

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

DM RECORDS, INC.)
)
)
PLAINTIFF,)
)
v.)
)
SELPH RECORDS, INC.)
and)
FREDERICK REEVES A/K/A DOC ICE)
A/K/A DOCTOR ICE A/K/A DOC)
REEVES A/K/A DOC ICE REEVES)
individually,)
)
DEFENDANTS.)
)

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW the Plaintiff, DM Records, Inc. (hereinafter “Plaintiff”), by and through its attorney Charlotte Towne, Esq., and complains against Selph Records, Inc. (hereinafter “Selph Records”) and Frederick Reeves a/k/a Doc Ice a/k/a Doctor Ice a/k/a Doc Reeves a/k/a Doc Ice Reeves (hereinafter “Doc Ice”) (collectively “Defendants”) as follows:

I. PARTIES

1. Plaintiff is a Florida corporation authorized to do business and doing business in the music content industry at its principal place of business in North Miami Beach, Florida.
2. Upon information and belief, Defendant Doc Ice is an individual who resides in Brooklyn, New York.
3. Upon information and belief, Defendant Selph Records is a New York corporation organized in Kings county, New York.

4. Upon information and belief, Defendants Selph Records and Doc Ice are the alter ego of the other, and each is the officer, agent, servant, representative, and/or employee of the other, acting in participation with the other, having authority or apparent authority to bind the other.

II. NATURE OF THE CASE

5. This is an action for declaratory relief for non-infringement of copyright of an album of sound recordings. The album is entitled Rely On Selph (hereinafter the “Album”). Defendant Doc Ice is the main featured artist performing on the Album. There are eleven sound recordings embodied on the album. One of the eleven sound recordings on the Album is also entitled “Rely On Selph”, which is the same as the title of the Album. The Album is the subject of this action.

6. Plaintiff is the registered sound recording copyright owner of the Album as a published work. (See copy of Plaintiff’s U.S. Copyright Registration No. SRu000292461 for the Album, and a copy of the United States Copyright Office website search records for the Plaintiff’s copyright registration, attached hereto as **“Exhibit A”**.)

7. Upon information and belief, Defendant Selph Records also registered a sound recording copyright for a work entitled “Rely On Selph” as an unpublished work. (See copy of Defendant’s U.S. Copyright Registration No. SRu000292461 showing the copyright registration form executed by Doc Ice Reeves as President of Selph Records, Inc., and a copy of the United States Copyright Office website search records for the Defendants’ copyright registration, attached hereto as **“Exhibit B”**.)

8. In 2001, Plaintiff acquired ownership of the Album, including all distribution agreements and licenses pertaining thereto, after Plaintiff purchased it along with other assets,

including catalogs of hundreds of other albums, from the bankrupt estate of a Louisiana corporation, Ichiban Records, Inc. (“Ichiban Records”) in the Ichiban Records’ Chapter 7 bankruptcy (“Ichiban Bankruptcy”). Ichiban Records’ assets, wherever located, including the Album, were transferred to Plaintiff free and clear of any liens, claims, and encumbrances pursuant to an order of the United States Bankruptcy Court in the Northern District of Georgia (hereinafter “Bankruptcy Court”).

9. Prior to the Plaintiff’s acquisition of the Album, Ichiban Records was the exclusive distributor of the Album since the Album was released in 1994. (See copy of the Album cover’s front and back, Album CD, and Album insert booklet with the words “Distributed by Ichiban Records” shown thereon, attached hereto as **“Exhibit C”**.)

10. Since Plaintiff acquired ownership of the Album in the Ichiban Bankruptcy, Plaintiff and its licensees have continued to distribute the Album for more than eleven years without the objection of Defendants.

11. Now, after more than eleven years, Defendants assert that Plaintiff is violating their proprietary rights in the Album’s copyright by distributing the Album without their permission.

