

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BMS ENTERTAINMENT/HEAT MUSIC LLC,

:
04 CV 02584

Plaintiff,

:
COMPLAINT

vs.

CHRISTOPHER BRIDGES, KANYE WEST,
EMI APRIL MUSIC, INC., a
Connecticut Corporation, LUDACRIS MUSIC
PUBLISHING, INC., YE WORLD MUSIC,
ISLAND DEF JAM MUSIC GROUP, a
Corporation, UNIVERSAL MUSIC
AND VIDEO DISTRIBUTION CORP.,
a California Corporation, And JOHN DOE
DEFENDANTS 1-100

Defendants,
.....

BMS Entertainment/Heat Music LLC by way of its attorney Ernest A. Savoy of The Marshall Firm for its complaint alleges:

JURISDICTION AND PARTIES

1. This action arises under the Copyright Act of the United States (17 U.S.C. §101, et seq.). The Court has exclusive jurisdiction over this action under Section 1338(a) of the Judicial Code (28 U.S.C. §1338(a)).
2. Plaintiff BMS Entertainment/Heat Music, LLC is a corporation organized and existing under the laws of the State of New Jersey with its principle place of business in New Jersey.

3. Defendant Christopher Brian Bridges (“Bridges”), professionally known as Ludacris, is a songwriter and a resident of the State of Georgia. Bridges is a co-writer of the musical composition “Stand Up”.

4. Defendant Kanye West (“West”) is a songwriter and upon information and belief is a resident of the State of Illinois. Upon information and belief West’s principle place of business is in the State of New York. West is a co-writer of the musical composition “Stand Up”.

5. Defendant EMI April Music Publishing, Inc. upon information and belief is a Connecticut corporation engaged in the business of publishing musical compositions, with its principle place of business in the State of New York. EMI is a co-publisher of the song “Stand-Up”.

6. Defendant Ludacris Music Publishing is an entity engaged in the business of publishing musical compositions, with its principle place of business in New York. Ludacris Music Publishing is a co-publisher of the song “Stand-Up”.

7. Defendant Ye World Music is an entity engaged in the business of publishing musical compositions, with its principle place of business in New York. Ye World Music is a co-publisher of the song “Stand-Up”.

8. Defendant Island Def Jam Music Group (“Def Jam”) is a corporation organized and existing under the laws of the State of New York, and is engaged inter alia in the business of manufacturing and distributing sound recordings, with its principle place of business in The State of New York. In or about 2003, Def Jam released an album titled “Chicken-n-Beer” by recording artist professionally

known as “Ludacris”, containing a recording of a musical composition entitled “Stand Up”.

9. Defendant Universal Music & Video Distribution Corporation (Universal) is a corporation organized and existing under the laws of the State of California, with its principle place of business in California. Universal manufactured and distributed the album entitled “Chicken-n-Beer” which contains the song “Stand Up”.

FACTS

10. On or about April 1, 2000, the group known as I.O.F. (It’s Only Family) wrote and recorded a musical composition entitled “Straight Like That” for its “Demo” CD in East Orange, NJ.

11. In or about June or July 2001, the group I.O.F. began to perform at concerts, its song “Straight Like That” in connection with promotional tours with the purpose of obtaining a recording contract with a major recording company.

12. Between August 2002 and May 2003, Defendant Christopher Bridges professionally known as “Ludacris” was personally handed copies of the I.O.F. “Demo” CD which contained the song “Straight Like That” on three separate occasions.

13. In May 2003, Defendant Kanye West was personally given a copy of the I.O.F. “Demo” CD which contained the song “Straight Like That”.

14. On or about October 7, 2003, Defendant Def Jam released a phonographic record album titled “Chicken-n-Beer” by recording artist professionally known as “Ludacris”, containing a recording of a musical

composition entitled "Stand Up"(Infringing Composition) which is an infringement on the I.O. F. song "Straight Like That".

15. Defendants Christopher Bridges and Kanye West ("Songwriters") of the Infringing Composition claim to write songs for affiliated publishing companies (EMI April Music, Inc, Ludacris Music Publishing, Ye World Music Inc. ("Publishers") exclusively around the world.

16. The Publishers hired a copyright administrator, who is, upon information and belief, for the Infringing Composition, EMI April Music, Inc., (Administrator"), to handle the day-to-day business of dealing with the Infringing Composition around the world.

17. Defendant, Def Jam Music Group, and some, as yet unidentified other Labels, who make up a portion of the John Doe Defendants 1-100 are Record Labels ("Labels") who record and distribute Records containing the Infringing Compositions and/or Sound Recordings.

18. At times, Labels subcontract with other companies, including other Labels, to manufacture the Records ("Manufactures"), and still other companies to distribute the Records to locations where the Records are sold to the general public ("Distributors"). Upon information and belief, several of the John Doe Defendants 1-100 are Manufacturers and/or Distributors.

