



fortnite is nearly free from pellegrino suit over dance moves

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On March 31st, the Eastern District of Pennsylvania dismissed with prejudice all but one of plaintiff's claims in *Pellegrino v. Epic Games*, No. 19-1806 (E.D. Pa. Mar. 31, 2020). As in several other recent cases, the dispute in *Pellegrino* arose out of an unauthorized use of dance moves in the popular video game Fortnite Battle Royale. Unlike those other cases, however, instead of suing for copyright infringement, professional saxophone player Leo Pellegrino brought claims for misappropriation of likeness and for trademark infringement under both the Lanham Act and Pennsylvania state law.

Pellegrino alleged that he developed a signature dance move while playing the saxophone. He further alleged that one of Fortnite's "emotes," the "Phone It In," plays a saxophone while dancing and thus misappropriates and infringes that signature dance move.

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