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Christopher Jon Sprigman
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Mr. Steven Plinio
GreenbergTraurig, LLP
1840 Century Park East, Suite 1900
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RE: Katy Perry's Claim to Own a Copyright in Left Shark

February 11, 2015

Dear Mr. Plinio:

Thank you for your letter of February 10. It has helped me to better understand your claims. It has not, however, convinced me of their merit.

First, you claim that the Left Shark costume is copyrightable because it is based on the “multiple shark drawings” you say were produced by Katy Perry’s team. The drawings are irrelevant. Sketches of Left Shark may be copyrightable, but that doesn’t make the Left Shark costume copyrightable. A design sketch of a ladies’ dress is copyrightable. And yet as anyone in the U.S. fashion industry will tell you, the dress on the rack is a useful article, which, like a costume, cannot be copyrighted. The drawings of Left Shark would be relevant only if my client had copied them in preparing his sculpture. But he didn’t copy the drawings – not least because he’s never seen them. My client saw only the Left Shark costume. As I explained in my previous letter, the Left Shark costume is an uncopyrightable useful article, and my client is free to copy it.

Second, you suggest that “conceptually separable elements” of the Left Shark costume may be copyrightable. Would you please tell me which elements of the Left Shark costume you believe to be conceptually separable from the costume as a whole? The dorsal fin, perhaps? The gills? The teeth?

When I look at the Left Shark costume, I don’t see “conceptually separable elements.” I see a shark costume. I am obliged to admit that, unlike any shark I’ve seen, the Left Shark costume has legs (and a quick Google search reveals that many other shark costumes have legs). But that doesn’t make the Left Shark costume copyrightable. The Left Shark costume

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has legs because the person inside of it has legs. The legs are not “conceptually separable” from the Left Shark costume. They are integral to its function as a costume.

If you have another argument for why Left Shark is copyrightable, please do let me know. Until then, I cannot advise my client to remove Left Shark from his website or from other websites now featuring it. Nor can I advise him to pay Katy Perry for a license.

Third, you write that Katy Perry is the owner of any copyright that may exist in the Left Shark costume “[p]ursuant to the terms of multiple agreements.” I read this as confirmation that Katy Perry did not design the costume herself, but rather acquired any copyright interest that may exist in the costume (which is, again, very likely none) by transfer of ownership from the designer. The Copyright Act requires all transfers of copyright ownership to be in writing. If you are determined to pursue this doubtful copyright claim, then please provide copies of the agreements you’ve mentioned.

Finally, I should add a word about your unfair competition claim. It is meritless. There is nothing unfair about copying works that are not copyrighted. Indeed, the Supreme Court has recognized a “federal right to copy and to use” works that, like the Left Shark costume, are in the public domain. *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 540 U.S. 806 (2003).

Likewise, I disagree with your suggestion that Katy Perry owns rights in Left Shark because any commercial value my client’s sculptures may have “derives solely from the public’s association of them with Ms. Perry.” That statement misunderstands the source of whatever (probably scant) commercial value Left Shark may possess. No one knew that one of the sharks dancing next to Katy Perry during the Super Bowl halftime show was Left Shark until the Internet told us so. The Internet decided that Left Shark’s flubbed dance moves were hilarious. It gave Left Shark his name, and then it made him into a meme. Left Shark isn’t really about Katy Perry. Unless you’re telling me that she planned this whole thing in advance.

In my previous letter, I stated that my client wants simply to get back to his business. Can we do that now, please?

All best regards,

A handwritten signature in black ink, appearing to be 'CS' or similar initials, written in a cursive style.

Chris Sprigman