

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

THE ESTATE OF MARILYN MONROE LLC,

Plaintiff,

-against-

ALBA LONGA CONCEPTS LLC,

Defendant.

SUMMONS

Index No.

Date Filed:

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or if the Complaint is not served with this Summons, to serve a Notice of Appearance, on plaintiff's attorney within 20 days after service of the Summons, exclusive of the day of service (or within 30 days after service is complete if this Summons was not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

New York County is designated as the venue for this action based upon defendant's place of business.

Dated: New York, New York
April 4, 2018

s/Bernard D'Orazio

LAW OFFICES OF
BERNARD D'ORAZIO & ASSOCIATES, P.C.
Attorneys for Plaintiff
100 Lafayette Street-Suite 601
New York, New York 10013
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Defendant's Address:

Alba Longa Concepts LLC
1460 Broadway, 11th Floor
New York, New York 10036
(VIA CERTIFIED MAIL/RRR)

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

THE ESTATE OF MARILYN MONROE LLC,

Plaintiff,

-against-

COMPLAINT

Index No.

ALBA LONGA CONCEPTS LLC,

Defendant.

Plaintiff, as and for its Complaint against the defendant, alleges that:

1. Plaintiff is a limited liability company organized under the laws of the State of Delaware.

2. Defendant is a limited liability company organized under the laws of the State of Delaware.

3. Defendant has consented to the jurisdiction of this Court in this matter by virtue of the following clause (Standard Terms ¶ 16(d)) in the "License Agreement" dated as of August 1, 2016 (the "Agreement"), between the parties, under which the claims asserted herein arise:

- (i) This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, notwithstanding any conflict of law provisions to the contrary.
- (ii) Except with respect to Licensor's right to injunctive relief, any action which in any way involves the rights, duties, and obligations of any party hereto under this Agreement shall be brought in the State courts located in New York, New York, and the parties hereby submit

to the personal jurisdiction of such courts and hereby agree that service of process on any party may be effected by certified mail, return receipt requested, first class postage prepaid. Each of the parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of any such suit or action in any such court. Accordingly, the parties agree that service of process deposited in certified or registered mail addressed to the other party at the address for the other party set forth in the notice section hereof shall be deemed valid service of process for all purposes. Each party agrees not to contest the respective venue or jurisdiction selection.

4. Plaintiff owns and controls rights to certain pending and registered “Marilyn Monroe” trademarks.

5. Under the terms set forth in the Agreement (Commercial Terms ¶ 4), plaintiff granted defendant a license to use the “Marilyn Monroe” trademark in connection with defendant’s manufacture, distribution, and sale of a defined line of defined consumer products, including sunglasses, watches, luggage, bags, leather accessories, scarves, footwear, apparel, dinnerware, drinkware, barware and flatware, in China.

6. The “Initial Term” of the Agreement was from August 1, 2016, to December 31, 2026 (Commercial Terms ¶ 5).

7. The Agreement (Commercial Terms ¶ 10) provides that plaintiff is entitled to royalties based upon the amount of “Net Sales,” as defined therein, at rates that varied depending on whether the goods were manufactured by defendant (“Manufactured Products”) (7%) or sublicensed by defendant (“Sublicensed Products”) (5%), as more particularly set forth therein.

8. The Agreement further provides that the “Minimum Net Sales” amount each year of the ten year Initial Term of the contract was \$28,000,000 (Commercial Terms ¶ 9), except for the first two years.

9. The Agreement further provides that the “Guaranteed Minimum Royalties” (“GMR”) due plaintiff the first year (2016/2017) was \$1,000,000; the second year (2018) was \$1,500,000; and was \$2,000,000 each year thereafter (2019-2026) (Commercial Terms ¶ 11).

10. The Agreement also provides that defendant was required to pay plaintiff 2% of net sales each year for net sales less than \$28,000,000 per contract year and 1% of net sales for net sales of \$28,000,000 or more each year, as its contribution to the “Common Marketing Fund” (“CMF”) for the licensed trademark (Commercial Terms ¶ 12).

11. The Agreement requires defendant to compute royalties and deliver a complete and accurate statement of sales and other specified information to plaintiff on a quarterly basis each year of the Agreement (Standard Terms ¶ 4(a)).

12. Simultaneous with the submission of each quarterly statement, defendant was required under the Agreement to pay all sums due to plaintiff for that quarter, including at a minimum, GMR and CMF payments (Standard Terms ¶ 4(c)).

