UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FREEPLAY MUSIC, LLC, Plaintiff, -against- ACTIVE INTEREST MEDIA HOLDCO, INC., ACTIVE INTEREST MEDIA INC., and SAIL MAGAZINE, Defendants.	Civil Action No.: **COMPLAINT AND JURY DEMAND**

Plaintiff Freeplay Music, LLC ("FPM"), through its undersigned attorneys Abrams Fensterman, LLP, complains of Defendants Active Interest Media Holdco, Inc., Active Interest Media, Inc., and SAIL Magazine (collectively "Defendants") as follows:

NATURE OF THE ACTION

1. By this complaint, FPM, a music publisher that has invested and risked money, time, and energy to develop its catalogue of copyrights, seeks redress for Defendants' direct, intentional, and vicarious copyright infringement of FPM's copyrighted works. Defendants exploited, without authorization, ten (10) of FPM's copyrighted songs in eighty eight (88) different videos by unauthorized reproduction, synchronizing, distribution and public performance by means of digital transmission of copyrighted musical compositions and sound recordings. Despite being on notice of their infringement, the Defendants have refused to remedy their wrongdoing, leaving FPM no alternative but to bring this action.

PARTIES

2. FPM is a Delaware limited liability company, with a principal place of business in New York, New York.

3. Upon information and belief, Active Interest Media, Inc. ("AIM") is an enthusiast media company headquartered at 5710 Flatiron Parkway, Unit A, Boulder, Colorado 80301-5711, that produces consumer and trade events, websites, magazines, podcasts, and TV shows that reach millions of readers, fans, and attendees across the globe.

4. Upon information and belief, Active Interest Media Holdco Inc. ("AIMH") is foreign business corporation duly registered with the New York State Department of State to conduct business in the State of New York. Upon information and belief, AIM is an indirectly wholly owned subsidiary of AIMH.

5. Upon information and belief, SAIL Magazine ("SAIL") is a print and digital magazine owned and published by AIMH and AIM. with its principal place of business located in Boulder, Colorado. Upon information and belief, SAIL is an indirectly wholly owned subsidiary of AIM and/or AIMH.

6. Plaintiff is informed and believes, and thereon alleges, that each AIM, AIMH and SAIL is a member, partner, shareholder, parent company, sister company, subsidiary of an affiliate of the other.

7. Plaintiff is informed and believes, and thereon alleges that, at all times relevant hereto, that AIM and AIMH are the owners, shareholders, members, officers, directors, agents, affiliate, managers, principals, and/or alter-egos of SAIL and were at all times acting within the scope of such ownership, agency, affiliation, and/or alter-ego relationship; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of FPM's rights alleged herein and the damages to FPM proximately caused thereby.

JURISDICTION AND VENUE

8. FPM's claims arise under the Copyright Act, 17 U.S.C. §§ 101 *et seq*. Subject matter jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338.

9. The Court has personal jurisdiction over Defendants because defendants are foreign corporations duly registered with the New York State Department of State to conduct business in the state of New York.

10. The Court has personal jurisdiction over Defendants pursuant to New York Civil Practice Law and Rules ("CPLR") §§ 301 and 302(a)(1-3).

11. Upon information and belief, Defendants have continuously and systematically transacted business within the State of New York by, among other things, (i) supplying printed goods to consumers in the state of New York; (ii) operating and maintaining an interactive website that allows for the transaction of business with customers located therein; and (iii) advertising to prospective clients in the State of New York to purchase Defendants' goods and services.

12. Upon information and belief, Defendants regularly do or solicit business, and engage in a persistent course of conduct, or derive substantial revenue from goods used or consumed and services rendered, in the State of New York; including but not limited to regularly conducting business over the Internet wherein goods and services are purchased by New York residents or provided in New York State.

13. Upon information and belief, Defendants have committed a tortious act of copyright infringement within the State of New York causing injury to FPM, a resident and domiciliary of New York.

14. Defendants expect or should reasonably expect their acts of copyright infringement to have consequences in the State of New York and derives substantial revenue from interstate or international commerce.

15. This Court has supplemental jurisdiction over any New York common law claims asserted herein under 28 USC §§ 1331, 1332 and 1338.

16. Venue in this District is proper under 28 U.S.C. §§ 1391(b), (d), and 1400(a).

FPM AND ITS BUSINESS

17. In 2001, Scott Schreer, one of America's most prolific and performed TV composers and producers, launched FPM, a high-quality online music library. Schreer, whose credits include, among many others, the NFL on Fox theme, is also a contributing composer to FPM's catalogue.

18. FPM makes its catalogue available on its website for users to synchronize with audiovisual works. To download and use music, a user must obtain a license from FPM that corresponds to the intended type of use by the user (i.e., personal, commercial, etc.). The cost of such license varies depending on the type of use.

