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Macklemore Beats Copyright Suit Over 'Thrift Shop'

By **Bill Donahue**

Law360 (April 24, 2019, 5:26 PM EDT) -- Hip hop duo Macklemore and Ryan Lewis won a ruling Tuesday tossing out a lawsuit that claimed they illegally sampled from a New Orleans jazz artist when they created hits like "Thrift Shop."

A Louisiana federal judge granted the two stars summary judgment in a lawsuit filed in 2017 by Paul Batiste, a Big Easy musician who accused them of borrowing from his songs when producing "Thrift Shop" and four other tracks.

The songs, the judge said, simply did not sound similar enough to constitute copyright infringement.

"After performing a listening comparison of each of Mr. Batiste's songs and the work that allegedly infringes it, and aided by the guidance of the defendants' expert musicologists, the court finds that the plaintiff has failed to demonstrate 'striking similarity' or any instances of sampling," U.S. District Judge Martin L.C. Feldman wrote.

Crucially, the judge ruled that Batiste had failed to show that Macklemore and Lewis ever heard his songs. Under copyright law, that means Batiste would have needed to show that the songs were not just alike but "strikingly similar" to win the case.

Analyzing each song, Judge Feldman ruled that Batiste had fallen well short of meeting that difficult burden.

"Mr. Batiste also alleges that 'Thrift Shop' infringes the hook and melody of 'World of Blues' to create its 'distinctive saxophone melody,'" the judge wrote. "With respect to this pairing, the court was unable to identify any similarity whatsoever."

Batiste, the uncle of "Late Show" bandleader Jon Batiste, sued Macklemore and Lewis in May 2017, claiming "Thrift Shop," "Can't Hold Us" and three other songs improperly sampled from 11 of his existing songs.

"Thrift Shop" and "Can't Hold Us" are the duo's two biggest hits. The former was their breakout hit, reaching number one on the Billboard Hot 100 and reaching 1.3 billion listens on YouTube. The latter song, released a year earlier, was a sleeper hit that also topped the charts.

"The plaintiff is disappointed with the court's ruling, but is looking forward to, and has confidence in, the appellate process," DaShawn Paul Hayes, counsel for Batiste, said.

Counsel for the defendants declined to comment on Wednesday.

Macklemore — whose real name is Ben Haggerty — and Ryan Lewis and other defendants are represented by Mary Ellen Roy and Dan Brian Zimmerman of Phelps Dunbar LLP and by Barry I. Slotnick, Erin Smith Dennis, Chris Carbone and Sara Slavin of Loeb & Loeb LLP.

Paul Batiste, doing business as Artang Publishing LLC, is represented by DaShawn Paul Hayes of the Hayes Law Firm PLC.

The case is *Batiste v. Lewis et al.*, case number 2:17-cv-04435, in the U.S. District Court for the

Eastern District of Louisiana.

--Editing by Nicole Bleier.

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