

# EXHIBIT B

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December 16, 2010

## VIA HAND DELIVERY AND FAX

The Honorable Kimba M. Wood  
U.S. District Court, Southern District of New York  
500 Pearl St.  
New York, NY 10007-1312

Re: Arista Records LLC et al. v. Lime Wire LLC et al.,  
No. 06 CV 5936 (KMW) (U.S. Dist. Ct. S.D.N.Y.)

Dear Judge Wood:

I write on behalf of Defendants to request a conference with Your Honor at the Court's earliest convenience to resolve what has escalated into an issue of pressing importance that threatens to severely prejudice Defendants in their defense of this action.

As the enclosed correspondence demonstrates, Plaintiffs have threatened to seek to disqualify the law firm of Willkie Farr & Gallagher LLP ("Willkie Farr"). The claimed basis for their threat is that until the Summer of 2007, a lawyer now employed at Willkie Farr, Jeffery Korn, had represented Plaintiffs in the present case (the "Lime Wire case") during his tenure at a previous employer, Cravath, Swaine & Moore LLP ("Cravath"). The Cravath firm is no longer counsel of record.

Mr. Korn left Cravath in the Summer of 2007 and commenced work as an associate at Willkie Farr on September 10, 2007. Naturally, Mr. Korn has not worked on this case since Willkie Farr became involved in it in 2010. Since leaving Cravath nearly three-and-one-half years ago, moreover, Mr. Korn has not communicated any confidential information he obtained at Cravath about this case to anyone at Willkie Farr.

Upon its retention in 2010, furthermore, Willkie Farr implemented procedures foreclosing Mr. Korn from access to confidential information about the Lime Wire case. The information screening to which Mr. Korn remains subject extends in both directions. Those Willkie Farr attorneys who work on the Lime Wire case are prohibited from engaging in any oral, written, or electronic communication with Mr. Korn about it.

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In short, while we take Plaintiffs' allegations very seriously, we believe they are baseless.

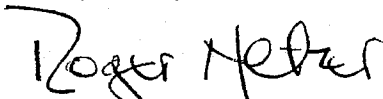
Nonetheless, it appears that Plaintiffs intend to press the issue through a disqualification motion. In their most recent letter, Plaintiffs yesterday demanded that Willkie Farr provide, by close of business today, detailed information and documents concerning the restrictions that prevent Willkie Farr lawyers who work on the Lime Wire case from gaining access to confidential information Mr. Korn may have obtained about this case before leaving Cravath back in 2007. Plaintiffs' demands even extend to non-public information about Willkie Farr clients that have no relationship to this case.

Plaintiffs offer no assurance that this information will be treated with confidentiality or not be exploited to claim waiver of applicable privileges. Nor do Plaintiffs offer any assurance that, were Willkie Farr to provide this information, Plaintiffs might forgo making a motion to disqualify. On the contrary, they state that irrespective of what we disclose to them, they have already concluded that there is an "unacceptable risk" Mr. Korn has shared their confidential information with members of the Lime Wire litigation team -- which he has not. If the Court would like us to provide details, *in camera*, of the procedures that were put into place, we will be pleased to do so.

We believe it best to proceed expeditiously and under the Court's auspices. As the Court is aware, fact discovery is to close on January 31st, depositions will take place throughout January, and trial is fast approaching. And as the Second Circuit recognizes, disqualification motions are often tactically motivated and intended to separate the client from his counsel of choice.

Given the uncertainty created by Plaintiffs' threats, Willkie Farr and its clients ask that this issue be resolved as expeditiously as possible and hopefully before the upcoming holidays. Accordingly, we ask Your Honor to meet with the parties at the Court's earliest convenience to determine the most efficient means of resolving this issue without undue delay.

Respectfully submitted,

  
Roger Netzer

Enclosures

cc: Hon. Debra Freeman, U.S. Magistrate Judge (by hand delivery and fax)  
Kelly M. Klaus, Esq. (by email and U.S. mail)

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BY EMAIL AND U.S. MAIL

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Re: Arista Records LLC et al. v. Lime Wire LLC et al.,  
No. 06 CV 5936 (KMW) (U.S. DIST. CT. S.D.N.Y.)

