

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

00 CIV. 0472

JUDGE RAYMOND
W. COVINO

BMG RECORDINGS, INC., SONY MUSIC
ENTERTAINMENT INC., WARNER BROS.
RECORDS INC., ARISTA RECORDS INC.,
ATLANTIC RECORDING CORPORATION, BMG
MUSIC d/b/a THE RCA RECORDS LABEL,
CAPITOL RECORDS, INC., ELEKTRA
ENTERTAINMENT GROUP, INC., INTERSCOPE
RECORDS, and SIRE RECORDS GROUP INC.,

Plaintiffs,

vs.

MP3.COM, INC.,

Defendant.

Case No.: _____

COMPLAINT FOR
COPYRIGHT
INFRINGEMENT

S. D. OF N. Y.
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FILED

Plaintiffs, by their counsel, allege as follows:

INTRODUCTION

1. This litigation seeks relief against an ongoing infringement of the copyrights in the sound recordings on some 45,000 audio CDs, most of which copyrights are owned by the plaintiff recording companies. The defendant made unauthorized copies of those 45,000 audio CDs, loaded the unauthorized copies onto file servers, and is permitting users of its Internet service to listen to and download those unauthorized copies. Despite the plaintiffs' requests, the defendant has refused to discontinue this massive ongoing infringement. The plaintiffs seek declaratory and injunctive relief, and statutory damages for willful copyright infringement.

NATURE OF THE CASE

2. Plaintiffs bring this action seeking declaratory, injunctive and monetary relief against MP3.com, Inc. ("MP3.com"), a publicly-held company which operates a commercial Internet site at <http://www.mp3.com>. At this site, MP3.com recently began offering two new "breakthrough products" through its "upgraded" My.MP3.com service (<http://my.mp3.com>) ("My.MP3"). In particular, My.MP3 now allows a user to listen, via the Internet, to the tracks of almost any commercial audio CD of his or her choosing, and to download digital copies of those CD tracks.

3. In order to create and offer this "upgraded" service, MP3.com copied the tracks from some 45,000 commercial CDs onto the computer servers that operate the MP3.com site and the My.MP3 service. Plaintiffs are among the leading manufacturers of phonorecords in the United States and own the copyrights in most of the hundreds of thousands of copyrighted sound recordings contained on the CDs that MP3.com copied. At no time have plaintiffs ever authorized MP3.com to make any reproductions of their copyrighted works or to offer the My.MP3 service.

4. To receive access to the tracks from a commercial CD over the My.MP3 service, a user need only do one of two things: First, the user can place an order for the commercial CD from one of several online CD retailers cooperating with MP3.com ("Instant Listening Service"). Second, the user can insert a commercial CD (or a copy, authorized or unauthorized, of a commercial CD) into his or her computer CD-ROM drive for a few seconds ("Beam-it"). Once a user has either placed the order or briefly inserted the CD, My.MP3 gives him or her permanent access to listen to or download the infringing reproductions of the CD's tracks from the defendant's server, on demand, at any place and through any device that can access the MP3.com site through the Internet. The My.MP3 service is further described in pages from the MP3.com Web site attached hereto as Appendix A.

5. Under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the "Copyright Act"), plaintiffs have the exclusive right, among other things, to make reproductions of their copyrighted sound recordings in all forms. This is one of the most sacrosanct rights afforded copyright owners.

6. Plaintiffs seek a declaration that MP3.com's unauthorized copying of plaintiffs' copyrighted sound recordings onto MP3.com's computer servers willfully infringes plaintiffs' copyrights in violation of the Copyright Act. Plaintiffs further seek injunctive relief prohibiting MP3.com from operating My.MP3 or any other service that uses any infringing reproduction of plaintiffs' copyrighted sound recordings. Plaintiffs pray also for statutory damages for willful copyright infringement in the amount specified in Section 504 of the Copyright Act.

JURISDICTION AND VENUE

7. This is a civil action seeking declaratory, injunctive and monetary relief for infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*). The Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338 (a).

8. This Court has personal jurisdiction over the defendant because defendant offers a service to residents of this State and this District which harms the copyrights owned by residents of this State and this District, and defendant is otherwise doing business in this State and this District.

9. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391 (b) and (c), and 1400 (a).

PARTIES

10. Plaintiff UMG RECORDINGS, INC. is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in Los Angeles County, California, and a place of business in New York, New York.

11. Plaintiff SONY MUSIC ENTERTAINMENT INC. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

12. Plaintiff WARNER BROS. RECORDS INC. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, California, which is licensed to do business in New York.

13. Plaintiff ARISTA RECORDS INC. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

14. Plaintiff ATLANTIC RECORDING CORPORATION is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

15. Plaintiff BMG MUSIC d/b/a THE RCA RECORDS LABEL is a New York general partnership with its principal place of business in New York.

16. Plaintiff CAPITOL RECORDS, INC. is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business in New York, New York.

17. Plaintiff ELEKTRA ENTERTAINMENT GROUP, INC. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

18. Plaintiff INTERSCOPE RECORDS is a California general partnership with its principal place in Los Angeles County, California, which is licensed to do business in New York.

19. Plaintiff SIRE RECORDS GROUP INC. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

20. Plaintiffs are engaged in the business of producing sound recordings, and manufacturing, distributing, selling, and/or licensing the distribution and sale of their sound recordings on phonorecords (as defined in 17 U.S.C. § 101), or arranging to do so in the United States. The most common form of phonorecord is an audio CD, but the term "phonorecord" includes any object that contains a sound recording, such as a computer audio file, analog cassette tape, vinyl album, or digital audio tape. Plaintiffs are among the leading manufacturers of phonorecords in the United States. The names and reputations of plaintiffs as manufacturers of phonorecords of high artistic and technical quality are widely and favorably known in the State of New York and throughout the United States and the world.

21. Defendant MP3.com, upon information and belief, is a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of California. Defendant operates its business through a commercial Web site (<http://www.mp3.com>) that provides, among other things, information about music and the use of the "mp3" digital audio format, digital downloads of music, and the My.MP3 interactive service. Defendant's My.MP3 service is targeted to and used by residents of this State and this District, and infringes copyrights owned by residents of this State and this District.

PLAINTIFFS' COPYRIGHTED SOUND RECORDINGS

22. "Sound recordings" are defined by the Copyright Act to be "works that result from the fixation of a series of musical, spoken or other sounds, but not including the sounds accompanying a motion picture or other audio visual work . . .," 17 U.S.C. § 101, that is, versions or renditions of musical compositions. Sound recordings are protected by copyright, separate from the underlying musical compositions.

23. Plaintiffs are the United States copyright owners or the owners of exclusive rights under copyright with respect to certain copyrighted sound recordings embodied in their phonorecords, including but not limited to those listed in Appendix B and incorporated by

reference herein (hereinafter "Copyrighted Recordings"). Each plaintiff has applied for and/or received Certificates of Copyright Registration from the Register of Copyrights for its Copyrighted Recordings. Under Section 106 of the Copyright Act, each plaintiff has the exclusive right, among other things, "to reproduce the [Copyrighted Recordings] in . . . phonorecords."

24. Plaintiffs have invested and continue to invest substantial sums of money, as well as time, effort, and creative talent, to discover and develop recording artists, and to create, manufacture, advertise, promote, sell, and license phonorecords embodying the performances of their exclusive recording artists. In order to create such phonorecords, plaintiffs make payments to these recording artists, other musicians, various trust funds established for the musicians' benefit, producers, technicians, and other staff personnel, as well as various other payments. Plaintiffs and their recording artists are compensated for their creative efforts and monetary investments largely from the sale of phonorecords to the public and from license fees received for the reproduction, distribution, digital performance, or other exploitation of such phonorecords. Absent such compensation, profits and motivation are siphoned away from artists and the record companies that record, manufacture, promote, and distribute those works. The pool of resources available for finding and promoting new artists shrinks, and sound quality and recording integrity are diluted and corrupted. The ultimate result is that the public's access to a wide variety of high-quality musical recordings is sharply curtailed.

