



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0235

November 14, 2023

Iosif Mermelshtayn

CLAIMANT

v.

300 Entertainment (Warner Music Group)

RESPONDENT

ORDER DISMISSING CLAIM WITHOUT PREJUDICE

The Copyright Claims Board (Board) issued orders that notified the claimant on August 17, 2023 and September 28, 2023 that the claim and amended claim, respectively, did not comply with the applicable statutory and regulatory requirements for filings before the Board. On October 24, 2023, the claimant filed a second amended claim, which was the final opportunity to file a compliant claim. 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(d).

A Copyright Claims Attorney reviewed the second amended claim and determined that the claim is still noncompliant because it does not provide enough facts about how the respondent had access to the claimant's work, or how copyright-protected material in that work and in the allegedly infringing work are substantially similar. The Copyright Claims Attorney referred the claim to a Copyright Claims Officer to confirm that it does not comply with the applicable requirements and that this proceeding should, therefore, be dismissed without prejudice. 17 U.S.C. § 1506(f)(1)(B). The Copyright Claims Officer reviewed the second amended claim and concurs with the finding of noncompliance.

The claim indicates that the claimant's work, a sound recording titled "Blissful Endings," has garnered 133 views on YouTube since 2011, or about one view per month. A "bare possibility" of access, based on such limited dissemination, is not enough. *Art Attacks Ink, LLC v. MGA Entertainment, Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009). "Although we recognize the power of the internet to reach a wide and diverse audience, the evidence here is not sufficient to demonstrate wide dissemination." *Id.* at 1145 (sales of 2,000 T-shirts per year); *see also Rice v. Fox Broadcasting Co.*, 330 F.3d 1170, 1178 (9th Cir. 2003) (plaintiff's video "only sold approximately 17,000 copies between 1986 and 1999; therefore, the video cannot be considered widely disseminated").

In addition, an infringement claim must plausibly identify specific expressive content protected by copyright that was copied. The "Blissful Endings" sound recording copyright protects against reproductions of actual sounds fixed in that particular sound recording (for example, by sampling or remixing), but not against works that sound similar without employing any sounds recorded in the claimant's work. 17 U.S.C. § 114. The allegations primarily point to such similarities between the underlying musical works, which the recording copyright does not prevent. The claimant does not support his bare allegation that Fetty Wap's "My Way" sampled "Blissful Endings." The second amended claim states that it included a video file with new evidence showing substantial similarity, but no

such video was uploaded. Board staff informed the claimant by email on November 1, 2023, that if he did not request leave to amend the claim again by November 8, 2023, to add the video file, then the claim would be reviewed for compliance without it. *See* 37 C.F.R. § 222.12(d)(2). The claimant has not requested leave to amend.

Accordingly, the Board dismisses the claim without prejudice and closes this case. Dismissal without prejudice means that any allegations that are not barred may be raised again by filing a new claim, if there is no agreement with the respondent to the contrary.

Copyright Claims Board