

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION 2012 FEB 24 AM 8:56

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL.  
JACKSONVILLE, FLORIDA

RC3, INC.,  
Plaintiff,

v.

JUSTIN BIEBER,  
Defendant.

Civil Action No.: 3:12-CV-193-J-37TEM

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, RC3, Inc., (hereinafter "RC3") files this Complaint for Declaratory Judgment against Defendant, Justin Bieber, (hereinafter "BIEBER") and respectfully complains as follows:

**Nature of Action**

1. This is an action for declaration of rights under the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1051 *et seq.* Specifically, RC3 seeks a declaration from this Court that the operation and maintenance of its iPhone/iPad/Android mobile application titled "Joustin' Beaver"; its website, <http://www.joustinbeaver.com>; and the use of the term "Joustin' Beaver"; and all associated materials (hereinafter the iPhone/iPad/Android mobile application; the website, the term "Joustin Beaver" and all associated materials shall collectively be referred to as the "App" unless otherwise specified) do not infringe, dilute, or otherwise violate the rights of Bieber
2. A case of actual controversy within this Court's jurisdiction exists between the parties concerning their respective trademark and related rights as set forth below. This Court is authorized to declare the rights of the parties in this case pursuant to the Federal

Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202 and Florida Statutes sections 86.011 et al.

### **Jurisdiction and Venue**

3. This court has subject matter jurisdiction over this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under the jurisdictional provisions of Title 28 of the United States Code, 28 U.S.C. §§ 1331, 1338, and 1367.
4. Bieber is an individual that does business throughout Florida. Additionally, Bieber contacted and sent the correspondence that created the present dispute to RC3 in this district, and a substantial part of events or omissions giving rise to the claim to be adjudicated in this action occurred in this district. Accordingly, Bieber is subject to personal jurisdiction in this district and venue is proper in this district under 28 U.S.C. § 1391.

### **Parties**

5. Plaintiff, RC3 is a Florida Corporation organized and existing under the State of Florida and having its principal place of business at 1012 King Street, Jacksonville, Duval County, Florida 32204.
6. Defendant, Bieber, is a minor that resides in California, and may be served with process by serving his attorney, Aaron Rosenberg, Esquire 11601 Wilshire Boulevard, Ste. 2200, Los Angeles, California 90025-1758. Fed. R. Civ. P. 5(b)(1).

### **Facts and Background**

7. Defendant, Justin Bieber, is a well-known celebrity that performs, promotes, and otherwise for entertainment purposes. The Defendant is an entertainer and well-known throughout the country as a “pop-performer.”

8. In an effort to comment upon the Defendant's life, the Plaintiff, RC3 developed the aforementioned App entitled "Joustin' Beaver." The App, a video game, is a parody of the commercial success of the Defendant and any celebrity. The parody app portrays a beaver floating on a log down a river. The beaver presents with bangs, a lance, and a purple sweater. The beaver knocks "Phot-Hogs" that are attempting to take his photograph into the river with his lance. The beaver also signs "Otter-graphs." The beaver also must dodge the "whirlpool of success," which will lead beaver out of control, while navigating the river.
9. The Plaintiff responded to counsel for the Defendant and multiple conversations took place during February of 2012. The Plaintiff attempted to explain to counsel for the Defendant that the App was protected under the First Amendment to the Constitution of the United States, as it was a parody and in no way committed any of the violations alleged by the Defendant, which are repeated in paragraph ten (10) of this complaint.
10. On or about February 13, 2012, counsel for the Defendant, Bieber, sent a Cease and Desist letter to RC3 alleging that the App, and use thereof, constituted a number of violations including:

"trademark infringement, unfair competition under the Lanham Act and under state law, dilution, false designation of origin, passing off, misappropriation of name for commercial purposes, misrepresentation, violation of rights of publicity and interference with [the Defendant's] contractual obligations to third parties."

A copy of the Cease and Desist Letter is attached hereto as Plaintiff's "Exhibit A."

11. The Cease and Desist letter demanded that the Plaintiff:

"(1) Immediately Cease any and all exploitation of the App; (2) Remove the App from iTunes and any other App Stores and ecommerce sites where it is currently available;

(3) Cease and desist all Unauthorized Activities relating to [the Defendant]; and (4) Provide a complete detailed accounting to [counsel for the Defendant] with respect to sales/revenues generated by the App to-date.”

12. The aforementioned Cease and Desist letter prompted discussions that indicated that a resolution is not likely.
13. The Defendant has indicated it will take any and all legal action it deems necessary.
14. The Defendant’s demands have created a reasonable apprehension of litigation and have brought into question the Plaintiff’s ability to continue to operate the App and all supporting material.
15. An actual and justiciable controversy exists between the parties based upon the Defendant’s claims and demands. The Plaintiff wishes to resolve any controversy and determine that it has not and will not, by continued use and promotion of the App, commit any of the violations alleged by the Defendant and plead in paragraph ten (10) of this complaint or otherwise.

