

JUDGE NATHAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CIV 3529

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TUFAMERICA, INC.,

Plaintiff,

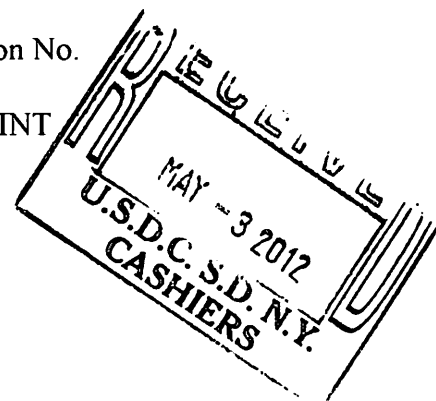
v.

MICHAEL DIAMOND, ADAM HOROVITZ,
and ADAM YAUCH, p/k/a BEASTIE BOYS,
UNIVERSAL MUSIC PUBLISHING, INC.,
UNIVERSAL MUSIC PUBLISHING GROUP,
BROOKLYN DUST MUSIC, and CAPITOL
RECORDS, LLC,

Defendants.
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Civil Action No.

COMPLAINT



Plaintiff TufAmerica, Inc. (“TufAmerica”), by and through its undersigned counsel,
alleges as follows:

BACKGROUND

1. This case is about the illegal “sampling,” or use without permission of a portion of an existing recording as part of another recording, committed by one or more of the defendants in connection with at least four recordings attributed to the group known as the “Beastie Boys.” Plaintiff TufAmerica is the exclusive licensee of the sampled recordings. Defendants are individuals, music publishing companies, and other entities that are listed in published directories as being responsible for the recordings that incorporate the samples. TufAmerica seeks to recover damages for defendants’ copyright infringement and other torts, and to enjoin further distribution of the recordings incorporating the samples.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue in this judicial district is appropriate pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(a).

3. This Court has personal jurisdiction over each of the Defendants. The Defendants have directed their activities and marketing of musical recordings to New York residents, and New York residents are able to purchase and download recordings that incorporate the infringed samples at issue in this lawsuit. Defendants thus do continuous and systematic business in New York, upon information and belief have entered into transactions directly related to the subject matter of this lawsuit, and are present in New York for purposes of establishing this Court's jurisdiction over them under N.Y. C.P.L.R. §§ 301 and 302(a)(1). In addition, upon information and belief one or more of the defendants maintain an interactive website through which New York residents are able to purchase infringing musical recordings. Accordingly such defendants expect or reasonably should expect their infringing conduct to have consequences in New York, and to yield revenue from interstate commerce, subjecting those defendants to jurisdiction under N.Y. C.P.L.R. § 302(a)(3) as well.

PARTIES

4. Plaintiff TufAmerica, Inc. is a New York corporation with a place of business at 10 West 37th Street, Suite 601, New York, New York.

5. Upon information and belief, defendant Michael Diamond ("Diamond") is an individual resident of the state of New York, and is a member of the music group known as "The Beastie Boys."

6. Upon information and belief, defendant Adam Horvitz (“Horvitz”) is an individual resident of the state of New York, and is a member of the music group known as “The Beastie Boys.”

7. Upon information and belief, defendant Adam Yauch (“Yauch”) is an individual resident of the state of New York, and is a member of the music group known as “The Beastie Boys.” Defendants Diamond, Horvitz, and Yauch shall be collectively referred to herein as the “Beastie Boys.”

8. Upon information and belief, defendant Universal Music Publishing Group is a d/b/a of Universal Music Publishing, Inc., and is a Delaware corporation having an address at 2100 Colorado Avenue, Santa Monica, CA 90404.

9. Upon information and belief, defendant Universal Music Group, Inc. is a corporate parent of defendant Universal Music Publishing, Inc. and is a Delaware corporation having an address at 2100 Colorado Avenue, Santa Monica, CA 90404.

