

EXHIBIT 2

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

16 JENNIFER PARISER
17 JONATHAN BLAVIN

18 WILSON, SONSINI, GOODRICH & ROSATI
18 Attorneys for Defendants

19 BY: MICHAEL SOMMER
19 JESSICA MARGOLIS

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1 (In open court; case called)

2 MR. POMERANTZ: Good morning, your Honor. Glenn
3 Pomerantz on behalf of the plaintiffs. With me is my
4 colleagues, Kelly Klaus, Jennifer Pariser, and Jonathan Blavin.
5 Also at the end of the table is Phil Nickels, and he'll be
6 helping with the technology.

7 MR. SOMMER: Good morning. Michael Sommer, my
8 colleague Jessica Margolis, and sitting is Mark Gorton, who
9 will be the witness today.

10 THE COURT: Good morning. All right. We're prepared
11 at this point, I think, to proceed without the need for
12 preliminaries.

13 We have the motion to freeze defendants' assets as my
14 first item; secondly, the matters raised in letter briefing of
15 July 2 and July 9; and the timeline for the rest of the
16 litigation.

17 Do counsel wish to add anything to that preliminary
18 agenda now?

19 MR. POMERANTZ: No, your Honor. That covers
20 everything that we were hoping to cover today.

21 MR. SOMMER: We have nothing to add, your Honor.

22 I didn't know we were going to be addressing the
23 letters, but we'll do so. I just thought we were here for the
24 asset hearing and to address the issues raised in our call of
25 yesterday about the other matter.

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1 But we'll certainly go as far today as we can within
2 the time limitations that I have.

3 THE COURT: What time do you need to end?

4 MR. SOMMER: I really need to walk out of the building
5 at 3:00 today. But I'm hopeful that that would allow
6 everything to get done.

7 THE COURT: I am too. I don't need oral argument on
8 the letter briefing matters. I have a draft opinion. I
9 thought I would give it to you, hear your reactions to it.

10 So, I think that will make your dealing with it easier
11 and faster.

12 MR. SOMMER: Sounds like that, Judge.

13 THE COURT: Okay. All right.

14 Then let's proceed with anything plaintiff wishes to
15 present in the way of testimony.

16 MR. POMERANTZ: Your Honor, we would like to call
17 Mr. Gorton as a witness in this proceeding.

18 THE COURT: Please watch any wires as you come
19 forward.

20 Come to the stand, and remain standing, raise your
21 right hand.

22 MARK GORTON,

23 called as a witness by the Plaintiff,
24 having been duly sworn, testified as follows:

25 THE COURT: You may proceed.

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1 DIRECT EXAMINATION

2 BY MR. POMERANTZ:

3 Q. Mr. Gorton, could you raise the microphone up a little bit
4 so I can hear you.

5 Thank you.

6 A. Is that better?

7 THE COURT: It works best, for some reason, if it's
8 underneath you by about eight inches.

9 THE WITNESS: Is this good. How's that?

10 THE COURT: Maybe it's not on. All right.

11 THE WITNESS: We'll a-- I can probably do the plugging
12 in, I'm guessing.

13 How's that?

14 MR. POMERANTZ: Got you. Perfect.

15 Your Honor, I have a couple of binders that I'd like
16 to bring to the witness and for your Honor to assist in the
17 examination.

18 THE COURT: That's fine. And you have a copy for your
19 adversary?

20 MR. POMERANTZ: I do.

21 May I approach?

22 THE COURT: Counsel may approach at any time and
23 adversary counsel also may approach at the same time.

24 MR. POMERANTZ: Your Honor, I have a copy for your
25 Honor and one for a clerk if you would like.

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1 THE COURT: That's good. Thank you.

2 MR. POMERANTZ: Again, may I approach?

3 THE COURT: Yes. Certainly.

4 Q. Mr. Gorton, there are two binders. One is a smaller binder
5 of exhibits we may refer to during the course of today's
6 examination. And the thicker one is your deposition
7 transcripts.

8 I'm not sure we'll have need to go to those, but I
9 wanted to have them there in the event that any of my questions
10 requires to look at deposition testimony.

11 Okay?

12 A. Yes.

13 Q. Now, you understand, Mr. Gorton that the record companies
14 are here seeking to freeze your assets. Do you understand
15 that?

16 A. Yes.

17 Q. And you understand that we're also seeking to freeze the
18 assets of LimeWire?

19 A. Yes.

20 Q. And the assets of LimeGroup?

21 A. Yes.

22 Q. And we're seeking to freeze those assets so that they're
23 available to satisfy the damages that will be awarded as part
24 of a final judgment in this matter.

25 You understand that?

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1 A. I see the next line, yes.

2 Q. And some articles about the Grokster case, correct?

3 A. Yes.

4 Q. So you were very closely following what happened in
5 Grokster, correct?

6 A. Again, I was, you know, "very closely" is perhaps -- I mean
7 but I -- you can see I was aware of what's going on.

8 Q. And then sometime maybe a few months before the Grokster
9 decision was issued by the Supreme Court, you were interviewed
10 by the New York Times, correct?

11 A. Maybe.

12 Q. That's tab 14 is the article.

13 Fair to say that you were interviewed by the New York
14 Times for an article that appeared March 28, 2005?

15 A. I see that.

16 Q. And does that comport with your recollection?

17 A. I mean I'm not sure I actually have a recollection about
18 this.

19 Q. And the article discusses your views about the Grokster
20 case.

21 Do you see that?

22 A. Well, sort of. Okay. I mean I see what --

23 Q. At the bottom of the third paragraph, the author of this
24 article states, "But Mr. Gorton said that if those rulings were
25 overturned, it could make LimeWire vulnerable."

