

12 CIV 1094

JUDGE NEHERSTEIN
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
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MAYIMBA MUSIC INC.,

12 Civ. ()

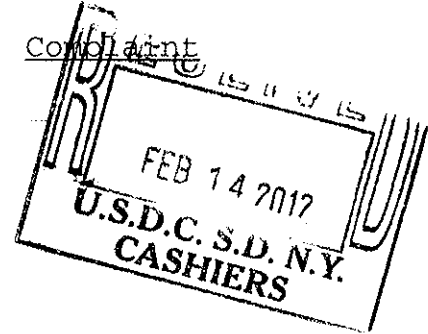
Plaintiff,

-against-

SONY CORPORATION OF AMERICA,
SONY MUSIC ENTERTAINMENT,
SONY/ATV LATIN MUSIC
PUBLISHING LLC, SONY/ATV DISCOS
MUSIC PUBLISHING, LLC, and
SONY/ATV TUNES LLC,

Defendants.

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Mayimba Music Inc., as and for its Complaint, states
and alleges:

The Parties

1. Plaintiff Mayimba Music Inc. ("Mayimba") is a corporation organized and existing under the laws of the State of New York with offices in New York City, New York and is engaged in the business of exploiting sound recordings and musical compositions. Mayimba is the worldwide administrator of the musical composition entitled "Loca Con Su Tiguerre" composed by Ramon Arias Vasquez.

2. Defendant Sony Corporation of America ("SONY") is a corporation organized and existing under the laws of the State of

New York with principal offices at 550 Madison Avenue, New York, New York 10022-3211.

3. Defendant Sony Music Entertainment ("SME"), upon information and belief, is a wholly owned subsidiary of SONY and maintains principal offices at 550 Madison Avenue, New York, New York 10022-3211.

4. Defendant SONY/ATV Latin Music Publishing LLC ("SONY Latin"), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware, is an authorized foreign limited liability company under the laws of the State of New York and maintains offices at 550 Madison Avenue, New York, New York 10022-3211.

5. Defendant SONY/ATV Discos Music Publishing LLC ("SONY Discos"), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware, is an authorized foreign limited liability company under the laws of the State of New York and maintains offices at 550 Madison Avenue, New York, New York 10022-3211.

6. Defendant SONY/ATV Tunes LLC ("SONY Tunes"), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware, is an authorized foreign limited liability company under the laws of the State of New York and maintains offices at 550 Madison Avenue, New York, New York 10022-3211.

Jurisdiction and Venue

7. Jurisdiction of this action is founded upon 28 U.S.C. §§ 1331, 1338(a) and 1367(a).

8. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.

9. Venue of the claims in this action is founded upon 28 U.S.C. §§ 1391(b)-(c) and 1400(a).

Allegations Applicable To All Counts

10. Ramon Arias Vasquez ("Vasquez") composed the words and music to a musical composition entitled "Loca Con Su Tiguer" ("Composition").

11. By written agreement dated October 10, 2008, Vasquez sold, assigned and transferred to J&N Music Publishing LLC ("J&N") one hundred (100%) percent of his rights in the Composition for the entire world in perpetuity and for the life of the copyright and all extensions and renewals thereof.

12. In 2012, by written agreement with J&N, Plaintiff Mayimba became and is the exclusive world wide administrator of the musical composition and sound recording of the Composition ("Administration Agreement").

13. Under the Administration Agreement, Mayimba is

authorized exclusively to license the Composition and to collect all money and royalties earned, generated or produced by the use and exploitation of the Composition in return for a fee.

14. Under the Administration Agreement, Mayimba is authorized to commence and maintain legal actions and proceedings to enforce the copyright in the Composition and to collect money and royalties from the licensing, use or exploitation of the Composition.

15. J&N has properly registered words and music of the Composition with the United States Copyright Office.

16. J&N has complied in all respects with the registration and deposit requirements of the United States Copyright Act with respect to the Composition.

17. J&N has been issued United States Certificate of Registration of Copyright PAu003588318 for the Composition.

18. Upon information and belief, according to SONY/ATV Music Publishing - News Musical Notes September 8, 2011 #89, the Composition performed by Shakira featuring El Cata "was the lead single from Shakira's third bilingual album 'Sale el Sol.' Loca became Shakira's ninth number one hit on the Billboard Hot Latin songs and her thirteenth number one hit in the Billboard Latin Pop songs."

Count I

19. The Composition is on the video and cd + dvd entitled "SHAKIRA En Vivo Desde Paris" that was released publicly in or about December 2011.

