

EXHIBIT A

2 A. Between 1994 and '95.
 3 Q. Okay. I am handing you what
 4 has been marked as Defendants' Exhibit 3,
 5 which is a copy of Plaintiff's
 6 Exhibit production pages Bates pages 13 and
 7 14. Have you seen this before, Mr. Chin --
 8 sorry, Mr. Vargas?
 9 A. What was just given, this
 10 certificate of registration?
 11 Q. Yes. Now I want to direct you
 12 down to block 3. This is a much easier copy
 13 to read than Exhibit 2; right?
 14 A. Yes. It is clearer.
 15 Q. It is not the same thing,
 16 though. If you look in block 1 do you see
 17 where it says "title of this work?"
 18 A. Right yes.
 19 Q. It says "Funky Drummer Volume
 20 II."
 21 A. Yes.
 22 Q. If you see down in 2A there is
 23 a little block that says "nature of
 24 authorship." It says "asterisk, sound
 25 recording."

2 that help your recollection of when Funky
 3 Drummer Volume II was recorded?
 4 A. Yes.
 5 Q. After reviewing these documents
 6 what is your best estimate of when Funky
 7 Drummer Volume II was recorded?
 8 A. Between 1994 and '95.
 9 Q. Do you see on Exhibit 3 that
 10 page 1, where it says "effective date of
 11 registration," it should be at the top of page
 12 13?
 13 A. Yes.
 14 Q. I am looking at 13, not 15.
 15 A. Yes. January 27.
 16 MR. CHIN: No 1.
 17 A. 1995. January 26.
 18 Q. For Exhibit 3 which is the
 19 sound recording copyright registration, does
 20 it say "effective date of registration,
 21 January 26, 1995?"
 22 A. Yes.
 23 Q. Then for Exhibit 2 which is the
 24 composition registration, do you see where it
 25 says "effective date of registration, January

8/1/2006 11:20 AM

153

8/1/2006 11:20 AM

155

2 A. Yes.
 3 Q. Do you understand this to be
 4 the copyright registration for the sound
 5 recording for Funky Drummer Volume II?
 6 A. Yes.
 7 Q. Then if we look back at
 8 Defendants' Exhibit 2, which is Bates pages 15
 9 and 16, do you see where in that same block 2
 10 as A where it says "nature of authorship," it
 11 says "music, drum rhythm, drum loops?"
 12 A. Yes.
 13 Q. Do you understand Exhibit 2 to
 14 be the composition registration with the
 15 Copyright Office?
 16 A. Yes.
 17 Q. Then if we look down back to 3
 18 now for a minute, the clearer one, at 3A,
 19 block 3A where it says "year in which creation
 20 of this work was completed," can you read it
 21 on that copy?
 22 A. Yes, I can.
 23 Q. What year is that?
 24 A. It says "1994."
 25 Q. Now that you've read that, does

2 27, 1995?"
 3 A. Yes.
 4 Q. So the sound recording
 5 copyright was registered January 26?
 6 A. Uh-huh.
 7 Q. And composition was registered
 8 January 27; is that right?
 9 A. Uh-huh.
 10 Q. So based on these documents, is
 11 it your understanding that Funky Drummer
 12 Volume II was recorded before January 26,
 13 1995?
 14 A. Yes.
 15 Q. If you look in block 2A of
 16 Exhibit 3 Bates page 13 where it says "name of
 17 author" do you see what it says there?
 18 A. Yes.
 19 Q. What does that say?
 20 A. It says JBR Records, Inc.
 21 Q. Does that mean that JBR Records
 22 owns or owned the copyright in the sound
 23 recording for Funky Drummer Volume II?
 24 A. Yes.
 25 Q. And on the other Exhibit,

8/1/2006 11:20 AM

154

8/1/2006 11:20 AM

156

2 you looking for?

3 A. A certain looseness sound where
4 when you do the roll that I did, it has a
5 certain feel to it where you can just know
6 from tuning and feel this is just right. Sort
7 of like cooking, you know when it's right.
8 That's the way I want it.

9 Q. Just to follow up a little bit
10 on obeying your Thirst and Wu-Tang Clan, did
11 you ever threaten to sue either one of them?

12 A. Either one of them meaning --

13 Q. Let me break it down. Did you
14 ever threaten to sue for Wu-Tang Clan's use of
15 one of your tracks?

16 MR. CHIN: Objection. I think
17 the testimony is his publisher dealt with it.

18 A. That is what I was about to
19 say. She pretty much dealt with all of that.

20 Q. Do you know if she threatened
21 to sue on your behalf?

22 A. I know that she reached out to
23 them and she gave them a time limit, if they
24 didn't contact her that she would seek legal
25 action, but they worked it out.

