

1 BLAISE & NITSCHKE, P.C.
2 HEATHER L. BLAISE, ESQ. (SBN 261619)
123 N. Wacker Drive, Suite 250
3 Chicago, IL 60606
4 Telephone: 312-448-6602
Email: hblaise@blaisenitschkelaw.com

5
6 Attorneys for Plaintiff,
WAYNE KRAMER

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 WAYNE KRAMER,

12 Plaintiff,

13
14 v.

15 THE PROCTER & GAMBLE
16 COMPANY, an Ohio Registered
Corporation, and DOES 1-100,

17 Defendants.
18
19
20
21
22
23

CASE NO: 2:20-cv-10705

**COMPLAINT FOR DAMAGES
FOR:**

**1) VIOLATIONS OF CALIFORNIA
STATUTORY RIGHT OF
PUBLICITY (CAL. CIV. CODE
§ 3344.1);
2) VIOLATIONS OF CALIFORNIA
COMMON LAW RIGHT OF
PUBLICITY; and
3) FALSE ENDORSEMENT
(SECTION 43(A) OF THE
LANHAM ACT, 15 U.S.C. § 1125(A))**

DEMAND FOR JURY TRIAL

24 **JURISDICTION AND VENUE**

25 1. This Court has subject matter diversity jurisdiction over this action
26 pursuant to 28 U.S.C. §1332.
27
28

1 2. This Court has personal jurisdiction over Defendant in that, among other
2 things, Defendant does business in this Judicial District, and Plaintiff does business
3 and is suffering harm in this Judicial District.

4 3. Venue is proper in this Judicial district pursuant to 28 U.S.C. §§
5 1391(b)-(d) and 1400(a).

6
7 **THE PARTIES**

8 4. Plaintiff WAYNE KRAMER is now, and at all times mentioned in this
9 Complaint was, a citizen of the United States, residing in Studio City, California.

10 5. Defendant THE PROCTER & GAMBLE COMPANY is now, and at all
11 times mentioned in this Complaint was, a corporation with its principal place of
12 business at 4400 Easton Commons Way, Suite 125, Columbus OH 43219.

13 **BACKGROUND**

14 6. Plaintiff Wayne Kramer was the founder of legendary band the MC5.
15 Kramer is widely cited by both critics and fellow musicians as having co-created the
16 prototype for the musical genres punk rock and heavy metal. In 1969, the MC5
17 released the politically incendiary and musically revolutionary hit album “Kick Out
18 the Jams” on Elektra Records. In addition to having an illustrious musical career as
19 well as being cited by Rolling Stone Magazine as a “Top 100 Guitarist of All Time,”
20 Mr. Kramer is a prominent and vigorous social activist. A true music legend, Mr.
21 Kramer is much more than a widely respected sonic innovator. He is also a devoted
22 activist who has channeled his personal journey into a commitment to social change
23 spanning decades. In furtherance of his activism, Mr. Kramer co-founded Jail Guitar
24 Doors, a Los Angeles-based 501(c)(3) non-profit organization that uses donated
25 musical instruments and devoted teaching artists to rehabilitate incarcerated men and
26 women, as well as justice-involved children.

27 7. Guided by a deep belief in the power of positive personal transformation
28 through music, Mr. Kramer’s work with the incarcerated through Jail Guitar Doors

1 serves as an inspiration for artists everywhere to use their platforms toward positive
2 social change. Mr. Kramer has been the subject of several documentaries and
3 television programs highlighting both his musical and philanthropic endeavors,
4 including the PBS Special Series “Lifecasters: The Beast and The Angel.” Mr.
5 Kramer is the recipient of a number of prestigious awards, including: (1) a special
6 recognition proclamation by the City of Los Angeles for his accomplishments and
7 service to Los Angeles County via Jail Guitar Doors; (2) a California Lawyers for the
8 Arts “Artistic License Award” in recognition of his work using music as
9 rehabilitation in the communities of both male and female adult and juvenile
10 incarcerated population; (3) The Future of Music Coalition “Voice of Change” honor
11 in recognition of his lifelong commitment to creative expression; (4) the Psychiatric
12 Rehabilitation Association “Board of Directors Award” for the use of his experience
13 and talent to advance recovery; and (5) the recipient of various music awards
14 including the prestigious Kerrang Magazine’s “Icon Award.” He is also a guest
15 lecturer at California Institute of the Arts, University of California Los Angeles,
16 Loyola University New Orleans, Georgetown University, and numerous others.

