

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

<p>ROBERT BURCK d/b/a THE NAKED COWBOY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CLEAR CHANNEL COMMUNICATIONS, INC.; CLEAR CHANNEL MANAGEMENT SERVICES, INC.;</p> <p>COREY BONALEWICZ; and TOMMY CHUCK</p> <p style="text-align: center;">Defendants.</p>	<p>NO.</p>
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COMPLAINT

Parties

1. Plaintiff herein is Robert Burck d/b/a The Naked Cowboy (“Burck”), an adult individual residing at 169 Blue Heron Drive, Secaucus, New Jersey, 07094.

2. Defendants herein are:

(A) Clear Channel Communications, Inc., a corporation with a principal place of business at 200 E. Basse Road, San Antonio, Texas, 78209;

(B) Clear Channel Management Services, Inc., a corporation with a principal place of business at , and a registered address for service at 830 Bear Tavern Road, Ewing, New Jersey;

(C) Corey Bonalewicz (“Bonalewicz”), an adult individual apparently residing at 1134 75th Ave N., St. Petersburg, Florida, 33702; and

(D) Tommy Chuck (“Chuck”), an adult individual with an apparent place of business at 4002 Gandy Blvd., Tampa, Florida, 33611.

3. The corporate Defendants named herein shall be hereinafter referred to, collectively and alternatively, as “Clear Channel.”

Statement of Jurisdiction

4. Subject-matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 as Plaintiff has pled causes of action arising under federal trademark law, and also pursuant to 28 U.S.C. § 1332 given the diversity of citizenship of the parties.

5. Personal jurisdiction is proper in this State given that Defendants regularly conduct business in New Jersey and/or have directed harm to Plaintiff, who resides in New Jersey.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).

Statement of Facts

7. Over the past decade, plaintiff Burck has performed as a street entertainer in New York City’s Times Square under the persona known as The Naked Cowboy.

8. Always in character, Burck has performed live for hundreds of thousands of people in his trademarked get-up, which features a white cowboy hat, white cowboy boots, white underpants, and an acoustic guitar.

9. The Naked Cowboy’s street performances, also known as “busking,” have become a fixture of New York City culture, as well as one of the top tourist attractions for visitors to Times Square.

10. Burck began his street performance career in 1998 after a shoot at Playgirl, and first appeared on Venice Beach. After some disappointing starts, a friend had suggested to him that he dress only in his underwear.

11. The suggestion proved to be a good one, as The Naked Cowboy's unmistakable persona, underwear included, has been the *sine qua non* of a surging career as the most famous busker in the entertainment capital of the world.

12. Burck's character, in addition to being a Times Square staple, has appeared in a variety of media.

13. He auditioned in character for "American Idol" during its first season, as well as for the talent show "Star Search."

14. His character is part of USA Network's "Characters Welcome" campaign.

15. He appeared briefly in the PBS documentary *Origins* to give his opinion on the possibility of extraterrestrial life.

16. He is featured singing in the video game "True Crime: New York City at Times Square."

17. He has appeared in several movies and television programs, including "Starship Dave," "Survive This," "Mulva: Zombie Ass Kicker," "Steve Harvey's Big Time," "New York Minute," "Creature Feature," "Lonely Planet," "Troma's Edge," "American Icon," and "The Howard Stern Show."

18. He appeared on an episode of the game show "Street Smarts," and featured in the music clip for a song by the rock band "Cake."

19. He also appeared in a music video for the song "Rockstar" by the multi-platinum artist "Nickelback."

20. He recently released an album featuring many of his own original songs which he performs for live audiences.

21. In addition to his live appearances in Times Square, he is a regular in the streets of the French Quarter during the New Orleans Mardi Gras season and the Labor Day Riverfest Festival in Cincinnati, Ohio. He has also appeared in Austin, Texas during the South by Southwest Music Conference.

22. In 2007, Mars, Incorporated, the maker of M&Ms candies, created an M&M character dressed in the Naked Cowboy's signature attire, and called it "Peanut Cowboy." The animated Cowboy M&M was featured in a prominent advertising campaign, which included a spot on a giant video billboard in the heart of Times Square.

23. The Naked Cowboy is a prominent and well-known persona, particularly in the area where the infringements described below have taken place.

24. The Naked Cowboy's name and likeness are registered trademarks owned by Burck.

25. Burck has licensed The Naked Cowboy name and/or likeness to companies for the purposes of advertising and endorsement.

26. The Naked Cowboy, for instance, appeared in a Chevrolet commercial which debuted during Super Bowl XLI.

27. As one would expect, in light of the trademarks held by Burck for his persona, he requires compensation for the use of his name and/or likeness for commercial purposes.

28. Defendants herein, however, have decided to use the Naked Cowboy's trademarks for their own commercial purpose, and without seeking his permission or providing him any compensation.

29. Upon information and belief, Clear Channel owns a radio station based in or around the Tampa, Florida, known as “93.3 FLZ” (the “Station”).

