

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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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,

**AFFIDAVIT**

-against-

PATRICIA SANTANGELO,

Defendant.

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

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 Patricia Santangelo, and respectfully submit this affidavit 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. A copy of the Complaint is annexed hereto as Exhibit "A".

2. The Complaint alleges in conclusory fashion and upon information and belief that defendant used "an online media distribution system" to download and distribute certain

copyrighted recordings. Complaint, ¶ 13. The Complaint makes no attempt to describe the specific acts of infringement or the dates and times on which they allegedly occurred.

3. Annexed to the Complaint are two exhibits – a list apparently prepared solely in connection with this litigation (Exhibit A) and a printout made with Kazaa software that appears not to be a list of recordings actually infringed, but merely lists recordings that may have been made available by the allegedly offending account (Exhibit B). Neither of these exhibits sets forth specific acts of infringement or any dates and times when the alleged acts of copyright infringement occurred.

4. As set forth in the accompanying Memorandum of Law, a copyright infringement claim which, as here, does not describe the acts, dates and times of the alleged infringement fails to satisfy the pleading requirements for such a claim and must therefore be dismissed.

5. Pursuant to 17 U.S.C. § 505, defendant requests that the Court award her the reasonable attorneys' fees that she incurred in defending this case.

**WHEREFORE**, it is respectfully requested that the Court grant the within motion and enter an Order dismissing the Complaint and awarding reasonable attorneys' fees to defendant.



MORLAN TY ROGERS

Sworn to before me this  
14<sup>th</sup> day of July, 2005



Notary Public

**RAY BECKERMAN**  
Notary Public, State of New York  
No. 028E5038058  
Qualified in Queens County 2007  
Commission Expires January 17, 2007