

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----x

ELEKTRA ENTERTAINMENT GROUP INC.,
et al,

Civil Action No. CV 06 3533
(DGT)(RML)

Plaintiff,

**DEFENDANT DEMANDS
TRIAL BY JURY**

-against-

RAE J. SCHWARTZ,

Defendant.

**ANSWER AND
COUNTERCLAIM**

-----x

Defendant, for her answer to the complaint, by her attorneys Vandenberg & Feliu, LLP,
sets forth:

- 1. Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs 4, 5, 6, 7, 8, 9, 12, 13, and 15.
- 2. Admits paragraphs 3 and 10, except denies that any acts of infringement by defendant occurred in this District or anywhere else.
- 3. Neither admits nor denies paragraphs 1, 2, and 11.
- 4. Denies the allegations of paragraphs 14, 16, 17, and 18.

FIRST AFFIRMATIVE DEFENSE

- 5. The complaint fails to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

_____6. Statutory damages sought by plaintiffs in the amount of \$750 per song title are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained.

THIRD AFFIRMATIVE DEFENSE

7. The plaintiffs are guilty of laches, waiver, and estoppel.

FOURTH AFFIRMATIVE DEFENSE

8. The alleged conduct constituted fair use.

FIFTH AFFIRMATIVE DEFENSE

9. The plaintiffs, who are competitors, are a cartel acting collusively in violation of the antitrust laws and of public policy, in an attempt to expand their monopoly power into the area of online digital music, by tying their copyrights to each other, collusively litigating and settling all cases together, and by entering into an unlawful agreement among themselves to prosecute and to dispose of all cases in accordance with a uniform agreement, and through common lawyers, thus overreaching the bounds and scope of whatever copyrights they might have.

10. As such, they are guilty of misuse of their copyrights.

SIXTH AFFIRMATIVE DEFENSE

11. The plaintiffs have engaged in a conspiracy to defraud the Courts of the United States, by bringing lawsuits against persons who are not known to have infringed copyrights, and to make false and unsupported allegations that the defendants have infringed copyrights; by utilizing a corporation known as Settlement Support Center LLC to make extortionate threats of criminal action and of defaming defendants' names and credit; by conducting ex parte "John Doe" lawsuits which they have no intention of pursuing, but in which they interact with Judges, Magistrates, and other officials on a daily basis, without notice or opportunity to be heard being offered to defendants; by bringing the "John Doe" lawsuits in jurisdictions far removed from the domiciles of the "John Does" so that they have no meaningful opportunity to be heard or to retain

counsel of their own choosing; by sending out press releases for the purpose of humiliating, embarrassing, and extorting; and by other unconscionable conduct.

12. As such, they are guilty of misuse of their copyrights. _____

SEVENTH AFFIRMATIVE DEFENSE

13. Plaintiffs are guilty of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

14. Upon information and belief, the alleged conduct was authorized.

NINTH AFFIRMATIVE DEFENSE

15. Upon information and belief, any harm, if any, which was sustained by plaintiffs was as a result of their own culpable conduct.

COUNTERCLAIM

16. Defendant is a resident of the County of Queens.

17. Upon information and belief, plaintiff Elektra Entertainment Group Inc. is a Delaware corporation.

18. Upon information and belief, plaintiff Interscope Records is a general partnership.

19. Upon information and belief, plaintiff UMG Recordings, Inc. is a Delaware corporation.

20. Upon information and belief, plaintiff SONY BMG Music Entertainment is a general partnership.

21. Upon information and belief, plaintiff BMG Music is a general partnership.

22. Upon information and belief, plaintiff Arista Records LLC is a Delaware limited liability company.

23. This claim arises under the Copyright Laws of the United States.

24. Jurisdiction in this Court is proper under 28 U.S.C. 1338(a) by reason of the fact that the claim arises under the Copyright Laws of the United States.

25. On or about July 18, 2006, plaintiffs commenced an action for copyright infringement against defendant (the "Infringement Action").

26. Upon information and belief, the plaintiffs' only evidence to support its claim against defendant was (a) her status as an account holder with an internet service provider, and (b) a screen shot of a peer-to-peer file sharing 'shared files folder' which used a dynamic IP address which plaintiffs' investigators claim to have been accessed by the internet access account paid for by defendant.

27. Defendant has placed plaintiffs on notice that she has no knowledge of file sharing, and has never shared files or downloaded song files at any time, and has indicated to plaintiffs that she has a young teenage daughter who, along with her friends, has access to the computer.

28. Plaintiffs nevertheless have refused to withdraw the Infringement Action against defendant and have continued to prosecute said action.

29. Plaintiffs have a pattern and practice of the action complained of by defendant in her counterclaim. See, e.g. *Atlantic Records v. Andersen*, 05-cv-933 Dist. of Oregon, *Atlantic v. Zuleta*, 06-cv-1221 ND GA, *Capitol Records v. Debbie Foster*, 04-1569-W, USDC, WD OK; *Elektra v. Wilke*, 06-cv-2717 N.D. IL, *Priority Records LLC v. Candy Chan*, 04-cv-73645 E.D. Michigan, *Virgin Records v. Marson*, 05-cv-03201 C.D.CA, *Warner v. Scantlebury*, 05-cv-74394 E.D. Michigan. See *amicus* brief of ACLU, Public Citizen, Electronic Frontier Foundation, American Association of Law Libraries, and ACLU Foundation of Oklahoma, submitted in

Capitol Records v. Foster, supra. (Exhibit A hereto).

30. Plaintiffs' practice is akin to extortion.

31. Pursuant to Copyright Act § 505, defendant is entitled to be awarded her attorneys fees in defending this frivolous suit.

WHEREFORE defendant demands judgment (a) dismissing the complaint; (b) awarding her costs, disbursements, and the costs of defense – including reasonable attorneys fees – under Article 17 of the United States Code; and (c) such other and further relief as to the Court seems proper.

Dated: New York, New York
October 28, 2006

VANDENBERG & FELIU, LLP

By: _____/s/
Ray Beckerman (RB 8783)
Attorneys for Defendant
110 East 42 Street
New York, NY 10017
(212) 763-6800

To: Robinson & Cole LLP, Esqs.
Attorneys for Plaintiffs
855 Third Avenue, Suite 2800
New York, NY 10022
(212)451-2900