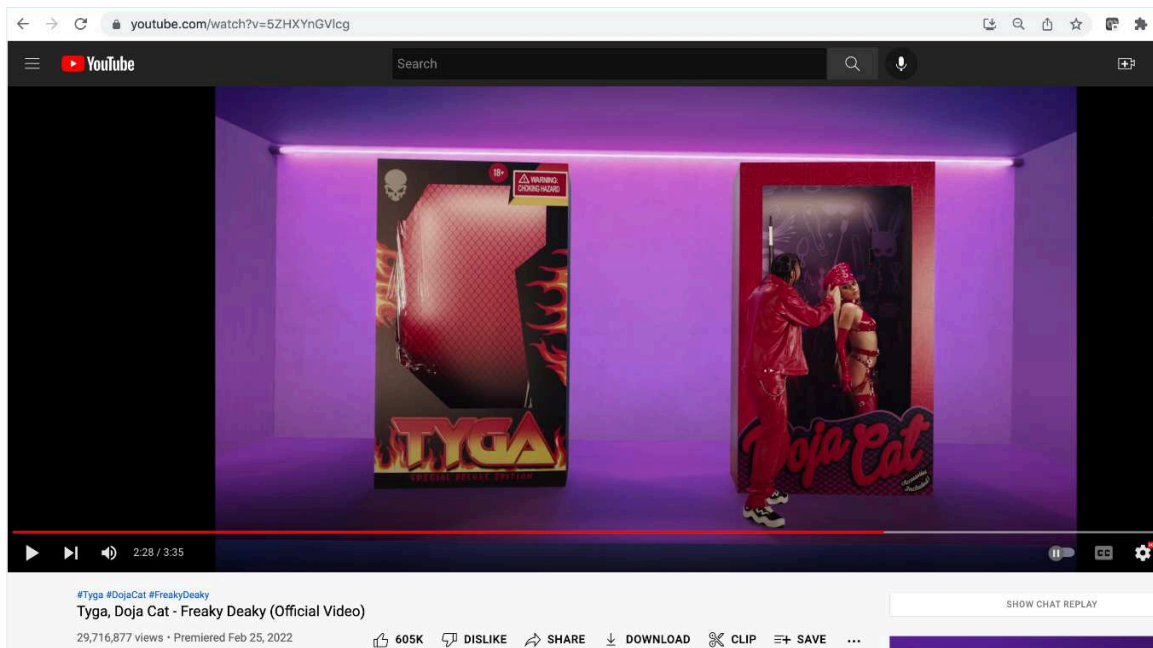


I. The *Wavy Baby* Drop

3. On February 25, 2022, the rapper Tyga debuted *Wavy Baby* in his video for the song “Freaky Deaky,” released in collaboration with Doja Cat. The video currently has nearly 30 million views on YouTube. See

<https://www.youtube.com/watch?v=5ZHXYnGVlcg>.



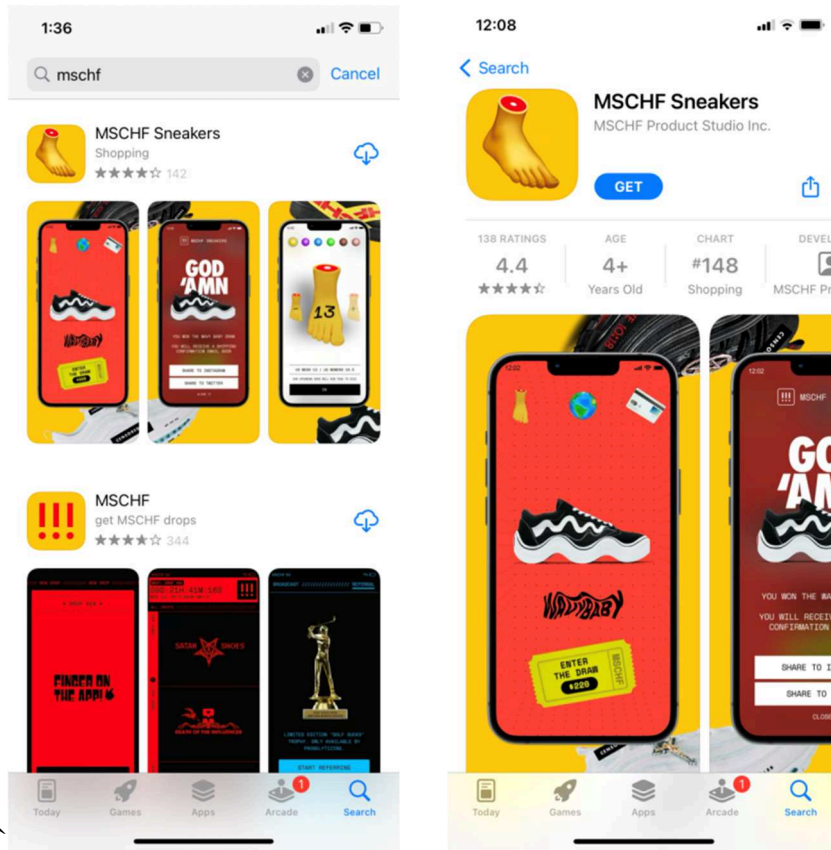
Wavy Baby clearly appeared throughout the “Freaky Deaky” video, and MSCHF formally announced the launch of *Wavy Baby* on March 22 through its MSCHF Sneakers app, but Vans waited until April 5 to send a demand letter to Tyga and until April 6 to send a demand letter to MSCHF.