30. On or about April 24, 2009, the Naked Cowboy discovered that the Station had placed 51 videos on youtube.com, which were linked from the Station’s website, and which featured an impostor of the Naked Cowboy.

31. Defendant Corey Bonalewicz, an apparent employee of the Station, appears in these videos dressed up in the Naked Cowboy’s signature attire.

32. When making these appearances, Bonalewicz has even called himself “the Naked Cowboy.”

33. Bonalewicz has acted and/or performed as an impostor of the Naked Cowboy.

34. The Station has promoted itself using the impostor.

35. The Station has solicited booking engagements of the impostor, and has provided its listeners/viewers with a 1-800 number to call to book an appearance.

36. Defendant Tommy Chuck is the Station’s Programming & Music Director. Upon information and belief, Chuck authorized and actively encouraged the infringing activities engaged in by Bonalewicz.

37. Both Chuck and Bonalewicz acted knowingly and willfully in creating, promoting, and disseminating the “Naked Cowboy” impostor.

38. The impostor has performed in a manner which not only unfairly trades upon, but also tarnishes the goodwill generated by the Naked Cowboy during the course of his career as an entertainer.

39. Burck seeks to be compensated for the ongoing infringement of both his federal trademark rights, as well as the infringement of his right of publicity.

40. Burck has satisfied all conditions precedent to his right to recover pursuant to the provisions of federal and state law set forth below.

COUNT I
Violation of 15 U.S.C. § 1125(a)

41. Burck incorporates the foregoing allegation of this Complaint as if set forth at length herein.

42. Defendants, individually and/or jointly, having traded upon the Naked Cowboy's trademarked name and likeness, have effected a false endorsement of the Station.

43. Defendants' conduct constitutes a misappropriation of the Naked Cowboy's celebrity persona in derogation of the trademark rights owned by Burck.

44. Defendants' conduct further amounts to both false association and unfair competition as defined in the Lanham Act.

45. Defendants' conduct has caused Burck to suffer losses in an amount equal to the full extent of recoverable damages permitted under the Lanham Act. Specifically, he seeks to recover his actual damages (including but not limited to a reasonable license fee and/or other royalty payments), the Defendants' profits, treble damages, attorney's fees, costs of suit, interest, and injunctive relief.

WHEREFORE, Plaintiff requests judgment in its favor and against Defendants, and seeks damages in a principal amount in excess of \$150,000, including treble

damages, attorney's fees, costs of suit, interest, and injunctive relief, along with such other relief warranted in law or equity or as deemed appropriate by the Court.

COUNT II
Violation of 15 U.S.C. § 1125(c)

46. Burck incorporates the foregoing allegation of this Complaint as if set forth at length herein.

47. The "Naked Cowboy" impostor has diluted the value of Burck's registered trademarks.

48. The impostor has performed in a manner which has tarnished the goodwill generated by Burck in his Naked Cowboy character and trademarks.

49. Defendants' conduct has caused Burck to suffer losses in an amount equal to the full extent of recoverable damages permitted under the Lanham Act. Specifically, he seeks to recover his actual damages (including but not limited to a reasonable license fee and/or other royalty payments), the Defendants' profits, treble damages, attorney's fees, costs of suit, interest, and injunctive relief.

WHEREFORE, Plaintiff requests judgment in its favor and against Defendants, and seeks damages in an amount in excess of \$150,000, including treble damages, attorney's fees, costs of suit, interest, and injunctive relief, along with such other relief warranted in law or equity or as deemed appropriate by the Court.

COUNT III
Violation of N.Y. Civil Rights § 51

50. Burck incorporates the foregoing allegations of this Complaint as if set forth at length herein.

51. As set forth above, Defendants knowingly, intentionally, and maliciously, used, published, and disseminated, and continue to use, the Naked Cowboy's likeness, picture, image, and/or name for purposes of advertising and/or trade, without his written consent.

52. Defendants have caused to be transferred, circulated, sold, distributed, used, displaced, advertised, reproduced and/or published, both directly and indirectly, through diverse media, certain unauthorized representations of the Naked Cowboy's likeness, picture, image and/or name.

53. Defendants' conduct constitutes an unauthorized use of the Naked Cowboy's likeness and image for a trade purpose, as defined under and/or pursuant to N.Y. Civ. Rights § 51.

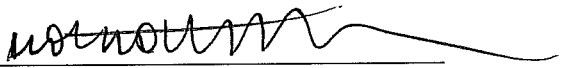
54. Defendants' conduct has caused Burck to suffer losses in an amount equal to the full extent of the damages permitted under N.Y. Civ. Rights § 51. Specifically, he seeks to recover his actual damages (including a reasonable license fee), the Defendants' profits, punitive damages, costs of suit, and interest.

WHEREFORE, Plaintiff requests judgment in its favor and against Defendants, and seeks damages in an amount in excess of \$150,000, including punitive damages, attorney's fees, costs of suit, interest, and injunctive relief, along with such other relief warranted in law or equity or as deemed appropriate by the Court.

JURY DEMAND

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

HALBERSTADT CURLEY LLC

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