

ORIGINAL

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FILED
LOS ANGELES SUPERIOR COURT

DEC 01 2006

JOHN A. CLARKE, CLERK
BY D.W. SWAIN, DEPUTY

Case assigned to Judge [Signature]

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 BC362701

14 ON-J PRODUCTIONS, LTD., a California
15 corporation,

16 Plaintiff,

17 v.

18 UNIVERSAL MUSIC GROUP, INC., a
19 Delaware corporation, and DOES 1 through 50,
20 inclusive,

21 Defendant.

22 CASE NO.

23 COMPLAINT FOR:

- 24 (1) BREACH OF CONTRACT;
- 25 (2) COMMON LAW INVASION OF
26 PRIVACY - APPROPRIATION OF NAME
27 AND LIKENESS; AND
- 28 (3) VIOLATION OF SECTION 3344 OF THE
CALIFORNIA CIVIL CODE

JMBM | Jeffer Mangels Butler & Marmaro

CIT/CASE: BC362701 (EA/DEF);
RECEIPT #: 0042121200
DATE PAID: 12/01/06 12:03:55 PM
PAYMENT: \$20.00 0310
RECEIVED:
CHECK: 320.00
CASH:
CHARGE:
CARD:

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COMPLAINT

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Butler & Marmarou

1 Plaintiff, ON-J Productions, Ltd. ("ON-J" or "plaintiff"), for its Complaint against
2 Universal Music Group, Inc. ("Universal" or "defendant") alleges as follows:

3 1. This Complaint is the result of Universal's refusal to fully and properly
4 comply with its contract and adequately compensate ON-J for its use of Olivia Newton-John's
5 services and name and likeness.

6 2. By this Complaint, ON-J, which provides the personal services of the
7 recording artist Olivia Newton-John, seeks to recover unpaid royalties due for Olivia Newton-John's
8 performance and name and likeness on the Grease soundtrack album cover. In 1978, in recognition
9 of Olivia Newton-John's fame as a recording artist and pivotal role in the Grease motion picture and
10 soundtrack, plaintiff bargained for and obtained an agreement guaranteeing her royalties from all
11 future sales of the soundtrack. Since that time, Universal has failed to fully compensate ON-J for
12 the royalties owed to it on multiple occasions.

13 3. A recently completed audit has shown that Universal has failed to pay ON-J
14 over \$1 million in outstanding royalties. This audit demonstrated that Universal failed to
15 adequately compensate ON-J and used incorrect royalty rates, incorrect exchange rates, incorrect
16 packaging deductions, underreported the retail price of albums, failed to pay the proper royalty for
17 the use of Olivia Newton-John's name and likeness, among other deficiencies. Finally, and to make
18 matters worse, defendant has refused to pay any of the amounts due and owing after a demand was
19 made on it demonstrating its failures.

20
21 **THE PARTIES**

22 4. Plaintiff ON-J Productions Ltd. is a corporation organized under the laws of
23 the State of California and doing business in the State of California. Among other things, ON-J
24 provides the personal services of Olivia Newton-John, a world-famous recording artist.

25 5. Plaintiff is informed and believes and thereon alleges that defendant
26 Universal Music Group, Inc. is a corporation organized under the laws of the State of Delaware
27 with its primary place of business in the State of California. Plaintiff is further informed and
28 believes and thereon alleges that defendant is the successor-in-interest to Stigwood Group Ltd.

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1 which was the party that originally contracted with ON-J for Olivia Newton-John's services in
2 connection with the Grease LP.

3 6. The true names and capacities of defendants named herein as Does 1 through
4 50, inclusive, are presently unknown to plaintiff who therefore sues those defendants by such
5 fictitious names. Plaintiff will seek leave of court to amend this Complaint to allege the true names
6 and capacities of the fictitiously named defendants when that information is obtained.

7
8 FACTS COMMON TO ALL CAUSES OF ACTION

9 7. Grease, one of the longest running musicals in the history of Broadway, was
10 adapted in 1978 into a motion picture starring Olivia Newton-John and John Travolta. The
11 soundtrack from the Grease motion picture is one of the strongest selling albums of all time. The
12 soundtrack includes such famous hits as "Summer Nights," "Hopelessly Devoted To You," "You're
13 The One That I Want," "Look At Me, I'm Sandra Dee" and "We Go Together" -- sung by Olivia
14 Newton-John alone or with other actors. When Grease was released in 1978, the movie and the
15 soundtrack were tremendously popular. Even today, more than twenty-five years later -- a tribute
16 the staying power of the movie, the story and the music -- Grease remains very popular as a new
17 generation discovers the movie and the soundtrack.

18 8. The cover of the Grease soundtrack album features a picture of Olivia
19 Newton-John and contains her name. Defendant has availed itself of Olivia Newton-John's name
20 and likeness and increased its sales of the soundtrack accordingly.

21 9. In 1978, when the Grease motion picture was made, ON-J and defendant
22 entered into a written agreement providing for the services of Olivia Newton-John in connection
23 with the Grease soundtrack album (the "Agreement"). This Agreement governed the amount of
24 royalties that ON-J was to be paid for each soundtrack album sold, among other conditions.

25 10. The Agreement has been modified in writing in certain respects on multiple
26 occasions, including in 1979, 1980, and 2000.

