

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ELEKTRA ENTERTAINMENT GROUP INC., a
Delaware corporation; VIRGIN RECORDS
AMERICA, INC., a California corporation; UMG
RECORDINGS, INC., a Delaware corporation;
BMG MUSIC, a New York general partnership;
and SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership,

No. 05 CV 2414 (CM)

Plaintiffs,

-against-

PATRICIA SANTANGELO,

Defendant.

-----X

**MEMORANDUM OF LAW OF
DEFENDANT PATRICIA SANTANGELO
IN SUPPORT OF HER MOTION TO DISMISS THE COMPLAINT**

Preliminary Statement

Patricia Santangelo, by her attorneys Beldock Levine & Hoffman LLP, respectfully submits this memorandum of law in support of her motion for an Order, pursuant to Rules 12(b)(6) and 8(a) of the Federal Rules of Civil Procedure, dismissing the Complaint herein on the grounds that it fails to state a claim upon which relief can be granted and does not satisfy the pleading requirements applicable to copyright infringement claims.

ARGUMENT

THE COMPLAINT MUST BE DISMISSED BECAUSE IT DOES NOT SET FORTH THE SPECIFIC ACTS, AND THE DATES AND TIMES, OF THE ALLEGED COPYRIGHT INFRINGEMENT

Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint give “fair notice of the claim asserted [to allow the defendant] to answer and prepare for trial.” Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). In copyright infringement cases, Rule 8(a)(2) “require[s] a plaintiff to plead with specificity the acts by which a defendant has committed copyright infringement.... [The complaint] must set out the ‘*particular infringing acts ... with some specificity*. Broad, sweeping allegations of infringement do not comply with Rule 8.” Marvullo v. Gruner & Jahr, 105 F.Supp.2d 225, 230 (S.D.N.Y. 2000) (italics added). To withstand a motion to dismiss, a copyright infringement claim must allege, inter alia, “by what acts *during what time* the defendant infringed the copyright.” Marvullo, supra, 105 F.Supp.2d at 230 (italics added); Brought to Life Music, Inc. v. MCA Records, Inc., 2003 WL 296561 at *1 (S.D.N.Y. Feb. 11, 2003) (granting Rule 12(b)(6) motion where “[p]laintiff ha[d] not attempted to describe ‘by what acts and during what time’ [the defendant] infringed the copyright”). See also Plunket v. Doyle, 2001 WL 175252 at *4-6 (S.D.N.Y. Feb. 22, 2001) (dismissing copyright infringement claim under Rule 8 because it “fails to describe the time period during which infringing acts occurred).

Here, the Complaint makes no attempt to describe the specific acts, or the dates and times, of the alleged copyright infringement. Nor do the exhibits annexed to the Complaint set forth any of this information. The Complaint must therefore be dismissed. Marvullo, supra, 105 F.Supp.2d at 230; Brought to Life Music, Inc., supra, 2003 WL 296561 at *1; Plunket v. Doyle, 2001 WL 175252 at *4-6.

CONCLUSION

The Court should grant the within motion in all respects.

Respectfully submitted,

BELDOCK LEVINE & HOFFMAN LLP
Attorneys for defendant Patricia Santangelo

By: s/Morlan Ty Rogers
Morlan Ty Rogers (MR 3818)

99 Park Avenue
New York, NY 10016
(212) 490-0400

Of Counsel:
Ray Beckerman
Morlan Ty Rogers
Daniel A. Singer