

**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 6

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

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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F.B.T. PRODUCTIONS, LLC,)
and Em2M, LLC,)
Plaintiffs,)

v.) Case No. CV 07-03314

AFTERMATH RECORDS doing)
business as AFTERMATH)
ENTERTAINMENT; INTERSCOPE)
RECORDS; UMG RECORDINGS,)
INC.; and ARY, INC.,)
Defendants.)

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

-----x
EIGHT MILE STYLE, LLC and)
MARTIN AFFILIATED, LLC,)
Plaintiffs,)

vs.) Case No. 2:07-cv-13164

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

) Hon. Anna Diggs Taylor

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May 14, 2008
10:06 a.m.

Deposition of JOEL MARTIN, held at the
law offices of Jenner & Block, 919 Third Avenue,
New York, New York, pursuant to notice and
agreement, before Donald R. DePew, an RPR, CRR and
Notary Public within and for the State of
New York.

Joel Martin

16:28:25

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(Witness looks at document.)

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A. I don't know.

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Q. Do you believe that digital downloads

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are manufactured or sold primarily for use on or

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in means of transportation?

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MR. BUSCH: The same objections as I've

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just said a moment ago, lack of foundation,

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speculation, vague and ambiguous.

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A. Well, I'm not sure what means of

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transportation means here, so I can't answer that

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question.

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Q. All right. Let's go back to the 2003

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agreement between F.B.T. and Aftermath, which is

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Exhibit 10.

16:29:08

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At the time that this agreement was

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negotiated and documented you were aware that

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music was being distributed through the Internet,

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correct?

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A. Yes.

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Q. Had you heard of Apple's iTunes Store

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by July 2003?

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A. I don't believe so.

16:29:31

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Q. Were you aware that permanent downloads

16:29:34

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were being offered by some on-line retailers?

Joel Martin

17:08:17 2 that was sent to it by Aftermath, or Interscope,
17:08:19 3 or Universal for mechanical royalties?

17:08:23 4 A. I don't believe so.

17:08:29 5 Q. Did you ever ask Universal or
17:08:32 6 Interscope to issue a new check because you
17:08:34 7 thought that the check that had been sent
17:08:36 8 improperly calculated the mechanical royalties
17:08:39 9 that were due?

17:08:48 10 A. I had no basis to be able to ask or
17:08:53 11 determine that anything was improper, other than
17:08:56 12 what I would have heard from my accountant or the
17:09:00 13 auditor, Gary Cohen.

17:09:02 14 Q. Well, starting sometime in 2004 you
17:09:04 15 knew that Universal was paying you mechanical
17:09:07 16 royalties based upon digital distribution of
17:09:11 17 Eminem recordings, correct?

17:09:15 18 A. We had information on the statements
17:09:20 19 relating to something called digital tracks. It
17:09:24 20 referenced a digital track, but we weren't exactly
17:09:27 21 sure what that meant.

17:09:28 22 Q. Well, did you ever tell Universal that
17:09:31 23 they had to issue you a new track.

17:09:34 24 MR. BUSCH: New track?

17:09:36 -25 MR. POMERANTZ: I'll take that back.

1 Joel Martin

17:11:42 2 MR. BUSCH: I don't think it's
17:11:43 3 necessarily neutral, but if -- my point is,
17:11:46 4 is that -- it's fine to answer the question.
17:11:48 5 I just don't -- I just want there to be an
17:11:50 6 agreement that by answering that question
17:11:51 7 we're not agreeing it's -- you're not
17:11:53 8 agreeing it's a license, I'm not agreeing
17:11:55 9 it's --

17:11:55 10 MR. POMERANTZ: We're wasting time.

17:11:59 11 Q. Were you aware that Eminem recordings
17:12:01 12 were available by way of permanent downloads back
17:12:04 13 in 2004?

17:12:05 14 MR. BUSCH: That's better.

17:12:07 15 A. Yes.

