

MAY 11 2009

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SONY BMG MUSIC)
ENTERTAINMENT, a Delaware)
General partnership; UMG)
RECORDINGS, INC., a Delaware)
Corporation; VIRGIN RECORDS)
AMERICA, INC.; a California)
Corporation; LAFACE RECORDS LLC,)
A Delaware limited liability company;)
And WARNER BROS. RECORDS)
INC.; a Delaware corporation,)
))
))
))
))
Plaintiffs,)
))
v.)
))
LINDSEY SIMMS,)
))
Defendant)
))

**Civil Action File
1:08 -CV-3728-CC**

**AMENDED ANSWER AND
COUNTERCLAIMS OF LINDSEY SIMMS**

Defendant LINDSEY SIMMS ("Defendant") submits her amended answer and to the initial complaint, and counterclaims as follows.

AMENDED ANSWER

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a cause of action against this Defendant.
2. Plaintiffs' claims are barred by the doctrine of unclean hands.
3. Plaintiffs' claims are barred by the doctrine of laches.
4. Plaintiffs' claims are barred because any alleged act giving rise to liability was committed by third parties beyond Defendant's control and without Defendant's knowledge, including the "online media distribution system" identified in Plaintiffs' Complaint.
5. Plaintiffs' claims are barred because Plaintiffs have failed to join an indispensable party, namely the "online media distribution system" listed in Plaintiffs' Complaint.
6. Defendant did not commit any act or omission which breached any legal duty owed to Plaintiffs.
7. Plaintiffs' claims are barred because Plaintiffs have sued the wrong party.
8. Plaintiffs have not produced any evidence linking the Defendant to any alleged "screen shots", " which show a vast array of files" as pictured in a share folder allegedly appearing on the computer Defendant had use of,

contrary to Plaintiffs' assertions (1:08- cv-03728-CC Docket report # 7, page 3).

9. Defendant reserves her right to plead additional defenses that may be identified during the investigation and/or course of discovery
10. Without waiving the foregoing, Defendant answers the individual allegations in the Complaint as follows:
 11. Defendant admits the allegation of paragraph 1 of the Complaint.
 12. Defendant admits she currently resides in this District; Defendant denies all other allegations of paragraphs 2 of the Complaint.
 13. As to the allegations of paragraphs 3, 4, 5, 6, and 7 of the Complaint, Defendant is without sufficient knowledge to admit or deny said allegations, but demands strict proof thereof.
 14. Defendant denies the allegation of paragraph 8 of the Complaint.
 15. In response to paragraph 9 of the Complaint, Defendant incorporates her responses to the allegations contained in paragraphs 1 through 13 above as if each were fully set forth herein.
 16. Admitted that paragraphs 10 -11 restate Plaintiffs' prior allegations. Substantive responses thereto are restated and incorporated by reference.

17. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 12 of the Complaint, but demands strict proof thereof.
18. Defendant denies the allegations of paragraph 13
19. Simms denies the allegations of paragraphs 14-16 and 18-19.
20. Defendant denies that Plaintiffs are entitled to the injunctive or other relief requested in the Complaint.

COUNTERCLAIMS

FACTS COMMON TO ALL COUNTERCLAIMS

21. Defendant hereby incorporates her responses and claims made in paragraphs 1 through 20 of her Answer, as if each were set forth in its entirety.
22. This court has jurisdiction for counterclaims in the instant suit.
23. Defendant Simms resides in Georgia.
24. Indigent Defendant had use of a pre-owned computer in college with programs and files previously installed on it by the previous owner, and/or other parties unknown to Defendant. The computer connected to the internet wirelessly.

25. Prior to and during Defendant's use of the computer she used in college, there were other parties, known and unknown to the Defendant who had access to the computer and the computer may have accessed multiple internet connections from multiple service providers unknown to the Defendant.
26. Defendant does not currently, and never has used any "online media distribution system" such as Ares or Ares Warez or similar systems, programs or software which allowed her to download, upload, and/or distribute copyrighted music or other copyrighted materials to the public or any party.
27. Defendant never has downloaded, made use of or otherwise installed any "online media distribution system", program or software to unlawfully download copyrighted material to any computer that she had ownership of.
28. Defendant never has downloaded, nor uploaded, nor distributed, nor made use of the listing of recordings as listed in Exhibit A to the Complaint.
29. Defendant never has downloaded, nor uploaded, nor distributed, nor made use of the list of alleged recordings and pornographic videos from any "online media distribution system" or any other source, as listed in Plaintiffs' Exhibit 1 from Plaintiffs' discovery request.

30. Defendant has never used the screen name "luckylinz" as included on Plaintiffs' Exhibit 1 from Plaintiffs' discovery request, while connected to the "online media distribution system" listed in the Complaint, nor any similar program or system.
31. Defendant has never knowingly permitted any other person to use any computer or wireless internet connection she had use of, for the purpose of downloading, uploading and/or distributing copyrighted music or other copyrighted materials.
32. Defendant has never opened or maintained an account with Ares or Ares Warez or any other "online media distribution system" or company which permitted the unauthorized downloading, uploading and/or distribution of copyrighted music recordings or copyright materials.
33. The computer Defendant used in college became completely in-operational in late 2007, prior to the filing of the Complaint.
34. Defendant has not maintained ownership of an internet access account with the internet service provider since 2007.
35. Plaintiffs have not observed any specific instance of the Defendant illegally downloading any sound recording.

