

Furtado, Timbaland prevail in music copyright appeal; FROM THE COURTS

by John Pacenti jpacenti@alm.com

18 September 2012

Miami Daily Business Review

Volume 87; Issue 68

Copyright 2012 ALM Properties, Inc. All Rights Reserved.

A federal appellate court Monday upheld the dismissal of a lawsuit filed against singer Nelly Furtado and producer Timbaland that claimed a Finnish chip-music song was plagiarized to create the dance hit single Do It.

The decision by a three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit tackles the copyright issue of online music distribution.

U.S. Magistrate Edwin E. Torres granted summary judgment last year on a motion by attorneys for Furtado's record label, Interscope-Geffen-A&M, to dismiss the lawsuit. Kernel Records Oy claimed personal computer and video gaming sounds on its Acidjazzed Evening were incorporated into Do It.

Chip music or chiptune has become a genre in recent years as musicians use sounds from personal computers, especially the Commodore 64.

The copyright infringement claim centered on whether the European track was first published on the Internet or in Europe. Under U.S. copyright law, music published first on the Internet is considered U.S.-created and must be copyrighted to be protected. The plaintiffs said the music was first published in Europe.

The Eleventh Circuit upheld Torres' decision in a 40-page ruling.

"When all inferences are drawn from the evidence in favor of Kernel, the record lacks sufficiently probative evidence of whether Acidjazzed Evening is a United States work or a foreign work," Judge Stanley Marcus wrote in the unanimous opinion.

The decision "is a significant new ruling in the area of Copyright Act law as it delves deeply into the question of what constitutes 'publication' in the Internet age," said William L. Charron, a partner with **Pryor Cashman** in New York who represented Furtado.