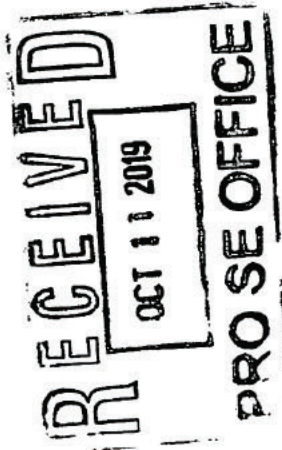


ORIGINAL

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK**

TAJE MONBO, et al	x
Plaintiffs	x
V.	x
LOTFY NATHAN, et al	x
Defendants	x
_____	x



Civil Action No.: CV-18-5930
Assigned Judge: Margo K. Brodie
Magistrate Judge: Steven L. Tiscione

**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION
FOR THE ISSUANCE OF REQUEST TO THE REGISTER OF COPYRIGHTS
PURSUANT TO 17 U.S.C. § 411(B)(2)**

Plaintiffs Taje Monbo and Deafueh Monbo (collectively "Plaintiffs"), submit this reply to Defendants Lotfy Nathan, Red Gap Film Group, LLC (Red Gap), and Vertical Entertainment, LLC (Vertical Entertainment) (collectively "Defendants") opposition to Plaintiffs' Motion for the issuance of a request to the Register of Copyrights pursuant to 17 U.S.C. §411(b)(2) with regards to Defendants' knowingly material misrepresentations of material facts in their copyright applications for registration Nos. PAu003699143 (the "infringing 12 O'Clock Boys 2013 Film") and PAu003430990 (the "infringing 2009 Twelve O'Clock Boyz six DVDs Registration").

PRELIMINARY STATEMENT

Pursuant to §411(b)(2), Plaintiffs Motion for the issuance of a request to the Register of Copyrights is proper. First, Red Gap alleges to be an author of the "12 O'Clock Boys 2013 Film". Further, Red Gap alleges that its use of Plaintiffs 12 O'Clock Boyz Copyrighted Work without permission is fair use. Under the "fair use" defense, another author may make limited use of the original author 's work without asking permission. **However, in this case, Red Gap is not a true**

author of the 12 O’Clock Boys 2013 film and therefore, can not use the fair use defense against Plaintiffs’ copyright infringement claims because the fair use defense is allowed for authors. The issuance of a request to the Register of Copyrights is crucial and important because if the Register of Copyrights opines that Red Gap is not a true author of the 12 O’Clock Boys 2013 film because Red Gap did not exist at the time the 12 O’Clock Boys 2013 Film was produced, then Red Gap and Lotfy Nathan can not use the fair use defense against Plaintiffs’ copyright infringement claims under the copyright act.

Second, Defendants took about **70% or more of Plaintiffs’ 2001 film** and used editing tools to compress those scenes into minutes of footages which Defendants then incorporated into Defendants’ infringing 12 O’Clock Boys 2013 film. (*See* First Amended Complaint, Line 118). This inclusion of about **70% or more of Plaintiffs’ 2001 film** into Defendants’ infringing 12 O’Clock Boys 2013 film is substantial. Under the Copyright Act, Defendants were obligated to disclose in their application the substantial pre-existing materials from Plaintiffs 12 O’Clock Boyz Copyrighted Works. The issuance of a request to the Register of Copyrights is necessary because only the Registers Of Copyrights can opine on whether or not, Defendants’ failure to disclose the approximately **70% or more of Plaintiffs’ 2001 film** (the “pre-existing materials”) that appear in Defendants’ infringing 2013 film, in its application, would have cause the Register of Copyrights to refuse the application for registration Nos. PAu003699143.

