

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE**

NAXOS DIGITAL SERVICE US, INC.,

Plaintiff,

v.

BEIJING KUKE MUSIC CO. LTD.,

Defendant.

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Case No. \_\_\_\_\_

JURY DEMAND

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**COMPLAINT**

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In this lawsuit, Plaintiff Naxos Digital Service US, Inc. (“Naxos” or “Plaintiff”) seeks compensatory damages attributable to Beijing Kuke Music Co. Ltd.’s (“Kuke” or “Defendant”) (collectively “the Parties”) repeated and ongoing breach of the Parties’ Digital Distribution Agreement.<sup>1,2</sup> Naxos respectfully states as follows in support of its Complaint:

**THE PARTIES**

1. Naxos is a Nevada corporation with its principal place of business in Franklin, Tennessee. For purposes of jurisdiction, based on its principal place of business, Plaintiff is a citizen of Tennessee.

2. Upon information and belief, Defendant Kuke is a business established under the laws of China with its principal place of business located at Beijing Kuke Music Co., Limited,

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<sup>1</sup> A true and correct copy of the Digital Distribution Agreement is attached hereto as **Exhibit A**. The Digital Distribution Agreement includes Chinese translations of each provision. Pursuant to Section 9.10, “[i]f there is any inconsistency or ambiguity between the English version and the Chinese version, the English version shall prevail.”

<sup>2</sup> The Parties amended the Digital Distribution Agreement on June 18, 2018 (the “Amendment”). The Amendment is not relevant to the subject matter of this lawsuit. A copy of the Amendment is attached hereto as **Exhibit B**.

Room 303, Beijing Broadcasting Tower, No. Jia 14, Jianwaidajie, Chaoyang District, Beijing, China. Upon information and belief, for purposes of jurisdiction, Kuke is a citizen of China based on its place of establishment and principal place of business.

### **JURISDICTION & VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, because there exists diversity of citizenship between the Parties, and Naxos affirmatively alleges that the extent of its injuries is greater than \$75,000.00, exclusive of interest and costs.

4. Personal jurisdiction in this district is proper because Kuke has conceded to personal jurisdiction in this district pursuant to the forum selection clause in Section 9.8 of the Digital Distribution Agreement.<sup>3</sup> Pursuant to the Digital Distribution Agreement, Kuke agreed:

All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction).

Any legal suit, action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of Tennessee in each case located in the City of Nashville and County of Davidson, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail shall

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<sup>3</sup> *Preferred Cap., Inc. v. Assocs. in Urology*, 453 F.3d 718, 721 (6th Cir. 2006) (“The requirement that a court have personal jurisdiction over a party is a waivable right and there are a variety of legal arrangements whereby litigants may consent to the personal jurisdiction of a particular court system. ... The use of a forum selection clause is one way in which contracting parties may agree in advance to submit to the jurisdiction of a particular court.” (internal citations and quotations removed); *Cal-Tenn Fin., LLC v. Scope Auto., LLC*, No. 3:18-CV-01347, 2019 WL 1282950, at \*5 (M.D. Tenn. Mar. 20, 2019) (“The minimum contacts standard can be met by a forum selection clause that is ‘freely negotiated’ and is not ‘unreasonable and unjust.’ *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972). ... Tennessee law is consistent with the rule of *Zapata*. [S]ee *Dyersburg Machine Works, Inc. v. Rentenbach Eng’g Co.*, 650 S.W.2d 378, 383 (Tenn. 1983) (holding that courts of Tennessee ‘should enforce [a forum selection] clause unless the party opposing enforcement demonstrates that it would be unfair and inequitable to do so.’).”).

be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

5. Likewise, personal jurisdiction is proper under Tennessee's long-arm statutes (Tenn. Code Ann. § 20-2-214(a)(6); Tenn. Code Ann. § 20-2-225).

