

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

BROADCAST MUSIC, INC.;)
MJ PUBLISHING TRUST d/b/a MIJAC)
MUSIC; EVIL EYE MUSIC, INC.;)
RONDOR MUSIC INTERNATIONAL,)
INC. d/b/a IRVING MUSIC; KENNY)
O'DELL MUSIC; SONY/ATV SONGS)
LLC d/b/a SONY/ATV TREE)
PUBLISHING; CONCORD MUSIC)
GROUP, INC. d/b/a JONDORA MUSIC;)
SONGS OF UNIVERSAL, INC.; EMI)
VIRGIN SONGS, INC. d/b/a EMI)
LONGITUDE MUSIC; SHIRLEY)
EIKHARD USA MUSIC; EMI)
BLACKWOOD MUSIC INC.; PEER)
INTERNATIONAL CORPORATION;)
SONY/ATV SONGS LLC d/b/a)
SONY/ATV ACUFF ROSE MUSIC;)
COBURN MUSIC, INC.; CASS)
COUNTY MUSIC; RED CLOUD MUSIC;)
PAINTED DESERT MUSIC)
CORPORATION; MOEBETOBLAME)
MUSIC; WARNER-TAMERLANE)
PUBLISHING CORP.; TOWER ONE)
MUSIC, A DIVISION OF CASTLE)
PUBLISHING, INC.; MAD MOTHER)
MUSIC,)

Plaintiffs,)

v.)

FRY FIVE LLC)
d/b/a BREWERS OF JORDAN;)
and RONALD A. FRY, individually,)

Defendants.)

CIVIL ACTION NO.:

COMPLAINT

_____)

Plaintiffs, by their attorneys, for their Complaint against Defendants, allege as follows (on knowledge as to Plaintiffs; otherwise on information and belief):

JURISDICTION AND VENUE

1. This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. Sections 101 et seq. (the “Copyright Act”). This Court has jurisdiction pursuant to 28 U.S.C. Section 1338(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1400(a).

THE PARTIES

3. Plaintiff Broadcast Music, Inc. (“BMI”) is a corporation organized and existing under the laws of the State of New York. BMI’s principal place of business is 7 World Trade Center, 250 Greenwich Street, New York, New York, 10007. BMI has been granted the right to license the public performance rights in approximately 6.5 million copyrighted musical compositions (the “BMI repertoire”), including those which are alleged herein to have been infringed.

4. The other Plaintiffs are the owners of the copyrights in the musical compositions which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

5. Plaintiff MJ Publishing Trust is a trust doing business as Mijac Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

6. Plaintiff Evil Eye Music, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

7. Plaintiff Rondor Music International, Inc. is a corporation d/b/a Irving Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

8. Plaintiff Kenny O'Dell Music is a sole proprietorship owned by Kenneth Gist a/k/a Kenny O'Dell. This Plaintiff is the copyright owner of at least one of the songs in this matter.

9. Plaintiff Sony/ATV Songs LLC is a limited liability company d/b/a Sony/ATV Tree Publishing. This Plaintiff is the copyright owner of at least one of the songs in this matter.

10. Plaintiff Concord Music Group, Inc. is a corporation d/b/a Jondora Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

11. Plaintiff Songs of Universal, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

12. Plaintiff EMI Virgin Songs, Inc. is a corporation d/b/a EMI Longitude Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

13. Plaintiff Shirley Eikard USA Music is a sole proprietorship owned by Shirley Rose Eikhard. This Plaintiff is the copyright owner of at least one of the songs in this matter.

14. Plaintiff EMI Blackwood Music Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

15. Plaintiff Peer International Corporation is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

16. Plaintiff Sony/ATV Songs LLC is a limited liability corporation d/b/a Sony/ATV Acuff Rose Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

17. Plaintiff Coburn Music, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

18. Plaintiff Cass County Music is a sole proprietorship owned by Donald Hugh Henley. This Plaintiff is the copyright owner of at least one of the songs in this matter.

19. Plaintiff Red Cloud Music is a sole proprietorship owned by Glenn Lewis Frey. This Plaintiff is the copyright owner of at least one of the songs in this matter.

20. Plaintiff Painted Desert Music Corporation is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

21. Plaintiff Moebetoblame Music is a partnership owned by Michael Balzary, John Anthony Frusciante, Anthony Kiedis and Chad Gaylord Smith. This Plaintiff is the copyright owner of at least one of the songs in this matter.

22. Plaintiff Warner-Tamerlane Publishing Corp. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

23. Plaintiff Tower One Music, A Division of Castle Publishing, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

24. Plaintiff Mad Mother Music is a sole proprietorship owned by Obed Wayne Kirkpatrick. This Plaintiff is the copyright owner of at least one of the songs in this matter.

25. Defendant, Fry Five LLC is a limited liability company organized and existing under the laws of the State of Minnesota, which operates, maintains and controls an establishment known as Brewers of Jordan, located at 350 Eldorado Drive, Jordan, Minnesota 55352 in this district (the "Establishment").

26. In connection with the operation of the Establishment, Defendant Fry Five LLC publicly performs musical compositions and/or causes musical compositions to be publicly performed.

27. Defendant Fry Five LLC has a direct financial interest in the Establishment.

28. Defendant Ronald A. Fry is a member of Defendant Fry Five LLC, with responsibility for the operation and management of that limited liability company and the Establishment.

29. Defendant Ronald A. Fry has the right and ability to supervise the activities of Defendant Fry Five LLC, and a direct financial interest in that limited liability company and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

30. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 29.

31. Plaintiffs allege fifteen (15) claims of willful copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

32. Attached as Exhibit A and incorporated herein is a schedule identifying some of the many musical compositions whose copyrights were infringed by Defendants. Exhibit A contains information on the fifteen (15) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information: Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the

copyright registration was issued for the musical composition; Line 6 indicating the Registration number(s); Line 7 showing the date(s) of infringement; and Line 8 identifying the Establishment where the infringement occurred.

33. For each of the musical compositions identified on Exhibit A, the person(s) named on Line 3 was the creator of the work (all references to Lines are lines on Exhibit A).

34. For each work, on or about the date(s) indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed on Line 6.

35. For each work, on the date(s) listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work, on the date(s) listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical composition listed on Line 2.

36. For each work, on the date(s) listed on Line 7, Defendants performed and/or caused the musical composition identified on Line 2 to be publicly performed at the Establishment without a license or permission to do so. Thus, Defendants have committed copyright infringement.

37. The specific acts of copyright infringement alleged, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

(I) Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. Section 502;

(II) Defendants be ordered to pay statutory damages, pursuant to 17 U.S.C. Section 504(c);

(III) Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. Section 505; and

(IV) That Plaintiffs have such other and further relief as is just and equitable.

Dated: October 18, 2011

By: s/William D. Schultz
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