12. Defendants’ assertions that Plaintiff has violated their copyright in the Album ignores the fact that they conceded to Plaintiff’s rights in the Album when they (1) entered into an exclusive distribution agreement with Ichiban Records in 1994 whereby they transferred partial ownership of the copyright in the Album to Ichiban Records, (2) never objected to Plaintiff’s acquisition of the Album in the Ichiban Records bankruptcy, and (3) never at any point over the past eleven years objected to Plaintiff’s and its licensees’ distribution of the Album.

13. Defendants' belated assertions that Plaintiff has violated their copyright in the Album are unfounded and were presumably made with the sole intention of inducing Plaintiff into paying Defendants a monetary settlement to avoid the cost of potentially having to defend against their baseless claims.

14. Therefore, to avoid legal uncertainty and to protect its business interests, Plaintiff has brought this action for declaratory judgment that Plaintiff has not infringed on the copyright in the Album. Plaintiff also seeks a determination that Defendants are barred from bringing claims against Plaintiff as a result of the order of the Bankruptcy Court.

15. Plaintiff also seeks injunctive relief and an award of costs and reasonable attorney's fees.

III. JURISDICTION AND VENUE

16. This civil action arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and the Federal Copyright Act, 17 U.S.C. §§ 101, et seq. (the "Copyright Act"). This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331. This Court also has federal subject matter jurisdiction pursuant to 28 U.S.C. §1338(a) because the action arises under the Copyright Act.

17. This Court has personal jurisdiction over Defendants because (a) Defendants intentionally sent threatening correspondence to Plaintiff in the State of Florida, asserting that the activities of Plaintiff in Florida infringe their copyright in Album; (b) Defendants sent this correspondence with the intention of inducing Plaintiff to cease certain business activities and pay Defendants a monetary settlement, thereby causing injury to Plaintiff in Florida; (c) Plaintiff filed the present action in direct response to Defendants' correspondence, and therefore

Plaintiff's claim arises out of Defendants' contacts with the State of Florida; and (d) exercise of personal jurisdiction would not be unreasonable.

18. Venue is proper in this District of Florida pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of events involved in this action occurred in this District, and the injury to Plaintiff from Defendants' unlawful conduct arose in this District.

IV. STATEMENT OF FACTS

19. Sometime in or around 1994, Defendants entered into an agreement with Ichiban Records pertaining to the release and sale of Defendants' sound recordings. Upon information and belief, Defendants' agreement with Ichiban was an exclusive distribution agreement that also granted Ichiban Records co-ownership of the copyrights in Defendants' sound recordings.

20. Upon information and belief, on or about April 13, 1994, Defendant Selph Records, by and through its alter ego Defendant Doc Ice, applied for registration of copyright of a sound recording entitled "Rely On Selph" as an unpublished work with the United States Copyright Office. The copyright registration form shows a registration date of April 25, 1994 and SRu000292461 is the designated copyright registration number. Although the copyright registration form shows Defendant Selph Records as the copyright claimant, upon information and belief, the form was executed by Defendant Doc Ice as the president of Defendant Selph Records on April 13, 1994. The names of the Album's eleven sound recordings are not listed on Defendants' copyright registration form or on the United States Copyright Office website records. (See attached Exhibit B.)

21. Upon information and belief, Defendants' copyright registration number SRu000292461 is not for registration of the entire Album's eleven sound recordings. Instead,

upon information and belief, Defendants' copyright registration number SRu000292461 is for registration of one sound recording entitled "Rely On Selph".

22. Upon information and belief, Defendants' copyright registration number SRu000292461 is for an unpublished work because the sound recording had not been released to the public at the time Defendants filed the registration, and the copyright registration form does not indicate that the work was published.

23. Upon information and belief, Defendants' copyright registration number SRu000292461 was registered before Defendants entered into the distribution agreement with Ichiban Records and granted co-ownership of the copyright in Defendants' sound recordings, including the Album, to Ichiban Records.

24. Shortly thereafter, on or around May 31, 1994, and pursuant to the agreement between Defendants and Ichiban Records, the Album was released as a CD by a wholly owned division of Ichiban Records called Wrap Records, and Ichiban Records commenced its distribution of the Album. The catalog number of the Album is WRA 8027.