6. Venue is proper in this district pursuant to Section 9.8 of the Digital Distribution Agreement, and pursuant to 28 U.S.C. § 1391(b)(3).<sup>4</sup>

### **FACTUAL BACKGROUND**

7. Naxos is an independent classical music company that distributes, markets, and promotes classical music to brick-and-mortar and online retailers; offers services tailored to consumer direct fulfilment; and supplies a catalog of independent classical music to digital download and mobile outlets worldwide.

8. Kuke is a provider of classical music licensing, subscription, and smart education services in Chinese market.

9. On May 18, 2018, the Parties entered into the Digital Distribution Agreement, which had an initial contract term from July 1, 2018 through June 30, 2026 that could automatically renew for one-year periods thereafter.<sup>5</sup>

10. Pursuant to the Digital Distribution Agreement, Naxos provides Kuke with access to certain Naxos digital music services and content, and authorizes Kuke to host, provide digital distribution through Kuke's website, and sell subscriptions to the Naxos services and content in

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<sup>4</sup> See *Preferred Cap.*, 453 F.3d at 721; *Cal-Tenn Fin.*, 2019 WL 1282950 at \*5; *Dyersburg Machine Works*, 650 S.W.2d at 383.

<sup>5</sup> Exh. A, at p. 1 and § 1.

specified regions of China.<sup>6</sup>

11. The Digital Distribution Agreement requires the Parties to share the revenue generated by Kuke's activities under the Digital Distribution Agreement.<sup>7</sup>

12. Section 5 of the Digital Distribution Agreement requires Kuke to send monthly sales reports to Naxos at the beginning of each month, and to pay Naxos its specified portion of the revenue no later than the tenth (10th) of each month.

13. Initially, the Parties performed their obligations under the Digital Distribution Agreement, and Kuke made the requisite monthly payments to Naxos through the reporting period that ended November 30, 2021.

14. However, in breach of the Digital Distribution Agreement, Kuke began to fall delinquent on payments to Naxos for its portion of the revenue earned since December 1, 2021.

15. While Naxos continued to send invoices to Kuke on a monthly basis, Kuke did not make the requisite payments to Naxos. Accordingly, in May of 2023, Naxos issued a notice of material breach dated May 9, 2023 (the "Notice") pursuant to Section 9.4 of the Digital Distribution Agreement.<sup>8</sup>

16. The Notice stated that Kuke's failure to make the requisite payments constituted a material breach of the Digital Distribution Agreement and that Kuke was "in arrears in the amount of \$1,055,272.93[.]"<sup>9</sup> The Notice provided a report detailing each delinquent payment owed by Kuke.<sup>10</sup> The Notice further stated that while Naxos was entitled to terminate the Digital

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<sup>6</sup> Exh. A, at §§ 2 and 3.

<sup>7</sup> Exh. A, at §§ 3.2, 3.3, and 3.4.

<sup>8</sup> A true and correct copy of the Notice is attached hereto as **Exhibit C**.

<sup>9</sup> Exh. C, at 1.

<sup>10</sup> Exh. C, at 2.

Distribution Agreement because of Kuke’s material breach, Naxos hoped to amicably resolve payment of the amounts owed.<sup>11</sup>

17. Kuke responded to the Notice in a letter dated May 10, 2023.<sup>12</sup> Kuke acknowledged it was in breach of its payment obligations to Naxos in that it had not paid Naxos the amounts owed. In relevant part, Kuke’s May 10, 2023 letter stated:

We have carefully reviewed the legal documents, invoice [sic] and appreciate you bringing this matter to our attention. Kuke confirms the intent to pay the full amount owed and please find the full payment plan outlined in the table below:

<b>Date</b>	<b>Amount (USD)</b>
July, 30, 2023	100,000.00
August, 30, 2023	100,000.00
September, 30, 2023	200,000.00
October, 30, 2023	200,000.00
November, 30, 2023	200,000.00
November, 31, 2023	255,272.93
<b>Total</b>	<b>1,055,272.93</b>

We would provide a written notification to inform you if there is any slight adjustment about the above payment plan. We highly value our business relationship with you and hope to regain your trust through our proactive approach to resolving this matter.<sup>13</sup>

18. After subsequent negotiations, the Parties executed a contract wherein Naxos agreed that it would not invoke its right to terminate the Digital Distribution Agreement until March 31, 2024, in exchange for Kuke’s agreement to pay the full amount owed to Naxos with incurred interest (the “Payment Plan Agreement”).<sup>14</sup> In relevant part, the Payment Plan Agreement

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<sup>11</sup> Exh. C, at 1.

