

IN THE CHANCERY COURT FOR DAVIDSON COUNTY TENNESSEE

UNIVERSAL MUSIC GROUP, INC. and)
 UMG RECORDINGS, INC.,)
)
 Plaintiffs,)
)
 v.)
)
 ROBERT METZGAR, d/b/a PLATINUM)
 PLUS UNIVERSAL RECORDS,)
)
 Defendant.)

Case No. 09-1362-IV

FILED
 2009 JUL 15 PM 2:55
 CLERK OF COURT
 DAVIDSON COUNTY TENNESSEE

VERIFIED COMPLAINT

1. Plaintiff Universal Music Group, Inc. is a corporation organized under the laws of the state of Delaware with its principal place of business in California. Plaintiff UMG Recordings, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in the state of California. Both of the Plaintiffs are duly qualified to do business in the State of Tennessee. MCA Nashville is a division of UMG Recordings, Inc. with its principal place of business in Tennessee.

2. Defendant, Robert Metzgar, d/b/a Platinum Plus Universal Records, is a citizen and resident of Nashville, Davidson County, Tennessee, holding himself out as having an office at 1214 16th Avenue South in Nashville.

3. Universal City Studios LLP is the owner of the federally registered trademark "Universal Records" in connection with (1) "prerecorded phonograph records, prerecorded audio cassette tapes, and compact discs, prerecorded audio-visual records in analog disc and digital disc configurations, and analog magnetic tape and digital magnetic tape configurations, all containing music," U.S. Patent and Trademark Office registration number 2098208, (2) "prerecorded phonograph records, prerecorded audio cassette tapes and compact discs, pre-

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recorded laser discs, all containing music, registration number 2168031, and (3) “musical sound recordings,” registration number 2889475 (“the Universal Mark”). The Universal Mark has achieved “incontestable” status with respect to the first two categories. Universal City Studios LLP has licensed to Plaintiffs the exclusive right to use the Universal Mark in connection with phonograph records and music, including the right to take action with respect to infringement or dilution of the Universal Mark.

4. UMG Recordings, Inc. is the owner of the federally registered trademark “MCA” and “MCA Records” (the “MCA Marks”) in connection with “prerecorded phonograph records and prerecorded audio and video magnetic tapes in cartridges and cassettes and compact discs, all containing music,” U.S. Patent and Trademark Office registration number 1690767, and (2) “prerecorded phonograph records and prerecorded audio and video magnetic tapes in cartridges and cassettes,” registration number 1336397. The MCA Marks have achieved “incontestable” status with respect to all categories. Plaintiffs have the exclusive right to use the MCA Marks in connection with phonograph records and music.

5. This Court has subject matter jurisdiction over this cause pursuant to 15 U.S.C. §§ 1114 and 1125. It has personal jurisdiction over Defendant because he resides in Davidson County, Tennessee, and committed the acts complained of herein in Davidson County, Tennessee. Venue is proper in this Court because the cause of action arose in this county.

6. Plaintiffs very recently discovered that Defendant is using publicly the Universal Mark as Platinum Plus Universal Records. He is representing to others, among other actions, that he owns the Universal Mark and that he has secured a federal registration of the Universal Mark, neither of which are true. He is representing to others, through the website located at

“www.platinumplusuniversal.com,” that he owns the Universal Mark and/or that he is affiliated with Plaintiffs. Collectively the Universal Mark and MCA Marks are referred to as “the Marks.”

7. Defendant is also using the MCA Marks through the website pages located at “www.myspace.com/robertmetzgar” and “www.capitolmanagement.com.” At those websites and elsewhere, he is, through wrongful use of the Marks, representing himself publicly to be an “MCA Universal Producer,” as “Robert Metzgar, Universal,” and that he “works as a music producer for MCA Universal....” Those representations are false.

8. Attached hereto as Exhibit A to the Verified Complaint is a true copy of the following websites:

www.myspace.com/robertmetzgar;
www.robertmetzgar.com;
www.platinumplusuniversal.com; and
www.capitolmanagement.com

9. Defendant’s misuse of the Marks is causing actual confusion and has caused Plaintiffs immediate and irreparable harm. Through his websites, use of his domain name and otherwise, Defendant is soliciting people whose hope is to be a recording artist to send materials such as demo recordings, pictures and press kits, to him at “Platinum Plus Universal Records.” He is attempting to cause others to conclude that he is affiliated with Plaintiffs.

