



# Marvin Gaye's Family Sues EMI Over Robin Thicke's 'Blurred Lines'

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By Eriq Gardner, The Hollywood Reporter | October 30, 2013 3:25 PM EDT

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Marvin Gaye's family is responding in a major way to Robin Thicke's lawsuit claiming that "Blurred Lines" wasn't stolen from Gaye's "Got to Give It Up."

On Wednesday, the family went nuclear with counterclaims that allege that Thicke stole the summer mega-hit and also committed copyright infringement on Gaye's "After the Dance" to create his song, "Love After War." What's more, the new legal papers obtained by The Hollywood Reporter suggest that Thicke's "Marvin Gaye fixation" extends further to more songs in the Thicke repertoire.

Perhaps even more consequential, Gaye's family also has set its sights on EMI April, the song publisher now owned by Sony/ATV that has business relationships with both sides. According to the counterclaims, EMI has breached a contract and its fiduciary duty by failing to protect Gaye's songs, attempting to intimidate the family against filing

any legal action, failing to remain neutral when faced with a conflict of interest and attempting to turn public opinion against the family. The penalty for those acts, says the Gaye family, should be that EMI loses all profits on "Blurred Lines" as well as rights to administer the song catalog of Gaye, known as the "Prince of Soul."



### Thicke & Company v. Marvin Gaye's Family

- Pharrell On 'Blurred Lines'-Marvin Gaye Lawsuit: 'All You Have To Do Is Read The Sheet Music'
- Blurred Legal Lines: Licensing Tangle Between Thicke, Gaye Parties Rolls On
- Robin Thicke Sues to Protect 'Blurred Lines' from Marvin Gaye's Family

This court battle was triggered in August when Thicke and his producers Pharrell Williams and Clifford Harris Jr. went to a California federal court with the aim of preemptively protecting "Blurred Lines" from allegations that it was illegally derived from Gaye's song as well as Funkadelic's "Sexy Ways." Requesting declaratory relief, the plaintiffs stated that "being reminiscent of a 'sound' is not copyright infringement."

In the latest court papers, Frankie Gaye and Nona Gaye say that not only does the lawsuit concern "blatant copying of a constellation of distinctive and significant compositional elements of Marvin Gaye's classic #1 song," but that Thicke himself candidly admitted as much.

The Gayes point to pre-litigation interviews given by Thicke to GQ and Billboard. To the first publication, Thicke said:

*"Pharrell and I were in the studio and I told him that one of my favorite songs of all time was Marvin Gaye's 'Got to Give it Up.' I was like, 'Damn, we should make something like that, something with that groove.' Then he started playing a little something and we literally wrote the song in about a half hour and recorded it."*

But Thicke's tune supposedly changed after the lawsuit was filed. Here is a TMZ interview with the singer, quoted in the latest legal papers:

*"Q: So, so, when you, when you wrote ["Blurred Lines"], do you like think of Marvin Gaye like when you write the music?*

*A: No."*

The Gaye family quotes music critics at The New York Times, Vice, Rolling Stone and Bloomberg Business Week who have remarked about the Marvin Gaye resemblance in "Blurred Lines." The countersuit also presents an expert report by musicologist Judith

Finell detailing "at least eight substantially similar compositional features" with Gaye's original. The similarities are said to encompass the signature phrase, vocal hook, backup vocal hook, their variations, and the keyboard and bass lines -- "far surpassing the similarities that might result from attempts to evoke an 'era' of music or a shared genre," according to the court papers.

While the countersuit makes the case that the public has detected Gaye in Thicke's other songs -- "including the similar bridge and identical lyrics from Marvin Gaye's 'I Want You' in Thicke's similarly-themed work, 'Make U Love Me'" -- it brings a second copyright infringement claim only over Thicke's "Love After War." That song is said to share a similar chorus, hook melody and more with Gaye's "After the Dance." (Listen below.)

If the countersuit against various parties including Universal Music and Geffen Records stopped there, it would be a noteworthy example of the legal issues that arise in copyright law in controversies over songcraft. But the Gaye family, represented by attorneys Richard Busch and Paul Duvall at King & Ballow, add more. In fact, what makes the case possibly precedent-setting is the allegations lodged against EMI.

EMI is the co-publisher of producing superstar Williams and is said to co-own and control "Blurred Lines." The Gaye family owns rights to "Got to Give It Up" and "After the Dance," but says it has assigned the rights to administer and protect those copyrights to EMI. Hence, a claimed conflict of interest.

According to the countersuit, EMI's "misconduct" includes failing to identify and raise claims based on entrusted Marvin Gaye copyrights, and after allegedly admitting that a claim was viable, "subsequently instructing its litigation attorney to intimidate the Gaye Family from filing an action by antagonistically warning that any lawsuit would be frivolous."

The Gaye family asserts that not only did EMI refuse to bring counterclaims after seeing a "renowned musicologist's report," but that it gave "strong biased support to the Blurred Writers."

To support the claim that EMI has breached its legal, contractual and ethical obligations, the Gaye family says that the chairman of EMI contacted its legal representative and accused the family of "ruining an incredible song," "killing the goose that laid the golden egg" and being responsible for "Blurred Lines" not receiving an MTV Video Music Award. He also allegedly complained that the lawsuit might kill any chances that Thicke would win a Grammy Award for Song of the Year.

The Gaye family also accuses EMI and representatives of Williams and Thicke of "the planting of a knowingly false story in the press that the Gaye Family supposedly turned down a "six figure settlement," (no such offer was made) in order to make them appear unreasonable."

This is intolerable, say the counter-claimants.

"Not only did EMI fail to bring this action, which is necessary to carry out EMI's duties to

protect the Gaye Family's copyrights," says the countersuit, "EMI attempted to dissuade the Gaye Family from pursuing this action by repeated threats and tactics to intimidate the Gaye Family and its representatives."

Now a contractual rescission is demanded in light of EMI's alleged decision to take no action on the "golden goose" that is Robin Thicke's hit. (Sony/ATV is one of the counter-defendants.)

"The EMI Defendants control approximately thirty percent (30%) of the music publishing market throughout the world," says the family's court papers. "Accordingly, there is a strong likelihood that conflicts of interest, such as the one in the present case, will arise again between the EMI Defendants and the Gaye Family. Based upon the blatant and egregious breach of the EMI Defendants' fiduciary duty and their covenant of good faith and fair dealing, the EMI Defendants have proven that they cannot be trusted to remain neutral and impartial, and that they are unworthy of the level of trust and professional conduct which is required of a copyright administrator charged with protecting the Gaye Family's important interests in copyrighted works created by Marvin Gaye."

The countersuit adds, "The Gaye Family should not be compelled to remain in this contractual relationship."

We'll add responses by the Thicke camp and EMI as they come.

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