

CV 11 - 3312

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US DISTRICT COURT E.D.N.Y.

★ JUL 11 2011 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CAT MUSIC SRL,

Case No.

BROOKLYN OFFICE

Plaintiff,

SUMMONS ISSUED

v.

COMPLAINT

MAYAVIN RECORDS SRL,

DEMAND FOR JURY TRIAL

Defendant.

ECF CASE

MATSUMOTO, J.

-----X

POHORELSKY, M.J.

Plaintiff, Cat Music SRL, by its attorney, Anthony Motta, as and for its complaint
against the defendant, Mayavin Records SRL, alleges the following:

PARTIES

1. Plaintiff, Cat Music SRL, ("Cat Music"), is a corporation formed under the laws of the country of Romania with its principal place of business at Panait Istrati Str. No. 59, Bucharest, Romania.

2. Upon information and belief, the defendant, Mayavin Records SRL ("Mayavin"), is a corporation formed under the laws of the country Romania with its principal place of business at 39 West Tudor Stefan Street, 1st Floor, Bucharest, Romania.

3. Upon information and belief, TuneCore, Inc. ("TuneCore"), is a corporation formed under the laws of the State of Delaware, authorized to do business within the State of New York, with its principal place of business in Brooklyn, New York.

4. Cat Music is the exclusive licensee of certain musical sound recordings featuring the artist, Ilie Eduard-Marian, p/k/a "Edward Maya" ("Maya"). Pursuant to an

exclusive co-production and licensing agreement between Cat Music and Maya, dated April 20, 2009 (the “Agreement”), Cat Music is the co-owner of all right, title and interest and in and to the certain sound recording entitled, “Desert Rain” (the “Infringed Work”), with the exclusive right, within North America, among other territories, to reproduce, distribute, rent, borrow, import, cause to have publicly performed and to generally make available the Infringed Work to the public via physical sale of phonorecords, and digital phonorecord delivery (e.g., digital downloads).

5. Upon information and belief, Mayavin is a record company owned by Maya, that oversees musical productions embodied upon, and manufactures, promotes and causes to have distributed, phonorecords that feature multiple master recordings, single master recording, and the underlying songwriting copyrights embodied thereon.

6. TuneCore is an online distribution service throughout the United States of music in digital phonorecord form, offering authorized rights-holders the ability to sell their music via online retailers such as iTunes, Amazon.com, Zune, Rhapsody, eMusic and many other online outlets.

7. Upon information and belief, Mayavin is involved in the unauthorized production, manufacture, promotion, marketing, and distribution of the Infringed Work, and caused the Infringed Work to be uploaded to TuneCore for the sole and express purpose of engaging in the unauthorized distribution of the Infringed Work via iTunes and other online music retail stores and streaming services.

8. On or about June 29, 2011, TuneCore forwarded an e-mail to Cat Music’s attorney (the “TuneCore Notice”) in response to a “Take Down” Notice sent to iTunes on

behalf of Cat Music. (A copy of the TuneCore Notice is attached as Exhibit "A".) TuneCore advised Cat Music's attorney that it had received a "Counter-Notification" from Mayavin alleging that it held rights in and to the Infringed Work that "do not infringe on (Cat Music's) rights". TuneCore provided Cat Music with ten (10) business days from June 29, 2011 to provide notification that it has filed an action seeking a court order to restrain Mayavin from engaging in further infringing activity in connection with the Infringed Work.

9. As part of the counter-notification, Mayavin, by and through its agent, Diana Alexandra Cordun consented, (the "Mayavin Consent"), to the jurisdiction of the Federal District in the Eastern District of New York, where TuneCore, Inc. is located, and stated that it "will accept service of process from the claimant". (A copy of the Mayavin Consent is annexed hereto as part of Exhibit "A".)