25. Ichiban Records' co-ownership of the Album's copyright was clear on the face of the Album by virtue of the Album's CD artwork showing side-by-side logos for "Selph Records" and "Wrap Records", and a copyright notice appearing in substantially the following form:

© © 1994 Selph Records, Wrap Records · Distributed by Ichiban Records

The same copyright notice is also shown on the Album's CD insert booklet. Furthermore, both the Album's CD artwork and insert booklet clearly showing that the Album was being distributed by Ichiban Records. (See attached Exhibit C.)

26. Defendants never objected to the Album's artwork and copyright notices showing Wrap Records, the wholly owned division of Ichiban Records, as a co-owner of the Album copyright, and Ichiban Records as the distributor.

27. Upon information and belief, Ichiban Records distributed the Album from the date of its release in 1994 until the Ichiban Bankruptcy.

28. Upon information and belief, at no time during Ichiban Records' distribution of the Album did Defendants object to the sale of the Album by Ichiban Records.

29. In 1999, Ichiban Records filed for Chapter 11 bankruptcy, which was later converted to a Chapter 7 in 2000.

30. In 2001, Plaintiff purchased substantially all of the assets of Ichiban Records bankruptcy estate in the Ichiban Bankruptcy, wherever located, free and clear of any liens, claims, and encumbrances. The assets of Ichiban Records bankruptcy estate that were purchased by Plaintiff in the Ichiban Bankruptcy included without limitation a catalog of hundreds of albums, the copyrights therein, and all of Ichiban Records' distribution agreements.

31. Upon information and belief, the Album, which included all of Ichiban Records' rights, title, and interest therein, was an asset of the estate in the Ichiban Bankruptcy, and was purchased by Plaintiff, free and clear of any liens, claims, and encumbrances.

32. At no time during the Ichiban Bankruptcy proceedings did the Defendants object as to the sale of the Album to Plaintiff.

33. Shortly after Plaintiff acquired Ichiban Records' assets, Plaintiff recorded with the United States Copyright Office the copyright assignment of Ichiban Records' copyrights to Plaintiff that was executed by the Ichiban Bankruptcy trustee. (See copy of Certificate of Recordation dated July 20, 2001, attached hereto as "**Exhibit D**", which includes copies of the

Bill of Sale, Asset Purchase Agreement, Irrevocable License Assignment, Copyright Assignment, and the Bankruptcy Court order (“Order”) confirming the sale of Ichiban Records’ assets to Plaintiff free and clear of any liens, claims, and encumbrances.)

34. On April 11, 2002, Plaintiff also registered the sound recording copyright in the Album as a published work with the United States Copyright Office. The Copyright Office website records show Plaintiff’s copyright registration information including a list of the names of all eleven sound recordings embodied on the Album. (See attached Exhibit A.)

35. For over 11 years, Plaintiff and its licensees have made the Album available for sale pursuant to its right to do so as a copyright owner in the Album, or at the very least, pursuant to a valid and enforceable license. Plaintiff and its licensees’ distribution of the Album have generated total sales of less than fifty dollars over the past 11 years.

36. On or about March 15, 2012, Defendants’ attorney sent Plaintiff a cease and desist demand letter (“Demand Letter”) claiming that Plaintiff was infringing on Defendant Selph Records’ alleged copyright in the Album. (See copy of the Demand Letter, attached hereto as “**Exhibit E**”.)

37. Since Plaintiff’s receipt of the Defendants’ Demand Letter, Defendants’ attorney has continued to send threatening emails to Plaintiff demanding monetary settlement.

38. At no time over the past 11 years up until Defendants’ attorney sent their Demand Letter making these allegations and threats had Defendants objected to Plaintiff’s distribution of the Album.

39. Plaintiff’s lawful distribution of the Album is pursuant to its ownership rights in the copyright of the Album, or at the very least, pursuant to a valid and enforceable license.

