

JUDGE KOELTL

98 CIV. 4645

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RALPHE A. ARMSTRONG, individually  
and d/b/a ANNA MUSIC  
Plaintiff,

98 Civ

COMPLAINT

v.

VIRGIN RECORDS, LTD., VIRGIN RECORDS AMERICA INC.,  
EMI GROUP, Plc., d/b/a EMI MUSIC PUBLISHING,  
WB MUSIC CORP., WARNER/CHAPPELL MUSIC, INC.,  
ISLAND MUSIC, ADDIDAS AMERICA, LEAGAS DELANEY,  
JONNY DOLLAR, BOOGA BEAR and ROBERT DEL NAJA,  
MARSHALL GRANTLEY and ANDREW VOWLES, jointly d/b/a  
as MASSIVE ATTACK.

Defendants.

S. D. OF N. Y.

FILED  
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S. D. OF N. Y.

Plaintiff, RALPHE A. ARMSTRONG, individually and doing  
business as ANNA MUSIC, by his attorneys, ABELMAN, FRAYNE & SCHWAB,  
for his complaint against defendants, alleges as follows:

FOR A FIRST CLAIM

1. This claim arises under the Copyright Act of the United  
States, Title 17 U.S.C. and Title 28 U.S.C. Section 1338, as  
hereinafter more fully appears.

2. Venue is proper in this court pursuant to 28 U.S.C.  
Section 1400 (a).

3. Plaintiff is a professional entertainer, a renowned  
bassist, and does business as ANNA MUSIC, a music publisher.

4. Upon information and belief, defendant VIRGIN RECORDS,  
LTD. ("VIRGIN ENGLAND") is a foreign corporation, engaged in the  
business of making and distributing recorded music phonorecords,  
including in this Judicial District.

5. Upon information and belief, defendant VIRGIN RECORDS  
AMERICA, INC. ("VIRGIN AMERICA") is a domestic corporation engaged

in the business of making and distributing recorded music phonorecords, including in this Judicial District.

6. Upon information and belief, defendant EMI GROUP Plc. ("EMI") is a domestic corporation and a music publisher, doing business as EMI MUSIC PUBLISHING, with its principal place of business in this Judicial District.

7. Upon information and belief, defendant WB MUSIC CORP. ("WARNER") is a domestic corporation and a music publisher, doing business in this Judicial District.

8. Upon information and belief, defendant WARNER/CHAPPELL MUSIC, INC. ("WARNER/CHAPPELL") is a domestic corporation and music publisher, doing business in this Judicial District.

9. Upon information and belief, defendant ISLAND MUSIC ("ISLAND") is a domestic corporation and a music publisher, with its principal place of business in this Judicial District.

10. Upon information and belief, defendant ADDIDAS AMERICA ("ADDIDAS") is a domestic corporation, a sporting goods manufacturer and a major television advertiser, doing business in this Judicial District.

11. Upon information and belief, defendant LEAGAS DELANEY ("LEAGAS") is a foreign advertising agency, doing business in this Judicial District.

12. Upon information and belief, defendant JONNY DOLLAR ("DOLLAR") is a producer of music recordings who can be found in this Judicial District.

13. Upon information and belief, defendant BOOGA BEAR ("BOOGA") is a producer of music recordings who can be found in this Judicial District.

14. Upon information and belief, defendant ROBERT DEL NAJA ("NAJA") is a professional entertainer, a recording artist and a member of the entertainment group professionally known as Massive Attack, who can be found in this Judicial District.

15. Upon information and belief, defendant MARSHALL GRANTLEY ("GRANTLEY") is a professional entertainer, a recording artist and

a member of the entertainment group professionally known as Massive Attack, who can be found in this Judicial District.

16. Upon information and belief, defendant ANDREW VOWLES ("VOWLES") is a professional entertainer, a recording artist and a member of the entertainment group professionally known as Massive Attack, who can be found in this Judicial District.