JURISDICTION

10. This court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§1331 and 1338.

VENUE

11. Venue of this case is proper in this district pursuant to 28 U.S.C. §§1391(b) and 1400.

CLAIM FOR COPYRIGHT INFRINGEMENT

12. This is an action for damages, declaratory relief, and permanent injunctive relief and is brought by Cat Music, pursuant to the Copyright Act, Copyright Revision Act, and the Digital Millenium Copyright Act, 17 U.S.C. SS 101, *et seq.*

13. The Infringed Work was authored by foreign nationals and was first published outside the United States.

14. Upon information and belief, the Infringed Work was first commercially released and published as a single outside the United States in or about April 2011.

15. The Infringed Work was released, at a minimum in the United States in or about April, 2011 on iTunes by Mayavin.

16. Upon information and belief, Mayavin is a record label wholly owned by Maya. Maya is also the artist performing the Infringed Work, along with the featured vocalist Vika Jigulina. Mayavin has, as a distributor of the Infringed Work, infringed the exclusive rights of Cat Music in the copyright in the Infringed Work in a number of ways including the following: (a) by substantial copying and public performances and by authorizing the copying and public performances; (b) the manufacture, distribution and sale (and/or authorizing others to do so) of the Infringed Work; (c) authorizing and/or licensing the Infringed Work for digital download and sale as “ringtones” and online streaming; (d) by publishing and/or administering the Infringed Work and commercially exploiting the Infringed Work; (e) by causing and/or materially contributing and/or by substantially participating in and furthering the abovementioned infringing acts, and/or sharing in the proceeds therefrom, all through substantial use of the Infringed Work in accordance with the foregoing. Further, Mayavin had the obligation, right, and ability to supervise such infringing activity but allowed the infringement to occur, and it had an obvious and direct financial interest in exploiting the copyrighted materials as set forth above. Accordingly, Mayavin is liable for direct, contributory and vicarious infringement.

17. Upon information and belief, Mayavin has received royalties and other payments for the sale and distribution of the Infringed Work, has received royalties for the inclusion of the Infringed Work upon certain third-party compilation recordings, has received synchronization royalties for use of the Infringed Work in audiovisual works, and has received performance royalties from performances of the Infringed Work, among other revenues sources known only to Mayavin, without accounting for and remitting the appropriate amount of such royalties to Cat Music. Upon information and belief, defendant has received royalties for the licensing of the Infringed Work for digital phonorecord delivery (e.g., downloads) and so-called “ringtones”.

18. By reason of the infringement and threatened infringement of Mayavin, Cat Music has sustained and will continue to sustain substantial injury, loss and damage to its rights in the Infringed Work.

19. Further irreparable harm to Cat Music is imminent as a result of Mayavin’s conduct, and Cat Music is without adequate remedy at law. Cat Music is entitled to an injunction restraining Mayavin, its officers, directors, agents, employees and representatives and all persons acting in concert with them from engaging in further acts of copyright infringement.

20. Cat Music is further entitled to recover from Mayavin the damages sustained by Cat Music as a result Mayavin’s acts of copyright infringement. Cat Music is at present unable to ascertain the full extent of the monetary damage Cat Music has suffered by reason of Mayavin’s acts of copyright infringement but believes such damages exceed \$150,000.00.

21. Cat Music is further entitled to recover from Mayavin the gains, profits

and advantages it obtained as a result of its acts of copyright infringement. Cat Music is at present unable to ascertain the full extent of the gains, profits, and advantages Mayavin has obtained by reason of its acts of copyright infringement, but Cat Music is informed and believes that Mayavin has obtained such gains, profits, and advantages in an amount exceeding \$150,000.00.

WHEREFORE, Cat Music SRL demands judgment as follows:

a) That Mayavin Records SRL be found liable for direct, contributory and/or vicarious copyright infringement.

b) That Mayavin Records SRL be ordered to submit to an accounting so that all gains, sales, profits and advantages derived by Mayavin from each of its acts, may be determined.

c) For a preliminary and permanent injunction enjoining and restraining Mayavin Records SRL and all persons acting in concert with it from copying, reproducing, performing, manufacturing, promoting, advertising and distributing, including posting the Infringed Work for digital phonorecord download, or performing any materials that are substantially similar to the Infringed Work, and to deliver to the Court for destruction or other reasonable disposition all such material and means for producing same in Mayavin's possession or control.

