



Marcus Gray et al v. Katy Perry et al, Docket No. 2:15-cv-05642 (C.D. Cal. Jul 24, 2015), Court Docket

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARCUS GRAY P/K/A FLAME; EMANUEL)
LAMBERT; and CHIKE OJUKWU,)
)
Plaintiffs,)

v.)

Civil Action No. 4:14-cv-01183-HEA

KATHERYN ELIZABETH HUDSON (p/k/a)
KATY PERRY); JORDAN HOUSTON (p/k/a)
JUICY J); LUKASZ GOTTWALD (p/k/a DR.)
LUKE); SARAH THERESA HUDSON; KARL)
MARTIN SANDBERG (p/k/a MAX MARTIN;)
HENRY RUSSELL WALTER (p/k/a CIRKUT);)
and CAPITOL RECORDS, LLC,)
)
Defendants.)

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FIRST AMENDED COMPLAINT

Introduction

1. This is an action for injunctive and other relief under the Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*(the “Copyright Act”), arising out of Defendants’ ongoing infringement of Plaintiffs’ copyright in their Christian gospel hip hop song entitled “Joyful Noise.”

2. By any measure, Defendants’ song “Dark Horse” is a mega-hit. Defendant Katy Perry has performed the song on national television and at sold-out concerts around the nation. It has been at or near the top of various Billboard and other music charts since its release last September. Millions of digital copies have been sold and downloaded. The song has been in near constant play on Top 40 radio stations throughout the United States. As of this week, more than 610 million viewers have watched the official music video of the Dark Horse song on YouTube,

which announced this summer that it was the most watched music video of the year to date. According to the YouTube and Vevo websites, more than 70 million viewers have listened to the official audio version of the Dark Horse song. Additionally, more than 7 million people have downloaded the digital version of the Dark Horse song and more than 65 million people have streamed the digital version of the Dark Horse song on the Internet. The song has become one of the bestselling singles of all time, and the album *Prism* on which it is included has reached one of the top ten spots on recording industry sales charts in numerous countries around the world.

3. By any measure, the Dark Horse song also constitutes an infringement of Plaintiffs' copyright in their Christian gospel song Joyful Noise, released five years before Dark Horse. Specifically, Defendants' unauthorized reproduction, distribution, and public performance of Plaintiffs' musical composition constitute infringement of Plaintiffs' exclusive rights in their copyright.

4. And by any measure, the devoutly religious message of Joyful Noise has been irreparably tarnished by its association with the witchcraft, paganism, black magic, and Illuminati imagery evoked by the same music in Dark Horse. Indeed, the music video of Dark Horse generated widespread accusations of blasphemy and an online petition signed by more than 60,000 demanding removal of an offensive religious image from the video.

The Plaintiffs

5. Plaintiff Marcus Gray is an American Christian hip hop musician and a citizen of Missouri who resides within the Eastern Division of this District.

6. Plaintiff Chike Ojukwu is an American Christian hip hop musician and record producer and a citizen of Missouri who resides within the Eastern Division of this District.

7. Plaintiff Emanuel Lambert is an American Christian hip hop musician and record producer and a citizen of Pennsylvania who resides in Aldan, Pennsylvania.

The Defendants

8. Upon information and belief, Defendant Katheryn Elizabeth Hudson (p/k/a Katy Perry) is a citizen of California presently residing at 7310 Mulholland Drive, Los Angeles, CA 90046.

9. Upon information and belief, Defendant Jordan Michael Houston (p/k/a Juicy J) is a citizen of Tennessee presently residing at 411 North Oakhurst Drive #402, Beverly Hills, CA 90210.

10. Upon information and belief, Defendant Lukasz Gottwald (p/k/a Dr. Luke) is a citizen of California presently residing at 8700 Hollywood Boulevard, West Hollywood, CA 90069.

11. Upon information and belief, Defendant Karl Martin Sandberg (p/k/a Max Martin) is a citizen of California presently residing at 882 North Doheny Drive, West Hollywood, CA 90069.

12. Upon information and belief, Defendant Henry Russell Walter (p/k/a Cirkut) is a citizen of California residing at 26664 Seagull Way, Unit A211, Malibu, CA 90265-4543.

13. Upon information and belief, Defendant Sarah Theresa Hudson is a citizen of California residing at 5000 Kester Ave., #5 Sherman Oaks, CA 91403.

14. Defendant Capitol Records, LLC (“Capitol Records”) is a Delaware limited liability company with its principal place of business at 150 Fifth Avenue, New York, New York 10011. Vevo, LLC, which operates a commercial site on YouTube that features music videos of

Capitol Records songs, is an affiliate of Capitol Records and has a principal place of business at the same address as Capitol Records.

Subject Matter Jurisdiction and Venue

15. This is an action for copyright infringement arising under the Copyright Act. The Court has subject matter jurisdiction under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a).

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

Personal Jurisdiction Over Defendants

17. This Court has personal jurisdiction over all of the defendants because each of them has sufficient contacts with the State of Missouri to satisfy this jurisdictional requirement, as more fully alleged below.

