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# “God Is a Woman” (Allegedly) Guilty of Copyright Infringement: The Merits of Artist Vladimir Kush’s Copyright Lawsuit Against “God Is a Woman” Singer Ariana Grande

BY [SAMANTHA WALD](#) / ON MARCH 13, 2019



A soft-focus scene, displaying the silhouette of a woman dancing inside the burning flame of a thin wax candle,[\[1\]](#) featured in singer Ariana Grande’s “God is a Woman” music video is now the focus of a federal lawsuit for copyright infringement.[\[2\]](#) The lawsuit, filed by Russian-American painter Vladimir Kush, claims that the pop star copied the Las Vegas-based artist’s image of a woman in a candle flame, without his permission, in her “God is a Woman” music video.[\[3\]](#) Kush further asserts that the allegedly infringing scene in Grande’s video is “nearly identical” to the imagery in his copyrighted artwork.[\[4\]](#)

Artist Vladimir Kush alleges that his copyrights in two original artworks were infringed in the music video for “God is a Woman,” the second chart-topping single from the singers Grammy-nominated *Sweetener* album. The artist, whose artworks have been exhibited around the world, asserts that the video directly copies the total concept and feel of, and specific expressive elements from two of his original artworks: *The Candle* and *The Candle 2*.<sup>[5]</sup> Both of Kush’s paintings depict “the silhouette of a woman with raised arms as the wick in the center of the flame of a candle, against a bluish sky with clouds[, where] [t]he light of the flame radiates outward in lines of light [with] the clouds form[ing] a centering ring of sorts around the flame ....”<sup>[6]</sup>

The claims raised in Vladimir Kush’s complaint are based on three segments appearing in different portions of the four-minute “God is a Woman” music video; <sup>[7]</sup> in the scenarios depicted, Grande’s silhouette, embodying the wick of a candle, dances inside a flame that surrounds and rises above her, radiating light “outward into a cloudy blue sky in the background.”<sup>[8]</sup> The depiction, Kush contends, “is strikingly similar to [his] copyrighted Works, using the silhouette of Ms. Grande as the replacement of the woman as the wick in the candle.”<sup>[9]</sup> The artist asserts that “[w]hile there are many ways to depict a woman dancing in the wick of a candle – even with a heavenly background” – the segments appearing in Ariana Grande’s “God is a Woman” video clearly copied, either directly or by close approximation, his expression of this idea.<sup>[10]</sup>

In response to the alleged unauthorized use of his imagery, Vladimir Kush subsequently filed an action for copyright infringement, vicarious copyright infringement, contributory copyright infringement, falsification and removal of copyright management information, false endorsement/association, violations of Nevada’s Deceptive Trade Practices Act, and unjust enrichment.<sup>[11]</sup> The complaint seeks equitable and monetary relief including actual damages and also a preliminary, permanent injunction prohibiting the music video from being further aired or publicized.<sup>[12]</sup>

While Grande has not yet filed any formal response to the complaint, the case nevertheless raises some important questions. To establish a prima facie case for copyright infringement, the plaintiff must prove that he has a valid copyright in his work and that the defendant, by engaging in copying-in-fact and illicit copying, has violated his reproduction right.<sup>[13]</sup> Put differently, “a copyright infringement plaintiff must first show that his work was actually copied, and then must show the copying amounts to an improper or wrongful appropriation.”<sup>[14]</sup> Note, however, that proof of copying alone is not sufficient; a plaintiff must also show that the copying was illicit – that is, that so much of the original composition was copied that it constitutes a wrongful appropriation.<sup>[15]</sup> Here, it seems likely that actual copying can be established, either by direct evidence of copying or by showing that the defendant had reasonable access to the copyrighted works and there are suspicious similarities that are probative of copying between the works.<sup>[16]</sup>

“But the question of substantial similarity, for purposes of whether the copying was wrongful, may well be a key question in the case.”<sup>[17]</sup> Proving substantial similarity does not require exact replication, but can instead be shown where portions of the later work are recognizably based on the infringed work to a lay observer.<sup>[18]</sup> Thus, the test for determining whether such similarity exists is “whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work.”<sup>[19]</sup> Importantly, it is not necessary that every detail be similar; rather, as long as substantial similarity is apparent, infringement exists.<sup>[20]</sup> Accordingly, since Grande “chose to use the same color palette, the same background of a cloudy sky, the same ring effect of the clouds around the flame, the same light beams radiating from the flame, and the same color candle, light fading to dark,”<sup>[21]</sup> it seems likely that substantial similarity can be established.

