

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Seugne Botha,

Plaintiff,

Case No.:

v.

JURY DEMANDED

**Sony Music Entertainment,
The Orchard Music Company,
Apple, Inc.,
Amazon, Inc.,
Spotify, Inc.,
Google, Inc.,
Microsoft, Inc.,
Deezer, Inc.,
Shazam Media Services, Inc.,
MediaNet, Inc.,
CD Universe, Inc.,
Saavn, LLC.**

Defendants.

_____ /

ORIGINAL COMPLAINT

Comes now Plaintiff Seugne Botha (“Botha” or “Plaintiff”) with her Complaint against Sony Music Entertainment (“Sony”), Orchard Music Company (“Orchard”), Apple, Inc. (“Apple”), Amazon, Inc. (“Amazon”), Spotify, Inc. (“Spotify”), Google, Inc. (“Google”), Microsoft, Inc. (“Microsoft”), Deezer, Inc. (“Deezer”), Shazam Media Services, Inc. (“Shazam”), MediaNet, Inc. (“MediaNet”), CD Universe, Inc. (“Universe”), and Saavn, LLC. (“Saavn”) (collectively “Defendants”) and states as follows:

INTRODUCTION

1. This is an action for Copyright Infringement under the United States Copyright Act of 1976, 17 U.S.C. § 101 et seq. (“Copyright Act”), and Unfair Competition under Florida common law.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff is an individual located in Pretoria, Gauteng, South-Africa and is a performer, composer, lyricist, pianist, and producer of her own original musical compositions.

3. Upon information and belief Defendant Sony Music Entertainment is a corporation registered in the State of Delaware, having its principal place of business and global headquarters located at 25 Madison Ave, New York, NY, 10010 USA and is an American music company owned by Sony that is incorporated as a general partnership of Sony Music Holdings Inc., through Sony Entertainment Inc., a subsidiary of Sony Corporation of America (“Sony”).

4. Upon information and belief Defendant The Orchard Music Company, is a music and entertainment Company located at 23 E 4th St, New York, NY 10003 USA and is wholly owned by Sony Music Entertainment (“Orchard”).

5. Upon information and belief Defendant Apple, Inc. is, *inter alia*, a corporation engaged in online music distribution and device manufacturing with its principal place of business located at One Apple Park Way, Cupertino, CA 95014, USA (“Apple”).

6. Upon information and belief Defendant Amazon, Inc. is, *inter alia*, a corporation engaged in online music distribution, book distribution, and device manufacturing with its principal place of business located at 410 Terry Ave. North, Seattle, WA 98108-1226 USA (“Amazon”).

7. Upon information and belief Defendant Spotify, Inc. is, *inter alia*, a corporation engaged in online music distribution with its principal place of business located at 45 W. 18th Street, 7th Floor, New York, NY 10011 USA (“Spotify”).

8. Upon information and belief Defendant Google, Inc. is, *inter alia*, a corporation engaged in online music distribution, search, and software with its principal place of business located at 1600 Amphitheatre Pkwy. Mountain View, CA 94043 USA (“Google”).
9. Upon information and belief Defendant Microsoft, Inc. is, *inter alia*, a corporation engaged in online music distribution and software with its principal place of business located at 1 Microsoft Way, Redmond, WA 98052 USA (“Microsoft”).
10. Upon information and belief Defendant Deezer, Inc. is, *inter alia*, a corporation engaged in online music distribution with its principal place of business located at C/O KVB Partners, 60 Broad Street, Ste. 3502, New York, NY 10004 USA (“Deezer”).
11. Upon information and belief Defendant Shazam Media Services, Inc., is, *inter alia*, a corporation engaged in online music distribution with its principal place of business located at 52 Vanderbilt Ave, 19th Floor, New York, NY 10017 USA (“Shazam”).
12. Upon information and belief Defendant MediaNet, Inc. is, *inter alia*, a corporation engaged in online music distribution with its principal place of business located at 2401 Elliott Ave., Suite 300, Seattle, WA 98121 USA (“MediaNet”).
13. Upon information and belief Defendant CD Universe, Inc. is, *inter alia*, a corporation engaged in online music distribution with its principal place of business located at 101 N. Plains Industrial Road, Wallingford, CT 06492-5857 USA (“Universe”).
14. Upon information and belief Defendant Saavn, LLC. is, *inter alia*, a corporation engaged in online music distribution with its principal place of business located at 460 Park Avenue South, 4th Floor, New York, NY 10016 USA (“Saavn”).¹

