IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ATLANTIC RECORDING CORPORATION, *et al.,*	)	
Plaintiffs,	)	Civil File Action No.:
v.	)	1:17-CV-0431-AT
SPINRILLA, LLC, *et al.,*	)	
Defendants.	)	

DEFENDANTS' MOTION IN LIMINE NO. 6 TO PRECLUDE PLAINTIFFS FROM REFERING TO DEFENDANTS AS "PIRATES" OR ENGAGED IN "PIRACY" OR "THEFT" AND SIMILARLY DISPARAGING TERMS

COMES NOW, Defendants, Spinrilla, LLC ("Spinrilla") and Jeffrey Dylan Copeland ("Mr. Copeland") (collectively "Defendants"), and hereby request that the Court enter an Order barring Plaintiffs from referring to Defendants as "Pirates" or having engaged in "Piracy" or "Theft" and similarly disparaging terms.

INTRODUCTION

This Court has already granted Plaintiffs summary judgment on their claim of direct infringement of the 4,082 Works in Suit. In so doing, the Court noted that "the Copyright Act is a strict liability statute. *Atl. Recording Corp. v. Spinrilla, LLC*, 506 F. Supp. 3d 1294, 1315 (N.D. Ga. 2020). Defendants anticipate, however, that Plaintiffs will use disparaging terms such as "pirates," "piracy," or thieves to brand

Defendants as deliberate, willful wrongdoers to predispose the jury to awarding higher damages. Because Plaintiffs' use of the terms is designed solely to prejudice the jury, the Court should bar their use by Plaintiffs.

BACKGROUND

For years, the music industry has sought to convince the public that it was under siege by "thieves, trespassers, pirates, or parasites." WILLIAM PATRY, MORAL PANICS AND THE COPYRIGHT WARS xviii-xix (Oxford Univ. Press 2009). Plaintiffs have already sought to associate Defendants with such marauders. For example, Plaintiffs' expert Catherine Tucker, PhD described her first "opinion" [redacted] Dkt. 450-4, Tucker Depo.at 9:6-9. Later she referred to the [redacted] *Id.* Tucker Depo.at 47:15-16. She deposed that [redacted] *Id.* Tucker Depo. at 93:16-21; 108:7-8. Defendants anticipate that Plaintiffs will continue to refer to piracy and pirates so that the jury will be predisposed to find the Defendants acted willfully. These terms are not evidentiary, have no probative value, and are highly inflammatory such that they will create undue prejudice. Accordingly, the Court should bar Plaintiffs from referring to Defendants as "pirates" or having engaged in

"piracy" or "theft" other similarly disparaging words.

ARGUMENT AND CITATION TO AUTHORITY

A. Legal Standard

The Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. *Fed. R. of Evidence 403*. The Court may, in its discretion, grant a motion in limine to exclude usage of words and phrases at trial that carry negative connotations where their prejudicial use outweighs any probative value. *Hydentra HLP Int., Ltd. v. Luchian*, No. 1:15-cv-22134-UU, 2016 U.S. Dist. LEXIS 145573, at *4 (S.D. Fla. May 27, 2016) (excluding use of the term "copyright troll"); *Hendrix v. Raybestos-Manhattan, Inc.,* 776 F.2d 1492, 1503 (11th Cir. 1985) ("The decision whether to grant or deny [a motion in limine] was a discretionary one.").

B. Using Terms such as Pirate, Piracy or Thief to Refer to Defendants is overly prejudicial.

The jury will decide whether Defendants acted "with knowledge that [their] conduct constitutes copyright infringement" or at least with "reckless disregard of the possibilities that one's actions are infringing a copyright." *MCA TV, Ltd. v. Feltner*, 89 F.3d 766, 768 (11th Cir. 1996) (willfully means with knowledge that the defendant's conduct constitutes copyright infringement); *Yellow Pages Photos, Inc.*

v. Ziplocal, LP, 795 F.3d 1255, 1272 (11th Cir. 2015) (willful copyright infringement under § 504(c)(2) encompasses reckless disregard of the possibility that one's actions are infringing a copyright).

