

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

EIGHT MILE STYLE, LLC; MARTIN
AFFILIATED, LLC,

Plaintiffs,

v.

SPOTIFY USA INC.; HARRY FOX
AGENCY, LLC,

Defendants,

Civil Case No. 3:19-CV-00736

Hon. Aleta A. Trauger

JURY DEMAND

SPOTIFY USA INC.,

Third-Party Plaintiff,

v.

KOBALT MUSIC PUBLISHING
AMERICA, INC.,

Third-Party Defendant.

**SPOTIFY USA INC.'S ANSWER TO
PLAINTIFFS' FIRST AMENDED COMPLAINT WITH
AFFIRMATIVE DEFENSES**

Defendant Spotify USA Inc. ("Spotify"), by and through its undersigned attorneys, hereby files its Amended Answer to Plaintiffs' First Amended Complaint with Affirmative Defenses as follow.

PRELIMINARY STATEMENT

Spotify is the leading global digital music streaming service, currently operating in 92 markets, with 299 million monthly active users and over 60 million tracks. Built to reverse the trend of music piracy which grew out of the Internet file-sharing platforms that were rampant in

the early 2000s and to provide fair compensation for artists, Spotify allows users to stream music and other content on demand over the Internet and through mobile applications on various devices. Spotify expends tremendous effort and resources to ensure that the various rights in any given track made available on its service are properly licensed and that rightsholders are appropriately compensated. Since launching the service, Spotify has paid over \$16 billion to rightsholders.

This action was originally commenced more than eight years after Spotify's launch in the United States, by two Michigan business entities (collectively "Eight Mile") that acquired a portion of the rights to musical compositions written by the hip-hop artist Eminem. This is not an action by or on behalf of Eminem or his direct representatives; indeed, Eminem was "just as surprised as anyone else" by Eight Mile's lawsuit. The lawsuit was especially surprising because Eight Mile has consistently and without objection accepted substantial royalty payments from Spotify for almost a decade leading up to this lawsuit for streams and limited downloads of sound recordings embodying musical compositions it now claims to assert against Spotify. Eight Mile suddenly argues those same sound recordings should not have been made available to Spotify users at all. Yet Eight Mile knowingly allowed its licensing agents, including Kobalt, and its affiliates, to grant mechanical licenses to Spotify and to collect royalty payments on Eight Mile's behalf pursuant to those agreements. Plaintiffs cannot authorize musical compositions to be reproduced and distributed, and accept the benefits of such reproduction and distribution, only to then turn around and claim willful copyright infringement.

What is more, Congress enacted the Music Modernization Act ("MMA") in October 2018 to eliminate the very type of lawsuit that Plaintiffs now bring, threatening levels of damages and liability that are not available under the statutory scheme. For lawsuits filed on or after January 1, 2018, the MMA makes statutorily prescribed royalties a copyright claimant's "sole and exclusive"

remedy provided certain requirements are met. Under this scheme, Spotify’s ongoing compliance with the statute strictly limits any remedy to statutory royalties.

Recognizing the additional impediment the MMA poses for its already-weak claim, Eight Mile devoted a substantial portion of its original complaint to alleging that Spotify failed to satisfy the MMA’s requirements for invoking the statute’s limitation on liability. Notably, however, Eight Mile materially mischaracterized how those requirements work, asserting that the MMA requires compliance by the “earlier” of two potential deadlines, when in fact the statute calls for compliance by the “later” of the two dates. Eight Mile’s failure to honor the statutory text is material—if Eight Mile’s false premise were accurate, Spotify would be required to travel back in time up to 7 years before the statute was enacted to comply with a new statutory requirement that is expressly forward looking. Spotify pointed out the misstatement in its Answer, in addition to asserting a claim against Kobalt Music Publishing America (“Kobalt”), based on its role in having licensed the musical compositions at issue to Spotify.

