

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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SONY BMG MUSIC ENTERTAINMENT,
a Delaware general partnership; et al.,

ANSWER

Plaintiffs,

v.

Case No.: 6:08-CV-6291-CJS

BRIA STADE,

TRIAL BY JURY DEMANDED

Defendant.
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Defendant Bria State, by her attorneys, Jonathan Edward Kirchner, P.C., for her Answer to Plaintiffs' complaint, alleges:

JURISDICTION AND VENUE

1. The allegations in paragraph 1 of Plaintiffs' complaint are legal conclusions and require no response.
2. The allegations in paragraph 2 of Plaintiffs' complaint are legal conclusions and require no response.
3. Defendant denies the allegations contained in paragraph 3 of Plaintiffs' complaint.

PARTIES

4. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of Plaintiffs' complaint.
5. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 of Plaintiffs' complaint.
6. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of Plaintiffs' complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of Plaintiffs' complaint.
8. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of Plaintiffs' complaint.
9. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of Plaintiffs' complaint.
10. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of Plaintiffs' complaint.
11. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of Plaintiffs' complaint.
12. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of Plaintiffs' complaint.
13. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of Plaintiffs' complaint.
14. Defendant denies the allegations contained in paragraph 14 of Plaintiffs' complaint.

COUNT I

15. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of Plaintiffs' complaint.
16. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 16 of Plaintiffs' complaint and further declines to respond to the allegations that are solely legal conclusions.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 17 of Plaintiffs' complaint and further declines to respond to the allegations that are solely legal conclusions.
18. To the extent a response is necessary, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 18 of Plaintiffs' complaint and further declines to respond to the allegations that are solely legal conclusions.
19. To the extent a response is necessary, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 of Plaintiffs' complaint and further declines to respond to the allegations that are solely legal conclusions.
20. Defendant denies the allegations in paragraph 20 of Plaintiffs' complaint and further declines to respond to the allegations that are solely legal conclusions.
21. To the extent a response is necessary, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 21 of Plaintiffs' complaint and further declines to respond to the allegations that are solely legal conclusions.
22. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 22 of Plaintiffs' complaint and further declines to respond to the allegations that are solely legal conclusions.

23. Defendant denies the allegations contained in paragraph 23 of Plaintiffs' complaint.

24. Defendant denies the allegations and legal conclusions contained in paragraph 24 of Plaintiffs' complaint; furthermore, said statutes cited by Plaintiffs are unconstitutional.

25. Defendant denies the allegations contained in paragraph 25 of Plaintiffs' complaint.

FIRST AFFIRMATIVE DEFENSE

26. Plaintiffs' complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

27. Plaintiffs' claims are barred by estoppel.

THIRD AFFIRMATIVE DEFENSE

28. Plaintiffs' claims are barred by acquiescence.

FOURTH AFFIRMATIVE DEFENSE

29. The conduct alleged in Plaintiffs' complaint, had it occurred, was "fair use" as it would have been solely for private entertainment and not for commercial use.

FIFTH AFFIRMATIVE DEFENSE

30. Plaintiffs' complaint fails to allege copyright infringement in that there is no liability unless copies of copyrighted works were actually and affirmatively disseminated to members of the public.

SIXTH AFFIRMATIVE DEFENSE

31. Plaintiffs, who are competitors in the recording industry, are in fact a cartel acting collusively in violation of antitrust laws and public policy by litigating and settling cases similar to the instant case; and by further entering into an unlawful agreement amongst themselves to prosecute and dispose of all cases similar to the instant one in an identical manner and by using the same lawyers.
32. Plaintiffs act in conspiracy by: filing suit against people that are not specifically known to have infringed copyrights without investigation sufficient to establish that the allegations and factual contentions therein (and by using private investigators unlawfully not licensed in New York State as such); alleging that an IP address is a unique identifier of a computer or an individual; using settlement companies as agents to extort (by threatening civil lawsuits, criminal action and ruining credit) in order to coerce and force potential Defendants and Defendants into settlements which have no relation to Plaintiffs' actual damages; commencing "John Doe" lawsuits in the federal courts which they have no intention of pursuing simply to gain unfair advantage in the courts and without providing Defendants with notice or opportunity to be heard; unlawfully invading "John Does'" privacy by serving subpoenas on ISPs without notice; unfairly and unjustly bringing lawsuits in jurisdictions far removed from actual dwelling places of Defendants so that they may gain advantage in the litigation.

