[US] Ed Sheeran in copyright dispute for “Thinking Out Loud”

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On 4 May 2023, Ed Sheeran was exonerated of copyright infringement by jurors in Manhattan federal court presided by U.S. District Judge Louis Stanton, after they denied liability regarding his 2014 Grammy award-winning song “Thinking Out Loud”. The case opposed the singer-songwriter to the heirs of Marvin Gaye’s co-writer, Ed Townsend, who claimed infringement of their copyright interests.

In 2017, Towsend’s heirs sued Ed Sheeran, his label Warner Music Group and his music publisher Sony Music Publishing, alleging striking similarities with Marvin Gaye’s song “Let’s get it on”, released in 1973. They pointed out the similarities between the melodies, chords and rhythms of the two songs and asserted ownership of "the way in which these common elements were uniquely combined”. In support of their claim, the Towsend heirs also relied on a medley performed by Ed Sheeran, in which he mixes both songs. The motion brought by the defendants to exclude the medleys or “mashups” from evidence were “denied with leave to renew it at trial, when the Court can evaluate the other evidence (…).”

Although the British artist and his lawyers recognized similarities in the chord progressions and rhythms, they defended that such chord progression was unprotectable and available to all songwriters. According to the latter, mainstream pop music is based on a rather limited set of chords that are “common building blocks which were used to create music long before ‘Let’s Get It On’ was written and will be used to create music long after we are all gone.” The Jury eventually gave him right.

On 16 May, Ed Sheeran and co-defendants won yet another battle over the same song in a lawsuit brought by Structured Asset Sales LLC (“SAS”), which owns interests in Marvin Gaye’s "Let's Get It On", and therefore the right to receive copyright royalties. Like Towsend heirs, SAS alleged “Thinking Out Loud” infringed on the copyright of the sheet music of "Let's Get It On". “The question then [was] whether two common elements [the chord progression and harmonic rhythm] are numerous enough to make their combination eligible for copyright protection”. Among their argumentation, the defendants’ experts brought that at least four songs released prior to "Let's Get It On" had used the same combination ("Georgy Girl," "Since I Lost My Baby," "Downtown," and "Get Off Of My Cloud").

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In this case, the U.S. District Judge Louis Stanton first ruled that Ed Sheeran would need to face a jury trial. On 29th September 2022, the former denied the defendant's renewed motion for Summary Judgment dismissing the case (a motion for reconsideration gives the Court the power to reconsider any of its decisions prior to the entry of a final judgment adjudicating all claims at issue). Judge Stanton considered that "the parties' dispute over the originality of the selection and arrangement of the combination of two commonplace musical building blocks - the chord progression and harmonic rhythm - in "Let's Get It On" was a genuine dispute necessitating denial of defendants' motion". The defendants therefore moved for reconsideration of that order.

The judge finally reversed the decision and dismissed the case on 16th May 2023, considering that "the combination of the chord progression and harmonic rhythm in "Let' s Get It On " was too commonplace to merit copyright protection".

The jurors' decisions in both cases have brought some reassurance to the music industry by establishing protection over the creative process of songwriters. The cases have indeed been of great interest following the numerous infringement actions brought in recent years, calling into question the extent to which pop songwriters' work can be protected by copyright.

Griffin et al v. Sheeran et al, 17 CIVIL 5221 (LLS), judgment - United States District Court Southern District of New York

https://cases.justia.com/federal/district-courts/new-york/nysdce/1:2017cv05221/477309/277/0.pdf?ts=1683373111

Structured Asset Sales, LLC vs. Edward Christopher Sheeran, et al., 18 Civ . 5839 (LLS), opinion and order - United States District Court Southern District of New York

https://www.nysd.uscourts.gov/sites/default/files/2023-05/18cv5839%20may%2016%202023%201507%20Opinion.pdf

Griffin et al v. Sheeran et al, dockets and filings

https://dockets.justia.com/docket/new-york/nysdce/1:2017cv05221/477309

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