

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

<p>XLON BEAUTY, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DORIS DAY,</p> <p style="text-align: right;">Defendant.</p>	<p>Index No. _____</p> <p>COMPLAINT</p>
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Plaintiff xLon Beauty, LLC (“Plaintiff”), brings suit against defendant Doris Day (“Defendant”), and allege upon information and belief, except for the allegations that are made on personal knowledge, as follows:

1. This complaint seeks relief for Plaintiff against Defendant for fraudulent inducement, breach of contract, breach of the duties of good faith and fair dealing, and unjust enrichment.
2. Plaintiff is a New York Limited Liability Company with offices at 48 W. 38th Street, New York, New York 10018.
3. Defendant is, on information and belief, an individual whose address is 10 East 70th Street, New York, NY 10021.
4. In or about August of 2015, the parties entered into an initial Endorsement Agreement (“3% Agreement”) wherein Defendant granted Plaintiff the right and license to use Defendant’s name, nickname, initials, autograph, facsimile signature, photograph, video, likeness and/or endorsement (“Property”) in connection with the advertisement, promotion, and sale of its anti-aging products (“Product”), in exchange for Plaintiff’s payment to Defendant of royalties equal to 3% of “Adjusted Gross Revenues.”

5. On or about August 8, 2016, the parties entered into a revised Endorsement Agreement (“7% Agreement,” and together with the 3% Agreement, the “Agreements”) wherein Defendant granted Plaintiff the right and license to use the Property in connection with the advertisement, promotion, and sale of the Product, in exchange for Plaintiff’s payment to Defendant of royalties equal to 7% of “Adjusted Gross Revenues.”

6. Aside from a change in the percentage of “Adjusted Gross Revenues” to be paid by Plaintiff to Defendant, the Agreements are identical.

7. Prior to and after execution of the Agreements, Defendant represented to Plaintiff that she was a Board Certified dermatologist with business connections she could use to promote the Product through provision of a variety of publicity, including but not limited to introductions to Dr. Oz and Christie Brinkley, and publicity through their respective media outlets.

8. Defendant did not use her connections to garner publicity for the Product. She entirely failed in her promises to take steps to obtain such publicity.

9. Instead, once Defendant learned of the value and efficacy of the Product, she attempted to purchase Plaintiff, initially offering a purchase price of \$500,000 and later increasing her offer to \$750,000.

10. On or around July 19, 2016, Plaintiff, in compliance with the Agreements’ requirement that Plaintiff provide Product to Defendant as she may require in performance of her obligations, provided Defendant with 50 Cura Perfect Light boxes, 50 Cura Perfect Medium boxes, and 10 Cura Perfect Dark boxes (collectively, “Samples”).

11. Defendant has failed to use the Samples to perform her obligations or to return the Samples to Plaintiff; instead, on information and belief, Defendant sold the Samples for her personal gain.

12. On or around September 29, 2016, Plaintiff's representative requested in writing that Defendant appear for a video promotion on November 1, 2016. Defendant did not make herself available.

13. During the terms of the Agreements Defendant has done no promotional appearances, with the exception of a single video.

14. Plaintiffs now claim fraudulent inducement, breach of contract, breach of the duties of good faith and fair dealing, and unjust enrichment against Defendant.

FIRST CLAIM FOR RELIEF
FRAUDULENT INDUCEMENT

15. Plaintiff repeats and realleges the allegations of Paragraphs 1-14 as if set forth in full herein.

16. On or about August of 2015, and again in or about June through August of 2016, Defendant represented to Plaintiff's representative, Sy Garfinkle, that she had business connections she could use to promote the Product through provision of a variety of publicity, including but not limited to introductions to Dr. Oz and Christie Brinkley, and that she would obtain appearances on their respective media outlets to promote the Product.

17. Defendant knew that her representations were false but made them to induce Plaintiff to enter into the Agreements, and in fact she did not use her connections to benefit the Product or the Plaintiff in any way.

18. Plaintiff entered into the Agreements in justifiable reliance on Defendant's misrepresentations.

19. Plaintiff has been damaged by Defendants' misrepresentations, as it would not have entered into the Agreements but for the misrepresentations.

SECOND CLAIM FOR RELIEF
BREACH OF CONTRACT

20. Plaintiff repeats and realleges the allegations of Paragraphs 1-19 as if set forth in full herein.

21. The 7% Agreement requires Defendant to make herself available for photographs, speaking engagements and/or commercials in video format for advertising and promoting the Product, if requested to do so by Plaintiff.

22. Defendant failed to do so on multiple occasions.

23. For example, on September 29, 2016, Plaintiff requested in writing that Defendant appear for a video promotion on November 1, 2016. Defendant did not make herself available.

24. Defendant has done no promotional appearances, with the exception of a single video.

25. Plaintiff suffers damages attributable to Defendant's breach of the 7% Agreement.

THIRD CLAIM FOR RELIEF
BREACH OF DUTIES OF GOOD FAITH AND FAIR DEALING

26. Plaintiff repeats and realleges the allegations of Paragraphs 1-25 as if set forth in full herein.

27. As a party to the Agreements Defendant owes Plaintiff duties of good faith and fair dealing.

28. Defendant was engaged by Plaintiffs to promote the Product and to use her business connections to garner publicity for the Product.

29. Defendant's failure to promote the Product through her business contacts acted to deprive Plaintiff of the right to receive the benefits under the Agreements.

30. Defendant's failure to promote the Product was an effort to prevent the Plaintiff from being successful, so that she could buy Plaintiff.

31. Defendant attempted to purchase Plaintiff, initially offering a purchase price of \$500,000 and later increasing her offer to \$750,000.

32. Plaintiff suffers damages attributable to Defendant's breach of the duties of good faith and fair dealing.

FOURTH CLAIM FOR RELIEF
UNJUST ENRICHMENT

33. Plaintiff repeats and realleges the allegations of Paragraphs 1-32 as if set forth in full herein.

34. Defendant was enriched by Plaintiff's provision of Samples, to the extent that Defendant sold the Samples for her personal gain.

35. Defendants' enrichment was at Plaintiff's expense, as Plaintiff provided the Samples to Defendant to use in the performance of her obligations, but Defendant neither performed her obligations nor returned the Samples to Plaintiff.

36. It is unjust for Defendants to retain the value of the Samples without compensating Plaintiff.

37. Plaintiff claims damages in an amount equal to the amount Defendant received for the sale of the Product.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Plaintiff's actual damages in an amount to be proved at trial, but totaling at least \$500,000;
- b. Pre-judgment and post-judgment interest;
- c. Plaintiff's costs of this action; and
- d. Such other and further relief as this Court deems just and proper.

Dated: December 29, 2016

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