

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ERIC DION FLEMMING,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
MARIO MIMS, p/k/a)	
YO GOTTI, BRANDON)	
COTTRELL, INEVITABLE)	JURY DEMAND
ENTERTAINMENT, LLC, and)	
JORDAN TOWER,)	
)	
Defendants.)	

COMPLAINT

I. THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Eric Dion Flemming, is a citizen and resident of Nashville, Tennessee, within this Judicial District.

2. Defendant Mario Mims, professionally known as Yo Gotti, is a performing artist and rapper and a citizen and resident of Memphis, Tennessee.

3. Defendant Brandon Cottrell, professionally known as Brandon Mimms, is the personal manager for Mr. Mims, and is a citizen and resident of Memphis, Tennessee.

4. Inevitable Entertainment, LLC (“IE LLC”) is a limited liability company organized under the laws of the State of Tennessee with its principal place of business in Memphis, Tennessee. Upon information and belief, Mr. Mims and Mr. Cottrell are officers and members of IE LLC.

5. Defendant Jordan Tower, individually and doing business as Jordan Tower Films (“JTF”), is, upon information and belief, a citizen and resident of Stamford, Connecticut.

6. This Court has subject-matter jurisdiction of this cause pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101, *et seq.*

7. This Court has personal jurisdiction over Defendants because Defendants are conducting business in the State of Tennessee by recording, copying, selling and/or performing music and/or video embodying the creative work at issue via interactive online sales and performances of the creative work and thus have engaged in conduct that has caused injury in this State and have otherwise availed themselves of the jurisdiction of this Court pursuant to Tenn. Code Ann. § 20-2-214.

8. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise to the claims occurred in this judicial district and Defendants are subject to personal jurisdiction within this judicial district.

II. THE CONTROVERSY

9. Plaintiff is a musician and musical artist and, among other musical talents, creates beats and melodies for use in hip hop and rap recordings.

10. On or around November 25, 2008, Plaintiff created a musical composition and sound recording consisting of different percussion instruments, bells, and a distinct melody line (the “Flemming Work”).

11. Plaintiff provided a copy of the Flemming Work to Jermaine Eric Shute (professionally known as “Starlito”), an artist signed to IE LLC, for the sole purpose of Mr. Shute’s non-commercial, demonstration use of the Flemming Work in a “mixed tape” to promote the Flemming Work to record labels and/or representatives on Plaintiff’s behalf. In providing the copy to Mr. Shute, Plaintiff neither issued a license nor assigned any rights with regard to the

Flemming Work, nor did he grant permission to Mr. Shute or any other person or entity to exploit the Work commercially or create any derivative works from the Work.

12. Upon information and belief, without Plaintiff's permission, Mr. Shute provided a copy of the Flemming Work to Mr. Mims and Mr. Cottrell. Mr. Mims and Mr. Cottrell, through their record company, IE LLC, misappropriated the Flemming Work, copied it, and sold, performed and distributed a derivative work of the Flemming Work known as "28 Bars" without Plaintiff's knowledge or permission, infringing on his copyright.

13. "28 Bars" was aptly named, in fact, because it encompasses 28 bars (or measures) of music, the exact 28 bars of the Flemming Work, with the addition of Mr. Mims' voice rapping on top of it. "28 Bars" is thus not only substantially similar to the Flemming Work but encompasses the Flemming Work in its entirety.

14. "28 Bars" appears in a variety of albums offered for sale, download, and online streaming on many online music retail and music streaming service websites, including, without limitation, iTunes, CDUniverse, eMusic, Last.FM, CDBaby, Amazon, Pandora, MOG, Spotify, Rhapsody, Yahoo Music, arismixtapes.com, importcds.com, mp3va.com, livemixtapes.com, datPiff.com, oonly.com, mixbird.com, and mediafiremp3.com. The albums on which "28 Bars" appear include at least *All Things White*, *Crack Muzik*, *DJ Scream Presents Cocaine Muzik 3*, *Official White Label*, *Kocaine Ballads from My S550*, *Southern Slang 16 (Explicit)*, *What I Ball For*, *Cocaine Muzik 3*, *On My Own*, *Yo Gotti — 5 Star General*, *Yo Gotti — Street Pharmacy*, and *DJ Fletch — Yo Gotti Crack Muzik* (collectively, the "Albums"). A true and correct copy of printouts reflecting "28 Bars" as it appears on these Albums is attached hereto as Exhibit A. Where copyright notices are visible on these Albums they are in the name of IE LLC or Mr. Mims.

