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BY: *[Signature]*
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 CV07-05818 PA AIVx

11 PARIS HILTON, an individual;
12 Plaintiff,

13 vs.

14 HALLMARK CARDS, a Missouri
15 corporation; and DOES 1 through
16 10 inclusive,

17 Defendants.

18) CASE NO.
19) COMPLAINT FOR DAMAGES:
20) 1. COMMERCIAL
21) APPROPRIATION OF IDENTITY
22) (Cal. Civ. Code § 3344);
23) 2. INVASION OF PRIVACY;
24) 3. MISAPPROPRIATION OF
25) PUBLICITY;
26) 4. FALSE DESIGNATION OF
27) ORIGIN UNDER THE LANHAM
28) ACT § 43(a), 15 U.S.C. § 1125(a)

JURY TRIAL DEMANDED

21 Plaintiff Paris Hilton complains and allege as follows:

22 JURISDICTIONAL AND VENUE ALLEGATIONS

- 23 1. At all relevant times hereto, Plaintiff Paris Hilton is an individual
24 residing in Los Angeles, California.
25 2. Plaintiff is informed and believes, and thereon alleges, that at all
26 relevant times Defendant Hallmark Cards was a corporation existing under the
27 general corporation laws of the State of Missouri, and is currently headquartered at
28 2501 McGee Street, Kansas City, Missouri 64108.

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1 3. Plaintiff is unaware of the names and true capacities of Defendants,
2 whether individual, corporate and/or partnership entities, named herein as DOES 1
3 through 10, inclusive, and therefore sues them by their fictitious names. Plaintiff
4 will seek leave to amend this complaint when their true names and capacities are
5 ascertained. Plaintiff is informed and believes, and based thereon alleges, that said
6 Defendants and DOES 1 through 10, inclusive, are in some manner responsible for
7 the wrongs alleged herein, and that at all times referenced each was the agent and
8 servant of the other Defendants and was acting within the course and scope of said
9 agency and employment.

10 4. Plaintiff is informed and believes, and based thereon alleges, that at
11 all relevant times herein, Defendants and DOES 1 through 10, inclusive, knew or
12 reasonably should have known of the acts and behavior alleged herein and the
13 damages caused thereby, and by their inaction ratified and encouraged such acts and
14 behavior. Plaintiff further alleges that Defendants and DOES 1 through 10,
15 inclusive, had a non-delegable duty to prevent or cure such acts and the behavior
16 described herein, which duty Defendants and DOES 1 through 10, inclusive, failed
17 and/or refused to perform.

18 5. The jurisdiction of this Court over the subject matter of this action is
19 predicated on 28 USC § 1332. The amount in controversy exceeds \$100,000.00,
20 exclusive of interest and costs. Venue in the Central District of California is
21 proper. The claims arose in this district, Plaintiff resides in this district, and
22 Defendant Hallmark Cards is subject to personal jurisdiction within this district.

23 CHARGING ALLEGATIONS

24 6. Plaintiff is informed and believes that Defendant Hallmark Cards
25 manufactured, published, released and distributed greeting cards wherein a
26 photograph of Ms. Hilton's face is superimposed over a cartoon of a waitress
27 serving food to a patron, along with the dialogue: "Don't touch that, it's hot.
28 What's hot? That's hot." The card is entitled "Paris's First Day as a Waitress" and

1 is attached hereto as Exhibit A. Plaintiff is informed and believes that these
2 pictures were published in 2007 and continue to be published by Hallmark Cards
3 throughout the United States, including but not limited to the State of California.

4 7. Plaintiff is informed and believes that Hallmark Cards published the
5 aforementioned cards in connection with a commercial purpose; the cards have a
6 U.S.A. sales price of \$2.49 each.

7 8. Defendant has wrongfully utilized Plaintiff's name and identity and,
8 therefore, damaging her rights of privacy and publicity, her exclusive property
9 rights and her personal rights in and to the use of her name and likeness.

10 **FIRST CAUSE OF ACTION**

11 **(For Commercial Appropriation in Violation of California**

12 **Civil Code Section 3344)**

13 9. Plaintiff repeats and realleges each and every allegation in paragraph 1
14 through 8 of this Complaint as set forth above.

15 10. Defendant has knowingly, and without the consent of Plaintiff,
16 utilized Plaintiff's name and photograph in products, merchandise and goods.