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1 Do you see that?

2 A. Yes.

3 Q. And then there was a quote. Quote, "If the Supreme Court
4 says it is illegal to produce the software, LimeWire, the
5 company, will cease to exist."

6 Do you see that?

7 A. Yes.

8 Q. That is something you said, isn't it?

9 A. I see the quote, yes.

10 Q. And you have no reason to think that's not what you said,
11 correct?

12 A. It's quite possible I said that.

13 Q. And, in fact, you had received, by this point in time, a
14 lot of legal advice about copyright infringement liability and
15 how Grokster and the Grokster decision may affect LimeWire,
16 correct?

17 MR. SOMMER: Objection.

18 THE COURT: I'll permit it.

19 THE WITNESS: I don't think I received very much legal
20 advice.

21 Q. Let me see if I can refresh your memory on that one too.

22 Turn to tab 14 -- no, I'm sorry. Thirteen. In your
23 binder.

24 Mr. Gorton, your lawyers had provided a privilege log
25 in this case a while ago and what I have done here is I've

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1 taken entries from that privilege log, organized them
2 chronologically, to the extent that those entries relate to
3 advice relating to copyright infringement or Grokster.

4 Do you see that?

5 A. Yes.

6 Q. And you have no reason to believe that any of the entries
7 on this log are incorrect, do you?

8 MR. SOMMER: Your Honor, this one I'm going to object
9 to. I mean we've never seen this before. We've had no
10 opportunity to --

11 THE COURT: This is a log produced, I take it, by your
12 predecessor counsel?

13 MR. SOMMER: That's not what I'm complaining about. I
14 assume -- I know there was a log, and I'm assuming this is a
15 faithful culling of certain entries from the log.

16 But I've never seen this before. The witness has
17 never seen this before. And I think it's unfair to ask him
18 whether it's accurate whether neither he nor his counsel have
19 reviewed this document.

20 THE COURT: Is it correct, Mr. Gorton, that you've
21 never reviewed this document?

22 THE WITNESS: I've never seen this before.

23 THE COURT: All right. You should go ahead.

24 MR. POMERANTZ: Did you -- I should not question him
25 about the document itself?

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1 THE COURT: Well, you can ask him if he recalls
2 whether a discussion took place on the topic, on those dates.

3 MR. POMERANTZ: Thank you, your Honor.

4 Q. Mr. Gorton, one of the names on this document is a
5 gentleman by the name of Fred von Lohmann.

6 Do you know a Fred von Lohmann?

7 A. Yes.

8 Q. Has he provided you with advice relating to copyright
9 issues?

10 A. He's a lawyer who works for the Electronic Freedom
11 Foundation. I mean has he provided me advice on copyright
12 issues?

13 I'm not sure if that's a -- if there's a technical --
14 what, you know, when you talk to a lawyer, is it always advice
15 or something?

16 But he's a lawyer who I spoke to and this is one of
17 his areas of expertise.

18 Q. And he's also the lawyer who provided you advice on
19 document destruction practices, correct?

20 MR. SOMMER: Objection.

21 THE COURT: Sustained. You can ask it in a
22 nonleading, nonprejudicial way.

23 Q. Sure. Mr. Von Lohmann provided you with other advice
24 relevant to LimeWire, correct?

25 THE COURT: Did he provide you with any advice
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1 relevant to LimeWire?

2 THE WITNESS: I mean some advice but -- well I mean --
3 all right.

4 Q. That's fine. There are other lawyers listed on this page,
5 Joshua Wattles, Greg Bylinsky.

6 They are both lawyers, correct?

7 A. Yes.

8 Q. And they both provided you with advice on copyright
9 infringement issues surrounding LimeWire, correct?

10 A. I mean Greg Bylinsky is a lawyer who also ran Lime Capital
11 Management and did stock picking.

12 I'm not so sure how much -- and I'm also not sure --
13 am I supposed to discuss or not discuss what lawyers did or
14 didn't say to me?

15 THE COURT: You should not discuss the content of what
16 you said to them to get legal advice and what they said to you.

17 You're being asked a much more general question,
18 whether you received advice on a topic, not what the advice
19 was.

20 THE WITNESS: I don't have a recollection of receiving
21 advice on copyright infringement from Greg Bylinsky.

22 Q. Now, you do recall -- let me ask you different.

23 I'm going to go back to Mr. Von Lohmann for a second.
24 Did he provide you with advice specifically related to
25 Grokster?

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1 A. I really don't recall.

2 Q. Well, look at this second page of this schedule that I
3 showed you and the third to last entry which shows it's from
4 Mr. Von Lohmann and it says, "e-mail discussing Grokster ruling
5 back in August of 2004."

6 Do you see that?

7 A. Yes.

8 Q. Does that refresh your recollection that you got advice
9 from Mr. Von Lohmann specifically related to Grokster?

10 A. If you look at the log, it says to Fred von Lohmann, from
11 Fred von Lohmann. So I'm not really sure this was to me. I
12 mean this might have just been a commentary of his or
13 something.

14 Q. Go back to the first page and you'll see the fourth entry
15 down, fifth entries down are from Mr. Von Lohmann, both of
16 which you're copied on, one of which says "e-mail discussing
17 Grokster briefs."

18 Any recollection of that communication with

19 Mr. Von Lohmann?

20 A. Again, I don't have any recollection of that.

21 Q. Now, this -- you recall that the Supreme Court issued its
22 ruling in Grokster on June 27, 2005? Correct?

23 A. Yes.

24 Q. And you were immediately aware of that ruling, correct?

25 A. Certainly relatively quickly.

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