4. As planned, sales of the *Wavy Baby* limited-edition work opened at noon on Monday, April 18, 2022.

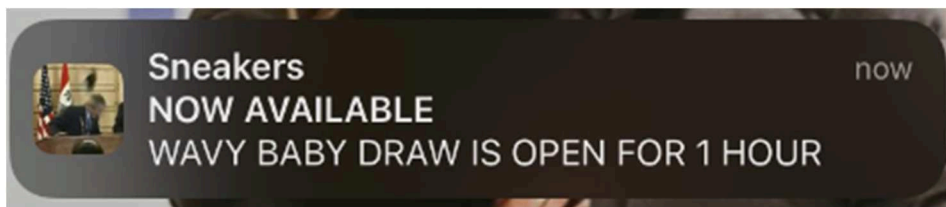
5. In order to participate in the raffle for *Wavy Baby*, individuals had to take part in MSCHF’s unique process, which includes downloading a specific mobile application

(the MSCHF Sneakers app), waiting until noon on drop day, submitting an entry into a raffle, waiting until the hour window for the raffle to close, and then waiting for an e-mail from MSCHF announcing the results of the raffle to determine whether they acquired the *Wavy Baby*. We aim to make each of our drops unique in some fashion – and all occur only through our apps and websites.

6. More specifically, for the *Wavy Baby* drop, anyone looking to participate first had to have access to MSCHF’s proprietary app for its sneaker art. That app can be found and downloaded only through the Apple Store (for Apple iOS devices) or Google Play (for Android devices). As shown in the screenshots below, the Apple App Store listings prominently display the MSCHF name and MSCHF’s bright yellow and red severed foot logo. They also display whatever the app looks like at the time of the search. Neither the App Stores nor the actual mobile app itself make any mention of Vans. Out of curiosity, I tried searching the word “Vans” in the Apple Store search function to see what came up. Dozens of apps appeared from that search, including “Vans Family,” “Vans VM,” “Levi’s,” “Tilly’s,” “PacSun,” “Zappos,” and “Macy’s.” Not one of them was related to MSCHF.

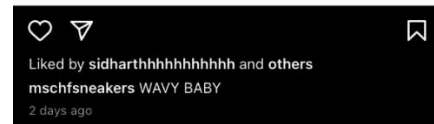
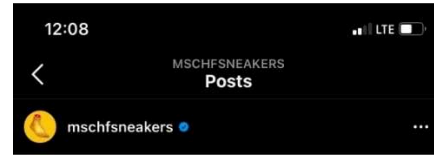


7. On April 18, 2022 at noon Eastern, MSCHF sent its MSCHF Sneakers app users a notification which read: “NOW AVAILABLE – WAVY BABY DRAW IS OPEN FOR 1 HOUR.” Users could then log in to the MSCHF Sneakers app to enter the raffle.



8. When the drop began, MSCHF posted the following on its Twitter and Instagram accounts to stimulate further interest in the release of MSCHF’s latest artwork. As part of MSCHF policy, MSCHF has only one post at a time on its social media accounts. No prior

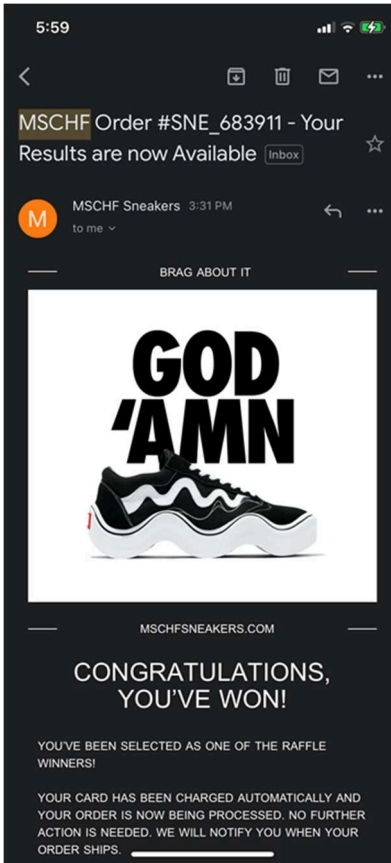
artwork is shown, and these posts will be deleted when it is time to notify followers of the next MSCHF artworks as part of our bi-weekly drops.



9. Between noon and 1pm Eastern on April 18, 2022, collectors who already downloaded the MSCHF Sneaker App could log into the app and register their interest in buying the *Wavy Baby* work. Entries were received from all fifty states and from 48 countries. Because the demand for *Wavy Baby* far outstripped the supply of these limited edition works, all collectors who submitted a purchase request were assigned a raffle ticket.

10. Once the purchase window closed at 1pm on April 18, a computer program randomly selected winners.

11. On the afternoon of April 18, those who entered the raffle to purchase the *Wavy Baby* either received an e-mail notification that they had “been selected” to purchase the *Wavy Baby* or that they had “not been selected.” Entrants were also notified via MSCHF’s app. All alerts and notifications clearly indicated that *Wavy Baby* was a MSCHF product.



