

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



Provided by:
[Overhauser Law Offices LLC](http://www.iniplaw.org)
www.iniplaw.org
www.overhauser.com

)
)
 BROADCAST MUSIC, INC.;)
)
 MJ PUBLISHING TRUST d/b/a MIJAC MUSIC,)
)
 SONY/ATV SONGS LLC d/b/a)
)
 SONY/ATV TREE PUBLISHING,)
)
 SONGS OF UNIVERSAL, INC.,)
)
 UNIVERSAL – SONGS OF POLYGRAM)
)
 INTERNATIONAL, INC., WELSH WITCH)
)
 MUSIC, VELVET APPLE MUSIC,)
)
 COMBINE MUSIC CORP., ELIJAH BLUE)
)
 MUSIC, A DIVISION OF LIGHTHOUSE,)
)
 INC., UNICHAPPELL MUSIC, INC.,)
)
 BMG RIGHTS MANAGEMENT US LLC)
)
 d/b/a MUSIC OF EVERPOP, WARNER-)
)
 TAMERLANE PUBLISHING CORP.,)
)
 THIRTY TWO MILE MUSIC, ZOMBIES)
)
 ATE MY PUBLISHING, FORTHEFALLEN)
)
 PUBLISHING, RESERVOIR MEDIA)
)
 MANAGEMENT INC. d/b/a RESERVOIR)
)
 416 a/k/a RESERVOIR ONE AMERICA,)
)
 E.O. SMITH MUSIC, SONY/ATV SONGS LLC, R)
)
 AND R NOMAD PUBLISHING COMPANY, A)
)
 DIVISION OF R & R NOMAD PUBLISHING CO.,)
)
 LLC, AND 4U2ASKY ENTERTAINMENT, INC.,)
)
)
)
 Plaintiffs,)
)
 v.)
)
 ROSES PUB, INC. d/b/a BIG BABY’S)
)
 BAR & GRILL; BRIAN)
)
 HUTCHISON AND LISA HUTCHISON,)
)
 each 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 Delaware. 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 nearly 13 million copyrighted musical compositions (the "BMI Repertoire"), including those which are alleged herein to have been infringed.

4. The Plaintiffs other than BMI 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 Sony/ATV Songs LLC is a limited liability company doing business as Sony/ATV Tree Publishing. This Plaintiff is the copyright owner of at least one of the songs in this matter.

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

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

8. Plaintiff Combine Music Corp. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

9. Plaintiff Elijah Blue Music, a Division of Lighthouse, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

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

11. Plaintiff BMG Rights Management US LLC is a limited liability company doing business as Music of Everpop. This Plaintiff is the copyright owner of at least one of the songs in this matter.

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

13. Plaintiff Reservoir Media Management Inc. is a corporation doing business as Reservoir 416 also known as Reservoir One America. This Plaintiff is the copyright owner of at least one of the songs in this matter.

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

15. Plaintiff R and R Nomad Publishing Company, a division of R & R Nomad Publishing Co. LLC is a limited liability company. This Plaintiff is the copyright owner of at least one of the songs in this matter.

16. Plaintiff 4U2asky Entertainment Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

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

18. Plaintiff Zombies Ate My Publishing is a partnership owned by Amy Lee and Ben Moody. This Plaintiff is the copyright owner of at least one of the songs in this matter.

19. Plaintiff Welsh Witch Music is a sole proprietorship owned by Stephanie Nicks. This Plaintiff is the copyright owner of at least one of the songs in this matter.

20. Plaintiff Velvet Apple Music is a sole proprietorship owned by Dolly Parton. This Plaintiff is the copyright owner of at least one of the songs in this matter.

21. Plaintiff Thirty Two Mile Music is a sole proprietorship owned by Robert J. Ritchie. This Plaintiff is the copyright owner of at least one of the songs in this matter.

22. Plaintiff Forthefallen Publishing is a sole proprietorship owned by David Hodges. This Plaintiff is the copyright owner of at least one of the songs in this matter.

23. Plaintiff E.O. Smith Music is a sole proprietorship owned by Rivers Cuomo. This Plaintiff is the copyright owner of at least one of the songs in this matter.

24. Defendant Roses Pub, Inc. is a corporation organized and existing under the laws of the State of Indiana, which operates, maintains and controls an establishment known as Big Baby's Bar & Grill, located at 1929 West 8th Street, Anderson, Madison County, Indiana 46016, in this district (the "Establishment)."

25. In connection with the operation of the Establishment, Defendant Roses Pub, Inc. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

26. Defendant Roses Pub, Inc. has a direct financial interest in the Establishment.

27. Defendant Brian Hutchison is an individual with an address of 1908 Whittier Avenue, Anderson, Indiana 46011 that operates, maintains, and controls the Establishment in this district.

28. In connection with the operation of this business, Defendant Brian Hutchison publicly performs musical compositions and/or causes musical compositions to be publicly

performed at the Establishment.

29. Defendant Brian Hutchison is an officer of Defendant Roses Pub, Inc. with responsibility for the operation and management of that corporation and the Establishment.

30. Defendant Brian Hutchison has the right and ability to supervise the activities of Defendant Roses Pub, Inc. and a direct financial interest in Roses Pub, Inc. and the Establishment.

31. Defendant Lisa Hutchison is an individual with an address of 1908 Whittier Avenue, Anderson, Indiana 46011 that operates, maintains, and controls the Establishment in this district.

32. In connection with the operation of this business, Defendant Lisa Hutchison publicly performs musical compositions and/or causes musical compositions to be publicly performed at the Establishment.

33. Defendant Lisa Hutchison is an officer of Defendant Roses Pub, Inc. with responsibility for the operation and management of that corporation and the Establishment.

34. Defendant Lisa Hutchison has the right and ability to supervise the activities of Defendant Roses Pub, Inc. and a direct financial interest in Roses Pub, Inc. and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

35. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 34.

36. Since September 2012, BMI has reached out to Defendants over seventy (70) times, by phone and mail, in an effort to inform Defendants of their obligations under the Copyright Act with respect to the necessity of purchasing a license for the public performance of musical compositions in the BMI repertoire. The letters included Cease and Desist Notices, providing

Defendants with formal notice that they must immediately cease all use of BMI-licensed music in the Establishment.

37. Plaintiffs allege thirteen (13) 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.

38. Annexed to this Complaint as a schedule (the "Schedule") and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. A copy of the Schedule is attached as Exhibit A. The Schedule contains information on the thirteen (13) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information (all references to "Lines" are lines on the Schedule): 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 copyright registration number(s) for the musical composition; Line 7 showing the date(s) of infringement; and Line 8 identifying the Establishment where the infringement occurred.

39. For each work identified on the Schedule, the person(s) named on Line 3 was the creator of that musical composition.

40. For each work identified on the Schedule, on or about the dates indicated on Line 5, the publishers 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 numbers listed on Line 6.

41. For each work identified on the Schedule, on the dates 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 identified on the Schedule, on the dates listed on Line 7, the Plaintiffs listed on Line 4 was and still are the owner of the copyright in the respective musical composition listed on Line 2.

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

43. The specific acts of copyright infringement alleged in the Complaint, 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) Plaintiffs have such other and further relief as is just and equitable.

Dated: January 23, 2018

By: /s/ April A. Wimberg

April A. Wimberg

Aaron W. Marcus

BINGHAM GREENEBAUM DOLL LLP

3500 PNC Tower

101 South Fifth Street

Louisville, KY 40202

502-587-3554

awimberg@bgdlegal.com

amarcus@bgdlegal.com

Attorney for Plaintiffs