



Arista Music et al v. Radionomy, Inc. et al

2016 | Cited 0 times | N.D. California | June 8, 2016

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 United States District Court

Northern District of California

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

ARISTA MUSIC, et al.,

Plaintiffs, v. RADIONOMY, INC., et al.,

Defendants.

Case No. 16-cv-00951-RS

ORDER DENYING WITHOUT PREJUDICE DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF JURISDICTION AND GRANTING PLAINTIFFS' REQUEST TO CONDUCT LIMITED DISCOVERY

I. INTRODUCTION Plaintiffs (Sony Music) are various entities that own the copyrights to numerous audio and visual works. Sony Music contends defendants Radionomy, Inc., Radionomy S.A., and Radionomy Group B.V. have continuously violated copyright law by performing and displaying copyrighted works without permission at the behest of defendant Alexandre . Radionomy Group and Saboundjian are citizens of the Netherlands and Belgium respectively. for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). Radionomy, Inc., and Radionomy S.A., on the other hand, agree this court has jurisdiction over them. Saboundjian and Radionomy Group Rule 12(b)(6). Pursuant to Local Rule 7-1(b) this matter is suitable for disposition without oral argument.

Sony Music submitted a substantive opposition to these motions to dismiss, but also

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 United States District Court

Northern District of California

requests permission to conduct limited discovery to develop further the record establishing personal



Arista Music et al v. Radionomy, Inc. et al

2016 | Cited 0 times | N.D. California | June 8, 2016

jurisdiction. Because esta is granted. *Mitan v. Feeney*, 497 F. Supp. 2d 1113, 1119 (C.D. Cal. 2007) (internal quotation

marks omitted). motions to dismiss are therefore denied without prejudice to their right to renew their challenges after the limited period of discovery.

II. BACKGROUND Radionomy Group is a corporation organized and incorporated under the laws of the Netherlands. Radionomy S.A. and Radionomy, Inc., are Radiono subsidiaries: Radionomy Group owns 99% of Belgium-based Radionomy S.A., which wholly owns Radionomy, Inc., a Delaware corporation. Until early 2016, Radionomy, Inc., maintained its principal place of business and headquarters in San Francisco, California.

The Radionomy entities offer an online music platform on their website, www.radionomy.com, and through other online services, such as TuneIn.com. The platform allows users to listen to music and to create and customize online stations for streaming music. Through this service, users can program stations with copies of sound recordings they own and upload or sound recordings available in online music library. Users may then stream these collections over the Internet. contains hundreds, if not thousands, of Radionomy currently does not have licenses or authorization to reproduce, publicly to perform, and/or to display Sony copyrighted works in the United States. Moreover, Radionomy has refused requests and demands to remove the infringing works from service and to cease the service that allows users to stream or to display S

Saboundjian, the CEO and founder of all three Radionomy entities, is a citizen and resident of Belgium. He and three other people founded Radionomy in Europe in 2007, and the service launched operations in the United States from its San Francisco headquarters in 2012. In early 2013, Radionomy, Inc. was formed and registered to do business in the State of California. When

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 United States District Court

Northern District of California

Radionomy, Inc., established its corporate headquarters in San Francisco, it filed papers with the California Secretary State, identifying Saboundjian as its agent for service of process in California. In March 2013, Saboundjian became CEO of Radionomy, Inc. Saboundjian admits that he visited indicating that over the past five years he has traveled to California once or twice a year to transact business. 1

III. LEGAL STANDARD Federal Rule of Civil Procedure 12(b)(2) authorizes motions to dismiss for lack of personal jurisdiction. Personal jurisdiction over a nonresident defendant may exist it essentially at home in the forum State (general jurisdiction), *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014) (internal quotation marks omitted), or minimum contacts with the forum state such that



Arista Music et al v. Radionomy, Inc. et al

2016 | Cited 0 times | N.D. California | June 8, 2016

the exercise of jurisdiction), *Shoe Co. v. Washington*, 326 U.S. 310, 316 (1946) (internal quotation marks omitted). Fairness requires that a court exercise jurisdiction only if the connection with the forum State are such that he should reasonably anticipate being haled into World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Where there is no federal statute applicable to determine personal jurisdiction, a district court should apply the law of the state where the court sits. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citing Fed. R. Civ. P. 4(k)(1)(A)). s long-arm statute is coextensive with federal due process requirements. *Id.* at 800-01. It permits the ution of this state or of the Cal. Civ. P. Code § 410.10.

If a defendant challenges the existence of personal jurisdiction, the plaintiff bears the

1 In his declaration, Saboundjian confined his review of business travel records to 2014-2015 even
surrender its license to do business in California until April 2016. He also did not describe what he
was doing while on business.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 United States District Court

Northern District of California

personal jurisdiction over the defendant. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011). The plaintiff need only make a prima facie showing of jurisdiction t may not simply rest on the bare allegations of the complaint. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). [U]ncontroverted allegations must be taken as true, and conflicts between parties over statements contained in affidavits mu *Id.* (internal quotation marks and alteration omitted).

