

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
UMG RECORDINGS, INC.,

Plaintiff,

- against -

ESCAPE MEDIA GROUP, INC.
Defendant.
-----X

Civil Action No.

10100152

SUMMONS

FILED
JAN 06 2010
COUNTY CLERK'S OFFICE
NEW YORK

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve your Answer on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the date of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded therein.

Plaintiffs designate New York County as the place of trial. Venue is based on C.P.L.R. §§ 503 and 509.

Dated: January 6, 2010
New York, New York

JENNER & BLOCK LLP

By: Andrew H. Bart

Andrew H. Bart

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COMPLAINT

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Plaintiff UMG Recordings, Inc. ("UMG"), by and through its undersigned attorneys,
alleges as follows:

NATURE OF THE ACTION

1. UMG is the owner or exclusive United States licensee of the rights in sound recordings recorded prior to February 15, 1972 ("Pre-1972 Recordings") of some of the most popular and successful recording artists of the 20th Century, such as Buddy Holly, The Carpenters, Cat Stevens, Chuck Berry, The Jackson Five, The Mamas and the Papas, Marvin Gaye, The Supremes, The Temptations, and The Who.¹ The recordings of these artists defined more than their generation as they remain immensely popular and valuable to this day.

2. Defendant Escape Media Inc. owns and operates the website www.grooveshark.com (the "Grooveshark website"). Through this website, defendant infringes UMG's Pre-1972 Recordings by, among other things, reproducing and storing these copyrighted sound recordings on its own servers as part of its extensive catalog of infringing music and then distributing copies of those recordings to the users of that website. Defendant uses the lure of free

¹ Pre-1972 Recordings are subject to protection exclusively under state law (including the law of the State of New York) and are not subject to or governed by the federal Copyright Act. UMG seeks redress in this litigation only for Pre-1972 Recordings.

access to UMG's Pre-1972 Recordings as a draw to its service, thereby increasing the traffic to its website and its revenues. Defendant does this without the approval or permission of UMG and without any payment to UMG. In fact, defendant has boasted that it targets "the very segment of users that are bringing the labels to their knees with illegal downloading," *i.e.*, the users who seek pirated music for free on the Internet.

THE PARTIES

3. UMG is a Delaware corporation with its principal place of business in Santa Monica, California, and transacts business in the state of New York.

4. Defendant is a Delaware corporation with its principal place of business in Gainesville, Florida.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over defendant. Defendant has chosen to direct its infringing activities at New York, including by entering into contracts and other arrangements with residents of New York and by enabling New York residents to upload copies of copyrighted works and to access infringing files, technical support, and other services through defendant's website. The many acts of infringement for which defendant is liable require a high level of interaction between users, their computers, and defendant's website and servers. Thus, defendant does continuous and systematic business in New York and hence is present in New York, *see* N.Y. C.P.L.R. § 301. Further, Defendant transacts business in New York, and contracts to supply goods and services in New York in connection with the matters giving rise to this suit. *See id.* § 302(a)(1). In addition, upon information and belief, defendant has engaged in paid transactions with New York residents for the provision or sale of goods and services, including infringing materials. Thus, defendant expects or reasonably should expect its

infringing and other illegal conduct to have consequences in New York, and/or derive substantial revenue from interstate commerce. *See id.* § 302(a)(3).

6. Venue for this action is proper in this Court pursuant to N.Y. C.P.L.R. §§ 503 and 509.

UMG'S BUSINESS

7. UMG is among the world's largest and most respected companies in the music business with a diverse collection of record labels, such as Decca, Motown, MCA, Chess, Geffen, and A&M. UMG owns and/or possesses the sole, exclusive, and complete rights to an extensive catalog of Pre-1972 Recordings. (A non-exhaustive list of plaintiff's Pre-1972 Recordings is attached hereto as **Exhibit A** and incorporated herein by reference.).

8. UMG distributes, sells, and/or licenses to others the right to distribute and/or sell the Pre-1972 Recordings in the form of CDs, cassettes, and other tangible media throughout the United States, including in New York. UMG also sells and distributes its sound recordings in the form of digital audio files through legitimate and authorized Internet services, such as iTunes and Amazon, and licenses its sound recordings for on-line streaming in the form of digital audio files to legitimate and authorized Internet services, such as MySpace, and Rhapsody.

