

NAPSTER INC

Filed by
BEST BUY CO INC

FORM SC TO-T/A

(Amended tender offer statement by Third Party)

Filed 10/27/08

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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. 4)

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.
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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:

AMENDMENT NO. 4 TO SCHEDULE TO

This Amendment No. 4 (“Amendment No. 4”) 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; and Amendment No. 3, filed with the SEC on October 14, 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. 4 have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO.

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 Friday, October 24, 2008, the Offer expired. Based on information provided by the Depository, a total of 39,301,255 Shares, representing approximately 83.3% of the outstanding Shares (including Shares tendered through guaranteed delivery procedures), were validly tendered and not withdrawn prior to the Expiration Date. Purchaser accepted for purchase all Shares validly tendered and not withdrawn in accordance with the terms of the Offer and will promptly pay for such Shares. Best Buy also announced that Purchaser has extended the Offer in order to solicit additional Shares for tender in the Offer. The Subsequent Offering Period for all of the remaining outstanding and untendered Shares will commence at 9:00 a.m., Eastern Time, on Monday, October 27, 2008. Subject to the terms and conditions of the Offer to Purchase, Napster stockholders tendering Shares during the Subsequent Offering Period will receive \$2.65 in cash, without interest, for each Share tendered, which is the same amount paid to holders of Shares who tendered Shares in the Offer. Shares properly tendered during the Subsequent Offering Period will be accepted as they are tendered and paid for promptly. The expiration date of the Subsequent Offering Period is 12:00 midnight, Eastern Time, at the end of Wednesday, October 29, 2008. Procedures for tendering Shares during the Subsequent Offering Period are the same as during the initial offering period with two exceptions: (1) Shares cannot be delivered by the guaranteed delivery procedure, and (2) Shares tendered during the Subsequent Offering Period may not be withdrawn.”

A copy of the October 27, 2008 press release issued by Best Buy announcing the expiration of the Offer, the acceptance for payment of the Shares validly tendered and not withdrawn during the Offer, and the commencement of the Subsequent Offering Period is attached as Exhibit (a)(1)(K) 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)(K) Press release issued by Best Buy on October 27, 2008 (filed herewith)”

EXHIBIT INDEX

(a)(1)(K) Press release issued by Best Buy on October 27, 2008 (filed herewith)



FOR IMMEDIATE RELEASE

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**Best Buy Completes Tender Offer for
Napster Shares, Begins Subsequent
Offering Period**

MINNEAPOLIS (Oct. 27, 2008) – Today Best Buy Co., Inc. (NYSE:BBY) successfully concluded 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 tender offer was made in accordance with the previously-announced agreement and plan of merger, dated Sept. 14, 2008, among Best Buy, Puma Cat and Napster. The tender offer expired at 12:00 midnight, Eastern Time, on Oct. 24, 2008.

A total of 39,301,255 shares of Napster common stock, representing approximately 83.3 percent of the outstanding shares of Napster common stock, were validly tendered and not withdrawn prior to the expiration of the offer, according to information which Best Buy obtained from U.S. Bank National Association, the depository for the offer. Best Buy accepted for purchase all validly tendered shares in accordance with the terms of the offer. Best Buy intends to make prompt payment for those shares, which have an aggregate price of approximately \$104 million.

“We’re pleased that our tender offer was successful. We look forward to concluding the merger so that we can begin the work of increasing Napster’s subscribers and building on its capabilities in the digital media space,” said David Morrish, executive vice president of connected digital solutions for Best Buy.

Because Best Buy does not beneficially own at least 90 percent of Napster’s outstanding shares, Best Buy announced today that it will begin a subsequent offering period for all of the remaining outstanding and untendered shares of Napster common stock at 9 a.m., Eastern Time, on Oct. 27, 2008. Subject to the terms and conditions of the offer to purchase, which was previously mailed to Napster stockholders, Napster stockholders now tendering shares will receive \$2.65 in cash, without interest, for each share tendered. This amount is equal to that paid to Napster stockholders who tendered in the initial offer. Best Buy expects to accept shares of Napster common stock as they are tendered and to pay for them promptly. The subsequent offering period expires at 12:00 midnight, Eastern Time, on Oct. 29, 2008. Procedures for tendering shares of Napster common stock during the subsequent offering period are the same as during the initial offering period with two exceptions: (1) shares cannot be delivered by the guaranteed delivery procedure, and (2) shares tendered during the subsequent offering period may not be subsequently withdrawn.

Following the purchase of shares validly tendered and guaranteed for delivery from the initial offer, Best Buy beneficially owns more than 50 percent of the outstanding shares of Napster common stock on a fully-diluted basis. As a result, Best Buy has the power to assure the consummation of the proposed merger of Puma Cat into Napster by voting the shares beneficially owned by Best Buy at a special meeting of the stockholders of Napster. In addition, Best Buy can exercise a “top-up option,” which allows the consumer electronics retailer to increase its share ownership percentage of Napster through the purchase of newly issued Napster shares, at the tender offer price. After a successful subsequent offering period, or the exercise of the “top-up option” under the agreement and plan of merger — or potentially after both actions — if Best Buy were to acquire beneficial ownership of more than 90 percent of the outstanding shares of Napster common stock, then Best Buy intends to cause Puma Cat promptly to merge into Napster without a meeting of the stockholders of Napster pursuant to the “short-form” merger statute under Delaware law. 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 stockholders of Napster are urged 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, Jiansu Five Star, Magnolia Audio Video, Pacific Sales Kitchen and Bath Centers, The Phone House and Speakeasy. Approximately 165,000 employees apply their talents to help bring the benefits of these brands to life for customers through retail locations, multiple 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 at Best Buy. 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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