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Kiesza's "Hideaway" Music Video the Subject of Copyright Infringement and False Endorsement Lawsuit

BY [BIANCA ACQUAVIVA](#) / ON APRIL 26, 2016

In 2014, Canadian recording artist Kiesza released the music video for "Hideaway," which later became a number one song. The video, which has over 300 million views on YouTube and has been nominated for numerous awards, features the artist dancing around a block in Williamsburg, Brooklyn against a backdrop of graffiti-covered walls.

In a complaint filed against Universal Music Group and Kiesza Rae Ellestad ("Kiesza") in the Southern District of New York on January 12, 2016, Jamie Mitchel Kosse, a street artist better known as Jamie Hef, alleges copyright infringement and false endorsement arising from the prominent use of his street art in the music video. Kiesza has publicly stated that she found the street in Brooklyn that she felt "captured graffiti art and the New York skyline," so she asked her brother to film the video. In the past, Kosse's art has been used by networks and studios such as NBC, CBS, Paramount Pictures, and Universal Studios, but it was licensed for use by these entities. The graffiti art was incorporated into Kiesza's music video without Kosse's permission and continues to be used without compensation. This mural, known as "Frogs, Elephants, Alphabet Demons, Adam and Graffiti HEFS" was created with the permission of the property manager.

The works that were depicted in the video are subjects of valid Copyright Registrations, and Kosse alleges that Kiesza has made reproductions of all of the works, as the music video has been viewed hundreds of millions of times on YouTube and other Internet websites and has been used extensively to promote Kiesza's music recordings and performances, thereby infringing on Kosse's copyrights. Kosse's "tags" "HEFS" and "JHES" were included in the depiction of his work, which he alleges has created a false endorsement that implies he permitted Kiesza's filming of his work when he did not. Kosse alleges that this constitutes false association, trademark infringement and unfair competition under the Lanham Act and false advertising under N.Y. Bus. Law 350 and unlawful deceptive business practices under New York State common law. He argues that his work was chosen because it is "emblematic of the gritty, cool image that Kiesza projects in the 'Hideaway' video."

This lawsuit is the latest of many, as graffiti artists are beginning to assert legal rights to their work. In 2014, David Anasagasti (known as "AholSniffsGlue") filed a complaint for copyright infringement against American Eagle Outfitters for using his murals, which were commissioned as part of the "Wynwood Walls" in Miami, in an advertising campaign without his permission. The advertising campaign depicted a young male model standing in front of

the mural with a spray can of paint. American Eagle settled with Mr. Anasagasti a few months after the complaint was filed. The lawsuit that has likely garnered the most attention is that of Joseph Tierney (known as "Rime") against Moschino and Jeremy Scott arising from Katy Perry's Met Gala gown, which used Rime's artwork without his permission, added Rime's name and fake signature on the gown, and superimposed the Moschino and Jeremy Scott brand name on the gown. Rime claims that not only was his art misappropriated and exploited, his image as a graffiti artist was also tarnished "by inclusion in such a crass and commercial publicity stunt." Attendees of the Met Gala are given a recommended dress code, and Katy Perry disobeyed the dress code by wearing this gown, a decision that garnered a lot of publicity. Notably, Rime stated in the complaint that he is extremely selective when choosing his commercial projects and regularly declines corporate offers to license his work.

Other cases have also been brought in the past year, such as *Williams v. Cavalli* and *Allsop aka Malarko Hernandez aka Malarky v. Ultracor et al.* As pointed out in *Street Art: The Everlasting Divide Between Graffiti Art and Intellectual Property Protection*, "[s]treet art is consistently copied and reprinted on clothing, posters, and merchandise. It is used in other artistic works such as television, film, books, and music videos and is even excavated from its surface for exhibition and sale in auction houses and galleries." As public appreciation for street art rises, it will be interesting to follow how courts treat cases arising from copying, as well as whether or not unsanctioned works will receive the same level of protection as those that are commissioned by the property owner.

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