

Re: Dkt. # 44

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 7 Universal Music Corp.;
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 8 Universal-Polygram International Publishing, Inc.;
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 9 Universal Music – MGB NA LLC;
 Universal Music – Z Tunes LLC;
 10 and Universal Music – MGB Music Publishing Ltd.

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 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION
 15

16 UMG RECORDINGS, INC., <i>et al.</i> ,)	Case No. CV 07-05744 AHM (AJWx)
17 Plaintiffs,)	
18 v.)	UMG'S OBJECTIONS TO LATE-FILED
19 VEOH NETWORKS, INC., a California)	DECLARATION OF JOSEPH PAPA
20 corporation, DOES 1-10, inclusive,)	
21 Defendants.)	Judge: Hon. Andrew J. Wistrich
22)	[Joint Stipulation of Parties Filed May 22,
23)	2008]
24)	Date: June 23, 2008
25)	Time: 10:00 a.m.
26)	Courtroom: 690, The Hon. Andrew J. Wistrich
27)	
28)	

1 **I. INTRODUCTION**

2 In connection with its motion for protective order seeking additional protections beyond
3 those set forth in the stipulated Interim Protective Order, Veoh failed to present any evidence to
4 support its motion. Now, in connection with its supplemental brief (filed at approximately 10:30
5 p.m. on the last day for filing such briefs), Veoh submits a late declaration from Joseph Papa to try
6 to remedy its complete failure of proof. Veoh's effort (implicitly conceding its failure to support
7 its motion) should be disregarded and stricken because it is both untimely and because it offers
8 nothing but unsupported conclusory assertions. Such conclusory assertions cannot support Veoh's
9 motion any more than the *ipse dixit* arguments set forth in Veoh's moving papers.

10 **II. THE PAPA DECLARATION IS UNTIMELY**

11 Veoh, as both the moving party and the party requesting added protections, is required to
12 make a specific showing of need for a court to order the additional limitations in its proposed
13 protective order. See *Frazier v. Layne Christensen Co.*, 2005 U.S. Dist. LEXIS 2358, *2-3 (W.D.
14 Wisc., Feb. 11, 2005) ("[D]efendants have to show that (1) the interest for which it is seeking
15 protection is confidential business information qualified for protection, and (2) there is good cause
16 to protect this information from disclosure to these particular witnesses."). Veoh was obliged to
17 come forward with any evidence supporting its motion in its moving papers. It failed to do so.
18 Instead, as set forth in UMG's portion of the Joint Stipulation, Veoh's motion offered nothing but
19 *ipse dixit* assertions that it possesses some unspecified sensitive information and that such
20 information was somehow threatened if the additional restrictions it seeks were not entered.

21 Now, after all of the briefing of the motion is done, Veoh tries belatedly to offer evidence
22 to support its assertions. Veoh's delay is inexcusable; neither the facts, nor the law have changed
23 since Veoh prepared its motion. If Veoh had evidence to support its motion, it should have
24 presented it in filing the motion. Presenting the Papa Declaration now is too little too late.

25 **III. THE PAPA DECLARATION MAKES ONLY CONCLUSORY ASSERTIONS**

26 Pursuant to Local Rule 7-7, declarations "shall contain only factual, evidentiary matter."
27 The Papa declaration does not provide such material to support Veoh's motion. Even if it were
28 timely filed, the Papa declaration fails to meet this standard. The only factual, evidentiary

1 information in the Papa Declaration is his name, title, job description, and his quotation of UMG's
2 Interrogatory No. 3. The remaining portions of the declaration contain only unsupported
3 conclusions.¹ Veoh merely repeats the *ipse dixit* assertions in its portion of the Joint Stipulation in
4 the declaration of one of its employees. For example, Papa declares that "Veoh operates in a
5 highly competitive and cutting edge field." This does nothing more than echo the conclusory
6 assertion in the Joint Stipulation.

7 Papa further claims he has reviewed many of UMG's document requests and
8 interrogatories, and has concluded that "[m]any of them call for highly confidential information,
9 which, if it were to be disclosed to Veoh competitors, would greatly disadvantage and cause
10 irreparable commercial harm to Veoh." Papa offers no explanation of what this highly
11 confidential information is, nor what disadvantage and irreparable harm would result from its
12 disclosure to Veoh's competitors. Papa makes similar statements after quoting UMG's
13 Interrogatory No. 3; Papa states that "[i]f such information were revealed to Veoh's competitors, it
14 would put Veoh at a significant commercial disadvantage." Again, he does not specify what
15 information is particularly sensitive (if any), nor what commercial disadvantage to Veoh would
16 occur if this information were revealed to a competitor. Papa even uses the same hollow term—
17 "significant commercial disadvantage"—when stating what would happen if Veoh's confidential
18 information, like its license agreements, were revealed. The Papa Declaration is devoid of
19 substance. Even if it were timely submitted, it would not be proper for consideration by the Court.

20 Rather, the parties have negotiated an interim protective order with provisions regarding
21 expert disclosure that are modeled after those used in the Northern District of California. These
22 provisions are even more restrictive than those which served the parties well in the UMG v.
23 MySpace and UMG v. Grouper cases, when they were pending before this Court. There is no
24 basis nor reason to depart from these provisions in this case. Indeed, merely asserting that Veoh
25 has sensitive information generally does nothing to support Veoh's motion. The parties agree that
26 a protective order should be entered to protect confidential information. Veoh must show that its
27 information is so sensitive that it would not be protected without the additional protections

28 ¹ UMG specifically objects to paragraphs 2-5 of the Papa Declaration as conclusory.

requested in its motion. The Papa Declaration provides no such evidence. Hence, the terms of the Interim Protective Order should be adopted by the Court as the final protective order.

Dated: June 11, 2008

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