

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

EASTLAND MUSIC GROUP, LLC)
a Florida Limited Liability Company)
Plaintiff,)
v.)
ANHEUSER-BUSCH COMPANIES, LLC,)
a Delaware Limited Liability Company,)
ANHEUSER-BUSCH COMPANIES, Inc.)
a Delaware Corporation,)
LIVE NATION ENTERTAINMENT , Inc.)
a Delaware Corporation,)
MYSPLACE, LLC)
a Delaware Limited Liability Company,)
Defendants.)

No. 3:14-cv-382-J-34PDB

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Eastland Music Group, LLC by and through their undersigned attorneys, for its Complaint against Defendants Anheuser-Busch Companies, LLC, Anheuser-Busch Companies, Inc., Live Nation Entertainment, Inc., and Myspace, LLC, alleges as follows:

NATURE OF THE ACTION

1. This is an action against Anheuser-Busch Companies, LLC, Anheuser-Busch Companies, Inc., Live Nation Entertainment, Inc., and Myspace, LLC (collectively, "AB") for trademark infringement and unfair competition.

PARTIES

2. Plaintiff Eastland Music Group, LLC ("EASTLAND") is a limited liability company organized under the laws of the State of Florida with a mailing address of 1116 Oakley Street, Jacksonville, Florida 32202.

3. Upon information and belief, Defendant Anheuser-Busch Companies, LLC is a limited liability company organized under the laws of the State of Delaware with a mailing address of Anheuser-Busch Companies, LLC., One Busch Place, St. Louis, Missouri 63118.

4. Upon information and belief, Defendant Anheuser-Busch Companies, Inc. is a corporation organized under the laws of the State of Delaware with a mailing address of Anheuser-Busch Companies, Inc., One Busch Place, St. Louis, Missouri 63118.

5. Upon information and belief, Defendant Live Nation Entertainment, Inc. is a corporation organized under the laws of the State of Delaware with a mailing address of 9348 Civic Center Dr., Beverly Hills, CA 90210.

6. Upon information and belief, Defendant Myspace, LLC, is a limited liability company organized under the laws of the State of Delaware with a mailing address of 407 North Maple Drive, Beverly Hills, CA 90210.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 because EASTLAND's claims arise under the federal laws of the United States. This Court has personal jurisdiction over Defendants due to their systematic and continuous business connections and contacts within Florida.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because Defendants are subject to personal jurisdiction in, do business in, and have committed acts of infringement in this district and have systematic and continuous business connections and contacts with this district and the Defendants transact business in this district.

FACTUAL BACKGROUND

9. EASTLAND began using the “PHIFTY-50” and “50/50” trademarks to identify its entertainment services and products in 2000 and 2003 respectively. EASTLAND’s use has been continuous and uninterrupted. EASTLAND owns U.S. registrations for both trademarks.

10. EASTLAND began using the “PHIFTY-50” trademark at least as early as December 2000 in connection with its entertainment services and products. Such use has been continuous and uninterrupted. EASTLAND registered its “PHIFTY-50” trademark on the Principal Register of the United States Patent and Trademark Office (“USPTO”) in 2005 and is the owner of that registered trademark and also has common law trademark rights in the “PHIFTY-50” trademark.

11. EASTLAND has been using the trademark “50/50” since approximately 2003 in connection with its entertainment services and products. Such use has been continuous and uninterrupted. EASTLAND registered its “50/50” trademark on the Principal Register of the USPTO in May 2013 and is the owner of that registered trademark and also has common law trademark rights in the “50/50” trademark.

12. EASTLAND is the owner of United States Trademark Registration Nos. 2,975,624; 4,337,794; 4,337,803 for the mark “PHIFTY-50” (the “PHIFTY-50 Registrations”), and United States Trademark Registration Nos. 4,337,793 and 4,337,802 (the “50/50 Registrations”). (collectively, the “EASTLAND Trademarks”) A copy of each is attached hereto as Exhibit 1. EASTLAND’s federal trademark registrations in the USPTO include the following:

MARK	REGISTRATION DATE	REGISTRATION NUMBER	GOODS AND SERVICES
PHIFTY-50	July 26, 2005	2,975,624	electrical apparatus, namely, series of pre-recorded phonograph records, compact discs, audio and video cassettes, and DVDs featuring music.