12. MSCHF sold 4,306 pieces of limited-edition *Wavy Baby* art on April 18, 2022. We had far more interest in *Wavy Baby* than we had works to sell. In fact, more than 9,000 people, most of whom I assume are collectors, entered the lottery for the *Wavy Baby*.

13. All orders for the *Wavy Baby* began shipping within 24 hours of selecting the winners of the raffle. Shipping and fulfillment of the orders will be completed today, April 20. As far as I am aware, consumers have already started receiving their *Wavy Baby* orders.

14. MSCHF has approximately 280 *Wavy Baby* works in its possession that were not included in the limited April 18 drop. These works are intended to account for any fulfillment errors and to fulfill requests from museums and galleries for exhibitions. These will not be otherwise distributed to the public. MSCHF will not distribute any of these archival pairs

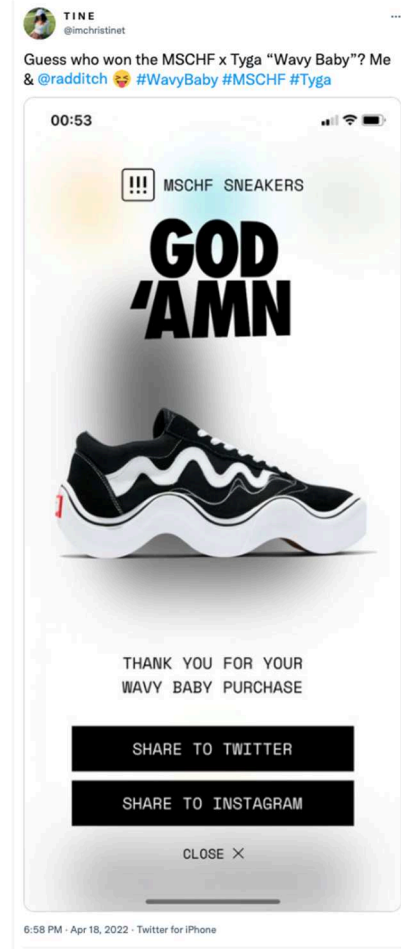
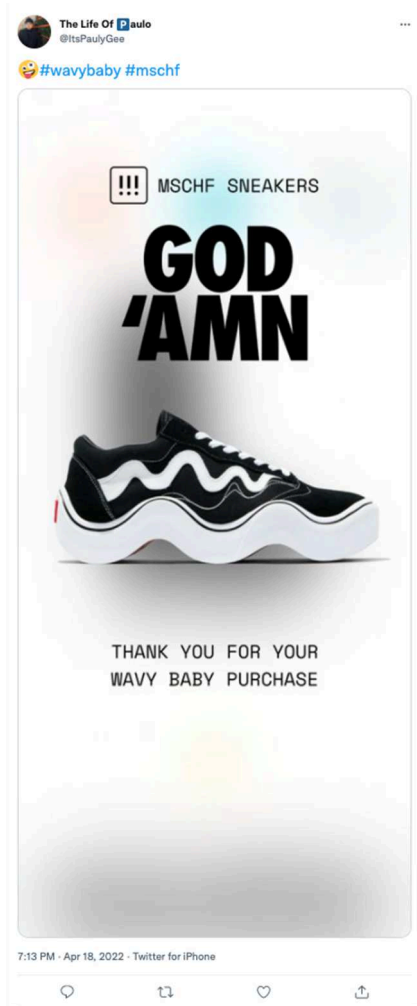
(except for express purposes of this litigation) pending the Court’s final judgment on the merits in this case.

II. Reactions to the *Wavy Baby* Drop

15. Immediately after the raffle e-mail notifications from “MSCHF Sneakers” went out, raffle participants took to social media to exclaim their excitement about the *Wavy Baby* lottery. Some examples include:

