

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

PHOEBE JONAS,

Plaintiff,

-against-

BAYER CORPORATION, and BAYER U.S.
LLC, d/b/a PHILLIPS',

Defendants.

Index No.:

Date Purchased:

SUMMONS

Plaintiff designates New York County
as the Place for Trial

To: The Above Named Defendant:

YOU ARE HEREBY SUMMONED to serve a copy of your answer on Plaintiff's attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue is CPLR§ 509.

Dated: New York, New York
June 25, 2018

MINTZ & GOLD LLP

By: 
Steven G. Mintz

Ryan Lawler
600 Third Avenue, 25th Floor
New York, New York 10016
(212) 696-4848

Defendants' address:
Bayer
100 Bayer Boulevard
Whippany, New Jersey 07981-0915

**SUPREME COURT OF THE STATE OF NEW YORK
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Defendants.

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COMPLAINT

Plaintiff Phoebe Jonas, by and through her attorneys, Mintz & Gold LLP, as and for her Complaint, alleges as follows:

THE PARTIES

1. Plaintiff Phoebe Jonas ("Plaintiff") is a resident of the State of New York, County of Kings. Plaintiff routinely works within the County of New York, as an actor.
2. Defendants Bayer Corporation ("Bayer Corp."), and Bayer U.S., LLC ("Bayer LLC"), (collectively, "Bayer") are part of a global conglomerate with numerous affiliated entities worldwide, including headquarters in the United States located at 100 Bayer Boulevard, Whippany, New Jersey 07981-0915.
3. Bayer Corp., is an Indiana Corporation registered to conduct business within the State of New York, with agents for process of service at Corporation Service Company, 80 State Street, Albany, New York 12207.
4. Bayer LLC is a Delaware Limited Liability Company registered to conduct business within the State of New York, with agents for process of service at Corporation Service Company, 80 State Street, Albany, New York 12207.

FACTS

5. Plaintiff is a professional actor.

6. Plaintiff has appeared in major motion pictures, television shows, and numerous television commercials which air in theatres, television, over the internet, and other forms of media.

7. Bayer is the maker of numerous consumer brands and consumer products, including, but not limited to, Phillips' brand consumer products ("Phillips").

8. Between June 2016 and March 28, 2018 Ms. Jonas was the "Phillips' Lady", appearing in numerous national commercials that promoted several Bayer products, including, but not limited to, Phillips' i) Colon Health Probiotics; ii) milk magnesia; iii) laxative caplets; iv) stool softener liquid gel tablets; and v) fiber gummies.

9. Plaintiff became known as the Phillips' Lady due to her frequent appearances in Bayer commercials.

10. Bayer's right to run the Phillips' ads with Plaintiff as the Phillips' Lady expired on March 28, 2018. Rather than discontinuing use of the ads or renewing the parties' agreement, Bayer unilaterally continued to use the commercials on its website without Plaintiff's consent or permission through April 20, 2018.

11. Unbeknownst to Plaintiff, at some time between late January or February 2018 and April 20, 2018 Bayer began airing ads of a Bobble Head that looks identical to Plaintiff.

12. Upon information and belief, Bayer created the Bobble Head replica to avoid renegotiating the right to continue to use Plaintiff's likeness with Plaintiff and continued to use her likeness (without consent).

13. On April 25, 2018 Plaintiff demanded that Bayer cease the unauthorized use of Plaintiff's "Cubicle" spot on its website and make her whole for same.

14. Bayer ultimately negotiated a resolution with Plaintiff for the improper use of her likeness between March 28, 2018 and April 26, 2018.

15. Up to and including April 20, 2018 Bayer had used Plaintiff's face as a placeholder frozen in the "Cubicle" ad on eight (8) separate pages of Phillips' brand products, and upon hitting play Plaintiff's "Cubicle" ad would play.

16. Between April 20, 2018 and April 26, 2018, Bayer had Plaintiff's face as placeholder frozen on the video of Plaintiff's ads on eight separate pages of Phillips' brand products, however upon hitting play, the video of the Bobble Head replica would play in place of Plaintiff.

17. On April 26, 2018, Bayer removed videos of Plaintiff as the Phillips' Lady from the Phillips' website, including her picture as placeholder immediately before the Bobble Head would appear.

18. As of April 26, 2018, Bayer still had not removed or replaced the video of a Bobble Head replica of Plaintiff in a clear attempt to steal Plaintiff's likeness without permission.

19. After discovering this violation, on May 18, 2018 Plaintiff sent Bayer a demand letter wherein Plaintiff placed Bayer on notice that it was using Plaintiff's likeness without permission, consent or authority and demanded that such use immediately cease.

20. Bayer's in-house counsel confirmed receipt of the May 18, 2018 demand letter in an email the same day.

21. As of June 21, 2018, the advertisements and video of the Bobble Head of Plaintiff's likeness remains on Phillips' website promoting the very same products Plaintiff previously promoted as the Phillips' Lady.

22. Bayer's use of Plaintiff's likeness by use of the Bobble Head for commercial advantage has continued with impunity, from creation of the Bobble Head replica of Plaintiff until as recently as June 21, 2018 without disclosing Bayer's use of Plaintiff's likeness (or obtaining authority to create the Bobble Head) or renewing the terms of Bayer's use of Plaintiff's likeness with Plaintiff.

