

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION  
CIVIL ACTION NO. \_\_\_\_\_

WAL BRANDING AND MARKETING, LLC,  
an Illinois limited liability company, WAL  
MERCHANDISING AND LICENSING, LLC,  
an Illinois limited liability company (f/k/a/  
WAL MARKETING & LICENSING,  
LLC, an Illinois limited liability company),  
AND WAL ACTION EVENTS,  
LLC, an Illinois limited liability company,

Plaintiffs,

v.

ROCKWELL TIME, INC.

Defendant.

**COMPLAINT  
JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs WAL Branding and Marketing, LLC, WAL Merchandising & Licensing, LLC (f/k/a WAL Marketing & Licensing, LLC) and WAL Action Events, LLC, allege against Defendant Rockwell Time, Inc. the following:

**PARTIES**

1. WAL Branding and Marketing, LLC ("WAL Branding") is an Illinois limited liability company existing under the laws of the State of Illinois that has its principal place of business located in the State of Illinois.

2. WAL Merchandising & Licensing, LLC (f/k/a WAL Marketing & Licensing, LLC) ("WAL Merchandising") is an Illinois limited liability company existing under the laws of the State of Illinois that has its principal place of business located in the State of Illinois.

3. Plaintiff WAL Action Events, LLC ("WAL Action") and collectively with WAL Branding and WAL Merchandising, "WAL") is an Illinois limited liability company existing under the laws of the State of Illinois that has its principal place of business located in the State of Illinois.

4. WAL Branding is the parent company of WAL Merchandising and WAL Action.

5. The sole member of each of WAL Branding, WAL Merchandising, and WAL Action is Kaplan Sports, LLC ("KSL").

6. KSL is an Illinois limited liability company whose sole member is Steve Kaplan, a citizen of Illinois.

7. Permissive joinder under Federal Rule of Civil Procedure 20(a)(1) is appropriate inasmuch as (1) Plaintiffs WAL Branding, WAL Merchandising, and WAL Action assert claims for relief herein with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) any question of law or fact common to Plaintiffs WAL Branding, WAL Merchandising, and WAL Action will arise in the action.

8. Upon information and belief, Defendant Rockwell Time, Inc. ("Rockwell") is a Utah corporation existing by virtue of the laws of the State of Utah that has its principal place of business located in the State of Utah.

9. WAL and Rockwell are hereinafter referred to as the "Parties."

#### **JURISDICTION AND VENUE**

10. This action arises under the federal trademark statute (the "Lanham Act"), 15 U.S.C. § 1051 *et seq.*, various Illinois statutes, and under the common law of the State of Illinois. This Court has subject matter jurisdiction over the federal trademark, false advertising, and unfair competition claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338, and

1367. The Court has subject matter jurisdiction over the related Illinois state law claims pursuant to 28 U.S.C. §§ 1338 and 1367.

11. The amount in controversy between the Parties exceeds \$75,000.

12. WAL is informed and believes, and on that basis alleges, that this Court has personal jurisdiction over Rockwell because it has extensive contacts with, and conducts business within, the State of Illinois and this judicial district; Rockwell has caused Rockwell products to be advertised, promoted, and sold in this judicial district; the causes of action asserted in this Complaint arise out of Rockwell's contacts with this judicial district; and because Rockwell has caused tortious injury to WAL in this judicial district.

13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) because Rockwell has extensive contacts with, and conducts business within, the State of Illinois and this judicial district; Rockwell has caused Rockwell products to be advertised, promoted, and sold in this judicial district; the causes of action asserted in this Complaint arise out of Rockwell's contacts with this judicial district; and because Rockwell has caused tortious injury to WAL in this judicial district.

## FACTS

### **WAL's Business and its Athlete Property Rights**

14. WAL Branding does business as the World Armwrestling League (the "League"). Founded in 2014, the League is a professional arm wrestling league based in Chicago, Illinois. The League is the largest and fastest growing professional arm-wrestling league in the world.

15. From time to time, and in connection with operating the League, WAL Merchandising and WAL Action enter into certain written agreements with athletes participating in League events.