50/50	May 21, 2013	4,337,793	Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music.
PHIFTY-50	May 21, 2013	4,337,794	Audio speakers; Earphones and headphones; Personal headphones for sound transmitting apparatuses.
50/50	May 21, 2013	4,337,802	Entertainment services in the nature of live musical performances; Entertainment services, namely, live, televised and movie appearances by a professional entertainer; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music.
PHIFTY-50	May 21, 2013	4,337,803	Entertainment services in the nature of live musical performances; Entertainment services, namely, live, televised and movie appearances by a professional entertainer; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music.

13. United States Trademark Registration No. 2,975,624 for “PHIFTY-50” was duly and legally issued on July 26, 2005 and has become incontestable under 15 U.S.C. §§ 1065 and 1115. The USPTO’s Notice of Acknowledgement Under Section 15 of incontestability is attached as Exhibit 2. The incontestability status constitutes conclusive evidence of the validity of the

registered mark, of EASTLAND's ownership of the mark, and of EASTLAND's exclusive right to use the mark in connection with the goods and services specified in those registrations. 15 U.S.C. § 1115(b).

14. As the owner of all right, title and interest in the EASTLAND Trademarks, EASTLAND has standing to sue for infringement of its trademarks and to seek monetary damages, injunctions and other relief for past, current, and future infringement of the trademarks.

15. EASTLAND, through its wholly owned subsidiary, Phifty-50 Records, owns the domain name www.phifty-50.com (the "50/50 Website").

16. EASTLAND prominently uses and displays the EASTLAND Trademarks on the home page of the 50/50 Website. Visitors to the 50/50 Website are required to click on the 50/50 trademark to enter the website. A copy of the home page of the 50/50 Website is attached as Exhibit 3.

17. Within the 50/50 Website EASTLAND uses the EASTLAND Trademarks on and in connection with music concerts, headphones, music videos, concert promotion, promotional clothing products, DVDs, video games and CDs featuring music and promotional products. A copy of the "Store" page of the 50/50 Website is attached as Exhibit 4. A copy of the "Media" page of the 50/50 Website is attached as Exhibit 5.

18. EASTLAND uses the EASTLAND Trademarks on or in connection with its music concerts featuring audio and video entertainment content. Digitally captured images displaying use of EASTLAND's 50/50 music concert performances are attached as Exhibit 6.

19. EASTLAND uses the EASTLAND Trademarks on or in connection with CDs, DVDs, and video games featuring audio and video entertainment content. Digitally captured images of EASTLAND's CDs, DVDs, and video games are attached as Exhibit 7.

INFRINGEMENT BY THE DEFENDANTS

20. Upon information and belief, AB has promoted music concerts featuring audio and video entertainment content using the “50/50” trademark between, at least, June through August 2013.

21. Upon information and belief, AB improperly and without permission used the “50/50” trademark to sell and promote music concerts and entertainment products in 2013 in conjunction with its “50/50/1” music concert finale in the following markets: Birmingham, Ala., Anchorage, Alaska; Phoenix, Ariz.; Little Rock, Ark.; Los Angeles, Calif.; San Francisco, Calif.; Denver, Colo.; Hartford, Conn.; Wilmington, Del.; Miami, Fla.; Atlanta, Ga.; Honolulu, Hawaii; Boise, Idaho; Chicago, Ill.; Indianapolis, Ind.; Iowa City, Iowa; Lawrence, Kan.; Louisville, Ky.; New Orleans, La.; Portland, ME; Silver Springs, Md.; Boston, Mass.; Detroit, Mich.; Minneapolis, Minn.; Biloxi, Miss.; St. Louis, Mo.; Missoula, Mont.; Lincoln, Neb.; Las Vegas, Nev.; Portsmouth, N.H.; Atlantic City, N.J.; Albuquerque, N.M.; New York City, N.Y.; Charlotte, N.C.; Fargo, N.D.; Columbus, Ohio; Oklahoma City, Okla.; Portland, Ore.; Philadelphia, Pa.; Providence, R.I.; Columbia, S.C.; Sioux Falls, S.D.; Nashville, Tenn.; Austin, Texas; San Antonio, Texas; Salt Lake City, Utah; Burlington, Vt.; Virginia Beach, Va.; Seattle, Wash.; Charleston, W. Va.; Milwaukee, Wis.; and Jackson Hole, Wyo. A copy of an advertisement on AB’s website at www.anheuser-busch.com showing advertisements for AB’s music concert, 50/50/1, is attached as Exhibit 8.

22. EASTLAND uses the EASTLAND Trademarks on or in connection with the promotion and sales of tickets for music concerts and related digital audio and video entertainment content sold via various media outlets on the Internet including Amazon.com and others. Digitally captured images of the Amazon.com websites showing the EASTLAND audio content are attached as Exhibit 9.

