

NAPSTER INC

Filed by
BEST BUY CO INC

FORM SC TO-T/A

(Amended tender offer statement by Third Party)

Filed 10/30/08

Address	9044 MELROSE AVENUE LOS ANGELES, CA 90069
Telephone	3102815000
CIK	0001122787
SIC Code	5731 - Radio, Television, and Consumer Electronics Stores
Industry	Retail (Technology)
Sector	Services
Fiscal Year	12/10

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, D.C. 20549

SCHEDULE TO/A

(RULE 14d-100)

**TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) or 13(e)(1) OF
THE SECURITIES EXCHANGE ACT OF 1934**
(Amendment No. 5)

Napster, Inc.

(Name of Subject Company (Issuer))

Puma Cat Acquisition Corp.

a wholly-owned subsidiary of

Best Buy Co., Inc.

(Names of Filing Persons (Offerors))

Common Stock, Par Value \$0.001 per Share

(Title of Class of Securities)

630797108

(CUSIP Number of Class of Securities)

Joseph M. Joyce

Best Buy Co., Inc.

7601 Penn Avenue South

Richfield, MN 55423

(612) 291-1000

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

Copy To:

John R. Houston, Esq.

Robins, Kaplan, Miller & Ciresi L.L.P.

2800 LaSalle Plaza, 800 LaSalle Avenue

Minneapolis, MN 55402

(612) 349-8500

CALCULATION OF FILING FEE

Transaction Valuation*

\$127,186,169.15

Amount of Filing Fee

\$4,998.42

* Estimated for purposes of calculating the amount of the filing fee only. The filing fee calculation assumes the purchase of 47,922,611 outstanding shares of Issuer common stock, par value \$0.001 per share, at a price of \$2.65 per share (including shares issued pursuant to restricted stock awards) at an aggregate purchase price of \$126,994,919.15; and an aggregate of \$191,250.00, representing the difference between the \$2.65 per share payable per share of common stock in the offer and the exercise price of all in-the-money options that are vested or will vest on or prior to the scheduled expiration date of the offer contemplated by this Schedule TO. The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #6 for Fiscal Year 2008 issued by the Securities and Exchange Commission on December 27, 2007, equals \$39.30 per \$1 million of the transaction value.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$4,998.42

Form or Registration No.: Schedule TO
Filing Party: Puma Cat Acquisition Corp. and Best Buy Co., Inc.
Date Filed: September 26, 2008

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

(1) Name of Reporting Person

Best Buy Co., Inc.

(2) Check the Appropriate Box if a Member of a Group

(a)

(b)

(3) SEC Use Only

(4) Source of Funds

WC, OO

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

(6) Citizenship or Place of Organization

Minnesota

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	0	shares
	(8)	Shared Voting Power	59,782,771	shares ¹
	(9)	Sole Dispositive Power	0	shares
	(10)	Shared Dispositive Power	59,782,771	shares ¹

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

59,782,771 shares ¹

(12) Check if the Aggregate Amount in Row (11) Excludes Certain Shares

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

90.0% ²

(14) Type of Reporting Person (See Instructions)

CO

¹ Includes Shares (as defined below) tendered during the initial offering period and the subsequent offering period of the Offer (as defined below) and Shares acquired pursuant to the exercise of the Top-Up Option (as defined in the Offer to Purchase, which term is defined below).

² Calculated based on 66,425,301 Shares issued and outstanding as of October 30, 2008, as reported by Napster, Inc. and after giving effect to the issuance of Shares pursuant to the exercise of the Top-Up Option.

(1) Name of Reporting Person
Best Buy Enterprise Services, Inc.

(2) Check the Appropriate Box if a Member of a Group
(a)
(b)

(3) SEC Use Only

(4) Source of Funds OO

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

(6) Citizenship or Place of Organization
Minnesota

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	0	shares
	(8)	Shared Voting Power	0	shares ¹
	(9)	Sole Dispositive Power	0	shares
	(10)	Shared Dispositive Power	0	shares ¹

(11) Aggregate Amount Beneficially Owned by Each Reporting Person
0 shares ¹

(12) Check if the Aggregate Amount in Row (11) Excludes Certain Shares

(13) Percent of Class Represented by Amount in Row (11) 0.0% ²

(14) Type of Reporting Person (See Instructions) CO

¹ Best Buy Enterprise Services, Inc. transferred all its previously-reported Shares to Puma Cat Acquisition Corp. on October 23, 2008.
² Calculated based on 66,425,301 Shares issued and outstanding as of October 30, 2008, as reported by Napster, Inc. and after giving effect to the issuance of Shares pursuant to the exercise of the Top-Up Option (as defined in the Offer to Purchase, which term is defined below).

(1) Names of Reporting Persons

Puma Cat Acquisition Corp.

