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IP CASE OF THE WEEK

Ninth Circuit Reverses District Court's Dismissal of Claims Alleging Taylor Swift Stole Lyrics to "Shake It Off"

Hall v. Swift, No. 18-55426, 2019 WL 5543864, (9th Cir. Oct. 28, 2019)

By: Reid Huefner and Adam Reis | November 8, 2019

A panel of the Ninth Circuit Court of Appeals reversed and remanded a decision by the Central District of California dismissing a complaint brought against Taylor Swift alleging that she stole the lyrics for her hit song "Shake It Off." The District Court dismissed the complaint on the basis that the allegedly-copied lyrical sequence lacked sufficient originality to be afforded copyright protection. In its reversal, the Ninth Circuit reminded the Court that it is not the Court's duty to judge the creative worth of an expressive work.

Sean Hall and Nathan Butler filed suit against Taylor Swift alleging that lyrics from her popular song "Shake It Off" were copied from their 2001 song "Playas Gon' Play," performed and released by the group 3LW. Hall and Butler's song contains the following lyrics: "Playas, they gonna play / And haters, they gonna hate…." Swift's "Shake It Off," written in 2014, contains the following: "'Cause the players gonna play, play, play, play, play / And the haters gonna hate, hate, hate, hate, hate…."

Upon motion by Swift, the District Court for the Central District of California dismissed the complaint on the basis that the lyrics that Swift allegedly copied—consisting of nothing more than two brief, banal truisms distilled down to only six relevant words—lacked sufficient originality to warrant copyright protection. The Copyright Act provides that copyright protection shall be afforded to all "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. 102. The amount of creative input generally required to meet this requirement is low. But courts, nonetheless, generally do not afford copyright protection to words or short phrases, unless they are sufficiently creative. The Court took judicial notice, and plaintiffs acknowledged, that "by 2001, American popular culture was heavily steeped in the concepts of players, haters, and player haters" and that combining the two truisms—"playas gonna play" and "haters gonna hate"—was "simply not enough." The District Court noted "[i]n order for such short phrases to be protected under the Copyright Act, they must be more creative than the lyrics at issue here." Because copyright infringement requires copying of the protectable (i.e., copyrighted) elements of a work, the District Court dismissed the complaint for failure to state a claim.

In a short opinion, a panel from the Ninth Circuit reversed and remanded. The Ninth Circuit reminded the District Court that originality is ordinarily a question of fact and that it is not the role of the Court to "constitute[] itself as the final judge of the worth of an expressive work." The Court quoted Justice Oliver Wendell Holmes Jr.'s words from more than a century ago that "[i]t would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits." At bottom, the Ninth Circuit found that, because no facts established an absence of originality—neither on the face of the complaint nor through the judicially noticed matters—dismissal was not appropriate.