

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
CIVIL ACTION NO.: 4:17-CV-22**

KAYLA KRAFT,)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
ANHEUSER-BUSCH, LLC, and R.A.)	(Jury Trial Demanded)
JEFFREYS DISTRIBUTING)	
COMPANY, LLC,)	
Defendants.)	

Plaintiff Kayla Kraft (“Kraft”) complains of Defendants Anheuser-Busch, LLC (“Anheuser-Busch”) and R.A. Jeffreys Distributing Company, LLC (“R.A. Jeffreys”) (collectively, “Defendants”) as follows:

PARTIES

1. Kraft is an individual residing in Greenville, North Carolina.
2. Anheuser-Busch is, on information and belief, is a limited liability company organized and existing under the laws of Missouri. Anheuser-Busch maintains a principal office address at One Busch Place, Saint Louis, Missouri 63118-1849, and a registered agent address at 160 Mine Lake Court, Suite 200, Raleigh, NC 27615-6417. On information and belief, Anheuser-Busch is doing business this District.
3. R.A. Jeffreys is, on information and belief, a limited liability company organized and existing under the laws of North Carolina. R.A. Jeffreys maintains a principal office address at 420 Civic Boulevard, Raleigh, North Carolina 27610-2967, and registered mailing address at 2026 US Highway 70 W, Goldsboro, NC 27530-9542. On information and belief, R.A. Jeffreys is doing business in this District.

JURISDICTION AND VENUE

4. This is an action for copyright infringement. The Court has subject matter jurisdiction under 28 U.S.C. § 1338 and 17 U.S.C. §§ 501 et seq. This Court has supplemental jurisdiction over the related state law claims under 28 U.S.C. §1367(a)

5. This Court has personal jurisdiction over the Defendants. Defendants have purposefully availed themselves of the privileges of conducting activities in North Carolina and this District and the claims arise from Defendants contacts within North Carolina and this District as set forth more fully below.

6. Venue is proper in this District under 28 U.S.C. §1391(c).

FACTUAL BACKGROUND

7. In about February, 2013, while having drinks with friends at a local bar, Kraft put on a fake mustache and drank from a bottle of Natural Light beer. Her friend Kathryn Belasco captured the moment in a photograph, taken using Kraft's smart phone. Figure 1 below shows the photograph of Kraft taken by Ms. Belasco, hereinafter referred to as the Kraft photograph.

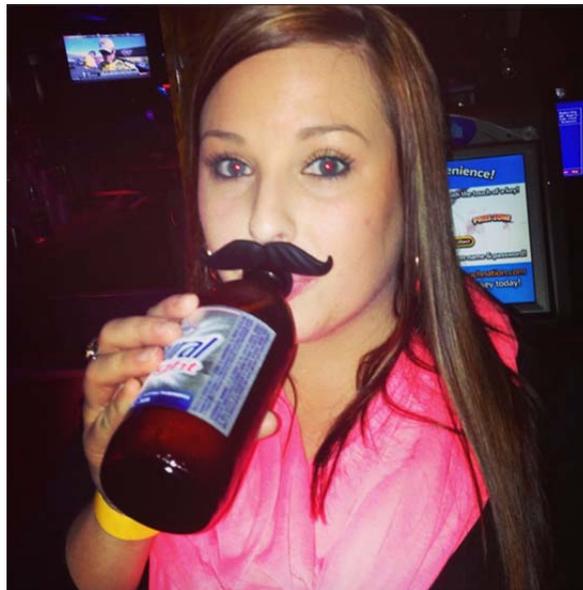


Figure 1

8. On or about February 16, 2013, Kraft posted the photograph to her Facebook page, where it was available to anyone having access to Kraft's Facebook page.

9. The photograph taken by Ms. Belasco is an original work of authorship protected under the U.S. copyright laws.

10. On or about May 16, 2016, Ms. Belasco assigned all of her rights in the photograph to Kraft, including all copyrights. By virtue of the assignment, Kraft is the owner of the copyright in the photograph.

11. The copyright in the photograph of Kraft is registered with the United States Copyright Office. Exhibit 1 attached hereto is a copy of the Certificate of Registration for the photograph of Kraft (Reg. No. VA 2-021-297), having an effective date of June 22, 2016.

12. On information and belief, Defendant Anheuser-Busch is a brewing company and sells beer and other beverages throughout the United State, including this District. In about 1977, Anheuser Busch introduced a light-calorie pilsner to the market under the mark NATURAL LIGHT and has sold its NATURAL LIGHT beer in the North Carolina and in this District continuously since 1977.

13. On information and belief, R.A. Jeffreys distributes Anheuser-Busch products, including NATURAL LIGHT beer, in North Carolina and in this District.

14. On information and belief, Defendants promote the sale of NATURAL LIGHT beer in North Carolina and this District through broadcast media and print media.

15. On information and belief, Defendants began a marketing campaign several years ago called EVERY NATTY HAS A STORY to promote sales of NATUAL LIGHT beer. As part of the EVERY NATTY HAS A STORY campaign, Defendants have distributed promotional items and print materials with images of ordinary people having good times. The promotional items

distributed as part of the EVERY NATTY HAS A STORY campaign include coasters and posters.

