

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC., *et al.*,)
)
)
 Plaintiffs,) Civ. Act. No.
) 03-CV-11661-NG
 v.) (LEAD DOCKET NUMBER)
)
 NOOR ALAUJAN,)
)
)
 Defendant.)
)
)

SONY BMG MUSIC ENTERTAINMENT, *et al.*,)
)
)
 Plaintiffs,) Civ. Act. No.
) 07-CV-11446-NG
 v.) (ORIGINAL DOCKET NUMBER)
)
)
 JOEL TENENBAUM,)
)
)
 Defendant.)
)
)

DEFENDANT'S PRETRIAL MEMORANDUM

The following is the Defendant's Pretrial Memorandum.

1. Names, addresses and telephone numbers of trial counsel.

Plaintiffs:

Timothy M. Reynolds
Eve G. Burton
HOLME ROBERTS & OWEN LLP
1700 Lincoln Street, Suite 4100
Denver, CO 80203
(303) 861-7000

Matthew J. Oppenheim
THE OPPENHEIM GROUP
7304 River Falls Drive
Potomac, MD 20854
(301) 299-4986

Daniel J. Cloherty
Victoria L. Steinberg
DWYER & COLLORA, LLP

600 Atlantic Avenue - 12th Fl.
Boston, MA 02210-2211
(617) 371-1000

Defendant:

Charles Nesson
Harvard Law School
1575 Massachusetts Ave.
Cambridge, MA 02138
(617) 495-4609

Matthew H. Feinberg
Matthew Kamholtz
FEINBERG & KAMHOLTZ
125 Summer Street
Boston, MA 02110-1621
(617) 526-0700

2. Whether the case is to be tried with or without a jury:

The case is to be tried with a jury.

3. Summary of the positions asserted by all parties with regard to liability and damages:

Joel Tenenbaum's use was fair. His actions were not profit-seeking. He caused no damage. It is unjust that he has been and that he should be further punished.

5. Contested issues of fact:

- a. Whether Defendant infringed.
- b. Whether Defendant infringed willfully.
- c. Whether the imposition upon the Defendant of a monetary damage award is just.

6. Jurisdictional questions:

Jurisdiction is not disputed.

7. Issues of law:

Defendant's Submission of Issues of Law:

- a. Whether Defendant infringed.
- b. Whether Defendant infringed willfully.
- c. Whether the imposition upon the Defendant of a monetary damage award is just.

8. Requested amendments to the pleadings:

None by the Defendant unless construction of the Complaint limiting it to the seven (now five) songs.

9. Additional matters to aid in the disposition of the action:

Because the time in which this trial is to take place is time-limited, the allocation of time between plaintiffs and defendant will not be fair unless the time is fairly allocated between us.

10. The probable length of trial:

Defendant anticipates 5 days for trial, inclusive of voir dire and based on the Court's trial schedule of 9:00 a.m. to 4:00 p.m..

11. Voir dire procedures:

Defendant's contribution to a voir dire questionnaire with be forthcoming.

12. The names and address of witnesses who shall testify at the trial, and the purpose of the testimony of each witness.

Defendant's Witness List attached as Exhibit A hereto.

- 13. A list of proposed exhibits, indicating which exhibits may be admitted without objection and a brief statement of the ground for any objection to others.**

Defendant's Exhibit List attached as Exhibit B hereto.

- 14. Jury Instructions.**

Defendant's proposed Jury Instructions attached as Exhibit C hereto.

Defendant's proposed Verdict Form will await the Court's ruling on fair use.

Respectfully submitted,

Dated: July 20, 2009

/s/Charles R. Nesson

Charles R. Nesson

Counsel for Joel Tenenbaum

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that on July 20, 2009, I caused a copy of the foregoing DEFENDANT'S PRETRIAL MEMORANDUM to be served upon the Plaintiffs via the Electronic Case Filing (ECF) system.

/s/Charles R. Nesson
Charles R. Nesson
Attorney for Defendant