

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543

1 Rebecca Lawlor Calkins (SBN: 195593)
Email: rcalkins@winston.com
2 Erin R. Ranahan (SBN: 235286)
Email: eranahan@winston.com
3 **WINSTON & STRAWN LLP**
333 South Grand Avenue, 38th Floor
4 Los Angeles, CA 90071-1543
Telephone: 213-615-1700
5 Facsimile: 213-615-1750

6 Jennifer A. Golinveaux (SBN 203056)
Email: jgolinveaux@winston.com
7 **WINSTON & STRAWN LLP**
101 California Street
8 San Francisco, CA 94111
(415) 591-1506 (Telephone)
9 (415) 591-1400 (Facsimile)

10 Michael S. Elkin (*pro hac vice*)
Email: melkin@winston.com
11 Thomas P. Lane (*pro hac vice*)
Email: tlane@winston.com
12 **WINSTON & STRAWN LLP**
200 Park Avenue
13 New York, New York 10166
(212) 294-6700 (Telephone)
14 (212) 294-4700 (Facsimile)

15 Attorneys for Defendant
VEOH NETWORKS, INC.

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**
19

20 UMG RECORDINGS, INC., *et al.*,

21 Plaintiffs,

22 vs.

23 VEOH NETWORKS, INC. *et al.*,

24 Defendants.
25
26

Case No. CV 07 5744 – AHM (AJWx)

Discovery Matter

**REPLY IN SUPPORT OF VEOH
NETWORKS, INC.'S EX PARTE
APPLICATION FOR AN ORDER
COMPELLING PLAINTIFFS'
COMPLIANCE WITH PRIOR
COURT ORDER TO PROVIDE
SUPPLEMENTAL RESPONSES
AND PRODUCTION OF
DOCUMENTS**

Discovery Cut-Off: January 12, 2009

28 LA:226313.1

1 **I. INTRODUCTION**

2 Plaintiffs' ("Plaintiffs" or "UMG") recycled "core" production is undeniably
3 deficient, just as it was in *MySpace* and *Grouper*.¹ Indeed, this Court need look no
4 further than Plaintiffs' written responses for proof of Plaintiffs' outright refusals to
5 produce documents responsive to categories previously ordered by this Court. (*See*,
6 *e.g.* UMG's Responses to Veoh's Requests Nos. 34-37, 52, 96, 202-203, 206-207).²
7 Plaintiffs must not be permitted to hide behind their high page count, low quality
8 production, any longer. Discovery must proceed and Plaintiffs' stall tactics and
9 attempts to distract with finger-pointing must not be indulged.

10
11 **II. PLAINTIFFS FAILURES, INCLUDING THE FAILURE TO PRODUCE**
12 **DOCUMENTS PREVIOUSLY ORDERED BY THE COURT IN**
13 **MYSPACE AND GROUPER, ARE CLEAR**

14 Even Plaintiffs cannot deny their failure to comply with orders relating to
15 multiple discovery disputes previously briefed, argued, and ruled upon by this Court.
16 Specifically, Plaintiffs admit (or do not deny) in their Opposition (UMG's Opposition
17 to Veoh's *Ex Parte* Application ["Opp."]) that they:³

- 18 • Failed to produce documents reflecting the profitability of the allegedly
19 infringed works, including the value of copyrighted works and UMG's
20 lost revenues and profits (Opp, p. 1, lines 19-20, p. 6, lines 6-14);

21
22
23 ¹ Plaintiffs' own discovery, while voluminous, is filled with a morass of irrelevant data
24 produced in prior actions. In fact, throughout the 1.4 million pages of documents,
25 Veoh is only mentioned ***a grand total of 300 times***. (Calkins Decl. ¶ 2). At the same
26 time, the document count mentioning *MySpace* is 29,519, while the document count
27 mentioning *Grouper* is 930. (*Id.*). On September 30, 2008, Plaintiffs produced just
28 1008 additional documents. (Calkins Decl. ¶ 3). These were largely articles and
documents having nothing to do with the specific facts at issue in this case. Plaintiffs
have yet to even identify a list of allegedly infringing works. (*Id.*)

² This is not an exhaustive list of Plaintiffs' refusals to produce documents in
categories already ordered by this Court.

