

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NBC UNIVERSAL, INC. and BRAVO MEDIA : Index No.
LLC, :
 : IAS Part
Plaintiffs, : Justice
 :
v. : **SUMMONS**
 :
THE WEINSTEIN COMPANY, LLC, :
 :
Defendant. :
 :
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TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorney an answer to the Complaint in this action within twenty days after the service of this Summons, exclusive of the day of service. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiffs designate New York County as the place of venue. Pursuant to CPLR § 503(a), (c) and (d), venue is proper because Plaintiffs' principal offices are located at 30 Rockefeller Plaza, New York, New York 10112 and Defendant's principal office is located in New York City

at 345 Hudson St., New York, New York 10014, and Defendant has consented to New York County as the sole and exclusive venue for this dispute.

Dated: April 7, 2008
New York, New York

GIBSON, DUNN & CRUTCHER LLP

By: 

Orin Snyder
Cynthia S. Arato

200 Park Avenue, 47th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

*Attorneys for Plaintiffs
NBC Universal, Inc. and
Bravo Media LLC*

TO:

The Weinstein Company
345 Hudson St.
New York, New York 10014

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NBC UNIVERSAL, INC. and BRAVO MEDIA	:	Index No.
LLC,	:	
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	:	
THE WEINSTEIN COMPANY, LLC,	:	
	:	
Defendant.	:	
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Plaintiffs NBC Universal, Inc. ("NBCU") and Bravo Media LLC ("Bravo") (collectively, "Plaintiffs"), by their attorneys, Gibson, Dunn & Crutcher LLP, for their Complaint against Defendant The Weinstein Company, LLC ("TWC"), allege as follows:

NATURE OF ACTION

1. This case arises from TWC's attempt to deprive Plaintiffs of valuable rights relating to the popular reality television show "Project Runway" (the "Program").
2. Pursuant to a License Agreement and its subsequent amendments, Bravo obtained from TWC the exclusive right to exploit the Program in all media in the United States for five "Cycles" (i.e., seasons). TWC also granted to Plaintiffs a right of first refusal to acquire additional Cycles of the Program beyond the Fifth Cycle, as well as rights of first negotiation and first refusal with respect to spin-offs of the Program. Bravo has paid TWC many millions of dollars in exchange for these exclusive rights. Despite receiving these handsome sums, TWC is now attempting to take the Program from Plaintiffs by licensing it to Lifetime Networks ("Lifetime") – a competing cable network – in violation of Plaintiffs' right of first refusal.
3. Plaintiffs have spent an enormous amount of time, energy and money in the development, production and promotion of the Program, transforming it from an untested

concept into an unqualified critical and commercial "hit." Since 2004, Bravo has exhibited four Cycles of the Program and has already begun pre-production of the much-anticipated fifth Cycle.

4. For more than one year, TWC and Plaintiffs have been in negotiations for Plaintiffs to acquire the exclusive right to broadcast subsequent Cycles of the Program, including the sixth Cycle. Unbeknownst to Plaintiffs, upon information and belief, TWC never intended to negotiate in good faith or to honor Plaintiffs' right of first refusal. Instead, TWC threatened to take future Cycles of the Program to a competing television network unless Plaintiffs agreed to pay many millions of additional dollars to TWC to acquire a "package" that included television rights to second-tier TWC films unrelated to the Program. Upon information and belief, on or about February 7, 2008, TWC secretly purported to grant to Lifetime rights to future Cycles of the Program as part of a "package" deal involving these other TWC properties, without complying with Plaintiffs' right of first refusal with respect to the Program. Upon information and belief, TWC included in that "package" certain rights relating to a spin-off of the Program, also in violation of Plaintiffs' contractual rights. Following TWC's invalid grant of rights to Lifetime, TWC continued to engage in sham negotiations with Plaintiffs over these very same rights and intentionally concealed from Plaintiffs the fact that TWC had entered into its invalid agreement with Lifetime. Upon information and belief, TWC engaged in this deception to prevent Plaintiffs from seeking legal redress until after TWC received payments from Lifetime and Lifetime publicly announced its purported acquisition of rights to, and plans to exhibit future episodes of, the Program. Upon information and belief, Lifetime is expected to make such public announcement shortly, in contravention of Plaintiffs' rights.

