

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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**BROADCAST MUSIC, INC.,; E.O. SMITH MUSIC;  
UNIVERSAL MUSIC-Z TUNES LLC d/b/a  
UNIVERSAL MUSIC Z SONGS; EMI BLACKWOOD  
MUSIC, INC;**

Plaintiffs,

Case No. 1:11-cv-01001-RHB

v

Hon. Robert Holmes Bell  
U.S. District Judge

**LADY GODIVA'S, INC., d/b/a LADY GODIVA'S;  
and MARK LONDON, individually,**

Defendants.

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**ANSWER**

**JURISDICTION AND VENUE**

1. This is a suit for Copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”). This Court has jurisdiction pursuant to 28 U.S.C. §1338(a).

**ANSWER: Paragraph #1 of Plaintiffs’ Complaint contains a conclusion of law to which no responsive pleading is required. Defendants leave Plaintiffs to their proofs with regard to this issue.**

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(a).

**ANSWER: Paragraph #2 of Plaintiffs' Complaint contains a conclusion of law to which no responsive pleading is required. Defendants leave Plaintiffs to their proofs with regard to this issue.**

### **THE PARTIES**

3. Plaintiff, Broadcast Music, Inc. ("BMI"), is a corporation organized and existing under the laws of the State of New York. BMI's principal place of business is 7 World Trade Center, 250 Greenwich Street, New York, New York 10007. BMI has been granted the right to license the public performance rights in approximately 6.5 million copyrighted musical compositions ( the "BMI repertoire"), including those which are alleged herein to have been infringed.

**ANSWER: Defendants are without sufficient information to admit or deny the allegations contained in Paragraph #3 of Plaintiffs' Complaint and leave Plaintiffs to their proofs.**

4. The other Plaintiffs are the owners of the copyrights in the musical compositions which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

**ANSWER: With regard to the first sentence of Paragraph #4 of Plaintiffs' Complaint, Defendants are without sufficient information to either admit or deny the allegations set forth in that sentence, and Defendants leave Plaintiffs to their proofs on that issue.**

**With regard to the second sentence of Paragraph #4, Plaintiffs' Complaint contains a conclusion of law to which no responsive pleading is required. Defendants leave Plaintiffs to their proofs with regard to this issue.**

5. Plaintiff E.O. Smith Music is a sole proprietorship owned by Rivers Cuomo. This Plaintiff is the copyright owner of at least one of the songs in this matter.

**ANSWER: Defendants are without sufficient information to admit or deny the allegations contained in Paragraph #5 of Plaintiffs' Complaint and leave Plaintiffs to their proofs.**

6. Plaintiff Universal Music-Z Tunes LLC is a corporation doing business as Universal Music Z Songs. This Plaintiff is the copyright owner of at least one of the songs in this matter.

**ANSWER: Defendants are without sufficient information to admit or deny the allegations contained in Paragraph #6 of Plaintiffs' Complaint and leave Plaintiffs to their proofs.**

7. Plaintiff EMI Blackwood Music, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

**ANSWER: Defendants are without sufficient information to admit or deny the allegations contained in Paragraph #7 of Plaintiffs' Complaint and leave Plaintiffs to their proofs.**

8. Defendant Lady Godiva's, Inc. is a corporation organized and existing under the laws of the State of Michigan, which operates, maintains and controls an establishment known as Lady Godiva's, located at 234 Market Avenue SW, Grand Rapids, Michigan, 49503, in this district (the "Establishment").

**ANSWER: Defendant Lady Godiva's, Inc. admits the allegations contained in Paragraph #8 of Plaintiffs' Complaint.**

9. In connection with the operation of this business, Defendant Lady Godiva's, Inc. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

**ANSWER: Defendant Lady Godiva's, Inc. admits the allegations contained in Paragraph #9 of Plaintiffs' Complaint.**

10. Defendant Lady Godiva's, Inc. has a direct financial interest in the Establishment.

**ANSWER: Defendant Lady Godiva's, Inc. admits the allegations contained in Paragraph #10 of Plaintiffs' Complaint.**

11. Defendant Mark London is an officer of Defendant Lady Godiva's, Inc. with primary responsibility for the operation and management of that corporation and the Establishment.

