

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SAMUEL BARTLEY STEELE, :  
BART STEELE PUBLISHING, and :  
STEELE RECORDZ, :  
  
Plaintiffs, : Civil Action  
v. : No. 08-11727-NMG  
:  
TURNER BROADCASTING SYSTEM, INC., :  
MAJOR LEAGUE PROPERTIES, INC., :  
TIME WARNER, INC., ISLAND DEF JAM :  
RECORDS, FOX BROADCASTING :  
COMPANY, JOHN BONGIOVI, :  
INDIVIDUALLY AND D/B/A BON JOVI :  
PUBLISHING, RICHARD SAMBORA, :  
INDIVIDUALLY AND D/B/A AGGRESSIVE :  
MUSIC, WILLIAM FALCON, :  
INDIVIDUALLY AND D/B/A PRETTY :  
BLUE SONGS, UNIVERSAL-POLYGRAM :  
INTERNATIONAL PUBLISHING, INC., :  
SONY/ATV TUNES LLC, KOBALT MUSIC :  
GROUP, A&E TELEVISION NETWORKS, :  
AEG LIVE LLC, VECTOR 2 LLC, BOSTON :  
RED SOX, INC., THE BIGGER PICTURE :  
CINEMA CO., and MARK SHIMMEL :  
MUSIC, :  
  
Defendants. :  
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**ANSWER AND AFFIRMATIVE DEFENSES**

Defendants Turner Broadcasting System, Inc., Major League Baseball Properties, Inc., Time Warner Inc., John Bongiovi (individually and d/b/a Bon Jovi Publishing), Richard Sambora (individually and d/b/a Aggressive Music), William Falcone (individually and d/b/a Pretty Blue Songs), Universal-Polygram International Publishing, Inc., A&E Television Networks, AEG Live LLC, Boston Red Sox Baseball Club Limited Partnership and Mark Shimmel (collectively the “Defendants”) by their undersigned counsel, answer Plaintiffs’

Amended Complaint (Docket No. 41) (the "Amended Complaint"),<sup>1</sup> upon knowledge as to the Defendants, and otherwise upon information and belief, as follows:

**Jurisdiction**

As to the unnumbered paragraph immediately following the heading "Jurisdiction," the Defendants admit that the Amended Complaint purports to be a civil action for copyright infringement under the United States Copyright Act, 17 U.S.C. §§ 101, *et seq.* The Defendants also admit that this Court has jurisdiction pursuant to 28 U.S.C. § 1338(a). The Defendants submit that no response is required to the allegation that the Amended Complaint purports to be a civil action for relief pursuant to Ch. 93A because Plaintiffs' 93A claim was dismissed from this Action by the Court's Memorandum and Order dated April 3, 2009 (Docket No. 85).

**Factual Allegations**

1. The Defendants admit that Mr. Steele is a natural person but lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 1 of the Amended Complaint.
2. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Amended Complaint.
3. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Amended Complaint.

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<sup>1</sup> Although the Court accepted the factual allegations from both the Original and Amended Complaints together for purposes of addressing the merits of the motions to dismiss (Memorandum and Order dated April 3, 2009 at 6), Defendants submit this Answer And Affirmative Defenses in response to the Amended Complaint only in accordance with the applicable legal precedent. See ConnectU LLC v. Zuckerberg, 522 F.3d 82, 91 (1st Cir. 2008); Kolling v. Am. Power Conversion Corp., 347 F.3d 11, 16-17 (1st Cir. 2003).

4. The Defendants admit that Defendant Time Warner Inc. is a company and that it has offices at One Time Warner Center, New York, New York.

