

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC,

No. 12-cv-0095 (RJS) (AJP)

Plaintiff,

-against-

ANSWER

REDIGI INC.,

Defendant.

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Defendant ReDigi Inc. (“ReDigi”), by its attorneys, Ray Beckerman, P.C., as and for its answer to the complaint (the “Complaint”) of plaintiff Capitol Records, LLC (“Plaintiff”), alleges as follows:

1. Denies the allegations in paragraph 1 of the Complaint, except admits that Plaintiff has brought the within action against ReDigi.
2. Denies the allegations in paragraph 2 of the Complaint, except admits that ReDigi owns and operates the “ReDigi” music service, which is a cloud-based music storage service as well as, upon information and belief, the first online marketplace for used or recycled music files.
3. Denies the allegations in paragraph 3 of the Complaint, except admits that 30 second clips of music tracks can be streamed through links which appear on the ReDigi website, that the streaming of such clips is provided by, and licensed from, an authorized provider thereof, that such clips are stored on the servers of said authorized provider and not on the ReDigi service or on the hard drives of ReDigi users, and that the

cover artwork displayed on the ReDigi website is likewise provided by, and licensed from, the authorized provider.

4. Denies the allegations in paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. Admits the allegations in paragraph 6 of the Complaint.

7. Denies the allegations in paragraph 7 of the Complaint, except admits that Plaintiff has brought the within action against ReDigi.

8. Admits the allegations in paragraph 8 of the Complaint.

9. Denies the allegations in paragraphs 9 and 10 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 11 through 15 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 16 and 17 of the Complaint, except denies those allegations to the extent that they allege that sound recordings and artwork have been illegally reproduced, distributed and or performed or displayed.

12. Denies the allegations in paragraph 18 of the Complaint, except admits that ReDigi owns and operates the ReDigi website and service located at www.redigi.com, that the website and service was launched in October 2011 and is in a “Beta” testing and “inventory build” phase, that ReDigi has referred to its service as “the world’s first online marketplace for used digital music,” and has stated that its service allows users to “buy used digital music from others at a fraction of the price currently available on iTunes.”

13. Denies the allegations in paragraph 19 of the Complaint, except admits that the ReDigi site makes possible the sale of a digital music file from one user to another without copying or file sharing.

14. Denies the allegations in paragraph 20 of the Complaint, except admits that ReDigi issued a press release before the launch of its service and respectfully refers the Court to said document for its content.

15. Denies the allegations in paragraph 21 of the Complaint, except admits that the track stored in the user's personal storage locker is the file which had been stored on the user's computer, and that ReDigi software automatically requires the user to delete all instances of the file from the user's hard-drive and attached devices upon the upload of the file to the user's personal storage locker.

16. Denies the allegations in paragraph 22 of the Complaint, except admits that ReDigi issued a press release before the launch of its service and respectfully refers the Court to said document for its content.

17. Denies the allegations in paragraphs 23 through 25 of the Complaint, except admits that ReDigi has a tutorial video on its website and respectfully refers the Court to said video for its content.

18. Denies the allegations in paragraph 26 of the Complaint, except admits that cover artwork from a third-party source is displayed on ReDigi's website pursuant to license.

19. Denies the allegations in paragraph 27 of the Complaint, except admits that ReDigi users can earn "ReDigi coupons" and credits which can be applied to the purchase of music files.

20. Denies the allegations in paragraph 28 of the Complaint, except admits that the ReDigi website offers contests.

21. Denies the allegations in paragraph 29 of the Complaint, except admits that ReDigi was mentioned in a New York Times article dated November 14, 2011.

22. Denies the allegations in paragraph 30 of the Complaint, except admits that the ReDigi earns a transaction fee from the sale of music by one user to another through the ReDigi website.

23. Denies the allegations in paragraph 31 of the Complaint, except admits that ReDigi has made public statements and issued press releases.

24. Denies the allegations in paragraph 32 of the Complaint, except admits that the “Verification Engine” in ReDigi’s proprietary “Music Manager” software (“Music Manager”) analyzes each file that a user seeks to upload to determine that it was legally downloaded from iTunes by the user and eligible to be uploaded to the user’s personal storage locker.

25. Denies the allegations in paragraph 33 of the Complaint, except admits that Amazon.com, which is not the source of any ReDigi uploads, has terms and conditions on its music store website.