10. Upon information and belief, defendant Brooklyn Dust Music is a subsidiary of one or more of defendants Universal Music Publishing Group, Universal Music Publishing, Inc. and Universal Music, Inc.

11. Upon information and belief, defendant Capitol Records, LLC is a Delaware limited liability company having an address c/o EMI Music North America, 150 Fifth Avenue, New York, New York 10011. Defendants Brooklyn Dust Music, Universal Music Publishing Group, Universal Music Publishing, Inc., Universal Music, Inc., and Capitol Records, LLC will be collectively referred to herein as the “Publisher Defendants.”

FACTS

12. TufAmerica is the owner of the Tuff City Music Group, which was founded in 1981 as a rap and hip-hop label. Since then, TufAmerica has moved into other musical genres, including blues, soul, funk, and R&B, acquiring the rights to thousands of musical recordings and compositions.

13. TufAmerica is the exclusive administrator and licensee of the copyrights, compositions, and musical recordings in and to, among others, the recordings “Say What” and “Drop the Bomb,” each of which was recorded by the musical group “Trouble Funk.” “Say What” appeared on the Trouble Funk album “Straight Up Funk Go-Go Style,” released in or about 1982, and “Drop the Bomb” appeared on the Trouble Funk album “In Times of Trouble,” released in or about 1985. “Say What” and “In Times of Trouble” shall together be referred to herein as the “Sampled Recordings.”

14. The album “Straight Up Funk Go-Go Style,” including the recording “Say What” was registered with the United States Copyright Office on April 5, 1982, and bears Reg. No. SR 34-094.

15. The musical composition for “Say What” was registered with the United States Copyright Office on April 22, 1985, and bears Reg. No. PA 246-946.

16. The album “In Times of Trouble,” including the musical composition and recording “Drop the Bomb” was registered with the United States Copyright Office on April 22, 1985, and bears Reg. No. SR 62-036.

17. By way of an agreement dated December 20, 1999 with Trouble Funk’s principals, who controlled the rights to the group’s recordings and compositions, TufAmerica became the exclusive administrator and copyright licensee of and to, among other recordings and compositions, the Sampled Recordings.

The Unauthorized “Say What” Samples

18. In or about 1989, defendants Capitol Records and the Beastie Boys released the first of what would become many releases of the album titled “Paul’s Boutique,” which included a musical recording titled “Shadrach.” Upon information and belief, “Paul’s Boutique” continues to be distributed by one or more of the Publisher Defendants and is available for purchase in audio CD, vinyl album, and MP3 download versions.

19. Upon information and belief, one or more of the Publisher Defendants are the publishers and/or administrators of the rights to Shadrach.

20. Upon information and belief, one or more of the Beastie Boys defendants were the writers and/or creators of Shadrach.

21. Shadrach incorporates a sample of a distinctive vocal sequence taken from “Say What” (the “Say What Sample”).

22. The Say What Sample was incorporated into the body of the Shadrach musical recording in such a way as to integrate it with original and other sampled recordings that, together, make up the whole of the piece.

23. No defendant ever disclosed to TufAmerica or Trouble Funk that the Say What Sample was incorporated as part of Shadrach. Upon information and belief, defendants purposely concealed the integration of the Say What Sample as part of Shadrach.

24. The manner in which the Say What Sample was incorporated as a part of the words and music that make up the Shadrach recording effectively concealed to the casual listener the fact that the Say What Sample was part of Shadrach.

25. Only after conducting a careful audio analysis of Shadrach that included isolating the suspected portion of the recording and comparing it with various parts of Say What was TufAmerica able to determine that Shadrach incorporates the Say What Sample.

26. Upon information and belief, one or more of the Publisher or Beastie Boy defendants were responsible for and/or benefited from the creation, reproduction, manufacture, distribution, or sale of the Shadrach recording that incorporates the Say What Sample.

