

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ATLANTIC RECORDING CORPORATION, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; ARISTA RECORDS LLC, a Delaware limited liability company; SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; and VIRGIN RECORDS AMERICA, INC., a California corporation,

Plaintiffs,

-against-

COLIN HUGGINS,

Defendant.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Case No. 05 CV 1534 (DGT) (RML)

**AFFIDAVIT IN OPPOSITION
TO MOTION FOR ATTORNEY
ADMISSION PRO HAC VICE**

MORLAN TY ROGERS, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and an associate of Beldock Levine & Hoffman LLP, attorneys for defendant Colin Huggins, and respectfully submit this affidavit in opposition to plaintiffs’ motion for an Order admitting Matthew C. Miller, Esq. of the Kansas City firm of Shook, Hardy & Bacon L.L.P. (“SHB”) to represent plaintiffs *pro hac vice* in this case. As shown below, SHB’s attorneys have already caused confusion and unnecessary delays in reaching a settlement of this matter and should not be allowed to interfere with this case, in which plaintiffs are already well represented by their counsel of record.

2. Plaintiffs' attorneys of record in this case are Cowan, Liebowitz & Latman, P.C. ("CLL"), a New York firm founded 48 years ago that "expanded and integrated copyright and trademark law into [its] principal practice in the 1970s before the importance of intellectual property was generally recognized." (Exhibit "A"). CLL is representing several of the plaintiffs and other record companies in dozens of similar "file-sharing" lawsuits brought against individuals in the New York metropolitan area.

3. A common feature of all of these suits is that SHB in Kansas City has relegated CLL to the role of obedient lapdog, taking away CLL's authority as counsel of record to agree to even the usual non-substantive courtesies practiced by litigation attorneys, such as agreeing to extensions of time and adjournments (subject, of course, to the Court's approval). All of these mundane matters must be approved by SHB in Kansas City.

4. All of our attempts to discuss settlement of this case¹ have been referred by CLL to SHB, which has simply refused to negotiate.

5. Before my firm was retained by Mr. Huggins, plaintiffs made a demand of \$4,500. After we were retained, I contacted Maryann Penney, Esq. of CLL to negotiate a settlement. She referred me to Ian Losasso, Esq. of SHB in Kansas City. On August 16, 2005, I spoke to Mr. Losasso and made a counter-offer of \$750. Even though I indicated that there was some flexibility, he initially said that he would not even convey our counter-offer to his clients. The next day, he called to say that our counter-offer had been rejected and that his clients were "standing firm." By

¹A copy of the Complaint is annexed hereto as Exhibit "B". Mr. Huggin has until October 21, 2005 to answer or move with respect thereto.

letter dated August 17, 2005, I invited him to make a counter-offer and indicated that if he did so, my client would increase his offer. (Exhibit “C”).

6. On September 7th (after I returned from vacation), I called Mr. Losasso again, who told me that his clients’ position hasn’t changed and that plaintiffs would not be making a counter-offer. Later that day, I spoke to Ms. Penney of CLL who told me that plaintiffs did in fact want to reach a settlement, that she would speak to Mr. Losasso and that I would be hearing from him. We agreed that we should use the court conference scheduled for October 7, 2005 as a settlement conference and that the parties would continue settlement discussions in an attempt to reach a settlement before then.² By letter dated September 8, 2005, I requested court approval for this, which was granted. (Exhibit “D”).

7. A week later, I still had not heard from Mr. Losasso. On September 15th, I e-mailed Ms. Penney regarding this. (Exhibit “E”). She responded by forwarding my email to him. (Exhibit “F”).

8. As of September 20th, I still had not heard from Mr. Losasso. I again e-mailed Ms. Penney (Exhibit “G”), who forwarded my email to him. (Exhibit “H”).

9. Later that day, Mr. Losasso finally called. He again refused to make a counter-offer or reduce plaintiffs’ initial demand, and called on Mr. Huggins to increase his offer, in effect asking us to bid against ourselves since Mr. Huggins had made the last offer.

²To facilitate this, it was necessary to extend Mr. Huggin’s time to answer the complaint past the date of the October 7th conference. As with a prior request, Ms. Penney first had to get approval from SHB in Kansas City to agree to this extension..

10. It is clear that SHB is not negotiating in good faith and that injecting SHB and its attorneys further into this case will prolong the resolution of this case and cause unnecessary expense to my client. Moreover, plaintiff's boiler-plate motion does not even attempt to explain why it is necessary or even appropriate for an SHB attorney to appear in this case, in addition to plaintiffs' attorneys of record.

11. We therefore oppose plaintiff's motion and request that the Court direct that an officer from at least one of the plaintiffs with full settlement authority attend the October 7th settlement conference.

WHEREFORE, it is respectfully requested that the Court deny plaintiffs' motion in all respects and grant such other and further relief as to the Court seems proper.

s/Morlan Ty Rogers
MORLAN TY ROGERS

Sworn to before me this
21st day of September, 2005

s/Sharon D. Chinitz
Notary Public

SHARON D. CHINITZ
Notary Public, State of New York
No. 30-4830635
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires June 30, 2007