

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

	)	
	)	
<b>In the Matter of</b>	)	
	)	<b>Docket No. 9298</b>
<b>POLYGRAM HOLDING, INC., et al.</b>	)	
	)	
	)	

**MOTION OF NON-PARTY SONY MUSIC ENTERTAINMENT INC.  
TO STRIKE OR CORRECT PARAGRAPH IN COMMISSION’S OPINION AND TO  
INTERVENE FOR THE SOLE PURPOSE OF SEEKING SUCH RELIEF**

Non-party Sony Music Entertainment Inc. (Sony) respectfully moves the Federal Trade Commission to amend its opinion in this docket to strike or correct an unsupported suggestion that Sony may have an incentive to collude with Universal Music Group (UMG). Sony asks for leave to intervene in this matter for the sole purpose of seeking this limited relief. In support of this motion, Sony states as follows:

On July 28, 2003, the Commission issued its opinion in this docket, in which it rendered its final determination on the merits of the case, following an appeal from the Administrative Law Judge’s initial decision. Sony did not participate in any aspect of this proceeding until today. In its opinion, the Commission suggested that Sony may have an incentive to collude with UMG with respect to the sale of certain musical recordings and that “[a]bsent a cease and desist order, UMG and Sony may find it profitable to fix prices on product sold to retail stores.” Slip op. at 60. The opinion based this suggestion on the mere fact that Sony and UMG had entered into a nonexclusive joint venture to distribute music over the Internet.

Sony believes that this suggestion is unsupported both because the joint venture in question no longer exists and because the mere existence of the joint venture could not have supported the existence of an incentive to collude outside the collaboration. Sony is concerned that the reference to its participation in the venture and language concerning the need for a cease and desist order based on that activity may be misread by others to suggest that the Commission had found Sony to have engaged in misconduct in connection with the joint venture. This is a matter of significant concern, and corrective action is needed to avoid serious prejudice to Sony.

The specific paragraph of the Commission's opinion that raises these concerns states as follows:

Respondent UMG is presently engaged in other joint venture activity – including a joint venture with Sony to distribute music over the Internet – that may provide similar incentives and opportunity to restrain competition. UMG, Sony, and other music companies will provide music to the joint venture on a nonexclusive basis, meaning that music products marketed by the joint venture may also be marketed through traditional retail outlets. Absent a cease and desist order, UMG and Sony may find it profitable to fix prices on product sold to retail stores so as to enhance the joint venture's sales. IDF 334.

Slip op. at 60.

The joint venture to distribute music over the Internet to which the Commission's opinion refers was known as "pressplay." Until earlier this year, Sony and UMG controlled 100% of pressplay. The joint venture came to an end on May 19, 2003, when Sony and UMG sold a 99.6% interest in pressplay to Roxio, Inc. The sale of pressplay is evidenced by Schedule 13D filed by Sony with the Securities and Exchange Commission on May 19, 2003. The Form 13D, which is attached to this motion as Exhibit 1, is officially noticeable by the Commission.

The evidence cited by the Commission did not support any inference that Sony would have had an incentive to collude with UMG even if the pressplay joint venture had continued to exist. The finding of fact on which the Commission's opinion relied to support the conclusion

that Sony may have the incentive to collude with UMG states in its entirety: “Universal Music Group and Sony Music Entertainment have formed a joint venture to distribute music over the Internet. Universal, Sony, and other music companies will provide their music to the venture, known as ‘pressplay’ on a non-exclusive basis. Accordingly, the music products marketed by the joint venture may also be marketed through traditional retail outlets.” Initial Decision, Finding 334. The finding is thus confined to the mere existence of the venture and its nonexclusive nature.

These facts are legally insufficient to give rise to any inference that Sony would have an incentive to collude in order to divert sales to the joint venture. If they were sufficient, the existence of every joint venture would be automatically condemned on a similar basis.<sup>1</sup> A determination that a joint venture creates an incentive to collude could only be made on the basis of evidence regarding the structure of the venture, the parties’ activities both within and outside the venture, the profitability of sales within and outside the venture, and other relevant factors. In this case, there appear to be no findings regarding any of these factors. Indeed, the Commission did not even have before it a finding that the joint venture distributed the recordings with respect to which the potential incentive to collude was alleged to exist or that Sony distributed music over the Internet solely through pressplay, to the exclusion of unaffiliated outlets.

In view of the foregoing, Sony respectfully requests the Commission to amend its opinion to strike or correct any reference to a possible incentive on the company’s part to collude with


---

<sup>1</sup> Indeed, much of the case law in the area of joint ventures focuses on the opposite incentive to that cited by the opinion – to divert joint venture business to individual members. *See, e.g., Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210 (D.C. Cir. 1986). Whether either incentive exists can only be determined on the basis of the facts in each case.

UMG. Other than in this narrow respect, Sony expresses no view on the case or the Commission's opinion.

