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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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8 Attorneys for Plaintiff
9 UMG RECORDINGS, INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 UMG RECORDINGS, INC., a Delaware
14 corporation,

15 Plaintiff,

16 v.

17 TROY AUGUSTO d/b/a ROAST BEAST
18 MUSIC COLLECTABLES AND
19 ROASTBEASTMUSIC, an individual;
20 and DOES 1 through 10, inclusive,

21 Defendants.

22
23
24
25
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27
28
CV 07-106
-COMPLAINT FOR
COPYRIGHT INFRINGEMENT
DEMAND FOR JURY TRIAL
[17 U.S.C. § 501]

1 UMG RECORDINGS, INC. ("UMG" or "Plaintiff"), by and through its
 2 attorneys of record, complains against Troy Augusto ("Augusto"), individually and
 3 d/b/a Roast Beast Music Collectables and roastbeastmusic, and DOES 1 through 10
 4 ("DOES") (collectively, "Defendants") as follows:

5
 6 **JURISDICTION AND VENUE**

7
 8 1. This is a civil action seeking damages, injunctive relief and other
 9 remedies for copyright infringement under the copyright laws of the United States (17
 10 U.S.C. § 101, et. seq.)

11
 12 2. This Court has subject-matter jurisdiction over this action pursuant to 17
 13 U.S.C. § 101 *et seq.* (the Copyright Act); 28 U.S.C. § 1331 (federal question); and 28
 14 U.S.C. § 1338(a) (copyright).

15
 16 3. Defendants are subject to the personal jurisdiction of this Court and
 17 venue is proper in this District under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a) in
 18 that the acts of infringement complained of herein occurred in this District and the
 19 Defendants reside, may be found and/or transact business in this District.

20
 21 **PARTIES**

22 4. Plaintiff is a Delaware corporation with principal places of business in
 23 Santa Monica, California and New York, New York.

24
 25 5. Plaintiff is informed and believes and based thereon alleges that Augusto
 26 is an individual residing in California and doing business under the names Roast Beast
 27 Music Collectables and roastbeastmusic.
 28

1 10. Like virtually all other music companies, UMG's record labels promote
 2 their musical releases through the distribution of "Promo CDs" to select influential
 3 persons. As the name suggests, "Promo CDs" are promotional recordings that are
 4 made available, under license, by record companies to a select group of individuals
 5 who are in a position to generate "buzz" or interest in the recording among the
 6 consuming public. Typical recipients of "Promo CDs" include radio DJs, music
 7 critics and music distributors. Although each record company distributes pursuant to
 8 the terms of its own unique license, nearly all "Promo CD" licenses (including those
 9 of UMG) expressly reserve all rights under U.S. copyright law, and expressly prohibit
 10 the sale of "Promo CDs." Notice of these restrictions is typically stamped,
 11 prominently, on each "Promo CD." In light of the foregoing restrictions in the license
 12 agreement, any sale of "Promo CDs," except by the copyright owner (*i.e.*, the music
 13 company that distributed the "Promo CD" in question), is a violation of the exclusive
 14 distribution right of the copyright owner set forth in 17 U.S.C. § 106(3).

15
 16 11 Under the d/b/a "Roast Beast Music Collectables," Augusto built an eBay
 17 "storefront" for the purpose of selling "Promo CDs," and, although the full extent of
 18 his sales are unknown, as of March 2007, he has generated more than 20,000 customer
 19 comments, from more than 15,000 different buyers.