Third, Defendants made knowingly material misrepresentations of material facts in their copyright applications for registration Nos. PAu003699143 (the “infringing 12 O’Clock Boys 2013 Film”). Specifically, Lotfy Nathan knowingly lied that Red Gap was the author of the infringing 12 O’Clock Boys 2013 Film when Lotfy Nathan knew that Red Gap did not even exist at the time the infringing 2013 film was produced. Furthermore, Defendants made knowingly

material misrepresentations of material facts in their copyright applications for registration Nos. PAu003430990 (the “infringing 2009 Twelve O’Clock Boyz six DVDs Registration”). Specifically, Defendants knowingly lied that Vertical Entertainment was the author of the infringing 2009 Twelve O’Clock Boyz six DVDs when Defendants knew that Vertical Entertainment did not even exist at the time the 2009 Twelve O’Clock Boyz six DVDs was produced.

ARGUMENT

1. Legal Analysis

Before presenting Plaintiffs’ legal argument, a discussion of 17 U.S.C. §411(b)(2) is necessary. The language of §411(b)(2) is straightforward. A party must allege (1) that inaccurate information was included on an application for copyright registration with knowledge that it was inaccurate, and (2) that the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration. If a party makes these allegations, **the statute requires the Court to seek the advice of the Register of Copyrights.**

Defendants have advanced several reasons why the Court should not request the advice of the Register of Copyrights. In its opposition (Dkt# 109), Defendants essentially argue (1) that whether Defendants’ copyright registrations are invalid and whether Defendants’ copyright registrations were obtained by Defendants’ knowingly material inaccurate information is irrelevant to the resolution of Plaintiffs’ copyright infringement claims; and (2) Defendants do not know of a single instance in which a Court entered an order under §411(b)(2) directing the Register of Copyrights to report on whether it would have invalidated a copyright registration where the Parties accused of copyright infringement is not the one arguing that the inaccurate information

submitted in an application for registration invalidates the copyright registrations. The Plaintiffs disagree. For one, just because a request under §411(b)(2) of this nature is not known to Defendants **does not obviate the Court's duty to comply with the statute.** The statute was enacted in 2008 and few litigants or courts have been aware of the provision, therefore it is not surprising that few courts have submitted a request under §411(b)(2). More fundamentally, the statutory language—"shall request"—is mandatory. Simply because Defendants have filed an opposition does not permit the Court to disregard the compulsory language of the statute.

In Defendants' opposition (Dkt# 109), Defendants argue that the Court's duty to request an opinion from the Register of Copyrights is only triggered if Plaintiffs prove the two requirements in §411(b)(1). In other words, Plaintiffs must "show" that Defendants included information on its applications that it knew was inaccurate, and that the inaccurate information was "so material" that, if known, it would have caused the Register of Copyrights to refuse registration. But that is not what the statute says. Rather, the Court's duty is triggered where **"information described under paragraph (1) is *alleged.*"** 17 U.S.C. § 411(b)(2) (emphasis added).

Accordingly, to the extent Plaintiffs allege that Defendants submitted inaccurate information with its copyright registrations that would satisfy the two requirements of §411(b)(1), the Court must ask the Register of Copyrights whether the alleged inaccurate information, if known, would have caused it to refuse registration. Under a plain reading of § 411(b)(2), the Court is required to seek the advice of the Register of Copyrights regardless of whether the party making the request has any factual basis for its allegations of inaccurate information.

2. Red Gap and Vertical Entertainment are not Entitled to Claim Copyright Under the “Work For Hire” Doctrine

Under the "work for hire" doctrine, in order for the entity hiring the work to be able to claim ownership of the work, a written agreement to that effect must be signed prior to the creation of the work, 17 U.S.C. §201 (b), *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989). Here in this case, Red Gap did not even exist before the infringing 2013 Film was produced. Therefore, Red Gap is not entitled to claim authorship of the 12 O’Clock Boys (2013) film by Lotfy Nathan under the "work for hire" doctrine and, as a result, is not entitled to ownership of the Copyright Registration, PAu003699143.

Similarly, Vertical Entertainment did not even exist before the infringing 2009 six DVDs was produced. Therefore, Vertical Entertainment is not entitled to claim authorship of the 2009 six DVDs entitled The Twelve O’Clock Boyz under the "work for hire" doctrine and, as a result, is not entitled to ownership of the Copyright Registration, PAu003430990.

