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Filing date: **07/01/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91160266
Party	Plaintiff Christopher Brooks
Correspondence Address	EVAN GOURVITZ FROSS ZELNICK LEHRMAN & ZISSU, P.C. 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES egourvitz@frosszelnick.com, bsolomon@frosszelnick.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Evan Gourvitz
Filer's e-mail	egourvitz@frosszelnick.com,bsolomon@frosszelnick.com
Signature	/Evan Gourvitz/
Date	07/01/2008
Attachments	Notice of Reliance (F0312914).PDF (94 pages)(2322062 bytes)

c. An October 5, 2000 article from *The New York Amsterdam News*, attached as Exhibit 3, noting the upcoming performance of Opposer, “Cab’s heir,” and his band THE CAB CALLOWAY ORCHESTRA at the “All Nite Soul Jazzfest.”

d. An October 14, 2000 article from *The Washington Times*, attached as Exhibit 4, discussing Opposer and his band THE CAB CALLOWAY ORCHESTRA and noting its upcoming performance at the opening ceremony for the new Eubie Blake National Jazz Institute and Cultural Center in Baltimore, Maryland.

e. A September 20, 2002 article from *The Chicago Tribune*, attached as Exhibit 5, discussing Opposer and his band THE CAB CALLOWAY ORCHESTRA and noting its upcoming performance at the Prairie Center for the Arts in Schaumburg, Illinois.

f. A November 8, 2002 article from *The Boston Globe*, attached as Exhibit 6, discussing Opposer and his band THE CAB CALLOWAY ORCHESTRA and noting its upcoming performance at a charitable event in Boston, Massachusetts.

g. A June 23, 2005 article from *The Charleston Gazette*, attached as Exhibit 7, discussing Opposer and his band THE CAB CALLOWAY ORCHESTRA and noting its upcoming performance at the Charleston Marriott in Charleston, North Carolina.

h. A July 2, 2005 article from *The Charleston Gazette*, attached as Exhibit 8, noting the performance of Opposer’s band, the “[n]ationally known act[.]” THE CAB CALLOWAY ORCHESTRA, at the FestivALL in Charleston, North Carolina.

i. A February 19, 2006 article from *The Paducah Sun*, attached as Exhibit 9, discussing Opposer and his band THE CAB CALLOWAY ORCHESTRA and noting its two performances at a Kentucky college.

j. A November 9, 2007 article from *The St. Petersburg Times*, attached as Exhibit 10, discussing Opposer and his band THE CAB CALLOWAY ORCHESTRA, observing that “[t]he orchestra is in the process of wrapping up a centennial anniversary tour that has taken it around the globe,” and noting its upcoming performance in Brooksville, Florida,

k. An April 4, 2008 article from *The Albuquerque Journal*, attached as Exhibit 11, discussing Opposer and his band THE CAB CALLOWAY ORCHESTRA, describing THE CAB CALLOWAY ORCHESTRA as “world famous” and “a big time jazz band” that will “give the kids an experience of live music and big band jazz because it’s kind of a lost art,” and noting its upcoming performance at a high school in New Mexico.

All of the above are relevant to show (i) media coverage of THE CAB CALLOWAY ORCHESTRA and Opposer’s use of THE CAB CALLOWAY ORCHESTRA, (ii) the reporting of the use of THE CAB CALLOWAY ORCHESTRA to the public, (iii) public exposure to the use of THE CAB CALLOWAY ORCHESTRA in connection with Opposer and his live musical performances, and (iv) the distinctiveness and fame of THE CAB CALLOWAY ORCHESTRA.

2. Pursuant to Rule 2.122(c) of the Trademark Rules of Practice, 37 C.F.R. § 2.122(c), TBMP § 704.05-06, and Fed. R. Evid. 401 and 801(d)(2), the following admissions against interest by Applicant:

a. Applicant’s July 8, 2005 Response to Opposer’s Statement of Undisputed Material Facts in connection with its opposition to Opposer’s motion for summary judgment in this proceeding, attached as Exhibit 12, at 4 (¶¶ 9-11), noting that (i) Applicant “[d]oes not dispute that since “sometime in 1999 Opposer has made sporadic sales of compact discs and videos that have born [sic] the mark THE CAB CALLOWAY ORCHESTRA,” (ii) “Opposer has . . . demonstrated the sale of . . . twenty compact discs prior to Applicant’s July 23, 1999 filing

date,” and (iii) “Opposer has . . . demonstrated the sale of . . . six videotapes prior to Applicant’s July 23, 1999 filing date.”

This is relevant because it serves as an admission against interest that Opposer used THE CAB CALLOWAY ORCHESTRA in connection with compact discs and videotapes prior to Applicant’s filing date.

b. Applicant’s June 24, 2005 Declaration of Cabella Calloway Langsam in Support of Applicant’s Opposition to Opposer’s Motion for Summary Judgment in this proceeding, attached as Exhibit 13, at 1-3 (¶¶ 2-7), explaining in detail that Cab Calloway was “an international jazz icon.”

This is relevant because it serves as an admission against interest that Cab Calloway was recognized by the relevant public as a historical person, whose name may be used as or in a mark without a requirement of secondary meaning.

3. Pursuant to Rule 2.122(e) of the Trademark Rules of Practice, 37 C.F.R. § 2.122(e), TBMP §§ 704.03(b)(1)(B)-(b)(2) and 704.07, and Fed. R. Evid. 401 and 803(8), the following official records:

a. Registration 2,459,428, for COUNT BASIE ORCHESTRA, a TARR printout of the prosecution history for its application (Serial No. 75/906,651), and the application, office action, and response for that registration, attached as Exhibit 14.

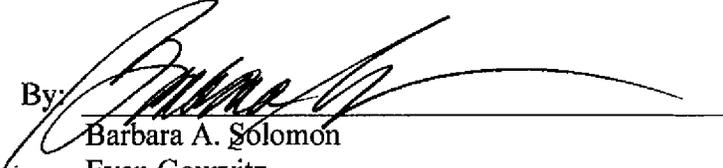
b. Registration 2,438,337 for TOMMY DORSEY ORCHESTRA, a TARR printout of the prosecution history for its application (Serial No. 75/890,818), and the application, office actions/amendments, and response for that registration, attached as Exhibit 15.

Both of the above are submitted as relevant to the issue of the inherent distinctiveness of full names and orchestra names.

Dated: New York, New York
July 1, 2008

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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Attorneys for Opposer

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 1

10/5/84 Boston Globe (Pg. Unavail. Online)
1984 WLNR 46818

Boston Globe (MA)
Copyright Globe Newspaper Company 1984

October 5, 1984

Section: ARTS/ FILMS

CAB CALLOWAY TO JOIN GRANDSON BROOKS IN FREE CONCERT

Ernie Santosuosso Globe Staff

Cab Calloway , the high priest of Hi-De-Ho, joins grandson Christopher Brooks Thursday at 8 p.m. in Jordan Hall in an Enchanted Circle Series Concert. Brooks, a guitarist-composer, is a member of the New England Conservatory of Music (NEC) faculty. The duo has not previously performed in Boston, so this promises to be a memorable evening for performers and audience.

Cabell (Cab) Calloway , 76, led a big band continuously from 1928-1948 and among the famous sidemen who performed in his aggregations were Dizzy Gillespie, saxophonists Chu Berry, Ben Webster and Eddie Barefield, bassist Milt Hinton and drummer Cozy Cole. He portrayed Sportin' Life for more than two years in the stage production of "Porgy and Bess" and has been almost exclusively a solo performer for the past three decades.

Brooks, a 1980 graduate of NEC, teaches in the school's Third Stream Department and also serves on the faculties of Beaver Country Day School and Community Music Center of Boston.

For his concert segment, Brooks will play selections from his upcoming album, "Ilenne Rainbow," and will join NEC colleagues Joseph Maneri, clarinet, and Gerald Zaritsky, piano, in a series of improvisations. Calloway will sing "Get Happy," "Stormy Weather," "Blues in the Night" and "You're Nobody Til Somebody Loves You."

NEC president Lawrence Lesser will present Calloway a plaque recognizing his "singular contribution as vocalist, improviser and composer to the enrichment of American music."

The concert is free and open to the public.

WEEKENDING - Frank Russo scooped up Boy George & the Culture Club for a Worcester Centrum date Tuesday, Nov. 20. Tickets are now on sale . . . Herb Reed of the original Platters and his group will sing at the Bojangles Club in the Palace Entertainment Complex in Saugus Fridays through Sundays this month . . .

The Tony Lada Sextet featuring the leader on trombone and trumpeter Jeff Stout, alto saxophonist Larry Monroe, drummer Ed Uribe, pianist Bob Dogan and bassist Gildas Bocle will be playing tonight and tomorrow, beginning at 9, at the Willow Jazz Club, Ball Square, Somerville . . . The Channel will be swimming with sound tonight with Ministry, Bamboo Gang and Front 242.

Berklee faculty guitarist Jon Damian and Manhattan guitarist Bill Frisell will give a debut performance of Damian's jazz originals Tuesday at 8:15 p.m. in Berklee Performance Center. Other members of the group are bassist John Voight and percussionist Taylor McLean . . . An evening of warm folk music will be provided tonight at 8 at the Me & Thee Coffeehouse, 28 Mugford st., Marblehead, by Bill Staines with Guy van Duser. . . Johnny Copeland, direct from Texas, will sing down-home Texas Blues tomorrow evening at Ed Burke's, 808 Huntington av., Boston.

Bob Connors & the New Yankee Rhythm Kings, featuring banjoist-vocalist Jimmy Mazzy, will play from 1-5 p.m. Sunday at the Sticky Wicket Pub in Hopkinton . . . Jazz guitarist Tal Farlow, backed by the Vicki von Eps Trio, returns to the Starlight Roof atop the Howard Johnson Motor Lodge tonight and tomorrow for shows at 9 and 11 . . . Pianist George Winston, who has set autumn to music, plays before another capacity house tomorrow at 8:30 in Symphony Hall . . . John Melisi Quartet with vocalist Vicki Burns is featured tonight and tomorrow at Ephraim's in Sudbury. Pianist Sammy Price will entertain Sunday from 4-8 p.m.

You're sure to enjoy the togetherness in jazz exemplified by Puttin' on the Ritz tonight and tomorrow at Ryles Upstairs in Inman Square, Cambridge . . . Over in Harvard Square, Passim will present Suzanne Vega plus Judy Polan tonight through Sunday and Talitha Nelson on Wednesday . . . The Herbie King Thing with the leader on drums plus Bobby Greene and Stan Strickland, reeds, Orlando Pandolfi, vibraharp, and Dan O'Brien, bass, are just the ticket tonight and tomorrow at the 1369 Jazz Club in Inman Square . . . The Washington Squares, whose musical style consists of hybrid new wave-folk, returns to Boston tomorrow night at the Rat.

Modern Productions kicks off its autumn concert series with a program starring pianist Claude Bolling with guests Larry Coryell and Pamela Sklar Friday, Oct. 19, at Berklee Performance Center. Ornette Coleman and Prime Time have been added to the schedule for a Dec. 15 concert at Berklee. A Grammavision all-star showcase will be presented Friday, Nov. 30, at Berklee . . . Guitarist Kevin Eubanks is the jazz attraction Tuesday night at 9 and 11 at Jonathan Swift's in Harvard Square. Max Creek performing "in the style of the Grateful Dead" appears tonight and tomorrow at Swift's . . . Pianist David Crohan, who had been entertaining vacationers during the summer at his own place, David's Island House on Martha's Vineyard, has returned to Boston where he will be performing at the Julien Bar at the Hotel Meridien Wednesdays through Saturdays, 5 p.m.-1 a.m. and Sunday brunch, 11:30 a.m.-3:30 p.m.

