

SUPERIOR COURT OF NEW JERSEY
CAPE MAY COUNTY
LAW DIVISION

Floss Stingel)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
City of Wildwood,)	
Wildwood Business Improvement)	
District (AKA "WBID"),)	
Wildwoods Boardwalk Special)	
Improvement District (AKA "WSID"),)	
Wildwood Historical Society and)	
George F. Boyer Museum)	
(AKA "Wildwood Historical Museum"),)	
Morey's Piers & Beachfront Waterparks,)	
and St. George's Stores)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiff Floss Stingel, by her undersigned attorney, files this Complaint against City of Wildwood, Wildwood Business Improvement District (AKA "WBID"), Wildwoods Boardwalk Special Improvement District (AKA "WSID"), Wildwood Historical Society and George F. Boyer Museum (AKA "Wildwood Historical Museum"), Morey's Piers & Beachfront Waterparks, and St. George's Stores (collectively "Defendants") for unauthorized use and monetization of Floss Stingel's voice pursuant to common law governing tortious conduct in New Jersey by using a recording of her voice for over 45 years without compensation. She alleges as follows:

INTRODUCTION

1. In 1971, Floss Stingel ("Ms. Stingel") recorded her voice saying the phrase:
"Watch the tram car, please."

2. This recording of Ms. Stingel’s voice has been used by the Wildwood Boardwalk tram cars for over 45 years without proper compensation to Ms. Stingel.

3. Ms. Stingel’s voice has become an iconic slogan throughout the tri-state area and is repeated by locals and tourists from around the world who visit the Wildwoods.

4. Ms. Stingel requests relief for misappropriation of likeness pursuant to New Jersey common law, unjust enrichment, and violation of right of publicity pursuant to New Jersey common law.

JURISDICTION AND VENUE

5. This court has jurisdiction over this matter pursuant to N.J. Stat. Ann. § 2A:14-1 et seq., governing civil claims and intellectual property rights within the State of New Jersey.

6. Venue is proper in this county pursuant to N.J. Stat. Ann. § 2A:4-30.65, as the alleged wrongful acts were committed within its limits, and the Defendants' principal place of business and operational activities are located here.

PARTIES

7. Ms. Stingel is a long-time resident and citizen of New Jersey.

8. The City of Wildwood is a municipal corporation, incorporated, existing and subject to the Constitution and laws of the State of New Jersey.

9. Wildwood Business Improvement District (AKA “WBID”) and Wildwoods Boardwalk Special Improvement District (AKA “WSID”) are private, non-profit management corporations that oversee certain aspects of the Business Districts in Downtown Wildwood and the Boardwalk in North Wildwood.

10. Wildwood Historical Society and George F. Boyer Museum (AKA “Wildwood Historical Museum”) is a 501(c)3 non-profit organization in Wildwood, New Jersey.

11. Morey's Piers & Beachfront Waterparks is a seaside amusement park located on the boardwalk in Wildwood and North Wildwood, New Jersey

12. St. George's Stores is an organization that owns Wildwood Gift Shop (AKA "The Tram Car Store") which sells the Tramcar Plushy toy and benefits from its sales and profits.

13. All Defendants are entities engaged in the operation and commercial exploitation of tram car services on the Wildwood Boardwalk in New Jersey.

FACTUAL BACKGROUND

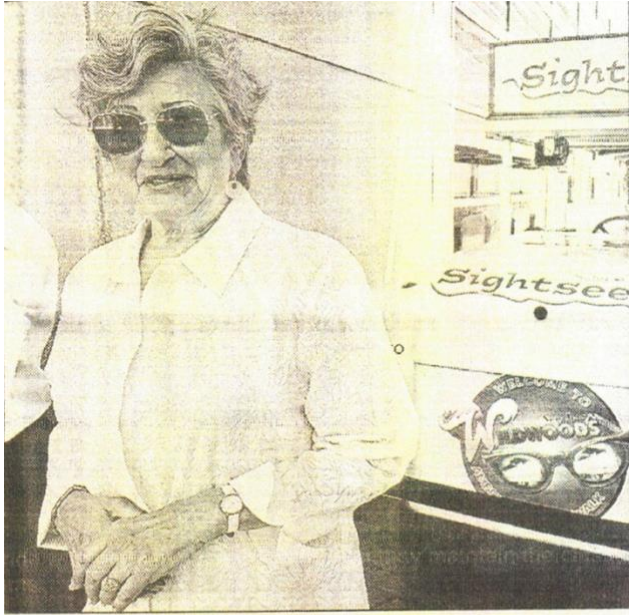
14. The Wildwood Tram Car is a trackless train service running on the Wildwoods Boardwalk ("Boardwalk") in Cape May County, New Jersey, and the communities of Wildwood and North Wildwood since 1949. The service takes passengers along a two-mile Boardwalk and is available at all points along the Boardwalk from Cresse Avenue in Wildwood Crest to 16th Avenue in North Wildwood.

