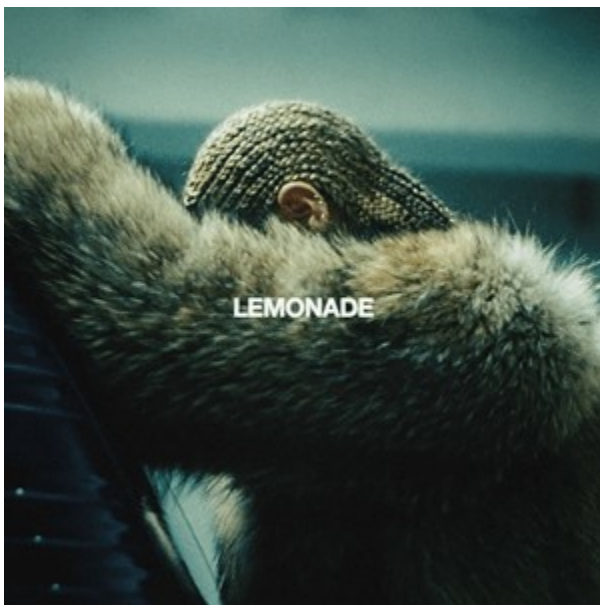


Copyright Claim against Beyoncé Gets Bounced in Scène à faire Tour de Force

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by J. Michael Keyes



R&B sensation Beyoncé can go back to promoting her album *Lemonade* now that a federal court held that a copyright claim against her was nothing but a lemon. While the decision may seem a bit tart to the plaintiff, it is a solid example of how one cannot squeeze scène à faire into a viable copyright claim. Have we got your juices flowing yet? Read on to hear why Beyoncé got this claim bounced.

The plaintiff, Matthew Fulks, is an independent filmmaker and

creative director of a 7 minute short film entitled “Palinoia,” which is about “the pain of a tumultuous relationship.” Earlier this spring, Fulks soured when Beyoncé and her entourage released a 58 minute film to promote her 6th album, *Lemonade*. The film tells the story of an African-American woman’s journey from heartbreak to healing. According to Fulks, Beyoncé’s promotional film copied several scenes from Palinoia. Fulks sued for infringement, and Beyoncé moved to dismiss.

The Hon. U.S. District Court Judge Jed Rakoff—no stranger to presiding over juicy IP disputes—sided with Beyoncé. Although Judge Rakoff observed that “substantial similarity” is often a factual question, he noted that it can be decided by the Court in instances where the similarity between two works concerns only non-copyrightable elements of the plaintiff’s work. This was such a case.

There were 9 different examples of alleged visual similarities. The Court addressed each

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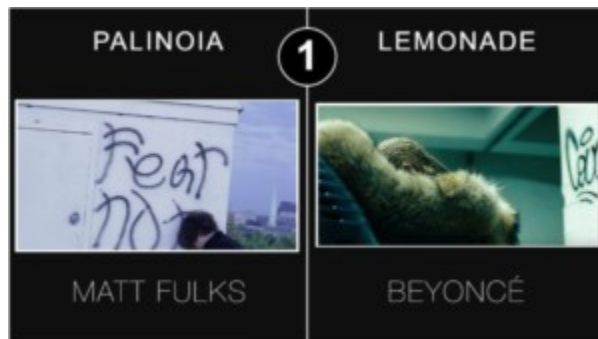
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one and explained how the plaintiff's expression constituted unprotectable ideas or common stock elements that could not be the basis for a copyright infringement claim. The Court's analysis is particularly instructive because screen shots of each of the visual similarities is incorporated into the opinion and then analyzed separately, allowing the reader to easily track the Court's analysis.

For example, take the following "Graffiti and Persons with Head Down" comparison:



These scenes do share some similarities (heads down with faces hidden, both characters in a state of “distress”, graffiti on a white background, and both scenes “shot from the left”). But, as the Court observed, a “state of distress” is an unprotected idea. Moreover, it flows naturally and necessarily that a distressed character would be leaning (as opposed to dancing) against something stable (as opposed to delicate) and that his or her head would be down (as opposed to up).” Finally, the fact that both scenes were “shot from the left” was nothing more than an unprotected idea.

If you are looking for an excellent, recent example of the *scène à faire* doctrine in action, Fulks v. Beyonce is worth your time.