

Federal Court Orders Miami Velvet Swingers Club To Pay Almost \$900,000 For Unauthorized Use Of Models' Photos

By David R. Ellis



In September 2019, a federal jury in Miami ordered Miami Velvet, a swingers club, to pay almost \$900,000 in damages to a group of 32 professional models whose images were used without permission in advertising for the night club. *Edmondson v. Velvet Lifestyles, LLC, DBA Miami Velvet*, Case 1:15-cv-24442.

For many years, Miami Velvet, the “most famous swingers club” in the city, used glossy photos of beautiful women clad in bikinis, corsets, and lingerie to advertise its partner-swapping, sex-fueled parties. However, at least 32 of the women featured on Miami Velvet’s fliers, web pages and social media accounts were professional models who had nothing to do with the club.

The plaintiffs included a super-model who had appeared on *The Real Housewives of Miami* and *Dancing with The Stars*, a former Miami Dolphins cheerleader, a model who was on *Deal or No Deal*, a former Old Spice spokeswoman who appeared in an Italian commercial with George Clooney, and several former Playboy centerfolds.

In December 2015, the Plaintiffs sued in U.S. District Court in Miami, claiming that the Defendants pirated and altered their images, likenesses and identities for purely self-serving commercial purposes in order to advertise, promote and market their club on their websites and social media accounts. They also alleged that the Defendants had posted their misappropriated and altered images next to, or in very close proximity to, photos of explicit, hardcore pornography which were too obscene and offensive to include as exhibits to a publicly-filed complaint.

The Plaintiffs alleged that the Defendants’ conduct created the false and misleading appearance and impression that each Plaintiff either worked for the Defendants, had appeared and participated in the Defendants’ activities and events at the club, and had agreed or consented to advertise, promote, market or endorse the club and its events and activities.

The Plaintiffs brought nine counts on behalf of each Plaintiff, including: False Advertising under Section 43(a) of the U.S. Trademark (Lanham) Act; violation of the Right of Publicity by Unauthorized Misappropriation of their Names and Likenesses under Fla. Stat. §540.08; violation of the Common Law Right of Publicity; violation of Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.204; Civil Theft under Fla. Stat. §812.014 and §772.11; Defamation; Defamation Per Se; Unjust Enrichment; and Negligence.

The Plaintiffs first count was for false advertising under Section 43(a) of the federal Lanham Act, which prohibits false and misleading representations in commercial advertising and promotion which is likely to cause confusion or mistake, or to deceive customers as to the affiliation, connection, or association of a person with another person or entity. Here, the Plaintiffs alleged, the Defendants used and altered their images, likenesses and identities without their permission in order to create the perception that they worked at or were affiliated with the club, endorsed the club or its activities, or consented to the use of their images to advertise, promote, and market the club.

This false and misleading advertising tended to confuse actual and

prospective patrons as to the general quality of attendees and participants at the club and also whether the Plaintiffs worked there or were otherwise affiliated with or endorsed the club and its activities. These misrepresentations thus misled patrons and enticed them to join the club, visit the club, and participate in events at the club.

In their second and third counts, the Plaintiffs alleged that their statutory and common law rights of publicity had been violated in that the Defendants had misappropriated their names and likenesses without permission. Section 540.08 of the Florida Statutes provides that “[n]o person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use.” Florida’s common law is essentially the same.

Here, the Plaintiffs alleged that the Defendants published their images, likenesses and identities on their websites and social media outlets in order to promote, advertise and market the club and its events and activities. The Plaintiffs never gave their consents or agreed to license the Defendants’ use and alteration of their images, likenesses or identities to advertise, promote, market or endorse the club or any club event or activity, thus violating the statute and their common law rights.

In their fourth and fifth counts, the Plaintiffs alleged violations of Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.204, and Civil Theft statute, Fla. Stat. §812.014 and §772.11, and added additional counts

for defamation, defamation per se, unjust enrichment, and negligence.

In 2017, a judge ruled in favor of the models, saying the club was liable for false advertising and other violations of their rights. The club's attorneys acknowledged that their clients were responsible for misappropriating the images but said the models were asking for too much money, and therefore demanded a jury trial on the amount of damages.

Two years later, after a trial, the federal jury awarded the Plaintiffs a total of \$892,500 (less than \$30,000 each) to be divided among the South Florida and Los Angeles models, a substantial amount but significantly below the \$5.3 million they had sought at trial.

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