U.S. court revives antitrust suit on music downloads

NEW YORK (Reuters) - A federal appeals court reinstated on Wednesday an antitrust lawsuit accusing major record labels of conspiring to fix prices for potentially millions of people who download their music over the Internet.

The U.S. Second Circuit Court of Appeals in New York said a federal district judge erred in dismissing the case in October 2008 against defendants that include Bertelsmann AG, EMI Group, Sony Corp, Vivendi SA and Warner Music Group Corp or various affiliates.

While not ruling on the case's merits, the appeals court said the plaintiffs' allegations were "sufficient to plausibly suggest" a price-fixing conspiracy. It sent the case back to the district court for further proceedings.

The case was filed on behalf of people who download music over the Internet. It accused the defendants of conspiring to fix prices and limit the availability of downloaded music in violation of a federal antitrust law, the Sherman Act.

"There was uncertainty in the law over the standards for pleading a price-fixing conspiracy," said Christopher Lovell, a partner at Lovell Stewart Halebian LLP representing the plaintiffs. "This decision goes a long way toward clarifying what the standard requires in a way that helps people who paid allegedly conspiratorial prices for digital music."

Lovell plans to seek class-action status and said the case's outcome could affect "millions." The lawsuit consolidates 28 state and federal cases from 2005 and 2006.

The music labels did not immediately return requests for comment.

According to the plaintiffs, the labels conspired to fix prices by creating joint ventures for distributing songs -- MusicNet, launched by Bertelsmann, EMI and Warner Music; and pressplay, launched by Sony and Vivendi's Universal Music Group -- and the entering of restrictive license agreements.

They also contended that, when rivals started to distribute the labels' music, the labels "agreed" to a wholesale price floor of about 70 cents per song, which they enforced in part through restrictive license agreements.

Writing for the appellate panel, Circuit Judge Robert Katzmann said that, assuming the allegations were true, there was "enough factual matter" to allow the case to go forward.

Katzmann pointed to several allegations of a conspiracy, including one commentator's assessment that "nobody in their right mind" would want to use MusicNet or pressplay.

He said this suggested that "some form of agreement among defendants would have been needed to render the enterprises profitable."

The case is Starr et al v. Sony BMG Music Entertainment et al, U.S. Second Circuit Court of Appeals, No. 08-5637.

Source URL (retrieved on *09/22/2014 - 7:19pm*):
http://www.ecnmag.com/news/2010/01/us-court-revives-antitrust-suit-music-downloads