

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UMG RECORDINGS, INC., <i>et al.</i>,)	
)	
Plaintiffs,)	CV 05-MHT-0600-VPM
)	
v.)	
)	
JAMIE HEARD,)	
)	
Defendant.)	

DEFENDANT S FIRST REQUEST FOR ADMISSIONS

COMES NOW Jamie Heard, Defendant in the above-styled action (Mr. Heard or Defendant), and, pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, hereby requests that Plaintiffs provide Defendant with their written and/or typed responses to these Requests for Admissions within thirty (30) days after the date indicated below on this Document s Certificate of Service:

I. DOCUMENT ENCOMPASSMENT

As used herein, the term document shall include writings, notes, drafts, outlines, recordings and files, regardless of storage media; they include, but are not limited to, writings contained on paper, recordable tape, celluloid, disks, hard drives, electronic mail servers or any other digitally stored media. The term document shall also include the full range of writings described in Rule 1001 of the Federal Rules of Evidence.

The requests listed herein include: writings, notes, drafts, outlines, recordings and files, regardless of storage media; they included, but were not limited to: writings contained on paper,

recordable tape, celluloid, disks, hard drives, electronic mail servers and any other digitally stored media.

II. SPECIAL INSTRUCTIONS REGARDING ELECTRONIC DATA

L. In those instances when requested information is stored only on software or other data compilations, Defendant should either produce the raw data along with all codes and programs from translating it into usable form or produce the information in a finished usable form, which would include all necessary glossaries, keys and indices for interpretation of the material.

M. The Requests stated herein include all electronic data generated, stored or accessible by your computer system. Plaintiffs consider electronic data to be an irreplaceable source of evidence in this matter. In addition to discovery of all tangible forms of evidence, therefore, Plaintiffs request access to your computer system for nondestructive retrieval of relevant electronic data. Accordingly, pending an agreement of the parties as to the timing and procedure for examining your computer system, or an order by the Court regarding same, Plaintiffs will insist that the following safeguards against the destruction of evidence be maintained until the final resolution of this issue:

N. On-Line Data Storage on Mainframes and Minicomputers: With regard to on-line storage or direct access storage devices attached to your mainframe computer or minicomputer: Do not modify or delete any electronic data files existing at the time these discovery request are served that are or may be responsive to any of the requests enumerated below, unless a true and correct copy of each such electronic data file has been made and steps have been taken to assure that such a copy will be preserved and accessible for purposes of this lawsuit.

O. Off-Line Data Storage, Backups and Archives, Floppy Diskettes, Tapes and Other Removable Electronic Media: With regard to all electronic media used for off-line storage, including magnetic tapes and cartridges and other media, which at the time of this discovery request is served contain any electronic data responsive to any of the request enumerated below: Stop any activity which may result in the loss of such electronic data, including rotation, destruction, overwriting or erasure of such media in whole or in part. This special instruction is intended to cover all removable electronic media used for data storage in connection with your computer system, including magnetic tapes and cartridges, magneto-optical disks, floppy diskettes, and all other media, whether used with personal computers, minicomputers or mainframes or other computers, and whether containing backup or archive data sets and other electronic data, for your computer system.

P. Replacement of Data Storage Devices: Do not dispose of any electronic data storage devices or media which may be replaced due to failure or upgrade or other reasons that may contain electronic data meeting the criteria listed in paragraph 2 above.

Q. Fixed Drives on Stand-Alone Personal Computers and Network Workstations: With regard to electronic data that is responsive to any of the requests enumerated below, which exist on fixed drives attached to stand-alone microcomputers or network workstations at the time this discovery request is served: Do not alter or erase such electronic data, and do not perform other procedures (such as data compression and disk de-fragmentation or optimization routines) which may affect such data, unless a true and correct copy has been made of such active files and of completely restored versions of such deleted electronic files and file fragments, copies have been made of all directory listings (including hidden files) for all directories and subdirectories

containing such files, and arrangements have been made to preserve copies during the pendency of this lawsuit.

R. Programs and Utilities: Preserve copies of all application programs and utilities, which may be used to process electronic data covered by the requests enumerated below.

S. Log of System Modifications: Maintain an activity log to document modifications made to any electronic data processing system that may affect the system's capability to process any electronic data that is responsive to any of the requests enumerated below, regardless of whether such modifications were made by employees, contractors, vendors or any other third parties.

T. Personal Computers Used by You: The following steps should immediately be taken in regard to all personal computers used by you or any assistant or person working at your direction, or its secretaries and assistants.

1. As to fixed drives attached to such computers: (i) a true and correct copy should be made of all electronic data on such fixed drives that is responsive to any of the requests enumerated below, including all active files completely restored versions of all deleted electronic files and file fragments; (ii) full directory listings (including hidden files) for all directories and subdirectories (including hidden directories) on such fixed drives should be written; and (iii) such copies and listings should be preserved until this matter reaches its final resolution.

2. All floppy diskettes, magnetic tapes and cartridges, and other media used in connection with such computers prior to the date of service of these discovery requests

containing any electronic data that is responsive to any of the requests enumerated below, should be collected and put into storage for the duration of this lawsuit.