2 the manufacturing house. We took it ourselves
3 to these records stores. The one shops, the
4 mom and pop stores.

5 Q. When you say it was
6 manufactured in Brooklyn, what do you mean?

7 A. They pressed the record and,
8 you know, put jackets on it and put the labels
9 on it.

10 Q. When you say press the record,
11 does that mean on to vinyl?

12 A. Yes. You know, they
13 manufactured the record, yeah.

14 Q. Was Funky Drummer II
15 distributed on any other media than vinyl?

16 A. No. The format was always
17 vinyl.

18 Q. How about Funky Drummer I?

19 A. Both. Always vinyl.

20 Q. Only distributed on vinyl.
21 They were never distributed on CDs?

22 A. We talked about doing that but
23 never did it.

24 Q. Cassette tapes?

25 A. No.

8/1/2006 11:20 AM

201

8/1/2006 11:20 AM

203

7/31/2006 Vargas, Ralph

7/31/2006 Vargas, Ralph

2 Q. To your knowledge they worked
3 it out before any legal action?

4 A. Yes.

5 Q. How about with Sprite
6 commercial?

7 A. Same thing.

8 Q. After you had the DAT tape for
9 Funky Drummer Volume II, what did you do next
10 with that tape?

11 A. I handed it over to Rick
12 Roberts.

13 Q. And what happened next as far
14 as the --

15 A. He was in control of that. The
16 record label owned it.

17 Q. When you say he owned it, what
18 do you mean?

19 A. It belongs to the record label
20 because it was put out on JBR Records.

21 Q. So what happened next to
22 actually distribute the Funky Drummer Volume
23 II?

24 A. Well, II was manufactured
25 somewhere in Brooklyn. I forget the name of

2 Q. So, how many copies of Funky
3 Drummer II were pressed?

4 A. As far as I can remember, 1,500
5 of II. But then you'd have to ask Rick. He
6 took care of all of that stuff.

7 Q. How many were pressed of Funky
8 Drummer Volume I?

9 A. We had an initial pressing of
10 1,500. We sold out on that and got another
11 1,500 pressed up. I think that was it. You
12 have to ask Rick on that one, too. But that's
13 what I remember.

14 Q. All I'm asking you is your best
15 recollection.

16 A. Yeah. Yeah.

17 Q. When you were just talking,
18 about Funky Drummer Volume I in that last
19 answer?

20 A. The one that got pressed up
21 twice, yeah. I. II only got 1,500, Volume
22 II.

23 Q. So there was never a second
24 pressing of Volume II?

25 MR. CHIN: Objection. It is

8/1/2006 11:20 AM

202

8/1/2006 11:20 AM

204

2 important that he don't guess. I don't want
3 him to guess. I want him to give his best
4 estimate to his personal knowledge. If he is
5 guessing, I don't want him to guess.

6 MR. OLSON: All we're asking
7 for is best estimates. Since all we have in
8 this case are people's estimates, I am
9 entitled to them.

10 MR. CHIN: Absolutely. You're
11 entitled to his best estimates. But guessing
12 is different than best estimates. I think we
13 can agree on that.

14 MR. OLSON: All I am asking
15 for is best estimates.

16 MR. CHIN: Okay.

17 Q. Mr. Vargas, with regard to
18 Funky Drummer Volume II, was it pressed more
19 than once, to your knowledge?

20 A. II, I remember 15. Rick could
21 have pressed more, that is why I said he would
22 have the answers to that, more accurate
23 answers than I would. That was in his
24 department.

25 Q. I understand that. All I am

2 Q. Do you remember any of those
3 distribution houses?

4 A. Only a few. There was a lot
5 more that he took care of. That all falls in
6 his area.

7 Q. Can you give me the names of
8 any you remember?

9 A. There was a record store called
10 Rock 'N Soul, Downstairs Records, Downtown
11 Records. There was another record store, then
12 the rest was distribution houses he had, that
13 he went to.

14 (Defendants' Exhibit 8
15 for identification, Distribution Lists Funky
16 Drummer I and II, production numbers 000017.)

17 Q. I am handing you what has been
18 marked as Defendants' Exhibit 8. It bears
19 Plaintiffs' Bates production number of 17.

