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FILE NO

December 2, 2010

VIA E-MAIL

Steven Hirsch
Vivid Entertainment
3599 Cahuenga Blvd. West, 4th Floor
Los Angeles, California 90068

Re: *Ashton Kutcher*

Dear Mr. Hirsch:

We are writing to you on behalf of our client, Ashton Kutcher, with respect to your unauthorized use of Mr. Kutcher's name and celebrity in connection with the promotion of Vivid Entertainment and its products. Specifically, it has come to our attention that you are using Mr. Kutcher's name in the promotion of a video featuring Britney Jones (the "Video"). The December 2, 2010 issue of the Huffington Post quotes a Vivid press release stating that "Ashton's fans will undoubtedly enjoy seeing what the star himself may have experienced..." It is clear that the use of our client's name is a principal selling point of the Video, and that Mr. Kutcher's name is being used in order to lure potential customers to buy the Video and other merchandise which you sell. You are, thus, trading on Mr. Kutcher's good name and reputation for a commercial purpose, and are attempting to misappropriate and convert the potential economic value in Mr. Kutcher's identity to your own advantage.

Your conduct not only constitutes a commercial appropriation of Mr. Kutcher's name and identity, but it also constitutes false designation of origin and a dilution of the value of Mr. Kutcher's name and identity and trademark, in violation of the federal Lanham Act, 15 USC § 1125 and also constitutes unfair competition, unfair business practices and false advertising in violation of California Business and Professions Code §§ 17200 et seq., and violations of other federal and state laws.

It is well established that a person who commercially exploits the name or likeness of someone without their consent is liable for all of the damages caused, for the value of the proprietary rights which were misappropriated, for the profits obtained from the use of the person's name or likeness for advertising purposes and obtained from the sale of any unauthorized merchandise. California Civil Code Section 3344 provides, in relevant part:

“Any person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent...shall be liable for any damages sustained by the person or persons injured as a result thereof.”

It is indisputable that the commercial exploitation of a person’s name for advertising purposes to sell videos and/or other merchandise is actionable, and that the plaintiff is entitled to recover damages and profits.

It is also clear that Mr. Kutcher’s name and persona have been used for promotional purposes as a means of both attracting the attention of consumers to your website and to solicit the sale of merchandise. You have used Mr. Kutcher’s name and persona in an obvious effort to attract the attention of potential customers and to "motivate a decision" by those customers to buy the Video and other merchandise.

As stated by the court, in White v. Samsung Electronic America, Inc., 971 F.2d 1395 (9th Cir.1992), recognizing that television and other media create “marketable celebrity identity value”:

“Advertisers use celebrities to promote their products. The more popular the celebrity, the greater number of people who recognize [him or] her, and the greater the visibility for the product.” (emphasis added) Id. at 1399.

Your conduct has already caused, and will continue to cause, substantial damages to our client. Mr. Kutcher has protected and continues to protect the use of his name and likeness to the fullest extent allowable under law. Furthermore, Mr. Kutcher utilizes his name and likeness to enter into contractual relationships with third parties, pursuant to which these entities remunerate our client with substantial sums for his exclusive grant of rights. Your unauthorized use of Mr. Kutcher’s name and identity has caused significant interference with these contractual relationships and has placed our client in extreme jeopardy. We will advise our client to seek recovery from Vivid and its affiliated entities to the fullest extent allowable under law for any damages, costs and /or liability suffered by him.

Steven Hirsch
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Accordingly, demand is hereby made upon you to immediately cease and desist, and cause all third parties to cease and desist, from any further unauthorized use of any materials containing Ms. Kutcher's name or identity and furnish written notice and/or other appropriate evidence to this office of the same.

If the aforementioned demands are not met forthwith, our client will avail himself of his legal and equitable rights and remedies to prevent further unauthorized use and to recover his substantial damages.

Nothing contained herein shall be deemed a complete recitation of the facts, an admission by our client or a waiver by our client of any of her rights, remedies, causes of actions or defenses, all of which are hereby expressly reserved.

Sincerely yours,



ROBERT D. OFFER
of SLOANE, OFFER, WEBER and DERN, LLP

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