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ROCK, PIZZA AND POWER TOOLS: A SONG ON HOW TO USE MUSICAL WORKS IN ADVERTISING

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The duo The Black Keys, one of the most popular rock band these days with more than 840 000 copies sold of its last album *El Camino*, which was released in December 2011, is taking the illegal use of its songs very seriously.

The Intro: A Story of Pizza and Power tools

Patrick Carney and Daniel Auerbach, the members of the band, have introduced two lawsuits before the federal court in Los Angeles last June [*Auerbach v. Pizza Hut*, 12-05385, and *Auerbach v. Home Depot*, 2:12-cv-05386, U.S. District Court, Central District of California (Los Angeles), based on the following article: Don Jeffrey, Bloomberg.com : <http://www.bloomberg.com/news/2012-06-22/black-keys-rock-duo-sues-pizza-hut-home-depot-over-songs.html>, June 22, 2012]. In the first lawsuit, the group claims that Pizza Hut has illegally used important parts of the song Gold on the Ceiling in a television commercial for its pizza restaurants. In the other lawsuit, the group claims that The Home Depot has used the song Lonely Boy in a television commercial promoting power tools. Both of these songs are from the popular album *El Camino*.

At the time of writing this article, media report that the group has finally settled these two lawsuits against The Home Depot and Pizza Hut, even though the details of these settlements remain confidential [The Black Keys settle lawsuits against Home Depot, Pizza Hut, Ottawa Citizen, November 28, 2012].

The Verse: An Isolated Case?

This kind of lawsuit is not new, since other artists have filed lawsuits against companies that have illegally used musical works in advertising in the past. In Germany, the rapper Eminem has filed a lawsuit against the automobile maker Audi in 2011 [*Eight Mile Style v. Audi*, Court No. 310 O 185/11], following an unauthorized use of an interpretation of the song Lose Yourself in a television commercial. In the

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United States, Tom Waits has also filed lawsuits against Frito Lay¹ [Waits v. Frito Lay, 978 F. 2d 1093 (9th Cir. 1992).] and Levi Strauss & Co [Karsten Strauss, Forbes.com : <http://www.forbes.com/sites/karstenstrauss/2012/07/02/pizza-hut-home-depot-sued-by-rock-stars/>, July 2, 2012]. for similar unauthorized uses of his musical works.

The Chorus: The Importance of Obtaining a License

The reason why this type of lawsuit goes on being repeated is because the use of music in advertising is not new. It is indeed frequent to see television commercials that feature famous songs as background music in order to draw the attention of potential consumers. However, it is essential to keep in mind that these musical works are protected by copyright. Thus, it is necessary to obtain the consent of the copyright owners on these songs through the appropriate licenses to use them in a commercial context. In the absence of such a license, the unauthorized use of a work will constitute an act of copyright infringement and will expose the infringer to the remedies provided by the *Copyright Act*.

The Bridge: How to Obtain a License?

In Canada, it is necessary to obtain a synchronization license to assemble a musical work in a television commercial. Such a license allows the synchronization of the sound recording of the musical work with the images and other audio elements of a cinematographic work, such as a television commercial or a movie.

Many people may have their say with regard to the grant of a synchronization license on the recording of a musical work, including the publisher, the producer, the authors, the composers or the performers. However, in Canada, it is simpler to first contact the collective societies who specifically administer the reproduction rights on numerous musical works, such as the SODRAC (Society for Reproduction Rights of Authors, Composers and Publishers in Canada).

The Outro: Stay in Tune

Obviously, when in doubt about a particular use of a musical work, it is important to contact your legal counsel specialized in copyright and intellectual property in order to ensure that you are in tune with the applicable law.



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