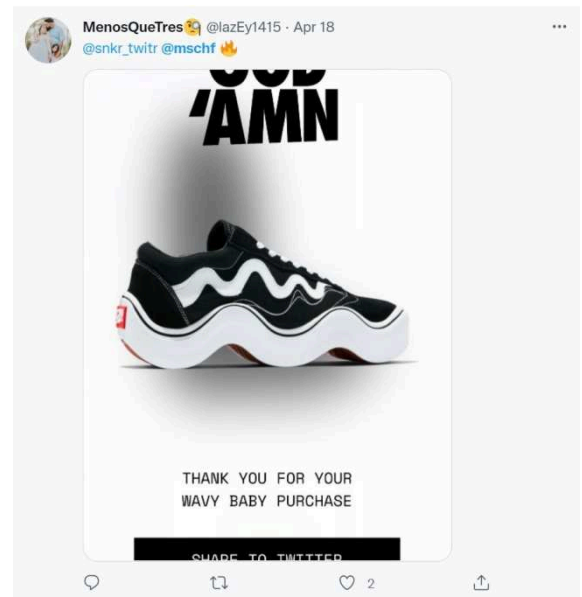
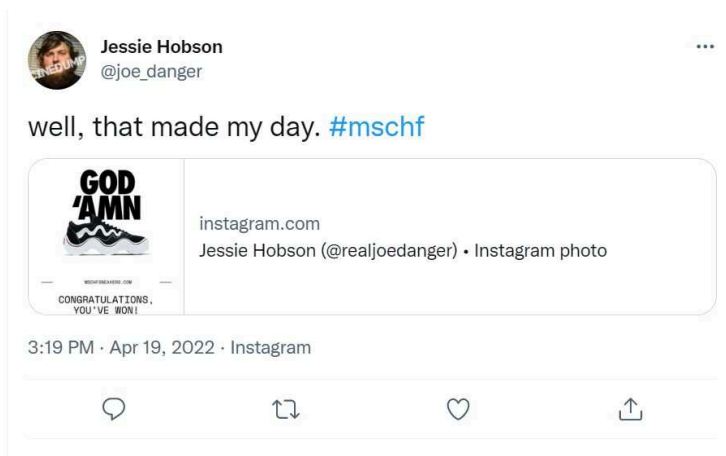
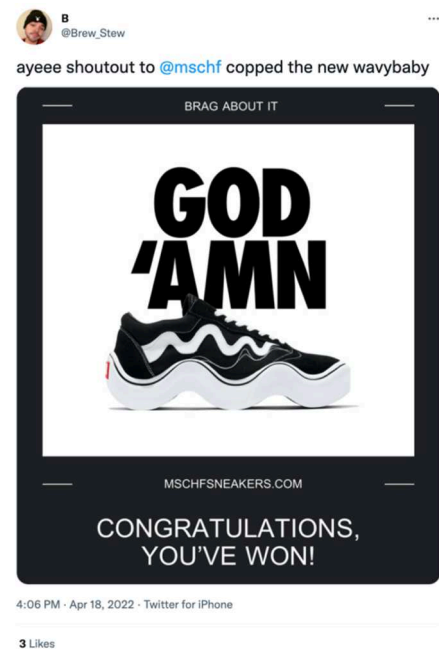
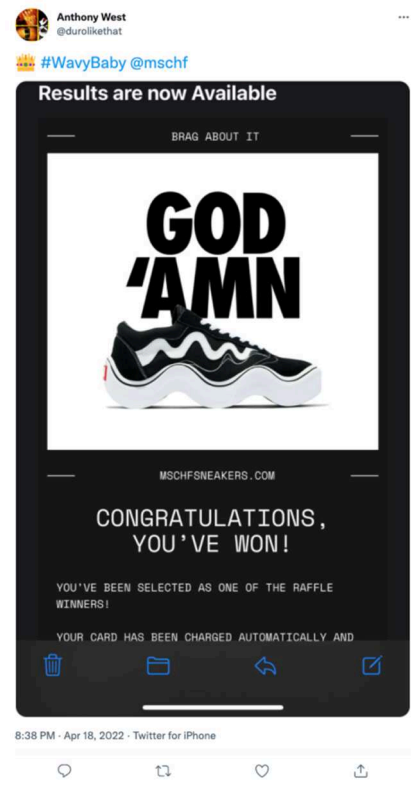
- “Entered and won the @mschf wavy baby shoes!!”
<https://twitter.com/RomeVStheWRLD/status/1516135153462042624>
- “#wavybaby @mschf.” (posted with a screenshot of the notification from MSCHF informing him that he won the lottery)
<https://twitter.com/duolikethat/status/1516214536977723397>
- “#wavybaby #mschf.” (posted with a screenshot of the MSCHF Sneakers app)
<https://twitter.com/ItsPaulyGee/status/1516193195364782080>
- “Guess who won the MSCHF x Tyga ‘Wavy Baby’ Me & @radditch #WavyBaby #MSCHF #Tyga.”
<https://twitter.com/imchristinet/status/1516189520823296005>





- “Sweet, I got some Wavy Baby shoes from @mschf :).”
(<https://twitter.com/faris/status/1516171732801011719>)
- “Gottem #MSCHF @Tyga #wavybaby” (posted with the e-mail notification confirming her success in the lottery)
(<https://twitter.com/grizzllbare/status/1516174455189368833>)
- “I REALLY GOT THE WAVY BABY MSCHF SHOES OMG ????”
(<https://twitter.com/drtymstrd/status/1516163279135162369>)
- “ayeee shoutout to @mschf copped the new wavybaby”
(https://twitter.com/Brew_Stew/status/1516146241851297792)

- “well, that made my day. @mschf”
(https://twitter.com/joe_danger/status/1516511791672569856)
- “@snkr_twitr @mschf” (posted with the MSCHF Sneakers app notification confirming purchase of the *Wavy Baby*)
(<https://twitter.com/lazEy1415/status/1516184774687301634>)



faris @faris

Sweet! I got some Wavy Baby shoes from @msCHF ;)

5:48 PM · Apr 18, 2022 · Twitter Web App

3 Likes

payton @drtymstrd · Apr 18

I REALLY GOT THE WAVY BABY MSCHF SHOES OMG ????

