

Re: Docket #210

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

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WESTERN DIVISION

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

Case No. CV-07-05744 AHM (AJWx)

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Plaintiffs,

**REPLY BRIEF IN SUPPORT OF
MOTION TO COMPEL VEOH TO
APPEAR AT RULE 30(b)(6)
DEPOSITION (DOCKET #210)**

14

v.

Magistrate: Hon. Andrew J. Wistrich

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

Date: December 8, 2008

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Time: 10:00 a.m.

Courtroom: 690

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Defendant.

Discovery Cutoff: January 12, 2009

Pretrial Conference: April 6, 2009

Trial Date: April 21, 2009

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1 **I. INTRODUCTION**

2 Plaintiffs (collectively “UMG”) hereby reply to Veoh’s Statement of Non-
3 Opposition to UMG’s Motion To Compel Veoh To Appear At Rule 30(b)(6)
4 Deposition. In short, UMG brought this motion only when Veoh refused to produce
5 its witnesses without a Court Order. Only after UMG had expended the resources to
6 bring the motion and after significant delay had ensued, Veoh filed a notice that it
7 did not oppose the motion. Notwithstanding that notice, Veoh still has not actually
8 acceded to the relief requested. Veoh has not provided dates for the deposition at
9 issue in the motion. Thus, UMG respectfully submits this reply to request 1) that
10 the Court enter an Order requiring Veoh to immediately provide dates on which its
11 witnesses will appear for the noticed deposition and 2) that the Court award
12 sanctions against Veoh for its refusal to produce witnesses, necessitating the filing
13 of the instant motion even though Veoh apparently had no intention of actually
14 presenting any opposition to the motion.

15 **II. THE COURT SHOULD ISSUE AN ORDER REQUIRING VEOH TO**
16 **APPEAR FOR ITS 30(B)(6) DEPOSITION**

17 After UMG filed the instant motion, Veoh remained silent for nearly two
18 weeks. Then, on the afternoon of November 24, 2008 – twelve days after UMG
19 filed its Motion and the day Veoh’s opposition should have been due – counsel for
20 Veoh approached counsel for UMG to request that the parties reach a stipulation to
21 resolve the Motion. Counsel for UMG spent the evening of November 24
22 conferring with counsel for Veoh to try to resolve the Motion. Those discussions
23 culminated in a proposal which UMG conveyed to Veoh late Monday night. *See*
24 Calkins Declaration In Support Of Statement of Non-Opposition (Docket #224), Ex.
25 C (2008-11-24 Glatstein email to Calkins). Veoh did not respond to UMG’s
26 proposal – either to accept or reject it. Finally, on November 25, 2008, the day after
27 its Opposition should have been due and almost two weeks after UMG filed its
28 Motion, Veoh filed its Notice of Non-Opposition to UMG’s Motion. *See* Notice of

1 Non-Opposition to Motion (Docket #224). Veoh does not dispute any of the above
2 facts.

3 Despite its stated “non-opposition” to UMG’s Motion to Compel, Veoh has
4 not provided a single date for a witness to appear for its Rule 30(b)(6) deposition.¹
5 Thus, Veoh has not provided UMG with the relief sought by the motion. UMG
6 discussed this matter further with counsel for Veoh on November 26, 2008, in an
7 effort to obtain dates for the deposition of Veoh. Veoh refused to provide any such
8 dates. *See* Glatstein Declaration in Support of Reply Brief (“Glatstein Decl.”), Ex.
9 A (2008-11-26 Marenberg letter to Calkins). Thus, UMG respectfully submits that
10 an order compelling Veoh to provide dates for deposition remains necessary and
11 appropriate. Having filed its notice of non-opposition to the instant motion, Veoh
12 cannot be heard to object to entry of the relief requested. Considering the
13 substantial delay Veoh has engineered by forcing UMG to file its Motion, and then
14 waiting until the last possible moment to announce that it would not oppose the
15 Motion, UMG respectfully submits that the Court should enter an order requiring
16 Veoh to provide dates immediately so that UMG is not forced to endure further
17 delay.

