

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
 CAPITOL RECORDS, LLC, :
 :
 Plaintiff, :
 :
 -against- :
 :
 REDIGI INC., :
 :
 Defendant. :
 :
 ----- X

12 Civ. 0095 (RJS)

**REPLY DECLARATION OF
RICHARD S. MANDEL, ESQ.
[FILED UNDER SEAL]**

RICHARD S. MANDEL, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a shareholder in the firm of Cowan, Liebowitz & Latman, P.C., which represents Plaintiff Capitol Records, LLC (“Capitol”) in this matter. I submit this reply declaration in further support of Capitol’s motion for partial summary judgment. I am familiar with the facts set forth in this declaration based on my personal knowledge and the documents attached hereto as exhibits.

2. Attached hereto as Exhibit 1 are relevant excerpts from ReDigi’s responses to Capitol’s first set of document requests.

3. Capitol’s request number 22 called for: “All documents concerning the lawfulness or unlawfulness of any services offered by ReDigi, including documents concerning whether ReDigi or any services offered by ReDigi may violate copyright or other intellectual property laws.” Capitol’s request 23 called for: “All documents supporting the statements on the ReDigi Website posted under the heading “ReDigi™ ... The Legal Alternative,” including, without limitation, all legal opinions and analyses on which such statements are based. In response to both request 22 and 23, ReDigi asserted attorney-client privilege and attorney-work product privilege.

4. Although Mr. Ossenmacher testified at his deposition that ReDigi had received favorable opinions from counsel regarding the legality of its proposed service, and had advised potential investors of that fact, ReDigi never produced any such opinion letters in discovery, either in response to Capitol's discovery requests or to follow-up requests made by Capitol during Mr. Ossenmacher's deposition and following such deposition. Attached hereto as Exhibit 2 are relevant excerpts from Mr. Ossenmacher's deposition concerning such opinion letters, as well as my July 3, 2012 email to ReDigi's counsel following up on the request made during the deposition.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON AUGUST 21, 2012 AT NEW YORK, NEW YORK.


RICHARD S. MANDEL