

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ATLANTIC RECORDING CORPORATION, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; BMG MUSIC, a New York general partnership; and SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership,

Case No.: 8:08-cv-00147-RAL-EAJ

Plaintiffs,

v.

EVA BOYER,

Defendant.

**PLAINTIFFS' ANSWER TO THE COUNTERCLAIMS
OF DEFENDANT EVA BOYER**

Plaintiffs Atlantic Recording Corp., *et al.* ("Plaintiffs"), by and through their undersigned counsel, Answer Defendant Eva Boyer's ("Defendant") Counterclaims as follows:

FIRST DEFENSE

Each of Defendant's six Counterclaims fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs answer the general and specific allegations of Defendant's Counterclaims as follows:

1. Plaintiffs state that no response is required as paragraph 1 alleges only legal conclusions. To the extent that a response is deemed required, Plaintiffs deny the allegations in paragraph 1.

2. Plaintiffs admit the allegations set forth in paragraph 2 of the Counterclaims.
3. Plaintiffs admit that they are the copyright owners or licensees of exclusive rights under United States copyright law with respect to certain sound recordings. Plaintiffs deny the remaining allegations of paragraph 3.
4. Plaintiffs deny the allegations set forth in paragraph 4 of the Counterclaims.
5. Plaintiffs deny the allegations set forth in paragraph 5 of the Counterclaims.
6. Plaintiffs admit that they have filed “Doe” actions in an effort to enforce their copyrights. Plaintiffs deny all remaining allegations in paragraph 6 of the Counterclaims.
7. Plaintiffs deny the allegations set forth in paragraph 7 of the Counterclaims.
8. Plaintiffs deny the allegations set forth in paragraph 8 of the Counterclaims.
9. Plaintiffs deny the allegations set forth in paragraph 9 of the Counterclaims.
10. Plaintiffs deny the allegations set forth in paragraph 10 of the Counterclaims.
11. Plaintiffs deny the allegations set forth in paragraph 11 of the Counterclaims.
12. Plaintiffs deny the allegations set forth in paragraph 12 of the Counterclaims.
13. Plaintiffs admit that they have filed suit against numerous individuals alleging similar claims to those asserted by Plaintiffs in their Complaint against Eva Boyer. Plaintiffs deny the remaining allegations in paragraph 13 of the Counterclaims.
14. Plaintiffs deny the allegations set forth in paragraph 14 of the Counterclaims.
15. Plaintiffs deny the allegations set forth in paragraph 15 of the Counterclaims.
16. Plaintiffs deny the allegations set forth in paragraph 16 of the Counterclaims.
17. Plaintiffs deny the allegations set forth in paragraph 17 of the Counterclaims.
18. Plaintiffs deny the allegations set forth in paragraph 18 of the Counterclaims.
19. Plaintiffs deny the allegations set forth in paragraph 19 of the Counterclaims.

20. Plaintiffs deny the allegations set forth in paragraph 20 of the Counterclaims.

21. Plaintiffs deny the allegations set forth in paragraph 21 of the Counterclaims.

22. Plaintiffs deny the allegations set forth in paragraph 22 of the Counterclaims.

COUNT I – TRESPASS TO CHATTELS

23. Plaintiffs hereby incorporate each of their responses to the above paragraphs as if fully set forth herein.

24. Plaintiffs deny the allegations set forth in paragraph 24 of the Counterclaims.

25. Plaintiffs deny the allegations set forth in paragraph 25 of the Counterclaims.

26. Plaintiffs deny the allegations set forth in paragraph 26 of the Counterclaims.

27. Plaintiffs deny the allegations set forth in paragraph 27 of the Counterclaims.

28. Plaintiffs deny the allegations set forth in paragraph 28 of the Counterclaims.

COUNT II – COMPUTER FRAUD AND ABUSE (18 U.S.C. § 1030)

29. Plaintiffs hereby incorporate each of their responses to the above paragraphs as if fully set forth herein.

30. Plaintiffs deny the allegations set forth in paragraph 30 of the Counterclaims.

31. Plaintiffs deny the allegations set forth in paragraph 31 of the Counterclaims.

32. Plaintiffs deny the allegations set forth in paragraph 32 of the Counterclaims.

33. Plaintiffs deny the allegations set forth in paragraph 33 of the Counterclaims.

COUNT III – ABUSE OF PROCESS

34. Plaintiffs hereby incorporate each of their responses to the above paragraphs as if fully set forth herein.

35. Plaintiffs admit that they filed a Doe action. Plaintiffs deny the remaining allegations set forth in paragraph 35 of the Counterclaim.

