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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY [Signature]

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United States District Court
for the Central District of California
Western Division

11 **IRA DEAN, an individual,**
12 **Plaintiff,**
13
14 **v.**
15 **MCDONALD'S CORPORATION, a**
16 **Delaware corporation; TBWA, INC.,**
17 **a Delaware corporation; and DOES 1**
18 **through 10, inclusive,**
19 **Defendants.**

Case No. **CV 08-03617** GPS

COMPLAINT FOR:

- 1) Violation of 15 U.S.C. 1125(a)
- 2) Misappropriation of Right of Publicity
- 3) Unfair Competition
- 4) Injunctive Relief

PLA_x

19 Plaintiff Ira Dean ("Plaintiff") alleges as follows:

NATURE OF THE CASE

22 1. This action arises from defendants' McDonald's Corporation and TBWA,
23 Inc. (collectively "Defendants") unauthorized commercial exploitation on packaging
24 for a food product of the trademark and likeness of Ira Dean, a well-known country
25 music star and celebrity.

JURISDICTION AND VENUE

27 2. This court has subject matter jurisdiction over this action pursuant to

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1 28 U.S.C. §§ 1331, 1332, and 1338.

2 3. This court has personal jurisdiction over Mc Donald's, Corp.
3 pursuant to Fed. R. Civ. P. 4(e).

4 4. Venue is proper in this case under 28 U.S.C. § 1391(b) and (c).

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6 **PARTIES**

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8 5. Plaintiff is, and at all times material hereto has been, an individual
9 residing in the city of Chapmansboro, County of Cheatham, state of Tennessee.

10 6. Plaintiff is informed and believes, and on that basis alleges, that
11 defendant McDonald's Corporation ("Defendant McDonald's") is a corporation
12 organized under the laws of the state of Delaware, with a principal place of
13 business located at 2111 McDonald's Drive, Oak Brook, IL 60523.

14 7. Plaintiff is informed and believes, and on that basis alleges, that
15 defendant TBWA Worldwide ("Defendant TBWA") is a corporation organized
16 under the laws of the state of Delaware, with a principal place of business located
17 at 488 Madison Avenue, New York, New York 10022.

18 8. Plaintiff does not know true names and capacities of those defendants
19 sued herein as Does 1 through 10, inclusive, and therefore sues these defendants by
20 such fictitious names. Plaintiff will amend this complaint to allege their true names
21 and capacities when ascertained. Plaintiff is informed and believes, and on that
22 basis alleges, that each of the defendants sued herein as Does 1 through 10,
23 inclusive, is in some manner legally responsible for the wrongful acts set forth
24 herein.

25 9. Plaintiff is informed and believes, and upon that basis alleges, that
26 each of the defendants were empowered to act as the agent, servant, and/or
27 employee of each of the other defendants, and that all of the acts alleged herein to
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1 have been done by each defendant were authorized, approved, and/or ratified by
2 each of the other defendants.
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4 **ALLEGATIONS COMMON TO ALL COUNTS**
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6 10. Plaintiff is the co-founder of Trick Pony, a well-known country music
7 group. His career has seen eight (8) Billboard Country Singles and three (3)
8 Billboard Top 200 albums among other accomplishments. Plaintiff is renowned
9 for his use of the upright bass (double bass), and prominently integrates it into his
10 image in live performances, photo shoots and music videos.

11 11. Plaintiff is informed and believes, and thereon alleges, that Defendants
12 have been using an image which is recognizable as that of Plaintiff on the
13 packaging of a hamburger product called the "Big & Tasty Burger".

14 12. Following a demand to cease and desist the infringements, Defendants
15 have not done so. Defendants, therefore, are knowingly and maliciously
16 continuing to infringe upon the rights of Plaintiff and are wrongfully exploiting
17 Plaintiff's persona, image and likeness to package and promote their hamburgers.

18 13. Plaintiff has satisfied all conditions precedent to his right to recover
19 pursuant to the provisions of federal and state law set forth below.
20

21 **FIRST CAUSE OF ACTION**
22 **Violation of 15 U.S.C. §1125 (a)**
23 **(Against All Defendants)**
24

25 14. Plaintiff realleges and incorporates all previous allegations as though
26 fully set forth herein.

27 15. Defendants used Plaintiff's mark in interstate advertisements and
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1 promotion of Defendant McDonald's products.

2 16. Defendants' interstate advertising and promotion of Defendant
3 McDonald's product featuring Plaintiff has created a likelihood of confusion,
4 mistake or deception as to Plaintiff's affiliation, connection, association,
5 sponsorship or approval of Defendant McDonald's products, effecting a false
6 endorsement of Defendant McDonald's products and its commercial activities;
7 thus, constituting infringement in violation of Section 43(a) of the Lanham Act, 15
8 U.S.C. § 1125(a)(1)(A).

