

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 09-0905-cv

Caption:

Motion for: Extension of briefing schedule pending determination of motion for stay.

Arista Records LLC et al., Plaintiffs-Appellees,

-against-

Set forth below precise, complete statement of relief sought: Staff Counsel has issued a scheduling order for this appeal, and appellant's brief is due by May 6, 2009. However, appellant moved on March 9 for a stay pending appeal, and that motion will be submitted on April 21. Until the Court decides the motion, appellant cannot determine how to proceed. The request is therefore that the Court extend the briefing schedule pending its decision on the motion for a stay, and, if appropriate, set out a new schedule in the decision.

Doe 3, Defendant-Appellant,

and

Does 1, 2 and 4-16, Defendants.

MOVING PARTY:

OPPOSING PARTY: Plaintiffs-Appellees Arista Records LLC et al.

Plaintiff Defendant Doe 3 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Richard A. Altman, Esq. Law Office of Richard A. Altman 285 West Fourth Street New York, New York 10014 212.633.0123 altmanlaw@earthlink.net

OPPOSING ATTORNEY Timothy M. Reynolds, Esq. Holme Roberts & Owen, LLP 1801 13th Street, Suite 300 Boulder, Colorado 80302 303.444.5955 timothy.reynolds@hro.com

Court-Judge/Agency appealed from: U.S. District Court, Northern District of New York, Hon. Glenn T. Suddaby, U.S.D.J.

Please check appropriate boxes:

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Has consent of opposing counsel:

Has request for relief been made below? Yes No

A. been sought? B. been obtained? Yes No Yes No

Has this relief been previously sought in this Court? Yes No

Has service been effected? [Attach proof of service] Yes No

Is oral argument requested? (requests for oral argument will not necessarily be granted) Yes No

Requested return date and explanation of emergency:

Has argument date of appeal been set? If yes, enter date: Yes No

Signature of Moving Attorney:

Date: April 17, 2009

/S/

ORDER

IT IS HEREBY ORDERED that the motion is GRANTED DENIED.

FOR THE COURT: CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: Form T-1080 (Revised 10/31/02)

By:

DECLARATION IN SUPPORT OF MOTION

RICHARD A. ALTMAN declares the following as true under penalty of perjury:

1. I am the attorney for Doe 3 in this appeal, and submit this declaration in support of this motion for an extension of the briefing schedule pending this Court's determination of appellant's motion for a stay.

2. This is an action for copyright infringement, and Doe 3 appeals from an order of the District Court for the Northern District of New York which denied Doe 3's motion to quash a subpoena seeking the disclosure of Doe 3's identity. The subpoena was served on the State University of New York in Albany. On March 9, 2009, appellant moved for a stay pending appeal, seeking to prevent compliance with the subpoena pending the appeal. The next day, Circuit Judge Livingston granted an interim stay pending the hearing of the motion by a full panel. A copy of the order is annexed. The motion has been fully briefed by the parties, and will be submitted to the A Panel on April 21.

3. On March 26, the Court's Staff Counsel issued Scheduling Order # 1. It requires that the Record on Appeal be filed by April 29, and that the appellant's brief and joint appendix be filed by May 6. A copy of the order is annexed. On April 15, the parties conducted a pre-argument conference with Staff Counsel. During the conference, we discussed the effect of the pendency of the stay motion on the briefing schedule. Staff Counsel advised that she would not be able to extend the schedule, and suggested that a motion to the Court requesting an extension would be appropriate. During the conference, appellees' counsel stated that he would oppose such a motion.

4. At this writing, it is of course not known whether the stay will issue, and if so, when, and hence the filing deadlines may pass while the motion is *sub judice*. In any event, preparation and

perfection of the appeal is not practicable until the Court grants the stay, because if the stay is denied, the appeal may become moot, and may be withdrawn.

4. I therefore respectfully request that the Court extend the time to file the record, joint appendix and briefs as it may deem appropriate, either by a separate order or in the order determining the motion for a stay.

Dated: April 17, 2009

/S/

RICHARD A. ALTMAN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 17, 2009, he served a copy of the within Motion for Extension of Briefing Schedule by first-class mail to Timothy M. Reynolds, Esq., Holme Roberts & Owen, LLP, attorneys for appellees, 1801 13th Street, Suite 300, Boulder, Colorado 80302, and by email to timothy.reynolds@hro.com.

Dated: April 17, 2009

/S/

RICHARD A. ALTMAN

ANTI-VIRUS CERTIFICATION FORM
See Second Circuit Interim Local Rule 25(a)6.

CASE NAME: Lava Records v. Amurao
DOCKET NUMBER: 08-2376-cv

I, Richard A. Altman, certify that I have scanned for viruses the PDF version of the attached document that was submitted in this case as an email attachment to

_____ <agencycases@ca2.uscourts.gov>.
_____ <criminalcases@ca2.uscourts.gov>.
__X__ <civilcases@ca2.uscourts.gov>.
_____ <newcases@ca2.uscourts.gov>.
_____ <prosecases@ca2.uscourts.gov>.

and that no viruses were detected.

Please print the **name** and the **version** of the anti-virus detector that you used: Norton 360 and Lavasoft Adwatch.

If you know, please print the version of revision and/or the anti-virus signature files. Unknown.

s/Richard A. Altman

Dated: April 17, 2009