19. Defendants Entertainment Company Universal Music and Video Distribution Corporation is involved in the manufacture and/or distribution and/or marketing of the Infringing Compositions.

20. The Infringing Composition was synchronized and performed publicly without the permission of Plaintiff, with visual images by the Defendants on many occasions.

21. The Defendants continue to infringe Plaintiffs' copyright in various capacities and in conjunction with different Defendants and the same Entertainment Company, Universal Recordings, Inc. (through its instrumentality Universal Music and Video Distribution Corporation), which controls the multiple infringing Defendant Labels, and many of the Publishers and Administrators.

22. Defendant Publishers, EMI April Music, Inc., Ludacris Music Publishing, Inc., Ye World Music handle or "administer" the day-to-day business of the Infringing Composition themselves.

CLAIM FOR RELIEF

(Copyright Infringement)

23. "The Composition" contains copyrightable subject matter under the copyright laws of the United States. On December 23, 2003, the United States Copyright Office received a claim to Copyright in the Composition.

24. Continuously, Defendants have substantially copied and publicly performed "the Composition", and made and distributed or authorized the making or distributing of phonorecords substantially utilizing "the Composition" in and as a part of "Stand Up" throughout the world.

25. Defendants' exploitation of "the Composition" was made without knowledge or authorization or permission from Plaintiff and constitutes infringement of the copyright in the Composition.

WHEREFORE, Plaintiff demands relief as follows:

(a) that each and every Defendant be found jointly and severally liable for direct, contributory and vicarious copyright infringement,

(b) that each and every Defendant be found jointly and severally liable for willful copyright infringement for each infringement

(c) that for such copyright infringement each and every Defendant be ordered to pay Plaintiff:

(i) such damages as Plaintiff has sustained in consequence of Defendants' infringement of said copyright, and to account for and pay Plaintiffs all gains, profits and advantage derived by each and every Defendant from their infringement of Plaintiff's copyright, the total amount to be determined at a trial of this action, or such damages as shall appear proper within the provisions of the Copyright statute; or in the alternative;

(ii) that the Defendants be required to pay to the Plaintiff such damages as have been sustained as a consequence of Defendants' infringement of the copyright in the Composition and to account to Plaintiff for all gains, profits and advantages derived by Defendants from such infringement but in no event should Plaintiff's recovery be less than the statutory damages provided in the U.S. Copyright Act 17 U.S.C. 504 (c)(2) One hundred and Fifty thousand (at \$150,000.00) dollars per infringement of the copyright herein;

(iii) in the event that Defendants are not found to have willfully infringed and Plaintiff's actual damages, including Defendants' profits are less

than Thirty thousand (\$30,000.00) dollars for each infringement that Plaintiff in the discretion of the Court be awarded statutory damages in the amount of Thirty Thousand (\$30,000.00) dollars per infringement pursuant to the US Copyright Act 17 U.S.C. 504(c)(1);

(d) that the defendants be required to Plaintiff the costs and disbursements of this action together with reasonable attorneys' fees in a sum allowed by the Court; and

(e) any further relief as the Court deems just and proper.

Count II

(Fraud)

26. The Plaintiff's repeat and re-allege each and every allegation set forth in paragraphs 1 through 25 as if fully set forth herein.

27. All of activity described in the preceding paragraphs constitutes self-concealing fraudulent activity insofar as Plaintiff, with no appropriate credit identifying the true origin of the Records. Plaintiff could have no way to discover each infringement would have no way of discovering each infringement absent purchasing every Record sold in the world. In addition, the misrepresentations on the song, the title, and on the Records themselves, constitute active fraudulent concealment.

WHEREFORE, Plaintiff demands relief as follows:

(a) that each and every Defendant be found jointly and severally liable for direct, contributory and vicarious copyright infringement,

(b) that each and every Defendant be found jointly and severally liable for willful copyright infringement for each infringement

(c) that for such copyright infringement each and every Defendant be ordered to pay Plaintiff:

(i) such damages as Plaintiff has sustained in consequence of Defendants' infringement of said copyright, and to account for and pay Plaintiffs all gains, profits and advantage derived by each and every Defendant from their infringement of Plaintiff's copyright, the total amount to be determined at a trial of this action, or such damages as shall appear proper within the provisions of the Copyright statute; or in the alternative;

(ii) that the Defendants be required to pay to the Plaintiff such damages as have been sustained as a consequence of Defendants' infringement of the copyright in the Composition and to account to Plaintiff for all gains, profits and advantages derived by Defendants from such infringement but in no event should Plaintiff's recovery be less than the statutory damages provided in the U.S. Copyright Act 17 U.S.C. 504 (c)(2) One hundred and Fifty thousand (at \$150,000.00) dollars per infringement of the copyright herein;

(iii) in the event that Defendants are not found to have willfully infringed and Plaintiff's actual damages, including Defendants' profits are less than Thirty thousand (\$30,000.00) dollars for each infringement that Plaintiff in the discretion of the Court be awarded statutory damages in the amount of

Thirty Thousand (\$30,000.00) dollars per infringement pursuant to the US Copyright Act 17 U.S.C. 504(c)(1);

(d) that the defendants be required to Plaintiff the costs and disbursements of this action together with reasonable attorneys' fees in a sum allowed by the Court; and

(e) any further relief as the Court deems just and proper.

