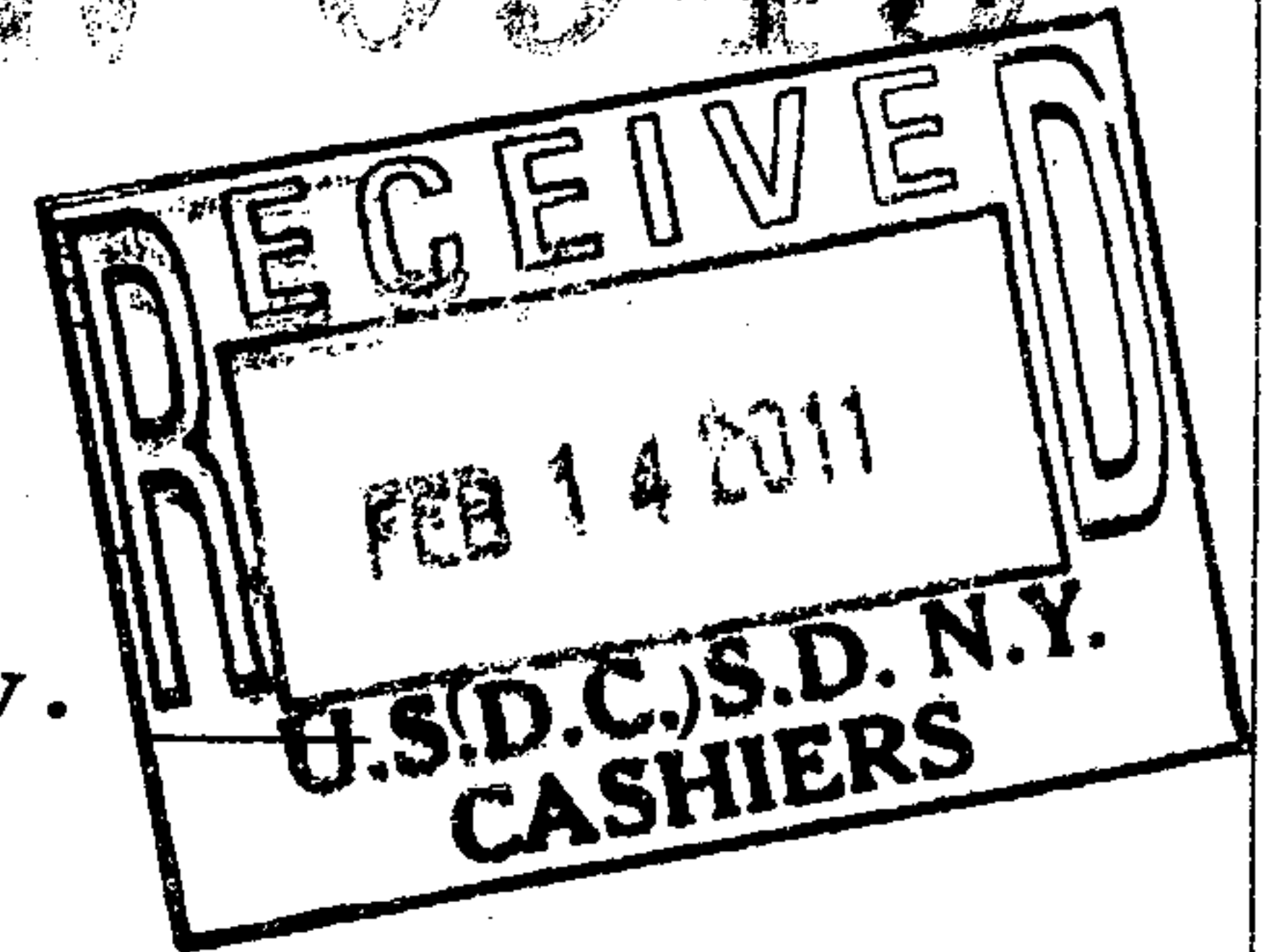


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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DAVID LACHAPELLE, :

Plaintiff, :

- against - :

11 Civ.

COMPLAINT

ROBYN RIHANNA FENTY p/k/a RIHANNA, :

ISLAND DEF JAM MUSIC GROUP, a :

division of UMG RECORDINGS, INC., :

MELINA MATSOUKAS, and BLACK DOG :

FILMS, INC. :

Defendants. :

Plaintiff Demands

a Trial by Jury

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Plaintiff, by his attorneys Shatzkin & Mayer, P.C., for his  
complaint alleges:



1. Plaintiff David LaChapelle is an artist, photographer,  
and director, and a citizen and resident of Los Angeles,  
California.