In addition, Rule 4(k)(2) of the Federal Rules of Civil Procedure permits federal courts to exercise personal jurisdiction over a defendant that lacks contacts with any single state if the defendant maintains sufficient contacts with the United States as a whole, unless (A) the defendant is subject to jurisdiction of the courts of general jurisdiction of any state, or (B) jurisdiction is consistent with the United States Constitution and laws. Fed. R. Civ. P. 4(k)(2).

District courts may permit limited discovery to determine whether personal jurisdiction exists. n *Internationale de Foo n*, 115 F. Supp. 3d 1035, 1053 (N.D. Cal. 2015).

requests for limited discovery. , 342 F.3d 1080, 1093 (9th Cir. 2003). While district court discretion in this area is broad, district courts abuse their discretion by to constitute a basis fo Mehr, 115 F. Supp. 3d at 1054 (quoting *Harris v. Rutsky &*

Co. Ins. Serv. v. Bell & Clements, 328 F.3d 1122, 1135 (9th Cir. 2003)). To that end, district Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002). Good cause exists when the need for expedited discovery outweighs prejudice to the responding party. *Id.*



Arista Music et al v. Radionomy, Inc. et al

2016 | Cited 0 times | N.D. California | June 8, 2016

IV. DISCUSSION A. Radionomy Group of incorporation or principle place of

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 United States District Court

Northern District of California

business Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011). Yet Sony Music insists this court has personal jurisdiction over Radionomy Group because its subsidiaries (Radionomy, Inc. and Radionomy S.A.) have had significant contacts with California. Generally, the existence of a parent-subsidiary relationship is insufficient s contacts with a forum state to another for the purpose of establishing personal jurisdiction. See Doe v. Unocal Corp., 248 F.3d 915, 925 (9th Cir. 2001). activities of its subsidiaries without incurring liability

Id. (quoting United States v. Bestfoods, 524 U.S. 51, 72 (1998)). separate entities Id. at 926 (internal quotation marks omitted).

ity of interest and ownership that the separate personalities of [the parent and subsidiary entities] no longer exist and (2) that Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 591 (9th Cir. 1996) (internal quotation marks omitted). Mere involvement in decision- show unity of interest and ownership malities Ranza, 793 F.3d at 1073 (internal quotation marks and alteration omitted). At this stage, Sony Music is at a considerable disadvantage without discovery. Evidence decisionmaking. All three entities shared senior officers and online resources. Radionomy Group

owns 99% of Radionomy S.A., which in turn wholly owns Radionomy, Inc. Declarations submitted by Sony Music suggest Saboundjian did not distinguish between the three entities when he negotiated licensing agreements on behalf of all three entities. Without discovery, however, Sony Music is incapable of offering any evidence about the extent to which the Radionomy

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 United States District Court

Northern District of California

entities observed (or did not observe) corporate formalities or whether the entities are properly capitalized. See Ranza, 793 F.3d at 1073. Because Sony Music has satisfactorily demonstrated that discovery may reveal facts establishing general personal jurisdiction over Radionomy Group, the best course is to permit Sony Music to conduct limited discovery to uncover relevant facts. Sony Music has demonstrated good cause for expedited discovery limited to questions of personal jurisdiction because without such discovery it may not have the opportunity to hold Radionomy Group to account for alleged violations. Radionomy Group has not suggested this limited discovery would cause prejudice; indeed, Radionomy Group has agreed not to resist a request for discovery. without prejudice to its right to renew its challenge to personal jurisdiction and the sufficiency of



Arista Music et al v. Radionomy, Inc. et al

2016 | Cited 0 times | N.D. California | June 8, 2016

the complaint after the limited period of discovery expires.

B. Saboundjian Similarly, Sony Music should have an opportunity to develop the factual record in support of general and specific jurisdiction over Saboundjian. It has presented sufficient evidence to suggest a factual basis for personal jurisdiction registered agent in California and role negotiating licensing agreements with U.S. and California

corporations. time without prejudice to his ability to challenge the existence of personal jurisdiction and the

sufficiency of the complaint in the future. Saboundjian has expressed willingness to proceed with limited jurisdictional discovery, and therefore permitting such limited discovery is unlikely to cause him prejudice.

V. CONCLUSION Civil P

limited discovery of facts establishing personal jurisdiction is granted. Such discovery must be completed within the next forty-five days. To facilitate expedited discovery, defendant are ordered to produce discovery responses within twenty days of service.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 United States District Court

Northern District of California

IT IS SO ORDERED.

Dated: June 8, 2016

_____ RICHARD SEEBORG United States District Judge