5. TWC's failure to honor Plaintiffs' right of first refusal and other valuable rights constitutes a breach of the parties' agreement. Accordingly, by this action, Plaintiffs seek a declaration that TWC is required to provide Plaintiffs with a right of first refusal with respect to future Cycles of the Program; a preliminary and permanent injunction preventing TWC from granting rights to future Cycles of the Program, or to spin-offs of the Program, to any third party without first offering Plaintiffs the right to match such an offer; specific performance of

Plaintiffs' rights of first negotiation and first refusal; and compensatory damages for TWC's breach of the agreement.

PARTIES

6. NBCU is a corporation organized under the laws of Delaware with its principal place of business at 30 Rockefeller Plaza, New York, New York 10112. NBCU is one of the world's leading media and entertainment companies in the development, production, and marketing of entertainment, news, and information.

7. Bravo is a limited liability company organized under the laws of New York with its principal place of business at 30 Rockefeller Plaza, New York, New York 10112. Bravo is a wholly owned subsidiary (through intermediate entities) of NBCU. Bravo is a successful cable network that reaches more than 80 million homes and offers innovative arts and entertainment programming. It has exhibited, and presently exhibits, a wide range of competition shows and "reality"-based programming, along with critically-acclaimed acquired movies, series and specials, including hit shows such as "Project Runway," "Queer Eye for the Straight Guy," "Top Chef," "Inside the Actors Studio" with James Lipton and "Cirque du Soleil: Fire Within."

8. Upon information and belief, TWC is a limited liability company whose members reside in New York, organized and existing under the laws of Delaware, with its principal place of business located at 345 Hudson St., New York, New York 10014.

9. Upon information and belief, TWC was founded in 2005 by Bob and Harvey Weinstein, upon their departure from Miramax Film Corporation, of which they were also the founders. Prior to the Weinsteins' departure, Miramax was primarily in the business of producing and distributing films (as opposed to television programs). Upon information and belief, "Project Runway" was Miramax's most successful television program. Upon information and belief, TWC is primarily in the business of motion picture and direct-to-video production (as opposed to television production) and has not been involved in any successful television programming beyond "Project Runway." Prior to 2005, Miramax owned the rights to the

Program now owned by TWC and, accordingly, Miramax (prior to the formation of TWC in 2005) and TWC will be referred to herein collectively as "TWC."

JURISDICTION AND VENUE

10. This Court has jurisdiction over TWC pursuant to CPLR § 301, as TWC regularly does or solicits business and/or derives substantial revenue from goods used or consumed or services rendered in this State and/or expects or should reasonably expect the acts complained of here to have consequences in this State and derives revenue from interstate or international commerce.

11. Pursuant to CPLR § 302(a)(1), TWC has submitted to the jurisdiction of this Court by transacting business in the State of New York.

12. In addition, the parties expressly consented to the jurisdiction of this Court in the Agreement, which provides in Paragraph 11, in relevant part, that "[a]ny controversy or claim arising out of or relating to this Agreement . . . or the breach of any term hereof, will be heard exclusively in the appropriate Federal or state courts located in the County of New York in New York State, and Packager and Bravo each irrevocably consent to the jurisdictions of such courts."

13. Venue in this Court is proper pursuant to CPLR § 503(a) and (d) because Plaintiffs' and TWC's principal places of business are located in New York City.

FACTUAL ALLEGATIONS

14. In or about 2003, TWC "pitched" the Program in general conceptual terms to Bravo and a number of other television networks. All of the other networks "passed" on the Program; Bravo was the only one willing to give the Program a chance. In or about November 2003, Bravo and TWC reached an agreement for Bravo to develop and oversee the production of the Program and to obtain exclusive rights to exhibit the Program in the United States, in exchange for significant payments to TWC.

15. From time to time, the parties have amended their rights and obligations with respect to one another and the Program. Except for various breaches by TWC, including those set forth herein, since 2003, the parties have continuously performed, and accepted substantial

benefits, under the terms of a written agreement dated as of November 11, 2003, as amended (the "Agreement"). The parties have confirmed the Agreement in numerous writings, including writings executed by TWC or its agents. Among other things, in November 2004, the parties executed a written indemnity agreement regarding the Program, which was signed by TWC "pursuant to a license agreement dated as of November 11, 2003." In March 2006, the parties executed an additional indemnity agreement regarding the Program, which was signed by TWC "pursuant to a license agreement, as amended, dated as of November 11, 2003." As explained more fully below, the parties amended the Agreement in January 2007 and also executed a letter agreement amendment to the Agreement, dated July 13, 2007, that expressly acknowledged, and altered, the provisions of the "November 11, 2003 'Project Runway' license agreement (as amended)." Counsel for TWC also confirmed and ratified the Agreement in, among other things, signed writings to Plaintiffs dated July 28, 2006 and August 11, 2006.

