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

Proceeding	91205896
Party	Defendant Wild Brain Entertainment, Inc.
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Submission	Motion to Compel Discovery
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Signature	/William M. Merone/
Date	12/23/2014
Attachments	RENEWED Motion to Compel -- Motion.pdf(42394 bytes ) RENEWED Motion to Compel -- Exhibits A-C.pdf(5891956 bytes ) RENEWED Motion to Compel -- Exhibit D.pdf(4851728 bytes ) RENEWED Motion to Compel -- Exhibit E (Part 1).pdf(3476542 bytes ) RENEWED Motion to Compel -- Exhibit E (Part 2).pdf(4828943 bytes )

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

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BEAU L. TARDY,

Opposer,

Opp. No. 91205896

v.

WILD BRAIN ENTERTAINMENT, INC.

Applicant.

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**APPLICANT’S RENEWED MOTION TO COMPEL DISCOVERY**

Applicant, Wild Brain Entertainment, Inc., moves pursuant to Trademark Rule 2.120(e) for an order compelling Opposer, Beau L. Tardy, to answer the discovery served in this case. Even though the Board has ruled that Opposer’s prior “responses”—which merely comprised a series of boilerplate and identical objections on the grounds of relevancy—“indicate[d] a failure [by Opposer] to participate in good faith in the discovery process in this case,” and further detailed the type of information Opposer was obligated to provide in response to certain requests, *see* D.I. 43, pp. 6-8, Opposer has refused to provide interrogatory answers, in direct violation of Federal Rule 33(b), or to confirm that he has produced all responsive documents, in violation of Federal Rule 34(b). Repeated efforts by Wild Brain to get Opposer to acknowledge and comply with his discovery obligations have been unsuccessful. Board intervention is thus needed again.

## BACKGROUND

Wild Brain served interrogatories and document requests on Opposer on February 12, 2014. *See* D.I. 39, Exs. A, B. Opposer, however, did not answer the interrogatories, and instead raised a series of boilerplate “relevancy” objections. *See* Exhibit A. Opposer similarly objected to Wild Brain’s document requests on relevancy grounds, and made his document production (limited as it was) “subject to” those objections. *See* Exhibit B. Unable to resolve this matter, Wild Brain eventually moved the Board to compel Opposer to respond. *See* D.I. 39.

On November 14, 2014, the Board ruled on Wild Brain’s motion. Because it believed that Wild Brain had not sufficiently tried to resolve the dispute before moving to compel (a conclusion with which Wild Brain respectfully disagrees; *see* D.I. 39, Ex I (Opposer refused to participate in a teleconference unless the interlocutory attorney assigned to this case was also involved); *but cf.* D.I. 43, pp. 2-3 (explaining that “Opposer’s refusal to participate in the parties’ meet and confer conference without participation by Board personnel [was] not well-taken”)), the Board denied Wild Brain’s motion to compel, but it did so without prejudice. *See* D.I. 43, p. 2. More important here, though, the Board expressly addressed Opposer’s “relevancy” objections, noting that Opposer’s assertion of “essentially identical objections” to each request showed “a failure to participate in good faith in the discovery process in this case.” *See id.*, p. 6.

The Board also discussed several of Wild Brain’s interrogatory requests and provided guidance as to what would constitute acceptable responses from Opposer. *See id.*, pp. 6-8. For example, in response to Interrogatory Nos. 6 and 8 (in which Wild Brain asked Opposer for quarterly sales and advertising/promotional figures for each good or service allegedly sold by Opposer under the DIZZY mark), the Board explained that “Opposer need only provide annual

figures in round numbers for each year since 2009 and may so provide under the Board's standard protective order," which it noted was operative in this case. *See id.*, pp. 7-8. And as to the interrogatories it did not discuss, the Board explained that the parties should not necessarily draw conclusions as to the propriety of the interrogatories as propounded, noting that the scope and applicability of those requests should be discussed by the parties. *See id.*, pp. 6-7.

Following issuance of the Board's Order, Wild Brain contacted Opposer and attempted to get discovery in this case back on track. To that end, Wild Brain sought to "arrange a process for securing responses to Wild Brain's outstanding discovery requests" and suggested that after Opposer served answers to the interrogatories and supplemental discovery response, the parties could meet and confer about any open issues that remained. *See Exhibit C(1)*. In response, Opposer served what he termed a "Supplemental Disclosure," which included certain additional documents, but no answers to Wild Brain's interrogatories or document requests. *See Exhibits C(2), D*. Undeterred, Wild Brain persisted, pointing out to Opposer that the Board explained that he had "a duty to correct or supplement his discovery responses as needed," *see Exhibit C(3)* (citing to D.I. 43, p. 8), and calling his attention to the requirements of Federal Rule 33(b) (which requires a party to answer each interrogatory, to the extent it is not objected to, "separately and fully in writing under oath") and Federal Rule 34(b) (which similar requires a written response). *See Exhibit C(5)*. Wild Brain also reminded Opposer of the fact that the Board *expressly discussed* certain interrogatories (and provided guidelines as to what would constitute proper responses), and agreed to limit the scope of certain other requests. *See Exhibits C(7), (10)*.

None of this, however, moved Opposer, who has remained steadfast in his view that his "Supplemental Disclosures" are sufficient. *See Exhibits C(4), (6), (11)*. Opposer also continues

to refuse to meet and confer, saying **again** that he will only do so with the involvement of “the Board attorney.” *See* Exhibit C(8); *but cf.* D.I. 43, pp. 2-3 (explaining that such a position was “not well-taken” and noting that “[t]he Board has neither the time nor the personnel to participate in meet and confer conferences to resolve parties’ discovery disputes as a matter of course”).

Thus, the parties are back where they started. Opposer has refused to provide answers to interrogatories and has only produced the documents that “will be used by” him at trial, rather than all documents in his possession, custody, or control responsive to Wild Brain’s document requests. *See* Exhibits C(10), C(11); *see also* Exhibit E (Opposer’s amended “Supplemental Disclosure”). Furthermore, Opposer has refused to meet and confer regarding these matters, although, to be fair, it is not clear how further discussions might resolve this dispute considering that Opposer refuses even to accept that he has an *obligation* to answer Wild Brain’s interrogatory requests (or provide supplemental answers to its document requests). *See generally* Exhibits C(1)-(11) (email exchanges between the parties over the course of two weeks).

## **ARGUMENT**

### **A. Opposer Has Failed to Provide Answers to Interrogatories**

The Federal Rules expressly state that “[e]ach interrogatory” served on a party “must, to the extent it is not objected to, be answered separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). Opposer’s only objection to Wild Brain’s interrogatories was that they all were supposedly not relevant to this case. *See* Exhibit A. That overarching and non-specific objection, however, has already been addressed and dismissed by the Board. *See* D.I. 43, p. 6.

Consequently, it was incumbent upon Opposer to provide sworn *answers* to each of Wild Brain's interrogatories, *see, e.g.*, Fed. R. Civ. P. 33(b)(3), and Wild Brain has repeatedly called on Opposer to do just that. *See* Exhibits C(1), C(3), C(5), C(7), C(10). In fact, the Board even *instructed* Opposer as to what was expected when he answered certain interrogatories. *See* D.I. 43, pp. 6-8 (Nos. 4, 6-8). Despite all of that, however, Opposer has **flatly refused** to answer the interrogatories posed, providing instead a self-serving declaration that resembles trial testimony and which does not address any the discovery questions posed. *See* Exhibits D, E.

This is not a case where the parties are quibbling over the meaning of a word here or there. Wild Brain repeatedly stated that if Opposer had legitimate concerns with the scope of the requests, those could easily have been discussed. *See* Exhibits C(1), C(3), C(5), C(7), C(10). Opposer, however, has taken the position that he is simply not *required* to provide interrogatory answers, although the reason Opposer has given for why he alone is exempt from the Federal Rules has changed several times. *See* Exhibits C(4) (asserting that “[t]he motion to compel was denied”) (*but see* D.I. 43, p. 2 [denying the motion “without prejudice”]), C(6) (claiming that responses were served) (*but see* Exhibit A [no answers]; D.I. 43, p. 6 [discussing Opposer’s “responses”]), C(8) (raising Wild Brain’s supposed discovery failings) (*but see* Exhibit C(10) [Opposer never said *why* Wild Brain’s discovery responses were insufficient]; TBMP, § 403.03 [explaining that a party is obligated to respond to a request for discovery even if the party’s adversary has also supposedly failed to respond to outstanding discovery]).

Opposer’s position is contrary to the law. *See* Fed. R. Civ. P. 33(b). Wild Brain thus respectfully requests that the Board compel Opposer to serve full and complete answers to all of the propounded interrogatories, subject to the limitations previously announced by the Board.

*See* D.I. 43, pp. 6-8 (limiting the scope of Interrogatory Nos. 4, 6-8) *see also* Exhibit C(7) (acknowledging the limitations imposed by the Board and describing what information Wild Brain believes Opposer is required to provide). Furthermore, Opposer should be estopped from raising any new objections to Wild Brain's requests. *See* TBMP, § 403.03 ("A party which fails to respond to interrogatories or document requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits."); *see also id.*, § 410; *Crane Co. v. Shimano Industrial Co.*, 184 USPQ 691, 691 (TTAB 1975) (party waived its right to object by refusing to respond to interrogatories).

**B. Opposer Has Failed to Respond Fully to the Document Requests**

Federal Rule 34(b) states that when responding to a request for the production of documents, a party, as to each item or category of documents requested, "must either state that inspection and related activities [*e.g.*, copying] will be permitted as requested or state an objection to the request, including the reasons." Fed. R. Civ. P. 34(b)(2)(B). And here, as before, *see supra*, the only "objections" Opposer raised to Wild Brain's document requests were that they all were supposedly not relevant. *See* Exhibit B. With those objections now having been resolved, *see* D.I. 43, p. 6, Opposer was therefore required to produce all documents in his possession, custody, or control (after performing a good faith search) that are responsive to one or more of Wild Brain's document requests. *See* Fed. R. Civ. P. 34(b). This is basic stuff.

Opposer, however, has refused to do so. Instead, Opposer served on Wild Brain a "Supplemental Disclosure" to which he attached "additional information and documents available **that will be used by** Opposer." *See* Exhibit E (emphasis added); *see also* Exhibit C(6)

(Opposer’s counsel similarly represented that “every document *that Opposer will be relying on to show standing*” had been produced) (emphasis added). This is *discovery*, however, not trial. Wild Brain is entitled to see any non-privileged documents in Opposer’s possession, custody, or control that are responsive to a document request. *See* Fed. R. Civ. P. 34(b). A party does not get to hold back responsive documents just because it has chosen not to “rely” on them at trial. After all, if a party could shield all of its potentially unhelpful documents that way, there’d be no point to discovery—the Rule would simply provide for pretrial disclosures and be done with it.

Opposer should be compelled to serve formal responses to each of the outstanding document requests and represent that he has searched for and produced all documents in his possession, custody, or control that are **responsive** to any of those requests, *irrespective* of whether Opposer intends to “rely” on them or not at trial. Furthermore, Opposer should be estopped from asserting new objections to Wild Brain’s requests. *See* TBMP, § 403.03.<sup>1</sup>

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<sup>1</sup> Wild Brain takes Opposer at his word that he will not present at trial any “information” or “documents” other than that which Opposer set out in his disclosures. *See* Exhibit E (Opposer stated that his Supplemental Disclosure “contains all the additional information and documents available that will be used by [him] except that information already provided in initial disclosures and already provided in discovery responses”); *see also* Exhibits C(4) (Opposer’s counsel acknowledged that Opposer’s “failure to provide information in disclosures or in response to discovery requests may mean that he is estopped from using it later”), C(6) (counsel represented that Opposer produced “every document that Opposer will be relying on to show standing”). However, that is not the point. Opposer must turn over all *responsive* documents, even those he doesn’t intend to use at trial.

## CONCLUSION

Opposer is represented by counsel. There is therefore no excuse for him to ignore his discovery obligations and flaunt the Federal Rules. The Board should therefore issue an order compelling Opposer's full compliance with the discovery process within thirty days, including by providing full narrative answers to each of the outstanding interrogatories and by certifying that Opposer has searched for and produced all documents responsive to Wild Brain's requests.

Respectfully submitted,

Dated: December 23, 2014

/William M. Merone/  
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*Counsel for Applicant,  
Wild Brain Entertainment, Inc.*

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Applicant's Renewed Motion to Compel Discovery* was served on the parties or counsel indicated below by electronic mail sent to the address(es) listed below (as agreed to by the parties):

Wendy Peterson  
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*Counsel for Opposer*

Dated: December 23, 2014

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*Counsel for Applicant,  
Wild Brain Entertainment, Inc.*

# **Exhibit A**

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

Opposition Proceeding 91205896

In the matter of Trademark Application No. 85509929

For the mark: DIZZY

Published for Opposition Date: June 5, 2012

**Beau Tardy, Opposer/Opposer**

v.

**Wild Brain Entertainment, Inc., Applicant**

**RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES**

Beau L. Tardy ("Opposer"), by its undersigned counsel, hereby objects and responds to Applicant Wild Brain Entertainment Inc's ("Opposer") Interrogatories, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Section 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office.

Opposer's responses are based upon the best information presently available to Opposer and within Opposer's possession, custody, or control. Where Opposer does not have information, response to any Request shall not be deemed to constitute an admission of any kind, that any responsive information does not exist, and/or that any statement or characterization in such response is complete. These responses are given without prejudice to further revision or supplementation of these responses by Opposer if further discovery or investigation so requires. These objections and responses are also provided without prejudice to any right of

Opposer to offer evidence on its behalf or to object to the relevance, competence, or admissibility on any ground of any evidence or witness offered by Applicant. Accordingly, Opposer reserves the right to rely, at the time of taking testimony or in other proceedings in this opposition, upon documents and evidence in addition to the material or information produced in response to these Requests, regardless of whether any such material or information is newly discovered or is presently in existence but not as yet located and produced despite diligent and good faith efforts.

Interrogatory No. 1

With respect to each business entity referenced in Paragraph 1 of the Notice of Opposition, identify and describe them in detail, including providing each such entity's name; particulars of each such entity's organization; the state under which each such entity was organized; each such entity's corporate status from 1996 to present; the effective date(s) and expiration or dissolution date(s) of same; and the officers and employees of each such entity from 1996 to present; and identify all documents relating thereto.

**Response 1:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 2

Describe in detail by year, beginning with your earliest alleged use, how, where, and in what form Opposer and/or Opposer's predecessors-in-interest used the DIZZY mark in commerce

in the United States for any business, good, or service, and identify documents sufficient to evidence such use by year for each such business, good, or services.

**Response 2:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 3

Identify the time periods that Opposer used the DIZZY mark as a “company name,” for any “merchandise,” “pop culture websites,” “cartoon character,” “TV show,” or “comics,” or for “streaming entertainment,” as set forth in your Amended Notice of Opposition, and identify specimens that evidence such use in connection with each of the above-listed goods or services for each year within each period the mark was so used for those goods or services, and all documents relating thereto.

