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MICHELLE SHOCKED (PRO SE)
45 TUDOR CITY PLACE #2108
NEW YORK, NEW YORK 10017
917 341 7735
account@michelleshocked.com

COPYRIGHT CLAIMS BOARD

MICHELLE SHOCKED Claimant, vs. JAMES BILLINGTON, Respondent	Case No.: 22-CCB-0058 MICHELLE SHOCKED WRITTEN REPLY TESTIMONY

1. Respondent Billington provides no evidence for his assertion that his listing on eBay was for a legitimate copy manufactured under a license agreement by Mercury / PolyGram. Billington provides no evidence for his assertion that his listing on eBay was a “pre-owned, store-bought, mass-produced CD”. Billington provides no evidence for his allegation that his 1986 Mercury Records copy of “The Texas Campfire Tapes” is legally “widely available for sale to this day.” The title is long out of print and remains unavailable for legal sale anywhere. Billington provides no evidence for his assertion that his copy of “The Texas Campfire Tapes” is a legitimate copy. His assertion that it is legitimate because he “bought it at Goodwill” is no defense to copyright infringement and his reliance on protection under the Exhaustion Doctrine for an illegitimate bootleg is erroneous as a matter of law. Billington is attempting to paint a picture of chain of title that simply does not exist. Billingtons’ reliance on the 1999 Mercury settlement agreement to the dispute under the 1987 Mercury recording contract doesn’t make sense. It is quite impossible for a 1986 CD to have been the legitimate product of a 1987 contract. First sale protection is afforded only if what he bought at Goodwill was a legitimate copy. It was not. The 1999 Mercury settlement agreement confirms that “The Texas Campfire Tapes” was a bootleg recording, the

work was never lawfully manufactured or distributed by Mercury, and Billington provides no evidence to support his claim that it was. Billington's eBay listing for an unlicensed bootleg recording enjoys no protection under First Sale Doctrine. Billington's citation to a Wikipedia article as authority on copyright law is mistaken.

2. Respondent Billington provides no evidence for his assertion that "the short video of the actual CD at the center of this was a professionally produced disc by Mercury Records." Billington offers no evidence that the CD he listed on eBay was "professionally produced by Mercury Records in 1986." Billington provides no evidence that Mercury was authorized to do so in 1986. Billington provides no evidence for his assertion that his eBay listing "produced around 1986" is a legitimate copy. His defense does not dispute the facts of the 1987 recording contract with Mercury. The 1987 recording contract with Mercury Records authorized them to manufacture and distribute studio recordings created while under contract ("Short Sharp Shocked" 1988, "Captain Swing" 1989, and "Arkansas Traveler" 1992.) This was two years after the 1986 bootleg of "The Texas Campfire Tapes" was made available without authorization by Cooking Vinyl. Billington has failed to produce any evidence of a contract between Cooking Vinyl and myself. He provides no evidence for his false assertion, because none exists. The reason Billington is unable to provide evidence of a 1986 contract between myself and Mercury Records to manufacture and distribute "The Texas Campfire Tapes" is because NO SUCH CONTRACT EVER EXISTED. He seems surprised that a major label would be defrauded of chain of title, but it was a simple a matter. Apparently, in 1987, my personal manager, Martin Goldschmidt, and his legal counsel, Alexis Grower, told PolyGram that a contract existed between myself and Cooking Vinyl, which was Martin Goldschmidt's record label, granting Cooking Vinyl rights to manufacture and distribute "The Texas Campfire Tapes." This was a false statement. The album was a bootleg recording, manufactured and released without my knowledge or consent. The 1999 settlement agreement between Mercury Records and me resolves my claim against Mercury regarding this fraud.

3. Respondent Billington, as a provider of "disc resurfacing services," and with a warehouse of inventory unlicensed for distribution by manufacturers of those goods, has an incredulously naïve understanding of greymarket distribution of counterfeit CDs. This August 2019 report by Paul Resnick of Digital Music News confirms that the RIAA, trade body for the major labels, say that 25% of CDs 'Fulfilled by Amazon' Are Counterfeit https://www.digitalmusicnews.com/2019/08/14/fulfilled-by-amazon-25-percent-cds-counterfeit/. This March 2015 FBI report confirms the confiscation of 75,000 counterfeit compact discs, https://www.fbi.gov/contact-us/field-offices/sacramento/news/press-releases/ten-arrested-thousands-of-counterfeit-and-pirated-disks-seized-in-movie-and-music-investigation. This KOIN-Portland news report of the 2017 arrest of Michael Hargreaves by the US Department of Homeland Security names Hargreaves as the source of more than $2 million in online sales annually of bootleg CDs https://youtu.be/0Z1Flbzzv5M. In 2020, the British Phonographic Institute provided the information for this report naming China as "Ground Zero for $1 Million of Counterfeit CDs." https://www.noise11.com/news/china-was-ground-zero-for-1-million-of-counterfeit-cds-20200819. The current listings on online marketplaces are all counterfeit copies of the bootleg recording. This was the reason Amber Leavitt, Senior Direction & Associate General Counsel, Head of Intellectual Property at eBay was willing to work with me to effect the takedown of the fraudulent first sale goods. The following 39 links to listings of "The Texas Campfire Tapes," unlicensed for distribution on eBay, were provided to Ms. Leavitt:

