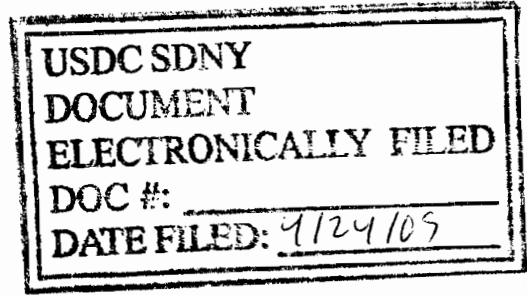


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
WOODY ALLEN,

Plaintiff,

- against -

AMERICAN APPAREL, INC.,

Defendant.
-----x

08 Civ. 3179 (TPG)

ORDER

This action concerns the unauthorized use of plaintiff's image in defendant's advertisements. Defendant has moved to compel the production of certain documents by plaintiff. The motion is granted in part and denied in part.

Plaintiff, Woody Allen, is a well-known actor and director. Defendant, American Apparel, is a clothing manufacturer and retailer. According to the complaint, American Apparel displayed images of Allen, without his consent, in advertisements on the Internet and on billboards posted in New York and California. Allen now seeks compensatory damages in excess of \$10 million, disgorgement of American Apparel's profits, exemplary damages, and costs and attorneys' fees.

American Apparel moves to compel the production of thirteen categories of documents by (1) Allen; (2) his talent manager, Stephen Tenenbaum; (3) Tenenbaum's management company, MBST

Entertainment; and (4) Allen's business manager, Joel Faden. According to American Apparel, all of these entities are represented, at least for the purpose of these discovery requests, by plaintiff's counsel.

Defendant's motion is granted with respect to the following three sets of requests.

Defendant has requested documents from Tenenbaum, MBST, and Faden reflecting their communications with Allen regarding the subject matter of this lawsuit. There is no dispute that Tenenbaum, MBST, and Faden agreed to produce nonprivileged documents in response to this request. However, the parties disagree as to whether such production has actually occurred. Plaintiff asserts that Faden and MBST have produced responsive documents, and that Tenenbaum has no responsive files. To the extent that this is inaccurate, these entities are ordered to produce documents responsive to this request. To the extent that responsive documents are being withheld on grounds of privilege, these entities are ordered to identify them on a privilege log.

Defendant has also requested various documents held by Faden. Plaintiff indicates that documents have been produced by Faden in response to certain document requests, and that Faden does not have documents responsive to other requests. However, plaintiff's submissions are not clear about whether Faden has produced all documents concerning the "value of a Woody Allen Endorsement," "[a]ny remuneration Woody Allen has received for Endorsements," "[a]ny

renumeration Woody Allen has been offered for Endorsements,” and “payments made to Woody Allen in connection with or as a result of the use of his name, image or likeness.” Since plaintiff and Faden do not appear to object to the production of such documents, Faden is ordered to either produce documents responsive to these requests or state explicitly that all such documents have been produced.

Finally, defendant seeks to depose Faden regarding matters related to plaintiff’s calculation of damages. Plaintiff contends that defendant appeared to have abandoned its interest in conducting this deposition. It is clear that defendant is still interested in conducting this deposition. Faden is therefore ordered to appear for a deposition, as noticed by defendant.

With respect to the remaining requests, the motion is denied.

Defendant has requested documents “concerning any appearance for which Woody Allen has been engaged, including without limitation any speaking engagements.” In its reply brief, defendant narrows this request to cover only “information related to instances in which a private company has engaged Plaintiff to promote a product or to perform.” Even in its more limited form, this request is overbroad. Although documents regarding endorsements and promotional efforts by Allen are certainly relevant (and, according to plaintiff, have already been produced to defendant), there is no reason to require Allen to produce

documents regarding each of his personal appearances and performances during his lengthy career.