16. Specifically, WAL Merchandising has executed and entered into a Marketing and Licensing Agreement (the "Marketing Agreement") with thirteen (13) "elite" League athletes (the "WAL Athletes") and WAL Action has executed and entered into a Event Participation and Promotion Agreement (the "Promotion Agreement" and collectively with the Marketing Agreement, the "WAL Contracts") with the WAL Athletes.

17. Both Travis Bagent and Todd Hutchings are WAL Athletes subject to the terms and conditions of the WAL Contracts. *See* **Composite Exhibit 1** and **Composite Exhibit 2** attached hereto.

18. Pursuant to the WAL Contracts, WAL owns the *exclusive, unrestricted and worldwide* rights to the name, likeness and image of the WAL Athletes, as well as the *exclusive* right to use of the services of the WAL Athletes in promoting all arm-wrestling events, activities and marketing, in any broadcast, social media platforms, webcasting, internet channels (e.g. YouTube), or any other form of digital media download or web syndication, websites, films and tapes for exhibition in any and all media (the "Athlete Property Rights").

**Rockwell's Unauthorized Use of WAL's Athlete Property Rights**

19. Rockwell designs and sells watches, sunglasses, and other apparel. Rockwell markets its products to consumers with an interest in "extreme" sports.

20. In addition, Rockwell, either directly or through various affiliates, including but not limited to "Rockwell Armsports," conducts, promotes and/or sponsors various arm-wrestling events featuring WAL's exclusive, contracted WAL Athletes, such as, among others: (a) "The Rockwell Open Armwrestling Championships Qualifying Event" that was held July 16, 2016 in Arkham, West Virginia; (b) "The Big Arm Classic Armwrestling Series North American

Armrestling Championships Qualifying Event" that was held July 23, 2016 in Chino, California; (c) the "Rockwell Open Armrestling Championships Qualifying Event" that was held September 4, 2016; (d) the "Rockwell Open Armrestling Championships Qualifying Event" that was held September 24, 2016 in Petaluma, California; (e) the "Rockwell Open Armrestling Championships Qualifying Event" that was held October 1, 2016 in Mesa, Arizona; (f) the "Rockwell Open Armrestling Championships Qualifying Event Directed by Travis Bagent" that was held October 8, 2016 in East Weymouth, Massachusetts; (g) the "Rockwell Battle of the Alamo" that was held October 22, 2016 in San Antonio, Texas; (h) the "Rockwell Open Armrestling Championships Qualifying Event" that was held October 29, 2016 in New York; (i) the "Rockwell Open Armrestling Championships Qualifying Event" that was held November 5, 2016 in Michigan; and (j) the "Rockwell Open Armrestling Championships Qualifying Event" that was held November 20, 2016 in Ohio (collectively, the "Rockwell Events"). See **EXHIBIT 3** attached hereto.

21. Rockwell has, and continues, to use WAL Athletes in various interviews on webcasts and podcasts to promote the Rockwell Events. The Rockwell Events directly compete with WAL arm-wrestling events featuring WAL Athletes and, upon information and belief, are an attempt by Rockwell to build a league to compete with the League (the "Competing League").

22. On January 16, 2016, Rockwell committed unauthorized direct and intentional solicitation of WAL Athletes during an event held in San Diego, California for the purposes of (a) promoting Rockwell watches to be worn by WAL Athletes during WAL's 2016 Championships and (b) building the Competing League. Rockwell's actions in soliciting and recruiting known WAL Athletes to wear Rockwell watches during WAL's ESPN-televised

championships is an intentional, willful and illegal appropriation of WAL product placement revenues.

23. WAL Athlete Todd Hutchings appeared wearing a Rockwell watch without WAL's required consent during ESPN broadcasts in two (2) WAL semi-final matches, one (1) final match, an interview with an ESPN reporter, various shots during preliminary matches, and the "Best Of" cut episode 6. See **Exhibit 4** attached hereto. The middleweight and "Best Of" episodes featuring Todd Hutchings will appear a minimum of four (4) airings in the United States, as well as internationally to approximately 60 countries. The cost of this product placement is valued in excess of \$500,000.

