

Exhibit 1

07T9ARIH

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 ARISTA RECORDS LLC, ET AL.,

4 Plaintiffs,

5 v.

06 CV 5936 (KMW)

6 LIMEWIRE LLC, ET AL.,,

7 Defendants.

8 -----x

New York, N.Y.

July 29, 2010

9:36 a.m.

10 Before:

11 HON. KIMBA M. WOOD

12 District Judge

13 APPEARANCES

14 MUNGER, TOLLES & OLSON, LLP

15 Attorneys for Plaintiffs

15 BY: GLENN POMERANTZ

16 KELLY KLAUS

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18 Attorneys for Defendants

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Gorton - direct

1 Now, you don't deny that you were at Mr. Bildson's
2 desk when you spoke with Mr. Falco, correct?

3 A. The conversation that I had with Mr. Falco was in the RIAA
4 office. It was not in Mr. Bildson's desk.

5 Q. Didn't you have a conversation with Mr. Falco while you
6 were at Mr. Bildson's desk?

7 A. It was -- I mean I have at one point in my life had a
8 conversation on the phone with Mr. Falco from Brett Bildson's
9 desk, but the contents of that conversation are absolutely
10 nothing like what's presented here.

11 Q. So, you admit you had a conversation with Mr. Falco from
12 Mr. Bildson's desk, but you deny that you said what Mr. Bildson
13 says in his declaration, correct?

14 A. Yes.

15 Q. Now, is it your position that at the time you created these
16 family partnerships in 2005 you did not believe that LimeWire
17 or you personally would be sued for copyright infringement? Is
18 that your position?

19 A. Yes.

20 Q. And you've stated that under oath previously, correct?

21 A. That's possible.

22 Q. Well, let's look at tab 2. This is a declaration you
23 submitted back at the time of the summary judgment motions.
24 And let's look at tab -- paragraph 7 of your declaration.

25 Paragraph 7 you state under oath that, "At the time

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1 and that the create date is October 4, 2001.

2 A. Okay.

3 Q. You have no reason to believe that's not true, correct?

4 A. Could be true. Yes.

5 Q. So, as of October of 2001 you're talking about potential
6 lawsuits against LimeWire, correct?

7 A. Correct.

8 Q. And what you say is that "The lawsuits recently filed
9 against Morpheus, Grokster, and FastTrack by the RIAA, and the
10 internal RIAA memos recently released, raise the specter of
11 legal action against LimeWire."

12 Correct?

13 A. I see that.

14 Q. So you knew in October of 2001 that the specter of illegal
15 action against LimeWire had been raised, right?

16 A. Okay.

17 Q. You then followed what happened with each of the Grokster
18 rulings, correct?

19 A. I was aware of them.

20 Q. Well, in fact, LimeWire submitted an amicus brief in the
21 Grokster lawsuit, didn't they?

22 A. Yes.

23 Q. And then you followed each ruling by the district court, by
24 the Ninth Circuit, and by the Supreme Court, correct?

25 A. I was aware of those rulings.

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1 A. I don't specifically recall the date.

2 Q. Let me refresh your memory. If you could look at tab 2,
3 which is your declaration, filed back at the time of the
4 summary judgment motion.

5 Turn to paragraph 6.

6 Do you see in the second sentence that you say that
7 you met with Kenneth Rubenstein on January 7, 2005?

8 A. Yes.

9 Q. Does that refresh your recollection that that's the first
10 time you met with Mr. Rubenstein?

11 A. Yes.

12 Q. And that was less than 30 days after the Supreme Court
13 announced that it was going to review the Ninth Circuit's
14 decision in Grokster, correct?

15 A. Correct.

16 Q. And then if we can go back to the timeline.

17 And you see that then three days after the Supreme
18 Court issued its ruling in Grokster, you went ahead and created
19 the partnerships and transferred your assets, correct?

20 A. Correct.

21 Q. Now your testimony is that the creation of those family
22 limited partnerships had nothing to do with the Grokster case,
23 correct?

24 A. Correct.

25 Q. Had nothing to do with your concern about your assets being

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1 subject to a legal judgment, right?

2 A. Correct.

3 Q. And your testimony is that it's just coincidence that these
4 family partnerships happened to be created immediately after
5 the two critical events in the Grokster case in the Supreme
6 Court, correct?

7 A. Correct.

8 Q. Now, let's talk a little bit about the lawyer who assisted
9 you here, Mr. Rubenstein. Why did you choose him in particular
10 to help you set up these limited partnerships?

11 A. He was recommended -- there was a friend of mine knew his
12 brother who worked at Kaye Scholer who recommended him.

13 Q. And your testimony is that you went to Mr. Rubenstein in
14 January of 2005 just to receive traditional estate planning
15 advice, correct?

16 A. Correct.

17 Q. You didn't go to him for asset protection advice? Is that
18 what you're saying?

19 A. Correct.

20 Q. Now when you saw Mr. Rubenstein in 2005, were you aware
21 that he wasn't just your ordinary estate planning lawyer?

22 MR. SOMMER: Objection to the form.

23 THE COURT: Sustained.

24 Q. Did you know that he had expertises beyond estate planning?

25 A. When I first met him I don't think I really particularly --

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1 MR. POMERANTZ: That just, in terms of the binder,
2 that goes through tab 36.