The Charles Kohlhase Trio encores in the Cambridge Public Library's Sounds of Jazz series tomorrow at 1 p.m. at the Central Square Branch Library, 45 Pearl st. SANTOS;10/02,14:24 BEVERI;10/05,12 B07629382

---- INDEX REFERENCES ----

NEWS SUBJECT: (Major Corporations (1MA93))

INDUSTRY: (Music Concert News (1MU45); Entertainment (1EN08); Music (1MU57); Consumer Electronics (1CO61); Electronics (1EL16); Manufacturing (1MA74))

REGION: (Massachusetts (1MA15); USA (1US73); Americas (1AM92); New England (1NE37); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (BEAVER COUNTRY DAY SCHOOL; BOBBY GREENE; BOJANGLES CLUB; CAB; CAMBRIDGE PUBLIC LIBRARY; CENTRAL SQUARE BRANCH LIBRARY; CHARLES KOHLHASE TRIO; CULTURE CLUB; DAMIAN; DE HO; ENCHANTED CIRCLE SERIES; FREE; GRAMMAVISION; HERBIE; HOTEL MERIDIEN WEDNESDAYS; HOWARD JOHNSON MOTOR LODGE; JAZZ CLUB; JULIEN BAR; MANHATTAN; NEC; PALACE ENTERTAINMENT COMPLEX; PIANIST DAVID CROHAN; PIANIST SAMMY PRICE; SPORTIN; STARLIGHT ROOF; STICKY WICKET PUB; STREAM DEPARTMENT; TAYLOR; WASHINGTON SQUARES (THE); TONY LADA SEXTET; VICKI; WEEKENDING FRANK RUSSO; WILLOW JAZZ CLUB; WORCESTER CENTRUM) (Bamboo Gang; Ben Webster; Berklee; Bill Frisell; Bill Staines; Bob Connors; Bob Dogan; Boy George; Brooks; Cab Calloway; Cabell (Cab) Calloway; Calloway; Christopher Brooks; Chu Berry; Cozy Cole; Dan O'Brien; Dizzy Gillespie; Ed Burke; Ed Uribe; Eddie Barefield; Eps Trio; George Winston; Gerald Zaritsky; Gildas Bocle; Herb Reed; Ilenne Rainbow; Jeff Stout; Jimmy Mazzy; John Melisi Quartet; John Voight; Johnny Copeland; Jon Damian; Joseph Maneri; Judy Polan; Kevin Eubanks; Larry Coryell; Larry Monroe; Lawrence Lesser; Max Creek; Milt Hinton; Modern Productions; Ornette Coleman; Pamela Sklar; Stan Strickland; Suzanne Vega; Symphony Hall; Tal Farlow; Thee Coffeehouse; Thing)

EDITION: N

Word Count: 1033

10/5/84 BOSTONG (No Page)

END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

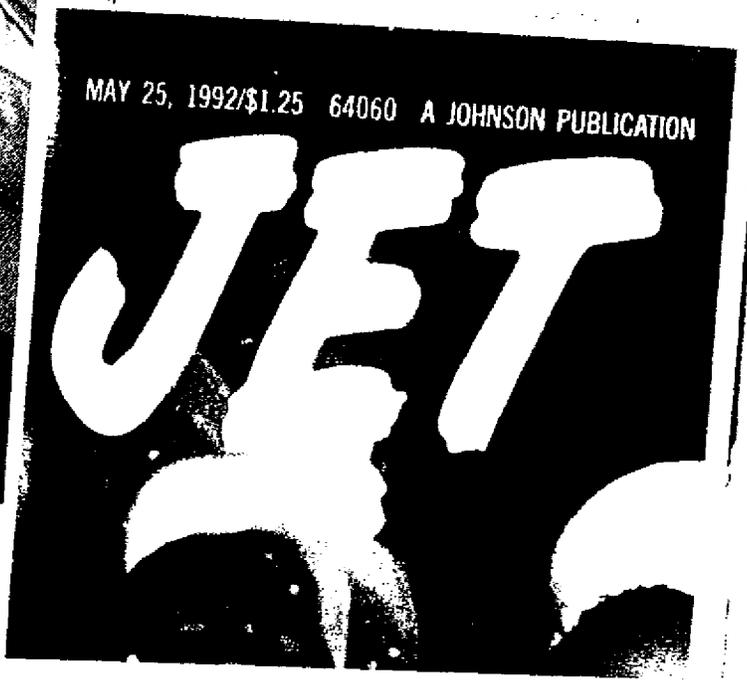
Opposer's Exhibits to Notice of Reliance

EXHIBIT 2



■ **Dynamic Duo:** The legendary Cab Calloway and his grandson Christopher Brooks recently teamed up to make beautiful music together at Coppin State College in Baltimore during the Associated Black Charities Jazz Night on the Avenue.

ENTERTAINMENT



Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 3

10/5/00 N.Y. Amsterdam News 26
2000 WLNR 7405888

New York Amsterdam News
Copyright 2000 New York Amsterdam News

October 5, 2000

Cab's heir puts talents to 'All Nite Soul Jazzfest'

Cab's heir puts talents to 'All Nite Soul Jazzfest'

The Jazz Ministry of St. Peter's Church will celebrate the 30th anniversary of its annual "All Nite Soul Jazzfest" on Sunday, Oct. 8, 5 p.m.-5 a.m.

The first "All Nite Soul Jazzfest" was initiated by the late Rev. John Garcia Gensel in 1970, to mark the fifth anniversary of the weekly Jazz Vespers, held every Sunday at 5 p.m. Since then, "All Nite Soul" has become more than a collage of performances. It is a "homecoming on Earth" for a multitude of jazz musicians, singers, dancers and jazz fans, affording them a rare opportunity to renew friendships, meet new people and further bond with one another.

This year's celebration will be dedicated to the loving memory of the late, great tap-dancing and singing legend Harold Nicholas who, with his brother Fayard, formed what would become the greatest tap-dancing tandem in the history of both stage and screen. Co-hosting the night's festivities with Jazz Pastor Dale Lind will be the highly talented singer/actress Yvette Glover.

Among the more than 150 artists appearing will be Clark Terry, Jimmy Heath, Billy Taylor, Jane Jarvis, Earl May, Benny Powell, Carrie Smith, Melba Joyce, Dave Kikoski, Eric Reed, Roosevelt Andre Credit, Juanita Fleming, The Cab Calloway Orchestra (led by Cab's grandson, Chris Calloway Brooks), Bruce Anthony Davis' "Stormy Weather Revue," the Savoy Swingers, The Little Rhythm Kings, Daphne Hellman, Paul Knopf, The Harlem Blues and Jazz Band, the Lyn Christie Quintet, Chuck Folds and his Sweet Basil Friends (including Theo Crocker, Doc Cheatham's grandson), Sarah McLawler, Jazzberry Jam, The Oak Park Middle School Knights of Jazz from Leesburg, Fla., and many others.

All proceeds from the \$20 door donation, as well as those from the Hungry Souls' Cafe, will go toward the support of St. Peter's full-time, ongoing Jazz Ministry and their weekly breakfast program for the homeless.

Photo (Chris Calloway Brooks)

---- INDEX REFERENCES ----

Language: EN

OTHER INDEXING: (Brooks, Chris Calloway; Calloway, Cab) (BILLY; CAB CALLOWAY ORCHESTRA; FLEMING; HARLEM BLUES; JAZZ; JAZZ BAND; JAZZ MINISTRY; JAZZ PASTOR DALE LIND; JUANITA; LYN CHRISTIE QUINTET; OAK PARK MIDDLE SCHOOL; ROOSEVELT ANDRE CREDIT; SAVOY SWINGERS; SWEET BASIL FRIENDS; TAYLOR) (Bruce Anthony Davis; Cab; Calloway Brooks; Carrie Smith; Chris; Chris Calloway Brooks; Chuck Folds; Clark Terry; Daphne Hellman; Dave Kikoski; Doc Cheatham; Eric Reed; Fayard; Harold Nicholas; Jane Jarvis; Jazzberry Jam; Jimmy Heath; John Garcia Gensel; Paul Knopf; Sarah McLawler; Theo Crocker; Yvette Glover) (New York, NY)

Word Count: 390

10/5/00 ENWNAMS 26

END OF DOCUMENT

Opposer's Exhibits to Notice of Reliance

EXHIBIT 4

10/14/00 Wash. Times (D.C.) D1
2000 WLNR 340160

Washington Times (DC)
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October 14, 2000

Section: D ARTS & ENTERTAINMENT

Eubie Blake jazz center to open in Baltimore

Suzin Schneider - THE WASHINGTON TIMES

BALTIMORE BALTIMORE - The new Eubie Blake National Jazz Institute and Cultural Center is "a center whose time has come," a consultant for the city says.

Publicist Kevin Brown refers to an institute that got its start in the 1970s and honors the Baltimore native who became a famous ragtime composer and performer.

A ribbon-cutting and grand-opening ceremony for the center will be held at 7:30 p.m. Friday. Guests will include actor-director Charles Dutton and jazz vocalist Ethel Ennis.

The Cab Calloway Orchestra will play classic swing from the days of Harlem's Cotton Club, including Mr. Calloway's signature song, "Minnie the Moocher." The orchestra is led by Christopher "Calloway" Brooks, the grandson of the late jazz great.

Two days later, the center will officially open to the public with a free "Family Day," which will include activities such as musical performances and face painting.

"We have reached a critical point in our 25-year evolution, thanks to state and city leaders," Camay Murphy, board president and acting executive director of the center, says in a statement.

The institute, which is a performing arts center and a repository of outstanding Baltimore jazz artists, started as the Model Cities Arts Program. It was renamed in 1984 when the estate of James Herbert "Eubie" Blake approached the center with a request to house his memorabilia.

The center's main building and five outreach centers, placed throughout the city, offer Saturday and after-school arts programs for Baltimore students.

In addition, it houses permanent exhibits not only about Mr. Blake but also other Baltimore jazz greats such as singer Billie Holiday and Mr. Calloway and swing-band leader Chick Webb.

The original center, at 409 N. Charles St., burned down in the mid-1990s. The institute has been operating out of a temporary location at Market Place.

About two years ago, the city bought the new building, at 847 N. Howard St., from Maryland General Hospital for \$200,000 and donated it to the center board. Renovation of the building - originally the University of Baltimore Law School and later used as a nurses training school - has taken almost two years and will cost an estimated \$2.3 million from both city and private funds.

"Everybody is really excited," Mrs. Murphy says. "Our building is lovely."

Features include a museum, gallery, gift shop, dance studio, art studio, band and rehearsal rooms, outdoor sculpture garden and a 150-seat auditorium. Adult classes will be offered, including courses in ceramics and computer graphics.

"Having our own home will enable us to expand our services and become a more significant contributor to the good health of the communities we serve," Mrs. Murphy says.

One feature she is proud of is the "Memories of You" wall, where the musical notes of Mr. Blake's song of the same name is etched on a multicolored glass wall. The notes will be sold off and names will be etched above them. Eventually, those involved in the center hope to have the music to the song playing by the display.

The new center is "the first arts anchor for the 'Avenue of the Arts,'" says Mr. Brown, referring to the growing arts community on Howard Street.

Mr. Blake, the son of former slaves, died in 1983 at age 100. His songs include "I'm Just Wild About Harry" (Harry Truman's presidential campaign song in 1948), which he wrote with his longtime collaborator, singer and lyricist Noble Sissle. The first song they wrote together, "It's All Your Fault," was performed by headliner Sophie Tucker.

A successful Broadway musical, "Eubie," was based on Mr. Blake's life.

J0091718-101400

Photos, A) Eubie Blake in a 1983 photo, at age 99; B) Baltimore pays tribute to jazz musician Eubie Blake with the new Eubie Blake National Jazz Institute and Cultural Center.

---- INDEX REFERENCES ----

REGION: (Maryland (1MA47); USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

OTHER INDEXING: (ARTS; BALTIMORE; CAB CALLOWAY ORCHESTRA; COTTON CLUB; CULTURAL CENTER; EUBIE BLAKE NATIONAL JAZZ INSTITUTE; HARLEM; HARRY; MARYLAND GENERAL HOSPITAL; MODEL CITIES ARTS; N CHARLES ST; N HOWARD ST; UNIVERSITY OF BALTIMORE LAW SCHOOL) (Adult; Billie Holiday; Blake; Brown; Calloway; Camay Murphy; Charles Dutton; Chick Webb; Ethel Ennis; Eubie; Eubie Blake; Eventually; Guests; James Herbert; Minnie; Murphy; Noble Sissle; Publicist Kevin Brown; Renovation; Sophie Tucker)

EDITION: Final

Word Count: 769

10/14/00 WATIMES D1

END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 5

9/20/02 Chi. Trib. 6A
2002 WLNR 12647774

CHICAGO TRIBUNE
Copyright 2002 Chicago Tribune Company

September 20, 2002

Section: Metro

Show promises jazz's fun side
Orchestra echoes Cab Calloway era
Christine des Garennes. Special to the Tribune.

With musicians sporting fedoras, a band leader scat singing, and perhaps a little jitterbugging in the aisles, the Cab Calloway Orchestra will perform Saturday in the Prairie Center for the Arts in Schaumburg.

Calloway Brooks, grandson of the late bandleader Cab Calloway, said he will deliver the "fun side of jazz." The repertoire will include such Calloway favorites as "Minnie the Moocher" plus Brooks' original songs.

"Part of the magic of the show is the interaction with the live audience," Brooks said, speaking to the "hi-de-ho" callback in "Minnie the Moocher."

Saturday's show will reflect the Harlem Renaissance era, when Calloway's band gained fame, said Rob Pileckis, Prairie Center Production Supervisor.

"Calloway was a hit. He was such a showman," Pileckis said.

Expect to see zoot suits and wide-brimmed hats.

Schaumburg is one of several U.S. stops for Brooks and the 13-member orchestra, which is on a tour that started in New York City.