24. WAL Athlete Travis Bagent appeared wearing a Rockwell watch without WAL's consent during ESPN broadcasts in several preliminary rounds. See **Exhibit 5** attached hereto. The product placement value for these episodes is valued in excess of \$30,000.

25. Rockwell's unauthorized use of WAL's Athlete Property Rights is likely to confuse, mislead, and deceive consumers as to WAL's endorsement of Rockwell's products.

26. WAL has not consented to, sponsored, endorsed, or approved of Rockwell's use of its Athlete Property Rights in connection with the manufacture, marketing, or sale of any products or services offered by Rockwell.

27. On information and belief, Rockwell's actions are willful and reflect an intent to confuse consumers and profit from the goodwill and consumer recognition associated with WAL's brand.

28. Rockwell is marketing, selling, and otherwise offering its products through the same channels of distribution and to the same target audience as WAL.

29. In an attempt to inappropriately build the Competing League, Rockwell has and continues to market Travis Bagent as the face of its brand by, among other things, (i) using social media to proclaim Travis Bagent a "Rockwell athlete;" see **Exhibit 6** attached hereto, and (ii) providing Travis Bagent with Rockwell merchandise to hand out at Rockwell Events for promotional purposes.

30. WAL sent a demand letter to Rockwell on or about August 5, 2016 informing it of WAL's valuable property rights and demanding that they cease all use of the WAL Athlete Property Rights (the "Cease and Desist Demand"). See **Exhibit 7** attached hereto.

31. WAL subsequently sent numerous email communications to counsel for Rockwell following up on the Cease and Desist Demand.

32. Despite the Cease and Desist Demand, as of the date of this Complaint, Rockwell continues to use the Athlete Property Rights without authorization. Rockwell's failure to comply with WAL's demands demonstrates a deliberate intent to continue to wrongfully and willfully infringe WAL's Athlete Property Rights.

**FIRST CLAIM FOR RELIEF**  
**(All Plaintiffs – False Designation of Origin under 15 U.S.C. §1125(a))**

33. WAL realleges and incorporates herein the allegations contained in paragraphs 1-32 of this Complaint.

34. Rockwell's unauthorized use in interstate commerce of the Athlete Property Rights in connection with the advertisement of Rockwell's goods and services is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Rockwell with WAL as to the origin, sponsorship, or approval of Rockwell's goods and services by WAL. Such actions constitute false designation of origin in violation of 15 U.S.C. § 1125(a).

35. Rockwell knew or should have known that its actions as described in this Complaint were likely to mislead.

36. As an actual and proximate result of Rockwell's willful and intentional actions, WAL has suffered damages in an amount to be determined at trial, and unless Rockwell is enjoined, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill.

37. Pursuant to 15 U.S.C. § 1117, WAL is entitled to damages for Rockwell's Lanham Act violations, as well as recovery of the costs of this action. Furthermore, WAL is informed and believes, and on that basis alleges, that Rockwell's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling WAL to recover additional damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

**SECOND CLAIM FOR RELIEF**  
**(All Plaintiffs – Violation of the Illinois Right of Publicity Act)**

38. WAL realleges and incorporates herein the allegations contained in paragraphs 1-32 and 34-36 of this Complaint.

39. Rockwell's unauthorized use of the Athlete Property Rights for commercial purposes is a violation of the Illinois Right of Publicity Act, 765 ILCS 1075/1-60.

40. Rockwell's use of the Athlete Property Rights was unauthorized because Rockwell did not obtain WAL's consent to use said Rights. In fact, Rockwell did not even request WAL's consent.

41. Rockwell's use of the Athlete Property Rights was willful because it used said Rights intentionally and with knowledge that the uses were not authorized.



42. As an actual and proximate result of Rockwell's willful and intentional actions, WAL has suffered damages in an amount to be determined at trial, and unless Rockwell is enjoined, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill.

**THIRD CLAIM FOR RELIEF**  
**(All Plaintiffs – Violation of Illinois Consumer Fraud and Deceptive Trade Practices Act)**

43. WAL realleges and incorporates herein the allegations contained in paragraphs 1-32, 34-36 and 39-41 of this Complaint.