In response, Eight Mile amended its complaint. Yet rather than correcting its misstatement of the law, Eight Mile chose to add, in tit-for-tat style, claims against Spotify’s licensing agent Harry Fox Agency (“HFA”). And, in an apparent effort to dress up their new claims, Eight Mile tacked on accusations of a “fraudulent scheme” and a “conspiracy”—accusations that are unsupported by any details whatsoever, despite the requirements of Federal Rule of Civil Procedure 9(b). But Eight Mile’s repetition of the mantras “fraud” and “conspiracy” do not make them true. Tellingly, Eight Mile has not attempted to allege specific facts—the “who, what, when, where, why, and how” that Rule 9(b) demands—to support its belated (and logically far-fetched) theory of “fraud” and “conspiracy” between Spotify and HFA. In fact, a redline comparison of the First Amended Complaint against the Complaint shows that Eight Mile often simply inserted some

form of the word “fraud” in front of a preexisting allegation, without explanation. These scattershot references to fraudulent conduct are baseless; they are also, as abundant case law makes clear, legally irrelevant to the only claims that Eight Mile has asserted—that is, under the Copyright Act. If anything, the cries of fraud and conspiracy serve to underscore that Eight Mile’s legal claims won’t stand up on their own.

GENERAL DENIAL

Except as otherwise expressly stated herein, Spotify (1) generally denies each and every allegation in the Complaint, including, without limitation, any allegations contained in the preamble, introduction, headings, subheadings, unnumbered Paragraphs and footnotes of the Complaint; (2) specifically denies that it has caused Plaintiffs to suffer any harm, losses, or damages; (3) denies any liability to Plaintiffs; and (4) declines to adopt or acknowledge as accurate any defined terms in the Complaint to the extent they constitute allegations directed at Spotify. Spotify reserves the right to challenge the authenticity of all sources and documents referred to or purportedly quoted from in the Complaint, and to assert that any of the sources or documents referred to or purportedly quoted from by Plaintiffs in the Complaint are covered by the attorney-client privilege, the work product doctrine, and/or otherwise applicable privileges. Spotify reserves the right to seek to amend or supplement its Answer as may be necessary or appropriate.

RESPONSES TO SPECIFIC ALLEGATIONS

NATURE OF THE ACTION

1. To the extent the allegations in Paragraph 1 contain legal conclusions, Plaintiffs’ characterization of their legal claims, and Plaintiffs’ definitions of terminology, no response is required. To the extent a response is required, Spotify denies the allegations in Paragraph 1 and denies that Plaintiffs have stated a claim or are entitled to any relief. To the extent Paragraph 1

contains allegations directed at entities other than Spotify, Spotify denies the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

2. To the extent the allegations in Paragraph 2 contain legal conclusions, Plaintiffs' characterization of their legal claims, and Plaintiffs' definitions of terminology, no response is required. To the extent a response is required, Spotify denies the allegations in Paragraph 2. To the extent Paragraph 2 contains allegations directed at entities other than Spotify, Spotify denies the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

3. To the extent the allegations in Paragraph 3 contain legal conclusions, Plaintiffs' characterization of their legal claims, and Plaintiffs' definitions of terminology, no response is required. To the extent a response is required, Spotify denies the allegations in Paragraph 3 and specifically denies that the allegations accurately and completely describe Spotify's business and history.

4. To the extent the allegations in Paragraph 4 contain legal conclusions, Plaintiffs' characterization of their legal claims, and Plaintiffs' definitions of terminology, no response is required. To the extent a response is required, Spotify denies the allegations in Paragraph 4. To the extent Paragraph 4 contains allegations directed at entities other than Spotify, Spotify denies the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

5. To the extent the allegations in Paragraph 5 contain legal conclusions, Plaintiffs' characterization of their legal claims, and Plaintiffs' definitions of terminology, no response is required. To the extent a response is required, Spotify denies the allegations in Paragraph 5. To the extent Paragraph 5 contains allegations directed at or characterizations of entities other than Spotify, Spotify denies the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

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