"I'm excited to be here. My grandfather has roots in Chicago. He really got his start at the Sunset Cafe," Brooks said of the former South Side club.

Calloway moved to Chicago in the late 1920s and sang with Louis Armstrong at the Sunset Cafe.

The orchestra will perform at 8 a.m. Saturday in the Prairie Center, 201 Schaumburg Ct. Tickets cost \$26 for adults and \$24 for seniors and students. Call 847-895-3600.

Copyright © 2002 Chicago Tribune Company

---- INDEX REFERENCES ----

REGION: (USA (1US73); Americas (1AM92); Illinois (1IL01); North America (1NO39))

Language: EN

OTHER INDEXING: (CAB CALLOWAY ORCHESTRA; HARLEM RENAISSANCE; LOUIS ARMSTRONG;
PRAIRIE CENTER; PRAIRIE CENTER PRODUCTION SUPERVISOR; SUNSET CAFE) (Brooks; Cab
Calloway; Call; Calloway; Calloway Brooks; Expect; Pileckis; Rob Pileckis; Schaum-
burg)

KEYWORDS: SUBURB; MUSIC; GUIDELINE

EDITION: Northwest Final

Word Count: 280

9/20/02 CHICAGOTR 6A

END OF DOCUMENT

Opposer's Exhibits to Notice of Reliance

EXHIBIT 6

11/8/02 Boston Globe C10
2002 WLNR 2629529

Boston Globe (MA)
Copyright (c) 2002, Globe Newspaper Company

November 8, 2002

Section: Arts

KEEPING CAB RUNNING CALLOWAY'S GRANDSON WORKS TO PERPETUATE SWING BANDLEADER'S
LEGACY

Steve Greenlee, Globe Staff

Cab Calloway, one of the hippest and most flamboyant bandleaders in the history of music, was not a press darling in his heyday, the '30s and '40s. The critics considered him a novelty act, long on flash and short on substance. While it's true that his tunes - with such names as "Papa's in Bed With His Britches On" and "Foo a Little Bally-Hoo" - smacked of silliness, his orchestra could match up with the best jazz bands, and moreover they were entertainers. Heck, it's where Dizzy Gillespie got his start.

Hindsight has done wonders for Calloway's reputation. The New Grove Dictionary of Jazz notes that Calloway, who died in 1994, was "one of the most successful bandleaders" of his age and singles out his scat singing for praise. Alyn Shipton's recent tome "A New History of Jazz" spends a dozen pages on Calloway, calling him a "larger-than-life character" whose band "shaped the sound of the decade."

C. Calloway Brooks is doing his part to make sure history doesn't forget the importance of his grandfather. Brooks (whose first name is Christopher) leads the Cab Calloway Orchestra, which performs tomorrow night at "Steppin' Out," the annual benefit

for Dimock Community Health Center. The event takes place at Boston's World Trade Center from 8 p.m. to 2 a.m. The Calloway band is among the evening's 25 performers, who also include another progeny of jazz royalty: drummer T.S. Monk Jr., son of the famous bebop pianist Thelonious Monk.

Brooks, who is writing a biography of his grandfather, wants to spread the word about him as much as he wants to entertain.

"It's really been underappreciated that he was a full performance artist," says Brooks, a graduate of the New England Conservatory of Music who took over the band

four years after his grandfather died. "A lot of the critical public had a great difficulty in getting one's arms around the African-American aspects of my grandfather's art. It was really befuddling to many critics used to European standards of aesthetic perfection."

With catchphrases such as "Hi-De-Ho" and "Are you all reet?" Calloway brought the call-and-response tradition into big-band jazz. His manner of dress - the zoot suit, the fieldworker's hat with the Native American feather, the European two-tone shoes - confused the critics, who couldn't reconcile his quirks and his stage presence with his musical talents, which might have appeared to be secondary but weren't.

Brooks's stage show (which will include 13 musicians tomorrow) may look like a trip back in time, but he says it's not merely a nostalgia act. While Brooks may dress like his grandfather and play his tunes, their voices sound nothing alike, and Brooks - a talented singer and guitarist in his own right - doesn't try to imitate Calloway.

"Basically, what I've done is taken material from the golden era of the Calloway repertoire and use that as kind of a basis for a fresh offering and a fresh slant on swing, and my own individual and unique approach to the Calloway legacy and the swing legacy generally. We do my own original songs, and we rearrange a lot of the Calloway repertoire," he says. "It is by no means intended as a Calloway clone kind of presentation. By the same token, it's heavily influenced by it."

Brooks, who lives in Westchester, N.Y., with his wife, was immersed in the jazz world early on. (Though he won't say how old he is, he appeared on Edward R. Murrow's TV show as an infant with his grandfather in 1958, and he enrolled at the New England Conservatory in 1976 - so we guess he's about 44.) One of Brooks's fondest memories is meeting Louis Armstrong backstage at the National Theater in Washington, D.C., at age 9. At NEC, he studied Third Stream music and tone color theory. He played with his grandfather's band, of course, but he has performed with Kenny Burrell, Anthony Braxton, and Lionel Hampton. In other words, he's a serious musician himself, not simply the heir to the Calloway throne.

But the question remains: Why? Why carry Cab Calloway's torch instead of trying to light your own?

"It's an incredibly satisfying thing to do," Brooks says. "It's a very, very important piece of American heritage. I really feel as though my granddad, more than anybody else, epitomized the essence of the American spirit at the time."

Steve Greenlee can be reached at greenlee@globe.com.

SIDEBAR:

JAZZ PICKS

Guitarist Pat Martino and pianist Gil Goldstein square off tonight and tomorrow at the Regattabar. . . . The Freddy Cole Quartet plays *Scullers* tonight and

tomorrow. . . . The Megawatt Blues Crushers (we've never heard them; we just like the name) play Ryles tomorrow. . . . Introspective pianist Fred Hersch plays Sunday at the Rogers Center for the Arts at Merrimack College. . . . The Cercie Miller Quartet, with guest trumpeter Tiger Okoshi, plays the Regattabar Tuesday. . . . Cool vocalist Tierney Sutton sings Tuesday at Scullers. . . . The John Payne Sax Choir plays Ryles Tuesday. . . . Latin jazz alert: The Mili Bermejo/George Schuller Octet performs at the Regattabar Wednesday, and the Nando Michelin Brazilian Project with Teresa Ines is there Thursday; Brazilian jazz singer Giana is at Ryles Wednesday. . . . Tower of Power brings its big sound to Scullers Wednesday and Thursday.

PHOTO

1. C. Calloway Brooks uses his grandfather's work as a jumping-off point for his own music.
2. Cab Calloway's (above) work is "a very, very important piece of American heritage," says C. Calloway Brooks. , AP FILE PHOTO

JAZZ NOTES / MUSIC / WEEKEND\\ TYPE: LIV

---- INDEX REFERENCES ----

REGION: (USA (1US73); Americas (1AM92); New England (1NE37); North America (1NO39))

Language: EN

OTHER INDEXING: (CAB CALLOWAY ORCHESTRA; CALLOWAY; CERCIE MILLER QUARTET; DIMOCK COMMUNITY HEALTH CENTER; FREDDY COLE QUARTET; JAZZ; JOHN PAYNE SAX CHOIR; KENNY BURRELL; LEGACY; MEGAWATT BLUES CRUSHERS; NANDO MICHELIN BRAZILIAN PROJECT; NATIONAL THEATER; PHOTO; PICKS; REGATTABAR; ROGERS CENTER; TERESA INES) (1. C. Calloway Brooks; Alyn Shipton; Anthony Braxton; Basically; Brooks; C. Calloway Brooks; Cab Calloway; CAB RUNNING CALLOWAY; Calloway; Edward R. Murrow; Fred Hersch; Gil Goldstein; Heck; Hindsight; Lionel Hampton; Louis Armstrong; Pat Martino; Steve Greenlee; T.S. Monk Jr.; Thelonious Monk; Tierney Sutton; Tiger Okoshi) (NAME - CALLOWAY)

EDITION: THIRD

Word Count: 1108
11/8/02 BOSTONG C10
END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 7

6/23/05 Charleston Gazette & Daily Mail (WV) 3D
2005 WLNR 9960276

Charleston Gazette (WV)
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June 23, 2005

Section: News

Hail this Cab

During the '30s and '40s, Cab Calloway and his big-band bop ruled with precision playing and the band leader's signature cry of "Hi-De-Ho" and now-classic tunes like "Minnie the Moocher." The band, the style, even the Cotton Club zoot suits live on in the form of Cab's grandson C. Calloway Brooks, who leads the 14-piece Cab Calloway Orchestra into the Charleston Marriott for a FestivALL Charleston showcase event, with dance music filling the ballroom from 9 p.m. to midnight Saturday. "It's the Harlem Renaissance kind of sound, the prime years of the swing era," Brooks says of the group's sound, not to mention its jive roots. His grandfather was influential not only musically but stylistically and linguistically. He propagated the style of speech that came to be known as "jive," publishing a slang compendium Calloway titled "Mr. Hepster's Jive Talk Dictionary" that contained words he coined such as "beat" (tired), "chick" (woman), "pad" (apartment), "jam" (musical improvisation) and "square" (unhip). To avoid squareness, then, the Marriott is where it's at. Tickets are \$50 through the Clay Center at 561-3570 or Taylor Books, 226 Capitol St. (342-1461).

ONLINE:

www.cabcalloway.cc

---- INDEX REFERENCES ----

Language: EN

OTHER INDEXING: (CLAY CENTER; COTTON CLUB; FESTIVALL CHARLESTON; MARRIOTT; ONLINE; TAYLOR BOOKS) (Brooks; C. Calloway Brooks; Cab; Cab Calloway; Cab Calloway Orchestra; Calloway; Hail; Hepster)

Word Count: 240

6/23/05 CHLST-GZ 3D

END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 8

7/2/05 Charleston Gazette & Daily Mail (WV) 5D
2005 WLNR 10548579

Charleston Gazette (WV)
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July 2, 2005

Section: News

Young musicians competition jazzes up FestivALL

Zack Harold

Sherman High School

The last weekend in June contained some sweltering hot days for Charleston, but it also brought plenty of excellent entertainment. Music of all types filled the capital city that weekend as part of the first ever FestivALL, a citywide summer celebration that will, I hope, reappear for many years to come. The event brought together performers from all different schools of music, from rock and soul to folk and, especially, jazz. Nationally known acts like the Cab Calloway Orchestra and guitar great George Benson swung city venues alongside more local groups like the Bob Thompson Unit and the Vince Lewis Trio.

On June 25, a group of young jazz musicians, looking more suited to play Jack Johnson than John Coltrane, also got involved, taking the stage for the finals of the first annual Next Generation Jazz Contest. Held at Haddad Riverfront Park, the competition was a showcase of up-and-coming local talent sponsored by the Charleston Jazz Series.

Applicants submitted a demo tape of their material by early June, and the best groups moved on to the finals. The contest had two categories (ages 18 and under and 19-25) in which one individual (collecting \$200) and one band (collecting \$400) would be crowned winners by a panel of judges. One overall winner would also be chosen and given an extra \$350 and the opportunity to perform at the All That Jazz Festival held later that night at the University of Charleston.

Above all, however, this competition enabled the young performers to display their musical prowess in a public forum. They did not disappoint.

Two bands were particularly impressive to me. The first was Huntington's 8th Avenue Trio. Featuring pianist Nate May and a phenomenal rhythm section consisting of bassist Grant Jacobs and drummer Jeremy Lee, the group kept its groove going strong during performances of the classic "Blue Bossa" and an interesting, blues-

tinged rendition of Jaco Pastorius' "The Chicken."

I thought the set was spectacular, and the judges felt similarly. The trio was awarded "best group" in the 18 and under category. (Chris Kimmons of the Chris Kimmons Duo earned "best individual" in this bracket.)

RK4, a Charleston area-based quartet led by guitarist Ryan Kennedy, was the other group I really enjoyed. The tight ensemble showed off some truly impressive individual chops but still managed to mesh as a group. Kennedy, a graduate of the Berklee College of Music, also accompanied singer Laurel Dennie during a rousing take on the Gershwin standard "Summertime."

The judges recognized both breathtaking performances - Dennie claimed "best individual" in the 19-25 category and RK4 won "best group." RK4 was also named the overall winner of the competition.

I'm really glad I attended the Next Generation Jazz Competition finals. Not only did it bring good music to the riverfront that afternoon, but it also reassured me that jazz music will still be a vibrant, truthful music even after the original masters of the craft are gone.

Though there may never be another Bill Evans, Miles Davis or Art Tatum, the life these legendary individuals brought to jazz will live on in the hands of very promising musicians like the ones I saw that day.

