

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.,

Plaintiffs/Counterclaim Defendants,

v.

LIME GROUP LLC; MARK GORTON; and GREG BILDSON,

Defendants,

and

LIME WIRE LLC,

Defendant/Counterclaim Plaintiff.

ECF CASE

06 CV. 5936 (GEL)

**DEFENDANTS’/
COUNTERPLAINTIFF’S
RESPONSE AND
WITHDRAWAL OF
OPPOSITION TO
PLAINTIFFS’/COUNTERCLAIM
DEFENDANTS’ MOTION FOR
LEAVE TO FILE AN AMENDED
COMPLAINT**

Defendant/Counter-Plaintiff Lime Wire LLC and Defendants Lime Group LLC, Mark Gorton, and Greg Bildson (collectively, “Defendants”) respond to Plaintiffs/Counterclaim Defendants’ Motion for Leave to File an Amended Complaint and supporting memorandum as follows:

On June 20, 2007, after the deadlines for joinder and amending pleadings, Plaintiffs/Counterclaim Defendants (“Plaintiffs”) requested leave of Court to amend their complaint to add new claims and a new party. Specifically, Plaintiffs seek to add a claim

for fraudulent transfer under Section 276 of the New York Debtor and Creditor Law against Defendant Mark Gorton (“Gorton”). They also seek leave to join as a defendant the M.J.G. Lime Wire Family Limited Partnership (“MJG”), of which Gorton is general partner, and assert a claim for common law unjust enrichment against MJG.

When asked whether they would oppose the Motion, Defendants stated that they would since Plaintiffs’ requested amendments and joinder are improper and without merit. Rather than being legitimate claims for relief, the requested amendments are more of a means to continue Plaintiffs’ campaign of harassment and intimidation against Gorton and, now, his family. Indeed, Plaintiffs go to great lengths in their Motion and proposed amendments to characterize Gorton as corrupt and to cast Lime Wire and Gorton as villains for commonplace acts such as distributing corporate profits to shareholders. In reality, there is nothing nefarious about forming a family limited partnership, selling stock to a partnership, or issuing dividends to shareholders. Defendants object to Plaintiffs’ unfair mischaracterizations regarding Gorton’s, Lime Wire LLC’s, and MJG’s actions. Defendants likewise object to the assumption on which all of Plaintiffs’ new allegations are premised—that Defendants are liable to Plaintiffs for secondary copyright infringement.

Despite their belief that Plaintiffs’ amendments are groundless and defective, Defendants recognize that leave to amend complaints should be freely granted. *See* FED. R. CIV. P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Supreme Court has clearly expressed a policy in favor of heeding Rule 15(a)’s terms and affording a plaintiff “an opportunity to test his claims on the merits.” *Foman*, 371 U.S. at 182. As expressed in a case on which Plaintiffs rely, “it is rare that such leave [under Rule 15(a)] should be

denied.” *Permatex, Inc. v. Loctite Corp.*, No. 03 Civ. 943, 2004 WL 1354253 at *1 (S.D.N.Y. Jun. 17, 2004) (quoting *Ricciuti v. N.Y.C. Transit Auth.*, 941 F.2d 119, 123 (2d Cir. 1991)). Indeed, Lime Wire itself has requested leave to amend its counterclaims—over Plaintiffs’ ironic opposition—in the event the Court finds that Defendants failed in whole or in part to state a claim.

Accordingly, since leave to amend is to be freely given, Defendants withdraw their opposition to Plaintiffs’ Motion and will address the merits of Plaintiffs’ amendments in a motion to dismiss and other means available under the Federal Rules of Civil Procedure.

Dated: July 5, 2007

Respectfully Submitted,

Of counsel:

Lauren E. Handler
SDNY (LEH 6908)
PORZIO, BROMBERG &
NEWMAN, P.C.
100 Southgate Parkway
P.O. Box 1997
Morristown, NJ 07962-1997
(973) 538-5146 (Facsimile)
(973) 889-4326 (Telephone)
lehandler@pbn.com

/s/
Charles S. Baker (CB1365)
Joseph D. Cohen (JC3017)
Susan K. Hellinger (SH8148)
PORTER & HEDGES, LLP
1000 Main Street, 36th Floor
Houston, Texas 77002
(713) 226-6000 (Telephone)
(713) 228-1331 (Facsimile)
cbaker@porterhedges.com
jcohen@porterhedges.com
shellinger@porterhedges.com

*Attorneys for Defendants/
Counterplaintiff*

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading was filed by means of the Court's ECF system. Accordingly, it is assumed that all counsel of record received notice of this filing from the ECF system. Lead counsel, listed below, will also receive a courtesy copy via email.

/s/

Charles S. Baker

TO:

Katherine B. Forrest
Teena-Ann V. Sankoorikal
Cravath, Swaine & Moore, LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000
(212) 474-3700 (fax)

*Counsel for Plaintiffs/
Counterclaim Defendants*

Of Counsel:

Kenneth L. Doroshow
Karyn A. Temple
Recording Industry Association of America
1025 F Street, NW, 10th Floor
Washington, DC 20004
(202) 775-0101
(202) 775-7253 (fax)