

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RALPH VARGAS and BLAND -

multiple bounce strokes and ghost notes. This recording of *BDG* was included on the album *Funky Drummer Vol. II* (“*FD II*”).

7. The composition *BDG* was not recorded anywhere by Ralph Vargas other than as part of the *BDG* sound recording included on *FD II*.

8. Ralph Vargas does not read or write music.

9. *FD II* is a collection of drum compositions for hip hop artists, remixers, production companies, production houses, disc jockeys and producers in other recordings. It contains 17 drum compositions and was recorded in approximately four hours in the studio. Plaintiff Roberts is the copyright owner in and to the sound recording of *FD II* and *BDG*.

10. *FD II* was released in February 1994 by JBR Music, Inc. (“JBR”), a record company that is no longer in business but was at the time owned by Plaintiff Bland-Ricky Roberts. JBR, prior to releasing *FD II*, released sound recording albums of numerous other recording artist that were signed to JBR.

11. JBR had distribution deals with various national and international record distributors including, but not limited to INDI Distribution, Tiger Distribution, California Record Distributors (collectively the “Distributors”). The Distributors distributed records manufactured by JBR, including *FD II*, to retail record stores across the country and overseas.

12. *FD II* was only released on vinyl LP. It was not released on CD, or any other medium.

13. Plaintiffs manufactured no more than 4000 copies of *FD II*. *FD II* was on sale from approximately February 1994 through April 1994. Plaintiffs did not sell any copies of *FD II* after April 1994.

14. Defendant Brian Transeau (“Defendant BT”) is a professional musician, composer and producer. He has released five full-length albums since 1996, and has written scores for popular movies such as *Monster* and *The Fast And The Furious*.

15. In August of 2000, Defendant BT created *Aparthenonia*. *Aparthenonia* is one bar of drumming music which is then repeated numerous times. In 2001, Defendant BT and Defendant East West Communications, Inc. (“Defendant EWC”) released a double sample compact disk sound library entitled *Breakz From The Nu Skool* (“*Breakz*”). It contains more than 400 tracks of “drum loops”— drums pattern repeated several times. These drum loops are not meant to be listened to as music on their own; they are designed to be used as a background for other musical works.

16. Defendant BT has not registered or claimed copyright in the drum loops on *Breakz*.

17. Defendant BT sold *Breakz* through Defendant EWC under a distribution agreement. Upon sale, Defendant BT granted end user license to purchasers of *Breakz* to use any of the tracks on *Breakz* in their own recordings.

18. One of the tracks on *Breakz* is entitled *Aparthenonia*.

19. *Aparthenonia* is one bar of drum music which is then repeated numerous times. The musical elements contained in *Aparthenonia* include high-hat, snare drum, bass drum, multiple bounce strokes, and “ghost notes.”

20. Alanda Music Ltd, d/b/a/ Fluid Music (“Fluid”) purchased a copy of *Breakz* and used *Aparthenonia* as part of a song it produced for Publicis, Inc., an advertising agency, to use in a commercial for Celebrex, a drug manufactured and distributed by Pfizer, Inc.

21. Plaintiffs contend that Defendant BT sampled or copied *Bust Dat Groove* and then digitally edited/manipulated the sequence of musical notes contained therein in order to create *Aparthenonia* thus infringing Plaintiffs’ copyrights in both the composition and sound recording of *BDG*.

22. BT contends he did not hear *BDG* or any part of *FD II* prior to composing *Aparthenonia*, and did not copy it. Rather, he created Defendant BT contends that *Aparthenonia* independently from using specialized computer programs.

23. Plaintiffs contend that the musical elements embodied in *Aparthenonia* are almost identical to the musical elements contained in *BDG* except that these elements have been re-arranged in *Aparthenonia*.

24. Plaintiffs contend that the rhythm, pitch and feel of *Aparthenonia* and *BDG* are almost identical.

25. Plaintiffs contend that *BDG* can be sampled or copied, and then digitally edited or manipulated, to create a duplicate of *Aparthenonia* that is approximately 98% identical.

26. Plaintiffs contend that the frequency spectra of the drum sounds of the first 2.3 seconds of the first bar of drum sounds in both *Aparthenonia* and *BDG* are virtually indistinguishable from each other.