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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 UMG RECORDINGS, INC., a
16 corporation,

17 Defendant.
18

Civil Action No.
CV-04-1050 JFW (Ex)

COMPLAINT FOR CIVIL
PENALTIES, INJUNCTIVE,
AND OTHER RELIEF

19 Plaintiff, the United States of America, acting upon notification and
20 authorization to the Attorney General by the Federal Trade Comh14.7339 tAJN7LAIN T FOR C
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1 **JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331,
3 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).
4 This action arises under 15 U.S.C. §§ 45(a)(1) and 6502(c).

5 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
6 §§ 1391(b)-(c) and 1395(a).

7 **DEFINITIONS**

8 4. For purposes of this Complaint, the terms “child,” “collects,”
9 “collection,” “Commission,” “delete,” “disclosure,” “Internet,” “online contact
10 information,” “operator,” “parent,” “person,” “personal information,” “third party,”
11 “verifiable consent,” and “website or online service directed to children,” are
12 defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

13 **THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE**

14 5. Congress enacted the Children’s Online Privacy Protection Act, 15
15 U.S.C. §§ 6501-6506, in 1998 to protect the safety and privacy of children online
16 by prohibiting the unauthorized or unnecessary collection of children’s personal
17 information online by operators of Internet websites or online services. The Act
18 directed the Federal Trade Commission to promulgate a rule implementing
19 COPPA. The Commission promulgated the Children’s Online Privacy Protection
20 Rule, 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b) of COPPA,
21 15 U.S.C. § 6502(b), and Section 553 of the Administrative Procedures Act, 5
22 U.S.C. § 553. The Rule went into effect on April 21, 2000.

23 6. The Rule applies to any operator of a commercial website or online
24 service, or portion thereof, directed to children that collects, uses, and/or discloses
25 personal information from children, and to any operator of a commercial website
26 or online service that has actual knowledge that it collects, uses, and/or discloses
27 personal information from children.

28 7. The Rule requires a subject website operator to meet specific

1 requirements prior to collecting online, using, or disclosing personal information
2 from children, including but not limited to:

- 3 a. Posting a privacy policy on its website providing clear,
4 understandable, and complete notice of its information
5 practices, including what information the website operator
6 collects from children online, how it uses such information, its
7 disclosure practices for such information, and other specific
8 disclosures set forth in the Rule;
- 9 b. Providing clear, understandable, and complete notice of its
10 information practices, including specific disclosures, directly to
11 parents when required by the Rule;
- 12 c. Obtaining verifiable parental consent prior to collecting, using,
13 and/or disclosing personal information from children;
- 14 d. Giving parents the option to consent to the collection and
15 internal use of their children's personal information without
16 consenting to the disclosure of that information to third parties;
- 17 e. Providing a reasonable means for parents to review the personal
18 information collected from their children and to refuse to permit
19 its further use or maintenance;
- 20 f. Not conditioning children's participation in an activity upon
21 children disclosing more personal information than is
22 reasonably necessary to participate in that activity; and
- 23 g. Establishing and maintaining reasonable procedures to protect
24 the confidentiality, security, and integrity of personal
25 information collected from children.

26 8. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a
27 violation of the Rule constitutes an unfair or deceptive act or practice in violation
28 of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See also* COPPA, 15

1 having fun, and also about, you know, kids['] things.” Defendant is, therefore, an
2 “operator” as defined in the Rule.

3 **Defendant’s Information Collection and Use Practices**

4 13. Visitors who have sought to register for various activities at
5 defendant’s websites, such as newsletters and bulletin boards, have been presented
6 with a form to fill out and submit online. In most instances, the first page of
7 defendant’s registration form has collected personal information including the
8 visitor’s date of birth, first and last name, home address, telephone number, email
9 address, and gender. (*See, e.g.*, Ex. D, p. 1; Ex. E; Ex. F, p. 2.) Tens of thousands
10 of visitors entered birth dates indicating they were children under the age of
11 thirteen. After collecting and maintaining this information with the actual
12 knowledge that the child was under thirteen years old, defendant has collected a
13 parent’s email address. (*See, e.g.*, Ex. D, p. 2.) Immediately thereafter, defendant
14 has collected from the child pages of additional information about his or her
15 interests, preferences, and activities, such as his or her recent music purchases and
16 favorite sports, magazines, TV music shows, and clothing brands. (*See, e.g.*, Ex.
17 D, pp. 3-5.) Defendant has collected and maintained all this personal information,
18 even after identifying the registrant as a child under thirteen.

