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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 -----X

RANDY BROWN a/k/a SAINT SOLOMON

Plaintiff,

17 Civ. 2293 (LLS)

- against -

OPINION & ORDER

TIME WARNER, INC., TURNER
 BROADCASTING SYSTEM, ADULT SWIM,
 CARTOON NETWORK, INC., WILLIAMS
 STREET PRODUCTIONS, LLC, AARON
 MCGRUDER, MIKE CLATTENBURG, and
 JOHN DOES 1-10

Defendants.

-----X

Defendants Time Warner Inc., Turner Broadcasting System, Inc., Williams Street Productions, LLC, the Cartoon Network, Inc., and Adult Swim (collectively the "defendants") move for dismissal of the copyright infringement complaint on the ground that the protectable elements of the plaintiff's work are not substantially similar to the defendants' work. For the following reasons, the motion (Doc. No. 31) is granted.

PARTIES

The plaintiff, Randy Brown a/k/a Saint Solomon, is the author of "Thank You, Jesus," a short story published as part of a collection that received a copyright on January 11, 1999, Uncle Sam's Nieces and Nephews.

Defendant Adult Swim is not a distinct legal entity, but rather a name given to a television programming service that is owned and operated by defendant The Cartoon Network, Inc. ("Cartoon Network"). Cartoon Network, which airs a live-action television series entitled Black Jesus, is a wholly owned indirect subsidiary of defendant Turner Broadcasting System, Inc. ("Turner"). Defendant Williams Street Productions, LLC ("Williams Street"), another a wholly owned subsidiary of Turner, produces and distributes shows, including Black Jesus. Defendant Time Warner is the parent holding company of Turner. As far as appears, the individual defendants (Aaron McGruder and Mike Clattenburg) have not been served with the complaint.

THE TWO WORKS

Mr. Brown claims that the defendants' television series, Black Jesus, infringes his copyright in the book containing his short story, "Thank You, Jesus."

1. Mr. Brown's Short Story, "Thank You, Jesus"

"Thank You, Jesus" is an eighteen-page short story about a preacher named Reverend Chance and his seventeen-year-old son named Jesus. Reverend Chance runs a small, rundown church which he has promised to improve for the past sixteen years. Jesus, a "short, round, troublesome" African American boy, is a "sinful"

high school dropout who attends church only so his father will allow him to use the family car.

The story opens with Jesus sleeping in his father's church, dreaming that he is actually the Son of God. When he awakes, Jesus believes that he is the actual Jesus Christ and that he should be in charge of the church. Jesus tells his father that he thinks it is time to take more responsibility, so his father suggests that Jesus preach at that night's service. Jesus agrees, imagining "pretty women at his beck and call."

Instead of preparing a sermon, Jesus meets his friend Speedy at the local park. Fearing that Speedy would think he was drunk if he told the truth, Jesus tells Speedy that guest preachers keep ten percent of the donations collected at their sermons. Speedy believes Jesus, and sets off to gather as many people as he can to attend Jesus' sermon. Jesus then uses the money his father gave him for the church offering, gas, and lunch to purchase "a beige gown, a pair of beige sandals, and a soft, cloth beige crown" to wear that evening.

When Jesus arrives at the church, he is met by crowds of people expecting to see the actual Jesus Christ. Jesus steps into the pulpit, and a congregant questions whether Jesus is "the real Jesus." One man demands that Jesus perform a miracle by giving sight to the man's blind brother. The blind man

proceeds to tell Jesus that he lost his sight when he drove home drunk from his job at a brewery. Jesus, recalling an argument he once had with Speedy, makes the blind man "see" that destructive malt liquor is advertised to African American youths while mellower alcohol is advertised to white wealthy customers. The blind man exclaims that that he can see what Jesus means, and the crowd cheers, "It is Jesus! It really is Jesus!" As the crowd quiets down, rain pours down and lightning strikes the church, setting the church on fire and burning it to the ground.

When Jesus and his father return home, his father expels him from the house and Jesus knows that he will "have to pack and be somewhere else that very night." The reverend answers a knock on the front door to find the insurance agent who previously sold him insurance which covers an "Act of God." The story ends when the insurance agent tells the reverend that the insurance should cover the cost of rebuilding the church, and the reverend says, "Thank you, Jesus," while looking up at the sky.

2. The Defendants' Live-Action Television Series, Black Jesus

Black Jesus is a live-action television series that airs on Adult Swim. The series tells the story of a man named Jesus Christ who believes he is the real Jesus Christ, depicted as an African American man living in modern-day Compton, Los Angeles.