2. Defendant Robyn Rihanna Fenty is a performing artist  
professionally known (and hereinafter referred to) as "Rihanna,"  
and upon information and belief is a citizen and resident of Los  
Angeles, California.

3. Rihanna performed a song entitled "S&M" (hereinafter the  
"Song") that was released on or about January 25, 2011, as the  
fourth single from her latest album, entitled "Loud."

4. Rihanna performed the Song in a music video (the "Music Video"), and upon information and belief participated in the creation and production thereof.

5. The Music Video was released on or about February 1, 2011.

6. Upon information and belief, defendant Melina Matsoukas ("Matsoukas"), a citizen and resident of Los Angeles, California, directed the Music Video.

7. Upon information and belief, defendant Black Dog Films ("Black Dog") produced the Music Video, and maintains its principal place of business in Los Angeles, California.

8. Defendant Island Def Jam Music Group ("Def Jam") is the record company that released the Song and the Music Video, and is a division of UMG Recordings, Inc., a Delaware corporation maintaining its principal place of business in New York, New York.

9. Def Jam claims to own the copyright in the Music Video.

10. Upon information and belief, Def Jam hired Matsoukas and Black Dog; released the Music Video; and presently is exploiting the Music Video in commerce in this judicial district and throughout the world.

#### Jurisdiction and Venue

11. Each of the defendants does business in the State of New York.

12. Each defendant has transacted and continues to transact business within the State of New York.

13. Each of the defendants has committed and continues to commit tortious acts within the State of New York from which the claims herein arise.

14. This is an action for infringement of plaintiff's copyrights, infringement of plaintiff's trade dress, and unfair competition, arising under the United States Copyright Act, Title 17, U.S. Code, the Lanham Act, Title 15, U.S. Code, and New York State common law.

15. Jurisdiction is vested in this Court pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338, and principles of pendent and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), and 1400.

David LaChapelle

17. Plaintiff has a world-wide reputation for his unique body of work in fashion and editorial photography, defined by its saturating, vibrant colors and theatrical, often surreal composition.

18. Plaintiff has photographed top stars of music, sports, fashion and film, and his photos are featured in numerous books, the most recent published by the respected art publisher Taschen.

19. Plaintiff's photos have been displayed in museum exhibitions and published on the covers of major publications, including a portrait of Keith Richards that is the cover of Richards' best-selling autobiography, "Life."

20. In recent years, plaintiff's career has expanded to include direction of live theatrical events and documentary film.

21. Commercial assignments remain a major source of income for plaintiff, including advertising campaigns he conceived, photographed and filmed for MTV, American Express, Mercedes and other high-profile brands.

22. In the music industry, plaintiff's directing credits include music videos for artists such as Moby, Jennifer Lopez and Britney Spears, as well as for Christina Aguilera, for which he won the award for "best music video" at the 2000 MTV Music Awards.

23. Plaintiff charges up to \$1-million to direct/produce a music video.

COUNT I

(Copyright Infringement)

24. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 23 hereof as if fully set forth herein.

The Infringed LaChapelle Works

25. The Music Video copies original photographs conceived and created by plaintiff, including the eight photographs set forth on the left column on Exhibit A attached hereto (the "LaChapelle Works").

26. Plaintiff is the sole owner of copyright in the LaChapelle Works.

27. Plaintiff has duly filed his copyrights in the LaChapelle Works, the registrations for which are presently pending.

Access

28. Plaintiff's body of work and the LaChapelle Works in particular are well known to defendants.

29. Plaintiff filmed Rihanna in a day-long shoot in July 2007 for an MTV advertisement.

30. Plaintiff photographed Mariah Carey for Def Jam in 2010 for her Def Jam album released at Christmas 2010.

31. The LaChapelle Works were prominently published in the French Photo in 2009, GQ in 2007, i-D in 2002, Australian Vogue in 1998, Detour in 1997, and in "David LaChapelle: Heaven or Hell," published in 2010.

