

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

Heather Shaffer,

Plaintiff,

___ Civ. _____(____)

v.

**COMPLAINT &
JURY DEMAND**

Carolyn Kavarnos.

Defendant.

Heather Shaffer, by and through her attorneys at PHILLIPS & BATHKE, P.C.,
complains of Carolyn Kavarnos, stating as follows:

Introduction

1. Shaffer brings this lawsuit to recover damages associated with
Kavarnos’ repeated and unjustified submissions of Digital Millenium Copyright
Act (“**DMCA**”) takedowns concerning Shaffer’s videos hosted on the YouTube
platform.

Parties, Jurisdiction & Venue

2. Shaffer lives in Tennessee and is a citizen of that state.

3. Upon information and belief, Kavarnos lives at 191 Anawanda Lake View
Road, Callicoon Center, New York 12724.

4. Kavarnos is a citizen of New York state.

5. This Court has jurisdiction over Kavarnos because, upon information and belief, she is a citizen of the state in which this District is located, she resides within the bounds of this District, and, upon information and belief, she undertook the actions complained of while located in this District.

6. Venue is proper in this District under 28 U.S.C. § 1391 for the reasons stated in ¶ 5.

7. This Court has jurisdiction over the subject matter of this litigation as it concerns the application of federal law, the Copyright Act, as amended. 17 U.S.C. § 101, *et seq.*

Factual Background

Kavarnos' YouTube Business

8. Kavarnos is active on the YouTube platform.

9. Kavarnos regularly posts hours long videos or engages in streaming on YouTube.

10. Much of Kavarnos' content on YouTube focuses on true crime coverage and commentary.

11. Kavarnos also posts content on live trials, shopping, do it yourself projects, home improvement, craft tutorials, and other related content.
12. Kavarnos conducts her YouTube activity using the screen name MommyRamblingsBlog.
13. Kavarnos conducts her YouTube activity as a business and generates revenue directly and indirectly from doing so.
14. Upon information and belief, Kavarnos receives revenue from YouTube for her content creation, subscribers, and views.
15. Upon information and belief, Kavarnos receives revenue from viewers, either through the YouTube platform or directly from them.
16. Upon information and belief, Kavarnos derives revenue from sales of products listed under the "Store" tab of her YouTube channel.
17. Kavarnos has over 42,100 subscribers and has posted at least 4,400 videos on the YouTube platform.

Shaffer's YouTube channel

18. Shaffer also runs a YouTube channel.
19. Shaffer's channel is called Hell to the No.

20. Shaffer has approximately 2,210 subscribers on her channel and has about 99 videos on the YouTube platform.

21. Shaffer engages in editorializing and commentary of other YouTube personalities.

22. Shaffer derives a degree of revenue from her YouTube channel.

Kavarnos DMCA campaign

23. In 2022, Kavarnos began a campaign attacking Shaffer's YouTube channel.

24. Upon information and belief, Kavarnos did so in order to uncover Shaffer's identity.

25. This is not the purpose of the DMCA.

26. On or about March 24, 2022, Kavarnos reported a video "JIMI FALLS - POOR MERB. !SUBSCRIBE!" under the DMCA, alleging it was infringing her copyrights.

27. On information and belief, Kavarnos did not consider whether any supposed infringement of the above video was protected by the fair use doctrine.

28. YouTube took down the video and issued Shaffer a "strike."

29. On or about March 30, 2022, Kavarnos reported several videos: "JIMI FALLS - POOR MERB. !SUBSCRIBE!," "AROUND AND AROUND WE GO," "TAMMY McDI7 NEEDS ATTENTION," "CZECHOSLOVAKIA??? WTF #merb #mommyramblings #natasha," "NAPKIN GATE 2022," "YOUR SON SAID HE DID NOT KNOW HOW TO PRAY," "PART TWO OF MARIE OSMOND," under the DMCA, alleging they were infringing her copyrights.

30. On information and belief, Kavarnos did not consider whether any supposed infringement of the above videos were protected by the fair use doctrine.

31. As a result, YouTube disabled her account.

32. Shaffer then hired an attorney to prepare and submit DMCA counter notices for each of the foregoing videos.

33. Shaffer had to pay that attorney to do so.

34. The counter notices asserted the fair use doctrine.

35. Those counter notices were provided to Kavarnos.

36. Thus, Kavarnos became aware of the fair use doctrine, if she did not know before.

37. Two weeks later, Kavarnos reported several videos: “HOW DARE YOU MERB!!,” “DANGER [caution emoji] FIRE PROJECT W MERB,” “NO Words [grimace emoji],” “WHO GIVES A FLIP,” and “Circling the Drain part one” under the DMCA, alleging they were infringing her copyrights.

38. On information and belief, Kavarnos did not consider whether any supposed infringement of the above videos were protected by the fair use doctrine.

39. YouTube assessed four strikes against Shaffer’s account and scheduled it to be disabled within seven days and barred her from posting more content in the meantime.

40. In late September 2022, Kavarnos reported several videos: “HOW DARE YOU MERB!!”¹ and “WHO GIVES A FLIP” under the DMCA, alleging they were infringing her copyrights.

41. On information and belief, Kavarnos did not consider whether any supposed infringement of the above videos were protected by the fair use doctrine.

¹ For a second time. Kavarnos reports the same videos repeatedly.

42. YouTube assessed strikes against Shaffer's channel and scheduled it to be disabled.

43. In late September 2022, Kavarnos reported several videos: "HOW DARE YOU MERB!," "WHO GIVES A FLIP," "DANGER [caution emoji] FIRE PROJECT W MERB," "NO Words [grimace emoji]," and "Circling the Drain part one" under the DMCA, alleging they were infringing her copyrights.

44. On information and belief, Kavarnos did not consider whether any supposed infringement of the above videos were protected by the fair use doctrine.

45. Shaffer then hired an attorney to prepare and submit DMCA counter notices for the above videos Kavarnos complained of in late September.

46. Shaffer had to pay that attorney to do so.

Count I
Misrepresentation under 15 U.S.C. § 512(f)

47. Shaffer realleges each of the forgoing paragraphs as if fully set forth here.

48. Kavarnos knowingly misrepresented that Shaffer's videos infringed Kavarnos' copyrights.

49. At a minimum, Kavarnos failed to consider whether any of Shaffer's allegedly infringing conduct was subject to the fair use doctrine.

50. Shaffer was damaged by these false statements in that her revenue realization from YouTube necessarily decreased.

WHEREFORE, Heather Shaffer requests this Court:

- A. Enter judgment in her favor and against Carolyn Kavarnos;
- B. Find Carolyn Kavarnos misrepresented to YouTube that Heather Shaffer's videos infringed Carolyn Kavarnos' copyrights;
- C. Award Heather Shaffer damages resulting from Carolyn Kavarnos' misrepresentations to Youtube that Heather Shaffer's videos infringed Carolyn Kavarnos' copyrights;
- D. Award Heather Shaffer reasonable attorneys' fees for the filing of counter notices with YouTube and for this lawsuit under 17 U.S.C. § 512(f)(2);
- E. Award Heather Shaffer reasonable attorneys' fees under 17 U.S.C. § 505;

Plaintiff demands a trial by jury on all counts so triable.

Respectfully,
HEATHER SHAFFER, by

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