MSCHF Order # [REDACTED] YOUR
Results are now Available

YOU'VE BEEN SELECTED AS ONE OF THE RAFFLE

1 Like

3 Likes

grizzlbare @grizzlbare · 23h

Gottem #MSCHF @Tyga #wavybaby 💰

2 Likes

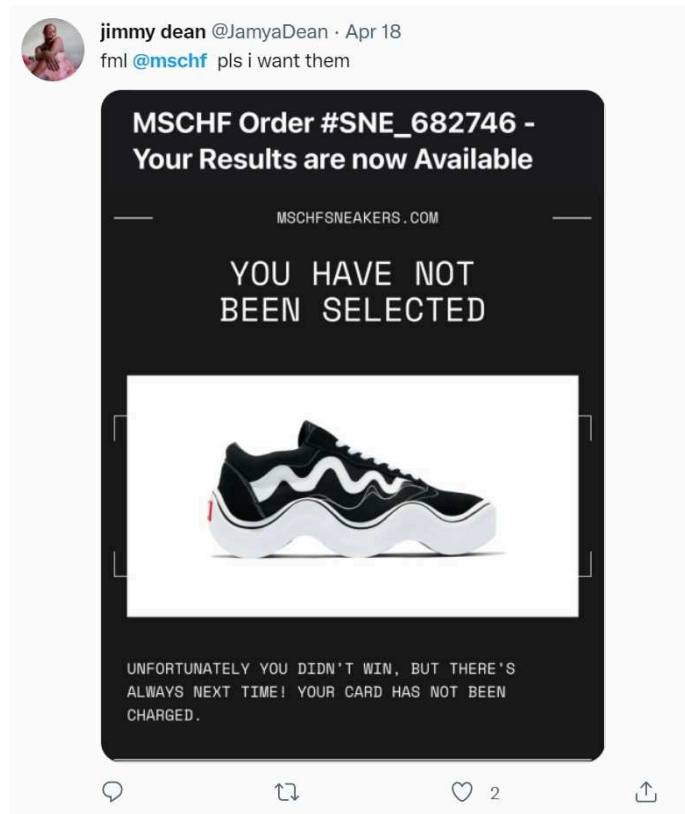
Baker @B_Nasty133 · Apr 18

0 for 72626632 on SNKRS and 1 for 1 on MSCHF let's keep all the releases on there

1 Like

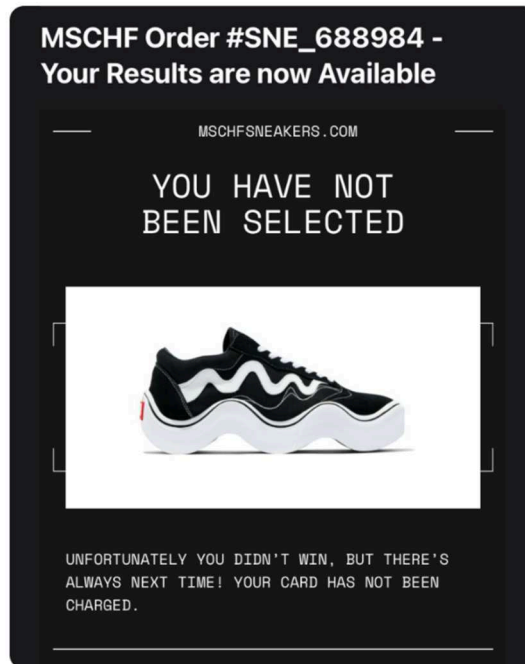
16. *Wavy Baby* purchasers who commented about the drop routinely mentioned or tagged “MSCHF,” “Tyga” or both.

17. Some of those who were not selected from the raffle also made clear that the product they missed out on was from MSCHF, like @JamyaDean, who tweeted “fml @mschf pls I want them” in response to the notification she received about losing the *Wavy Baby* raffle. (<https://twitter.com/JamyaDean/status/1516167944346251269>) Another user, @ohdartay, posted her raffle results and wrote “Nah @Tyga @mschfsneakers I need a recount” with crying emojis. (<https://twitter.com/ohdartay/status/1516198931658682372>)



ib(Em).
@ohdartay

Nah @Tyga @mschfsneakers I need a recount 🙄🙄🙄



7:36 PM · Apr 18, 2022 · Twitter for iPhone

18. As several posts demonstrate, and as expected, sneakerheads – the sneaker enthusiasts who collect, trade, and display sneakers as a hobby – have taken to social media to announce and discuss the *Wavy Baby* in full force. One account, @collectomatic, a self-identified “sneakerhead” and collector posted about snagging the *Wavy Baby*, and wrote “@tyga #wavybaby...#mschf #sneakerhead...”

(<https://twitter.com/Collectomatic/status/1516233581043068928>).



19. Another account, @SneakerShouts, which promotes new sneakers, restocks, releases, and deals, and has over 400,000 followers, tweeted that the *Wavy Baby* was dropping at 12pm EST and wrote “Tyga x MSCHF Wavy Baby,” with a link to the MSCHF Sneakers website. (<https://twitter.com/SneakerShouts/status/1516076516421120015>)



20. Another popular sneakerhead account, @JustFreshKicks, which shares sneaker news, release dates, launch links and restock alerts, posted that the “Tyga x MSCHF ‘Wavy Baby’” would be “LIVE in 30mins.”

(<https://twitter.com/JustFreshKicks/status/1516075342770933769>)



21. Yet another sneakerhead account,

@SoleRetriever, tweeted when the Wavy Baby dropped:

“Live: MSCHF Wavy Baby raffle...1 hour to enter.”

(<https://twitter.com/SoleRetriever/status/1516084144937259009>)

22. These sneakerhead accounts expressly

associated the *Wavy Baby* with MSCHF and Tyga.