17 8. Mr. Kramer has a substantial impact and a great range in the music
18 industry.

19 9. Mr. Kramer alone holds the publicity rights, including the use of Mr.
20 Kramer’s name, likeness, image, and identity for commercial purposes.

21 10. Mr. Kramer’s established signature stars and stripes Fender guitar has
22 become synonymous with his image and brand.
23
24
25
26
27
28



(See <https://www.fender.com/articles/artists/what-i-know-so-far-wayne-kramer/>.)

11. In 2011, Fender released a limited-run replica of the guitar as the Fender Wayne Kramer Stratocaster. Fender promoted the guitar through a video featuring Mr. Kramer holding, displaying, and discussing the guitar.



(See <https://www.youtube.com/watch?v=3C2XlrCzVf0>.)

12. On or about December 2018, Defendant was advertising, marketing, and distributing products using Mr. Kramer's name, image and/or likeness.



13. Defendant's design of the aforementioned body wash product was clearly inspired by Mr. Kramer's performances:



(See <https://riotfest.org/2017/06/wayne-kramers-youtube-page-becoming-treasure-trove-mc5-fans/>) (website last viewed December 13, 2019.)



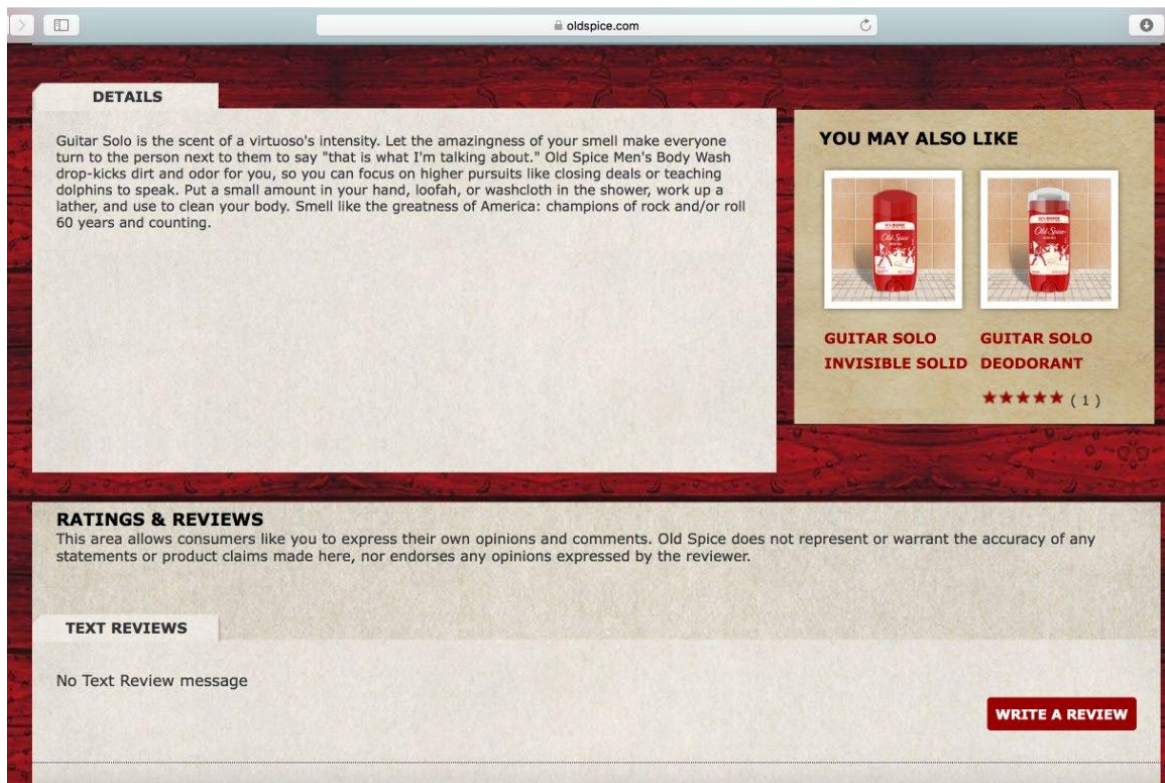
(See <https://twitter.com/waynekramer>.)