16. On information and belief, Defendants acquired a copy of the Kraft photograph through social media and used the Kraft photograph in the EVERY NATTY HAS A STORY campaign without the authorization or consent of Ms. Belasco or Kraft.

17. On information and belief, Defendants used the Kraft photograph on coasters distributed to bars and restaurants in North Carolina and this District. Figure 2 below shows a coaster distributed by Defendants including the Kraft photograph. The coaster shown in Figure 2 has been distributed by Defendants in North Carolina and this District.

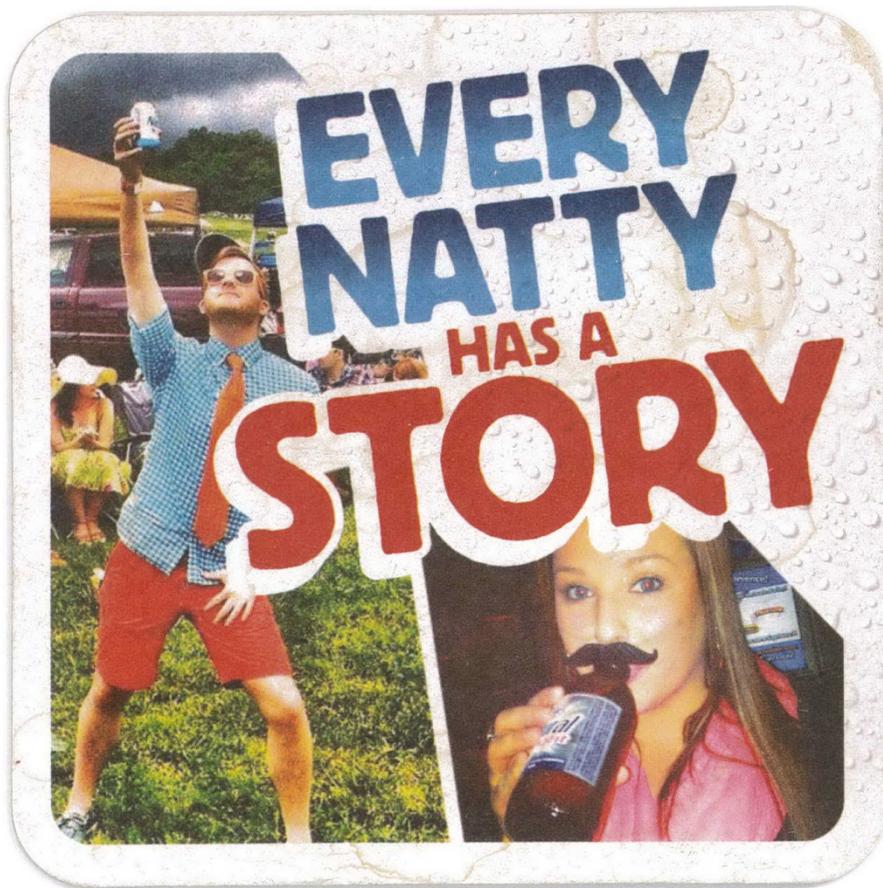


Figure 2

18. On information and belief, Defendants used the Kraft photograph on posters distributed to and displayed in bars, restaurants, and retail outlets in North Carolina and this District. Figure 3 below shows a poster including the Kraft photograph distributed and displayed by Defendants. The poster shown in Figure 3 has been distributed publicly displayed by Defendants in North Carolina and this District.

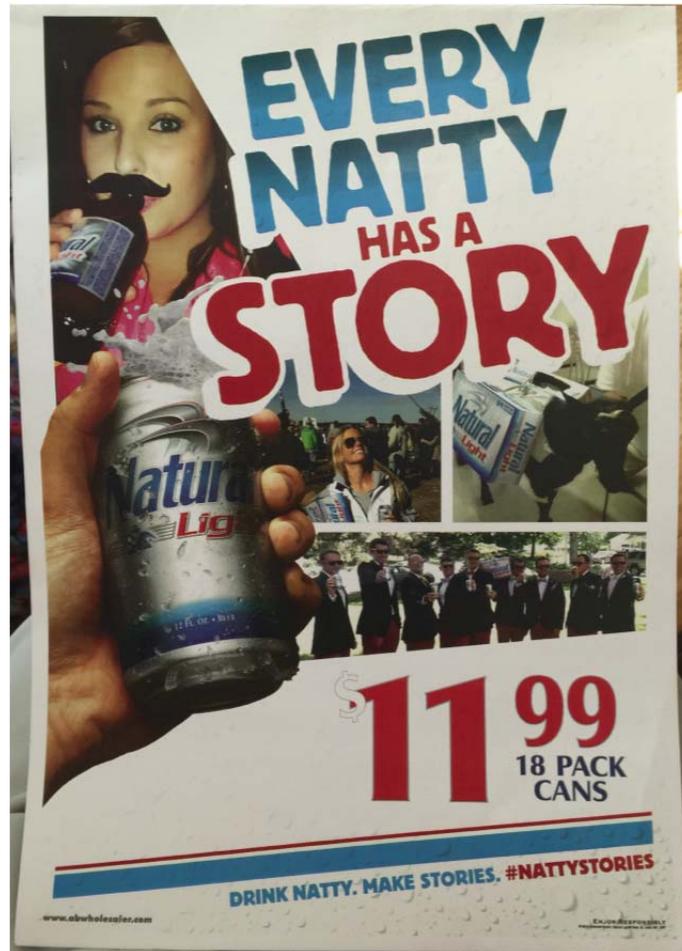


Figure 3

FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT 17 U.S.C. §§ 501, ET SEQ.

