

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CATHERINE MCGANN

Plaintiff,

- against -

PETER GENE HERNANDEZ A/K/A BRUNO MARS
and WARNER MUSIC INC.

Defendant.

Docket No. 1:17-cv-9094

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Catherine McGann (“McGann” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendants Peter Gene Hernandez A/K/A Bruno Mars (“Mars”) and Warner Music Inc. (“Warner” and together with Mars “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of American singer-songwriter Bruno Mars when he was a child Elvis impersonator owned and registered by McGann, a Los Angeles based professional photographer. Accordingly, McGann seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. McGann is a professional photographer in the business of licensing her photographs to online and print outlets for a fee having a usual place of business at 720 South San Fernando Blvd, Unit 106, Burbank, California, 91502.

6. Upon information and belief, Mars is an American singer-songwriter who has won five Grammy Awards, three Brit Awards, and one Guinness World Record with a place of business at 1633 Broadway, New York, New York 10019.

7. At all times material hereto, Mars has operated his Facebook Page at the URL: www.Facebook.com/BrunoMars.

8. At all times material hereto, Mars has operated his Instagram Page at the URL: www.Instagram.com/BrunoMars/.

9. At all times material hereto, Mars has operated his Twitter Page at the URL: www.Twitter.com/BrunoMars/.

10. All together the Mars Websites.

11. Upon information and belief, Warner is foreign business corporation duly organized and existing under the laws of the State of Delaware with a principal place of business at 1633 Broadway, New York, New York 10019. Upon information and belief, Warner is

registered with the New York Department of State, Division of Corporations to do business in the State of New York.

12. Upon information and belief, at all times material hereto, Warner has operated the Mars Websites with Mars.

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

13. McGann photographed American singer Bruno Mars when he was a child Elvis impersonator (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

14. McGann is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

15. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-067-037.

B. Defendant's Infringing Activities

16. On June 21, 2017, Defendant's copied the Photograph and placed it on the Mars Websites.

17. The Photograph on the Instagram website received 1,202,292 likes. See Exhibit B.

18. The Photograph on the Facebook website received 235,356 likes. See Exhibit C.

19. The Photograph on the Twitter website received 63,000 likes and 14,757 Retweets. See Exhibit D.

20. Defendants did not license the Photograph from Plaintiff, nor did Defendants have Plaintiff's permission or consent to publish the Photograph on the Mars Websites.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANTS)
(17 U.S.C. §§ 106, 501)

21. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-20 above.

22. Defendants infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Mar Websites. Defendants are not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

23. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

24. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

25. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;

2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
November 20, 2017

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