20. The video and cd + dvd entitled "SHAKIRA En Vivo Desde Paris" have been sold and distributed in the United States.

21. Upon information and belief, SME is reproducing, selling, distributing the video and cd + dvd entitled "SHAKIRA En Vivo Desde Paris" containing the Composition.

22. J&N has not granted SONY the right to reproduce, sell, distribute the Composition or to make derivative works based upon the Composition, in whole or part or to otherwise use exploit the Composition in whole or part, on the video and cd + dvd entitled "SHAKIRA En Vivo Desde Paris" containing the Composition.

23. J&N has not granted SME the right to reproduce, sell, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use or exploit the Composition in whole or part on the video and cd + dvd entitled "SHAKIRA En Vivo Desde Paris" containing the Composition.

24. Mayimba has not granted SONY the right to reproduce, sell, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use exploit the Composition in whole or part on the video and cd +

dvd entitled "SHAKIRA En Vivo Desde Paris" containing the Composition.

25. Mayimba has not granted SME the right to reproduce, sell, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use or exploit the Composition in whole or part on the video and cd + dvd entitled "SHAKIRA En Vivo Desde Paris" containing the Composition.

26. Upon information and belief, SONY is a company that is familiar with copyright law and securing permission before reproducing, selling, distributing or exploiting a copyrighted work.

27. Upon information and belief, SME is familiar with copyright law and securing permission before reproducing, selling, distributing or exploiting a copyrighted work.

28. Upon information and belief, the reproducing, sale, distribution and exploitation of the Composition on the video and cd + dvd entitled "SHAKIRA En Vivo Desde Paris" is willful.

29. By reason of the foregoing, SONY has infringed J&N's copyright in the Composition.

30. By reason of the foregoing SME has infringed J&N's copyright in the Composition.

31. By reason of the foregoing, Mayimba is entitled to damages, an injunction, costs, attorney's fees and interest.

Count II

32. Upon information and belief, the phonorecord entitled Sale el Sol containing the Composition was released publicly in or about October 2010.

33. The Composition appears under the title Loca two times on the publicly released phonorecord entitled Sale el Sol.

34. Sale el Sol containing the Composition was and is being sold and distributed in the United States.

35. Upon information and belief, SONY Latin has granted licenses or permission for exploitation of the words and music of the Composition, in whole or part, including derivative versions, on the phonorecord entitled Sale el Sol.

36. The phonorecord entitled Urban Merengue, Vol. 1 containing the Composition was released publicly.

37. The Composition appears under the title Loca Con Su Tiguerre on the publicly released phonorecord entitled Urban Merengue, Vol. 1.

38. Urban Merengue, Vol. 1 containing the Composition was and is being sold and distributed in the United States.

39. Upon information and belief, SONY Latin has granted licenses or permission for exploitation of the words and music of the Composition, in whole or part, including derivative versions, on the phonorecord entitled Urban Merengue, Vol. 1.

40. Upon information and belief, SONY Latin has granted licenses or permission for exploitation digitally of the words and music of the Composition, in whole or part, including derivative versions.

41. J&N has not granted SONY Latin the right to reproduce, sell, license, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use exploit the Composition, in whole or part.

42. Mayimba has not granted SONY Latin right to reproduce, sell, license, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use exploit the Composition, in whole or part.

43. Upon information and belief, SONY Latin does not have a compulsory license in accordance with 17 U.S.C. §115 to exploit the Composition, in whole or part, or derivative versions thereof.

44. Upon information and belief, SONY Latin is a company that is familiar with copyright law and securing permission before reproducing, selling, distributing, licensing or exploiting a copyrighted work.

45. Upon information and belief, SONY Latin's granting of a license, permission to reproduce, sell, distribute, and exploit the Composition on the phonorecord Sale el Sol is willful.

46. Upon information and belief, SONY Latin's granting of a

license, permission to reproduce, sell, distribute, and exploit the Composition on the phonorecord Urban Merengue Vol. 1 is willful.

47. Upon information and belief, Sony Latin's granting of a license, permission to reproduce, sell, distribute, and exploit the Composition and derivative versions thereof digitally is willful.

48. By reason of the foregoing SONY Latin has infringed J&N's copyright in the Composition.

49. By reason of the foregoing, Mayimba as administrator for J&N, is entitled to damages, an injunction, costs, attorney's fees and interest.

Count III

50. Upon information and belief, the phonorecord entitled Sale el Sol containing the Composition was released publicly in or about October 2010.

51. The Composition appears under the title Loca two times on the publicly released phonorecord entitled Sale el Sol.

52. Sale el Sol containing the Composition was and is being sold and distributed in the United States.

53. Upon information and belief, SONY Discos has granted licenses or permission for exploitation of the words and music of the Composition, in whole or part, including derivative versions,

on the phonorecord entitled Sale el Sol.