27. Upon information and belief, the “Paul’s Boutique” album incorporating the Shadrach recording and the unauthorized Say What Sample has been distributed in the United States, Canada, Europe, Japan, and other countries around the world at various times and in various formats since 1989, and continues to be so distributed today.

28. Upon information and belief, the Shadrach recording with the unauthorized Say What Sample has been and remains available for digital download worldwide through various on-line music websites such as iTunes and Amazon.com.

29. Most recently, in 2009, defendants Capitol Records and the Beastie Boys re-released Paul’s Boutique, this time in a “remixed and remastered” form. Shadrach was included in this release as well and, upon information and belief, was one of the tracks that was remixed and remastered in connection with the release. The unauthorized Say What Sample was again included as part of the Shadrach recording.

30. In addition, Shadrach was included in the Beastie Boys DVD Video Anthology released in 2000 as a music video. Upon information and belief, the unauthorized Say What Sample was included as part of this Shadrach music video.

31. TufAmerica has never received any royalties or payment of any kind for defendants' uses of the unauthorized Say What Sample in connection with the Shadrach recordings.

The First Unauthorized Drop the Bomb Sample

32. Paul's Boutique also included a track titled "Car Thief," which upon information and belief has appeared on every version of Paul's Boutique issued.

33. Upon information and belief, one or more of the Publisher defendants are the publishers and/or administrators of the rights to Car Thief.

34. Upon information and belief, one or more of the Beastie Boys defendants were the writers and/or creators of Car Thief.

35. Car Thief incorporates a sample of a distinctive drum and synthesizer sequence taken from "Drop the Bomb" (the "First Drop the Bomb Sample").

36. The First Drop the Bomb Sample was incorporated into the body of the Car Thief musical recording in such a way as to integrate it with original and other sampled recordings that, together, make up the whole of the piece.

37. No defendant ever disclosed to TufAmerica or Trouble Funk that the First Drop the Bomb Sample was incorporated as part of Car Thief.

38. The manner in which the First Drop the Bomb Sample was incorporated as a part of the music that made up the Car Thief recording effectively concealed to the casual listener the fact that the First Drop the Bomb Sample was part of Car Thief.

39. Only after conducting a careful audio analysis of Car Thief that included isolating the suspected portion of the recording and comparing it with various parts of Drop the Bomb was TufAmerica able to determine that Car Thief incorporates the First Drop the Bomb Sample.

40. Upon information and belief, one or more of defendants were responsible for and/or benefited from the creation, reproduction, manufacture, distribution, or sale of the Car Thief recording that incorporates the First Drop the Bomb Sample.

41. Upon information and belief, the “Paul’s Boutique” album incorporating the Car Thief recording and the unauthorized First Drop the Bomb Sample has been distributed in the United States, Canada, Europe, Japan, and other countries around the world at various times since 1989.

42. Upon information and belief, the Car Thief recording with the unauthorized First Drop the Bomb Sample has been and remains available for digital download worldwide through various on-line music websites such as iTunes and Amazon.com.

43. Most recently, in 2009, Paul’s Boutique was again released, this time in a “remixed and remastered” form. Car Thief was included in this release as well and, upon information and belief, was one of the tracks that was remixed and remastered in connection with the release. The unauthorized First Drop the Bomb Sample was again included as part of the Car Thief recording.

44. TufAmerica has never received any royalties or payment of any kind for defendants’ uses of the unauthorized First Drop the Bomb Sample in connection with the Car Thief recordings.

The Second Unauthorized Drop the Bomb Sample

45. In or about 1986, the Beastie Boys defendants released the first of what would become many releases of the album titled “Licensed to Ill,” which included a musical recording titled “Hold It Now Hit It.”

46. Upon information and belief, one or more of the Publisher defendants are the publishers and/or administrators of the rights to Hold It Now Hit It.

47. Upon information and belief, one or more of the Beastie Boys defendants were the writers and/or creators of Hold It Now Hit It.

48. Hold It Now Hit It incorporates a sample of a distinctive drum sequence taken from “Drop the Bomb” (the “Second Drop the Bomb Sample”).

