

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JAMES WATKINS
1303 71st Avenue, Apt. 4
Phila PA 19126

:

Plaintiff,

CIVIL ACTION NO.: _____

vs.

:

ITM RECORDS
Schallplatten GmbH
Moltkestrabe 73
Wuppertal, Nordrhein-Westfalen
Germany 42115

AND

:

JURY TRIAL DEMANDED

AMAZON.COM, INC.
1200 12th Ave. South, Ste. 1200
SEATTLE, WA 98144-2734

AND

:

RELATIVITY MEDIA, LLC
d/b/a ARTISTDIRECT.COM
9242 Beverly Boulevard #300
Beverly Hills, CA 90210

AND

:

BURN DIRECT
d/b/a MEGAONLINESTORE
PO Box 800 Spring Hill
Queensland Australia 4000

AND

:

ULLI BLOBEL
Schallplatten GmbH
Moltkestrabe 73
Wuppertal, Nordrhein-Westfalen
Germany 42115

AND

WEST WIND PUBLISHING
Schallplatten GmbH
Moltkestrabe 73
Wuppertal, Nordrhein-Westfalen
Germany 42115

AND

CARUS-VERLAG GmbH & Co KG
Sielminger Str. 51 | D-70771
LE-Echterdingen GERMANY AND :

TRANS WORLD ENTERTAINMENT CORP
d/b/a FYE
38 Corporate Circle
Albany, NY 12203 AND :

ZINK MEDIA, INC. d/b/a DISCOGS.COM
5505 SW Dover Lp
Portland OR 97225 AND

TOWER RECORDS, INC. :

AND

ALL MEDIA NETWORK, LLC, d/b/a
ALLMUSIC.COM
564 Market St., Suite 416
S.F., CA 94104 AND

AOL, Inc.
770 Broadway
NY NY 10003 AND

WAL-MART STORES, INC. :
d/b/a WALMART.COM
702 SW 8th Street
Bentonville, AR 72716-8611 AND

CadNor Ltd., d/b/a
NORTH COUNTRY AUDIO :
Cadence Building
Redwood, New York 13679

Defendants. :

_____ :

COMPLAINT

A. JURISDICTION AND VENUE

1. Jurisdiction is based upon federal question, to wit, the Copyright Act of 1976 as amended. Title 17, United States Code.

2. Venue is proper under the Fed.R.Civ. Pro.

B. THE PARTIES

3. Plaintiff JAMES WATKINS (“WATKINS”) is a private adult individual who resides at the above address; plaintiff is a songwriter and copyright holder.

4. Defendant ITM RECORDS (“ITM”) is a German company doing business throughout the United States as a manufacture, distributor and/or seller of music, doing business at the above address.

5. Defendant AMAZON.COM, INC. (“AMAZON”) is a domestic corporation with its principal offices located at the above address; AMAZON is a manufacturer and/or distributor and/or seller of, inter alia, recorded music.

6. Defendants RELATIVITY MEDIA, LLC, d/b/a ARTISTDIRECT.COM BURN DIRECT d/b/a MEGAONLINESTORE, WEST WIND PUBLISHING CARUS-VERLAG, TRANS WORLD ENTERTAINMENT CORP d/b/a FYE, ZINK MEDIA, INC. d/b/a DISCOGS.COM, TOWER RECORDS, INC. , ALL MEDIA NETWORK, LLC, d/b/a ALLMUSIC.COM, AOL, Inc., WAL-MART STORES, INC. d/b/a WALMART.COM, CadNor Ltd., d/b/a NORTH COUNTRY AUDIO (hereinafter collectively referred to as “Defendants” are domestic or foreign entities doing business in this District, with their principal offices located at the above addresses; said defendants are manufacturers and/or distributors and/or sellers of, inter alia, recorded music.

7. Defendant ULLI BLOBEL (“BLOBEL”) is a private adult individual doing business in this District and engaged in the business of manufacturing, distributing and/or selling recorded music, with his principal office located at the above address.

8. At all times material hereto, all of the defendants acted on their own behalves, and/or through the acts of their employees, agents, representatives, servants, and the like, acting within their course of employment and scope of duties.

9. The doctrine of respondeat superior applies to the defendants.

10. Certain of defendants are successors in interests, or predecessors in interest, of the entity or entities which possess primary liability to plaintiff.

C. THE FACTS

11. Plaintiff WATKINS, a citizen of the United States, obtained copyright registration for his musical works which were embodied in an album entitled, "INTENSE"; plaintiff WATKINS was an author and the copyright claimant to "INTENSE" (hereinafter referred to as "Subject Album").

12. The Subject Album contained Eight (8) original works which are copyrightable under Title 17 of the United States Code, to wit, the Copyright Act of 1976 as amended, the titles of which songs are as follows:

1. "I.T.M." (It's The Music)
2. "Eric D."
3. "Dad"
4. "Sequence"
5. "Park Avenue"
6. "Say No To Drugs"
7. "Water For The Fish"
8. "Aslas"

13. The Subject Album contains "protectable elements" afforded copyright protection, which protectable elements are inclusive but not limited to the unique musical content.

14. Plaintiff WATKINS duly applied to the Library of Congress copyright office, and received a Certificate of Registration, dated August 6, 1990 for the Subject Album. See Exhibit A, attached and incorporated by reference as though fully set forth herein and made a part hereof.

15. Subsequent to August 6, 1990, plaintiff WATKINS has sought to publish, published, and/or licensed for publication said Subject Album in compliance with federal copyright law, and he has remained the owner of the copyright of the Subject Album.