19 14. In many instances, after collecting the child’s personal information
20 listed above, defendant has sent the parent an email requesting that the parent
21 consent to the child’s participation in a named activity by clicking on a hyperlink
22 in the email. (*See, e.g.*, Ex. D, p. 6; Ex. F, p. 3.) Defendant has not disclosed its
23 information practices in these emails, including what information it has already
24 collected from the child, what information it wishes to collect from the child, or the
25 intended uses of such information. For example, the email from
26 www.lilromeo.com indicates that the operator has collected the child’s name and
27 email address, but not that it also has collected the child’s home address, telephone
28 number, gender, and information about interests, preferences, and activities. (Ex.

1 D, p. 6.)

2 15. When a parent has clicked the indicated link to approve of his or her
3 child's participation in the named activity, defendant has connected the parent to
4 an Internet web page which either automatically has registered the parent's consent
5 or has asked the parent to consent by clicking a "Submit" button. (*See, e.g., Ex. D,*
6 *p. 7.*) Defendant has taken no further steps to verify that the person providing
7 consent was the child's parent. Defendant has used this method of obtaining
8 parental consent for all its activities, including those such as bulletin boards that
9 require the most reliable methods of parental consent.

10 16. In this manner, defendant has collected and maintained personal
11 information from tens of thousands of children without first sending their parents a
12 direct notice of its information practices and without obtaining parental consent to
13 collect the information. Defendant maintained this personal information regardless
14 of whether parental consent ever was obtained. At times, defendant has used this
15 information to send children marketing or promotional emails about its recording
16 artists. (*See, e.g., Ex. G.*)

17 17. Defendant provided no mechanism for parents to review or delete the
18 information collected from their children, as required by the Rule.

19 **Defendant's Privacy Policies**

20 18. Defendant has posted privacy policies on its websites, but in many
21 cases the privacy policies have not clearly, understandably, or completely disclosed
22 all of its information collection, use, and disclosure practices or made other
23 disclosures required by the Rule. (*See Ex. H.*)

24 **DEFENDANT'S VIOLATIONS OF THE CHILDREN'S ONLINE PRIVACY** 25 **PROTECTION RULE**

26 19. Since at least April 21, 2000, defendant has been an operator of
27 several hundred websites through which it has, with actual knowledge, collected
28 personal information from children. Since at least February 5, 2002, defendant

1 also has been an operator of at least one website directed to children. In numerous
2 instances, including the acts and practices described above, defendant has collected
3 personal information from children in violation of the Rule, including:

- 4 a. Failing to provide sufficient notice on the website of what
5 information it collects online from children, how it uses such
6 information, its disclosure practices, and all other required
7 content, in violation of Section 312.4(b) of the Rule, 16 C.F.R.
8 § 312.4(b);
- 9 b. Failing to provide direct notice to parents of what information it
10 collects online from children, how it uses such information, its
11 disclosure practices, and all other required content, in violation
12 of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);
- 13 c. Failing to obtain verifiable parental consent before any
14 collection, use, and/or disclosure of personal information from
15 children, in violation of Section 312.5 of the Rule, 16 C.F.R.
16 § 312.5; and
- 17 d. Failing to provide a reasonable means for parents to review the
18 personal information collected from their children and to refuse
19 to permit its further use or maintenance, in violation of Section
20 312.6 of the Rule, 16 C.F.R. § 312.6.

21
22 **DEFENDANT’S UNFAIR OR DECEPTIVE ACTS OR PRACTICES**
23 **IN VIOLATION OF THE FTC ACT**

24 20. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair
25 or deceptive acts or practices in or affecting commerce are hereby declared
26 unlawful.”

27 21. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a
28 violation of the Rule constitutes an unfair or deceptive act or practice in violation

1 of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C. §
2 6502(c).

3 22. By and through the acts and practices described in Paragraphs 13
4 through 18, above, defendant has violated Section 5(a)(1) of the FTC Act, 15
5 U.S.C. § 45(a)(1).

6
7 **CIVIL PENALTIES, INJUNCTION AND OTHER RELIEF**

8 23. Defendant has violated the Rule as described above with knowledge
9 as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

10 24. Each collection, use, or disclosure of a child’s personal information
11 from April 21, 2000 through the filing of this Complaint, in which defendant has
12 violated the Rule in one or more of the ways described above, constitutes a
13 separate violation for which plaintiff seeks monetary civil penalties.

14 25. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as
15 modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of
16 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC’s Rules of Practice, 16of the FTC’6386

1 violation of the Rule;

2 (3) Permanently enjoin defendant from violating the Rule; and

3 (4) Award plaintiff such additional relief as the Court may deem just,
4 proper, or necessary to redress injury to consumers resulting from
5 defendant's violations of the Rule.

6 DATED:

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