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He's got 99 Problems, But a Breach Might NOT be One

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In the wake of 2016, Jay-Z faces an \$18 million lawsuit for his failure to publicly appear and promote his signature fragrance line, as he was contractually obligated. 2009 marked the start of a budding licensing relationship between Parlux Fragrances and Hova, wherein Parlux courted the rapper with common stock offers and warrant transfers to win his affections for a fragrance deal. Finally in 2012, Mr. Carter agreed to an exclusive license to his name and likeness for Parlux's use in fragrances and other beauty products. The successful 2013 launch of the GOLD Jay-Z fragrance promised growth for the future relationship. However, things began to smell sour once Jay declined to meet his contractually obligated minimum number of public appearances in support of the fragrance and Parlux sought Jay-Z's assistance in developing flanker fragrances to no avail. Parlux cites a number of declined appearances and attempts to communicate with Jay-Z and his representatives, which they claim are the basis for three separate counts of breach of contract and one count of breach of implied duty of good faith and fair dealing.^[1] Parlux seeks rescission, which entails the return of 300,000 shares of Perfumania common stock, 800,000 Perfumania warrants, and \$2 million in guaranteed royalties, along with a declaratory judgment, and \$18 million in damages.^[2] The New York Supreme Court is left to decide whether or not these communication breakdowns amount to one of Jay-Z's 99 problems, this one with an \$18 million price tag.

The complaint poses a number of notable issues the Court must resolve, which may set precedent for exclusive licenses of an individual's name and likeness for use in manufacture, distribution, and sale of goods. To be successful in a rescission action under New York law, Parlux must prove both a lack of legal remedy^[3] and, in this case, that the breach "substantially defeats the purpose of the contract"^[4]. Here, Parlux seeks, in part, to rescind the two inducement agreements wherein Parlux transferred Jay-Z 300,000 shares of common stock and subsequently 800,000 warrants in Perfumania. The Court is left to decide whether the inducement contracts were made in anticipation of the exclusive license, a purpose it may deem fulfilled upon execution of the 2012 License and Sub-License Agreements, and whether the substantial purpose of the agreement is based in the use and exploitation of the multi-millionaire's name and likeness and not in Jay-Z's promotional services thereunder. This analysis will also influence Parlux's success in its breach of contract claims for all three agreements based on his alleged failure to meet his contractual minimum public appearances and failure to participate in the development of flanker fragrances. If Parlux is successful, Jay-Z will also be forced to return the \$2 million in guaranteed royalties received. As if his growing success was not enough, this decision could serve as definitive affirmation of Jay-Z's claim that he "ain't a businessman, [he's] a business, man."

In light of the current New York standard of proof of damages, this suit may prove whether the Court will lax its standard on lost profits. Currently, the Empire State of Mind law requires lost profits be proven to a reasonable certainty, "capable of measurement based on known reliable factors without undue speculation"^[5], thereby incorporating the essence of the new business rule. Parlux cites that they had projected a highly profitable business relationship, selling \$15 million the first year and \$35 million the second and subsequent years after the launch. Instead the fragrance sold an abysmal \$14 million the first year and \$6.1 million the second.^[6] Parlux states Jay-Z's delayed participation in developing flanker fragrances and actions undermining the brand have left the company with a net loss and customer lack of interest, effectively diminishing the company's equity value. The Court will be left to decide whether these projections for the fragrance's success in its first and subsequent

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years were based on reliable information and whether the measured loss and damages alleged are justifiable under the same standards.

This is not Jay-Z's first time around the litigation block, but the allegations suggest this may have been one project too many for the highly diversified mogul. However, Parlux has a high burden to prove Hova's wrongdoing. We will see if he can run this town. This will be one case to watch.

[1] Parlux Fragrances, LLC, et al. v. S. Carter Enterprises, LLC, et al., Complaint (Sup. Ct. of NY, Jan. 25, 2016).

[2] *Id.*

[3] Rudman v. Cowles Communications, Inc., 30 N.Y.2d 1, 13 (1972); Babylon Assocs. v. County of Suffolk, 101 A.D.2d 207, 215 (2d Dep't 1984).

[4] Babylon Assocs. v. County of Suffolk, 101 A.D.2d 207, 215 (2d Dep't 1984).

[5] Schonfeld v. Hilliard, 218 F.3d 164, 172 (2d Cir. 2000).

[6] Parlux Fragrances, LLC, et al. v. S. Carter Enterprises, LLC, et al., Complaint (Sup. Ct. of NY, Jan. 25, 2016).

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