

THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

CIVIL ACTION No. 08-CV-11126NG

INTERSCOPE RECORDS, a California general)
 partnership; SONY BMG MUSIC)
 ENTERTAINMENT, a Delaware general)
 partnership; MAVERICK RECORDING)
 COMPANY, a California joint venture;)
 WARNER BROS, RECORDS INC., a)
 Delaware corporation; ARISTA RECORDS)
 LLC, a Delaware limited liability company; and)
 UMG RECORDINGS, INC., a Delaware)
 Corporation,)
)
 Plaintiffs,)
)
 v.)
)
 AMANDA PAUL)
)
 Defendants,)
)

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
TO PLAINTIFF'S COMPLAINT FOR COPYRIGHT INFRINGEMENT**

Defendant AMANDA PAUL, proceeding pro se, answers and alleges as follows:

1. Can neither admit nor deny the allegations of paragraphs 1 and 2 of the complaint, in that they are conclusions of the law for the Court.
2. Can neither admit nor deny the allegations of paragraph 3 of the complaint, in that they are conclusions of the law for the Court.
3. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the complaint.
4. Denies each and every remaining allegation of the complaint.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted, in that among other things, the facts alleged therein do not constitute copyright infringement,

SECOND AFFIRMATIVE DEFENSE

The Court should not permit the action to proceed in the absence of persons needed for just adjudication of the controversy. Such persons are subject to service of process and their joinder will not deprive the Court of jurisdiction over the subject matter of the action.

THIRD AFFIRMATIVE DEFENSE

The action should be dismissed on the ground that it is not being prosecuted in the name of the real party in interest, which is the Recording Industry Association of America.

FOURTH AFFIRMATIVE DEFENSE

The provision for statutory damages in 17 U.S.C. § 504(c) is unconstitutional as applied to the facts of this action, in that the amount of \$750 provided for therein is so grossly disproportionate to plaintiff's actual damages, if any, as to violate the due process clauses of the fifth and fourteenth amendments to the Constitution.

FIFTH AFFIRMATIVE DEFENSE

Some or all of the claims are barred by the statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims of infringement are barred by the doctrine of fair use.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims of infringement are barred by estoppel and/or acquiescence.

EIGHTH AFFIRMATIVE DEFENSE

1. During most of the time periods in which the sound recordings which are the subject of this action were allegedly reproduced, downloaded and/or distributed by an online media distribution system, defendant did not use the computer allegedly used.
2. Therefore, defendant did not commit the allegedly infringing acts alleged in the complaint.

NINTH AFFIRMATIVE DEFENSE

The complaint fails to satisfy the pleading requirements for a claim of copyright infringement, in that there can be no liability for infringing upon the right of distribution unless copies of copyrighted works are actually disseminated to members of the public. Defendant denies having disseminated any copies of copyrighted works to members of the public.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred under the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, the alleged conduct, had it occurred, was authorized; indeed, on information and belief, plaintiffs promoted, fostered and facilitated the actions complained of over the internet and by other means.

TWELFTH AFFIRMATIVE DEFENSE

The alleged claims are neither well-grounded in fact nor warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law within the meaning of Rule 11 of the Federal Rules of Civil Procedure.

THIRTEENTH AFFIRMATIVE DEFENSE

1. The plaintiffs and their attorneys have engaged in a wide-ranging conspiracy to defraud the Courts of the United States.

2. The plaintiffs, ostensibly competitors in the recording industry, are a cartel acting collusively in violation of the antitrust laws and public policy, by litigating and settling all cases similar to this one together, and by entering into an unlawful agreement among themselves to prosecute and to dispose of all cases in an identical manner and through common lawyers.

3. Among the acts in furtherance of this conspiracy are: (1) bringing, without investigation sufficient to establish that the allegations and factual contentions therein have evidentiary support, lawsuits against persons who are not specifically known to have infringed copyrights, including persons who are deceased, disabled or who lack knowledge of how to use computers or download files from the internet; (2) making false and unsupported allegations that the defendants in these actions have infringed copyrights, by making the unwarranted and technologically erroneous assumption that an Internet Protocol address is a unique identifier of a computer or an individual; (3) using a corporation known as Settlement Support Center, LLC as their agent to make extortionate threats to take criminal action and to defame defendants' names and credit, in order to force defendants to pay sums which have no relation to plaintiff's actual damages, if any, and by delivering releases to settling defendants (few of whom are represented by counsel) which are fraudulent, in that they do not constitute true releases of all claims by

putative plaintiffs, thereby misleading settling defendants into erroneously believing that they cannot be sued again; (4) commencing *ex parte* “John Doe” lawsuits which they have no intention of pursuing, but by means of which they are able to communicate with District Judges, Magistrate Judges, and other judicial officials on a daily basis, without providing defendants with notice or opportunity to be heard, in violation of attorneys’ ethical obligations as officers of the Courts; (5) invading the privacy of these “John Doe” defendants by then serving subpoenas on Internet Service Providers without notice to the putative defendants; (6) bringing the “John Doe” lawsuits in jurisdictions far removed from the domiciles of the “John Does,” so that they have no meaningful opportunity to be heard or to retain counsel of their own choosing; (7) withdrawing such actions upon being challenged and thereby preventing defendants from obtaining relief for having to defend the.; (8) engaging in other unconscionable conduct.