23. Upon information and belief, AB is selling and promoting or intends to sell and promote music concerts and entertainment products featuring audio and video entertainment content using the “50/50” trademark through media outlets across the United States on the Internet including, at least, Facebook.com for AB’s 2013 concert series finale. A copy of a Facebook webpages showing advertisements for AB’s 2013 music concert, 50/50/1, is attached as Exhibit 10.

24. EASTLAND uses the EASTLAND Trademarks on or in connection with promotional videos and music videos available on the Internet through various media outlets including YouTube. A copy of a YouTube webpage showing a screen shot of a promotional video for EASTLAND’s music is attached as Exhibit 11.

25. AB has improperly and without permission used the “50/50” trademark on or in connection with promotional music concerts and videos for AB’s music concert series, 50/50/1, in 2013. Said videos are, or were, available on the Internet through various media outlets including YouTube. A copy of a YouTube webpage showing a promotional video for AB’s music concert, 50/50/1, is attached as Exhibit 12.

26. EASTLAND uses the EASTLAND Trademarks on or in connection with clothing. Digitally captured images of EASTLAND’s clothing products are attached as Exhibit 13.

27. Upon information and belief AB is selling or intends to sell clothing and other products featuring the “50/50” trademark.

28. AB has improperly and without permission used the “50/50” trademark on or in connection with the promotion, ticket sales, merchandising and distribution of AB’s music concert series, 50/50/1.

29. Due to EASTLAND’s extensive advertising, promotion, marketing and sales of its concerts, videos, DVDs, CDs, and promotional items such as shirts, hats, and headphones, the

public recognizes the EASTLAND Trademarks and identifies EASTLAND as the source of products marked with the 50/50 or PHIFTY-50 Trademarks. As a result, EASTLAND Trademarks have acquired extensive recognition and goodwill in the marketplace.

30. EASTLAND has spent and continues to spend substantial sums of money, time, and effort to develop, advertise, and promote the EASTLAND Trademarks and EASTLAND's products and services through, in part, advertising campaigns and its website.

31. Upon information and belief, AB is a nearly \$39.8 billion global consumer products company with a presence in entertainment and music, television, advertising, and obviously, beer. For example, Bud Light is a wholly owned brand of AB. A copy of AB's company overview, available on its website at www.ab-inbev.com, is attached as Exhibit 14.

32. Throughout the summer of 2013, AB advertised its 50/50/1 summer concert series and concert finale, which upon information and belief, was supported by promotions on 80 million packages of Bud Light products, as well as a national advertising campaign created by Translation (the agency behind AB's other music festival, Budweiser Made In America.). Examples of AB's promotion of its music concert series, 50/50/1, were available at www.billboard.com.com and are attached as Exhibit 15. AB also broadcasted an extensive radio and television ad campaign for its 50/50/1 concert finale.

33. In or about August 2013, AB produced a music concert series under the mark "50/50/1."

34. EASTLAND uses the EASTLAND Trademarks on or in connection with radio and television advertising to promote 50/50 concerts and music related products. A copy of a radio playlist and advertisements from a media company webpage showing a use of EASTLAND's Trademarks is attached as Exhibit 16.

35. The title of AB's music concert series, 50/50/1, is identical with, or substantially indistinguishable from EASTLAND's Trademarks.

36. The title of AB's music concert, 50/50/1, is confusingly similar to EASTLAND's Trademarks.

37. Upon information and belief, Live Nation Entertainment ("Live Nation") is a worldwide live entertainment ticketing sales and marketing company, comprised of four market leaders: Ticketmaster.com, Live Nation Concerts, Artist Nation, and Live Nation Network. A copy of Live Nation Entertainment's company overview, available on its website at www.livenation.com, is attached as Exhibit 17.

38. Upon information and belief, Live Nation provides global sponsorship, advertising and promotion of live music events. *Id.*

39. Live Nation is a distributor of AB's music concert series, 50/50/1. A copy of a Live Nation advertisement for the music concert series, 50/50/1, is attached as Exhibit 18.

40. Live Nation promoted and advertised AB's music concert series, 50/50/1, using EASTLAND's Trademarks prominently in mailings to potential consumers. A copy of a Live Nation email advertisement for the music concert series, 50/50/1, is attached as Exhibit 19.

41. Myspace is a social networking and advertising service. A copy of Myspace's company overview, available on its website at www.myspace.com, is attached as Exhibit 20.

