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Pryor Cashman Wins Summary Judgment Dismissing Copyright Infringement Claims Relating To Mariah Carey Hit Song

Pryor Cashman successfully obtained summary judgment for its clients, Mariah Carey, Jermaine Dupri, Manuel Seal, Jhnta Austin, EMI April Music, BMG Songs and others, in a music copyright infringement case regarding the song *It's Like That* from Ms. Carey's successful album, *The Emancipation of Mimi*.

The plaintiff claimed that Ms. Carey and the other writers of the song *It's Like That* had copied plaintiff's song *Sexy*. Plaintiff claimed that Ms. Carey and the other writers had obtained access to her song through her website. Plaintiff also claimed that *It's Like That* was "strikingly similar" to plaintiff's song, such that, if she could not prove that the writers had access to her song, copying could be presumed under the law.

Pryor Cashman partners Donald Zakarin and Ilene Farkas and associate Nia Castelly moved for summary judgment against the plaintiff, 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. Pryor Cashman 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.

On September 14, 2007, Chief U.S. District Judge Kimba Wood of the Southern District of New York agreed and granted Pryor Cashman's motion for summary judgment in its entirety. The Court found that plaintiff had failed to submit admissible evidence that Ms. Carey or anyone else connected with *It's Like That* had ever heard the plaintiff's song prior to the creation of *It's Like That*. To the contrary, there was undisputed and corroborated evidence of the independent creation of *It's Like That*.

Without any proof that the writers of *It's Like That* had access to plaintiff's song, the Court found that plaintiff was required to demonstrate that the two songs at issue were "strikingly similar" – which means that the two songs are so alike that the *only* reasonable explanation for such a great degree of similarity is copying. Judge Wood found that the plaintiff's musicologist had failed to show that the works satisfied the requirements for "striking similarity." Judge Wood also agreed with defendants' musicologist, who found that the alleged similarities between the two songs were merely basic, non-protectible musical elements common to other popular music compositions.

The case was featured on *MTV News.com* on September 26, 2007 in an article entitled "Mariah Carey Wins in Court."

Pryor Cashman's victory was also discussed in the September 24, 2007 edition of *Bloomberg Law Reports - Intellectual Property* in an article entitled "Mariah Carey's 'It's Like That' Does Not Infringe Chafir's 'Sexy.'"