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HOUSE BILL 167

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Al Park

AN ACT

RELATING TO ADVERTISING; ENACTING THE TRUTH IN MUSIC
ADVERTISING ACT; PROHIBITING CERTAIN CONDUCT; PROVIDING FOR
INJUNCTIVE RELIEF AND PAYMENT OF COSTS AND RESTITUTION;
ESTABLISHING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Truth in Music Advertising Act".

Section 2. DEFINITIONS.--As used in the Truth in Music
Advertising Act:

A. "performing group" means a vocal or instrumental
group seeking to use the name of another group that has
previously released a commercial sound recording under that
name;

B. "recording group" means a vocal or instrumental

underscoring material = new
[bracketed material] = delete

1 group at least one of whose members has previously released a
2 commercial sound recording under that group's name and in which
3 the members have a legal right by virtue of use or operation
4 under the group name without having abandoned the name or
5 affiliation with the group; and

6 C. "sound recording" means a work that results from
7 the fixing on a material object of a series of musical, spoken
8 or other sounds regardless of the nature of the material
9 object, including a disk, electronic media, tape or phonograph
10 record, in which the sounds are embodied.

11 Section 3. FALSE ADVERTISING.--It is unlawful for a
12 person to advertise or conduct a live musical performance or
13 production in this state through the use of a false, deceptive
14 or misleading affiliation, connection or association between a
15 performing group and a recording group. This section does not
16 apply if any of the following apply:

17 A. the performing group is the authorized
18 registrant and owner of a federal service mark or trademark for
19 that group registered in the United States patent and trademark
20 office;

21 B. at least one member of the performing group was
22 a member of the recording group and has a legal right by virtue
23 of use or operation under the group name without having
24 abandoned the name or affiliation with the group;

25 C. the live musical performance or production is

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~~[bracketed material] = delete~~

1 identified in all advertising and promotion as a salute or
2 tribute;

3 D. the advertising does not relate to a live
4 musical performance or production taking place in this state;
5 or

6 E. the performance or production is expressly
7 authorized by the recording group.

8 Section 4. RESTRAINING PROHIBITED ACTS.--

9 A. Whenever the attorney general or a district
10 attorney has a reason to believe that a person is advertising
11 or conducting or is about to advertise or conduct a live
12 musical performance or production in violation of Section 3 of
13 the Truth in Music Advertising Act and that proceedings would
14 be in the public interest, the attorney general or district
15 attorney may bring an action in the name of the state of New
16 Mexico against the person to restrain by temporary or permanent
17 injunction that advertisement or conduct.

18 B. Whenever a court issues a permanent injunction
19 to restrain and prevent violations of the Truth in Music
20 Advertising Act as authorized in Subsection A of this section,
21 the court may, in its discretion, direct that the defendant
22 restore to a person in interest any money or property, real or
23 personal, that may have been acquired by means of a violation
24 of that act, under terms and conditions to be established by
25 the court.

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