

In the
United States Court of Appeals
For the Seventh Circuit

No. 11-1708

VINCENT PETERS,
professionally known as VINCE P,

Plaintiff-Appellant,

v.

KANYE WEST, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.

No. 10 C 3951—**Virginia M. Kendall**, *Judge*.

ARGUED MARCH 26, 2012—DECIDED AUGUST 20, 2012

Before EASTERBROOK, *Chief Judge*, and BAUER and WOOD,
Circuit Judges.

WOOD, *Circuit Judge*. In 2006, Vincent Peters, whose stage name is Vince P, wrote, recorded, and distributed a song entitled *Stronger*. The song's title comes from a key line in its "hook" (refrain or chorus). The line in turn draws from an aphorism coined by Friedrich Nietzsche: "what does not kill me, makes me stronger."

Vince P believes that he had an opportunity to “make it” in the hip-hop recording industry—he needed only to find an executive producer. His search led him to John Monopoly, a business manager and close friend of Kanye West, one of hip-hop’s superstars. Vince P sent Monopoly a disc containing a recording of *Stronger*, and even secured a meeting with Monopoly, during which Vince P played his recording of *Stronger* for Monopoly. Monopoly was apparently impressed and agreed to be Vince P’s producer, so long as Vince P was funded by a record label. That funding never materialized, unfortunately, and so the proposed collaboration foundered.

Shortly thereafter, Kanye West released a song entitled *Stronger*. West’s song also features a hook that repeats the Nietzschean maxim. Worse, according to Vince P, West’s song contains several other suspicious similarities to his song. Vince P tried to contact West, but he was turned away by West’s representatives. In response, Vince P registered his copyright in his version of *Stronger* with the U.S. Copyright Office and filed suit against West. The district court dismissed the complaint for failure to state a claim upon which relief can be granted. We agree with the district court that the two songs are not similar enough to support a finding that copyright infringement has occurred, and we thus affirm.

I

Vince P describes himself in the complaint as an up-and-coming hip-hop artist and songwriter. In 2006,

as he was beginning his career in music, he wrote and recorded a song entitled *Stronger*, which is about the competitive—indeed cutthroat—nature of the hip-hop and rap world. For clarity, we refer to this as *Stronger (VP)*. Vince P’s music apparently captured the attention of someone at Interscope Records; that person told him that the company would devote “substantial resources” to producing Vince P’s inaugural album, but only if he could procure the services of a good executive producer.

His search led him to John Monopoly, a well-known producer and—importantly for our purposes—a close friend and business manager to Kanye West. Vince P sent several of his songs to Monopoly, who liked what he heard enough to schedule a meeting. On November 12, 2006, Vince P and Monopoly met at the latter’s home in Chicago, where Vince P played several of his recordings, including *Stronger (VP)*. At the conclusion of their meeting, Vince P left a CD of some of his songs—including *Stronger (VP)*—with Monopoly. Eventually, Monopoly agreed to be Vince P’s executive producer, so long as Interscope Records was willing to fund the recording project. That funding, however, fell through, and so the project stalled.

In July 2007, less than a year after the November 2006 meeting between Vince P and Monopoly, West released his own single titled *Stronger*. (We call this *Stronger (KW)*.) It was a huge hit. The song earned the #1 spot in several Billboard charts, the single sold over three million copies, and it eventually earned West a Grammy

for Best Rap Solo Performance. Vince P, however, was not among its fans. He noticed what he thought were several infringing similarities between his 2006 song and West's more recent release. Vince P also saw that Monopoly was listed as a manager on the notes to West's album GRADUATION, on which *Stronger (KW)* appears. Vince P attempted to contact West, but he was rebuffed by West's representatives, and so he turned to the federal courts. After formally registering his copyright in *Stronger (VP)* with the U.S. Copyright Office, see 17 U.S.C. § 411(a), *Reed-Elsevier v. Muchnick*, 130 S. Ct. 1237, 1241 (2010) (copyright registration, while not jurisdictional, is a substantive requirement of infringement litigation), Vince P sued West in the U.S. District Court for the Northern District of Illinois. That court dismissed Vince P's complaint under Federal Rule of Civil Procedure 12(b)(6), and he now appeals.

II

We review the district court's order granting West's motion to dismiss *de novo*. *Justice v. Town of Cicero*, 577 F.3d 768, 771 (7th Cir. 2009). We "construe the complaint in the light most favorable to the plaintiff," and we therefore draw all plausible inferences in Vince P's favor. *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008). As a practical matter for the present case, this means that we assume as true all of Vince P's allegations regarding Monopoly's early access to Vince P's song and his claims about the close relationship between Monopoly

and Kanye West. We review *de novo* the district court's determinations regarding the similarity between the two songs as well as its ultimate conclusion of noninfringement. *Intervest Constr. Inc. v. Canterbury Estate Homes, Inc.*, 554 F.3d 914, 919-20 (11th Cir. 2008).

Vince P's complaint contains only one claim: his allegation that *Stronger (KW)* infringes his valid copyright in *Stronger (VP)*. Proving infringement of a copyright owner's exclusive right under 17 U.S.C. § 106(1) (the reproduction right) requires proof of "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *JCW Invs., Inc. v. Novelty, Inc.*, 482 F.3d 910, 914 (7th Cir. 2007).

A

Copyright "registration made before or within five years after the first publication of the work shall constitute prima facie evidence of the validity of the copyright." 17 U.S.C. § 410(c). Vince P applied for copyright registration in *Stronger (VP)* on March 28, 2010, which is well within the statutory five-year window beginning in 2006. West appropriately does not challenge Vince P's copyright registration, nor does he otherwise question the validity of Vince P's copyright ownership in *Stronger (VP)*. Vince P has thus made a *prima facie* showing of his ownership in the whole of the lyrics to his song.

Nevertheless, whether the parts of that song that West allegedly copied are, on their own, entitled to copyright

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