runway* moved to Lifetime. The Plaintiffs also had no justification for its inadequate and counterproductive promotion of Season 5 of the Program.

47. TWC was damaged by the depreciated value of *Project Runway*, diminished revenue, and impaired prestige from what that value, revenue, and prestige would have been had the Plaintiffs not intentionally inflicted temporal damage through its unjustifiable conduct.

PRAYER FOR RELIEF

WHEREFORE, TWC respectfully requests judgment in its favor against NBCU and Bravo as follows:

- (a) Awarding Defendant compensatory and any and all damages available by law in an amount to be determined at trial, with interest, at the maximum amount permitted by law;
- (b) And such other and further relief as the Court may deem just and proper.

JURY DEMAND

Defendant-Counterclaim Plaintiff TWC demands a jury trial in this action.

Dated: October 24, 2008
Armonk, New York

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