23. In addition to raffle participants and

sneakerheads flooding social media with posts, various celebrity artists have been spotted showing off the *Wavy Baby* in a performative way. For example, Tyga, with whom MSCHF collaborated for the *Wavy Baby*, donned the *Wavy Baby* for his performance at the popular music festival Coachella. Doja Cat, who starred in “Freaky Deaky” with Tyga, also showed off the *Wavy Baby* at Coachella. We were impressed and honored that Tyga and Doja Cat wore the shoes at Coachella – that is serious commitment to their art and this cause; their feet could not have felt good afterward, but we love it!



24. As other examples, Usher (a friend of Tyga)

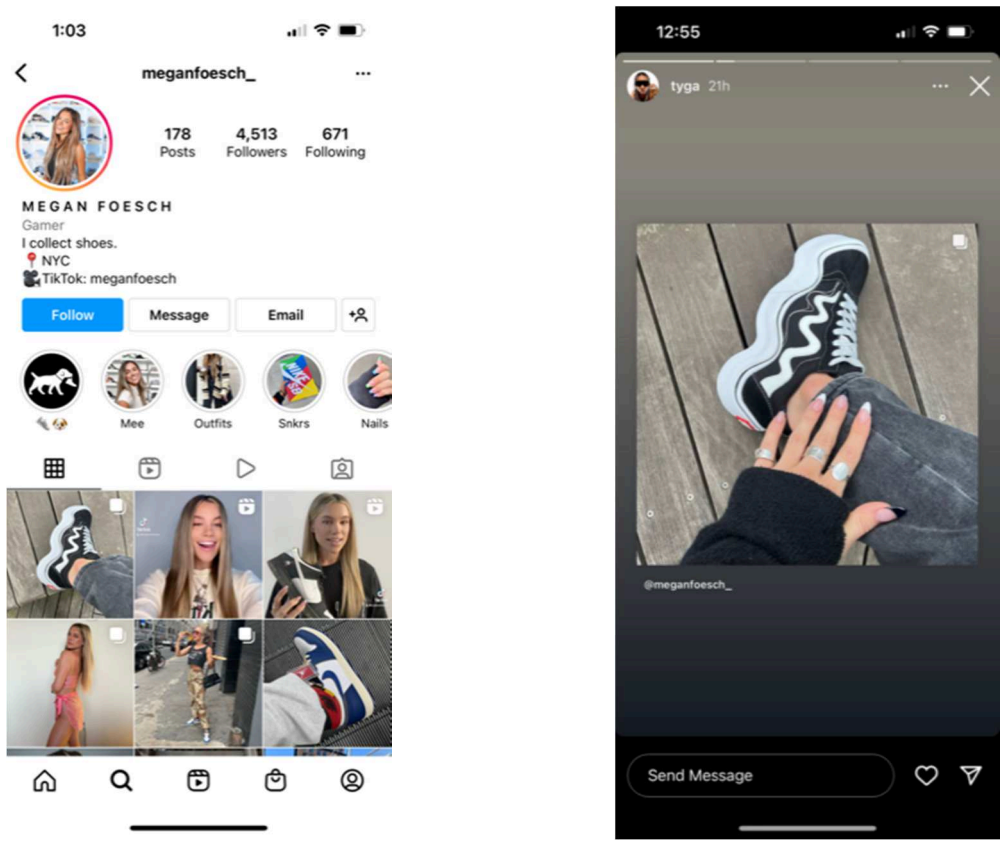
sported the *Wavy Baby* with a red fur coat, large silver

chains, and black sunglasses to attend a grand opening event at Rockefeller Center, as shown at

right. Amber Rose (another friend of Tyga) wore the *Wavy Baby* to attend Tyga’s *Wavy Baby*

launch party. It has been very cool to see these celebrities wear our art as part of their own art. Although the *Wavy Baby* works were not a central part of their image (indeed, for the most part, they were barely even noticeable in the coverage), I was very proud to see that artists like Usher, Tyga, Doja Cat, and Amber Rose have chosen to display the *Wavy Baby* during special occasions, like launches, concerts, and grand openings, as they would with any other unique art piece to make them stand out.

25. I was also pleased to see sneakerheads post videos checking out the shoes. For instance, below is a screenshot Tyga reposted to his page of Megan Foesch trying on the shoes. Megan is a sneaker collector.



III. The Potential for Confusion with Vans

26. I am not aware of any collector who bought or tried to buy a *Wavy Baby* and thought they were buying a Vans shoe.

27. Since the *Wavy Baby* was announced, was promoted through our limited promotions, and was launched and fulfilled, I am aware of no instance in which someone was actually confused into thinking we collaborated with Vans. While I have seen some commentators reference Vans, I really can't imagine that anyone who purchased our sneakers could in any way believe that Vans was associated with this. That is not the MSCHF way; we do not want to be associated with Vans like that. And, in any event, the *Wavy Baby* shoes are unique, with many differences from Vans' iconic skate shoes. *Cf.* Exhibit 1 (the *Wavy Baby* work) with Exhibit 2 (a pair of Vans Old Skools in the same size).¹

