

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTA MUSIC, ARISTA RECORDS
LLC, ATLANTIC RECORDING
CORPORATION, ELEKTRA
ENTERTAINMENT GROUP INC.,
LAFACE RECORDS LLC, SONY
MUSIC ENTERTAINMENT, UMG
RECORDINGS, INC., WARNER BROS.
RECORDS INC., AND ZOMBA
RECORDING LLC,

Plaintiffs,

v.

ESCAPE MEDIA GROUP INC.,
SAMUEL TARANTINO, JOSHUA
GREENBERG, PAUL GELLER,
BENJAMIN WESTERMANN-CLARK,
JOHN ASHENDEN, CHANEL
MUNEZERO, NIKOLA ARABADJIEV

Defendants.

11 Civ. 840 (TAG)

AMENDED COMPLAINT

#3

Plaintiffs Arista Music, Arista Records LLC, Atlantic Recording Corporation, Elektra Entertainment Group Inc., LaFace Records LLC, Sony Music Entertainment, UMG Recordings, Inc., Warner Bros. Records Inc., and Zomba Recording LLC ("Plaintiffs"), by and through their undersigned attorneys, allege as follows:

NATURE OF THE ACTION

1. This case relates to a business that is engaged in the willful infringement of a massive number of copyrights over the Internet. Defendant Escape Media Inc. ("Escape") owns and operates a pirate website, www.grooveshark.com (the "Grooveshark website"), through which it provides anyone with an Internet connection with free and unfettered access to infringing copies of "any song in the world."

2. Escape publicly touts the fact that it has a catalog of 15 million sound recordings available on demand including the most popular sound recordings by top commercial artists such as Michael Jackson, Bob Marley, Madonna, Led Zeppelin, Green Day, Elton John, Jay-Z, and Lady Gaga. Critically, however, Escape does not have a license or other authorization from Plaintiffs or from the owners of the copyrights on the vast majority of the sound recordings contained on the site.

3. Escape has brashly acknowledged the unauthorized and infringing nature of its business. Escape's senior director readily admitted that Escape "***bet the company on the fact that it is easier to beg forgiveness than ask permission***" from record labels to exploit their copyrighted sound recordings. *See* Exhibit A (emphasis added). The same director bragged that Escape's meteoric growth is sustained without "paying a dime to any of the [record] labels." *See* Exhibit B.

4. Escape knows that its conduct is unlawful. In an email to UMG Recordings, Inc, Escape openly admitted that it "owes UMG for the use of its valuable content." *See* Exhibit C. In another email to several of the plaintiffs herein, Escape even acknowledged that "we cannot be a real company until and unless we secure the licenses that we need." Plaintiffs repeatedly have refused to grant Escape's requests for such a license. Nonetheless, Escape continues to blatantly and openly exploit their copyrighted sound recordings without permission.

5. Escape's brazen decision to infringe Plaintiffs' copyrighted sound recordings is driven by its awareness that the life-blood of its business is its ability to offer users all of the most popular copyrighted sound recordings. ***Accordingly, to ensure that all recordings are available, Escape's senior officers personally have illegally uploaded thousands of infringing sound recordings to the Grooveshark website and have instructed their employees to do the same.*** Escape's business records establish unequivocally that the sound recordings illegally

copied by Escape's executives and employees include thousands of well known sound recordings owned by Plaintiffs—and it is these sound recordings that form the basis of this lawsuit.

6. In a recent blog posting, a Grooveshark employee freely acknowledged that Escape's senior officers have personally participated in, directed, and authorized these acts of infringement:

We are assigned a predetermined amount of weekly uploads to the system and get a small extra bonus if we manage to go above that (not easy). The assignments are assumed as direct order for the top to the bottom, we don't just volunteer to "enhance" the Grooveshark database . . . Are the above legal or ethical? Of course not . . . If the labels or their lawyers can't figure out how to stop it, then I don't feel bad for having a job. It's tough times.

See <http://www.digitalmusicnews.com/stories/101311cc>, a copy of which attached hereto as Exhibit D (emphasis added).

7. These flagrant acts of infringement by Escape and its senior officers and employees reflect the essence of Escape's business and culture. Escape and its management have adopted a business model that is premised on massive willful copyright infringement. As a direct result of this egregious and willful conduct, thousands of Plaintiffs' most popular sound recordings are infringed daily on a massive scale. The harm to Plaintiffs, which invest millions of dollars and enormous creative energies to produce and exploit their copyrighted works, is manifest and irreparable.