32. Upon information and belief, Matsoukas was asked by Rihanna or persons acting on her behalf to make a "LaChapelle-esque music video."

33. Prior to the hiring of Matsoukas, another well-known director was asked to create a LaChapelle-inspired music video for Rihanna and that director rejected the offer.

34. Upon information and belief, the storyboards for the Music Video consisted of or contained prints of the LaChapelle Works and other LaChapelle photographs.

Copying

35. Defendants at no time requested permission from plaintiff to copy the LaChapelle Works or create derivative works based on them.

36. The Music Video is directly derived from and substantially similar to the LaChapelle Works.

37. Examples of defendant's appropriation of plaintiff's artistic expression are contained in Exhibit A attached hereto, setting forth frames from the Music Video next to the LaChapelle Works from which they obviously copied, inter alia, plaintiff's composition, total concept, feel, tone, mood, theme, colors, props, settings, decors, wardrobe and lighting.

38. For example, plaintiff's photograph "Latex" features a close-up of a female in profile (her left side is facing the camera) against a blue background wearing false eyelashes and a close-fitting, shiny, pink latex hood, with her mouth open and a cup the size of a small candy on her tongue; in the Music Video, Rihanna is seen in close-up profile (with her left side facing the camera) against a blue background wearing false eyelashes and a close-fitting, shiny, pink latex hood, with her mouth open and placing a small candy on her tongue.

39. Defendants' blatant reliance on the LaChapelle Works, including incorporating them on the storyboards for the video shoot, confirms that defendants' infringing acts were willful, wanton and deliberate.

40. Defendants' exploitation of the LaChapelle Works includes posting the Music Video on YouTube and on Def Jam's own website.

41. Defendants' acts constitute infringement of plaintiff's copyrights in the LaChapelle Works, in violation of sections 501 and 106 of the Copyright Act of 1976, 17 U.S.C. §§ 501, 106.

42. Defendants' conduct is "willful," as that term is used in section 504(c)(2) of the Copyright Act, 17 U.S.C. § 504(c)(2).

43. Unless restrained by the injunction relief sought herein, defendants' infringement of plaintiff's copyrights will cause plaintiff irreparable injury for which plaintiff has no adequate remedy at law.

44. Defendants' infringement has caused plaintiff to sustain monetary damage in an amount to be determined at trial, but in no event less than \$1-million.

#### COUNT II

(Lanham Act § 43(a))

45. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 44 hereof as if fully set forth herein.

46. Defendants have produced, displayed and distributed the Music Video in a transparent attempt to exploit plaintiff's preeminent reputation and the instant recognition among the public of his provocative, innovative style, without having to pay his fees.

47. The public recognizes plaintiff's images, including without limitation the LaChapelle Works, and his video productions as first-quality artworks.

48. Through successful and careful marketing, the LaChapelle Works, other photographs and videos produced by plaintiff have acquired secondary meaning, being widely associated by the public with plaintiff's authorship.

49. Goodwill of enormous value has come to be associated with photographs and videos credited to plaintiff and employing his signature style.

50. Without authority or permission, the defendants have willfully copied, reproduced and imitated the trade dress of the LaChapelle Works in connection with the Music Video in a manner that is confusing similar to plaintiff's distinctive trade dress.

51. Defendants are wrongly implying to the public that plaintiff was involved in the creation of the Music Video or that plaintiff has endorsed, sanctioned, approved or otherwise consented to its creation.

52. The conduct of defendants was and is calculated to intentionally trade upon the quality, popularity and goodwill of plaintiff's name, his body of work and the LaChapelle Works.

53. Defendants have caused actual confusion as to the source of the Music Video, as reflected, inter alia, in Twitter messages from plaintiff's fans and followers.



54. Defendant's conduct constitutes trade dress infringement and false designation of origin, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

55. The Music Video is of inferior quality to music videos directed by plaintiff.

56. Defendants' violations of the Lanham Act have been committed willfully, wantonly, maliciously and with reckless disregard for plaintiff's rights.

57. By reason of the foregoing, defendants have caused damage to plaintiff and his reputation for which plaintiff has no adequate remedy at law.

58. Plaintiff has sustained monetary damages in an amount to be determined at trial, but in no event less than \$1-million, and is entitled to treble damages, or not less than \$3-million.