23. Plaintiff has repeatedly strenuously objected to Bayer's unauthorized use of her likeness without consent.

24. At no point did Plaintiff ever give Bayer consent, permission and/or authority to create and/or air the Bobble Head video portraying her likeness on the internet, television commercials or any other form of media.

25. Moreover, Bayer knew that no such consent, permission and/or authority to air any video portraying her likeness was ever granted, as Plaintiff demanded that she be compensated for the unlawful use of her likeness from March 28, 2018 through April 20, 2018 and did not grant permission to use her likeness beyond that date and demanded Bayer cease such use; whether that likeness be videos of her on commercials or Bobble Head replicas of Plaintiff.

26. By reason of the foregoing, Defendant have acted in violation of Sections 50 and 51 of the Civil Rights Law of New York, to the injury of Plaintiff.

AS AND FOR THE FIRST CAUSE OF ACTION

(Violation of Sections 50 and 51 of the Civil Rights Law of New York)

(Injunction and monetary damages)

27. Plaintiff repeats and realleges each and every allegation set forth above as fully set forth herein.

28. As set forth above, by creating the Bobble Head replica of Plaintiff without her consent and replacing video of Plaintiff as the Phillips' Lady on Phillips' website with video of a Bobble Head replica of Plaintiff and continuing to air said video footage, Bayer knowingly and willfully used Plaintiff's likeness without consent, permission or authority.

29. Indeed, Bayer knowingly created the Bobble Head replica and willfully replaced video footage of Plaintiff as the Phillips' Lady with a Bobble Head replica of Plaintiff.

30. Plaintiff subsequently learned that she was replaced with a Bobble Head replica and demanded compensation for the use of said Bobble Head commercials from creation and beyond the expiration of the parties' agreement (and at no time had Plaintiff ever consented to the creation or use of the Bobble Head even before the expiration of the parties' agreement).

31. Despite demanding that Bayer cease continued use of her likeness, Bayer has continued, with impunity to air ads of the Bobble Head replica of Plaintiff, without authority.

32. By reason of the foregoing, Bayer has knowingly and intentionally violated Sections 50 and 51 of the Civil Rights Law of New York, to the injury of Plaintiff.

33. Moreover, pursuant to Section 51 of the Civil Rights Law of New York, Plaintiff is entitled to recover exemplary damages due to the knowing and willful nature of Bayer's use of Plaintiff's likeness without consent.

34. Indeed, after Plaintiff demanded that Bayer cease using her likeness Bayer continued to run the Bobble Head video on its Phillips' brand website without Plaintiff's knowledge or consent.

35. Subsequently, on May 18, 2018 Plaintiff sent a demand letter demanding that Bayer cease using her likeness in Bobble Head form.

36. As of June 21, 2018, the Bobble Head remains on the Phillips' brand website.

37. Accordingly, this Court should enjoin Bayer from continued use of the Bobble Head replica of Plaintiff.

38. By reason of the foregoing, this Court should award Plaintiff damages and exemplary damages in an amount to be determined at trial, but not less than \$500,000, plus interest, costs, disbursements and reasonable attorneys' fees.

AS AND FOR A SECOND CAUSE OF ACTION

(Common Law Unjust Enrichment)

39. Plaintiff repeats and realleges each and every allegation set forth above as fully set forth herein.

40. As set forth above, by replacing video of Plaintiff as the Phillips' Lady on Phillips' website with video of a Bobble Head replica of Plaintiff and continuing to air said Bobble Head video beyond April 20, 2018 for commercial advantage, Bayer knowingly and willfully used Plaintiff's likeness without consent, permission or authority.

41. As set forth above, despite several demands by Plaintiff that Bayer cease using her likeness in Bobble Head form, Bayer continues to use same.

42. As a matter of equity and good conscience, Bayer must make restitution to Plaintiff in an amount to be determined at trial, but not less than an amount equivalent to the benefit conferred upon Bayer.

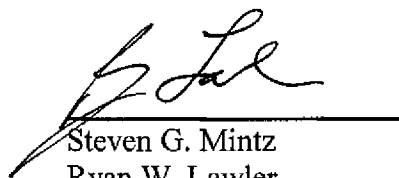
43. Accordingly, Plaintiff has been damaged in an amount to be determined at trial, but not less than \$500,000, plus interest, costs, disbursements and reasonable attorneys' fees.

WHEREFORE, Plaintiff demands judgment as follows:

- A. On the First Cause of Action, issuance of an Order enjoining Bayer from using Plaintiff's likeness in any medium and/or any other use of Plaintiff's likeness without consent, as well as damages and exemplary damages in an amount to be determined at trial, but not less than \$500,000 plus interest, costs, disbursements and reasonable attorneys' fees;
- B. On the Second Cause of Action damages in an amount to be determined at trial, but not less than \$500,000 plus interest, costs, disbursements and reasonable attorneys' fees; and
- C. On all Causes of Action such other and further relief as to this Court seems fair and just.

Dated: New York, New York
June 25, 2018

MINTZ & GOLD LLP



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