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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YESH MUSIC, LLC,

Case No.: 20-cv-2906

Plaintiff,

ECF CASE

v.

**AMENDED COMPLAINT AND JURY
DEMAND FOR DAMAGES FOR
COPYRIGHT INFRINGEMENT**

TUFTS UNIVERSITY,

Defendant.

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Plaintiff YESH MUSIC, LLC, by and through the undersigned counsel, brings this Amended Complaint and Jury Demand against defendant TUFTS UNIVERSITY for damages based on copyright infringement and related claims pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101, et seq. (“the Copyright Act” or “Act”) and violations of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-05 (the “DMCA”). Plaintiff alleges below, upon personal knowledge as to itself, and upon information and belief as to other matters so indicated.

JURISDICTION AND VENUE

1. This court has Infringing matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).

SPECIFIC JURISDICTION

2. CPLR § 302 (a)(3) authorizes this Court to exercise jurisdiction over nondomiciliaries who commit a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if it: (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.

3. At bar, defendant is nondomiciliary headquartered in Middlesex County, Mass.

4. Defendant infringed plaintiff's exclusive rights to its copyrighted recording *Anything You Synthesize (Ambient)* (the "Copyrighted Recording"); this is a tort committed outside the state.

5. Defendant was put on notice multiple times by YouTube, and by plaintiff, that its copying, distribution, public display, and synchronization of plaintiff's Copyrighted Recording was unlicensed, and the plaintiff was domiciled in this state. Defendant elected to continue to infringe after notice.

6. Defendant should have expected, or should reasonably have expected, its acts to have consequences in this state.

7. The Copyrighted Recording at issue here was used by defendant to promote its services, and overall company.

8. Defendant is a national company and generate substantially all of its revenue from interstate or international commerce.

9. Defendant also regularly does or solicits business, or engage in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state.

10. Jurisdiction is conferred over defendant pursuant to CPLR §§ 302(3)(i) and (ii).

VENUE

11. A plaintiff may bring a case in: “(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. . . ; or, (3) if there is no district in which an action may otherwise be brought . . . a judicial district in which any defendant is infringing to the court’s personal jurisdiction with respect to such action.” 28 U.S.C. § 1391(b)(1)-(3).

12. At bar, a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

DUE PROCESS

13. There are no due process concerns in light of the fact that defendant committed an intentional tort that they knew had an effect in this Judicial District.

14. Defendant frequently contracts with companies in this Judicial District such that it reasonably knows it may be haled into this forum.

PARTIES

15. Plaintiff YESH MUSIC, LLC is a New York limited liability company with a headquarters located at 75-10 197th St, 2nd Floor, Flushing, NY 11366.

16. Upon information and belief, defendant TUFTS UNIVERSITY not for profit educational institution with an administrative office located at 89-91 Curtis Street, Medford, Middlesex County, Massachusetts.

FACTS

17. Plaintiff is the sole beneficial owner by assignment of an original musical composition and recording titled *Anything You Synthesize (Ambient)* - U.S. Copyright Registration No. SR 713-214. See **Exhibit 1**.

18. Defendant is a Massachusetts not-for-profit corporation operating as an independent university.

19. Defendant caused to be produced a video advertisement titled “The Season 2018 - Chapter 3: Culture” which synchronized the Copyrighted Recording without license or authority (the “Infringing Advertisement”). Defendant then distributed and publicly displayed the Infringing Advertisement by posting it to the Tufts Lacrosse YouTube page. See <<https://www.youtube.com/user/JumbosLaxTV/about>>.