36. Plaintiffs deny the allegations set forth in paragraph 36 of the Counterclaims.

37. Plaintiffs deny the allegations set forth in paragraph 37 of the Counterclaims.

38. Plaintiffs deny the allegations set forth in paragraph 38 of the Counterclaims.

39. Plaintiffs deny the allegations set forth in paragraph 39 of the Counterclaims.

40. Plaintiffs deny the allegations set forth in paragraph 40 of the Counterclaims.

COUNT IV – DECEPTIVE AND UNFAIR TRADE PRACTICES
(Fla. Stat. § 501.201 *et seq.*)

41. Plaintiffs hereby incorporate each of their responses to the above paragraphs as if fully set forth herein.

42. Plaintiffs deny the allegations set forth in paragraph 42 of the Counterclaims.

43. Plaintiffs deny the allegations set forth in paragraph 43 of the Counterclaims.

44. Plaintiffs deny the allegations set forth in paragraph 44 of the Counterclaims.

COUNT V – DECLARATORY JUDGMENT

45. Plaintiffs hereby incorporate each of their responses to the above paragraphs as if fully set forth herein.

46. Plaintiffs deny the allegations set forth in paragraph 46 of the Counterclaims.

47. Plaintiffs deny the allegations set forth in paragraph 47 of the Counterclaims.

48. Plaintiffs deny the allegations set forth in paragraph 48 of the Counterclaims.

49. Plaintiffs deny the allegations set forth in paragraph 49 of the Counterclaims.

COUNT VI – CIVIL CONSPIRACY

50. Plaintiffs hereby incorporate each of their responses to the above paragraphs as if fully set forth herein.

51. Plaintiffs deny the allegations set forth in paragraph 51 of the Counterclaims.

52. Plaintiffs deny the allegations set forth in paragraph 52 of the Counterclaims.

53. Plaintiffs deny the allegations set forth in paragraph 53 of the Counterclaims.

54. Plaintiffs deny the allegations set forth in paragraph 54 of the Counterclaims.

55. Plaintiffs deny the allegations set forth in paragraph 55 of the Counterclaims.

56. Plaintiffs deny the allegations set forth in paragraph 56 of the Counterclaims.

THIRD DEFENSE

Defendant's Counterclaims are barred by the doctrines of waiver, laches and estoppel.

FOURTH DEFENSE

Defendant's Counterclaims are barred by the doctrine of unclean hands.

FIFTH DEFENSE

Plaintiffs' actions are protected by the right to petition under the First Amendment of the United States Constitution, as delineated in the *Noerr-Pennington* doctrine.

SIXTH DEFENSE

Plaintiffs deny each and every allegation of the Counterclaims, express or implied, not expressly admitted herein.

SEVENTH DEFENSE

Plaintiffs reserve the right to add affirmative defenses as warranted by ongoing discovery, investigation, or as otherwise permitted by law or court order.

EIGHTH DEFENSE

By using a peer-to-peer network, Defendant opened her computer to the world, thereby barring any trespass or invasion of privacy claims.

NINTH DEFENSE

To the extent Defendant suffered any damages, those damages were a result of her own action or the action of third parties, and not Plaintiffs.

TENTH DEFENSE

Defendant's Counterclaims are groundless and frivolous, entitling Plaintiffs to costs and attorneys fees.

WHEREFORE, Plaintiffs request that Defendant's Counterclaims be dismissed with prejudice, Plaintiffs be awarded their costs and fees and such other and further relief as the law allows and is deemed appropriate by this Court.

Dated: 5/20/08

By: s/Chaila D. Restall
CHAILA D. RESTALL
Florida Bar No.: 0581771
chaila.restall@akerman.com
AKERMAN SENTERFITT
SunTrust Financial Centre
401 East Jackson Street, Suite 1700
Tampa, Florida 33602
Phone: (813) 209-5027
Facsimile: (813) 223-2837
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 20, 2008, I electronically filed the foregoing **PLAINTIFFS' ANSWER TO THE COUNTERCLAIMS OF DEFENDANT EVA BOYER** via the CM/ECF system which will notify the following electronically:

Michael Alex Wasylik
P.O. Box 2245
Dade City, FL 33526

s/Chaila D. Restall

CHAILA D. RESTALL