

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

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

Plaintiffs,

vs.

Case No. 2:07-cv-13164
Hon. Anna Diggs Taylor

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

Defendants.

Howard Hertz, Esq. (P26653)
Jay G. Yasso, Esq. (P45484)
Hertz Schram PC
1760 S. Telegraph Rd., Suite 300
Bloomfield Hills, MI 48302
(248) 335-5000
hhertz@hertzschr.com
jyasso@hertzschr.com
Attorneys for Plaintiffs

Richard S. Busch (TN BPR#14594)
King & Ballow
1100 Union Street Plaza
315 Union Street
Nashville, TN 37201
(615) 259-3456
rbusch@kingballow.com
Attorneys for Plaintiffs

MOTION FOR RECONSIDERATION

Doc. 169
Plaintiffs Eight Mile Style, LLC (“Eight Mile”) and Martin Affiliated, LLC (“Martin”) respectfully move this Court, pursuant to LR 7.1(g), to reconsider its ruling denying Plaintiffs’ Motion to Amend the Complaint in this matter to state copyright infringement claims against both Defendants, Apple Computer (“Apple Computer”) and intervener Aftermath Records d/b/a Aftermath Entertainment (“Aftermath”).

In denying Plaintiffs’ Motion to Amend in its recent ruling from the bench, the Court relied upon Defendants’ representations that discovery would have needed to be taken regarding Plaintiffs’ claims of copyright infringement against Aftermath in order to avoid prejudice. While Defendants claim prejudice for their failure to have had the opportunity to take discovery with

respect to the claims in the Amended Complaint, the discovery actually taken since the early stages of the case shows that both Defendants submitted interrogatories to Plaintiffs and received responses that made Plaintiffs' position clear with respect to Aftermath's copyright infringement. Aftermath also took Eight Mile Style's deposition multiple times and inquired into the factual basis for Plaintiffs' copyright claims against Aftermath. The interrogatories propounded by Defendants and the responses by Plaintiffs attached hereto as Exhibit A indicate that Defendant Aftermath conducted discovery with respect to the basis for Plaintiffs' claims of copyright infringement, which would include vicarious and contributory copyright infringement against Aftermath, as early as March 21, 2008. For example, in Interrogatory No. 16 Plaintiffs were asked to "Identify all wrongful acts that You contend Aftermath has committed regarding any of the matters alleged in your Complaint" and in Interrogatory No. 30 Plaintiffs were asked by Defendants Apple and Aftermath to describe all facts supporting the contention Defendants' copyright infringement was "willful." Plaintiffs fully answered each interrogatory as to both Defendants and the responses include facts upon which Aftermath can be held contributorily and vicariously liable, as well as directly liable. If Plaintiffs are unable to prove the elements of vicarious and contributory copyright infringement, Plaintiffs will be prejudiced, not Defendants. Furthermore, it was Aftermath which voluntarily intervened as a Defendant soon after the Complaint was filed. In response to Plaintiffs' document requests as to damages, Aftermath produced forty-four (44) profit and loss statements, knowing that Plaintiffs were seeking damages against Aftermath for copyright infringement. There is simply no prejudice to Defendants and as leave to amend should be "freely" given "when justice so requires," Plaintiffs respectfully request that this Court reconsider its initial ruling, to correct a palpable defect by which the Court and Plaintiffs have been misled, and grant Plaintiffs' Motion to Amend the

Complaint.

Dated: September 21, 2009

Respectfully submitted,

/s/ Howard Hertz
Howard Hertz (P26653)
Jay G. Yasso (P45484)
Hertz Schram PC
1760 South Telegraph Road, #300
Bloomfield Hills, MI 48302
(248) 335-5000
hhertz@hertzschram.com
Attorneys for Plaintiffs

Richard S. Busch (TN BPR#14594)
King & Ballow
1100 Union Street Plaza
315 Union Street
Nashville, TN 37201
(615) 259-3456
rbusch@kingballow.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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

This 21st day of September 2009.

/s/ Howard Hertz