

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STRONG ARM PRODUCTIONS USA, INC.,
TRAMAR DILLARD p/k/a FLO RIDA, and
D3M LICENSING GROUP, LLC,

Case No.:

Plaintiffs,

vs.

CELSIUS HOLDINGS, INC.,

Defendant.

COMPLAINT

Plaintiffs, Strong Arm Productions USA, Inc. (“Strong Arm”), Tramar Dillard (“Flo Rida”), and D3M Licensing Group, LLC (“D3M”) sue Celsius Holdings, Inc. (“Celsius”) and in support allege:

JURISDICTION, PARTIES, & VENUE

1. This is a civil action seeking damages exceeding \$30,000, exclusive of interest, attorney’s fees and costs. The claims for breach of contract, accounting, and unjust enrichment relate to product endorsement services provided to Celsius by Mr. Dillard, professionally known as “Flo Rida.”

2. Plaintiff Strong Arm (also known as Strong Arm Productions, Inc.) is a Florida corporation with its principal place of business in Hialeah, Florida. Flo Rida is the president of Strong Arm and resides in Florida.

3. Plaintiff D3M is a Florida Limited Liability Company with its principal place of business in Wellington, Florida.

4. At times material, D3M and Strong Arm were authorized to license to Celsius the image and professional services of Flo Rida, who was a party and intended beneficiary of the subject transactions and agreements.

5. Defendant Celsius (also known as Celsius Products Holdings, Inc.) is a Nevada corporation with its principal place of business in Boca Raton, Florida. Celsius (NASDAQ: CELH) is the creator and marketer of the Celsius brand energy drinks and its stock is publicly traded. It regularly conducts business in Broward County, and throughout the nation.

6. Venue is proper in this county because the parties contractually agreed to venue in Broward County, and events giving rise to the claims occurred in Broward County.

7. All conditions precedent to the maintenance of this action have occurred, been performed, or have been waived.

GENERAL ALLEGATIONS

8. By way of background, Flo Rida maintained a successful endorsement partnership with Celsius which was highly effective in opening new doors for Celsius and its products. As a music industry superstar and international icon with millions of digital followers, Flo Rida played an instrumental role as the worldwide brand ambassador and launched a new era for Celsius brand development, growth, and expansion. Even Celsius' top management publicly recognized that the partnership between Flo Rida and Celsius accelerated the introduction of the Celsius brand to millions around the world and allowed Celsius to finally succeed at new levels.

9. This partnership initially put together by D3M in 2014 paved the way for Celsius to grow its product portfolio (such as adding a powder product and a new product line called Celsius Heat) and expand its product distribution channels to include new key national/regional retailers, such as GNC, 7-11, Vitamin Shoppe, and others. Indeed, the company's powder product was initially launched in conjunction with Flo Rida in mid-2014 and Celsius has consistently sold and collected revenues for its powder form products since then.

10. From a financial perspective, Celsius exponentially increased product revenues and sales, attracted key investors, and upgraded its financial status -- all of which ultimately led to the

important transition into the Nasdaq market in mid-2017 and the company's upward success. Indeed, the enduring impact of Flo Rida's brand endorsement continues as current celebrities and the public still refer to Celsius as "Flo Rida's drink."

11. In contemplation of the highly influential and ongoing impact of this endorsement partnership with Celsius, the compensation obligations to Plaintiffs included bonus compensation, incentive compensation, and royalties. While certain guaranteed payments were payable at contract inception, others became due from Celsius later at various specified intervals or upon reaching certain benchmarks and continuing thereafter.

12. Celsius was solely responsible for making additional payments and delivering shares of stock based upon future product sales and revenues. Yet, once the benchmarks were reached and product revenues triggered additional royalties, Celsius failed to deliver the required compensation to which Flo Rida, Strong Arm and D3M were entitled.

13. By virtue of contractual rights, agreements, and equitable considerations, Plaintiffs are entitled to pursue recovery of damages and other relief from Celsius as sought herein.

COUNT I
BREACH OF CONTRACT
(2014 Endorsement Agreement)

14. Plaintiffs reallege and incorporate all allegations in paragraphs 1 through 13, as if set forth fully herein.

15. This claim arises from the endorsement and licensing agreement identified as the March 9, 2014 Endorsement Agreement ("the 2014 Agreement") relating to product endorsement services provided by Flo Rida. A copy of the 2014 Agreement is incorporated herein, but cannot be attached due to confidentiality prohibitions. In any event, Defendant has possession and was recently provided a copy of the 2014 Agreement so it is apprised with notice of its contents.

16. From the start, Flo Rida's endorsements served to globally market and promote all aspects of the Celsius brand. He was the brand ambassador for company products, inclusive of

the original “ready to drink” form comprised of various flavors (both sparkling and non-carbonated) and all newly launched co-branded products, such as those in the powdered form (initially packaged as “Flo Fusion” and later re-packaged as “On the Go Sticks”) and Celsius “Heat.” Each of these new product lines were co-branded through marketing and promotions utilizing Flo Rida’s image, endorsements, right of publicity, and intellectual property.

