

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

GIBSON GUITAR CORPORATION,

Plaintiff,

v.

AMAZON.COM, INC., GAMESTOP
CORPORATION, TOYS-R-US INC.,
WAL-MART STORES, INC.,
TARGET CORPORATION, AND
KMART CORPORATION, SEARS
ROEBUCK & CO, HARMONIX
MUSIC SYSTEMS, INC., MTV
NETWORKS, and ELECTRONIC
ARTS INC.,

Defendants.

Civil Action No. 3:08-0279

United States District Judge
Thomas A. Wiseman, Jr.

United States Magistrate Judge
Juliet Griffin

DECLARATION OF MARK A. SAMUELS
IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT
AS TO THE VIACOM DEFENDANTS

I, MARK A. SAMUELS, declare and state:

1. I am an attorney licensed to practice law in the State of California, and am a member of the law firm of O'Melveny & Myers LLP, counsel of record for defendants Harmonix Music Systems, Inc., Viacom International Inc. (erroneously named herein as "MTV Networks"), and Electronic Arts, Inc. ("EA") (collectively, the "Viacom Defendants"). I make this Declaration in support of the Viacom Defendants' Motion to Dismiss Amended Complaint as to the Viacom Defendants. I have personal knowledge of the facts stated herein and, if called as a witness, would competently testify thereto.

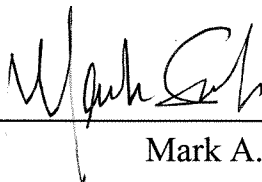
2. Plaintiff Gibson Guitar Corporation ("Gibson") has filed identical claims against the Viacom Defendants in two lawsuits pending in this Court: This action, and the action styled *Gibson Guitar Corp. v. Harmonix Music Systems, Inc., et al.*, Civil Action No. 3:08-0294 ("the Standalone Action"). Answers to the complaint in the Standalone Action were filed on behalf of the Viacom Defendants on April 14 and 20, 2008. These Answers were filed when Gibson failed to dismiss the Standalone Action as it had previously suggested it might do.

3. On May 1, 2008, I sent an email to Gibson's counsel, Matthew Siegel, pointing out that the claims against the Viacom Defendants were duplicative of Gibson's claims against them in the Standalone Action, and I asked Mr. Siegel to dismiss Gibson's claims against the Viacom Defendants on that basis. Mr. Siegel declined, stating that "we [Gibson] are not 'dismissing' anything or giving up any of our rights." Attached

hereto as Exhibit A is a true and correct copy of the email exchange between me and Mr. Siegel.

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

Executed this 6th day of May, 2008, at Los Angeles, California.



Mark A. Samuels

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