**Response 3:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 4

Identify every outlet (whether retailer, distributor, individual websites, media outlet, online channel, etc.) through which any goods and services bearing or sold in connection with the DIZZY mark were distributed, sold, or offered for sale in the United States, including by

describing what goods or services were distributed, sold, or offered for sale through each such outlet and the dates those goods or services were distributed, sold, or offered for sale through each outlet, and identify all documents relating thereto.

**Response 4:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 5

Identify the person(s) most knowledgeable concerning the marketing, offering, distribution, and sale of goods and services bearing or sold in connection with the DIZZY mark in the United States, and identify all documents relating thereto.

**Response 5:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, the foregoing general and specific objections, Opposer identifies Beau Tardy as the person most knowledgeable and the documents identified as Document Production #1 in response.

Interrogatory No. 6

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, state by quarter (or if quarterly information is

not available, then by year) the quantity (if applicable) and total gross revenue generated by the distribution or sale of each such good or service in the United States, and identify all documents relating thereto.

**Response 6:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 7

For goods and services bearing or sold in connection with the DIZZY mark, identify for each year that each such good or service was distributed, sold, or offered for sale the specific geographic location(s) (i.e., city and state) in which such goods were sold or offered for sale in the United States and the dates each of those goods were offered for sale there, and identify all documents relating thereto.

**Response 7:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 8

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, state by quarter (or if quarterly information is not available, then by year) the total amount spent advertising or promoting each such good

or service in the United States and identify all of the advertising outlets (whether television station, radio station, Internet website, etc.) through which any such advertisements for the DIZZY mark were broadcasted or exhibited in the United States, and identify all documents relating thereto.

**Response 8:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 9

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify the persons with the most knowledge concerning such use (including first use) of the mark in the United States, and identify all documents relating thereto.

**Response 9:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify the person(s) with the most knowledge

concerning the marketing, promotion, and sale of such goods and services in the United States, and identify all documents relating thereto.

**Response 10:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 11

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify (including by providing contact information for) the manufacturer(s) of the goods and/or the provider of such including by indicating the period that each such manufacture or provider was responsible for the manufacture or provision of the goods or services, and identify all documents relating thereto.

**Response 11:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 12

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify (including by providing contact information for) the distributors, retailers, and/or other outlets to or through whom Opposer

has sold and/or distributed such goods and services in the United States, including by indicating the period that each such distributor, retailers, and/or other outlet was involved in the sale or distribution of the goods or services, and identify all documents relating thereto.

**Response 12:** Opposer objects to this Interrogatory in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

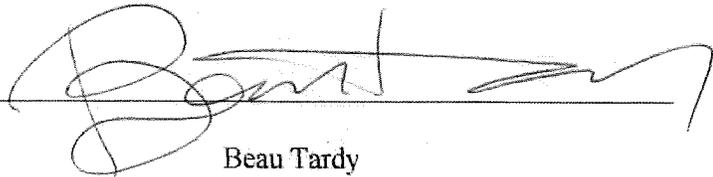
Interrogatory No. 13

Identify all persons who furnished any information used in responding to each of the foregoing interrogatories and to Wild Brain Entertainment, Inc.'s First Set of Document Requests, and for each person so identified, indicate the discovery request for which such person furnished information, and identify all documents referred to or considered in responding to the foregoing interrogatories.

**Response 13:** Opposer identifies Beau Tardy as the person who furnished all information.

I, Beau Tardy, believe based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information and belief. I verify under penalty of perjury that the foregoing is true and correct.

Executed this day 12 May 2014

  
Beau Tardy

Submitted By: /Wendy Peterson/

Date: May 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2014, the foregoing was served upon Applicant's attorney by email to:

JONATHAN D REICHMAN

KENYON & KENYON LLP

jreichman@kenyon.com, wmerone@kenyon.com, nsardesai@kenyon.com,

tmdocketny@kenyon.com

By: /Wendy Peterson/

Date: May 14, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

# **Exhibit B**

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

Opposition Proceeding 91205896

In the matter of Trademark Application No. 85509929

For the mark: DIZZY

Published for Opposition Date: June 5, 2012

**Beau Tardy, Opposer/Opposer**

v.

**Wild Brain Entertainment, Inc., Applicant**

**RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS**

Beau L. Tardy ("Opposer"), by its undersigned counsel, hereby objects and responds to Applicant Wild Brain Entertainment Inc's ("Opposer") Document Requests, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Section 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office.

Opposer's responses are based upon the best information presently available to Opposer and within Opposer's possession, custody, or control. Where Opposer does not have information, response to any Request shall not be deemed to constitute an admission of any kind, that any responsive information does not exist, and/or that any statement or characterization in such response is complete. These responses are given without prejudice to further revision or supplementation of these responses by Opposer if further discovery or investigation so

requires. These objections and responses are also provided without prejudice to any right of Opposer to offer evidence on its behalf or to object to the relevance, competence, or admissibility on any ground of any evidence or witness offered by Applicant. Accordingly, Opposer reserves the right to rely, at the time of taking testimony or in other proceedings in this opposition, upon documents and evidence in addition to the material or information produced in response to these Requests, regardless of whether any such material or information is newly discovered or is presently in existence but not as yet located and produced despite diligent and good faith efforts.

#### Request No. 1

Any and all documents and things which identify each person or entity which has held an ownership interest in Opposer's DIZZY mark at any time between 1996 and the present.

Response 1: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

#### Request No. 2

Any and all documents and things which comprise, reflect, or relate to the chain-of-title regarding ownership of Opposer's DIZZY mark between 1996 and the present.

Response 2: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 3

Any and all documents and things which reflect, confirm, or establish the use of DIZZY as a company name, as referred to in Paragraph 1 of the Amended Notice of Opposition.

Response 3: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 4

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with merchandise, as referred to in Paragraph 1 of the Amended Notice of Opposition.

Response 4: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 5

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with pop culture websites, as referred to in Paragraph 1 of the Amended Notice of Opposition.

Response 5: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 6

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with cartoon character, as referred to in Paragraph 1 of the Amended Notice of Opposition.

Response 6: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 7

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with TV show, as referred to in Paragraph 1 of the Amended Notice of Opposition.

Response 7: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 8

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with comics, as referred to in Paragraph 1 of the Amended Notice of Opposition.

Response 8: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 9

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with web streaming entertainment, as referred to in Paragraph 1 of the Amended Notice of Opposition.

Response 9: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 10

Any and all documents and things which support Opposer's allegation in Paragraph 2 that it produces cartoon characters (other than DIZZY) for entertainment purposes.

Response 10: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 11

Any and all documents and things which support Opposer's allegation in Paragraph 2 that it uses its cartoon characters to advertise collateral goods and entertainment services.

Response 11: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 12

Any and all documents and things which reflect, confirm, or establish Opposer's alleged common law rights in the goods identified in Paragraph 4.

Response 12: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 13

Any and all documents and things which reflect, confirm, or establish that Opposer's DIZZY mark "was first used anywhere in a different form other than that sought to be registered at least as early as 12/31/1996."

Response 13: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 14

Any and all documents and things which reflect, confirm, or establish that Opposer has used DIZZY in commerce “since at least 1996 . . . for Production [sic] of television commercials, television programs, cartoons, animations, games, screensavers and other forms of entertainment.”

Response 14: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 15

Any and all documents and things which identify the “predecessor-in-interest” referred to in Paragraph 5.

Response 15: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 16

Any and all documents and things which reflect, confirm, or establish the abandonment of rights by Opposer's predecessor-in-interest, as referred to in Paragraph 5.

Response 16: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 17

Any and all documents and things which reflect, confirm, or establish Opposer's "privity of interest" as referred to in Paragraph 5.

Response 17: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 18

Any and all documents and things which reflect the class of purchasers for Opposer's goods and services, as referred to in Paragraph 27.

Response 18: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 19

Any and all documents and things which comprise or relate to any search or clearance reports for the mark DIZZY obtained or procured by or on behalf of Opposer.

Response 19: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 20

Any and all documents and things which comprise, refer, or relate to Registrations Nos. 2,339,835 and 2,339,836, including without limitation any decision to allow such registrations to expire.

Response 20: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, all documents requested are available for download from the USPTO web site.

Request No. 21

With respect to each business entity referenced in Paragraph 1 of the Notice of Opposition, any and all documents and things which reflect each such entity's organization; the state under which each entity was organized; each entity's corporate status from 1996 to present; the effective date(s) and expiration or dissolution date(s) of same; and the officers and employees of each of the entities from 1996 to present.

Response 21: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 22

Any and all documents and things describing by year, beginning with your earliest alleged use, how, where, and in what form Opposer and/or Opposer's predecessors-in-interest used the DIZZY mark in commerce in the United States for any business, good, or service, and identify documents sufficient to evidence such use by year for each such business, good, or services.

Response 22: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 23

Any and all documents and things relating to the channel(s) of trade in connection with the sale of goods and services bearing or sold in connection with the DIZZY mark in the United States.

Response 23: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 24

Any and all documents and things identifying or listing every outlet (whether retailer, distributor, individual websites, media outlet, online channels, etc.) in the United States which have sold or offered for sale any goods and services bearing or sold in connection with the DIZZY mark.

Response 24: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 25

All invoices and purchase orders for goods and services bearing or sold in connection with the DIZZY mark in the United States.

Response 25: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 26

Any and all documents and things evidencing or relating to the total gross revenue generated from the sales of goods and services bearing or sold in connection with the DIZZY mark in the United States, by quarter (or if quarterly information is not available, then by year).

Response 26: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 27

Any and all documents and things evidencing or relating to the total number of units of Opposer's (or Opposer's predecessors in interest's) goods and services sold under the DIZZY mark in the United States, by quarter (or if quarterly information is not available, then by year).

Response 27: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 28

Any and all documents and things evidencing the geographic location(s) at which Opposer's (or Opposer's predecessors in interest's) goods and services have been sold under the DIZZY mark in the United States, by quarter (or if quarterly information is not available, then by year), including the dates each of those goods were offered for sale there.

Response 28: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 29

All annual, quarterly, monthly, and weekly sales reports and/or royalty reports for each of goods and services bearing or sold in connection with the DIZZY mark.

Response 29: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 30

Any and all documents and things comprising or regarding the marketing, promotion, or advertising of goods and services bearing or sold in connection with the DIZZY mark in the United States, including any and all expenditures therefor, by quarter (or if quarterly information is not available, then by year).

Response 30: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 31

Representative samples of all printed publications, television exhibitions, radio exhibitions, Internet exhibitions, and website pages relating to the advertising or promotion of the DIZZY mark in connection with Opposer's (or Opposer's predecessors in interest's) goods and services in the United States.

Response 31: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 32

Representative samples of each type of label, container, carton, tag, invoice, sticker, embossing, box, bag, packaging, silkscreen, or other means by which Opposer (including its predecessors-in-interest) has used the DIZZY mark in connection with Opposer's (or Opposer's predecessors in interest's) goods and services in the United States.

Response 32: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 33

Any and all documents and things relating to any time Opposer has ever challenged a third party regarding the use of the DIZZY mark (or other designation in which Opposer considered such mark to be in conflict with the DIZZY mark) in the United States, including, without limitation:

- (a) Any and all documents and things identifying the third party;
- (b) Any and all documents and things describing the designation used and the goods or services in connection with which it is or was used;
- (c) Any and all documents and things describing the nature of the action taken by Opposer, including, without limitation any and all protest letters sent by Opposer or legal proceedings instituted by Opposer; and
- (d) Any and all documents and things describing the results, if any, of said action.

Response 44: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 34

Any and all documents and things relating to any time Opposer has ever been challenged by a third party regarding the use of the DIZZY mark (or other designation in which the challenger considered such mark to be in conflict with the DIZZY mark) in the United States, including, without limitation:

(e) Any and all documents and things identifying the third party;

(f) Any and all documents and things describing the designation used and the goods or services in connection with which it is or was used;

(g) Any and all documents and things describing the nature of the action taken by Opposer, including, without limitation any and all protest letters sent by Opposer or legal proceedings instituted by Opposer; and (h) Any and all documents and things describing the results, if any, of said action.

Response 34: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 35

Any and all licenses or permissions granted by Opposer (including its predecessors-in-interest) to any third party with respect to use of the DIZZY mark in the United States, including any related correspondence.

Response 35: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 36

Any and all documents and things concerning Applicant.

Response 36: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 37

Samples of goods and services that make use of the DIZZY mark in the United States.

Response 37: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 38

Any and all documents and things sufficient to identify the total number of goods and services, by quarter and by product or service name, sold and/or distributed to consumers under the DIZZY mark in the United States.

Response 39: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 39

Any and all documents and things sufficient to identify the compensation that Opposer has received, by quarter and by product or service name, for all goods and services sold and/or distributed under the DIZZY mark in the United States.

Response 39: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 40

Any and all documents and things sufficient to identify all persons involved in the distribution or sale of goods and services bearing or sold in connection with the DIZZY mark to consumers in the United States.

Response 40: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1.

Request No. 41

Any and all documents and things related to United States Trademark Application Serial No. 85/741,800.

Response 41: Opposer objects to this Document Request in that it seeks information that is neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of, the foregoing general and specific objections, Opposer has provided documents responsive to a reasonable interpretation of this request in Document Production #1 and documents that are downloadable from the USPTO web site.

Request No. 42

Any and all documents and things identified by Opposer in response to the Interrogatories which are not otherwise covered by these Requests.

Response 42: Not applicable.

Submitted By: /Wendy Peterson/

Date: May 14, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents LLC

PO Box 18716

Minneapolis, MN 55418

(651) 500-7590; [wsp@NJPLS.com](mailto:wsp@NJPLS.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2014, the foregoing was served upon Applicant's attorney by email to:

JONATHAN D REICHMAN

KENYON & KENYON LLP

jreichman@kenyon.com, wmerone@kenyon.com, nsardesai@kenyon.com,

tmdocketny@kenyon.com

By: /Wendy Peterson/

Date: May 14, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

# **Exhibit C(1)**

**From:** [Merone, William](#)  
**To:** "[Wendy Peterson](#)"; "[wsp@njpls.com](mailto:wsp@njpls.com)"  
**Cc:** [Reichman, Jonathan](#)  
**Subject:** Tardy v. Wild Brain (Opp. No. 91205896)  
**Date:** Tuesday, November 18, 2014 2:26:35 PM

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Ms. Peterson:

In the wake of the Board's order of November 14<sup>th</sup>, I wished to follow up with you and arrange a process for securing responses to Wild Brain's outstanding discovery requests. As you are aware, the Board explained that your client's objection on the overarching ground of relevance was not well taken, noting that "Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which [sic] relies to plead standing and claims herein." (p. 6). At that same time, though, the Board signaled that certain Wild Brain requests were "clearly excessive," particularly those that were unlimited in time.

With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce "representative samples" of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

If this is acceptable, please let me know and confirm when we should expect to receive your revised discovery responses. I would suggest that a week should be long enough, although with the holidays I see no reason not to extend the time until **Monday, December 1<sup>st</sup>**. That way we could look to hold a discovery conference during the latter part of that week and still leave sufficient time before the close of discovery for further motion practice should it be needed.

I look forward to your response.