17. In the 2014 Agreement, the provisions relating to bonus and incentive compensation were broad and encompassed revenues to be derived as the brand developed and the product portfolio grew. It was specifically contemplated that as Celsius (also referenced to as the “Company”) profited in the future, additional compensation would be paid by Celsius in the form of shares of company stock and ongoing royalties.

Stock Transfers

18. More specifically, the 2014 Agreement granted rights to shares of Company common stock -- some at inception of the agreement and some to be issued later upon achievement of designated sales or revenue benchmarks. *2014 Agreement ¶ 7, pg. 8 and Exhibit B pg. 20.* With respect to the latter, Celsius agreed:

- (a) to issue additional shares as bonus compensation once the Company achieved a specified dollar amount in “...gross cumulative Co-branded revenues in any twelve-month period during the Term...” *and*
- (b) to issue another additional number of shares as incentive compensation once the Company sold a specified total of “units of Co-branded Product through its channels of distribution following the execution of this Agreement ...”

19. Unbeknownst to Plaintiffs, the first benchmark (which is not tied to any specific product) had been satisfied. The Company’s annual gross cumulative revenues exceed the designated figure during the term of the Agreement and those gross revenues related to co-branded marketing and promotions utilizing Flo Rida’s image, endorsements, right of publicity, and intellectual property. The second benchmark (which had no time limitation for achievement) was

also ultimately accomplished as the requisite unit sales of Co-branded Product (i.e. the modified version of its Core Products in a powdered form) was met.

20. Although both benchmarks were achieved, Celsius failed to notify Plaintiffs or issue the additional shares of company stock in breach of the 2014 Agreement.

21. As the applicable company product sales and revenue information was in the sole possession and control of Celsius, it was Celsius' obligation in an essentially fiduciary capacity to monitor the benchmarks and account to Plaintiffs with respect to the accomplishment of benchmarks under circumstances giving rise to the existence of trust among the parties. However, Celsius failed to do so and concealed material facts from Plaintiffs that deprived them from discovering the contractual breaches.

Royalties

22. Similarly, the express terms of the 2014 Agreement granted the right to receive royalties arising from the sale of company products. Certain guaranteed royalty amounts were advanced, but additional royalties became due in connection with each unit of Product sold per the 2014 Agreement.

23. Despite the express and ongoing obligations, Celsius failed to pay the required royalties (percentage of wholesale price or percentage of net profits for each unit of Product sold, whichever is greater). *See 2014 Agreement, Exhibit A, pg. 20.*

24. As the applicable company product sales and profit information was in the sole possession and control of Celsius, it was Celsius' obligation in an essentially fiduciary capacity to properly calculate and pay royalties to Plaintiffs under circumstances giving rise to the existence of trust among the parties. However, Celsius failed to do so and concealed material facts from Plaintiffs that deprived them from discovering the contractual breaches.

25. By failing to perform its contractual obligations as described above, Defendant Celsius materially breached the 2014 Agreement.

26. As a direct and proximate result of these material breaches of contract, Plaintiffs have been damaged and additional compensation remains due and owing as described herein.

27. Plaintiffs delivered written notice of the contractual breaches and provided an opportunity for Celsius to cure for more than 30 days. Despite such notice, Celsius failed to timely cure its breaches of agreement.

28. Pursuant to the 2014 Agreement, Plaintiffs are entitled to recover attorney's fees in the event of a dispute arising from the contract. Demand is hereby made for an award of reasonable attorney's fees and costs relating to this action.

WHEREFORE, Plaintiffs, Strong Arm Productions USA, Inc., Tramar Dillard p/k/a Flo Rida, and D3M Licensing Group, LLC demand judgment against Defendant Celsius Holdings, Inc. for damages, prejudgment interest, attorney's fees, costs, and any relief this Court deems appropriate.

COUNT II
BREACH OF CONTRACT
(2016 Endorsement Agreement)

29. Plaintiffs reallege and incorporate all allegations in paragraphs 1 through 13, and 16, as if set forth fully herein.

30. This claim arises from the endorsement and licensing agreement identified as the April 11, 2016 Endorsement and Licensing Agreement ("the 2016 Agreement") relating to product endorsement services provided by Flo Rida. A copy of the 2016 Agreement is incorporated herein, but cannot be attached due to confidentiality prohibitions. In any event, Defendant has possession and was recently provided a copy of the 2016 Agreement so it is apprised with notice of its contents.

31. With respect to the 2016 Agreement, Celsius was required to pay royalties based upon sales of certain company products. Specifically, Celsius agreed to pay a royalty per case sold of Celsius domestic ready-to-drink Sparkling Orange and a royalty per box of domestically sold

powdered sticks. *See 2016 Agreement, ¶¶ 5.2 and 5.3.* These products have been continuously sold by Celsius and are currently part of the product line. Celsius had ongoing obligations to pay royalties, which by their nature survived the natural expiration of the 2016 Agreement.