---- INDEX REFERENCES ----

INDUSTRY: (Entertainment (1EN08); Live Entertainment (1LI85))

Language: EN

OTHER INDEXING: (8TH AVENUE TRIO; BERKLEE COLLEGE OF MUSIC; CAB CALLOWAY ORCHESTRA; CHARLESTON; CHARLESTON JAZZ SERIES; CHICKEN; CHRIS KIMMONS DUO; GENERATION JAZZ COMPETITION; JACO PASTORIUS; JAZZ FESTIVAL; SHERMAN HIGH SCHOOL; UNIVERSITY OF CHARLESTON; VINCE LEWIS TRIO) (Art Tatum; Bill Evans; Chris Kimmons; Dennie; Featuring; George Benson; Grant Jacobs; Huntington; Jack Johnson; Jeremy Lee; John Coltrane; Kennedy; Miles Davis; Nationally; Ryan Kennedy)

Word Count: 642

7/2/05 CHLST-GZ 5D

END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 9

2/19/06 Paducah Sun (KY) (Pg. Unavail. Online)
2006 WLNR 2887012

Paducah Sun, The (KY) (KRT)
Copyright 2006 The Paducah Sun, Ky.

February 19, 2006

Visiting the Hotel Metropolitan: Brooks Pledges Support
Shelley Byrne
The Paducah Sun, Ky.

Feb. 19--Calloway Brooks climbed stairs at the Hotel Metropolitan, peered out a window and opened a medicine cabinet in the bathroom, thinking about what it was like when his grandfather, jazz legend Cab Calloway, stayed there.

"It's a fantastic piece of American culture," he said Saturday after touring the partially renovated building.

Brooks remembers his grandfather talking about how hard it was to find places to stay or eat when touring in the South during segregation.

"At least when he came here he had a place to stay," he said.

The hotel, at 724 Oscar Cross Ave., opened in 1909 as the only place in Paducah where black people could stay until segregation ended. Other famous people who stayed in the hotel include Louis Armstrong, B.B. King, Ella Fitzgerald, Ray Charles and Tina Turner.

Since Calloway was already famous when he came to Paducah, he probably would have stayed in one of the two front rooms, which were considered the best, he said.

Finding a hotel that would accept a black man was such a problem for Calloway that eventually he got his own Pullman railroad car, so he always had someplace where he knew he could get some rest, Brooks said.

Brooks, who now leads the Cab Calloway Orchestra, was in Paducah on Saturday for two performances at West Kentucky Community and Technical College. He visited the Hotel Metropolitan between them.

"So the next time I come back, I'll be staying here, right?" he asked board members of the Upper Town Heritage Foundation, which owns the building. They told him "Absolutely." Part of the hotel is being turned into a bed and breakfast. It will also house a cultural museum and gift shop.

"Let me know when you get it open and I'll send you some memorabilia of Granddad's you can keep in your museum," he said.

Brooks also promised to help with fund-raising efforts in any way he could, saying that preserving places like the Hotel Metropolitan is important because it connects people with their past.

"The stronger the roots, the stronger the tree," he said.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Race Relations (1RA49); Social Issues (1SO05); Minority & Ethnic Groups (1MI43))

REGION: (Kentucky (1KE38); USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

OTHER INDEXING: (GRANDDAD; HOTEL METROPOLITAN; OSCAR CROSS; TECHNICAL COLLEGE; UPPER TOWN HERITAGE FOUNDATION) (Brooks; Cab Calloway; Calloway; Calloway Orchestra; Ella Fitzgerald; Feb; Louis Armstrong; Ray Charles; Tina Turner)

Word Count: 411

2/19/06 PADUCAHSUN (No Page)

END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 10

11/9/07 St. Petersburg Times 3
2007 WLNR 22199138

St Petersburg Times
Copyright 2007 St. Petersburg Times

November 9, 2007

Section: HERNANDO TIMES

RELATIVELY SPEAKING, HE'S A REMINDER, NOT A CLONE

LOGAN NEILL

BROOKSVILLE Christopher Calloway Brooks' connection to his grandfather's musical legacy is strong.

On stage, he dresses nattily in zoot suit and tails and whirls around with exuberance and grace. But the descendant of the original "Hi-Dee-Ho" man is quick to point out that he's no imitation of Cab Calloway.

"It is by no means intended as a Calloway clone kind of presentation," Brooks told the Boston Globe a few years back. "By the same token, it's heavily influenced by it."

That said, anyone planning to see Brooks and the Cab Calloway Orchestra at Saturday's Bandshell Bash in downtown Brooksville shouldn't wonder whether they'll be hearing Calloway classics such as Stormy Weather, Jumpin' Jive and of course, Minnie the Moocher. Brooks wouldn't want it any other way.

"Granddad used to say, 'I'm a performing artist, not a recording artist,'" Brooks told the Times in 2003. "Audiences will get that Calloway feeling: fun, tight ensemble work, authenticity, freshness, nice staging and presentation."

Since Cab Calloway's death in 1994, Brooks has led something of a crusade to keep his grandfather's brand of jazz in fashion. The orchestra is in the process of wrapping up a centennial anniversary tour that has taken it around the globe.

Calloway was one of the most revered African-American artists of his generation. Along with peers such as Louis Armstrong, Duke Ellington and Fats Waller, Calloway became a fixture of the Harlem Renaissance music scene during the late 1920s and 1930s.

His music was a playful blend of big band jazz and showbiz gimmickry. So infectious was the rhythm that it inspired the band leader to dance across the stage.

Brooks' earliest impression of Calloway was that of a babysitter who would take him along to rehearsals. In time, Brooks found his own musical interests. After graduating from the New England Conservatory of Music with a degree in jazz studies, he went on to work with jazz luminaries before settling in as guitarist with his grandfather's orchestra.

Logan Neill can be reached at lneill@sptimes.com or (352) 848-1435.

If you go

Cab Calloway Orchestra

When: 4-8 p.m. Saturday

Where: Hernando Park 204 E Fort Dade Ave., Brooksville.

Admission: Free. Attendees may bring lawn chairs or blankets.

Information: Call 796-3734 or visit www.bandshellbash.com.

---- INDEX REFERENCES ----

INDUSTRY: (Cloning (1CL05); Pharmaceuticals & Biotechnology (1PH13); Molecular & Cellular Biology (1MO84); Biopharmaceuticals (1BI13))

Language: EN

OTHER INDEXING: (AUDIENCES; BROOKSVILLE; CAB CALLOWAY; CAB CALLOWAY ORCHESTRA; CALLOWAY; CLONE; HARLEM RENAISSANCE; HERNANDO; REMINDER; SPEAKING; BOSTON (THE)) (Attendees; Brooks; Brooksville; Christopher Calloway Brooks; Ellington and Fats Waller; Granddad; Information; Logan Neill; Louis Armstrong)

Word Count: 458

11/9/07 STPTFTI 3

END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 11

4/4/08 Albuquerque J. (N.M.) 4
2008 WLNR 6375002

Albuquerque Journal (NM)
Copyright 2008 The Albuquerque Journal

April 4, 2008

Section: ARTS/ENTERTAINMENT

All That JAZZ
Performance will benefit Rio Rancho High School's band program

AMANDA STEVENS Journal Staff Writer

The world famous Cab Calloway Orchestra will be jazzing up Rio Rancho High School next weekend.

The band booster club of Rio Rancho High School is bringing the orchestra all the way from New York City to hopefully raise some money and expose the students to a "big time jazz band."

"We're really excited about it," booster member Michael Jacobs said. "This is our way to get Rio Rancho on the map and make a little money."

The booster club decided to go against more popular techniques for raising money such as small bake sales or car washes to raise money for the Rio Rancho High School band.

"A lot of booster clubs try to do small fundraising like candy sales," Jacobs said. "We decided to take on the bigger ones that will bring in more bang for your buck. It can be more expensive in the beginning, but in the end it's worth it."

Proceeds from the concert will go towards instrument repair, costs of band trips, equipment, uniform costs and snacks for the 200 plus members of the high school's band program.

While raising money for the program is a large motivator in bringing the orchestra to Rio Rancho, there are other benefits of the concert, Jacobs said.

"In order for the kids in the jazz band, for them to experience jazz, they need to see live performances so they understand what they are trying to do," Jacobs said. "They can't emulate something they've never seen."

The Cab Calloway Orchestra is directed by Cab's grandson, C. Calloway Brooks.

The orchestra "comes from the Big Band Swing Jazz Orchestra tradition that came bursting out of the Cotton Club, and the Savoy Ballroom, in the Harlem Renaissance during the golden age of radio in the 1930's and 1940's," the orchestra's Web site says.

The educational benefit of having the Cab Calloway Orchestra at the high school is more important than the money that will be raised, Jacobs said.

"We're trying to give the kids an experience of live music and big band jazz because it's kind of a lost art," he said.

If you go

WHAT: The Cab Calloway Orchestra performance.

WHEN: 7 p.m. April 11.

WHERE: Rio Rancho High School Performing Arts Center, 301 Loma Colorado.

HOW MUCH: \$25 in advance at Baum's Music, 3301 Southern and 2908 Eubank, or The Color Spot, 3771 Southern; or \$30 at the door.

---- INDEX REFERENCES ----

COMPANY: ALGERIENNE DE BANQUE; JAZZ PHARMACEUTICALS INC; STADIUM GROUP PLC

INDUSTRY: (Music Concert (1MU45); Entertainment (1EN08); Music (1MU57))

Language: EN

OTHER INDEXING: (BIG BAND SWING JAZZ ORCHESTRA; CAB; CAB CALLOWAY ORCHESTRA; COLOR SPOT; COTTON CLUB; HARLEM RENAISSANCE; JAZZ; RIO RANCHO HIGH SCHOOL; RIO RANCHO HIGH SCHOOL PERFORMING ARTS CENTER; SAVOY BALLROOM; SOUTHERN) (Jacobs; Michael Jacobs; Proceeds; Rancho; Rio Rancho)

Word Count: 452

4/4/08 ALBUQJNL 4

END OF DOCUMENT

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 12

FISH & RICHARDSON P.C.

225 Franklin Street
Boston, Massachusetts
02110-2304

Telephone
617 542-5070

Facsimile
617 542-8906

Web Site
www.frb.com

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

July 8, 2005

Commissioner for Trademarks
Box TTAB – No Fee
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Christopher Brooks v. Creative Arts by Calloway, LLC
Opposition No. 91160266 (CAB CALLOWAY)

Dear Sir/Madam:

I am writing in reference to Applicant's Motion in Opposition to Opposer's Motion for Summary Judgment, which was filed by First Class mail on July 1, 2005 in the above-referenced matter. Enclosed please find Exhibit A ("Applicant's Response to Opposer's Statement of Undisputed Material Facts") to APPLICANT'S MEMORANDUM IN OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT, which inadvertently was not included with the paper filing on July 1, 2005.

Please contact me with any questions.

Very truly yours,


Cynthia Johnson Walden

cc: Barbara A. Solomon, Esq.
Evan Gourvitz, Esq.

21123000.doc



AUSTIN

BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 75761159
Mark: CAB CALLOWAY
Applicant: CREATIVE ARTS BY CALLOWAY, LLC

----- x

CHRISTOPHER BROOKS,	:		
	:		
Opposer	:		
	:		
v.	:	Opposition No. 91160266	
	:		
CREATIVE ARTS BY CALLOWAY, LLC,	:		
	:		
Applicant.	:		

-----x

**APPLICANT'S RESPONSE TO OPPOSER'S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Applicant, Creative Arts By Calloway, LLC ("Applicant" and "Creative Arts") hereby responds to the Statement of Undisputed Material Facts submitted by Opposer, Christopher Brooks, ("Opposer"). For the convenience of the Board and the parties, each numbered paragraph of Opposer's Statement of Undisputed Material Facts is quoted in full immediately preceding Applicant's response thereto.

1. Opposer, who uses the stage names Calloway Brooks or C. Calloway Brooks, is the eldest grandson of the internationally famous jazz musician Cab Calloway, who died in 1994.

Response: Undisputed, noting that Opposer's given name, Christopher Williams Brooks, does not include the word Calloway.

2. Opposer is a 1980 Dean's List graduate of the New England Conservatory of Music who, from 1978 to 1993, repeatedly performed professionally with his grandfather at venues ranging from private parties to the Kennedy Center and Lincoln Center.

Response: As for the first clause of the sentence, admit for the purpose of summary judgment as the fact is not material to the outcome of the opposition. Applicant does not have information sufficient to confirm or deny the first clause of this sentence, however, the evidence submitted by Opposer does not show that Opposer *repeatedly* performed with Cab Calloway. Rather, the evidence shows that Opposer and Cab Calloway appeared on the same stage on three occasions: (1) at Coppin State College in Baltimore, (2) at Kennedy Center, and (3) at Jordan Hall in Boston. Applicant requires discovery to take a position on whether Opposer repeatedly performed with Cab Calloway.