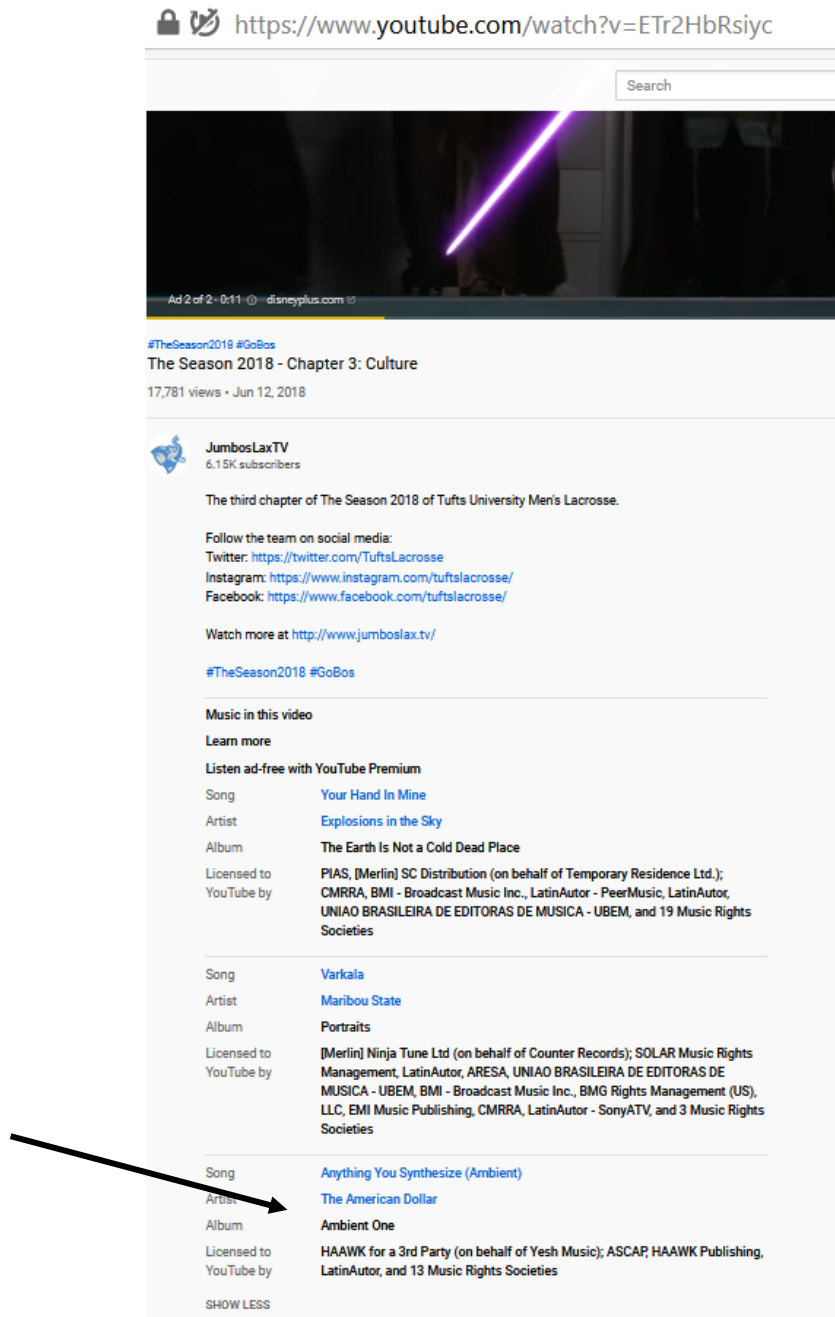
20. Defendant had no authority to use the Copyrighted Recording in any manner.

21. Plaintiff discovered the Infringing Advertisement after significant due diligence on or about May 18, 2020.

22. Plaintiff immediately notified defendant by email, informing defendant that there was no license for its copying, distribution, public display, and synchronization of the Copyrighted Recording.

23. Defendant elected to ignore the notice from plaintiff.

24. Months before plaintiff's May 18, 2020 Notice of Infringement, defendant was put on notice by YouTube as part of the Content ID system. See below.



25. Defendant ignored the YouTube notice and continued to infringe.

26. Plaintiff was forced to retain counsel, and on or about May 30, 2020 counsel for plaintiff sent a Notice to Cease and Desist by email and first-class mail. See **Exhibit 3**.

27. Defendant ignored the Notice from plaintiff's counsel and continued to infringe.

28. Defendant's failure to comply with the notices from YouTube, plaintiff, and plaintiff's counsel evidences defendant's intent to infringe.

29. Defendant knew it was infringing plaintiff's exclusive rights when it synchronized the Copyrighted Recording to the Infringing Advertisement. Defendant knew it was infringing when it uploaded the Infringing Advertisement to YouTube.

30. The Infringing Advertisement is active and available to public as of the date of this Complaint. Defendant will not stop infringing plaintiff's rights unless this Court mandates it.

31. The Infringing Advertisement is a promotional video for defendant's men's lacrosse team

32. Defendant charges an astronomical \$54,318 per year in tuition. The lacrosse team not only attracts students to attend defendant, it also generates hundreds of thousands of dollars a year directly.

33. Defendant did not include any identifying information in the Infringing Advertisement which would have allowed plaintiff to identify defendant's use of the Copyrighted Recording. Specifically, the Infringing Advertisement omits the Copyrighted Recording's title, album name, author, label, and copyright owner.

