

Minn woman who lost music-share suit gets replay

June 13 2009, By STEVE KARNOWSKI , Associated Press Writer

(AP) -- The Minnesota woman who became the nation's only music file-sharing defendant so far to go to trial is getting a replay two years after losing the case.

Jammie Thomas-Rasset, a 32-year-old mother of four and self-described "huge music fan," will be armed with aggressive new lawyers when her retrial begins in federal court here Monday.

The lawsuit is among the last vestiges of an anti-piracy campaign that the [recording industry](#) ultimately dropped amid widespread criticism. The Recording Industry Association of America said in December it had stopped filing lawsuits like these and would work instead with Internet service providers to cut access to those it deems illegal file-sharers. But the recording industry plans to proceed with cases that are already filed.

Thomas-Rasset is the rare defendant who has fought back.

Music companies have filed more than 30,000 similar copyright lawsuits in recent years against people they accused of illegally swapping songs through Internet file-sharing services such as Kazaa. None of the others has made it to trial yet.

Faced with huge legal bills, most settled for an average of about \$3,500, even if they insisted they had done nothing wrong. Thomas-Rasset's new lawyer, K.A.D. Camara, notes the settlements add up to more than \$100 million; the RIAA contends its legal costs exceeded the settlement

money it brought in.

The lawsuits have turned into a public relations nightmare for the recording industry, putting music companies in the position of going after their most ardent fans. Blogs and media reports have highlighted heavy-handed tactics against several improbable targets.

In 2006, for example, the industry dropped a lawsuit against Tanya Andersen, a disabled single mother in Oregon. Andersen said she had been misidentified and never downloaded the music she was accused of stealing. Industry representatives allegedly threatened to question her 10-year-old daughter if she didn't pay up.

And in 2007, the companies backed off their attempt to sue an elderly Texas grandmother, Rhonda Crain, who had been displaced by Hurricane Rita in 2005 and said she never downloaded music. They settled for no money, just her agreement not to download any music illegally.

Camara said he hoped to turn Thomas-Rasset's retrial into a trial against the RIAA, both before the jury and in the court of public opinion. A win by the defense, he said, could undermine the other music-sharing cases.

"What you'll see in Minneapolis will be the first battle in what we think will be a successful campaign against the recording industry," Camara said.

RIAA spokeswoman Cara Duckworth insisted the music companies will again prevail, just as they had in 2007 when a federal jury in Duluth found Thomas-Rasset violated copyrights by offering 24 songs on the Kazaa file-sharing network. She was ordered to pay \$222,000 in damages, or \$9,250 per song.

"The facts in evidence have not changed in this case," Duckworth said. "We're confident that a new jury will see it no differently from the first time around."

Duckworth said the group doesn't have figures on cases still pending, but the industry will press ahead with them, saying it had to pursue those "who have regularly illegally downloaded music and thumbed their nose at the law and the legal process."

Nor did Duckworth have figures on how many defendants decided to settle after Thomas-Rasset lost.

"Suffice to say, the first trial generated a fair amount of attention and certainly caused a number of people to think twice about downloading music illegally," she said.

Thomas-Rasset, who still denies any illegal song swapping, is getting a retrial after U.S. District Judge Michael Davis decided last September he erred in telling jurors the companies didn't have to prove anyone downloaded the copyright-protected songs she allegedly made available. Davis later concluded the law requires that actual distribution be shown.

The companies suing are subsidiaries of all four major recording companies, Warner Music Group Corp., Vivendi SA's Universal Music Group, EMI Group PLC and Sony Corp.'s Sony Music Entertainment.

The defense is now being handled by Camara and his partner, who agreed to take the case for free after the court last month relieved her previous attorney, Brian Toder, who had put in nearly \$130,000 worth of unpaid time.

Camara, who's about to turn 25, was just 19 when he became the youngest person ever to graduate from Harvard Law School, and he

graduated with high honors. He and his partner at their Houston law firm, Joe Sibley, 34, a classmate, were already involved in a couple of similar cases. He said they agreed to defend Thomas-Rasset for free in hopes of setting precedents for other cases.

On orders from Sibley, Thomas-Rasset declined to say why she's kept up the fight for so long when she could have settled for a few thousand dollars at the start.

Thomas-Rasset, who pronounces her first name as JAY'-mee, lives in the central Minnesota city of Brainerd. She said her musical tastes are "very eclectic" ranging from rock to country to classical. "It all depends on my mood and what I'm doing and who I'm with," she said. She also said she doesn't buy many CDs anymore because she spends what little discretionary income she has on concerts instead.

In the short time since they took over the case, Camara and Sibley have tried some new legal tricks, with mixed success.

On Thursday, Davis shot down their request to suppress evidence gathered by the MediaSentry anti-piracy service. The judge didn't buy Camara's claim that MediaSentry violated a federal wiretapping law and a state law regulating private detectives when it tracked down his client. Had Camara won on that point, however, the recording companies could have been left without much of a case against her or other defendants.

But the defense did manage to create at least a headache for the music labels by demanding that they produce certified copies from the U.S. Copyright Office of the copyrights on the 24 tracks in question, to prove they really do own the songs.

The industry's lawyers were caught by surprise, having gotten by with uncertified copies during the first trial. Although [music](#) companies told

Davis this past Monday they weren't sure they could get certified copies in time for the new trial, Davis reminded them that they had the burden of proving they owned the copyrights. Camara said he'll seek dismissal of the case if the plaintiffs fail that test.

Corryne McSherry, a staff attorney with the digital-rights group Electronic Frontier Foundation, said the new defense team is taking a creative approach. She said it would have been interesting to see how all the cases that settled might have turned out if those defendants had free lawyers who were willing to push as hard.

"This case could end up being the tail end of a frankly shameful and certainly failed campaign to go after users," McSherry said. "Maybe this will be the coda to that long campaign."

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Citation: Minn woman who lost music-share suit gets replay (2009, June 13) retrieved 27 April 2024 from <https://phys.org/news/2009-06-minn-woman-lost-music-share-replay.html>

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