17:12:11 16 Q. At any time in 2004 or 2005 did you
17:12:14 17 tell Universal that they had to recut the check to
17:12:17 18 Eight Mile for mechanical royalties because they
17:12:21 19 included payments for permanent downloads and you
17:12:24 20 hadn't licensed the compositions for permanent
17:12:28 21 downloads?

17:12:28 22 MR. BUSCH: Objection, asked and
17:12:29 23 answered.

17:12:29 24 He said that all he saw was a digital
17:12:31 25 track.

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17:12:32 2 A. We had no idea that permanent downloads
17:12:34 3 were necessarily included by virtue of the
17:12:36 4 statement that we received from the UMG copyright
17:12:39 5 department.
17:12:39 6 Q. Well, you knew permanent downloads were
17:12:41 7 out in the marketplace, didn't you?
17:12:42 8 A. So?
17:12:43 9 Q. And you knew that there were Eminem
17:12:45 10 recordings, right?
17:12:45 11 A. What does that have to do with whether
17:12:47 12 or not we knew what we were being paid for?
17:12:47 13 Q. Well, did you pick up the phone and
17:12:49 14 call Universal and say what the heck are those
17:12:51 15 downloads doing out there, I haven't licensed the
17:12:54 16 compositions for permanent downloads?
17:12:56 17 A. Did we pick the phone up and ask?
17:12:58 18 Q. Yes.
17:12:59 19 A. We put them on notice that we weren't
17:13:00 20 licensing digital tracks --
17:13:01 21 Q. How did you put them on notice?
17:13:01 22 A. -- for permanent downloads.
17:13:01 23 We told them.
17:13:06 24 Q. Who told them?
17:13:08 25 A. I did, my assistant told them.

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17:13:10

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Q. Who did you tell?

17:13:11

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A. People in the UMG copyright department

17:13:13

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that were issuing -- or requesting that we

17:13:15

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consider issuing licenses for digital.

17:13:19

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Q. Which people?

17:13:20

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A. It would have been several people.

17:13:21

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It would have been Chad Gary, Todd Douglas,

17:13:25

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Pat Blair, Tim Hernandez --

17:13:27

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Q. Who do you --

17:13:28

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A. -- people in the copyright department.

17:13:30

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Q. I'm sorry. Who do you recall

17:13:32

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telling --

17:13:32

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MR. BUSCH: He just answered the

17:13:34

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question.

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Q. Those are names --

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A. Those were people in particular.

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Q. You had conversations directly with

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each of those four?

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A. Yes, I did.

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Q. And you told them that you weren't

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going to license the Eminem compositions for

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permanent downloads?

17:13:45

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A. I wouldn't characterize it as that we

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wouldn't, no, not that we weren't. But subject to

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17:13:52 the terms and conditions that were contained in a
17:13:57 mechanical license that we've been using, we would
17:14:00 not be using those terms and conditions. Yes, I
17:14:03 did.

17:14:03 Q. So did you tell Universal that you were
17:14:06 willing to license the Eminem compositions for
17:14:10 permanent downloads if they agreed to certain
17:14:13 terms and conditions?

17:14:14 A. On a test basis we -- there was an
17:14:17 agreement to see what happened initially with one
17:14:23 or two compositions.

17:14:24 Q. And did you tell Universal that with
17:14:27 the exception of those one or two compositions you
17:14:30 refused to license Eminem compositions for
17:14:33 purposes of permanent downloads?

17:14:35 A. I didn't tell them I refused, no.

17:14:37 Q. What did you tell them?

17:14:38 A. I told them that we would see what
17:14:40 happens in a test case with the few compositions
17:14:44 that we had agreed to license at that time.
17:14:47 Because we didn't know what accountings would look
17:14:50 like, we didn't know who was going to be selling
17:14:52 it. We didn't know anything. I mean, it was
17:14:54 very, very new. As -- I don't even believe there

Joel Martin

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17:14:57 2 was iTunes out there.

