



COPYRIGHT CLAIMS BOARD

DOCKET NO. 22-CCB-0189

ALKASHIF M Marshall

CLAIMANT

v.

Niki Minaj/Cash Money

RESPONDENT

ORDER DISMISSING CLAIM WITHOUT PREJUDICE

PLEASE READ CAREFULLY

The claimant initiated this proceeding on October 4, 2022. On November 10, 2022, the Copyright Claims Board issued a [noncompliance order](#) that notified the claimant that the claim did not comply with the applicable statutory and regulatory requirements for filings before the Board. [37 C.F.R. § 224.1\(c\)\(2\)](#). On December 12, 2022, the claimant submitted a Request to Amend Pleadings. The Board treated the request as a timely amendment and considered the original claim together with the request, again finding it noncompliant, and issued a [second noncompliance order](#) on January 17, 2023. On February 16, 2023, the claimant submitted a second amended claim, which was the final opportunity to submit a compliant claim. [17 U.S.C. § 1506\(f\)\(1\)\(B\)](#); [37 C.F.R. § 224.1\(d\)](#). Under [17 U.S.C. § 1506\(f\)\(1\)\(B\)](#), if any part of a second amended claim is noncompliant, the entire claim must be dismissed without prejudice.

A Copyright Claims Attorney reviewed the second amended claim and concluded that the claim is still noncompliant as the allegations clearly do not state a claim upon which the Board may grant relief. [37 C.F.R. § 224.1\(b\)\(3\)](#). The Copyright Claims Attorney referred the second amended claim to me to confirm that it does not comply with the applicable statutory and regulatory requirements, and that this proceeding should therefore be dismissed without prejudice. [17 U.S.C. § 1506\(f\)\(1\)\(B\)](#). I have reviewed the second amended claim, and I concur with and confirm the finding of noncompliance.

“Altogether, a claim for copyright infringement has three elements: ‘(1) ownership of a valid copyright; (2) factual copying; and (3) substantial similarity’” between the allegedly infringed and infringing works. *Batiste v. Lewis*, 976 F.3d 493, 502 (5th Cir. 2020) (quoting *Armour v. Knowles*, 512 F.3d 147, 152 (5th Cir. 2007)). Determining substantial similarity “usually requires a ‘side-by-side comparison’ of the works’ protectable elements ‘to determine whether a layman would view the two works as substantially similar.’” *Id.* (quoting *Nola Spice Designs, L.L.C. v. Haydel Enters., Inc.*, 783 F.3d 527, 552 (5th Cir. 2015)). To establish substantial similarity, a claimant “must show that the copyrighted expressions in the two works are sufficiently alike that the copyright to the original work has been infringed.” *Armour*, 512 F.3d at 152.

The claimant alleges that the respondents infringed his copyright by duplicating the vocal hook of his song “Kissing” in the chorus of their song “Super Freaky Girl.” The second amended claim includes a link to an [Apple Music page](#) for an album by Rasta Pirate Tre Ace with “Kissing” as its second track, as well as a link to a [music video on YouTube](#) of “Super Freaky Girl” performed by Nicki Minaj. The recordings of the songs available on those pages are central to the infringement claim and incorporated in the second amended claim by reference. Comparing those recordings side by side, the second amended claim does not identify any element of “Super Freaky Girl” that is substantially similar to expressive material in “Kissing” that copyright protects.

“[N]on-infringement may be determined as a matter of law . . . [if] the similarity between two works concerns only non-copyrightable elements of the [claimant’s] work.” *General Universal Sys. v. Lee*, 379 F.3d 131, 142 n. 18 (5th Cir. 2004) (quoting *Herzog v. Castle Rock Entertainment*, 193 F.3d 1241, 1247 (11th Cir. 1999)). A copyright only extends to copyrightable subject matter, and copyright law does not protect ideas or concepts embodied in a creative work. 17 U.S.C. § 102(b). “An idea is never copyrightable. Copyright only bars others from copying an author’s original *expression* of an idea. Others are therefore free to use and copy an idea as long as they do not plagiarize its expression.” *Positive Black Talk, Inc. v. Cash Money Records, Inc.*, 2003 U.S. Dist. LEXIS 6843, *13 (E.D. La. Apr. 21, 2003) (internal quotations and citations omitted).

The claimant asserts that in each recording, the vocalist spells out the letters of a word (K-I-S-S-I-N-G in “Kissing” and F-R-E-A-K in “Super Freaky Girl”), with the one of the letters “dragged out,” that is, sung for an extended duration. Spelling out a word in a vocal performance, a common trope in other songs, is an idea that copyright does not protect. Stretching a note, including one of those letters, is also a common vocal technique. Moreover, any original expression of that trope in the recording of “Kissing” is not substantially similar to the performance of “Super Freaky Girl.” The claimant alleges that the Nicki Minaj performance repeats each of the first two letters in “freak” to give it seven letters, like “kissing.” The claimant’s copyright does not prevent another performer from spelling out another word of seven letters or any other length. The claimant cannot pursue this claim for infringement of the sound recording because his copyright does not protect any material used in “Super Freaky Girl.” Accordingly, the Board dismisses the claim without prejudice and closes this case.

Date: March 10, 2023
Copyright Claims Officer