9. UMG has invested and continues to invest significant money, time, effort, and creative talent to create, manufacture, advertise, promote, sell, and license the Pre-1972 Recordings.

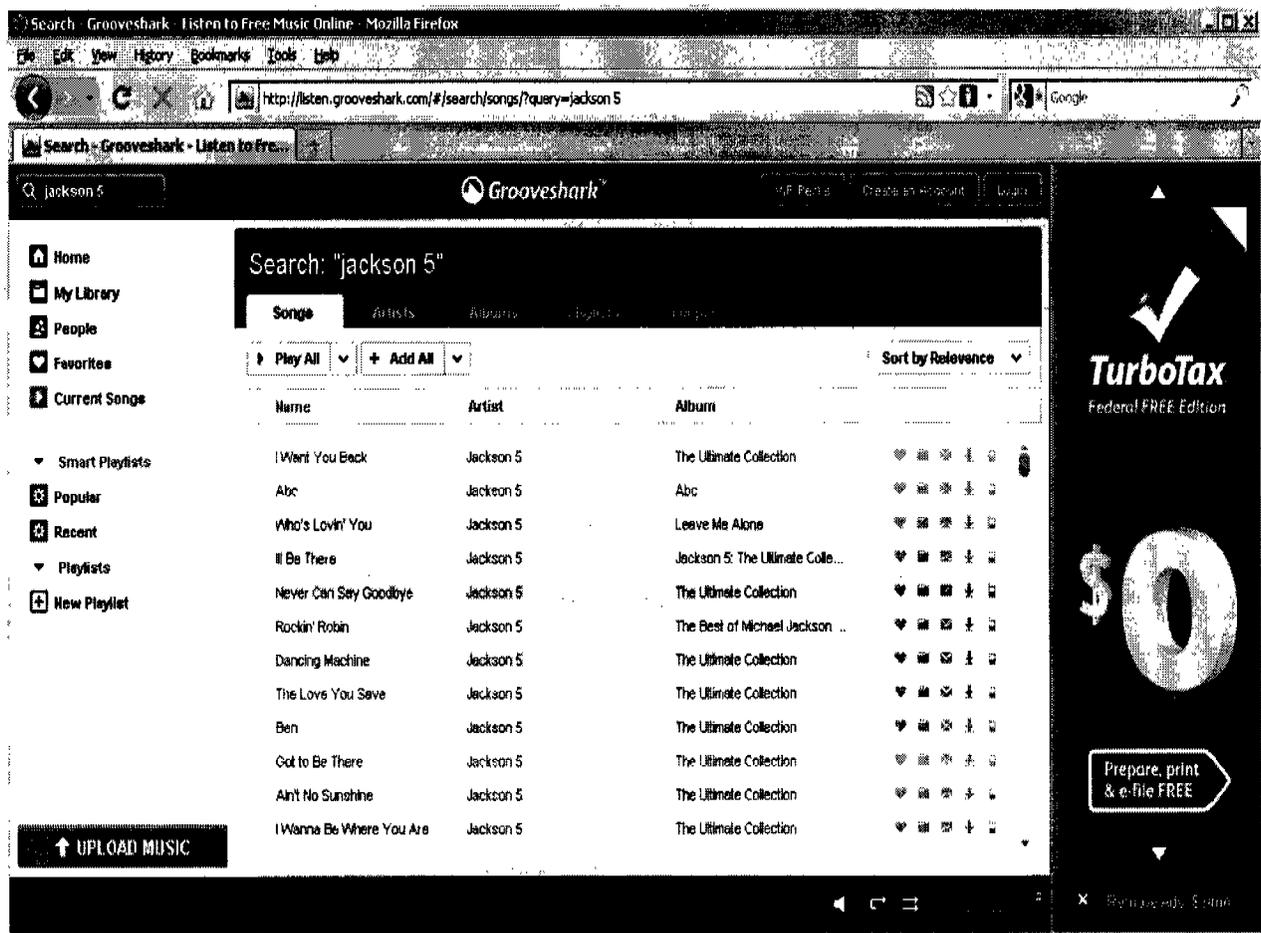
DEFENDANT'S INFRINGING CONDUCT

10. Defendant illegally reproduces and distributes the Pre-1972 Recordings via the Grooveshark website. Using its own proprietary software application known as "Sharklet," defendant enables and encourages its users to upload digital copies of the Pre-1972 Recordings

which defendant then copies to its servers. The process by which this is accomplished begins when a user accesses the Grooveshark website and clicks on the “add music” link. Defendant then prompts the user to upload a particular music file located on the user’s computer.