-- Wm. Merone

**William M. Merone**  
**Counsel | Trademarks & Copyrights**  
**Kenyon & Kenyon LLP**  
1500 K Street, NW | Washington, DC 20005-1257  
202.220.4270 Office | 202.220.4201 Fax  
[wmerone@kenyon.com](mailto:wmerone@kenyon.com) | [www.kenyon.com](http://www.kenyon.com)

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# **Exhibit C(2)**

**From:** [Wendy Peterson](#)  
**To:** [Merone, William](#)  
**Cc:** [Reichman, Jonathan](#)  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)  
**Date:** Friday, November 21, 2014 12:05:52 PM  
**Attachments:** [Supplemental Disclosure with Exhibit A Sample of DIZZY uses from 2006-2014.pdf](#)

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Dear Mr. Merone,

The Board recommended that my client do further supplemental disclosures regarding his use of DIZZY as a competitor in the years before the filing of the opposition. Attached is a declaration with samples of use from Beau Tardy in response to the Board's suggestion.

For your convenience I saved this in a reduced format so that it could be viewed all as one file and so that it could be transmitted via email rather than CDs.

Wendy

On Tue, Nov 18, 2014 at 1:26 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

In the wake of the Board's order of November 14<sup>th</sup>, I wished to follow up with you and arrange a process for securing responses to Wild Brain's outstanding discovery requests. As you are aware, the Board explained that your client's objection on the overarching ground of relevance was not well taken, noting that "Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which [sic] relies to plead standing and claims herein." (p. 6). At that same time, though, the Board signaled that certain Wild Brain requests were "clearly excessive," particularly those that were unlimited in time.

With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce "representative samples" of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

If this is acceptable, please let me know and confirm when we should expect to receive your revised discovery responses. I would suggest that a week should be long enough, although with the holidays I see no reason not to extend the time until **Monday, December 1<sup>st</sup>**. That way we could look to hold a discovery conference during the latter part of that week and still leave sufficient time before the close of discovery for further motion practice should it be needed.

I look forward to your response.

-- Wm. Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

**Kenyon & Kenyon LLP**

1500 K Street, NW | Washington, DC 20005-1257

[202.220.4270](tel:202.220.4270) Office | [202.220.4201](tel:202.220.4201) Fax

[wmerone@kenyon.com](mailto:wmerone@kenyon.com) | [www.kenyon.com](http://www.kenyon.com)

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# **Exhibit C(3)**

## Merone, William

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**From:** Merone, William  
**Sent:** Monday, November 24, 2014 4:12 PM  
**To:** 'Wendy Peterson'  
**Cc:** Reichman, Jonathan  
**Subject:** RE: Tardy v. Wild Brain (Opp. No. 91205896)

Ms. Peterson:

I acknowledge receipt of your client's "Supplemental Disclosure." However, I have not yet received amended responses to our written discovery requests. Please advise when we should expect to receive that material. As I noted, if we could receive responses by December 1<sup>st</sup>, we could meet and confer later that week.

Regarding your statement that that "[t]he Board recommended that [your] client do further supplemental disclosures regarding his use of DIZZY," I am not aware of any such statement in the Board's order. Regardless, providing further disclosure does not relieve Opposer from his obligation to respond to the written discovery requests (including, but not limited to, the interrogatories). To the contrary, the Board clearly stated that "Opposer has a duty to correct or supplement **his discovery responses** as needed," citing to Federal Rule 26(e). See Order, p. 8 (emphasis added). In other words, the Board (like Applicant) is expecting that Opposer will serve amended responses to the pending discovery requests now that Opposer's overarching relevancy objection has been rejected. See Order, p. 6 (noting that Opposer is "required to respond to discovery requests **and** produce documents") (emphasis added). After Opposer has served his responses, the parties can then hold a conference to discuss any objections raised with the goal of arriving at mutual agreement as to the scope of Opposer's obligations.

Please therefore advise when we can expect to receive amended responses both to Applicant's First Set of Document Request and to Applicant's First Set of Interrogatories.

Regards,

-- William Merone

**William M. Merone**  
**Counsel | Trademarks & Copyrights**  
**Kenyon & Kenyon LLP**  
1500 K Street, NW | Washington, DC 20005-1257  
202.220.4270 Office | 202.220.4201 Fax  
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**From:** Wendy Peterson [mailto:wspnjpls@gmail.com]  
**Sent:** Friday, November 21, 2014 12:04 PM  
**To:** Merone, William  
**Cc:** Reichman, Jonathan  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear Mr. Merone,

The Board recommended that my client do further supplemental disclosures regarding his use of DIZZY as a competitor in the years before the filing of the opposition. Attached is a declaration with samples of use from Beau Tardy in response to the Board's suggestion.

For your convenience I saved this in a reduced format so that it could be viewed all as one file and so that it could be transmitted via email rather than CDs.

Wendy

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Ms. Peterson:

In the wake of the Board's order of November 14<sup>th</sup>, I wished to follow up with you and arrange a process for securing responses to Wild Brain's outstanding discovery requests. As you are aware, the Board explained that your client's objection on the overarching ground of relevance was not well taken, noting that "Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which [sic] relies to plead standing and claims herein." (p. 6). At that same time, though, the Board signaled that certain Wild Brain requests were "clearly excessive," particularly those that were unlimited in time.

With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce "representative samples" of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

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I look forward to your response.

-- Wm. Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

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# **Exhibit C(4)**

## Merone, William

---

**From:** Wendy Peterson <wspnjpls@gmail.com>  
**Sent:** Monday, November 24, 2014 4:38 PM  
**To:** Merone, William  
**Cc:** Reichman, Jonathan  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear Mr. Merone,

The motion to compel was denied.

A supplement was provided that we believed was needed to clarify some issues ("as needed").

My client realizes fully that failure to provide information in disclosures or in response to discovery requests may mean that he is estopped from using it later.

On the subject of discovery, I believe that you have not fully responded to our discovery requests. Are you willing to be estopped if you do not provide them now? I don't know that the Board will be entertained by the lyrics to songs and the sketches provided. Lack of bona fide intent is shown by lack of documents, it is the easiest way to show it.

Wendy

On Mon, Nov 24, 2014 at 3:11 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

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I acknowledge receipt of your client's "Supplemental Disclosure." However, I have not yet received amended responses to our written discovery requests. Please advise when we should expect to receive that material. As I noted, if we could receive responses by December 1<sup>st</sup>, we could meet and confer later that week.

Regarding your statement that that "[t]he Board recommended that [your] client do further supplemental disclosures regarding his use of DIZZY," I am not aware of any such statement in the Board's order. Regardless, providing further disclosure does not relieve Opposer from his obligation to respond to the written discovery requests (including, but not limited to, the interrogatories). To the contrary, the Board clearly stated that "Opposer has a duty to correct or supplement **his discovery responses** as needed," citing to Federal Rule 26(e). See Order, p. 8 (emphasis added). In other words, the Board (like Applicant) is expecting that Opposer will serve amended responses to the pending discovery requests now that Opposer's overarching relevancy objection has been rejected. See Order, p. 6 (noting that Opposer is "required to respond to discovery requests **and** produce documents") (emphasis added). After Opposer has served his responses, the parties can then hold a conference to discuss any objections raised with the goal of arriving at mutual agreement as to the scope of Opposer's obligations.

Please therefore advise when we can expect to receive amended responses both to Applicant's First Set of Document Request and to Applicant's First Set of Interrogatories.

Regards,

-- William Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

**Kenyon & Kenyon LLP**

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**From:** Wendy Peterson [mailto:[wspnjpls@gmail.com](mailto:wspnjpls@gmail.com)]

**Sent:** Friday, November 21, 2014 12:04 PM

**To:** Merone, William

**Cc:** Reichman, Jonathan

**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear Mr. Merone,

The Board recommended that my client do further supplemental disclosures regarding his use of DIZZY as a competitor in the years before the filing of the opposition. Attached is a declaration with samples of use from Beau Tardy in response to the Board's suggestion.

For your convenience I saved this in a reduced format so that it could be viewed all as one file and so that it could be transmitted via email rather than CDs.

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With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce "representative samples" of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

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I look forward to your response.

-- Wm. Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

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# **Exhibit C(5)**

## Merone, William

---

**From:** Merone, William  
**Sent:** Tuesday, November 25, 2014 11:24 AM  
**To:** 'Wendy Peterson'  
**Cc:** Reichman, Jonathan  
**Subject:** RE: Tardy v. Wild Brain (Opp. No. 91205896)

Ms. Peterson:

Thank you for your reply. Opposer's supplement, however, is not a substitute for written discovery responses. Opposer has not provided answers to our First Set of Interrogatories, nor has he represented that he will produce all documents in his possession, custody, or control that are responsive to our Document Requests.

If your client's position is that he does not need to provide written answers to our interrogatories, please state the basis for that belief. The obligations imposed by the Federal Rules apply fully to Board proceedings, and Rule 33(b) requires a party to answer each interrogatory, to the extent it is not objected to, "separately and fully in writing under oath." Opposer has not done that. (Furthermore, the Board has already addressed the overarching "relevancy" objection he previously raised).

Similarly, Rule 34(b), which governs documents requests, states that "the party to whom the request is directed must respond in writing" and must "either state that inspection and related activities [*e.g.*, copying] will be permitted as requested or state an objection to the request, including the reasons." Opposer has not done that either, and Opposer's supplemental production is not a substitute.

While you write that you client "realizes fully that failure to provide information in disclosures or in response to discovery requests may mean that he is estopped from using it later," that does not justify his refusal to participate in the discovery process. And while we stand ready to review Opposer's written responses and to confer with you in good faith about the interrogatories and requests (which is what the Board expects), and to narrow them where applicable, we cannot do that until Opposer serves formal, written responses as required by the Federal Rules.

If Opposer does not intend to provide written responses to our requests, please advise so that we may revisit this issue with the Board. Otherwise, please let us know the date that we should expect to receive responses drafted in good faith so that we can look ahead to schedule a possible meet-and-confer conference.

Finally, regarding Unilever's responses to Opposer's requests, we are prepared to discuss those any time you wish. Please let us know which requests you would like to discuss and we can set up a mutually agreeable time the week of December 1<sup>st</sup>.

Regards,

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**To:** Merone, William  
**Cc:** Reichman, Jonathan  
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Please therefore advise when we can expect to receive amended responses both to Applicant's First Set of Document Request and to Applicant's First Set of Interrogatories.

Regards,

-- William Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

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**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

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Ms. Peterson:

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With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce "representative samples" of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

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I look forward to your response.

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**William M. Merone**

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# **Exhibit C(6)**

## Merone, William

---

**From:** Wendy Peterson <wspnjpls@gmail.com>  
**Sent:** Tuesday, November 25, 2014 12:27 PM  
**To:** Merone, William  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear William,

I served the responses to interrogatories and document requests on May 14, 2014. Are you claiming that you did not receive these?

You have every document that Opposer will be relying on to show standing. The rest of the proceeding is all about your client.

Wendy

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Regards,

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**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

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# **Exhibit C(7)**

## Merone, William

---

**From:** Merone, William  
**Sent:** Tuesday, November 25, 2014 3:12 PM  
**To:** 'Wendy Peterson'  
**Cc:** Reichman, Jonathan  
**Subject:** RE: Tardy v. Wild Brain (Opp. No. 91205896)

Ms. Peterson:

We, of course, are aware of Opposer's May 2014 responses, which we attached as Exhibits D and E to our Motion to Compel (D.I. 39). If you review Opposer's Responses to Interrogatories (*see id.*, Ex. E), however, you will note that Opposer did not provide written answers to any of the interrogatories we posed. Instead, Opposer simply raised the same "relevance" objection again and again.

Moreover, *the Board* was well aware of Opposer's responses when it issued its Nov. 14<sup>th</sup> order. See D.I. 43, p. 6 (observing that "[i]n response to the vast majority of Applicant's interrogatories, Opposer set forth essentially identical objections that each request is 'neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence'"). As the Board found, though, "[s]uch responses indicate **a failure to participate in good faith** in the discovery process in this case." *See id.* (emphasis added); *see also id.* ("Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which relies to plead standing and claims herein.").

Pursuant to Federal Rule 33(b), Opposer must therefore now provide an answer to each interrogatory, separately, in writing, and under oath. Opposer's continued refusal to do so is both unwarranted and sanctionable under Rule 37.

Indeed, I note that the Board has already given Opposer instructions as to what he must do when answering certain interrogatories. For example, the Board has said that Opposer does not need to "identify [his] customers" in response to **Rog. No. 4**. *See* D.I. 43, p. 7. As a result, we will accept from Opposer an answer in which he identifies every "type" of retail outlet (*e.g.*, department store, grocery store, music store, online retailer) through which any of his "DIZZY" goods or services have been offered, distributed, or sold since 2009, along with a description of the various goods and services offered, distributed, or sold through each of those types of outlets, along with the particular dates relating thereto.

For **Rog. No. 6** and **Rog. No. 8**, the Board stated that Opposer may respond by providing revenue and advertising figures as "annual figures in round numbers for each year since 2009 ...." D.I. 43, p. 7. And when answering **Rog. No. 7**, Opposer is to "identify the states in which he has distributed, sold, or offered for sale goods or services under the pleaded mark for each year since 2009." *See* D.I. 43, p. 8. We thus expect to see that information set forth in Opposer's responses as well.

As to the remaining interrogatories, Unilever is prepared to discuss them (as well as the outstanding document requests), consistent with the Board's order. If Opposer does not intend to answer each interrogatory in full, however, he must first state "with specificity" why he is not doing so, *see* Fed. R. Civ. P. 33(b)(4), thus allowing the parties to have meaningful discussions and address any legitimate concerns.

Thus, we will ask you once again to clearly state whether Opposer will be serving answers and amended responses to the propounded discovery request and when we can expect to receive them. With discovery set to close at the end of December, we need to get this process moving and resolved.

Regards,

-- Wm. Merone

**From:** Wendy Peterson [mailto:wspnjpls@gmail.com]  
**Sent:** Tuesday, November 25, 2014 12:27 PM  
**To:** Merone, William  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

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If Opposer does not intend to provide written responses to our requests, please advise so that we may revisit this issue with the Board. Otherwise, please let us know the date that we should expect to receive responses drafted in good faith so that we can look ahead to schedule a possible meet-and-confer conference.

Finally, regarding Unilever's responses to Opposer's requests, we are prepared to discuss those any time you wish. Please let us know which requests you would like to discuss and we can set up a mutually agreeable time the week of December 1<sup>st</sup>.

Regards,

-- Wm. Merone

**From:** Wendy Peterson [mailto:[wspnjpls@gmail.com](mailto:wspnjpls@gmail.com)]

**Sent:** Monday, November 24, 2014 4:38 PM

**To:** Merone, William

**Cc:** Reichman, Jonathan

**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear Mr. Merone,

The motion to compel was denied.

A supplement was provided that we believed was needed to clarify some issues ("as needed").

My client realizes fully that failure to provide information in disclosures or in response to discovery requests may mean that he is estopped from using it later.

On the subject of discovery, I believe that you have not fully responded to our discovery requests. Are you willing to be estopped if you do not provide them now? I don't know that the Board will be entertained by the lyrics to songs and the sketches provided. Lack of bona fide intent is shown by lack of documents, it is the easiest way to show it.

