



March 18, 2021

VIA EMAIL

Jeffrey Moreira
Rico Management
19510 Van Buren Blvd
Suite F3-182
Riverside, CA 92508
copyright4@ricomanagement.com

Re: Coachella Music Festival LLC adv. Krazam LLC

Dear Mr. Moreira:

The Electronic Frontier Foundation represents Krazam LLC, a comedy duo that produces videos skewering different aspects of tech industry culture. Krazam’s latest video, titled “Virtual Coachella,” uses parody to comment on the sponsorship-stuffed and litigious nature of Coachella today.¹ On March 11, 2021, Krazam received a cease-and-desist message from you via Instagram, in which you alleged that the Virtual Coachella video and associated social media posts infringe trademarks owned by Coachella Music Festival LLC (“Coachella”). Your allegations are baseless. No reasonable consumer would ever mistake Coachella for the source or sponsor of the video, and the video falls firmly within the First Amendment’s protections for expressive works. You should retract your allegations immediately.

Judging by the boilerplate language of your message, perhaps you didn’t actually watch Krazam’s video. If you had, you would have seen that it imagines an absurd and rather dismal virtual festival experience.² Every aspect of the experience is plastered in advertisements and corporate-sponsored content. Our festival goer takes a virtual “drug” that requires agreeing to an arbitration clause; makes GE-sponsored memes celebrating things like broad app permissions, targeted ads, and ending net neutrality; and gets matched with an energy drink-promoting bot at a virtual “Hot Hookup Date Zone.” The video ends with a drone “deactivating” the user for having “vibes” that don’t comply with festival policy.

No reasonable consumer would believe that this unflattering caricature was produced, sponsored, or endorsed by Coachella, nor that the experience depicted is an actual

¹ <https://www.youtube.com/watch?v=67sfZfreOrU>

² Illustrative screenshots are provided in Attachment A.

Coachella product.³ Cf. *Radiance Found., Inc. v. NAACP*, 786 F.3d 316, 328 (4th Cir. 2015) (use of trademark to convey message critical of trademark owner ensures no lasting consumer confusion). Indeed, courts readily recognize that successful parodies carry little risk of consumer confusion. See, e.g., *Louis Vuitton Malletier, S.A. v. My Other Bag, Inc.*, 156 F. Supp. 3d 425, 435 (S.D.N.Y.) (quoting McCarthy on Trademarks and Unfair Competition § 31:153), *aff'd*, 674 Fed. App'x 16 (2d Cir. 2016); *Anheuser-Busch, Inc. v. L. & L. Wings, Inc.*, 962 F.2d 316, 320–21 (4th Cir. 1992). Without a likelihood of consumer confusion, there is no infringement and thus no basis for your demands.

Moreover, you should be well aware that the First Amendment protects the use of trademarks in expressive works so long as the use of the mark is relevant to the work and not explicitly misleading. *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989); *VIP Prods. LLC v. Jack Daniel's Prods., Inc.*, 953 F.3d 1170, 1174 (9th Cir. 2020), *cert. denied*, No. 20-365, 2021 WL 78111 (Jan. 11, 2021). That protection indisputably applies here. First, there is no question that Krazam's parody video is an expressive work. See *Cliffs Notes, Inc. v. Bantam Doubleday Dell Publ'g Grp., Inc.*, 886 F.2d 490, 495 (2d Cir. 1989) (*Rogers* test for infringement applies to “works of artistic expression, a category that includes parody”). Second, Krazam's use of the “Coachella” trademark in the video and its title has obvious artistic relevance to the work, a comedic critique of Coachella as a company and festival. Finally, there is nothing explicitly misleading about the video's title or content; Krazam has not, for example, claimed that Coachella endorsed the video or had a role in producing it. See *Rogers*, 875 F.2d at 1001.

In short, your allegations of trademark infringement and unfair competition lack merit. Krazam will not be complying with any of your demands, and you should withdraw them immediately.

Sincerely,



Cara L. Gagliano
Staff Attorney
Electronic Frontier Foundation

³ If your client sincerely fears that this depiction is too realistic to be perceived as parody, Krazam's video should be the least of its reputational concerns.

Attachment A