Jesus preaches the traditional messages of love and forgiveness, all the while engaging in nontraditional behavior like cursing, drinking, and smoking marijuana. However, Jesus performs miracles, such as healing through touch and turning alcohol into water.

Jesus is a tall man with long brown hair, who wears a white gown, brown robe, sandals, and wreath of leather thorns. Jesus has a circle of friends and followers, including Fish (an ex-convict), Boonie (an overweight slacker), Ms. Tudi (Boonie's mother who deals in marijuana), Jason (another slacker), Trayvon (the most intelligent group member), and Maggie (another woman). Three other characters - Vic (the manager of Fish's apartment complex), Lloyd (a homeless man), and Dianne (a detective and Jason's girlfriend) - make it their mission to expose Jesus as a fraud. Throughout Season One, Jesus regularly preaches to residents of Compton, although never in a church.

Most of Season One focuses on Jesus carrying out God's plan to create a community garden in Compton. Jesus enlists the help of his friends by promising them that they can grow marijuana among the vegetables. Together, they overcome several obstacles along the way: paying off Mexican gang members who "own" the garden location, stealing horse manure to use as fertilizer, and preventing others from ruining the garden while Dianne attempts

to commit Jesus to a mental institution. At one point, the marijuana plants mysteriously die while the vegetables in the garden flourish, a phenomenon that Jesus attributes to God's plan. Jesus is proven correct when the police cannot find any illegal drugs when they search the community garden, and when the tomatoes have the effects of marijuana on anyone who eats them.

When a city council member puts the community garden lot up for sale, Jesus and his friends hold a benefit concert to save the garden (as God instructed Jesus to do in a dream), but Vic nonetheless announces that his management company purchased the lot. Season One ends with Jesus being committed to a mental facility. Season Two begins with Jesus' release from the mental facility, and focuses on Jesus' struggle to follow God's directive to stop engaging in disreputable schemes.

STANDARD

"It is a principle fundamental to copyright law that a copyright does not protect an idea, but only the expression of an idea. Similarly, scenes a faire, sequences of events that necessarily result from the choice of a setting or situation, do not enjoy copyright protection." Williams v. Crichton, 84 F.3d 581, 588 (2d Cir. 1996) (citations and internal quotation marks omitted). For example, elements such as "drunks, prostitutes,

vermin and derelict cars," as well as "disgruntled, demoralized police officers and unsuccessful foot chases of fleeing criminals" in a police story set in the South Bronx were held to be unprotectable as scenes à faire. Walker v. Time Life Films, Inc., 784 F.2d 44, 50 (2d Cir. 1986). When the works are similar at only an abstract level, the defendant's work does not infringe, because it is not the ideas but only their techniques of expression that the copyright law protects:

Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times might consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his 'ideas,' to which, apart from their expression, his property is never extended.

Nichols v. Universal Pictures Corp., 45 F.2d 119, 121 (2d Cir. 1930).

Courts have "emphasized repeatedly that the essence of infringement lies in taking not a general theme but its particular expression through similarities of treatment, details, scenes, events and characterization." Reyher v. Children's Television Workshop, 533 F.2d 87, 91 (2d Cir. 1976).

Courts dismiss copyright infringement claims before discovery where the alleged similarity "concerns only noncopyrightable elements of plaintiff's work or no reasonable

trier of fact could find the works substantially similar.”
Williams, 84 F.3d at 587 (citation and internal quotation marks
omitted).

DISCUSSION

This case turns on whether there is a substantial similarity of protected expression between the two works at issue. Here, no reasonable jury, properly instructed, could find that (regardless of whether the underlying ideas are related) the concepts’ expressions of “Thank You, Jesus” are substantially similar to those of Black Jesus. See Peter F. Gaito Architecture, LLC v. Simone Dev. Corp., 602 F.3d 57, 63 (2d Cir. 2010). In fact, there are no similarities between the two works beyond the abstract and unprotected idea of an African American male protagonist named Jesus who believes he is the Son of God.

1. Plot

Mr. Brown contends that the plots are substantially similar because each “focuses on a Jesus character that engages in un-Jesuslike behavior which is used to propel their respective character and story.” (Plaintiff’s Brief at 14). Mr. Brown further contends that Black Jesus picks up where “Thank You, Jesus” left off. Although these plot elements appear similar in their

description, they "prove to be quite dissimilar once examined in any detail." Williams, 84 F.3d at 590.

"Thank You, Jesus" tells the story of an ungrateful teenage son's delusion that he is the real Jesus Christ, which leads to the destruction and ultimate resurrection of his father's church. After Jesus manipulates his father into letting Jesus lead a sermon, Jesus lies to his friend Speedy so Speedy will gather people to attend the sermon. While Jesus is delivering the sermon, lightning strikes the church and burns it to the ground. Jesus' father expels Jesus from the house that night, and then learns that his insurance will pay to rebuild the church.