26. Denies the allegations in paragraph 34 of the Complaint, except admits that Music Manager is resident on the user’s computer, that Music Manager verifies the eligibility of music files to be uploaded to the user’s personal storage locker, that after a file is so verified, Music Manager uploads the file and requires deletion of the file and all copies thereof from the user’s computer and from all synchronization and

storage devices attached thereto, that if any storage or synchronization device is connected to the computer subsequent to the upload, Music Manager automatically searches such device or devices for instances of copies of the previously uploaded file, that if a copy of such file is detected, the user is prompted to authorize the deletion of such file from that device, and that if the user fails to provide such authorization, the user's ReDigi account is suspended.

27. Denies the allegations in paragraph 35 of the Complaint, except admits that the First Sale Doctrine of 17 U.S.C. § 109 is one of many defenses to this action.

28. Paragraph 36 of the Complaint calls for legal conclusions, and as such, no response is necessary; to the extent that paragraph 36 contains factual allegations, ReDigi denies same.

29. Denies the allegations in paragraphs 37 and 38 of the Complaint.

30. Denies the allegations in paragraph 39 of the Complaint, upon information and belief denies that Plaintiff owns any of the songs, and denies knowledge or information sufficient to form a belief as to the truth of the allegation that “many of Billboard's ‘top 100’ [recordings] listed as available from ReDigi are owned by Plaintiff.”

31. Denies the allegations in paragraph 40 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff owns or controls the sound recordings listed in Exhibits A and B to the Complaint.

32. Denies the allegations in paragraph 41 of the Complaint, except admits that the RIAA sent ReDigi a “cease and desist” letter in November 2011, which failed to comply with the Digital Millennium Copyright Act, 17 U.S.C. § 512 (“DMCA”).

33. Denies the allegations in paragraphs 42, 43, 45 through 50, 52 through 60, 62 through 70, and 72 of the Complaint.

34. Denies the allegations in paragraph 73 of the Complaint, except admits that Music Manager determines whether files sought to be uploaded to the ReDigi Cloud are eligible to be uploaded, that it is not necessary for the user to know the source of the file sought to be uploaded since Music Manager will determine whether it is from an eligible source, that ReDigi has adopted and reasonably implemented a policy that provides for the suspension of users’ accounts in the event of repeated infringement and violation of ReDigi’s terms of service, and that ReDigi has informed its users of this policy and they have agreed to same.

35. Denies the allegations in paragraph 74 of the Complaint.

36. Denies the allegations in paragraph 75 of the Complaint, except admits that ReDigi charges a transaction fee on the sale of a used music file.

37. Denies the allegations in paragraphs 76 through 81 of the Complaint.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 83 of the Complaint.

39. Denies the allegations in paragraph 84 of the Complaint, except admits that Plaintiff has not granted ReDigi a license to copy, distribute or perform any pre-1972 recordings.

40. Denies the allegations in paragraphs 85 through 88 of the Complaint.

AFFIRMATIVE DEFENSES

41. After signing up for a ReDigi account, accepting ReDigi's terms of service, downloading and installing ReDigi's proprietary "Music Manager" software ("Music Manager"), and logging into the account using secure login information, a ReDigi user may upload an eligible music file ("Eligible File") from the user's computer to the user's personal storage locker ("Cloud Locker") in ReDigi's cloud-based storage system (the "ReDigi Cloud").

42. A user's Cloud Locker consists of file pointers that associate particular Eligible Files with a particular user's account and indicate in which Cloud Locker those files are located.

43. Only the user associated with a particular Cloud Locker has access to its contents.

44. The only Eligible Files are those originally and legally downloaded from iTunes, thereby excluding music tracks copied from CDs, or downloaded from other online vendors or files sharers, or obtained from any other source.

45. The terms and conditions used by iTunes do not in any way prohibit any part of ReDigi's business model. Plaintiff's citation of the terms and conditions used by Amazon.com is inapposite.

46. Music Manager analyzes each music file that a user seeks to upload to determine that it was legally downloaded from iTunes by the user and eligible to be uploaded. Before a file is accepted for upload, the file is subjected to an initial validation process on the user's computer, which includes analyzing file ownership, source, purchase dates, UITS code if it exists, metadata, and changes and modifications, if any. If the file passes the initial validation stage, the file is uploaded to the user's Cloud Locker where additional and more intensive analysis takes place to confirm eligibility, including validating file source and ownership, and verifying that the file was not modified or tampered with.

47. Music Manager continuously runs in the background on a user's computer. Upon the upload of an Eligible File to a user's Cloud Locker, such file and all copies thereof residing on the user's computer, and on attached synchronization and storage devices, are deleted therefrom.

48. If any storage or synchronization device is connected to the user's computer subsequent to the upload, Music Manager automatically searches such devices for instances of copies of any Eligible File previously uploaded by the user to his or her Cloud Locker.

