

FILED

LOS ANGELES SUPERIOR COURT

JAN 31 2008

JOHN A. CLARKE, CLERK

BY D.M. SWAIN, DEPUTY

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

BC384673

11 ALENA, LLC, a Delaware LLC;
12 Plaintiff,

Case No.

11 **COMPLAINT FOR DECLARATORY
12 AND INJUNCTIVE RELIEF**

13 vs.

14 TERI HATCHER, a California individual;
15 WANNABE PRODUCTIONS, LLC, formerly
16 known as ISBE PRODUCTIONS, LLC, a
17 Delaware LLC; and DOES 1 through 100
18 inclusive;
19 Defendants.

20 Plaintiff Alena, LLC hereby alleges as follows:

21 **I**

22 **PARTIES AND VENUE**

23 1. Plaintiff Alena, LLC ("Alena") is a limited liability company organized under the
24 laws of the State of Delaware with its principal place of business in Culver City, County of Los
25 Angeles, State of California.

26 2. Defendant Teri Hatcher ("Hatcher") is an individual and a resident of the City and
27 County of Los Angeles, State of California.
28

CITIZEN: 10086573 LEA/057#:
RECEIPT #: 00121212030
DATE PAID: 01/22/08 08:10:25 PM
PAYMENT: \$20.00
RECEIVED:
CHECK# 120.00
CASH:
CHANGE:
CARD:

Handwritten: Alan D. Rensfield
Vertical stamp: 10 JUDGE

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2 3. Defendant Wannabe Productions, LLC, formerly known as ISBE Productions, LLC
3 (“Wannabe”) is a limited liability company organized under the laws of the State of Delaware
4 with its principal place of business in the City of Beverly Hills, County of Los Angeles, State of
5 California.

6 4. Alena is informed and believes and thereon alleges that Wannabe is the alter ego of
7 Hatcher. Alena is further informed and believes and thereon alleges that Hatcher dominates and
8 controls Wannabe and that there is such a unity of interest and ownership that the separate
9 personalities of Wannabe and Hatcher no longer exist and if the acts are treated as those of
10 Wannabe alone, an inequitable result will follow.

11 5. Alena is ignorant of the true names and capacities of defendants sued herein as Does
12 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Alena
13 will amend this complaint to allege their true names and capacities when ascertained. Alena is
14 informed and believes and thereon alleges that each of such fictitiously named defendants is
15 responsible in some manner for the occurrences herein alleged, and that Alena’s injuries as
16 herein alleged were proximately caused by these defendants’ acts.

17 6. Alena is informed and believes and thereon alleges that defendants Does 1
18 through 100, inclusive, were the agents, servants, employees, alter-egos, instrumentalities,
19 representatives, coventurers, co-conspirators and partners of each of the other defendants,
20 including Wannabe and Hatcher, and in doing the things hereinafter alleged, were acting in the
21 scope of their authority as such agents, servants, employees, alter-egos, instrumentalities,
22 representatives, coventurers, co-conspirators and partners and with the knowledge, permission
23 and consent or with the approval or ratification of their co-defendants, and, as such, share
24 liability with each other with respect to said matters complained of herein. Defendants Wannabe
25 and Hatcher and Does 1 through 100, inclusive, shall be collectively referred to herein as
26 “defendants.”
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II

FIRST CAUSE OF ACTION

(Declaratory Relief against all Defendants)

7. Alena realleges and incorporates as if set forth fully herein, paragraphs 1 through 6 above.

8. On or about November 30, 2005, Hydroderm, a skin care products company, entered into a written, exclusive endorsement contract ("Contract") with defendant Wannabe for the services of "Desperate Housewives" star, defendant Teri Hatcher. The Contract essentially provides that, during the term thereof, Hatcher would endorse and promote only Hydroderm's skin care products and would refrain from authorizing or permitting the use of her name, voice, autograph, image or likeness to promote, endorse, market or advertise, directly or indirectly, any skin care product manufactured or marketed by any of Hydroderm's competitors.