19. With over 300,000,000 impressions to its website as of 2013, FPM is one of the most widely trafficked production music libraries in the industry. Since August 2013, FPM has issued over 3.5 million licenses to the copyrighted music in its library.

20. All use of FPM's music requires a license.

THE DEFENDANTS

21. Upon information and belief, SAIL is holds itself as the magazine of record on the sailing way of life. Their editorial mission is to inspire, educate and entertain sailors of every kind and to celebrate the sport in words and images.

22. Upon information and belief, SAIL publishes promotional videos advertising its business on various online platforms.

23. Upon information and belief, these promotional advertising videos include various songs being played throughout the duration of the videos.

THE FPM COPYRIGHTS AT ISSUE AND DEFENDANTS' UNAUTHORIZED EXPLOITATION

24. FPM is the exclusive owner of the registered copyrights in and to the musical compositions and sound recordings for the songs (the "FPM's Copyrighted Music") set forth below:

a) "Bad Moon" Registration no. SR 336-939

b) "Stomp Box" Registration no. SR 336-939

c) "Catch Me If You Can" Registration no. SR 411 915

d) "Get Down" Registration no. SR 411 915

e) "Rough Rouge" Registration no. SR 412-793

f) "Cool Shades" Registration no. SR 335-678

g) "Spice Factor" Registration no. SR 335-678

h) "Southern Style" Registration no. SR 412-768

i) "Snowblind" Registration no. SR 335-537

j) "Soul Guitar" Registration no. SR 335-537

25. FPM and its predecessor in interest has always owned, maintained, and controlled the exclusive true and valid copyrights in the Copyrighted Music.

26. FPM has complied in all respects with the provisions of the Copyright Act, 17 U.S.C. et seq., has registered the Copyrighted Music with the United States Copyright Office, and was issued a Certificate of Registration for each work of Copyrighted Music. True and complete

copies of the Certificate of Registration for each work of Copyrighted Music are collectively annexed hereto as **Exhibit "A"**.

27. Defendants exploited FPM's Copyrighted Works by, inter alia, the unauthorized sale, distribution, reproduction, synchronization, creation of derivative works, and public performance thereof via digital transmission on online platforms, including without limitation iTunes, Apple Music, Spotify, Amazon Music and www.YouTube.com ("Digital Distribution Platforms").

28. As a result, Defendants benefitted from and continues to benefit from said unauthorized exploitations of FPM's Copyrighted Works.

29. FPM put Defendants on notice of their infringement and exploitation of FPM's Copyrighted Works.

30. Despite being on notice of its infringement, Defendants refused to remedy their wrongdoing, leaving FPM no alternative but to bring this action.

31. All of the Copyrighted Music was published with a copyright notice.

32. Defendants have engaged in a number of unauthorized uses of FPM's Copyrighted music.

(a) Upon information and belief, FPM's copyrighted song "**Bad Moon**" was exploited on the www.YouTube.com website at least one (1) time.

(b) Upon information and belief, FPM's copyrighted song "**Stomp Box**" was exploited on the www.YouTube.com website at least one (1) time.

(c) Upon information and belief, FPM's copyrighted song "**Catch Me If You Can**" was exploited on the www.YouTube.com website at least one (1) time.

(d) Upon information and belief, FPM's copyrighted song "**Get Down**" was exploited on the www.YouTube.com website at least one (1) time.

(e) Upon information and belief, FPM's copyrighted song "**Rough Rouge**" was exploited on the www.YouTube.com website at least one (1) time.

(f) Upon information and belief, FPM's copyrighted song "**Cool Shades**" was exploited on the www.YouTube.com website at least four (4) times.

(g) "Upon information and belief, FPM's copyrighted song "**Spice Factor"** was exploited on the www.YouTube.com website at least four (4) times.

(h) Upon information and belief, FPM's copyrighted song "**Southern Style**" was exploited on the www.YouTube.com website at least one (1) time.

(i) Upon information and belief, FPM's copyrighted song "**Snowblind**" was exploited on the www.YouTube.com website at least one (1) time.

(j) Upon information and belief, FPM's copyrighted song "**Soul Guitar**" was exploited on the www.YouTube.com website at least sixty five (65) times and www.facebook.com at least eight (8) times.

33. Upon information and belief, Defendants copied and reproduced the songs, created derivative works in the synchronized audiovisual songs by posting or causing to be posted, the videos identified in the preceding paragraph on the website(s) identified in the preceding paragraph.

34. Defendants did not enter into a license agreement to exploit any of FPM's Copyrighted Music.

35. Upon information and belief, Defendants reproduced, synchronized, distributed, and publicly performed by means of digital transmission FPM's Copyrighted Music, through among other things, digital transmissions on the websites set forth above.

36. Upon information and belief, at all relevant times, Defendants maintained editorial control for content that Defendants reproduced, synchronized, distributed, and publicly performed by means of digital transmission on the websites set forth above.

