

EXHIBIT 6

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ARISTA RECORDS LLC, ET AL.,
Plaintiffs,

v.

06 Civil 5936 (KMW)

LIMEWIRE LLC, et al.,
Defendants.

-----x

October 13, 2010
1:15 p.m.

Before:

HON. KIMBA M. WOOD

District Judge

(Continue on next page)

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APPEARANCES

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ROBERT CLARIDA, ESQ.,

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Attorneys for Defendants
BY: JOSEPH BAIIO, ESQ.,
TARIQ MUNDIYA, ESQ.,
JOHN OLLER, ESQ.,
TODD COSENZA, ESQ.,

ALSO PRESENT:
JENNIFER PAISER, Sony Corporation of America

- - -

THE CLERK: Arista Records against Limewire.
Will counsel please state your appearances.
MR. POMERANTZ: Good morning, your Honor. Glenn
Pomerantz on behalf of the plaintiffs. With me is Jennifer
Pariser and Robert Clarida.

MR. BAIIO: Joseph Baio on behalf of the defendants.
With me are Tarip Mundiya, John Oller and Todd Consenza.

THE COURT: Welcome to the case.

MR. BAIIO: Thank you, your Honor.

THE COURT: I think as a preliminary matter I should
dismiss the prior firm that represented defense counsel and I
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1 do so now.
2 MR. BAIIO: Thank you, your Honor.
3 THE COURT: All right.
4 I need to hear at this point from plaintiff.
5 MR. POMERANTZ: I take it what you would like me to
6 address, your Honor, are the two proposed motions in the letter
7 that was sent to your Honor on September 29.
8 THE COURT: Yes.
9 What I'm interested in on your first point is how
10 that -- the essence of what your motion is. I can see some
11 peripheral areas and I'm not sure it will be an issue.
12 And with the second, I don't know the law on that so I
13 would need to be well briefed.
14 MR. POMERANTZ: Certainly.
15 On the first issue I am fully aware your Honor noted
16 in the Bryant decision that there is a flip among the circuits
17 and, in fact, your Honor deviated from four other circuits on
18 this independent economic value test.
19 The losing party in Bryant has now filed a cert
20 petition which I think is awaiting a ruling by the Supreme
21 Court and there is an acknowledged circuit split at this point.
22 At the very least we would like to brief the issue so that we
23 pay preserve our position for appeal.
24 THE COURT: Good.
25 MR. POMERANTZ: There are, however, even if -- even
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1 under your Honor's approach in Bryant, there may be some
2 factual variations and fact patterns here that may warrant
3 consideration by your Honor.

4 The fact pattern in Bryant was an album comes out and
5 years later it then goes out into the digital format individual
6 tracks.

7 There are two other variations that could present
8 themselves and do present themselves.

9 One is when the album and the individual tracks are
10 offered simultaneously into the marketplace and the other one
11 when the individual tracks are offered first and then sometime
12 later the album is issued.

13 Let's take that last situation. In that last
14 situation, let's say there are two individual track issues and
15 they are both in French, at that moment in time the copyright
16 owner can sue and get two statutory awards, one for each track.

17 Thereafter, an album comes out that takes the two and
18 puts them together. The question would arise under Bryant
19 whether now the copyright owner has lost the ability to get two
20 awards and, instead, only gets one because they have been put
21 together into an album or whether they still have the right to
22 get two awards which they had at the time they released the two
23 individual tracks.

24 So we would like to have the opportunity to brief the
25 various, all these fact patterns that are present in this case

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1 given the number of awards, number of releases, and so we think
2 that this is an issue that does merit briefing at the very
3 least to preserve our position under Bryant, but also to
4 present your Honor with varying fact patterns so your Honor can
5 consider the analysis of Bryant and apply your knowledge.

6 THE COURT: Is there case law the on these other
7 issues?

8 MR. POMERANTZ: Well, the case law that I'm primarily
9 aware, the case that your Honor considered in the Bryant case,
10 that is, we are aware of other circuits --

11 THE COURT: I should have phrased my question in a
12 more pointed manner.

13 You said there are issues that did not come up in
14 Bryant that you plan to raise, such as individual tracks being
15 released first.