16. Under the Agreement, TWC granted Bravo the perpetual, exclusive right to exhibit an initial ten-episode Cycle of the Program in the United States. TWC also granted Bravo consecutive options to license the perpetual, exclusive rights to exhibit four additional Cycles of the Program in the United States. Bravo has exercised each such option. Among other things, the Agreement, as amended, also gives Plaintiffs the right of first refusal to acquire rights to additional Cycles of the Program and the right of first negotiation and first refusal to acquire rights to various categories of "spin-offs" (hereinafter a "Spin-off"). These rights were designed to allow Plaintiffs to choose whether to retain rights to the Program in which they have invested and which they have made successful. The Agreement also prohibits TWC from promoting, marketing or exhibiting additional Cycles of the Program (or granting any third-party the rights to do the same) during the time when Bravo is still exhibiting new episodes of the Program and for a period of time thereafter (hereinafter the "Holdback Period").

17. Under Bravo's auspices, the Program went into initial production in 2004. Since that date, Bravo has exhibited four complete Cycles of the Program as follows: Cycle One – December 1, 2004 through February 23, 2005; Cycle Two – December 7, 2005 through March 8,

2006; Cycle Three – July 5, 2006 through October 18, 2006; and Cycle Four – November 14, 2007 through March 5, 2008. TWC is currently involved in the pre-production of Cycle Five and this Cycle is presently scheduled to begin airing in July 2008.

18. Plaintiffs have invested significant capital and resources in the development, production and promotion of the Program. Although the Program was not an initial hit, Plaintiffs nurtured it from a nascent, untested concept to a successful production. Over time, the Program has become a critical and commercial success.

19. In late 2006, in the context of negotiations between Bravo and TWC regarding future Cycles of the Program, certain disputes arose between the parties regarding the scope of Plaintiffs' exclusivity rights and rights of first refusal. The parties met on January 15, 2007 to discuss additional amendments to the Agreement to resolve these disputes. This meeting took place at the Four Seasons Hotel in Beverly Hills, California, and was attended by Jeff Zucker, the current President and Chief Executive Officer of NBCU; Marc Graboff, the current Co-Chairman of NBC Entertainment and Universal Media Studios; and Harvey Weinstein.

20. At the meeting, the parties reached an agreement to resolve their disputes (hereinafter the "January Amendment"). The parties agreed, among other things, that NBCU would have a right of first refusal to license future Cycles of the Program for exhibition on any non-Bravo NBCU platform should TWC seek to sell or license any new Cycles. TWC also insisted that it would only permit future cycles of the Program to be exhibited on the Bravo channel if NBCU would agree to a "package" deal in which NBCU would also acquire the television rights to various films owned by TWC.

21. In consideration for the January Amendment, Plaintiffs made valuable concessions. Among other things, Plaintiffs agreed that Cycle Five of the Program would be produced and exhibited earlier than Bravo desired. Plaintiffs also agreed that the Holdback Period on the Program would have an earlier end date than originally contemplated under the Agreement, allowing TWC to market, promote and exploit future Cycles of the Program earlier than otherwise allowed (to the extent NBCU did not exercise its right of first refusal with respect

to such Cycles). These concessions left Bravo with a substantially less optimal schedule for producing, airing and selling commercial time and product integrations on Cycle Five, as well as a much shorter interval between the airing of Cycles Four and Five than Bravo would normally have preserved, and that it believed was most advantageous for it.

22. During the January 15 meeting at which the January Amendment was made, Harvey Weinstein gave Jeff Zucker his word that TWC would honor NBCU's right of first refusal in exchange for the concessions made by Plaintiffs, going so far as to assure Mr. Zucker with words to the effect of: "You can only have in your life five true friends and I consider you one of my five friends. And I'm telling you, I will not embarrass you."

23. Plaintiffs confirmed the January Amendment by an email writing sent to Jim Wiatt, Chief Executive Officer of the William Morris Agency (TWC's agent), on January 19, 2007. Among other things, this writing confirmed the right of first refusal to be held by NBCU:

3. Harvey gave Jeff his word that, should he or TWC sell or license Runway to another network (other than a network which Harvey or TWC owns or controls) NBC Universal will have a first refusal right to acquire the series for NBC, USA or another non-Bravo platform.