3. Lotfy Nathan is not the Author of the 12 O’Clock Boys 2013 Film

Under the copyright law, the creator of the original expression in a work is its author. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or entity, such as a publisher. In cases of works made for hire, the employer or commissioning party is considered to be the author. Here in this case, Defendant Lotfy Nathan is not the author of Red Gap’s 12 O’Clock Boys 2013.

Specifically, when the Copyright Office asked Defendant Lofty Nathan if he was the author of the 12 O’Clock Boys 2013 film, Defendant Lofty Nathan responded that he was not the author of the 12 O’Clock Boys 2013 film. Therefore, none of the Defendants is the true author of 12 O’Clock Boys 2013.

4. Defendants' 12 O'Clock Boys Film was Published Prior to the Publication Date

In the Copyright Act, a work is considered published when the author makes it available to the public on an unrestricted basis. On March 10, 2013, Defendants made their infringing 12 O'Clock Boys 2013 film available to the public on an unrestricted basis at the Southwest Film Festival and at the South by Southwest theaters. Specifically, Defendants' 12 O'Clock Boys 2013 film had its "world premiere" on March 10, 2013 at the South by Southwest Film Festival and at the South by Southwest theaters. Therefore, Defendants' infringing 12 O'Clock Boys 2013 film was published on March 10, 2013 under the Copyright Act.

In addition to the knowingly misrepresenting that Red Gap is the Author, Red Gap's application submitted at Defendant Lotfy Nathan's direction to the Copyright Office for copyright registration PAu003699143 for his infringing 12 O'Clock Boys (2013) film also includes inaccurate information and material misstatements about the publication date, that if known, would have caused the Register of Copyrights to refuse Red Gap's copyright application pursuant to 17 U.S.C. §411 (b)(1)(A) of the Copyright Act.

5. Defendants Received Legal Services From Six Different Law Firms

Although, Defendant Lotfy Nathan now alleges that the reason for the material misrepresentation in his application is because he was unfamiliar with the "work-for-hire" requirements and what constituted "publication" under the Copyright Act, Defendants Lotfy Nathan and Red Gap had a legal team of six law firms. (See **Exhibit 1**, at Page 9).

Specifically, Defendant Lotfy Nathan and Red Gap's legal team consisted of the below law firms where Defendants received legal services in connection with the 12 O'Clock Boys 2013 film:

No.	Lawyer Name	Law Firm Name
1	Marc Simon, Esq	Cowan, Debaets, Abrahams & Sheppard, LLP
2	Robert L. Sigel, Esq	The Law Office of Robert L. Seigel
3	Kathryn Miller Goldman, Esq	Goldman & Minton, P.C.
4	Jaime Herrero, Esq	The Law Office of Jaime Herrero
5	Stephen B. Awalt, Esq	Stephen B. Awalt, PA
6	Cynthia Blake Sander, Esq.	Baker Donelson, LLP

The above six law firms provided advice to Defendants on copyright, legal clearance, intellectual property policies, and exploitation of the 12 O’Clock Boys 2013 film, among other things. Not only did Defendant Lofty Nathan have assistance from the Copyright Office on how to accurately complete his application, but he also had access to a team of six law firms. It is clear that Lotfy Nathan knowingly misrepresented material facts in the copyright applications to the Copyright Office.

CONCLUSION

Plaintiffs request a timely submission of the request to the Register of Copyrights prior to the Court’s ruling on Defendants’ proposed motion to dismiss. Plaintiffs believe that the timely submission of the request to the Register of Copyrights is important for an early disposition of this controversy with respect to copyright registration Nos. PAu003699143 and PAu003430990. A delay will prejudice the Plaintiffs.