18 **III. UMG IS ENTITLED TO ITS ATTORNEYS’ FEES FOR A MOTION IT**
19 **SHOULD NOT HAVE HAD TO FILE**

20 Veoh’s Notice of Non-Opposition concedes that UMG was entitled to the
21 relief UMG requested. This is the same relief that UMG requested in a letter to
22 Veoh on October 23. *See* Ledahl Declaration in Support of Motion to Compel Veoh
23 to Appear (“Ledahl Decl.”) (Docket #211), Ex. C (2008-10-23 Glatstein letter to
24 Calkins). Indeed, as contemplated by Local Rule 37, UMG’s October 23 letter
25 contained the same arguments and legal authority which UMG included in its
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27 ¹ On November 19, 2008, UMG requested that Veoh provide dates for the
28 deposition of two witnesses, Stacie Simons and Anita Talebizadeh. Glatstein Decl.,
Ex. B (2008-11-19 Ledahl letter to Golinveaux). Veoh has not provided any dates
for these depositions.

1 Motion. *See id.* (citing, *inter alia*, *Quality Aero Tech. v. Telemetrie Elektronik*, 212
2 F.R.D. 313, 319 (E.D.N.C. 2002)). UMG’s Motion also sought the same relief that
3 UMG requested in no less than four meet and confer discussions on October 24 and
4 30, and November 3 and 12. *See* Ledahl Decl., ¶ 2. Yet Veoh waited thirteen days
5 after UMG filed its Motion – until November 25 – to finally agree that UMG could
6 proceed with the discovery it had requested. Veoh does not suggest that UMG’s
7 meet and confer efforts were deficient, or otherwise attempt to explain its refusal to
8 provide the requested discovery without forcing UMG to file a motion.

9 In short, Veoh forced UMG to pursue by its Motion relief to which UMG was
10 so clearly entitled that Veoh could not even oppose the Motion in good faith. *See*
11 Notice of Non-Opposition (“Veoh will appear in connection with Plaintiffs’ second
12 30(b)(6) notice…”). Veoh’s conduct achieved nothing but delay and imposition of
13 unnecessary costs on UMG.

14 The Local Rules provide that Motion practice be reserved for good faith
15 disputes between the parties, and instructs the parties to meet and confer in order to
16 “eliminate the necessity for hearing the motion or to eliminate as many of the
17 disputes as possible.” *See* Local Rule 37-1. UMG followed the Local Rules’
18 procedure by sending Veoh a letter which contained its arguments and legal
19 authority, and then meeting and conferring with Veoh four times regarding the
20 substance of UMG’s Motion, before proceeding with its filing. Veoh, in contrast,
21 feigned opposition to a motion it had no intention – or basis – to oppose. This is a
22 violation of Local Rule 37-1.

23 Unnecessary motion practice wastes the Court’s time and the parties’ money,
24 and causes significant and unnecessary delay in the litigation. That is precisely why
25 Local Rule 37-4 allows this Court to issue an appropriate sanction against a party
26 whose conduct violates Local Rule 37. UMG therefore respectfully suggests that
27 Veoh be ordered to pay UMG’s reasonable attorneys’ fees associated with bringing
28 a Motion to which Veoh had no good faith basis to oppose. *See* Local Rule 37; *see*

1 also, e.g., *Atkins v. Fischer*, 232 F.R.D. 1 16,142 (D.D.C. 2005) (awarding sanctions
2 where “Defendant’s intransigence imposed costs upon the plaintiff and required the
3 diversion of scarce judicial resources without justification”) (citing Fed. R. Civ. P.
4 37(a)(4) & 34(b)). As detailed in the accompanying Glatstein Declaration, UMG
5 expended substantial resources to bring this motion, including more than \$3,000 in
6 attorneys’ fees. UMG respectfully submits that such amount should be awarded as a
7 sanction for Veoh’s conduct in forcing UMG to bring the instant motion that Veoh
8 did not even oppose.

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10 Dated: December 1, 2008

IRELL & MANELLA LLP
Steven A. Marenberg
Elliot Brown
Brian Ledahl
Benjamin Glatstein

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15 By: _____ /s
Brian Ledahl

16 Attorneys for Plaintiffs
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