

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELOHIM EPF USA, INC.,

Plaintiff,

19-cv-2431 (PKC)

-against-

ORDER

162 D & Y CORP. d/b/a Flower Karaoke, et al.,

Defendants.  
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CASTEL, U.S.D.J.

This Order invites plaintiff Elohim EPF USA, Inc. (“Elohim”) to file a letter-brief responding to certain arguments raised in defendants’ post-trial memorandum. (See ECF 363 at 12-20; see also ECF 364 ¶¶ 212-51.) In their memorandum, defendants assert that certain certificates of copyright registration filed by Elohim are invalid because they do not satisfy the regulatory requirements promulgated for group copyright registrations. Specifically, “Bae A Pa (Jealousy)” was one of ten songs listed in a single certificate filed by Elohim on December 19, 2013. (ECF 346-14.) Separately, the copyrights for the songs “So Cool,” “Push Push,” “Ni Kka Jit Ge (How Dare You)” and “Ga Sik Geol (Shady Girl)” were filed in a single certificate of registration filed by Elohim on December 29, 2013. (ECF 346-7.)

“A certificate of copyright registration is a prerequisite to asserting a civil copyright infringement claim. Thus, without a valid copyright registration, a plaintiff cannot bring a viable copyright infringement action.” Sohm v. Scholastic Inc., 959 F.3d 39, 52-53 (2d Cir. 2020) (citing 17 U.S.C. § 411(a)). “[T]he Register of Copyrights is authorized by statute to promulgate regulations which may ‘require or permit . . . a single registration for a group of related works.’” Palmer/Kane LLC v. Rosen Book Works LLC, 204 F. Supp. 3d 565, 570

(S.D.N.Y. 2016) (Rakoff, J.) (quoting 17 U.S.C. § 408(c)(1)). The Copyright Office has promulgated regulations that govern the group registration of defined categories of work. See 37 C.F.R. § 202.4. “Group registration carries important advantages for copyright holders, since it requires only one fee to register multiple works, all of which are entitled to the § 410(c) presumption of validity and all of which may be sued upon individually. Given the significant advantages conferred by group registration, it follows that ‘compliance with the applicable regulations should be strictly enforced.’” Palmer/Kane, 204 F. Supp. 3d at 570 (quoting 5 William F. Patry, Patry on Copyright § 17:92).

In 2013, at the time that Elohim filed its certificates of registration for “Bae A Pa (Jealousy),” “So Cool,” “Push Push,” “Ni Kka Jit Ge (How Dare You)” and “Ga Sik Geol (Shady Girl),” the regulation governing a group registration was codified at 37 C.F.R. § 202.3 (effective July 18, 2013). The regulation permitted group registration for certain defined categories, including automated databases, related serials, daily newspapers, contributions to periodicals, daily newsletters and published photographs. Id. § 202.3(b)(5)-(10). It did not provide for the group registration of musical works. Approximately eight years later, in 2021, 37 C.F.R. § 202.4 was amended to permit the group registration of musical works on an album.

Separately, in 2013, multiple published works were eligible to be registered as a single work if they “are included in a single unit of publication, and in which the copyright claimant is the same.” 37 C.F.R. § 202.3(b)(4)(i)(A) (effective July 18, 2013). And the Copyright Act grants protections to a compilation, 17 U.S.C. § 103, which “is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship,” 17 U.S.C. § 101. Defendants urge that the record does not support a finding that the

above-identified compositions are eligible for copyright protection as part of a “single work” registration or a compilation.

Elohim is invited to file a letter-brief no later than November 22, 2023 responding to defendants’ arguments directed toward the validity of the certificates of registration for “Bae A Pa (Jealousy),” “So Cool,” “Push Push,” “Ni Kka Jit Ge (How Dare You)” and “Ga Sik Geol (Shady Girl).”

SO ORDERED.



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P. Kevin Castel  
United States District Judge

Dated: New York, New York  
November 15, 2023