Wendy

On Mon, Nov 24, 2014 at 3:11 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

I acknowledge receipt of your client's "Supplemental Disclosure." However, I have not yet received amended responses to our written discovery requests. Please advise when we should expect to receive that material. As I noted, if we could receive responses by December 1<sup>st</sup>, we could meet and confer later that week.

Regarding your statement that that "[t]he Board recommended that [your] client do further supplemental disclosures regarding his use of DIZZY," I am not aware of any such statement in the Board's order. Regardless, providing further disclosure does not relieve Opposer from his obligation to respond to the written discovery requests (including, but not limited to, the interrogatories). To the contrary, the Board clearly stated that "Opposer has a duty to correct or supplement **his discovery responses** as needed," citing to Federal Rule 26(e). See Order, p. 8 (emphasis added). In other words, the Board (like Applicant) is expecting that Opposer will serve amended responses to the pending discovery requests now that Opposer's overarching relevancy objection has been rejected. See Order, p. 6 (noting that Opposer is "required to respond to discovery requests **and** produce documents") (emphasis added). After Opposer has served his responses, the parties can then hold a conference to discuss any objections raised with the goal of arriving at mutual agreement as to the scope of Opposer's obligations.

Please therefore advise when we can expect to receive amended responses both to Applicant's First Set of Document Request and to Applicant's First Set of Interrogatories.

Regards,

-- William Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

**Kenyon & Kenyon LLP**

1500 K Street, NW | Washington, DC 20005-1257

[202.220.4270](tel:202.220.4270) Office | [202.220.4201](tel:202.220.4201) Fax

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**From:** Wendy Peterson [mailto:[wspnjpls@gmail.com](mailto:wspnjpls@gmail.com)]  
**Sent:** Friday, November 21, 2014 12:04 PM  
**To:** Merone, William  
**Cc:** Reichman, Jonathan  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear Mr. Merone,

The Board recommended that my client do further supplemental disclosures regarding his use of DIZZY as a competitor in the years before the filing of the opposition. Attached is a declaration with samples of use from Beau Tardy in response to the Board's suggestion.

For your convenience I saved this in a reduced format so that it could be viewed all as one file and so that it could be transmitted via email rather than CDs.

Wendy

On Tue, Nov 18, 2014 at 1:26 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

In the wake of the Board's order of November 14<sup>th</sup>, I wished to follow up with you and arrange a process for securing responses to Wild Brain's outstanding discovery requests. As you are aware, the Board explained that your client's objection on the overarching ground of relevance was not well taken, noting that "Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which [sic] relies to plead standing and claims herein." (p. 6). At that same time, though, the Board signaled that certain Wild Brain requests were "clearly excessive," particularly those that were unlimited in time.

With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce "representative samples" of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

If this is acceptable, please let me know and confirm when we should expect to receive your revised discovery responses. I would suggest that a week should be long enough, although with the holidays I see no reason not to extend the time until **Monday, December 1<sup>st</sup>**. That way we could look to hold a discovery conference during the latter part of that week and still leave sufficient time before the close of discovery for further motion practice should it be needed.

I look forward to your response.

-- Wm. Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

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# **Exhibit C(8)**

## Merone, William

---

**From:** wspnjpls@gmail.com on behalf of Wendy Peterson <wsp@njpls.com>  
**Sent:** Wednesday, November 26, 2014 10:19 AM  
**To:** Merone, William; Reichman, Jonathan  
**Subject:** Your email

Dear Mr. Merone,

I got you last email but I'm not going to open it until I return from Chicago.

Please consider what I have proposed many times before: If you believe that there are some remaining issues regarding discovery, I would be pleased to discuss both parties production with the Board attorney. They are experts in these issues and any real concerns could be addressed and dealt with. Your multiple refusals to respond to our discovery requests are well documented. My multiple requests to take our meet and convey a step higher and meet with the Board attorney lead me to presume that all of your emails and objections are just for purposes of harassment and NOT for any real good faith attempt to resolve the issues. There are only so many ways for me to say that every document has been disclosed. There are no surprises coming. Standing is a very low threshold and my client will either make it or he won't.

I hope that you have a wonderful Thanksgiving. I plan to!

Wendy

# **Exhibit C(9)**

## Merone, William

---

**From:** Wendy Peterson <wspnjpls@gmail.com>  
**Sent:** Monday, December 01, 2014 10:12 AM  
**To:** Merone, William  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Mr. Merone,

Please address your own failures to provide relevant discovery.

Wendy Peterson

On Tue, Nov 25, 2014 at 2:12 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

We, of course, are aware of Opposer's May 2014 responses, which we attached as Exhibits D and E to our Motion to Compel (D.I. 39). If you review Opposer's Responses to Interrogatories (*see id.*, Ex. E), however, you will note that Opposer did not provide written answers to any of the interrogatories we posed. Instead, Opposer simply raised the same "relevance" objection again and again.

Moreover, *the Board* was well aware of Opposer's responses when it issued its Nov. 14<sup>th</sup> order. See D.I. 43, p. 6 (observing that "[i]n response to the vast majority of Applicant's interrogatories, Opposer set forth essentially identical objections that each request is 'neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence'"). As the Board found, though, "[s]uch responses indicate **a failure to participate in good faith** in the discovery process in this case." *See id.* (emphasis added); *see also id.* ("Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which relies to plead standing and claims herein.").

Pursuant to Federal Rule 33(b), Opposer must therefore now provide an answer to each interrogatory, separately, in writing, and under oath. Opposer's continued refusal to do so is both unwarranted and sanctionable under Rule 37.

Indeed, I note that the Board has already given Opposer instructions as to what he must do when answering certain interrogatories. For example, the Board has said that Opposer does not need to "identify [his] customers" in response to **Rog. No. 4**. See D.I. 43, p. 7. As a result, we will accept from Opposer an answer in which he identifies every "type" of retail outlet (*e.g.*, department store, grocery store, music store, online retailer) through which any of his "DIZZY" goods or services have been offered, distributed, or sold since 2009, along with a description of the various goods and services offered, distributed, or sold through each of those types of outlets, along with the particular dates relating thereto.

For **Rog. No. 6** and **Rog. No. 8**, the Board stated that Opposer may respond by providing revenue and advertising figures as “annual figures in round numbers for each year since 2009 ...” D.I. 43, p. 7. And when answering **Rog. No. 7**, Opposer is to “identify the states in which he has distributed, sold, or offered for sale goods or services under the pleaded mark for each year since 2009.” See D.I. 43, p. 8. We thus expect to see that information set forth in Opposer’s responses as well.

As to the remaining interrogatories, Unilever is prepared to discuss them (as well as the outstanding document requests), consistent with the Board’s order. If Opposer does not intend to answer each interrogatory in full, however, he must first state “with specificity” why he is not doing so, see Fed. R. Civ. P. 33(b)(4), thus allowing the parties to have meaning discussions and address any legitimate concerns.

Thus, we will ask you once again to clearly state whether Opposer will be serving answers and amended responses to the propounded discovery request and when we can expect to receive them. With discovery set to close at the end of December, we need to get this process moving and resolved.

Regards,

-- Wm. Merone

**From:** Wendy Peterson [mailto:[wspnjpls@gmail.com](mailto:wspnjpls@gmail.com)]  
**Sent:** Tuesday, November 25, 2014 12:27 PM  
**To:** Merone, William

**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear William,

I served the responses to interrogatories and document requests on May 14, 2014. Are you claiming that you did not receive these?

You have every document that Opposer will be relying on to show standing. The rest of the proceeding is all about your client.

Wendy

On Tue, Nov 25, 2014 at 10:24 AM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

Thank you for your reply. Opposer's supplement, however, is not a substitute for written discovery responses. Opposer has not provided answers to our First Set of Interrogatories, nor has he represented that he will produce all documents in his possession, custody, or control that are responsive to our Document Requests.

If your client's position is that he does not need to provide written answers to our interrogatories, please state the basis for that belief. The obligations imposed by the Federal Rules apply fully to Board proceedings, and Rule 33(b) requires a party to answer each interrogatory, to the extent it is not objected to, "separately and fully in writing under oath." Opposer has not done that. (Furthermore, the Board has already addressed the overarching "relevancy" objection he previously raised).

Similarly, Rule 34(b), which governs documents requests, states that "the party to whom the request is directed must respond in writing" and must "either state that inspection and related activities [e.g., copying] will be permitted as requested or state an objection to the request, including the reasons." Opposer has not done that either, and Opposer's supplemental production is not a substitute.

While you write that you client "realizes fully that failure to provide information in disclosures or in response to discovery requests may mean that he is estopped from using it later," that does not justify his refusal to participate in the discovery process. And while we stand ready to review Opposer's written responses and to confer with you in good faith about the interrogatories and requests (which is what the Board expects), and to narrow them where applicable, we cannot do that until Opposer serves formal, written responses as required by the Federal Rules.

If Opposer does not intend to provide written responses to our requests, please advise so that we may revisit this issue with the Board. Otherwise, please let us know the date that we should expect to receive responses drafted in good faith so that we can look ahead to schedule a possible meet-and-confer conference.

Finally, regarding Unilever's responses to Opposer's requests, we are prepared to discuss those any time you wish. Please let us know which requests you would like to discuss and we can set up a mutually agreeable time the week of December 1<sup>st</sup>.

Regards,

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**From:** Wendy Peterson [mailto:[wspnjpls@gmail.com](mailto:wspnjpls@gmail.com)]

**Sent:** Monday, November 24, 2014 4:38 PM

**To:** Merone, William

**Cc:** Reichman, Jonathan

**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear Mr. Merone,

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A supplement was provided that we believed was needed to clarify some issues ("as needed").

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Please therefore advise when we can expect to receive amended responses both to Applicant's First Set of Document Request and to Applicant's First Set of Interrogatories.

Regards,

-- William Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

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**From:** Wendy Peterson [mailto:[wspnjpls@gmail.com](mailto:wspnjpls@gmail.com)]  
**Sent:** Friday, November 21, 2014 12:04 PM  
**To:** Merone, William  
**Cc:** Reichman, Jonathan  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

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For your convenience I saved this in a reduced format so that it could be viewed all as one file and so that it could be transmitted via email rather than CDs.

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Ms. Peterson:

In the wake of the Board's order of November 14<sup>th</sup>, I wished to follow up with you and arrange a process for securing responses to Wild Brain's outstanding discovery requests. As you are aware, the Board explained that your client's objection on the overarching ground of relevance was not well taken, noting that "Opposer brought

this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which [sic] relies to plead standing and claims herein.” (p. 6). At that same time, though, the Board signaled that certain Wild Brain requests were “clearly excessive,” particularly those that were unlimited in time.

With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce “representative samples” of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

If this is acceptable, please let me know and confirm when we should expect to receive your revised discovery responses. I would suggest that a week should be long enough, although with the holidays I see no reason not to extend the time until **Monday, December 1<sup>st</sup>**. That way we could look to hold a discovery conference during the latter part of that week and still leave sufficient time before the close of discovery for further motion practice should it be needed.

I look forward to your response.

-- Wm. Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

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# **Exhibit C(10)**

## Merone, William

---

**From:** Merone, William  
**Sent:** Tuesday, December 02, 2014 10:07 AM  
**To:** Wendy Peterson  
**Cc:** Reichman, Jonathan  
**Subject:** RE: Tardy v. Wild Brain (Opp. No. 91205896)

Ms. Peterson:

As I wrote in my Nov. 25th email (below), we are certainly willing to discuss Applicant's discovery responses with you. However, you have not identified which of Applicant's responses were supposedly improper and (equally important) why. Applicant's position is that its objections and responses were proper, as was its production.

The fact that you wish to raise concerns over Applicant's responses, though, does not excuse Opposer from supplementing his own discovery responses. See TBMP 403.03. Thus, my question, which I have asked several times now, but to which you have not yet responded, still stands: **Will Opposer will be serving answers to our interrogatories and amended responses to our document requests?**

At this point, I must insist that you provide a yes/no answer.

As concerns the interrogatories, Opposer's obligation, as I've discussed, is to provide written answers (signed under oath), subject to the modifications in my previous email (and in the Board's order). See Fed. R. Civ. P. 33(b).

Regarding the document requests, Opposer must agree to produce all documents in his possession, custody, or control that are responsive to the requests or else stand on one or more previously-stated objections (if any), which can then be tested on a motion to compel. See Fed. R. Civ. P. 34(b)(2)(B). Opposer's representation that he has produced all of the documents on which he "will be relying to show standing" does not justify him withholding otherwise responsive documents, assuming any further documents exist. This is discovery, not trial.

As I have repeatedly stated, we are prepared to discuss the scope of Applicant's requests with you, but it is incumbent on Opposer first to respond to those requests. Please let us know what Opposer intends to do.

Regards,

William Merone

---

**From:** Wendy Peterson [wspnjpls@gmail.com]  
**Sent:** Monday, December 01, 2014 10:11 AM  
**To:** Merone, William  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Mr. Merone,

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Wendy Peterson

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Moreover, *the Board* was well aware of Opposer's responses when it issued its Nov. 14<sup>th</sup> order. See D.I. 43, p. 6 (observing that "[i]n response to the vast majority of Applicant's interrogatories, Opposer set forth essentially identical objections that each request is 'neither relevant to the claims or defense of any party or the subject matter involved in this opposition, nor reasonably calculated to lead to the discovery of admissible evidence'"). As the Board found, though, "[s]uch responses indicate **a failure to participate in good faith** in the discovery process in this case." *See id.* (emphasis added); *see also id.* ("Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which relies to plead standing and claims herein.").

Pursuant to Federal Rule 33(b), Opposer must therefore now provide an answer to each interrogatory, separately, in writing, and under oath. Opposer's continued refusal to do so is both unwarranted and sanctionable under Rule 37.

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Thus, we will ask you once again to clearly state whether Opposer will be serving answers and amended responses to the propounded discovery request and when we can expect to receive them. With discovery set to close at the end of December, we need to get this process moving and resolved.

Regards,

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**To:** Merone, William

**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear William,

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On Mon, Nov 24, 2014 at 3:11 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

I acknowledge receipt of your client's "Supplemental Disclosure." However, I have not yet received amended responses to our written discovery requests. Please advise when we should expect to receive that material. As I noted, if we could receive responses by December 1<sup>st</sup>, we could meet and confer later that week.

Regarding your statement that that "[t]he Board recommended that [your] client do further supplemental disclosures regarding his use of DIZZY," I am not aware of any such statement in the Board's order. Regardless, providing further disclosure does not relieve Opposer from his obligation to respond to the written discovery requests (including, but not limited to, the interrogatories). To the contrary, the Board clearly stated that "Opposer has a duty to correct or supplement **his discovery responses** as needed," citing to Federal Rule 26(e). See Order, p. 8 (emphasis added). In other words, the Board (like Applicant) is expecting that Opposer will serve amended responses to the pending discovery requests now that Opposer's overarching relevancy objection has been rejected. See Order, p. 6 (noting that Opposer is "required to respond to discovery requests **and** produce documents") (emphasis added). After Opposer has served his responses, the parties can then hold a conference to discuss any objections raised with the goal of arriving at mutual agreement as to the scope of Opposer's obligations.