Count III

(Copyright Infringement)

28. The Plaintiff's repeat and re-allege each and every allegation set forth in paragraphs 1 through 26 as if fully set forth herein.

29. Defendant Universal Music and Video Distribution Corporation and/or the Defendant Producers also acted wrongfully by using Plaintiffs' sound copyright protected musical composition and sound recording in synchronization with visual images in their works without obtaining from Plaintiff the required synchronization licenses for such uses, and by failing to obtain a license from the applicable Plaintiff sound recording owners to utilize such recording.

30. Upon information and belief, all Defendant Publishers have received every royalty for the sale of Records containing the Infringing Composition, have received royalties for inclusion of the Infringing Composition in print editions of sheet music, have received synchronization royalties for the addition of the Infringing Composition to audio-visual works, and have received performance

royalties from the performance of the Infringing Composition, without submitting the appropriate amount of such royalties to Plaintiff.

31. Upon information and belief, Defendant Labels, Manufacturers, Entertainment Company and Distributors have collected fees from the sale of said Records containing the Infringing Composition and Sound Recording; and have retained a portion of those fees without submitting the appropriate amounts to Plaintiffs.

32. Upon information and belief, Defendant Universal Music and Video Distribution Corporation and/or Defendant Producers, without entering into an agreement with Plaintiff, have collected and retained monies from the subject Videos and Motion Pictures containing the Infringing Composition, have paid royalties to numerous entities, but have not submitted the appropriate amount of royalties in the form of synchronization royalties and other fees to Plaintiff.

33. Plaintiff has not received proper compensation, in the form of royalties and/or copyright interest, for the improper use of their musical composition, and where appropriate, their sound recording, in Infringing Composition and/or Sound Recording, Record, and Videos.

34. The foregoing conduct of the Defendants constitutes fraudulent and improper creation of a musical composition, such that the subject Infringing Composition and/or Sound Recording and the Records, Videos and/or Motion Pictures are owned by Plaintiff, and constitutes direct, vicarious, and contributory copyright infringement, such that Defendants are jointly and severally liable

therefore for such acts, which are continuing violations of the Copyright Act, insofar as, the Infringing Composition is still in print, and sales are still occurring.

35. The foregoing conduct of Defendants also is below the standard of care required of reasonable and prudent entities in the subject activities.

36. As a direct and proximate result of Defendants' conduct, the applicable ownership Plaintiffs have suffered actual damages including lost profits, lost opportunities, loss of goodwill, lost publicity, attorney's fees and interest, and, in the alternative, is entitled to statutory damages as allowed by law.

37. The acts and omissions of the Defendants are willful and intentional acts of infringement of the copyright in the Composition.

38. Defendants will continue to exploit and license the Composition, and unless enjoined by this Court will continue to infringe the copyright in the Composition.

WHEREFORE, Plaintiff demands relief as follows:

- (a) that each and every Defendant be found jointly and severally liable for direct, contributory and vicarious copyright infringement,
- (b) that each and every Defendant be found jointly and severally liable for willful copyright infringement for each infringement
- (c) that for such copyright infringement each and every Defendant be ordered to pay Plaintiff:
 - (i) such damages as Plaintiff has sustained in consequence of Defendants' infringement of said copyright, and to account for and pay Plaintiffs all gains, profits and advantage derived by each and every

Defendant from their infringement of Plaintiff's copyright, the total amount to be determined at a trial of this action, or such damages as shall appear proper within the provisions of the Copyright statute; or in the alternative;

(ii) that the Defendants be required to pay to the Plaintiff such damages as have been sustained as a consequence of Defendants' infringement of the copyright in the Composition and to account to Plaintiff for all gains, profits and advantages derived by Defendants from such infringement but in no event should Plaintiff's recovery be less than the statutory damages provided in the U.S. Copyright Act 17 U.S.C. 504 (c)(2) One hundred and Fifty thousand (at \$150,000.00) dollars per infringement of the copyright herein;

(iii) in the event that Defendants are not found to have willfully infringed and Plaintiff's actual damages, including Defendants' profits are less than Thirty thousand (\$30,000.00) dollars for each infringement that Plaintiff in the discretion of the Court be awarded statutory damages in the amount of Thirty Thousand (\$30,000.00) dollars per infringement pursuant to the US Copyright Act 17 U.S.C. 504(c)(1);

(d) that the defendants be required to Plaintiff the costs and disbursements of this action together with reasonable attorneys' fees in a sum allowed by the Court; and

(e) any further relief as the Court deems just and proper.

DATED:

The Marshall Firm

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