Dear Counsel:

We are writing regarding a very serious matter that we have just become aware of. Jeffrey Korn, an attorney who played an active role representing Plaintiffs in this litigation while at Cravath, Swaine & Moore LLP ("Cravath"), is now and for several years has been an attorney at Willkie Farr & Gallagher LLP ("Willkie Farr"). Because of Mr. Korn's work as counsel for Plaintiffs, he acquired Plaintiffs' confidential information, including information protected by the attorney-client privilege. Willkie Farr did not disclose to Plaintiffs Mr. Korn's association with your firm or obtain Plaintiffs' consent prior to undertaking to represent Defendants in this same case. In these circumstances, Plaintiffs do not understand how Willkie Farr could have commenced to represent, or how it can continue to represent, Defendants in this case.

We understand that, while he was at Cravath, Mr. Korn was an integral member of the team representing Plaintiffs for an extended period during 2006 and 2007, an intensive period of

Joseph T. Baio, Esq.  
Tariq Mundiya, Esq.  
December 10, 2010  
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litigation activity in this case. Mr. Korn regularly communicated directly with our clients, and he obtained from them confidential information in the course of the attorney-client relationship.

As I am sure you know, the Federal Court requires attorneys appearing before it to adhere to the State's Rules of Professional Conduct. See Local Rules 1.3, 1.5. "Although New York's Disciplinary Rules are not binding on federal courts . . . the Court refers to these rules, and to the Committee on Professional Ethics's opinions interpreting them, for guidance." *Papyrus Technology Corp. v. New York Stock Exchange, Inc.*, 325 F. Supp. 2d 270 (S.D.N.Y. 2004). See *All Star Carts & Vehicles, Inc. v. BFI Canada Income Fund*, 2010 WL 2243351 at \*3 (E.D.N.Y. June 1, 2010) ("The New York State Rules of Professional Conduct, 22 N.Y.C. R.R. § 1200 . . . guide the conduct of attorneys arguing before this Court."); *Artandi v. Buzack*, 2004 WL 764907, at \*7 (S.D.N.Y. Apr. 9, 2004).

Rule 1.10(c) of the New York Rules of Professional Conduct provides:

When a lawyer becomes associated with a firm, the firm may not knowingly represent a client in a matter that is the same as or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, formerly represented a client whose interests are materially adverse to the prospective or current client unless the newly associated lawyer did not acquire any information protected by Rule 1.6 or Rule 1.9(c) that is material to the current matter.

N.Y. R. Prof. Conduct Rule 1.10(c).

Rules 1.6 and 1.9(c) protect "Confidential information," which is "information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential." *Id.* Rule 1.6(a). Rule 1.10(c)'s prohibition extends to the entire law firm that the attorney joins: "[W]here an attorney working in a law firm is disqualified from undertaking a subsequent representation opposing a former client, all the attorneys in that firm are likewise precluded from such representation." *Kassis v. Teacher's Ins. & Annuity Ass'n*, 93 N.Y.2d 611, 616 (1999).

During his representation of Plaintiffs, Mr. Korn indisputably acquired "confidential information," including information protected by the attorney-client privilege, that is "material to the current matter." When Willkie Farr took on the representation of Defendants, your firm did not make any disclosure of this matter to any of our clients. Nor did Willkie Farr receive any written consent from our clients to undertake to represent Defendants. See N.Y. R. Prof. Conduct Rule 1.10(d). Moreover, it is our understanding, based on a very quick review of the publicly available docket, that Mr. Korn has worked with Mr. Mundiya, Ms. Eaton and others from your *Lime Wire* litigation team previously, and that he currently is working with them on at least one active litigation matter. In short, this is not an instance of an associate moving between