### COUNT I

#### **DECLARATION OF NON-INFRINGEMENT**

RC3 repeats the allegations above as if fully set forth herein.

16. A justiciable and actual controversy exists before this Court with respect to whether RC3’s use of the App infringes the trademark, or otherwise, claimed by Bieber.
17. RC3, therefore, requests a declaration that its use of the App does not infringe the trademark and/or trade dress rights claimed by Bieber, or otherwise create any likelihood of confusion under the Lanham Act, 15 U.S.C. §§ 1114-1118 and 1125 and at common law.

**COUNT II**

**DECLARATION OF NON-DILUTION**

RC3 repeats the allegations above as if fully set forth herein.

18. A justiciable and actual controversy exists before this Court with respect to whether RC3's use of the App dilutes the trademark rights, or otherwise, claimed by Bieber.

19. RC3, therefore, requests a declaration that its use of the App does not dilute the trademark rights claimed by Bieber, or otherwise create any likelihood of dilution under the Lanham Act, 15 U.S.C. §§ 1114-1118 and 1125 and at common law.

**COUNT III**

**DECLARATION OF NON-PASSING OFF**

RC3 repeats the allegations above as if fully set forth herein.

20. A justiciable and actual controversy exists before this Court with respect to whether the Plaintiff, RC3's use of the App creates a claim for passing off by the Defendant.

21. RC3, therefore, requests a declaration that its use of the App does not create a claim of passing off actionable by Bieber.

**COUNT IV**

**DECLARATION OF NON-MISREPRESENTATION**

RC3 repeats the allegations above as if fully set forth herein.

22. A justiciable and actual controversy exists before this Court with respect to whether RC3's use of the App misrepresents the trademark rights, or otherwise, claimed by Bieber.

23. RC3, therefore, requests a declaration that its use of the App does not misrepresent the trademark rights claimed by Bieber, or otherwise create any likelihood of

misrepresentation under the Lanham Act, 15 U.S.C. §§ 1114-1118 and 1125 and at common law.

**COUNT V**

**DECLARATION THAT THE APP DOES NOT IMPLY A  
FALSE DESIGNATION OF ORIGIN**

RC3 repeats the allegations above as if fully set forth herein.

24. A justiciable and actual controversy exists before this Court with respect to whether RC3's use of the App creates a False Designation of Origin as claimed by Bieber.

25. RC3, therefore, requests a declaration that its use of the App does not dilute the trademark rights claimed by Bieber, or otherwise create any likelihood of dilution under the Lanham Act, 15 U.S.C. §§ 1114-1118 and 1125 and at common law.

**COUNT VI**

**DECLARATION THAT RC3 DOES NOT MISAPPROPRIATE THE  
DEFENDANT'S NAME FOR COMMERCIAL PURPOSES**

RC3 repeats the allegations above as if fully set forth herein.

26. A justiciable and actual controversy exists before this Court with respect to whether RC3's use of the App Misappropriates the Defendant's Name for Commercial Purposes, claimed by Bieber.

27. RC3, therefore, requests a declaration that its use of the App does not Misappropriate the Defendant's Name for Commercial Purposes as claimed by Bieber, or otherwise create any likelihood of misappropriation under the Lanham Act, 15 U.S.C. §§ 1114-1118 and 1125 and/or at common law.

**COUNT VII**

**DECLARATION THAT THE “JOUSTIN’ BEAVER” MARK IS PROTECTED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION**

RC3 repeats the allegations above as if fully set forth herein.

28. A justiciable and actual controversy exists before this Court with respect to whether RC3’s use of the App is protected free speech activity under the First Amendment to the United States Constitution.

29. RC3, therefore, requests a declaration that its use of Joustin’ Beaver mark is protected by free speech activity under the First Amendment to the United States Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, RC3 respectfully requests that the Court enter judgment as follows:

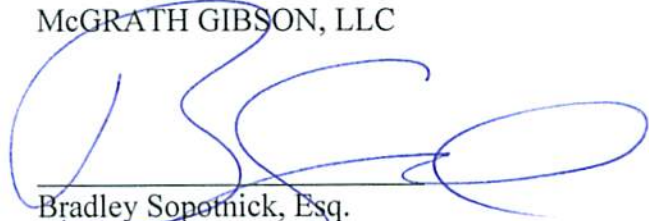
- a) Declaring that RC3’s use of the App does not infringe the trademark or the trade dress rights claimed by Bieber;
- b) Declaring that RC3’s use of the App does not dilute the trademark rights claimed by Bieber;
- c) Declaring that RC3’s use of the App does not create a claim for passing off actionable by Bieber;
- d) Declaring that RC3’s use of the App does not misrepresent the trademark rights claimed by Bieber;
- e) Declaring that RC3’s use of the App does not create a false designation of origin thus violating the trademark rights claimed by Bieber;
- f) Declaring that RC3’s use of the App does not misappropriate the Defendant’s name thus violating the trademark rights claimed by Bieber;