IV. The Secondary Market

28. I am aware that the *Wavy Baby* is currently available for sale on the secondary market.

29. To understand how our art is appreciated, I have become familiar with the secondary market for our pieces.

30. Like MSCHF's other projects, once the drop ends, our artwork is sometimes traded in the secondary market. This includes websites such as StockX, which is a site to which sneakerheads and other collectors will look to acquire our art pieces. Companies like StockX provide sellers a marketplace to sell goods through their website. These are reputable resale sites, and all listings include clear branding that shows that purchasers in the secondary









¹ Exhibits 1 and 2 were hand-delivered to the courthouse on the afternoon of April 20, 2022. A physical copy of both have also been sent to counsel for Plaintiffs.

market who look for or purchase *Wavy Baby* works will know that they are purchasing a MSCHF work, not a Vans sneaker. Further, if a purchaser buys a MSCHF work, the seller will first send the work to StockX for authentication, and StockX then provides the piece to the purchaser. These authentication processes are very important to collectors, who will not shop in places that do not have it.

31. There are a large number of collectables on sites like StockX.com, and the best way to find merchandise is to enter terms in a keyword search.

















32. A collector looking to purchase a MSCHF product might search for “MSCHF” on StockX, for example, and locate the *Wavy Baby* and other MSCHF artworks for sale.

Home / Search / MSCHF
Browse **36** results for "MSCHF" Sort By: Last Sale

 <p>MSCHF x The Weeknd Vinyl Blade (Edition of 25) Orange Lowest Ask \$8,300 Last Sale: \$8,200</p>	 <p>MSCHF Boosted Packs V1 Box of 10 Packs Lowest Ask \$999 Last Sale: \$995</p>	 <p>MSCHF Wavy Baby x Tyga Lowest Ask \$305 Last Sale: \$432</p>	 <p>MSCHF Dead Startup Toys Collector's Bundle Lowest Ask \$295 Last Sale: \$270</p>
 <p>MSCHF Blur \$20 USD Figure Lowest Ask \$250 Last Sale: \$250</p>	 <p>MSCHF x "Famous" Mouse Token Lowest Ask \$224 Last Sale: \$225</p>	 <p>MSCHF x Highsnobility Blur €50 Euro Figure Lowest Ask \$248 Last Sale: \$200</p>	 <p>MSCHF Boosted Packs V3 "Mariah Carey Edition" Box ... Lowest Ask \$199 Last Sale: \$170</p>

33. A collector looking for *Wavy Baby* specifically might search for “Wavy Baby,” which would render approximately 29 hits, including *Wavy Baby*, or other products that in “Wavy” or “Baby,” but not including any Vans sneakers.




 <p>MSCHF Wavy Baby x Tyga</p> <p>Lowest Ask</p> <p>\$304</p>	 <p>New Balance Vision Racer Jaden Smith Wavy Baby Blue</p> <p>Lowest Ask</p> <p>\$248</p>	 <p>Converse Chuck Taylor All-Star 70 Hi Navy Blue Baby...</p> <p>Lowest Ask</p> <p>\$58</p>	 <p>BAPE Baby Milo Reflective Keychain Navy</p> <p>Lowest Ask</p> <p>\$11,832</p>
 <p>BAPE Baby Milo Day Pack Navy</p> <p>Lowest Ask</p> <p>\$140</p>	 <p>BAPE x Coach Baby Milo Plush Doll Navy</p> <p>Lowest Ask</p> <p>\$265</p>	 <p>A Bathing Ape Bape Sta Low Color Block Yellow Navy Ba...</p> <p>Lowest Ask</p> <p>--</p>	 <p>Bearbrick My First Baby 400% Pearl Navy</p> <p>Lowest Ask</p> <p>\$629</p>
 <p>BAPE X The Simpsons Baby Milo Donut Tee Navy</p> <p>Lowest Ask</p> <p>--</p>	 <p>BAPE Shark Hoodie Baby Milo Plush Navy</p> <p>Lowest Ask</p> <p>\$500</p>	 <p>BAPE City Camo Baby Milo Tee Navy</p> <p>Lowest Ask</p> <p>--</p>	 <p>BAPE Baby Milo Tee Tee (Kids) Navy/Multi</p> <p>Lowest Ask</p> <p>--</p>
			

34. If a collector is interested in purchasing *Wavy Baby*, he or she can click on the listing, which prominently notes that MSCHF is the manufacturer.

Home / Sneakers / Other Brands / Other / MSCHF Wavy Baby X Tyga

MSCHF Wavy Baby
x Tyga

100% Authentic Condition: New



Size: All






Buy or Bid Size: 11 \$304

Sell or Ask Size: 7 \$333

Last Sale: \$384
▼ -\$15 (-4.0%)

