

Epic Dance Moves Win Legal Dance-Off (Mostly)

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by Ryan Meyer



In a recent decision, Judge John R. Padova of the federal court for the Eastern District of Pennsylvania dismissed seven out of eight of the claims brought by musician Leo Pellegrino alleging that Epic Games unlawfully copied his “Signature Move” in its massively popular online

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video game, “Fortnite.” Although Pellegrino’s false endorsement claims survives, this was a significant victory for Epic, since the remainder of Pellegrino’s right of publicity, privacy, unfair competition, unjust enrichment, and trademark claims were dismissed with prejudice. Like several other recent decisions, this decision provides guidance to video game companies seeking to incorporate elements of reality into their games.

Leo Pellegrino is a professional saxophone player and member of the “brass house” band, “Too Many Zooz.” According to Pellegrino’s complaint, “[u]sing [Pellegrino’s]

unique anatomy—specifically his externally rotatable feet—Pellegrino was able to create the Signature Move, a series of movements that express his own unique dancing style” while playing a saxophone. The complaint further alleges that “[b]y executing the Signature Move in concert and festival performances in front of hundreds of thousands of people and in online videos with millions of views, his Signature Move has grown in popularity and has become inextricably linked to his identity.” For those of you who, like me, aren’t particularly hip to the brass house music scene, Pellegrino’s Signature Move looks like this. It’s kind of like a hyperactive version of the dance professional wrestler Junkyard Dog used to do with kids after wrestling matches, but with more foot twisting and a saxophone. Although the Court’s reference to Pellegrino’s “unique anatomy” suggests that a particular anatomy is required to do the dance, having externally rotated feet appears to be somewhat common.



