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Macklemore Wants Fees After Failed 'Thrift Shop' Case

By **Bill Donahue**

Law360 (May 14, 2019, 6:32 PM EDT) -- Hip-hop duo Macklemore and Ryan Lewis want their legal bills reimbursed after beating an "objectively baseless" copyright lawsuit that claimed "Thrift Shop" and other hits featured illegal samples.

In a motion for attorney fees filed Monday, the pair said a Louisiana federal judge should punish their accuser — a New Orleans jazz artist named Paul Batiste — both for bringing the infringement suit and for how his attorneys litigated it.

The two are asking for \$149,358 in fees and costs.

"Defendants are seeking only a fraction of the fees and expenses they incurred and submit that such relief is warranted because plaintiff's claims were objectively baseless and unreasonable from the outset, and both plaintiff and his counsel engaged in egregious misconduct," Macklemore and Lewis wrote.

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

"Thrift Shop" and "Can't Hold Us" are the duo's two biggest hits. The former was their breakout hit, reaching No. 1 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.

Last month, a federal judge easily **granted judgment to the two stars**, saying a comparison of the songs showed far too little in common 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 at the time.

In Monday's request for attorney fees, Macklemore and Lewis pointed to the weakness of Batiste's case and examples of supposed bad behavior by his attorneys, like submitting a "fraudulent expert report" — two key prongs courts often cite when awarded such fees.

The filing also detailed a previous copyright case Batiste filed against "virtually every major record label and music publisher in the country," which a judge later dismissed on the grounds that it "had no realistic chance of success."

"Notwithstanding [the earlier judge]'s admonishment, plaintiff and his counsel proceeded with this meritless litigation," Macklemore and Lewis wrote Monday. "An award of attorneys' fees would beneficially deter, rather than excessively chill, future lawsuits."

On Tuesday, an attorney for Batiste told Law360 that Monday's motion "contained grave misrepresentations" and that the artist "looks forward to opposing this motion."

Attorneys for Macklemore and Lewis did not immediately return a request for comment.

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

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 Adam LoBelia.

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