

United States Court of Appeals For the First Circuit

No. 09-1091

ARISTA RECORDS, INC., a Delaware corporation; SONY MUSIC ENTERTAIN SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; UMG RECORDINGS INC., a Delaware corporation; BMG MUSIC, a New York general partnership; ATLANTIC RECORDING CORPORATION; CAPITAL RECORDS

Plaintiffs - Appellants

CAPITAL RECORDS, INC., a Delaware corporation; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; FONOVisA; CAPITOL RECORDS INC; MOTOWN RECORD COMPANY, LP; RECORDING INDUSTRY RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.; ANSWERTHINK, INC.

Plaintiffs

v.

WALID SMAYHA; YEVGENIYA SHNAYDER; CATHERINE SIMMONS; REGINA POSHKUS; ADAM FARLEY; JEAN CORLIN; JAMES KELLY; JANEEN NEMES; MICHAEL NETTO; MELISSA L. DESISTO; ROBERT MARSHALL; JOSEPH ROBICHAUD; MATTHEW BITTARELLI; MICHAEL B. KATZ; HEATHER A. MILTON; GURI JANE ANDERSSKOG; LUCJAN ZABOROWSKI; JESSICA WILLIAMSON; JOHN HUTTUNEN; CHARLES DOHERTY; MONICA BUCKLEY; HENRY BISNAW; COLLEEN AZEVEDO; ALISON ECCLESTON; JOEL TENENBAUM; CHRISTOPHER BURATI; ALANNA GANDELMAN; JULIE DOBSON; LASHAANA STRAW; ALFONSO BURGESS; MICHAEL FITZGERALD; ALEXANDRA GRIFFIN; KERI INGEMI; TAHIRIH LAFOREST; RYAN LINDSEY; DAVID E. LOPES; AMANDA PAUL; ELIZABETH STEWART; DIANE BRIGGS; SARA WEINER; ALEKSEY SCHNAYDER; SHARON PRITCHARD; SHELAGH HAYES

Defendants - Appellees

JUDITH SABATINO; MARYANN BRAYDEN; RHONDA CAMERON; JOYCE CROWE; MICHELLE AVERY; KRISTIN KTSANES; NANCY KINCHLA; BERNARD MULLEN; JIN YANG; FLORCIE MATHE; MARTIN SALANT; SHAWN SCOTT; MARY MANNING; JILL HIBBARD; RENEE HUDEC; EDWARD KERRISSEY; CHRISTOPHER MCLAUGHLIN; KATHERINE MONAHAN; DONNA WILBUR; JOHN MCDERMOTT; LINDA WHITING; MICHELE MULLIGAN; DANIEL RICHARDSON; JOHN LEIENDECKER; JOSEPH MACINNIS; P. MACINNIS; NANCY MADDEN; PETER DELGARDO; COLLEEN FANGUIAIRE; WILLIAM FULLER; JOHN DELEHANTY; TERRANCE FITZGERALD; BRIAN CUSACK; DEBORAH ANN; ALPHON ATKINSON; MICHAEL RAFERTY; ANDREA M. O'SHAUGHNESSY; LISA SHATFORD; HUY NGUYEN; GEORGE NADOLNY; STEVE DIFLAMINIES; PATTI CALLAGY; KAY O'NEIL; MURRAY

MILLER; JAMES MCDONOUGH; WILLIAM J. WHITE, JR.; SHELAGH HAYES;
FRANCIS HALEY, JR.; PATRICIA O'CONNOR; PEGGY O'NEIL; SHAWN O'NEIL;
KATHERINE HANLEY; JAMIE STILLMAN; JASON CONNOLLY; MARK GANNON,
MICHAEL STURGE; MITCHELL KLASKY; HENRY GOLDFARB; KRISTINA FERRARA,
MERT SADI; KARA LEE JANSONS; MARIA MOJICA; FRANKLYN F. LAU; MANDY
LADEBAUCHE; NELSON CURRAL; JESSICA CONTARDO; ELISA CANTONE; TRACY
LAWRENCE, a/k/a Tracy MacDonald, a/k/a Tracy M. Swanton; KIM WARD; KRISTEN
KNEELAND, PATRICIA LAVERTY, a/k/a Patricia K. Hill, a/k/a Patricia K. Sheehan;
ALBERT MICHAUD; EDWARD DUTCHER; ROBIN HEENAN; JOY LIANG,
CHRISTOPHER SAVASTA; MICHELLE WEBBER, ERIN D. BARRY, YESENIA A.
CRESPO, JUNE HASKINS; RICHARD L. DUBROCK; NOOR ALAUJAN; DONNA SCOTT;
ENZA VIOLA; RYAN HALLAHAN

Defendants

WARNER BROS RECORDS INC.

