

Swift Shakes Off Copyright Infringement Lawsuit

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Pop artist Taylor Swift shook off a copyright infringement lawsuit filed by Sean Hall and Nathan Butler in the U.S. District for the Central District of California, *Sean Hall d.b.a. Gimme Some Hot Sauce Music, et al. v. Taylor Swift, et al.* Plaintiffs composed the song *Playas Gon' Play*, which was recorded by the all-girl group 3LW that gained popularity in the early 2000s, and released in May 2001. The song peaked at number 81 on Billboard's Hot 100 chart and the album it appeared on sold more than 1 million units. Plaintiffs claimed that Swift's *Shake it Off* copied two brief phrases from the lyrics of the chorus of their song: "*Playas, they gonna play / And haters, they gonna hate /*." No

musical elements were alleged to be copied by Swift and her collaborators.

Plaintiffs acknowledged that the concepts of players and their playing were well-established in pop culture when their song was released, but alleged that the “combination of playas/players playing along with hatas/haters hating ... was completely original and unique” when the song was released in 2001.

Shake it Off, which was written in 2014 by Swift, Karl Martin Sandberg and Karl Johan Schuster and released in August 2014, debuted at number 1 on Billboard's Hot 100 chart and has sold more than 9 million copies. The chorus of *Shake it Off* contains these lyrics: “Cause the players gonna play, play, play, play, play / And the haters gonna hate, hate, hate, hate, hate /.”

The key issue in the case was whether the lyrics “*Playas, they gonna play / And haters, they gonna hate*” are sufficiently original and creative to warrant copyright protection. Short phrases and slogans are generally not protected under federal copyright law, although there are exceptions if they are sufficiently creative – such as a catchy one-liner from a film or play. On January 3, 2018, Swift filed a motion to dismiss, arguing that the phrase “*Playas, they gonna play/And haters, they gonna hate*” is not entitled to copyright protection on this basis.

Given that American culture in the early 2000s was heavily steeped with the concepts of players and player haters and “*playas, they gonna play*” and “*haters, they gonna hate*” were well-known short phrases, not surprisingly, the Court ruled on February 13, 2018 that the lyrics were not sufficiently creative to warrant copyright protection. The combination of these two unprotectable elements intertwined could not establish copyright protection. If you want to create a protectable copyright work from preexisting elements that will not be shaken off, you will need to convert them from merely well-known banal or trivial elements into an original and creative whole.