(2) Check the Appropriate Box if a Member of a Group

(a)

(b)

(3) SEC Use Only

(4) Source of Funds

WC, OO

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

(6) Citizenship or Place of Organization

Delaware

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power	0	shares
	(8)	Shared Voting Power	59,782,771	shares ¹
	(9)	Sole Dispositive Power	0	shares
	(10)	Shared Dispositive Power	59,782,771	shares ¹

(11) Aggregate Amount Beneficially Owned by Each Reporting Person

59,782,771 shares ¹

(12) Check if the Aggregate Amount in Row (11) Excludes Certain Shares

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

90.0% ²

(14) Type of Reporting Person (See Instructions)

CO

¹ Includes Shares (as defined below) tendered during the initial offering period and the subsequent offering period of the Offer (as defined below) and Shares acquired pursuant to the exercise of the Top-Up Option (as defined in the Offer to Purchase, which term is defined below).

² Calculated based on 66,425,301 Shares issued and outstanding as of October 30, 2008, as reported by Napster, Inc. and after giving effect to the issuance of Shares pursuant to the exercise of the Top-Up Option.

AMENDMENT NO. 5 TO SCHEDULE TO

This Amendment No. 5 (“Amendment No. 5”) amends and supplements the Tender Offer Statement on Schedule TO filed with the U.S. Securities and Exchange Commission (the “SEC”) on September 26, 2008, as amended by Amendment No. 1, filed with the SEC on October 2, 2008; Amendment No. 2, filed with the SEC on October 10, 2008; Amendment No. 3, filed with the SEC on October 14, 2008; and Amendment No. 4, filed with the SEC on October 27, 2008 (collectively, the “Schedule TO”). The Schedule TO relates to the offer by Puma Cat Acquisition Corp., a Delaware corporation (the “Purchaser”) and wholly-owned subsidiary of Best Buy Co., Inc., a Minnesota corporation (“Best Buy”), to purchase all outstanding shares of common stock, par value \$0.001 per share, and the stock purchase rights associated with such shares (collectively, the “Shares”), of Napster, Inc., a Delaware corporation (“Napster”), at a purchase price of \$2.65 per Share, net to the seller in cash, without interest thereon, upon the terms and subject to the conditions set forth in the Offer to Purchase dated September 26, 2008 (the “Offer to Purchase”), and in the related Letter of Transmittal (which, together with any supplements or amendments thereto, collectively constitute the “Offer”), copies of which are attached to the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used and not otherwise defined in this Amendment No. 5 have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO.

This Amendment No. 5 also amends and supplements the Schedule 13D filed by Best Buy, Purchaser, and Best Buy Enterprise Services, Inc. with the SEC on September 24, 2008.

Items 1, 4, 8 and 11. Summary Term Sheet; Terms of the Transaction; Interest in Securities of the Subject Company; Additional Information.

Items 1, 4, 8 and 11 of the Schedule TO are hereby amended and supplemented as follows:

“At 12:00 midnight, Eastern Time, at the end of Wednesday, October 29, 2008, the Subsequent Offering Period expired. Based on information provided by the Depository, as of the expiration of the Subsequent Offering Period, an additional 3,932,720 Shares were validly tendered, resulting in the ownership by Purchaser of an aggregate of 40,558,382 Shares, representing approximately 85.9% of the outstanding Shares. Purchaser accepted for payment all Shares validly tendered during the Subsequent Offering Period in accordance with the terms of the Offer and will promptly pay for such Shares. In order to acquire more than 90% of the outstanding Shares (excluding Shares tendered through guaranteed delivery procedures and not yet delivered), Purchaser, pursuant to the terms of the Merger Agreement, exercised its Top-Up Option, pursuant to which Purchaser acquired 19,224,389 newly-issued shares at a purchase price per share equal to the Offer Price. As a result of Purchaser’s acquisition of the Shares validly tendered during the initial offering period, shares validly tendered during the Subsequent Offering Period, and the shares issued pursuant to the Top-Up Option, Purchaser owns more than 90% of the outstanding Shares (excluding Shares tendered through guaranteed delivery procedures and not yet delivered). Pursuant to the Merger Agreement, Best Buy is therefore entitled to and intends to cause Purchaser to merge with and into Napster on or before Friday, October 31, 2008, without a meeting of the stockholders of Napster, in accordance with the DGCL’s “short-form” merger statute, with Napster continuing as the Surviving Corporation and a wholly-owned subsidiary of Best Buy. As a result of the Merger, each outstanding Share that was not purchased in the Offer (other than Shares held by Purchaser or Best Buy, treasury Shares, which will be cancelled, and Shares held by stockholders, if any, who properly exercise appraisal rights in accordance with the DGCL) will be converted into the right to receive \$2.65 per Share, in cash, without

interest. Shares held by stockholders who perfect their appraisal rights will represent only the right to receive the amount awarded in the appraisal, or, if such demand for appraisal is withdrawn or forfeited, \$2.65 per Share, in cash, without interest.”