¹ Apple, Amazon, Spotify, Microsoft, Universe, Google, Deezer, Shazam, MediaNet, Saavn, are collectively referred to as the “Online Distributors”.

15. Upon information and belief, at all times material hereto, Defendants operated through the acts of their employees, agents, representatives, servants, and the like, acting within their course of employment and scope of duties.

16. This Complaint alleges Copyright Infringement under the Copyright Act and this Court has subject matter jurisdiction over this federal question claim pursuant to 28 U.S.C. § 1338(a) (“Copyright”).

17. This Complaint alleges Unfair Competition under Florida law, arising from the same transaction or occurrence as Plaintiff’s Copyright Infringement claim, and this Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. § 1367 (“Supplemental Jurisdiction”).

18. This Court has personal jurisdiction over Defendants because Defendants’ tortious, intentional, willful and malicious acts of copyright infringement and unfair competition, occurred within this jurisdiction and throughout the world, were expressly aimed at this jurisdiction, and caused harm Defendants knew or should have known was likely to be suffered in this jurisdiction. Upon information and belief, this Court also has personal jurisdiction over Defendants because they have offices in this forum, and/or have transacted business in this judicial district.

19. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants reside and may be found in this judicial district such that they are subject to personal jurisdiction in this judicial district.

ALLEGATIONS COMMON TO ALL COUNTS

20. Botha composed the music and lyrics to “U is Daar” (“U Are There”) between December 2011 and February 2012; and recorded it in South Africa between April 30, 2013 and May 15, 2013.

21. Botha composed the music and lyrics to “Ek Slaan My Oe Na Die Berge” (“I Lift My Eyes to the Mountains”) on or about April 2012; and recorded it in South Africa between April 30, 2013 and May 15, 2013.

22. On or about October 24, 2013 Botha assigned five songs to the Maranatha Record Company (“Maranatha”), this agreement (“Assignment”) did not include either “U is Daar” or “Ek Slaan my Oë Na Die Berge” (“Songs”). *See Exhibit A*, assignment between Botha and Maranatha, attached hereto and included herein by reference.²

23. On or about March 4, 2014, Maranatha’s General Manager, Hester Moolman (“Moolman”) requested permission from Botha to include “Ek Slaan my Oe Na Die Berge” on a compilation album for Easter entitled “Kruishou Liefde.” *See Exhibit B*, request from Moolman.

24. Botha allowed Maranatha to use “Ek Slaan My Oe Na Die Berge” only for “Kruishou Liefde.”

25. Maranatha also negotiated a distribution agreement with Botha, (“Contract”). However, the Contract was never perfected because Botha never signed it. *See Exhibit C*, copy of unsigned Contract. The alleged Contract was for manufacturing and physical distribution in South Africa only.

26. Maranatha terminated the Contract with Botha on or about October 14, 2014. *See Exhibit D*, Moolman Notice of Termination of relationship. Such termination was given immediate effect.

27. Ms. Botha never licensed any rights to the Songs to Maranatha. Botha performed her own marketing and paid for her own master³ pursuant to the Songs.

28. Additionally, Botha took her own photographs which she used in promotional materials (“Photos”).

29. Botha never licensed any rights in the Songs to any entity.

² All exhibits are attached hereto and included herein by reference unless otherwise noted.

³ A master is “an original recording, film, or document from which copies can be made.” *See* <https://en.oxforddictionaries.com/definition/master>. Last visited April 10, 2018.

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