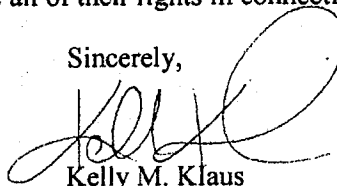
MUNGER, TOLLES & OLSON LLP

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December 10, 2010  
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firms and working with teams of lawyers unrelated to those who are adverse to his former client. Rather, Mr. Korn has worked, and continues to work, with the core members of Willkie Farr's *Lime Wire* litigation team who right now are actively litigating against the clients Mr. Korn represented, in the very action in which he represented them. In light of these facts, it appears clear that "disqualification is required" as a "matter of law" under the New York Rules. See *Kassis*, 93 N.Y.2d at 619; *ACP 140 West End Ave. Associates, LP. v. Kelleher*, 781 N.Y.S.2d 622, 1 Misc.3d 909(A), at \*2 (2003).

If you believe that there are legal authorities or relevant facts that we have not considered, please tell us what those are immediately. Because of the seriousness of this issue, I must ask that you respond by Monday, December 13. Otherwise, Plaintiffs may have no choice but to bring this matter to the Court's attention and to request the immediate disqualification of Willkie Farr. Our clients expressly reserve all of their rights in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly M. Klaus", written in a cursive style. The signature is positioned above the printed name.

Kelly M. Klaus

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December 14, 2010

## BY EMAIL AND U.S. MAIL

Kelly M. Klaus, Esq.  
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355 South Grand Avenue  
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Re: Arista Records LLC et al. v. Lime Wire LLC et al.,  
No 06 CV 5936 (KMW) (U.S. Dist Ct. S.D.N.Y)

Dear Mr. Klaus:

This responds to your letter of December 10, 2010 regarding my colleague Jeffrey Korn.

As you know, Mr. Korn left Cravath Swaine & Moore more than three years ago, in the Summer of 2007. After a short hiatus for paternity leave, he commenced work as an associate at Willkie Farr & Gallagher LLP ("Willkie Farr") on September 10, 2007.

Since leaving Cravath nearly three-and-one-half years ago, Mr. Korn has not communicated any confidential information he obtained at Cravath about the Lime Wire case (the "Litigation") to anyone at Willkie Farr. Upon its retention, moreover, Willkie Farr erected a screen that prevents Mr. Korn from learning confidential information about the Litigation. Not only has Mr. Korn performed no work on the Litigation, Mr. Korn also cannot obtain access to any documents, records or files of Willkie Farr pertaining to the Litigation.

In addition, Mr. Korn has adhered to Willkie Farr's categorical instruction not to communicate any confidences or secrets about the Litigation to anyone at Willkie Farr, and not to obtain any confidences or secrets about the Litigation from anyone at Willkie Farr. This instruction extends, naturally, to those attorneys you mention on the Lime Wire case with whom Mr. Korn has worked on matters that have no relation whatsoever to Lime Wire in general or the Litigation in particular.

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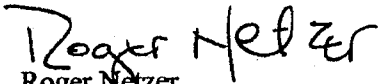
The information blackout to which Mr. Korn remains subject extends in both directions. Those Willkie Farr attorneys who work on the Litigation are restricted from engaging in any oral, written, or electronic communication with Mr. Korn about the Litigation.

Your letter incorrectly states that plaintiffs only just became aware that Mr. Korn works at Willkie Farr. Plaintiffs and their attorneys, including both in-house counsel and counsel of record in this case, were notified when Mr. Korn left Cravath that he would be joining Willkie Farr.

As you must be aware, courts in the Second Circuit are extremely reluctant to grant disqualification motions because they are often tactically motivated and separate the client from his counsel of choice. A non-exhaustive list of legal authorities you may wish to consider that are not mentioned in your letter include: *Hempstead Video, Inc. v. Vill. of Valley Stream*, 409 F.3d 127, 132 (2d Cir. 2005); *Applied Tech. Ltd. v. Watermaster of Am., Inc.*, No. 07 CV 6620, 2009 WL 804127 (S.D.N.Y. Mar. 26, 2009); *Intelli-Check, Inc. v. Tricom Card Techs., Inc.*, No. 03 CV 3706, 2008 WL 4682433 (E.D.N.Y. Oct. 21, 2008); and *Siverio v. Lavergne*, No. 86 CV 6584, 1989 WL 31531 (S.D.N.Y. Mar. 29, 1989).

