

JUDGE SAND

08 CV 8828

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ROYALTY NETWORK INC.,

Plaintiff,

v.

SONY BMG MUSIC ENTERTAINMENT,
individually and d/b/a SONY BMG SALES
ENTERPRISE, WORLD WRESTLING
ENTERTAINMENT, INC., STEPHANIE
MUSIC PUBLISHING, INC., JOHN CENA,
and CHERRY LANE MUSIC PUBLISHING
COMPANY, INC.

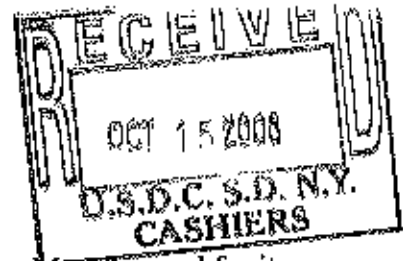
Defendants.
-----X

Case No. 08 CV 8828

COMPLAINT

DEMAND FOR JURY TRIAL

ECF CASE



Plaintiff, The Royalty Network Inc., by its attorney, Anthony Motta, as and for its
complaint against the defendants, alleges the following:

PARTIES

1. Plaintiff, The Royalty Network Inc., is a New York corporation with its principal place of business at 224 West 30th Street, Suite 1007, New York, New York 10001.
2. Jamal Grinnage ("Grinnage"), Eric Murray ("Murray") and Daryl Pittman ("Pittman") are co-writers of the musical composition entitled "Ante Up" (the "Infringed Work") each holding a 33.33% interest in the copyright of the musical composition. Together Grinnage and Murray hold a 66.66% interest in the copyright of the musical composition of the Infringed Work (the "Grinnage-Murray Copyright Interest").
3. Under an exclusive recording artist agreement dated May 1, 1993 (the "Recording Agreement") between Grinnage and Murray p/k/a "MOP--THE NEXT GENERATION ("MOP") and Blaze Entertainment, Inc. ("Blaze Entertainment") Blaze Entertainment has "an undivided

50% percent interest" in the worldwide copyright and is the exclusive administrator of all musical compositions covered up by the Recording Agreement, including the Grinnage-Murray Copyright Interest in the Infringed Work.

4. Laze Elliot owns and controls Blaze Entertainment.

5. Pursuant to an Administration Agreement dated June 15, 2008 between plaintiff and Laze Elliot d/b/a Blind Man's Bluff Music (ASCAP) ("BMBM") (the "Agreement") plaintiff administers throughout the World all musical compositions owned or controlled, in whole or in part, directly or indirectly, by BMBM including musical compositions of the affiliated entity, Blaze Entertainment.

6. Pursuant to the Agreement plaintiff administers the Grinnage-Murray Copyright Interest in the Infringed Work.

7. The Agreement provides that plaintiff has the authority to sue in its own name and "to do and carry out whatever may serve BMBM's interests" provided that BMBM gives plaintiff written authorization to do so. In conformity with the Agreement, BMBM has given plaintiff full authorization to commence an action, on its behalf, in this matter.

8. Upon information and belief, the defendant, Sony BMG Music Entertainment ("SONY") is a Delaware general partnership authorized to do business in the State of New York with its principal place of business in the State and City of New York.

9. Upon information and belief, SONY is a record company that, under its trademark Columbia Records, oversees the musical productions embodied upon and manufactures, promotes and causes to have distributed, phonorecords that feature multiple master recordings and the underlying songwriting copyrights embodied thereon.

10. Upon information and belief, SONY, under its trademark Columbia Records, is the

record company involved in the production, manufacture, promotion, marketing and distribution of two phonorecords entitled *"You Can't See Me"* and *"WWE: Raw Greatest Hits-The Music"* (collectively referred to hereafter as the "Albums").

11. Upon information and belief, SONY BMG Sales Enterprises ("SBSE") is an unincorporated division of SONY with its principal place of business in the State and City of New York.

