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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.

Case No. CV 07 5744 – AHM (AJWx)

**VEOH'S RESPONSE TO UMG'S
OBJECTIONS AND REQUEST TO
STRIKE VEOH'S REPLIES IN
SUPPORT OF ITS RENEWED
MOTIONS TO COMPEL CHAIN OF
TITLE AND IDENTIFICATION
DISCOVERY**

Date: 12/17/08
Time: 10:00 a.m.
Crtrm: 690
Discovery Cut-Off: January 12, 2009

1 **I. INTRODUCTION**

2 Veoh files this brief response to UMG's so called "Objections and Request to
3 Strike Veoh's Replies in Support of its Renewed Motions to Compel Chain of Title
4 and Identification Discovery" ("UMG's Objections"). UMG's Objections is a
5 transparent attempt to supplement its briefing in opposition to Veoh's Motions to
6 Identify Works at Issue and Compel Chain of Title/Rights Information Re Same with
7 an unauthorized sur-reply, and illustrates the lengths to which UMG will go in its
8 efforts to avoid having this Court rule on the merits of Veoh's motions.

9 The thrust of UMG's Objections, that Veoh's reply briefs in support of its
10 motions were procedurally improper, is without merit. As Veoh has explained, Veoh
11 filed its renewed motion(s) to compel in accordance with Local Rule 7 and outside of
12 Local Rule 37 due to the procedural history of the motion(s), after this Court granted
13 Veoh's request to file the initial motion on an expedited basis. Plaintiffs themselves
14 relied on the briefing schedule set forth in Local Rule 7 in filing their oppositions to
15 Veoh's motions. Veoh's replies were filed in accordance with the briefing schedule
16 and page-limits provided by the Local Rules, and Veoh respectfully requests that the
17 Court consider them in ruling on Veoh's motions.

18 UMG's assertion that Veoh has improperly burdened Plaintiffs with filings
19 around the Thanksgiving holiday and improper *ex parte* filings is equally misplaced,
20 and particularly ironic given the timing and history of Plaintiffs' own copious filings
21 in this action. UMG's Objections also blatantly misrepresent a statement made in
22 Veoh's reply in support of its motion to compel Chain of Title, as explained in Section
23 III below. Finally, UMG's request for sanctions is without any basis and should be
24 rejected out of hand.

25 UMG's strenuous efforts to avoid having this Court fully consider the merits of
26 Veoh's motions to compel, including its reply briefs, should be rejected, and UMG's
27 request for sanctions should be denied.

28

1 **II. VEOH'S REPLIES WERE PROCEDURALLY PROPER**

2 As Veoh explained in its motion and reply, because of the procedural history of
3 these motions, Veoh filed its renewed motions in accordance with Local Rule 7-3,
4 rather than Local Rule 37. Indeed, Plaintiffs filed two oppositions in accordance with
5 the briefing schedule provided by Local Rule 7-9, 14 days before the hearing, one of
6 which was 19-pages (Docket 222) and another of which was 17-pages (Docket 221),
7 which are clearly outside of the Local Rule 37 briefing schemes and instead in
8 accordance with Local Rule 7-9. It is thus curious that Plaintiffs expect to benefit
9 from filing oppositions in accordance with the Local Rule 7-9 briefing procedures, but
10 then seek to sanction Veoh for following the same briefing schedule by filing replies
11 in accordance with Local Rule 7-10.

12 This Court granted expedited consideration of the critical issues raised in
13 Veoh's Motions to Compel Chain of Title and Identification Discovery pursuant to its
14 October 28, 2008 Order (Docket 193). If it had not, Veoh would have followed the
15 Local Rule 37 Procedures, and sent a joint stipulation by November 14, as it did with
16 other outstanding discovery motions scheduled to be heard on December 17. When
17 the Court denied Veoh's prior Motion to Compel Plaintiffs to Identify Works/Produce
18 Chain of Title Info Re Same without prejudice to Veoh renewing the motion on a
19 more adequate record, Veoh had no choice but to renew its motion following the
20 procedure approved by this Court in connection with the prior motion, which was the
21 only way to place this matter before the Court, short of an *ex parte* application, prior
22 to the discovery cut-off. Veoh relied on the permission to bring these crucial issues to
23 the Court's attention on an expedited basis, outside of Local Rule 37,¹ and did not
24 believe that the Court's intention in its November 21 Order was to foreclose Veoh's

25 ¹ Notably, the Court's November 21, 2008 Order did not mention failure to comply
26 with Local Rule 37 as a grounds for denial, as such would have been inconsistent with
27 the Court's own October 28, 2008 Order (Docket 193). Conversely, in denying a
28 recent *ex parte* application by Veoh, this Court's December 5 order explicitly stated
that grounds for denial included failure to comply with Local Rule 37. (Docket 271).
Thus, if the Court had intended Veoh to re-file the motion in accordance with Rule 37,
presumably the Court would have included such language in the Order.

1 ability to ever re-file the motion given the discovery cut-off, and never address the
2 merits of the dispute, which the approach for which Plaintiffs' advocate would
3 effectively accomplish.

