

Sony Music Entm't v. Vital Pharms., Inc.
Case No. 21-22825-CIV, 2022 U.S. Dist. LEXIS 183358 (S.D. Fl. Sep. 14, 2022)

Year	2022
Court	United States District Court for the Southern District of Florida
Key Facts	Plaintiffs, Sony Music Entertainment and seven other affiliated record labels (collectively, “SME”), own or control a musical catalog of 211 sound recordings. Defendant Vital Pharmaceuticals, doing business as Bang Energy, is an energy drink and sports nutrition supplement company, which is owned and chiefly run by Defendant Jack Owoc. Bang has a substantial social media presence across its official accounts. Bang engages social media influencers to promote and market its related products through videos posted online, which Bang owns through agreements with the influencers. Defendants used their own social media accounts to post at least 286 videos that include short clips from SME’s recordings; and influencers likewise used clips of SME’s music in at least 98 videos that promote Bang. After sending cease-and-desist letters concerning these unlicensed uses, SME sued for copyright infringement. The parties cross-moved for summary judgment.
Issue	Whether using clips of sound recordings in videos posted on social media to promote a commercial product amounts to fair use.
Holding	Because SME addressed fair use only in a footnote in their motion, the court declined to consider whether SME was entitled to summary judgment as to this defense. Instead, the court only considered Defendants’ affirmative fair use arguments to conclude that fair use did not preclude granting summary judgment for SME as to liability. Under the first fair use factor, the purpose and character of the use, the court found that Defendants’ uses served a commercial purpose: to market and sell Bang’s products. The court further concluded that Defendants “characterizing the copyrighted works as providing different entertainment value”—here, using a sound clip to tell a visual story—“does not render the use transformative.” Accordingly, the first factor weighed against fair use. Defendants did not address the second factor, the nature of the copyrighted work. The court found that it weighed against fair use because SME’s works are original and creative works, which are closer to the core of intended copyright protection. On the third factor, the amount and substantiality of the portion used, Defendants argued that Bang’s uses were quantitatively small because they only used, on average, a fifteen-second “snippet” (typically less than 10%) from each of SME’s sound recordings. Nonetheless, the court observed that even a small degree of taking can weigh against fair use if the copying involves an essential part of the copyrighted work. On this point, the court commented that “[i]t can hardly be said that copyrighted works are qualitatively insubstantial simply because they are included in [short] videos.” Thus, the court found that this factor weighed against fair use, or was neutral at best. Considering the fourth factor, the effect of the use upon the potential market for or value of the copyrighted work, the court found that “widespread, uncompensated uses,” like Bang’s, would have a “significant adverse impact” on SME’s ability to get paid for licensing its music. The court rejected Defendants’ arguments that their uses benefited SME by “increasing [] exposure and potential sales” and that SME failed to show market harm. Accordingly, the fourth factor weighed against fair use. In sum, all four factors disfavored fair use.
Tags	Film/Audiovisual; Internet/Digitization; Music; Social Media
Outcome	Fair use not found

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