DEFENDANT'S INFRINGING "MY.MP3" SERVICE

25. On or about January 12, 2000, Defendant introduced its "upgraded" My.MP3 service to the public. The press release announcing the revised My.MP3 explained that: "[t]he new service, currently free to consumers, contains two breakthrough products – Instant Listening Service™ and Beam-it™ – that allow consumers to store, customize and listen to their CDs from anywhere, anytime using the open portals of web-enabled devices."

26. In order to create and offer this service, defendant copied every track from 45,000 commercial audio CDs onto its computer servers. All or virtually all of these audio CDs are marked as copyrighted and contain explicit notices prohibiting unauthorized copying. When users access sound recordings through My.MP3, it is these infringing reproductions that are accessed. Included among these infringing reproductions are copies of thousands of copyrighted sound recordings owned by plaintiffs, none of whom has authorized defendant to make any such reproductions.

27. Through My.MP3, a user can get access to any of the infringing reproductions made by defendant that he or she chooses, listen to a performance made from those infringing reproductions through any device, such as a computer, that can access MP3.com's Web site, and download copies of those infringing reproductions. The user obtains permanent access to the infringing reproductions by placing an order for or confirming to defendant that he is in the possession of an audio CD (or a copy, authorized or unauthorized, of an audio CD) containing those sound recordings.

28. The user does not and cannot copy his or her own CD onto the My.MP3 computer servers. The My.MP3 service is built on and only grants access to the infringing reproductions made by defendant.

29. Upon information and belief, My.MP3 is currently being offered free of charge to users. Defendant has indicated that it intends to sell subscriptions to the service in the future. The My.MP3 service contains advertisements on its Web pages that a user sees when he or she listens to or downloads music via My.MP3.

30. Defendant has been advised by representatives of the plaintiffs that defendant's unauthorized reproduction of commercial CDs violates the Copyright Act, and defendant has been urged to discontinue its infringing activities. Defendant has refused to do so. Upon information and belief, defendant also has taken no steps to inform the users of its My.MP3

service or any other interested persons that music made available for listening and download through the My.MP3 service consists of infringing reproductions of copyrighted sound recordings.

COUNT I
(Copyright Infringement)

31. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 30, above.

32. This claim is brought pursuant to the Copyright Act and 28 U.S.C. § 2201 (a), seeking declaratory, injunctive and monetary relief. There is an actual controversy between the plaintiffs and defendant.

33. Under Section 106 of the Copyright Act, each plaintiff has the exclusive right to reproduce its Copyrighted Recordings in copies or phonorecords, and the exclusive right to authorize the reproduction of its Copyrighted Recordings in copies or phonorecords.

34. Unauthorized reproduction of Copyrighted Recordings constitutes infringement of the exclusive rights under Section 106 of the Copyright Act. Defendant has willfully and with full knowledge of plaintiffs' copyrights made infringing reproductions of thousands of plaintiffs' copyrighted sound recordings for the purpose of operating its commercial My.MP3 interactive service.

35. As a direct and proximate result of the foregoing acts of infringement by defendant, plaintiffs have been and will continue to be irreparably injured.

36. As a direct and proximate result of the foregoing acts of infringement by defendant, plaintiffs are entitled to damages and profits under Section 504 of the Copyright Act, including statutory damages for willful infringement in an amount to be established at trial.

RELIEF

WHEREFORE, plaintiffs pray for judgment and relief as follows:

A. For a declaration that defendant has willfully infringed the copyrights of plaintiffs in the Copyrighted Recordings by making unauthorized reproductions of such works as part of its My.MP3 interactive service;

B. For a preliminary and permanent injunction requiring defendant, its agents, employees, and other persons acting in concert with, or for, them (i) to cease and desist operation of My.MP3 or any other service that uses infringing reproductions of plaintiffs' Copyrighted Recordings; (ii) to cease and desist from making any infringing reproductions of plaintiffs' Copyrighted Recordings; and (iii) to destroy any infringing copies of the Copyrighted Recordings in the possession of defendant, including without limitation any infringing copies on defendant's computer servers;

C. For an award of damages, including, without limitation, statutory damages for willful infringement of \$150,000 per work infringed;


D. For an award of the costs of this action, including reasonable attorneys' and expert witness fees; and

E. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 21, 2000

Respectfully submitted,

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