

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BLACK AND WHITE ENTERTAINMENT, INC., d/b/a :
“RAH MUZIC” & “RAH RECORDS” :
Plaintiff, :

-against- :

MARVEL ENTERTAINMENT, LLC; :
COLUMBIA PICTURES INDUSTRIES, INC.; :
SONY PICTURES ENTERTAINMENT INC.; :
SONY PICTURES RELEASING CORPORATION; :
SONY PICTURES HOME ENTERTAINMENT INC., and :
TENCENT PICTURES (USA) LLC, :

Defendants. :
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Docket No.

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff Black and White Entertainment, Inc. doing business as “Rah Muzic” and “Rah Records,” by its attorneys, as and for its Complaint against defendants, hereby alleges upon personal knowledge and upon information and belief:

Nature of the Case

1. This is an action for copyright infringement, in violation of 17 U.S.C. ¶¶ 101, *et seq.* arising from the defendants’ unauthorized reproduction, distribution, electronic transmission and public performance of plaintiff’s copyrighted sound recording, *Super Hyphie*, in the blockbuster film, Venom.

Subject Matter Jurisdiction

2. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338(a) because this action arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*

Personal Jurisdiction

3. This Court has personal jurisdiction over defendants because they have directed their activities and marketing of the infringing work discussed herein at New York residents, have entered into transactions giving rise to Plaintiffs' claim in this judicial district, filmed the infringing work in this judicial district, caused harm in this judicial district, infringed Plaintiff's copyright in this judicial district, and targeted, publicly performed, streamed, and sold the infringing work to residents in this judicial district. Defendants thus do continuous and systematic business and/or have a place of business in this Judicial District.

Venue

4. Venue is proper in this Judicial District pursuant to 28 U.S.C 1391(b), 1391(c) and 1400(a) because defendants are subject to personal jurisdiction in this Judicial District and have committed unlawful acts of infringement in this Judicial District.

Parties

5. Plaintiff Black and White Entertainment, Inc. doing business as "Rah Muzic" and "Rach Records" is a corporation organized and existing under the laws of the State of California with principal offices in the State of New York.

6. Upon information and belief, defendant Marvel Entertainment, LLC is a Delaware limited liability company that is authorized to do business in New York and maintains its principal office at 1290 Avenue of the Americas in New York. Marvel Entertainment LLC is engaged among other things, in the business of productions of films and has reproduced, distributed, electronically transmitted and publicly performed Plaintiff's copyrighted sound recording *Super Hyphie* in the infringing film, Venom, in the U.S. and throughout the world, and/or authorized the same.

7. Upon information and belief, defendant Columbia Pictures Industries, Inc.

(“Columbia Pictures”) is a Delaware corporation authorized to do business in New York and that maintains an office in New York, New York. Columbia Pictures is engaged among other things, in the business of productions of films and has reproduced, distributed, electronically transmitted and publicly performed Plaintiff’s copyrighted sound recording *Super Hyphie* in the infringing film, Venom, in the U.S. and throughout the world, and/or authorized the same.

8. Upon information and belief, defendant Sony Pictures Entertainment Inc. is a Delaware corporation authorized to do business in New York. Sony Pictures Entertainment Inc. is engaged among other things, the business of productions of films and has reproduced, distributed, electronically transmitted and publicly performed plaintiff’s copyrighted sound recording *Super Hyphie* in the infringing film, Venom, in the U.S. and throughout the world, and/or authorized the same.

9. Upon information and belief, defendant Sony Pictures Releasing Corporation is a Delaware limited liability company doing business in New York. Sony Pictures Releasing Corporation is engaged in among other things, the business of film distribution and has reproduced, distributed, electronically transmitted and publicly performed plaintiff’s copyrighted sound recording *Super Hyphie* in the infringing film, Venom, in the U.S. and throughout the world, and/or authorized the same.

10. Upon information and belief, defendant Sony Pictures Home Entertainment Inc. is a Delaware corporation authorized to do business n New York. Sony Pictures Home Entertainment Inc., is engaged among other things, in the business of home video distribution and has reproduced, distributed, electronically transmitted and publicly performed plaintiff’s copyrighted sound recording *Super Hyphie* in the infringing film, Venom, in the U.S. and throughout the world, and/or authorized the same.

11. Upon information and belief, defendant Tencent Pictures (USA) LLC (“Tencent”) is a Delaware limited liability company doing business in New York. Tencent is engaged among other things, in the business of producing films and has reproduced, distributed, electronically transmitted and publicly performed Plaintiff’s copyrighted sound recording *Super Hyphie* in the infringing film, Venom, in the U.S. and throughout the world, and/or authorized the same.

Plaintiff’s Ownership of *Super Hyphie*

12. Plaintiff Black and White Entertainment, Inc. doing business as “Rah Muzic” and “Rah Records” is a record label founded in 2004 by Albert Keys.

