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

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

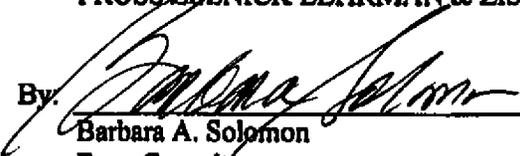
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|------------------------|--|
| Proceeding | 91160266 |
| Party | Plaintiff Christopher Brooks |
| Correspondence Address | EVAN GOURVITZ FROSS ZELNICK LEHRMAN & ZISSU, P.C. 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES egourvitz@frosszelnick.com, bsolomon@frosszelnick.com |
| Submission | Other Motions/Papers |
| Filer's Name | Evan Gourvitz |
| Filer's e-mail | egourvitz@frosszelnick.com,bsolomon@frosszelnick.com |
| Signature | /Evan Gourvitz/ |
| Date | 07/01/2008 |
| Attachments | Stipulation and Agreement to Submit Testimony of Witness (F0312909).PDF (19 pages)(649050 bytes) |

Dated: New York, New York
~~June 2, 2008~~
July 1, 2008

Respectfully submitted,

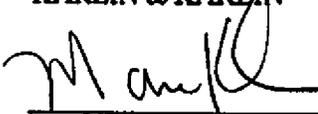
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June 19, 2008

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

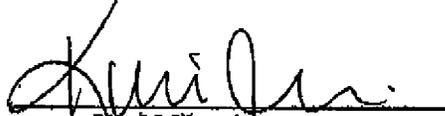
Opposer's Exhibits to Stipulation and Agreement to
Submit Testimony of Witnesses Called by Opposer by Declaration

EXHIBIT 1

4. On December 19, 1998, I first performed with Opposer and a five-piece band at the Sleepy Hollow Country Club in Scarborough, New York under the name THE CAB CALLOWAY ORCHESTRA. At the performance, a poster-sized display (roughly 2 feet by 3 feet) on an easel near the band prominently noted our performance under the name THE CAB CALLOWAY ORCHESTRA.
5. Thereafter, I performed with Opposer and his band under the name THE CAB CALLWAY ORCHESTRA at various venues, including performances that took place at the United Jewish Appeal (UJA) in Rye, New York on March 20, 1999 and at the Eubie Blake Cultural Center in Baltimore, Maryland on May 19, 1999. At both performances we were introduced as THE CAB CALLOWAY ORCHESTRA and Opposer repeatedly referred to us as THE CAB CALLOWAY ORCHESTRA during and at the close of the performance.
6. I would estimate that each of the three shows of THE CAB CALLOWAY ORCHESTRA noted above was attended by about 200 people.
7. During the May 19, 1999 performances at the Eubie Blake Cultural Center I saw Opposer advertising and selling both a compact disc and a videotape of the band's performances and handing out a business card bearing the name THE CAB CALLOWAY ORCHESTRA. The recordings used the name THE CAB CALLOWAY ORCHESTRA on their cover.
8. As a member of Opposer's band, I know that Opposer continues to sell these recordings, and additional CD and DVD recordings, under the name THE CAB CALLOWAY ORCHESTRA to the present day.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16 day of June, 2008 at Tokyo, Japan.


Kuni Mikami

0000228.1.13

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

Opposer's Exhibits to Stipulation and Agreement to
Submit Testimony of Witnesses Called by Opposer by Declaration

EXHIBIT 2

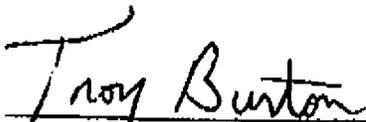
ORCHESTRA, to take place at the Center on May 19, 1999. Attached hereto as Exhibit A is a contract for that performance, noting that the artist was "Calloway Brooks and the Cab Calloway Orchestra."

4. The performance noted above did in fact take place on May 19, 1999, where Opposer and his band performed under the name THE CAB CALLOWAY ORCHESTRA. I was in the audience, along with about 200 other people, including children from three schools in the area. The audience for this show was composed not only of people from Maryland but from a variety of states and other U.S. territories. For example, I know that Reppert Stone, the chair of the Howard University music department and a resident of Washington D.C., attended that show.

5. After the performance, Opposer offered for sale compact discs and videotapes of the band's performances to the audience. I purchased ten of these compact discs and two of these videotapes, which were labeled with the name THE CAB CALLOWAY ORCHESTRA, for the Center. A photocopy of the receipt of that purchase is attached hereto as Exhibit B. Those compact discs and videotapes remain in the archives of the Center, where they may be viewed by visitors from around the United States and the world.

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

Executed this 18 day of June, 2008 at Baltimore, Maryland.