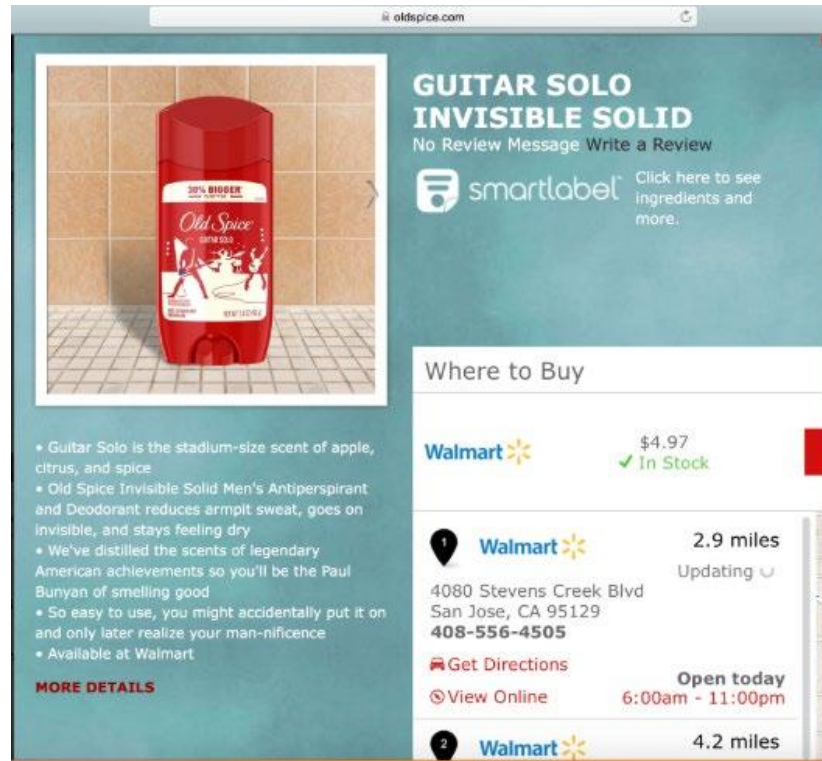


(See <https://www.fordtheatres.org/calendar/rock-out-5-2019>.)

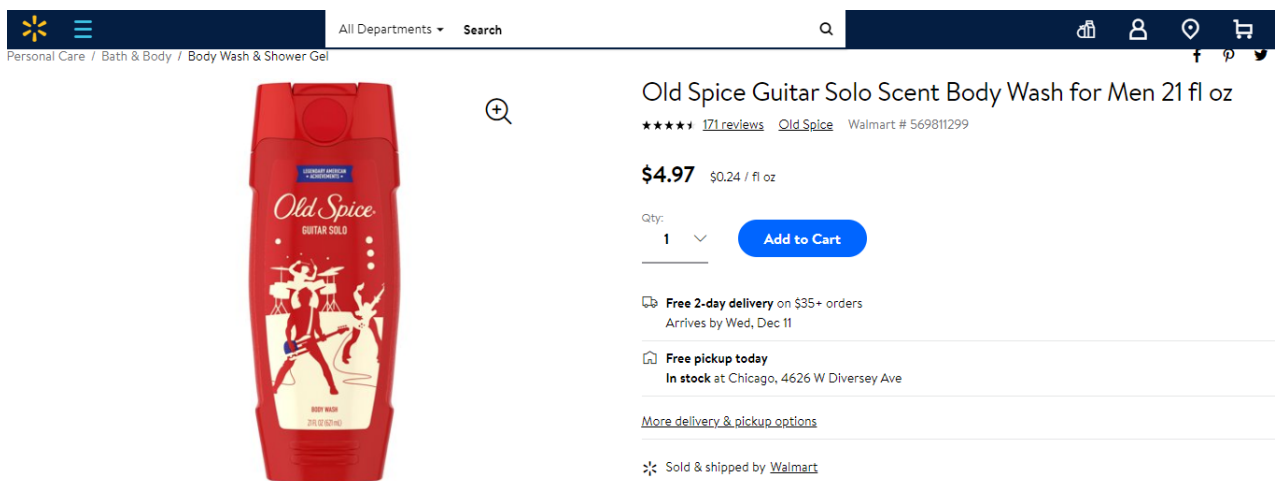
14. Defendant's products which incorporated Mr. Kramer's name, image and/or likeness were available for purchase to the public and were sold in stores throughout the United States.