Under a plain reading of § 411(b)(2), the Court is required to seek the advice of the Register of Copyrights **regardless of whether the party making the request has any factual basis for its allegations of inaccurate information.**

Respectfully Submitted:

[Redacted signature]

[Redacted signature]

Dated: October 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of this PLAINTIFFS' REPLY TO DEFENDANTS OPPOSITION TO MOTION FOR THE ISSUANCE OF REQUEST TO THE REGISTER OF COPYRIGHTS PURSUANT TO 17 U.S.C. § 411(B)(2) was mailed October 11, 2019 to:

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MELONI & MCCAFFREY, P.C.
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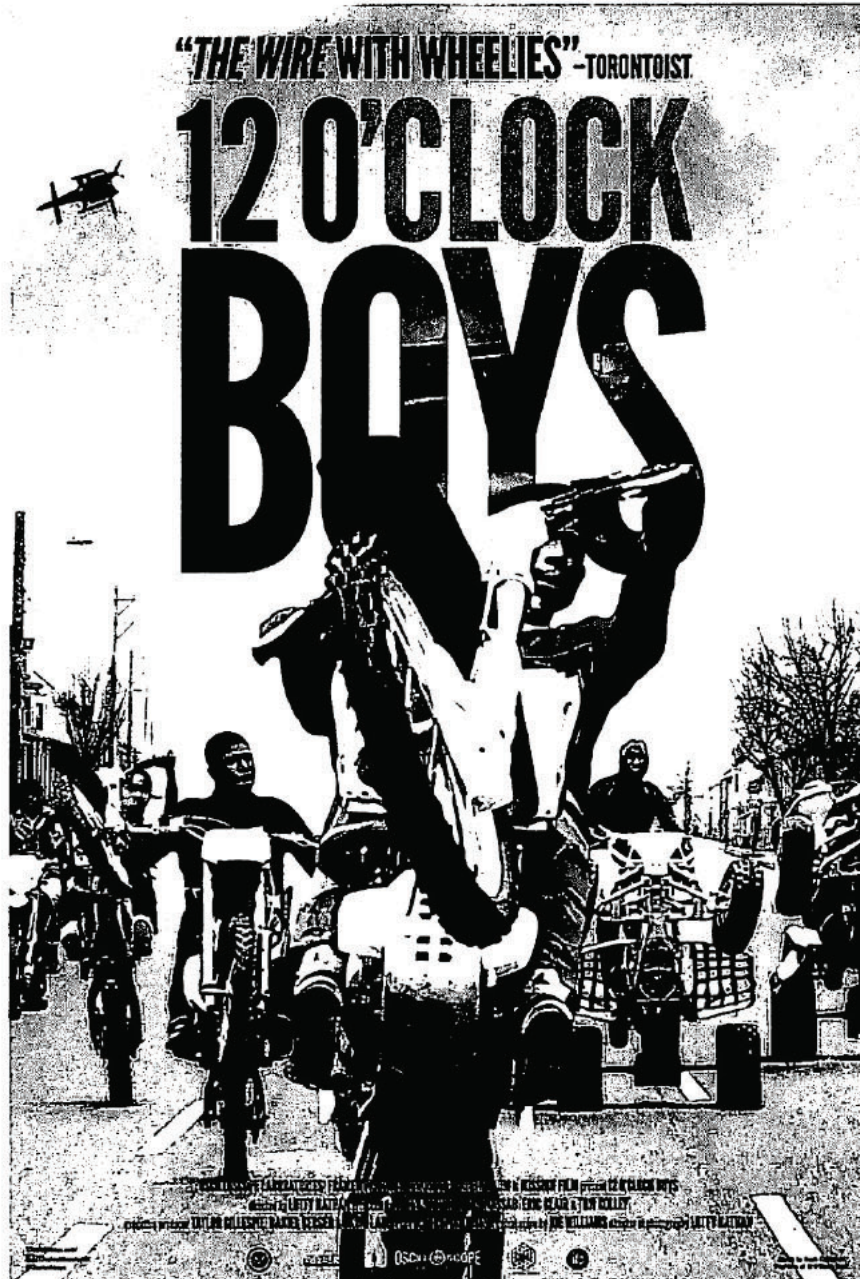


Dated: October 11, 2019

EXHIBIT 1

OSCILLOSCOPE
LABORATORIES

presents



72 mins. • USA • Not Rated by the MPAA

www.12oclockboys.com/

Logline

Pug, a young boy growing up on a combative West Baltimore block, finds solace in a group of illegal dirt bike riders known as The 12 O'Clock Boys.

