

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
SHANDY MEDIA, INC.,
:
Plaintiff,
:
- against -
:
DEFY MEDIA, LLC,
:
Defendant.
:
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COMPLAINT

Plaintiff SHANDY MEDIA, INC. (“Shandy”), by and through its undersigned counsel, as and for its Complaint against Defendant DEFY MEDIA, LLC (“Defy”), alleges as follows:

INTRODUCTION

1. Shandy brings this breach of contract action in order to recover amounts owed by Defy pursuant to the terms of two contracts: (1) the CLiP Affiliate Partnership Agreement by and between Shandy and Defy (the “CLiP Agreement”), dated November 14, 2016, and (2) the Exclusive Online Advertising Representation Agreement by and between Shandy and Defy (the “PubSuite Agreement”), dated January 1, 2018.

2. Under the terms of the CLiP Agreement, Shandy embedded Defy’s proprietary content enablement platform (the “Player”) on Shandy’s websites, allowing the websites’ users to access Defy’s content. Under the terms of the PubSuite Agreement, Shandy gave Defy the exclusive right to represent Shandy in connection with the solicitation, sale, and placement of advertising on Shandy’s websites.

3. Pursuant to the terms of both agreements, Shandy has submitted monthly invoices to Defy. Defy has refused to pay the amounts owed under the CLiP Agreement since February 2018, and has refused to pay the amounts owed under the PubSuite Agreement since March 2018. Defy's failure to pay Shandy constitutes a material breach of each contract for which Shandy is entitled to recover all amounts owed, plus statutory pre-judgment interest of 9% per year.

PARTIES

4. Shandy is a California corporation with a principal place of business at 3151 Cahuenga Boulevard West, Suite 210, Los Angeles, California 90068.

5. Upon information and belief, Defy is a Delaware limited liability company, with a place of business at 366 5th Avenue, 4th Floor, New York, New York 10001. Upon information and belief, Defy is registered with the New York Department of State, Division of Corporations to do business in the State of New York.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this judicial district based on 28 U.S.C. § 1391(b)(2) in that a substantial part of the events giving rise to Shandy's claims occurred in this District. Moreover, under Section 9(v) of the CLiP Agreement, the parties agreed that "[a]ny disputes under this Agreement may be brought in the state courts and the Federal courts located in New York County in New York City." Under Section 11 of the PubSuite Agreement, the parties agreed and "consent[ed] to the exclusive jurisdiction of the courts of the State of New York for resolution of all claims, differences, and disputes which the parties may have regarding this Agreement."

FACTS

I. THE PARTIES' AGREEMENTS.

8. Shandy is a digital publisher that creates and provides original content to the millennial consumer group across multiple platforms, including a variety of web properties.

9. Upon information and belief, Defy is a digital media company that produces online content for the 12-34 age group. Defy owns multiple brands that operate dedicated websites and YouTube channels.

A. *The CLiP Agreement*

10. On or about November 14, 2016, Shandy entered into the CLiP Agreement with Defy. A true and correct copy of the CLiP Agreement is attached hereto as Exhibit A. The parties' rights and obligations under the CLiP Agreement are outlined in the agreement. *See Ex. A.*

11. In consideration for Shandy's services under the CLiP Agreement, Defy agreed to pay Shandy a monthly fee, calculated in accordance with Schedules A and B of the CLiP Agreement. *See id.* at ¶ 8.

12. The CLiP Agreement requires Defy to remit payment to Shandy within forty-five (45) days of its receipt of each invoice from Shandy. *See id.* at ¶ 8.

13. Defy terminated the CLiP Agreement by email on May 4, 2018.

B. *The PubSuite Agreement*

14. On or about January 1, 2018, Shandy entered into the PubSuite Agreement with Defy. A true and correct copy of the PubSuite Agreement is attached hereto as Exhibit B. The parties' rights and obligations under the PubSuite Agreement are outlined in the agreement. *See Ex. B.*

15. In consideration for Shandy's services under the PubSuite Agreement, Defy agreed to pay Shandy a monthly fee, as defined in paragraph 2 of the PubSuite Agreement. *See id.* at ¶ 2.