17:14:59 3 You know, I remember something about

17:15:01 4 Pressplay or some other digital initiatives that

17:15:05 5 Universal was involved with directly. But there

17:15:08 6 was no mention of so many of the things that had

17:15:13 7 happened soon after we agreed to discuss and talk

17:15:19 8 about terms and conditions of licenses for

17:15:23 9 permanent digital downloads.

17:15:25 10 Q. When did you agree to those test

17:15:26 11 licenses?

17:15:27 12 A. Excuse me?

17:15:28 13 Q. When did you agree to those test

17:15:28 14 licenses?

17:15:29 15 A. When?

17:15:29 16 Q. Yeah. What year?

17:15:31 17 MR. BUSCH: Just note my objection.

17:15:32 18 We produced the one agreement that I

17:15:34 19 believe is signed.

17:15:35 20 A. Yeah, I don't know. I'd have to take a

17:15:36 21 look at the date.

17:15:37 22 Q. 2003?

17:15:38 23 MR. BUSCH: Objection.

17:15:38 24 We produced a document.

17:15:39 25 Don't speculate. Whatever date --

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A. I don't know.

17:15:42

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Q. Well, certainly from the date you

17:15:44

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signed that license going forward --

17:15:46

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A. Correct.

17:15:46

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Q. -- you knew that your royalty

17:15:48

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statements were going to reflect some payments for

17:15:51

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permanent downloads, right?

17:15:52

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A. Absolutely not.

17:15:53

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Q. Why not?

17:15:53

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A. Because it wasn't designated on the

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statement. I didn't know what it was including.

17:15:57

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Q. But wouldn't the license --

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A. That was the whole purpose of issuing a

17:16:00

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license and a basis to find out how we were being

17:16:03

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accounted to.

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Q. That license required Universal to make

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payments to you for mechanical royalties, correct?

17:16:09

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A. To make payments to us?

17:16:11

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Q. To Eight Mile, right.

17:16:13

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A. That we would be receiving payments?

17:16:17

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Q. Yes.

17:16:19

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A. That's correct.

17:16:19

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Q. And you expected those payments to be

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on some sort of a royalty statement, correct?

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17:16:25 A. But of what nature?
17:16:26 What nature?
17:16:27 Q. Did you expect them to be on a royalty
17:16:29 statement?
17:16:30 A. I expected them to at least minimally
17:16:31 be defined as to what it was.
17:16:34 Q. So are you saying that in 2004 you
17:16:35 didn't know that when you cashed the checks you
17:16:40 were cashing checks that were paying you monies
17:16:42 for permanent download mechanical royalties?
17:16:45 A. Not necessarily, no.
17:16:46 Q. What does not necessarily mean?
17:16:49 A. Not necessarily.
17:16:49 Q. What does that mean?
17:16:50 A. I had no way, by way of the statement,
17:16:53 to determine whether or not it was a permanent
17:16:56 download on the UMG royalty statements, no way.
17:16:59 Q. Okay. So are you -- I just want to be
17:17:01 clear, you're saying that when you cashed checks
17:17:04 in 2004, and 2005, and 2006 that were sent to you
17:17:10 for mechanical royalties you did not know that any
17:17:12 of those monies were being paid to you for
17:17:16 permanent downloads?
17:17:16 MR. BUSCH: Objection, asked and

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17:19:00
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evidence.

Don't speculate.

A. I can't recall exactly the time. I can't recall.

Q. Did you -- I'm just going to try and find as close as we can get to it, you know, and obviously your recollection is what it is.

Do you recall knowing at any time in 2004 that you had received a payment for mechanical royalties relating to an Eminem composition that was for the sale or license of a permanent download?

A. No.

MR. BUSCH: Asked and answered.

Q. How about 2005?

A. I don't believe so.

Q. How about 2006?

A. Possibly.

Q. Do you recall what led you to learn that some of the mechanical royalty payments that you were receiving related to permanent downloads?