Short Synopsis

Pug, a thirteen year old boy living on a dangerous Westside block of Baltimore, has one goal in mind: to join the 12 O'Clock Boys; the notorious urban dirt-bike group. Converging from all parts of the inner city, they invade the streets and clash with police, who are forbidden to chase the bikes for fear of endangering the public. Pug looks to the pack for mentorship, spurred by their dangerous lifestyle and deep bonds. He narrates their world as if explaining a dreamscape—an action-packed world full of power and freedom. The film captures this world with unprecedented intimacy as the riders themselves guide us into a culture few get to access. The film presents the pivotal years of change in a boy's life growing up in one of the most dangerous and economically depressed cities in the United States.

The Story

Pug, a wisecracking thirteen year old living on a dangerous Westside block in Baltimore, has one goal in mind: to join the *12 O'Clock Boys*, the notorious urban dirt-bike group (riding off-road motorbikes and four-wheelers). Converging from all parts of the inner city, they disregard traffic laws, roadblocks, and the police, who are a constant presence, yet are forbidden to chase the bikes for fear of endangering the public.

Pug's admiration for the riders falls sharply into focus with the death of his older brother—his last remaining paternal figure. Left to his own devices, and at constant odds with his mother Coco, Pug looks to the pack as a means of expression and mentorship, spurred by their dangerous and rebellious lifestyle. Pugs guides us through the treacherous streets of Baltimore as he searches to define himself and join the pack.

Pug's journey is interspersed with the revelation of the group as a whole. He narrates their world as if explaining a dreamscape—an action-packed world full of power and freedom captured with unprecedented intimacy as the riders themselves guide us into a culture few get to access. The founders of the pack share their motivations and self-define what it means to be a rider. As characters like Bam and Shawn Sean reminisce about their first experiences on bikes as children, we gain an understanding of the point of entry to this "group" and the important role it plays in their lives.

Juxtaposed against the sensationalized depiction of the dirt bike riders are the sobering and sometimes fatal consequences of their renegade sport. Pug characterizes the end of the age of innocence for children growing up in Baltimore; his youth and vulnerability show on his face, yet equally transparent are his efforts to imitate his hard-edge community.

Throughout the film, Pug tries to find a way in. Coco, frustrated to the brink with his recklessness, considers dropping him off at the police station. But Pug thrives on the chaos. He gets closer and closer to the action with every scene, honing his wheelie skills, searching for his own bike, and even witnessing a particularly brutal encounter as the police swarm the riders.

Background

The 12 O'Clock Boys are the renegade dirt-bike group of Baltimore. They take to the streets on Sundays, in packs of up to 100 off-road and ATV vehicles, converging from all parts of the inner city. Although they parade through the city at high speeds, brazenly disregarding traffic laws, the police are forbidden to chase the bikes for fear of endangering the public. This creates a cat-and-mouse game with law enforcement who employ helicopters and technology to try to suppress the dirt bike movement. The bikers revel in taunting the police. The urban dirt bike phenomenon has grown in recent years—Philadelphia and New York and other cities also have factions—but the most high octane and irreverent riders are indisputably represented in Baltimore's 12 O'Clock Boys.

For many of the Baltimore youth, the dirt bike community represents a way of edification and mentorship in a city that otherwise has few resources and promise for children. In a neighborhood rampant with drugs and violence, the dirt bike pack seems to be a way of escape.