19. Kraft realleges paragraphs 1 through 18.
20. Upon information and belief, Defendants reproduced, distributed, and publicly

displayed the Kraft photograph without the authorization or consent of Kraft or Ms. Belasco, and have created unauthorized derivative works incorporating the Kraft photograph. These acts constitute infringement of Kraft copyright in the Kraft photograph.

21. Upon information and belief, Defendants committed acts of infringement in North Carolina and this District, for example, by distributing coasters and posters including a reproduction of the Kraft photograph in North Carolina and this District.

22. Upon information and belief, Defendants' infringement was willful and deliberate.

23. Upon information and belief, Kraft has suffered actual damages and Defendants have profited unjustly as a result of Defendants' infringement of the copyright in the Kraft photograph.

SECOND CLAIM FOR RELIEF
INVASION OF PRIVACY BY MISAPPROPRIATION

24. Kraft realleges paragraphs 1 through 23.

25. Upon information and belief, Defendants have misappropriated the likeness of Kraft by producing and distributing promotional items bearing her likeness without her knowledge or consent. The promotional items bearing Kraft's likeness were distributed publicly as part of the EVERY NATTY HAS A STORY marketing campaign to promote sales of NATURAL LIGHT beer. These acts constitute an unlawful invasion of Kraft's right of privacy.

26. Upon information and belief, Defendants have distributed the promotional items bearing Kraft's likeness in North Carolina and this District.

27. Upon information and belief, Defendants did not compensate Kraft for the use of her likeness in commercial promotions and advertising.

28. Upon information and belief, Defendants' acted willfully, deliberately, and in

reckless disregard of Kraft's rights. Upon further information and belief, Defendants have engaged in a widespread pattern and practice of misappropriating the names and likeness of others for commercial purposes without permission or compensation.

29. Upon information and belief, Kraft has suffered actual damages and Defendants have been unjustly enriched as a result of Defendants misappropriation of Kraft's likeness.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE RIGHT OF PUBLICITY

30. Kraft realleges paragraphs 1 through 29

31. Upon information and belief, Defendants have misappropriated the commercial value of Kraft's identity by using, without her consent, her likeness on promotional items distributed to the public for purposes of trade. The promotional items bearing Kraft's likeness were distributed by Defendants as part of the EVERY NATTY HAS A STORY marketing campaign to promote sales of NATURAL LIGHT beer. These acts constitute a violation of Kraft's right of publicity.

32. Upon information and belief, Defendants' acted willfully, deliberately, and in reckless disregard of Kraft's rights. Upon further information and belief, Defendants have engaged in a widespread pattern and practice of misappropriating the names and likeness of others for commercial purposes without permission or compensation.

33. Upon information and belief, Kraft has suffered actual damages and Defendants have been unjustly enriched as a result of Defendants violation of Kraft's right of publicity.

PRAYER FOR RELIEF

Kraft respectfully prays that:

A. Defendants, their employees, representatives, and agents be permanently enjoined from publishing, marketing, selling, or using Kraft's copyrighted works or any works

substantially similar thereto;

B. Defendants' be required to pay Kraft in full for damages resulting from the acts of infringement and violation of Kraft's rights as alleged herein.

C. Defendants' account to Kraft for profits earned in conjunction with the use of Kraft photograph.

D. The Court award Kraft enhanced damages under and/or punitive damages for Defendants' willful acts of infringement;

E. The Court award any and all relief to which Kraft may be entitled pursuant to the Copyright Act, 17 U.S.C. §§ 502, 503, 504, and 505;

F. Defendants' be required to pay all costs and attorney fees to the extent authorized by applicable law.

G. The Court grant Kraft such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Kraft hereby demands a trial by jury on all issues so triable.

Respectfully submitted, this the 20th day of February, 2017

THE KESSLER LAW FIRM, PLLC

COATS & BENNETT, PLLC

By: /s/ Christopher C. Kessler
Christopher C. Kessler
NC State Bar No. 18,696
3207 South Memorial Drive
Greenville, North Carolina 27834-6718
Telephone: (252) 321-2535
Email: cck@kesslerlawfirmpllc.com

By: /s/ David E. Bennett
David E. Bennett
NC State Bar No. 12,864
1400 Crescent Green, Suite 300
Cary, North Carolina 27518
Telephone: (919) 854-1844
Facsimile: (919) 854-2084
Email: dbennett@coatsandbennett.com

Attorneys for Plaintiff