https://www.ebay.com/itm/114924875841, https://www.ebay.com/itm/304101624389, https://www.ebay.com/itm/193881791314, https://www.ebay.com/itm/174082636635, https://www.ebay.com/itm/274764486616, https://www.ebay.com/itm/194255250242, https://www.ebay.com/itm/174889732762, https://www.ebay.com/itm/324746495801, https://www.ebay.com/itm/265105776410, https://www.ebay.com/itm/224563519818,

https://www.ebay.com/itm/393284854303, https://www.ebay.com/itm/363488706810, https://www.ebay.com/itm/324749249577, https://www.ebay.com/itm/184714254634, https://www.ebay.com/itm/194102220018, https://www.ebay.com/itm/174773423188, https://www.ebay.com/itm/164910587502, https://www.ebay.com/itm/184886674840, https://www.ebay.com/itm/265230656373, https://www.ebay.com/itm/224568508795, https://www.ebay.com/itm/294009957607, https://www.ebay.com/itm/174827601794, https://www.ebay.com/itm/274888110642, https://www.ebay.com/itm/393081865334, https://www.ebay.com/itm/203360431953, https://www.ebay.com/itm/324751832378, https://www.ebay.com/itm/133417586478, https://www.ebay.com/itm/294025918041, https://www.ebay.com/itm/373678226468, https://www.ebay.com/itm/284312861020, https://www.ebay.com/itm/114811704839, https://www.ebay.com/itm/393148896878, https://www.ebay.com/itm/333607352111, https://www.ebay.com/itm/333607352111, https://www.ebay.com/itm/373680817244, https://www.ebay.com/itm/373680817398, https://www.ebay.com/itm/144132454686, https://www.ebay.com/itm/393492890951, and https://www.ebay.com/itm/255055066016.

By initiating a counterclaim with eBay, the Respondent has assumed all liability for the distribution of the counterfeit product.

4. The Copyright Act provides for statutory damages for infringement of an exclusive right. I own the exclusive rights to distribute my work. Billington has willfully engaged in the unlicensed distribution of counterfeit goods. An offer for sale by an unlicensed distributor is sufficient to satisfy a finding of infringement for unlawful distribution. The only legitimate distribution for my registered, protected works that were performed on “The Texas Campfire Tapes” is solely at my website, www.michelleshocked.com. These are in the form of the legitimate “The Texas Campfire Takes” CDs, which are listed at a premium price of $250, rewarding consistent long-term collectors of my music and

ensuring the value of their investment in my discography. The devaluation from the rip-off arbitrage scam that Billington has participated in with his eBay listing creates significant harm to my exclusive distribution right.

5. Respondent Billington's assertion that legal action against the "actual offenders" should have been taken long ago relies on a misunderstanding of the law and facts in this case. The 1999 Mercury settlement agreement confirms that just such legal action took place. The fact is that Billington did not rely on the terms of eBay's own Vero program policies, and accept the reasonable response to correspondence sent April 21, 2022 to Amber Leavitt, Senior Direction & Associate General Counsel, Head of Intellectual Property at eBay, and her determination that my counterfeit trafficking claims appear legitimate. Instead, Billington has filed a counterclaim, without a basis of fact, or none provided, to support wildly speculative assertions. Billington's failure to comprehend that "Mercury Records, the storied, historical record label that brought us Johnny Cash and David Bowie conspired to mass produce an illicit copy of [my] work" is slightly amusing.

Numerous works of historical scholarship, such as "Hit Men: Powerbrokers and Fast Money Inside the Music Business" by Frederic Dannen, and "How Music Got Free" by Stephen Witt, confirm that Billington is under informed. It isn't necessary to invoke the past with regard to these "storied" major labels' questionable activities. A claim of a bootleg recording manufactured and distributed by Sony was made as recently as June 2023. https://dockets.ccb.gov/case/detail/22-CCB-0265.

Billington lacks sufficient experience or insight into evident facts: that Mercury was "given permission" to release "The Texas Campfire Tapes" by a bootlegger, namely Cooking Vinyl's Martin Goldschmidt.

6. The evidence provided by me in Document #6 Copyright Assignment – Sound Recordings – The Texas Campfire Tapes https://dockets.ccb.gov/document/download/1234 makes reference to the terms of the 1987 recording contract between Mercury Records and myself.