42. Myspace is a distributor of AB's music concert series, 50/50/1. Myspace distributed live streaming videos of the music concert series, 50/50/1. An example of a Myspace advertisement for the music concert series, 50/50/1, is attached as Exhibit 21.

43. Upon discovery that AB intended to use EASTLAND's Trademarks as a trademark on and in connection with a music concert series, 50/50/1, and other music products, EASTLAND requested that AB cease and desist the use of EASTLAND's Trademarks.

44. On July 17, 2013, EASTLAND sent correspondence to AB requesting that they cease and desist their use of EASTLAND's Trademarks. A copy of the July 17, 2013 correspondence is attached as Exhibit 22.

45. On July 31, 2013, EASTLAND sent a second correspondence to AB requesting that they cease and desist their use of EASTLAND's Trademarks. A copy of the July 31, 2013 correspondence is attached as Exhibit 23.

46. AB refused to stop using EASTLAND's Trademarks.

47. AB has improperly and without permission used and, upon information and belief, intends to continue improperly using EASTLAND's Trademarks without EASTLAND's permission or consent.

48. On information and belief, AB knew of the EASTLAND Trademarks at all times prior to AB's unauthorized adoption, promotion, and use of the EASTLAND Trademarks.

49. AB's use of the EASTLAND Trademarks caused, and is likely to continue to cause, confusion or mistake and/or among consumers as to EASTLAND's support, affiliation and/or endorsement of AB's concert series and concert series finale.

50. AB's knowingly improper use of the EASTLAND Trademarks was and is willful, and any future use will also be willful under the Lanham Act.

COUNT I – FEDERAL TRADEMARK INFRINGEMENT

51. EASTLAND reasserts and incorporates by reference the allegations of its Complaint at paragraphs 1 through 50 as if fully set forth herein.

52. EASTLAND is the exclusive owner and user of the valid and subsisting, federally registered trademarks identified in the 50/50 and PHIFTY-50 Registrations set forth herein. EASTLAND has spent years developing its 50/50 brand and has acquired a significant amount of good will therein.

53. AB's use in interstate commerce of the EASTLAND Trademarks in connection with the promotion, advertisement, distribution, and sales of its products and services is likely to cause confusion, mistake and/or deceive the public in violation of 15 U.S.C. § 1114.

54. As a direct and proximate result of the foregoing acts of infringement, EASTLAND has been and will continue to be actually damaged. In addition, EASTLAND has been and will continue to be irreparably harmed by the loss of the control over the good will it has developed over the years and the diminution of and inability to control its reputation and trademarks.

55. AB's intentional and willful infringement of the trademarks identified in the 50/50 and PHIFTY-50 Registrations, and disregard of EASTLAND's trademark rights, renders this case an exceptional case pursuant to 15 U.S.C. § 1117(a).

56. EASTLAND has no adequate remedy at law, because the trademarks identified in the 50/50 and PHIFTY-50 Registrations represent to the public EASTLAND's identity, reputation, and good will and the source of its goods and services. Money damages alone cannot fully compensate EASTLAND for the harm occasioned by AB's misconduct.

57. Unless enjoined by the Court, AB will continue to illegally use and infringe the EASTLAND Trademarks, to EASTLAND's irreparable injury.

WHEREFORE, EASTLAND prays for entry of judgment in its favor and against AB as follows:

A. Enter a permanent injunction and restraining order enjoining AB and all of their agents, servants, employees, successors and assigns, and all persons in active concert or participation with AB, from

- 1) Selling, marketing, advertising, importing or purchasing products under the trademarks identified in the 50/50 and PHIFTY-50 Registrations or trademarks confusingly similar to the trademarks identified in the 50/50 and PHIFTY-50 Registrations including, but not limited to, the mark “50/50” and “50/50/1”;
- 2) Unfairly competing with EASTLAND; and
- 3) Causing a likelihood of confusion or misunderstanding as to source, sponsorship, approval, or certification of AB’s products or as to any affiliation, connection, or association of them with or approval by EASTLAND, or engaging in any other conduct that similarly creates a likelihood of confusion or misunderstanding or false representation with respect to EASTLAND.

