

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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TIMES SQUARE SOUVENIRS, INC.,
a New York Corporation,

Index No. 650686/2017

Plaintiff,

v.

AMENDED
VERIFIED COMPLAINT

BIG APPLE ENTERTAINMENT PARTNERS, LLC,
d/b/a RIPLEY'S BELIEVE IT OR NOT,
a Delaware Limited Liability Company,

Defendant.

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Plaintiff, Times Square Souvenirs, Inc., complains of the Defendant, Big Apple Entertainment Partners, LLC by its attorneys, The Dweck Law Firm, and respectfully alleges to this Court as follows:

INTRODUCTION

1. This action arises out of the wrongful termination of a written licensing agreement between Big Apple Entertainment Partners, LLC ("Big Apple" or "Licensor") and Times Square Souvenirs, Inc. ("Times Square" or "Licensee"). After the parties executed a License Agreement for Times Square to occupy a portion of the ground floor of the Ripley's Believe Or Not museum at a building located at 234 West 42nd Street in Manhattan (the "Building"), where it had a licensed concession and authority to sell retail gifts and souvenirs, and after Times Square expended, and incurred obligations for extensive sums of money for construction, installation, outfitting and merchandising the license concession area, without notice or just cause, the Defendant arbitrarily and summarily terminated the written License Agreement and ordered and compelled the Plaintiff after four days of occupancy to shut down and discontinue its

operation and to vacate the concession area. Despite the unlawful termination of the License Agreement by the Defendant, the Defendant has unlawfully and without just cause exhibited the licensed area of the subject premises to third parties in an attempt to find a subsequent occupant/licensee. The Defendant has failed and refused to return the Plaintiff's security deposit, operating fee, monies, installations and inventory, or to reimburse the Plaintiff for its projected lost profits as sustained by the Plaintiff, or to return or reimburse the Plaintiff for any of the expenditures incurred by it in preparing the location for retail use.

THE PARTIES

2. The Plaintiff, Times Square Souvenirs, Inc., is a domestic corporation with offices within the County, City and State of New York.

3. Upon information and belief, the Defendant, Big Apple Entertainment Partners, LLC, is a Delaware Limited Liability Company doing business under the firm name and style of Ripley's Believe It Or Not, with its place of business within the County, City and State of New York at 234 West 42nd Street in Manhattan.

JURISDICTION AND VENUE

4. Venue is proper because all of the events, omissions and defaults giving rise to the claims asserted herein occurred within the State of New York and the parties have offices with the County of New York.

FACTUAL BACKGROUND

5. The Plaintiff, Times Square Souvenirs is engaged in a highly competitive retail souvenir and gift business whose principals are seasoned experts with extensive experience in the operation of retail souvenir facilities at multiple locations wherein Plaintiff's principals have marketed and sold a variety of retail gifts and souvenirs.

6. Times Square and its principals are well known and recognized within the retail gift and souvenir industry as seasoned, experienced and honorable business persons with an excellent reputation for the operation and maintenance of successful retail locations for the sale of gifts and souvenirs.

7. By a writing dated and entered into as of the 24th day of October 2016 (the "License Agreement"), Times Square, as Licensee, entered into a written License Agreement with the Defendant Big Apple Entertainment Partners, LLC, as Licensor, pursuant to which the Defendant Big Apple agreed to grant Times Square a license for the use of a certain portion of the ground floor of the Building, where the Defendant Licensor was and is the lessee and operator of Ripley's Believe It Or Not museum pursuant to a franchise agreement dated March 24, 2006 between Ripley's Attractions, Inc., as Franchisor and Big Apple as Franchisee.

8. The License Agreement between the Plaintiff and Defendant was effective as of November 1, 2016 and was to continue for a term of 5 years, to and including October 31, 2021.

9. The License Agreement provided for a non-exclusive license for the Plaintiff to use and occupy the concession area in the Building for the permitted purpose of selling retail gifts and souvenirs.

10. The relevant provisions of the License Agreement state:

"Licensor hereby grants to Licensee a **non-exclusive** license to use and occupy the Premises solely for the Permitted Purpose (the "**Operating License**"). Licensee shall use and occupy the premises solely for the permitted purpose and for no other purpose unless the parties amend or modify the permitted purpose and the writing signed by both parties. Licensee acknowledges Licensor has a separate agreement with a vendor for tourist marketing material and such vendor has a podium inside the entrance of the premises as shown on Exhibit C, attached hereto."

11. The License Agreement further provided that in consideration of the Operating License, Licensee was to pay to Licensor a monthly operating fee for the first year for occupancy of \$18,000; for the second year of \$18,540; for the third year of \$19,096; for the fourth year of \$19,669 and for the fifth year of \$20,259, making a total aggregate license fee of \$1,150,768, plus additional fees of 2% of the annual gross sales over \$650,000 per calendar year based upon the gross sales of the Licensee at the Building.

12. In accordance with the provisions of the License Agreement, the Plaintiff tendered to the Defendant, which the Defendant accepted, the sum of \$18,000, which represented the security deposit for its licensed occupancy, together with the sum of \$16,900 for the purchase of the Defendant's pre-existing inventory at the location.

13. After the execution of the License Agreement as aforescribed, the Plaintiff and its principals proceeded to engage the services of a contractor and support entities to prepare and ready the premises for commencement by the Plaintiff of business operations. Included in the undertakings by the Plaintiff was the purchase of inventory, preparation of renderings, purchase of lighting, store and display fixtures and

equipment, and all such related expenses attendant to the commencement of a first class retail gift and souvenir operation.

14. At all times hereinafter mentioned, the Plaintiff fully performed all of its obligations under the License Agreement.

15. The Plaintiff commenced its business operations on November 18, 2016, with a fully-finished, outfitted and completely and fully-stocked inventory.

16. On November 22, 2016, a representative of the Defendant stated to a principal of the Plaintiff that the Plaintiff must immediately cease its operations, and vacate the premises forthwith, with a statement that "the order came from above."

17. Thereafter, representatives of the Defendant Big Apple met with the representatives of the Plaintiff, at which time the Plaintiff's representatives observed that the premises vacated by the Plaintiff were being exhibited to a prospective tenant.

18. The Defendant's representative thereupon being in apparent recognition of the culpability of the Big Apple for damages for wrongful termination of the License Agreement, offered to repurchase the pre-existing Ripley's inventory, which had been paid for by the Plaintiff, with a request that the Plaintiff's representatives present them with a request for reimbursement of the damages sustained by the Plaintiff as a result of the cancellation of the License Agreement by Big Apple.

19. The Defendant Big Apple has breached the License Agreement by terminating and cancelling the same without legal cause or justification and such breach of the agreement is material.

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