

**UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**EIGHT MILE STYLE, LLC, and MARTIN  
AFFILIATED, LLC,**

**Plaintiffs,**

vs.

**APPLE COMPUTER, INC. and  
AFTERMATH RECORDS d/b/a  
AFTERMATH ENTERTAINMENT**

**Defendant.**

**Case No. 2:07-cv-13164  
Hon. Anna Diggs Taylor  
Magistrate Judge Donald A. Scheer**

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**[PROPOSED] FIRST AMENDED COMPLAINT FOR  
DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Eight Mile Style, LLC and Martin Affiliated, LLC (collectively, plaintiffs), by and through their attorneys, King & Ballow and Hertz Schram PC, for their amended complaint for damages and for declaratory and injunctive relief against defendant Apple Computer, Inc. and Aftermath Records d/b/a Aftermath Entertainment (collectively, “Defendants”) state:

**GENERAL ALLEGATIONS**

1. Eight Mile Style, LLC (“Eight Mile”) is a Michigan limited liability company.
2. Martin Affiliated, LLC (“Martin”) is a Michigan limited liability company.

3. Apple Computers, Inc. (“Apple”) is a California corporation with its principal place of business in California.

4. Aftermath Records d/b/a Aftermath Entertainment (“Aftermath”) is a joint venture between three entities: (1) Interscope Records, a California general partnership, (2) Interscope Records, an unincorporated division of UMG Recordings, Inc. (“UMG”), a Delaware corporation authorized to do business in the State of California, and (3) ARY, Inc., a California corporation. The Interscope Records partnership is a general partnership comprised of three entities: (a) Interscope Records, an unincorporated division of UMG, (b) UMG, and (c) PRI Productions, Inc., a Delaware Corporation. Through a series of recent transactions, Interscope Records, an unincorporated division of UMG, is now the primary owner of Aftermath.

5. Aftermath voluntarily intervened in this action.

6. The amount in controversy in this matter exceeds the sum of \$75,000, exclusive of costs and interest.

7. This Court has jurisdiction over the subject matter of this action pursuant to 17 USC § 101 *et seq* and 28 USC §§ 1331 and 1338(a) and (b).

8. This court has personal jurisdiction over Apple and Aftermath.

9. Venue is appropriate in this District under 28 USC § 1391(c) because plaintiffs’ claims arose in this district.

10. Eight Mile and Martin are the owners of, or have ownership interests in, the copyrights in the musical compositions which are attached as collective Exhibit A hereto (the Compositions), written and composed, in part, by Marshall B. Mathers, III, professionally known as “Eminem.”

11. Apple is a purveyor of music download services which do not require the manufacture or distribution of CDs or any other physical medium. Instead, Apple provides digital downloading of recordings, including recordings in which Eight Mile and Martin own the copyrights, to various end users. End users pay a fee to download the musical performances in the form of a digital audio file, which allows an end user to copy the file from Apple to the end user's own individual digital storage devices. Under a typical arrangement, Apple will charge a fixed fee (at times relevant to this complaint, .99) for an end user to store a single musical track which a consumer may store on no more than five authorized devices, such as an iPod.

12. Apple has provided and continues to provide digital downloading of recordings of the Compositions on a regular and systematic basis to end users in this District, has received and continues to receive compensation from end users for doing so, and has remitted and continued to remit some of the compensation which it has received to Universal Music Group ("Unviersal") or one of its divisions.

13. Apple has provided no compensation to Eight Mile or Martin for its use of the Compositions for which Eight Mile and Martin own, or have ownership interests in, the copyrights, nor has Apple sought or obtained permission from Eight Mile or Martin to use the Compositions.

14. On information and belief, Apple has reproduced and distributed the digital transmissions, and continues to reproduce and distribute the digital transmissions, pursuant to a purported license with Universal and/or Aftermath. But Eight Mile and Martin have never authorized Universal and/or Aftermath to license the works to Apple; Eight Mile and Martin have never authorized Universal and/or Aftermath to engage in reproduction or distribution of

the digital transmissions through third parties or otherwise; Universal and/or Aftermath have never obtained the permission of Eight Mile and Martin to do so; and indeed, Universal and/or Aftermath have, on any number of occasions, asked Eight Mile and Martin to execute agreements allowing Apple to reproduce and distribute the digital transmissions, but Eight Mile and Martin have not provided that permission.

15. Apple's reproduction and distribution of the digital transmissions via iTunes constitutes a continuing, and willful, infringement of Eight Mile's and Martin's copyright interests in the Compositions.