9. The Contract, at paragraph 20, purports to include an agreement to arbitrate which essentially states that such arbitration must conclude within 120 days.

10. On or about November 30, 2005, plaintiff Alena and third-party Intermix Media, Inc. executed a guaranty in connection with the Contract ("Guaranty," a copy of which is attached hereto as Exhibit "A").

11. The Guaranty does not include an agreement to arbitrate, nor does it incorporate by reference the arbitration clause of the Contract.

12. On December 4, 2007, Hydroderm filed a civil action against defendants Wannabe and Hatcher in the Los Angeles Superior Court, Case No. BC 381664 (the "Lawsuit"), alleging, among other things, that Wannabe repeatedly and materially breached the Contract by permitting Hatcher's name, image and/or likeness to be used to promote and market skin care products manufactured or marketed by Hydroderm's competitors.

13. On December 28, 2007, defendants Wannabe and Hatcher served a Demand for Arbitration ("Demand," a copy of which is attached hereto as Exhibit "B") against Hydroderm

1 and the two additional companies Alena, LLC and Intermix Media, Inc. The Demand seeks: (a)
2 relief against Hydroderm for its purported breach of the Contract; (b) the "enforcement of
3 guaranties by Respondents Alena, LLC and Intermix Media, Inc."; and (c) "declaratory relief as
4 to the rights and remedies of the parties."
5

6 14. On or about January 3, 2008, defendants Wannabe and Hatcher filed and served a
7 motion in the lawsuit for an order compelling Hydroderm to arbitrate their disputes under the
8 Contact. That motion is scheduled to be heard on February 4, 2008.

9 15. By filing the Demand, defendants assert they have the right to arbitrate against
10 Alena concerning the Guaranty and to require Alena to comply with the 120 day arbitration
11 deadline. However, Alena asserts that no agreement to arbitrate exists between Alena and either
12 defendant, and that Alena is not required to and cannot be compelled to arbitrate any dispute
13 concerning the Guaranty.

14 16. Thus, an actual case and controversy has arisen and now exists between Alena
15 and defendants concerning their respective rights and obligations concerning the Demand and
16 defendants' desired arbitration. Alena desires a judicial declaration that the Guaranty is not
17 subject to an arbitration agreement, that the Demand and defendants' desired arbitration be
18 deemed ineffective and invalid as against Alena, and that defendants must address any dispute
19 involving the Guaranty in a court of law, if at all. A judicial declaration is necessary and
20 appropriate at this time in order that Alena may ascertain the respective rights and duties of all
21 parties, and otherwise determine the appropriate response to the Demand, if any be required.
22

23 III

24 SECOND CAUSE OF ACTION

25 (Injunctive Relief against all Defendants)

26 17. Alena realleges and incorporates as if set forth fully herein, paragraphs 1 through
27 16 above.
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2 18. Alena further desires preliminary and permanent injunctive relief prohibiting
3 defendants from acting upon the Demand or otherwise pursuing arbitration against Alena relating
4 to the Guaranty.

5 IV

6 PRAYER

7 WHEREFORE, plaintiff Alena prays for judgment against defendants, jointly and
8 severally, as follows:

9
10 On the First Cause of Action

11 1. That this Court declare that the Guaranty is not subject to an arbitration
12 agreement, that the Demand and defendants' desired arbitration be deemed ineffective and
13 invalid as against Alena, and that defendants must address any dispute involving the Guaranty in
14 a court of law, if at all; and

15 2. Such other and further relief as is just and proper.

16
17 On the Second Cause of Action

18 3. For a preliminary and permanent injunction prohibiting defendants from acting
19 upon the Demand or otherwise pursuing arbitration against Alena relating to the Guaranty; and

20 4. Such other and further relief as is just and proper.

21
22 Robert M. Heller,
23 A Professional Law Corporation

24
25 By: 

26 Robert M. Heller, Esq.
27 Attorneys for Plaintiff
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