17. Prior to 1975, plaintiff, who then was and continues to be, a citizen of the United States, created and wrote a musical work entitled *Planetary Citizen* ("Plaintiff's Song").

18. Plaintiff's Song contains material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

19. On January 1, 1978, Plaintiff's Song was first published under the authority of plaintiff, in phonorecords recorded by The Mahavishnu Orchestra, led by guitar giant John McLaughlin, as part of the legendary album entitled *Inner Worlds*.

20. At all times pertinent hereto, plaintiff duly complied with all of the provisions of the copyright laws of the United States applicable to Plaintiff's Song.

21. Plaintiff duly registered a claim to copyright in Plaintiff's Song in the United States Copyright Office, evidenced by a Certificate of Registration issued by the Register of Copyrights, dated and identified as follows: "3-7-97 PA 831-747."

22. Since 1978, plaintiff has been the proprietor of the statutory copyright in Plaintiff's Song and duly possessed of all rights, title and interest therein.

23. From time to time between 1978 and the date of filing this action, defendants, respectively, infringed the statutory copyright in Plaintiff's Song, including by substantial copying; publicly performing; making and distributing, or authorizing the making and distributing of, phonorecords; making and distributing, or authorizing the making and distributing of, recorded commercial advertising announcements; participating in and furthering such infringing acts, or sharing in the proceeds therefrom, all through substantial use of Plaintiff's Song by sampling the recording made

by The Mahavishnu Orchestra in and as part of a song entitled *Unfinished Sympathy*, recorded by defendants NAJA, GRANTLEY and VOWLES as the group professionally known as Massive Attack.

24. Upon information and belief, the respective infringing acts of defendants include, but are not limited to the following:

a. Defendants NAJA, GRANTLEY and VOWLES participated in and contributed to the copying of Plaintiff's Song by sampling in the creation of the song entitled *Unfinished Sympathy*.

b. Defendants NAJA, GRANTLEY, VOWLES, DOLLAR and BOOGA participated in and contributed to the copying of Plaintiff's Song by sampling in the creation of the Massive Attack recording of *Unfinished Sympathy*.

c. Defendants NAJA, GRANTLEY, VOWLES, DOLLAR, BOOGA, VIRGIN ENGLAND, VIRGIN AMERICA, EMI, WARNER, WARNER/CHAPPELL and ISLAND contributed to and participated in the making and distributing of phonorecords in the United States, and various other territories of the world, serving to reproduce mechanically the Massive Attack recording of *Unfinished Sympathy*.

d. All defendants contributed to and participated in the unauthorized copying and use of Plaintiff's Song in recorded commercial announcements for products of ADDIDAS and the unauthorized public performances of such announcements in the United States and various other territories of the world.

25. Defendants' respective infringing acts were, and if continued hereafter, will be, committed willfully.

#### FOR A SECOND CLAIM

26. Repeats and realleges each and every allegation contained in paragraphs 2 through 25.

27. Jurisdiction of this claim is based upon Title 28 Section 1367 (a) and principles of pendent jurisdiction.

28. The United States has entered into international copyright relations with various countries of the world, including

through the Universal Copyright Convention and the Berne Convention.

28. From time to time between 1978 and the date of filing this action, the rendition of *Unfinished Sympathy* recorded by Massive Attack was publicly performed in various territories of the world outside the United States, including as part of the recorded commercial announcements for the products of ADDIDAS, in direct violation of plaintiff's international copyrights.

30. From time to time between 1978 and the date of filing this action, phonorecords serving to reproduce mechanically the Massive Attack recording of *Unfinished Sympathy* were sold in various territories of the world outside the United States, in direct violation of plaintiff's international copyrights.

31. By reason of the foregoing, defendants have infringed plaintiff's international copyrights to an extent to be more fully specified following discovery of defendants' business records.