3 THE COURT: Thank you.

4 MR. POMERANTZ: Those are all portions from
5 Mr. Rubenstein's website.

6 THE COURT: Thank you.

7 Q. Now, Mr. Gorton, were you aware that your counsel told us
8 and told the Court last week that you would be calling
9 Mr. Rubenstein to come here and testify today?

10 A. Yes.

11 Q. And were you aware that they also told us that they would
12 be waiving privilege and providing us with some additional
13 documents?

14 A. Yes.

15 Q. And then were you aware that 72 hours ago or less we heard
16 that you had decided not to call Mr. Rubenstein as a witness?

17 A. Correct.

18 Q. And you understand that you chose not to provide us with
19 documents that might show what happened between you and
20 Mr. Rubenstein?

21 MR. SOMMER: Objection. We chose not to waive
22 privilege.

23 THE COURT: Sustained.

24 Q. Were you aware of that?

25 MR. SOMMER: The question -- sustained.

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Gorton - cross

1 Q. I want to draw your attention to the second page of the
2 letter, and it's the bottom paragraph on the page, where the --
3 in the middle of the paragraph it says, "Finally, as you are on
4 notice of claims against you and your company."

5 Do you see that?

6 A. Yes.

7 Q. Now is that the first time you had any inkling that someone
8 might come after you individually?

9 A. Yes.

10 Q. Was your decision to meet with a lawyer to make plans for
11 your estate related in any way to a concern on your part that
12 you individually were going to get sued by the plaintiffs in
13 this case?

14 A. No.

15 Q. How about that LimeWire was going to get sued?

16 A. No.

17 Q. Now, let's talk about the beginning of 2005 because that's
18 when you first actually met with Mr. Rubenstein, correct?

19 A. Correct.

20 Q. Now, you talked this morning a little bit about following
21 the Grokster case as it went through its various courts,
22 correct?

23 A. Yes.

24 Q. And I think Mr. Pomerantz established that the district
25 court decision was in April of 2003 and that was in favor of

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1 thought what LimeWire was doing was completely within the
2 bounds of the law, and that we were making a value neutral
3 piece of software, and that we weren't inducing anyone's
4 behavior. And that when I looked at the facts in the Grokster
5 case and LimeWire's own behavior, I thought that we were very
6 different.

7 Q. Would you turn again to tab 14. I want to refresh your
8 recollection one more time.

9 This is the New York Times article in which you were
10 quoted months before the Supreme Court handed down its decision
11 in Grokster.

12 A. Correct.

13 Q. In this article it states, "The case is against other
14 file-sharing services, Grokster and Morpheus, which won in
15 lower courts. But Mr. Gorton said that if those rulings were
16 overturned, it would make LimeWire vulnerable. 'If the Supreme
17 Court says it is illegal to produce the software, LimeWire, the
18 company, will cease to exist.'"

19 You see that, don't you?

20 A. Yes.

21 Q. And that was your state of mind before the Supreme Court
22 ruled, correct?

23 A. Well, I would point out that -- I mean the Supreme Court
24 did not say that it was illegal to produce the software. In
25 fact, it says producing -- very clearly said producing the

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1 software by itself is fine.

2 And they created this whole other concept of
3 inducement, which never occurred -- I mean occurred to me that
4 such a thing could exist prior to that actual ruling.

5 And, again, as I pointed out, it was my feeling --
6 turns out incorrectly -- that LimeWire was not at great legal
7 risk. Even, you know -- again, I'm obviously wrong about some
8 of these things and in retrospect it's easy to look back and
9 say how could I have not known. I'm certainly asked myself
10 that question recently.

11 But at the time I approached it very much with the
12 mind-set of a technologist. I think I knew LimeWire from the
13 inside. And it's a different LimeWire than gets painted by the
14 selection of e-mails that are presented in court documents.

15 And we are a technology company that makes a piece of
16 software that transfers files. I still to this day have a hard
17 time seeing that being an illegal thing or something for which
18 I'm liable. I understand it's not worth rehashing, all of
19 that.

20 But in terms of my state of mind which I believe you
21 were getting at, that is the state of mind I carried in my head
22 right up until Judge Wood's ruling.

23 Q. You knew you were inducing massive infringements before the
24 Grokster ruling ever came down, didn't you?

25 MR. SOMMER: Objection. Relevance.

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1 MR. POMERANTZ: Your Honor, I was responding to
2 testimony he just gave.

3 MR. SOMMER: Doesn't make this next question --

4 THE COURT: Sustained.

5 Q. After the Grokster decision came down, you didn't turn off
6 LimeWire, did you?

7 A. No.

8 Q. You didn't stop distributing it, did you?

9 A. No.

10 Q. You testified about some new service you're creating. Do
11 you remember that?

12 A. Yes.

13 Q. And you said it was going to be a service that was going to
14 licensed recordings, from the owners of those recordings,
15 correct?

16 A. Correct.

17 Q. You don't have a license from any of my clients for that
18 service, correct?

19 A. Certainly true.

20 Q. You continue to distribute the LimeWire software, correct?

21 A. Correct.

22 Q. Now, you -- Mr. Sommer pointed you to a bunch of bank
23 records to try to show that you actually had money in bank
24 accounts that weren't in family limited partnerships or IRAs.

25 Do you recall that testimony?

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