54. The phonorecord entitled Urban Merengue, Vol. 1 containing the Composition was released publicly.

55. The Composition appears under the title Loca Con Su Tiguerre on the publicly released phonorecord entitled Urban Merengue, Vol. 1.

56. Urban Merengue, Vol. 1 containing the Composition was and is being sold and distributed in the United States.

57. Upon information and belief, SONY Discos has granted licenses or permission for exploitation of the words and music of the Composition, in whole or part, including derivative versions, on the phonorecord entitled Urban Merengue, Vol. 1.

58. Upon information and belief, SONY Discos has granted licenses or permission for exploitation digitally of the words and music of the Composition, in whole or part, including derivative versions.

59. J&N has not granted SONY Discos the right to reproduce, sell, license, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use exploit the Composition, in whole or part.

60. Mayimba has not granted SONY Discos the right to reproduce, sell, license, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use exploit the Composition, in whole or part.

61. Upon information and belief, SONY Discos does not have a compulsory license in accordance with 17 U.S.C. §115 to exploit the Composition, in whole or part, or derivative versions thereof.

62. Upon information and belief, SONY Discos is a company that is familiar with copyright law and securing permission before reproducing, selling, distributing, licensing or exploiting a copyrighted work.

63. Upon information and belief, SONY Discos's granting of a license, permission to reproduce, sell, distribute, and exploit the Composition on the phonorecord Sale el Sol is willful.

64. Upon information and belief, SONY Discos' granting of a license, permission to reproduce, sell, distribute, and exploit the Composition on the phonorecord Urban Merengue Vol. 1 is willful.

65. Upon information and belief, SONY Discos's granting of a license, permission to reproduce, sell, distribute, and exploit the Composition digitally is willful.

66. By reason of the foregoing SONY Discos has infringed J&N's copyright in the Composition.

67. By reason of the foregoing, Mayimba, as administrator of J&N, is entitled to damages, an injunction, costs, attorney's fees and interest.

Count IV

68. Upon information and belief, the phonorecord entitled Sale el Sol containing the Composition was released publicly in or about October 2010.

69. The Composition appears under the title Loca two times on the publicly released phonorecord entitled Sale el Sol.

70. Sale el Sol containing the Composition was and is being sold and distributed in the United States.

71. Upon information and belief, SONY Tunes has granted licenses or permission for exploitation of the words and music of the Composition, in whole or part, including derivative versions on the phonorecord entitled Sale el Sol.

72. The phonorecord entitled Urban Merengue, Vol. 1 containing the Composition was released publicly.

73. The Composition appears under the title Loca Con Su Tiguerre on the publicly released phonorecord entitled Urban Merengue, Vol. 1.

74. Urban Merengue, Vol. 1 containing the Composition was and is being sold and distributed in the United States.

75. Upon information and belief, SONY Tunes has granted licenses or permission for exploitation of the words and music of the Composition, in whole or part, including derivative versions on the phonorecord entitled Urban Merengue, Vol. 1.

76. Upon information and belief, SONY Tunes has granted licenses or permission for exploitation of the words and music of the Composition, in whole or part, including derivative versions digitally.

77. J&N has not granted SONY Tunes the right to reproduce, sell, license, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use exploit the Composition, in whole or part.

78. Mayimba has not granted SONY Tunes the right to reproduce, sell, license, distribute the Composition or to make derivative works based upon the Composition, in whole or part, or to otherwise use exploit the Composition, in whole or part.

79. Upon information and belief, SONY Tunes does not have a compulsory license in accordance with 17 U.S.C. §115 to exploit the Composition, in whole or part, or derivative versions thereof.

80. Upon information and belief, SONY Tunes is a company that is familiar with copyright law and securing permission before reproducing, selling, distributing, licensing or exploiting a copyrighted work.

81. Upon information and belief, Sony Tunes's granting of a license, permission to reproduce, sell, distribute, and exploit the Composition on the phonorecord Sale el Sol is willful.

82. Upon information and belief, Sony Tunes' granting of a

license, permission to reproduce, sell, distribute, and exploit the Composition on the phonorecord Urban Merengue Vol. 1 is willful.

83. Upon information and belief, Sony Tunes's granting of a license, permission to reproduce, sell, distribute, and exploit the Composition digitally is willful.

84. By reason of the foregoing SONY Tunes has infringed J&N's copyright in the Composition.

85. By reason of the foregoing, Mayimba, as administrator of J&N, is entitled to damages, an injunction, costs, attorney's fees and interest.

