IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Eddie Lee Richardson, a/k/a Hotwire the Producer, Plaintiff, v. Karim Kharbouch, a/k/a French Montana, Defendant.	No. 19 CV 02321 Honorable Nancy L. Maldonado

MEMORANDUM OPINION AND ORDER

Plaintiff Eddie Lee Richardson brings this action under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq*., against Defendant Karim Kharbouch—a well-known hip hop artist who performs under the name French Montana. Plaintiff claims that Defendant's hit single "Ain't Worried About Nothin'" ("AWAN") was created using the melody of a song that Plaintiff composed and shared online when he was sixteen. Plaintiff alleges that Defendant's public performances of AWAN constitute willful copyright infringement, for which he seeks damages and equitable relief. Currently before the Court are cross-motions for summary judgment. (Dkt. 69) (Plaintiff); (Dkt. 75) (Defendant). For the reasons given below, the Court grants Defendant's motion in part, denies it in part, and denies Plaintiff's motion in full.

Background

Because this case is before the Court on summary judgment, the factual record is framed largely by the parties' Local Rule 56.1 statements and responses, (Dkt. 66-1, 69-1, 79-1), although the Court retains discretion to "consider other materials in the record" where appropriate. Fed. R. Civ. P. 56(c)(3). Regrettably, the parties' filings deviate from Local Rule 56.1 in significant

respects. The Court will discuss the implications of this non-compliance before summarizing the facts of this case. It will then provide a brief overview of the Copyright Act of 1976, which articulates the legal framework governing Plaintiff's claims.

A. Local Rule 56.1

In the Northern District of Illinois, Local Rule 56.1 "guides how parties must marshal evidence at the summary judgment stage." *Flint v. City of Belvidere*, 791 F.3d 764, 766 (7th Cir. 2015). The rule requires movants for summary judgment to file, in addition to a supporting memorandum of law, a "statement of material facts that complies with LR 56.1(d) and that attaches the cited evidentiary material." N.D. Ill. L.R. 56.1(a)(2). Local Rule 56.1(d) requires that the facts in the movant's statement be arrayed in "concise numbered paragraphs," each of which must contain references to the "specific evidentiary material . . . that supports it." N.D. Ill. L.R. 56.1(d)(1)–(2).

In opposing a motion for summary judgment, a non-movant must "file a response" to the movant's statement of material facts "that complies with LR 56.1(e) and that attaches any cited evidentiary material not attached to the" movant's statement. N.D. Ill. L.R. 56.1(b)(2). Local Rule 56.1(e) requires that the non-movant's response "consist of numbered paragraphs corresponding to the numbered paragraphs" in the movant's statement and that each of these paragraphs "set forth the text of the asserted fact (including its citations to the supporting material), and then shall set forth the [non-movant's] response." N.D. Ill. L.R. 56.1(e)(1). Each response must either "admit," "dispute," or "admit in part and dispute in part the asserted fact." N.D. Ill. L.R. 56.1(e)(2). Where the non-movant disputes a fact, he or she must "cite specific evidentiary material that controverts the fact and must concisely explain how the cited material controverts the asserted fact." N.D. Ill. L.R. 56.1(e)(3).

In addition to responding to the movant's statement of material facts, a non-movant may also file a statement of his or her own, setting forth in numbered paragraphs—with citations to the record—any "additional material facts that comp[ly] with L.R. 56.1(d) . . . ." N.D. Ill. L.R. 56.1(b)(3), (d). If the non-movant relies on evidence in the record not attached by the movant to his or her statement of material facts, the non-movant must attach that evidentiary material to his or her response. N.D. Ill. L.R. 56.1(b)(3). The moving party must file a response to the non-movant's statement of additional material facts, if any, and that statement must comply with the same requirements applicable to the non-movant's response to the movant's statement of material facts. N.D. Ill. L.R. 56.1(c)(2).

Local Rule 56.1 serves to "inform the court of the evidence and arguments in an organized way—thus facilitating its judgment of the necessity for trial." *Little v. Cox's Supermarkets*, 71 F.3d 637, 641 (7th Cir. 1995). The rule, promulgated by the Northern District of Illinois pursuant to Federal Rule of Civil Procedure 83(a), is not merely aspirational—it is a rule of procedure like any other, for which the failure to comply can carry severe consequences. *Petty v. City of Chi.*, 754 F.3d 416, 420 (7th Cir. 2014) ("If parties fail to comply with local rules, they 'must suffer the consequences, harsh or not.'" (quoting *Midwest Imports, Ltd. v. Coval*, 71 F.3d 1311, 1317 (7th Cir. 1995)). District judges possess broad discretion to "require strict compliance with Local Rule 56.1," *Flint*, 791 F.3d at 767, and are not required to "scour the record looking for factual disputes." *Thornton v. M7 Aerospace LP*, 796 F.3d 757, 769 (7th Cir. 2015).

