

## Music Litigation: Case Descriptions

- *ABKCO Music & Record, Inc. v. Stellar Records*, (S.D.N.Y. 1995), *aff'd*, 96 F.3d 60 (2d Cir. 1996): Won a preliminary injunction holding that copyright in a sound recording was infringed by a manufacturer of a karaoke (CD&G) disc which obtained only compulsory license.
- *ABKCO Music Inc. v. Westminster Music Ltd.* (U.S. District Court for the Southern District of N.Y. 1994): Won jury verdict involving synchronization rights to classic Mick Jagger/Keith Richards compositions.
- *Allen v. Beaver Music* (AAA – N.Y.): Won arbitration to recapture the copyright to one of client's best known songs as well as damages. At issue was the construction of a form industry contract from the 1930s.
- *Barrett v. Polygram* (U.S. District Court for the District of N.J.): Pryor Cashman obtained summary dismissal of claims brought by the composer that Polygram's licensing of a song for use in videocassette of the movie "Porky's" exceeded rights granted by composer.
- *BMI v. Claire's Stores*, 754 F. Supp. 1324 (N.D. Ill. 1990), *aff'd*, 949 F. 2d 1482 (7th Cir. 1991): Won judgment on behalf of a retailer sued by BMI for playing radios in its stores without obtaining a performance license. This was a case of first impression, interpreting §110(5) of the Copyright Act of 1976.
- *Bright Tunes Music Corp. v. Harrisongs Music, Ltd.*, 420 F. Supp. 177 (S.D.N.Y. 1976), *aff'd*, *ABKCO Music Inc. v. Harrisongs Music Ltd.*, 722 F.2d 988 (2d Cir. 1983): Won trial establishing that George Harrison's musical composition, "My Sweet Lord", infringed copyright in the song "He's So Fine."
- *Chafir v. Carey* (U.S. District Court for the Southern District of N.Y.): We obtained summary judgment in September 2007 for our clients, Mariah Carey, Jermaine Dupri, Manuel Seal, Johnta Austin, EMI April Music, BMG Songs and others, in a music copyright infringement case regarding the song *It's Like That* from Carey's successful album, *The Emancipation of Mimi*. We moved for summary judgment, arguing that there was no evidence that any of the writers of *It's Like That* had access to plaintiff's song and that the uncontroverted evidence proved the independent creation of this song at a recording studio in Atlanta. We also argued that plaintiff had failed to submit admissible evidence of "striking similarity" under the law and that, based on the testimony of Pryor Cashman's expert, the alleged "similarities" between the two songs were nothing more than generic, commonplace musical elements found elsewhere in popular music.
- *Cherry River Music Co. v. Simitar Entertainment*, 38 F. Supp. 2d 310 (S.D.N.Y. 1999): Obtained a preliminary injunction and recall order on behalf of a music publisher with respect to the defendant's CDs of professional wrestlers' theme music based on the defendant's having failed to properly obtain compulsory licenses and without having obtained negotiated mechanical licenses, despite expert testimony that defendant's actions were consistent with industry custom.
- *Cousins v. EMI, Jay-Z, Kanye West* (U.S. District Court for the Northern District of Ill.): Successfully defended copyright infringement claims brought by the plaintiff and obtained dismissal of his claims with prejudice prior to any discovery.
- *Gaste v. Kaiserman*, 863 F.2d 1061 (2d Cir. 1988): Won trial verdict and appeal for plaintiff in copyright infringement claim against the musical composition entitled "Feelings."
- *Greenfield v. Philles Records Inc.*, 98 N.Y.2d 562, 750 N.Y.S.2d 565 (2002): We obtained a landmark contract and intellectual property law ruling on behalf of record producer Phil Spector and other

defendants against royalty claims by the former group The Ronettes. In a precedent setting opinion, Pryor Cashman achieved an extraordinary result for commercial entities doing business in New York. The state's highest court unanimously reversed a lower court's award that significantly impaired the rights of owners of property and adopted the rule advocated by Pryor Cashman, ensuring broad rights of exploitation for property owners. The court below had found that an owner of intellectual property did not have the right to exploit its property for any purpose not specifically authorized. On appeal, we argued that a party obtaining ownership of property through a contract has the absolute and unrestricted right to use that property in any way it chooses, subject only to express contractual limitations on such use. The New York State Court of Appeals agreed, placing the burden on a grantor to expressly reserve all rights of exploitation not being granted and ruling that the parties' agreement need not list all uses in which the grantee was permitted to engage. The Court also adopted our argument that a party is entitled only to compensation for uses of property for which an agreement expressly provides compensation and that no compensation is due for uses that are not specifically compensable by the agreement. The result obtained by Pryor Cashman reversed a line of decisions holding that an owner of property could not exploit its property in any manner not specifically authorized by the agreement transferring ownership and that a transfer-ring party had the right to compensation for any uses of the property not specifically authorized in the agreement.

- *James v. Universal*, 2005 U.S. Dist. LEXIS 4442 (S.D.N.Y. 2005): Won summary judgment dismissing complaint brought by two songwriters for misappropriation and unjust enrichment, based on proof that the album at issue had never been commercially released or otherwise exploited in the U.S. by the defendants, establishing that court lacked subject matter jurisdiction.
- *Kennedy v. Dante Smith a/k/a "Mos Def"* (N.Y. Supreme Court) (unreported decision): We represented major record and music publishing companies and others in an action brought by a plaintiff claiming producer royalties on the album "Black on Both Sides" by recording artist Mos Def. We succeeded in having the case dismissed.
- *Santrayall v. Burrell, Capitol Records*, 1998 WL 60923 (S.D.N.Y. 1998): Won jury verdict on behalf of the rap artist, M.C. Hammer, in a case where he was charged with copyright infringement related to his composition "Here Comes the Hammer."
- *Scarlet Moon v. Sony Music Entertainment* (California District Court 2004): Represented music publishing companies in defense and settlement of a class action lawsuit, arising out of the terms of the defendants' prior settlement with MP3.com of their copyright infringement claims based on the MP3.com service.
- *Sunenblick v. MCA Records, Inc.*, (*Uptown Records v. Uptown Records*), 895 F. Supp. 616 (S.D.N.Y. 1995), *aff'd*, 101 F.3d 684 (2d Cir. 1996): Won dismissal of a trademark infringement claim brought by a competing jazz record label against popular rap record label Uptown after a full trial.
- *Sylvestre v. Oswald*, 1993 U.S. Dist. LEXIS 7002 (S.D.N.Y. 1993): Summary judgment denied in a music copyright case on issues of access and striking similarity involving the hit song "Heaven."
- *Youngblood v. Score* (U.S. District Court for the Southern District of N.Y. 1999): Won dismissal of plaintiffs' claims of copyright infringement against defendant Warner Bros. relating to the unauthorized use of the plaintiffs' music as background music in a television soap opera after a full trial.