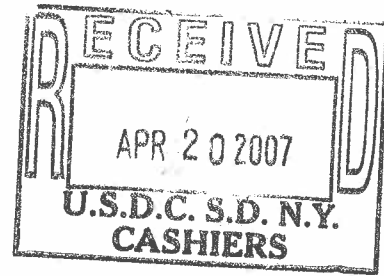


Marc S. Dreier (MD 9713)
Ira S. Sacks (IS 2861)
Mark S. Lafayette (ML 4256)
Safia A. Anand (SA 2386)
DREIER LLP
499 Park Avenue
New York, NY 10022
(212) 328-6100
Attorneys for Plaintiff



JUDGE STEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANYWHERECD, LLC,

Plaintiff,

-against-

WARNER MUSIC INC. and WARNER MUSIC
GROUP CORP.,

Defendants.
-----X

07 CV 3167

Civil Action No.

COMPLAINT

**PLAINTIFF REQUESTS
TRIAL BY JURY**

Plaintiff AnywhereCD, LLC (“AnywhereCD” or “Plaintiff”), by its attorneys Dreier LLP, alleges on knowledge as to its own acts and otherwise on information and belief as follows:

NATURE OF THE ACTION

1. Plaintiff spent over one million dollars to develop, promote and premiere one of the most consumer-friendly music websites available. The purpose of the website was to permit consumers to purchase full album compact discs (“CDs”) and open MP3 format files of the CDs to be used in any lawful manner by the consumer, including by downloading the

MP3 files to their portable music devices, such as iPods, or to their secure internet lockers. After securing the agreement of Warner Music, Inc. (“Warner Music”) to provide content for the AnywhereCD website, Warner Music and its affiliate Warner Music Group Corp. (“WMG”) maliciously and in bad faith asserted that AnywhereCD breached that agreement and made false and damaging statements to the press, which were intended to injure and destroy AnywhereCD’s business.

2. Accordingly, through this action AnywhereCD seeks (a) a declaratory judgment that (i) AnywhereCD is not violating Defendants’ copyrights by offering for sale and selling music in MP3 format; and (ii) the Digital Music Download Agreement, dated February 26, 2007, between Plaintiff and Warner Music is still in full force and effect, and (b) damages arising out of Defendants’ malicious and bad faith tortious interference with AnywhereCD’s business and prospective business relations, defamation of AnywhereCD’s business, trade libel and breach of contract.

JURISDICTION AND VENUE

3. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure seeking a declaration of rights and/or other legal relations of the parties to this litigation with respect to an actual controversy arising under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*

4. This Court has jurisdiction over this matter pursuant to the Copyright Act (17 U.S.C. § 101 *et seq.*); 28 U.S.C. §§ 1331, 1338 and 1367; and the Declaratory Judgment Act (28 U.S.C. § 2201), and related claims under the common law of the State of New York and other states. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(a) because Defendants transact business in this district.

THE PARTIES

5. Plaintiff AnywhereCD is a Delaware limited liability corporation with its principal place of business at 5960 Cornerstone Court, Suite 150, San Diego, California 92121.

6. Defendant Warner Music is a Delaware corporation with its corporate headquarters located at 75 Rockefeller Plaza, New York, New York 10019.

7. Defendant WMG is a Delaware corporation with its corporate headquarters located at 75 Rockefeller Plaza, New York, New York 10019.

8. Warner Music and WMG are collectively referred to herein as "Warner."

FACTS

9. In or about late October 2006, AnywhereCD and Warner entered into negotiations with respect to an agreement which would permit AnywhereCD to sell CD's containing Warner owned music ("Warner Content") bundled with high quality MP3 files of those purchased CD's to consumers through a website. During the negotiation process, the AnywhereCD proposal (as embodied in the Agreement (as defined below)) went before the full WMG executive committee and was approved.

10. Thereafter, AnywhereCD and Warner Music entered into a Digital Music Download Agreement, dated February 26, 2007, (the "Agreement"). The planned launch date for the website was April 11, 2007.

11. In connection with the Agreement and otherwise, AnywhereCD invested more than \$1 million in engineering, servers, data center, marketing, public relations, quality assurance, customer support, royalties and other fees to make AnywhereCD a reality. Warner

was aware of that investment, the plans for the AnywhereCD website, and the potential expansion of the AnywhereCD business.

12. The AnywhereCD website was launched on the morning of April 12, 2007.

13. The AnywhereCD website permitted consumers the option of selecting an “MP3 Album” or an “MP3 Album + CD.” For both options, the consumer was buying a CD. For the “MP3 Album” option, the physical CD, although purchased by the consumer, would not be delivered to the consumer (and would have to be picked up by the consumer, if desired). That saved the consumer approximately \$3. For the “MP3 Album + CD” option, the physical CD would be shipped as directed by the consumer by AnywhereCD. For both options, AnywhereCD electronically sent an MP3 format file with the music from the CD to the consumer.

14. The Terms of Sale on the AnywhereCD website clearly state that a consumer’s MP3 Album purchase is an effective compact disc purchase. Moreover, Warner was specifically made aware of the difference between the two options described above at or prior to launch.

15. As Warner knew well in advance from the Agreement, the AnywhereCD website sold CDs bundled with MP3 files that were not protected by digital rights management (“DRM”).

16. For every CD and MP3 file that was sold, AnywhereCD paid Warner the same royalties (irrespective of the option chosen by the consumer) and either delivered the physical CD to the consumer or held the physical CD for the consumer.

17. The operation of the AnywhereCD website as described above was fully licensed by Warner and fully complied with the Agreement.

18. Notwithstanding such compliance, at 4:25 pm EDT on April 12, 2007, Warner faxed AnywhereCD a malicious and bad faith termination letter (the "April 12 Letter") stating, among other things, that AnywhereCD was in breach of the Agreement because it was offering for sale and selling digital copies of Warner Content in MP3 format separate from the sale of a physical CD. The April 12 Letter also stated, among other things, that the Agreement was terminated, effective immediately, and that if AnywhereCD did not immediately cease and desist from the offer of sale and sale of Warner content, Warner would bring an action for willful copyright infringement and seek a temporary restraining order. The April 12 Letter provided AnywhereCD with no notice that it had a certain period of time to cure the default alleged by Warner prior to any purported termination.

19. The April 12 Letter was sent in bad faith and to maliciously injure AnywhereCD for Warner's own improper purposes. Warner was fully aware that under both options on the AnywhereCD website, AnywhereCD was selling physical CDs along with MP3 files in a bundle. Warner also knew that the MP3 files were not DRM protected. Warner was fully aware that AnywhereCD was in full compliance with the Agreement and attempted to wrongfully terminate the Agreement for reasons unrelated to the AnywhereCD website.

20. Despite the fact that AnywhereCD was in full compliance with the Agreement, in order to attempt to resolve the issue consensually, at 10:30 pm EDT AnywhereCD removed the "MP3 Album Option" from the AnywhereCD website. Thus, the alleged breaching content was only on the website for a total of six hours, any such breach was *de minimis* and was immediately cured within hours of Warner's improper notice.