4. On information and belief, these and other plaintiffs and the Recording Industry Association of America have commenced some 20,000 actions in the District Courts of the United States in the past five years, the overwhelming majority of which have resulted either in default judgments or extortionate settlements far in excess of any actual damages incurred by plaintiffs.

5. These actions, and the conduct underlying them, constitute misuse of plaintiff’s copyrights and any rights plaintiffs may have thereunder, thereby barring plaintiff’s from any relief whatsoever, and which action and conduct further constitute a complete defense to any claims of copyright infringement.

FIRST COUNTERCLAIM
(Declaration of Non-Infringement)

1. Defendant-counterclaim plaintiff Amanda Paul is an individual residing within this district.

2. On information and belief, plaintiff-counterclaim defendants Arista Records LLC, Warner Bros. Records Inc., Capital Records, Inc., Sony BMG Music Entertainment, Elektra Entertainment Group Inc. and UMG Recordings, Inc., are all Delaware corporations with their principals places of business in the State of New York (California with respect to Warner Bros. Records Inc. and UMG Recordings, Inc.).

3. On information and belief, plaintiff-counterclaim defendant BMG Music is a New York partnership with its principal place of business in the State of New York.

4. On information and belief, plaintiff-counterclaim defendant Priority Records LLC is a limited liability company with its principal place of business in the State of California.

5. This Court has jurisdiction of this counterclaim pursuant to 17 U.S.C. § 101 *et seq.* (copyright), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a)(copyright) and 28 U.S.C. § 2201 (declaratory judgment)

6. Counterclaim defendants are, on information and belief, the copyright owners or licensees of certain sound recording.

7. On or about July 1, 2008, counterclaim defendants commenced an action in the U.S. District Court for the District of Massachusetts (1:08-cv-11126) against counterclaim plaintiff, charging him with copyright infringement.

8. Counterclaim plaintiff is accused therein of downloading and file-sharing

certain computer files consisting of sound recording allegedly owned or licensed by counterclaim defendants.

9. The acts allegedly committed by counterclaim plaintiff as set forth in the complaint therein do not constitute copyright infringement.

10. Counterclaim defendants do not allege any specific acts of downloading or file-sharing or provide any details of time and place regarding such acts.

11. Counterclaim plaintiff did not commit any of the alleged acts of downloading and file-sharing.

12. Counterclaim plaintiff did not in any event violate any of the exclusive rights of any of the counterclaim defendants in and to the sound recordings, and has never copied any of the song files, the rights to which allegedly belong to the counterclaim defendants.

13. There is an actual controversy between the counterclaim plaintiff and counterclaim defendants.

14. Counterclaim plaintiff re-alleges paragraphs 1 through 5 of his Thirteenth Affirmative Defense.

15. Counterclaim defendants have on many occasions voluntarily dismissed actions similar to the action against counterclaim plaintiff, which they have brought in district courts throughout the United States.

16. By voluntarily dismissing their cases, counterclaim defendants have prevented the legitimacy of their conduct and strategy from being judicially examined, and have prevented the defendants in those cases from being judicially vindicated.

17. The relief requested cannot be obtained in the action against counterclaim plaintiff.

18. Counterclaim plaintiff is entitled to a positive judicial declaration of non-infringement and to such further relief as may be appropriate, including costs and a reasonable attorney's fee.

SECOND COUNTERCLAIM
(Misuse of Copyright)

19. Counterclaim plaintiff re-alleges paragraphs 1 through 12 of his First Counterclaim.

20. The counterclaim defendants are competitors in the business of recorded music.

21. The counterclaim defendants are a cartel acting collusively in violation of the antitrust laws and public policy, by litigating and settling all cases similar to this one together, and by entering into an unlawful agreement among themselves to prosecute and to dispose of all cases in an identical manner and through common lawyers.

22. Counterclaim plaintiff re-alleges paragraphs 1 through 5 of his Thirteenth Affirmative Defense.

23. Such actions represent an attempt by counterclaim defendants to secure for themselves rights far exceeding those provided by copyright laws.

24. Such acts constitute misuse of copyrights, and lead to a forfeiture of the exclusive rights granted to counterclaim defendants by those laws.

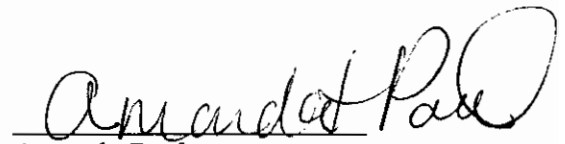
25. Counterclaim plaintiff is entitled to a judgment that counterclaim defendants have forfeited the exclusive rights, if any, which they possess in and to the sound recording which they allege him to have infringed.

26. Counterclaim plaintiff is further entitled to a judgment that counterclaim defendants have forfeited the exclusive rights, if any, which they possess in and to the sound recordings listed on Exhibits A and B to their complaint, whether or not he is alleged to have infringed the rights of counterclaim defendants therein.

27. Counterclaim plaintiff is further entitled to costs and a reasonable attorney's fee and such other relief as may be just.

WHEREFORE, the defendant demands judgment in his favor dismissing the complaint with prejudice, and in his favor on his counterclaims, declaring that defendant did not infringe any of the exclusive rights of plaintiffs, and that plaintiffs have forfeited their exclusive rights by misuse of their copyrights, to the costs and disbursements of this action, including reasonable attorney's fees, and to such other relief as may be just.

Dated: February 6, 2009



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