16 MR. POMERANTZ: Correct.

17 THE COURT: Has that been the subject of prior
18 adjudication?

19 MR. POMERANTZ: Not that I'm aware of. I don't think
20 so.

21 THE COURT: All right.

22 MR. POMERANTZ: That is the first thing.
23 I don't know if you want to address this or not.

24 THE COURT: You need not address it. I was just
25 curious whether or not I would be getting any help on that.

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1 MR. BAIO: On the second point, your Honor?
2 THE COURT: Well, I think we were on -- let's see. We
3 were on the first point.
4 MR. BAIO: Well, there is your authority, your Honor,
5 in the Bryant case. There is supplemental authority within
6 this circuit that we will provide to you. We think the law is
7 clear.
8 What plaintiff is talking about that there may be
9 something, a single track release before an album, where we sit
10 that is hypothetical. We have not received anything that
11 demonstrates that. In fact, there is a copyright number
12 attributable to each cut, each track which is the compilation
13 copyright number. So plaintiffs have elected in the final list
14 that they were to supply on September 16, they identified a
15 copyright number for each one of the tracks in Michael
16 Jackson's Bad album, for example, that has the same copyright
17 number. So we're not sure if they think there is something in
18 the record that will allow them to raise something that they
19 didn't back on September 16; it's hypothetical for us.
20 We also have not received all the documents that we
21 need in order to probe underneath the copyrights and the
22 ownership issues. We are looking forward to that. But so far
23 as our motion, it's very straightforward, it relies on Bryant,
24 it relies on the statutory language and it reduces the number
25 of work by about three-quarters. It goes from 10,000 down to

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1 about 2,500, and that is just on the first issue.

2 THE COURT: Your position is that -- I'm not quite
3 sure how your copyright point could differ from the position
4 taken by plaintiff's counsel.

5 MR. BAIIO: The copyright point as to which, your
6 Honor, as to this very first argument?

7 THE COURT: As to all of the copyright -- all of the
8 tracks in Michael Jackson's album having the same copyright
9 number.

10 MR. BAIIO: We agree. We are the movant on this and we
11 believe that they can collect statutory awards per work. The
12 law, based on what your Honor has held and the statute itself
13 make it plain that a compilation is a work, you may not break
14 out the segments in order to collect separate statutory awards.
15 That is exactly what they have identified in the list.

16 THE COURT: As you know probably in Bryant, the
17 situation was not one where plaintiffs themselves had issued
18 single songs, they issued albums and that made the decision
19 different from the one that you are posing, that plaintiff is
20 counterposing here.

21 MR. BAIIO: Plaintiff is hypothesizing and maybe it
22 turns out to be accurate that there were at some point a single
23 issued before the compilation. I think that on albums going
24 way back that is probably not going to be the case, that really
25 wasn't the way things were done, but we will find out.

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1 In any event, in the list they provided us they use
2 one copyright number, the same copyright number for each track
3 within an album. So what they have given us demonstrates that
4 it is part of as compilation and in one instance they had 13
5 songs by an artist, another it is six songs by an artist, it is
6 all part of the album, and under the law it should collapse
7 under one. If they have a separate copyright they haven't
8 identified it to us in their final list a month ago and we have
9 two months left in the discovery period.

10 So I'm addressing what seems to me to be a
11 hypothetical at this point. I don't know whether he things it
12 will salvage, plaintiffs' counsel things it will salvage one
13 cut or twelve cuts or what. We will have a substantial
14 diminution no matter what from 10,000, and that's very
15 important for us in the discovery that we're conducting, the
16 analysis, the preparation for trial during which we have only
17 one more month of discovery.

18 So I think based on the information we have, the
19 copyright argument is that a compilation is a compilation.

20 I don't know if I have addressed --

21 THE COURT: Let me ask Mr. Pomerantz a question.

22 Have you come across an instance where a defendant
23 has -- I'm sorry -- have you come across a situation where --
24 that you hypothesized?

25 MR. POMERANTZ: I think all three situations that I
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1 hypothesized actually happen frequently, and I'll give you an
2 example.

3 The example that defendant's counsel raised an album
4 was released before the digital era, Michael Jackson's album.
5 That is one that only came out in some physical form at one
6 period in time and later digital tracks were made available.

7 The second one would be where the album and the
8 individual tracks are made available simultaneously, a common
9 occurrence in today's marketplace and for the last several
10 years.

11 And the third would be where the record company
12 decides to release just some individual tracks to see if the
13 public desires those tracks, try to get the market and promote
14 it and sometime thereafter take those tracks and issues them
15 with some other tracks in an album.

16 All three of those will occur. In each of those
17 situations the record company is choosing to make available at
18 different points in time these tracks in an album format and in
19 an individual format.

20 Your Honor's analysis in Bryant was driven largely by
21 the statutory language, and what we would like to have an
22 opportunity to brief to your Honor is if you think about each
23 of those different fact patterns and you look at the statutory
24 language and other relevant evidence, what is the right
25 conclusion here, and I think that is an interesting question

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1 that deserves to be breached --
2 THE COURT: I agree it deserves to be briefed.
3 All right. How quickly can you brief it?
4 MR. BAIIO: Your Honor, as the movant, we can do it
5 right away. I mean, I will get my colleagues.
6 Can we have it by the end of the week?
7 MR. POMERANTZ: Can I suggest we consult?
8 THE COURT: Why don't you go ahead and consult.
9 MR. BAIIO: Okay, that's fine, your Honor.
10 THE COURT: One second.
11 I begin a long trial November 22 and I would like to
12 resolve this well in advance of that, so I'm hoping that the
13 motion can come in within a week and that the reply can be made
14 within the next week, the response, and then any reply by
15 movant within three days. I will turn to it right away when
16 it's fully briefed.
17 MR. POMERANTZ: Okay.
18 THE COURT: Okay? And I urge counsel to make sure
19 that you scour precedent to see if there is any assistance for
20 me here. I haven't come across anything that would deal with
21 these questions specifically, but I never faced it before.
22 Anything else today?
23 MR. POMERANTZ: On the second motion would you like me
24 to address that?
25 THE COURT: Yes.