<sup>12</sup> A true and correct copy of Kuke’s May 10, 2023 letter is attached hereto as **Exhibit D**.

<sup>13</sup> Exh. D, at 1.

<sup>14</sup> The Payment Plan Agreement is attached hereto as **Exhibit E**.

stated:

Kuke agrees to pay [Naxos] the owed amount in full with incurred interest at 6% by the end of December 2023. Payment is to be made in installments of \$200,000 at the end of August, September, October, November and with all unpaid amounts with interest at the end of December 2023. Kuke also agrees to make all scheduled payments promptly so as to avoid adding to the backlog. In the event that Kuke fails to make the payments specified above, Kuke agrees to pay any unpaid balance no later than 31 March, 2024.<sup>15</sup>

20. Kuke did not fulfill its obligations under the Payment Plan Agreement. Though Kuke made two installment payments of \$50,000 at the end of August and September 2023, those payments were each \$150,000 less than the agreed upon installment payments specified in the Payment Plan Agreement. Further, Kuke has not made any of the other payments provided for in the Payment Plan Agreement nor any of the subsequent payments required under the Digital Distribution Agreement.

19. In a letter to Kuke dated April 4, 2024, Naxos demanded that Kuke “send payment to Naxos for the unpaid amount of \$1,431,758.39 by April 30th[.]”<sup>16</sup> The letter also demanded that Kuke temporarily take down all third-party distributed labels provided to Kuke pursuant to the Digital Distribution Agreement. However, “as a demonstration of good will that Kuke will make outstanding payments as soon as possible,” Naxos allowed Kuke to continue making available any Naxos-owned label content.<sup>17</sup>

20. On April 12, 2024, Kuke represented that it had initiated the “takedown process” to remove all of the third-party distributed labels as requested by Naxos, and stated that Kuke

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<sup>15</sup> Exh. E, at § 1.

<sup>16</sup> A true and correct copy of the April 4, 2024 letter is attached hereto as **Exhibit F**.

<sup>17</sup> Exh. F, at 1.

would be making a payment of \$30,000 in three weeks.<sup>18, 19</sup>

21. On April 15, 2024, Naxos informed Kuke that “a \$30,000 payment is totally unacceptable. Under the circumstances, [Naxos has] no choice but to demand that Kuke take down all Naxos and Naxos-owned content within the next 72 hours or pay the full amount payable as of February 24, \$1,670,217.51.”<sup>20</sup>

22. After continued, unsuccessful negotiations between the Parties, Naxos sent an email to Kuke on May 23, 2024,<sup>21</sup> which stated, “Kuke has failed to pay in full the outstanding amounts owed to [Naxos] under the [Digital Distribution Agreement] since December 2021 despite [Naxos]’s multiple prior notices and demands to do so. As of 31 March 2024, the total outstanding amount due and owing to [Naxos] by Kuke is USD 1,683,925.22. ... Kuke has also failed to take down the content owned by Naxos[.]”<sup>22</sup> Naxos stated that if Kuke did not pay all amounts due to Naxos within 21 days, Naxos would initiate the procedures to terminate the Digital Distribution Agreement.<sup>23</sup>

23. Kuke responded on June 6, 2024 admitting that it had breached the Digital Distribution Agreement and Payment Plan Agreement and that “there is no doubt Kuke’s delinquency in the payment of licence [sic] fees under the [Digital Distribution Agreement] has negatively impacted [Naxos.]” Kuke represented that it was “working on a proposal for a new

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<sup>18</sup> A true and correct copy of the Parties April 2024 e-mail correspondence is attached hereto as **Exhibit G**.