A. Yes.

Q. What caused you --

A. Advice from Gary Cohen, the auditor.

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17:19:17 2 Q. So until Gary Cohen told you that part
17:19:19 3 of your mechanical royalty payments were for
17:19:22 4 permanent downloads, you didn't know that?

17:19:23 5 A. Not necessarily.

17:19:23 6 Q. What does that mean?

17:19:25 7 Does that mean, no, or maybe so, but
17:19:27 8 you're not sure?

17:19:31 9 A. Because of the dates involved I can't
17:19:33 10 recollect exactly whether or not at some point we
17:19:36 11 started seeing something on a statement that for
17:19:38 12 the first time referred to permanent download, or
17:19:42 13 whether or not it was Gary Cohen that actually
17:19:44 14 advised us where to look on the statement that
17:19:46 15 reflected digital income. I can't recall.

17:19:49 16 Q. And once you learned for the first time
17:19:51 17 that some portion of the payments that you were
17:19:54 18 receiving were for permanent downloads --

17:19:58 19 A. Yes.

17:19:58 20 Q. -- did you tell anyone at Universal
17:20:00 21 that they should stop paying that money to you
17:20:02 22 because you had not licensed the compositions for
17:20:06 23 permanent download purposes?

17:20:08 24 A. Not specifically, no.

17:20:10 25 Q. Why not?

1 Joel Martin

17:20:12 2 A. Well, I'm not exactly sure what I was
17:20:14 3 supposed to tell them, that \$28,000 out of a
17:20:17 4 \$4 million check that we couldn't exactly
17:20:20 5 determine again what it was for. There was no way
17:20:22 6 for us to segregate out mastertone income from
17:20:25 7 download income from -- we didn't have the ability
17:20:30 8 ourselves to be able to determine what needed to
17:20:32 9 be segregated and how we could do that.

17:20:37 10 And if you're asking me would I hold up
17:20:39 11 a \$4 million check for a \$28,000 digital payment
17:20:42 12 that I couldn't ascertain as to what it was for
17:20:45 13 specifically, no, I would not do that.

17:20:47 14 Q. That wasn't my question, Mr. Martin.
17:20:49 15 My question was not what you could do.

17:20:51 16 My question was, why didn't you ask
17:20:53 17 Universal to stop paying you monies for mechanical
17:20:57 18 royalties related to permanent downloads because
17:21:00 19 you hadn't licensed those compositions for that
17:21:04 20 purpose?

17:21:05 21 A. Listen, in some cases it's quite
17:21:07 22 possible that certain compositions were licensed
17:21:10 23 by other publishers. For example, our
17:21:13 24 co-publisher Famous, might have been in the
17:21:16 25 position where they actually licensed for digital

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17:21:17 2 downloads. We had no way of verifying that.

17:21:22 3 Q. But the bottom line is you never asked

17:21:25 4 Universal to stop paying you for mechanical

17:21:28 5 royalties for permanent downloads, correct?

17:21:32 6 A. Based on a minute percentage of a huge

17:21:35 7 check, no.

17:21:37 8 Q. Have you ever offered to refund any

17:21:40 9 monies that Universal has paid to Eight Mile for

17:21:46 10 mechanical royalties related to permanent

17:21:49 11 downloads?

17:21:50 12 A. Me personally?

17:21:52 13 I don't believe so.

17:21:53 14 Q. Are you aware of anybody making such an

17:21:57 15 offer to Universal on behalf of Eight Mile?

17:22:00 16 A. To refund?

17:22:01 17 Q. Yes.

17:22:02 18 A. I don't know.

17:22:02 19 Q. You're not aware of it?

17:22:03 20 A. I'm not aware of it.

17:22:14 21 Q. Can you go back to the 1998 agreement,

17:22:17 22 please, Exhibit 5, and turn to page 4.

17:22:51 23 A. What page?