49. If a copy of such Eligible File is detected, the user is prompted to authorize the deletion of such file from that device, and if the user fails to provide such authorization, the user's ReDigi account is suspended.

50. If a user downloads a file from his or her Cloud Locker, the file in the Cloud Locker is deleted.

51. After the upload of an Eligible File to a user's Cloud Locker, the user can listen to the file by "streaming" it from the user's Cloud Locker to an internet-connected device using the user's secure login to access his or her ReDigi account.

52. No copy of a music file so "streamed" is stored; rather it is loaded into RAM, and disappears when the song stops playing.

53. A user can choose to offer an Eligible File stored in his or her Cloud Locker for resale to other ReDigi users through the ReDigi used music marketplace.

54. No copy of the file in the ReDigi Cloud is made when the Eligible File is sold by one ReDigi user to another ReDigi user.

55. When such a file is purchased by another user, the file pointer associating the Eligible File with the Cloud Locker of the selling user is modified to associate the file with the Cloud Locker of the purchasing user.

56. In such a transaction only the pointer is changed; the Eligible File remains in the same location in the ReDigi Cloud and is not copied.

57. After such a sale, the selling user no longer has any access to the file so sold.

58. After such a sale, the Eligible File remains in the purchasing user's Cloud Locker where he or she can store it, listen to it, offer it for sale, or download it, in which case the file is deleted from the purchasing user's Cloud Locker.

59. ReDigi earns a transaction fee on the sales.

60. ReDigi's website has links to 30-second clips which are streamed by a third-party source and to associated artwork maintained by that source, all pursuant

to license. No copies of such clips are made or stored on ReDigi's website or in the ReDigi Cloud, nor are any of the artwork files which are displayed on the website stored on the website or in the ReDigi Cloud.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

61. The Complaint fails to state a claim upon which relief can be granted, and violates Fed. R. Civ. P. 8 by failing to allege (a) each specific original work that is the subject of Plaintiff's claim, (b) Plaintiff's ownership of each such specific work, (c) specifics of copyright registration of each such specific work, and (d) the acts by which and the times during which ReDigi purportedly infringed each such copyright.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

62. ReDigi's music storage service and used music marketplace are protected by the safe harbor defense of the Digital Millennium Copyright Act, 17 U.S.C. § 512.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

63. Plaintiff failed to comply with the notification requirements of the Digital Millennium Copyright Act, 17 U.S.C. § 512.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

64. ReDigi's music storage service and used music marketplace do not infringe on copyright based on the fair use doctrine.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

65. ReDigi's music storage service and used music marketplace do not infringe on copyright based on the essential step defense of 11 U.S.C. § 117.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

66. ReDigi's music storage service and used music marketplace do not infringe on copyright based on the copyright exhaustion doctrine.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

67. The sale of Eligible Files from one ReDigi user to another ReDigi user does not infringe on copyright based on the first sale doctrine.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

68. The transfer by a ReDigi user of Eligible Files to and/or from the user's own Cloud Locker in the ReDigi Cloud is a non-infringing act protected by the fair use doctrine.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

69. The transfer by a ReDigi user of Eligible Files to and/or from the user's own Cloud Locker in the ReDigi Cloud is a non-infringing act protected by the essential step defense of 11 U.S.C. § 117.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

70. The transfer by a ReDigi user of Eligible Files to and/or from the user's own Cloud Locker in the ReDigi Cloud does not infringe on copyright based on the copyright exhaustion doctrine.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

71. The transfer by a ReDigi user of Eligible Files to and/or from the user's own Cloud Locker in the ReDigi Cloud does not implicate the distribution right of 17 U.S.C. § 106(3).

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

72. The streaming of 30-second clips of music files and associated cover artwork through ReDigi's website is pursuant to licenses.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

73. The distribution right of 17 U.S.C. § 106(3) is limited to the dissemination of material objects.

74. The digital files that are the subject of this action are not material objects.

75. The dissemination of digital files does not infringe the distribution right of 17 U.S.C. § 106(3).

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

76. Alternatively, if digital files are held by the Court to be material objects subject to the distribution right of 17 U.S.C. § 106(3), then they are likewise material objects subject to the first sale exception to 17 U.S.C. § 106(3) created by 17 U.S.C. § 109, and a ReDigi user's sale of a single file to another ReDigi user therefore does not infringe the distribution right of 17 U.S.C. § 106(3), pursuant to 17 U.S.C. § 109.

WHEREFORE ReDigi demands judgment dismissing the Complaint and awarding attorneys' fees, costs, disbursements, and such other and further relief as to the Court seems proper.

Dated: Forest Hills, New York
January 19, 2012

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