Defendant has further requested “all documents concerning [plaintiff’s] public image, [his] persona or [his] reputation.” In its memorandum of law, defendant explains this request as calling for press releases issued by Allen, transcripts or videos of interviews of Allen, reviews of Allen’s movies, and fan mail received by Allen. Defendant argues that such documents are relevant to Allen’s claim that his endorsement is especially valuable because it is rarely granted. In reality, however, this information would not provide meaningful evidence of the value of defendant’s endorsement, and there is no reason to require its production by plaintiff.

Defendant has also requested documents concerning previous litigation filed by Allen asserting claims similar to those asserted here, as well as any testimony previously given by Allen regarding the unauthorized use of his name, image, or likeness. Defendant has not offered any explanation of why such documents are relevant to the instant litigation. Plaintiff has identified two cases that relate to this request, both of which are over twenty years old. Even assuming that files related to these cases still exist, it would be unduly burdensome to require plaintiff to retrieve and review them.

Defendant further seeks to compel Tenenbaum to disclose the substance of conversations he had with Allen’s counsel regarding this

litigation. Plaintiff contends that these conversations were privileged because Tenenbaum communicated with Allen's attorneys only in his capacity as Allen's representative, not as a third party. Since defendant has not produced any evidence that undermines this contention, there is no basis to compel the disclosure of this information. Defendant's request to depose Tenenbaum further regarding the claim of privilege is also denied. Defendant has already had an adequate opportunity to depose Tenenbaum about the nature of his relationship with Allen and Allen's attorneys. Although Allen's counsel objected at that deposition to the disclosure of the substance of Tenenbaum's conversations with Allen's attorneys, he did not prevent Tenenbaum from answering questions about the nature of these relationships.

Defendant also seeks the production of plaintiff's tax returns and documents "reflecting box office receipts, tickets sold, DVD sales and the like" for plaintiff's movies, apparently from the entire duration of plaintiff's career. Defendant contends that this information will be used to test plaintiff's claims regarding the value of his endorsement. These requests are, as plaintiff contends, overbroad and unduly burdensome. Plaintiff appears to disavow any intent to rely on such information to support his claim for damages, and there is no indication that such expansive discovery is needed to support defendant's analysis of the value of plaintiff's endorsement.

Defendant has also asked plaintiff to identify which American Apparel advertisements support his view that he would not want “to be associated” with defendant because its advertisements have “a sleazy quality to them.” To the extent that Allen’s view of defendant and its advertisements is relevant to this case, it is only to show that he would not have voluntarily agreed to endorse defendant’s products. Allen’s testimony to that effect is sufficient, and there is no reason to require him to identify specific advertisements that he finds distasteful.

Defendant seeks to compel plaintiff to produce evidence of his attorneys’ fees in this matter. If plaintiff ultimately prevails in this action and seeks to recover such fees, he will be required to substantiate such a request. At this time, however, there is no reason to require him to produce such information.

Defendant has also requested a privilege log from plaintiff. However, plaintiff has represented that no responsive documents are being withheld on the ground of privilege. Consequently, there are no documents that plaintiff could be required to list on a privilege log.

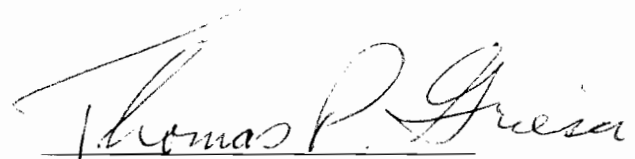
Finally, with regard to defendant’s request for documents concerning endorsements done by plaintiff, and endorsement offers he has received, plaintiff states that all such documents have been produced. There is no basis to compel further production of such documents.

The correspondence accompanying the motion papers also raises the issue of whether defendant may depose Leslee Dart, Allen's publicist, and Letty Aronson, who is Allen's sister, producer, and adviser. There is no indication that Aronson has any information relevant to this litigation. With regard to Dart, defendant has explained that she has knowledge about plaintiff's prior endorsements. Provided that this knowledge is not duplicative of information obtained through other discovery, it would be appropriate to depose Dart regarding this issue.

Defendant's motion to compel is granted in part and denied in part, as set forth above.

SO ORDERED.

Dated: New York, New York
April 21, 2009



Thomas P. Griesa
U.S.D.J.