Troy Burton

(PG24397.1)2

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

Opposer's Exhibits to Testimonial Declaration of Troy Burton

EXHIBIT A

AGREEMENT BETWEEN SPONSOR AND ARTIST

This is to put in writing the arrangements which have been made between the parties Hereto:

SPONSOR: Eubie Blake Cultural Center
 SPONSOR REPRESENTATIVE: Troy Burton
 SPONSOR ADDRESS: 847 North Howard St, Baltimore MD
 SPONSOR TELEPHONE NUMBER(S): voice: 410-225-3130 fax: 410-225-3139
 ARTIST: Calloway Brooks and the Cab Calloway Orchestra
 ARTIST REPRESENTATIVE: Christopher Brooks
 ARTIST ADDRESS: 43 Myrtle Blvd, Larchmont, NY 10539
 ARTIST TELEPHONE NUMBER(S): voice: 914-833-3777 fax: 914-833-3777
 PLACE OF PERFORMANCE(S): Eubie Blake Center
 NAME OF HALL, ADDRESS OF STAGE ENTRANCE: TBA
 DATE AND TIME OF PERFORMANCE(S): May 19th 1999 10AM 2PM
 NATURE OF PERFORMANCE(S): Music of the Harlem Renaissance
 PROGRAM: Swing Dance Music
 DATE AND TIME OF SOUND CHECK REHEARSAL(S): approx 1 1/2 hours prior to performance
 ARTIST TO ARRIVE: Approx 1 1/2 hour prior to engagement
 ARTIST TO BE MET ON ARRIVAL BY: Troy Burton
 TECHNICAL REQUIREMENTS: Seating for ensemble, Electrical outlets,
 SPONSOR PROVIDED ACCOMMODATIONS: Light food and drink
 TOTAL SPONSOR PAYMENT TO ARTIST: of gross gate w/5 minimum/musicians
 MANNER OF PAYMENT: Cash prior immediately after performance.

Neither Artist is not liable for failure to appear or perform on the schedule (s) in the event of illness, adverse weather, or other extreme or unusual conditions beyond artist control. In such cases, the artist or it's representative will endeavor to make alternate arrangements. The program is subject to change. Sponsor will be notified of any changes as soon as possible. Kindly sign and return one copy of this contract, which will constitute a binding agreement under the laws of the State of New York when signed by all parties.

Cornell Murphy Sr. Per. Chris Brooks
 (Signature) (Signature)
March 2, 1999 March 2, 1999
 (Date) (Date)

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

Opposer's Exhibits to Testimonial Declaration of Troy Burton

EXHIBIT B

337051

| CUSTOMER'S ORDER NO. | | DATE 5/14/99 | | | | |
|--------------------------|-------------|--------------|--------|----------|-------------|----------|
| NAME Eubio Blake Carters | | | | | | |
| ADDRESS | | | | | | |
| CITY, STATE, ZIP | | | | | | |
| SOLD BY | CASH | C.O.D. | CHARGE | ON ACCT. | MOSE. RETD. | PAID OUT |
| AY | X | | | | | |
| QUAN. | DESCRIPTION | | | PRICE | AMOUNT | |
| 1 | 10 | C.C.O. CDS | | | 10 | 100.00 |
| 2 | 2 | C.C.O. VHS | | | 25 | 50.00 |
| 3 | | | | | | |
| 4 | | | | | | |
| 5 | | | | | | |
| 6 | | | | | | |
| 7 | | | | | | |
| 8 | | | | | | |
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| 12 | | | | | | |
| RECEIVED BY <i>MB</i> | | | | | | |

4705 KEEP THIS SLIP FOR REFERENCE

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

Opposer's Exhibits to Stipulation and Agreement to
Submit Testimony of Witnesses Called by Opposer by Declaration

EXHIBIT 3

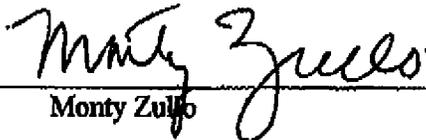
including in Westchester, New York and at Birdland in New York, New York.

4. In March 1999 I helped Mr. Brooks develop a marketing strategy for the Orchestra. In connection with that marketing strategy, in March 1999 my colleague Steve Collucci and I distributed a press packet advertising and promoting Mr. Brooks' band under the name THE CAB CALLOWAY ORCHESTRA to various industry contacts, including to people at Time Warner, William Morris, and ICM.

5. On May 22, 1999, I purchased five compact discs and two videotapes of the Orchestra's performances, all of which prominently bear the name THE CAB CALLOWAY ORCHESTRA. A photocopy of the receipt of that purchase is attached hereto as Exhibit A. These materials have been circulated among my contacts in the entertainment industry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of June, 2008 at Soufriere, St. Lucia.



Monty Zullo

(70305162.1)2

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

Opposer's Exhibits to Testimonial Declaration of Monty Zullo

EXHIBIT A

{F0311836.1 }

361112

| CUSTOMER'S ORDER NO. | | DATE | |
|----------------------|-------------|-----------|--------|
| NAME | | 5/22/99 | |
| ADDRESS | | | |
| CITY, STATE, ZIP | | | |
| SOLD BY | CASH | C.O.D. | CHARGE |
| CB | ✓ | | |
| ON ACCT. | MOSE. RETD. | PAID OUT | |
| | | | |
| QUAN. | DESCRIPTION | PRICE | AMOUNT |
| 1 | 2 | CCO Video | 25 50 |
| 2 | 5 | CCO CD's | 15 75 |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |
| 12 | | | |
| RECEIVED BY | | 15 10 | |
| CB | | | |

4705 KEEP THIS SLIP FOR REFERENCE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **STIPULATION AND AGREEMENT TO SUBMIT TESTIMONY OF WITNESSES CALLED BY OPPOSER BY DECLARATION with Exhibits 1 - 3** 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