16. Subsequent to the issuance of the copyright, defendants infringed upon plaintiff WATKINS's copyright by recording, mixing, mastering, distributing, selling, licensing, and/or receiving revenue from the Subject Album.

17. Defendants' unlawful commercial exploitation of the songs appearing on the Subject Album constitutes actionable unlawful copyright infringement under Title 17 of the United States Code and applicable case law.

COUNT ONE: VIOLATION OF TITLE 17, UNITED STATES CODE- SEC 115 ET SEQ.

COPYRIGHT INFRINGEMENT - MECHANICAL LICENSE/ROYALTIES

(AGAINST ALL DEFENDANTS)

18. Paragraphs 1 through 17 inclusive, are incorporated by reference as though fully set forth herein and made a part hereof.

19. Under applicable provisions of the Copyright Act as amended, defendants are liable to plaintiff, copyright holder, to pay mechanical royalties for defendants commercial exploitation of the songs appearing on the Subject Album.

20. Defendants' commercial exploitation of the Subject Album was, and continues to be, an unlawful infringement of plaintiff WATKINS's copyright.

21. Under Title 17 of the United States Code, prior to said defendants'

commercial release of the songs contained on the Subject Album for public consumption, said defendants were required to acquire a mechanical license from plaintiff.

22. Said defendants' failure to obtain a proper mechanical license from plaintiff WATKINS is a violation of Title 17 of the United States Code.

23. Said defendants are liable to plaintiff for failure to obtain a mechanical license from plaintiff WATKINS as required by Title 17 of the United States Code.

24. In the alternative, in the event that this Court deems that no mechanical license was required, due to the prior publication of Subject Album by plaintiff, then in such event, said defendants' conduct is still violative of Title 17 of the United States Code for failure by defendants to pay any compulsory license fees to plaintiff WATKINS, as mandated by applicable copyright laws.

25. Said defendants are liable to plaintiff for all revenues generated from the sales and licensing of all products and services containing plaintiff's songs thereupon, for violation of Section 115 et seq. of Title 17 of the U.S. Code.

WHEREFORE on Count One, plaintiff WATKINS demands judgment in his favor, and against all defendants, jointly and severally, as follows:

- a) For actual damages in excess of Seventy-Five Thousand Dollars (\$75,000);
- b) For statutory damages up to \$150,000 for each infringement;
- c) For interest, reasonable counsel fees and costs;
- d) For such other relief as this Court may deem proper.

COUNT TWO: VIOLATION OF TITLE 17, UNITED STATES CODE -

COPYRIGHT INFRINGEMENT

(AGAINST ALL DEFENDANTS)

26. Paragraphs 1 through 25, inclusive are incorporated by reference as though fully set forth herein and made a part hereof

27. Defendants have been, and are continuing to commercially exploit the songs which are subject to plaintiff's copyright as provided in Exhibit A attached hereto.

28. Defendants are liable to plaintiff for violation of Title 17 of the United States Code, and applicable case law, pertaining to unlawful infringement for unlawfully selling, licensing and/or otherwise commercially exploiting plaintiff's copyrighted music in violation of plaintiff's copyright .

WHEREFORE on Count Two, plaintiff WATKINS demands judgment in his favor, and against all defendants, jointly and severally, as follows:

- a) For actual damages in excess of Seventy-Five Thousand Dollars (\$75,000);
- b) For statutory damages of \$150,000 for each infringement;
- c) For interest and reasonable counsel fees and costs;
- d) For such other relief as this Court may deem proper.

COUNT THREE: INJUNCTIVE RELIEF

(AGAINST ALL DEFENDANTS)

29. Paragraphs 1 through 28 inclusive, are incorporated by reference as though fully set forth herein and made a part hereof.

30. Plaintiff's copyrighted works are unique and extraordinary, and defendants' improper unlawful action has caused, and continues to cause, irreparable damage to plaintiff.

31. Plaintiff seeks injunctive relief as set forth hereinbelow because plaintiff has no adequate remedy at law.

32. Plaintiff is entitled to this Court's grant of injunctive relief.

WHEREFORE on Count Three, plaintiff WATKINS demands judgment in his favor, and against all defendants, jointly and severally, as follows:

- a) For the issuance of temporary and permanent injunctions which prohibit

defendants' continued unlawful use of plaintiff's copyrighted work;

b) For a mandatory injunction requiring defendants' to halt all printed and/or digital materials pertaining to the Subject Album;

c) For reasonable counsel fees and costs;

d) For such other relief as this Court may deem proper.

COUNT FOUR: ACCOUNTING AND CONSTRUCTIVE TRUST

33. Paragraphs 1 through 32 are incorporated by reference as though fully set forth herein and made a part hereof.

34. Plaintiff seeks a full accounting in regard to all of defendants' revenues, from any and all sources derived.

35. Plaintiff seeks the imposition of a constructive trust in benefit of plaintiff, in regard to all incoming sales and revenues, from and and all sources derived.

WHEREFORE on Count Four, plaintiff demands judgment in his favor, and against all defendants, and severally, as follows:

a) For a full, complete accounting;

b) For costs of suit;

c) For reasonable counsel fees;

d) For such other relief as this Court deems proper.

Dated February 13, 2014

Respectfully submitted,

/Simon Rosen, Esq./ (#6279)

SIMON ROSEN, ESQ.

ATTORNEY ID NO. 38603

SimonOnKey@aol.com

2019 Walnut Street,

Philadelphia, PA 19103

Tel. (215)564-0212