

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLC, ATLANTIC
RECORDING CORPORATION, CAPITOL
RECORDS, LLC, ELEKTRA ENTERTAINMENT
GROUP INC., LAFACE RECORDS LLC, SONY
MUSIC ENTERTAINMENT, UMG RECORDINGS,
INC., WARNER BROS. RECORDS INC.,
WARNER MUSIC GROUP CORP., and
ZOMBA RECORDING LLC,

Plaintiffs,

v.

VITA TKACH and DOES 1-10, D/B/A
GROOVESHARK.IO and GROOVESHARK.PW

Defendants.

CIVIL ACTION NO. _____

~~PROPOSED~~ TEMPORARY
RESTRAINING ORDER,
SEIZURE ORDER, AND
ORDER TO SHOW CAUSE
FOR PRELIMINARY
INJUNCTION

DAB
5/13/15

[FILED UNDER SEAL
PURSUANT TO 15 USC § 1116]

Plaintiffs Arista Records LLC, Atlantic Recording Corp., Capitol Records, LLC, Elektra Entertainment Group Inc., LaFace Records, LLC, Sony Music Entertainment, UMG Recordings, Inc., Warner Bros. Records Inc., Warner Music Group Corp., and Zomba Recording LLC (collectively "Plaintiffs") have filed a complaint against Defendants Vita Tkach and Does 1-10, d/b/a Grooveshark.io (collectively "Defendants"), for injunctive and other relief under the Lanham Act, 15 U.S.C. §§ 1051 *et. seq* and the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq*.

Plaintiffs have moved *ex parte* for a Temporary Restraining Order, Seizure Order, and an Order to Show Cause for Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65, 15 U.S.C. § 1116 (Section 34 of the Lanham Act), and 28 U.S.C. § 1651(a) (the All Writs Act), as well as this Court's inherent equitable powers.

Having reviewed the papers, declarations, exhibits, and memorandum of law, the Court hereby makes the following findings of fact and conclusions of law:

1. Plaintiffs have demonstrated that they are entitled to the injunctive relief sought by establishing that they are suffering irreparable harm and that they are likely to succeed on the merits of their claims.

2. With respect to the likelihood of success on the merits of its Lanham Act claims, Plaintiff UMG Recordings, Inc. ("UMG") has demonstrated that it is likely to succeed in showing that it is the owner by assignment of all right, title, interest, and all goodwill in, *inter alia*, the word mark "Grooveshark" and the shark fin logo design featured on the Grooveshark.com website (hereinafter "Grooveshark Marks"), and that the Grooveshark Marks are valid and protected by federal registration.

3. Further with respect to the likelihood of success on the merits, Plaintiff UMG has demonstrated that it is likely to succeed in showing that Defendants are using counterfeit and confusingly similar imitations of the Grooveshark Marks in commerce in connection with the promotion and advertisement of the Grooveshark.io website currently accessible via the grooveshark.io and grooveshark.pw domain names (hereinafter the "Counterfeit Service") in a manner that is likely to cause confusion, mistake and deception as to the source, sponsorship and origin of Defendants' Counterfeit Service.

4. With respect to the likelihood of success on the merits of Plaintiffs' copyright infringement claims, Plaintiffs have demonstrated that they are likely to succeed in showing that their copyrights at issue in this lawsuit are valid and entitled to protection, and that Plaintiffs are either owners or exclusive licensees of those copyrights.

5. Further with respect to likelihood of success on the merits, Plaintiffs have demonstrated that they are likely to succeed in showing that Defendants are engaging in direct and secondary copyright infringement of Plaintiffs' copyrighted sound recordings through the Counterfeit Service, which allows users to download and stream infringing copies of Plaintiffs' sound recordings directly from servers operated or controlled by Defendants, in violation of Plaintiffs' copyrights.

6. There is good cause to believe that, unless the Defendants are restrained and enjoined by Order of this Court, immediate and irreparable harm will result from the Defendants' ongoing violations.

7. Defendants have attempted to conceal their identities and move certain elements of the Counterfeit Service outside of this Court's reach, including through the use of aliases and purposely deceptive contact information associated with their operation, and by moving their digital music download server used to supply infringing copies of Plaintiffs' sound recordings from a hosting provider located in the United States to a new hosting provider located outside the United States following receipt of a copyright complaint notice from Plaintiffs;

8. If Plaintiffs were to proceed on notice to Defendants, Defendants would likely destroy, move, hide, or otherwise make the Counterfeit Service and business records relating thereto inaccessible to the Court, thus frustrating the ultimate relief Plaintiffs seek in this action.

9. There is good cause to believe that the grooveshark.io and the grooveshark.pw domain registration records must be immediately modified to specify nameservers controlled by Plaintiffs in order to disable access to the Counterfeit Service and thereby prevent Defendants from continuing to mislead and deceive the public regarding the source, sponsorship or affiliation of the Counterfeit Service during the pendency of this action.