15. Plaintiff contacted Mr. Cottrell via email on October 24, 2011, bringing the infringement to his attention. Mr. Cottrell did not deny the infringement, but he refused to cease the infringement. Instead, Mr. Cottrell recommended to Plaintiff, in a response email on the same date, that he “go after the people that are actually making money from the songs” and that Mr. Mims and Mr. Cottrell “don’t charge for [the Yo Gotti] mixtapes.” A true and correct copy of that email exchange is attached hereto as Exhibit B.

16. Also without Plaintiff’s knowledge or permission, JTF produced and released a music video encompassing “28 Bars” (the “Video”). This Video was released under the instruction, direction, and supervision of IE LLC, Mr. Mims, and Mr. Cottrell, as well as JTF. The Video is available online at certain websites including, without limitation, YouTube, Dopehood.com, Keepittrill.com, Hiphoplead.com, WorldStarHipHop.com, themixtapedaily.com, YouClubVideo.com, EVERYONE.LOVES.HIPHOP., thafixx.com, and, until recently, on Mr. Mims’s official website, Newyogotti.com. In fact, as recently as Monday, June 2, 2012, Mr. Tower posted the Video on his own Facebook page. A true and correct copy of print-outs reflecting the Video as it appears on these websites is attached hereto as Exhibit C.

17. Defendants’ uses of the Flemming Work in “28 Bars,” the Albums, and the Video, and in any other manner in which “28 Bars” was exploited were not authorized by Plaintiff and constitute willful and intentional copyright infringement.

18. On or about January 4, 2012 (and again on March 21, 2012, after the January 4 letters to Mr. Mims and JTF were returned to Plaintiff’s counsel), Plaintiff’s counsel sent a cease-and-desist letter to Defendants on behalf of Plaintiff, alerting them of the infringement. Plaintiff never received a response from Defendants, and the infringing uses have continued to this day.

19. As a direct and proximate result of Defendants' infringement of the Flemming Work, Plaintiff has incurred damages in an amount to be proven at trial.

20. Plaintiff registered the Flemming Work with the U.S. Copyright Office on September 27, 2011, Registration Number SRu001039766.

COUNT I
Copyright Infringement

21. Plaintiff restates and incorporates herein the allegations set forth in Paragraphs 1-20 above.

22. Plaintiff owns the copyright to the Flemming Work, including the exclusive right to copy, sell, perform, and create derivative works from the Flemming Work.

23. Plaintiff granted no license to Defendants, or any of Defendants' employees or agents, to use the Flemming Work.

24. Plaintiff did not transfer or assign any rights in and/or to the Flemming Work to Defendants, or to any of Defendants' employees or agents.

25. Plaintiff registered the Flemming Work with the U.S. Copyright Office on September 27, 2011.

26. Defendants have published, sold, performed, and/or created derivative works from the Flemming Work and/or works substantially similar or embodying the entirety of the Flemming Work without Plaintiff's permission and in the face of his objections, including, in certain instances, placing their own copyright notices on works encompassing the Flemming Work. By their conduct, Defendants have willfully and intentionally infringed Plaintiff's copyright in the Flemming Work. Defendants' infringing conduct is ongoing, despite notice of infringement.

27. As a direct and proximate result of Defendants' infringements, Plaintiff has been damaged and is entitled to injunctive relief to prevent the infringement of his copyright; impoundment of the infringing articles, his actual damages and any additional profits of the infringers; and pre-judgment interest.

WHEREFORE, Plaintiff demands the following relief:

1. All available remedies set forth in the Copyright Act, 17 U.S.C. §§ 503, 504 and 505, including actual damages, Defendants' profits attributable to the infringements, pre-judgment interest, impoundment of the infringing articles and a preliminary and permanent injunction;
2. Pre-judgment interest; and
3. Such other and further relief as may be appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted;



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