15. On or about December 30, 2018 Defendant's product was advertised and sold on its website www.oldspace.com.





16. On information and belief, the aforementioned products have been removed from Old Spice's website. However, as of December 6, 2019, aforementioned products are still available for online purchase at Walmart.com.



(See <https://www.walmart.com/ip/Old-Spice-Guitar-Solo-Scent-Body-Wash-for-Men-21-fl-oz/307088377>.)

1 17. Defendant had no authority from Mr. Kramer to produce, advertise,
2 market, and/or distribute products with Mr. Kramer's name, image and/or likeness.

3 18. Defendant did not have a license or any other form of consent to use Mr.
4 Kramer's name, image, and/or likeness in any way.

5 **FIRST CLAIM FOR RELIEF**
6 **VIOLATIONS OF CALIFORNIA STATUTORY RIGHT OF PUBLICITY-**
7 **CAL. CIV. CODE § 3344.1**

8 19. Plaintiff repeats, alleges, and incorporates by reference Paragraphs 1
9 through 18, as set forth herein.

10 20. No one other than Mr. Kramer holds his publicity rights, including the
11 use of Mr. Kramer's name, image, likeness, and identity for commercial purposes.

12 21. Plaintiff is informed and believes that in or about December 2018, and
13 continuing to this date, Defendant has willfully and knowingly infringed on the
14 publicity rights of Mr. Kramer for its own purpose of advertising or selling, or
15 soliciting purchases of products, merchandise, and goods, even after being informed
16 of this claim.

17 22. The appropriations were unauthorized and without Plaintiff's consent.

18 23. The appropriations usurped Plaintiff's ability to control the subject
19 publicity rights and diluted his ability to effectively market such images, all to the
20 detriment of Plaintiff.

21 24. Plaintiff is informed and believes, and on other basis, alleges that as a
22 proximate result of the advantage accruing to Defendant from said appropriation,
23 Plaintiff has been/or will be deprived of monetary sums in an amount to be
24 determined in the further course of this litigation.

25 25. Defendant's actions caused confusion in the marketplace. Namely, Mr.
26 Kramer's fans were placed under the false belief that such use was actually
27 authorized by Mr. Kramer.
28



26. Defendant's acts of violation of statutory right of publicity against Plaintiff have caused Plaintiff damage in that the value of merchandise actually authorized by Plaintiff is diluted in the marketplace.

27. In addition, Mr. Kramer's goodwill, reputation, and business has been and will continue to be irreparably harmed by Defendant unless it is enjoined from its exploitative and infringing commercial business practices and from using Mr. Kramer's image and likeness. Given Mr. Kramer's established brand and image, professional reputation, and moral commitment as a champion for the working class, he never would have licensed his image or likeness in connection with the sale of Defendant's body wash products.

28. Mr. Kramer would have never authorized Defendant to use his image or likeness as it would never be in his interest to be associated with aforesaid body wash product and more importantly Defendant and the advertising website "Old Spice" which does not incarnate any of the values Mr. Kramer represents and to which has dedicated most parts of his life.

1 29. As a result, Mr. Kramer is appalled, disgusted, and embarrassed to see
2 his image and/or likeness falsely endorsing Defendant's products because such
3 unauthorized use creates a perception of hypocrisy in the public eye and irreparably
4 undermines the important international social work that has been Mr. Kramer's adult
5 life's mission, the value of which is immense and cannot be overstated.

