

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC, CAPITOL	:	12 Civ. 0095 (RJS)
CHRISTIAN MUSIC GROUP, INC. and	:	
VIRGIN RECORDS IR HOLDINGS, INC.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
REDIGI INC., JOHN OSSENMACHER and	:	
LARRY RUDOLPH a/k/a LAWRENCE S.	:	
ROGEL,	:	
	:	
Defendants.	:	
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REPLY DECLARATION OF ALASDAIR J. McMULLAN, ESQ.

ALASDAIR J. McMULLAN, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am Senior Vice President of Universal Music Group (“UMG”), with responsibility for managing and supervising litigation for UMG and its affiliates, including Plaintiff Capitol Records, LLC (formerly Capitol Records, Inc.) (“Capitol”) and Capitol Christian Music Group, Inc. (“CCMG”). I submit this reply declaration in further support of Plaintiffs’ motion *in limine* excluding Defendants from challenging Plaintiffs’ ownership of the sound recordings at issue in this case.

The MEA and Recordings 197-353

2. In Defendants’ opposition to Plaintiffs’ *in limine* motion regarding ownership, they challenge one category of works in which Capitol claimed ownership as an exclusive U.S. licensee by virtue of the Matrix Exchange Agreement, or “MEA” (recordings 197-353 in Plaintiffs’ Trial Exhibit 39). Defendants contend that the MEA was signed by EMI Music International Services Limited (“EMIMIS”), which is not listed as the copyright owner for the works in question on the certificates of registration.

3. The MEA was entered into in recognition of the fact that EMI Group plc and its various subsidiaries (collectively, the “EMI Group”) operate as an international music company owning rights to sound recordings in many different countries around the world. In order to organize such holdings in an efficient manner, the MEA generally provided for the rights in a particular country to be held by a subsidiary of the EMI Group in that country. Schedule 1 to the MEA lists the particular subsidiaries (identified as “Repertoire Owners”) that controlled the rights in each particular country with respect to all of the recordings owned around the world by the EMI Group. In the United States, such entity was Capitol.

4. Each of the Repertoire Owners signed the same form MEA with EMIMIS that was contained in Plaintiffs’ Trial Exhibit 81. Under that agreement, EMIMIS granted an exclusive license to such Repertoire Owner for the particular country in which it was located. Under paragraph 16 of the MEA, the Repertoire Owner in turn granted a reciprocal exclusive license to EMIMIS (and its subsidiary licensees) everywhere outside the Repertoire Owner’s own exclusive territory. By virtue of these reciprocal exclusive licenses, each of the listed Repertoire Owners outside the United States has exclusively licensed EMIMIS and in turn Capitol the United States rights to the recordings owned by such Repertoire Owner. Those licenses remained in effect during the relevant period of infringement in this case before the MEA between EMIMIS and Capitol was terminated effective as of April 1, 2013 and replaced by a similar agreement between and among UMG entities.

5. Accordingly, through operation of the MEA, Capitol did in fact receive an exclusive U.S. license tracing back to each of the Repertoire Owner that owned the copyright to recordings 197-353 in Plaintiffs’ Trial Exhibit 39 as of the time of Defendants’ infringement. Relevant portions of the versions of the MEA agreement signed between EMIMIS and such

Repertoire Owners – Virgin Records Ltd.; EMI Music Sweden AB; EMI Music France SA; EMI Group Canada Inc.; and EMIMIS Music Mexico, S.A. – are included in a replacement version of Plaintiffs’ Trial Exhibit 81 (along with the agreement reflecting termination of the EMIMIS/Capitol MEA) submitted to the Court on disk in connection with Plaintiffs’ reply papers in support of their motions *in limine*. Each of these agreements contained the same type of reciprocal license contained in the MEA agreement between EMIMIS and Capitol, and thus exclusively licensed to EMIMIS the United States rights owned by such Repertoire Owners in recordings 197-353 of Plaintiffs’ Trial Exhibit 39.

The Warner Divestiture

6. Defendants also argued in their Pretrial Memorandum (although not specifically in their opposition to Plaintiffs’ *in limine* motion on ownership) that Plaintiffs may have conveyed or sold their right to sue for the infringements at issue. Presumably, Defendants are alluding to the fact that some of the repertoire owned by Capitol or related EMI companies was divested and sold to Warner Music in July 2013 as a result of the UMG acquisition of EMI’s recorded music business. However, the applicable EMI/Warner agreement (relevant portions of which are included on a disk submitted to the Court with this motion and referenced as Plaintiffs’ Trial Exhibit 234) provides in paragraph 12.6 that the EMI companies retain the conduct, cost and benefit of any infringing digital services infringement claims brought prior to the completion of the EMI/Warner transaction, regardless of whether the EMI company continues to own the repertoire cited in such claims after the completion of the EMI/Warner transaction. Because this case was filed against ReDigi in January 2012, Capitol retains the right to sue for the past

infringements of recordings that may have been subsequently acquired by Warner Music in the EMI/Warner Music transaction.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON MARCH 23, 2016 AT SANTA MONICA, CALIFORNIA.

A handwritten signature in black ink, appearing to read 'ALASDAIR J. McMULLAN', written over a horizontal line.

ALASDAIR J. McMULLAN