49. The Second Drop the Bomb Sample was incorporated into the body of the Hold It Now Hit It musical recording in such a way as to integrate it with original and other sampled recordings that, together, make up the whole of the piece.

50. No defendant ever disclosed to TufAmerica or Trouble Funk that the Second Drop the Bomb Sample was incorporated as part of Hold It Now Hit It.

51. The manner in which the Second Drop the Bomb Sample was incorporated as a part of the music that made up the Hold It Now Hit It recording effectively concealed from the casual listener the fact that the Second Drop the Bomb Sample was part of Hold It Now Hit It.

52. Only after conducting a careful audio analysis of Hold It Now Hit It that included isolating the suspected portion of the recording and comparing it with various parts of Drop the Bomb was TufAmerica able to determine that Hold It Now Hit It incorporates the Second Drop the Bomb Sample.

53. Upon information and belief, one or more of defendants were responsible for and/or benefited from the creation, reproduction, manufacture, distribution, or sale of the Hold It Now Hit It recording that incorporates the Second Drop the Bomb Sample.

54. Upon information and belief, the “Licensed to Ill” album incorporating the Hold It Now Hit It recording and the unauthorized Say What Sample has been distributed in the United States, Canada, Europe, Japan, and other countries around the world at various times since 1986.

55. Upon information and belief, the Hold It Now Hit It recording with the unauthorized Second Drop the Bomb Sample has been available for digital download worldwide through various on-line music websites such as iTunes and Amazon.com.

56. TufAmerica has never received any royalties or payment of any kind for defendants' uses of the unauthorized Second Drop the Bomb Sample in connection with the Hold It Now Hit It recordings.

The Third Unauthorized Drop the Bomb Sample

57. Also included as a track on the same "Licensed to Ill" album that included the Second Unauthorized Drop the Bomb Sample as part of Hold it Now Hit It was a musical recording titled "The New Style."

58. Upon information and belief, one or more of the Publisher defendants are the publishers and/or administrators of the rights to The New Style.

59. Upon information and belief, one or more of the Beastie Boys defendants were the writers and/or creators of The New Style.

60. The New Style incorporates a sample of a distinctive drum and synthesizer sequence taken from "Drop the Bomb" (the "Third Drop the Bomb Sample").

61. The Third Drop the Bomb Sample was incorporated into the body of The New Style musical recording in such a way as to integrate it with original and other sampled recordings that, together, make up the whole of the piece

62. No defendant ever disclosed to TufAmerica or Trouble Funk that the Third Drop the Bomb Sample was incorporated as part of The New Style.

63. The manner in which the Third Drop the Bomb Sample was incorporated as a part of the music that made up The New Style recording effectively concealed from the casual listener the fact that the Third Drop the Bomb Sample was part of The New Style.

64. Only after conducting a careful audio analysis of The New Style that included isolating the suspected portion of the recording and comparing it with various parts of Drop the Bomb was TufAmerica able to determine that The New Style incorporates the Third Drop the Bomb Sample.

65. Upon information and belief, one or more of defendants were responsible for and/or benefited from the creation, reproduction, manufacture, distribution, or sale of the The New Style recording that incorporates the Third Drop the Bomb Sample.

66. Upon information and belief, the “Licensed to Ill” album incorporating the The New Style recording and the unauthorized Third Drop the Bomb Sample has been distributed in the United States, Canada, Europe, Japan, and other countries around the world at various times since 1986.

67. Upon information and belief, The New Style recording with the unauthorized Third Drop the Bomb Sample has been and remains available for digital download worldwide through various on-line music websites such as iTunes and Amazon.com.

68. Upon information and belief, the Beastie Boys have performed The New Style, including in such performance the unauthorized Third Drop the Bomb Sample, in at least one live concert in the United States, in particular at The Joint at the Hard Rock Hotel in Las Vegas, Nevada on October 23, 2006.