37. On multiple occasions, FPM's attorneys, and others acting on its behalf, sent correspondence to Defendants identifying their use of FPM's Copyrighted Music, and requesting that Defendants contact FPM's attorneys to either provide proof of their valid use of FPM's Copyrighted Music, or to resolve, what is otherwise, Defendants' copyright infringement.

38. Despite being notified that it was using FPM's Copyrighted Music without authorization, the Defendants willfully and intentionally ignored FPM's correspondence and continued to use the Copyrighted Music without authorization from FPM.

COUNT 1

DIRECT COPYRIGHT INFRINGEMENT
(Against Defendant SAIL Magazine)

39. FPM incorporates the allegations set forth in paragraphs 1 through 33 hereof, inclusive, as though the same were set forth herein.

40. This cause of action arises under 17 U.S.C. § 501.

41. Each of the FPM Copyrights were registered with the United States Copyright Office either by FPM or its predecessor-in-interest. *See* **Exhibit "A".**

42. At all times relevant, FPM has owned FPM's Copyrighted Music and has been the only owner of the exclusive rights provided under 17 U.S.C. § 106.

43. All of FPM's Copyrighted Music are original works of authorship and constitutes copyrightable subject matter within the meaning of 17 U.S.C. § 102.

44. Defendant SAIL used FPM's Copyrighted Music in promotional videos without license or authorization to advertise, market, and/or promote their products and/or services.

45. FPM has never granted Defendant SAIL the right, or otherwise authorized Defendant SAIL, to exploit FPM's Copyrighted Music.

46. By reproducing, synchronizing, distributing, and publicly performing FPM's Copyrighted Music by means of digital transmission videos containing FPM's Copyrighted Music, Defendant SAIL's acts violate FPM's exclusive rights under 17 U.S.C. §106.

47. FPM's attorneys sent correspondence to Defendant SAIL demanding that they cease and desist their unauthorized uses of the Copyrighted Music and to pay the applicable fees for the unauthorized use of the copyrighted material.

48. Upon information and belief, despite being on notice that their use of the Copyrighted Music was not authorized or licensed, Defendant SAIL refused to pay FPM the applicable fees for the unauthorized use of the copyrighted material.

49. Defendant SAIL had actual or constructive awareness that their unauthorized use of the Copyrighted Music constituted infringement of FPM's Copyrights. Alternatively, Defendant SAIL's act of infringement resulted from a reckless disregard for, or willful blindness to, FPM's rights.

50. Defendant SAIL's infringement of the FPM Copyrighted Music is and has been willful, intentional, purposeful, and/or in disregard of FPM's rights.

51. By reason of Defendant SAIL's continued willful infringement, FPM has sustained and will continue to sustain substantial injury, loss, and damage to its ownership rights in its Copyrighted Music.

52. By reason of Defendant SAIL's willful infringement, FPM has sustained irreparable harm that cannot be remedied by monetary damages alone.

53. FPM is entitled to an injunction restraining Defendant SAIL, their officers, directors, agents, employees, representatives, and all persons acting in concert with them, from further engaging in such acts of copyright infringement.

54. Pursuant to 17 U.S.C.§ 504(c), FPM is further entitled to recover from Defendant SAIL, up to $150,000.00 in statutory damages for each work as a result of Defendant SAIL's acts of copyright infringement for a total of not less than Nine Hundred Thousand Dollars ($900,000.00).

55. The total actual damages are not readably ascertainable but - based on the pervasive and willful nature of the infringement - are believed to be in excess of One Nine Hundred Thousand Dollars ($900,000.00).

56. Pursuant to 17 U.S.C. § 505, FPM is further entitled to recover from Defendant SAIL the reasonable attorneys' fees and legal costs incurred as a result of Defendant SAIL's acts of copyright infringement.

AS AND FOR A SECOND CAUSE OF ACTION
VICARIOUS COPYRIGHT INFRINGEMENT
(Against Defendants Active Interest Media, Inc. and Active Interest Media Holdco, Inc.)

57. FPM incorporates the allegations set forth in paragraphs 1 through 56 hereof, inclusive, as though the same were set forth herein.

58. Upon information and belief, Active Interest Media Holdco, Inc. is and has been the parent company of the Active Interest Media, Inc. and SAIL Magazine.

59. Upon information and belief, during some or all of the time period relevant to this Complaint, SAIL was owned and operated by AIM and AIM is part of AIMH's brand portfolio.

60. Upon information and belief, AIMH and AIM, at all relevant times has dominated the management of SAIL, either directly or indirectly.

61. Upon information and belief, at all times relevant to this Complaint, AIM and AIMH had the right and ability to supervise and/or control the infringing conduct of SAIL, but it has failed to exercise such supervision and/or control.