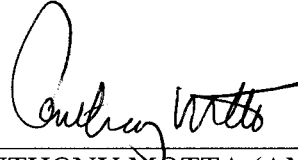
d) For actual damages and Mayavin's profits in an amount in excess of \$150,000.00 to be determined at trial.

e) For declaratory judgment that Cat Music SRL co-owns the copyright in the Infringed Work, and has the exclusive rights granted to it, as provided in the Agreement, and is entitled to receive, collect and distribute all royalties, as provided in the Agreement.

f) For its reasonable attorney's fees and costs.

g) For such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 8, 2011.

A handwritten signature in black ink, appearing to read "Anthony Motta", written over a horizontal line.

ANTHONY MOTTA (AM-1648)
Attorney for Plaintiff
50 Broadway, Suite 2202
New York, New York 10004
Tel: (212) 791-7360
Fax: (212) 791-7362

A

DMCA Counter-Notification

Subject: DMCA Counter-Notification
From: "Jake Smith, TuneCore Copyright" <copyright@tunecore.com>
Date: Wed, 29 Jun 2011 16:24:25 -0400
To: amotta@prodigy.net

Hello Anthony,

We are writing with respect to the Notice of Infringement you submitted with respect to

Artist: Edward Maya
Album: Desert Rain (feat. Vika Jigulina) - Single

(the "Recordings"). Please be advised that TuneCore has received a Counter-Notification asserting that the Recordings do not infringe on your rights. A copy of that Counter-Notification can be viewed in the forwarded message below. It includes the name and contact information for the party who has submitted the Counter-Notification (the "Counter-Notifying Party"), as well as the Counter-Notifying Party's consent to jurisdiction in the judicial district noted in the Counter-Notification.

You have ten (10) business days from the date of this email to notify TuneCore, in writing, that you have filed an action seeking a court order to restrain the Counter-Notifying Party from engaging in infringing activity relating to the Recordings. If we do not receive such notification from you within ten (10) business days, we will restore the Recordings to the TuneCore service."

Best,

Jake Smith
Manager of Copyright & Fraud
copyright@tunecore.com
www.tunecore.com
---- Forwarded message ----
Subject: DMCA Counter-Notification
From: office@edwardmaya.com
Date: Wed, 29 Jun 2011 15:47:16 +0300
To: copyright@TuneCore.com

Hy,

1. The work names is : Edward Maya ft. Vika Jigulina - Desert Rain
2. All the contact details are below
3. Statements signed attached
4. Cordun Diana Alexandra - official manager at MAYAVIN RECORDS

Diana Cordun

International Licensing & Booking

39 Tudor Stefan St.
Sector 1
Bucharest, Romania

Mobile : 0040 727 814 366
E-mail : office@edwardmaya.com

www.edwardmaya.com
www.mayavinagency.com

www.mayavinrecords.com
www.mayavinstore.com
www.mayavincompany.com

Edward Maya
Music Producer & Dj
UK,London

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International Licensing & Booking

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DMCA Counter-Notification

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www.edwardmaya.com
www.mayavinagency.com

www.mayavinrecords.com
www.mayavinstore.com
www.mayavincompany.com

Edward Maya
Music Producer & Dj
UK, London

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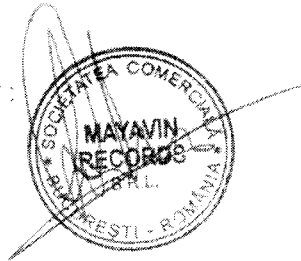
I consent to the jurisdiction of the Federal District Court for the district in which my address is located, or if my address is outside of the United States, the judicial district which TuneCore is located, and will accept service of process from the claimant.

SIGNATURE AND STAMP :



I am the TuneCore user that uploaded the material in question to the TuneCore service. I swear, under penalty of perjury, that I have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled.

SIGNATURE AND STAMP :



01.jpg	Content-Type: image/jpeg
	Content-Encoding: base64