3. A full-time musician, Mr. Brooks performs with his musical ensemble THE CAB CALLOWAY ORCHESTRA.

Response: Undisputed. Applicant does not dispute this allegation. However, Applicant points out that Opposer also regularly performs under band names other than THE CAB CALLOWAY ORCHESTRA such as the Cab Jivers.

4. Mr. Brooks is the sole proprietor, musical director and lead performer of the Orchestra.

Response: Undisputed.

5. Since December 1998, and prior to any date upon which Applicant can rely, Opposer has been using the mark THE CAB CALLOWAY ORCHESTRA continuously with the Orchestra's live musical performances.

Response: Applicant requires discovery to take a position on this proposed statement of fact. Opposer proffers three documents entitled "Agreement[s] Between Sponsor and Artist" as evidence that Opposer allegedly has used the mark THE CAB CALLOWAY ORCHESTRA continuously since 1998. These agreements are not evidence of service mark usage. Further, the agreements specifically state "Artist is not liable for failure to appear or perform on the schedules [sic] date in the event of illness, sever weather, or other extreme or unusual conditions beyond artist control....The program is subject to change." These agreements do not even remotely show continuous service mark usage of THE CAB CALLOWAY ORCHESTRA from 1998. Even if Opposer did perform as he alleges at the Sleepy Hollow Country Club in Scarborough, New York, there is no evidence, other

than Opposer's word, that he used the service mark THE CAB CALLOWAY ORCHESTRA in connection with that performance. In the civil litigation between the parties, Opposer submitted evidence that he also performs under band names other than The Cab Calloway Orchestra such as the Cab Jivers. Moreover, while the advertisements attached as Exhibit 4 to Opposer's declaration do show (infringing) service mark use, the advertisements do not show use of THE CAB CALLOWAY ORCHESTRA in 1998 or 1999.

Further, there are other dates, in addition to the July 23, 1999 filing date, on which Applicant may rely upon for establishing prior trademark and service mark rights in the CAB CALLOWAY designation in connection with goods and services that were not at issue in the prior litigation including: (1) educational services in the field of the arts; (2) entertainment services in the nature of live musical and theatrical performance; (3) clothing; and (4) sound recordings. Declaration of Cabella Calloway Langsam, ¶¶ 3, 9, 10, 11, 12, 18, Exs. 1, 5, 6, 7, 12. Applicant must be allowed to develop the record during the testimony period to further establish its prior rights.

6. The Orchestra has performed professionally hundreds of times throughout the United States at venues ranging from New York to Illinois to California, including at such world-famous venues as Carnegie Hall, Lincoln Center and Birdland.

Response: Applicant requires discovery to take a position on this statement of fact. The evidence submitted in support of such performances does not show use of THE CAB CALLOWAY ORCHESTRA prior to Applicant's filing date, nor does it show use of the THE CAB CALLOWAY ORCHESTRA service mark hundreds of times prior to Applicant's filing date, or even that The Cab Calloway Orchestra has performed hundreds of times throughout the United States.

7. The Orchestra performs songs written and/or recorded by Cab Calloway, jazz standards by a variety of other artists, and Opposer's original songs and arrangements.

Response: Undisputed.

8. The Orchestra's performances have been advertised and promoted nationwide, including through Opposer's website, and have received favorable notices.

Response: Applicant requires discovery to take a position on this statement of fact. Applicant does not dispute that Opposer currently promotes The Cab Calloway Orchestra on his website. The advertisements for and reviews of Opposer's performances submitted by Opposer are not for any performances occurring before Applicant's filing date of July 23, 1999, nor is there any evidence that they were distributed nationwide prior to July 23, 1999.

9. Since at least as early as 1999, and prior to any date upon which Applicant can rely, Opposer has been using the mark THE CAB CALLOWAY ORCHESTRA continuously in connection with the sale of compact discs and videotapes.

Response: Applicant requires discovery to take a position on this statement of fact. Applicant does not dispute that since sometime in 1999 Opposer has made sporadic sales of compact discs and videos that have born that mark THE CAB CALLOWAY ORCHESTRA. In addition, Applicant must be afforded the opportunity to establish that, through its predecessors in interest, Applicant owns trademark and service mark rights in the CAB CALLOWAY mark in connection with various goods and services that predate Opposer's alleged first use of the mark THE CAB CALLOWAY ORCHESTRA.

10. Opposer has released two different compact discs to date, and roughly 2,000 copies have been sold throughout the United States.

Response: Opposer has only demonstrated the sale of at most twenty compact discs prior to Applicant's July 23, 1999 filing date.

11. Opposer has sold roughly 300-400 copies of his videotape to date throughout the United States.

Response: Opposer has only demonstrated the sale of at most six videotapes prior to Applicant's July 23, 1999 filing date.

12. Applicant is a Delaware limited liability company founded by its predecessor, Cab Calloway's third wife and widow Zulme Calloway, and her relatives to manage whatever rights she acquired (by will or otherwise) in Cab Calloway's name, likeness, voice and intellectual property.

Response: Disputed, only with respect to the characterization of Zulme Calloway as Cab Calloway's third wife. Zulme Calloway was Mr. Calloway's second wife.

13. On July 23, 1999, Applicant's predecessor filed intent-to-use application Serial No. 75/761, 159 (the "Application") to register CAB CALLOWAY.

Response: Undisputed.

14. The services in the Application are "[r]etail stores, retail outlets and on-line retail store services featuring compact discs, records, video tapes, cassettes, digital video and audio discs, and other home entertainment related products; distribution of pre-recorded comedies, musicals and dramas on video tapes, cassettes, digital video and audio discs, CD-ROM; distribution of pre-recorded theatrical musicals, comedies and dramas on video tapes, cassettes, digital video and audio discs, CD-ROM; and distribution of pre-recorded music, drama, comedy and variety shows on video tapes, cassettes, digital video and audio discs and CD-ROM" in International Class 35, and "[e]ntertainment services in the nature of multimedia entertainment software production services, scheduling of programs on a global computer network; production and distribution of live music concerts, comedy, and dramatic series; production of live music concerts and live theatrical plays; production of radio and television programs; production of videotapes and sound recordings, namely, phonograph records, pre-recorded audio tapes, compact discs, videotapes, digital audio tapes, compact disc videos, and laser discs; production and distribution of motion pictures; production of comedies, musicals and dramas; scheduling television and radio programming; production of music, drama, comedy and variety shows; theatrical production of musicals, comedies and dramas" in International Class 41.

Response: Undisputed.

15. On February 20, 2001, Applicant's predecessor filed an amendment to the Application to allege use of the mark on "all the goods/services listed in the Application/Notice of Allowance," claiming a first use date of January 1, 1928 and a first use in commerce date of January 1, 1929.

Response: Undisputed for present purposes.

16. The amendment was false, since it asserted use of the mark since 1928 on items such as “on-line retail store services featuring compact discs...video tapes [and] digital video and audio discs” (e.g., *id.*, 10/3/00 Action Letter) that clearly did not exist as of the claimed date of first use.

Response: Undisputed; however, Applicant denies any implication that Applicant intended to defraud the Trademark Office.

17. On April 16, 2001, Applicant filed suit against Opposer in the United States District Court for the Southern District of New York.

Response: Undisputed.

18. In the Civil Action, Applicant did not dispute that Opposer had been using THE CAB CALLOWAY ORCHESTRA in connection with his entertainment services since 1998, and in connection with his compact discs and videotapes since 1999.

Response: When Opposer began using THE CAB CALLOWAY ORCHESTRA was not an issue in the litigation, was not litigated, and was not material to the outcome of the case.

19. In the Civil Action, Applicant admitted that a likelihood of confusion exists between Applicant’s alleged mark CAB CALLOWAY used in connection with entertainment services and Opposer’s mark THE CAB CALLOWAY ORCHESTRA used in connection with goods and entertainment services.

Response: Undisputed.

20. Applicant’s suit was dismissed by the U.S. District Court for the Southern District of New York on summary judgment on December 11, 2001.

Response: Undisputed.

21. The basis for the dismissal was that as of the time of the suit Applicant had no rights in and had made no use of CAB CALLOWAY as a mark.

Response: Disputed. The basis of the dismissal was that Applicant had no *service* mark rights in CAB CALLOWAY in connection with *entertainment services* because Mr. Cab Calloway’s will did not transfer an ongoing business to Ms. Zulme Calloway (“Cab Calloway had not provided in

his will for the continuation of his orchestra or other entertainment services”) and Zulme Calloway did not continue Mr. Calloway’s entertainment services after his death (“The will did not contemplate that Mrs. Calloway would continue in the position of directing the band, and there is no evidence that she was capable of doing so.”). See *Creative Arts by Calloway, LLC v. Brooks*, No. 01 Civ 3192 (CLB) (S.D.N.Y. Dec. 11, 2001) (Memorandum & Order, p. 9). The district court also held that Opposer’s use of “Cab Calloway” in the designation THE CAB CALLOWAY ORCHESTRA was a descriptive fair use, not a service mark use. *Id.* at pp. 10-11. Whether Applicant had rights in contexts other than Mr. Calloway’s entertainment services was not at issue in the suit.

22. The decision was affirmed on appeal by the U.S. Court of Appeals for the Second Circuit on Oct. 11, 2002.

Response: Applicant does not dispute that the judgment was affirmed. The Second Circuit did note, however, that Opposer’s use of the designation THE CAB CALLOWAY ORCHESTRA was not a descriptive fair use.

23. Both the district court and appeals court in the Civil Action found that Opposer had commenced his use of THE CAB CALLOWAY ORCHESTRA for entertainment services in 1998.

Response: Disputed. The appeals court made no findings. With respect to any statements made by the district court, the issue of Opposer’s first use was not at issue in the Civil Action, was not litigated in the Civil Action, was not material to the outcome of the Civil Action, and is not precluded from determination in another action. At most, the district court’s statements regarding Opposer’s use of THE CAB CALLOWAY ORCHESTRA was dicta with no preclusive effect.

24. Both the district court and the appeals court in the Civil Action acknowledge Opposer’s use of THE CAB CALLOWAY ORCHESTRA as a mark in connection with live musical performances since 1998, as well as Opposer’s sale of compact discs and videotapes of his performances.

Response: Disputed. The appeals court made no findings. In addition, dispute to the extent Opposer is asserting that the date Opposer first began using THE CAB CALLOWAY ORCHESTRA in connection with live musical performances, compact discs, and videotapes was an issue in the Civil

Action, was litigated in the Civil Action, and was material to the outcome of the Civil Action. The date of Opposer's first use was not at issue in the Civil Action, was not litigated in the Civil Action, was not material to the outcome of the Civil Action, and is not precluded from determination in another action. Moreover, the district court's only reference to Opposer's compact discs and a videotape is "Defendant has released two compact discs and a videotape." See *Creative Arts by Calloway, LLC v. Brooks*, No. 01 Civ 3192 (CLB) (S.D.N.Y. Dec. 11, 2001) (Memorandum & Order, p. 3).

25. Applicant filed an amended statement of use for the Application on October 24, 2002, claiming use of the mark on all of the services in the Application except "[r]etail stores, retail outlets and on-line retail services," and claiming first use and first use in commerce dates of January 1, 1929.

Response: Undisputed.

26. On December 17, 2002, Applicant requested that its amendment to allege use be withdrawn and that the Application once again proceed to publication in connection with all services exclusively as an intent-to-use application under Section 1(b) of the Lanham Act.

Response: Undisputed.

27. The earliest priority date upon which Applicant can rely for the services set forth in the Application is the date it filed the Application, July 23, 1999.

Response: Disputed. Applicant, by and through its predecessor, does have certain rights in the CAB CALLOWAY mark that predate July 23, 1999, the exact dates and quantum of which will have to be established by further evidence. For instance, Applicant's licensee The Cab Calloway School of the Arts in Wilmington, Delaware, which adopted the name The Cab Calloway School of Arts in 1993, has used the CAB CALLOWAY designation under license in connection with a variety of products and services including shirts, jackets, school supplies, the production and presentation of concerts and theatrical performances, and education services, among other things. Langsam Decl. ¶¶ 9-12, Exs. 5-7.

28. The parties' marks considered in their entirety are nearly identical in appearance, sound, connotation and commercial impression.

Response: Undisputed.

29. In the Civil Action, Applicant stated that Opposer's mark THE CAB CALLOWAY ORCHESTRA is "deceptively similar or identical" to its own alleged mark CAB CALLOWAY, and that THE CAB CALLOWAY ORCHESTRA is a "variation or permutation" of CAB CALLOWAY.

Response: Undisputed.

30. Opposer's goods and services and the services set forth in the Application are identical or closely related.

Response: Undisputed.

31. Applicant stated in the Civil Action that Opposer is using THE CAB CALLOWAY ORCHESTRA "in connection with goods and services which are the same or related to the services of [Applicant]."

Response: Undisputed.

32. Opposer uses the mark THE CAB CALLOWAY ORCHESTRA in connection with entertainment services and prerecorded media—specifically, live musical performances, compact discs, and videotapes.