While we take seriously your allegations, they are completely baseless. We believe, and will assert to the Court, that any motion relating to this matter is a litigation strategy designed to disadvantage a party in a billion-dollar case as it heads toward trial.

Very truly yours,

  
Roger Netzer



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BY EMAIL AND U.S. MAIL

Roger Netzer, Esq.  
Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019-6099

Re: Arista Records LLC et al. v. Lime Wire LLC et al.,  
No. 06 CV 5936 (KMW) (U.S. DIST. CT. S.D.N.Y.)

Dear Mr. Netzer:

I am writing in response to your letter of December 14, 2010. Your letter does not alleviate Plaintiffs' serious and well-founded concerns regarding Willkie Farr's breach of its ethical obligations. You cannot and so do not deny that Willkie Farr undertook to represent clients in connection with *the very same litigation* in which Mr. Korn was integrally involved in representing the adverse parties while at Cravath. You cannot and so do not deny that Mr. Korn has had significant and ongoing involvement working with the exact same close-knit group of Willkie Farr lawyers representing Defendants in the case. And you cannot and so do not deny that your law firm did *nothing* to alert Plaintiffs to the manifest conflict, much less seek their consent, prior to undertaking to act as counsel for Mark Gorton or Lime Wire. In light of all these facts, there is a high and unacceptable risk that Plaintiffs' confidential information has been, continues to be and/or will in the future be disclosed, in violation of the ethical rules.

Your letter makes a number of vague statements, apparently designed to give the impression that there is nothing for Plaintiffs to be concerned about. In fact, your letter simply

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raises more questions than it answers. Because this matter may be presented to the Court in the very near future, it is imperative that you provide specific information—not generalities—so that Plaintiffs and, if necessary, the Court, may have complete information concerning the relevant facts. Accordingly, please provide the following information and documents to me by no later than the close of business tomorrow, December 16:

- The specific date—as well as documents evidencing the same—on which Willkie Farr implemented the purported “screen” that you refer to your letter. Without limiting this request in any way, you should provide to us any memoranda or emails circulated within Willkie Farr regarding any claimed “screen” with respect to Mr. Korn.
- The specific measures—as well as documents evidencing the same—that Willkie Farr has implemented to enforce the “screen.” Your description of the measures and documents evidencing the same should explain in detail how it is that Mr. Korn “cannot obtain access to any documents, records or files of Willkie Farr pertaining to the litigation.”
- You state in your letter that Willkie Farr “erected” the claimed “screen” “[u]pon its retention.” What is the specific “retention,” who is/are the specific client(s) you are referring to, and what is the exact date of the same?
- When did Willkie Farr first start representing any Defendant in this case and/or any entity that owns, is owned by or that is under common control with any Defendant (including without limitation Tower Research Capital LLC and Tower Research Capital Investments LLC)?
- A list of all matters, whether filed litigation or otherwise, to which both Mr. Korn and any or more of the following Willkie lawyers has billed time: Joseph Baio, Tariq Mundiya, Mary Eaton or Todd Cosenza.

In requesting this information, Plaintiffs do not in any way concede or agree that any screening measure would be satisfactory given the facts in this case, or that any measures Willkie Farr claims to have adopted have been sufficient. Because of the gravity of this issue, I reiterate that we must have the requested information and documents by no later than the close of business tomorrow.

MUNGER, TOLLES & OLSON LLP

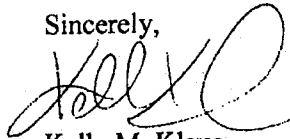
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Our clients continue to expressly reserve all of their rights in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly M. Klaus". The signature is fluid and cursive, with a large, stylized "K" at the beginning and a long, sweeping underline that extends to the right.

Kelly M. Klaus