THE PARTIES

8. Plaintiff Arista Music is a New York partnership with its principal place of business in New York, New York.

9. Plaintiff Arista Records LLC, is a Delaware company with its principal place of business in New York, New York.

10. Plaintiff Atlantic Recording Corporation is a Delaware corporation with its

principal place of business in New York, New York.

11. Plaintiff Elektra Entertainment Group Inc. is a Delaware corporation with its principal place of business in New York, New York.

12. Plaintiff LaFace Records LLC is a Delaware corporation with its principal place of business in New York, New York.

13. Plaintiff Sony Music Entertainment is a Delaware partnership with its principal place of business in New York, New York.

14. Plaintiff UMG Recordings, Inc. is a Delaware corporation with its principal place of business in Santa Monica, California. UMG is registered to do business in New York and maintains an office in New York City. Indeed, several of UMG's record label divisions are headquartered in New York.

15. Plaintiff Warner Bros. Records Inc. is a Delaware corporation with its principal place of business in Burbank, California.

16. Plaintiff Zomba Recording LLC is a Delaware corporation with its principal place of business in New York, New York.

17. Escape is a Delaware corporation with its principal place of business in Gainesville, Florida. Escape is registered to do business in New York and maintains an office in New York City.

18. Samuel Tarantino is a co-founder and the Chief Executive Officer of Escape. In his capacity as CEO, Mr. Tarantino has been responsible for formulating, approving, and controlling virtually all aspects of Escape's business operations. Thus, at all times, he has been one of the moving, active, conscious forces behind Defendants' infringement of Plaintiffs' copyrights.

19. Joshua Greenberg is a co-founder and the Chief Technology Officer of Escape. In

his capacity as CTO, Mr. Greenberg has been responsible for formulating, approving, and controlling virtually all aspects of Escape's operations. Thus, at all times, he has been one of the moving, active, conscious forces behind defendants' infringement of Plaintiffs' copyrights. Upon information and belief, Greenberg lives and works in Florida.

20. Paul Geller is the Senior Vice President for External Affairs at Escape, and a senior executive officer. Mr. Geller, along with Tarantino and Greenberg, is a key decision maker within Escape. Thus, at all times, he has been one of the moving, active, conscious forces behind defendants' infringement of Plaintiffs' copyrights. Upon information and belief, Geller lives and works in New York, New York.

21. Escape's business records confirm that Tarantino, Greenberg and Geller, ("collectively referred to herein as the "Executive Defendants") have personally uploaded thousands of infringing copies of copyrighted sound recordings including hundreds of infringing copies of Plaintiffs' copyrighted sound recordings to the Grooveshark website. In addition, these Executive Defendants have directed the uploading of tens of thousands of additional recordings including thousands of Plaintiffs' recordings, have exercised control over the infringing activities described herein and have personally benefitted from this infringing activity through their ownership interest in the company.

22. Benjamin Westermann-Clark is the Vice President of Public Relations at Escape, and a senior executive officer. Upon information and belief, Westermann-Clark lives and works in Florida.

23. John Ashenden is Creative Director and Vice President of Product Development at Escape, and a senior executive officer. Upon information and belief, Ashenden lives and works in Florida.

24. Chanel Munezero is employed by Escape as a software developer. Upon

information and belief, he lives and works in Florida.

25. Nikola Arabadjiev is employed by Escape in the “quality assurance” department. Upon information and belief, he lives and works in Florida.

26. Escape’s business records confirm that Ashenden, Westermann-Clark, Munezero and Arabadjiev (the “Employee Defendants”) have engaged in systematic and widespread illegal uploading of Plaintiffs’ copyrighted content to the Grooveshark website. Acting pursuant to the direction of Escape and the Executive Defendants, the Employee Defendants have copied tens of thousands of sound recordings, including thousands of sound recordings belonging to Plaintiffs, and uploaded them to the Grooveshark website.