10. Plaintiffs' immediate and irreparable harm from denial of the requested *ex parte* order would outweigh any harm to Defendants' legitimate interests from granting such an order;

11. Plaintiffs have represented that they have not publicized the requested seizure;

12. Plaintiffs have provided the United States Attorney with reasonable notice of this application for an *ex parte* seizure order;

13. Plaintiff UMG has demonstrated that Defendants are operating the Counterfeit Service through the grooveshark.io and the grooveshark.pw domains, which have been registered through a registrar located in the United States;

14. Entry of an order other than an *ex parte* order temporarily restraining the Counterfeit Service and seizing the grooveshark.io and grooveshark.pw domain names and business records relating to the Counterfeit Service would not adequately achieve the purposes of the Lanham Act to preserve Plaintiff UMG's equitable remedies for trademark counterfeiting, nor would it adequately protect Plaintiffs from the ongoing, mass-scale infringement of their copyrights through the Counterfeit Service;

THEREFORE, IT IS HEREBY ORDERED that Defendants show cause on or before the th 27 day of May 2015, at 11 a.m./p.m. or as soon thereafter as counsel can be heard, in Courtroom 906, in the United States District Court for the Southern District of New York, ^{40 Foley Square} ~~500~~

~~Pearl Street~~, New York, New York 10007, why an order pursuant to Federal Rule of Civil Procedure 65, Section 34 of the Lanham Act, the All Writs Act, and this Court's inherent equitable powers should not be entered granting Plaintiffs a preliminary injunction enjoining and restraining Defendants, their officers, agents, servants, employees, confederates, and any persons in active concert or participation with them, including but not limited to domain name registrars, domain name registries, and Internet service providers ("ISPs"), from:

1. Using the Grooveshark Marks in any manner in connection with the advertising, offering for sale, or sale of any service or product, not provided by or authorized by Plaintiff UMG.
2. Committing any acts calculated to cause consumers to believe that the Counterfeit Service or any other use of the Grooveshark Marks is offered under the control and supervision of Plaintiff UMG or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff UMG;
3. Infringing any of the Grooveshark Marks and damaging Plaintiff UMG's goodwill;
4. Otherwise competing unfairly with Plaintiff UMG in any manner; or
5. Using, linking to, transferring, selling, exercising control over, or otherwise owning the domain names grooveshark.io or grooveshark.pw or any other domain name that incorporates, in whole or in part, any of Grooveshark Marks (the "Infringing Domain Names").
6. Directly or secondarily infringing Plaintiffs' copyrighted sound recordings via the Counterfeit Service or any variations thereof.

IT IS FURTHER ORDERED that, with respect to the Infringing Domain Names, the domain registrar Namecheap, Inc., shall take the following actions:

- A. Maintain unchanged the WHOIS or similar contact and identifying information as of the time of receipt of this Order and maintain the domains with the current registrar;
- B. Immediately change the authoritative name-servers for the Infringing Domain Names to name-servers controlled by Plaintiffs pending further direction from this

Court, the effect of which would be to make the Infringing Domain Names inaccessible during this period;

- C. Prevent transfer of the Infringing Domain Names and any further modification of any aspect of the domain registration records of the Infringing Domain Names by Defendants or third parties at the registrar or by other means;
- D. Preserve all evidence that may be used to identify the Defendants using the domains;
- E. Refrain from providing any notice or warning to, or communicating in any way with, Defendants or Defendants' representatives and refrain from publicizing this Order until this Order is executed in full, except as necessary to communicate with domain registrars and registries to execute this Order; and it is further

ORDERED that, pending the hearing on Plaintiffs' application for a preliminary injunction, Defendants, including their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them or third parties providing services used in connection with Defendants' operations, or having knowledge of this Order by service, actual notice or otherwise be, and they are hereby, temporarily restrained from:

- A. Committing any of the acts set forth in numbered paragraphs 1-6 above;
- B. Moving, destroying, or otherwise disposing of any computer files, electronic files, business records, or documents related to the Counterfeit Service, the Infringing Domain Names, and/or Defendants' assets and operations; and it is further

ORDERED, that the Temporary Restraining Order shall remain in effect until the date for hearing on the Order to Show Cause set forth above, or such further dates as set by the Court, unless Defendants stipulate, or have not objected, to the Preliminary Injunction; and it is further

ORDERED, that Plaintiffs shall post a corporate surety bond, cash or a certified or attorney's check in the amount of \$25,000 as security, determined adequate for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or restraint hereunder; and it is further

ORDERED, that Plaintiffs may complete service of process on Defendants of this Order together with the Summons and Complaint by electronic mail, and that such service shall be made on or before two (2) business days following the successful completion by domain registrar Namecheap, Inc. of the actions required above; and it is further

ORDERED, that Plaintiffs' counsel file with the Court within ten (10) days after the Order is executed, an affidavit or declaration setting forth: (a) the date on which the Order was executed, which shall be not be later than seven (7) days after the issuance of this Order; (b) the date and means with which Defendants were served with a copy of this Order; (c) a description of the domain names, websites, and any other assets that were disabled and /or restrained; and it is further

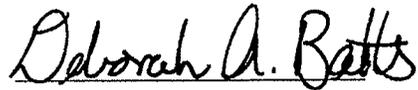
ORDERED, that upon two (2) business days' written notice to the Court and Plaintiffs' counsel, any Defendant may, upon proper showing, appear and move for the dissolution or modification of the provisions of this Order concerning the restriction upon transfer of Defendants' assets; and it is further

ORDERED, that Defendants' answering papers, if any, shall be filed with the Clerk of this Court and served upon Plaintiffs' attorneys by delivering copies thereof to the offices of Jenner & Block, 919 Third Avenue, New York, New York, 10166, Attention: Gianni P. Servodidio, Esq., before 4:00 a.m.  on 5/20, 2015. Any reply shall be filed and served by Plaintiffs at the hearing; and it is finally

ORDERED, that this action shall remain sealed by the Court until the earliest the date for hearing on the Order to Show Cause set forth above;

IT IS SO ORDERED

Entered this 13th day of May __, 2015.

A handwritten signature in cursive script that reads "Deborah A. Baltz". The signature is written in black ink and is positioned above the printed name of the judge.

United States District Judge