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18 NAPSTER, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 A&M RECORDS, INC., a corporation, et al.

23 Plaintiffs,

24 v.

25 NAPSTER, INC., a corporation, and DOES 1
26 through 100,

27 Defendants.

28 JERRY LEIBER, individually and doing business
as JERRY LEIBER MUSIC, et al.

Plaintiffs,

v.

NAPSTER, INC.,

Defendants.

Case Nos. C 99-5183 MHP (ADR)
C 00-0074 MHP (ADR)

**DECLARATION OF DAVID REZAK
IN SUPPORT OF DEFENDANT
NAPSTER, INC.'S OPPOSITION TO
PLAINTIFFS' JOINT MOTION FOR
PRELIMINARY INJUNCTION**

Date: July 26, 2000

Time: 2:00 p.m.

Courtroom: 15

Hon. Marilyn H. Patel

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I, David Rezak, declare as follows:

1. I am a life-long resident of the greater Syracuse, New York area, a thirty-year veteran of the music industry in Syracuse, and am self-employed as a music booking agent. I also own a portfolio of investment properties in the Syracuse University area. I have personal knowledge of the following facts and, if called and sworn as a witness, could competently testify thereto.

2. I am familiar with a music store doing business as Oliver’s Records (“Oliver’s), and have entered the store on several occasions when it was located at its previous location on Marshall Street. Oliver’s offers compact discs (“CDs”) for sale, a substantial portion of which are “previously owned” or used.

3. Shortly before Christmas of 1998, a Best Buy opened up in the Carousel Center mall, which is approximately three miles from Oliver’s present location. Among other products, Best Buy offers for sale a very large selection of discounted CDs.

4. In the late fall of 1999, Oliver’s Records moved from its original location on Marshall Street to its present location at 700 South Crouse Avenue.

5. Marshall Street, on which Oliver’s was located until the late fall of 1999, is the stereotypical college town “main drag”, and attracts a great deal of foot traffic due to its proximity to the Syracuse University campus, convenient available public parking (in lots,

1 garages, and on Marshall Street itself), and large number of bars, restaurants, and retail stores.
2 Prior to its move, Oliver's was located among these bars, restaurants and retail stores, in a large,
3 prominent retail space at ground level. Attached hereto as Exhibits A and B are true and correct
4 copies of photographs of Oliver's on Marshall Street, taken when Oliver's was still in business at
5 its Marshall Street location.

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8 6. The area immediately surrounding Oliver's new location, at the corner of Crouse
9 Avenue and Adams Street, has fewer bars, restaurants and retail shops, attracts significantly fewer
10 pedestrians than Marshall Street, is slightly further from the Syracuse University campus, and has
11 less public parking. Adams Street, for example, on which the entrance to Oliver's is actually
12 located, is a two-lane, one-way street with fast-moving traffic and no parking. Moreover, the
13 retail space Oliver's now occupies is the basement of a two-story bar doing business as Harry's
14 Bar, and thus is not as easily visible or accessible as it was at its previous location. Indeed, the
15 business that previously occupied the space now occupied by Oliver's, a bicycle shop doing
16 business as Velo-City, went out of business approximately 18 months ago. Attached hereto as
17 Exhibits C and D are true and correct copies of photographs of Oliver's at its present location at
18 the corner of Crouse Avenue and Adams Street, taken in June 2000.

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21 7. The Daily Orange is the official student-run newspaper of Syracuse University. I
22 read the Daily Orange almost every day, and often place advertisements in it for my rental
23 properties, as well as in connection with my work as a music booking agent. I am therefore
24 familiar with many of the advertisements placed in the Daily Orange by other businesses,
25 including Oliver's advertisements. Prior to Oliver's move from its previous location on Marshall
26 Street in the late fall of 1999, Oliver's placed an advertisement in the Daily Orange at least once
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1 each semester. I have not seen an advertisement for Oliver's in the Daily Orange in the last
2 twelve months.

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4 I declare under penalty of perjury under the laws of the United States of America that the
5 foregoing is true and correct. Executed on _____, 2000

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David Rezak

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