20
 21 12. At various dates in 2006 and 2007, UMG identified a number of eBay
 22 auctions at which unauthorized copies of its copyrighted "Promo CDs" were being
 23 sold by Augusto. These auctions included sales of the following copyrighted sound
 24 recordings:

- 25 ///
- 26 ///
- 27 ///
- 28 ///

Artist	Title of Work	Effective Date of Registration	Copyright Registration No.
Hinder	Extreme Behavior	November 1, 2005	SR 379-192
Nelly Furtado	Loose	July 28, 2006	SR 387-509
Rich Boy	Throw Some D's (4 versions)	September 22, 2006	SR 398-764
Dirty Pretty Things	Waterloo to Anywhere	September 22, 2006	SR 394-696
Lionel Richie	Coming Home	October 17, 2006	SR 391-372
The Killers	Sam's Town (Best Buy Exclusive)	October 27, 2006	SR 398-798
Bone Thugs-N- Harmony	"Just Vibe" (4 versions)	November 29, 2006	SR 400-656
Gwen Stefani	Wind It Up	December 29, 2006	SR 400-613

13. True and correct copies of the eBay auctions referenced in the preceding paragraph are attached hereto as Exhibit A. True and correct copies of the U.S. copyright certificates for the above-referenced works are attached hereto as Exhibit B.

14. Each of the "Promo CDs" offered for sale by Augusto in the eBay auctions referenced in Exhibit A contains the following language printed prominently and directly on the CDs:

FBI Anti-Piracy Warning: Unauthorized copying is punishable under Federal law. This CD is the property of the record company and is licensed to the intended recipient for personal use only. Acceptance of this CD shall constitute an agreement to comply with the terms of the license. Resale or transfer of

1 possession is not allowed and may be punishable under federal and state laws.

2 This CD may be watermarked to identify the intended recipient.

3
4 15. The following descriptive text from Augusto's December 2006 eBay
5 auction for a "Promo CD" of "Wind It Up" by Gwen Stefani is typical of Augusto's
6 advertising:

7 Here is the rare, circa 2006

8 Gwen
9 promotional CD, called
10 *Wind It Up*

11 **INDUSTRY EDITION - NOT SOLD IN STORES!**

12 Reads, "For Promotional Use Only" on disc/insert!

13 Features 1 track, the great 3:11 *The Great Escape* version!

14 Limited U.S. edition, issued by InterScope Records (INTR-11911-2).

15 Disc is in MINT, UNPLAYED condition - will play perfectly!

16 Includes a cool promo-only disc, and exclusive promo artwork!

17 Comes in a jewel case, w/ original rear promo insert, great shape!

18 Guaranteed to be AUTHENTIC! CD Playside is SILVER!

19 16. Augusto deceives potential eBay buyers by speciously claiming that he
20 has the right, under U.S. copyright law, to sell the "Promo CDs" under the "first sale
21 doctrine" embodied in 17 U.S.C. § 109. (In fact, since "Promo CDs" are never sold,
22 only licensed, that doctrine simply does not apply.)

23 17. For years, UMG has sought to bring an end to Augusto's illegal sales of
24 its copyrighted works short of the cost and burden of bringing suit. In accordance
25 with policies of eBay (which, by design, are substantially similar to the requirements
26 of the Digital Millennium Copyright Act), UMG, acting through the Recording
27 Industry Association of America (RIAA), contacted eBay and demanded that the
28 auctions for these items be terminated. Based upon UMG's representation that

1 Augusto's sales infringed its rights under U.S. Copyright, eBay suspended the auctions
2 of the works identified by UMG in Exhibit A.

3
4 18. On various dates in 2006 and 2007, Augusto responded by completing,
5 under penalty of perjury, an eBay "Counter Notice Regarding Removed Listing" with
6 respect to each such auction. These counter notices are attached hereto as Exhibit C.
7 Based upon Augusto's submission of such Counter Notices, eBay permitted him to
8 proceed with his auctions, which he did.

9
10 19. As set forth in each of the forms contained in Exhibit C, Augusto
11 affirmed as follows with respect to each of his "Roast Beast" auctions:

12
13 "I CERTIFY UNDER SWORN PENALTY OF PERJURY that I am sending
14 this notification on the basis of my good faith belief that the listings ... referred to
15 below do not involve infringing materials ... and have been identified by a Verified
16 Rights Owner ... as infringing by mistake or due to misidentification ..."