10. In the last several months, several individuals have appeared unexpectedly at Plaintiffs’ Nashville offices, angrily demanding to see Defendant. They were demanding return of money, in some instances said to be \$100,000, which they had paid to Defendant. They appeared at Plaintiffs’ offices demanding to know why Plaintiffs have not lived up to Defendant’s promises and representations to advance their careers in the music business. They went to Plaintiffs’ offices because they believed Defendant’s misrepresentations that they were dealing with Plaintiffs.

11. In addition, other individuals are calling Plaintiffs' offices demanding to speak to Defendant and expressing their dissatisfaction with him.

12. Further, music industry services have asked Plaintiffs for confirmation of the purported relationship between Defendant and Plaintiffs and inquired as to the nature of Defendant's relationship with Plaintiffs.

13. Defendant's actions have caused Plaintiffs actual, immediate and irreparable harm. In addition to causing actual confusion, Defendant's misuse of the Marks is likely to cause further confusion. Moreover, Defendant's misrepresentations and misuse of the Marks, representing to innocent third parties that he is affiliated with Plaintiffs, successful and respected music companies, diminish and dilute the value of Plaintiffs' exclusive Marks and cause incalculable damage to Plaintiffs' reputation.

14. This misconduct by Defendant, moreover, is intentional. In several past instances, he has held himself out, falsely, as being affiliated with other reputable music companies in order to entice innocent third parties, yearning for musical success for an entrée to a major, well known music company, to pay him significant sums of money, believing that they were paying money to the reputable companies whom he was falsely representing himself to be. Only judicial intervention caused him to cease these fraudulent activities. Once again Defendant is engaging in this activity, this time misusing the Marks.

15. The public interest demands that Defendant's conduct must stop immediately, in order to protect others from falling victim to his schemes, and to protect Plaintiffs' goodwill and reputation from further immediate, incalculable and irreparable harm.

16. Moreover, Defendant's website is deceptively written to cause third parties to believe that he has affiliations not only with Plaintiffs, but with famous and successful

companies and entertainers, when he does not, in order to entice them into believing that he is someone whom he is not, for the purpose of reaping wrongful financial gain.

COUNT I
(Federal Trademark Infringement)

17. The Marks are registered on the Principal Register of the United States Trademark Office, which registration is prima facie evidence of the validity of the registered Marks and Plaintiffs' exclusive right to use the Marks in commerce in connection with phonograph records and the music business. Further, the Marks have achieved "incontestable" status pursuant to 15 U.S.C. § 1065; accordingly, the registrations are conclusive evidence of the validity of the registered Marks and their registration, of the registrant's ownership of the Marks, and of the owner's exclusive right to use the registered Marks in commerce.

18. Pursuant to 15 U.S.C. § 1114, Defendant is liable to Plaintiffs for federal trademark infringement and the remedies provided therein.

19. Pursuant to 15 U.S.C. §§ 1116 and 1117, Defendant is liable to Plaintiffs for injunctive relief, disgorgement of Defendant's profits, any and all damages sustained by the Plaintiffs, and the costs of the action, including Plaintiffs' attorneys' fees, as this is an extraordinary case.

COUNT II
(Violation of the Lanham Act, 15 U.S.C. § 1125(a))

20. Defendant's advertising has falsely used "Universal Records" and other false designations of origin and false and misleading descriptions of fact and representations of fact, which have caused actual confusion, are likely to cause further confusion and have caused mistakes and deception as to Defendant's affiliation, connection and association with Plaintiffs, and/or their approval of his goods, services and commercial activities. In addition, Defendant

has used the federal trademark symbol ® in connection with its use of the Universal Mark, fraudulently misrepresenting that it has a federal registration in the mark.

21. In addition, Defendant, in commercial advertising and promotion, has misrepresented the nature, characteristics and qualities of his services, deceptively representing that he is affiliated with Plaintiffs.