17 11. Defendant knowingly, and without the consent of Plaintiff, utilized
18 Plaintiff's name and the photograph for purposes of advertising, selling and
19 soliciting purchases of products, merchandise and goods.

20 12. Defendant's conduct is in violation of California Civil Code
21 Section 3344, since such acts were without Plaintiff's consent. Defendant
22 knowingly appropriated Plaintiff's name and the photograph for the purpose of
23 promoting, marketing, merchandising and exploiting its products.

24 13. Plaintiff is informed and believes, and based thereon alleges there
25 was, and is, a direct connection between the use of Plaintiff's name and the
26 photograph and the commercial purposes associated with the production, sale,
27 distribution and promotion of Defendant's products.

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1 14. As a proximate result of Defendant's actions, Plaintiff has suffered
2 actual damages in an amount to be shown at trial, but not less than one hundred
3 thousand dollars (\$100,000.00).

4 15. Pursuant to California Civil Code Section 3344, Plaintiff is also
5 entitled to Defendant's profits resulting from the unauthorized exploitation of her
6 name and the photograph, in an amount to be proven at trial.

7 16. Defendant's acts were willful, malicious and oppressive to the extent
8 that Defendant acted in conscious disregard of Plaintiff's rights. Defendant failed
9 to properly obtain approval relative to its use of the name and the photograph of
10 Plaintiff. Accordingly, Plaintiff will seek an award of punitive damages against
11 Defendant, for its wrongdoing, and to deter it from similar wrongdoing in the
12 future.

13 17. In performing the acts herein alleged, Defendant has caused, and
14 continues to cause, Plaintiff great and irreparable injury for which there is no
15 adequate remedy at law. Accordingly, Plaintiff is entitled to injunctive relief.

16 18. Pursuant to California Civil Code Section 3344, Plaintiff is entitled
17 to recover her attorneys' fees in pursuing this action.

18 **SECOND CAUSE OF ACTION**

19 **(For Invasion of Privacy and Appropriation of Plaintiff's**
20 **Name and Likeness Under Common Law)**

21 19. Plaintiff repeats and realleges each and every allegation in
22 paragraphs 1 through 18 of this Complaint as set forth above.

23 20. Defendant has, in writing, producing, distributing and selling the
24 "Paris's First Day as a Waitress" cards, exploited, without Plaintiff's consent,
25 Plaintiff's name and likeness and invaded her right to privacy. More specifically,
26 Defendant appropriated Plaintiff's name and likeness for the purpose of promoting,
27 marketing, merchandising and exploiting its products.

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1 28. Plaintiff has been damaged in that he has suffered a loss of her
2 valuable property rights as a result of Defendant's misappropriation of her right to
3 publicity.

4 29. As a proximate result of Defendant's actions, Plaintiff has suffered
5 actual damages in an amount to be shown at trial, but in no event less than one
6 hundred thousand dollars (\$100,000.00).

7 30. Defendant's acts were willful, malicious and oppressive to the extent
8 that Defendant acted in conscious disregard of Plaintiff's rights. Defendant failed
9 to properly obtain approval relative to their use of the name and likeness of
10 Plaintiff. Accordingly, Plaintiff will seek an award of punitive damages against
11 Defendant for its wrongdoing, and to deter it from similar wrongdoing in the future.

12 31. In performing the acts herein alleged, Defendant has caused, and
13 continues to cause, Plaintiff great and irreparable injury for which there is no
14 adequate remedy at law. Accordingly, Plaintiff is entitled to injunctive relief.

15 **FOURTH CAUSE OF ACTION**

16 **(For False Designation of Origin Under The Lanham**

17 **Act § 43(a), 15 U.S.C. § 1125(a))**

18 32. Plaintiff repeats and realleges each and every allegation in paragraphs
19 1 through 31 of this Complaint as set forth above.

20 33. By promoting and causing the advertisements to be published and
21 distributed in interstate commerce, Defendant has falsely represented to the
22 public that its products are in some way authorized by, endorsed by, sponsored by,
23 or associated with the Plaintiff.

24 34. As a result, members of the public will be and in fact have actually
25 been deceived and/or confused into believing that Defendant's products are
26 authorized by, endorsed by, sponsored or associated with Plaintiff. Plaintiff has
27 been harmed by Defendant's unauthorized use of her names and identity, which is a
28 valuable property right, as an apparent endorsement of Defendant's products.

