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3UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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OKSANA S. BAIUL,

Plaintiff,

-v-

NBCUNIVERSAL MEDIA, LLC, et al.,

Defendants.

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OKSANA S. BAIUL and OKSANA, LTD.,

Plaintiffs,

-v-

STEPHEN DISSON, et al.,

Defendants.

-----X

KATHERINE B. FORREST, District Judge:

Before this Court are several lawsuits brought by Oksana Baiul (“plaintiff” or “Baiul”) against a variety of entities—including agents, networks, producers, coaches, and accountants—that seek millions of dollars in damages for events that took place as recently as within the last two years and as long ago as the last two decades. This Opinion & Order relates to two of those lawsuits; the first suit arises out of alleged commercial uses of Baiul’s name and likeness to promote two skating shows in which she never participated, while the second arises out of allegedly defamatory statements about the first lawsuit as reported by two New York City-

area newspapers. Before the Court are motions for summary judgment seeking the dismissal of these two suits.

For the reasons set forth below, these suits are wholly without merit, defendants' motions for summary judgment are GRANTED, and these actions are DISMISSED.

#### I. PROCEDURAL HISTORY

On February 1, 2013, Baiul filed suit against NBC Universal Media, LLC and NBC Sports Network, LP (the "NBC Defendants") and Disson Skating, LLC in New York State Supreme Court, New York County, for violations of the Lanham Act, 15 U.S.C. § 1125(a), and New York Civil Rights Law § 51, as well as common law fraud and negligent misrepresentation (hereinafter, the "Lanham Act Action"). (Lanham Act Action Notice of Removal, Ex. B ¶¶ 28-61, ECF No. 1.)<sup>1</sup> The Lanham Act Action was removed by Disson Skating, LLC to this Court on April 3, 2013. (*Id.* ¶¶ 1-4.)

On February 26, 2013, Baiul<sup>2</sup> filed suit against Stephen Disson and Disson Skating, LLC (the "Disson Defendants") in New York State Supreme Court, New York County, for libel (hereinafter, the "Libel Action"). (Libel Action Notice of Removal, Ex. B ¶¶ 46-221, 13 Civ. 2208, ECF No. 1.) The Libel Action was removed by the Disson Defendants on April 3, 2013 (*id.* ¶¶ 1-7), and this Court accepted it as related to the Lanham Act Action on April 8, 2013.

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<sup>1</sup> Unless otherwise specified, all ECF references in this Opinion correspond to the docket in the Lanham Act Action, 13 Civ. 2205.

<sup>2</sup> Though both Oksana S. Baiul and "Oksana Ltd." are named as plaintiffs in this action, the Court hereinafter refers to both interchangeably as either "Baiul" or "plaintiff" for the sake of simplicity.

By order dated May 1, 2013, fact discovery in both actions was scheduled to close on August 30, 2013. At a status conference on August 29, 2013, plaintiff's counsel stated, for the first time, his desire to amend the complaints in both actions. Following motions to amend the complaints pursuant to Rule 15, the Court granted plaintiff's motion to amend the complaint in the Libel Action on consent in light of the fact that the only change to be made was a change to the damages amount listed in the complaint that had been previously provided to the Disson Defendants in discovery. (9/24/13 Order, 13. Civ. 2208, ECF No. 25.) The Court denied plaintiff's motion to amend in the Lanham Act Action because, "[o]n a substantive level, such amendment would be futile as the allegations set forth in the proposed amended complaint fail to allege sufficient facts to support a claim of successor liability" and "the amendment comes at too late a stage in these proceedings" such that defendants would be prejudiced. (9/24/13 Order, ECF No. 29.)

On October 24, 2013, defendants in both actions moved for summary judgment seeking dismissal of the operative complaints. Plaintiff opposed the motions,<sup>3</sup> and the motions became fully briefed on December 16, 2013.<sup>4</sup>

## II. FACTS

In support of their motion for summary judgment, the NBC Defendants submitted a statement of material facts pursuant to Local Civil Rule 56.1 ("NBC

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<sup>3</sup> Because plaintiff failed to timely oppose the motions or to otherwise comply with the Court's rules or the Local Civil Rules of this District, the Court only accepted certain filings in opposition to these motions. (See 12/4/13 Order, ECF No. 67; 12/5/13 Order, ECF No. 68.)