Response: Undisputed.

33. Purchasers of Opposer's goods and services are not any more sophisticated than the average consumer, and may include people who attend a concert on impulse when passing by a venue where Opposer is performing, or choose to buy a compact disc or videotape after seeing Opposer perform.

Response: Undisputed.

34. Opposer's goods and services are relatively inexpensive.

Response: Undisputed.

35. Opposer and his orchestra have earned roughly \$1 million in connection with his use of the mark THE CAB CALLOWAY ORCHESTRA for the Orchestra and for the sale of compact discs and videos over the course of six years.

Response: Opposer has offered no documentary support for this proposed statement of fact. Opposer has performed under a variety of names, only one of which is The Cab Calloway Orchestra, and has not offered any documentary evidence that the amount of the money he has allegedly earned is derived from his unauthorized use of the mark THE CAB CALLOWAY ORCHESTRA. Applicant requires discovery to take any position on this proposed statement of fact.

36. The Orchestra has broadcast nationally as part of the entertainment at the Preakness Stakes horse race, and recently performed a version of the "Jeopardy" theme in radio promotions for that television game show that were distributed nationally.

Response: Applicant requires discovery to take any position on this proposed statement of fact.

37. The Orchestra has received substantial media coverage.

Response: The evidence does not show that the Orchestra has received *substantial* media coverage, as Opposer has proffered only six new articles. Applicant requires discovery to take any position on this proposed statement of fact.

38. No third parties are using marks similar to THE CAB CALLOWAY ORCHESTRA for similar goods or services.

Response: Applicant's licensees make use of the mark CAB CALLOWAY in connection with various goods and services including clothing, educational services, and the production of musical concerts and theatrical performances. Langsam Decl., ¶¶ 9-12, 18, Exs. 5-7, 12.

39. Applicant has not yet made any use of CAB CALLOWAY as a mark.

Response: Disputed. See Langsam Decl., ¶¶ 9-12, 18, Exs. 5-7, 12.

40. There is and has been no consent, agreement or assignment between the parties.

Response: Undisputed.

41. There would be substantial potential confusion if Applicant were allowed to register CAB CALLOWAY for services similar or identical to the goods and services offered by Opposer under the mark THE CAB CALLOWAY ORCHESTRA.

Response: Applicant does not deny that the parties' claimed marks are confusingly similar. Applicant maintains, however, that the substantial potential for confusion is based on Opposer's infringing use.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing EXHIBIT A to APPLICANT'S MEMORANDUM IN OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT, has this 8th day of July 2005 been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business:

Barbara A. Solomon, Esq.
Evan Gourvitz, Esq.
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

A handwritten signature in cursive script, appearing to read "Cynthia Johnson", is written over a horizontal line.

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 13

and soon Cab Calloway's Cotton Club Orchestra took its place as the club's house band. Radio broadcasts of Cab Calloway's Cotton Club Orchestra helped propel my father to stardom. During the 1930s and '40s, my father's band included many legendary jazz players including Dizzy Gillespie. During the 1950s, my father starred in George Gershwin's Broadway musical "Porgy and Bess." He also starred in other Broadway productions including "Hello Dolly" and "The Pajama Game." My father's talent touched a new generation in 1980 when he was featured in the hit movie "The Blues Brothers." In the 1990s, my father appeared on Sesame Street as well as in Janet Jackson's music video for her song entitled *Alright*.

3. Over the course of my father's 60-year career, he authored or co-authored over one hundred compositions including the hit *Minnie the Moocher*, which features the popular "hi-de-hi-de-hi-de-hi / ho-de-ho-de-ho-de-ho" refrain. My father also released numerous records and record albums of his recorded music, many of which are still in circulation today. Attached hereto as Exhibit 1 are true and correct depictions of the packaging for various Cab Calloway recordings.

4. Cab Calloway was an inspired composer, performer, and band leader. He was very particular about his art, always striving to achieve a particular sound in his works. He worked tirelessly with his bands to create his unique style of jazz, and was incredibly meticulous about how his songs were performed and recorded. He had an uncanny ability to make his bands animated and dynamic, as he artfully brought the various band sections to life. In fact, he earned his first band leader position by jumping in as a band's "leader" when the actual leader was taking a break from rehearsal. The sound my father yielded from this band was so different and lively, my father eventually became the band's leader.

5. Cab Calloway treated his artists with great respect, took excellent care of them, and paid them well and on time. In addition, he was a strict disciplinarian, which earned him the nickname "Fess" – short for Professor – by his band members because of his rigorous work ethic and exacting standards.

6. In addition to his tremendous musical contributions, my father introduced “jive” into the American vernacular literally changing American culture forever. He authored the first Hepster’s Dictionary, which is a dictionary of jive terms. See Exhibit 2. My father was famous for his revolutionary combination of jive talk with scat singing.

7. My father’s reputation as an international jazz icon was acknowledged throughout his life in ways too numerous to detail. The following are just a few examples of the recognition and celebrity he received: (1) he was awarded the National Medal of Arts by President Clinton in 1994; (2) he was posthumously inducted into the International Jazz Hall of Fame; (3) in 1985, then Mayor of New York City, Ed Koch, presented a tribute to my father; and (4) he received numerous letters and commendations from fans and dignitaries, including a letter from the Governor of the State of New York in 1977 describing Cab Calloway as “one of our most distinguished citizens.” See Exhibit 3.

8. Because I was living in Delaware, my parents frequently visited me there and eventually moved from New York to Delaware, where my father died in 1994. In 1993, Cab Calloway became involved with the Creative and Performing Arts Middle School in the Red Clay Consolidated School District. Cab Calloway gave his time, talent and love to this school to encourage and foster the development of musical and creative talents of the young students of the school. Cab Calloway even participated in the ribbon-cutting ceremony for the school. See Exhibit 4.

9. In recognition of Cab Calloway’s involvement with the school and to honor his status as an international jazz icon, the Red Clay School District sought Cab Calloway’s permission to name the school “Cab Calloway School of the Arts.” Cab Calloway authorized the school to use his name as the name of the school.

10. Since October 1993, when The Red Clay Middle School for Creative and Performing Arts was renamed “Cab Calloway School of the Arts”, the school has continuously

operated under the name Cab Calloway School of the Arts, often abbreviated and referred to as "Cab Calloway" by school officials, students, and the community at large. See Exhibit 5.

11. Since at least 1994, the Cab Calloway School of the Arts has used CAB CALLOWAY as a service mark in connection with the production and presentation of theatrical plays and musical performances. Cab Calloway School of the Arts regularly performs musical concerts and theatrical plays both at the school and in a variety public venues. For example, Cab Calloway School of the Arts performing groups were chosen to sing before thousands of people in the Cathedral of St. John the Divine in Harlem at a memorial service in Cab Calloway's honor. The Cab Calloway School of the Arts performing groups have also entertained Hillary Rodham Clinton, performed with Bob McGrath from the original cast of Sesame Street, represented the State of Delaware with their dancing and singing at The Kennedy Center in Washington D.C., and have also worked with various world renowned musical artists. Attached hereto as Exhibit 6 are true and correct copies of news articles demonstrating the use of the CAB CALLOWAY service mark in connection with the production and presentation of musical and theatrical performances.

12. Cab Calloway and his successors in interest also authorized the Cab Calloway School of the Arts to sell various clothing items, school supplies, and other products bearing the CAB CALLOWAY mark. Cab Calloway School of the Arts currently sells clothing items and has done so since at least as early as 1994 pursuant to its license from Cab Calloway and his Estate to do so. See Exhibit 7.

13. From 1992 to 1994, I was the President of the Board of Directors of the Cab Calloway School of the Arts. Since that time I have been and continue to be an honorary member of the Board of Directors, as has my mother.

14. Another way my father's reputation has been recognized is through a \$250,000 scholarship fund set up by MBNA in my father's honor to provide talented and deserving Cab Calloway School of the Arts' students the opportunity to enrich and augment their experience and

learning of the arts during the summer months. Since 1995, this scholarship has been awarded to over 268 students. See Exhibit 8.

15. When Cab Calloway passed away in 1994, he bequeathed to my mother, Zulme, all his property, real personal and mixed, of whatever kind "including all royalties and residuals or other payments or rights to payment for the reproduction of my performances or any songs or lyrics or both in which I have any ownership or other rights" as well as all intellectual property rights he possessed. See Exhibit 9.

16. After my father passed away, we founded the Cab Calloway Foundation in 1995 to honor his legacy and to promote the arts and education. I am Chief Executive Officer of the Cab Calloway Foundation. Attached hereto as Exhibit 10 is a true and correct copy of the program distributed to attendees of the Cab Calloway Foundation Kick-off, which took place at Planet Hollywood in New York City in 1997.

17. In December 2000, my mother, my sister Chris Calloway, my husband and I formed Creative Arts by Calloway, LLC (hereinafter "CABC") to manage, promote, license and otherwise deal with the rights associated with the name, likeness, voice, and intellectual property rights belonging to Cab Calloway. I am the Managing Partner of CABC. My mother assigned all of her interests in my father's intellectual property, including all trademarks and service marks and associated goodwill, to CABC. See Exhibit 11.

18. One of CABC's predecessor in interest, Calloway Entertainment, granted a trademark license to Gear Ink to manufacture and sell T-shirts bearing the CAB CALLOWAY trademark. Gear Ink currently submits royalty checks to CABC as consideration for this license, and it has been sending such checks to my mother since at least 1996. See Exhibit 12.

19. As set forth above, CABC by and with its predecessors in interest and affiliated entities, has used the CAB CALLOWAY mark in connection with a variety of goods (e.g., sound recordings, clothing, and school supplies) and services (e.g., production and presentation of musical and theatrical performances, educational services, and scholarship awards) since long prior to Opposer's first use of THE CAB CALLOWAY ORCHESTRA.

I declare under penalty of perjury that the foregoing is true.

Executed this 24 day of June, 2005.


Cabella Calloway Langsam

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 14

Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,459,428

Registered June 12, 2001

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

COUNT BASIE ORCHESTRA

**COUNT BASIE ENTERPRISES, INC. (NEW YORK CORPORATION)
200 WEST 57TH STREET
NEW YORK, NY 10019**

FOR: PRERECORDED AUDIO TAPES FEATURING MUSIC, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-1-1936; IN COMMERCE 9-1-1936.

FOR: LIVE MUSICAL ENTERTAINMENT FEATURING PERFORMANCES BY AN ORCHESTRA, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-1-1936; IN COMMERCE 9-1-1936.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORCHESTRA", APART FROM THE MARK AS SHOWN.

"COUNT BASIE" IS THE NAME OF A DECEASED INDIVIDUAL "WILLIAM COUNT BASIE".

SER. NO. 75-906,651, FILED 2-2-2000.

DORITT L. CARROLL, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-07-01 15:49:32 ET

Serial Number: 75906651 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2459428

Mark (words only): COUNT BASIE ORCHESTRA

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2007-05-29

Filing Date: 2000-02-02

Transformed into a National Application: No

Registration Date: 2001-06-12

Register: Principal

Law Office Assigned: LAW OFFICE 115

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-05-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Count Basie Enterprises, Inc.

Address:

Count Basie Enterprises, Inc.

200 West 57th Street

New York, NY 10019

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES**International Class:** 009**Class Status:** Active

prerecorded audio tapes featuring music

Basis: 1(a)**First Use Date:** 1936-09-01**First Use in Commerce Date:** 1936-09-01**International Class:** 041**Class Status:** Active

live musical entertainment featuring performances by an orchestra

Basis: 1(a)**First Use Date:** 1936-09-01**First Use in Commerce Date:** 1936-09-01**ADDITIONAL INFORMATION****Disclaimer:** "ORCHESTRA"**Name Portrait Consent:** "Count Basie" is the name of a deceased individual "William Count Basie".**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

PROSECUTION HISTORY**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-05-29 - Section 8 (6-year) accepted & Section 15 acknowledged

2007-05-22 - Assigned To Paralegal

2007-04-23 - Section 8 (6-year) and Section 15 Filed

2007-04-23 - TEAS Section 8 & 15 Received

2006-10-17 - Case File In TICRS

2001-06-12 - Registered - Principal Register

2001-03-20 - Published for opposition

2001-03-07 - Notice of publication

2000-09-28 - Approved for Pub - Principal Register (Initial exam)

2000-07-12 - Communication received from applicant

2000-06-26 - Non-final action mailed

2000-06-20 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Dorothy M. Weber

Correspondent

Dorothy M. Weber

SHUKAT ARROW HAFER WEBER & HERBSMAN, LLP

111 WEST 57TH STREET, SUITE 1120

NEW YORK NY 10019

Phone Number: 2122454580

Fax Number: 2129566471

Mark: COUNT BASIE ORCHESTRA

Applicant: Count Basie Enterprises, Inc.