17:22:52 24 Q. Let's go to the 2000 -- page 4.

17:23:00 25 A. Okay.

Joel Martin

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17:33:32 14
17:33:34 15
17:33:35 16
17:33:38 17
17:33:40 18
17:33:42 19
17:33:44 20
17:33:46 21
17:33:51 22
17:34:00 23
17:34:02 24
17:34:07 25

mechanical royalty?

MR. BUSCH: Object to form, it calls
for a legal conclusion.

A. I don't know.

Q. Has anyone ever told you that a
permanent download involves a mechanical royalty?

MR. BUSCH: At what point in time,
because there have been determinations, as
you know, about things of that nature?

And are you asking about conversations
he may have had with his attorney?

Because if you are, then I would
instruct you not to answer on the grounds of
attorney-client privilege.

Q. Has anyone other than your own attorney
told you that mechanical royalties apply to
digital downloads?

MR. BUSCH: Objection, it assumes facts
not in evidence as well, lack of foundation.

A. No one has told me specifically that it
absolutely applies as it relates to mechanical
licenses.

Q. Do you think that paragraph 6(a) grants
Aftermath a license for all controlled

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17:34:10 2 compositions?

17:34:11 3 MR. BUSCH: Object to form.

17:34:13 4 A. What it basically says is that we will
17:34:15 5 agree to agree to license compositions.

17:34:20 6 Q. What does it mean to agree to agree?

17:34:23 7 A. Well, generally speaking, we do agree
17:34:25 8 to agree. I mean, for ten years I've been
17:34:27 9 licensing compositions to Aftermath and we've
17:34:33 10 agreed to agree on terms and conditions that are
17:34:35 11 appropriate to this provision.

17:34:38 12 Q. What language in this -- strike that.

17:34:42 13 I just want to make sure we have a
17:34:44 14 clear answer.

17:34:45 15 Do you think that the language of 6(a)
17:34:47 16 grants Aftermath a license for all controlled
17:34:49 17 compositions?

17:34:50 18 MR. BUSCH: For digital uses as well?

17:34:53 19 MR. POMERANTZ: Yes.

17:34:54 20 MR. BUSCH: Object to form.

17:34:55 21 A. Maybe.

17:34:58 22 I'm sorry. Repeat the question again.

17:35:00 23 Did you say grants?

17:35:02 24 Q. Yes.

17:35:03 25 A. No, it doesn't grant.

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17:35:05 2 Q. What does it do?

17:35:06 3 A. It says that we will agree to agree
17:35:09 4 with respect to licensing and that we will license
17:35:15 5 based on that agreement.

17:35:18 6 Q. What language in paragraph 6(a) do you
17:35:21 7 think says that you will agree to agree?

17:35:27 8 A. Well, the fact that we will license
17:35:29 9 basically doesn't contain any other terms and
17:35:33 10 conditions that we would feel appropriate to apply
17:35:36 11 to this paragraph. And we would have to agree,
17:35:40 12 which we have done consistently, to issue
17:35:44 13 licenses.

17:35:45 14 Q. Is your position on the -- whether it
17:35:48 15 grants a license or just has an agreement to
17:35:51 16 agree, is it based on the three words will be
17:35:54 17 licensed?

17:35:56 18 MR. BUSCH: Object to form.

17:35:57 19 A. It's based on the fact that it says it
17:35:59 20 will be licensed. And there's no terms and
17:36:02 21 conditions that apply specifically to mechanical
17:36:05 22 licensing provisions that we would be in agreement
17:36:09 23 with.

17:36:09 24 Q. What terms and conditions are you
17:36:11 25 referring to?

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17:36:11

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A. Oh, payment, how we're getting paid,

17:36:15

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rates, formats, term, a variety of things. The

17:36:23

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same things that we've agreed to, for example, in

17:36:25

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the mastertone agreement.

