

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<hr/>		
CAPITOL RECORDS, INC., et al.	)	
Plaintiffs,	)	
	)	Civ. Act. No. 03-CV-11661-NG
v.	)	(LEAD DOCKET NUMBER)
	)	
NOOR ALAUJAN,	)	
Defendant.	)	
<hr/>		
<hr/>		
SONY BMG MUSIC ENTERTAINMENT	)	
et al. Plaintiffs,	)	
	)	Civ. Act. No 1:07-cv-11446-NG
v.	)	(ORIGINAL DOCKET NUMBER)
	)	
JOEL TENENBAUM,	)	
	)	
Defendants.	)	
<hr/>		

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM OF LAW RE PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES**

On December 11, 2008, Plaintiffs filed a Motion to Compel Defendant, Joel Tenenbaum, to respond to Plaintiffs' Interrogatory No. 26 and Second Set of Requests for Production, which Plaintiffs served on Defendant on October 9, 2008 (Doc. 709). Defendant filed a response on January 12, 2009 (Doc. 725). Plaintiffs are submitting this short supplemental memorandum to present to the Court new evidence demonstrating the relevance of these discovery requests to their claim of copyright infringement and as further support for their Motion to Compel.

**INTRODUCTION**

Plaintiffs have asked Defendant for all CDs in Defendant's possession, including all CDRs. Plaintiffs believe that Defendant's CDRs contain copies of the music files located on

Defendant's share directory, included as Exhibit B to Plaintiffs' Complaint. In response to a subpoena issued to Defendant's sister, Tova Tenenbaum, Plaintiffs recently obtained other CDRs Defendant created and, as expected, found copies of a number of the sound recordings that Defendant was found infringing through KaZaA. This further supports the likelihood that Defendant's CDRs contain copies of the sound recordings at issue in this case and listed on Exhibit B to the Complaint. Therefore, Defendant should be compelled to produce all CDRs in his possession, custody or control.

### **THE RELEVANT DISCOVERY REQUESTS**

In their Motion to Compel, Plaintiffs established that each of their outstanding discovery requests is narrowly tailored, directly relevant, not unduly burdensome, and thus Defendant's responses should be compelled. The CDRs Defendant gave to his sister provide further support for the following requests:

#### **REQUEST FOR PRODUCTION NO. 20:**

Every compact disc ("CD") that YOU have burned from sound recordings located in any share folder associated with any online media distribution system or peer-to-peer network from January 1, 2003 to date, including but not limited to Napster, KaZaA, and/or LimeWire.

#### **REQUEST FOR PRODUCTION NO. 21:**

A photocopy of every CD YOU own.

#### **REQUEST FOR PRODUCTION NO. 22:**

A photocopy of the front cover of every CD YOU own.

#### **INTERROGATORY NO. 26**

For each compact disc ("CD") produced in Response to Request for Production No. 20, IDENTIFY the date each sound recording contained on the CD was downloaded and the online media distribution system or peer to peer network used to download the sound recordings contained on the CD, including but not limited to Napster, KaZaA, and/or LimeWire.

**THE BURNED CDRs DEFENDANT GAVE TO HIS SISTER CONTAIN  
EVIDENCE OF INFRINGEMENT**

Defendant's sister, Tova Tenenbaum, testified during her October 15, 2008 deposition that Defendant left several homemade CDRs in his car when he gave the car to her. (Deposition of Tova Tenenbaum, 78:9-79:22, attached as **Exhibit 1**). An examination of those CDRs revealed many of the artists and tracks at issue in the current case, including sound recordings such as Ironic by Alanis Morissette and Drug Ballad by Eminem. Indeed, the CDRs Plaintiffs inspected included at least 21 of the sound recordings found in Defendant's share folder and which are listed on Exhibit B to the Complaint. Similarly, the CDRs contained dozens of sound recordings by the same artists whose sound recordings were found in Defendant's share folder and are listed on Exhibit B to the Complaint.

Thus, many of the sound recordings found on the CDRs that Defendant burned and gave to his sister are sound recordings Defendant downloaded from and uploaded to P2P networks. They also are evidence of Defendant's music tastes. Accordingly, this evidence renders it highly likely that Defendant's burned CDRs contain sound recordings downloaded from Defendant's share folder associated with an online media distribution system or P2P network. This new evidence more than satisfies the liberal standard for discovery and makes it almost certain that Defendant's remaining collection of burned CDRs contain similar evidence of Defendant's copyright infringement. As such, Defendant should be compelled to respond to Plaintiffs' outstanding discovery requests.

**CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request the Court grant their Motion to Compel and order Defendant to, among other things, produce all CDRs in his possession, custody or control.

Dated: April 30, 2009

Respectfully submitted,

SONY BMG MUSIC ENTERTAINMENT;  
WARNER BROS. RECORDS INC.; ATLANTIC  
RECORDING CORPORATION; ARISTA  
RECORDS LLC; and UMG RECORDINGS, INC.

By their attorneys,

/s/ Timothy M. Reynolds

Laurie J. Rust (pro hac vice)

Eve G. Burton (pro hac vice)

Timothy M. Reynolds (pro hac vice)

HOLME ROBERTS & OWEN LLP

1700 Lincoln, Suite 4100

Denver, Colorado 80203

Telephone: (303) 861-7000

Facsimile: (303) 866-0200

Email: laurie.rust@hro.com

eve.burton@hro.com

timothy.reynolds@hro.com

Daniel J. Cloherty (BBO #565772)

DWYER & COLLORA, LLP

600 Atlantic Avenue - 12th Floor

Boston, MA 02210-2211

Telephone: (617) 371-1000

Facsimile: (617) 371-1037

dcloherty@dwyercollora.com

ATTORNEYS FOR Plaintiffs

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 30 2009, the foregoing **PLAINTIFFS' SUPPLEMENTAL MEMORANDUM OF LAW RE PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES** was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). A copy of the foregoing was also served by United States Mail on the following:

Charles Nesson  
1575 Massachusetts Avenue  
Cambridge, MA 02138  
nesson@gmail.com  
Attorney for Defendant

s/ Timothy M. Reynolds  
Timothy M. Reynolds (pro hac vice)  
HOLME ROBERTS & OWEN LLP  
1700 Lincoln, Suite 4100  
Denver, Colorado 80203  
Telephone: (303) 861-7000  
Facsimile: (303) 866-0200  
Email: timothy.reynolds@hro.com