Counter Defendant - Appellant

CASE OPENING NOTICE

Issued: January 27, 2009

The above-captioned appeal was docketed in this court today pursuant to Rule 12 of the Federal Rules of Appellate Procedure. The above case number and caption should be used on all papers subsequently submitted to this court. If any party disagrees with the clerk's office's designation of the parties on appeal, it must file a motion to amend the caption with any supporting documentation attached. Absent an order granting such a motion, the parties are directed to use the above caption on all pleadings related to this case.

Appellant must complete and return the following forms to the clerk's office by **February 10, 2009** to be deemed timely filed:

- [Appearance Form](#)
- [Transcript Report/Order Form](#) (Please carefully read the instructions for completing and filing this form.)
- [Docketing Statement](#)

These forms are available on the court's website at www.cal.uscourts.gov, under "Forms & Notices." Failure to comply with the deadlines set by the court may result in dismissal of the appeal for lack of diligent prosecution. See 1st Cir. R. 3.0, 10.0, and 45.0.

If less than the entire transcript is ordered, appellant must file and serve on all other parties a statement of the issues in accordance with Fed. R. App. P. 10(a)(3)(A). In addition, if the parties are unable to agree as to the contents of the joint appendix, appellant must file and serve a statement of the issues and designation of the contents of the appendix. Fed. R. App. P.

30(b)(1); 1st Cir. R. 30.0(b). Upon confirmation by the circuit clerk that the record is complete either because no hearing was held, no transcript is necessary, or the transcript is on file, the clerk's office will set the briefing schedule and forward a scheduling notice to the parties.

Within seven days of filing the notice of appeal, appellant must pay the filing fee to the district court clerk. An indigent appellant who seeks to appeal in forma pauperis must file a motion and financial affidavit in the district court in compliance with Fed. R. App. P. 24. Unless this court is provided with notice of paying the filing fee to the clerk of the district court or filing a motion seeking in forma pauperis status within fourteen days of the date of this notice, this appeal may be dismissed for lack of prosecution. 1st Cir. R. 3.0(b).

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). *Pro se* parties are not required to file an appearance form. Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission with the appearance form. 1st Cir. R. 46.0(a)(2).

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at www.ca1.uscourts.gov. Your attention is called specifically to the notices listed below:

- [Notice to Counsel and Pro Se Litigants](#)
- [Transcript Notice](#)
- [Notice Regarding Registration for Electronic Noticing](#)
[<http://www.ca1.uscourts.gov/files/notices/ElectronicNoticingRegNotice.pdf>]

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Richard Cushing Donovan , Clerk

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FOR THE FIRST CIRCUIT
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United States Court of Appeals For the First Circuit

NOTICE OF ELECTRONIC AVAILABILITY OF CASE INFORMATION

The First Circuit has implemented the Case Management portion of the Federal Judiciary's Case Management/Electronic Case Files ("CM/ECF") computer system. As of March 31, 2008, any new court generated document (e.g., notices, orders, opinions, and judgments) will be attached to the docket. The court has not yet put into place that part of CM/ECF which allows attorneys to file documents electronically. However, the court will soon begin attaching public briefs and petitions for rehearing/rehearing en banc to the docket. The court may also attach other filings. Therefore, parties should not include in their public filings information that is too private or sensitive to be posted on the internet. In immigration and social security cases, the Court's docket, orders, and opinions are available via remote electronic access but party filings are not remotely available to the general public.

Specifically, recent amendments to Fed. R. App. P. 25, and new Fed. R. Bank. P. 9037, ed. R. Civ. P. 5.2 and Fed. R. Cr. P. 49.1 require that parties not include, or partially redact where inclusion is necessary, the following personal data identifiers from documents filed with the court unless an exemption applies:

- **Social Security or Taxpayer Identification Numbers.** If an individual's social security or taxpayer identification number must be included, only the last four digits of that number should be used.
- **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- **Dates of Birth.** If an individual's date of birth must be included, only the year should be used.
- **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- **Home Addresses in Criminal Cases.** If a home address must be included, only the city and state should be listed.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend caption to redact the identifier.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, national security information, and sensitive security information as described in 49 U.S.C. § 114.

Attorneys are urged to share this notice with their clients so that an informed decision can be made about inclusion of sensitive information. The clerk will not review filings for redaction. For further information, including a list of exemptions from the redaction requirement, see <http://www.privacy.uscourts.gov/>.

cc:

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