A copy of the October 30, 2008 press release issued by Best Buy announcing the expiration of the Subsequent Offering Period and the exercise of the Top-Up Option is attached as Exhibit (a)(1)(L) hereto and is incorporated herein by reference.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented as follows:

“(a)(1)(L) Press release issued by Best Buy on October 30, 2008 (filed herewith)”

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

PUMA CAT ACQUISITION CORP.

By: /s/ Todd G. Hartman

Name: Todd G. Hartman

Its: Vice President

BEST BUY CO., INC.

By: /s/ Susan S. Grafton

Name: Susan S. Grafton

Its: Vice President, Controller and Chief Accounting
Officer

Dated: October 30, 2008

EXHIBIT INDEX

(a)(1)(L) Press release issued by Best Buy on October 30, 2008 (filed herewith)

**FOR IMMEDIATE RELEASE****Media Contacts:**

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Wade Bronson, Director, Investor Relations
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**Best Buy Completes Subsequent Offering
Period for Napster Shares**

MINNEAPOLIS (Oct. 30, 2008) – Today Best Buy Co., Inc. (NYSE:BBY) successfully concluded the subsequent offering period of the cash tender offer by its wholly-owned subsidiary, Puma Cat Acquisition Corp., to purchase all outstanding shares of common stock of Napster, Inc. (NASDAQ:NAPS). The subsequent offering period followed Best Buy's initial tender offer, in which Best Buy acquired approximately 35.5 million Napster shares (excluding shares tendered by guaranteed delivery but not delivered), or 75.3 percent of all outstanding Napster shares, and which expired on Oct. 24, 2008.

The subsequent offering period expired at 12:00 midnight, Eastern Time, at the end of Oct. 29, 2008. As of that time, approximately 3.9 million additional Napster shares, representing an additional 8.3 percent of outstanding Napster shares, had been validly tendered and not withdrawn during the subsequent offering period, according to information provided by U.S. Bank National Association, the depository for the offer. Best Buy accepted for payment all shares validly tendered during the subsequent offering period and intends to make prompt payment for those shares. As a result of the tender offer, Best Buy beneficially owns an aggregate of approximately 40.6 million Napster shares (including approximately 1.1 million shares previously owned by Best Buy), representing approximately 85.9 percent of Napster's outstanding shares. The aggregate purchase price for all shares tendered pursuant to the tender offer (including the subsequent offering period) is \$104.5 million.

Best Buy also announced today that it exercised its “top-up option” under the agreement and plan of merger. The exercise of the top-up option allowed Best Buy to increase its share ownership percentage of Napster through the purchase of newly-issued shares of Napster common stock at the tender offer price. As a result of its purchase of all validly-tendered shares and the exercise of the top-up option, Best Buy beneficially owns more than 90 percent of the outstanding shares of Napster common stock and intends to cause Puma Cat promptly to merge with and into Napster without a meeting of the stockholders of Napster pursuant to the Delaware “short-form” merger statute. Best Buy expects to consummate the merger on or prior to Oct. 31, 2008. As a result of the merger, each outstanding share of Napster common stock will be converted into the right to receive \$2.65 per share, in cash, without interest. The only exceptions are shares held by Best Buy or Puma Cat; treasury shares, which will be cancelled; and shares held by stockholders, if any, who properly exercise appraisal rights in accordance with Delaware law. Best Buy expects this process ultimately to result in its ownership of 100 percent of Napster’s common stock.

This news release is neither an offer to purchase nor a solicitation of an offer to sell shares of Napster. Best Buy and Puma Cat are filing an amendment to the original tender offer statement with the SEC. Napster is filing with the SEC an amendment to its original solicitation/ recommendation statement on Schedule 14D-9. These filings contain important information about the tender offer, and Best Buy urges stockholders of Napster to read these filings carefully. These filings are available at no charge at the SEC’s Web site (<http://www.sec.gov>). The original tender offer statement and the related materials may be obtained for free by directing a request by mail to D.F. King & Co., Inc., 48 Wall Street, New York, New York 10005; by calling (800) 628-8532; or by contacting Best Buy.

About Best Buy

With operations in the United States, Canada, Europe and China, Best Buy is a multinational retailer of technology and entertainment products and services with a commitment to growth and innovation. The Best Buy family of brands and partnerships collectively generates more than \$40 billion annual revenue and includes brands such as Best Buy, Best Buy Mobile, The Carphone Warehouse, Future Shop, Geek Squad, Jiangsu Five Star, Magnolia Audio Video, Pacific Sales Kitchen and Bath Centers, The

Phone House and Speakeasy. Approximately 165,000 talented employees help bring the benefits of these brands to life for customers through retail locations, call centers and Web sites, in-home solutions, product delivery and activities in our communities. Community partnership is central to the way we do business. In fiscal 2008, we donated a combined \$31.8 million to improve the vitality of the communities where our employees and customers live and work. For more information about Best Buy, visit www.bestbuy.com.

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