5. The Defendants admit the allegations contained in paragraph 5 of the Amended Complaint.

6. The Defendants deny the allegations contained in paragraph 6 of the Amended Complaint.

7. The Defendants admit the allegations contained in paragraph 7 of the Amended Complaint.

8. The Defendants deny the allegations contained in paragraph 8 of the Amended Complaint.

9. The Defendants admit the allegations contained in paragraph 9 of the Amended Complaint.

10. The Defendants deny the allegations contained in paragraph 10 of the Amended Complaint.

11. The Defendants admit the allegations contained in paragraph 11 of the Amended Complaint.

12. The Defendants submit that no response is required to paragraph 12 of the Amended Complaint because Sony/ATV Tunes LLC was dismissed from this Action by the Court's Memorandum and Order dated April 3, 2009.

13. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Amended Complaint.

14. The Defendants deny the allegations contained in paragraph 14 of the Amended Complaint.

15. The Defendants admit that Defendant Turner Broadcasting System, Inc. is a company and that it has offices located at One CNN Center, Atlanta, Georgia.

16. The Defendants admit that Defendant A&E Television Networks has offices at 235 E. 45th Street, New York, New York. The Defendants deny that A&E Television Networks is a company.

17. The Defendants admit that Defendant AEG Live LLC is a limited liability company and that it has offices at 5750 Wilshire Boulevard, Suite 501, Los Angeles, California.

18. The Defendants submit that no response is required to paragraph 18 of the Amended Complaint because Vector 2, LLC was dismissed from this Action by the Court's Memorandum and Order dated April 3, 2009.

19. The Defendants admit that Defendant Boston Red Sox Baseball Club Limited Partnership (misidentified in the Amended Complaint as Boston Red Sox, Inc.) has offices at 4 Yawkey Way, Boston, Massachusetts. The Defendants deny that Defendant Boston Red Sox Baseball Club Limited Partnership is a corporation.

20. The Defendants admit that on October 20, 2004 a person using the email address ecmp2000@comcast.net sent an electronic mail message with a Windows Media Audio file attachment entitled "01 Man I Really Love This Team.wma" to the electronic mail address jrourke@redsox.com, but lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 20 of the Amended Complaint.

21. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Amended Complaint.

22. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Amended Complaint.

23. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Amended Complaint.

24. The Defendants admit that Plaintiffs attached as Exhibit D to their initial Complaint (Docket No. 1) a letter dated March 25, 2008 from Robert Cheatham and respectfully refer the Court to that document for a full and complete statement of its contents. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 24 of the Amended Complaint.

25. The Defendants admit that in 2006, Defendant Turner Broadcasting System, Inc. (“Turner”) acquired the rights for seven years to televise on cable television the Major League Baseball post-season playoff series, starting with the 2007 season. The remaining allegations contained in paragraph 25 of the Amended Complaint are denied.

26. The Defendants deny the allegations contained in paragraph 26 of the Amended Complaint.

27. The Defendants deny the allegations contained in paragraph 27 of the Complaint, except admit that (i) to promote the first post-season on the Turner Broadcasting System cable network, on August 31, 2007 Turner announced “a full length promo” featuring rock performer Bon Jovi; (ii) in the Turner Promo, the Bon Jovi band performed the song “I Love This Town” from the band’s new *Lost Highway* CD; and (iii) Defendant Turner’s promotion of the first post-season on the Turner Broadcasting System cable network included radio advertising, online advertising, print advertising, and billboard advertising.

28. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint, except admit that (i) on June 30, 2006 the United States Copyright Office issued copyright number PAu3052330 for

works titled “The Collection,” “Greatest Hits,” and “Words and Music;” (ii) Plaintiff Steele is listed on copyright number PAu3052330 as an author of the works titled “The Collection,” “Greatest Hits,” and “Words and Music;” and (iii) Plaintiff Steele is listed as the claimant for that copyright. The Defendants invite the Court to examine Exhibit 4 to the February 18, 2009 Transmittal Declaration of Scott D. Brown in Support of the Moving Defendants’ Motion to Dismiss the Amended Complaint (Docket No. 50), which on information and belief is a true and correct copy of the deposit copy at the United States Copyright Office for copyright PAu3052330, for a full and complete statement of their contents.