44. Rockwell's acts constitute unfair methods of competition and unfair or deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS 505/2 *et seq.*, in that those acts created a likelihood of confusion or misunderstanding as to WAL's sponsorship or approval of Rockwell's goods or services, or created a likelihood of confusion as to Rockwell's affiliation, connection or association with WAL.

45. Rockwell's conduct in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act was willful and outrageous, perpetrated by evil motive or with reckless indifference to the rights of others.

46. As an actual and proximate result of Rockwell's willful and intentional actions, WAL has suffered damages in an amount to be determined at trial, and unless Rockwell is enjoined, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill.

**FOURTH CLAIM FOR RELIEF**  
**(All Plaintiffs – Common Law Unfair Competition)**

47. WAL realleges and incorporates herein the allegations contained in paragraphs 1-32, 34-36, 39-41, and 44-45 of this Complaint.

48. Rockwell's willful actions constitute unfair competition under the common law of the State of Illinois.

49. As an actual and proximate result of Rockwell's willful and intentional actions, WAL has suffered damages in an amount to be determined at trial, and unless Rockwell is enjoined, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill.

**FIFTH CLAIM FOR RELIEF**  
**(All Plaintiffs – Tortious Interference With Business Relations )**

50. WAL realleges and incorporates herein the allegations contained in paragraphs 1-32, 34-36, 39-41, 44-45 and 48 of this Complaint.

51. WAL has an existing business relationship with the WAL Athletes.

52. Rockwell, with knowledge of this relationship, has acted improperly and without privilege by: (1) using the Athlete Property Rights in interstate commerce without WAL's consent in connection with the advertisement of Rockwell's goods and services; (b) using the Athlete Property Rights for commercial purposes in violation of the Illinois Right of Publicity Act, 765 ILCS 1075/1-60; (c) using unfair methods of competition and unfair or deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS 505/2 *et seq.*; (d) engaging in unfair competition under the common law of the State of Illinois; and (e) otherwise intentionally interfering with WAL's business relationship with the WAL Athletes.

53. In doing so, Rockwell has acted purposefully and with malice with the intent to injure WAL.

54. Rockwell's improper actions have caused a strain on the relationship between

WAL and the WAL Athletes, which has (1) jeopardized the ability of WAL and the WAL Athletes to sustain the business relationship, and (2) threatened WAL's continued and future business dealings with the WAL Athletes.

55. As an actual and proximate result of Rockwell's willful and intentional actions, WAL has suffered damages in an amount to be determined at trial, and unless Rockwell is enjoined, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill.

**SIXTH CLAIM FOR RELIEF**  
**(WAL Merchandising – Tortious Interference With Contract )**

56. WAL Merchandising realleges and incorporates herein the allegations contained in paragraphs 1- 32, 34-36, 39-41, 44-45, 48 and 51-54 of this Complaint.

57. WAL Merchandising has a contractual relationship with the WAL Athletes by virtue of the Marketing Agreement. Rockwell is not a party to the Marketing Agreement.

58. Rockwell, with knowledge of the Marketing Agreement, has acted improperly and without privilege by: (a) using the Athlete Property Rights in interstate commerce without WAL Merchandising's consent in connection with the advertisement of Rockwell's goods and services; (b) using the Athlete Property Rights for commercial purposes in violation of the Illinois Right of Publicity Act, 765 ILCS 1075/1-60; (c) using unfair methods of competition and unfair or deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS 505/2 *et seq.*; (d) engaging in unfair competition under the common law of the State of Illinois; (e) intentionally interfering with WAL Merchandising's business relationship with the WAL Athletes; and (f) otherwise intentionally interfering with WAL Merchandising's contractual relationship with the WAL Athletes.

59. In taking these actions, Rockwell has acted purposefully and with malice with the intent to injure WAL Merchandising.

60. Rockwell's improper actions have jeopardized WAL Merchandising's ability to continue its contractual relationship with the WAL Athletes as well as its prospects of securing a long-term agreement with the WAL Athletes.

61. As an actual and proximate result of Rockwell's willful and intentional actions, WAL Merchandising has suffered damages in an amount to be determined at trial, and unless Rockwell is enjoined, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill.