Moreover, beyond the substantial similarity question, another issue likely to arise in this case is fair use. Whether Ariana Grande’s “God is a Woman” video constitutes a protectable fair use is largely dependent on whether the three, approximately five-second or less, segments of the music video featuring Vladimir Kush’s “woman as the wick in the candle” artwork is transformative.<sup>[22]</sup> In a fair use analysis, a work is transformative if it “adds something new, with a further purpose or different character, altering the original work with new expression, meaning, or message.”<sup>[23]</sup> Thus, when considering transformativeness, the court must determine whether the music videos transformation of a two-dimensional artwork into a three-dimensional environment, in which the live silhouette of a woman, acting as the wick of a candle, dances inside a flame as music plays in a segment of a larger video, is sufficient to render a work a protectable fair use. Note, however, that the courts have “held that merely translating a work into a different medium (for example, taking a two-dimensional black and white photo and creating from it a three-dimensional piece of sculpture) is not alone sufficient to render a work a protectable fair use.”<sup>[24]</sup> Therefore, key to this inquiry is whether the music video truly “manifest[s] an entirely different aesthetic,”<sup>[25]</sup> which alters the original in the creation of “new information, new aesthetics, new insights and understandings” or presents the artwork with “new expression, meaning, or message.”<sup>[26]</sup>

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<sup>[1]</sup> Connor Whittum, *Ariana Grande’s Epic ‘God Is a Woman’ Video, Decoded*, billboard (July 13, 2018), <https://www.billboard.com/articles/news/8465375/ariana-grande-epic-god-is-a-woman-video-decoded>.

[2] Ken Ritter, *An Artist Is Suing Ariana Grande Over an Image in the 'God Is a Woman' Music Video*, Time (Feb. 5, 2019), <http://time.com/5520899/ariana-grande-god-is-a-woman-sued/>.

[3] Dory Jackson, *Ariana Grande Faces Lawsuit Over 'God is a Woman' Music Video*, Newsweek (Feb. 5, 2019, 12:32 PM), <https://www.newsweek.com/ariana-grande-faces-lawsuit-over-god-woman-music-video-1318498>

[4] Clarisse Loughrey, *Ariana Grande sued for copyright infringement over 'God Is A Woman' video*, Independent (Feb. 6, 2019), <https://www.independent.co.uk/arts-entertainment/music/news/ariana-grande-god-is-a-woman-copyright-lawsuit-vladimir-kush-art-infringement-message-input-message-a8765411.html>.

[5] "In 1999, and 2000, [Kush] obtained copyright registration for ... [the] paintings entitled "The Candle" and "The Candle 2." Complaint at 4, Kush v. Grande-Butera, No. 2:19-cv-00186 (D. Nev. Jan. 31, 2019).

[6] *Id.*

[7] *Id.* at 6.

[8] Rachel Crosby, *Ariana Grande accused of copyright infringement by Las Vegas artist*, L.V. Rev.-J. (Feb. 1, 2019, 5:02 PM), <https://www.reviewjournal.com/entertainment/music/ariana-grande-accused-of-copyright-infringement-by-las-vegas-artist-1587518/>.

[9] Complaint, *supra* note 8.

[10] *Id.*

[11] *Id.* at 2.

[12] *Id.* at 14.

[13] See Warner Bros. Entertainment, Inc. v. RDR Books, 575 F. Supp. 2d 513 (S.D.N.Y. 2008).

[14] Kate Lucas, *Artist Sues For Copyright Infringement Over Kendrick Lamar and SZA's New Music Video*, Grossman LLP: Art Law Blog (Feb. 22, 2018), <https://www.grossmanllp.com/artist-sues-for-copyright-infringementnbspover-ke>.

[15] See Arnstein v. Porter, 154 F.2d 464 (2d Cir. 1946).

[16] See Three Boys Music Corp. v. Bolton, 212 F.3d 477 (9th Cir. 2000); see also Ty, Inc. v. GMA Accessories, Inc., 132 F.3d 1167 (7th Cir. 1997).

[17] Lucas, *supra* note 16.

[18] See *Steinberg v. Columbia Pictures Industries, Inc.*, 663 F. Supp. 706 (S.D.N.Y. 1987).

[19] *Id.* at 711 (quoting *Ideal Toy Corp. v. Fab-Lub Ltd.*, 360 F.2d 1021, 1022 (2d Cir. 1966)).

[20] *Id.*

[21] Complaint at 6, *Kush v. Grande-Butera*, No. 2:19-cv-00186 (D. Nev. Jan. 31, 2019).

[22] *Bill Graham Archives v. Dorling Kindersley, Ltd.*, 448 F.3d 605 (2d Cir. 2006).

[23] *Id.* at 608 (quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994)).

[24] *Lucas*, *supra* note 16.

[25] *Cariou v. Prince*, 714 F.3d 694, 706 (2d Cir. 2013).

[26] *Cariou v. Prince*, 714 F.3d 694, 706 (2d Cir. 2013). (citations and some quotation marks omitted).