<sup>19</sup> Exh. G, at 1.

<sup>20</sup> Exh. G, at 1.

<sup>21</sup> A true and correct copy of the Parties May 23 and June 6, 2024 e-mail correspondence is attached hereto as **Exhibit H**.

<sup>22</sup> Exh. H, at 2.

<sup>23</sup> Exh. H, at 2.

payment plan[.]”<sup>24</sup>

24. As of the date of the filing of this Complaint, Kuke has not paid the vast majority of the amounts owed to Naxos under the Digital Distribution Agreement and/or the Payment Plan Agreement incurred since December 1, 2021. As of September 1, 2024, Kuke currently owes Naxos \$1,855,493.89.<sup>25</sup>

## CAUSES OF ACTION

### COUNT I – BREACH OF CONTRACT

#### *Breach of the Digital Distribution Agreement*

25. Naxos repeats and restates each of the foregoing paragraphs as if they are fully incorporated herein.

26. The Digital Distribution Agreement is a valid and enforceable contract between the Parties.

27. Pursuant to Sections 2 and 3 of the Digital Distribution Agreement, Naxos provided Kuke with access to certain Naxos digital music services and content and authorized Kuke to host, provide digital distribution through Kuke’s website, and sell subscriptions to the Naxos services and content in specified regions of China.

28. In exchange and pursuant to Sections 3.2, 3.3, 3.4, and 5, Kuke was required to pay Naxos its portion of the revenue earned no later than the tenth (10th) of each month.

29. Kuke breached the Digital Distribution Agreement by failing to pay Naxos its full portion of the revenue earned since December 1, 2021. Kuke’s breach remains ongoing today.

30. Naxos has been, and is continuing to be, damaged by Kuke’s breaches of the Digital

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<sup>24</sup> Exh. H, at 1–2.

<sup>25</sup> An accounting report detailing the unpaid amounts owed under the Digital Distribution Agreement and the interest owed pursuant to the Payment Plan Agreement through the reporting period ending August 31, 2024 is attached hereto as **Exhibit I**.



Distribution Agreement in an amount to be determined at trial.

COUNT II – BREACH OF CONTRACT

*Breach of the Payment Plan Agreement*

31. Naxos repeats and restates each of the foregoing paragraphs as if they are fully incorporated herein.

32. The Payment Plan Agreement is a valid and enforceable contract between the Parties.

33. Pursuant to Section 1 of the Payment Plan Agreement, Naxos agreed that it would not invoke its right to terminate the Digital Distribution Agreement until March 31, 2024. In exchange, Kuke agreed “to pay [Naxos] the owed amount in full with incurred interest at 6% by the end of December 2023 ... in installments of \$200,000 at the end of August, September, October, November and with all unpaid amounts with interest at the end of December 2023 ... [but] no later than 31 March, 2024.”

34. Kuke breached the Payment Plan Agreement by failing to make all of the payments required the Payment Plan Agreement.

35. Naxos has been damaged by Kuke’s breaches of the Payment Plan Agreement in an amount to be determined at trial.

PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff demands judgment of the Defendant as follows:

1. That the Court find that the Digital Distribution Agreement and the Payment Plan Agreement are valid and enforceable agreements, Kuke breached the Digital Distribution Agreement and the Payment Plan Agreement, and Naxos has been damaged thereby in an amount to be determined at trial;

2. That Naxos be awarded compensatory damages for all amounts owed by Kuke under the Digital Distribution Agreement and the Payment Plan Agreement, including accrued interest on past-due amounts; and

3. For such other and further legal and equitable relief as may be appropriate and to which Naxos is justly entitled.

Respectfully submitted this 3 day of October, 2024.

**BASS, BERRY & SIMS, PLC**

*/s/ Ashleigh D. Karnell*

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