Dated: August 4, 2003

Respectfully Submitted,



---

Joseph Kattan  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 955-8500

Attorney for Sony Music Entertainment, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2003, I caused a copy of the attached Motion of Non-Party Sony Music Entertainment Inc. To Strike Or Correct Paragraph In Commission's Opinion And To Intervene For The Sole Purpose Of Seeking Such Relief to be served upon the following persons :

Donald S. Clark, Secretary (by hand)  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Geoffrey M. Green  
John Roberti  
Melissa Westman-Cherry (by facsimile and Overnight UPS)  
Bureau of Competition  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Drop S-3030  
Washington, DC 20580

Richard B. Dagen (by facsimile and Overnight UPS)  
Cary Zuk  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, N.W., Drop S-3030  
Washington, DC 20580

Bradley S. Phillips (by Overnight UPS)  
Glenn D. Pomerantz  
Stephen E. Morrissey  
Munger, Tolles & Olson LLP  
355 S. Grand Avenue, 35th Floor  
Los Angeles, CA 90071



---

Susan M. Dale

**SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE 13D  
(Rule 13d-101)**

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT  
TO RULE 13d-1(a) AND AMENDMENTS THERETO FILED  
PURSUANT TO RULE 13d-2(a)**

ROXIO, INC.

(Name of Issuer)

COMMON STOCK

(Title of Class of Securities)

780008108

(CUSIP Number)

**LISA WEISS, ESQ.  
SENIOR VICE PRESIDENT AND GENERAL COUNSEL  
SONY MUSIC ENTERTAINMENT INC.  
550 MADISON AVENUE  
NEW YORK, NEW YORK 10022-3211  
(212) 833-8000**

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

MAY 19, 2003

(Date of Event which Requires Filing of this Statement)

If the person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of 13d-1(e), 13d-1(f) or 13d-(g), check the following box .

**Note:** Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7(b) for other parties to whom copies are to be sent.

<sup>1</sup> The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(Continued on following pages)



1. Name of Reporting Person. I.R.S. Identification No. of above person

SMEI Duet Holdings, Inc.

2. Check the Appropriate Box if a Member of a Group\*

(a)

(b)

3. SEC Use Only

4. Source of Funds

SC

5. Check Box if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

6. Citizenship or Place of Organization

Delaware

7. Sole Voting Power

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON  
WITH

8. Shared Voting Power

1,957,262 (see Item 5)

9. Sole Dispositive Power

10. Shared Dispositive Power

1,957,262 (see Item 5)

11. Aggregate Amount Beneficially Owned by Each Reporting Person

1,957,262 (see Item 5)

12. Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares\*

13. Percent of Class Represented by Amount in Row (11)

Approximately 8.3% (see Item 5)

14. Type of Reporting Person\*

CO

1. S.S. or I.R.S. Identification No. of above person

Sony Music Entertainment Inc.

2. Check the Appropriate Box if a Member of a Group\*

(a)

(b)

3. SEC Use Only

4. Source of Funds

SC

5. Check Box if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(e) or 2(f)

6. Citizenship or Place of Organization

Delaware

7. Sole Voting Power

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON  
WITH

8. Shared Voting Power

1,957,262 (see Item 5)

9. Sole Dispositive Power

10. Shared Dispositive Power

1,957,262 (see Item 5)

11. Aggregate Amount Beneficially Owned by Each Reporting Person

1,957,262 (see Item 5)

12. Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares\*

13. Percent of Class Represented by Amount in Row (11)

Approximately 8.3% (see Item 5)

14. Type of Reporting Person\*

CO



1. Name of Reporting Person. S.S. or I.R.S. Identification No. of above person

Sony Corporation of America

2. Check the Appropriate Box if a Member of a Group\*

(a)

(b)

3. SEC Use Only

4. Source of Funds

SC

5. Check Box if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(e) or 2(f)

6. Citizenship or Place of Organization

New York

7. Sole Voting Power

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON  
WITH

8. Shared Voting Power

1,957,262 (see Item 5)

9. Sole Dispositive Power

10. Shared Dispositive Power

1,957,262 (see Item 5)

11. Aggregate Amount Beneficially Owned by Each Reporting Person

1,957,262 (see Item 5)

12. Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares\*

13. Percent of Class Represented by Amount in Row (11)

Approximately 8.3% (see Item 5)

14. Type of Reporting Person

HC, CO

**ITEM 1. SECURITY AND ISSUER.**

The name of the subject company is Roxio, Inc., a Delaware corporation ("Roxio"), and the address of its principal executive offices is 455 El Camino Real, Santa Clara, California 95050. The Company's telephone number is (408) 367-3100. The class of securities to which this statement relates is the Common Stock of Roxio.

**ITEM 2. IDENTITY AND BACKGROUND.**

This Statement is filed by SMEI Duet Holdings, Inc., a Delaware corporation ("SMEI"), Sony Music Entertainment Inc., a Delaware corporation ("Sony Music"), and Sony Corporation of America, a New York corporation ("SCA" and, collectively, the "Reporting Persons").