15. Therefore, the Wildwood Tram Car is one of the main sources, if not the main source, of transportation on the Boardwalk. It aids in reducing vehicle traffic in the Wildwoods.

16. In 1949, S.B. Ramagosa (AKA "Gilbert Ramagosa") purchased the historic electric-powered tram cars that debuted at the 1939 New York City World's Fair. These tram cars are some of the oldest operating modes of transportation in the United States, which have become a famous tourist attraction.

17. In 1971, Ms. Stingel recorded the phrase "Watch the tram car, please" onto a tape recorder at the request of the Defendants. Ms. Stingel's boyfriend at the time worked for the Ramagosa family and asked her to create the recording to provide a warning that the tram cars could use. At this time, Ms. Stingel had experience performing commercial voice recordings for her then-employer, South Jersey Gas Company.

18. This recorded vocal performance has since become a staple announcement on the Wildwood Tram Car and Boardwalk and has played continuously for over four decades.



Staff photo by Dale Herhard

Floss Stingel of North Wildwood, sits in a Sightseer tramcar recently. For 34 years, her recorded voice has warned passers-by that a tram is coming — and 'if the wind's blowing right, I can hear it from my house,' Stingel says.

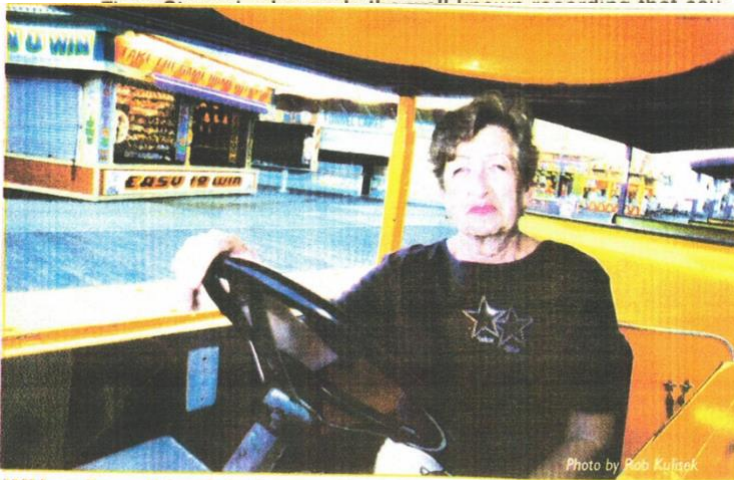


Photo by Rob Kultok

Wildwood's own Voice of the Summer, Flossie Stingel, seated in the Tram

19. Every time an operator of the Wildwood Tram Car presses a button to warn pedestrians of the tramcar, Ms. Stingel's voice recording plays. Her voice can be heard on the boardwalk by people passing by and by locals living in the area when the wind blows her voice their way.

20. Ms. Stingel's voice recording has become a slogan that signifies summertime in the Wildwoods. It can be heard an estimated 6,000 times per day.

21. Tourists and locals find themselves repeating Ms. Stingel's famous slogan, which is one of the most well-known slogans in the tri-state area. People from all over the world have heard and imitated Ms. Stingel's voice.

22. The Boardwalk has been entwined with the economy of the Wildwoods communities it expands through since its opening in 1899. It is the focal point of the resort and a vacation spot for families during the summer. Therefore, the tram cars have become an iconic attraction for the millions of people who visit the Boardwalk each year.

23. The tram cars and tourist attractions are located at Morey's Piers & Beachfront Waterparks ("Morey's Piers"), which is located on the Boardwalk. It has more than 100 rides and attractions across three amusement piers and two beachfront waterparks.

24. Morey's Piers has been family owned and operated since 1969 and was previously run by the Morey Brothers, Will Jr. and Jack Morey. The current owner of Morey's Piers is Wilbert Morey II.