Director's Statement – Lotfy Nathan

I was attending college in Baltimore and would see the dirt bike pack zoom by once in a while. Neither I nor anyone else in the protected bubble I was living in knew what they were about. I asked around and found that they congregated at Druid Hill Park on Sundays. I went there not knowing what to expect, but found that the riders were very receptive. I made some friends and went from there. Within about a year I was able to get in position to capture some very dynamic action coverage of the riders, thanks to a faction of the group called the WOWBOYZ, who I approached through YouTube after seeing how well they were able to keep up with the pack. They were veterans of the group, and they knew how to negotiate the chaos of following the group. In 2010 I met Pug and knew immediately that there was something very telling in his character, a young boy on the cusp of joining the group.

Filmmaker Lotfy Nathan Discusses the Cast of Characters

Pug: I met Pug as he was turning thirteen. I was introduced to him in early 2010 as I was filming the 12 O'Clock Boys. He was rather soft spoken at the time, though he seemed to be taking note and emulating the manner of the older men around him. Pug, who was riding his little four-wheeler in a field near his house immediately stood out to me. He seemed to embody the character of a lot of kids in Baltimore. He was at the end of an age of innocence and would have to declare the kind of person he was going to be in his environment very soon. In the years that followed, I witnessed Pug gravitate more and more to dirt bike riders, and even as he opened up to me, I saw that he was developing a harder shell. Pug is an extremely intelligent and witty child. His sensibility has been cultivated by living in a community that forced him to come to grips with harsh realities that many people go their whole lives without seeing. He is simply obsessed with riding a dirt bike. For him it is the ultimate validation.



Coco: Pug's mother, Coco, has lived in Baltimore all of her life. At 38 years old, she has found herself a single mother with five kids, struggling against the odds. During the course of production, her eldest son, Tibba, has an asthma attack and dies. Coco finds purpose in becoming a registered nurse, but her path as a single mother of four children isn't any easier. Coco has a very strong personality and needs every bit of it to raise her children with the constant challenges of day-to-day living in inner city Baltimore.



Steven AKA Moe: Steven grew up in circumstances similar to Pug's. His father was never around. He was raised in part by the streets, with a mother who tried her best to keep him on track. He worked his way out of the inner city, and now lives in the county in a nice home with a stable job as a longshoreman at the Baltimore harbor. His son, Steven Jr., attends a private school and has things Steven didn't have as a kid. Still, he believes that it's important for his son to see how the hood functions, and where his roots are. He sees dirt bike riding as a positive outlet for children growing up in Baltimore and brings his son out every Sunday to watch the pack's parade. He also sees something in Pug and helps him explore the dirt bike world by taking him to safe open spaces to practice his riding.

About the Filmmaker

Lotfy Nathan – Director, Producer, Cinematographer

Lotfy Nathan, 26, is a fellow of the Garrett Scott Foundation, IFP Lab, IFP Spotlight, and a recipient of the Grainger Marburg Grant. His first film: "12 O'Clock Boys" has had preview screenings at Lincoln Center, IFC Center, Rooftop film festival, and Full Frame Festival. He was recently accepted to the Columbia University MFA Film Program.

About the Film Team

Ian Olds - Consulting Editor

Ian Olds is a director of both narrative and documentary work. Most recently he directed *Fixer: The Taking of Ajmal Naqshbandi* (winner of top jury prizes at Tribeca and Madrid, acquired by HBO, and nominated for an Emmy for Outstanding Investigative Journalism). Other credits include the Iraq war doc *Occupation: Dreamland* (short-listed for an Academy Award for Best Documentary Feature and winner of a 2006 Independent Spirit Award).

Patrick Wright - Associate Editor, Associate Producer

Patrick Wright recently co-produced and was associate editor for *Music By Prudence* a portrait of Prudence Mabhena, a disabled Zimbabwean singer songwriter. *Music By Prudence* won the 2010 Academy Award for Best Documentary Short and aired on HBO in May 2010

John Benam - Second Unit Camera (Phantom)

John Benam is a long-time employee of National Geographic Television and Film. Mr. Benam was a Coordinating Producer and Cameraman on the Emmy Award winning mini-series "Great Migrations".

