

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TUFAMERICA, INC. d/b/a TUFF CITY RECORDS,

Index No. 24-cv-2585

Plaintiff,

- against-

COMPLAINT

UNIVERSAL MUSIC PUBLISHING, INC.

JURY TRIAL DEMANDED

Defendant.

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Plaintiff TufAmerica, Inc. d/b/a Tuff City Records (“Plaintiff”), by and through its undersigned attorneys, hereby files this Complaint against Universal Music Publishing, Inc. (“Defendant”), and alleges as follows:

NATURE OF THIS ACTION

1. This is an action for copyright infringement, and for declaratory and injunctive relief.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), as this matter involves, *inter alia*, violation of a federally-registered copyright. Plaintiffs seek a declaratory judgment under the Declaratory Judgment Act pursuant to 28 U.S.C. § 2201.

3. Venue in this district is proper as to Defendant pursuant to 28 U.S.C. § 1391(b)(1), (2) and (3), and New York Civ. Prac. L. & R. §§ 301 and 302(a)(3)(i) and (ii), because Defendant (a) does business from one or more New York City addresses, (b) regularly does and solicits business, and engages in a persistent course of conduct, and derives substantial revenue from goods used or consumed or services rendered, in the state of New York, (c) because Defendant expects or should reasonably expect its services to have consequences in the

state of New York, and (d) because Defendant derives substantial revenue from interstate and international commerce.

THE PARTIES

4. Plaintiff is a New York corporation located at 439 West 43rd Street, New York, New York 10036. Plaintiff owns and administers the copyrights to tens of thousands of musical recordings and compositions from the genres of Blues, Rhythm and Blues, Jazz, Funk, Soul, Hip-Hop, New Orleans and Latin Music, much of which might otherwise fall into obscurity.

5. Defendant is a California corporation and one of the world's leading global music publishers, with places of business at 2105 Colorado Avenue, Santa Monica, California 90404 and 1755 Broadway, New York, New York 10019.

6. Defendant conducts systematic and continuous business in the State of New York, including but not limited to, reproducing, distributing, and publicly performing, and/or authorizing the reproduction, distribution, and public performance of musical compositions.

FACTUAL SUMMARY

7. Plaintiff is owner of all rights in and to the musical composition entitled "Impeach the President," and holds a U.S. Copyright Registration (SR0000136339) in connection with that musical composition and sound recording of the composition.

8. A true and correct copy of Copyright Registration SR0000136339 is attached hereto as **Exhibit A**.

9. The "deposit copy" submitted to the U.S. Copyright Office in connection with the registration was the commercially-released sound recording (in vinyl record format) of the composition.

10. Defendant is the music publisher of the musical composition entitled "Real Love." "Real Love" was recorded by Mary J. Blige for UMG Recordings, Inc. ("UMG").

11. Both the “Real Love” sound recording and the “Real Love” musical composition contain an uncleared sample from “Impeach the President.”

12. Plaintiff has advised Defendant repeatedly of the presence of the uncleared sample from “Impeach the President” in “Real Love,” and Defendant has repeatedly refused to engage Plaintiff in substantive negotiations to rectify the foregoing, let alone agreed to compensate Plaintiff for the past infringement or on an ongoing basis.

13. Defendant’s refusal to cooperate with Plaintiff is difficult to reconcile with the fact that Plaintiff reached an agreement with UMG Recordings, Inc. with respect to the presence of the uncleared sample from “Impeach the President” on the master sound recording of “Real Love.”

AS AND FOR A FIRST CAUSE OF ACTION
(Copyright Infringement)

14. Plaintiff repeats, realleges and incorporates herein by reference each and every allegation contained above as though the same were set forth herein.

15. Plaintiff is the owner of the musical composition “Impeach the President.”

16. Plaintiff holds a federal copyright registration for the musical composition “Impeach the President.”

17. Defendant, or people acting at its direction or under its control, had access to the musical composition “Impeach the President.”

18. Defendant, or people acting at its direction or under its control, without the permission or consent of Plaintiff, and without authority, incorporated an uncleared sample from the musical composition “Impeach the President” into the musical composition “Real Love.”

19. Defendant, or people acting at its direction or under its control, without the

permission or consent of Plaintiff, and without authority, have publicly performed or otherwise exploited an uncleared sample from the musical composition “Impeach the President” by virtue of their public performance or exploitation of the musical composition “Real Love.”

20. Defendant’s conduct constitutes infringement of Plaintiff’s exclusive rights under the Copyright Act, pursuant to 17 U.S.C. § 501, including but not limited to: (A) the right to publicly perform the musical composition “Impeach the President,” 17 U.S.C. § 106(4) (the copyright owner has the exclusive right to perform and authorize others to perform the copyrighted work publicly); and (B) the right to prepare derivative works of the musical composition “Impeach the President,” 17 U.S.C. § 106(2) (the copyright owner has the exclusive right to prepare and authorize others to prepare derivative works based on a copyrighted work).