16. Aftermath materially contributed to the infringement of Apple as described above, with knowledge of the infringing activity by purporting to license the Compositions to Apple for reproduction and distribution of the digital transmissions via iTunes. Aftermath also reproduced and distributed the Compositions themselves by transmitting them to Apple for reproduction and distribution of the digital transmissions via iTunes. Aftermath's conduct constitutes direct, contributory and vicarious copyright infringement of Eight Mile's and Martin's copyright interests in the Compositions.

17. Aftermath had and has the right and ability to supervise and control the infringing activities of Apple and has derived a direct financial benefit from Apple's infringing activity.

18. Eight Mile and Martin have demanded that Apple and Aftermath cease and desist their reproduction and distribution of the digital transmissions of the Compositions, and Apple and Aftermath have refused to cease and desist and continue unlawfully to reproduce and distribute the digital transmissions.

19. Apple's unlawful use of Eight Mile's and Martin's copyrighted materials have infringed Eight Mile's and Martin's copyrights, entitling Eight Mile and Martin to actual or statutory damages under the Copyright Act.

20. Aftermath's unlawful use of Eight Mile's and Martin's copyrighted materials have infringed Eight Mile's and Martin's copyrights, entitling Eight Mile and Martin to actual or statutory damages under the Copyright Act.

**COUNT I – COPYRIGHT INFRINGEMENT UNDER 17 USC § 101 *ET SEQ.***

21. Plaintiffs incorporate the allegations of paragraph 1-20 of their complaint.

22. Apple's reproduction and distribution of the Compositions infringes on Eight Mile's and Martin's exclusive rights held under the Copyright Act, 17 USC § 101 *et seq.*

23. Apple's conduct has at all times been knowing and willful.

24. Aftermath's reproduction, distribution and purported licensing of the Compositions infringes on Eight Mile's and Martin's exclusive rights held under the Copyright Act, 17 USC § 101 *et seq.*

25. Aftermath materially contributed to the infringement of Apple described above, with knowledge of the infringing activity.

26. Aftermath had and has the right and ability to supervise and control the infringing activities of Apple and has derived a direct financial benefit from Apple's infringing activity.

27. Aftermath's conduct has at all times been knowing and willful.

28. Aftermath and Apple are jointly and severally liable for the infringement alleged herein.

29. As a proximate result of the wrongful conduct of Apple and Aftermath, plaintiffs have been irreparably harmed, and they have also suffered damage in excess of \$75,000, exclusive of costs and interest.

WHEREFORE, plaintiffs request that this Court:

A. Enter a temporary restraining order, preliminary injunction and permanent injunction against Apple preventing Apple and all persons or parties in concert or privity with it from reproducing and distributing the Compositions without Eight Mile's and Martin's consent;

B. Enter a declaratory judgment that Apple's reproduction and distribution of plaintiffs' copyrighted works constitute acts of willful copyright infringement, and declare that Apple and all persons or parties in concert or privity with it may not reproduce or distribute the Compositions without the express written permission of plaintiffs;

C. Enter a temporary restraining order, preliminary injunction and permanent injunction against Aftermath preventing Aftermath and all persons or parties in concert or privity with it from purporting to authorize any third party to reproduce and distribute the Compositions without Eight Mile's and Martin's consent;

D. Enter a declaratory judgment that Aftermath's purported authorization of Apple's reproduction and distribution of plaintiffs' copyrighted works constitute acts of willful copyright infringement, and declare that Aftermath and all persons or parties in concert or privity with it may not purport to authorize the reproduction or distribution the Compositions without the express written permission of plaintiffs

- E. Award Eight Mile and Martin their actual damages and the profits of Apple and Aftermath that are attributable to Apple's and Aftermath's acts of infringement, or, alternatively, statutory damages of up to \$150,000 per act of infringement;
- F. Award Eight Mile and Martin their attorney fees and costs; and
- G. Grant any other appropriate relief.

Respectfully submitted,

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Dated: August 6, 2009

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served via the Court's Electronic Filing System:

Counsel	On behalf of
<p>Daniel D. Quick, Esq. Dickinson Wright PLLC 38525 Woodward Ave Suite 2000 Bloomfield Hills, MI 48304 (t): (248) 433-7200 (e): dquick@dickinsonwright.com</p> <p>Kelly M. Klaus, Esq. Munger, Tolles &amp; Olson LLP 355 South Grand Ave Suite 3500 Los Angeles, CA 90071-1560 (t): (213) 683-9238 (e): kelly.klaus@mto.com</p>	<p>Apple Computer, Inc. and Aftermath Records d/b/a Aftermath Entertainment</p>

this 6th day of August 2009.

s/ Richard S. Busch