Defendant scans that file for “song information” including the name of the song and the artist, and then copies the file from the user’s computer and stores it on its own servers.

11. Thereafter, any user of the Grooveshark website who wants to obtain a copy of the Pre-1972 Recording can simply type the name of the song or artist and defendant will provide a list of the music files in the Grooveshark library matching those terms. For example, a user who searches for a popular artist such as the “JACKSON 5” will receive the following search results:



12. When a user clicks on a particular song from the search results provided by

defendant, a digital copy is sent by defendant from its servers to the user's personal computer where a copy is made on that user's computer and streamed for the user to listen to. As a result of defendant's infringing reproduction and distribution, users can obtain a copy of any song in the Grooveshark library on their personal computers almost instantaneously. At the same time that the user receives the infringing copy from defendant, a control bar appears on the user's computer screen that allows the user to pause, forward, rewind or replay the infringing recording at the discretion of the user.

13. Registered users of defendant's service also receive their own personal "library" where they can collect and organize songs available from defendant's servers for easy access and copying without the need to conduct additional searches to locate these songs. Through this library, users may obtain instant and permanent access to thousands of recordings reproduced and distributed by defendant with no compensation to UMG. They can also create personal playlists or a list of favorite songs or instantly access and reproduce the most popular songs reproduced and distributed by defendant to its users.

14. Defendant's website also provides users with tools designed to encourage and enable the distribution of infringing sound recordings virally over the Internet. Users of defendant's website are encouraged to upload sound recordings to defendant's servers and "share" them via email or through specially designed user-interfaces with popular social networking services such as Twitter, MySpace and Facebook.

15. Recently, defendant launched a "VIP" service through which it sells monthly subscriptions to users in exchange for certain enhanced features and benefits specifically designed to foster infringement. For example, defendant distributes copies of copyrighted sound recordings from its servers to the mobile phones of VIP users. Its marketing materials encourage

VIP users to “pick your favorite songs and store them on your phone to listen to even when your coverage drops.” Defendant also provides VIP users with additional storage capacity for their accounts allowing them to add up to “5000 Favorite songs and 50,000 songs” to their Grooveshark libraries for instant and permanent access to copyrighted works with no compensation to the copyright owners. Indeed, defendant specifically entices users to sign up for its VIP service with the promise of “10x More Music” and access to “the world’s music catalog, without interruption.” See webpages printed from www.grooveshark.com on December 29, 2009, attached hereto as **Exhibit B**.

16. Defendant openly promotes its Grooveshark service as providing users the ability to “find any song in the world and listen to it instantly.” Defendant’s website invites users to “sign up for a Grooveshark account and begin listening to millions of tracks for free.” See webpages printed from www.grooveshark.com on December 29, 2009, attached hereto as **Exhibit C**.

17. By copying and distributing thousands of works, the Grooveshark website has been able to attract hundreds of thousands of visitors each month, thereby allowing defendant to profit directly from its unlawful activities by, among other things: (a) selling advertisements that are displayed in conjunction with the sound recordings it unlawfully copies and distributes, and (b) selling monthly subscriptions to users with the promise of greater access to infringing music; and (c) increasing venture capital investment and the value of its company to potential purchasers.

18. Because defendant’s business plan is based on copyright infringement, defendant refuses to implement readily available filtering. This type of filtering is used by various websites in order to avoid unlawful copying and distribution of works owned by others.

19. Defendant’s use and exploitation of the Pre-1972 Recordings has never been

authorized or licensed by UMG and deprives UMG and recording artists of compensation for their unique works. Defendant's use of the Pre-1972 Recordings is a blatant violation of UMG's rights under New York law.

FIRST CAUSE OF ACTION

(Common Law Copyright Infringement)

20. UMG realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 19, above.

21. The Pre-1972 Recordings are unique intellectual property subject to common law copyright protection under the law of the State of New York.