17:36:28

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Q. Do you believe that the wording of

17:36:32

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paragraph 6(a) means that Aftermath had to come

17:36:36

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and ask someone for a mechanical license before it

17:36:39

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could use one of the Eminem compositions on a

17:36:43

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compact disc for a download?

17:36:45

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A. Absolutely.

17:36:46

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Q. Who did they have to come to ask?

17:36:50

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A. Eight Miles Style in this instance

17:36:52

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where we controlled a portion of the composition.

17:36:54

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Q. Is Eight Miles Style a party to this

17:36:58

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agreement?

17:37:06

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A. Well, it says all controlled

17:37:09

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compositions controlled directly or indirectly in

17:37:12

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part by F.B.T. or any affiliated company of F.B.T.

17:37:16

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Okay. So I -- this agreement isn't

17:37:18

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with Eight Mile Style, but Eight Mile Style

17:37:22

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acquired the rights to the compositions by virtue

17:37:30

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of an agreement with F.B.T.

17:37:33

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Q. So do you believe that Aftermath had to

17:37:34

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go to Eight Miles Style to get a mechanical

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17:48:18 2 objected as it related to terms and conditions
17:48:21 3 being included in a license that was appropriate
17:48:25 4 for the use.

17:48:28 5 Q. But if Aftermath asked for a license
17:48:29 6 could Eight Mile say no?

17:48:32 7 MR. BUSCH: The same objection,
17:48:34 8 overbroad, and it's vague and ambiguous.

17:48:37 9 A. If Aftermath asked for a license and
17:48:42 10 decided to do things or not include things in the
17:48:46 11 agreement, terms and conditions that weren't
17:48:48 12 appropriate, we would not be agreeing on the terms
17:48:53 13 and conditions of the license. And in that event
17:48:59 14 we would have to try to agree.

17:49:04 15 Q. Well, does will be licensed as used in
17:49:07 16 6(a) require Eight Mile to sign a license
17:49:11 17 agreement when Aftermath asks?

17:49:13 18 MR. BUSCH: Object to form.

17:49:14 19 A. I think under normal certain -- normal
17:49:18 20 circumstances as it relates to physical product, I
17:49:21 21 think, of course, yes, it does, as long as terms
17:49:23 22 and conditions are met pursuant to -- and I would
17:49:27 23 say licensing terms and conditions that are
17:49:31 24 consistent with what we've agreed to in the past
17:49:35 25 historically.

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17:52:28 2 on that.

17:52:29 3 You said you'd bet me, what do you want
17:52:30 4 to bet?

17:52:30 5 MR. POMERANTZ: I don't want to impugn
17:52:32 6 Mr. Levinsohn's credibility. I would say
17:52:34 7 that you're coaching the witness on the
17:52:36 8 record --

17:52:36 9 MR. BUSCH: I am not doing that.

17:52:36 10 MR. POMERANTZ: -- which is grossly
17:52:37 11 improper.

17:52:37 12 MR. BUSCH: I am absolutely not.

17:52:39 13 A. Would you repeat the question, please.

17:52:40 14 Q. Yes.

17:52:41 15 What is the difference between will be
17:52:43 16 licensed and might be licensed?

17:52:45 17 MR. BUSCH: Objection to form.

17:52:46 18 A. I don't know. I know what will be
17:52:48 19 licensed means here in this --

17:52:49 20 Q. Will be licensed means you have to
17:52:51 21 license it, right?

17:52:52 22 MR. BUSCH: Object to form, you're
17:52:52 23 mischaracterizing his testimony.

17:52:52 24 A. Well --

17:52:53 25 MR. BUSCH: Hold on.

Joel Martin

17:52:53 2 You're arguing with him. He's answered
17:52:56 3 these questions for the last ten minutes and
17:52:58 4 now you're just arguing with him.

17:53:00 5 A. Will be licensed means that we will
17:53:03 6 license. Again, we have agreed to agree that
17:53:09 7 there would be terms and conditions contained in
17:53:12 8 the license as it relates to issuing the license.

