

Eight Mile Style, LLC et al. v. Apple Computer Inc., et al.
Case No. 2:07-CV-13164

EXHIBIT 4

**Letter from Melinda LeMoine to Richard Busch,
dated July 24, 2009**

MUNGER, TOLLES & OLSON LLP

355 SOUTH GRAND AVENUE
THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560
TELEPHONE (213) 683-9100
FACSIMILE (213) 687-3702

560 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105-2907
TELEPHONE (415) 512-4000
FACSIMILE (415) 512-4077

July 24, 2009

ROBERT K. JOHNSON¹
ALAN V. FRIEDMAN¹
RONALD L. OLSON¹
RICHARD S. VOLPERT
DENNIS C. BROWN¹
ROBERT E. DENHAM
JEFFREY I. WEINBERGER
CARY B. LERMAN
CHARLES D. SEGAL
RONALD K. MEYER
GREGORY P. STONE
VILMA S. MARTINEZ
BRAD D. BRIAN
BRADLEY S. PHILLIPS
GEORGE M. GARVEY
WILLIAM D. TEMKO
STEVEN L. GUISEI¹
ROBERT B. KNAUSS
STEPHEN M. KRISTOVICH
JOHN W. SPIEGEL
TERRY E. SANCHEZ
STEVEN M. PERRY
MARK B. HELM
JOSEPH D. LEE
MICHAEL R. DOYEN
MICHAEL E. SOLOFF
GREGORY D. PHILLIPS
LAWRENCE C. BARTH
KATHLEEN M. McDOWELL
GLENN D. POMERANTZ
RONALD C. HAUSMANN
PATRICK J. CAFFERTY, JR.
JAY M. FUJITANI
O'MALLEY M. MILLER
SANDRA A. SEVILLE-JONES
MARK H. EPSTEIN
HENRY WEISSMANN
KEVIN S. ALLRED
BART H. WILLIAMS
JEFFREY A. HEINTZ
JUDITH T. KITANO
KRISTIN LINSLEY MYLES
MARC T.G. DWORSKY
JEROME C. ROTH
STEPHEN D. ROSE
JEFFREY L. BLEICH
GARTH T. VINCENT

TED DANE
MARK SHINDERMAN
STUART N. SENATOR
MARTIN D. BERN
DANIEL P. COLLINS
RICHARD E. DROOYAN
ROBERT L. DELL ANGELO
BRUCE A. ABBOTT
JONATHAN E. ALTMAN
MARY ANN TODD
MICHAEL J. O'SULLIVAN
KELLY M. KLAUS
DAVID B. GOLDMAN
BURTON A. GROSS
KEVIN S. MASUDA
HOJON Hwang
KRISTIN S. ESCALANTE
DAVID C. DINIELLI
ANDREA WEISS JEFFRIES
PETER A. DETRE
PAUL J. WATFORD
DANA S. TREISTER
CARL H. MOOR
DAVID M. ROSENZWEIG
DAVID H. FRY
LISA J. DEMSKY
MALCOLM A. HEINICKE
GREGORY J. WEINGART
TAMERLIN J. GODLEY
JAMES C. RUTTEN
J. MARTIN WILLHITE
RICHARD ST. JOHN
ROHIT K. SINGLA
LUIS LI
CAROLYN HOECKER LUEDTKE
C. DAVID LEE
MARK H. KIM
BRETT J. RODDA
SEAN ESKOVIK
FRED A. ROWLEY, JR.
KATHERINE M. FORSTER
BLANCA FROMM YOUNG
SUSAN R. SZABO
NATALIE PAGES STONE
MONIKA S. WIENER
LYNN HEALEY SCADUTO
RANDALL G. SOMMER

¹A PROFESSIONAL CORPORATION

SHONT E. MILLER
MARIA SEFERIAN
MANUEL F. CACHAN
ERIC J. LORENZINI
KATHERINE K. HUANG
ROSEMARIE T. RING
JOSEPH J. YBARRA
KATE K. ANDERSON
ALISON J. MARKOVITZ
E. DORSEY KLEGER-HEINE
JAY K. GHYA
SUSAN TRAUB BOYD
JENNIFER L. POISE
TODD J. ROSEN
BRIAN R. HOCHLEUTNER
GRANT A. DAVIS-DEANNY
JASON RANTANEN
AMY C. TOVAR
REBECCA GOSE LYNCH
JONATHAN H. BLAVIN
JOHN R. GRIFFIN
KAREN J. FESSLER
MICHELLE T. FRIEDLAND
J. RAZA LAWRENCE
LIKA C. MIYAKE
MELINDA EADES LEMOINE
ANDREW W. SONG
YOHANCE C. EDWARDS
JULIE D. CANTOR
SETH GOLDMAN
FADIA RAFFIEDIE KHOURY
JOSHUA P. GROBAN
VICTORIA L. BOESCH
HALIN J. CHEN
BRAD SCHNEIDER
ALEXANDRA LANG SUSMAN
GENEVIEVE A. COX
MIRIAM KIM
MISTY M. SANFORD
BRIAN P. DUFF
AIMEE FEINBERG
JOEL D. WHITLEY
KATHARINE L. HALL
KATHERINE KU
KIMBERLY A. CHI
SHOSHANA E. BANNETT
TINA CHAROENPONG

