

**DECLARATION OF RICHARD S. BUSCH IN SUPPORT OF PLAINTIFFS'  
MOTION TO EXCLUDE LATE PRODUCED DOCUMENTS**

**EXHIBIT 1-B: Defendant Apple's Responses to Plaintiffs'  
First Set of Interrogatories**

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

**KING & BALLOW**

**MAR 27 2008**

**RECEIVED**

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  
Honorable Anna Diggs Taylor  
Magistrate Judge Donald A. Scheer

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

Defendants.

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**APPLE INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF  
INTERROGATORIES**

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PROPOUNDING PARTY: Plaintiffs Eight Mile Style, LLC and  
Martin Affiliated, LLC

RESPONDING PARTY: Defendant Apple Inc.

SET NO. One (1)

RESPONSE: Apple incorporates its General Objections. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define "prepared or assisted in the preparation of." Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects that this Interrogatory improperly circumvents the limitation on the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a). This Interrogatory seeks information about the preparation of responses to two sets of discovery requests served on two different parties, each set of which contains 20 separate interrogatories and 28 separate requests for production. By itself, this single Interrogatory exceeds the total number of Interrogatories Plaintiffs are permitted to serve under Federal Rule 33(a).

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that its responses to Plaintiffs' First Set of Requests for Production of Documents and First Set of Interrogatories were prepared by outside counsel and in-house counsel.

**INTERROGATORY NO. 2:**

Please state with specificity each fact that supports, or forms the basis for, each of the affirmative defenses asserted in your Answer to the Complaint.

RESPONSE: Apple incorporates its General Objections. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory to the extent it calls for a legal conclusion. Apple further objects that this Interrogatory is an improper attempt to circumvent the limitation on the number of interrogatories permitted under Federal Rule of Civil Procedure 33(a). This

Interrogatory seeks information about 16 separate affirmative defenses and therefore counts as 16 separate interrogatories against the total number of Interrogatories Plaintiffs are permitted to serve under Federal Rule 33(a). Apple further objects to this Interrogatory as a contention interrogatory, purporting to require Apple to marshal all of its evidence, which is inappropriate at this time, as discovery in this matter has only commenced, Plaintiffs have not yet produced a single document or answered a single interrogatory, and there have been no depositions. Apple specifically reserves the right to amend and/or supplement its response to this Interrogatory.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds as follows: Plaintiffs' Complaint attempts to assert claims under the Copyright Act and state law claims. To the extent the evidence shows that any of the claims fail, the Complaint will have failed to state a valid claim and Plaintiffs will have suffered no damages. To the extent Plaintiffs fail to carry their burden to demonstrate they are the owners of the copyrights or exclusive rights under state law alleged to have been infringed or interfered with, Plaintiffs' claims will fail for lack of standing.

The Copyright Act, 17 U.S.C. § 301, preempts Plaintiffs' state law claims because those claims all seek to enforce claimed legal and/or equitable rights that are equivalent to one or more exclusive rights within the general scope of copyright as specified by 17 U.S.C. § 106.

To the extent Plaintiffs have failed to comply with the registration requirements of the Copyright Act, their prayer for statutory damages and attorney's fees under the Copyright Act is barred by 17 U.S.C. § 412(2).

To the extent Plaintiffs attempt to seek relief on claims outside of the three-year limitations period under the Copyright Act, 17 U.S.C. § 507(b), or outside the applicable state law limitations period for any state law claim that is not preempted, the damages claims are barred. In addition, laches bars any claim that Plaintiffs have unreasonably and unjustifiably

delayed bringing. Plaintiffs' delay also constitutes a failure of Plaintiffs to mitigate their alleged damages.

In addition, Aftermath has asserted affirmative defenses against Plaintiffs' claims based on Plaintiffs' express and implied licenses concerning the conduct alleged to violate Plaintiffs' rights. One or more of these defenses may bar Plaintiffs' claims in whole or in part based on express license, implied license, waiver, unclean hands, set-off and/or Plaintiffs' failure of performance. To the extent any such affirmative defense bars any or all of Plaintiffs' claims against Aftermath, the same claims would be barred as against Apple.

**INTERROGATORY NO. 3:**

Please state with specificity the details of all communications, either internally or between you and (1) Plaintiff, its employees, agents or representatives; (2) Eminem; and/or (3) any other third party concerning the Eminem Compositions, including the parties to, and the dates and substance of, each such communication.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define "details," "concerning" and "any other third party." Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that any relevant information that may be discoverable from Apple by way of a valid

Interrogatory may be determined by Plaintiffs' examination of those business records that Apple is producing in response to Plaintiffs' First Set of Requests for Production of Documents. The burden of deriving that information is substantially the same for Plaintiffs as for Apple. Apple therefore refers Plaintiffs to documents produced in discovery. *See* Fed. R. Civ. P. 33(d).