17:53:17 9 Q. If Aftermath sends Eight Mile a
17:53:19 10 mechanical license that has in it terms that are
17:53:22 11 totally consistent with paragraph 6(a), can
17:53:26 12 Eight Mile refuse to sign that license?

17:53:29 13 MR. BUSCH: Object to form.

17:53:30 14 A. What do you mean by totally consistent?

17:53:32 15 Q. Well, you can read. There's a rate in
17:53:34 16 paragraph 6(a).

17:53:36 17 MR. BUSCH: That applies to what?

17:53:37 18 MR. POMERANTZ: That applies -- it says
17:53:38 19 what it says. It applies.

17:53:40 20 MR. BUSCH: Object to form.

17:53:41 21 Q. If Eight Mile receives a license from
17:53:44 22 Aftermath that is fully consistent with the terms
17:53:48 23 of paragraph 6(a), can Eight Mile refuse to sign
17:53:53 24 that license?

17:53:54 25 A. Well, for example, if they do it on

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17:53:56 behalf of Virgin Records?

17:53:58 I believe that we will issue the
17:54:00 license to Virgin Records, it doesn't necessarily
17:54:03 have to be Aftermath, but we will license.

17:54:05 Q. My question had nothing to do with
17:54:07 Virgin Records.

17:54:08 A. Your question has to do with whether or
17:54:10 not we will license --

17:54:14 MR. BUSCH: And to whom.

17:54:16 A. Exactly, to whom is the question.

17:54:18 Q. Okay. I'm going to ask you now to
17:54:20 Aftermath.

17:54:20 If Aftermath sends a mechanical license
17:54:23 to Eight Mile for Eight Mile to sign and it
17:54:27 provides for a mechanical license to Aftermath and
17:54:31 its distributors and licensees that is fully
17:54:35 consistent with the terms of paragraph 6(a) of the
17:54:38 contract, can Eight Mile refuse to sign that
17:54:43 agreement?

17:54:43 MR. BUSCH: Hold on.

17:54:44 Objection, an incomplete hypothetical,
17:54:49 contains facts not in evidence. Object to
17:54:52 form.

17:54:59 A. As it relates to terms and conditions

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17:55:01 2 that are typical in licensing agreements with
17:55:05 3 either third parties or to Aftermath, I think in
17:55:11 4 instances, for example, where it says that we
17:55:14 5 don't get paid, you know, I don't believe that's
17:55:17 6 appropriate.

17:55:17 7 Q. Okay. Well, again you've changed my
17:55:19 8 question, because paragraph 6(a) involves the
17:55:22 9 payment of a specified rate. So don't change my
17:55:25 10 question.

17:55:25 11 My question to you is that you get a
17:55:28 12 mechanical license from Aftermath.

17:55:30 13 A. Yeah.

17:55:30 14 Q. It provides for a mechanical license to
17:55:32 15 Aftermath and its distributors and licensees that
17:55:35 16 is fully consistent with the terms of 6(a), can
17:55:41 17 Eight Mile refuse to sign that license?

17:55:43 18 MR. BUSCH: Objection --

17:55:44 19 A. There's no --

17:55:45 20 MR. BUSCH: Hold on. Hold on.

17:55:46 21 Objection.

17:55:46 22 I don't understand the question. You
17:55:47 23 added in a term from the mechanic -- from the
17:55:51 24 controlled composition clause about
17:55:52 25 distributors/licensees in the middle of a

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question.

Therefore it's vague and ambiguous and I don't understand it. Object to form.

A. Again, if it doesn't contain material terms and conditions that would be acceptable, like are there accountings provided, when do we get accountings, when do we get paid, do we have audit provisions, what rights do we have with respect to the documents to go back and look, and so on and so forth.

If certain key elements were missing, I think that we are not agreeing with respect to the license exactly -- maybe it's just a timing issue when we agree, but we certainly have the obligation to agree to agree.

