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APPELLATE LAWYER of the WEEK

From R&B to Tejano, Lawyer Wins Music Cases

No matter the musical genre, Roland Garcia has a knack for convincing federal judges that his record company clients haven't violated copyright laws by publishing what plaintiffs argue are substantially similar songs.

In fact, he once persuaded U.S. District Court Judge Nancy Atlas that megastar Beyonce's 2003 R&B hit "Baby Boy" wasn't copied from an aspiring singer's demo tape.

And now he's convinced the U.S. Court of Appeals for the Fifth Circuit that his Tejano record company client didn't steal from an old heartbreak song about love letters—even though his client's song contained nearly identical lyrics.

"Cases like this, and even the Beyonce case, are yet another step in the evolution of the law," said Garcia, a shareholder in the Houston office of Greenberg Traurig of his Dec. 14 victory in *Guzman v. Hacienda Records*.

"It's the dilemma faced by record labels. Someone hears a song on the radio and says, 'Hey—that's my song!' And the record label has never heard of that song," Garcia said. "The legal nuances are important to the record industry. Otherwise, there would be no record industry."

The background to the case is as follows, according to the Fifth Circuit's decision.

The dispute involves two Tejano songs, *Triste Aventurera* [*Triste*] and *Cartas de Amor* [*Cartas*]. Each song is about a man who spurns his ex-lover's written effort to rejuvenate a romance. And both songs were written and recorded by artists in Corpus Christi—the hub of Tejano music.

Plaintiff Jose Guzman wrote *Triste* in the early 1970s, registered the song with the U.S. Copyright Office in 1974 and performed the song regularly in Corpus Christi music venues with his band *Los Duendes* from 1974 until 1990.



Garcia

In 1990, Corpus-based Hacienda Records added *Cartas* to its song catalogue after it was recorded by a band called the *Hometown Boys*. *Cartas* opens with the lyrics: "I have in my possession love letters that you have sent me asking for compassion." *Triste* opens with the lyrics: "I have in my possession a love letter that you have sent me asking for compassion."

Guzman heard *Cartas* on a Corpus radio station sometime during the 1990s and surmised that it was his song *Triste*. Years later, he filed a complaint against Hacienda in a Southern District of Texas court claiming the record company had violated his copyright to *Triste*. At trial, Guzman argued that Hacienda had access to *Triste* because radio stations regularly played the song and his band regularly performed it. He also argued that *Triste* and *Cartas* were "strikingly similar."

But the trial judge ruled for Hacienda, citing a lack of corroborating evidence that *Triste* was a popular song and that Hacienda had access to it. The trial judge also ruled that the musical differences between the

songs—as well as a lack of uniqueness or complexity—fatally undercut Guzman's striking similarity argument.

Guzman appealed the rulings to the Fifth Circuit. And the Fifth Circuit affirmed the trial court's ruling finding that there no corroborating evidence that *Triste* was played "thousands" of times on radio stations from 1974 until 1990—which would have proven Hacienda had access to the song.

The Fifth Circuit also ruled that Guzman did not prove the songs were "strikingly similar" even though the songs started out with nearly identical lyrics. The court noted there were a number of differences in the songs including melodic contour, filler music, key, tempo, length and chord structures.

"Absent evidence of uniqueness or complexity, and in light of the expert testimony at trial describing differences in the lyrics and music of the songs, the district court's finding that *Cartas* and *Triste* are not strikingly similar was not clearly erroneous," wrote Carl Stewart, chief judge of the Fifth Circuit.

"What the plaintiffs argued, and what we worried about, was it is true that one line of the song is the same. It's 16 words," said Garcia, who said he walked the court through all the ways the songs were different at oral argument.

"The Fifth Circuit said you don't just look at the lyrics, you look at the totality of the songs," Garcia said. "You can't isolate one feature over others."

David Showalter of Richmond's Showalter Law Firm, who represents Guzman, said he has not decided whether to ask for rehearing in the case.

"Mr. Guzman is 90 years old. He's crushed. In his view, his song's been taken away from him," Showalter said. "Of course the lyrics are identical in the opening. The trial court and the Fifth Circuit kind of gloss over the fact you have the same lyrics."

—JOHN COUNCIL