Joe Williams - Composer

John Kassab - Producer

John Kassab is a sound designer and film producer from Melbourne, Australia. His recent sound work can be heard in Academy Award Winning 'The Lost Thing' by Shaun Tan and festival favorite 'Deeper Than Yesterday' by Ariel Kleiman. Both films also received award recognition for their sound design and mix.

Eric Blair - Producer

Eric Blair has worked on numerous films and television projects throughout Baltimore, including "Homicide: Life on the Street" and HBO's "The Corner". He is a principal at Mission Media/Mission Film, a Baltimore based creative agency.

CREDITS

12 O'CLOCK BOYS

—

THE BOY:

Pug

THE MOTHER:

Coco

THE RIDERS:

Steven

Wheelie Wayne

Superman

Bam

Shawn Sean

Kevin

"Twelve O'Clock Boyz"

"Wildout Wheelie Boys"

"Raise it up"

and

THE POLICE

—

In Association With:

Framework Images

PROSPEKT

ALEThERIUM

MISSION FILM

Directed and Produced by:

Lotfy Nathan

Producer:

John Kassab

Executive Producer:

Taylor Gillespie

Producer:

Eric Blair

Editor:

Thomas Niles

Co-Producer:

Tom Colley

Director of Photography:

Lotfy Nathan

Original Score by:

Joe Williams

Music Supervisor:

Joe Williams

Additional Music by:
Schwarz

Schwarz
"June 26th"
"Omar 2.0"

BEAUTIFUL SWIMMERS
"Joyride"
Beautiful Swimmers
Future Times

"Swimmers Groove"
Beautiful Swimmers
Future Times

DUTCH E GERM
"Elephant"
"Rama Drum Line"
Uno Records

JAMES NASTY
"Dont Stop 2.0"
James Nasty

MURDER MARK
Bad Bitches Drop It Low
Murder Mark featuring TT The Artist and Sheila
D Yeah
Zoo On Mars Entertainment

NINJA POSSE
"The real charged up"

NGUZU NGUZU
Youtellem
NA (Daniel Pineda)
Fade to Mind

SADE
"Kiss Of Life"
Performed by Sade
Courtesy of Sony Music Entertainment (UK) Ltd
& Epic Records
By Arrangement with Sony Music Licensing

Phantom HD Camera Unit Director:
Eric Blair

Phantom Camera Operators:
John Benham
Nick Midwig

Phantom Assistant:
David Toms

Phantom footage provided by
MISSION FILM

Additional Camera:
Tom Colley
Ross Finkel
Larry Jackson
Sean Mattison
Paul Slupski
Ian Scott
Errol Webber
Joe Williams
Tommy Rouse

Additional Editors:
Patrick Wright
Nathaniel Fowler
Margarida Lucas

Assistant Editors:
Nisha Ramnath
Catharine Axley

Consulting Editor:

Ian Olds

Associate Producers:

Tom Colley
Ross Finkel
Ted Marcus
Trevor Martin
Jon Paley
Patrick Wright

Production Assistants:

Larry Jackson
Tyon Ford a.k.a Slope
Ray Le

Sound Recordist:

Joe Williams

Transportation:

Tommy Rouse
Dane Nester
Michael Petruzzo
Marlon Ziello
Nick Wiznewski
Ivy Barkakati

Still Photographers:

Eric Brittain
Alexander Dondero

Design by:

Post Typography

Legal Services provided By:

Marc Simon, Esq.
Robert L Seigel, Esq.
Kathryn Miller Goldman
Jaime Herrero, Esq.
Stephen B. Awalt, Esq.
Cynthia Blake Sanders, Esq.



SOUND

Gigantic Post
Executive Producer Steven Tollen
Rerecording Mixer Eric Milano
Supervising sound editor Perry Levy