18. Each of these defendants, acting personally, through authorized agents and representatives, or jointly with one another, have purposefully, foreseeably, systematically, and continuously over the past year directed their marketing, promotion, sale, and public performance of their infringing Dark Horse song toward residents of the State of Missouri and, as a direct result thereof, have injured these Plaintiffs in Missouri by infringing their exclusive rights under the Copyright Act by, among other things:

a. Authorizing, arranging for, and profiting from Missouri residents purchasing CDs and digital downloads of the Dark Horse song, streaming the audio version of the Dark Horse song, and viewing the music video version of the Dark Horse song on the commercial YouTube and Vevo websites;

b. Authorizing, arranging for, and profiting from Missouri residents purchasing digital downloads of the Dark Horse song directly from interactive links

embedded in the Internet pages for the music video version of the Dark Horse song on the commercial YouTube and the Vevo websites;

c. Authorizing, arranging for, and profiting from the commercial broadcast of the Dark Horse on radio stations throughout Missouri and the nation;

d. Authorizing, arranging for, profiting from, and/or performing the Dark Horse song on national television programs that are broadcast into Missouri, including the performance of the song on or about January 26, 2014 at the nationally televised 56th Annual Grammy Awards®, which was broadcast by CBS television and reached a viewing audience of more than 28 million, including, upon information and belief, hundreds of thousands of citizens of Missouri;

e. Authorizing, arranging for, profiting from, and/or performing the Dark Horse song at live concerts in Missouri in 2014 at the Scottrade Center in St. Louis (on August 17) and the Sprint Center in Kansas City (on August 19); and

f. Actively promoting the Dark Horse song on their social media sites and including direct links to the iTunes page for purchasing a digital download of that song.

19. Each and every one of the above-alleged activities were (a) foreseeably and purposefully directed at residents of Missouri, and (b) caused injuries in Missouri that are within the scope of this lawsuit.

20. As for the scale of these Missouri contacts, even if one were to generously assume that residents of the State of Missouri account for just 1/50th (*i.e.*, 2%) of all commercial activity in the United States related to the Dark Horse song, that would mean that citizens of the State of Missouri:

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a. Have viewed the infringing music video of the Dark Horse song on the commercial Vevo site on YouTube more than 12 million times (and, in the process, generated huge advertising revenue for these Defendants);

b. Have streamed the infringing audio version of the Dark Horse song more than 1.3 million times; and

c. Have purchased more than 140,000 digital downloads of the infringing Dark Horse song.

So, too, assuming that the Missouri portion of the more than 28 million viewers of the 1994 Grammy Awards television show is just 2% of the total audience, then the performance of the infringing Dark Horse song broadcast into Missouri that night was viewed by more than 500,000 Missourians.

21. With respect to Defendant Katy Perry, her additional Missouri contacts include the following:

a. She operates an interactive website where she promotes and sells to citizens of Missouri and elsewhere copies of the Dark Horse song, as shown on the screenshots from her website attached to this pleading as Exhibit 1

b. She traveled into Missouri for the commercial purpose of performing two concerts in Missouri in August of 2014 where, on information and belief, her performance of the infringing Dark Horse song was seen by approximately 40,000 concertgoers.

22. With respect to each of the other five individual Defendants who are listed as writers and co-owners of the copyright in the Dark Horse song, in addition to their Missouri contacts alleged above, these Defendants knew, intended, expected, and agreed that a song that

they would co-write for Defendant Perry would be distributed, promoted, broadcast, and sold throughout the nation, including in Missouri, in that, among other things, they knew or should have known that:

- a. Defendant Perry's prior two albums—*One of the Boys* and *Teenage Dreams*—had each sold more than 5 million copies nationwide, including in Missouri;
- b. Twelve singles from those two albums had sold more than 1 million copies each nationwide, including in Missouri;
- c. Seven of those 12 singles had reached the Number 1 spot on the **BILLBOARD HOT 100**, which is the American music industry standard record chart for singles, published by *Billboard* magazine and based on radio play, streaming online, and sales; and
- d. The commercial and geographic scope of a song performed by Defendant Perry would exceed the commercial and geographic scope of virtually every other performing artist, as confirmed earlier this year by the Recording Industry Associate of America (“RIAA”), in a ceremony naming Ms. Perry as the performing artist with the most Gold and Platinum digital single certifications in history, which—as stated in the RIAA press release—“makes Perry the first artist to surpass the 70 million digital award threshold—20 million ahead of any other artist.”

Plaintiffs' Song: “Joyful Noise”

23. Plaintiffs are the authors and creators of an original musical composition embodied in the sound recording entitled Joyful Noise.
24. Plaintiffs created Joyful Noise in 2007 and published it in March of 2008.

25. The United States Copyright Office has issued the Certificate of Registration No. PA-1-900-321 for the copyright in the Song (the “Copyright”). An accurate copy of the Certificate of Registration is attached to this pleading as Exhibit 2.

