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Attorney for Plaintiff Ornette Coleman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ORNETTE COLEMAN,

Plaintiff,

-against-

COMPLAINT

SYSTEM DIALING LLC; JORDAN McLEAN;
AMIR ZIV; and JOHN DOES 1-10,

JURY TRIAL DEMANDED

Defendants.
-----X

Plaintiff Ornette Coleman, by his attorneys, Reitler Kailas & Rosenblatt LLC,
avers as follows:

NATURE OF ACTION

1. Plaintiff Ornette Coleman is a world-famous musician and composer.
2. Plaintiff seeks damages and injunctive relief for (i) unauthorized fixation, transmission, distribution and trafficking in sound recordings of live musical performances by Plaintiff in violation of the federal Anti-Bootlegging Act, 17 U.S.C. § 1101;

(ii) false advertising and unfair competition in violation of Section 43(a) of the federal Lanham Trademark Act, 15 U.S.C. § 1125(a); (iii) unfair and deceptive business practices in violation of N.Y. Gen. Bus. Law §§349-350 and (iv) unfair competition in violation of the common law of the State of New York.

3. Plaintiff's claims all arise out of Defendants' acts of fixing, reproducing, communicating, publicly distributing, selling, and trafficking in unauthorized recordings of live musical performances by Plaintiff (the "Infringing Recordings") by means of Defendants' website located at www.sytemdialingrecords.com (the "Website") and other physical and electronic distribution channels, without Plaintiff's consent and over Plaintiff's explicit and repeated objections.

4. As a direct consequence of Defendants' wrongful conduct Plaintiff has suffered and is suffering irreparable harm and has sustained substantial injury, loss and damage.

5. This action seeks damages and injunctive relief to stop Defendants before they cause further injury.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under the copyright laws of the United States, 17 U.S.C. § 101 et seq. and 28 U.S.C. §§ 1331 and 1338.

7. Upon information and belief, this Court has personal jurisdiction over the Defendants because the Defendants have fixed, reproduced, communicated, publicly distributed, sold, and trafficked in the Infringing Recordings, or authorized others to do so, in

New York and this District, and are otherwise transacting business in this State and in this jurisdiction.

8. A copy of a vinyl LP embodying the Infringing Recordings (“Infringing LP”) was sold into this judicial District by mail order from Defendants System Dialing LLC and Jordan McLean on or about January 29, 2015, see attached Exhibit A.

9. The printed information on the back cover of the Infringing LP states that it was “recorded in NYC” and that the engineer was Defendant Amir Ziv, see attached Exhibit B.

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

PARTIES

11. Plaintiff Ornette Coleman is a world famous musician and composer. He has earned a MacArthur Foundation “Genius” Award (1994), the Pulitzer Prize in Music (2007), a Grammy Lifetime Achievement award (2007), an honorary doctorate from the University of Michigan (2010), and was inducted into the Jazz Hall of Fame in 1969 by *Down Beat* magazine. He has performed with legendary artists in all genres of music, including John Coltrane, the Grateful Dead, and the Master Musicians of Joujouka, Morocco. His compositions have been performed by the London Philharmonic, the Philadelphia Orchestra, the Brooklyn Philharmonic and the American Symphony Orchestra. He was the subject of the 1985 documentary film *Ornette: Made in America* by Oscar-winning director Shirley Clarke.

12. Upon information and belief, Defendant System Dialing LLC (“SD”) is a New York limited liability company having a principal place of business at 1659 Berme Road, Kerhonkson, New York 12446.

13. Upon information and belief, Defendant Jordan McLean is an individual residing at 1659 Berme Road, Kerhonkson, New York 12446.

14. Upon information and belief, Defendant Amir Ziv is an individual residing at 1659 Berme Road, Kerhonkson, New York 12446.

15. Upon information and belief, Defendants John Does 1-10 are individuals and/or corporate entities whose identity is presently unknown, residing or doing business in this judicial District, but whose identity will become known through discovery in this action.

DEFENDANTS’ UNLAWFUL ACTS

16. Upon information and belief, Defendants McLean and Ziv attended a number of private “jam sessions” at the home of Plaintiff in New York City in or around July 2009.

17. Without Plaintiff’s knowledge or consent, Defendants McLean and Ziv made audio recordings of one or more live musical performances by Plaintiff that occurred at those events. These unauthorized recordings are identified above as the Infringing Recordings.

18. Without Plaintiff’s consent, Defendants have reproduced, communicated to the public, publicly distributed, sold, transmitted, and trafficked in copies or phonorecords of the Infringing Recordings under the title “New Vocabulary.”