16. The PubSuite Agreement requires that "[a]ny amounts due [Shandy] for an individual month of the Term shall be payable by Defy to [Shandy] within thirty (30) days following the completion of the applicable month." *Id.*

17. Defy suspended the PubSuite Agreement by email on May 14, 2018.

II. DEFY FAILS TO COMPLY WITH ITS OBLIGATIONS UNDER THE AGREEMENTS.

18. At all relevant times, Shandy performed its obligations under the CLiP Agreement and PubSuite Agreement.

19. Shandy invoiced Defy on a monthly basis to recover amounts owed under the CLiP Agreement and PubSuite Agreement.

20. Shandy sent Defy invoices for services performed under the CLiP Agreement on February 1, 2018, March 1, 2018, April 1, 2018, and May 1, 2018. True and correct copies of the invoices are attached as Exhibit C.

21. Defy has an outstanding balance under the CLiP Agreement of \$115,486.06. This includes the past-due amount of \$47,035.45 for January 2018, the past-due amount of \$16,599.96 for February 2018, and the past-due amount of \$48,526.29 for March 2018. A balance of \$3,324.36 for April 2018 is due on June 15, 2018. *See Ex. C.*

22. Shandy sent Defy invoices for services performed under the PubSuite Agreement on March 1, 2018, April 1, 2018, May 1, 2018, and May 15, 2018. True and correct copies of the invoices are attached as Exhibit D.

23. Defy has an outstanding balance under the PubSuite Agreement of \$35,790.36. This includes the past-due amount of \$7,150.87 for February 2018, the past-due amount of

\$7,353.96 for March 2018, and the past-due amount of \$14,244.82 for April 2018. A balance of \$7,040.71 for May 2018 is due on June 14, 2018. *See* Ex. D.

24. Since receiving notification of outstanding amounts owed under the CLiP Agreement and PubSuite Agreement, Defy has refused to pay Shandy any of the amounts owed.

25. Defy's refusal to pay the amounts owed to Shandy under the CLiP Agreement and PubSuite Agreement constitute material breaches of each contract.

26. As a result of Defy's breaches, Shandy has been damaged in an amount to be proven at trial.

FIRST CLAIM FOR RELIEF
(BREACH OF CONTRACT – CLIP AGREEMENT)

27. Shandy repeats and realleges the allegations contained in paragraphs 1 through 28 as if fully set forth herein.

28. The CLiP Agreement is a valid and enforceable contract between Shandy and Defy.

29. Shandy has fully and/or materially performed its obligations under the CLiP Agreement and has satisfied all conditions precedent.

30. Under the CLiP Agreement, Defy was obligated to pay Shandy a monthly fee determined in accordance with Schedules A and B of the agreement.

31. Shandy has issued invoices for outstanding amounts owed on February 1, 2018, March 1, 2018, April 1, 2018, and May 1, 2018.

32. In breach of the CLiP Agreement, Defy has failed to pay Shandy's monthly invoices.

33. As a direct result of Defy's breaches of the CLiP Agreement, Shandy has been damaged in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(BREACH OF CONTRACT – PUBSUITE AGREEMENT)

34. Shandy repeats and realleges the allegations contained in paragraphs 1 through 35 as if fully set forth herein.

35. The PubSuite Agreement is a valid and enforceable contract between Shandy and Defy.

36. Shandy has fully and/or materially performed its obligations under the PubSuite Agreement and has satisfied all conditions precedent.

37. Under the PubSuite Agreement, Defy was obligated to pay Shandy a monthly fee as described in the agreement.

38. Shandy has issued invoices for outstanding amounts owed on March 1, 2018, April 1, 2018, May 1, 2018, and May 15, 2018.

39. In breach of the PubSuite Agreement, Defy has failed to pay Shandy's monthly invoices.

40. As a direct result of Defy's breaches of the PubSuite Agreement, Shandy has been damaged in an amount to be determined at trial.

WHEREFORE, Shandy demands judgment against Defy as follows:

- (a) Damages in an amount to be determined at trial;
- (b) Statutory prejudgment interest of 9% per year; and
- (c) For such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 13, 2018

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