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1 MR. BAIO: We can or we can simply include it, your
2 Honor.
3 THE COURT: I was assuming that you would include it.
4 MR. POMERANTZ: You want all the motions at the same
5 time?
6 MR. BAIO: Yes.
7 THE COURT: Can you do that?
8 MR. POMERANTZ: Sure.
9 So if we are done with the motions, I thought it would
10 be appropriate and helpful to update you where we are and to
11 seek your guidance.
12 Your Honor set a cutoff date, a discovery cutoff date
13 of November 15 and if your Honor recalls that was based upon
14 sort of looking at discovery in two bites, one where a certain
15 amount of discovery would happen in the first roughly 45 days
16 and then there would be a second round, a second 45 days ending
17 November 15.
18 Your Honor instructed us that to the extent that the
19 defendants were seeking information from us that we thought was
20 beyond the scope of the limited discovery your Honor had
21 authorized at this phase of the case that we should brief those
22 issues to your Honor, which we did with prior counsel, in late
23 August and early September. Those issues were then referred to
24 the magistrate judge now assigned to this case.
25 The defendants then have served 28 deposition notices

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1 and subpoenas, ten of them going to our clients, 18 going to
2 third parties.

3 We believe that that also exceeded some of those
4 deposition notices, not primarily to our clients but third
5 parties, exceeded the scope of discovery for this limited phase
6 of the case and that also was also presented by letter to the
7 magistrate judge.

8 We had a telephonic discussion with the magistrate
9 judge, I'm not sure it was an argument, but discussion about
10 ten days ago or so and we have not yet received a ruling.

11 The defendants have taken the position that the
12 documents they are seeking from us are relevant to all of those
13 depositions and we're happy to make our people available as
14 soon as we can, but we really don't want to go through it
15 twice, to get deposed once and then they get the documents and
16 deposed twice. We would like to gets it deposed and be done
17 and done by November 15. We want it to get done on November 15
18 because we want to go to trial on December 18 and your Honor
19 has told us on more than one occasion you want to hold to that
20 date and we do, too.

21 So we are now backing up with -- it is now October 14,
22 we have a November 15 cutoff and we have 28 notices from their
23 side. They said they don't need depositions from all 28, they
24 may just need documents from some, and they haven't told me how
25 many they need depositions from, but we are talking somewhere

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1 between ten and 20 depositions on their side and we've asked
2 for two or three depositions on our side.

3 So we are very concerned. Both sides have indicated a
4 willing to double track depositions, that is not a problem,
5 take two in a day.

6 We are having a hard time getting started with those
7 depositions because we have some document issues. We don't --
8 we think they have all the documents they need except some
9 revenue reports which we provided one to them either yesterday
10 or today and the other three companies will provide it within
11 the next week. We think that's all they need and are entitled
12 to and the issue is in front of the magistrate judge at this
13 point.

14 THE COURT: What issue is before the magistrate judge
15 specifically?

16 MR. POMERANTZ: There are quite a few. They fall into
17 a number of categories. Some of them have to do with lost
18 profits and revenue information, some of them have to do with
19 evidence of direct infringement.

20 There are actually lengthy letter briefs to the
21 magistrate judge which sets forth all of those issues and we
22 had a long hearing with the magistrate judge by telephone and
23 we went through, not all of those issues but most of those
24 issues. And I'm not blaming the magistrate judge, I'm really
25 not. We're concerned that we really do want to hold to this

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1 schedule.

2 Under your Honor's order of September 14, what your
3 Honor said was that when that discovery issue is resolved, we
4 get three weeks to produce whatever we are ordered to produce.
5 We obviously have an incentive to produce it if we can and
6 providing them the revenue reports now without a ruling, but we
7 are beginning to get ourselves backed up here and we really
8 would like to hold to the November 15 date if we can.

9 THE COURT: I will call Magistrate Judge Freeman and
10 expedite a decision.

11 MR. POMERANTZ: And please, I don't blame her, she is
12 new to the case --

13 THE COURT: I will not do it in any way that is
14 insulting or hurts feelings.

15 Anything else?

16 MR. POMERANTZ: I don't think so.

17 MR. BAIO: No, your Honor.

18 THE COURT: Okay. Thank you.
19 We're adjourned.

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