6 30. Importantly, the Wayne Kramer and MC5 fans are disappointed to see
7 Mr. Kramer's image offered in connection with a body wash product by a company
8 named "Old Spice", thereby tarnishing the reputation of Mr. Kramer.

9 **SECOND CLAIM FOR RELIEF**
10 **VIOLATIONS OF CALIFORNIA COMMON LAW RIGHT OF PUBLICITY**

11 31. Plaintiff repeats, alleges, and incorporates by reference Paragraphs 1
12 through 30, as though fully set forth herein.

13 32. Plaintiff is informed and believes that in or about 2018, Defendant
14 willfully and knowingly infringed on the publicity rights of Mr. Kramer by
15 appropriating the identity of Mr. Kramer for its own purpose of advertising or selling,
16 or soliciting purchases of products, merchandise, and goods, even after being
17 informed of this claim.

18 33. No one other than Plaintiff hold a license or any other form of consent
19 from Mr. Kramer to use his image, likeness, or identity.

20 34. The appropriation usurped Plaintiff's ability to control the subject
21 publicity rights and diluted his ability to effectively market such images, all to the
22 detriment of Plaintiff.

23 35. Plaintiff is informed and believes, and on that basis, alleges that as a
24 proximate result of the advantage accruing to Defendant from said appropriation,
25 Plaintiff has been and/or will be deprived of monetary sums in an amount to be
26 determined at trial.

27 **THIRD CLAIM FOR RELIEF**
28 **UNFAIR COMPETITION AND FALSE ENDORSEMENT**

(SECTION 43(A) OF THE LANHAM ACT, 15 U.S.C. § 1125 (A))

36. Plaintiffs repeat, allege, and incorporate by reference Paragraphs 1 through 35, as though fully set forth herein.

37. Since approximately on or about December 2018 to the date of this Complaint, Defendants have created, manufactured, marketed and sold, body wash products prominently featuring Mr. Kramer's likeness in conjunction with the signature stars and stripes Fender guitar which has become synonymous with Mr. Kramer's image and band.

38. Defendant, by its intentional and unauthorized appropriation and use of Mr. Kramer's image and likeness has engaged, and is continuing to engage, in acts of the wrongful deception of the purchasing public, with the effect of confusing customers into believing that Defendant is legitimately connected with, or sponsored or approved by Wayne Kramer along with wrongful deprivation of Mr. Kramer's good name and reputation.

39. Defendant's use of the likeness of Mr. Kramer constitutes a false designation or origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, mistake, or to deceive as to the endorsement, affiliation, connection, or association of Defendant with Mr. Kramer

40. Defendant's unauthorized and infringing activities as described herein has been knowing, intentional, and malicious, and its misuses were carried out with the intent to trade upon the goodwill and reputation of Mr. Kramer

WHEREFORE, Plaintiff, WAYNE KRAMER, by and through his attorney, respectfully prays for judgment against Defendants, THE PROCTER & GAMBLE COMPANY and DOES 1-100, for:

A. Compensatory damages for Defendant's unauthorized use of Mr. Kramer's image and/or likeness;

- 1 B. An accounting for, and payment to the Plaintiff as actual damages, all
2 gains, profit and advantages derived by Defendant as a result of its unfair
3 trade practices, unfair competition, and false endorsement;
4 C. Additional damages for an amount determined in the further course of
5 this litigation for unfair and deceptive trade practices, competition, and
6 false endorsement;
7 D. Punitive damages for willful violation of Cal. Civ. Code § 3344;
8 E. Reasonable attorney fees;
9 F. The costs of this action including, but not limited to, expert fees;
10 G. Pre-judgment interest according to law; and
11 H. Such other and further relief as the Court deems just and proper.

12 **JURY DEMAND**

13 Plaintiff demands trial by jury on all issues so triable.

14
15 DATED: November 24, 2020

Respectfully submitted,

16 **WAYNE KRAMER**

17 /s/ Heather L. Blaise

18 HEATHER L. BLAISE, ESQ. (SBN 261619)

19 123 N. Wacker Drive, Suite 250

20 Chicago, IL 60606

21 Telephone: 312-448-6602

22 Email: hblaise@blaisenitschkelaw.com

23 *Attorney for Plaintiff*
24
25
26
27
28