69. TufAmerica has never received any royalties or payment of any kind for defendants’ uses of the unauthorized Third Drop the Bomb Sample in connection with the The New Style recordings.

**FIRST CLAIM FOR RELIEF
(Copyright Infringement – Say What Sample)**

70. TufAmerica repeats and realleges the allegations set forth in paragraphs 1 through 69 above as if set forth fully herein.

71. One or more of the Publisher and/or Beastie Boys defendants are liable to TufAmerica for Copyright Infringement under 17 U.S.C. § 501, et seq. for each and every publication of Shadrach that incorporated the unauthorized Say What Sample.

**SECOND CLAIM FOR RELIEF
(Copyright Infringement – First Drop the Bomb Sample)**

72. TufAmerica repeats and realleges the allegations set forth in paragraphs 1 through 71 above as if set forth fully herein.

73. One or more of the Publisher and/or Beastie Boys defendants are liable to TufAmerica for Copyright Infringement under 17 U.S.C. § 501, et seq. for each and every publication of Car Thief that incorporated the unauthorized First Drop the Bomb Sample.

**THIRD CLAIM FOR RELIEF
(Copyright Infringement – Second Drop the Bomb Sample)**

74. TufAmerica repeats and realleges the allegations set forth in paragraphs 1 through 73 above as if set forth fully herein.

75. One or more of the Publisher and/or Beastie Boys defendants are liable to TufAmerica for Copyright Infringement under 17 U.S.C. § 501, et seq. for each and every publication of Hold It Now Hit It that incorporated the unauthorized Second Drop the Bomb Sample.

**FOURTH CLAIM FOR RELIEF
(Copyright Infringement – Third Drop the Bomb Sample)**

76. TufAmerica repeats and realleges the allegations set forth in paragraphs 1 through 75 above as if set forth fully herein.

77. One or more of the Publisher and/or Beastie Boys defendants are liable to TufAmerica for Copyright Infringement under 17 U.S.C. § 501, et seq. for each and

every publication and public performance of The New Style that incorporated the unauthorized Third Drop the Bomb Sample.

**FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)**

78. TufAmerica repeats and realleges the allegations set forth in paragraphs 1 through 77 above as if set forth fully herein.

79. One or more of the Defendants have been unjustly enriched by their failure to pay TufAmerica for the use of any or all of the Sampled Recordings, and TufAmerica has been damaged thereby.

80. One or more of the Defendants are liable to TufAmerica for unjust enrichment under New York State common law.

**SEVENTH CLAIM FOR RELIEF
(Misappropriation)**

81. TufAmerica repeats and realleges the allegations set forth in paragraphs 1 through 80 above as if set forth fully herein.

82. One or more of the Defendants have misappropriated TufAmerica's right to benefit from the Sample Recordings by incorporating one or more of the Sample Recordings into Shadrach, Car Thief, Hold It Now Hit It, and/or The New Style.

83. One or more of the Defendants are liable to TufAmerica for misappropriation under New York State common law.

WHEREFORE, TufAmerica prays for judgment against Defendants as follows:

1. For damages in an amount to be determined at trial, a preliminary and permanent injunction enjoining Defendants, and their respective agents, servants, employees, officers, successors, licensees, and assigns, and all persons acting in concert or participation with each or any of them, from (a) directly or indirectly infringing in any manner any of the Sample Recordings; (b) from directly or indirectly infringing or inducing the infringement of any of the Sample Recordings; and (c) from directly or

indirectly committing any acts of unfair competition in connection with the Sample Recordings.

2. For an accounting, the imposition of a constructive trust, restitution to TufAmerica of Defendants' unlawful proceeds, and damages according to proof.
3. For punitive and exemplary damages in an amount as may be awarded at trial.
4. For prejudgment interest according to law.
5. For TufAmerica's costs incurred in this action including its reasonable attorneys' fees.
6. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: 

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Attorney for Plaintiff

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