25. In 2004, the Wildwoods Boardwalk Special Improvement District ("WSID") purchased the Boardwalk Tram Car system to preserve the service.

26. Wildwood Historical Society and George F. Boyer Museum ("The Wildwood Historical Museum") further helps preserve the history and character of the Boardwalk and Wildwood Tram Car.

27. These corporations and the City of Wildwood benefit from the tourism and profits brought in through the help of Ms. Stingel's iconic slogan on the historical tram cars. This allows for redevelopment of the Boardwalk, which in turn brings in more revenue.

28. In 2007, Rampage Trailer Co., a South Carolina based manufacturer that is also located in Middle Township, New Jersey, built exact replicas of the original tram car trailers to increase passenger capacity and rider comfort, therefore increasing profits for the City of Wildwood and other Defendants.

29. To honor the new tram cars created by Rampage Trailer Co., which were the first new cars in 44 years, Ms. Stingel was invited to an event to provide a live rendition of her famous slogan. This event helped bring in revenue for Defendants.

30. The Wildwoods Tram Car carries about half a million people up and down the Boardwalk each year. The tram car fare was \$4 in 2022 and increased to \$5 in 2023. Therefore, the tram cars are expected to make \$2.5 million per year.

31. People travel to the Wildwoods to hear Ms. Stingel's voice and specific presentation of her slogan. Ms. Stingel has attended numerous events, including an event to celebrate the Wildwoods Tram Car service during its 60th birthday celebration, where Ms. Stingel ended the ceremony with a live version of her famous slogan. This event helped bring in revenue for the City of Wildwood and Defendants.

32. Wildwoods Historical Museum also asked Ms. Stingel to autograph memorabilia for its 60th Anniversary, which in turn makes a profit for Defendants. It unveiled a commemorative Tram Car Token for this anniversary event.

33. Additionally, Ms. Stingel was invited to attend the Third Annual Postcard Show and Open House, an event put on by the Wildwoods Historical Museum on April 19, 2008. Dealers were present at this event to buy, sell, and trade postcards.

34. Ms. Stingel has been interviewed by numerous newspapers. Her story and slogan have been used to publish articles and other media coverage on the iconic Wildwoods Tram Car,

including, but not limited to, The Press of Atlantic City, Cape May County Herald, and the Philadelphia Inquirer. This media coverage attracts tourists and brings in revenue for Defendants.

35. The City of Wildwood also uses Ms. Stingel's famous slogan to advertise its city and attractions on its website and in other medias.

36. Additionally, Anita S. Hirsch published a book called *Wildwood By-the-Sea: Nostalgia and Recipes*, which references the historical significance of Ms. Stingel's famous slogan for the tram cars. This book is sold by the Wildwoods Historical Museum.

37. Ms. Stingel's voice recording has been used in television documentaries about the Wildwoods and to make and sell memorabilia—including t-shirts, toy tramcars, brochures, and postcards—which is also used to attract tourists and bring in revenue for Defendants.

38. The Wildwood Gift Shop (AKA "The Tram Car Store") sells the Tramcar Plushy toy (which comes equipped with voice activation that repeats Ms. Stingel's famous slogan), and benefits from its sales and profits.

39. Wildwood Historical Museum sells the Talking Toy Tram Car, a plastic Sightseer Tram with a button that, if pressed, repeats Ms. Stingel's iconic slogan.

40. Moreover, the Atlantic City trams, operated by B&B Parking, used the famous recording of Ms. Stingel's distinct voice until a lawsuit was filed in 2015, which led the Atlantic City trams adopting a different recording. Mayor Patrick Rosenello, who was North Wildwood Council President at the time, states that "Atlantic City, especially now, needs to develop its own image so that folks can develop their own fondness for Atlantic City, as people have for the

Wildwoods.¹ He equated the use to plagiarism. This emphasizes the importance and uniqueness of Ms. Stingel's voice recording and its benefit to the City of Wildwood's economy.

41. On a bigger scale, HBO's "Sex and the City" filmed one of Wildwood's tram cars for its episode that took place on the Atlantic City Boardwalk. Ms. Stingel's famous slogan was part of the scene.

42. Ms. Stingel has never been compensated for her recording, except for occasional free tram tickets, which are not commensurate with the commercial value derived from the use of her voice.

