

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE**

**SOCIALCOASTER, INC., d/b/a** )  
**BVIRAL** )  
 )  
**Plaintiff,** )  
 )  
**v.** )  
 )  
**KELI NETWORK, INC., d/b/a** )  
**JELLYSMACK,** )  
 )  
**Defendant.** )

**Case No.** \_\_\_\_\_

---

**COMPLAINT**

---

Plaintiff SocialCoaster, Inc., d/b/a BVIRAL (“Plaintiff” or “BVIRAL”) by and through counsel, files this Complaint against Keli Network, Inc., d/b/a JellySmack (“JellySmack” or “Defendant”) and states as follows:

**THE PARTIES**

1. Plaintiff BVIRAL is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1441 US Highway 96 W, Suite 2 #120, Franklin, Tennessee 37064. BVIRAL is a tech-centric media publisher & entertainment studio. Among other things, BVIRAL acquires rights in and monetizes online viral videos. Through this process, BVIRAL obtains exclusive intellectual property rights in these videos.

2. Defendant JellySmack is an entity organized under the laws of the State of Delaware with its principal place of business at 450 Park Ave South, 3rd Floor, New York, NY 10016. Its registered agent for service of process is the Corporation Trust Company, 2109 Orange Street, Wilmington, DE, 19801. JellySmack is an entity in the business of generating and exploiting online content.

## JURISDICTION AND VENUE

3. The Court has personal jurisdiction over Defendant because Defendant has sufficient contacts with this forum such that it has purposefully availed itself of the privilege of conducting activities within this state, including a substantial part of the activities that give rise to Plaintiff's causes of action, all of which were targeted to this forum state.

4. The Court has subject matter jurisdiction over this action because it arises under the laws of the United States pursuant to 28 U.S.C. § 1331.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

## FACTUAL BACKGROUND

### I. INTRODUCTION.

6. This is a Complaint for copyright infringement by BVIRAL against JellySmack for JellySmack's repeated exploitation and monetization of BVIRAL's copyright-protected content.

7. As of the time of the filing of this Complaint, at issue are one hundred and sixty-five (165) infringements of online videos (the "Content") in which BVIRAL has all rights pursuant to exclusive licenses that it has with the third-party creators of each of the videos comprising the Content. Appended hereto as **Exhibit A** is a schedule setting forth each of the videos comprising the Content in which BVIRAL has rights, as well as pertinent information concerning BVIRAL's registered copyrights for each of the videos and pertinent information concerning JellySmack's infringement of the same.

8. Based on the foregoing, and as set forth more fully herein, BVIRAL seeks monetary damages in excess of \$3,750,000.00—including statutory damages and its attorneys' fees and

costs—in addition to injunctive relief restraining JellySmack from engaging in infringing activity relating to BVIRAL’s Content on online platforms and otherwise.

9. JellySmack’s infringement of BVIRAL’s intellectual property rights is ongoing, and JellySmack continues to post, and monetize, content infringing on the rights of BVIRAL. BVIRAL continues to apply for, and be granted, copyright registrations in these additional videos.

10. As a result, BVIRAL expects subsequent amendments this Complaint to account for JellySmack’s continuing and future infringing conduct.

## **II. BVIRAL ACQUIRED EXCLUSIVE RIGHTS IN THE CONTENT.**

11. As set forth above, BVIRAL acquired intellectual property rights in the Content pursuant to a series of Exclusive License Agreements, (each, an “ELA”), with the original creators of each of the videos comprising the Content. As relevant to this action, the terms of each ELA are materially the same. A true and accurate copy of an exemplar ELA, covering a video at issue in this litigation and redacted to exclude information irrelevant to this action, is attached hereto as **Exhibit B**.

12. As set forth in each of the ELAs, BVIRAL obtained “an exclusive, sub-licensable, transferable, royalty-free and irrevocable license” of the Content. (*See* Ex. A, ¶ I.1).

13. The transfer included a broad grant of rights to BVIRAL, including the rights to “manage, use, refrain from using, or alter the [Content] by any and all methods or means” and to allow others to do the same. (*Id.*, ¶ I.2). The ELAs include broad rights for BVIRAL to use the Content in “in Media and throughout Distribution Channels, by itself, its successors or assigns, for any purpose whatsoever as Licensee in its sole discretion may determine.” (*Id.*).

14. Finally, as relevant here, the ELAs grant BVIRAL the right to engage in any-and-all copyright enforcement actions with respect to the Content. As set forth in the exemplar ELA,

the licensors appoint BVIRAL as an attorney-in-fact with respect to the Content, and the licensors allow BVIRAL to:

- i. take any such action as may from time to time be necessary to effect, transfer, or assign the rights granted to [BVIRAL] herein, including without limitation copyright-related actions; and
- ii. enforce all claims and prosecute actions against any and all claims from the past, present, and future use of the [Content] by unauthorized third parties.

(*Id.*, ¶ I.3).

15. In connection with each of the ELAs, the original creators of the Content made certain representations and warranties to BVIRAL relevant to this action and with respect to the Content.

16. First, the creator represented and warranted to BVIRAL that they each “ha[d] the full right, power and authority to enter into, full perform, and grant the rights under Section I.”

(*Id.*, ¶ III.1).

17. Second, the creators represented and warranted that each of them “[was] the sole and exclusive owner of the entire worldwide right, title and interest (including the copyrights and all property rights) in and to” the Content. (*Id.*, ¶ III.2).

18. Third, the creators represented and warranted that they “ha[d] not previously entered into any other agreement in connection with the [Content] and has not done or permitted to be done anything which may curtail or impair any of the rights granted” to BVIRAL under the ELA. (*Id.*, ¶ III.4).

19. Pursuant to the ELAs, BVIRAL has applied for and received copyright registrations for each of the videos comprising the Content. The registration numbers for each of the pieces of material comprising the Content are set forth in the schedule attached hereto as Exhibit A.

### III. BVIRAL & THE CONTENT CREATOR BUSINESS MODEL.

20. Through its ordinary course of business, and pursuant to its rights under the ELAs, BVIRAL polices its intellectual property rights to determine if and when other accounts post or otherwise exploit BVIRAL's materials online.

21. In instances where BVIRAL determines that another user is monetizing material in which BVIRAL has exclusive rights, BVIRAL will submit a takedown to the relevant digital service provider ("DSP") pursuant to the provisions of the Digital Millennium Copyright Act ("DMCA"). *See* 17 U.S.C. § 512(g)(1).

22. In addition to issuing this takedown notice, BVIRAL will, on most occasions, have an employee reach out to the infringing poster. In this communication, BVIRAL will provide evidence of its exclusive rights in the material and request that the infringing poster either evidence its own rights in the material or for the infringing poster to voluntarily remove the material.

23. This rights management process, and BVIRAL's policing efforts in general, are critical to BVIRAL's ultimate success as a business. The material which BVIRAL licenses derives its value from how much exposure it receives online, i.e. how many "view" or "clicks" that a video can generate. Unauthorized use by unlicensed third parties devalues and dilutes the material, causing actual damage to BVIRAL and causing BVIRAL to lose actual revenue each time that material receives exposure outside of BVIRAL and its network.

24. Further, this dampening of the material's value disincentivizes content creators from licensing with and otherwise engaging with BVIRAL, since the protection of content creators' rights is a cornerstone of the value proposition provided by BVIRAL.

25. As a result, BVIRAL must, and does, remain vigilant in protecting the intellectual property rights of itself and its content creator counterparts.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.