21. Defendant’s acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiff.

22. As a direct and proximate result of Defendant’s infringement of Plaintiff’s copyright and exclusive rights under copyright, Plaintiff is entitled to its actual damages plus Defendant’s profits from infringement, as will be proven at trial, pursuant to 17 U.S.C. § 504(b).

23. In the alternative, at Plaintiff’s election, Plaintiff is entitled to statutory damages, pursuant to 17 U.S.C. § 504(c), of up to \$150,000.

24. Defendant’s conduct has caused, is causing, and unless enjoined by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction requiring Defendant to immediately stop exploiting the musical composition “Impeach the President,” and by extension the musical composition “Real Love,” and stop making the musical composition “Real Love” available for use by others.

AS AND FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

25. Plaintiff repeats, realleges and incorporates herein by reference each and every allegation contained above as though the same were set forth herein.

26. Pursuant to 28 U.S.C. § 2201, the Court may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is, or could be, sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

27. Plaintiff is the owner of the musical composition “Impeach the President.”

28. Plaintiff holds a federal copyright registration for the musical composition “Impeach the President.”

29. Defendant, or people acting at its direction or under its control, had access to the musical composition “Impeach the President.”

30. Defendant, or people acting at its direction or under its control, without the permission or consent of Plaintiff, and without authority, incorporated an uncleared sample from the musical composition “Impeach the President” into the musical composition “Real Love.”

31. Defendant, or people acting at its direction or under its control, without the permission or consent of Plaintiff, and without authority, have publicly performed or otherwise exploited an uncleared sample from the musical composition “Impeach the President” by virtue of their public performance or exploitation of the musical composition “Real Love.”

32. Defendant’s conduct constitutes infringement of Plaintiff’s exclusive rights under the Copyright Act, pursuant to 17 U.S.C. § 501, including but not limited to: (A) the right to publicly perform the musical composition “Impeach the President,” 17 U.S.C. § 106(4) (the

copyright owner has the exclusive right to perform and authorize others to perform the copyrighted work publicly); and (B) the right to prepare derivative works of the musical composition “Impeach the President,” 17 U.S.C. § 106(2) (the copyright owner has the exclusive right to prepare and authorize others to prepare derivative works based on a copyrighted work).

33. Defendant’s acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiff.

34. Plaintiff repeatedly notified Defendant in writing of Plaintiff’s ownership rights in the musical composition “Impeach the President,” and on February 13, 2024 advised Defendant that if it did not immediately cease and desist from exploiting the musical composition “Impeach the President” by February 23, 2024, Plaintiff would pursue legal action against them.

35. Defendant did not respond to Plaintiff by February 23, 2024.

36. By reason of the foregoing, there is a present controversy between Plaintiff and Defendant regarding Defendant’s infringement of Plaintiff’s copyright in the musical composition “Impeach the President.”

37. Plaintiff seeks a declaration that it is the owner of all rights in and to the musical composition “Impeach the President,” and a declaration that Defendant’s ongoing exploitation of the musical composition “Impeach the President,” through the incorporation of an uncleared sample of the musical composition “Impeach the President” in the musical composition “Real Love” constitutes copyright infringement.

38. Upon entry of an order granting the sought after Declaratory Judgment, Plaintiff requests the Court order Defendant to pay attorney’s fees pursuant to 17 U.S.C. ¶ 505, and expenses incurred by Plaintiff in connection with this action.

AS AND FOR A THIRD CAUSE OF ACTION
(Injunctive Relief)

39. Plaintiff repeats, realleges and incorporates herein by reference each and every allegation contained above as though the same were set forth herein.

40. Plaintiff is the owner of the musical composition “Impeach the President.”

41. Plaintiff holds a federal copyright registration for the musical composition “Impeach the President.”

42. Defendant, or people acting at its direction or under its control, had access to the musical composition “Impeach the President.”

43. Defendant, or people acting at its direction or under its control, without the permission or consent of Plaintiff, and without authority, incorporated an uncleared sample from the musical composition “Impeach the President” into the musical composition “Real Love.”

44. Defendant, or people acting at its direction or under its control, without the permission or consent of Plaintiff, and without authority, have publicly performed or otherwise exploited an uncleared sample from the musical composition “Impeach the President” by virtue of their public performance or exploitation of the musical composition “Real Love.”

45. Defendant’s conduct constitutes infringement of Plaintiff’s exclusive rights under the Copyright Act, including but not limited to: (A) the right to publicly perform the musical composition “Impeach the President,” 17 U.S.C. § 106(4) (the copyright owner has the exclusive right to perform and authorize others to perform the copyrighted work publicly); and (B) the right to prepare derivative works of the musical composition “Impeach the President,” 17 U.S.C. § 106(2) (the copyright owner has the exclusive right to prepare and authorize others to prepare derivative works based on a copyrighted work).

46. Defendant’s acts of infringement have been willful, intentional, and purposeful, in

disregard of and indifferent to the rights of Plaintiff.