**INTERROGATORY NO. 4:**

Please explain the basis for your belief that Universal had the authority to license, authorize, or otherwise grant to Apple the right to reproduce, distribute, and sell downloads of sound recordings of the Eminem Compositions through its iTunes Store, including but not limited to each and every license or agreement pursuant to which such authorization was purportedly obtained.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define "belief," "license," "authorize," "otherwise grant," and "reproduce, distribute, and sell." Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that its written agreements with UMG for Universal Sound Recordings include representations and warranties by each of the parties regarding their corporate right, power and authority to execute, deliver and perform the Agreements and to consummate the transactions

contemplated thereby, and also specify the party that is responsible for paying and administering all mechanical royalties payable to publishers and/or owners of copyrights in the musical compositions embodied in the Universal Sound Recordings sold as downloads pursuant to those agreements. The burden of deriving such information from those agreements is substantially the same for Plaintiffs as for Apple. Apple therefore refers Plaintiffs to documents produced in discovery. *See* Fed. R. Civ. P. 33(d).

**INTERROGATORY NO. 5:**

For each license or agreement identified in response to Interrogatory Number 4 above, please identify the person(s) who were involved in the negotiation or drafting of such license or agreements.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define “license,” “agreements” and “involved in the negotiation or drafting.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that the agreements referred to in Apple’s Response to Interrogatory No. 4 have been principally negotiated and/or drafted by Eddy Cue and Kevin Saul, on behalf of Apple, and David Weinberg and Amanda Marks, on behalf of UMG.

**INTERROGATORY NO. 6:**

Please explain the basis for your belief that Apple has the right to synchronize with images, transmit, publicly perform, or reproduce lyrics of the Eminem Compositions through its iTunes Store, or by any other means of display or distribution.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define “right,” “synchronize with images,” “transmit,” “publicly perform,” “reproduce,” and “other means of display or distribution.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material. Apple further objects that this Request does not seek, and it is not reasonably calculated to lead to the discovery of, any information that is relevant to the claims or defenses in this litigation.

**INTERROGATORY NO. 7:**

For each license or agreement identified, referenced, or related to your response to Interrogatory Number 6 above, please identify the person(s) who were involved in the negotiation or drafting of such license or agreements.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to



the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define “license or agreement,” “referenced,” “related to,” and “involved in the negotiation or drafting.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material. Apple further objects that this Request does not seek, and it is not reasonably calculated to lead to the discovery of, any information that is relevant to the claims or defenses in this litigation.

**INTERROGATORY NO. 8:**

Please explain the basis for your contention in Defendants’ Motion to Transfer Venue that the Controlled Composition clause in the March 9, 1998 Agreement and the 2003 Agreement authorized the sale of the Eminem Compositions on iTunes, and therefore is a “complete defense” to Plaintiffs’ claims in this action.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define “authorized the sale of the Eminem Compositions.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material. Apple

further objects to this Interrogatory as misleading in its characterization of legal arguments stated in pleadings on file in this action.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that Aftermath contends that the Controlled Composition clauses in the March 9, 1998 Agreement and the 2003 Agreement (1) apply to the compositions at issue in Plaintiffs' Complaint and (2) provide the authority for Aftermath and UMG to authorize Apple to disseminate the sound recordings that Plaintiffs allege to embody the Eminem Compositions at issue in the Complaint. The merits of Aftermath's contentions are to be litigated between Plaintiffs and Aftermath. If Aftermath prevails on its contentions, then Plaintiffs have no claims in this lawsuit against Apple.

**INTERROGATORY NO. 9:**

Please explain the basis for your belief that Apple is authorized to sell through its iTunes Store downloads of sound recordings of the Eminem Compositions, including but not limited to each and every license or agreement pursuant to which such authorization was purportedly obtained.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define "belief," "authorized to sell," "license," and "agreement." Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that its authority to sell through its iTunes Store downloads of Universal Sound Recordings, including the sound recordings alleged to embody the compositions at issue in Plaintiffs' Complaints, is granted by Apple's written agreements with UMG for Universal Sound Recordings.

**INTERROGATORY NO. 10:**

For each license or agreement identified in response to Interrogatory Number 9 above, please identify the person(s) who were involved in the negotiation or drafting of such license or agreements.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define "license," "agreement" and "involved in the negotiation or drafting." Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that the agreements referred to in Apple's Response to Interrogatory No. 9 have been principally negotiated and/or drafted by Eddy Cue and Kevin Saul, on behalf of Apple, and David Weinberg and Amanda Marks, on behalf of UMG.

**INTERROGATORY NO. 16:**

Please state with specificity any and all parties who have purportedly obtained rights at any time from Aftermath, Interscope, UMG, or any of its related companies to reproduce, distribute, or sell sound recordings of the Eminem Compositions in any form of digital media, including but not limited to digital download, streaming, mastertones, and ringtones, including the date the license or agreement was executed and the parties thereto.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define “purportedly obtained rights,” “related companies,” “reproduce, distribute, or sell,” “digital media,” “digital download,” “streaming,” “mastertones,” “ringtones,” and “license or agreement.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects that this Request does not seek, and it is not reasonably calculated to lead to the discovery of, any information that is relevant to the claims or defenses in this litigation. Apple further objects that this Interrogatory seeks information that is in the possession, custody or control of another party, and that this Interrogatory is not properly directed to Apple.