20 Could you read the title of the
21 document at the top?

22 A. Distribution Lists Funky
23 Drummer I and II.

24 Q. Have you seen this document
25 before?

8/1/2006 11:20 AM

205

8/1/2006 11:20 AM

207

2 asking about is your knowledge?

3 A. 1,500 of II.

4 Q. So to your knowledge -- strike
5 that.

6 As far as you know there wasn't
7 a second pressing of Funky Drummer Volume II?

8 A. Yeah, as far as I can remember,
9 yes.

10 Q. You said after it was pressed
11 you took it to mom and pop record stores;
12 right?

13 A. Yes.

14 Q. You said "we," who is we?

15 A. Rick Roberts, Bland-Ricky
16 Roberts.

17 Q. And you?

18 A. And me, yes.

19 Q. Anyone else?

20 A. No.

21 Q. Other than distributing to mom
22 and pop record stores, was Funky Drummer
23 Volume II distributed in any other way?

24 A. Rick took it to different
25 distribution houses around the city.

2 A. Yes.

3 Q. Did you help prepare this
4 document?

5 A. Somewhat, yeah.

6 Q. Where did the information for
7 this document come from?

8 A. Initially Rick had most of this
9 information.

10 Q. Where did he have the
11 information?

12 A. I guess he has the records or
13 he did a lot of this himself. I happened to
14 be with him a few times, that's why I know of
15 some of the places.

16 Q. When you say he did a lot of
17 this, do you mean compiling this document
18 Exhibit 8 --

19 A. Oh, no.

20 Q. -- or do you mean distribution?

21 A. Distribution.

22 Q. Plaintiffs recently produced
23 this document with the column on the right
24 which has a little bit of contact information
25 for some of the entities on the left. Are you

8/1/2006 11:20 AM

206

8/1/2006 11:20 AM

208

2 answer.

3 A. I would think so, yeah.

4 Q. Was it less than \$100,000?

5 A. I don't know.

6 Q. You can't say whether it was?

7 A. I can't say with certainty.

8 Q. So it could have been more than

9 \$100,000?

10 A. Could have been. I don't know.

11 Q. How did you account on your

12 taxes for the sales from Funky Drummer Volume

13 II?

14 MR. CHIN: Objection. Instruct

15 not to answer.

16 MR. OLSON: What is the basis

17 for the instruction?

18 MR. CHIN: This is highly

19 irrelevant and the information, the

20 information or whatever answer he may or may

21 not give could subject him to criminal

22 problems. I am not going to let him answer

23 that question.

24 If you want to send a written

25 interrogatory, we'll decide then. I am not

2 subject him to liability. So I am withdrawing

3 my instruction not to answer.

4 Q. Let me ask the question again,

5 Mr. Vargas. How did you account for sales

6 from Funky Drummer Volume II on your taxes?

7 A. I did not.

8 Q. At the time did you think there

9 was anything you were required to do to

10 account for sales on your taxes?

11 A. I wasn't aware.

12 Q. Now, if you sold, say you made

13 profits of \$100,000 from Funky Drummer Volume

14 II, it would be safe to say you would owe some

15 taxes; isn't it?

16 MR. CHIN: Objection, calls for

17 hypothetical.

18 A. Hypothetically speaking, yeah.

19 Q. Did you file income tax returns

20 from '95 through the end of 90s?

21 MR. CHIN: Objection,

22 relevance. You can answer.

23 A. Yeah, I filed taxes on

24 everything with the exception of the vinyl

25 stuff.

8/1/2006 11:20 AM

225

8/1/2006 11:20 AM

227

2 letting him answer that in a deposition.

3 MR. OLSON: So, are you

4 instructing him to take the Fifth Amendment,

5 is that what you are saying?

6 MR. CHIN: I am instructing

7 him to take the Fifth Amendment because I

8 don't know what the answer is going to be. If

9 you want me to step outside with him and find

10 out whether or not his answer could subject

11 him to criminal liability, I will do that.

12 MR. OLSON: Yeah, I would be

13 interested if there is a reasonable

14 apprehension of prosecution. Why don't we

15 take a quick break and you can confer.

16 MR. CHIN: Okay.

17 VIDEOGRAPHER: Going off the

18 record. The time is 3:16.

19 (Recess taken.)

20 VIDEOGRAPHER: We are back on

21 the record. The time is 3:21.