<sup>4</sup> Three weeks after the motions for summary judgment became fully briefed, plaintiff again moved for leave to file an amended complaint in the Lanham Act Action. The Court again denied plaintiff's motion as untimely. (1/6/14 Order, ECF No. 86.)

SOF”) (ECF No. 43), a response to Baiul’s statement of additional facts pursuant to Local Civil Rule 56.1 (“NBC RSOF”) (ECF No. 82), and declarations from, inter alia, Chelley Talbert (“Talbert Decl.” and “Talbert Supp. Decl.”) (ECF Nos. 34, 81). The Disson Defendants also submitted a statement of material facts pursuant to Local Civil Rule 56.1 (“Disson SOF”) (ECF No. 44),<sup>5</sup> a response to Baiul’s statement of additional facts pursuant to Local Civil Rule 56.1 (“Disson RSOF”) (ECF No. 79), and declarations from, inter alia, Matthew DeOreo (“DeOreo Decl.” and “DeOreo Supp. Decl.”) (13 Civ. 2208, ECF Nos. 36, 58). Subject to the limitations imposed by the Court in light of multiple confusing and untimely filings,<sup>6</sup> Baiul submitted oppositions and statements of additional material facts pursuant to Local Civil Rule 56.1 with respect to both the NBC Defendants (“Baiul-NBC SOF”) (ECF No. 69) and the Disson Defendants (“Baiul-Disson SOF”) (ECF No. 62), as well as a declaration from, inter alia, Raymond Markovich (“Markovich Decl.”) (ECF No. 62-1).

Unless otherwise noted, there is no genuine dispute<sup>7</sup> as to the following material facts.<sup>8</sup>

<sup>5</sup> Many of the filings by the Disson Defendants and Baiul in support of and in opposition to the instant motions were filed in both the Lanham Act Action and the Libel Action (and often more than once in each action). For the sake of simplicity, the Court cites to only one copy of these filings in this Opinion.

<sup>6</sup> These issues are described in further detail in the Court’s December 4 and 5, 2013 orders. (See ECF Nos. 67-68.)

<sup>7</sup> The Court notes that many of Baiul’s “objections” to defendants’ statements of material facts are merely argument—assertions that certain facts should not be credited, are irrelevant according to counsel’s understanding of the law, or must be read in the context of other facts that are either beside the point or are flatly contradicted by the record. This approach is insufficient to create genuine issues of material fact as to these statements. See Hicks v. Baines, 593 F.3d 159, 166 (2d Cir. 2010) (“[M]ere conclusory allegations or denials . . . cannot by themselves create a genuine issue of material fact where none would otherwise exist.”) (citations and internal quotation marks omitted).

<sup>8</sup> The Court notes that Baiul does not oppose the vast majority of the facts put forth by the NBC Defendants and the Disson Defendants in the manner prescribed by the local rules of this District

A. The NBC Defendants

NBC Sports is the sports division of the NBCUniversal Media, LLC television network. (NBC SOF ¶ 1.) NBC Sports broadcasts a diverse array of sports programming, and produces or co-produces hundreds of hours of original sports programming a year. (Id. ¶¶ 2-3.) NBC Sports sells hundreds of hours of broadcast time annually to third-party producers, so that they can air their sports programming on the NBC broadcast television network (“NBC”) or the NBC Sports channel. (Id. ¶ 4.) NBC Sports airs over nine thousand hours of sports programming annually on NBC and the NBC Sports channels combined. (Id. ¶ 5.) Advertising for programming produced by NBC Sports is one of the primary sources of revenue for NBC Sports. (Id. ¶ 6.)

B. The Disson Defendants

Disson Skating, LLC (“Disson”), organized under the laws of Virginia, is a third-party producer that purchases broadcast time from NBC Sports to air pre-packaged programming on NBC. (NBC SOF ¶ 12; Disson SOF ¶ 4.) Disson produces, among other things, figure skating shows, which have aired on NBC, CBS, ESPN, USA, Bravo, Hallmark Channel, TBS, Style, and Ovation. (NBC SOF ¶¶ 13-14.) Stephen Disson is a skating producer and principal of Disson. (Disson SOF ¶ 3.) Disson came into existence in March 2012; prior to March 2012, and at

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(even in the later, untimely filings that the Court has reviewed but determined not to consider for purposes of these motions). See Local Civil Rule 56.1(b) (“The papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and if necessary, additional paragraphs containing a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried.”). Accordingly, these facts are deemed admitted for the purposes of these motions. See Local Civil Rule 56.1(c).

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