(Emphasis added). In response, TWC confirmed the January Amendment by an email writing sent by TWC's agent to Plaintiffs on February 22, 2007, which stated:

Harvey intends to live by the terms of the letter you sent to Jim Wiatt on 1/19/07.

(Emphasis added).

24. None of the terms of the January Amendment, as confirmed in the January 19, 2007 email to Jim Wiatt, was amended or modified, except that the parties agreed to further alter the Holdback Period, as confirmed in a signed writing dated July 13, 2007, which expressly acknowledged, and altered, the provisions of the "November 11, 2003 'Project Runway' license agreement (as amended)." Plaintiffs agreed to further shorten this Holdback Period in reliance on, and subject to, their right of first refusal and other rights granted to them pursuant to the January Amendment.

25. Performing under the Agreement and the January Amendment, Plaintiffs, working with TWC and its producers, continued to develop and produce the Program. Bravo exhibited Cycle Four of the Program from November 14, 2007 to March 5, 2008. Bravo has spent significant time and money planning for the production of Cycle Five, which began its pre-production phase in March 2008, immediately following the airing of the Cycle Four finale. Bravo has paid TWC substantial fees for Cycles One through Four.

26. In or about September 2007, Plaintiffs resumed negotiating with TWC regarding the future Cycles of the Program. Upon information and belief, TWC was not interested in negotiating with Plaintiffs in good faith or in honoring Plaintiffs' right of first refusal. Instead, TWC insisted it would take the Program to a competing television network unless Plaintiffs acquired a "package" from TWC that included television rights to second-tier films owned by TWC.

27. In response, from about September 2007 through April 2008, Plaintiffs attempted, in good faith, to negotiate and fashion a reasonable proposal for a "package" deal. At no time did Plaintiffs relinquish their right of first refusal to the Program on a stand-alone basis. Nor did Plaintiffs relinquish their rights relating to any Spin-off.

28. Upon information and belief, on or about February 7, 2008 – in the midst of the parties' negotiations – TWC purported to grant to Lifetime rights to future Cycles of the Program as part of a secret "package" deal involving these other TWC properties. TWC did so without complying with Plaintiffs' right of first refusal with respect to the Program. Upon information and belief, Lifetime agreed to pay substantial sums of money to TWC for a "package" deal that included the Program, as well as the other TWC films. Upon information and belief, TWC also purported to grant Lifetime rights to a Spin-off, again without having honored Bravo's rights of first negotiation and first refusal with respect to any Spin-off. Upon information and belief, TWC also purported to grant Lifetime the right to market and promote future episodes of the Program before expiration of the Holdback Period and Lifetime intends to exercise these

purported rights by announcing shortly its intent to exhibit future episodes of the Program later this year.

29. Following TWC's invalid grant of rights to Lifetime, TWC continued to engage in sham negotiations with Plaintiffs regarding the acquisition of rights to future Cycles of the Program – rights that TWC already had purported to grant to Lifetime in exchange for considerable sums of money. Throughout these sham negotiations, TWC intentionally concealed from Plaintiffs its invalid agreement with Lifetime. Upon information and belief, TWC engaged in this deception to prevent Plaintiffs from seeking legal redress until after TWC received payments from Lifetime and Lifetime publicly announced its purported acquisition of rights to the Program and to prevent Plaintiffs from exercising their rights of first refusal and first negotiation. Indeed, Plaintiffs learned of TWC's dealings only last week.

30. Plaintiffs have built significant goodwill as a result of their successful development and promotion of the Program, including with viewers, critics, advertisers and owners of other entertainment projects looking for distribution partners. TWC's breach of the Agreement and its diversion of the Program and any Spin-off will cause Plaintiffs irreparable harm.

FIRST CAUSE OF ACTION
(Breach of Contract)

31. Plaintiffs repeat and reallege paragraphs 1 through 30 above, as if set forth here in full.

32. Plaintiffs and TWC are parties to a binding and enforceable Agreement, which TWC breached by refusing to (a) honor Plaintiffs' right of first refusal regarding the Program as set forth in the Agreement, (b) negotiate in good faith for a deal with NBCU that would provide it with future Cycles of the Program to air on Bravo following the completion of Cycle Five, as further set forth in the Agreement; (c) honor Bravo's rights of first refusal and first negotiation regarding any Spin-off as set forth in the Agreement; and (d) refrain from marketing and

promoting new episodes of the Program (or granting rights to a third-party to do the same) during the Holdback Period.