62. As a direct and proximate result of such failures, AIM and AIMH have vicariously infringed FPM's Copyrights, as set forth above.

63. Upon information and belief, AIM and AIMH was actually involved with the decisions, other processes and personnel directly responsible for the creation of the videos containing unlicensed use of FPM's Copyrighted Music, and the posting of the videos to social media websites including but not limited to Facebook and YouTube.

64. AIM'S publication, SAIL, had actual or constructive awareness that its unauthorized use of the Copyrighted Music constituted infringement of FPM's copyrights in the Copyrighted Music. Alternatively, SAIL's acts of copyright infringement resulted from a reckless disregard for, or willful blindness to, FPM's rights.

65. AIM and AIMH had an obvious and direct financial interest in the creation, use and exploitation of the videos because the videos were commercial advertisements created and used to promote "SAIL" goods and services in the United States and other territories where AIM and AIMH has its subsidiaries and uses the videos.

66. Upon information and belief, at all times relevant to this Complaint, AIM and AIMH derived substantial financial benefit from infringements of FPM's Copyrights by SAIL.

67. The above-mentioned acts of infringement by have been willful, intentional and purposeful in disregard of, and with indifference to, the rights of FPM.

68. AIM and AIMH's conduct, as alleged, constitutes vicarious infringement of FPM's Copyrights and exclusive rights under copyright, in violation of §§ 106, 115 and 501 of the Copyright Act (17 U.S.C.A. § 106, 17 U.S.C.A. § 115, 17 U.S.C.A. § 501).

69. As a direct and proximate result of the AIM and AIMH's vicarious infringement of FPM's Copyrights and exclusive rights under copyright, FPM is entitled to damages pursuant to 17 U.S.C.A. § 504(b) for each infringement.

70. Pursuant to 17 U.S.C.§ 504(c), FPM is further entitled to recover from AIM and AIMH up to $150,000.00 in statutory damages for each work as a result of Defendants' acts of vicarious copyright infringement. Such damages are not readably ascertainable but - based on the pervasive and willful nature of the infringement - are believed to be in excess of One Million Five Hundred Thousand Dollars ($1,500,000.00).

71. Pursuant to 17 U.S.C. § 505, FPM is further entitled to recover from Defendants AIM and AIMH the reasonable attorneys' fees and legal costs incurred as a result of Defendants' acts of vicarious copyright infringement.

PRAYER FOR RELIEF

WHEREFORE, FPM respectfully prays for judgment against Defendants as follows:

1. On the first cause of action for copyright infringement against SAIL, enter judgment that Defendants have infringed the copyrights in and to FPM's Copyrighted Music pursuant to the U.S. Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq*;

2. Enter a permanent injunction ordering Defendants and each of their respective agents, officers, employees, representatives, successors, assign, attorneys and all other persons acting for, or on behalf of, Defendants, or in concert or participation with Defendants, be preliminarily and permanently enjoined from reproducing, distributing, publicly performing by any means including but not limited to digital transmission, or preparing derivative works based on, or in any other way using FPM's Copyrighted Music;

3. Order that FPM be awarded, at its election, all damages caused by the acts forming the basis of this Complaint, including without limitation an award of statutory damages pursuant to 17 U.S.C. § 504 and actual damages in an amount not readily ascertainable but believed to be in excess of Nine Hundred Thousand Dollars ($900,000.00);

4. Order that Defendants be required to pay to FPM the costs of this action and FPM's reasonable attorneys' fees pursuant to 17 U.S.C. § 505;

5. Order that Defendants be required to pay to FPM prejudgment interest at the statutory rate; and

6. On the second cause of action for vicarious copyright liability against AIMH and AIM, enter judgment that Defendants have infringed the copyrights in and to FPM's Copyrighted Music pursuant to the U.S. Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq*;

7. Enter a permanent injunction ordering Defendants and each of their respective agents, officers, employees, representatives, successors, assign, attorneys and all other persons acting for, or on behalf of, Defendants, or in concert or participation with Defendants, be preliminarily and permanently enjoined from reproducing, distributing, publicly performing by any means including but not limited to digital transmission, or preparing derivative works based on, or in any other way using FPM's Copyrighted Music;

8. Order that FPM be awarded, at its election, all damages caused by the acts forming the basis of this Complaint, including without limitation an award of statutory damages pursuant to 17 U.S.C. § 504 and actual damages in an amount not readily ascertainable but believed to be in excess of Nine Hundred Thousand Dollars ($900,000.00);

9. Order that Defendants be required to pay to FPM the costs of this action and FPM's reasonable attorneys' fees pursuant to 17 U.S.C. § 505;

10. Order that Defendants be required to pay to FPM prejudgment interest at the statutory rate; and

11. Grant all such other and further relief to FPM as the Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

FPM requests a trial by jury on all issues so triable.

Dated: Lake Success, NY
June 27, 2024

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