19. Upon Information and belief, without Plaintiff's consent, John Does 1-10 have reproduced, communicated to the public, publicly distributed, sold, transmitted and trafficked in copies or phonorecords of the Infringing Recordings, or authorized others to do so, in New York and this District.

20. After becoming aware of Defendants' unauthorized fixing, reproducing, communicating, publicly distributing, selling, and trafficking in the Infringing Recordings, Plaintiff contacted Defendants and demanded *inter alia* that they make no further use or exploitation of the Infringing Recordings.

21. Plaintiff's efforts to resolve the matter short of litigation have been unsuccessful.

22. Plaintiff has suffered, and continues to suffer, from the infringing activities of Defendants.

COUNT I
VIOLATION OF ANTI-BOOTLEGGING ACT, 17 U.S.C. § 1101

23. Plaintiff repeats and reavers the allegations contained in paragraphs 1 through 22 as if set forth fully herein.

24. Defendants' unauthorized fixing, reproducing, communicating, publicly distributing, selling, and trafficking in unauthorized recordings of live musical performances by Plaintiff and/or Defendants' authorization of others to engage in such acts, are violations of Plaintiff's rights under the Anti-Bootlegging Act, 17 U.S.C. § 1101.

25. As a direct and proximate result of the foregoing acts of the Defendants, the Plaintiff has been damaged in an amount to be proved at trial.

COUNT II
UNFAIR COMPETITION IN VIOLATION OF LANHAM ACT, 15 U.S.C. § 1125(a)

26. Plaintiff repeats and reavers the allegations contained in paragraphs 1 through 25 as if set forth fully herein.

27. Defendants' prominent use of the name "Ornette Coleman" in connection with the unauthorized public distribution, advertising, promotion and exploitation of the Infringing Recordings, as embodied on the Infringing LP and in other physical and electronic formats, see Exhibit A, is likely to cause reasonably prudent purchasers to believe, falsely, that Plaintiff approves of, or is affiliated with, Defendants' activities.

28. The title chosen by Defendants for the Infringing Recordings, "New Vocabulary," and the name of Defendants' record label, "System Dialing Records," further aggravate the above-referenced likelihood of confusion because of their similarity to the titles of the last two official major-label studio album releases by Plaintiff, "Sound Grammar" (which won the Pulitzer Prize for music in 2007) and "Tone Dialing."

29. Upon information and belief, the album title and label name chosen by Defendants were intentionally selected, from the infinite number of possible titles and label names, to cause reasonably prudent purchasers to believe, falsely, that Plaintiff approves of, or is affiliated with, Defendants' activities.

30. Defendants' advertising and promotion of the Infringing Recordings as alleged above constitute false advertising and unfair competition in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

31. As a direct and proximate result of the foregoing acts of the Defendants, the Plaintiff has been damaged in an amount to be proved at trial.

COUNT III
VIOLATION OF NEW YORK GENERAL BUSINESS LAW §§349-350

32. Plaintiff repeats and reavers the allegations contained in paragraphs 1 through 31 as if set forth fully herein.

33. Defendants' activities as alleged above constitute unfair and deceptive business practices in violation of §§ 349-350 of New York General Business Law.

34. As a direct and proximate result of the foregoing acts of the Defendants, the Plaintiff has been damaged in an amount to be proved at trial.

COUNT IV
UNFAIR COMPETITON UNDER NEW YORK COMMON LAW

35. Plaintiff repeats and reavers the allegations contained in paragraphs 1 through 34 as if set forth fully herein.

36. Defendants' activities as alleged above constitute unfair competition in violation of the common law of the State of New York.

37. As a direct and proximate result of the foregoing acts of the Defendants, the Plaintiff has been damaged in an amount to be proved at trial.

WHEREFORE, the Plaintiff requests the following relief:

- A. Actual damages and profits under 17 U.S.C. § 504 in an amount to be proved at trial;
- B. Treble damages for willful violation of 15 U.S.C. § 1125(a);
- C. Attorney's fees for willful violation of 15 U.S.C. § 1125(a);

- D. Punitive damages for violation of New York's common law of unfair competition;
- E. A permanent injunction requiring the Defendants to cease and desist from reproducing, communicating, publicly distributing, selling, and trafficking in the Infringing Recordings or any derivative work thereof, or authorizing and third parties to do so;
- F. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
February __, 2015

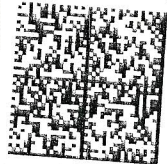
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ROSENBLATT, LLC
Attorneys for Plaintiff