Billington's defense relies on a chain of title that does not exist and therefore fails. It is quite impossible for a 1986 CD to have been the subject of a 1987 contract. "The Texas Campfire Tapes" was a bootleg recording, manufactured and released without my knowledge or consent.

The historical record recites the facts that completely contradict Billington's defenses. For example,

> "According to Ken Garner's In Session tonight book, Kershaw discovered the singer when Pete Lawrence of Cooking Vinyl brought into John Walters office a cassette 'of this woman he'd recorded at the Kerville Folk Festival in Texas,' recalls Andy [Kershaw, the BBC radio personality] We listened to a bit of it, it was a sort of a female Woody Guthrie, and you could hear trucks rumbling by, train whistles in the distance, crickets chirping. Pete wanted to get her over here to re-record the numbers. Great idea, I said.
>
> 'Anyway, the tape burbled on, crickets chirping away; and I suddenly thought, look, if we're sitting here enjoying this so much with all this noise on the tape, why not just put it out as it is? It's just the right environment for these songs anyway.' And later, that's precisely what Cooking Vinyl did, releasing Michelle Shocked's Texas Camp Fire Tapes; yet only after they were convinced by the overwhelming response they got, when part of it was heard first as a [BBC] Radio 1 session. Andy had believed in this idea to the extent of contracting in four of the numbers, which were first broadcast on 25 September 1986."
>
> https://andy-kershaw.fandom.com/wiki/Michelle_Shocked

Thus, the basic framework of the fraud was commenced: Cooking Vinyl, without my authorization, "just put [the Texas Campfire Tapes] out as it is" without my knowledge and consent. There was no "contracting in four of the numbers" in 1986 with my knowledge, consent or signature.

7. Respondent Billington's ignorance of copyright law is manifest by his confusion

between my ownership of the underlying works, that is the songs that appear on The Texas Campfire Tapes recordings, and the sound recordings of those performances. The evidence provided in Document #7 Copyright Assignment – Musical Compositions – The Texas Campfire Tapes https://dockets.ccb.gov/document/download/1235 do not show, as Billington asserts "merely shows that Universal Records gave her back the rights to her recordings 22 years ago". When "The Texas Campfire Tapes" was released, there was no PA registration for the songs. Later, the 1988 PolyGram Music publishing agreement does not cleanse the unlicensed, infringing distribution of my musical works. It merely confirms that Billington is attempting to paint a picture of chain of title that simply does not exist. It is quite impossible for a 1986 CD to have been the subject of a 1988 music publishing agreement. In fact, it is contradictory for Billington to assert that no record label would bootleg a record to bolster his argument that the 1986 record release was subject to a contract with Mercury when such a record contract would have resulted in the songs' PA registrations being filed at that time. Instead, the songs' PA registrations occurred when Polygram Music signed a publishing agreement with me in 1988—two years after the bootleg of my performance and my musical works were distributed without a license. The 2002 Universal Music settlement agreement merely resolves this fraud by restoring chain of title, conferred solely to myself.

8. A primary source of distribution of greymarket goods by rack jobbers is through Goodwill. Respondent Billington does not deny his sourcing of his vast warehouse supply of counterfeit goods obtained from this money laundering operation. This Reddit thread is very typical of the type of greymarket chatter one sees regularly on online forums. Thousands of more examples are available.

Fake Taylor Swift Records on Shop Goodwill

There's three separate auctions for these fake Tear Drops on my Guitar 7 inch records on Shopgoodwill. The bid is already up to $3,000 on all three of the auctions. However, these are fake/bootleg copies. The real 7 inch debut era pressings are numbered on the back out of 5000.

Fake records end up at goodwill all of the time so always beware when bidding on something for such a high price without a confirmation that it's authentic. Also considering how limited and rare this vinyl is just think about how likely it is for a random goodwill to have 135 sealed copies out of 5000.

The bidders are more than likely scalpers considering this is labeled as a "reseller lot", so keep an eye out in the coming weeks for a flood of bootleg copies of this album! Be safe on shop goodwill guys lately it's been mostly fake signatures and bootleg vinyls, and they've been caught multiple times using bots to make popular auctions even more expensive. High key feels like they support scalper culture. But to end on a happy note, happy almost Era's Tour!! <3 https://www.reddit.com/r/TaylorSwift/comments/11kn1tr/fake_taylor_swift_records_on_shop_goodwill/.

9. Respondent Billington attempts to offer evidence in violation of Rule 408. Discussions between the parties in an attempt to settle are inadmissible as evidence pursuant to the Federal Rules of Civil Procedure and Billington's paragraph 9 should be struck from the record.

10. Respondent Billington makes another attempt to offer evidence in violation of Rule 408. Discussions between the parties in an attempt to settle are inadmissible as evidence pursuant to the Federal Rules of Civil Procedure and Billington's paragraph 10 should be struck from the record.