32. Unbeknownst to Plaintiffs, Celsius failed to deliver the payment of all royalties due pursuant to the 2016 Agreement in breach of the agreement.

33. As the company product sales and profit information was in the possession and control of Celsius, it was Celsius' obligation in an essentially fiduciary capacity to properly calculate and pay royalties to Plaintiffs under circumstances giving rise to the existence of trust among the parties. However, Celsius failed to do so and concealed material facts from Plaintiffs that deprived them from discovering the contractual breaches.

34. By failing to perform its contractual obligations as described above, Defendant Celsius materially breached the 2016 Agreement.

35. As a direct and proximate result of these material breaches of contract, Plaintiffs have been damaged and additional compensation remains due and owing.

36. Plaintiffs delivered written notice of the contractual breaches and provided an opportunity for Celsius to cure for more than 30 days. Despite such notice, Celsius failed to timely cure its breaches of agreement.

37. Pursuant to the 2016 Agreement, Plaintiffs are entitled to recover attorney's fees in the event of a dispute arising from the contract. Demand is hereby made for an award of reasonable attorney's fees and costs relating to this action.

WHEREFORE, Plaintiffs, Strong Arm Productions USA, Inc., Tramar Dillard p/k/a Flo Rida, and D3M Licensing Group, LLC demand judgment against Defendant Celsius Holdings, Inc. for damages, prejudgment interest, attorney's fees, costs, and any relief this Court deems appropriate.

COUNT III ACCOUNTING

38. Plaintiffs reallege and incorporate all allegations in paragraphs 1 through 13, 15, and 30, as if set forth fully herein.

39. By virtue of the licensing agreements entered into by the parties, Plaintiffs were entitled to receive future additional shares of stock and payment of royalties upon achievement of certain benchmarks and sales targets.

40. Because the recordkeeping and applicable data was within its sole possession, Celsius accepted the fiduciary role to account for and properly make transfers to Plaintiffs in accordance with the agreements under circumstances giving rise to the existence of trust among the parties.

41. However, Celsius failed to properly handle the royalty calculations, payments and stock transfers and instead retained funds and assets to which Plaintiffs were entitled.

42. These material facts were concealed from Plaintiffs which delayed the discovery of Defendant's wrongdoing and deprived them from knowledge relating to their entitlement to additional royalties and shares.

43. Because of the nature and complexities of the royalty/stock related evaluations, Plaintiffs are entitled to a detailed accounting of Celsius' books and records as necessary to complete an appropriate royalty analysis, as well as evaluate the applicable product sales and revenue benchmarks at issue relating to additional shares of Celsius stock.

44. Once the accounting is completed, Plaintiffs seek an award of damages and all other appropriate relief due pursuant to the compensation provisions of the 2014 Agreement and the 2016 Agreement, including attorney's fees.

WHEREFORE, Plaintiffs, Strong Arm Productions USA, Inc., Tramar Dillard p/k/a Flo Rida, and D3M Licensing Group, LLC demand an accounting and judgment against Defendant

Celsius Holdings, Inc. for damages, prejudgment interest, attorney's fees, costs, and any relief this Court deems appropriate.

COUNT IV UNJUST ENRICHMENT

45. Plaintiffs reallege and incorporate all allegations in paragraphs 1 through 13, as if set forth fully herein.

46. This equitable claim is asserted as an alternative to the other counts and consistent with conditions where an adequate remedy at law is lacking.

47. Plaintiffs conferred a direct benefit on Defendant by providing the professional endorsement services of Flo Rida with respect to Company products. From the start, Flo Rida's endorsements served to globally market and promote all aspects of the Celsius brand. He was the brand ambassador for company products, inclusive of the original "ready to drink" form comprised of various flavors (both sparkling and non-carbonated) and all newly launched co-branded products, such as those in the powdered form (initially packaged as "Flo Fusion" and later re-packaged as "On the Go Sticks") and Celsius "Heat." Each of these new product lines were co-branded through marketing and promotions utilizing Flo Rida's image, endorsements, right of publicity, and intellectual property.

48. Defendant had knowledge of that benefit.

49. Defendant voluntarily accepted and retained this conferred benefit.

50. As Celsius concealed material facts from Plaintiffs relating to product sales and revenues, they were deprived from discovering that full value of the conferred benefit had not been paid.

51. The circumstances are such that it would be inequitable for Defendant to retain the benefits without paying the full value thereof to Plaintiffs.

WHEREFORE, Plaintiffs, Strong Arm Productions USA, Inc., Tramar Dillard p/k/a Flo Rida, and D3M Licensing Group, LLC demand judgment against Defendant Celsius Holdings, Inc. for damages, prejudgment interest, costs, and any relief this Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Dated: May 4, 2021

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