



Dua Lipa Sued (AGAIN!) Over Hit Song ‘Levitating’

August 11, 2023

On July 31, 2023, music producer and ElectroSpit talk box inventor Bosko Kante sued international popstar Dua Lipa for copyright infringement in the United States District Court for the Central District of California over her 2020 hit song “Levitating.”^[i] This is the third lawsuit against Dua Lipa over the song, which spent seventy-seven weeks on the Billboard Hot 100 charts.^[ii]

As defined in the Complaint, a talk box is a device which “allows musicians to modify the sound of a musical instrument by shaping the frequency content of the sound and to apply speech sounds (in the same way as singing) onto the sounds of the instrument, and to control the modification of the instrument’s sounds by changing the shape of the mouth, and vocalizing the instrument’s output into a microphone.”^[iii]

Bosko Kante alleges in or about 2019, he was approached by music producer, Stephen Kozmeniuk, who was one of the producers of “Levitating,” to discuss a talk box performance using the ElectroSpit Talk Box to be licensed in connection with “Levitating.” ^[iv] Bosko Kante claims that he “composed, created, and recorded a performance” on the ElectroSpit Talk Box, which “included, among other things, original melodies, and lyrics.”^[v] Despite the lack of a written agreement, Bosko Kante claims it was “explicitly agreed” by oral agreement that any license for his recorded talk-box performance would be limited to use in the original recording of “Levitating,” and no other uses would be allowed, including any other sampling or re-use.^[vi] Bosko Kante alleges that his talk box performance was subsequently incorporated into three remixes, all of which “sampled and incorporated a greater amount” of his work than the original version of “Levitating.”^[vii] The Complaint specifically outlines the successes of the “Levitating” remix featuring American rapper DaBaby, which had 1.6 billion plays on Spotify and over 641,000,000 plays on YouTube.^[viii]

Bosko Kante claims that as a direct and proximate result of the copyright infringement, he is entitled to recover all profits from Dua Lipa, Kozmeniuk, and Warner Brothers Music Group, Corp., which is expected to “be in excess” of \$20,000,000.^[ix] Bosko Kante is also seeking a temporary and permanent injunction.^[x]

This lawsuit is not the first time “Levitating” has faced scrutiny. In March 2022, reggae group Artikal Sound System claimed that Dua Lipa stole the core hook of their 2017 song, “Live Your Life” for “Levitating.”^[xi] On June 5, 2023, District Court for the Central District of California Judge Sunshine Sykes dismissed Artikal Sound System’s copyright suit for failure to adequately plead copying, which requires the copyright plaintiff show the defendant had access to the plaintiff’s work and that there are “probative similarities” between plaintiff’s and

defendant's works.^[xii] Dua Lipa is also involved in active litigation with songwriters L. Russell Brown and Sandy Linzer, who claimed in a March 2022 lawsuit that Dua Lipa stole the track and melody to "Levitating" from their 1979 song "Wiggle and Giggle All Night" and their 1980 song "Don Diablo."^[xiii] Just this week, the District Court for the Southern District of New York denied Dua Lipa's motion to dismiss and ordered the Defendants to file an answer on or before August 29, 2023.^[xiv]

Dua Lipa is not the only popular musician to recently find themselves embroiled in a copyright infringement lawsuit. In May 2023, singer-songwriter Ed Sheeran successfully **defeated a copyright infringement lawsuit** that accused him of copying Marvin Gaye's 1973 classic "Let's Get it On" for his 2014 hit song "Thinking Out Loud." Other stars, such as Justin Bieber, Bad Bunny, and Taylor Swift have also been hit with copyright infringement lawsuits over the last year. Given the potential for large monetary awards in copyright infringement lawsuits, it is likely that high profile cases will continue to be litigated in the courts.

Cullen and Dykman's Intellectual Property team continues to monitor important developments in this case and other trademark and copyright law matters. Should you have any questions about this legal alert, please feel free to contact Karen Levin (klevin@cullenllp.com) at (516) 296-9110 or Ariel Ronneburger (aronneburger@cullenllp.com) at (516) 296-9182.

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

^[i] *Bosko Kante v. Dua Lipa et al*, 2:23CV06186 (C.D. Cal. Jul. 31, 2023).

^[ii] Ramishah Maruf, *Dua Lipa Sued Over Copyright in 'Levitating,'* CNN Business, Aug. 2, 2023, <https://www.cnn.com/2023/08/02/business/dua-lipa-levitating-copyright-lawsuit/index.html#:~:text=Dua%20Lipa%20sued%20over%20copyright%20in%20'Levitating'&text=In%20a%20lawsuit%20>.

^[iii] Complaint at 13, *Bosko Kante v. Dua Lipa et al*, 2:23CV06186 (C.D. Cal. Jul. 31, 2023).

^[iv] *Id.* at 15.

^[v] *Id.* at 16.

^[vi] *Id.* at 18.

^[vii] *Id.* at 26.

^[viii] *Id.* at 28.

^[ix] *Id.* at 42.

^[x] *Id.* at 55.

[xi] Blake Brittain, *Dua Lipa Wins Dismissal of ‘Levitating’ Copyright Lawsuit*, Reuters, June 6, 2023, <https://www.reuters.com/legal/dua-lipa-wins-dismissal-levitating-copyright-lawsuit-2023-06-06/>.

[xii] *Christopher Edward Cope et al v. Warner Records, Inc. et al*, 2:22CV01384 (C.D. Cal. June 5, 2023)(citing *Loomis v. Cornish*, 836 F.3d 991, 995 (9th Cir. 2016)).

[xiii] Bryan Alexander, *Dua Lipa Faces New 'Levitating' Lawsuit Over use of 'Talk Box' Recording in Remixes*, USA Today, Aug. 3, 2023, <https://www.usatoday.com/story/entertainment/music/2023/08/03/dua-lipa-new-levitating-lawsuit-talk-box/70520985007/>.

[xiv] *Lardball Publishing Company, Inc. & Sandy Linzer Productions, Inc., Plaintiffs v. Dua Lipa, Johnathan Lindale Kirk (“Da Baby”) d/b/a Baby Jesus Publishing, Clarence Coffee, Jr., Sarah Hudson, Stephen Kozmeniuk, Sony Music Publishing (US) LLC, Universal Music Corporation, & Warner Records Inc., Defendants.*, No. 22 CIV. 1872 (KPF), 2023 WL 5050951 (S.D.N.Y. Aug. 8, 2023).

Practices

- Intellectual Property

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