34. Defendant's removal and/or failure to include any copyright management information after notice is a violation of 17 U.S.C. § 1202 – the DMCA. Plaintiff is entitled to up to \$25,000 for each violation of the DMCA pursuant to Section 1203 of the DMCA.

**FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**

35. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

36. It cannot be disputed that the plaintiff has a valid, registered copyright, and owns all rights to the Copyrighted Recording.

37. Defendant without authority from plaintiff, reproduced, publicly displayed, and/or synchronized plaintiff's Copyrighted Recording in its entirety to the Infringing Advertisement.

38. Defendant created and displayed the Infringing Advertisement for the sole purpose of commercial gain.

39. Defendant refused to cease and desist after multiple demands from plaintiff directly, and through counsel.

40. Defendant's use of the Copyrighted Recording was not for criticism, comment, news reporting, teaching, scholarship, or research.

41. Defendant's use was not transformative.

42. Defendant elected to reproduce, synchronize, and/or distribute plaintiff's Copyrighted Recording, using the entirety of each track, without a license.

43. As a direct and proximate result of defendant's infringement of plaintiff's exclusive rights to the Copyrighted Recording as set forth in Section 106 of the Act, plaintiff has incurred damages, and requests an award of defendant's profits, and plaintiff's loss, plus costs, interest, and attorneys' fees. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement/reckless disregard of up to \$150,000, but not less than \$30,000.

**SECOND CLAIM FOR RELIEF
VIOLATION OF DMCA OF 1998, AS AMENDED,
17 U.S.C. §§ 1201, et seq.**

44. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

45. Section 1202 provides in part: (b) No person shall, without the authority of the copyright owner or the law - (1) intentionally remove or alter any copyright management information, [or] (3) distribute . . . works [or] copies of works . . . knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title. 17 U.S.C. § 1202(b).

46. The DMCA states: “Definition.—As used in this section, the term “copyright management information” means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work: (1) The title and other information identifying the work, including the information set forth on a notice of copyright. (2) The name of, and other identifying information about, the author of a work. (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright. (4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work. (5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer,

performer, or director who is credited in the audiovisual work. (6) Terms and conditions for use of the work. (7) Identifying numbers or symbols referring to such information or links to such information. (8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.” 17 U.S.C. § 1202(C); S.Rep. No. 105-190 (1988), note 18.

47. Plaintiff always distributes its copyrighted recordings, including the Copyrighted Recording here, with copyright management information including the title, author, label, and copyright owner.

48. Defendant could not have obtained a copy of the master recording for the Copyrighted Recording without this information.

49. Master recordings are tightly controlled by plaintiff to prevent unauthorized commercial use – like the Infringing use at issue here.

50. A master recording is an authenticated and unbroken version of a musical Recording (typically 96 kHz / 24 bit) with the highest-possible resolution—as flawless as it sounded in the mastering suite.

51. Defendant’s Infringing Advertisement is synchronized to a very high-resolution copy of the Copyrighted Recording. This high-resolution version cannot be obtained without copyright management information being included.

52. Defendant removed plaintiff’s copyright management information, and copied, synchronized, publicly displayed, and/or distributed the Copyrighted Recording.

53. Defendant failed to include any information which identified the Copyrighted Recording, the author of the Copyrighted Recording, the owner of any right in the Copyrighted Recording, or information about the terms and conditions of use of the Copyrighted Recording.

54. Defendant continued to publicly display the Infringing Advertisement with no attribution after YouTube, plaintiff, and plaintiff's counsel separately informed defendant that it was infringing plaintiff's rights to the Copyrighted Recording.

55. Defendant violated the DMCA each time it wrongfully distributed the Infringing Advertisement.

56. Defendant did the forgoing with the intent to conceal the infringement.

57. Plaintiff seeks award of statutory damages for each violation of Section 1202 of the DMCA in the sum of \$25,000.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendant, and awarding plaintiff as follows:

1. restitution of defendant's unlawful proceeds in excess of plaintiff's compensatory damages;
2. compensatory damages in an amount to be ascertained at trial;
3. statutory damages to plaintiff according to proof, including but not limited to all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), 504(c)(2));
4. an award of statutory damages for each violation by defendant of the DMCA, 17 U.S.C. § 1202;
5. reasonable attorneys' fees and costs (17 U.S.C. § 505);
6. pre- and post-judgment interest to the extent allowable; and,
7. such other and further relief that the Court may deem just and proper.

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

Dated: July 1, 2020
New York, New York

GARBARINI FITZGERALD P.C.

By: 
Richard M. Garbarini (RG 5496)