**SEVENTH CLAIM FOR RELIEF**  
**(WAL Action – Tortious Interference With Contract)**

62. WAL Action realleges and incorporates herein the allegations contained in paragraphs 1- 32, 34-36, 39-41, 44-45, 48 and 51-54 of this Complaint.

63. WAL Action has a contractual relationship with the WAL Athletes by virtue of the Promotion Agreement. Rockwell is not a party to the Promotion Agreement.

64. Rockwell, with knowledge of the Promotion Agreement, has acted improperly and without privilege by: (a) using the Athlete Property Rights in interstate commerce without WAL Marketing's consent in connection with the advertisement of Rockwell's goods and services; (b) using the Athlete Property Rights for commercial purposes in violation of the Illinois Right of Publicity Act, 765 ILCS 1075/1-60; (c) using unfair methods of competition and unfair or deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS 505/2 *et seq.*; (d) engaging in unfair competition under the common law of the State of Illinois; (e) intentionally interfering with WAL Action's business

relationship with the WAL Athletes; and (f) otherwise intentionally interfering with WAL Action's contractual relationship with the WAL Athletes.

65. In taking these actions, Rockwell has acted purposefully and with malice with the intent to injure WAL Action.

66. Rockwell's improper actions have jeopardized WAL Action's ability to continue its contractual relationship with the WAL Athletes as well as its prospects of securing a long-term agreement with the WAL Athletes.

67. As an actual and proximate result of Rockwell's willful and intentional actions, WAL Action has suffered damages in an amount to be determined at trial, and unless Rockwell is enjoined, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill.

**EIGHTH CLAIM FOR RELIEF**  
**(Injunctive Relief)**

68. WAL realleges and incorporates herein the allegations contained in paragraphs 1-32, 34-36, 39-41, 44-45, 48, 51-54, 57-60 and 63-66 of this Complaint.

69. Absent an injunction enjoining and restraining Rockwell from using WAL's Athlete Property Rights without WAL's consent, WAL will continue to suffer irreparable harm and damage to its business, reputation, and goodwill, and will have no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, WAL prays that this Court enter judgment against Rockwell as follows:

A. That Rockwell be adjudged to have violated 15 U.S.C. § 1125(a) by using the WAL Athletes' Property Rights in interstate commerce without WAL's consent in connection with the advertisement of Rockwell's goods and services;

B. That Rockwell be adjudged to have violated the Illinois Right of Publicity Act, 765 ILCS 1075/1-60, by using the WAL Athletes' Property Rights without WAL's consent;

C. That Rockwell be adjudged to have violated the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS 505/2 *et seq.*, by engaging in unfair methods of competition and unfair or deceptive acts or practices;

D. That Rockwell be adjudged to have engaged in unfair competition under the common law of the State of Illinois;

E. That Rockwell be adjudged to have tortiously interfered with WAL's business relationship with the WAL Athletes;

F. That Rockwell be adjudged to have tortiously interfered with WAL's contractual relationship with the WAL Athletes;

G. That WAL be awarded damages in an amount sufficient to compensate it for the damage caused by Rockwell's willful and intentional actions;

H. That WAL be awarded Rockwell's profits derived by reason of said acts, or as determined by said accounting;

I. That such damages and profits be trebled and awarded to WAL and that WAL be awarded its costs, attorneys' fees and expenses in this suit under 15 U.S.C. § 1117, as a result of Rockwell's willful, intentional, and deliberate acts in violation of the Lanham Act;

J. That this Court:

1. Temporarily enjoin and restrain Rockwell from using WAL's Athlete Property Rights without WAL's consent;
2. enter a preliminary injunction pending the entry of any final order resolving this action; and

3. enter the relief prayed for above as a final and permanent injunction.

I. That WAL be granted prejudgment and post judgment interest;

J. That WAL be granted costs and attorneys' fees associated with the prosecution of this action; and

K. That WAL be granted such further relief as the Court may deem just.

Dated: December 15, 2016.

Respectfully submitted,

**NELSON MULLINS RILEY & SCARBOROUGH LLP**

/s/ Brendi E. Kaplan

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