

Jay-Z Got 99 Problems but the Statute of Frauds Ain't One

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After a six year legal battle, superstar rapper Shawn Carter (“Jay-Z”) and his former partners Damon “Dame” Dash and Kareem “Biggs” Burke successfully defended their use of Roc-A-Fella Records’ iconic logo. *Walker v. Carter, et al.* highlights the importance of keeping reliable written records, and paying attention to the statute of limitations in actions brought under the Copyright Act.

The case involved allegations by Dwayne Walker Jr. that Jay-Z and his partners (1) breached a 1995 contract that provided Walker with 2% of all royalties earned from sales of merchandise including the logo for a ten year period and (2) infringed Walker’s copyright in the logo. The logo includes a stylistic capital “R” over a circle representing a record album and an offset champagne bottle.

The logo was first used on the commercial release of Jay-Z’s 1996 single, *Dead Presidents*, and although it has gone through several iterations, it has remained essentially the same since the 1996 commercial release of Jay-Z’s first full-length album, *Reasonable Doubt*. The controversy appears to have ended on



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October 11, 2018, when the Second Circuit issued a three paragraph Summary Order affirming the District Court's judgment.

To understand the District Court's rulings, some basic background is warranted. According to Walker, he designed the logo in 1995 with the help of three friends: Freddie Mack, Kenny Gonzalez, and Flavius "Flavi" Penchon. Specifically, Walker, who admittedly "wasn't a great illustrator," enlisted Mack to draw the circle representing the album, because "his things come out straight, circles come out circular." He asked Flavi to draw the "R" and Kenny to draw the champagne bottle. Walker himself did not draw any part of the Logo, but allegedly directed the compilation of the three elements as follows:

The album goes behind this, put the R right here, and drop the champagne bottle a little bit off the album but keep it centered so it kind of, the top of what looks like the middle of a album, and that's what we did.

Walker, Flavi, Kenny, and Mack then met at Kinko's, where Kenny used tracing paper to transfer the three elements onto one piece of paper. They made a copy of the traced version and discarded the original drawings and the traced version.

Walker claims the men presented the logo to Jay-Z's partner Dash, who approved of the design. Several days later, Walker claims, he and Dash shook on an agreement in which Walker was to receive two percent royalties, "for the next ten years after the first year of use, as well as \$3500 up front." A few days later Dash paid Walker the \$3500 and Walker wrote out the agreement on a blank piece of paper:

I hereby Dwayne Walker received \$3500 as partial payment for creating the Roc-A-Fella logo in execution of Damon Dash as chief executive officer of Rock-A-Fella Records in which it's agreed if the logo is used after the first year two percent for the next 10 years will be payable to Dwayne Walker.

Walker and Dash allegedly signed the agreement with Walker keeping the only copy and Dash keeping the only copy of the logo. Walker claims that the agreement was subsequently lost in 1998 when his family members cleared out the apartment he had formerly shared with his uncle.

In April 2010, Walker filed a copyright registration for the logo. The deposit copy was not the original drawing, but instead was a reconstruction—a friend of Walker's took a photograph of the logo, "extracted it" and "touched it up" by adding "a black box outline." Walker listed himself as the "author" of the logo design and listed it as "Made for hire." At his deposition, however, Walker said that none of the men who drafted the logo worked for him and that he signed no documents with them regarding ownership.

Jay-Z and his partners disputed Walker's account in its entirety. They claimed that the logo was created by Adrien Vargas, who was hired as Roc-A-Fella's Art Director in 1995.

Vargas was credited with “Design” and “Art Direction” on the commercial releases of *Dead Presidents* and *Reasonable Doubt*, respectively. Roc-A-Fella filed for a trademark registration of the logo on December 3, 1996. Jay-Z and his partners disputed there was ever any agreement for royalties to Walker.

Breach of Contract

Because the alleged agreement between Walker and Dash had been lost in 1998, New York’s Statute of Frauds required Walker to rely on parol evidence to establish its existence. The court treated Walker’s parol evidence with great skepticism, noting:

[Walker] does not present evidence of the existence of the writing sufficient to create a triable issue of material fact. Defendants do not admit the existence of the writing. And the testimony presented by Plaintiff of the alleged writing is alternately contradictory, self-serving, and not based on first-hand knowledge. Plaintiff can present no witnesses to the signing of the agreement, as by his own account, only he and Dash were present with it was drafted and signed.

The court then highlighted the contradictory and self-serving nature of the testimony, and granted Jay-Z and his partners’ motion for summary judgment on the contract claim.

Copyright Infringement

Jay-Z and his partners also moved for summary judgment on Walker’s copyright claim, arguing that the claim was a copyright *ownership* claim rather than a copyright *infringement* claim, and was thus barred by the three year statute of limitations. Unlike an infringement claim, which can be ongoing in nature, an ownership claim accrues only once—“when a reasonably diligent plaintiff would have been put on inquiry as the existence of a right.”

The court began by detailing the overwhelming evidence indicating that Walker’s claim was an ownership claim rather than an infringement claim, stating:

All parties have presented ample evidence that, at the very least, third parties have colorable claims of ownership. For instance, Adrien Vargas testified at length regarding his alleged creation of the Logo. And on the other side, Plaintiff and his witnesses testified that at least three other individuals had a hand in creating the Logo—and that Dash described to Plaintiff the general concept. All of this points to a genuine dispute over both the authorship and the ownership of the Logo.

Once the court determined that the claim was one of ownership, rather than infringement, it addressed the issue of accrual. The court found, drawing all inferences in favor of Walker, that the latest possible date the ownership claim could have accrued was 2007, the latest possible end-date of the purported contract. At the end of the

alleged contract, Walker would have been owed millions of dollars in royalty payments that he did not receive, putting him on notice of the dispute. Because the suit was not filed until 2012, well more than three years after the claim accrued, Jay-Z and his partners' motion for summary judgment on the copyright claim was also granted.