33. Plaintiffs fully performed their obligations under the Agreement.

34. As a direct and proximate result of TWC's breach, Plaintiffs have been damaged.

35. The damage that Plaintiffs have suffered and will continue to suffer from TWC's breach is irreparable, such that Plaintiffs have no adequate remedy at law. Such conduct will continue to cause irreparable harm to Plaintiffs unless restrained by this Court.

SECOND CAUSE OF ACTION
(Declaratory Relief)

36. Plaintiffs repeat and reallege paragraphs 1 through 30 above, as if set forth here in full.

37. Plaintiffs' rights under the Agreement are being placed in jeopardy by TWC's actions.

38. Plaintiffs have a legally protected interest because they will be directly harmed by TWC's actions.

39. TWC contends that it is free and clear to grant a third party exclusive rights to exhibit future Cycles of the Program in the United States without offering Plaintiffs a right of first refusal with respect to such rights. TWC further contends that it is free and clear to grant a third party exclusive rights to exhibit any Spin-off in the United States without offering Bravo rights of first refusal/first negotiation regarding such a Spin-off. TWC further contends that it is authorized to grant third-parties the right to market and promote future episodes of the Program during the Holdback Period. Plaintiffs contend that TWC is obligated under the Agreement to offer Plaintiffs a right of first refusal regarding exclusive rights to exhibit future Cycles of the Program in the United States and rights of first refusal/first negotiation regarding any Spin-off and to refrain from granting third-parties the right to market and promote future episodes of the Program during the Holdback Period. Accordingly, a justiciable controversy exists as to the rights and obligations of the parties regarding whether Defendant is required to give Plaintiffs a

right of first refusal with respect to the granting of exclusive rights to exhibit future Cycles of the Program in the United States, rights of first refusal/first negotiation regarding any Spin-off, and TWC's right to grant third-parties the right to market and promote future episodes of the Program during the Holdback Period .

THIRD CAUSE OF ACTION
(Specific Performance)

40. Plaintiffs repeat and reallege paragraphs 1 through 30 above, as if set forth here in full.

41. Plaintiffs have fully complied with their obligations under the Agreement, in reliance upon TWC's fulfillment of its obligations.

42. Money damages would be inadequate to protect the expectation interest of Plaintiffs because such damages could not compensate for Plaintiffs' inability to exhibit future Cycles of the Program and any Spin-off – both unique properties – on its networks or channels. Plaintiffs would lose immeasurable and valuable goodwill associated with exhibiting such a highly successful Program and potentially successful Spin-off on their networks or channels.

43. Granting specific performance compelling TWC to honor Plaintiffs' rights of first refusal/first negotiation would not impose an unreasonable hardship or injustice on TWC because TWC is contractually bound, and previously agreed in exchange for valuable consideration that it has received, to grant Plaintiffs such rights.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment in their favor against TWC as follows:

(a) Granting Plaintiffs preliminary and permanent injunctive relief to prevent and restrain TWC from granting rights to future Cycles of the Program or to any Spin-off to any person or entity other than Plaintiffs without first (i) honoring Plaintiffs' right of first refusal regarding the Program as set forth in the Agreement; (ii) negotiating in good faith for a deal with

NBCU that would provide it with future Cycles of the Program to air on Bravo following the completion of Cycle Five, as also set forth in the Agreement; (iii) honoring Bravo's rights of first refusal/first negotiation regarding any Spin-off as set forth in the Agreement; and (iv) complying with the restrictions applicable to TWC during the Holdback Period;

(b) Declaring that Plaintiffs are entitled to the rights granted to them under the Agreement, including (i) the right of first refusal regarding the Program as set forth in the Agreement; (ii) the right to have TWC negotiate in good faith for a deal with NBCU that would provide it with future Cycles of the Program to air on Bravo following the completion of Cycle Five, as also set forth in the Agreement; (iii) the rights of first refusal/first negotiation regarding any Spin-off, as set forth in the Agreement; and (iv) the restrictions applicable to TWC during the Holdback Period;

(c) Specific performance of TWC's obligations under the Agreement, including as set forth in the January Amendment;


(d) Awarding Plaintiffs compensatory and any and all other damages available by law in an amount to be determined at trial, with interest, at the maximum amount permitted by law;

(e) Awarding Plaintiffs their costs and disbursements in prosecuting this action to the extent permitted by law; and

(f) Awarding Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
April 7, 2008

GIBSON, DUNN & CRUTCHER LLP

By: 
Orin Snyder
Cynthia S. Arato

200 Park Avenue, 47th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

*Attorneys for Plaintiffs
NBC Universal, Inc. and
Bravo Media LLC*