B. An Order, under 15 U.S.C. §§ 1116 and 1118, requiring AB to deliver to EASTLAND, or requiring proof of destruction, of all products and or promotional materials of AB to which the mark “50/50” or “50/50/1” is affixed and all promotional and packaging materials related to AB’s infringing products;

C. An Order, pursuant to 15 U.S.C. § 1116, requiring AB to file with this Court and serve upon EASTLAND within 30 days after the entry of the permanent injunction, a report in writing and under oath, setting forth in detail the manner and form in which AB has complied with the above two subparagraphs (A and B) of this prayer;

D. An award to EASTLAND, under 15 U.S.C. § 1117, of all profits received by AB from the sales and revenues of any kind as a result of AB’s illegal use of EASTLAND

Trademarks, including profits from sales of tickets and merchandise that used or were promoted with EASTLAND's Trademarks and any other damages to be determined that EASTLAND has suffered as a result of AB's conduct, and find that this is an exceptional case due to the flagrant and deliberate character of such infringement and unfair competition and therefore award EASTLAND treble damages, fees and costs; and

- E. Grant EASTLAND such other and further relief as this Court may deem just, proper and equitable under the circumstances.

COUNT II – FEDERAL UNFAIR COMPETITION

58. EASTLAND reasserts and incorporates by reference the allegations of its Complaint at paragraphs 1 through 56 as if fully set forth herein.

59. AB intentionally and willfully used EASTLAND's Trademarks in interstate commerce without authorization or permission in connection with the advertising, promotion, and sale of their concert events and other products.

60. AB's unlawful adoption and use of EASTLAND's Trademarks in interstate commerce is likely to cause confusion, to cause mistake and/or to deceive consumers.

61. AB's unauthorized use of EASTLAND's Trademarks has caused or is likely to cause confusion and such conduct and appropriation constitute a false designation of origin in violation of 15 U.S.C. § 1125(a).

62. AB's conduct has injured and will continue to injure EASTLAND by diminishing EASTLAND's goodwill and reputation among its customers, its potential customers, and the general public. EASTLAND seeks damages in such sum as may be proved at trial. Further, EASTLAND has been and continues to be irreparably harmed by AB's wrongful conduct.

WHEREFORE, EASTLAND prays for entry of judgment in its favor and against AB as follows:

- A. Enter a permanent injunction and restraining order enjoining AB and all of their agents, servants, employees, successors and assigns, and all persons in active concert or participation with AB, from
 - 1) Selling, marketing, advertising, importing or purchasing products under the trademarks identified in the 50/50 and PHIFTY-50 Registrations or trademarks confusingly similar to the trademarks identified in the 50/50 and PHIFTY-50 Registrations including, but not limited to, the mark “50/50” and “50/50/1”;
 - 2) Unfairly competing with EASTLAND; and
 - 3) Causing a likelihood of confusion or misunderstanding as to source, sponsorship, approval, or certification of AB’s products or as to any affiliation, connection, or association of them with or approval by EASTLAND, or engaging in any other conduct that similarly creates a likelihood of confusion or misunderstanding or false representation with respect to EASTLAND.
- B. An Order, under 15 U.S.C. §§ 1116 and 1118, requiring AB to deliver to EASTLAND, or requiring proof of destruction, of all products and or promotional materials of AB to which the mark “50/50” or “50/50/1” is affixed and all promotional and packaging materials related to AB’s infringing products;
- C. An Order, pursuant to 15 U.S.C. § 1116, requiring AB to file with this Court and serve upon EASTLAND within 30 days after the entry of the permanent injunction, a report in writing and under oath, setting forth in detail the manner and form in which AB has complied with the above two subparagraphs (A and B) of this prayer;

- D. An award to EASTLAND, under 15 U.S.C. § 1117, of all profits received by AB from the sales and revenues of any kind as a result of AB's illegal use of EASTLAND Trademarks, including profits from sales of tickets and merchandise that used or were promoted with EASTLAND's Trademarks and any other damages to be determined that EASTLAND has suffered as a result of AB's conduct, and find that this is an exceptional case due to the flagrant and deliberate character of such infringement and unfair competition and therefore award EASTLAND treble damages, fees and costs; and
- E. Grant EASTLAND such other and further relief as this Court may deem just, proper and equitable under the circumstances.

JURY TRIAL DEMAND

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

Dated: April 4, 2014

Respectfully submitted,



Mark E. Calvin, Esquire

Florida Bar No.: 045039

Mark L. Rosenberg, P.A.

554 Lomax Street

Jacksonville, Florida 32204

(904) 354-4680

(904) 725-3783 Fax

Email: Calvin@marklrosenberg.com

Gerald C. Willis, Jr.

James P. Murphy

Jesse Dyer

McAndrews, Held & Malloy, Ltd.

500 West Madison Street, 34th Floor

Chicago, Illinois 60661

Office: (312) 775-8000

Fax: (312) 775-8100

Email: jwillis@mcandrews-ip.com

Attorneys for Plaintiff,

EASTLAND MUSIC GROUP, LLC