

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW
YORK

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BEVERLY STANDING
a/k/a BEV STANDING,

Plaintiff,

: **COMPLAINT**

-against-

: 7:21-cv-4033

BYTEDANCE E-COMMERCE, INC d/b/a TIKTOK

Defendants.

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Plaintiff Beverly Standing a/k/a Bev Standing ("Plaintiff"), for her complaint against Defendant BYTEDANCE E-COMMERCE, INC d/b/a TIKTOK ("Defendants") alleges as follows:

NATURE OF THE ACTION and FACTUAL BACKGROUND

1 This is a civil action for injunctive relief and damages for violation of Plaintiff's right of publicity, the Lanham Act, 15 U.S.C. § 1051, *et seq.*, common law unfair competition, and New York General Business Law § 349, *et seq.*

2. Plaintiff is a voice over actor and is well known in the voice over industry. Plaintiff's voice and likeness are well-known both in this country and abroad.

3. Defendants, BYTEDANCE E-COMMERCE, INC d/b/a TIKTOK is a social networking service and social media platform. It is generally used to make short-form videos of one minute in length or less. Among a variety of features available through the platform, a user is able to add a computer generated voice to play during the user's uploaded

videos. These videos, including any computer generated voices, are available for consumption by the millions of TikTok users worldwide.

4. Several years ago, Plaintiff was hired by the Institute of Acoustics to perform voice work purportedly for Chinese translations.

5. The Institute of Acoustics is a company based out of Edenborough Scotland, but upon information and belief, a company from China contracted with The Institute of Acoustics.

6. Plaintiff's work for the Institute of Acoustics related to "text to speech" and artificial intelligence technology and resulted in the Institute of Acoustics' acquisition of electronic data files of Plaintiff's voice that were recorded on Plaintiff's equipment.

7. Plaintiff did not have a contract with the Institute of Acoustics permitting it to transfer that data to any other person or entity for later use.

8. During November of 2020, Plaintiff discovered that her electronic voice files were acquired by Defendant which is using Plaintiff's voice as the female computer generated voice of TikTok.

9. Although the voice and likeness are Plaintiff, the TikTok user is able to determine what words are spoken in Plaintiff's voice and some videos depicting Plaintiff's voice have involved foul and offensive language.

10. Plaintiff was not compensated for the use of her voice and likeness and never gave permission for Defendant to use her voice and likeness to Defendant.

11. Defendants have unlawfully used Plaintiff's voice and likeness in connection with the services of TikTok resulting in irreparable harm to Plaintiff. Defendants' conduct ignores Plaintiff's right of publicity, violates the Lanham Act, and constitutes unfair competition and deceptive trade practices in accordance with New York General Business Law §

349, *et seq.* Unless Defendants are enjoined, Plaintiff will continue to suffer irreparable and permanent harm.

THE PARTIES

12. Plaintiff is a Canadian citizen who resides in Welland, Ontario Canada.

13. On information and belief, Defendant BYTEDANCE E-COMMERCE, INC d/b/a TIKTOK is a duly authorized domestic corporation registered to conduct business in the State of New York and maintains registered agents Xianxi Liu of 118 New Main Street Yonkers, New York and Corporation Service Company of 80 State Street Albany, New York and transacts substantial business in this judicial district.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

14. This Court has personal jurisdiction over Defendants pursuant to New York CPLR §§ 301 and 302(a)(1)-(3) because Defendants are registered in New York and conducts substantial business within the State of New York related to the unlawful activities at issue in this Complaint, and because the harm suffered by Plaintiff within this State flows directly from such business conducted by defendants.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District, and Defendant's main office is located in Westchester County, New York.

Irreparable Harm to Plaintiff

16. As a direct consequence of Defendants' unauthorized conduct, Plaintiff has suffered significant injury and irreparable harm.

17. Plaintiff has invested substantial effort in preserving, protecting, and honing her reputation, and has amassed substantial goodwill and a favorable reputation during her career. By misappropriating Plaintiff's voice and likeness, Defendants have not only traded on Plaintiff's earned goodwill, but are also depriving the Defendant of the ability to control her reputation.

18. If Defendants are not enjoined from misappropriating and continuing to disseminate Plaintiff's voice and likeness, Plaintiff will continue to suffer irreparable harm.

19. Because Plaintiff's reputation will be irreparably harmed if Defendants are not enjoined, money damages cannot sufficiently compensate Plaintiff for the damage caused by Defendants' unauthorized acts.

20. In contrast, Defendants will not suffer any cognizable or irreparable injury if they are enjoined.

The Voice Files are Proper Subject for Copyright Protection

21. Federal copyright protection, as defined by 17 U.S.C. §102(a), is available for “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”

22. This statutory requirement has been distilled into two required elements: (1) originality and (2) fixation.

23. The Supreme Court has set a low bar for originality. In *Feist Publications, Inc. v. Rural Tel. Serv. Co.* the Court stated that “[o]riginal, as the term is used in copyright, means only that the work was independently created

by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity.” 499 U.S. 340, 345 (1991). The Court went on to state that the “vast majority of works make the grade quite easily, as they possess some creative spark.” *Id.*

24. The copyrighted voice files easily satisfy this standard for originality. The various designs were created by Plaintiff who has subsequently copyrighted this material. The stylization and artistic nature of the voice files is certainly sufficient to satisfy the “minimal degree of creativity” requirement. *Feist Publications, Inc.*, 499 U.S. at 345.

25. The copyrighted voice files also satisfy the fixation requirement. The definitions section of the Copyright Act provides that “A work is ‘fixed’ in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” 17 U.S.C. §101. The copyrighted voice files are electronically stored and permanent unless deleted, clearly stable and able to be perceived for much more than a transitory duration.

26. Additionally, to be copyrightable, a subject must qualify as a “work” under the Copyright Act. 17 U.S.C. §102(a) lists eight works-of-authorship categories. Of those eight categories, tattoos are protected as copyrightable under the seventh, which covers “sound recordings.” 17 U.S.C. §102(a)(7).

27. The definitions section of the Copyright Act provides that “sound recordings” are “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture

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