III. SPECIFIC ADMISSIONS REQUESTED

REQUEST NO. 1:

Admit that the musical recordings represented on Exhibit A to Plaintiffs Complaint were obtained by MediaSentry.

REQUEST NO. 2:

Admit that Plaintiffs do not know of any specific instances of any specific musical recordings downloaded by Defendant.

REQUEST NO. 3:

Admit that Plaintiffs do not know of any specific instances of specific musical recordings that were distributed by Defendant.

REQUEST NO. 4:

Admit that Plaintiffs Complaint filed in this action does not identify any specific act of copyright infringement regarding any musical recording owned by any Plaintiff to this action

REQUEST NO. 5:

Admit that Plaintiffs have no direct evidence that Defendant actually downloaded any of the musical recordings identified in Exhibits A or B to Plaintiffs Complaint.

REQUEST NO. 6:

Admit that Plaintiffs have no direct knowledge how any of the musical recordings identified in Exhibits A or B to Plaintiffs Complaint reached Defendant s Computer.

REQUEST NO. 7:

Admit one or more of the musical recordings identified in Exhibit A to Plaintiffs Complaint are not owned by any Plaintiff named in this action.

REQUEST NO. 8:

Admit that the Recording Industry Association of America (RIAA) is the trade group that represents the recording industry in the United States.

REQUEST NO. 9:

Admit that MediaSentry, Inc. is a company employed, compensated, and used by the RIAA for the purpose of locating and identifying individuals to sue for copyright infringement.

REQUEST NO. 10:

Admit that on or about June 2, 2005, MediaSentry, Inc. was acquired by SafeNet.

REQUEST NO. 11:

Admit that MediaSentry was the actual entity directly responsible for downloading from Defendant s computer the musical recordings identified in Exhibit A to Plaintiffs Complaint through the use of a peer-to-peer computer network.

REQUEST NO. 12:

Admit that MediaSentry was the actual entity directly responsible for capturing Defendant s IP Address on or about August 21, 2004.

REQUEST NO. 13:

Admit that MediaSentry was the actual entity directly responsible for obtain the Screenshot represented by Exhibit B to Plaintiffs Complaint.

REQUEST NO. 14:

Admit that none of the Plaintiffs to this action have any direct knowledge concerning the authenticity of Exhibits A and B to Plaintiffs Complaint.

REQUEST NO. 15:

Admit that Plaintiffs have no direct knowledge as to whether any musical recordings Plaintiffs allege Defendant stored on his computer were downloaded by anyone other than MediaSentry.

REQUEST NO. 16:

Admit that the musical recordings Plaintiffs allege are on Defendant s computer could have come a source other than illegal downloading from a peer-to-peer program.

REQUEST NO. 17:

Admit that Plaintiffs Expert Witness in this action, Dr. Doug Jacobson, had not personally listened to any of the musical recordings identified in Exhibit A of Plaintiffs Complaint neither by the time of the filing of Plaintiffs Complaint nor service of Sr. Jacobson s Expert Report for this action.

REQUEST NO. 18:

Admit that MediaSentry, Inc. s was directly responsible for capturing and archiving the songs downloaded from Defendant s alleged computer.

REQUEST NO. 19:

Admit that one of the services MediaSentry, Inc. offers is to upload files, known as MediaDecoys, which are intentionally misrepresented and identified as copyrighted musical recordings.

REQUEST NO. 20:

Admit that the musical recordings MediaSentry downloaded from Defendant s Computer were downloaded from Defendant s computer without Defendant s consent nor knowledge.

REQUEST NO. 21:

Admit that neither Plaintiffs, their agents, or representatives such as MediaSentry ever actually observed Defendant downloading or distributing activity any copyrighted works owned by any Plaintiff to this action.

REQUEST NO. 22:

Admit that MediaSentry inspected, copied, removed, or uploaded files stored on Defendant s personal computer without Defendant s permission or consent.

REQUEST NO. 23:

Admit that you are aware that Plaintiffs Responses to Defendant s First Interrogatory Request were stated under oath.

REQUEST NO. 24:

Admit that no Plaintiff named in this action has listened to each and every musical recording identified in Exhibit A to Plaintiffs Complaint.

REQUEST NO. 25:

Admit that not all of the Plaintiffs named in this action have listened to each and every musical recording identified in Exhibit A to Plaintiffs Complaint.

REQUEST NO. 26:

Admit that no Plaintiff named in this action has listened to each and every musical recording identified in Exhibit B to Plaintiffs Complaint.

REQUEST NO. 27:

Admit that not all of the Plaintiffs named in this action have listened to each and every musical recording identified in Exhibit B to Plaintiffs Complaint.

REQUEST NO. 28:

Admit that with respect to this lawsuit, you contend and claim that the musical recordings identified in Exhibit A to Plaintiffs Complaint were downloaded by Defendant in violation of copyright laws.

REQUEST NO. 29:

Admit that on the 21st day of August, 2004 between the times of approximately 5:33 o'clock a.m. (EST) and 9:34 a.m. (EST), you personally observed the downloading of musical recordings to the computer with IP Address 24.178.134.148.