JURISDICTION AND VENUE

27. This Court has personal jurisdiction over all of the defendants. Escape does continuous and systematic business in New York and is thus subject to the jurisdiction of this Court pursuant to N.Y.C.P.L.R. § 301. It is registered to do business in New York and maintains an office at 254 West 31st Street, New York, NY 10001. Escape also transacts business in New York, and contracts to supply goods and services in New York in connection with the matters giving rise to this suit. *See id.* § 302(a)(1). Specifically, Escape has entered into contracts and other arrangements with residents of New York which enable New York residents to access infringing files, technical support, and other services through the Grooveshark website. Escape is also subject to jurisdiction pursuant to C.P.L.R. § 302(a)(2) since it has committed numerous tortious acts within the State of New York, including by encouraging its New York employees to upload infringing content to the Grooveshark website as well as distributing and performing infringing copies of sound recordings to New York residents. Escape also commits infringing acts outside of New York causing injury to Plaintiffs in New York, reasonably expects or should expect its infringing conduct to have consequences in New York and derives substantial revenue

from interstate commerce. *See id.* § 302(a)(3).

28. The Court also has personal jurisdiction over the Executive Defendants. Each of the Executive Defendants exercises direction and control over, and benefits from Escape's infringing activities as alleged herein. Several of the Executive Defendants are founders of Escape's operations and have personally participated in developing the infringing features of the Grooveshark website and business. In addition, each of the Executive Defendants has entered New York repeatedly for purposes of transacting business on behalf of Escape. The Court also has personal jurisdiction over Paul Geller because he lives and works in New York and directs infringing activities from within the state.

29. The Court also has personal jurisdiction over the Employee Defendants and the Executive Defendants pursuant to C.P.L.R. § 302(a)(3) because *inter alia* (i) these defendants have committed tortious acts outside of the State of New York that have caused damage to Plaintiffs inside the State of New York and (ii) these defendants expect or reasonably should have expected their actions to have consequences in New York, and they derive substantial revenue from interstate commerce through their employment at Escape.

30. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or 28 U.S.C. § 1400(a). On information and belief, a substantial part of the acts of infringement complained of herein occurs or has occurred in this District. Further, Plaintiffs Arista Music, Arista Records LLC, Atlantic Recording Corporation, Elektra Entertainment Group, Inc., LaFace Records LLC, Sony Music Entertainment, and Zomba Recording LLC have their principal places of business in New York and in this District. Plaintiffs UMG Recordings, Inc. and Warner Bros. Records Inc. each has a place of business in New York and in this District. Accordingly, Plaintiffs have been injured in New York by Defendants' infringing conduct.

PLAINTIFFS' BUSINESSES

31. Plaintiffs are among the world's largest and most respected companies in the music business operating a diverse collection of record labels, such as A&M, Arista, Asylum, Atlantic, Columbia, The Decca Label Group, Elektra, Epic, Geffen, Interscope, Island Def Jam Music Group, Motown, RCA, Reprise, Universal Music Group Nashville, Universal Republic Records, and The Verve Music Group, among many more.

32. Plaintiffs are the owners or exclusive United States licensees of sound recordings containing the performances of some of the most popular and successful recording artists of all-time, such as Britney Spears, Bob Marley, Elton John, Green Day, Lady Gaga, Led Zeppelin, Madonna, Metallica, Michael Jackson, and many more. Plaintiffs have invested and continue to invest significant money, time, effort, and creative talent to create, promote, sell, and license their sound recordings. Together, Plaintiffs own the large majority of copyrighted sound recordings sold in the United States.

33. Plaintiffs distribute, sell, and/or license their sound recordings in the form of CDs, cassettes, and other tangible media throughout the United States, including in New York. Plaintiffs also sell, distribute, and/or license their sound recordings in the form of digital audio files through legitimate and authorized Internet services, such as iTunes, Amazon, MySpace, Rhapsody, and Spotify.

DEFENDANTS' INFRINGING CONDUCT

34. Escape and the Executive Defendants designed and operate the Grooveshark website. At all relevant times, Escape's business plan was to attract a substantial user base for the site using the allure of a massive library of free copyrighted sound recordings. Escape entices users to its website by proclaiming that it will enable them to "listen to any song in the world" for free. Escape boasts that the Grooveshark website "is the world's largest on-demand

and music discovery service” with over 15 million songs available. *See* webpages printed from www.grooveshark.com on November 10, 2011, attached hereto as **Exhibits E & F**.

35. However, Defendants have no license for the overwhelming majority of the sound recordings available through the Grooveshark website, and have no license from Plaintiffs for any of their sound recordings. Rather, Defendants decided to create equity value for Escape and the Executive Defendants by exploiting those sound recordings without authorization from or payment to copyright owners.