40. An actual case or controversy has arisen between the parties. Defendants have threatened imminent litigation against Plaintiff, and have asserted that Plaintiff's and its licensees' sale of the Album constitutes copyright infringement. These statements threaten injury to Plaintiff.

COUNT 1

DECLARATORY RELIEF FOR NON-INFRINGEMENT

41. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 40 hereof as if fully set forth herein.

42. Based on the facts set forth in the foregoing allegations, an actual controversy has arisen and now exists between the parties as to the ownership and rights in the Album.

43. Under the circumstances, a judicial declaration is necessary and appropriate at this time so that the parties and others may determine their rights under the laws at issue.

44. Plaintiff is entitled to a declaration that Plaintiff's and its licensees' distribution of the Album did not infringe on Defendants' alleged copyright in the Album because (a) Ichiban Records was a co-owner of the copyright in the Album, which was assigned to Plaintiff, and Plaintiff is now a co-owner of the copyright in the Album, or (b) alternatively, Ichiban Records was implicitly licensed the right by Defendants to distribute the Album, and such license was assigned to Plaintiff, or (c) alternatively, due to Defendants' lack of objection to Plaintiff's distribution of the Album for over eleven years, Plaintiff has a valid and enforceable implied license to distribute the Album.

45. Plaintiff is further entitled to a declaration that Defendants are estopped from bringing claims against Plaintiff under the statute of limitations pursuant to 17 U.S.C. § 507(b) of the Copyright Act, and/or laches.

46. Based on the Bankruptcy Court's Order and the United States Bankruptcy Code ("Bankruptcy Code"), Plaintiff is further entitled to a declaratory judgment that (i) the Bankruptcy Court's Order approving the sale of all of Ichiban Records' assets, and the closing of the Ichiban Bankruptcy case, preclude Defendants' claims pursuant to the doctrines of res judicata and/or claims preclusion; and (ii) section 363(m) of the Bankruptcy Code protects Plaintiff as a good-faith purchaser and precludes Defendants' post-bankruptcy sale claims.

47. Upon information and belief, Defendants' assertions of copyright infringement were and continue to be made in bad faith for the sole purpose of inducing Plaintiff into paying them a monetary settlement merely to avoid the cost associated with defending their baseless claims.

48. By their actions, Defendants have forced Plaintiff to retain the services of an attorney to prosecute this action, and therefore, Plaintiff seeks to recover its reasonable attorney's fees and costs.

TRIAL BY JURY

49. Plaintiff hereby requests trial by jury on all issues wherein trial by jury is permissible.

PRAAYER FOR RELIEF

NOW WHEREFORE, Plaintiff prays that the Court grant the following relief:

A. A declaratory judgment that Plaintiff's and its licensees' distribution of the Album did not infringe on Defendants' alleged copyright in the Album;

B. A declaratory judgment that Defendants are estopped from bringing claims against Plaintiff under the statute of limitations pursuant to 17 U.S.C. § 507(b) of the Copyright Act, and/or laches;

C. A declaratory judgment that (i) the Bankruptcy Court's Order approving the sale of all of Ichiban Records' assets, and the closing of the Ichiban Bankruptcy case, preclude Defendants' claims pursuant to the doctrines of res judicata and/or claims preclusion; and (ii) section 363(m) of the Bankruptcy Code protects Plaintiff as a good-faith purchaser and precludes Defendants' post-bankruptcy sale claims;

D. Injunctive relief enjoining Defendants, and their agents, servants, employees, successors and assigns, and all those acting under the authority of or in privity with them, from asserting that Defendants' distribution of the Album infringes upon Defendants' alleged copyright in the Album or violates any other rights of Defendants related to the Album;

E. An award of costs and reasonable attorney's fees incurred by Plaintiff in prosecuting this action, pursuant to 17 U.S.C. § 505;

F. That Plaintiff be awarded trial by jury on all issues triable by jury; and

G. That Plaintiff be awarded any additional relief as this Court deems just and proper.

Dated: April 11, 2012

Respectfully submitted,

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