REQUEST NO. 30:

Admit that on the 21st day of August, 2004 between the times of approximately 5:33 o'clock a.m. (EST) and 9:34 a.m. (EST), you personally observed the distribution of musical recordings by the computer with IP Address 24.178.134.148.

REQUEST NO. 31:

Admit that as of this date, after a reasonably diligent search and/or investigation, neither you nor any agents, employees, or representatives acting on your behalf are aware of any direct knowledge of musical recordings downloaded by Defendant in violation of the Copyright laws.

REQUEST NO. 32:

Admit that as of this date, after a reasonably diligent search and/or investigation, neither you nor any agents, employees, or representatives acting on your behalf are aware of any direct

knowledge of musical recordings distributed by Defendant in violation of the Copyright laws.

REQUEST NO. 33:

Admit that Exhibit A attached hereto is an accurate copy of the Affidavit of Morlan Rogers, and exhibits (if applicable), filed with the United States District Court for the Southern District of New York on or about March 30, 2006, in the lawsuit *Warner Bros. Records, Inc., et al. v. John Does 1-149*, Case No. 05-CV-8365(RO), in which involves one or more Plaintiffs to this action are named Plaintiffs.

REQUEST NO. 34:

Admit that Exhibit B attached hereto is an accurate copy of the Court Reporter s Transcript, and exhibits (if applicable), of a hearing before the Honorable Judge Richard Owen of the United States District Court for the Southern District of New York on or about May 19, 2006, in the lawsuit *Warner Bros. Records, Inc., et al. v. John Does 1-149*, Case No. 05-CV-8365(RO), in which involved one or more Plaintiffs to this action are named Plaintiffs.

REQUEST NO. 35:

Admit that Exhibit C attached hereto is an accurate copy of the Court Reporter s Transcript, and exhibits (if applicable), of a hearing before the Honorable Judge Colleen McMahon of the United States District Court for the Southern District of New York on or about May 6, 2005, in the lawsuit *Elektra Entertainment Group, Inc. et al. v. Patricia Santangelo*, Case No. 05-CIV-2414 (CM), in which one or more Plaintiffs to this action are named Plaintiffs.

REQUEST NO. 36:

_____Admit that Exhibit D attached hereto is an accurate copy of the Affidavit of Zi Mei, and exhibits (if applicable), filed with the United States District Court for the Southern District

of New York on or about December 28, 2005, in the lawsuit *Atlantic Recording Corporation, et al. v. John Does 1-25*, Case No. 05-CV-9111 (LTS), in which one or more Plaintiffs to this action are named Plaintiffs.

REQUEST NO. 37:

Admit that Exhibit E attached hereto is an accurate copy of the Declaration of Jonathan Whitehead in Support of Plaintiffs *Ex Parte* Application to Take Immediate Discovery, and exhibits (if applicable), filed with the United States District Court for the Southern District of New York on or about October 21, 2005, in the lawsuit *Atlantic Recording Corporation, et al. v. John Does 1-25*, Case No. 05-CV-9111 (LTS), in which one or more Plaintiffs to this action are named Plaintiffs.

REQUEST NO. 38:

Admit that Exhibit F attached hereto is an accurate copy of the Second Declaration of Jonathan Whitehead, and exhibits (if applicable), filed with the United States District Court for the Southern District of New York on or about January 23, 2006, in the lawsuit *Atlantic Recording Corporation, et al. v. John Does 1-25*, Case No. 05-CV-9111 (LTS), in which one or more Plaintiffs to this action are named Plaintiffs.

REQUEST NO. 39:

Admit that Exhibit G attached hereto is an accurate copy of the Reply Affidavit of Zi Mei, and exhibits (if applicable), filed with the United States District Court for the Southern District of New York on or about February 6, 2006, in the lawsuit *Atlantic Recording Corporation, et al. v. John Does 1-25*, Case No. 05-CV-9111 (LTS), in which one or more Plaintiffs to this action are named Plaintiffs.

REQUEST NO. 40:

Admit that Exhibit H attached hereto is an accurate copy of the Cross-Examination of Gary Millin, taken on or about March 4, 2004, concerning the lawsuit BMG Canada, Inc. et al. v. John Doe, Jane Doe, et al., Case No. T-292-04, in which one or more Plaintiffs to this action are named Plaintiffs.

Respectfully submitted,

Coker B. Cleveland
(ASB-4299-O36C) (CLE-040)
Attorney for Defendant
Jamie Heard

OF COUNSEL:

CLEVELAND LAW FIRM, LLC
1816 Tin Valley Circle, Ste. C
Birmingham, Alabama 35235
Telephone: 205.453.4702
Cellular: 205.516.3579
Facsimile: 205.419.0704
Email: cbcleveland@hotmail.com

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that a true and correct copy of the above and foregoing was served via CM/ECF to the following, this the 7th day of June, 2006:

Dorman Walker
Kelley F. Pate
Leslie E. Williams
BALCH & BINGHAM, LLP
Post Office Box 78
Montgomery, Alabama 36101-0078

OF COUNSEL