**INTERROGATORY NO. 17:**

Please explain the reason why it was necessary for UMG (through Interscope) to enter into the Mastertone Agreement on August 26, 2005 with Eight Mile and Martin Affiliated granting a limited license to create and digitally distribute mastertone recordings of the Eminem Compositions.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define “necessary,” “limited license to create and digitally distribute,” and “mastertone recordings.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the extent this Interrogatory mischaracterizes the Mastertone Agreement. Apple further objects that this Interrogatory seeks information that is in the possession, custody or control of another party, and that this Interrogatory is not properly directed to Apple.

**INTERROGATORY NO. 18:**

Identify all musical copyright owners and administrators who have entered into agreements directly with you for the reproduction, distribution, transmission, synchronization, or public performance of musical compositions, and the identity of all payees under such agreements.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define “musical copyright owners,” “administrators,” “reproduction,” “distribution,” “transmission,” “synchronization,” “public performance,” and “payees.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control

of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material. Apple further objects that this Request does not seek, and it is not reasonably calculated to lead to the discovery of, any information that is relevant to the claims or defenses in this litigation.

**INTERROGATORY NO. 19:**

With respect to each of the following so-called major label companies, state whether the labels purport to grant licenses to Apple for mechanical reproduction of underlying musical compositions.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague, ambiguous, and incomprehensible, particularly in its failure to define “so-called major label companies,” “purport to grant licenses,” and “mechanical reproduction.” Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material. Apple further objects that this Request does not seek, and it is not reasonably calculated to lead to the discovery of, any information that is relevant to the claims or defenses in this litigation.

**INTERROGATORY NO. 20:**

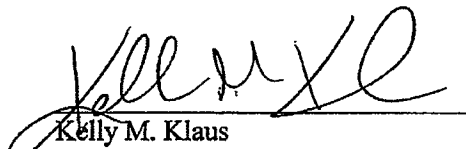
Please identify any and all communications between Apple and the Recording Industry Association of America (RIAA) concerning the effectiveness and/or legal support for the

positions taken by UMG in this action, including but not limited to the identity of the individual on behalf of the RIAA with whom Apple has had any such communication.

RESPONSE: Apple incorporates its General Objections above. Apple specifically objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and work product doctrine, including without limitation any joint privilege relating to the same. Apple further objects to this Interrogatory as vague and ambiguous, particularly in its failure to define "positions taken by UMG in this action," "concerning" and "effectiveness and/or legal support." Apple further objects to this Interrogatory as overly broad and unduly burdensome. Apple further objects to this Interrogatory to the extent the information requested is within the possession, custody or control of Plaintiffs. Apple further objects to the Interrogatory to the extent it seeks information that is confidential, proprietary, trade secret information, and/or competitively sensitive material. Apple further objects that this Request does not seek, and it is not reasonably calculated to lead to the discovery of, any information that is relevant to the claims or defenses in this litigation.

Subject to and without waiver of the foregoing General and Specific Objections, Apple responds that, based on a reasonably diligent search for information responsive to this Interrogatory, Apple is not aware of any communications responsive to this Interrogatory.

DATED: March 20, 2008

  
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Daniel D. Quick (P48109)  
Dickinson Wright PLLC  
Attorneys for Defendants

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I, the undersigned, declare: that I am employed in the aforesaid County; I am over the age of 18 and not a party to the within action; my business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California 90071-1560.

On March 20, 2008, I served upon the interested party(ies) in this action the foregoing document(s) described as:

**APPLE INC.'S RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' FIRST SET OF INTERROGATORIES**

- By placing  the original  a true copy thereof enclosed in sealed envelope(s) addressed as stated on the attached service list.
- BY MAIL (AS INDICATED ON THE ATTACHED SERVICE LIST)** I caused such envelope(s) to be deposited with postage thereon fully prepaid in the United States mail at a facility regularly maintained by the United States Postal Service at Los Angeles, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation dated or postage meter date is more than one day after dated of deposit for mailing, pursuant to this affidavit.
- BY FEDERAL EXPRESS PRIORITY OVERNIGHT DELIVERY (AS INDICATED ON ATTACHED SERVICE LIST)** I caused such envelope(s) to be placed for Federal Express collection and delivery at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for Federal Express mailing. Under that practice it would be deposited with the Federal Express office on that same day with instructions for overnight delivery, fully prepaid, at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the Federal Express delivery date is more than one day after dated of deposit with the local Federal Express office, pursuant to this affidavit.
- BY FACSIMILE (AS INDICATED ON ATTACHED SERVICE LIST)** By sending a copy of said document by facsimile machine for instantaneous transmittal via telephone line.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.



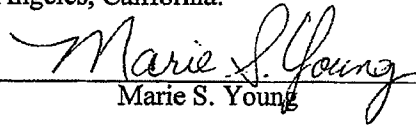
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Executed on March 20, 2008, at Los Angeles, California.

  
Marie S. Young