

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,

v.

LIME GROUP LLC; LIME WIRE LLC; MARK GORTON; GREG BILDSON; M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP,

Defendants.

No.: 06 CIV. 5936 (GEL)

**DECLARATION OF ALLAN KLEPFISZ IN SUPPORT OF
NON-PARTY QTRAX, INC.'S MOTION TO QUASH SUBPOENA**

ALLAN KLEPFISZ, declares as follows:

1. I am the President and Chief Executive Officer of QTrax, Inc. ("QTrax"). Qtrax is not a party in this action.
2. I submit this declaration in support of Nonparty QTrax Inc.'s Motion to Quash the Subpoena pursuant to Rule 45(c) of the Federal Rules of Civil Procedure ("Fed.R.Civ. P.").
3. I have personal knowledge of the matters set forth herein, unless stated on information and belief, which, as to those facts, I believe them to be true. I am fully familiar with the facts and circumstances surrounding QTrax's receipt of the non-party discovery subpoena in the above-referenced action ("the Subpoena"), which was received by messenger

delivery on March 6, 2008 by QTrax's office manager, Theodora Cucu, at QTrax's offices at 211 Madison Avenue in New York, NY. (A true and correct copy of the Subpoena is attached hereto as Exhibit A.)

4. The Subpoena was issued by counsel for defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, Greg Bildson, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants" or "Lime Wire").

5. The Subpoena was delivered without a witness fee.

6. QTrax is not a party to this matter, or to any related matter, and has no past or present relationship whatsoever with Defendants. QTrax has not been provided with any documents or other information regarding this case.

7. In the Subpoena, Lime Wire seeks (i) the production of all documents in QTrax's possession that refer, relate or pertain to any agreement with any of the Plaintiffs, the Recording Industry Association of America ("RIAA"), or what they define as the "Major Labels" (i.e., Warner Music Group, EMI, Sony BMG, and Universal Music Group and their subsidiaries and related entities; and (ii) to take my deposition as Chairman and CEO of QTrax.

8. Given what I understand about this action, however, there appears to be no basis for requiring the production of documents from QTrax or taking my deposition. The Subpoena, instead, appears to be designed to harass and inconvenience QTrax and force QTrax to produce confidential business information to Defendant Lime Wire, a *competitor* of QTrax.

9. Upon information and belief, the instant case involves a dispute between plaintiffs 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”), and Defendants.

10. Defendants developed and distribute a peer-to-peer (“P2P”) music platform called Lime Wire that allows users to share and download music tracks from other users.

11. On information and belief, Plaintiffs, the major record labels, have sued Defendants for vicarious and contributory copyright infringement resulting from the file sharing process that Lime Wire facilitates.

12. Recently, QTrax has emerged as a new, “legal” P2P ad-supported music platform that will allow its registered users to share music tracks under licensing agreements that QTrax is negotiating with certain record labels.

13. In order to offer the first “legal” file sharing platform, QTrax is still currently, painstakingly negotiating or soliciting licensing agreements with major record labels, including many of the Plaintiffs to this action.

14. QTrax has invested significant effort in both the platform’s design and in negotiating licensing agreements to ensure that QTrax will *not* vicariously infringe upon any copyrights or facilitate any copyright infringement.

15. QTrax’s platform is currently still in “Beta” testing, and has yet to officially launch. To that effect, none of the Plaintiffs’ copyrighted music appears on or is available for download from QTrax’s site.

16. Qtrax and Lime Wire directly compete as P2P music file sharing platforms.

17. Not only are QTrax and Lime Wire direct competitors, but a recent, public interaction displayed precisely how hostile relations are between the two companies.

18. Defendants' motivation for serving this non-party Subpoena upon QTrax thus cannot be more apparent. Using this litigation as a vehicle, Defendants are trying to harass and gain an unfair business advantage over QTrax, its only prospective, legally operating competitor, by acquiring "[a]ll documents that refer, relate, or pertain to any agreement, draft or otherwise, with any of the Plaintiffs, the RIAA or the Major Labels."

19. Clearly, pre-launch disclosure of information relating to its contracts and communications with the music industry to a key competitor (the Defendants) – and to the record labels QTrax is (and is not) negotiating licensing agreements with (i.e., the Plaintiffs) – would compromise existing and potential contracts and the successful launch of its product. Furthermore, granting Defendants access to its confidential communications and contracts with the record labels would give Defendants an unfair business advantage over QTrax and impair Qtrax's ability to compete in the P2P music market.

20. The information Defendants seek to obtain from QTrax thus constitutes confidential, proprietary information that would provide Defendants with an unfair business advantage over QTrax, would impair QTrax's contractual and business relations with major music industry players, and could be financially devastating to QTrax.

21. That Lime Wire is acting in bad faith, and seeks to obtain confidential business information from QTrax and secure to itself an unfair business advantage, is also evidenced by

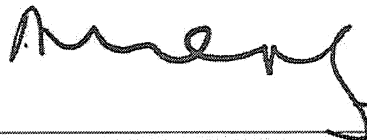
the comments made to me by Lime Wire's Director of Business Operations, Brian Dick on February 27, 2008, where I spoke at the Digital Music Forum East in New York. After my comments, in which I observed that members of the press had "crucified" QTrax in connection with delays in QTrax's attempts to launch its platform, Mr. Dick approached me and said, in substance, "I hope the press will crucify you a second time" and abruptly walked away. The Subpoena was served on QTrax the following week.

22. I also wish to point out that the Subpoena is very broad and places an undue burden on QTrax because any relevant, non-confidential information requested by the Subpoena could have been (and likely was) requested by Defendants in its discovery requests to the Plaintiffs in the underlying litigation.

23. Accordingly, as a non-party, QTrax should be protected from this onerous request in Defendants' Subpoena. QTrax respectfully requests that this Court quash the Subpoena.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14 th day of March, 2008.



ALLAN KLEPFISZ