

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

v.

Case No. 09 Civ 08400 (GBD)

ANSWER

INTERSCOPE GEFFEN 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 MANTIA, THOMAS :
E. STINSON and DARREN A. REED, :
professionally known as GUNS ‘N ROSES, and :
CHRISTOPHER PITMAN, :

Defendants.

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Defendants Interscope Geffen A&M Records, a division of UMG Recordings, Inc. (“Interscope”), William B. Rose p/k/a Axl Rose, Brian P. Carroll, Ron Thal, Paul Huge, Robin Finck, Bryan Mantia, Thomas E. Stinson, Darren A. Reed and Christopher Pitman (collectively, “Defendants”), by and through their attorneys, Jenner & Block LLP, as and for their answer to the complaint dated October 2, 2009 (the “Complaint”) of plaintiffs Domino Recording Company, Inc. and Independiente, Ltd. (collectively, “Plaintiffs”), respond as follows:

SUMMARY OF ACTION

1. In response to the allegations contained in paragraph 1 of the Complaint, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to Plaintiffs’ motivation in bringing this action or Plaintiffs’ ownership and control of the two sound recordings, but deny the allegations as they relate or pertain to any wrongdoing by Defendants.

THE PARTIES

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint, except admit that Interscope is a division of UMG Recordings, Inc., which is a Delaware corporation, and except admit that Interscope is engaged in the business of producing and commercially exploiting sound recordings.
5. Admit the allegations contained in paragraph 5 of the Complaint.
6. Admit the allegations contained in paragraph 6 of the Complaint.
7. Admit the allegations contained in paragraph 7 of the Complaint.
8. Admit the allegations contained in paragraph 8 of the Complaint.
9. Admit the allegations contained in paragraph 9 of the Complaint.
10. Admit the allegations contained in paragraph 10 of the Complaint.
11. Admit the allegations contained in paragraph 11 of the Complaint.
12. Admit the allegations contained in paragraph 12 of the Complaint.
13. Deny the allegations contained in paragraph 13 of the Complaint, except admit that defendants Rose, Carroll, Thal, Huge, Finck, Mantia, Stinson and Reed have all professionally recorded music and performed as the band Guns N' Roses, and are credited as musicians on the album entitled "Chinese Democracy" (the "Album").

14. Admit the allegations contained in paragraph 14 of the Complaint.

15. Deny the allegations contained in paragraph 15 of the Complaint, except admit that Pitman contributed to and financially benefitted from the production of certain musical performances on the Album.

JURISDICTION AND VENUE

16. A response is not required from Defendants as to the statement contained in paragraph 16 of the Complaint as it states a legal conclusion.

17. A response is not required from Defendants as to the statement contained in paragraph 17 of the Complaint as it states a legal conclusion, but Defendants deny that a substantial part of the events giving rise to the claims herein occurred in the Southern District of New York.

BACKGROUND

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint

23. Deny the allegations contained in paragraph 23 of the Complaint, except admit that in or around November 2008, Interscope released the Album.

24. Deny the allegations contained in paragraph 24 of the Complaint.

25. Deny the allegations contained in paragraph 25 of the Complaint, except admit that the sound recording entitled “Riad N’ the Bedouins” (the “Recording”) and the Album, which embodies the Recording, were manufactured and distributed by Interscope and that sales of the Recording and Album have taken place within this judicial district.

26. Deny the allegations contained in paragraph 26 of the Complaint, except admit that the Recording has sold more than one million copies worldwide.

27. Deny the allegations contained in paragraph 27 of the Complaint, except admit that certain defendants were involved in the creation, production, and distribution of both the Recording and the Album.

28. Deny the allegations contained in paragraph 28 of the Complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.

30. Deny the allegations contained in paragraph 30 of the Complaint.

31. In response to the allegations contained in paragraph 31 of the Complaint, Defendants admit that Plaintiffs sent a letter to Interscope dated February 26, 2009 and respectfully refer the Court to Exhibit 2 for a full and complete recitation of the contents therein.

32. Deny the allegations contained in paragraph 32 of the Complaint.

33. In response to the allegations contained in paragraph 33 of the Complaint, Defendants deny that they had any duty to comply with Plaintiffs' demands set forth in the February 26, 2009 letter and deny the remaining allegations as they relate or pertain to any wrongdoing by Defendants.

34. Deny the allegations contained in paragraph 34 of the Complaint.

35. Deny the allegations contained in paragraph 35 of the Complaint.

**AS AND FOR A
FIRST CLAIM FOR RELIEF
(Copyright Infringement)**

36. In response to the allegations contained in paragraph 36 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 35 of the Complaint as if fully set forth herein.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. Deny the allegations contained in paragraph 38 of the Complaint.

39. Deny the allegations contained in paragraph 39 of the Complaint.

40. Deny the allegations contained in paragraph 40 of the Complaint.

41. Deny the allegations contained in paragraph 41 of the Complaint.

42. Deny the allegations contained in paragraph 42 of the Complaint.

43. Deny the allegations contained in paragraph 43 of the Complaint.

44. Deny the allegations contained in paragraph 44 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Defendants upon which any relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by license.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims fail because any alleged use of Plaintiffs' allegedly infringed work constitutes *de minimis* or fair use thereof.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claim and prayer for relief is barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed by virtue of Plaintiffs' unclean hands.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Any harm alleged to have been suffered by Plaintiffs is the result of acts or omissions on the part of persons over whom Defendants have no control.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

In the event of a finding of infringement, if any, any such infringement by Defendants was innocent.

WHEREFORE, Defendants respectfully request that the Court:

- A. Dismiss Plaintiffs' Complaint against Defendants in its entirety with prejudice, and award judgment to Defendants;

- B. Award Defendants their reasonable costs and attorneys' fees incurred in having to defend this action, pursuant to 17 U.S.C. § 505; and
- C. Award Defendants such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 20, 2010

JENNER & BLOCK LLP

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Records, a division of UMG Recordings, Inc.,
William B. Rose p/k/a Axl Rose, Brian P. Carroll,
Ron Thal, Paul Huger, Robin Finck, Bryan Mantia,
Thomas E. Stinson, Darren A. Reed and
Christopher Pitman*

CERTIFICATE OF SERVICE

I, Carletta F. Higginson, hereby certifies that on this 20th day of August, 2010, I caused a true copy of the foregoing **Answer** to be served via this Court's Electronic Case Filing system upon:

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Attorneys for Plaintiffs

Dated: New York, New York
August 20, 2010

s/Carletta F. Higginson
Carletta F. Higginson