12. SBSE makes available throughout the world and is a distributor throughout North America of music in a number of formats including DVD and video, Compact Disk, cassette tape and digital formats and distributes audio and video releases from, among others, Columbia Records, SONY, Epic Records, Legacy Recordings, SONY Classical, SONY Nashville and the Zomba Label Group which includes Jive Records, LaFace Records, SoSo Def Records, Volcano Records and Verity Records.

13. Upon information and belief, at all times herein relevant, SBSE has acted as a distributor for SONY and Columbia Records. Commencing on or about May 10, 2005 SONY and SBSE caused to have produced, manufactured, distributed and made available throughout the world *"You Can't See Me"* and on or about December 18, 2007 caused to have produced, manufactured, distributed and made available throughout the world *"WWE: Raw Greatest Hits-The Music"* each of which featured the song, "The Time is Now (John Cena's Theme)" (the "Infringing Work").

14. The Infringing Work is available throughout the world on the Internet for purchase as a download and as a "ringtone"; and may be as accessed and heard as streaming media.

15. Upon information and belief, the defendant, "WWE" is a Delaware corporation, with its principal place of business in Stamford Connecticut, and is authorized to do business in New

York State.

16. Upon information and belief, WWE is the world's largest professional wrestling promoter. WWE promotes professional wrestling events on cable television, pay-per-view and live performances, under three brands: Raw, SmackDown!, and ECW.

17. Upon information and belief, the defendant, Cena, is a resident of the State of Massachusetts.

18. Cena is a professional wrestler for defendant "WWE" and a co-writer of the Infringing Work. At all times herein relevant, at a minimum, Cena has used, and continues to use, the Infringing Work as his so-called "theme". Upon information and belief, the Infringing Work is played publicly every time he enters and leaves the ring for a wrestling performance. Many of such performances are televised on WWE produced television broadcasts, such as: "Unforgiven", "Raw", "Friday Night Smackdown", "ECS on SCI FI" and "Saturday Night's Main Event" as well as multiple "Pay-Per-View" broadcasts.

19. Upon information and belief, the defendant, Stephanie Music Publishing, Inc. ("Stephanie") is a Connecticut corporation with its principal place of business in Stamford, Connecticut and is authorized to do business in the State of New York.

20. Upon information and belief, Stephanie is a music publisher that represents the copyrights of the musical compositions that serve, in part, as the musical "themes" for the wrestlers signed to WWE and at all times herein relevant has published the Infringing Work.

21. Upon information and belief, the defendant, Cherry Lane Music Publishing Company, Inc. ("Cherry Lane") a New York corporation with its principal place of business at 6 East 32nd Street, 11th Floor, New York, New York 10016.

22. Upon information and belief, Cherry Lane is the administrator for the publishing

copyrights of all works of Stephanie, including the publishing copyright in and to the Infringing Work.

JURISDICTION

23. This court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§1331 and 1338.

VENUE

24. Venue of this case is proper in this district pursuant to 28 U.S.C. §§1391(b) and 1400.

BACKGROUND FACTS

25. The Infringed Work was originally performed by the group MOP and released in the United States in a number of formats, including as a single, a "white label" promotional single, and it also has been included as a musical composition on more than one album.

26. The Infringing Work includes a distinctive "freestyle" rap--"BRRR Abado" that has been sampled from the Infringed Work and is clearly repeated three times in the Infringing Work, at the introduction, the second chorus, and the third chorus.

27. As shown below, at all times relevant, defendants were aware that they needed to obtain a written license for use of the Infringed Work:

a) On or about December 10 2004, Leah Weitzen, an attorney with Pryor Cashman Sherman & Flynn, LLP ("Pryor Cashman"), then representing defendant WWE, sent a facsimile to BMBM requesting a proposed "gratis license" to permit Cena to use the Infringed Work in the Infringing Work and attaching a draft license agreement for BMBM to sign.

b) BMBM advised Pryor Cashman that it would not grant a "gratis license" for use of the Infringed Work.

c) Upon information and belief, on or about March 15, 2005, WWE, by and through Pryor Cashman, faxed the same "gratis license" to a "Tyrone Smith" ("Smith") at Next Level Groove Music ("Next Level"), seeking clearance to allow Cena to use the Infringed Work. Upon

information and belief, Smith signed the "gratis license" as "President" of Next Level.