**Date of First Use
In Interstate
Commerce:** September 1, 1936

Class: 41

Services: Musical Entertainment Services namely in
all performance media. Live and recorded,
rendered by on orchestra.

COUNT BASIE ORCHESTRA



02-02-2000

U.S. Patent & TMO/TM Mail Ropt Dt. #26

TRADEMARK



75906651

75906651

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

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(5/87)

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US PATENT &
TRADEMARK OFFICE

**IN THE UNITED STATES
AND TRADEMARK OFFICE**

**Application for Registration of a
Trademark**

Mark: COUNT BASIE ORCHESTRA

Class: 41

Prepared by:

**Shukat Arrow Hafer & Weber, L.L.P.
111 West 57th Street
Suite 1120
New York, New York 10019
(212) 245-4580**

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

APPLICATION FOR REGISTRATION OF A SERVICE MARK

-----x
Mark: COUNT BASIE ORCHESTRA
Class: 41
-----x

TO THE COMMISSIONER OF PATENT AND TRADEMARKS:

Count Basie Enterprises, Inc., a New York Corporation, with its principal place of business located at 200 West 57th Street, New York, New York 10019.

The above identified applicant has adopted and is using the trademark mark shown in the accompanying drawing for :

Musical entertainment services in all performance media, live and recorded, rendered by an orchestra.

No claim is made to the exclusive right to use "orchestra" apart from the mark as shown. "Count Basie" is the name of a deceased individual "William Count Basie". Applicant was the owner of Registration No. 1,601,474 for the mark "Count Basie Orchestra" which mark was cancelled by virtue of applicant's inadvertent failure to renew.

Applicant requests that such mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The trademark was first used on goods on September 1, 1936; was first used in the sale or advertising of goods rendered in interstate commerce on September 1, 1936; and is now in use in such commerce.

The mark is used by affixing it to labels and in other ways common in the trade, and three (3) specimens showing the mark as actually used are presented herein.

POWER OF ATTORNEY

Applicant hereby appoints Dorothy M. Weber, Esq., an attorney at law admitted to practice under the laws of the State of New York, of the law firm SHUKAT ARROW HAFER & WEBER, located at 111 West 57th Street, Suite 1120, New York, New York 10019, as its attorney to prosecute this application for registration, to transact all business in the Patent and Trademark Office in connection therewith and to receive the certificate of registration.

DECLARATION

The undersigned declares: That he is the President of applicant corporation

and is authorized to execute this affidavit on behalf of the corporation. That he believes the corporation to be the owner of the trademark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; and that the fact set forth in this application are true.

It is further declared by the undersigned that all statements made herein of undersigned's own knowledge are true, and that all statements made on information and belief are believed to be true; and, further, that these statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S. Code 1001, and that such willful false statements may jeopardize the validity of this application or any registration issuing thereon.

Dated: This 18th day of January, 2000.

COUNT BASIE ENTERPRISES, INC.

By: Aaron A. Woodward III
Aaron A. Woodward, III

Sworn to before me this
18th day of January, 2000.

[Signature]
NOTARY PUBLIC

Notary Public
State of New York
Jones E. Herbsman
My Commission Expires 9-14-00
Registration No 02HE5001706

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 75/906651		APPLICANT Count Basie Enterprises, Inc.		PAPER NO.	
MARK COUNT BASIE ORCHESTRA				ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov	
ADDRESS DOROTHY M. WEBER SHUKAT ARROW HAFER & WEBER 111 WEST 57TH STREET, SUITE 1120 NEW YORK, NEW YORK 10019			ACTION NO. 01	If no fees are enclosed, the address should include the words "Box Responses - No Fee." Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.	
			MAILING DATE 06/26/00		
			REF. NO.		
FORM PTO-1525 (5-00)		U.S. DEPT. OF COMM. PAT. & TM OFFICE			

PRIORITY ACTION

EXAMINING ATTORNEY Doritt Carroll	PERSON CALLED/INTERVIEWED Jonas Herbsman	TELEPHONE NUMBER (212) 245-4580
<input checked="" type="checkbox"/> TELEPHONE CALL	INTERVIEW DATE June 23, 2000	<input checked="" type="checkbox"/> ATTORNEY
<input type="checkbox"/> PERSONAL INTERVIEW		<input type="checkbox"/> APPLICANT

CALL RECORD/NOTES

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

RE: Serial Number 75/906651

This case will be given priority as an amended case if Applicant or applicant's attorney responds to the requirements stated below within two months of the above mailing date. In any event, a proper response to this Priority Action must be received within SIX MONTHS from the mailing date stated above in order to avoid ABANDONMENT.

Identification of Goods and Services

The identification of goods and services is unacceptable as indefinite. TMEP section 804. The applicant must distinguish between live musical performances, which are services classified in International Class 41, and recordings, which are goods classified in International Class 9. If accurate, the applicant may adopt the following identification:

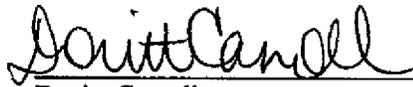
Prerecorded audio tapes featuring music, in International Class 9; and

Live musical entertainment featuring performances by an orchestra, in International Class 41.

Additional Fee Required

The application identifies goods and services that may be classified in several international classes. Therefore, the applicant must either: (1) restrict the application to the number of classes covered by the fee already paid, or (2) pay the required fee for each additional class. 37 C.F.R. Section 2.86(a)(2); TMEP sections 810.01 and 1113.01.

Effective January 10, 2000, the fee for filing a trademark application is \$325 for each class. This applies to classes added to pending applications as well as to new applications filed on or after that date. 37 C.F.R. Section 2.6(a)(1).



Doritt Carroll
Trademark Examining Attorney
Law Office 115, (703) 308-9115 x120

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AKI
JA

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

-----X

Applicant: Count Basie Enterprises, Inc.

Mark: COUNT BASIE ORCHESTRA

Serial No.: 75/906651

Class: 41

Examiner: Doritt Carroll, Esq.
Law Office 115

-----X

07-12-2000
U.S. Patent & TMO/TM Mail Rpt Dt #54

TRADEMARK LAW OFFICE 15
Serial Number: 75/906651
Mark: COUNT BASIE ORCHESTRA
Please Place on Upper Right Corner
**of Response to Office Action ONLY **

July 11, 2000

RESPONSE TO OFFICE ACTION

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Applicant adopts the examiner's recommendation as follows.

The description in the application is deleted and in its place and
stead the following:

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07/18/2000 EPIM1 0000065 75906651
01 FC:361 325.00 OP

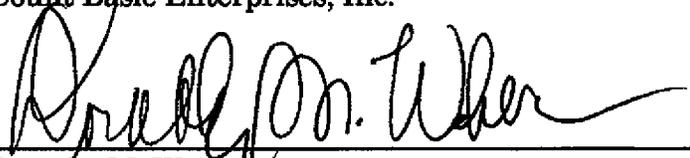
Prerecorded audio tapes featuring music, in International Class 9; and

Live musical entertainment featuring performances by an orchestra, in International Class 41.

Enclosed is a check in the sum of \$325.00 to add an additional class to the pending application.

Respectfully submitted,

Count Basie Enterprises, Inc.



By: Dorothy M. Weber
Shukat Arrow Hafer & Weber, L.L.P.
111 West 57th Street, Suite 1120
New York, NY 10019
(212) 245-4580
Attorneys for Count Basie Enterprises, Inc.

Christopher Brooks v. Creative Arts by Calloway, LLC, Opp. No. 91/160,266

Opposer's Exhibits to Notice of Reliance

EXHIBIT 15

Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,438,337

Registered Mar. 27, 2001

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

TOMMY DORSEY ORCHESTRA

TOMMY DORSEY PRODUCTIONS, INC. (DELA-
WARE CORPORATION)
9625 BROADWAY TERRACE
BAY HARBOR, FL 33154

FOR: SERIES OF PHONOGRAPH RECORDS,
COMPACT DISCS, PRE-RECORDED AUDIO CAS-
SETTES AND VIDEOTAPES, AND MOTION PIC-
TURES FEATURING MUSIC AND MUSICAL
PERFORMANCES, IN CLASS 9 (U.S. CLS. 21, 23, 26,
36 AND 38).

FIRST USE 3-31-1958; IN COMMERCE 3-31-1958.

FOR: ENTERTAINMENT SERVICES, NAMELY
LIVE MUSICAL PERFORMANCES RENDERED BY

AN ORCHESTRA, IN CLASS 41 (U.S. CLS. 100, 101
AND 107).

FIRST USE 3-31-1958; IN COMMERCE 3-31-1958.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "ORCHESTRA", APART FROM
THE MARK AS SHOWN.

THE NAME IN THE MARK IDENTIFIES A FA-
MOUS BAND AND ORCHESTRA LEADER NOW
DECEASED.

SER. NO. 75-890,818, FILED 1-7-2000.

LBSLEY LAMOTHE, EXAMINING ATTORNEY

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Serial Number: 75890818 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2438337

Mark (words only): TOMMY DORSEY ORCHESTRA

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2007-05-01

Filing Date: 2000-01-07

Transformed into a National Application: No

Registration Date: 2001-03-27

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-05-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. TOMMY DORSEY PRODUCTIONS, INC.

Address:

TOMMY DORSEY PRODUCTIONS, INC.

9625 BROADWAY TERRACE

BAY HARBOR, FL 33154

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES**International Class:** 009**Class Status:** Active

SERIES OF PHONOGRAPH RECORDS, COMPACT DISCS, PRE-RECORDED AUDIO CASSETTES AND VIDEOTAPES, AND MOTION PICTURES FEATURING MUSIC AND MUSICAL PERFORMANCES

Basis: 1(a)**First Use Date:** 1958-03-31**First Use in Commerce Date:** 1958-03-31**International Class:** 041**Class Status:** Active

ENTERTAINMENT SERVICES, NAMELY LIVE MUSICAL PERFORMANCES RENDERED BY AN ORCHESTRA

Basis: 1(a)**First Use Date:** 1958-03-31**First Use in Commerce Date:** 1958-03-31**ADDITIONAL INFORMATION****Disclaimer:** "ORCHESTRA"**Name Portrait Consent:** The name in the mark identifies a famous band and orchestra leader now deceased.**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

PROSECUTION HISTORY**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-05-16 - Undeliverable Mail - No Action Taken

2007-05-01 - Section 8 (6-year) accepted & Section 15 acknowledged

2007-03-27 - Assigned To Paralegal

2007-02-27 - Section 8 (6-year) and Section 15 Filed

2007-02-27 - TEAS Section 8 & 15 Received

2006-11-20 - Case File In TIGRS

2001-03-27 - Registered - Principal Register

2001-01-02 - Published for opposition

2000-12-01 - Notice of publication

2000-10-20 - Approved for Pub - Principal Register (Initial exam)

2000-10-10 - Examiner's amendment mailed

2000-06-21 - Non-final action mailed

2000-06-07 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Alison J. Dow

Correspondent

TOMMY DORSEY PRODUCTIONS, INC.

C/O Alison J. Dow

9625 BROADWAY TERRACE

BAY HARBOR, FL 33154

Applicant: TOMMY DORSEY PRODUCTIONS, INC.
P.O. Address: 9625 BROADWAY TERRACE
BAY HARBOR, FL 33154
Goods or Services: **CLASS 9:** SERIES OF PHONOGRAPH RECORDS, COMPACT DISCS, AND PRE-RECORDED AUDIO CASSETTE TAPES FEATURING MUSIC
CLASS 41: ENTERTAINMENT SERVICES, NAMELY, LIVE, FILMED, AND RECORDED MUSICAL PERFORMANCES RENDERED BY AN ORCHESTRA
Filing Basis: USE IN COMMERCE: SECTION 1(a)
Date of First Use Anywhere 03/31/1958
Date of First Use in Commerce 03/31/1958

TOMMY DORSEY ORCHESTRA



01-07-2000

U.S. Patent & TMOs/TM Mail Rcpt Dt. '47

TRADEMARK



75890818

NY119154 I

75890818

TRADEMARK APPLICATION SERIAL NO _____

**U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET**

01/14/2000 FMAX1 0000090 75890818
01 FC:361 490.00 DP

PTO-1555
(5/87)

LOEB & LOEB LLP

A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

345 PARK AVENUE
NEW YORK, NY 10154-0037

TELEPHONE: 212.407.4000
FACSIMILE: 212.407.4990
www.loeb.com

EXPRESS MAILING CERTIFICATE
I, Lisa E. Zeng, hereby certify that the foregoing documents
are being deposited with the United States Postal Service as Express Mail postage prepaid
in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal
Drive Arlington Virginia 22202-3513 on the date of 1/7/2000.