4 **III. UMG'S COMPLAINTS ABOUT THE TIMING OF VEOH'S MOTIONS**
5 **ARE PARTICULARLY IRONIC IN LIGHT OF PLAINTIFFS' TACTICS**

6 It is particularly ironic that Plaintiffs complain about being inconvenienced over
7 the week of the Thanksgiving holiday, when Plaintiffs have repeatedly managed to
8 time their filings to require Veoh to respond at or near a major holiday. For example,

- 9 • Late in the afternoon of July 3, 2008—and without any warning,
10 Plaintiffs served their portion of a nearly 200-page joint stipulation
11 pursuant to Local Rule 37, that included eighteen separate sections
12 (Docket 78). This required Veoh's response within five court days (the
13 following week), and thus necessitated devoting considerable time over
14 the Fourth of July weekend. The filing was of particular surprise given
15 that Plaintiffs' counsel had previously indicated that it would provide a
16 written response to Veoh's latest letter proposal regarding the issues
17 raised by the motion, but forewent efforts to resolve the issues informally
18 in favor of filing their motion with no advance notice to Veoh;
- 19 • Plaintiffs originally noticed their motion for leave to amend complaint for
20 July 7 (the Monday after the Fourth of July weekend), and subsequently
21 agreed to continue the hearing only under a briefing schedule where
22 Veoh's opposition was due July 4, 2008. (Docket 58). Veoh filed its
23 opposition on July 3, 2008 (Docket 63);
- 24 • Plaintiffs filed their motion for partial summary judgment on September
25 5, 2008, the week of the Labor Day holiday (Docket 117);
- 26 • On October 14, 2008, the day after Columbus Day 2008, Plaintiffs filed
27 an *ex parte* application for protective order re depositions (Docket 166);
- 28 • Plaintiffs' *ex parte* application for an order requiring Veoh to maintain

1 evidence (Docket 190), required Veoh to file an opposition on Halloween
2 day, October 31, 2008 (Docket 197); and

- 3 • After the close of business on Wednesday, November 19, 2008, Plaintiffs
4 served their portion of a joint stipulation regarding (1) search terms, (2)
5 custodians and (3) Skype accounts pursuant to Local Rule 37, which
6 required Veoh to provide its portion of the joint stipulation by
7 Wednesday, November 26, 2008, the day before Thanksgiving.

8 Similarly, while Plaintiffs complain that Veoh has filed a "slew" of *ex parte*
9 applications, Plaintiffs led the way with numerous *ex parte* applications, including:

- 10 • On October 5, 2007, Plaintiffs' *ex parte* application to continue hearings
11 on Veoh's motion to dismiss by one week to avoid calendar conflict with
12 hearings scheduled in related actions (Docket 16);
13 • On October 14, 2008, Plaintiffs filed an *ex parte* application for
14 protective order re depositions (Docket 166);
15 • On October 27, 2008, Plaintiffs filed an *ex parte* application for an order
16 requiring Veoh to maintain evidence (Docket 190), and
17 • On November 12, 2008, Plaintiffs filed an *ex parte* application to shorten
18 time for hearing re: UMG's motion to compel (Docket 212).

19 Far from adhering strictly to the briefing procedures set forth in the Local and
20 Federal Rules, Plaintiffs have filed numerous briefs not otherwise authorized:

- 21 • On October 9, 2007, Plaintiffs filed a "reply" in support of their *ex parte*
22 application to continue hearing on Veoh's motion to dismiss (Docket 22);
23 • August 28, 2008, Plaintiffs filed a "response" to Veoh's lodging a notice
24 of decision previously requested by the Court (Docket 106);
25 • On September 8, 2008, Plaintiffs filed a brief/purported "objections" to
26 the Lane Declaration filed in support of Veoh's Summary of Discovery
27 Orders (Docket 121);
28 • On October 20, 2008, Plaintiffs filed a "reply" in support of their *ex parte*

- 1 application for protective order re depositions (Docket 185); and
2 • December 11, 2008, Plaintiffs filed a brief/purported "objections" to
3 Veoh's replies (Docket 281), wherein it "renews" requests for sanctions
4 against Veoh, necessitating the response herein.

5 **IV. UMG MISREPRESENTS STATEMENTS MADE IN VEOH'S REPLY**

6 In an apparent attempt to justify its disingenuous request for sanctions,
7 Plaintiffs also falsely state that "Veoh suggests that UMG has identified only 475
8 distinct works for which UMG may claim copyright infringement." (UMG's
9 Objections (Docket 281) p. 3:22-23).² Veoh actually, and entirely accurately, stated
10 that there were only 475 works *for which Plaintiffs had federal copyright*
11 *registrations*. (Veoh's Reply (Docket 275) p. 2:14-15; p.8:3-4). Notably, Plaintiffs
12 have not disputed this fact. As Plaintiffs waited until December 1, 2008 to identify
13 allegedly infringing works, it was not until Veoh filed its reply briefs that it had an
14 opportunity to address these identifications at all. UMG's finally identifying alleged
15 infringements after the motion and oppositions were submitted, and request to strike
16 Veoh's replies and foreclose Veoh's ability to even address these identifications in
17 timely-filed replies, again confirms the paucity of Plaintiffs' substantive arguments in
18 opposition to Veoh's motions, and the lengths to which UMG will go in an attempt to
19 avoid having this Court consider the merits of those motions.

20 **V. CONCLUSION**

21 Plaintiffs latest "objections" and request for sanctions are nothing more than a
22 desperate attempt to avoid having this Court ever consider the merits of Veoh's

23 ///

24 ///

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26 _____
27 ² Plaintiffs' reply incorrectly cites to "Ex. 1 at Ex. A" of the "Ranahan Declaration" to
28 show the infringements identified, when Plaintiffs presumably intended to refer to the
Calkins Declaration at ¶ 2 and Exh. A, as there was no Ranahan Declaration filed in
support of the replies.

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motions on two critical discovery issues. Veoh's replies were proper, and UMG's objections should be disregarded.

Dated: December 15, 2008

WINSTON & STRAWN LLP

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