FOR A THIRD CLAIM AGAINST DEFENDANTS  
OTHER THAN ADDIDAS AND LEAGAS

32. This claim arises under Section 43 (a) of the Lanthan Act entitled, "False designations of origin and false descriptions forbidden", Title 15 U.S.C Section 1125 (a), and Title 15 U.S.C. Section 1121 (a).

33. Repeats and realleges each and every allegation contained in paragraphs 2 through 24.

34. From time to time between 1978 and the date of filing this action, defendants, other than ADDIDAS and LEAGAS, have affixed, applied, annexed and used in connection with phonorecords and other materials distributed throughout the United States and other countries of the world, the false descriptions and representations that the song entitled *Unfinished Sympathy* was solely written by NAJA, GRANTLEY and VOWLES; that EMI, WARNER, WARNER/CHAPPELL and ISLAND are the sole copyright proprietors of *Unfinished Sympathy*; and that VIRGIN ENGLAND, VIRGIN AMERICA and

CIRCA RECORDS LTD. are the sole copyright proprietors of the rendition of *Unfinished Sympathy* recorded by Massive Attack.

35. Said defendants' failure to attribute to plaintiff the authorship and copyright ownership of Plaintiff's Song and to attribute to plaintiff's licensee, Sony Music Entertainment, Inc. ("Sony"), the copyright in the rendition of Plaintiff's Song recorded by The Mahavishnu Orchestra, creates a false impression of the source of the song and recording used in *Unfinished Sympathy*.

36. Plaintiff has no adequate remedy at law and the aforesaid false descriptions and representations have caused and will continue to cause plaintiff irreparable harm and injury.

WHEREFORE, plaintiff demands for his respective claims:

FIRST CLAIM

A. That defendants, and each of them, and their respective agents, servants and representatives, be enjoined during the pendency of this action and permanently, from infringing plaintiff's statutory copyright in any manner, including from disposing of copies of, and making and distributing phonorecords of the recording of *Unfinished Sympathy* by Massive Attack; and from licensing and contributing to or participating in and furthering any infringing acts.

B. That defendants, and each of them, be required to account for all gains, profits and advantages derived by defendants from each of their infringements of plaintiff's statutory copyright, and to pay to plaintiff such damages as plaintiff has sustained in consequence of each infringement of said copyright; or such damages as to this court shall appear proper within the provisions of the Copyright Act.

C. That defendants, and each of them, be required to deliver up on oath, to be impounded during the pendency of this action and for destruction, all infringing copies, recordings and phonorecords, and all plates, molds matrices and other means of

any kind for making infringing copies, sound recordings or phonorecords.

D. That defendants pay to plaintiff the costs of this action, including a reasonable attorney's fee to be allowed to plaintiff by this court.

E. That plaintiff have such other and further relief as is just.

#### SECOND CLAIM

A. That defendants, and each of them, be required to pay to plaintiff all such damages as plaintiff has sustained in consequence of each infringement, and to account for all gains, profits and advantages derived by defendants from each infringement; and that plaintiff recover such other and further relief as may be permitted by the law of the territory governing each infringement.

B. That defendants pay to plaintiff the costs of this action, including a reasonable attorney's fee to be allowed to plaintiff by this court.

C. That plaintiff have such other and further relief as is just.

#### THIRD CLAIM

A. That defendants, and their respective agents, servants, and representatives, be enjoined, during the pendency of this action and permanently, from omitting to credit plaintiff, and his licensee, as their respective interests may appear, for his authorship of Plaintiff's Song, his copyright ownership thereof, and the copyright of Sony in the recording of Plaintiff's Song, on any phonorecords serving to reproduce the recording of *Unfinished Sympathy* by Massive Attack, or on any packaging, advertising or other materials concerning the phonorecords.

B. That defendants and each of them be required to account for all gains, profits and advantages derived from their false descriptions and representations.

C. That defendants pay to plaintiff the costs of this action, including a reasonable attorney's fee to be allowed to plaintiff by this court.

D. That plaintiff has such other and further relief as is just.

ABELMAN, FRAYNE & SCHWAB

By 

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