33. The above actions constitute misuse of Plaintiffs' own copyrights and bar Plaintiffs' claims.

SEVENTH AFFIRMATIVE DEFENSE

34. Plaintiffs' claims are barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

35. Plaintiffs' complaint must be dismissed for failure to join an indispensable party, namely the alleged peer to peer network.

NINTH AFFIRMATIVE DEFENSE

36. Plaintiffs have failed to mitigate damages.

TENTH AFFIRMATIVE DEFENSE

37. Upon information and belief, prior to brining approximately 30,000 claims in federal court for copyright infringement, Plaintiffs promoted downloading free music as a way to increase their business. Thereafter, Plaintiffs changed their business model and began suing and harassing the public for behavior they had previously promoted and encouraged.

ELEVENTH AFFIRMATIVE DEFENSE

38. Plaintiffs have not suffered any actual damages.

TWELTH AFFIRMATIVE DEFENSE

39. The statutory damages requested by Plaintiff are unconstitutional. To the extent Plaintiffs have any actual damages at all, for years now Plaintiffs have offered "legal" and "lawful" downloads to the public for less than one dollar per song on popular "legal" download websites such as Apple's iTunes. Upon information and belief, Plaintiffs profit far less that one dollar per song. As

such, the statutory damages violate the constitution in that same permit Plaintiffs to collect approximately 1,000 to 42,000 times their actual damages, and sometimes much more.

THIRTEENTH AFFIRMATIVE DEFENSE

40. Upon information and belief, any and all evidence that Plaintiffs intend to produce are the product of investigations by MediaSentry or SafeNet, both of which are not licensed private investigators in the State of New York. If a private investigator operates in New York State without said license, said investigator is guilty of a misdemeanor. See NYS Gen. Bus. Law 70. Illegally obtained evidence is not admissible in a civil case.

FOURTEENTH AFFIRMATIVE DEFENSE

41. Plaintiffs' claims are barred in that if the conduct alleged by Plaintiffs occurred, same would constitute innocent infringement.

FIFTEENTH AFFIRMATIVE DEFENSE

42. Upon information and belief, and pursuant to 17 USC 412, Plaintiffs are not entitled to the damages they seek.

SIXTEENTH AFFIRMATIVE DEFENSE

43. Upon information and belief, Plaintiffs' works did not bear copyright notice.

SEVENTEENTH AFFIRMATIVE DEFENSE

44. In April 2007, Defendant lived in a dorm room in the "House of General Science"; said facility had an "open door policy" so that any other person living in said facility could walk into any other person's dorm room

unimpeded. In sum, Defendant's computer was able to be accessed by tens, if not hundreds of people in April 2007.

EIGHTEENTH AFFIRMATIVE DEFENSE

45. All or part of Plaintiffs' complaint fail to state a cause of action, to wit: "because Congress did not expressly equate the act of 'offering to distribute...for the purposes of further distribution' to the act of 'making available,' Plaintiff's allegations – insofar as Plaintiffs wish to hold Defendant liable for acts of infringement other than actual downloading and/or distribution – fail to state a claim." Elektra et al v. Barker, 551 F.Supp.2d 234, 245 (S.D.N.Y. 2008).

46. All or part of Plaintiffs' complaint fail to state a cause of action because Plaintiffs failed to plead that Defendant made an offer to distribute for the purpose of further distribution, public performance, or public display. Id.

NINETEENTH AFFIRMATIVE DEFENSE

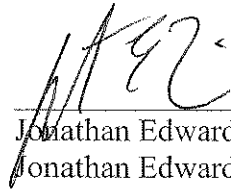
47. The named Plaintiffs do not have standing to bring the instant action, as the true Plaintiff is the RIAA.

TWENTIETH AFFIRMATIVE DEFENSE

48. All or part of the claims of copyright infringement alleged in Plaintiffs' complaint are barred on statute of limitations grounds.

WHEREFORE, Defendant respectfully requests judgment dismissing the complaint, awarding costs, disbursements and attorney's fees, and for such other and further relief as the Court may deem just, equitable and proper.

Dated: Holbrook, New York
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