Black Jesus, on the other hand, follows a flawed modern-day Jesus living in Compton, on a mission to spread the traditional Christian messages of love and kindness through untraditional methods. Its Jesus hero implements God's plan to grow a community garden to help the Compton community, which as well will help Jesus and his friends grow marijuana. In order to grow the garden, Jesus and his friends must take over a vacant lot, negotiate with gang members and drug dealers, and steal the necessary supplies.

The concept of an African American Jesus who engages in allegedly "un-Jesuslike" conduct is an abstract idea, which is illustrated and expressed differently by entirely different stories in each work. In "Thank You, Jesus," Jesus lies throughout

the story: to his father, so he can deliver a sermon; to Speedy, to persuade him to gather a large crowd for the sermon; and to the church congregation, to convince them that he is the real Jesus Christ. By contrast, in Black Jesus, Jesus steals manure and negotiates with gang members to grow a community garden, in order to benefit the community while growing marijuana. Although the works may share the general idea of "un-Jesuslike" behavior, they develop that idea differently through their respective plots.

Nor would the outcome be different if, as Mr. Brown argues, Black Jesus were presented as a continuation of "Thank You, Jesus." That might misappropriate the idea, but ideas are not protected by copyright.

Courts in the Second Circuit dismiss copyright claims where there is far greater overlap in plot elements than that presented here. See, e.g., Mallery v. NBC Universal, Inc., No. 07 Civ. 2250, 2007 WL 4258196 (S.D.N.Y. Dec. 3, 2007) (both works depict a future where tragic events like the destruction of landmark buildings in New York City occur), aff'd 331 F. App'x 821 (2d Cir. 2009); Sheldon Abend Revocable Trust v. Spielberg, 748 F. Supp. 2d 200, 208 (S.D.N.Y. 2010) (a male protagonist confined to his home spies on neighbors, discovers that a neighbor is a murderer, is attacked by the murderer, and is vindicated of falsely accusing the guilty neighbor).

2. Characters

Mr. Brown does allege similarities between Jesus and Speedy in "Thank You, Jesus" and Jesus and Fish in Black Jesus, but that degree of similarity is far too general to support a claim of copyright infringement. See Spielberg, 748 F. Supp. 2d at 208.

The Jesus in "Thank You, Jesus" is the "short round, troublesome" seventeen-year-old son of a preacher who executes a "sinful scheme" by manipulating his father into letting him deliver a sermon, (Compl. Ex. A at 54), whereas the Jesus in Black Jesus is a tall adult male who engages in certain unconventional acts but ultimately preaches the traditional Christian messages of kindness and forgiveness.

Both works also feature a friend of Jesus who schemes to make quick money. Those characters, however, go about their money-making plans in different ways: Speedy in "Thank You, Jesus" jumps at the chance to collect ten percent of the offerings from the people who attend Jesus' sermon, whereas Fish in Black Jesus participates in Jesus' plan to hold a benefit concert to raise money for the community garden.

There are other well-developed characters in Black Jesus, but Mr. Brown does not allege any similarities between other characters in the two works.

3. Setting

The settings of the two works are dissimilar. "Thank You, Jesus" occurs in a seemingly rural town called Silltown. By contrast, Black Jesus takes place in modern-day Compton, Los Angeles, an inner-city setting.

4. Themes

Although both works loosely embody religious themes, their most prominent themes are not substantially similar. "Thank You, Jesus," explores the themes of greed, faithlessness, and father-son relationships. Black Jesus, on the other hand, uses its inner-city setting and comedic plot to focus on themes such as forgiveness, determining right from wrong, racism and police brutality, and bettering one's community.

5. Total Concept and Feel

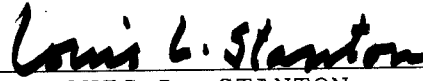
The total concept and feel of a work refers to the way in which an author selects and arranges the elements of the work, taking into account the "mood, details, or characterization." Reyher, 533 F.2d at 91-92. The total concept and feel of the two works here differ substantially. "Thank You, Jesus" is an eighteen-page story which takes place over the course of one day. Black Jesus is a multi-season live-action comedy television series which takes place over the course of several months. Thus, the pace and length of the works are quite different.

CONCLUSION

The motion for dismissal (Doc. No. 31) is granted.

So ordered.

Dated: New York, New York
December 6, 2017



LOUIS L. STANTON

U.S.D.J.