³ This list is not exhaustive.

- 1 • Failed to produce documents relating to viral marketing, including failing
2 to even search for documents relating to viral marketing in the files of the
3 persons primarily responsible for viral marketing activities., *i.e.* interns
4 (Opp. p. 5, lines 14-15);
- 5 • Failed to produce documents identifying the works purportedly infringed
6 by Veoh (Opp., p. 1, lines 19-20, p. 6, lines 6-14);
- 7 • Failed to serve supplemental written responses as ordered in this Court's
8 August 25, 2008 Order ("Order").

9 In a desperate attempt to excuse at least some of their discovery failures, UMG
10 actually tries to convince this Court that its November 8, 2007 Order, entitled "Order
11 Re: Discovery Disputes," and beginning with "IT IS ORDERED," (emphasis in
12 original) is not really an order at all, and therefore, UMG could not have been
13 expected to comply in the first place, much less in connection with the Order. This
14 stunning misrepresentation of the Court's November 8 Order is easily remedied by a
15 simple review of the November 8 Order. Veoh therefore respectfully requests that the
16 Court review the November 8, 2007 Order and draw its own conclusion. (*See* Calkins
17 Decl. ¶ 6 and Exh. 5 in Support of Veoh's Ex Parte Application for Order Compelling
18 Compliance with Prior Court Order [Docket No. 82 in *Groupers*]).

19 **III. PLAINTIFFS' FAILURE TO SERVE SUPPLEMENTAL RESPONSES**
20 **IN ACCORDANCE WITH THE COURT'S ORDER, IS CLEAR**

21 In an attempt to excuse its failure to comply with its obligation to serve
22 supplemental responses to Veoh's Requests as set forth in the Order, UMG feigns
23 confusion over the reading of the Order, despite the fact that the Order could not be
24 clearer. The Court ordered the parties to serve supplemental responses to document
25 requests and state whether documents are being withheld on the basis of an objection
26 other than privilege and if so, identify the objection, and describe in general terms
27

1 what the documents being withheld consist of. (August 25 Order). UMG failed to do
2 so.

3 Instead, UMG now disingenuously claims that it "understood" the Order to
4 actually refer to supplemental *interrogatory* responses, and that "any" such
5 supplemental interrogatory responses should be served by the deadline. (Opp. p. 8,
6 lines 10-13). Setting aside for the moment that UMG's purported "understanding" is
7 implausible to the point of being absurd, Veoh needs the supplemental responses
8 ordered by the Court immediately in order to determine the categories in which UMG
9 is withholding documents, the basis for such withholding, and the scope of documents
10 withheld, so that it may pursue additional relief and discovery where appropriate,
11 before the January 12, 2009 discovery cutoff. Indeed, with the exception of the
12 Requests to which UMG has flatly refused to produce any documents, UMG's current
13 Responses conceal entirely the universe of documents being withheld and the basis for
14 such withholding.

15 **IV. UMG SHOULD BE ORDERED TO COMPLY WITH THE COURT'S**
16 **ORDER IMMEDIATELY**

17 Plaintiffs' stall tactics and attempts to deny Veoh critical discovery while
18 running the clock on the discovery cutoff, continue. Feigned confusion, outright
19 disregard for this Court's Orders, and failure to comply with discovery obligations
20 under the Federal Rules must not be countenanced. Plaintiffs should be ordered to
21 comply with the Court's Order immediately.

22 Dated: October 22, 2008

WINSTON & STRAWN LLP

25 By /s/ Rebecca Lawlor Calkins

26 Michael S. Elkin

27 Thomas P. Lane

Jennifer A. Golinveaux

Rebecca L. Calkins

Erin R. Ranahan

Attorneys for Defendant

28 LA:226313.1

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VEOH NETWORKS, INC.