29. The Defendants deny the allegations contained in paragraph 29 of the Amended Complaint, except admit that (i) on July 3, 2007 the United States Copyright Office issued copyright number PA0001384875 for the song “I Love This Town,” (ii) Defendants Bongiovi, Sambora and Falcone are listed on copyright number PA0001384875 as the authors of the song “I Love This Town,” and (iii) Universal-Polygram International Publishing Inc., Bon Jovi Publishing, Sony/ATV Tunes LLC, Aggressive Music, Pretty Blue Songs, and Kobalt Music Group are listed as the claimants for that copyright.

30. The Defendants deny the allegations contained in paragraph 30 of the Amended Complaint.

31. The Defendants deny the allegations contained in paragraph 31 of the Amended Complaint, except admit that (i) Defendants Bongiovi, Sambora, and Falcone are the authors of the song “I Love This Town,” (ii) the song “I Love This Town” appears on Bon Jovi’s *Lost Highway* CD, and (iii) in the Turner Promo, the Bon Jovi band performed the song “I Love This Town.”

32. The Defendants deny the allegations contained in paragraph 32 of the Amended Complaint.

33. The Defendants deny the allegations contained in paragraph 33 of the Amended Complaint.

34. The Defendants deny the allegations contained in paragraph 34 of the Amended Complaint, except admit that they have not sought or obtained a license agreement from Plaintiffs or ASCAP relating to Plaintiffs' song "Man I Really Love this Team," and aver that no such license is required.

35. The Defendants deny the allegations contained in paragraph 35 of the Amended Complaint.

36. The Defendants deny the allegations contained in paragraph 36 of the Amended Complaint.

37. The Defendants deny the allegations contained in paragraph 37 of the Amended Complaint.

**COUNT I – VIOLATION OF TITLE 17, U.S.C.**

38. The Defendants incorporate their responses to paragraphs 1-37 of the Amended Complaint.

39. The Defendants deny the allegations contained in paragraph 39 of the Amended Complaint.

The Defendants deny the "wherefore" paragraph following paragraph 39 of the Amended Complaint.

**COUNT II – VIOLATION OF G. L. c. 93A**

40. The Defendants submit that no response is required to paragraph 40 of the Amended Complaint because Plaintiffs' 93A claim was dismissed from this Action by the Court's Memorandum and Order dated April 3, 2009 (Docket No. 85). To the extent that paragraph 40 of the Amended Complaint may be deemed to require a response, the Defendants incorporate their responses to paragraphs 1-39 of the Amended Complaint.

41. The Defendants submit that no response is required to paragraph 41 of the Amended Complaint because Plaintiffs' 93A claim was dismissed from this Action by the Court's Memorandum and Order dated April 3, 2009 (Docket No. 85). To the extent that paragraph 41 of the Amended Complaint may be deemed to require a response, the Defendants deny the allegations contained therein.

The Defendants deny the "wherefore" paragraph following paragraph 41 of the Amended Complaint.

**AFFIRMATIVE DEFENSES**

For their affirmative defenses, the Defendants aver as follows:

**FIRST AFFIRMATIVE DEFENSE**

1. The allegations in Count I of the Amended Complaint fail to state a claim upon which relief may be granted.

**OTHER AFFIRMATIVE DEFENSES**

2. The Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserve their right to seek leave to amend this Answer and Affirmative Defenses and assert all such defenses.



WHEREFORE, the Defendants demand judgment dismissing Count I of the Amended Complaint in all respects as against them with prejudice, together with an award of the Defendants' costs and disbursements, including reasonable attorneys' fees, and such other and further relief as the Court may deem just and proper.

Dated: April 17, 2009  
Boston, Massachusetts

Respectfully submitted,

/s/ Matthew J. Matule  
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**CERTIFICATE OF SERVICE**

I, Matthew J. Matule, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on April 17, 2009.

Dated: April 17, 2009 /s/ Matthew J. Matule  
Matthew J. Matule

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