WHEREFORE, Plaintiff Mayimba Music Inc. demands judgment against all Defendants, jointly and severally, as follows:

(a) Permanently enjoining Defendant SONY Corporation of America and its agents, representatives, servants, employees, attorneys, attorneys in fact and all persons and entities of any nature acting or purporting to, for or on behalf of SONY Corporation of America and all other persons or entities who are in active concert or participation with them from directly or indirectly infringing J&N Publishing LLC's copyright in and to the composition entitled Loca Con Su Tiguerre composed by Ramon Arias Vasquez in any manner or way and/or through or by any and

all means, machines, methods, ways, devices, processes and/or things now known or hereafter known, discovered, created, invented or used;

(b) Permanently enjoining Defendant SONY Music Entertainment and its agents, representatives, servants, employees, attorneys, attorneys in fact and all persons and entities of any nature acting or purporting to, for or on behalf of SONY Music Entertainment and all other persons or entities who are in active concert or participation with them from infringing directly or indirectly J&N Publishing LLC's copyright in and to the composition entitled Loca Con Su Tiguerre composed by Ramon Arias Vasquez in any manner or way and/or through or by any and all means, machines, methods, ways, devices, processes and/or things now known or hereafter known, discovered, created, invented or used.

(c) Permanently enjoining Defendant SONY/ATV Latin Music Publishing LLC and its agents, representatives, servants, employees, attorneys, attorneys in fact and all persons and entities of any nature acting or purporting to, for or on behalf of SONY/ATV Latin Music Publishing, LLC and all other persons or entities who are in active concert or participation with them from infringing directly or indirectly J&N Publishing LLC's copyright in and to the composition entitled Loca Con Su Tiguerre composed by Ramon Arias Vasquez in any manner or way and/or

through or by any and all means, machines, methods, ways, devices, processes and/or things now known or hereafter known, discovered, created, invented or used;

(d) Permanently enjoining Defendant SONY/ATV Discos Music Publishing LLC and its agents, representatives, servants, employees, attorneys, attorneys in fact and all persons and entities of any nature acting or purporting to, for, on behalf of SONY/ATV Discos Music Publishing LLC and all other persons or entities who are in active concert or participation with them from infringing directly or indirectly J&N Publishing LLC's copyright in and to the composition entitled Loca Con Su Tiguerre composed by Ramon Arias Vasquez in any manner or way and/or through or by any and all means, machines, methods, ways, devices, processes and/or things now known or hereafter known, discovered, created, invented or used;

(e) Permanently enjoining Defendant SONY/ATV Tunes LLC and its agents, representatives, servants, employees, attorneys, attorneys in fact and all persons and entities of any nature acting or purporting to, for or on behalf of SONY/ATV Tunes LLC and all other persons or entities who are in active concert or participation with them from infringing directly or indirectly J&N Publishing LLC's copyright in and to the composition entitled Loca Con Su Tiguerre composed by Ramon Arias Vasquez in any manner or way and/or through or by any and all means, machines,

methods, ways, devices, processes and/or things now known or hereafter known, discovered, created, invented or used;

(f) Awarding Plaintiff Mayimba Music, Inc. the actual damages and all profits attributable to Defendants' infringements of "Loca Con Su Tiguerre" pursuant to 17 U.S.C. §504(b);

(g) Awarding Plaintiff Mayimba Music, Inc. statutory damages pursuant to 17 U.S.C. §504(c), including damages for wilful infringement, based upon Defendants' infringements of "Loca Con Su Tiguerre";

(h) Ordering and directing Defendants to account to Plaintiff Mayimba Music, Inc. for all money, consideration, rights, licenses, gains and profits derived, received, paid or otherwise obtained by Defendants from the infringements of "Loca Con Su Tiguerre";

(i) Awarding interest;

(j) Awarding the costs and disbursements of this action;

(k) Awarding attorney's fees; and

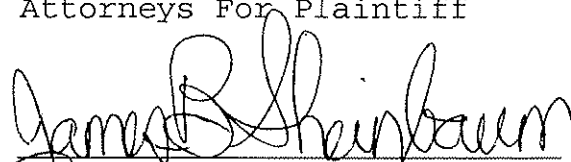
(l) Awarding and granting such other and further relief as may be just and proper.

Dated: New York, New York

February 14, 2012

Borstein & Sheinbaum
Attorneys For Plaintiff

By:

A handwritten signature in black ink, appearing to read "James B. Sheinbaum". The signature is written in a cursive style and is positioned above a horizontal line.

James B. Sheinbaum (JS 0291)

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