**Radadar**  
online.com

COUNT III

(State-law Unfair Competition)

59. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 44 and 46 through 56 hereof as if fully set forth herein.

60. Defendants' acts and conduct are calculated and designed to unlawfully trade on the popularity, goodwill and trade dress of plaintiff.

61. Defendants acted in bad faith.

62. Defendants' conduct has been committed willfully, wantonly, maliciously and with reckless disregard for plaintiff's rights.

63. These acts constitute unfair competition under New York common law.

64. By reason of the foregoing, defendants have caused irreparable damage to plaintiff, and will continue to do so, unless defendants are enjoined and restrained from continuing such acts.

65. Plaintiff has been damaged in an amount to be determined at trial, but in no event less than \$1-million, and is entitled to punitive damages.

A large, semi-transparent watermark is centered on the page. It features the word "Radar" in a large, bold, sans-serif font. Below "Radar" is the text "online.com" in a smaller, lowercase font. To the left of the word "Radar" are three curved lines resembling a radar signal or a Wi-Fi symbol. The watermark is overlaid on the text of paragraph 65 and the section header.

COUNT IV  
(Unjust Enrichment)

66. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 44 and 46 through 56 and 60 through 62 hereof as if fully set forth herein.

67. Defendants have reaped, and will continue to reap substantial sums of money from their unauthorized exploitation of the LaChapelle Works.

68. By virtue of the foregoing, plaintiff has been damaged in an amount to be determined at trial.

WHEREFORE, plaintiff demands judgment against defendants, jointly and severally, as follows:

(a) on Count I, an award of actual damages in an amount to be determined;

(b) on Count II, an award of actual damages in an amount to be determined, along with reasonable attorneys fees and treble damages, pursuant to 15 U.S.C. § 1117;

(c) on Count III, an award of damages, in an amount to be determined, and punitive damages;

(d) on Count IV, an accounting of all gains and profits derived by defendants through their infringement and an award in the amount shown thereon;

(e) on Counts I through III, issuance of an order that defendants, along with their officers, agents, employees, successors and assigns, and those in active concert or participation with each or any of them, be permanently restrained and enjoined from

(1) directly or indirectly infringing plaintiff's copyrights and trade dress in any manner;

(2) exhibiting, distributing, displaying, or exploiting the Music Video in any manner;

(3) any conduct that tends to falsely represent, or is likely to confuse, mislead, or deceive the public, that the Music Video originated from plaintiff or was sponsored or approved by him; and

(3) from otherwise competing unfairly with plaintiff in any manner;

(f) on all counts, awarding plaintiff interest and the costs of suit; and

(g) such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 10, 2011

SHATZKIN & MAYER, P.C.

By Debra A. Mayer  
Debra A. Mayer (DM 6381)  
Attorneys for Plaintiff  
1776 Broadway, 21st Floor  
New York, New York 10019-2002  
(212) 684-3000