Please therefore advise when we can expect to receive amended responses both to Applicant's First Set of Document Request and to Applicant's First Set of Interrogatories.

Regards,

-- William Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

**Kenyon & Kenyon LLP**

1500 K Street, NW | Washington, DC 20005-1257

[202.220.4270](tel:202.220.4270) Office | [202.220.4201](tel:202.220.4201) Fax

[wmerone@kenyon.com](mailto:wmerone@kenyon.com) | [www.kenyon.com](http://www.kenyon.com)

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**From:** Wendy Peterson [mailto:[wspnjpls@gmail.com](mailto:wspnjpls@gmail.com)]

**Sent:** Friday, November 21, 2014 12:04 PM

**To:** Merone, William  
**Cc:** Reichman, Jonathan  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)

Dear Mr. Merone,

The Board recommended that my client do further supplemental disclosures regarding his use of DIZZY as a competitor in the years before the filing of the opposition. Attached is a declaration with samples of use from Beau Tardy in response to the Board's suggestion.

For your convenience I saved this in a reduced format so that it could be viewed all as one file and so that it could be transmitted via email rather than CDs.

Wendy

On Tue, Nov 18, 2014 at 1:26 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

In the wake of the Board's order of November 14<sup>th</sup>, I wished to follow up with you and arrange a process for securing responses to Wild Brain's outstanding discovery requests. As you are aware, the Board explained that your client's objection on the overarching ground of relevance was not well taken, noting that "Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which [sic] relies to plead standing and claims herein." (p. 6). At that same time, though, the Board signaled that certain Wild Brain requests were "clearly excessive," particularly those that were unlimited in time.

With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce "representative samples" of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

If this is acceptable, please let me know and confirm when we should expect to receive your revised discovery responses. I would suggest that a week should be long enough, although with the holidays I see no reason not to extend the time until **Monday, December 1<sup>st</sup>**. That way we could look to hold a discovery conference during the latter part of that week and still leave sufficient time before the close of discovery for further motion practice should it be needed.

I look forward to your response.

-- Wm. Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

**Kenyon & Kenyon LLP**

1500 K Street, NW | Washington, DC 20005-1257

[202.220.4270](tel:202.220.4270) Office | [202.220.4201](tel:202.220.4201) Fax

[wmerone@kenyon.com](mailto:wmerone@kenyon.com) | [www.kenyon.com](http://www.kenyon.com)

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# **Exhibit C(11)**

## Merone, William

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**From:** Wendy Peterson <wspnjpls@gmail.com>  
**Sent:** Wednesday, December 03, 2014 1:51 PM  
**To:** Merone, William; Reichman, Jonathan  
**Subject:** Re: Tardy v. Wild Brain (Opp. No. 91205896)  
**Attachments:** Updated Supplemental Disclosure Beau Tardy with updated Exhibits.pdf

Mr. Merone,

We have updated the Supplemental Disclosure with the signed and sworn statement: 1. I have searched my records to provide responsive documents and answers to all of the discovery requests by Applicant. This declaration contains all the additional information and documents available that will be used by Opposer except that information already provided in initial disclosures and already provided in discovery responses. This declaration is being provided in response to a duty to supplement discovery responses in a timely manner because Opposer has learned that in some material respect the previous disclosures or responses may have been incomplete. This corrective information is being made known to Applicant as a part of the discovery process in writing under Fed. R. Civ. P. 26(e)(1)(A). HUNTER INDUSTRIES v. THE TORO COMPANY, 91203612 (TTAB 2014).

A disclosure that addresses corrective information does not have to take the form of an interrogatory response. Other than this additional paragraph, there are a few additional exhibit pages regarding Dizzy TV added at the end. Case law and Fed. R. Civ. P. 26(e)(1)(A) supports that this is a good faith and appropriate response.

Wendy

T

On Tue, Nov 18, 2014 at 1:26 PM, Merone, William <[WMerone@kenyon.com](mailto:WMerone@kenyon.com)> wrote:

Ms. Peterson:

In the wake of the Board's order of November 14<sup>th</sup>, I wished to follow up with you and arrange a process for securing responses to Wild Brain's outstanding discovery requests. As you are aware, the Board explained that your client's objection on the overarching ground of relevance was not well taken, noting that "Opposer brought this case and, in doing so, should have expected that he would be required to respond to discovery requests and produce documents to support the allegations upon which [sic] relies to plead standing and claims herein." (p. 6). At that same time, though, the Board signaled that certain Wild Brain requests were "clearly excessive," particularly those that were unlimited in time.

With the above in mind, and considering the short time remaining for discovery, I believe that the most logical way to proceed would be for Opposer to withdraw his relevance objections and to respond to each request anew, noting, if applicable, for which of the requests it would be unduly burdensome to provide a complete response. For its part, Wild Brain will stand ready to modify any overly broad requests (particularly those

identified by the Board) and will work with Opposer on an acceptable scope of response, which we can do by way of a traditional discovery conference. Furthermore, and as the Board noted, it would be proper for Opposer to produce “representative samples” of responsive documents in situations where the volume of responsive documents is otherwise voluminous, and if there are any requests for which no responsive documents exist, it would benefit all and simplify things if Opposer simply noted that fact in his formal response.

If this is acceptable, please let me know and confirm when we should expect to receive your revised discovery responses. I would suggest that a week should be long enough, although with the holidays I see no reason not to extend the time until **Monday, December 1<sup>st</sup>**. That way we could look to hold a discovery conference during the latter part of that week and still leave sufficient time before the close of discovery for further motion practice should it be needed.

I look forward to your response.

-- Wm. Merone

**William M. Merone**

**Counsel | Trademarks & Copyrights**

**Kenyon & Kenyon LLP**

1500 K Street, NW | Washington, DC 20005-1257

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# **Exhibit D**

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

Opposition Proceeding 91205896

In the matter of Trademark Application No. 85509929

For the mark: DIZZY

Published for Opposition Date: June 5, 2012

**Beau Tardy, Opposer/Opposer**

**v.**

**Wild Brain Entertainment, Inc., Applicant**

**SUPPLEMENTAL DISCLOSURE: BEAU TARDY DECLARATION**

I, Beau Tardy, declare that I am the owner and creator of the DIZZY mark and am authorized to make this declaration. I declare further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

1. On March 31, 2006 my name was officially changed from Jean-Marie Ledoux Tardy to Beau Ledoux Tardy in the Superior Court of New Jersey, Middlesex County.

Therefore any reference to Jean-Marie Tardy, or Jean Tardy in official documents prior to 2006 refer directly to me, Beau Tardy.

2. I am the creator and owner of the Dizzy trademark and associated IP. In 1994 I created the Dizzy brand name for my company Dizzy Productions and paid New York state and federal taxes as d/b/a Dizzy Productions. In 1997, Dizzy Productions was changed to Dizzy Worldwide Corp. and was incorporated in the state of New York. The only officers were my wife **Mara Marich** and myself. We never sold stock nor hired other board members or officers. Hence all IP developed by and for Dizzy Worldwide Corp. belonged to and still belongs to my wife and myself.
  
3. In 2000, we moved to Sydney, Australia to open a second international branch of Dizzy Worldwide Corp. We were issued a Certificate of Registration of a Foreign Company by the Australian Securities and Investment Commission in August 2000. Our Sydney office handled clients in Asia-Pacific garnering an Australian Television Award for Best Commercial Direction.
  
4. In 2007, we incorporated under a new name, Aquarium Creative Agency in the state of New Jersey. Again, no other officers besides Mara Marich and myself ever owned or ran the business.

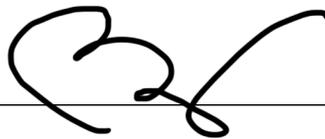
5. Currently, Mara Marich and I still own all the Dizzy assets. We continue to develop and utilize the Dizzy trade name and cat character in business, particularly on the web and on TV, YouTube, Vimeo and Roku.
6. 2006-2012: In 2006 I developed the cartoons called Dizzy Flashtoons, which were pitched to MTV. I created a web domain called Dizzycartoons.com and posted them online. I also registered the domain Dizzytv.com for streaming media. In 2006 Dizzy Worldwide won a Communicators Award for animation for an MTV commercial.
7. In 2007 the online store Dizzyshop.com was created to sell t-shirts, posters, stickers, music cds and video dvds. In 2007 Dizzy Worldwide won a silver Telly Award.
8. In 2008, more Dizzy Flashtoons were created but were not posted online in an effort to sell them to a network before self-publishing them. The web domain Dizzyville.com was created along with the concept for an online computer game called Dizzyville. Interestingly, in a successful online bidding process, the domain Dizzyville.com was wrested away from a competitor who was attempting to create a similarly named service. Our websites, Dizzyshop.com, Dizzyworldwide.com, Dizzythecat.com, Dizzycartoons.com and Dizzytv.com continued to receive traffic. The Dizzy name and cartoon character were used on TV shows broadcast to air on Princeton TV 30 and streamed online through Ustream.

9. In 2009, we continued to do business as Dizzy Worldwide as a d/b/a and mainly focused on websites and online content as evidenced by advertising revenue from Google. We created and sold music cds of the music that was aired on Dizzy TV. These were sold on Dizzyshop.com as well as Bandcamp. We continued to broadcast Dizzy TV on channel 30 and Ustream.
  
10. In 2010 we registered the domain name Dizzycomics.com in order to publish comics online. Downloadable music was made available on Bandcamp. We continued to stream on Ustream and to sell posters and t-shirts on Dizzyshop.com.
  
11. In 2011, we continued to stream content on Ustream and Dizzytv.com and posted videos to YouTube and Vimeo under the Dizzy name. Efforts were being made to develop Dizzycomics.com to post comics online and trials were being made to publish comics on the Amazon Kindle under a different name.
  
12. In 2012 a Dizzy TV dvd was released. The websites Dizzythecat.com, Dizzytv.com, Dizzyville.com, Dizzyshop.com, Dizzyworldwide.com and Dizzycartoons.com were all maintained and continued to receive traffic. More videos were posted on YouTube and Vimeo and streamed on Ustream.
  
13. In 2013-2014, Dizzy Comics began to be published in newspaper format in the Houston area. Dizzy videos were created and displayed at the Museum of Modern Art in New York for the MoMA PopRally. Dizzy Flashtoons were pitched to

Nickelodeon Animation and to Frederator Studios in New York. A new Dizzy TV pilot was created and a Dizzy TV channel was created on Roku. Videos continue to be posted on YouTube and Vimeo and streamed on Ustream. Music is available on Bandcamp. Work on a cartoon syndicate under the Dizzy name was started.

14. Exhibit A contains a sampling of some of the DIZZY uses in commerce from 2005 to the present. The DIZZY mark has been used continuously in the US during the relevant years from 2006 until Applicant's constructive first use date.

Executed this day 21 November 2014



Beau Tardy

Submitted By: /Wendy Peterson/

Date: November 21, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents LLC  
PO Box 18716  
Minneapolis, MN 55418  
(651) 500-7590; [wsp@NJPLS.com](mailto:wsp@NJPLS.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2014, the foregoing was served upon Applicant's attorney by email to:

JONATHAN D REICHMAN  
KENYON & KENYON LLP  
jreichman@kenyon.com, wmerone@kenyon.com, nsardesai@kenyon.com,  
tmdocketny@kenyon.com

By: /Wendy Peterson/

Date: November 21, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy



# DIZZY THE CAT

#1



MR BIRD ©



BONGA ©



DIZZY ©

PLUS LOTS  
MORE!



DIZZY WORLDWIDE © 2008

Exhibit A



# DIZZY<sup>®</sup> THE CAT

PRESENTS

**DIZZY<sup>®</sup>**

ISSUE

#1

WINTER  
2006

Mr.  
BIRD

BONGA

DIZZY

& MORE!

## How Dizzy Got Dizzy!



All cartoon characters, character names, animations, designs, layouts, text and interactive functionalities presented here are the exclusive copyrighted © and trademarked ™ and ® property of Dizzy Worldwide Corp.

DIZZY 2006

play  
**Exhibit A**



# DIZZY THE CAT

PARENTS



ISSUE

#1

WINTER  
2006

# BONGA'S TAKA HUE™

©2006

Mr.  
BIRD™

BONGA™

DIZZY™

& MORE!



start +

Exhibit A

All cartoon characters, character names, animations, designs, layouts, text and interactive functionalities presented here are the exclusive copyrighted © and trademarked ™ and ® property of Dizzy Worldwide Corp.

DIZZY © 2006



# DIZZY THE CAT PRESENTS

ISSUE  
#1  
WINTER  
2006

DIZZY © 2006

Welcome to Dizzy The Cat Presents! At the Dizzy Worldwide studios we are committed to making healthy, hilarious, wholesome and 100% original entertainment that everyone can enjoy! Be sure to come back often and watch for the Spring 2006 issue. Write us and tell us what you think. Send us your own cartoons and drawings! Shop at our store!

Thanx for stopping by!

-The Editors



YOUR  
AD  
HERE!

intitively built by



Dizzy Worldwide

## DIZZY SHOP™

\*t-shirts

\*posters

& more!



front

### MAKE A FACE!



## make my.com

PayPal  
for Business



Accept credit cards  
in just minutes!



Exhibit A



# DIZZYSHOP.com

Welcome

to the real **DIZZYSHOP!** Here is where you will find all your authentic **DIZZY THE CAT™** products. **We ship worldwide!** Shipping is United States Postal Service. If you would prefer Fedex, DHL or UPS please email us first at this address: [dizzyworldwide@usa.net](mailto:dizzyworldwide@usa.net). You can also call us at 281-312-0418 to check on your order. We will refund any item you're not 100% satisfied with minus shipping costs. All transactions are processed securely by Paypal. We accept all major credit cards, even without a Paypal account. Thanks for stopping by!

Pay securely online.



**DIZZY T-SHIRT** featuring **Dizzy The Cat™** on the front in 2 color vinyl silkscreen and the web address [www.dizzythecat.com](http://www.dizzythecat.com) in white across the left sleeve. They are 100% cotton, **Fruit Of The Loom** or **Hanes** t-shirts and come in 3 sizes: medium, large or x-large. 4 great shirt colors.



Price : \$26.00

*\*Limited supplies!*

select size

select color

[View Cart](#)

**USTREAM** Search for channels and videos. Login | Sign Up **Go Live!**

On Air News Campaign 2012 Pets & Animals Entertainment Sports Music Tech Gaming Education Spirituality More

hide this ad?

**SONY Bravia TV Promotion**  
 Bundle a PS3 & TV and Save Over \$550! Shop now at Official Site.  
[store.sony.com/TV\\_Promo](http://store.sony.com/TV_Promo)

Recorded live on April 23, 2008 12:32am GST  
**Dizzy TV - 4. 23. 2008. 01:32:36 GMT-0400**  
 Jazzyburns [Join Crowd](#)

AdChoices

Videos [Go to Channel Page](#)

Untitled Video...  
 52 views  
 October 30, 2008 at 10:15pm

Dizzy TV - 4, 23...  
 52 views  
 April 23, 2008 at 12:32am

**Watch Watch tv series online**  
 Watch Instantly Online, Movies & TV Shows. Free Trial.  
 Notflix.com Ads by Google

00:10 Share

Tweet 0 Like 0 +1 0

Not rated yet. You must be logged in to rate this video. Highlight a moment

You're Watching **Dizzy TV - 4. 23. 2008. 01:32:36 GMT-0400**  
 Enable Ustream Social to add this to your Facebook Timeline.