SCA has its principal executive offices at 550 Madison Avenue, New York, New York 10022. The principal business of SCA is the manufacture and sale, through its subsidiaries, of audio, video, communications and information technology products for the consumer and professional markets, and the music, motion picture, television and online entertainment businesses.

Sony Music, an indirect wholly owned subsidiary of SCA, has its principal executive offices located at 550 Madison Avenue, New York, New York 10022. The principal business of Sony Music is the development, production, manufacture, and distribution of recorded music, in all commercial formats and musical genres worldwide.

SMEI, a wholly owned subsidiary of Sony Music, has its principal executive offices located at 550 Madison Avenue, New York, New York 10022. SMEI has no business operations of its own, and its only assets are the shares of Roxio Common Stock that are the subject of this Schedule 13D (the "Roxio Shares") and the retained interest in Napster, LLC described in Item 4.

Sony Music and SCA are deemed the beneficial owners of the Roxio Shares held by SMEI. In addition, Sony Corporation, a Japanese corporation and the ultimate parent of SCA, Sony Music and SMEI, may be deemed the beneficial owner of the Roxio Shares.

The name, business address, present principal occupation or employment, name, principal business and address of any corporation or other organization in which such employment is conducted, and the citizenship of each director and executive officer of each of the Reporting Persons is set forth on Exhibit 1, 2 or 3, as the case may be, and Exhibits 1, 2 and 3 are incorporated herein by reference.

None of the Reporting Persons nor, to the best knowledge of the Reporting Persons, any person listed in Exhibits 1, 2 or 3, as applicable, has been convicted during the last five years in a criminal proceeding (excluding traffic violations or similar misdemeanors) or was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree, final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

**ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION**

SMEI received the Roxio Shares as partial consideration for the sale of substantially all of its membership interests in Napster, LLC. See Item 4 for a more detailed description of the transactions.

**ITEM 4. PURPOSE OF TRANSACTION**

On May 19, 2003, Roxio, SMEI and UMG Duet Holdings, Inc. ("UMG" and together with SMEI, the "Sellers"), entered into a Purchase Agreement (the "Agreement"), pursuant to which the parties consummated the sale by the Sellers to Roxio of 99.6% of the membership interests of Napster, LLC, a Delaware limited liability company (d/b/a "pressplay") (the "Target"). Each of the Sellers retained 0.2% of the membership interests of Target and the right to receive up to an aggregate of \$12.5 million from certain cumulative cash flows of Target.

Target is an online music service. The assets being acquired will serve as the foundation for the launch of Roxio's new legal online music service under the Napster brand.

The total purchase price paid by Roxio for the acquisition of Target (the "Consideration") consisted of the 3,914,524 shares of Roxio's Common Stock and \$12,500,000 in cash. SMEI received 1,957,262 of the shares and UMG received 1,957,262 of the shares. Additionally, Roxio has granted certain registration rights with respect to the shares issued as part of the Consideration, and has undertaken to register the offering of such shares within 90 days. Furthermore, pursuant to the Agreement, each Seller, so long as it has not sold more than 645,896 of the shares it received, shall have the right to nominate one director to Roxio's Board of Directors.

A copy of the Agreement is filed as Exhibit 4 to this Schedule 13D and is incorporated herein by reference. The foregoing description of the terms and conditions of the Agreement is qualified in its entirety by, and made subject to, the more complete information set forth in the Agreement.

**ITEM 5. INTEREST IN SECURITIES OF THE ISSUER**

The Reporting Persons share with each other voting and dispositive power with respect to 1,956,262 shares of Roxio Common Stock, which constitute approximately 8.3% of the issued and outstanding shares of Roxio Common Stock as of immediately following the consummation of the transactions described in Item 4.

Except as described herein, none of the Reporting Persons, nor, to the best knowledge of the Reporting Persons, any person listed in Exhibits 1, 2 or 3, as applicable, beneficially owns, or has acquired or disposed of, any shares of Roxio Common Stock during the past 60 days.

**ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER**

Except as described herein, none of the Reporting Persons, nor, to the best knowledge of the Reporting Persons, any of their respective directors or executive officers, has any other contracts, arrangements, understandings or relationships with any persons with respect to the securities of Roxio. The transactions described in Item 4 are further described in the Purchase Agreement attached as an exhibit hereto and is incorporated herein by reference.

**ITEM 7. MATERIAL TO BE FILED AS EXHIBITS**

- (1) Executive Officers and Directors of SMEI Duet Holdings, Inc.
- (2) Executive Officers and Directors of Sony Music Entertainment Inc.
- (3) Executive Officers and Directors of Sony Corporation of America

- (4) Purchase Agreement, dated as of May 19, 2003, by and among UMG Duet Holdings, Inc., SMEI Duet Holdings, Inc. and Roxio, Inc. (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Roxio, Inc. on May 19, 2003).
- (5) There is also filed as an exhibit hereto the agreement to file the Schedule 13D jointly, as required by Rule 13d-1(k).