11. Respondent Billington confirms that he provides an online service to resurface discs to remove scratches. This supports my claim that he is not a mere record collector, selling his individual "first use" CD collection on eBay, but is, in fact, a commercial distributor of unlicensed goods. I never claimed that he manufactures or duplicates CDs. His response is a deflection from the fact of his commercial-scale resale of goods unlicensed for distribution.

12. eBay has been the focus of several Federal investigations since its inception as a resale market, originally for fostering ticket scalping. eBay is sensitive to multiple Federal agencies providing oversight for a diverse array of consumer protection concerns, with which the platform seeks to cooperate for protection of their safe harbor from liability, which has been threatened on more than one occasion. More than ten years prior, a member of my non-profit FFS Project board, Linda Howard, was able to successfully defeat an international counterfeit ring of traffickers of karaoke discs on eBay. It was on Ms. Howard's experienced counsel that we worked directly with Ms. Leavitt, at eBay's top policy level, to address our concerns of the scale of fraudulent first sale distribution of the bootleg recording, "The Texas Campfire Tapes." More than a hundred hours of pro bono legal counsel by Schnader Law was invested into this effort by the time we completed the research and developed the strategy to send the list of DMCA takedowns to Ms. Leavitt, of which Billington's listing was but one.

13. Despite sharing the same name as "The Father of the DMCA, James Billington," Billington demonstrates the breathtaking scope of his ignorance regarding basic laws of copyright. In fact, any of my work found on the Internet *is* unlicensed for distribution; it is the basis of my claim. This fact is indisputable. I own exclusive distribution rights to my works, and I chose to distribute my work exclusively on my own website, www.michelleshocked.com.

14. The Dallas Morning News article on page 16 offered as evidence by Respondent Billington provides further evidence of the scope of Billington's lack of understanding of basic facts in this claim. The copyright infringement taking place on YouTube is not "alleged." It is an established fact of the legal record. A March 2022 settlement agreement between myself and a YouTube channel, "Sloan's TV Airchive," for $2000, resolved a matter of copyright infringement for the unlicensed distribution of my copyright protected work, "When I Grow Up." In 2010, AOL News reported, "Viacom vs. YouTube/Google: A Piracy Case in Their Own Words"

"Google had an internal meeting on competing with YouTube, and its executives were highly critical of YouTube: "A large part of their traffic is pirated content." YouTube is a "rogue enabler of content theft," "YouTube's business model is completely sustained by pirated content," "it's a video Grokster," "I can't believe you're recommending buying YouTube … they're 80% illegal pirated content." https://www.aol.com/2010/03/21/viacom-v-youtube-google-a-piracy-case-in-their-own-words/.

Billington is likely also unaware of this February 2024 report by Wired Magazine, "Music Piracy Is Back In a Big Way — Especially From YouTube". https://www.wired.com/story/music-piracy-way-up/.

The fact is, this is an *actual* information war, and weaponization of DMCA safe harbor by YouTube, to exploit a loophole for liability from willful, mass copyright infringement, is well documented. But that's another claim for another day.

15. The scale of unlicensed distribution on resale platforms such as Amazon, eBay and Discogs is unprecedented. Rather than characterize me as a troll for desperately trying to protect and enforce my exclusive distribution right, Billington should provide evidence to his wild claims of legitimacy for third-party online marketplace sellers who function as liability shields for some of the largest distributors of unlicensed goods on earth. The fact is, I can't actually sell my original inventory. It remains warehoused and undistributed, while "used like new" counterfeit goods flood the marketplace. First sale goods used to be limited to a handful of record stores that sold used records from a tiny bin in the back of the store. Now, entire warehouses are dedicated to stocking shipping containers full of greymarket unlicensed goods – counterfeits and cutouts alike — offered on online third-party marketplaces as unlicensed distribution. The bottom line: no artist, songwriter or producer gets paid a cent for any of this traffic.

The 1999 settlement agreement with Mercury / PolyGram, on pages 5 and 6, stipulates a 24 month period to sell off or destroy all remaining inventory of my three studio albums—not “The Texas Campfire Tapes”. Not only do the labels often refuse to issue the contractually required ‘certificate of destruction’ for all remaining inventory, over a period of time they begin to slowly distribute their warehoused product among their various distribution networks, via rackjobbers and one stops, for sale as “used like new” which provides a legal fiction for their further manufacture of outright brand new counterfeit.

Dated this February 22, 2024,



MICHELLE SHOCKED

Proof of Delivery

I hereby certify that on Thursday, February 22, 2024, I provided a true and correct copy of the #26 22-CCB-0058 BIL Shocked Written Reply Testimony to the following:

James Billington, represented by James Billington, served via ESERVICE at info@retrostarmusic.com

Signed: /s/ Michelle Shocked