**ITT Tech - Official Site**  
 Tech-Oriented Degree Programs. Education for the Future.

hide this ad?

Channel is offline

**Dizzy TV**  
Jazzyburns [Join Crowd](#) [Pop out](#)

USTREAM

Off Air [Share](#) [C](#) [M](#)

[Tweet](#) 0 [Like](#) 0 [+1](#) 0

This Channel Is Offline

**Channel Info** **Honors** **Embed** **Flag**

**Dizzy TV** **622 Views**  
**1 In Crowd**

Dizzy © TV is "live" TV Art Broadcast Electronic Space Jazz™.  
Dimensional TV that connects directly to your Brain™.  
Dizzy © TV is a Neuron™.  
Fast-Forward Free Style Future American Mythology for the Electronic Age™.  
Technology Deconstructivism™

Videos **Social Stream** Chat [Pop out](#)

**Untitled Video...**  
REC  
52 views  
October 30, 2008 at 8:15pm

**Dizzy TV - 4. 23...**  
REC  
62 views  
April 22, 2008 at 10:32pm

[More](#)

[hide this ad?](#)

**Watch Live Football**  
Watch Your Favorite Football Team Live Online - No Registration!  
[www.TelevisionFmatic.com](http://www.TelevisionFmatic.com)

**ITT Tech - Official Site**  
Tech-Oriented Degree Programs. Education for the Future.  
[www.ITT-Tech.edu](http://www.ITT-Tech.edu)

**Free Online Radio**  
Listen to Free Streaming Internet Radio Now with the Radio Toolbar  
[www.RadioRage.com](http://www.RadioRage.com)

**Watch Live Football**  
Turn Your Computer into a TV! Watch Football Games Online.  
[www.BringMeSports.com](http://www.BringMeSports.com) [AdChoices](#)

**Featured** [◀](#) [▶](#)

Firefox File Edit View History Bookmarks Tools Window Help Thu 17:35:40 PM (43%)

Ustream.Tv

http://www.ustream.tv/metrics/recorded

Mara411 cPanel® 11 Stick

Project Wonderful - Forgotten ... Net@dress Email - dizzyworld... Ustream.Tv

**Jazzyburns**  
Crowds: 2

**Jump to Your Channel**

[Go To Channel](#) ▾

or [create another channel](#).

---

Overview

Premium Services

Channel

Account

Metrics

Analytics Console

**Recorded & Highlights**

Crowd

Events

Find Shows to Watch

Crowds

---

Find Your Friends on Ustream

Find friends >

**USTREAM** PRO BROADCASTING

Take control of your broadcast!

Remove Ads

YOUR LOGO Custom Branding

HD HD Streams

[Learn More >](#)

**Metrics**

Collected statistics of your channels, recorded and highlighted videos, Crowd members, and events. Metrics may take 24-48 hours to be fully processed.

**Top videos & highlights**

Video Title	Viewers
Dizzy TV - 4. 23. 2008. 01:32:36 GMT-0400	59
Dizzy TV - Jazzyburns 2	47

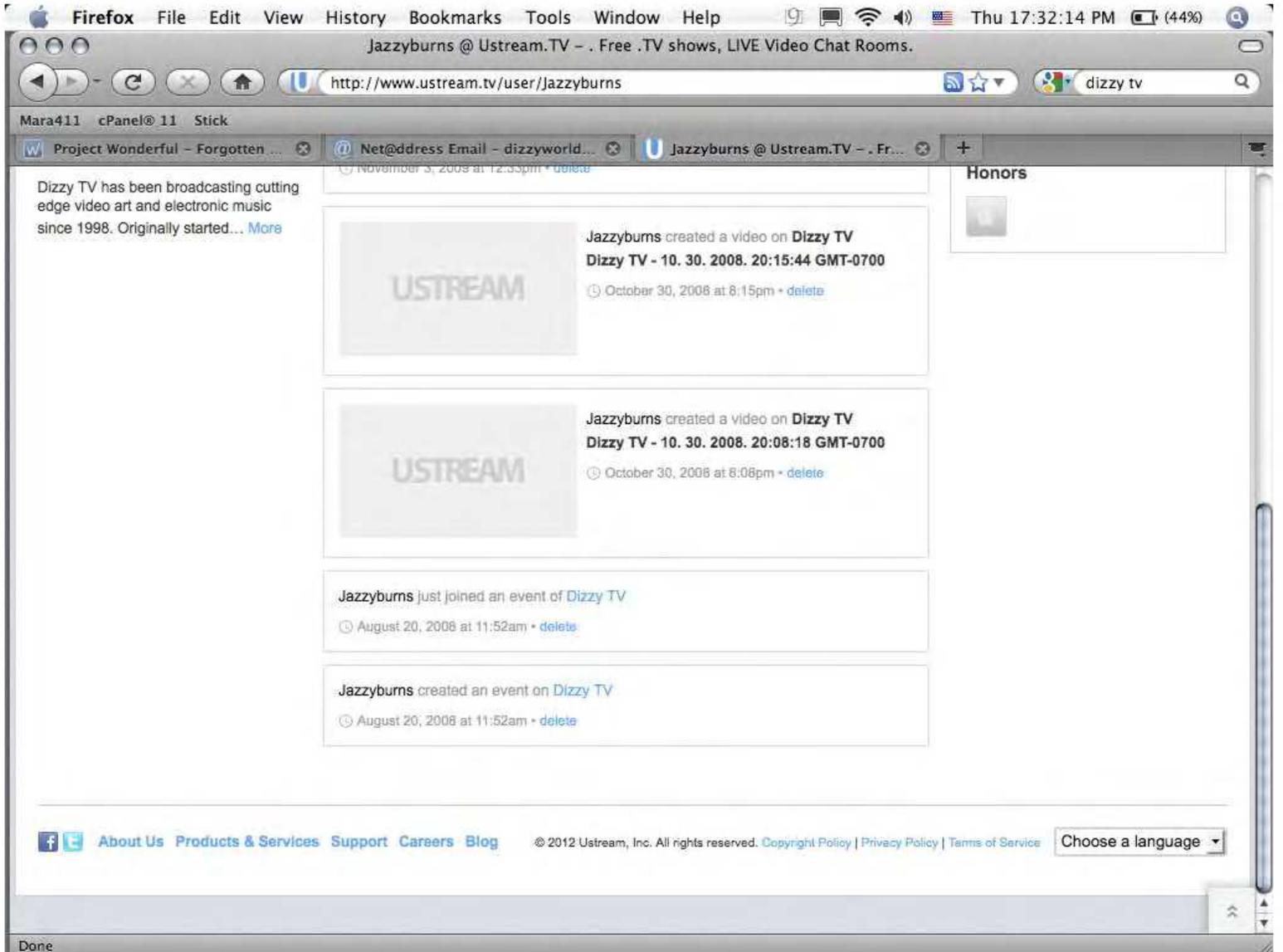


Exhibit A

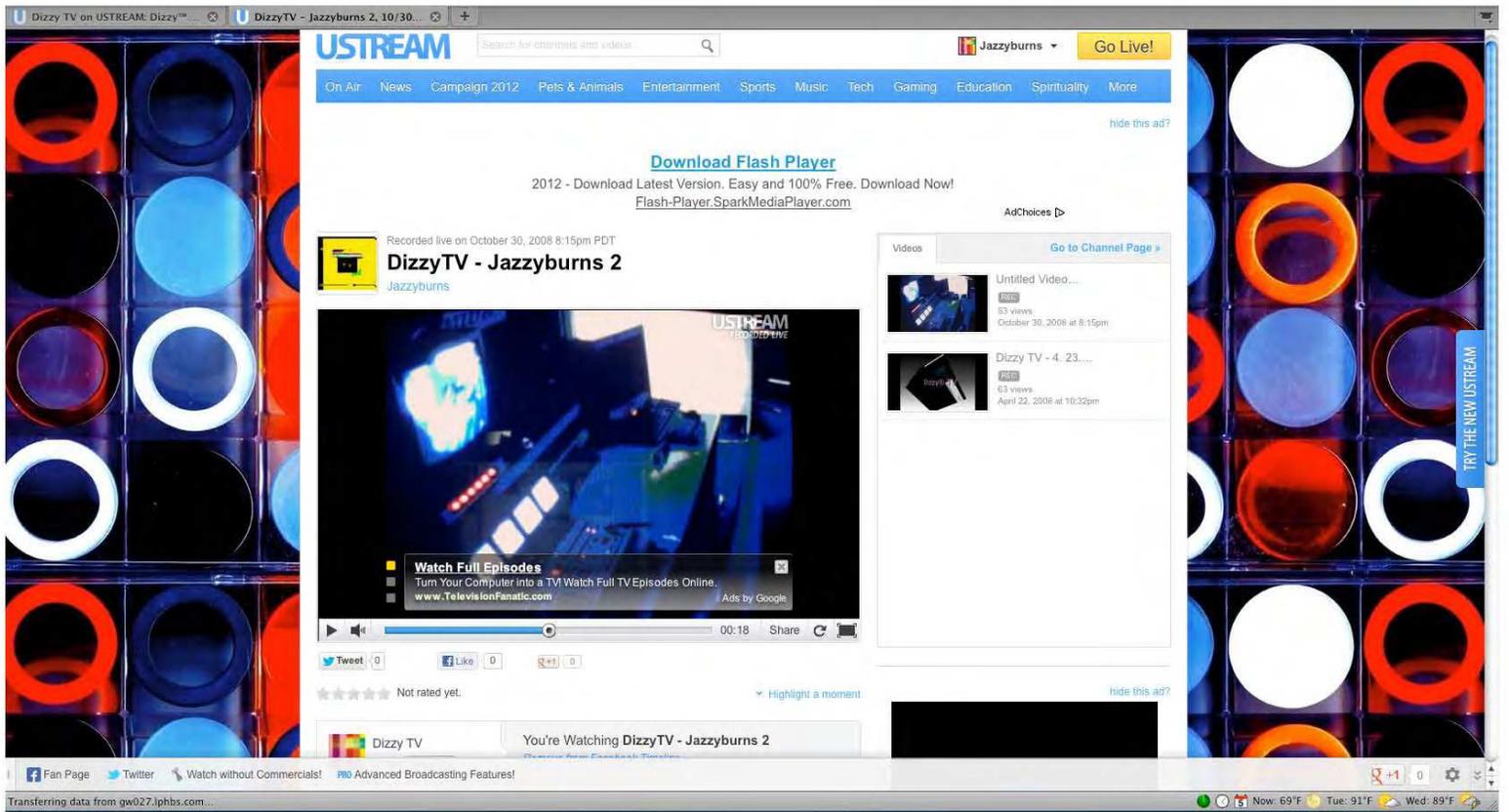


Exhibit A

### Dizzy TV \*live\* June 2008

beautardy [Subscribe](#) 8 videos



This video is public.

Like Add to Share

4 views

Published on Sep 8, 2012 by beautardy

Dizzy TV featuring VJ-DJ Jazzy Bum's \*live\*. Originally aired on Princeton TV, June 3, 2008.

0 likes, 0 dislikes

Show more

All Comments (0)

see all

Respond to this video

LABOR DAY SAVINGS  
SHOP NOW AND SAVE



More from beautardy's activity

- 2 videos Dizzy TV
- Magic Machine© by beautardy 81 views
- Nickelodeon Compilation by beautardy 1,668 views

#### Suggestions

- Calvin Klein Underwear by calvinklein 4,865,274 views Ad
- اروع فيديو في العالم بترككم مع رقصات بركانية by aazdang04 15,806 views
- Third Eye Blind - Misfits by charlesaurus 204,099 views
- Dizzy Gillespie quintet Live in studio's tv 1960 by renato16able 694 views

# DIZZY.TV

Watch Dizzy® TV *\*live\**!

Featuring original mix tracks by Jazzy Bum's. Go to the Jazzy Bum's myspace page!

Missing Plugin



To watch "live" broadcast click on arrow in middle of screen.

(If arrow is not active this means the broadcast is not live. Go to [Ustream.tv/channel/dizzy-tv](http://Ustream.tv/channel/dizzy-tv) to watch other pre-recorded shows)

Missing Plugin



\*\*\* Exclusively on DIZZY® TV! \*\*\*



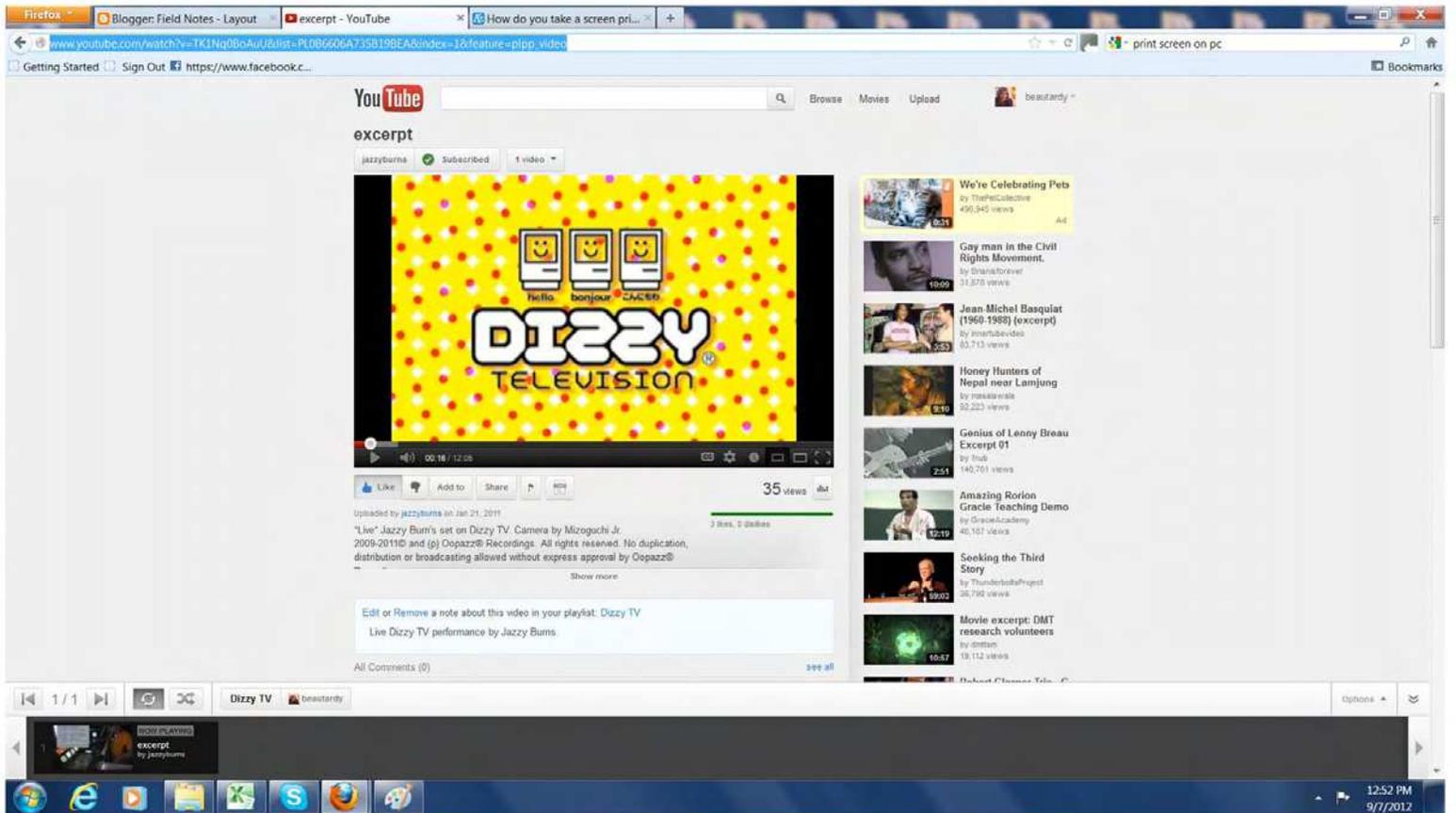
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**Exhibit A**



**Exhibit A**



Ustream.Tv

http://www.ustream.tv/popular/c/Dizzy-TV/0#\_=\_

Net@ddress Email StatCounter Dizzy® TV Jazzy Burn's Atomik » Login ICECUBES Beau Tardy Website Twitter Sign in to Yahoo! SoundCloud cPanel Login Untitled Document

Start Stumbling...