Q. So is it your testimony that if, for example, Aftermath sends a mechanical license to Eight Mile that has an audit provision in it that is not acceptable to Eight Mile, that Eight Mile can refuse to sign that mechanical license?

A. Well, there have been conditions where they've sent audit provisions that weren't acceptable and they've changed them.

Q. Okay. But my question to you is, can

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18:27:19 2 Q. When did you conclude that the test
18:27:21 3 wasn't working to your satisfaction?
18:27:30 4 A. Well, despite our insistence that
18:27:33 5 third parties enter into agreements with us, the
18:27:42 6 agreements that were being sent to us to sign
18:27:46 7 contained provisions that were even less favorable
18:27:50 8 than what we had agreed in this instance to
18:27:53 9 execute.
18:27:57 10 Q. By the way, going back to Exhibit 48 --
18:28:00 11 A. Yeah.
18:28:00 12 Q. -- the digital permanent download
18:28:04 13 license that you signed.
18:28:05 14 A. Yes.
18:28:05 15 Q. I notice that this version doesn't have
18:28:08 16 any signature on it by Universal, do you see that?
18:28:11 17 A. Yes, I do.
18:28:11 18 Q. Do you believe that when you signed
18:28:13 19 this agreement you were giving permission to
18:28:17 20 Universal to use the composition for purposes of
18:28:20 21 permanent downloads?
18:28:25 22 A. At the time we issued this license in
18:28:28 23 good faith.
18:28:30 24 Q. And you were granting that permission
18:28:31 25 for this particular composition, correct?

Joel Martin

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18:28:33 2 A. At the time we issued this license in
18:28:36 3 good faith, meaning that we expected, of course,
18:28:41 4 this to be counter-executed and sent back.

18:28:44 5 Q. But at the time you signed it did
18:28:47 6 you -- were you intending in good faith to give
18:28:50 7 your permission for Universal to use this
18:28:54 8 composition for purposes of permanent downloads?

18:28:56 9 MR. BUSCH: Objection.

18:28:57 10 He's answered the question.

18:28:59 11 MR. POMERANTZ: I just didn't get it.

18:29:00 12 MR. BUSCH: You did. He said that he
18:29:01 13 was expecting to be countersigned and
18:29:04 14 returned.

18:29:05 15 Q. Okay. So did you --
18:29:05 16 You weren't giving your permission
18:29:07 17 then?

18:29:07 18 A. Our permission?

18:29:09 19 Q. Yeah.

18:29:09 20 A. Well, our permission based on an
18:29:11 21 agreement to execute the agreement, of course.

18:29:15 22 Q. So at some point did you call up
18:29:16 23 Universal and say, hey, where's the
18:29:19 24 countersignature?

18:29:19 25 A. No.

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Q. At some point did you say, hey, you

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don't have permission because I didn't get a

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countersignature?

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A. We didn't realize that we didn't have a

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countersignature on this particular agreement.

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Q. Until when?

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A. Until we prepared -- started to file

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the lawsuit.

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Q. And then once you saw that you didn't

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have a countersignature, did you think that you

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never gave your permission?

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A. That's correct.

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Q. Because you didn't get a

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countersignature?

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A. That's correct.

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Q. So your signature by itself didn't

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indicate permission on your behalf?

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MR. BUSCH: Are you saying that

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Universal agreed to all those terms, is that

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what you're saying?

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MR. POMERANTZ: No.

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You can ask questions of the witness

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when you're done. You can't ask questions of

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me.

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

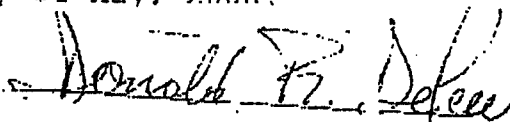
COUNTY OF NEW YORK)

I, DONALD R. DePEW, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public within and for the State of New York, do hereby certify:

That JOEL MARTIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of May, 2008.


DONALD R. DePEW, RER, CRR