

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
CAPITOL RECORDS, INC. et al.,)	
)	Civ. Act. No. 03-cv-11661-NG
Plaintiffs,)	(LEAD DOCKET NUMBER)
)	
v.)	
)	
NOOR ALAUJAN,)	
)	
Defendant.)	
_____)	
)	
SONY BMG MUSIC ENTERTAINMENT, et al.)	
)	Civ. Act. No. 07-cv-11446-NG
Plaintiffs,)	(ORIGINAL DOCKET NUMBER)
)	
v.)	
)	
JOEL TENENBAUM)	
)	
Defendant.)	
_____)	

DEFENDANT'S FIRST AMENDED COUNTERCLAIM

Pursuant to Fed. R. Civ. P. 13, Defendant Joel Tenenbaum submits the following amended counterclaim against all Plaintiffs of record in this case. Concurrent with this filing, Defendant is also filing a Motion to Add the Recording Industry Association of America ("RIAA") as a counterclaim defendant. Defendant asserts the following counterclaim against RIAA as well.

JURISDICTION AND VENUE

1. This is a federal counterclaim seeking actual damages and such punitive damages as the Court sees fit for abuse of federal process.

2. This Court has jurisdiction to redress Defendant for such abuse under its inherent authority. *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764-765; *Nationwide Charters and Conventions, Inc. v. Garber*, 254 F.Supp 85 (D. C. Mass. 1966).

3. Defendant alternatively asserts a counterclaim against Plaintiffs under state law for abuse of process. *Am. Mgmt. Servs. v. George S. May Int'l*, 933 F. Supp. 64, 68 (D. Mass. 1996).

4. This Court has supplemental jurisdiction for the state counterclaim. 28 U.S.C. § 1367.

PARTIES

5. Defendant and counterclaim Plaintiff Joel Tenenbaum is a Massachusetts resident with his primary residence in Massachusetts.

6. Plaintiffs and counterclaim Defendants Sony BMG Music Entertainment, Warner Bros. Records Inc., Atlantic Recording Corporation, Arista Records LLC, and UMG Recordings are corporations or partnerships organized under the laws of Delaware, each with respective principal places of business identified in Plaintiffs' Complaint (Case # 1:07-cv-11446-NG; Doc. No. 1).

7. On information and belief, counterclaim Defendant RIAA is a trade association controlled by the five above-identified counterclaim Defendants. The Plaintiffs of record and RIAA will collectively be referred to herein as "Plaintiffs."

COUNT 1: ABUSE OF FEDERAL PROCESS

8. Plaintiffs filed a civil action on September 8, 2003, seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C §101 et seq.). Plaintiffs alleged that Joel Tenenbaum violated their rights of reproduction and distribution by using an online media distribution system to download Copyrighted Recordings. Plaintiffs specified the seven recordings alleged to have been downloaded by Defendant in Exhibit A of the Complaint.

9. Plaintiffs used the federal process against Defendant when they: initiated this lawsuit, submitted discovery and production requests, issued subpoenas, and conducted depositions.

10. On information, belief, and evidence submitted concurrently in "Defendant's Reponse to Plaintiffs' Motion to Dismiss," Plaintiffs did not file this suit primarily to seek redress against Defendant for harm that he allegedly caused.

11. Plaintiffs filed this suit primarily to advance ulterior purposes. On information and belief, these ulterior purposes include, but may not be limited to:

-Unlawfully sacrificing Defendant to intimidate other Internet users into altering the norms of Internet usage.

-Unlawfully sacrificing Defendant to intimidate other accused infringers into settling without exercising their constitutional right to have their defenses heard in court.

12. In their attempts to advance their ulterior purposes, Plaintiffs abused prosecutorial discretion unconstitutionally conferred upon them by Congress and abused a statutory scheme providing for unconstitutional damages.

13. Plaintiffs reserve the right to further identify other ulterior purposes after conducting discovery.

14. The conduct against Defendant has caused and is causing actual harm to Defendant and his family. This harm includes, but is not limited to:

a) Money spent preparing court filings, traveling to and from court, traveling to and from depositions, traveling to and from meetings with counsel, and other expenses;

b) Countless hours devoted to proceeding *pro se* during the initial stages of this litigation;

- c) Being submitted to extensive depositions, discovery requests, and interrogatory requests;
 - d) Being forced to miss school and work;
 - e) Being subjected to numerous harassing, intimidating, and at times insulting telephone communications from opposing counsel;
 - f) Being subjected to the stigma of being a defendant in a federal lawsuit.
15. Defendant prays for judgment against Plaintiffs for:
- a) actual damages incurred;
 - b) such punitive damages as the Court, through judge or jury, sees fit; and
 - c) to such other and further relief, at law or in equity, general or special, to which Defendant may be entitled.

Dated: October 27, 2008

Respectfully submitted,




Charles R. Nesson
1575 Massachusetts Avenue
Cambridge, MA 02138
E-mail: nesson@law.harvard.edu
Telephone: (617) 495-4609

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, Charles Nesson, hereby certify that on October 27, 2008, a true copy of the above document will be served electronically on counsel for Plaintiffs.



Charles R. Nesson
1575 Massachusetts Avenue
Cambridge, MA 02138
E-mail: nesson@law.harvard.edu
Telephone: (617) 495-4609

ATTORNEY FOR DEFENDANT