Dizzy TV Ustream.Tv Dizzy TV on USTREAM: Dizzy™ ...

**USTREAM** BETA

Jazzyburns



1/1 **LIVE**

### Dizzy TV

by Jazzyburns

Like 0 Remove from Facebook Timeline



**HIGHLIGHT** 00:52

Extra cheesy Pizza Museum opens



01:06

I lava you



**HIGHLIGHT** 00:25

Life's a bitch and then you die —



**HIGHLIGHT** 05:11

Competitive poodle styling



**LIVE**

Time to get creative



00:23

Polo is huge here!



**HIGHLIGHT** 02:48

Ooh. Ahh.



**HIGHLIGHT** 61:07

Pretentious art highlight of the day



**HIGHLIGHT** 00:33

The most adorable of the deadly sins



**POPULAR** 00:42

Does Mark Zuckerberg still write Facebook code?

excerpt

jazzyburns + Subscribe 1 video



Like Add to Share

43 views

Uploaded by jazzyburns on Jan 21, 2011

\*Live\* Jazzy Burn's set on Dizzy TV. Camera by Mizoguchi Jr. 2009-2011© and (p) Oopazz® Recordings. All rights reserved. No duplication, distribution or broadcasting allowed without express approval by Oopazz® Recordings.

Category:

Music

License:

Standard YouTube License

Show less

All Comments (0)

see all

More from jazzyburns's activity

- Dizzy TV \*live\* June 2008**  
by beautyardy  
8 views  
20:46
- Moldover's Jamboxes**  
by moldover  
11,921 views  
7:27
- excerpt**  
by jazzyburns  
43 views  
12:05

Suggestions

- Red Dawn - Opens Nov 21st**  
by RedDawnFilm  
473,373 views  
2:34
- Gay man in the Civil Rights Movement.**  
by Brianisforever  
32,009 views  
10:09
- The loss of Stevie Ray Vaughan**  
by VirtuaCory  
474,369 views  
6:35
- Genius of Lenny Breau Excerpt 01**  
by fnub  
149,012 views  
2:51
- Seeking the Third Story**  
by ThunderboltProject

Jazzy Burn's

http://jazzyburns.bandcamp.com/

Jazzy Burn's

# oopazzz<sup>®</sup>

## Space Jazz<sup>©</sup>

by Jazzy Burn's

Get With It "Live" 00:00 / 06:31

**Digital Album**  
 Immediate download of 7-track album in your choice of MP3 320, FLAC, or just about any other format you could possibly desire.  
**Buy Now \$1.99 USD** or more

Share / Embed ▾

- ▶ 1. Get With It "Live" 06:31
- ▶ 2. Work 03:49
- ▶ 3. New York City "live" 16:39
- ▶ 4. TV'S Red Piano Mix 04:33
- ▶ 5. Radio Tuvalu 10:47
- ▶ 6. Chasin' The Bump 02:47
- ▶ 7. Zahedan 11:22

*As heard on Dizzy TV! This CD features some of the great Space Jazz<sup>©</sup> tracks by Jazzy Bum's played live on Dizzy TV.*

released 23 May 2012

tags: electronic electro jazztronica spacejazz triphop New York

© all rights reserved

feeds for this album, this artist



Tweet Like 2



Jazzy Burn's is a mix of jazz, electro and funky beats. Jack Dangers of Meat Beat Manifesto selected a Jazzy Bum's track in ... more

SoundCloud  
 Facebook  
 YouTube

discography

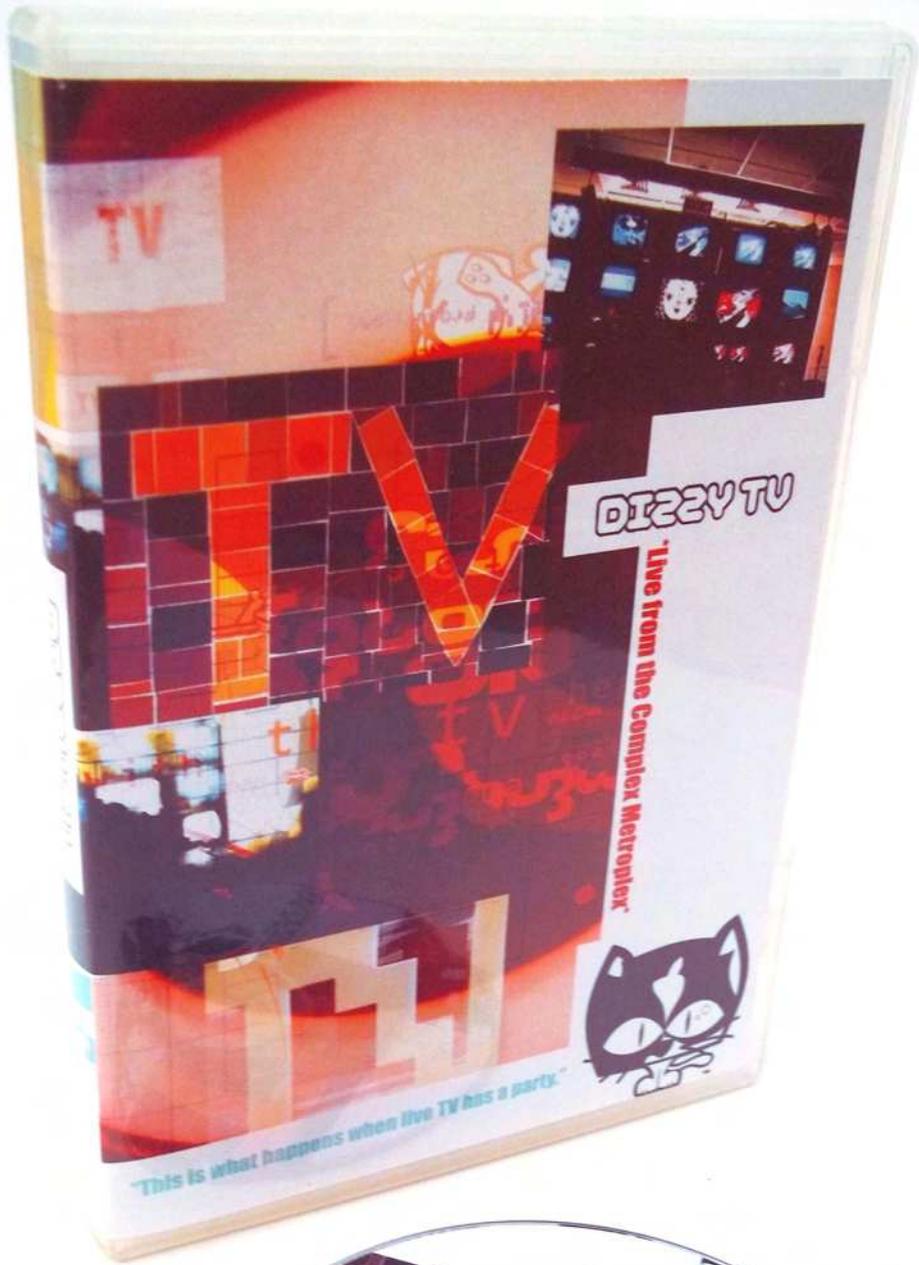


Space Jazz<sup>©</sup>  
 May 2012



Colorbars  
 Sep 2011





**Exhibit A**

DIZZY THE CAT



2014 © Beau Fardy

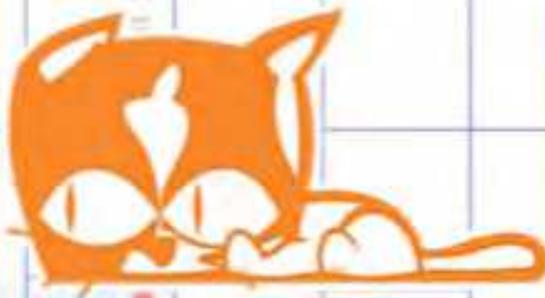


Exhibit A

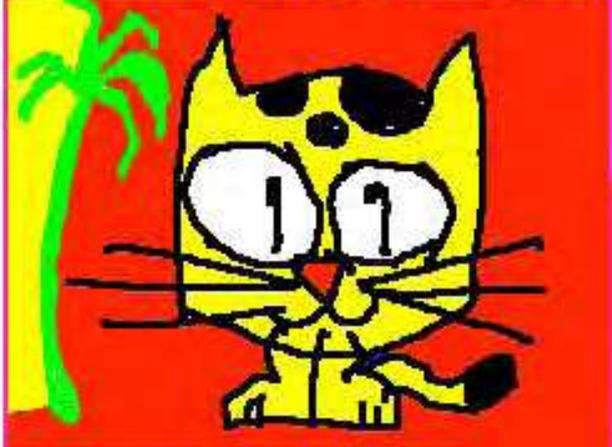


BONGA'S

TAKE HOME



BONGA the 8-bit cat



©2019 BONGA CAT



WIPE-OUT



Exhibit A

# "Mr. Bird"

main character



2014 © Beau Tardy



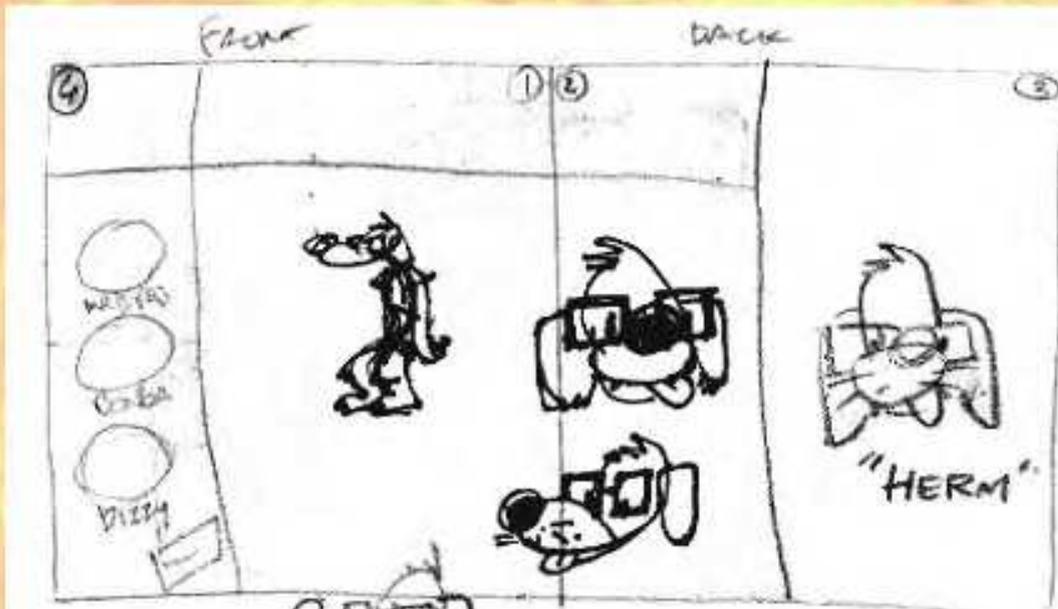
Exhibit A

**“Fifi”  
Mr. Bird’s  
girlfriend**

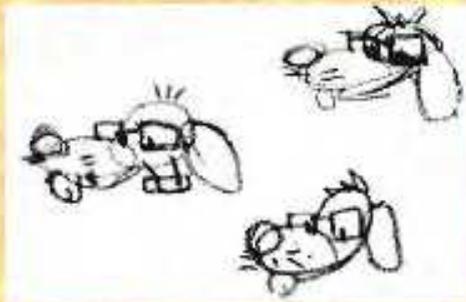


**FIFI**





**"HERM"  
the  
drummer**



# "MO" the mysterious masked bass player



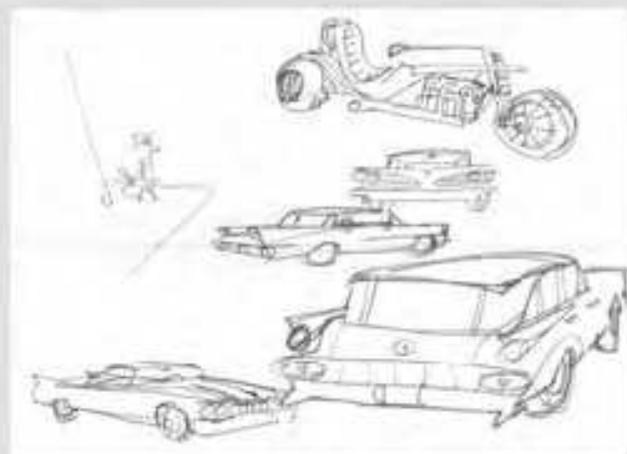
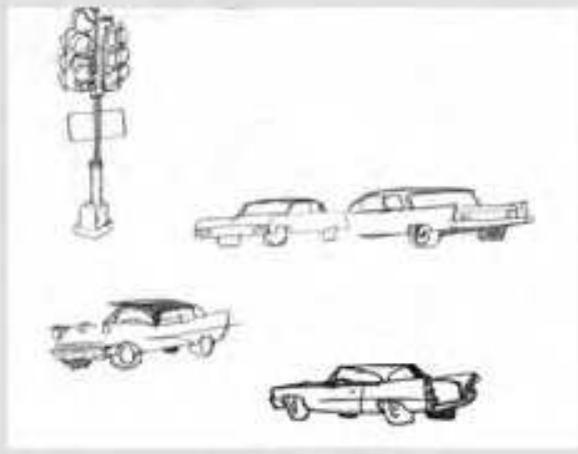
2014 © Beau Tardy



Exhibit A



**Mr. Bird drawings**



**Exhibit A**

# DIZZY COMICS

February 2014



Dear Friends, here it is,  
the brand new Dizzy Comics!  
Featuring all your favorite  
comics: ICECUBE, URBAN  
JUNGLE, ZOMBIE BOY,  
THE AMAZING JIM CORN  
and so much more to come!  
You can only get them here or  
at [www.dizzycomics.com](http://www.dizzycomics.com)  
If your paper doesn't carry  
Dizzy Comics, ask them to!  
Tell us what you think  
at [www.dizzycomics.com](http://www.dizzycomics.com)!