36. While the Grooveshark website purports to allow users to upload content, it is of critical importance to Escape that all popular recordings are available to its users. Accordingly, Escape’s own CEO, officers and employees took on the direct responsibility for “seeding” (*i.e.*, uploading) a significant volume of infringing content to make sure it was available to users of the Grooveshark website.

37. As noted above, an Escape employee has publicly admitted that the most popular sound recordings available on the Grooveshark website regularly are uploaded by Escape’s employees at the direction of Escape and the Executive Defendants. According to this Escape employee, employee compensation is tied directly to the number of major label sound recordings uploaded by employees each week. *See* Exhibit D *supra*.

38. Escape’s business records provide irrefutable confirmation of this employee’s allegations. As shown below, records of user uploads maintained by Escape demonstrate that the Executive and Employee Defendants, together with other Escape employees, have uploaded more than 100,000 sound recordings to the Grooveshark website in order to boost Escape’s library of infringing content and to make the service more attractive to prospective users:

Employee	Title	Min. Number of Uploads
Samuel Tarantino	CEO	1,791
Paul Geller	Senior Vice President	3,453
Benjamin Westermann-Clark	Vice President	4,654
John Ashenden	Vice President	9,195
Chanel Munezero	Software Engineer	20,756
Nikola Arabadjiev	Quality Assurance	40,243
Other Employees		33,685
Total		113,777

39. The recordings uploaded by Escape’s own officers and employees include thousands of recordings owned by Plaintiffs, including popular sound recordings featuring Plaintiffs’ artists such as Green Day, Madonna, Eminem, Bob Marley, Guns N’ Roses, Jay-Z, and the Black Eyed Peas. The Employee Defendants have engaged in this activity at the direction, for the benefit, and under the control of Escape and the Executive Defendants. Once uploaded by the Defendants herein, a sound recording becomes available to all users of the Grooveshark website who visit the website and search for the name of the song. A non-exhaustive representative list of Plaintiffs’ sound recordings that have been infringed by the Defendants is attached hereto as **Exhibits G, H, and I**.

40. The direct infringement by Escape’s own officers and employees has contributed materially to the ability of the Grooveshark website to attract millions of visitors each month, thereby allowing Defendants to profit directly from their unlawful activities by, among other things: (a) selling advertisements that are displayed in conjunction with the sound recordings it unlawfully copies and distributes; (b) selling monthly subscriptions to users with the promise of greater access to infringing music; and (c) increasing venture capital investment and the value of its company to potential purchasers.

41. Defendants’ use and exploitation of the sound recordings at issue in this case has never been authorized or licensed by Plaintiffs and deprives Plaintiffs and recording artists of

compensation for their unique works. Defendants' use of these recordings is a blatant violation of Plaintiffs' rights under federal copyright law.

CLAIM FOR RELIEF

Federal Copyright Infringement (Against All Defendants)

42. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 41 as if fully set forth herein.

43. Without authorization, Defendants are exploiting Plaintiffs' copyrighted sound recordings in violation of 17 U.S.C. §§ 106 and 501, including but not limited to the representative list of copyrighted sound recordings listed in Exhibits G, H and I hereto.

44. Defendants' acts of infringement are willful, intentional and purposeful, in disregard of and indifference to Plaintiffs' rights.

45. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendants' profits from infringement, as will be proven at trial.

46. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

47. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money damages. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502,

Plaintiffs are entitled to a preliminary and permanent injunction prohibiting infringement of Plaintiffs' copyrights and exclusive rights under copyright.

WHEREFORE, Plaintiffs pray for judgment against defendant as follows:

1. For a preliminary and a permanent injunction enjoining Defendants, and their respective agents, servants, employees, officers, successors, licensees, and assigns, and all persons acting in concert or participation with each or any of them, from directly or indirectly infringing in any manner any of Plaintiffs' sound recordings, including but not limited to the recordings listed on Exhibits G, H, and I.

2. For an accounting, the imposition of a constructive trust, restitution of Defendants' unlawful proceeds, and damages according to proof.

3. For punitive and exemplary damages in an amount as may be awarded at trial.

4. For prejudgment interest according to law.

5. For Plaintiffs' costs incurred in this action including reasonable attorneys' fees.

6. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: Andrew H. Bart

Andrew H. Bart
Gianni P. Servodidio
Joseph J. McFadden
JENNER & BLOCK LLP
919 Third Avenue
37th Floor
New York, NY 10022
tel. (212) 891-1600
fax (212) 891-1699

Attorneys for Plaintiffs

Dated: New York, New York
December 15, 2011