

1 DAVID BOIES (pro hac vice)
JONATHAN D. SCHILLER (pro hac vice)
2 BOIES, SCHILLER & FLEXNER LLP
80 Business Park Drive, Suite 110
3 Armonk, New York 10504
Telephone: (914) 273-9800
4 Facsimile: (914) 273-9810

5 LAURENCE F. PULGRAM (CSB No. 115163)
DAVID L. HAYES (CSB No. 122894)
6 FENWICK & WEST LLP
275 Battery Street, Suite 1500
7 San Francisco, CA 94111
Telephone: (415) 875-2300
8 Facsimile: (415) 281-1350

9 DANIEL JOHNSON, JR. (CSB No. 57409)
DARRYL M. WOO (CSB No. 100513)
10 MARY E. HEUETT (CSB No. 197389)
EMILIO G. GONZALEZ (CSB No. 197382)
11 FENWICK & WEST LLP
Two Palo Alto Square
12 Palo Alto, CA 94306
Telephone: (650) 494-0600
13 Facsimile: (650) 494-1417

14 Attorneys for Defendant
NAPSTER, INC.

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 A&M RECORDS, INC., a corporation, et al.
20 Plaintiffs,

21 v.

22 NAPSTER, INC., a corporation, and DOES 1
through 100,
23 Defendants.

24 JERRY LEIBER, individually and doing business
as JERRY LEIBER MUSIC, et al.

25 Plaintiffs,

26 v.

27 NAPSTER, INC.,
28 Defendants.

Case Nos. C 99-5183 MHP (ADR)
C 00-0074 MHP (ADR)

**DECLARATION OF JAMES
GUERINOT IN SUPPORT OF
DEFENDANT NAPSTER'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: July 26, 2000
Time: 2:00 p.m.
Courtroom: 15
Hon. Marilyn H. Patel

1 I, Jim Guerinot, declare as follows:

2 1. I know the matters stated herein of my own personal knowledge and, if called to
3 testify, could and would testify competently to them.

4 2. From 1992 to 1994 I was the general manager of A&M Records.

5 3. I am currently the owner of Time Bomb Records.

6 4. Time Bomb has signed, among other bands, Social Distortion, The Amazing
7 Crowns, Peter Searcy, Sunny Day Real Estate, Death In Vegas, The Aquabats, No Knife,
8 Starling, Mike Ness, The Reverend Horton Heat, Chlorine and Soul Circle.

9 5. As a personal manager, I represent the successful recording artists The Offspring,
10 Social Distortion, Chris Cornell, and No Doubt. None of the above mentioned artists have been
11 requested to comment, therefore these views are exclusively those of the Offspring and Jim
12 Guerinot.
13

14 6. In 1987 The Offspring self-financed their first release, a 7" single. The Offspring
15 released another 7" single called Baghdad and an album titled *The Offspring*. In 1992, under the
16 Epitaph label, The Offspring released another album, Ignition. In 1994, The Offspring's
17 breakthrough single, "Come Out and Play" and top hit "Self Esteem" helped push their third
18 album, *Smash*, to the best selling independent album release of all time, selling over 11,000,000.
19 Videos from that album received heavy MTV play. In 1996, after resolution of disputes with
20 Epitaph, The Offspring signed with Columbia Records. In February 1997 they released their
21 next album, *Ixnay On The Hombre*. In October of 1998, the band released their fifth album,
22 Americana, which produced the hits "Pretty Fly" and "Why Don't You Get A Job."

23 7. The Offspring support Napster on their web site and even provided a link to
24 Napster. A copy of that web page link is attached as Exhibit A. The Offspring believe that
25 digital technology provides a great opportunity to communicate directly with fans and thus
26
27
28

1 increase their fan base.

2 8. Napster is a wonderfully programmed system that The Offspring has
3 successfully used to promote their music and their band. Wired magazine reported that singles by
4 the band from their record, *Americana*, had as many 22 million downloads while the band sold
5 ten and a half million copies of that release. It is the bands' and their manager's opinion that
6 allowing fans of The Offspring to hear their music on Napster will make fans more, not less,
7 likely to purchase the group's records, T-shirts and other merchandise, and attend live
8 performances by the band.
9

10 9. Napster allows The Offspring to reach a global audience of music lovers and to
11 create new fans all over the world. Compared to traditional, and more expensive methods of
12 "sampling" promotion such as cassette and CD samplers, allowing fans to download MP3s from a
13 website and/or trade them on Napster is radically more efficient and effective. With the
14 increasing use of the Internet, it is conceivable that Napster and other technologies that allow
15 quick and direct means of sharing and transferring information, will be as effective as radio,
16 television and the press to market and promote their music while being more cost effective. The
17 Offspring view Napster as a vital and necessary means to promote music and foster a better
18 relationship with fans.
19
20

21 I declare under penalty of perjury that the foregoing is true and correct. Executed this
22 2nd day of July, 2000, in Laguna Beach, California.
23

24 _____
25 James Guerinot

26 22179/00400/LIT/1058588.2
27
28