43. Defendants have used and monetized Ms. Stingel's voice recording without her continual, explicit consent, and have gained significant commercial benefits from its usage without providing Ms. Stingel with just compensation.

CAUSE OF ACTION

Count I: Misappropriation of Likeness

44. Ms. Stingel realleges and incorporates by reference the allegations set forth in the preceding paragraphs above.

45. Ms. Stingel's voice constitutes part of her identity, or likeness, and its unauthorized commercial use without consent constitutes a misappropriation of her likeness under New Jersey's common law. *Prima v. Darden Restaurants, Inc.*, 78 F. Supp. 2d 337 (D.N.J. 2000); *Edison v. Edison Polyform Manufacturing Co.*, 67 A. 392 (N.J. Ch. 1907).

46. Similar to *Faber v. Condecors, Inc.*, where the plaintiff allowed his employer to use his family's likeness for over three decades to promote its business in a company publication and on company memorabilia, the Defendants in this matter misappropriated Ms. Stingel's

¹ Christie Rotondo, "Watch the tram car, please" playing on Atlantic City Boardwalk, The Press of Atlantic City.

likeness for commercial purpose for over four decades and she should therefore be awarded damages. 477 A. 2d 1289 (N.J. App. Div. 1984).

47. Defendants have been unjustly enriched at Ms. Stingel's expense, reaping significant financial benefits from the continual use of her voice.

Count II: Unjust Enrichment

48. Ms. Stingel realleges and incorporates by reference the allegations set forth in the preceding paragraphs above.

49. Defendants have unfairly benefited from the use of Ms. Stingel's voice recording, thereby gaining substantial revenue and profit to Ms. Stingel's detriment.

50. Ms. Stingel has not been adequately compensated for Defendants' use of her voice. She has received free tram tickets but no other notable compensation while Defendants are expected to make \$2.5 million per year at 500,000 rides per year at the rate of \$5 per ride.

51. The circumstances make it inequitable for Defendants to retain these financial benefits without providing just compensation to Ms. Stingel for using her voice to promote and maintain its business.

Count III: Violation of Right of Publicity

52. Ms. Stingel realleges and incorporates by reference the allegations set forth in the preceding paragraphs above.

53. The continual, unauthorized commercial exploitation of Ms. Stingel's voice constitutes a violation of her right of publicity under New Jersey common law. An individual has the right to prevent the unauthorized, commercial appropriation of his likeness, which is used interchangeably with the right of publicity under New Jersey law. *Tellado v. Time-Life Books, Inc.*, 643 F. Supp. 904 (D.N.J. 1986); *Edison*, 67 A. at 392.

54. Defendants have used Ms. Stingel's distinctive and identifiable voice for commercial purposes and material profit without her permission, infringing upon her right to control the commercial use of her identity, or likeness.

55. Defendants have therefore invaded Ms. Stingel's property rights, and she is therefore eligible to collect damages. *Canessa v. Kislak, Inc.*, 97 N.J. Super. 327 (1967).

PRAYER FOR RELIEF

WHEREFORE, Ms. Stingel demands judgment against Defendants as follows:

- A. Compensatory damages in an amount to be determined at trial for the unauthorized use of Ms. Stingel's voice recording.
- B. An accounting of all profits and revenues received by the Defendants attributable to the use of the Ms. Stingel's voice recording.
- C. Restitution and disgorgement of all wrongful gains obtained by Defendants through the unauthorized use of Ms. Stingel's voice.
- D. Injunctive relief enjoining Defendants from further use of Ms. Stingel's voice recording without obtaining proper authorization and compensation.
- E. Reasonable attorney's fees, costs, and expenses incurred in this action.
- F. Any other relief that the Court deems just and proper.

JURY DEMAND

Ms. Stingel hereby demands a trial by jury pursuant to Rule 4:35-1 of the New Jersey Rules of Civil Procedure.

CERTIFICATION UNDER RULE 4:5-1

Pursuant to Rule 4:5-1, I certify that to the best of my knowledge, information, and belief, the matter in controversy is not the subject of any other pending or contemplated court

action or arbitration, nor is any other court or arbitrator having jurisdiction over this matter.

Further, no other parties should be joined in this action.

NOTICE OF TRIAL COUNSEL

PLEASE TAKE NOTICE Emeka Igwe, Esq. is hereby designated as trial counsel from
The Igwe Firm, LLC in the above-captioned matter.

Respectfully submitted,

THE IGWE FIRM

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