

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MGA ENTERTAINMENT, INC.,	:	
	:	Index No.
Plaintiff,	:	
	:	
- against -	:	
	:	<u>VERIFIED COMPLAINT</u>
MARVEL ENTERTAINMENT, INC., MARVEL	:	
CHARACTERS, INC. and ISAAC PERLMUTTER,	:	
	:	<u>Jury Trial Demanded</u>
Defendants.	:	
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Plaintiff, MGA Entertainment, Inc. ("MGAE"), by its attorneys, Grimes & Battersby, LLP, for its Complaint against Marvel Entertainment, Inc. ("Marvel"), Marvel Characters, Inc. ("Marvel Characters") and Isaac Perlmutter, respectfully alleges as follows:

NATURE OF THE CASE

1. This is a civil action by MGAE against Marvel, Marvel Characters and the CEO and Vice Chairman of Marvel, Isaac Perlmutter, arising out of their campaign of harassment against MGAE in an effort to extort millions of dollars from the company. Defendants' conduct includes the wrongful termination of a valuable license agreement that was in effect, threats by Mr. Perlmutter to embarrass MGAE and harm the company's legal position in another pending lawsuit if MGAE did not pay millions to defendants, and then the subsequent filing of a wholly unjustified lawsuit against MGAE. Defendants' actions have caused significant harm to MGAE, its valuable brands and products, and its customer relationships.

PARTIES

2. MGAE is a California corporation, with its principal place of business at 16380 Roscoe Boulevard, Van Nuys, California 91406.

3. Upon information and belief, defendant Marvel is a Delaware corporation with a principal place of business located at 417 Fifth Avenue, New York, New York 10016.

4. Upon information and belief, defendant Marvel Characters is a Delaware corporation with a principal place of business located at 9242 Beverly Boulevard, Los Angeles, California 90210.

5. Upon information and belief, defendant Perlmutter is an individual whose principal place of business is located at 417 Fifth Avenue, New York, New York 10016. Upon information and belief, Perlmutter, the CEO and Vice-Chairman of Marvel, has personally directed, controlled, ratified, participated in and/or been the moving force behind the tortious activities of Marvel and Marvel Characters, and has personally committed the tortious acts that form the subject matter of MGAE's claims.

JURISDICTION

6. The Court has personal jurisdiction over defendant Marvel by virtue of its domicile in New York. The Court has personal jurisdiction over defendant Marvel Characters by its consent to jurisdiction in New York and CPLR § 302. The Court has personal jurisdiction over defendant Perlmutter by virtue of his domicile in the State of New York or CPLR § 302.

FACTUAL BACKGROUND

7. MGAE and defendants Marvel and Marvel Characters entered into License Agreement No. D06002 on or about January 30, 2006, as amended (the "D06002 Agreement"). Pursuant to the Agreement, MGAE had the right to use the character likenesses and trademarks of "Spider-Man" and many of Marvel's other well known characters to make, distribute and sell certain licensed products – which included, *inter alia*, die cast vehicles, racing track sets and related play sets – through defined distribution channels. The D06002 Agreement has a term

extending through December 31, 2009. (A copy of the D06002 Agreement is attached hereto at Tab A).

8. Upon information and belief, in 2008 Marvel retained Gingold & Company to perform an audit of MGAE with respect to royalty compliance for the D06002 Agreement. Gingold & Company issued a written report, dated November 26, 2008, which found “additional royalties, interest and audit fees due from MGA in the amount of \$1,129,796.”

9. By letter dated December 22, 2008, Marvel demanded payment of the full amount of the alleged royalty discrepancy found in the Gingold report. Marvel threatened to commence legal action if payment was not made within ten days. (A copy of the December 22, 2008 letter is attached hereto at Tab B).

10. MGAE disputed the audit’s findings and vehemently denied that any amount was due and owing to defendants pursuant to the D06002 Agreement or otherwise.

11. At this same time, defendant Perlmutter communicated with Isaac Larian, MGAE’s President and CEO. For purposes of background, MGAE is involved in a highly-publicized lawsuit with Mattel, Inc. in federal court in California over ownership of the copyrights to the “Bratz” line of dolls. Perlmutter told Larian that he and MGAE should pay money to Marvel with “Mattel hanging in the news,” or else Perlmutter would bring a lawsuit that would seek to embarrass MGAE with retailers and the public and, to Perlmutter’s belief, harm MGAE’s legal position vis-à-vis the Mattel lawsuit. Upon information and belief, Perlmutter’s actions were driven by a personal animosity for Larian and MGAE.

12. At the end of the ten-day period on January 2, 2009, Defendants Marvel and Marvel Characters promptly issued a written Notice of Termination of the D06002 Agreement to MGAE and sued MGAE in this Court for alleged breach of contract based on the audit findings.

(A copy of the January 2, 2009 Notice of Termination is attached hereto at Tab C; a copy of the Complaint is attached hereto at Tab D).

