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Capitol Won't Surrender Royalties In '80s Singer's Suit

By **Matt Fair**

Law360, New York (June 12, 2012, 8:07 PM ET) -- Capitol Records LLC asked a California federal judge on Monday to dismiss a putative class action claiming it failed to properly compensate Dale Bozzio, former frontwoman of the '80s band Missing Persons, for digital content licenses, arguing that Bozzio had no binding claim on the royalty payments under the band's contract.

Capitol, a wholly owned subsidiary of EMI, is a defendant in the case Bozzio filed in the Northern District of California on behalf of other artists with the record company. The suit alleges that EMI and several subsidiaries, including Capitol, failed to properly pay their recording artists and music producers for income they received from licensing artists' recorded music catalogs for sales of digital downloads, ringtones and streaming music.

Bozzio, a protege of Frank Zappa, co-founded the band Missing Persons in 1980, which is best known for the songs "Destination Unknown," "Words" and "Walking in LA."

Capitol argued in its motion, however, that Bozzio has no claim on royalty payments because, individually, she is not a party to the band's contract with the recording company. It asked a judge to dismiss the singer's claim with prejudice.

Members of Missing Persons entered into a contract individually and collectively with Capitol in 1982, the company's motion said. A year later, the band signed a loan-out agreement amending their original contract to include Missing Persons Inc. as the sole contracting party.

"As a result, the only party entitled to enforce the terms of the original agreement as amended is Missing Persons Inc., not plaintiff," the motion said. "Given that plaintiff is no longer a party to the original agreement, she cannot assert any claim based on that agreement."

According to Capitol, the contract stipulates that individual members with disputes over the payment of royalties "would look solely to Missing Persons Inc. for payment of all royalties and fees due under the original agreement and that ... individual band members would not make claims against Capitol for payment of royalties."

The contract also requires that, in the case of an alleged breach, the offending party be given due notice and opportunity to correct the problem. Capitol's motion claimed that Bozzio afforded the company no such chance.

Capitol, as well as its parent EMI, has allegedly justified its payment rate to artists for digital sales by arguing that the agreements between the company and the sellers of digital content, such as Apple Inc. and AT&T Inc., are not licenses but are instead indistinguishable

from the agreements Capitol has with stores that sell its CDs and other physical products.

But Bozzio argues that this is not the case and that for every dollar Capitol actually pays to artists and producers for digital content income, it should be paying between \$2 and \$3 more, adding up to tens of millions of dollars or more each year on a classwide basis.

Attorneys for Bozzio didn't return messages seeking comment Tuesday, while attorneys for Capitol declined to comment on the case.

EMI was hit with a similar suit last month by Martha Davis, the lead singer of the New Wave band The Motels, alleging that EMI owes her and other artists for the sales of digital licenses that it treated like the sales of physical products. That case is ongoing.

Capitol is represented by Peter Ostroff, Rollin Ransom, Sean Commons and R.C. Harlan of Sidley Austin LLP.

Bozzio is represented by R. Alexander Saveri, Cadio Zirpoli, Melissa Shapiro and Carl Hammarskjold of Saveri & Saveri Inc., Robert J. Bonsignore of Bonsignore and Brewer, Joseph W. Cotchett and Steven N. Williams of Cotchett Pitre & McCarthy LLP, and D. Michael Noonan of Shaheen & Gordon PA.

The case is Dale Bozzio et al. v. EMI Group Ltd. et al., case number 4:12-cv-02421, in U.S. District Court for the Northern District of California.

--Additional reporting by Lana Birbrair. Editing by Kat Laskowski.

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