

AFFIRMATIVE DEFENSES

4. As and for a first affirmative defense, the Opposition fails to state a cause of action upon which relief may be granted against Applicant/Respondent.

5. Applicant's services are in the nature of musical performances and Opposer is a professional baseball team whose goods and services relate primarily to professional baseball activities: the marks are not identical, the primary color "red" is quite common is not entitled to any substantial protection for either party, the goods and services of each are not substantially related and move in entirely different channels of trade - all of which makes it highly unlikely, if not impossible, that any confusion will result.

5. Any alleged damages suffered by Opposer are as a result of his own culpable conduct.

Dated: New York, New York
December 6, 2011

Respectfully submitted,

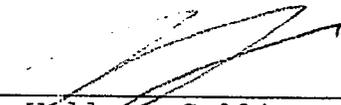
By:  _____

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Trademarks, Washington, D.C. 20231 on December 6, 2011.

Dated: December 6, 2011

By: 
Name: Wallace Collins, Esq.