17
18 20. This is not the first time that Augusto has been sued for copyright
19 infringement based upon his sale of "Promo CDs." In June 2004, Capitol Records,
20 Inc. and Virgin Records America, Inc., two leading record companies, brought suit
21 against Augusto in the U.S. District Court for the Northern District of Illinois (the
22 "Capitol/Virgin Lawsuit"). The relevant facts set forth in that complaint are identical
23 to those alleged by UMG in this Complaint. (A true and correct copy of the
24 Capitol/Virgin Complaint is attached hereto as Exhibit D.)

25
26 21. By a consent decree (a true and correct copy of which is attached hereto
27 as Exhibit E), judgment in the Capitol/Virgin Lawsuit was entered against Augusto,
28 who stipulated to various conclusions and findings of fact, including:

1 "4. From time to time, Plaintiffs have made available to various
 2 individuals, including Defendant, promotional compact discs containing
 3 Copyrighted Recordings ("Promo CDs"). As is established by express
 4 language included on the external packing of the Promo CDs, as well as
 5 longstanding custom and practice in the industry, Plaintiffs' distribution
 6 of Promo CDs to selected recipients did not convey ownership of the
 7 Promo CDs to those recipients, but rather constituted a licensing
 8 arrangement in which recipients were given permission to use the Promo
 9 CDs for promotional purposes, but forbidden from selling or otherwise
 10 transferring them without Plaintiffs' authorization. As Plaintiffs have
 11 neither transferred ownership of their Promo CDs, nor authorized any
 12 recipient of Promo CDs to do so, Plaintiffs' exclusive distribution rights
 13 with regard to their Promo CDs remain intact regardless of whether or
 14 not some of the Promo CDs have been sold by third parties without
 15 Plaintiffs' authority through various means.

16
 17 "5. Defendant has, on numerous occasions, and despite repeated
 18 warnings, offered Plaintiffs' Promo CDs for sale through an online
 19 auction website known as eBay.com. These sales, made without
 20 Plaintiffs' authorization, violated Plaintiffs' exclusive rights under 17
 21 U.S.C. § 106(3)."

22
 23 **FIRST CLAIM FOR RELIEF**

24
 25 **(Copyright Infringement Under 17 U.S.C. § 501)**
 26 **(Against All Defendants)**

27 22. UMG incorporates here by reference the allegations in paragraphs 1
 28 through 21, above, as though fully set forth herein.

1 23. UMG is the owner of all right, title and interest in the sound recordings
2 set forth in Exhibit B (the "Sound Recordings"). UMG's rights include all rights
3 under U.S. copyright law, including the exclusive right to distribute the Sound
4 Recordings to the public.

5
6 24. The Sound Recordings consist of material wholly original with UMG and
7 are copyrightable subject matter under the laws of the United States.

8
9 25. With respect to the Sound Recordings, UMG has complied in all respects
10 with the Copyright Act and all of the laws of the United States governing copyrights.

11
12 26. Defendants have directly, vicariously and/or contributorily infringed
13 and/or induced infringement, of UMG's Sound Recordings copyrights in violation of
14 17 U.S.C. § 501, *et seq.*

15
16 27. All of Defendants' acts are and were performed without UMG's
17 permission, license or consent.

18
19 28. Defendants' infringement of UMG's copyrights has been willful,
20 intentional and in total disregard of, and with indifference to, UMG's rights by
21 willingly and knowingly reproducing, displaying, distributing and utilizing for
22 purposes of trade and promotion unauthorized copies of the Sound Recordings.

23
24 29. As a result of Defendants' infringement of UMG's copyrights and
25 exclusive rights under copyright, UMG is entitled pursuant to 17 U.S.C. § 504 to
26 either disgorgement of profits and recovery of actual damages, or statutory damages.
27 UMG is further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

1 30. The said wrongful acts of Defendants have caused, and are causing, great
2 damage to UMG, which damage cannot be accurately computed, and therefore, unless
3 this Court restrains Defendants from further commission of said acts, UMG will suffer
4 irreparable injury, for which it is without an adequate remedy at law. Accordingly,
5 UMG seeks an order under 17 U.S.C. § 502 enjoining Defendants from any further
6 infringement of UMG's copyrights.