9 17. Defendants' conduct has caused Plaintiff to suffer losses in an amount
10 equal to the full extent of recoverable damages permitted under the Lanham Act.
11 Specifically, he seeks to recover his actual damages (including a reasonable license
12 fee), Defendants' profits, treble damages, attorney's fees, cost of suit, and interest.

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14 **SECOND CAUSE OF ACTION**

15 **Misappropriation of Plaintiff's Common Law Right of Publicity**
16 **(Against All Defendants)**

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18 18. Plaintiff realleges and incorporates all previous allegations as though
19 fully set forth herein.

20 19. Due to the investment of substantial money, time and energy in
21 advertising, publicizing, and promoting the accomplishments and excellence of
22 Plaintiff, Plaintiff has developed and now possesses a separate right of publicity.

23 20. By reason of the aforesaid, Defendants' use of Plaintiff's identity and
24 appropriation of Plaintiff's likeness, persona, and image to Defendant McDonald's
25 advantage, commercially or otherwise, without Plaintiff's consent, has resulted and
26 continues to result in injury which constitute a misappropriation of Plaintiff's
27 common law right of publicity, the rights to which are owned by Plaintiff.
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1 **FOURTH CAUSE OF ACTION**

2 **For Injunctive Relief**

3 **(Against All Defendants)**

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5 18. Plaintiff realleges and incorporates all previous allegations as though
6 fully set forth herein.

7 24. By reason of the Defendants' acts alleged herein, Plaintiff has
8 suffered and will continue to suffer damage to his reputation and goodwill; and has
9 lost profits, gains and advantages he would have made but for Defendants' act.

10 25. Unless Defendants' acts of misappropriation and unfair competition
11 are immediately restrained and enjoined, Plaintiff will suffer irreparable injury in
12 that Defendants' actions will: (a) lessen and dilute the value of Plaintiff's publicity
13 and marketing rights; (b) interfere with his ability to exploit, market, and license
14 such rights; (c) create confusion in the marketplace as to the duly authorized source
15 of Defendant McDonald's merchandise; and (d) deprive Plaintiff of his just
16 revenues based upon his legal exploitation of his name and likeness rights.

17 26. It will be impossible to ascertain the amount of compensation which
18 could afford Plaintiff adequate relief for such threatened.

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20 **PRAYER FOR RELIEF**

21
22 WHEREFORE, based on the aforesaid, Plaintiff respectfully requests that
23 this Court issue a judgment in its favor and against Defendants as follows:

24 1. That Defendants, and each of them, be required to account and pay over
25 to Plaintiff all gains, profits and advantages derived by each of them from their
26 violation of Section 43 (a) of the Lanham Act; from their infringement of the
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1 plaintiff's common law right of publicity; and from their adjudged unfair
2 competition with Plaintiff; as well as the damages which the Plaintiff has sustained
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4 by reason of the defendants' said acts.

5 2. That Defendants, their agents, servants, employees, officers, attorneys,
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7 successors and assigns and all persons acting under the defendants or on their
8 behalf, be enjoined pendente lite and permanently from: (a) using Plaintiff's
9 name, likeness or identity in association with the sale, offering for sale,
10 distribution or advertising of goods or services in any manner; (b) making, having
11 made for them, selling, distributing or disposing of in any manner any
12 advertisements or promotional material using Plaintiff's name or likenesses; (d)
13 engaging in any unfair trade practices or unfair competition against the plaintiff;
14 (e) aiding, abetting, encouraging or inducing another to do any of the acts herein
15 enjoined.
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20 3. That the Court award punitive and exemplary damages against
21 Defendants and in favor of Plaintiff in such sum as it determined at trial by reason
22 of said Defendants' fraud in wilfully continuing to use the likeness of Plaintiff
23 even after notice of such infringement by Plaintiff.
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25 4. That Defendants, and each of them, be required to pay Plaintiff the
26 costs of this action, reasonable attorneys' fees to be allowed by the Court, and
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1 such further relief as to this Court may seem just, proper, or necessary.

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3 **JURY DEMAND**

4 Plaintiff hereby demands a trial by jury on all counts pled herein.

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6 DATED: June 2, 2008

LAW OFFICES OF WILLIAM HOCHBERG

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9 BY: _____

10 
11 William I. Hochberg, Esq.
12 Attorney for Plaintiff
13 IRA DEAN

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