

**DECLARATION OF RICHARD S. BUSCH IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANTS APPLE COMPUTER, INC. AND
AFTERMATH RECORDS d/b/a/ AFTERMATH ENTERTAINMENT**

EXHIBIT 5

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

DEPOSITION OF MICHAEL OSTROFF

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

F.B.T. PRODUCTIONS, LLC;)
AND EM2M, LLC,)

PLAINTIFFS,)

VS.)

CASE NO. CV 07-3314 PSG
(MANX)

AFTERMATH RECORDS DOING)
BUSINESS AS AFTERMATH)
ENTERTAINMENT; INTERSCOPE)
RECORDS; UMG RECORDINGS,)
INC.; AND ARY, INC.,)

DEFENDANTS.)

DEPOSITION OF MICHAEL OSTROFF, TAKEN
ON BEHALF OF THE PLAINTIFFS, AT 10250
CONSTELLATION BOULEVARD, 19TH FLOOR,
LOS ANGELES, CALIFORNIA, COMMENCING AT
2:03 P.M., THURSDAY, JUNE 5, 2008,
BEFORE ALEX BAKER, CSR NUMBER 11897.

DEPOSITION OF MICHAEL OSTROFF

17:12:20 1 RECORD COMPANY, AS OPPOSED TO AFTERMATH, THE LANGUAGE
17:12:23 2 THAT FOLLOWS, "AND ITS DISTRIBUTORS/LICENSEES." DO YOU
17:12:26 3 KNOW OF ANY AGREEMENT THAT -- WITHIN UNIVERSAL OR
17:12:31 4 INTERSCOPE THAT HAS THAT LANGUAGE, "AND ITS
17:12:34 5 DISTRIBUTORS/LICENSEES"?

17:12:36 6 A. I THINK I TESTIFIED THAT I WASN'T SURE
17:12:39 7 ABOUT THAT, DISTRIBUTOR/LICENSEES, YEAH.

17:12:43 8 Q. OKAY. I ASKED MARNIE NIEVES EARLIER
17:12:46 9 THIS QUESTION -- DO YOU KNOW MARNIE NIEVES?

17:12:49 10 A. YES.

17:12:49 11 Q. OKAY. SHE'S AN ATTORNEY WITH UNIVERSAL?

17:12:52 12 A. WITH INTERSCOPE, YES, AND A&M.

17:12:54 13 Q. OKAY. WOULD IT BE FAIR TO SAY THAT IF
17:12:57 14 UNIVERSAL LICENSES A MASTER TO A THIRD-PARTY RECORD
17:13:03 15 COMPANY, LIKE K-TEL OR LIONEL RECORDS, AND -- FOR
17:13:13 16 REPRODUCTION BY THAT RECORD LABEL, THAT IT WOULD BE
17:13:21 17 K-TEL OR LIONEL RECORDS UNDER THAT SCENARIO THAT WOULD
17:13:27 18 BE RESPONSIBLE FOR OBTAINING A MECHANICAL LICENSE, EVEN
17:13:31 19 IF UNIVERSAL HAS A CONTROLLED COMPOSITION CLAUSE LIKE
17:13:34 20 THIS?

17:13:34 21 A. TYPICALLY, THAT'S THE CASE, YES.

17:13:36 22 Q. OKAY. DID YOU THINK OF ANY EXAMPLES
17:13:40 23 WHERE IT WOULD NOT BE THE CASE?

17:13:43 24 MR. POMERANTZ: OBJECTION. VAGUE.

17:13:55 25 THE DEPONENT: I CAN'T. THAT'S NOT TO

DEPOSITION OF MICHAEL OSTROFF

17:13:56 1 SAY THERE AREN'T, BUT I CAN'T.

17:13:59 2 BY MR. BUSCH:

17:14:12 3 Q. SO WOULD IT BE FAIR -- DO YOU KNOW
17:14:14 4 WHETHER IN THIS LANGUAGE WHERE IT SAYS, "TO AFTERMATH
17:14:18 5 AND ITS DISTRIBUTORS/LICENSEES," IT IS MEANT TO APPLY TO
17:14:21 6 THE AFFILIATED DISTRIBUTORS OR LICENSEES OF AFTERMATH,
17:14:23 7 AS OPPOSED TO UNAFFILIATED DISTRIBUTORS OR LICENSEES?

17:14:28 8 MR. POMERANTZ: OBJECTION. VAGUE. LACK
17:14:29 9 OF FOUNDATION.

17:14:33 10 THE DEONENT: WHAT'S THE QUESTION
17:14:34 11 AGAIN?

17:14:34 12 BY MR. BUSCH:

17:14:35 13 Q. MY QUESTION IS: SINCE, GENERALLY
17:14:37 14 SPEAKING, A -- IF -- AND REMEMBER THIS WAS ENTERED INTO
17:14:43 15 IN 1998. THERE WERE NO PERMANENT DOWNLOADS IN 1998.

17:14:46 16 WOULD THAT BE FAIR TO SAY?

17:14:49 17 A. I DON'T KNOW THAT THERE WERE NONE, BUT
17:14:52 18 WE WEREN'T GENERALLY IN THE BUSINESS AT THAT TIME. OF
17:14:55 19 PERMANENT DOWNLOADS.

17:14:56 20 Q. AND WAS PERMANENT DOWNLOADS A -- WAS IT
17:15:00 21 WITHIN THE NORMAL DISTRIBUTION PROCESS IN 1998?

17:15:07 22 A. UNIVERSAL MUSIC GROUP WAS NOT GENERALLY
17:15:13 23 DISTRIBUTING ITS CONTENT AS PERMANENT DOWNLOADS IN 1998.

17:15:17 24 Q. I GUESS -- SO MY QUESTION TO YOU IS:
17:15:19 25 WHERE IT SAYS THAT ALL CONTROLLED COMPOSITIONS WILL BE

DEPOSITION OF MICHAEL OSTROFF

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.
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6 DEPONENT'S DECLARATION
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10 I CERTIFY UNDER PENALTY OF PERJURY THAT THE
11 FOREGOING IS TRUE AND CORRECT.
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16 EXECUTED AT _____ ON _____.
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20 _____
21 (SIGNATURE OF DEPONENT)
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DEPOSITION OF MICHAEL OSTROFF

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.

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I, ALEX BAKER, CERTIFIED SHORTHAND REPORTER,
CERTIFICATE NUMBER 11897, FOR THE STATE OF CALIFORNIA,
HEREBY CERTIFY:

THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME AT
THE TIME AND PLACE THEREIN SET FORTH, AT WHICH TIME THE
DEPONENT WAS PLACED UNDER OATH BY ME;

THE TESTIMONY OF THE DEPONENT AND ALL OBJECTIONS
MADE AT THE TIME OF THE EXAMINATION WERE RECORDED
STENOGRAPHICALLY BY ME AND WERE THEREAFTER TRANSCRIBED;

THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT
TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR NOR
RELATED TO ANY PARTY TO SAID ACTION, NOR IN ANY WAY
INTERESTED IN THE OUTCOME THEREOF.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY
NAME THIS 11TH DAY OF JUNE, 2008.