c) Upon information and belief, Smith was a receptionist for Next Level and was not authorized to sign a license on its behalf. Moreover, upon information and belief, Smith was not a copyright proprietor of the Infringed Work but rather simply an employee for Pittman, an officer of Next Level and a co-writer of the Infringed Work.

d) Even assuming Smith was authorized to sign the license it is invalid because Next Level could not grant such a license. Upon information and belief, some time in 2003, Pittman had signed a co-publishing/administration agreement with Spirit Two Music, Inc. giving it sole right to license the Infringed Work. The co-publishing/administration agreement is still in full force and effect to date rendering any purported license from Next Level *void ab. initio*.

28. Upon information and belief, in or about April, 2005, defendants, WWE and Cena, commenced using the Infringing Work as defendant Cena's "theme" and licensed the Infringing Work to various third parties including SONY, among others.

29. On June 8, 2008, plaintiff sent e-mail correspondence to SONY and Cherry Lane, as publishing administrator for WWE, stating in part that plaintiff and BMBM would not "accept or agree to their grant".

30. On August 26, 2008, plaintiff sent a letter to Cherry Lane, SONY and Next Level stating in part as follows:

"As you are aware, we control 66.66% of the composition "Ante Up" on behalf of our client, Blind Man's Bluff Music (ASCAP). The song was sampled in the new composition, "The Time Is Now", however the sample was never cleared by us, nor were we ever contacted regarding clearance. Next Level Grooves, who granted the sample use to Cherry Lane Music, owns no share of Blind Man's Bluff's share of "Ante Up". Therefore, the inclusion of "The Time Is Now" on "Raw--Greatest Hits--The Music", released by Columbia Records/WWE Music Group, as well as any other use of this song, is means for copyright infringement. Unless you can provide a meaningful response within 10 days of this letter, we will file a copyright infringement lawsuit against the parties involved."

31. On September 3, 2008, plaintiff was informed by Cherry Lane via e-mail that "they were merely the administrator on behalf of the WWE, and from this point forward, WWE will handle this matter." Cherry Lane provided plaintiff with the contact information for WWE's

attorney.

32. On September 4, 2008 plaintiff sent to WWE's attorney a letter stating in part as follows:

"As you are aware, we control 66.66% of the composition "Ante Up" on behalf of our client, Blind Man's Bluff Music (ASCAP). The song was sampled in the new composition, "The Time Is Now", however the sample was never cleared by us, nor were we ever contacted regarding clearance. Next Level Grooves, who granted the sample use to Cherry Lane Music, owns no share of Blind Man's Bluff's share of "Ante Up". Therefore, the inclusion of "The Time Is Now" on "Raw--Greatest Hits--The Music", released by Columbia Records/WWE Music Group, as well as any other use of this song, is means for copyright infringement. Unless you can provide a meaningful response within 10 days of this letter, we will file a copyright infringement lawsuit against the parties involved."

33. On September 11, 2008, WWE's attorney sent a letter to plaintiff stating in part as follows:

"Contrary to your assertions of your (September 4, 2008) Letter, Cena properly licensed the publishing rights to the Ante Up sample from your co-publisher, Next Level."

CLAIM FOR COPYRIGHT INFRINGEMENT

34. This is an action for damages, declaratory relief, and permanent injunctive relief and is brought by plaintiff, pursuant to the Copyright Act and Copyright Revision Act, 17 U.S.C. §101, *et seq.* (the "Act")

35. Plaintiff has complied with all laws pertinent to the Infringed Work as a copyrighted work and a copyright in the musical composition of the Infringed Work was registered with the U.S. Copyright Office on September 24, 2003 under Registration Number PA0001193869.