26. Plaintiffs have been at all relevant times three of the four owners of the Copyright.

27. After receipt of the Certificate of Registration, LeCrae Moore—the fourth owner of the Copyright and initially a fourth plaintiff—transferred and assigned all of his ownership interest in the Copyright (including any claims in this action) to the other three original Plaintiffs. Accordingly, because Mr. Moore is no longer an owner of any interest in the Copyright and thus no longer has standing to be a plaintiff in this action, he is no longer a plaintiff. (Doc. 17.)

28. Thus, the three current Plaintiffs are now the sole owners of all right, title, and interest in the Copyright.

29. Pursuant to Section 106 of the Copyright Act, 17 U.S.C. § 106, Plaintiffs, as owners of the copyright in Joyful Noise, are the owners of the exclusive rights to reproduce that song, to distribute copies of that song, to prepare derivative works based upon that song, and to publicly perform that song.

30. The Joyful Noise song appears on the album entitled *Our World: Redeemed*, which was released in 2008.

31. The album *Our World: Redeemed* received a Grammy Award nomination for Best Rock or Rap Gospel Album and a Stellar Award nomination for Rap Album of the Year in 2008.

32. The song Joyful Noise received a 2008 Gospel Music Association Dove Award nomination for the Best Rap/Hip Hop Recorded Song of the Year.

33. As of this week, over 6 million viewers have watched music video versions of Joyful Noise on YouTube.

Defendants' Song: "Dark Horse"

34. In September of 2013, Capitol Records released the "Dark Horse" song ("Dark Horse") as the first promotional single from Defendant Perry's studio album, entitled *Prism*.

35. On information and belief, based in part on U.S. Copyright Registration No. PA0001871672, the six individual Defendants in this action claim to be authors of Dark Horse.

36. On or about October 5, 2013, Dark Horse debuted at Number 17 on the Billboard Hot 100 chart.

37. In October of 2013, Capitol Records released the album *Prism*, and two months later Capital released Dark Horse as the album's third official single.

38. By January of 2014, Dark Horse had reached Number 1 on the Billboard Hot Digital Songs chart and the Billboard Hot 100 chart, where it remained for weeks.

Defendants' Infringement of Plaintiffs' Copyright

39. Defendants never sought or obtained permission from Plaintiffs to use the Joyful Noise song in creating, reproducing, recording, distributing, selling, or publicly performing Dark Horse.

40. Plaintiffs never gave any of the Defendants permission, consent, or a license to use Joyful Noise for any purpose, including creation of a derivative work based on Joyful Noise.

41. As alleged above, Defendants have copied, sold, performed, and otherwise commercially exploited and profited from Dark Horse in numerous ways, included but not limited to the following:

a. Selling the compact disc-release of *Prism* to the public on numerous websites and through retail stores throughout the nation; and

b. Duplicating and uploading the digital version of Dark Horse to, among other sites, iTunes, Amazon, Google Play, and eMusic for purchase by consumers.

42. In addition, Defendants Perry and Houston publicly performed Dark Horse in 2014 at the nationally televised 56th Annual Grammy Awards®, and Defendant Perry has performed Dark Horse at various concerts and music festivals to tens of thousands of spectators throughout the nation, including Missouri, and overseas.

43. In addition, Capitol Records prepared the music video of Dark Horse and, in conjunction with its affiliated company Vevo, arranged for its commercial syndication and publication on YouTube, Vevo.com, and other commercial sites, which have been viewed by the public more than 610 million times, thus generating additional profits for Defendants.

44. Defendants' actions, as alleged above, constitute infringement of Plaintiffs' copyright in Joyful Noise. Among other things, Defendants' actions violate all of Plaintiffs' exclusive rights in Joyful Noise under Section 106 of the Copyright Act, 17 U.S.C. § 106.

45. These Defendants have already infringed Plaintiffs' copyright and caused damage and irreparable harm through their unauthorized copying, distribution, and public performance of Dark Horse. If not enjoined, they will continue to cause Plaintiffs irreparable harm.

46. So, too, Defendants unlawful actions have caused irreparable harm to Plaintiffs' reputation and the reputation of the Joyful Noise song within the Christian gospel music world by, among other things, creating a false association between the music of Joyful Noise and the anti-Christian witchcraft, paganism, black magic, and Illuminati imagery evoked by Dark Horse, especially in the music video version.

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47. Plaintiffs have given written notice of the infringement to Defendants or their representatives.

48. Defendants have continued to infringe the copyright in Joyful Noise.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendants as follows:

A. A permanent injunction enjoining and restraining Defendants, their agents, servants, employees, attorneys, partners, licensees, divisions, affiliates, parent corporation(s), and all others in active concert or participation with any of them from copying, distributing, publicly displaying, or otherwise making any use of the Joyful Noise or Dark Horse;

B. An award of monetary damages sufficient to compensate Plaintiffs for the injuries suffered as a result of Defendants' wrongful conduct;

C. An award of Defendants' profits and unjust enrichment realized from their infringement and other wrongful conduct;

D. An award to Plaintiffs of interest, costs and reasonable attorney's fees expended in this action; and

E. An award of such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs respectfully request a jury trial.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 6, 2014, a copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on all counsel of record.

/s/Michael A. Kahn