

MEDIA RELEASE

“This Is Spinal Tap” Co-Creator and “Simpsons” Star Harry Shearer Files Fraud Suit Against French Conglomerate Vivendi

Harry Shearer, renowned worldwide for his voicing of 23 characters on the long-running animated television series 'The Simpsons', has filed a comprehensive legal action in Los Angeles, California, USA. The lawsuit alleges the French conglomerate, Vivendi S.A., engaged in anti-competitive and unfair business practices, as well as fraudulent accounting, directly related to its management of the cult-classic film, *This Is Spinal Tap*. Shearer co-created the film, co-wrote the soundtrack and starred as the Spinal Tap band's bassist, Derek Smalls.

According to the complaint, Vivendi and its agents, including StudioCanal and Universal Music Group, willfully manipulated certain accounting data, while ignoring contractually-obligated accounting and reporting processes, to deny Shearer and his fellow co-creators their rightful stake in the production's profits. The action seeks US\$125,000,000 in compensatory and punitive damages.

As a StudioCanal executive with personal responsibility for exploitation of the film and band, Ron Halpern is named as a co-defendant in the claim. Halpern is based in Paris.

“Almost 40 years ago, Christopher Guest, Michael McKean, Rob Reiner and I created the somewhat legendary band Spinal Tap,” said Shearer. “We thought there was something real and really funny about the characters, and between that inception and the theatrical release of *This Is Spinal Tap* in 1984, we poured ourselves into nurturing and perfecting the paean to rock loudness that has entertained so many people, even today. But despite the widespread success of the film and its music, we've fallen victim to the same sort of fuzzy and falsified entertainment industry accounting schemes that have bedeviled so many other creators. In this instance, the fraud and negligence were just too egregious to ignore. Also, this time, it was personal.”

In 1982, Reiner, Shearer, Guest, and McKean – signed an agreement with Embassy Pictures, Inc. for the production, financing and distribution of *This Is Spinal Tap*. The agreement ensured profit participation payments, at the rate of 40 percent of net receipts, to the creators based on all sources of revenue, including merchandise and music.

After two years of production, the film was released in 1984. It soon became a cult favourite and its reputation as one of the 20th Century's most enduring comedies has increased exponentially in the ensuing years. The film's accolades include being named in the *New York Times* Guide to the Best 1,000 Greatest Movies Ever Made list, *Total Film's* 100 Greatest Movies of All Time list, and achieving the coveted Number One spot on *Time Out London's* 100 Best Comedy Movies list. In 2002, the film's lasting appeal led the US Library of Congress (the world's largest cultural collection), to designate it as a culturally, historically or aesthetically significant film.

The film's ongoing critical success was likewise matched by its financial success. It was produced on a shoestring budget of US\$2.25 million. Yet *This Is Spinal Tap* and the music and merchandise that it and

the band have spawned, earned tens of millions of dollars in revenue, according to the complaint – through re-releases, album and singles sales, merchandise sales, and distribution of the film in various formats, across the globe over the course of the last 32 years. However, these profits were not fairly shared with the four co-creators, cast or crew.

When Vivendi acquired the rights to *This Is Spinal Tap* in 1989, through its subsidiary Canal, the lawsuit alleges it began a concerted and fraudulent campaign to hide, or grossly underreport, the film’s revenues in order to avoid its profit participation obligations. Vivendi’s financial reporting of income has been woefully inconsistent at best. Performance of its duties to the film’s creators dropped off entirely from 2014, the 30th anniversary of the film’s initial theatrical release. In the past two years, Vivendi has altogether failed to produce an account of any Tap revenue, according to the complaint.

The complaint alleges that *This Is Spinal Tap* has generated millions of dollars, across various revenue streams, for Vivendi, its subsidiary companies and their licensees. The French conglomerate asserts that the four creators’ share of total worldwide merchandising income between 1984 and 2006 was US\$81 dollars. Between 1989 and 2006, total income from soundtrack music sales was reported by Vivendi as US\$98 dollars, according to the complaint.