22. As the owners of valid common law copyrights or exclusive licensees in and to the Pre-1972 Recordings, UMG possesses the exclusive rights to manufacture, copy, sell, distribute, and otherwise exploit the Pre-1972 Recordings, and license, or refrain from licensing, others to do so.

23. UMG has not authorized or licensed defendant to reproduce or distribute the Pre-1972 Recordings in any manner.

24. The reproduction and distribution by defendant of unauthorized copies of the Pre-1972 Recordings, including but not limited to those listed in Exhibit A, constitute infringement of UMG's common law copyrights in those recordings.

25. Through the conduct described above, defendant is liable for the common law copyright infringement of the Pre-1972 Recordings.

26. As a direct and proximate result of defendant's willful, wanton, and reckless tortious conduct, UMG is entitled to compensatory and punitive damages in such amounts as proven at trial.

27. Defendant's conduct has caused, and unless enjoined by this Court will continue to cause, UMG irreparable injury that cannot be fully compensated or measured in money damages, and for which UMG has no adequate remedy at law, thus entitling it to injunctive relief prohibiting defendant from further violating plaintiff's rights in the Pre-1972 Recordings.

SECOND CAUSE OF ACTION

(Unfair Competition)

28. UMG realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27 above.

29. Defendant has paid nothing to UMG for reproducing or distributing the Pre-1972 Recordings. Without expending any time, labor, or money of its own, defendant has simply appropriated the commercial qualities, reputation, and salable properties of the Pre-1972 Recordings, including but not limited to those recordings listed on Exhibit A, by unfairly and directly competing with UMG's use, sale, distribution, and exploitation of the Pre-1972 Recordings. In so doing, defendant has undermined UMG's substantial creative and financial investment for defendant's own commercial benefit.

30. Defendant has usurped for itself the fruits of UMG's financial and creative investments. Defendant is profiting from the results of UMG's expenditures and skill without having to incur any expense or risk of its own in relation to the Pre-1972 recordings. Furthermore, Defendant's unauthorized use of the Pre-1972 Recordings is likely to cause confusion, mistake or deception as to the source, sponsorship, affiliation or connection between UMG and defendant.

31. Defendant's acts constitute a misappropriation of UMG's rights in and to the Pre-1972 Recordings, and constitute misappropriation and unfair competition under New York law.

32. As a direct and proximate result of defendant's misappropriation and unfair competition, UMG is entitled to recover all proceeds and other compensation received or to be received by defendant arising from its use or exploitation of the Pre-1972 Recordings. UMG is entitled to an accounting to ascertain the amount of such profits and compensation.

33. As a direct and proximate result of defendant's misappropriation and unfair competition, UMG has been damaged, and defendant has been unjustly enriched, in amounts to be proven at trial.

34. As a direct and proximate result of defendant's willful, wanton, and reckless acts of unfair competition, defendant has been unjustly enriched, and UMG is entitled to compensatory and punitive damages in an amount to be proved at trial..

WHEREFORE, UMG prays for judgment against defendant as follows:

1. For a preliminary and a permanent injunction enjoining defendant, and its respective agents, servants, employees, officers, successors, licensees, and assigns, and all persons acting in concert or participation with each or any of them, from; (a) directly or indirectly infringing in any manner any of plaintiff's Pre-1972 Recordings, including but not limited to the Pre-1972 Recordings listed on Exhibit A; (b) from causing, contributing to, enabling, facilitating, inducing or participating in the infringement of any of plaintiff's Pre-1972 Recordings, including but not limited to the Pre-1972 Recordings listed on Exhibit A; and (c) from causing, contributing to, enabling, facilitating, inducing or participating in any acts of unfair competition in relation to plaintiff's Pre-1972 Recordings, including but not limited to the Pre-1972 Recordings listed on Exhibit A.

2. For an accounting, the imposition of a constructive trust, restitution of defendant's unlawful proceeds, and damages according to proof.

3. For punitive and exemplary damages in an amount as may be awarded at trial.
4. For prejudgment interest according to law.
5. For UMG's costs incurred in this action including reasonable attorneys' fees.
6. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By:  _____

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January 6, 2010