27 11. Among the conditions in the Agreement and its subsequent modifications are
28 the following:

- 1 • ON-J is entitled to receive royalties, both on any 'Grease' soundtrack album sold, as well as
- 2 for each single performed by Olivia Newton John, throughout the world, at rates specified
- 3 by the Agreement.
- 4 • ON-J is entitled further entitled to a name and likeness royalty at a specified rate from the
- 5 sale of each and every unit of phonograph records
- 6 • Although the Agreement initially covered royalties only concerning phonograph records, it
- 7 has since been modified to cover other media including compact discs and cassette tapes.

8 12. A recent audit conducted on ON-J's behalf for the period October 1, 1996 to
9 December 31, 2003 shows that defendant owes ON-J further payments for underreported royalties,
10 as the result of the use of incorrect royalty rates and incorrect exchange rates, incorrect packaging
11 deductions, incorrect deduction of withholding tax, retail price under reportings, interest on the
12 findings, incorrect corrections to the name and likeness royalties, and incorrect adjustments to
13 amounts due in prior audit periods. All told, this audit demonstrated that ON-J was due in excess of
14 \$1 million. Although these amounts are clearly due and owing, defendant has refused to pay the
15 more than \$1 million that these audit claims indicate is owed to ON-J and has offered no
16 justification for its failure to do so.

17
18 **FIRST CAUSE OF ACTION**

19 **(Breach of Written Contract Against All Defendants)**

20 13. Plaintiff realleges and incorporates herein by this reference paragraphs 1
21 through 12, inclusive, as though fully set forth herein.

22 14. Plaintiff has performed all conditions, covenants and promises required by it
23 to be performed in accordance with the terms and conditions of the Agreement except those
24 conditions, covenants and promises the performance of which has been excused or made impossible
25 by defendant's actions.

26 15. Defendant has breached the Agreement by failing to by failing to properly
27 pay ON-J the amounts that are due and owing as set forth in paragraph 12, supra.

1 16. As a direct and proximate result of defendant's breach of the Agreement,
2 plaintiff has been damaged in an amount which exceeds the jurisdictional minimum of this Court.

3
4 **SECOND CAUSE OF ACTION**

5 **(For Common Law Invasion of Privacy – Appropriation of Name and Likeness All Defendants)**

6 17. Plaintiff incorporates by this reference and realleges paragraphs 1 through 16
7 as though fully set forth herein.

8 18. Defendant has invaded Olivia Newton-John's right to privacy by using her
9 name, likeness, and personality to sell the soundtrack albums.

10 19. The appropriation was unauthorized and without Olivia Newton-John's
11 consent in that ON-J was not properly compensated for the use Olivia Newton-John's name and
12 likeness as provided for under the Agreement.

13 20. The appropriation was for Defendant's advantage in that Defendant has made
14 considerable profits from the sale of the soundtrack album, the cover of which features Olivia
15 Newton-John's name and likeness.

16 21. As a proximate result of the above-mentioned conduct, ON-J has suffered
17 damages to its business in that it was not properly compensated for the use of Olivia Newton-John's
18 image and likeness, in amount to be proven at trial, but which exceeds the jurisdictional minimum
19 of this Court.

20 22. In appropriating Olivia Newton-John's image and likeness, defendant was
21 guilty of oppression, fraud, or malice, in that defendant appropriated Olivia Newton-John's image
22 and likeness with a willful and conscious disregard of plaintiff's rights. Plaintiff therefore seeks
23 punitive damages.

24
25 **THIRD CAUSE OF ACTION**

26 **(For Violation of California Civil Code Section 3344 Against All Defendants)**

27 23. Plaintiff incorporates by this reference and realleges paragraphs 1 through 22,
28 as though fully set forth herein.

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24. Defendant has appropriated Olivia Newton-John's name and likeness by using her name, likeness, and personality to sell the Soundtrack Albums.

25. The appropriation was unauthorized and without Olivia Newton-John's consent in that ON-J was not properly compensated for the use of Olivia Newton-John's name and likeness as provided for under the Agreement.

26. The appropriation was for Defendant's advantage in that Defendant has made considerable profits from the sale of the soundtrack album, the cover of which features Olivia Newton-John's name and likeness.

27. As a proximate result of the above-mentioned conduct, ON-J has suffered damages to its business in that it was not properly compensated for the use of Olivia Newton-John's image and likeness, in amount to be proven at trial, but which exceeds the jurisdictional minimum of this Court.

28. In appropriating Olivia Newton-John's image and likeness, defendant was guilty of oppression, fraud, or malice, in that defendant appropriated Olivia Newton-John's image and likeness with a willful and conscious disregard of plaintiff's rights. Plaintiff therefore seeks punitive damages.

WHEREFORE, plaintiff prays for judgment as follows:

1. On all causes of action, for damages in the amount of no less than \$1 million plus interest thereon, and in an amount according to proof at trial;
2. On the second and third causes of action, for exemplary and punitive damages; and

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- 3. For costs of suit herein incurred; and
- 4. For such other and further relief as the Court deems just and proper.

Dated: December 1, 2006

JEFFER, MANGELS, BUTLER & MARMARO LLP
MARC MARMARO
JEFFREY K. RIFFER
PAUL A. KROEGER

By: Marc Marmaro
MARC MARMARO
Attorneys for Plaintiff ON-J PRODUCTIONS, LTD.,
A CALIFORNIA CORPORATION,

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