36. Upon information and belief, defendants are the creator, performer, purported publishers, purported administrator, label, and distributor of the Infringing Work and have infringed the copyright in the Infringed Work in a number of ways including the following: (a)

by substantial copying and public performances and by authorizing the copying and public performances; (b) the manufacture, distribution and sale (and/or authorizing others to do so) of the Album and the Infringing Work; (c) authorizing and/or licensing The Infringing Work for digital download and ringtones; (d) by publishing and/or administering the Infringing Work and commercially exploiting the Infringing Work; (e) by utilizing, authorizing or licensing the Infringing Work for synchronization with audiovisual works; (f) by causing and/or materially contributing and/or by substantially participating in and furthering the abovementioned infringing acts, and/or sharing in the proceeds therefrom, all through substantial use of the Infringed Work in and as part of the Infringing Work contained on the Albums, and through multiple public performances over cable television and pay-per-view programs. Further, such defendants had the obligation, right, and ability to supervise such infringing activity but allowed the infringements to occur, and they had an obvious and direct financial interest in exploiting the copyrighted materials as set forth above. Accordingly, defendants are liable for direct, contributory and vicarious infringement.

37. Upon information and belief, the defendants have received or will receive advances, royalties and other payments for sale of the Albums containing the Infringing Work, have received or will receive advances, royalties and other payments for the inclusion of the Infringing Work in print editions of sheet music, have received or will receive synchronization royalties for use of the Infringing Work in audiovisual works and have received or will receive public performance royalties from performances of the Infringing Work, among other revenues sources known only to defendants, without accounting for and remitting the appropriate amount of such royalties to plaintiff or providing for appropriate copyright interest of BMBM in the Infringing Work. Upon information and belief, defendant publishers have received royalties for

the licensing of the Infringing Work for digital downloads and ringtones.

38. By reason of the infringement and threatened infringement of the defendants, plaintiff has sustained and will continue to sustain substantial injury, loss and damage to its rights in the Infringed Work.

39. Further irreparable harm to plaintiff is imminent as a result of defendants' conduct, and plaintiff is without adequate remedy at law. Plaintiff is entitled to an injunction restraining defendants, its officers, directors, agents, employees and representatives and all persons acting in concert with them from engaging in further acts of copyright infringement.

40. Plaintiff is further entitled to recover from defendants the damages sustained by plaintiff as a result of defendants' acts of copyright infringement. Plaintiff is at present unable to ascertain the full extent of the monetary damage plaintiff has suffered by reason of defendants' acts of copyright infringement but believes such damages exceed \$150,000.

41. Plaintiff is further entitled to recover from defendants the gains, profits and advantages it obtained as a result of their acts of copyright infringement. Plaintiff is at present unable to ascertain the full extent of the gains, profits, and advantages defendants have obtained by reason of their acts of copyright infringement, but plaintiff is informed and believes that defendants have obtained such gains, profits, and advantages in an amount exceeding \$150,000.

42. Alternatively, pursuant to 17 U.S.C. Section 504, plaintiff is entitled to statutory damages of not less than \$750 nor more than \$30,000 for each infringement and in the event the court finds the infringement was committed willfully, for statutory damages not exceeding \$150,000 for each infringement.

WHEREFORE, plaintiff demands judgment as follows:

a) That defendants be found liable for direct, contributory and/or vicarious copyright infringement.

b) That defendants be ordered to submit to an accounting so that all gains, sales, profits and advantages derived by defendants from each of their acts, may be determined.

c) For a preliminary and permanent injunction enjoining defendants and all persons acting in concert with them from copying, reproducing, performing, manufacturing, promoting, advertising and distributing the Infringing Work, or performing any materials that are substantially similar to the Infringing Work, for the recall of all copies of the Infringing Work from distributors and retailers, and to deliver to the Court for destruction or other reasonable disposition all such material and means for producing the Infringing Work in defendants' possession or control.

d) For actual damages and defendants' profits in an amount in excess of \$150,000 to be determined at trial, or alternatively, for statutory damages pursuant to 17 U.S.C. Section 504, plus interest.

e) For declaratory judgment that BMBM owns an undivided share in the copyright in the "Infringing Work", in a percentage to be determined at trial, and is entitled to royalties, including digital download royalties, based on such percentage.

d) For its reasonable attorney's fees and costs.

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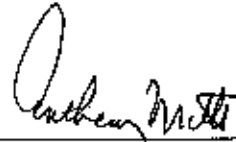
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e) For such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 14, 2008.



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