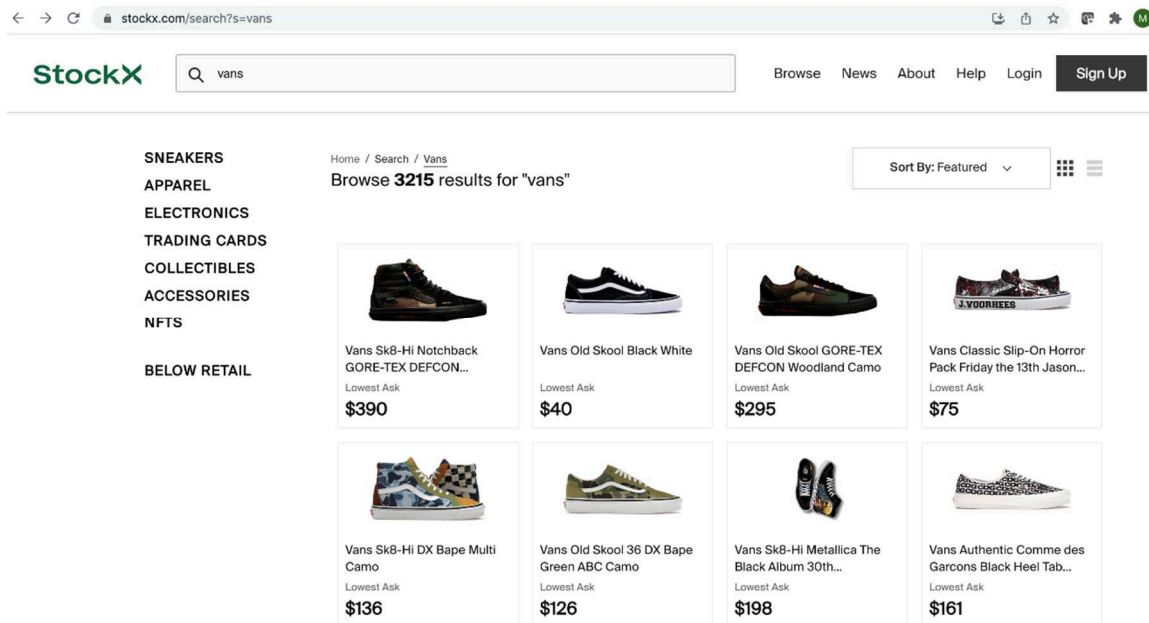
View Asks View Bids View Sales

Related Products

 Louis Vuitton x NBA Abbesses Derby Ebony Lowest Ask \$1,869 Last Sale: \$760	 New Balance 2002R Invincible x N.Hoolywood Lowest Ask \$626 Last Sale: \$409	 New Balance 2002R COSTS x FDMTL Lowest Ask \$447 Last Sale: \$360	 New Balance 1500 LaMJC x Colette x Undeclared... Lowest Ask \$1,339 Last Sale: \$419	 New Balance 580 LaMJC x Colette x Undeclared... Lowest Ask \$959 Last Sale: \$665
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35. StockX also lists prior sales on its website for *Wavy Baby*. From StockX’s website, as noon on April 20, it appears that *Wavy Baby* has resold between \$290 and \$727.

36. I searched for “Vans” on StockX, and more than 3,000 results appeared. The *Wavy Baby* did not appear.



37. Overall, we are grateful for the public response to *Wavy Baby*. The high demand for the drop, the reaction on social media following the drop, and the price of the *Wavy Baby* on the secondary market, which validates our belief that *Wavy Baby* is a piece of art that will be coveted by collectors for its artistic expression.

V. The Future Plans for *Wavy Baby*

38. When planning for the *Wavy Baby*, MSCHF initially considered and even began to plan for a second, bigger drop of the work. We did this because the vast majority of our limited drops are not very profitable – that is because we focus on the actual art rather than the profits. Our point is not to make a profit; our mission is to get our message out there. That being said, even artists need funds to survive, so we are always considering whether certain of our artworks are suitable for additional sales. We model this off of artists like Andy Warhol, who famously mass produced several of his artworks to make a profit.

39. MSCHF has since decided, however, that it will not again make additional *Wavy Baby* works. We do not want the focus of our work to be on a lawsuit. We would rather focus on our artistic expression and what we see as important social commentary. That is no longer possible since Vans initiated this lawsuit, which has become a distraction to the *Wavy Baby* work.

40. MSCHF has instead moved on to announce its next bi-weekly work, which will drop on Monday, April 25. We have also announced that our next footwear art will not drop until June 17. This footwear art has now moved into the prime spot on MSCHF Sneaker's mobile app and website, and the *Wavy Baby* has been archived, like our other past footwear projects – *TAP3*, *Jesus Shoes*, *Satan Shoes*, and *Birkinstocks*.

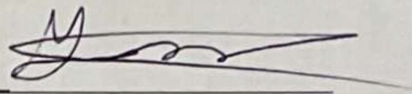
41. To be perfectly clear, to respect the Court process and give the Court an opportunity to decide this case on an appropriate record, MSCHF expressly agrees that it will not manufacture, design, or sell any additional *Wavy Baby* works in its current design and will not include any commentary on Vans or its trademarks or trade dress in future drops or works pending this Court's final judgment in this case.

42. Although MSCHF does intend to release another shoe with a similar silhouette in October, that shoe will have different branding, colors, and design elements. Once the October artwork is finalized, MSCHF will agree to share the design with Vans (subject to a protective order) sufficiently in advance of the drop to allow Vans to seek provisional relief if it believes the October shoe violates any of its rights.

43. Further, it is not MSCHF's practice to direct others on how to comment on MSCHF art pieces. MSCHF will not direct others to market or advertise MSCHF's *Wavy Baby* pieces.

44. In addition, our limited social media posts (the one that has appeared on Instagram and the one that has appeared on Twitter) will be removed when we announce our next shoe drop.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 20, 2022 in Brooklyn, New York.



Gabriel Whaley