13. In point of fact, the harm threatened by Perlmutter has unfortunately come to pass. MGAE has been harmed by Perlmutter's actions and the assertion of meritless claims filed by Marvel and Marvel Characters. The lawsuit has harmed MGAE's reputation with its retail customers. Moreover, Mattel has referenced the lawsuit in its legal filings with the U.S. District Court in California as evidence in furtherance of Mattel's argument for the establishment of a provisional remedy against MGAE, namely a constructive trust.

14. Through his intentional and malicious actions to extort monies from Larian and MGAE, Perlmutter has exercised complete dominion over Marvel, and Perlmutter's domination was used to commit a wrong against MGAE that has caused the company to suffer substantial harm.

FIRST CAUSE OF ACTION

(Wrongful Termination)

(As Against Defendants Marvel and Marvel Characters Only)

15. MGAE repeats and re-alleges paragraphs 1 through 14 as if restated in full.

16. On January 30, 2006, MGAE and defendants Marvel and Marvel Characters reached a binding agreement that was later memorialized in writing and signed by the parties and is known as the D06002 Agreement, as amended.

17. MGAE performed all of its obligations under the agreement and has satisfied all conditions precedent in order to proceed with this action. Any obligations not met by MGAE were a direct result of breaches of the Agreement and/or wrongful termination of the Agreement by defendants Marvel and Marvel Characters.

18. Defendants wrongfully terminated the D06002 Agreement on January 2, 2009 by claiming that they were entitled to monies under the agreement when in fact no such monies were due. Defendants' termination denies MGAE its rights under the agreement.

19. As a result of Defendants' wrongful termination of the License Agreement, MGAE has been damaged in an amount to be proven at trial of at least \$100 million, or such other amount as the jury may award.

SECOND CAUSE OF ACTION

(Malicious Prosecution)

(As Against All Defendants)

20. MGAE repeats and re-alleges paragraphs 1 through 19 as if restated in full.

21. Marvel and Marvel Characters, acting under the complete domination of Perlmutter, commenced a lawsuit against MGAE on January 2, 2009.

22. The lawsuit lacks adequate probable cause.

23. The lawsuit was brought with malice and in bad faith in an effort to extort monies from MGAE through threats of harm that have unfortunately come to fruition.

24. As a result of the bad faith actions of defendants, MGAE has been damaged in an amount to be proven at trial of at least \$100 million, or such other amount as the jury may award.

THIRD CAUSE OF ACTION

(Abuse of Process)

(As Against All Defendants)

25. MGAE repeats and re-alleges paragraphs 1 through 24 as if restated in full.

26. Marvel and Marvel Characters, acting under the complete domination of Perlmutter, issued process through the commencement of a lawsuit on January 2, 2009.

27. Defendants had an intent to do harm without excuse or justification.

28. Defendants used process in a perverted manner to obtain a collateral objective, namely to extort monies from MGAE.

29. The lawsuit has caused special injury to MGAE, namely injury to its business and reputation with customers, and interference with ongoing legal proceedings against Mattel.

30. As a result of the bad faith actions of defendants, MGAE has been damaged in an amount to be proven at trial of at least \$100 million, or such other amount as the jury may award.

FOURTH CAUSE OF ACTION

(Intentional Infliction of Economic Harm)

(As Against All Defendants)

31. MGAE repeats and re-alleges paragraphs 1 through 30 as if restated in full.

32. In the alternative, MGAE claims damages for intentional infliction of economic harm against defendants.

33. Through the conduct described above, defendants intended to inflict harm on MGAE through acts of disinterested malevolence, the sole motivation of which was to harm MGAE.

34. Defendants lacked any excuse or justification for their acts.

35. The intentional actions of defendants have caused special damages to MGAE, namely injury to its business and reputation with customers, and interference with ongoing legal proceedings against Mattel.

36. As a result of the malicious actions of defendants, MGAE has been damaged in an amount to be proven at trial of at least \$100 million, or such other amount as the jury may award.

Jury Demand

37. MGAE demands trial by jury of all claims.

RELIEF REQUESTED

In view of the foregoing, MGAE requests that the Court:

A. On the First Cause of Action, award MGAE compensatory damages, in an amount to be determined at trial, but no less than \$100 million, plus punitive damages in an amount to be determined at trial;

B. On the Second Cause of Action, award MGAE compensatory damages, in an amount to be determined at trial, but no less than \$100 million, plus punitive damages in an amount to be determined at trial;

C. On the Third Cause of Action, award MGAE compensatory damages, in an amount to be determined at trial, but no less than \$100 million, and special and punitive damages in an amount to be determined at trial;

D. On the Fourth Cause of Action, award MGAE compensatory damages, in amount to be determined at trial, but no less than \$100 million, and special and punitive damages in an amount to be determined at trial;


E. Award MGAE its attorney's fees and costs of this action; and,

F. Award MGAE any and all other relief to which it may be entitled.

Dated: February 27, 2009

Respectfully submitted,

GRIMES & BATTERSBY, LLP



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