

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:

YOKO ONO LENNON, SEAN ONO LENNON,
JULIAN LENNON, and EMI BLACKWOOD
MUSIC, INC.,

08 CV 3813 (SHS)(FM)

Plaintiffs,

**Affidavit of Yoko Ono
Lennon In Support of
Plaintiffs' Motion For A
Preliminary Injunction**

-against-

PREMISE MEDIA CORPORATION, L.P., C&S
PRODUCTION L.P. *d/b/a* RAMPANT FILMS,
PREMISE MEDIA DISTRIBUTION L.P. AND
ROCKY MOUNTAIN PICTURES, INC.,

Defendants.
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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Plaintiff, YOKO ONO LENNON, being duly sworn, deposes and says:

1. I am one of the Plaintiffs in the above captioned action. As the widow of the late John Lennon, I am one of the copyright owners of the musical composition "Imagine". Under my late husband's will I was appointed Executrix and charged with protecting and preserving his name, assets and legacy. I then succeeded, individually, to trademark and other intellectual property interests owned by John Lennon on his death, including, but not limited to, the trademark in "Imagine" (the "Mark").

2. My late husband's stature as a musician, artist, political activist and musical icon of the twentieth century is indisputable.

3. Together with the Co-Plaintiff, EMI Blackwood Music, Inc. (our exclusive administrator for musical compositions), I work to control the manner in which John Lennon's music is licensed and utilized.

4. "Imagine" has been licensed and featured in countless highly publicized contexts, including the 1984 Academy Award nominated film The Killing Fields, at the opening ceremony of the 2006 Winter Olympics in Torino, Italy, and for the past three years served as the musical "backdrop" in Times Square in New York City on New Year's Eve, before the famous midnight drop of the New Year's ball.

5. I believe "Imagine" is one of the, if not the "signature" song, written by my late husband. "Imagine" earned accolades from all corners of the music world. In 2004, Rolling Stone magazine voted "Imagine" the third greatest song of all time. Likewise, the Recording Industry Association of America has included the Imagine Recording among its ranking of the most historically significant recordings. Imagine is immediately recognizable to most Americans.

6. I have licensed the use of the Mark throughout the world in numerous instances including, most recently, the creation and installation of the Imagine Peace Tower in Reykjavik, Iceland. "Imagine" was also the title of the critically acclaimed David Wolper documentary on the life of John Lennon, produced with my participation. I also control the creation and licensing of many types of products which spread the message of John Lennon and his creative works.

7. On or about April 15, 2008, I became aware of press reports posted on Internet news sites incorrectly stating that I had licensed or otherwise authorized the use of "Imagine" in a motion picture entitled "Expelled: No Intelligence Allowed"

(the "Movie"). This was the first time that I became aware of the Movie or the use of "Imagine" in the Movie.

Defendants Unauthorized Use

8. I am advised that the Movie prominently features the use of John Lennon's recording of "Imagine", together with a reproduction, by subtitle, of a portion of the lyrics of the song on the screen.

9. None of the Defendants sought permission to use "Imagine" from me or from EMI Blackwood Music, Inc.

10. The use of "Imagine" is not only an affront to the intellectual property rights Plaintiffs control encompassed under our copyright, it is also causing harm to the trademark rights as well.

11. I learned from the initial press reports that the use of "Imagine" in the Movie was causing widespread criticism and concern about why those responsible for licensing "Imagine" would permit such use. As the April 16, 2008 online edition of The Wall Street Journal explained, "Word of the song's appearance in 'Expelled: No Intelligence Allowed' outraged bloggers, who immediately began speculating about why Ms. Ono would allow the song to appear in what they characterized as 'creationist propaganda.'" A copy of The Wall Street Journal article is attached as Exhibit A.

12. In one of the most aggravated instances of confusion about such alleged, false authorization, on the widely read HuffingtonPost.com, the blogger James Boyce attacked me, when he stated:

"Yoko Ono either sold or gave the rights to "Imagine" to the producers of the film. In screenings around the country, and in copies of the movie reviewed, everyone notes the odd inclusion of the song. I guess that the \$20 million plus the estate earns every year isn't enough for Yoko Ono, not only does she feel the need to license the song out, she probably held out for the highest bidder..."

Mr. Boyce retracted this malicious statement when informed by my attorney that, in fact, no permission had been granted by me. A copy of Mr. Boyce's article and retraction are attached as Exhibit B.

The Irreparable Harm to Plaintiffs

13. Together with EMI Blackwood Music, Inc., I carefully consider each and every request for a synchronization use such as the one made in the Movie. While a fee is negotiated for uses of this kind, the information a potential licensee provides to us regarding how the song will be used is of paramount concern for me.

14. As set forth in the accompanying affidavit from EMI Blackwood Music, Inc., I carefully select how and where we license John Lennon's musical works to third parties. Losing control of this process harms the copyright in "Imagine" in a manner which simply cannot be quantified in money damages---the loss of this control is irreparable.

15. As is clearly apparent from the press report, speculation about my "selling out", tarnishes and diminishes the legacy left by John Lennon.

16. If anyone could use "Imagine", or any other John Lennon song, without permission, the work which EMI Blackwood Music, Inc. and I have done for decades would simply be destroyed.

17. One of the most basic rights I control by reviewing and choosing licenses is the right to say "no". The filmmakers simply looted me of the ability to do

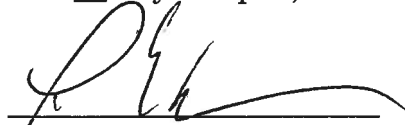
so. I ask that the Court not condone this type of behavior so that it will not create a damaging precedent.

18. I have not asked this Court, or any other Court, for the relief sought herein by prior application or otherwise.



YOKO ONO LENNON

Sworn to before me
this 29 day of April, 2008



Notary Public