13. Plaintiff is the copyright owner of the *Super Hyphie* sound recording, copyright registration number SR 869190.

14. Plaintiff first released *Super Hyphie* in 2005:



15. *Super Hyphie* is perhaps the most famous rap/hip-hop recording in the San Francisco Bay Area’s history. The recording reached No. 40 on the Billboard Rhythmic Top 40

chart, and launched the “Hyphy movement” – a style of music and dance that is synonymous with Bay Area hip-hop.

Defendants Infringed *Super Hyphie*

16. On or about October 1, 2018, defendants premiered the infringing film, Venom, in the United States. Defendants subsequently released the film commercially in several other countries on October 3, 2018 and the infringing film was released in China on November 9, 2018.

17. The *Super Hyphie* sound recording was unlawfully copied in the infringing film Venom. The use of *Super Hyphie* in Venom was intentional and part of the film’s producers’ intent to ground the film in the Bay Area.

18. The San Francisco Bay Area is central to Venom’s plot and the film’s poster features the San Francisco – Oakland Bay Bridge on it:



19. Venom's producer, Ruben Fleischer, stated in interviews that he desired to have the film "grounded" in the Bay Area, explaining: "The world in which it takes place, we wanted to feel very grounded and of reality, not a heightened world, but real-life San Francisco – where this journalist unexpectedly goes through a transformation that results in a larger-than-life experience."

20. *Super Hyphie* is reproduced in Venom without authorization at approximately the 20:00 – 21:00 minute marks in the film during a scene depicting a homeless woman selling stolen newspapers, "grounding" the film in San Francisco.

21. A substantial amount of the *Super Hyphie* sound recording is reproduced without authorization during this scene in Venom.

22. Beginning on or about October 5, 2018, each of the defendants unlawfully reproduced, distributed, electronically transmitted, publicly performed and/or authorized the reproduction, distribution, electronically transmission and public performance of the *Super Hyphie* sound recording in the film, Venom, throughout the world and each of the defendants continues to infringe Plaintiff's copyright in the *Super Hyphie* sound recording.

First Cause of Action

(Copyright Infringement – 17 U.S.C. § 101, et seq.)

23. Plaintiff repeats and realleges the allegations set forth above as though set forth fully herein.

24. Defendants' reproduction, distribution, electronic transmission and/or public performances of the *Super Hyphie* sound recording in the film, Venom, and/or authorization of the same, continue and defendants have not compensated or sought permission from plaintiff for the use of its copyrighted sound recording in Venom.

25. The defendants' reproduction, distribution, electronic transmission, public performance of the *Super Hyphy* sound recording, and authorizing others to do the same, infringes plaintiff's exclusive rights under the Copyright Act.

26. The conduct of each of the defendants is knowing and willful.

27. As a proximate result of defendants' wrongful conduct, plaintiff has been irreparably harmed, suffered damage, and defendants have profited in an amount to be determined at trial.

Second Cause of Action
(Permanent Injunction)

28. Plaintiff repeats and realleges the allegations set forth above as though set forth fully herein.

29. Plaintiff has a likelihood of eventual success in this litigation.

30. Plaintiff will suffer irreparable harm if injunctive relief is not granted by this Court.

31. Defendants' infringements of plaintiff's copyright in *Super Hyphy* sound recording are causing irreparable harm to plaintiff.

Demand for Jury Trial

32. Plaintiff respectfully requests a trial by jury on all claims asserted in this Complaint.

Prayer for Relief

WHEREFORE, plaintiff, by its attorneys, respectfully requests that judgment be entered against defendants, jointly and severally, as follows:

- A. For judgment that defendants have violated the Copyright Act and that all such violations have been willful; and
- B. For judgment entering a preliminary and permanent injunction enjoining and restraining defendants and their officers, agents, servants, employees and attorneys and all those in active concert or participation with them, from infringing plaintiff's exclusive rights under the Copyright Act by reproducing,

distributing, electronically transmitting and publicly performing the *Super Hyphie* sound recording, and authorizing others to the same, as part of Venom; and

- C. For judgment assessing defendants for the damages suffered by plaintiff since defendants began infringing *Super Hyphie* on October 5, 2018, including an award of actual damages and defendants' profits attributable to the infringement;
- D. For judgment directing that defendants deliver up for destruction to plaintiff all copies of Venom in their possession or under their control, pursuant to 15 U.S.C. § 1118 and 17 U.S.C. § 503; and
- E. For judgment granting such other, further, and different relief as to the Court may deem just and proper, including plaintiff's costs and reasonable attorneys' fees.

Dated: New York, New York
October 7, 2020

SCHWARTZ, PONTERIO & LEVENSON, PLLC
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