



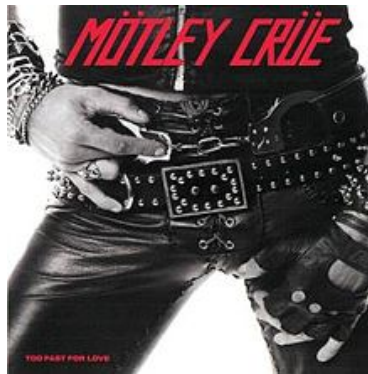
Mötley Crüe Successfully Moves for Dismissal of Suit Involving Copyright in “Too Fast for Love” Album Artwork

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by [Jeffrey A. Wakolbinger](#)

On October 9, 2012, Judge Grady, in the United States District Court for the Northern District of Illinois, dismissed a copyright-infringement action against rock band Mötley Crüe for lack of personal jurisdiction.¹

The suit was brought by Ron Toma, who owns copyrights in certain photographs of band members Vince Neil, Nikki Sixx, Mick Mars, and Tommy Lee. One of those photographs was a close up of singer Vince Neil’s waist area, featuring a prominent studded belt buckle (the “Belt Buckle Image”).



The photograph was taken by Michael Pinter in 1981 and used as the cover artwork for Mötley Crüe’s debut album, “Too Fast for Love.” Toma acquired the copyright in that image in 2008 through assignment. In September 2011, he filed a complaint in the Northern District of Illinois

¹ [Toma v. Motley Crue, Inc., No. 11 C 6766 \(N.D. Ill. Oct. 9, 2012\).](#)



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against Motley Crue, Inc., alleging that the defendants infringed his copyright in the Belt Buckle Image by projecting it on screen during live performances. He later amended the complaint to add the band's touring company, Red White & Crue, Inc, as a defendant. The only specific example of alleged infringement in the complaint is a link to a YouTube video showing live footage from a concert in Las Vegas, during which the Belt Buckle Image was displayed on a screen while the band performed the title track of the album. Defendants moved to dismiss the complaint for lack of personal jurisdiction.

Toma asserted the defendants were subject to general and specific jurisdiction in Illinois. Relying on a declaration submitted by bass player, Nikki Sixx, Defendants asserted that they had no physical or legal presence in Illinois. Toma argued otherwise, citing the band's performances in Illinois, relationships with Illinois vendors, album and merchandise sales in Illinois, and activities related to a settlement agreement resolving a prior lawsuit with Toma in Illinois. (This was actually Toma's third suit against the band, notwithstanding that he apparently was a fan—his declaration stated that he attended Mötley Crüe concerts in Illinois in 1997, 1998, 2000, 2005, and 2006.) The court found these contacts to be "extensive in the aggregate" but not "continuous and systematic" as required to meet "the demanding standard required to subject the defendants to general jurisdiction in Illinois."

Regarding specific jurisdiction, Toma did not contest defendants' assertion that they did not display the Belt Buckle Image during Mötley Crüe's recent Illinois concerts. Instead, he argued the defendants were subject to personal jurisdiction because Toma's claim arose out of an agreement to settle a prior suit he brought in the Northern District of Illinois involving the same image. The court found the existence of a settlement agreement insufficient to establish personal jurisdiction, stating, "This is not a case where the defendants deliberately sought out a business relationship with an Illinois resident." Rather, Motley Crue, Inc. was compelled by law to respond to the earlier suit Toma filed against it. The fact that the case settled through an agreement that provided that it was governed by Illinois law was a factor to consider in the jurisdictional analysis, but the court found it insufficient standing alone.

Toma also argued that jurisdiction was proper because the defendants purposefully availed themselves of the benefits of Illinois by infringing the copyright of a known Illinois resident (Toma). The court disagreed. The "express aiming" test articulated by the Supreme Court in *Calder v. Jones*, 466 U.S. 783, 789–90 (1984), states that a defendant who intentionally and expressly aims tortious actions at a state could reasonably anticipate being haled into court there to answer for its actions. In the Seventh Circuit, "something more" than injury in the forum state is required: the plaintiff must establish "tortious conduct specifically directed at the forum, making the forum the focal point of the tort." *Tamburo v. Dworkin*, 601 F.3d 693, 706 (7th Cir. 2010). The Mötley Crüe defendants displayed the Belt Buckle Image outside Illinois and did not direct their actions to Illinois. Mere knowledge that the copyright holder lives in Illinois is not enough.

While *Home Sweet Home* may be a copyright owner's preferred forum, it is imperative to consider whether the owner can prove jurisdiction over the defendants or risk facing the *Same Ol' Situation*

as Toma and being told to *Just Go Away* after a year of litigation.² The best time to consider those issues is before filing the complaint.

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² *Home Sweet Home*, *Same Ol' Situation*, and *Don't Go Away Mad (Just Go Away)* are some of the dozen Mötley Crüe songs to chart on the Billboard Hot 100 over the years. *Too Fast for Love* (the album) peaked at number 77 on the Billboard 200 album chart in 1987.