At least one of Plaintiffs' experts made [redacted]. *Id.* Tucker Depo.at 9:6-9; 47:15-16; 93:16-21; 108:7-8. Another witness, L. Carlos Linares, Jr. is "Vice President, Anti-Piracy Legal Affairs" for the Recording Industry Association of America. Doc. 182-1, p. 8.

The music industry has tried to convince the public that it is engaged in a "copyright war" with "thieves, trespassers, pirates, or parasites." *Patry*, supra. "Metaphors such as pirate are used for the very grown-up purpose of branding one side in a debate as evil, and the other as good." *Patry* at 91. Metaphors appeal to emotions and facilitate "quick decision making with incomplete information under conditions where there is more than one possible outcome." *Patry* at 54. Such terms carry not only the negative connotations of being a thief or a pirate, but they also suggest habitual, intentional or reckless wrongdoing.

The Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. *Fed. R. of Evidence 403*. Plaintiffs use the derogatory terms

to associate Defendants with intentional or reckless bad actors so that the jury will find Defendants acted willfully without needing evidence of Defendants' actual intent.

Several courts have already recognized the prejudicial effect of using derogatory labels in infringement cases. See e.g. *Alarm Grid v. Alarm Clu*b, No. 17-80305-CIV-MARRA, 2018 U.S. Dist. LEXIS 235605 (S.D. Fla. Apr. 27, 2018)(banning phrase "copyright troll"); *Parthenon Unified Memory Architecture LLC v. Apple Inc*., No. 2:15-cv-621-JRG-RSP, 2016 U.S. Dist. LEXIS 182585, at *2-3 (E.D. Tex. Sep. 21, 2016) (barring use of "pirate,""bandit," and other deregatory terms); *Rembrandt Wireless Techs., L.P. v. Samsung Elecs. Co*., No. 2:13-CV-213-JRG-RSP, 2015 U.S. Dist. LEXIS 20306, 2015 WL 627430, at *1 (E.D. Tex. Jan. 31, 2015) (excluding terms such as "patent troll" and "pirate"); *Intellectual Ventures I LLC v. Symantec Corp*., No. 10-1067-LPS, 2015 U.S. Dist. LEXIS 2841, 2015 WL 82052, at *1 (D. De. Jan. 6, 2015) (excluding phrase "patent troll"); *HTC Corp. v. Tech. Props. Ltd*., No. 5-08-cv-00882, 2013 U.S. Dist. LEXIS 129263, 2013 WL 4782598, at *4 (N.D. Cal. Sept. 6, 2013)(excluding troll because of the derogatory characterization). The terms have no tendency to make a fact more or less probable and are therefore not relevant. *Fed. R. of Evidence 401*. The unfair prejudice to Defendants far outweighs any probative value because the terms have none. *Fed. R. of Evidence 403*.

CONCLUSION

For all reasons shown, the Court should bar Plaintiffs from referring to Defendants as "Pirates" or having engaged in "Piracy" or "Theft" and similarly disparaging terms.

Respectfully submitted this the 8th day March, 2023.

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CERTIFICATE OF COUNSEL REGARDING FONT SIZE

I, Robin L. Gentry, an attorney, hereby certify that the foregoing has been prepared with a font size and point selection (Times New Roman, 14 pt.) which is approved by the Court pursuant to Local Rules 5.1(C) and 7.1(D).

/s/ Robin L. Gentry
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' MOTION IN LIMINE NO. 6 TO PRECLUDE PLAINTIFFS FROM REFERING TO DEFENDANTS AS "PIRATES" OR ENGAGED IN "PIRACY" OR "THEFT" AND SIMILARLY DISPARAGING TERMS**, on the date stated below, was filed using the Court's *CM/ECF* system, which automatically and contemporaneously sends electronic notification and a service copy of this filing to counsel of record:

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