**ANSWER:** Defendant Mark London admits the allegations contained in Paragraph #11 of Plaintiffs' Complaint, however, Defendant Mark London states that he has no personal liability in this matter, and respectfully requests this Court to remove him as a named Defendant.

12. Defendant Mark London has the right and ability to supervise the activities of Defendant Lady Godiva's, Inc. and a direct financial interest in that corporation and the Establishment.

**ANSWER:** Defendant Mark London admits the allegations contained in Paragraph #12 of Plaintiffs' Complaint, however, Defendant Mark London states that he has no personal liability in this matter, and respectfully requests this Court to remove him as a named Defendant.

#### **CLAIMS OF COPYRIGHT INFRINGEMENT**

13. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 12.

**ANSWER:** Defendants hereby incorporate by reference their Answers set forth to Paragraphs #1-12 above, as if fully set forth herein.

14. Plaintiffs allege three claims of copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

**ANSWER:** With regard to the first sentence of Paragraph #14 of Plaintiffs' Complaint, Defendants are without sufficient information as to what Plaintiffs believe is "unauthorized public performance of musical compositions," and leave Plaintiffs to their proofs on this issue.

**Furthermore, Defendant is without sufficient information to either admit or deny any residual allegations set forth in Paragraph #14 of Plaintiffs' Complaint and leave Plaintiffs to their proofs.**

15. Annexed as the Schedule and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the three claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information: Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the Registration number(s); Line 7 showing the date(s) of infringement; and Line 8 identifying the Establishment where the infringement occurred.

**ANSWER: Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph #15 and leave Plaintiffs' to their proofs on this issue. Furthermore, Defendants are without sufficient information to either admit or deny the claims as asserted in the annexed Schedule and leave Plaintiffs to their proofs.**

16. For each of the musical compositions identified on the Schedule, the person(s) named on Line 3 was the creator of the work (all references to Lines are lines on the Schedule).

**ANSWER: Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph #16 of Plaintiffs' Complaint and leave Plaintiffs to their proofs on this issue.**

17. For each work, on or about the date(s) indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed on Line 6.

**ANSWER: Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph #17 of Plaintiffs' Complaint and leave Plaintiffs to their proofs on this issue.**

18. For each work, on the date(s) listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work, on the date(s) listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical composition listed on Line 2.

**ANSWER: Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph #18 of Plaintiffs' Complaint and leave Plaintiffs to their proofs on this issue.**

19. For each work, on the date(s) listed on Line 7, Defendants performed and/or caused the musical composition identified on Line 2 to be publicly performed at the Establishment without a license or permission to do so. Thus, Defendants have committed copyright infringement.

**ANSWER: Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph #19 of Plaintiffs' Complaint and leave Plaintiffs to their proofs on this issue.**

20. The specific acts of copyright infringement alleged, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

**ANSWER: Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph #20 of Plaintiffs' Complaint and leave Plaintiffs to their proofs on this issue.**

WHEREFORE, Plaintiffs pray that:

(I) Defendants, their agents, servants, employees, and all persons acting under their

permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. § 502;

(II) Defendants be ordered to pay statutory damages, pursuant to 10 U.S.C. § 504(c);

(III) Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. § 505; and

(IV) That Plaintiffs have such other and further relief as is just and equitable.


**ANSWER: Defendants deny that Plaintiffs are entitled to any of the relief requested. Furthermore, the allegations in this section of Plaintiffs' Complaint are a prayer for relief and require no response.**

**LADY GODIVA'S, INC.,**  
A Michigan Corporation

and

**MARK LONDON,**  
An individual

Dated: October 25, 2011.

By:   
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