By: _____
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EXHIBIT A

SYSTEM DIALING RECORDS
1659 BERME ROAD
KERHONKSON, NY 12446

endicia.com



071V00771906

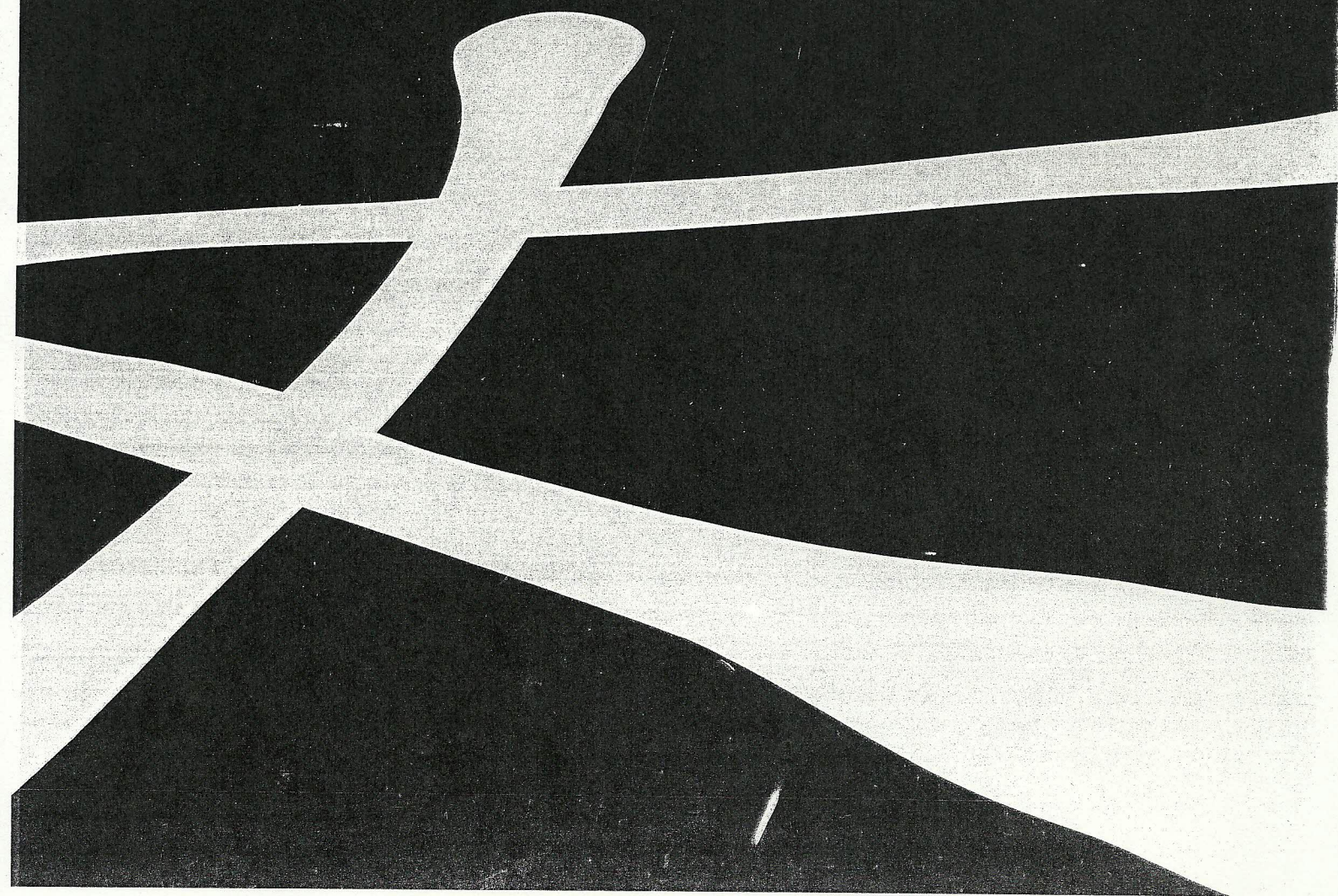
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EXHIBIT B

NEW VOCABULARY



Special appearance by
Adam Holzman *
piano



noise rhythm
RECORDS

All rights reserved 2014
System Dialing Records

Recorded in NYC July 18-20 2009

Engineered by Amir Ziv

Mixed by Marc Urselli, Abe Seiferth (1, 10), Amir Ziv (11)

Mastered by Dietrich Schoenemann

Artwork by Michelle Bothe

Produced by Jordan McLean & Amir Ziv

Special Thanks: Bill T. Jones, Maggie Gyllenhaal, Peter Sarsgaard, Easy Partners, Martin Mueller, Shelly Joy,
Reed, Angelina Mike, Jac Holzman, Joel Segel, Justin Sloan, Laurel Angrist, Peter Strunsky, and Gadi Shorr.

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