7
8 31. As a result of Defendants' acts alleged herein, UMG has suffered, is
9 suffering and will continue to suffer substantial damage to its business in the form of
10 diversion of trade, loss of profits, injury to goodwill and reputation, and the dilution of
11 the value of its rights, all of which are not yet fully ascertainable.

12
13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests judgment against Defendants as follows:
16

17 (1) For the entry of an injunction providing that Defendants, their officers,
18 agents, servants, employees, representatives, and attorneys, and all persons in active
19 concert or participation with them:

20 (a) be permanently enjoined from copying, reproducing, displaying,
21 promoting, advertising, distributing, or selling any work that infringes,
22 contributorily infringes, or vicariously infringes UMG's rights in the Sound
23 Recordings, and any other copyrighted work of UMG, whether now in
24 existence or later created; and

25 (b) deliver to UMG all copies of UMG's promotional recordings in
26 their possession, custody or control;

27 (2) For the entry of a seizure order directing the U.S. Marshall to seize and
28 impound all items possessed, owned or under the control of Defendants, their officers,

1 agents, servants, employees, representatives and attorneys, and all persons in active
 2 concert or participation with them, which infringe upon UMG's copyrights, including,
 3 but not limited to, any and all broadcasting materials, advertising materials, print
 4 media, signs, Internet web sites, domain names, computer hard drives, servers or any
 5 other media, either now known or hereafter devised, bearing any design or mark
 6 which infringe, contributorily infringe, or vicariously infringe upon UMG's
 7 copyrights in the Sound Recordings, as well as all business records related thereto,
 8 including, but not limited to, lists of advertisers, clients, customers, viewers,
 9 distributors, invoices, catalogs, and the like;

10 (3) For actual damages for copyright infringement pursuant to 17 U.S.C.
 11 §§ 504(a)(1) & (b);

12 (4) For an accounting of all profits, income, receipts or other benefit derived
 13 by Defendants from the reproduction, copying, display, promotion, distribution or sale
 14 of products and services, or other media, either now known or hereafter devised, that
 15 improperly or unlawfully infringe UMG's copyrights pursuant to 17 U.S.C.

16 §§ 504(a)(1) & (b);

17 (5) For a disgorgement by Defendants to UMG of all profits derived by
 18 Defendants from their acts of copyright infringement and to reimburse UMG for all
 19 damages suffered by Plaintiffs by reason of Defendants' acts, pursuant to 17 U.S.C.

20 §§ 504(a)(1) and (b);

21 (6) For statutory damages, upon election prior to final judgment and in lieu
 22 of actual damages and profits for copyright infringement, pursuant to 17 U.S.C.

23 § 104(c);

24 (7) For attorney's fees and costs pursuant to 17 U.S.C. § 505;

25 (8) For prejudgment interest; and

26 ///

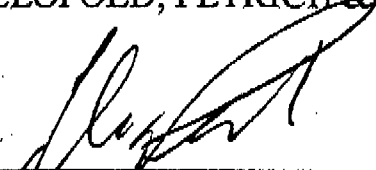
27 ///

28 ///

1 (9) For any such other and further relief as the Court may deem just and
2 appropriate.

3
4 DATED: May 10, 2007

LEOPOLD, PETRICH & SMITH, P.C.


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7 
8 LOUIS P. PETRICH
9 THOMAS J. PEISTRUP
10 Attorneys for Plaintiff
11 UMG RECORDINGS, INC.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff UMG Recordings, Inc. hereby respectfully demands a trial by jury for
14 all claims and issues raised in its Complaint to which it is or may be entitled to a jury
15 trial.

16
17 DATED: May 10, 2007

LEOPOLD, PETRICH & SMITH, P.C.

18
19 
20 LOUIS P. PETRICH
21 THOMAS J. PEISTRUP
22 Attorneys for Plaintiff
23 UMG RECORDINGS, INC.