22. Accordingly, pursuant to 15 U.S.C. § 1125(a), Defendant is liable to Plaintiff for damages and injunctive relief.

COUNT III

(Violation of Federal Trademark Dilution Act, 15 U.S.C. § 1125)

23. Plaintiffs' Marks are famous and distinctive.

24. Defendant used Plaintiffs' Marks in commerce beginning after Plaintiffs' Marks became famous.

25. Defendants' use of Plaintiffs' Marks has caused and will continue to cause dilution of the distinctive quality of Plaintiffs' Marks.

26. Defendant willfully intended to trade on Plaintiffs' reputation and to cause dilution of Plaintiffs' famous Marks.

27. As a result of Defendant's conduct, Plaintiff is entitled to recover damages, Defendant's profits, costs, and attorneys' fees for exceptional conduct.

COUNT IV

(Violation of the Anticybersquatting Consumer Protection Act,
15 U.S.C. § 1125(d))

28. Defendant's domain name www.platinumplusuniversal.com is identical or confusingly similar to or dilutive of Plaintiffs' Marks.

29. Defendant registered and used and continues to use the domain name with a bad-faith intent to profit from the Marks.

30. As a result of Defendant's conduct, Plaintiff is entitled to an order that Defendant transfer the domain name to Plaintiff, actual damages, profits, or, in the alternative, statutory damages of the maximum amount allowed under the Anticybersquatting Consumer Protection Act, costs, and attorneys' fees because this is an exceptional case.

COUNT V
(Common-Law Trademark Infringement)

31. Plaintiffs are the owners of federal and common-law trademark rights to the Marks.

32. By the acts described herein, Defendant has violated Plaintiffs' exclusive common-law trademark rights, rendering himself liable for injunctive relief and damages to Plaintiffs.

33. As the proximate result of Defendant's conduct, Defendant is liable to Plaintiffs for compensatory and punitive damages and injunctive relief.

COUNT VI
(Tennessee Dilution)

34. Plaintiff's Marks are famous in Tennessee.

35. Defendant's use of the Marks began after the Marks became famous and has caused and will continue to cause dilution of the distinctive quality of the Marks.

36. Defendant willfully intended to trade on Plaintiffs' reputation and to cause dilution of Plaintiffs' famous Marks.

37. Accordingly, Plaintiffs are entitled to injunctive relief against Defendant's use of the Marks, Defendant's profits, Plaintiffs' actual and compensatory damages and treble damages.

COUNT VII
(Violations of the Tennessee Consumer Protection Act)

38. Defendant is also liable, under the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*, to Plaintiffs, as he has committed false and deceptive acts by holding himself out as being affiliated with Plaintiffs, by soliciting money from innocent third parties under false representations, specifically that he is affiliated with Plaintiffs, by misrepresenting to the public, including, without limitation, by use of his domain name, reference to the Marks and use of the Marks in his domain name, and by use of the federal trademark registration symbol ® in connection with his purported mark although he does not have a federally registered mark, that he owns a federally registered mark and is affiliated with Plaintiffs, and otherwise.

39. Accordingly, Defendant is liable to Plaintiffs for damages, injunctive relief, treble damages, and attorneys' fees.

COUNT VIII
(Common-Law Unfair Competition)

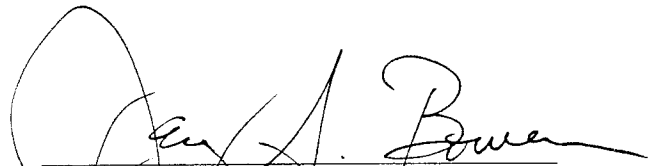
40. Defendant is passing off himself and his services as being Plaintiffs or being affiliated or associated with Plaintiffs. This conduct constitutes unfair competition, rendering Defendant liable for compensatory and punitive damages and injunctive relief.

WHEREFORE, Plaintiffs demand:

1. A restraining order to prevent immediate and irreparable harm to Plaintiffs; and
2. Preliminary and permanent injunctive relief, preventing irreparable injury to Plaintiffs and to the public; and
3. Compensatory damages; and
4. Treble damages; and

5. Punitive damages; and
6. Maximum statutory damages under the Anticybersquatting Consumer Protection Act; and
7. An order that Defendant transfer the domain name www.platinumplusuniversal.com to Plaintiffs; and
8. General relief; and
9. Plaintiffs' costs and attorneys' fees; and
10. Such further relief as may be appropriate.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.



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