13. The Agreement provides that if any payment was not made when due, interest at the rate of 1% per month shall accrue until payment is received (Standard Terms ¶ 4(d)).

14. The Agreement grants plaintiff the right to suspend or terminate the Agreement because of, among other things, defendant’s failure to make any required

payment, if the breach is not cured within 10 days after service of a notice to cure (Standard Terms ¶ 12(b)).

15. The Agreement (Standard Terms ¶ 13(a)) also provides that in the event of a breach by defendant, “[a]ny and all unpaid fees, including but not limited to any Guaranteed Minimum Royalties for the then-current-Term and any and all CMF and Royalties payable hereunder and/or any other payments due to Licensor pursuant hereto in the event of expiration or termination by Licensor, shall be immediately due and payable to Licensor (and shall be paid not later than (i) twenty-one (21) days from the expiration of the Term or upon such earlier date as may be set forth in the Summary of Commercial Terms, or (ii) five (5) days from the earlier termination of this Agreement for any reason).”

16. Defendant breached the Agreement by failing to make the required GMR payment due on December 1, 2016.

17. On June 19, 2017, plaintiff sent and delivered to defendant a Notice of Breach based on defendant’s failure to make the GMR payment due on December 1, 2016.

18. Defendant failed to cure its breach.

19. On July 14, 2017, plaintiff sent and delivered to defendant a Notice of Termination of the Agreement.

20. On November 14, 2017, as provided in the Agreement (Standard Terms ¶ 16(d)), plaintiff duly demanded that the parties submit the matter to mediation before a JAMS mediator in New York.

21. Defendant failed to respond to the demand for mediation.

22. As provided in the Agreement (Standard Terms ¶ 16(d)), plaintiff is now free to “pursue any and all remedies available under law. . . .”

FIRST CAUSE OF ACTION

(Failure to Pay GMR - Commercial Terms ¶ 11)

23. By virtue of the foregoing, defendant is liable to plaintiff for breach of the Agreement (Commercial Terms ¶ 11) in the principal amount of \$18,500,000 for all required GMR payments due thereunder, less payments made, as follows:

2016/2017 =	\$1,000,000
2018 =	\$1,500,000
2019 =	\$2,000,000
2020 =	\$2,000,000
2021 =	\$2,000,000
2022 =	\$2,000,000
2023 =	\$2,000,000
2024 =	\$2,000,000
2025 =	\$2,000,000
2026 =	\$2,000,000

SECOND CAUSE OF ACTION

(Failure to Pay CMF - Commercial Terms ¶ 12)

24. Defendant has failed to make any of the CMF payments required under the Agreement.

25. By virtue of defendant’s uncured breach in making required payments and plaintiff’s termination of the Agreement, all sums due under the Agreement (Standard Terms ¶ 12(a)), including Minimum CMF, are now due and owing.

26. Defendant is liable to plaintiff under the Agreement for breach of contract based on defendant’s failure to pay all Minimum CMF due thereunder, in the sum of \$4,448,000, as follows:

2019 =	\$560,000
2020 =	\$560,000
2021 =	\$560,000
2022 =	\$560,000
2023 =	\$560,000
2024 =	\$560,000
2025 =	\$560,000
2026 =	\$560,000

THIRD CAUSE OF ACTION

(Attorneys' Fees and Costs - Standard Terms ¶ 16(e))

27. The Agreement (Standard Terms ¶ 16(e)) provides that:

Default Expenses. If either Party defaults with respect to any obligation under this Agreement, the defaulting party shall indemnify the other party against and reimburse the other party for all reasonable attorney's fees and all other costs and/or expenses resulting or made necessary by the bringing of any action, motion or other proceeding to enforce any of the terms, covenants or conditions of this Agreement.

28. By virtue of the foregoing, defendant is liable for plaintiff's reasonable attorney's fees and costs in this matter, in an amount to be determined by the Court.

WHEREFORE, plaintiff demands judgment against defendant, as follows:

- A. On the First Cause of Action, awarding plaintiff damages of \$18,500,000, plus interest thereon at 1% per month;
- B. On the Second Cause of Action, awarding plaintiff damages of \$4,448,000, plus interest thereon at 1% per month;
- C. On the Third Cause of Action, awarding plaintiff its reasonable attorney's fees and costs incurred in this matter;

D. Granting plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 4, 2018

s/Bernard D'Orazio

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