1 source of a wide variety of clothing and related goods and as distinguishing such
2 goods from those of others.

3 42. With actual and constructive notice of the above-mentioned federal
4 trademark registration and Plaintiff's extensive and continuous use of the That's
5 Hot mark, Plaintiff is informed and believes, and upon such information and belief
6 avers, that Defendant has offered for sale or sold merchandise bearing the
7 letters/words "That's Hot."

8 41. The promotion, sale, offering for sale, advertising and distribution by
9 Defendant of these infringing goods is likely to cause confusion and mistake and to
10 deceive purchasers, and do in fact cause confusion, mistake and deception.

11 44. Defendant's acts have caused and, unless restrained by this Court,
12 will continue to cause Plaintiff and the public to suffer great and irreparable damage
13 and injury through, inter alia, a likelihood of confusion, mistake, and deception
14 among the relevant purchasing public and trade as to the source of the Defendant's
15 infringing goods.

16 45. Plaintiff has suffered loss of profits and other damage, and
17 Defendant has earned illegal profits, in an amount to be proven at trial, as the result
18 of the aforesaid acts of Defendant. Plaintiff may elect, at time of trial, and in the
19 alternative statutory damages up to the maximum extent permitted under the
20 Lanham Act, as determined by the trier of fact.

21 46. Plaintiff has no adequate remedy at law.

22 **ON THE FIRST CAUSE OF ACTION:**

23 1. For actual damages in an amount not less than one hundred thousand
24 dollars (\$100,000.00);

25 2. All profits earned by Defendant in connection with the exploitation of
26 the photograph of Plaintiff according to proof at trial;

27 3. For punitive damages according to proof at trial;

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1 4. For a temporary and permanent injunction restraining Defendant from
2 any and all future exploitation of Plaintiff's name and likeness;

3 6. For attorneys' fees;

4 7. For costs of suit herein incurred; and

5 8. For such other and further relief as the Court may deem proper.

6 **ON THE SECOND CAUSE OF ACTION:**

7 1. For actual damages in an amount not less than one hundred thousand
8 dollars (\$100,000.00);

9 2. For punitive damages according to proof at trial;

10 3. For a temporary and permanent injunction restraining Defendant from
11 any and all future exploitation of Plaintiff's name and likeness;

12 4. For costs of suit herein incurred; and

13 5. For such other and further relief as the Court may deem proper.

14 **ON THE THIRD CAUSE OF ACTION:**

15 1. For actual damages in an amount not less than one hundred thousand
16 dollars (\$100,000.00);

17 2. For punitive damages according to proof at trial;

18 3. For a temporary and permanent injunction restraining Defendant from
19 any and all future exploitation of Plaintiff's name and likeness;

20 4. For costs of suit herein incurred; and

21 5. For such other and further relief as the Court may deem proper.

22 **ON THE FOURTH CAUSE OF ACTION:**

23 1. For actual damages in an amount not less than one hundred thousand
24 dollars (\$100,000.00);

25 2. All profits earned by Defendant in connection with the exploitation of
26 the photograph of Plaintiff according to proof at trial;

27 3 For a temporary and permanent injunction restraining Defendant from
28 any and all future exploitation of Plaintiff's name and likeness;

- 1 4. For attorneys' fees;
- 2 5. For costs of suit herein incurred;
- 3 6. For treble damages; and
- 4 7. For such other and further relief as the Court may deem proper.

5 **ON THE FIFTH CAUSE OF ACTION:**

- 6 1. For actual damages in an amount not less than one hundred thousand
7 dollars (\$100,000.00);
- 8 2. All profits earned by Defendant in connection with the exploitation of
9 the mark "That's Hot" according to proof at trial;
- 10 3. For a temporary and permanent injunction restraining Defendant
11 from any and all future exploitation of Plaintiff's name and likeness;
- 12 4. For attorneys' fees;
- 13 5. For costs of suit herein incurred;
- 14 6. For treble damages; and
- 15 7. For such other and further relief as the Court may deem proper.

16 DATED: September 6, 2007

BLAKELY LAW GROUP

17
18 By: 
19 BRENT H. BLAKELY
20 Attorneys for Plaintiff Paris Hilton

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal
23 Rules of Civil Procedure.

24 DATED: September 6, 2007

BLAKELY LAW GROUP

25
26 By: 
27 Brent H. Blakely
28 Attorneys for Plaintiff Paris Hilton