Unfortunately, the parties' filings fail to comply with Local Rule 56.1 in significant ways. Plaintiff's Rule 56.1(b)(2) response to Defendant's statement of material facts, for instance, does not specifically respond to each of the facts in Defendant's statement. (Dkt. 79-1). Instead, Plaintiff responds to only one of those facts. While the Court interprets Plaintiff's non-responsiveness as

indicative of his agreement with the remainder of the facts asserted in Defendant's statement, Plaintiff is reminded that Local Rule 56.1 requires a non-movant's response to "set forth the text of" and "admit," "dispute," or "admit in part and dispute in part" each fact asserted by the movant, N.D. Ill. L.R. 56.1(e)(1)–(2).

The most significant departure from Local Rule 56.1 is Defendant's failure to file a response to either Plaintiff's Rule 56.1(a)(2) statement of material facts (filed with Plaintiff's summary judgment motion) or Plaintiff's Rule 56.1(b)(3) statement of additional facts (filed in response to the statement of material facts Defendant included with his summary judgment motion). Local Rule 56.1 makes clear that a party's failure to respond to facts asserted by the movant in a Rule 56.1(a)(2) statement of material facts or by the non-movant in a Rule 56.1(b)(3) statement of additional material facts results in admission, at least for the purpose of ruling on the motion for summary judgment. N.D. Ill. L.R. 56.1(e)(3) ("Asserted facts may be deemed admitted if not controverted with specific citations to evidentiary material."); *Washington v. McDonough*, 2021 WL 1962420, at *3 (N.D. Ill. May 17, 2021) (deeming facts asserted in movant's statement of material facts admitted where non-movant failed to file a response under Local Rule 56.1(b)(2)); *Allied Ins. Co. v. United States*, 2022 WL 4182383, at *5 (N.D. Ill. Sept. 13, 2022) (deeming facts asserted in non-movant's statement of additional material facts admitted where movant failed to file a response under Local Rule 56.1(c)(2)).

In its discretion, the Court will enforce Local Rule 56.1 in this case, with a few exceptions to promote an eventual decision on the merits, and not by a technical default. As will become clearer below, were the Court to deem paragraphs 4, 6, and 7 of Plaintiff's statement of material facts admitted, that decision would all but require the Court to enter summary judgment in Plaintiff's favor. Paragraphs 4 and 6, citing to an expert opinion, state that "AWAN is 'shockingly

similar' to HPW," (Dkt. 69-1, ¶ 4); and that "[i]t is 'extremely unlikely'" that these similarities are attributable to a common source in "the public domain," (*id.* at ¶ 6; Dkt. 66-5). Paragraph 7 states that "[o]rdinary observations by the public confirm that 'there is more than a passing similarity' between AWAN and HPW," and is based on the opinion of a TMZ journalist (or perhaps more than one). (Dkt. 69-1, ¶ 7; Dkt. 66-10).

The Court is not inclined to decide this case on a technicality, and will not strictly enforce Rule 56.1 as to these three facts. The Court takes Defendant's failure to respond as an acknowledgement that these individuals expressed those opinions, not as an admission that those opinions are factually correct. With this exception, the Court deems every other statement of fact in the Local Rule 56.1 filings admitted, save the lone fact to which Plaintiff objected. On that understanding, the Court will now summarize the salient facts bearing on Plaintiff's claims.

B. The Facts

In 2012, Plaintiff Eddie Lee Richardson—then just sixteen years old and an aspiring music producer—composed an original piece of music titled "*Hood* Pushin' Weight" ("HPW"). (Dkt. 69-1, ¶ 1); (Dkt. 72). According to Plaintiff's expert report, HPW is "comprised of an arrangement of seven [musical] motives"—"short musical idea[s] . . . used to develop longer musical expressions like melodies."[1] (Dkt. 69-5, 3–4). With the exception of the "vocal phrase 'Hotwire,'" which Plaintiff interspersed throughout HPW to tag the work as his own, HPW is purely instrumental. (*Id.* at 4); (Dkt. 69-1, ¶ 1).

On October 7, 2012, Plaintiff uploaded HPW to SoundClick.com, an "online audio distribution and music sharing website that enables its users to upload, promote, and share audio."

[1] A melody is "a succession of single notes that develops over an extended period of musical time . . . ." (Dkt. 69-5, 3).

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