- g) Declaring that RC3's use of the App is protected under the First Amendment of the United States Constitution;
- h) Declaring that RC3's use of the App does not otherwise violate any of Bieber's rights under federal or state law;
- i) The Plaintiff prays this court grant it to recover its costs and reasonable attorney fees incurred in this action; and
- j) RC3 recover any such other relief as the Court may deem appropriate.

DATED this \_\_\_\_ day of February, 2012.

Respectfully Submitted,

McGRATH GIBSON, LLC



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Attorneys for the Plaintiff



myman greenspan fineman fox rosenberg & light llp  
COUNSELORS AT LAW

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February 13, 2012

VIA EMAIL  
mail@rc3.com

RC3, Inc.  
Attn: Robb Chamberlain

**Re: CEASE AND DESIST – "Joustin Beaver" App**

Mr. Chamberlain:

This law firm represents Justin Bieber (hereinafter referred to as our "Client").

We recently became aware that RC3, Inc. ("you") have created an iphone/ipad/Android mobile application titled "**Joustin' Beaver**" (the "App"). The App portrays a beaver character based on our Client as part of the App's game play and the game description and publicity surrounding the game clearly link the App to our Client by name and our Client's renown celebrity. For reference, please see the following URLs:

<http://rc3.com/blog/?p=152>;  
<http://www.joustinbeaver.com/about/>;  
<http://spong.com/nibble/26296/Joustin-Beaver-iOS-Game-is-Just-Asking-for-a-Lawsuit>; and  
<http://appmodo.com/61658/justin-bieber-inspired-game-app-takes-stab-at-aggressive-paparazzi/>.

Please be advised, at no time has our Client, our Client's parental guardian, or our Client's designated representatives entered into an agreement with you or your related business entities, or otherwise granted permission to you or any third party, to create the App. Further, I am not aware that you made any inquiry or gesture to contact our Client's representatives to obtain such authorization. Accordingly, you have no right to utilize our Client's name, image, likeness, life story or identity in or in connection with the App.

Absent the express written consent of our Client and our Client's parental guardian, the exploitation of the App is a direct and blatant infringement of our Client's right of publicity. Exploitation of our Client's name, likeness, image and renowned reputation in the industry to promote, advertise and market the App falsely implies that our Client has granted you certain rights to do so which, as you know, is not the case. These flagrant and conscious infringements of our Client's rights may further constitute a number of violations including: trademark infringement, unfair competition under the Lanham Act and under state law, dilution, false designation of origin, passing off, misappropriation of name for commercial purposes, misrepresentation, violation of rights of publicity and interference with our Client's contractual obligations to third parties (collectively, the "Unauthorized Activities").

Be advised that your Unauthorized Activities may subject you to statutory damages for each willful infringement. Further, the Lanham Act entitles our Client to recover from you any profits derived from the Unauthorized Activities as well as treble damages and costs incurred in defending our Client's intellectual property rights.

On behalf of our Client, we hereby demand that you act expeditiously to comply with the following:

1. Immediately cease any and all exploitation of the App;
2. Remove the App from iTunes and any other app stores and ecommerce sites where it is currently available;
3. Cease and desist all Unauthorized Activities relating to our Client; and
4. Provide a complete detailed accounting to us with respect to sales/revenues generated by the App to-date.

EXHIBIT

A

RC3, Inc.  
February 13, 2012  
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Please contact the undersigned to confirm your compliance with the foregoing demands and to discuss acceptable compensation for the severe harm that your actions have caused to our Client, including, without limitation, the cost of our enforcement efforts.

If we do not hear from you within two (2) business days in an attempt to informally resolve this matter, our Client has instructed us to take any and all legal action necessary to vindicate our Client's rights with respect to your Unauthorized Activities.

Nothing contained in this letter is intended or shall be construed as an admission of any fact, nor a waiver of any of our Client's rights, claims or remedies, in connection with this matter or any related matter, all of which are hereby expressly reserved.

Very truly yours,

*-DICTATED BUT NOT READ-*

Aaron D. Rosenberg  
of MYMAN GREENSPAN FINEMAN  
FOX ROSENBERG & LIGHT, LLP

ADR/tm

cc: Mr. Scooter Braun  
Allison Kaye, Esq.  
Solomon Smallwood, CPA  
Todd Mumford, Esq.  
(all via email)