47. As a direct and proximate result of the copyright infringement and other violations detailed herein, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining and restraining Defendant, and anyone acting at its direction or under its control, from infringing Plaintiff's copyright in the musical composition "Impeach the President," pursuant to 17 U.S.C. § 502 and common law principles of contract law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff TufAmerica, Inc. d/b/a Tuff City Records, prays for judgment against Defendant Universal Music Publishing, Inc. as follows:

1. Damages to Plaintiff for Defendant's willful infringement of Plaintiff's copyright in the musical composition "Impeach the President";
2. Declaratory Judgment that Plaintiff is the owner of the copyright in the musical composition "Impeach the President," that Defendant has infringed Plaintiff's copyright in the musical composition "Impeach the President," and that Defendant must pay Plaintiff for the damages arising from said infringement;
3. For preliminary and permanent injunctive relief enjoining and restraining Defendant, and anyone acting at its direction or under its control, from further exploiting the musical composition "Impeach the President";
4. For pre- and post-judgment interest according to law;
5. For reimbursement of Plaintiff's expenses, including attorney's fees, incurred in connection with the enforcement of its rights; and
6. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: New York, New York
April 4, 2024

PARNESS LAW FIRM, PLLC

By: /s/ Hillel I. Parness
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*Attorneys for Plaintiff TufAmerica, Inc.
d/b/a Tuff City Records*



COPY OF REGISTRATION

SR 136-339

NOTE: due to the nature of the storage medium (microfilm), the attached photocopies are the best possible copies available.

FORM SR
UNITED STATES COPYRIGHT OFFICE
REGISTRATION NUMBER

SR **136 339**

EFFECTIVE DATE OF REGISTRATION
NOV 25 1991
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK "Impeach The President" / (as performed by The Honey Drippers)
"Roy C.'s Theme Song"

PREVIOUS OR ALTERNATIVE TITLES Alaga Records AL 1017

NATURE OF MATERIAL RECORDED See instructions

- Musical Musical-Dramatic
- Dramatic Literary
- Other

NAME OF AUTHOR Roy C. Hammond (a/k/a Roy C.,, and a/k/a The Honey Drippers)

DATES OF BIRTH AND DEATH
Year Born 1934 Year Died

Was this contribution to the work a work made for hire? Yes No
AUTHOR'S NATIONALITY OR DOMICILE
Name of Country USA
OR Citizen of Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed
sound recording, performance, composition

DATES OF BIRTH AND DEATH
Year Born Year Died

NAME OF AUTHOR
Was this contribution to the work a work made for hire? Yes No
AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR Citizen of Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

DATES OF BIRTH AND DEATH
Year Born Year Died

NAME OF AUTHOR
Was this contribution to the work a work made for hire? Yes No
AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR Citizen of Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 1973
DATE AND NATIONALITY OF FIRST PUBLICATION OF THIS PARTICULAR WORK October 1, 1973 USA

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2
Tuff City Records
161 West 54th Street, Suite 704
New York, NY 10019.

APPLICATION RECEIVED NOV 25 1991
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED NOV 25 1991
REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.
by written agreement

MORE ON BACK Complete all applicable spaces (numbers 5-9) on the reverse side of this page. See detailed instructions. Sign the form at item 8.

DO NOT WRITE HERE OFFICE USE ONLY
DO NOT WRITE HERE
Page 1 of 2 pages

NOTE Under the law

04798616

04798616

SR 136 339

EXAMINED BY

FORM SR

CHECKED BY

CORRESPONDENCE
Yes

DEPOSIT ACCOUNT
FUNDS USED

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

This is the first published edition of a work previously registered in unpublished form

This is the first application submitted by this author as copyright claimant

This is a changed version of the work, as shown by space 6 on this application

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work, complete only 6b for a compilation

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates ▼

See instructions
before completing
this space

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account
Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent Name Address Apt./City/State/Zip ▼

Tuff City Records

161 West 54th Street, Suite 704

New York, NY 10019

Att: Aaron Fuchs

Area Code & Telephone Number ▶

(212) 262-0385

Be sure to
give your
daytime phone
number

CERTIFICATION I, the undersigned, hereby certify that I am the

Check one ▼

author

other copyright claimant

owner of exclusive right(s)

authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▼

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date

Aaron Fuchs

date ▶ November 21, 1971



Handwritten signature (X) ▼

X

Aaron Fuchs

MAIL
CERTIFI-
CATE TO

Certificate
will be
mailed in
window
envelope

Name ▼	Tuff City Records
Number/Street/Apartment Number ▼	161 West 54th Street, Suite 704
City/State/ZIP ▼	New York, NY 10019

Complete all necessary spaces
 Sign your application in space 8
 REGISTERED MAIL
 REGISTERED MAIL PERMIT NO. 1000
 1. Application form
 2. Non-refundable \$10 filing fee in check or money order payable to Register of Copyrights
 3. Deposit material
 MAIL ROOM
 Register of Copyrights
 Library of Congress
 Washington, D.C. 20559

* 17 USC § 506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409 or in any written statement filed in connection with the application, shall be fined not more than \$2,500