22 MR. CHIN: Okay. I have

23 spoken with my client and discussed the

24 question, the last question with him. And I

25 feel satisfied that his answer will not

2 Q. When you made profits from

3 playing with Total Remix, did you record that

4 income on your income taxes?

5 MR. CHIN: Objection,

6 relevance.

7 A. Yes, I have a separate tax

8 ID number.

9 Q. Do you have an accountant who

10 helps you with your taxes?

11 MR. CHIN: Objection,

12 relevance?

13 A. I don't have a separate. Just

14 a regular, you know, tax people.

15 Q. Who did your taxes, say in

16 1996?

17 MR. CHIN: Objection,

18 relevance?

19 A. H&R.

20 Q. H&R Block?

21 A. Yes.

22 Q. Did you tell H&R Block that you

23 had proceeds from sales of Funky Drummer

24 Volume II that you needed to account for?

25 A. No.

8/1/2006 11:20 AM

226

8/1/2006 11:20 AM

228

2 really don't.

3 Q. To your knowledge did Bust Dat
4 Groove ever receive any radio airplay?

5 A. I've never heard it, no.

6 Q. To your knowledge did Bust Dat
7 Groove ever receive any TV airplay?

8 A. Other than the Celebrex.

9 Q. Okay. Other than allegedly in
10 the Celebrex ad, to your knowledge did Bust
11 Dat Groove ever receive any TV airplay?

12 A. As far as I know. Sometimes,
13 you know people use it and I'm not aware of it
14 so I don't know.

15 Q. I'm just asking --

16 A. As far as I know.

17 Q. As far as you know the answer
18 is?

19 A. I don't know.

20 Q. Let me ask it one more time
21 just to get a yes or no answer. As far as you
22 know -- strike that.

23 Other than allegedly in the
24 Celebrex commercial, as far as you know did
25 Bust Dat Groove ever receive any TV airplay?

8/1/2006 11:20 AM

237

2 A. I don't know.

3 Q. Did Mr. Roberts ever give you
4 any kind of written accounting for profits
5 from the Funky Drummer II album?

6 A. No.

7 Q. Did you ever license any tracks
8 from the Funky Drummer II album?

9 A. No.

10 Q. Do you know if anyone ever
11 licensed any tracks from the Funky Drummer II
12 album?

13 MR. CHIN: Objection.

14 A. I don't know.

15 Q. Did you try to license tracks
16 from the Funky Drummer II album?

17 A. I didn't personally, but maybe
18 Jane Peterer did.

19 Q. Do you have any knowledge of
20 any attempts she made to license tracks from
21 the Funky Drummer album?

22 A. No. But I got personal phone
23 calls myself from people that wanted to use it
24 and I would direct them to Jane Peterer.

25 Q. People who wanted to use tracks

8/1/2006 11:20 AM

238

2 from Funky Drummer II?

3 A. Yeah.

4 Q. Which tracks?

5 A. I don't remember the exact
6 tracks.

7 Q. Did anyone call wanting to use
8 Bust Dat Groove?

9 A. I don't know. Sometimes they
10 would call her directly, so...

11 Q. I am just asking with reference
12 to the calls you stated you received, did
13 anyone call with regard to Bust Dat Groove?

14 A. We didn't get into even finding
15 out what track they wanted to use because I
16 would direct them to Jane Peterer. She was
17 handling all my publishing work, so...

18 Q. Did you follow up with
19 Ms. Peterer after you directed people to her?

20 A. Yes. And she told me who was
21 inquiring. But we didn't get into what track
22 or anything like that, you know.

23 Q. Did any of those inquiries lead
24 to someone paying for license to the track?

25 A. As far as I know, no.

8/1/2006 11:20 AM

239

2 Q. And you stated that you
3 intended this album to be for hip-hop
4 producers, among other people; correct?

5 A. Yes.

6 Q. And you hoped that they would
7 listen to your tracks and license the tracks;
8 is that right?

9 A. Yes.

10 Q. So you wanted them to use the
11 tracks in albums or music they would be doing;
12 is that correct?

13 A. Yes.

14 Q. But you wanted them to pay you
15 for the right to do that; correct?

16 A. Exactly.

17 Q. Did you give any copies of
18 Funky Drummer II away to try to encourage
19 people to use your tracks?

20 A. We gave very few out. Very
21 few. Because it was expensive for us.

22 Q. So, under plan that you had,
23 you expected, say, hip-hop producers to buy
24 your album; correct?

25 A. Absolutely. Yes.

8/1/2006 11:20 AM

240