36. Plaintiffs have not observed any specific instance of the Defendant illegally uploading any sound recording.
37. Plaintiffs have not observed any specific instance of the Defendant illegally disseminating any sound recording to anyone not authorized to receive it.
38. Simms never has configured any computer to “share” files.
39. On February 23, 2009, when Defendant submitted a Motion to Amend her first Answer, she received a notice that Plaintiffs had simultaneously filed a Motion to dismiss her opportunity to Amend her Answer and Counterclaim, and inadvertently believed the notice of the motion sent by Plaintiffs indicated that the Plaintiffs motion had been already granted. Defendant subsequently received permission from the Court to amend her answer.
40. Defendant served Plaintiffs’ with the Responses to Plaintiffs’ request for discovery on or around April 10, 2009 as well as Plaintiffs supplemented request on or around April 20, 2009. Defendant submitted an affidavit on or around April 18, 2009 containing facts to the best of her knowledge concerning the previous primary user of the computer. Defendant received a letter from Plaintiffs dated April 10, 2009 (Attached as Exhibit A) requesting the last name of the party who also used the computer, which was

previously provided by the Defendant in the Joint Preliminary Report (filed March 2, 2009 – 1:08-cv-03728-CC; Docket Report # 7)

41. Plaintiffs have continued the claims and allegations set forth in the Complaint in order to harass, embarrass, unduly burden and cause unnecessary cost to Defendant and to extract from Defendant a settlement of a claim against her for which Plaintiffs know they have no or insufficient evidentiary support, and for which Plaintiffs will have no evidentiary support even after a reasonable opportunity for further investigation and discovery, and for which there is no sufficient legal basis.
42. Plaintiffs' actions are stubbornly litigious and have caused Defendant to incur cost unnecessarily.
43. Defendant is entitled to recover her cost as a result of being a party herein.

PRAYER FOR RELIEF

As to the WHEREFORE portion of Plaintiffs' Complaint, the Defendant Simms prays the Plaintiffs' have or receive nothing.

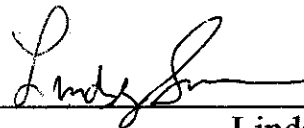
WHEREFORE, Defendant Simms request that this Court

- a) dismiss the Plaintiffs' Complaint in it's entirety;

- b) that the Court award to Defendant her cost incurred in defending herself against Plaintiffs' claims; and further relief for as the Court deems just and proper
- c) and Defendant request that this case be tried before a jury.

Respectfully submitted,

This 11th day of May , 2009



Lindsey Simms
Pro Se Defendant
2610 Sumpter Trail
Conyers, GA 30012
Tel. 678-325-9848
Lrs485@yahoo.com



Holme Roberts & Owen LLP

Attorneys at Law

Exhibit A

DENVER

April 10, 2009

Lindsey Simms
2610 Sumpter Trail
Conyers, GA 30012

BOULDER

Re: *Sony BMG Music Entertainment, et al. v. Lindsey Simms*
Case No. 1:08-cv-03728-CC

COLORADO SPRINGS

Dear Ms. Simms:

I am writing to follow up on our brief telephone conversation today. As I stated, I am an attorney at Holme Roberts & Owen LLP and have taken your case over from Kendra Shirey. I am working with Robert Glass of Balch & Bingham LLP, who serve as local counsel to Plaintiffs in this case.

LONDON

I would like to continue our conversation, so please give me a call at your earliest convenience to discuss the case and see if we can resolve it without additional time or expense for either side.

LOS ANGELES

I understand you are claiming that you are not responsible for the infringement at issue and that you borrowed the infringing computer from your boyfriend at the time, "Linzo." I am sure you understand that most people claim they are not responsible, at least initially, and try to blame someone else. Therefore, your denial and identification of another individual by the first name of "Linzo," without more, is insufficient.

MUNICH

However, I want to emphasize that Plaintiffs only intend to pursue claims against those who have liability for acts of copyright infringement, and prefer to enforce their copyrights against those who commit direct infringement rather than pursue secondary liability. Accordingly, Plaintiffs invite you to provide any information that you have concerning who the direct infringer(s) may be, including but not limited to "Linzo's" last name and all contact information you have for him, as well as the basis for your belief that he is responsible. If, after receipt of such information, Plaintiffs determine that the person you identified is more culpable, then Plaintiffs will take all appropriate action, including likely voluntarily dismissing their present claims against you. Based on the evidence, however, and without more information from you, Plaintiffs have no choice but

PHOENIX

SALT LAKE CITY

SAN FRANCISCO

Eve G. Burton 303.866.0551 eve.burton@hro.com

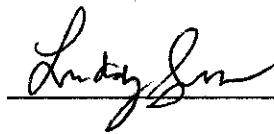
1700 Lincoln Street, Suite 4100 Denver, Colorado 80203-4541 tel 303.861.7000 fax 303.866.0200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11th 2009 that I mailed the foregoing
DEFENDANT'S AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM by first class mail to the following participants:

Robert Glass
Georgia Bar No. 115504
30 Ivan Allen Jr. Boulevard NW, Ste 700
Atlanta, GA 30308-3036
Telephone: 404-261-6020

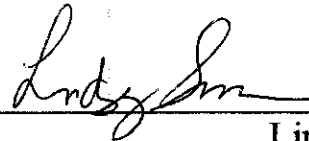
Attorney for the Plaintiffs



Lindsey Simms
Pro Se Defendant
2610 Sumpter Trail
Conyers, GA 30012
Tel. 678-325-9848

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1 (C)

I HEREBY CERTIFY that on May 11, 2009 the foregoing DEFENDANT'S AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM has been prepared in a Times New Roman 14 point font, one of the font and point selections approved by the Court in Local Rule 5.1. (C)



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