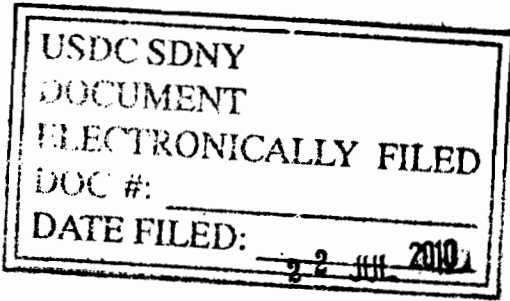


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



----- X
DOMINO RECORDING COMPANY, INC. and :
INDEPENDIENTE, LTD., :

Plaintiffs, :
-against- :

INTERSCOPE GEFLEN A&M RECORDS, a :
division of UMG RECORDINGS, INC., WILLIAM :
B. ROSE, professionally known as AXL ROSE, :
BRIAN P. CARROLL, RON THAL, PAUL HUGE, :
ROBIN FINCK, BRYAN MANITA, THOMAS E. :
STINSON and DARREN A. REED, professional :
known as GUNS 'N ROSES, and CHRISTOPHER :
PITMAN., :

Defendants. :

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09 cv 8400 (GBD)

MEMORANDUM
DECISION and ORDER

GEORGE B. DANIELS, District Judge:

Plaintiffs Domino Recording Company Inc., (“Domino”) and Independiente Ltd., (“Independiente”) bring this copyright infringement action against all Defendants. Plaintiffs allege that Defendants used without authorization two sound recordings owned and controlled by Plaintiffs in the creation, production, manufacture, distribution, and commercial exploitation of a sound recording. Defendant Interscope Geffen A&M Records (“Interscope”), moves to dismiss the Complaint pursuant to Fed. R. Civ. P. 8(a) and 12(b)(6). Defendant’s motion to dismiss is denied.

Under the Federal Rules of Civil Procedure, a claimant must only provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). In assessing the sufficiency of plaintiff’s complaint under Rule 12(b)(6), this Court must “draw all inferences in the light most favorable to the non-moving party.” In re NYSE Specialists Sec. Litig., 503 F.3d 90, 95 (2d Cir. 2007). The Court’s task on a Rule 12b(6) motion “is merely to

assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.” Ortiz v. Guitian Brothers Music, Inc., 2009 WL 2252107 at *2 (S.D.N.Y. 2009). In order to withstand a motion to dismiss, a plaintiff must set forth in the complaint “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. V. Twombly, 550 U.S. 544, 936 (2007). See also Ashcroft v. Iqbal, 129 S. Ct. 1937, (2009). To state a *prima facie* case for copyright infringement, Plaintiffs must allege “(1) the specific original works that are the subject of the copyright claim, (2) that plaintiff owns the copyrights in those works, (3) that the copyrights have been registered in accordance with the statute, and (4) by what acts during what time the defendant infringed the copyright.” Kelly v. LL Cool J, 145 F.R.D.. 32, 36 (S.D.N.Y. 1992). See also Feist Publ’ns, Inc.v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991).

The allegations of the Complaint sufficiently set forth the necessary elements of a copyright infringement claim. In the Complaint Plaintiffs allege that they own the copyrights in two specified sound recordings, entitled “Wherever You Are” and “A Strangely Isolated Place;” that copyright registrations have been duly obtained; that Defendants produced, manufactured, reproduced and distributed a specified recording entitled “Riad ’N the Bedouins” performed and recorded by the recording group Guns ’N Roses and included on an album entitled “Chinese Democracy;” and that Defendants’ recording contains copies of Plaintiffs’ sound recordings without authority having been obtained to do so.

Accordingly, the allegations contained in the Complaint are sufficient to put all Defendants on notice of Plaintiffs’ copyright infringement claims. Defendants’ motion to dismiss is denied.

Dated: July 21, 2010
New York, New York

21 JUL 2010

George B. Daniels
HONORABLE GEORGE B. DANIELS
GEORGE B. DANIELS
United States District Judge