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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YESH MUSIC, LLC,

Case No.: 19-cv-3198

Plaintiff,

ECF CASE

v.

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

ST. GEORGE UNIVERSITY,

Defendant.

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Plaintiff YESH MUSIC, LLC, by and through the undersigned counsel, brings this Complaint and Jury Demand against defendant ST. GEORGE 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 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 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).
2. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

3. This Court has general jurisdiction over defendant has a primary place of business in Great River, NY.

4. This Court has *in personam* jurisdiction over defendant because the defendant has established contacts within this Judicial District, sufficient to permit the exercise of personal jurisdiction, by publishing infringing audiovisual work on the Internet so it can be used or viewed within this Judicial District in the ordinary course of trade. Upon information and belief, defendant generates significant revenue from New York state.

5. Defendant directs a significant amount of recruiting at New York.

This Court Has Jurisdiction Pursuant to CPLR § 302(a)(3)

6. 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.

7. Defendant synchronized, reproduced, and distributed the subject advertisement through websites like YouTube. This is a tort (copyright infringement) committed without the state.

8. The copyright owner resides in this Queens, NY, and the injury was felt in that Judicial District.

9. Defendant 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.

Jurisdiction is conferred pursuant to CPLR 302(a)(3) subsection (i).

10. Defendant was expressly told there was no license for any use on March 3, 2019 and March 16, 2019. Defendant ignored the notices and continued to synchronize and distribute plaintiff's Copyrighted Composition without a license. Clearly, defendant knew its acts would have consequences in this Judicial District.

11. Jurisdiction is conferred pursuant to CPLR 302(a)(3) subsection (ii).

PARTIES

12. 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.

13. Upon information and belief, defendant ST. GEORGE UNIVERSITY ("ST. GEORGE") is an educational institution with a principal place of business located at 3500 Sunrise Highway, Building 300, Great River, NY 11739.

FACTS

14. Plaintiff is the sole beneficial owner by assignment of an original musical work titled *Starscapes*, which is identified in U.S. Copyright Registration No. SR 713-289 (the "Copyrighted Composition"). See **Exhibits 1 and 2**.

15. Defendant ST. GEORGE copied and synchronized the Copyrighted Composition to an advertisement titled "University Feature: @StGeorgesU" and transmitted the advertisement to the public for performance on its YouTube page located at

<https://www.youtube.com/watch?v=LNdHVY_ps1A> (the “ST. GEORGE Advertisement”), where any visitor to the website could view the promotional advertisement without restriction.

16. Defendant had no license or authority for this, or any, use of the Copyrighted Composition.

17. Plaintiff discovered the ST. GEORGE Advertisement after due diligence on March 3, 2019, and made a demand to remove the video via email on that same day. Defendant ignored the demand.

18. Defendant did not include any identifying information of the Copyrighted Composition, including the song title, author, and owner. Consequently, the ST. GEORGE Advertisement did not appear in dozens of searches conducted each year.

19. On or about March 16, 2019, ST. GEORGE was sent a Notice of Litigation and Demand to Preserve Evidence by counsel for plaintiff. See **Exhibit 3**.

20. ST. GEORGE’s actions, and inaction, fall squarely under the reckless disregard or intentional standard for enhanced damages under Section 504(c) of the Act.

21. ST. GEORGE’s failure to include any copyright management information is a violation of the DMCA.

FIRST CLAIM FOR RELIEF COPYRIGHT INFRINGEMENT

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

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

24. Defendant without authority from plaintiff, reproduced, synchronized, publicly displayed, and/or publicly distributed a video advertisement synchronizing plaintiff's Copyrighted Composition.

25. Defendant refused to produce a license or cease and desist after multiple notices.

26. As a direct and proximate result of defendant's infringement, 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 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.**

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

28. Section 1202 provides in part: (a) no person shall knowingly and with the intent to induce, enable, facilitate or conceal infringement - (1) provide copyright information that is false, or (2) distribute or import for distribution copyright management information that is false. (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(a)-(b).

29. Copyright management information is defined as "information which identifies the work, the author of the work, the owner of any right in the work, or information about the

terms and conditions of use of the work . . . which is attached to a copy of a work or appears in connection with communication of the work to the public.” S.Rep. No. 105-190 (1988), note 18.

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

31. Defendant violated the DMCA each time it wrongfully distributed the ST. GEORGE Advertisements.

32. Defendant violated section 1202, upon information and belief, by abstracting the recording from YouTube thereby removing and/or altering the anti-circumvention software.

33. Defendant did the forgoing with the intent to conceal the infringements.

34. Plaintiff seeks award of statutory damages for each violation of section 1202 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;
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: May 29, 2019
New York, New York

GARBARINI FITZGERALD P.C.

By: 
Richard M. Garbarini (RG 5496)