**EXHIBIT A**

David LaChapelle Photographs



Photograph by David LaChapelle



Photograph by David LaChapelle



Photograph by David LaChapelle



Photograph by David LaChapelle



Photograph by David LaChapelle



Photograph by David LaChapelle



Photograph by David LaChapelle



Photograph by David LaChapelle

Rihanna S&M Video Stills



Rihanna S&M Video Still



Rihanna S&M Video Still



Rihanna S&M Video Still



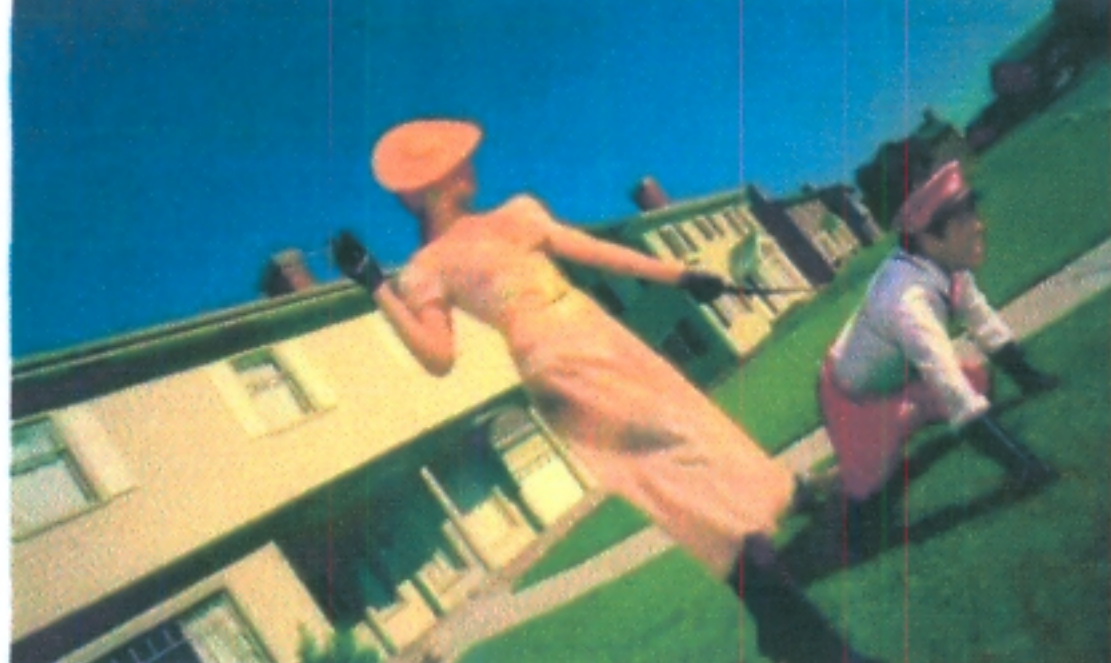
Rihanna S&M Video Still



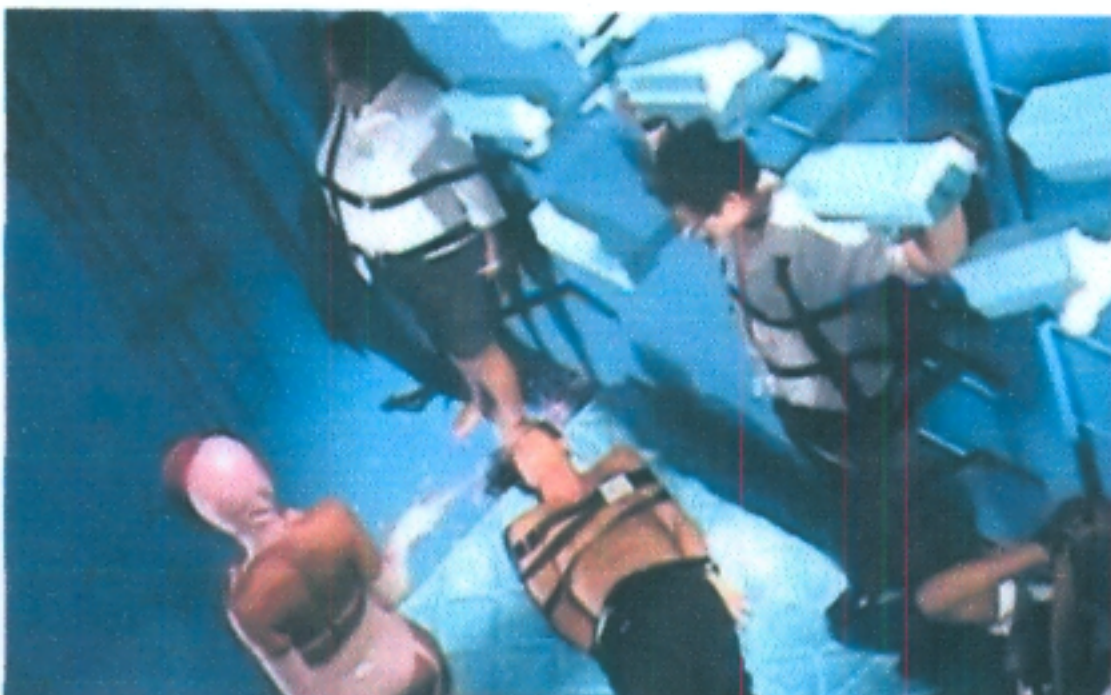
Rihanna S&M Video Still



Rihanna S&M Video Still



Rihanna S&M Video Still



Rihanna S&M Video Still