

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Petitioner

v.

Time Warner, Inc.
75 Rockefeller Plaza
New York, New York 10019,

Sony Corporation of America
1 Sony Drive
Park Ridge, New Jersey 07656,

PolyGram Holding, Inc.
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019,

EMI Music
Carnegie Hall Tower
152 West 57th Street
New York, New York 10019,

Bertelsmann, Inc.
1133 Avenue of the Americas
New York, New York 10036,

MCA, Inc.
100 Universal City Plaza
Universal City, California
91608,

Respondents.

Misc. Action No.
94-338 (HHG)

ANSWER OF EMI MUSIC
INC. TO PETITION TO
ENFORCE CIVIL
INVESTIGATIVE DEMANDS

Respondent EMI MUSIC INC. (sued herein as EMI Music), by
its undersigned attorneys, as and for its Answer to the Petition of
the United States of America to Enforce Civil Investigative Demand
("CID") No. 11115, avers as follows:

1. Admits the allegations contained in paragraph 1 of the Petition, except denies that the Petitioner is entitled to the relief sought or any other relief whatsoever.

2. Admits the allegations contained in paragraph 2 of the Petition.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Petition.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Petition.

6. Denies each and every allegation contained in paragraph 6 of the Petition, except admits that EMI MUSIC INC. has a place of business at 152 West 57th Street, New York, New York 10019.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Petition.

9. Admits the allegations contained in paragraph 9 of the Petition, except denies that there is a basis at law for the investigation.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Petition, except admits that EMI MUSIC INC. received a CID which stated that it was issued on July 7, 1994 and was returnable on August 15, 1994.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Petition.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Petition.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Petition.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Petition.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Petition.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Petition.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Petition.

18. Admits the allegations contained in paragraph 18 of the Petition.

19. Admits the allegations contained in paragraph 19 of the Petition, and avers that EMI MUSIC INC. has raised several proper objections to CID No. 11115, including, but not limited to, the objections set forth in paragraph 19 of the Petition.

20. Admits the allegations contained in paragraph 20 of the Petition.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Petition.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Petition.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Petition.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Petition.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Petition, except admits that the Petition, as to EMI

MUSIC INC., purports to encompass the U.S.-located documents described in paragraph 25 of the Petition.

26. Denies each and every allegation contained in paragraph 26 of the Petition.

27. Denies each and every allegation contained in paragraph 27 of the Petition, except admits that EMI MUSIC INC. voluntarily has produced documents and information relating to both foreign and domestic activities while maintaining its objections to portions of CID No. 11115, and denies knowledge or information sufficient to form a belief as to the truth of the allegations with respect to Respondents other than EMI MUSIC INC.

28. Denies each and every allegation contained in paragraph 28 of the Petition.

29. Denies each and every allegation contained in paragraph 29 of the Petition.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

30. Under the Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a, the foreign business activities that the Petitioner seeks to investigate are outside the jurisdiction of the United States. The Petitioner, therefore, has no jurisdiction to investigate the matters set forth in the Petition.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

31. The Petition must be dismissed because the Petitioner's attempt to investigate the foreign business activities covered by the Petition violates principles of international comity.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

32. The Court lacks personal jurisdiction over EMI MUSIC INC., and venue is not proper under 15 U.S.C. § 1314(a) because EMI MUSIC INC. does not transact business and is not found in the District of Columbia.

WHEREFORE, Respondent EMI MUSIC INC. respectfully requests that this Court enter a judgment:

1. dismissing the Petition with prejudice; and
2. granting EMI MUSIC INC. such other and further relief as the Court deems just and proper.

CHADBOURNE & PARKS

By _____
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