(Signature) Lisa E. Zeng
NAME Lisa E. Zeng
Address 345 Park Avenue
Express Mail Label Number 9501 2121
Date of Deposit 1/7/2000

Direct Dial: 212-407-4809
e-mail: azeng@loeb.com

January 7, 2000

VIA EXPRESS MAIL

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
ATTN: **BOX NEW APP/FEE**

Re: Use-Based Trademark Application for -
"Tommy Dorsey Orchestra" Classes 9 & 41

Ladies and Gentlemen:

Enclosed please find a trademark application for the above-referenced mark in Classes 9 & 41. Also enclosed please find a typed Drawing Page, a Power of Attorney, and specimens showing its use in commerce, along with a check in the amount of \$490 (\$245 x 2) to cover the prescribed filing fees.

Once these materials have been received, kindly return the enclosed, self-addressed, postage-paid postcard confirming your receipt of these materials.

If anything further is required, or if you have any questions, please feel free to call me at the above-stated telephone number.

Sincerely,

Anna Zeng

Anna Zeng
Legal Assistant
Loeb & Loeb LLP

JZ:jz
01905410001
NY121863.1

Enclosure

cc: Mr. Steve Dorsey
James R. Guerette, Esq.

NEW YORK
LOS ANGELES
NASHVILLE
TOKYO
ROME

~TRADEMARK/SERVICE MARK APPLICATION (15 U.S.C. §§ 1051, 1126(d)&(e))~

~To the Assistant Commissioner for Trademarks~

<APPLICANT INFORMATION>

<Name> Tommy Dorsey Productions, Inc.

<Street> 9625 Broadview Terrace

<City> Bay Harbor

<State> Florida

<Country> United States

<Zip/Postal Code> 33154

<Telephone Number>

<Fax Number>

<e-mail Address>

<APPLICANT ENTITY INFORMATION>~Select only ONE~

<Individual: Country of Citizenship>

<Corporation: State/Country of Incorporation> Delaware

<Partnership: State/Country under which Organized>

<Name(s) of General Partner(s) & Citizenship/Incorporation>

<Other Entity Type: Specific Nature of Entity>

<State/Country under which Organized>

<TRADEMARK/SERVICE MARK INFORMATION>

<Mark> TOMMY DORSEY ORCHESTRA

<Typed Form>~Enter YES, if appropriate~ YES

~DISPLAY THE MARK that you want to register on a separate piece of paper (even if simply a word(s))Please see additional HELP instructions

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<Use in Commerce: Section 1(a)>~Applicant is using the mark in commerce on or in connection with the below-identified goods and/or services (15 U.S.C. § 1501(a))

<International Class Number(s)> 9; 41

<Listing of Goods and/or Services>~List in ascending numerical class orderPlease see sample in HELP instructions

9: Series of phonograph records, compact discs, and pre-recorded audio cassette tapes featuring music

41: Entertainment services, namely, live, filmed, and recorded musical performances rendered by an orchestra

<Date of First Use Anywhere> 03/31/1958

<Date of First Use in Commerce> 03/31/1958

~Submit one (1) SPECIMEN for each international class showing the mark as used in commerce

<Intent to Use: Section 1(b)>~Applicant has a bona fide intention to use the mark in commerce on or in connection with the below-identified goods and/or services (15 U.S.C. § 1501(b))
<International Class Number(s)>
<Listing of Goods and/or Services>~List in ascending numerical class orderPlease see sample in HELP instructions

<Foreign Priority: Section 44(d)>~Applicant has a bona fide intention to use the mark in commerce on or in connection with the below-identified goods and/or services, and asserts a claim of priority based upon a foreign application in accordance with 15 U.S.C. § 1126(d)

<International Class Number(s)>
<Listing of Goods and/or Services>~List in ascending numerical class orderPlease see sample in HELP instructions

<Country of Foreign Filing>
<Foreign Application Number>
<Date of Foreign Filing>

<Foreign Registration: Section 44(e)>~Applicant has a bona fide intention to use the mark in commerce on or in connection with the below-identified goods and/or services based on registration of the mark in applicant's country of origin

<International Class Number(s)>
<Listing of Goods and/or Services>~List in ascending numerical class orderPlease see sample in HELP instructions

<Country of Foreign Registration>
<Foreign Registration Number>
<Foreign Registration Date>
<Foreign Registration Renewal Date>
<Foreign Registration Expiration Date>
~Submit foreign registration certificate or a certified copy of the foreign registration, in accordance with 15 U.S.C. §1126(e)

<FEE INFORMATION>

\$245.00 x <Number of Classes> 2 = <Total Filing Fee Paid> \$490

<SIGNATURE INFORMATION>

~Applicant requests registration of the above-identified mark in the United States Patent and Trademark Office on the Principal Register established by Act of July 5, 1946 (15 U.S.C. § 1051 et seq.) for the above-identified goods and/or services

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. § 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true

~Signature A Jane New Dorsey
<Date> January 6, 2000
<Name> Jane New Dorsey
<Title> President

<CONTACT INFORMATION>

<Name> James R. Guerette, Esq.
<Company/Firm Name> Loeb & Loeb LLP
<Street> 345 Park Avenue, 18th Floor
<City> New York
<State> New York
<Country> United States
<Zip/Postal Code> 10154-0037
<Telephone Number> 212-407-4861
<Fax Number> 212-407-4990
<e-Mail Address> jguerette@loeb.com

The information collected on this form allows the PTO to determine whether a mark may be registered on the Principal or Supplemental Register, and provides notice of an applicant's claim of ownership of the mark or bona fide intent to use the mark in commerce. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental Register. 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated seventeen to twenty-three minutes. Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number. (See bottom left side of this form)

NY1191541

POWER OF ATTORNEY

All communications and the Certificate of Registration in connection with the mark "TOMMY DORSEY ORCHESTRA" should be forwarded to the attention of James R. Guerette, Esq., Loeb & Loeb LLP, 345 Park Avenue, New York, New York, 10154.

Applicant hereby appoints the law firm of Loeb & Loeb LLP and William J. Marlow, David H. Carlin, James D. Taylor, Terri J. Seligman, Kenneth R. Florin, James R. Guerette, Philippa J. Smith, and Po Yi, members of the bar of the State of New York, with offices at 345 Park Avenue, New York, New York 10154, (212) 407-4000 and/or David Grace., a member of the bar of the State of California, with offices at 10100 Santa Monica Blvd., Suite 2200, Los Angeles, CA 90067-4164, (310) 282-2000, to prosecute this application, to transact all business in the United States Patent and Trademark Office in connection therewith and to receive the Certificate of Registration.

DATED: January 6, 2002

BY: 
Jane New Dorsey, President

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 75/890818		APPLICANT TOMMY DORSEY PRODUCTIONS, INC.		PAPER NO. 	
MARK TOMMY DORSEY ORCHESTRA		ADDRESS JAMES R. GUERETTE LOEB & LOEB LLP 345 PARK AVENUE, 18TH FLOOR NEW YORK NEW YORK 10154-0037		ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>	
FORM PTO-1525 (5-90)		U.S. DEPT. OF COMM. PAT. & TM OFFICE		ACTION NO. 01 MAILING DATE 06/21/00 REF. NO.	

Please provide in all correspondence:

1. Filing Date, serial number, mark and Applicant's name.
2. Mailing date of this Office action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and ZIP code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/890818

The assigned examining attorney has reviewed the referenced application and determined the following.

1. The applicant must insert a disclaimer of ORCHESTRA in the application. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP sections 1213 and 1213.09(a)(i).

A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use ORCHESTRA apart from the mark as shown.

2. If the name shown in the mark identifies a particular living individual, the applicant must submit a written consent from that individual, authorizing the applicant to register the name. If the name does not identify a living individual, the applicant should state so for the record. Trademark Act Section 2(c), 15 U.S.C. Section 1052(c); TMEP sections 813 and 1206.

PLEASE NOTE: All of the issues raised can be resolved by telephone. The applicant may telephone the examining attorney, instead of submitting a written response, to expedite the application.

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.



Lesley LaMothe
Trademark Attorney
Law Office
(703) 308-9103 ext. 186
(703) 308-7185 (fax)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 75/890818 APPLICANT TOMMY DORSEY PRODUCTIONS, INC. SH	PAPER NO. DA
MARK TOMMY DORSEY ORCHESTRA	ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>
ADDRESS JAMES R. GUERETTE LOEB & LOEB LLP 345 PARK AVENUE, 18TH FLOOR NEW YORK NEW YORK 10154-0037	ACTION NO. 02 <hr/> MAILING DATE 10/10/00 <hr/> REF. NO.
<small>FORM PTO-1525 (5-90)</small>	<small>U.S. DEPT. OF COMM. PAT. & TM OFFICE</small>

- Please provide in all correspondence:
1. Filing Date, serial number, mark and Applicant's name.
 2. Mailing date of this action.
 3. Examining Attorney's name and Law Office number.
 4. Your telephone number and ZIP code.

EXAMINER'S AMENDMENT

EXAMINING ATTORNEY	PERSON CALLED/INT. VIEWED	TELEPHONE NUMBER
Lesley LaMothe	James Guerette	
<input checked="" type="checkbox"/> TELEPHONE CALL	INTERVIEW DATE	<input checked="" type="checkbox"/> ATTORNEY
<input type="checkbox"/> PERSONAL INTERVIEW	October 6, 2000	<input type="checkbox"/> APPLICANT

CALL RECORD/NOTES

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

RE: Serial Number 75/890818

In accordance with the authorization granted by the above Applicant or attorney, the application has been **AMENDED** as indicated below. No response is necessary unless there is an objection to the amendment.

1. The name in the mark identifies a famous band and orchestra leader now deceased.
2. Disclaimer: No claim is made to the exclusive right to use ORCHESTRA apart from the mark as shown.

FMM
FMM



Lesley LaMothe
 Trademark Attorney
 Law Office
 (703) 308-9103 ext. 186
 (703) 308-7185 (fax)
 e-mail : lesley.lamothe@uspto.gov

LaMothe, Lesley

From: jguerette@loeb.com
Sent: Tuesday January 30, 2001 4:02 PM
To: lesley.lamothe@uspto.gov
Subject: Tommy Dorsey Orchestra

Lesley,

I received your voice mail message regarding application serial no. 75-890,818 for the above-referenced mark.

I would say that we should amend Class 41 to read as follows:
"Entertainment services, namely live musical performances rendered by an orchestra."

I'm fine with reclassifying the filmed performances to Class 9. I'm not sure how the description should read exactly. Can we say "Series of phonograph records, compact discs, pre-recorded audio cassettes and videotapes, and motion pictures featuring music and musical performances"? If there is some other way we need to describe this, please let me know.

If these descriptions are acceptable, please feel free to issue an Examiner's Amendment. If you have any questions or need any more information, please do not hesitate to let me know.

Thank you.

Jim Guerette
Loeb & Loeb LLP
345 Park Avenue
New York, NY 10154
212-407-4861

This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender. Please destroy the original transmission and its attachments without reading or saving in any manner. Thank you.

UNITED STATES PATENT AND TRADEMARK OFFICE

JAN 31 2001

75/890818 0000000 JAMES R GUERETTE LOEB & LOEB LLP 345 PARK AVE 18TH FL NEW YORK NY 10154-0037	PAPER NO. <div style="text-align: center; font-size: 2em; font-family: cursive;">7B</div> ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov If no fees are enclosed, the address should include the words "Box Responses - No Fee." Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.
---	--

EXAMINER'S AMENDMENT

EXAMINING ATTORNEY	PERSON CALLED/INTERVIEWED	TELEPHONE NUMBER
Lesley LaMothe	Jim Guerette	
<input checked="" type="checkbox"/> TELEPHONE CALL	INTERVIEW DATE	<input checked="" type="checkbox"/> ATTORNEY
<input type="checkbox"/> PERSONAL INTERVIEW	January 30, 2001	<input type="checkbox"/> APPLICANT

CALL RECORD/NOTES

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

RE: Serial Number 75/890818

In accordance with the authorization granted by the above Applicant or attorney, the application has been AMENDED as indicated below. No response is necessary unless there is an objection to the amendment.

Please amend the identification of goods and services as follows—

CLASS 9

Series of phonograph records, compact discs, pre-recorded audio cassettes and videotapes, and motion pictures featuring music and musical performances."

CLASS 41

"Entertainment services, namely live musical performances rendered by an orchestra."

REPUBLICATION IS NOT NECESSARY



Lesley LaMothe
 Trademark Attorney
 Law Office 103
 (703) 308-9103 ext. 186
 fax: 703-308-7185
 e-mail : lesley.lamothe@uspto.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **OPPOSER'S NOTICE OF RELIANCE with Exhibits 1 - 15** was served Express Mail No. EV 368951170 US postage prepaid and placed in a official depository under exclusive care and custody of the United States Postal Service within the State of New York upon:

Marc A. Karlin, Esq.
Karlin & Karlin
3701 Wilshire Blvd., Suite 1035
Los Angeles, CA 90010

on this 1st day of July 2008.


MARIO ORTIZ