

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RALPH VARGAS AND BLAND RICKY
ROBERTS,

Plaintiffs,

v.

PFIZER INC., PUBLICIS, INC., FLUID MUSIC,
EAST WEST COMMUNICATIONS, INC., AND
BRIAN TRANSEAU P/K/A "BT",

Defendants.

04 CV 9772 (WHP)
ECF CASE

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that, upon the bases set forth in the accompanying memorandum of law and exhibits annexed theretp, the declaration of Christopher W. Keegan and exhibits annexed thereto, the declaration of Brian Transeau, the declaration of Dr. Richard Boulanger, the declaration of Matthew DiMittia, the declaration of Carlos Vasquez, as well as upon all prior pleadings and proceedings had herein, Defendant Brian Transeau, joined by Defendant East-West Communications, Inc. (hereinafter "Defendants"), hereby move this Court, before the Honorable William H. Pauley III, at the United States Courthouse for the Southern District of New York, located at 500 Pearl Street, New York, New York, for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing the Complaint on the grounds set forth in the accompanying memorandum, including but not limited to that the accused drum beat was independently created and there is no evidence of access or copying of the asserted sound recording and therefore no infringement under the Copyright Act.

The date for Plaintiffs' response and oral argument is set forth in the Court's Order of September 5, 2006. Plaintiff's Response shall be due on October 6, 2006 and oral argument shall be at on November 3, 2006 at 10:30 a.m. or as soon thereafter as the Court is available.

WHEREFORE, Defendants request that the Court grant their motion and provide the relief set forth in the Proposed Order submitted herewith.

Dated: September 25, 2006.

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