LEE S. TAYLOR
DEREK J. KAUFMAN
KIMBERLY D. ENCINAS
MARCUS J. SPIEGEL
GABRIEL P. SANCHEZ
BETHANY C. WOODARD
PAULA R. LEVY
CONNIE Y. CHIANG
DAVID C. YANG
WILLIAM E. CANO
EMILY PAN
BILL WARD
HENRY E. ORREN
BENJAMIN W. HOWELL
WESLEY SHIH
JACOB S. KREILKAMP
PAUL J. KATZ
TYLER A. ROOZEN
JONATHAN M. WEISS
ZACHARY KATZ
DANIEL A. LYONS
ELISABETH J. NEUBAUER
TREVOR D. DRYER
ERIC P. TUTTLE
HEATHER E. TAKAHASHI
KRISTINA L. WILSON
KEVIN A. GOLDMAN
ROBYN KALI BACON
BERNARD A. ESKANDARI
JENNY M. JIANG
KEITH R.D. HAMILTON, II
SORAYA C. KELLY
PATRICK ANDERSON
MARK R. YOHALEM
JEFFREY Y. WU
YUVAL MILLER
MARK R. CONRAD
DANIEL R. MCCARTHY

RICHARD D. ESBENSHADE¹
ALLISON B. STEIN
PETER R. TAFT
OF COUNSEL

E. LEROY TOLLES
(1922-2008)

VIA E-MAIL AND U.S. MAIL

Richard Busch
King & Ballow
1100 Union Street Plaza
315 Union Street
Nashville, Tennessee 37201

Re: Eight Mile Style, LLC v. Apple, Inc.

Dear Richard:

I write to discuss two issues regarding Gary Cohen's expert reports produced on July 3 and July 6.

First, we were very surprised to see that Mr. Cohen's report asserted that plaintiffs were entitled to profits from sales of the iPod portable music player. Plaintiffs' Complaint and the over two years of ensuing discovery have never even hinted that profits from sales of the iPod – or anything *about* the iPod – was at issue in this lawsuit. Indeed, the only time iPod sales have been raised during this lawsuit was in the portion of Eddy Cue's deposition on which Mr. Cohen relies in his report. Yet in that very deposition, shortly after the portion on which Mr. Cohen relies, you specifically *disclaimed* any connection between the testimony sought regarding iPod profits and damages in the *Eight Mile* case. *See* Cue Dep., 114:8-116:8 (stating "This has nothing to do with damages. It goes to the *F.B.T.* matter . . ." and "This has nothing to do with profit issues with respect to profit and loss on the songs involved in the *Eminem* case. . .").

WRITER'S DIRECT LINE
(213) 683-9171
(213) 683-4071 FAX
Melinda.LeMoine@mto.com

Richard Busch

July 24, 2009

Page 2

Trial is imminent, and it is far too late to introduce what amounts to an entirely new theory. Until Mr. Cohen mentioned commercial advertisements for the iPod, there was no hint of disclosure that they formed any part of Plaintiffs' case. The first iPod advertisement was the subject of a long-resolved dispute, and, over a year ago, you stated you were not seeking discovery related to that advertisement. April 16, 2008 e-mail from R. Busch to K. Klaus. The composition "Lose Yourself" was licensed for use in the 2005 Apple "Silhouette" commercial, and also was indisputably licensed for sale as a download on the iTunes Store. There is no basis to contend that any profits allegedly driven by an advertisement in which the use of the composition was concededly authorized are somehow reachable in this copyright infringement action.

In any event, the amount Mr. Cohen ultimately calculates as Apple's contribution margin does not include iPod sales. *See* Cohen Report, p. 6-7 (opining that line A represents Apple's contribution margin). In fact, Mr. Cohen states that "the portion of iPod profits attributable to 8MS recordings is indeterminate." *Id.* at 6. Please confirm **by Monday, July 27** that Plaintiffs are *not* seeking profits from the sales of iPods in this action. If you will not do so, we will file a motion to exclude Mr. Cohen's opinion to the extent it includes any discussion of iPods (and on further grounds that it is inadmissible under *Daubert* and other controlling authority).

Second, we still have serious concerns about Plaintiffs' now concededly improper treatment of Mr. Cohen's report under the Protective Order. That Order gives us the right to designate any material as Confidential or Confidential - Attorney's Eyes Only. The totals for each category of costs included in Cohen's report include competitively sensitive information that has been designated, when produced, Confidential - Attorney's Eyes Only. Mr. Martin may review the *text* of Mr. Cohen's report and the *final totals* that Mr. Cohen opines should be deducted. He may not under the Protective Order in this case review the cost information, whether in the aggregate or by composition. Confirm that you are proceeding accordingly, as well as treating the schedules as Confidential - Attorney's Eyes Only. Our clients reserve their rights to seek relief for the violation of the Protective Order you concede has taken place by sharing this information with Mr. Martin.

Sincerely,


Melinda E. LeMoine