“This is a simple issue of artists’ rights,” added Shearer. “It is stunning that after all this time, two cinema releases, all the various home video format releases, all the records and CDs, and all the band-themed merchandise still widely available worldwide, the only people who haven’t shared Spinal Tap’s success are those who formed the band and created the film in the first place.”

“Vivendi and its subsidiaries – which own the rights to thousands and thousands of creative works – have, at least in our case, conducted blatantly unfair business practices,” Shearer continued. “But I wouldn’t be surprised if our example were the tip of the iceberg. Though I’ve launched this lawsuit on my own, it is in reality a challenge to the company on behalf of all creators of popular films whose talent has not been fairly remunerated. I am just one person seeking redress for blatant injustice, but I hope this lawsuit will, in its own way, help set a new precedent for faithful and transparent accounting practices, and fair artistic compensation, industry-wide.”

ENDS

Hear Harry in his own words on Twitter movie clip: [@theharryshearer](https://twitter.com/theharryshearer)

Issued by Harry Shearer’s litigation PRs:

Paris:

[Jean de Belot](#)
[Alexandre Levy](#)
[Violaine Naud](#)

London:

[Melanie Riley](#)
[Louise Beeson](#)
[Sarah Peters](#)

New York/Washington:

[Ian McCaleb](#)
[Mona Amin](#)
[Bryant Madden](#)

Los Angeles:

[Seth Jacobson](#)

Aria Partners

O: +33 1563 37064
M: +33 607 415852

Bell Yard Communications

O: +44 (0)207 936 2021
M: +44 (0)7775 591244

Levick

O: +1 202 973 5303
C: +1 202 779 0587

C: +1 310 592 3900

NOTES TO EDITORS

Band & Movie Background

Although *This Is Spinal Tap* was first released in 1984 in US and UK (in 2000 in France) the band “Spinal Tap” was actually created in the late 1970s. The band’s rock musician characters “Nigel Tufnel” and “David St. Hubbins” were created by Christopher Guest and Michael McKean with Harry Shearer creating bassist “Derek Smalls”. Spinal Tap’s comedic sole claim to fame was as “one of England’s loudest bands”.

Phrasing from the film’s script has entered the general lexicon (“*it goes to 11*”) as exemplified by the Tesla car, whose audio system’s volume control goes to 11, as does that of the BBC’s iPlayer. The film continues to be shown regularly on TV home viewing around the world, is available on multiple video formats and has been supported by several album/ singles releases and band tours. Yet, apparently, the film took 27 years to recoup.

Litigation Background

Mr Shearer has been frustrated by the difficulty in receiving a clear picture from the Vivendi group as to the revenues due from each of the various income streams – including merchandising and music sales – and by the Group’s accounting methods. He is determined to highlight the principle of fair rights to creators. He is unafraid to take on vested interests in the entertainment industry in his pursuit of equitable treatment between the industry and its talent.

This lawsuit will determine several key matters in respect of the exploitation rights to *This Is Spinal Tap*, including breach of contract, fraud and fraudulent concealment, breach of an implied covenant of good faith and fair dealings and the lawfulness or otherwise of practices indulged in by a media player with market dominance. The lawsuit raises particular concerns over the anti-competitive effects of non-arms’ length transactions among Vivendi subsidiaries in managing *This Is Spinal Tap*. These issues are further outlined in the Complaint.

Mr Shearer has filed his litigation in the U.S. District Court for the Central District of California, through his trial counsel, Peter Haviland, Managing Partner of the Los Angeles office of U.S. firm Ballard Spahr.

Advisors

Lead Litigator:	Peter Haviland, Ballard Spahr (Los Angeles, CA.)
Management Company:	John Power and Anna Derpersegian Power Twersky & Depersegian (Los Angeles, CA.)
Lead Counsel:	Amanda Harcourt, Intellectual Property Consultant (UK)