WORD!

1. #

ACROSS:  
1. Full  
2. Surprised  
3. Scared

DOWN:  
1. Wonder  
2. Digit  
3. Sheep



WORD! ANSWERS:  
ACROSS:  
1. FULL  
2. SURPRISED  
3. SCARED

DOWN:  
1. WONDER  
2. DIGIT  
3. SHEEP

Dizzy Comics, the "cat" logo,  
Icecube, Urban Jungle, Zombie  
Boy, The Amazing Jim Corn,  
Word! are trademark and copy-  
right properties of their respective  
authors and cannot be copied or  
re-distributed in any media with-  
out prior written consent.  
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Shamrock's  
5TH ANNUAL  
SAINT PATRICK'S DAY  
EXTRAVAGANZA

3.17.14

02/18/2014

228 West 1st St. Humble TX

[www.Shamrock.com](http://www.Shamrock.com)

Exhibit A



# DIZZY COMICS

February 2014



Dear Friends, here it is, the brand new Dizzy Comics! Featuring all your favorite comics: ICECUBES, URBAN JUNGLE, ZOMBIE BOY, THE AMAZING JIM CORN and so much more to come! You can only get them here or at [www.dizzycomics.com](http://www.dizzycomics.com). If your paper doesn't carry Dizzy Comics, ask them to! Tell us what you think at [www.dizzycomics.com](http://www.dizzycomics.com)!

WORD: 1. 2. 3.

2. #

ACROSS: 1. Full 2. Surprised 3. Scared

DOWN: 1. Wonder 2. Digit 3. (She)ep



ICECUBES the book! Get yours!

[www.dizzycomics.com](http://www.dizzycomics.com)

WORD! ANSWERS:

ACROSS: 1. ATE 2. WOV 3. EEE

DOWN: 1. AWE 2. TOE 3. EWE

Dizzy Comics, the 'cat' logo, Icecubes, Urban Jungle, Zombie Boy, The Amazing Jim Corn, Word! are trademark and copyright properties of their respective authors and cannot be copied or re-distributed in any media without prior written consent. All rights reserved. © and TM 2014





**Exhibit A**

# **Exhibit E**

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

Opposition Proceeding 91205896

In the matter of Trademark Application No. 85509929

For the mark: DIZZY

Published for Opposition Date: June 5, 2012

**Beau Tardy, Opposer/Opposer**

**v.**

**Wild Brain Entertainment, Inc., Applicant**

**SUPPLEMENTAL DISCLOSURE: BEAU TARDY DECLARATION**

I, Beau Tardy, declare that I am the owner and creator of the DIZZY mark and am authorized to make this declaration. I declare further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

1. I have searched my records to provide responsive documents and answers to all of the discovery requests by Applicant. This declaration contains all the additional information and documents available that will be used by Opposer except that

information already provided in initial disclosures and already provided in discovery responses. This declaration is being provided in response to a duty to supplement discovery responses in a timely manner because Opposer has learned that in some material respect the previous disclosures or responses may have been incomplete. This corrective information is being made known to Applicant as a part of the discovery process in writing under Fed. R. Civ. P. 26(e)(1)(A). HUNTER INDUSTRIES v. THE TORO COMPANY, 91203612 (TTAB 2014).

2. On March 31, 2006 my name was officially changed from Jean-Marie Ledoux Tardy to Beau Ledoux Tardy in the Superior Court of New Jersey, Middlesex County. Therefore any reference to Jean-Marie Tardy, or Jean Tardy in official documents prior to 2006 refer directly to me, Beau Tardy.
3. I am the creator and owner of the Dizzy trademark and associated IP. In 1994 I created the Dizzy brand name for my company Dizzy Productions and paid New York state and federal taxes as d/b/a Dizzy Productions. In 1997, Dizzy Productions was changed to Dizzy Worldwide Corp. and was incorporated in the state of New York. The only officers were my wife **Mara Marich** and myself. We never sold stock nor hired other board members or officers. Hence all IP developed by and for Dizzy Worldwide Corp. belonged to and still belongs to my wife and myself.
4. In 2000, we moved to Sydney, Australia to open a second international branch of Dizzy Worldwide Corp. We were issued a Certificate of Registration of a Foreign

Company by the Australian Securities and Investment Commission in August 2000.

Our Sydney office handled clients in Asia-Pacific garnering an Australian Television Award for Best Commercial Direction.

5. In 2007, we incorporated under a new name, Aquarium Creative Agency in the state of New Jersey. Again, no other officers besides Mara Marich and myself ever owned or ran the business.
6. Currently, Mara Marich and I still own all the Dizzy assets. We continue to develop and utilize the Dizzy trade name and cat character in business, particularly on the web and on TV, YouTube, Vimeo and Roku.
7. 2006-2012: In 2006 I developed the cartoons called Dizzy Flashtoons, which were pitched to MTV. I created a web domain called Dizzycartoons.com and posted them online. I also registered the domain Dizzytv.com for streaming media. In 2006 Dizzy Worldwide won a Communicators Award for animation for an MTV commercial.
8. In 2007 the online store Dizzyshop.com was created to sell t-shirts, posters, stickers, music cds and video dvds. In 2007 Dizzy Worldwide won a silver Telly Award.
9. In 2008, more Dizzy Flashtoons were created but were not posted online in an effort to sell them to a network before self-publishing them. The web domain Dizzyville.com was created along with the concept for an online computer game

called Dizzyville. Interestingly, in a successful online bidding process, the domain Dizzyville.com was wrested away from a competitor who was attempting to create a similarly named service. Our websites, Dizzyshop.com, Dizzyworldwide.com, Dizzythecat.com, Dizzycartoons.com and Dizzytv.com continued to receive traffic. The Dizzy name and cartoon character were used on TV shows broadcast to air on Princeton TV 30 and streamed online through Ustream.

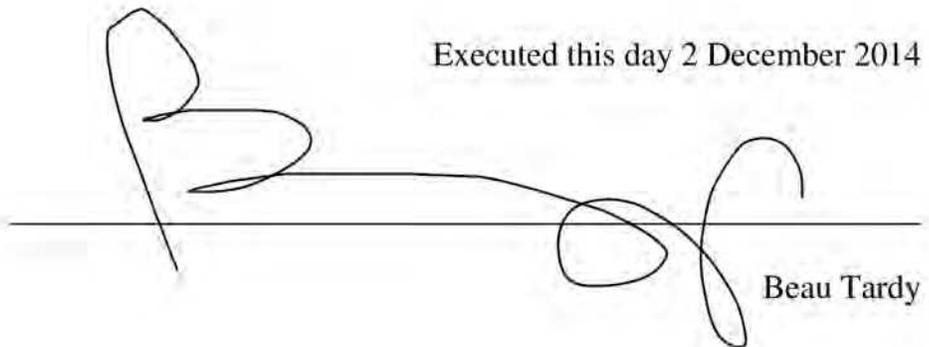
10. In 2009, we continued to do business as Dizzy Worldwide as a d/b/a and mainly focused on websites and online content as evidenced by advertising revenue from Google. We created and sold music cds of the music that was aired on Dizzy TV. These were sold on Dizzyshop.com as well as Bandcamp. We continued to broadcast Dizzy TV on channel 30 and Ustream.
11. In 2010 we registered the domain name Dizzycomics.com in order to publish comics online. Downloadable music was made available on Bandcamp. We continued to stream on Ustream and to sell posters and t-shirts on Dizzyshop.com.
12. In 2011, we continued to stream content on Ustream and Dizzytv.com and posted videos to YouTube and Vimeo under the Dizzy name. Efforts were being made to develop Dizzycomics.com to post comics online and trials were being made to publish comics on the Amazon Kindle under a different name.

13. In 2012 a Dizzy TV dvd was released. The websites Dizzythecat.com, Dizzytv.com, Dizzyville.com, Dizzyshop.com, Dizzyworldwide.com and Dizzycartoons.com were all maintained and continued to receive traffic. More videos were posted on YouTube and Vimeo and streamed on Ustream.

14. In 2013-2014, Dizzy Comics began to be published in newspaper format in the Houston area. Dizzy videos were created and displayed at the Museum of Modern Art in New York for the MoMA PopRally. Dizzy Flashtoons were pitched to Nickelodeon Animation and to Frederator Studios in New York. A new Dizzy TV pilot was created and a Dizzy TV channel was created on Roku. Videos continue to be posted on YouTube and Vimeo and streamed on Ustream. Music is available on Bandcamp. Work on a cartoon syndicate under the Dizzy name was started.

15. Exhibit A contains a sampling of some of the DIZZY uses in commerce from 2005 to the present. The DIZZY mark has been used continuously in the US during the relevant years from 2006 until Applicant's constructive first use date.

Executed this day 2 December 2014

A handwritten signature in black ink, appearing to read "Beau Tardy", is written over a horizontal line. The signature is stylized and cursive.

Beau Tardy

Submitted By: /Wendy Peterson/

Date: December ~~2~~2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents LLC  
PO Box 18716  
Minneapolis, MN 55418  
(651) 500-7590; wsp@NJPLS.com

**CERTIFICATE OF SERVICE**

3

I hereby certify that on December ~~2~~<sup>3</sup>2014, the foregoing was served upon Applicant's attorney by email to:

jreichman@kenyon.com, wmerone@kenyon.com, tmdocketny@kenyon.com

3

By: /Wendy Peterson/

Date: December ~~2~~<sup>3</sup>2014

Wendy Peterson, Attorney for Opposer, Beau Tardy



# DIZZY THE CAT

#1



MR BIRD ©



BONGA ©



DIZZY ©

PLUS LOTS  
MORE!



Exhibit A



# DIZZY<sup>®</sup> THE CAT

PRESENTS

**DIZZY**<sup>®</sup>

ISSUE

#1

WINTER  
2006

Mr.  
BIRD

BONGA

DIZZY

& MORE!

## How Dizzy Got Dizzy!



All cartoon characters, character names, animations, designs, layouts, text and interactive functionalities presented here are the exclusive copyrighted © and trademarked ™ and ® property of Dizzy Worldwide Corp.

DIZZY 2006

play  
**Exhibit A**



# DIZZY THE CAT

PARENTS



ISSUE

#1

WINTER  
2006

# BONGA'S TAKA HUE™

©2006

Mr.  
BIRD™

BONGA™

DIZZY™

& MORE!



start +

Exhibit A

All cartoon characters, character names, animations, designs, layouts, text and interactive functionalities presented here are the exclusive copyrighted © and trademarked ™ and ® property of Dizzy Worldwide Corp.

DIZZY © 2006



# DIZZY THE CAT PRESENTS

ISSUE  
#1  
WINTER  
2006

DIZZY © 2006

Welcome to Dizzy The Cat Presents! At the Dizzy Worldwide studios we are committed to making healthy, hilarious, wholesome and 100% original entertainment that everyone can enjoy! Be sure to come back often and watch for the Spring 2006 issue. Write us and tell us what you think. Send us your own cartoons and drawings! Shop at our store!

Thanx for stopping by!

-The Editors



YOUR  
AD  
HERE!

intitively built by



Dizzy Worldwide

**DIZZY SHOP**™

\*t-shirts  
\*posters  
&more!



front

**MAKE A FACE!**

1 2 3 4 5 6  
7 8 9 10 11 12

**make my.com**

**PayPal** for Business

VISA MASTERCARD DISCOVER AMEX

Accept credit cards in just minutes!

StatCounter.com

Exhibit A



# DIZZYSHOP.com

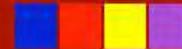
*Welcome*

to the real **DIZZYSHOP!** Here is where you will find all your authentic **DIZZY THE CAT™** products. **We ship worldwide!** Shipping is United States Postal Service. If you would prefer Fedex, DHL or UPS please email us first at this address: [dizzyworldwide@usa.net](mailto:dizzyworldwide@usa.net). You can also call us at 281-312-0418 to check on your order. We will refund any item you're not 100% satisfied with minus shipping costs. All transactions are processed securely by Paypal. We accept all major credit cards, even without a Paypal account. Thanks for stopping by!

Pay securely online.



**DIZZY T-SHIRT** featuring **Dizzy The Cat™** on the front in 2 color vinyl silkscreen and the web address [www.dizzythecat.com](http://www.dizzythecat.com) in white across the left sleeve. They are 100% cotton, **Fruit Of The Loom** or **Hanes** t-shirts and come in 3 sizes: medium, large or x-large. 4 great shirt colors.



Price : \$26.00

*\*Limited supplies!*

select size

select color

[View Cart](#)

**USTREAM** Search for channels and videos. Login | Sign Up **Go Live!**

On Air News Campaign 2012 Pets & Animals Entertainment Sports Music Tech Gaming Education Spirituality More

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**SONY Bravia TV Promotion**  
 Bundle a PS3 & TV and Save Over \$550! Shop now at Official Site.  
[store.sony.com/TV\\_Promo](http://store.sony.com/TV_Promo)

Recorded live on April 23, 2008 12:32am GST  
**Dizzy TV - 4. 23. 2008. 01:32:36 GMT-0400**  
 Jazzyburns [Join Crowd](#)

AdChoices

Videos [Go to Channel Page](#)

Untitled Video...  
 52 views  
 October 30, 2008 at 10:15pm

Dizzy TV - 4, 23...  
 52 views  
 April 23, 2008 at 12:32am

**Watch Watch tv series online**  
 Watch Instantly Online, Movies & TV Shows. Free Trial.  
 Notflix.com Ads by Google

00:10 Share

Tweet 0 Like 0 +1 0

Not rated yet. You must be logged in to rate this video. Highlight a moment

You're Watching **Dizzy TV - 4. 23. 2008. 01:32:36 GMT-0400**  
 Enable Ustream Social to add this to your Facebook Timeline.

**ITT Tech - Official Site**  
 Tech-Oriented Degree Programs. Education for the Future.

hide this ad?

Channel is offline

**Dizzy TV**  
Jazzyburns [Join Crowd](#) [Pop out](#)

USTREAM

Off Air [Share](#) [C](#) [M](#)

[Tweet](#) 0 [Like](#) 0 [+1](#) 0

This Channel Is Offline

**Channel Info** Honors Embed Flag

**Dizzy TV** **622 Views**  
1 In Crowd

Dizzy © TV is "live" TV Art Broadcast Electronic Space Jazz™.  
Dimensional TV that connects directly to your Brain™.  
Dizzy © TV is a Neuron™.  
Fast-Forward Free Style Future American Mythology for the Electronic Age™.  
Technology Deconstructivism™

Videos Social Stream Chat [Pop out](#)

Untitled Video...  
REC  
52 views  
October 30, 2008 at 8:15pm

Dizzy TV - 4. 23...  
REC  
62 views  
April 22, 2008 at 10:32pm

[More](#)

[hide this ad?](#)

**Watch Live Football**  
Watch Your Favorite Football Team Live Online - No Registration!  
[www.TelevisionFmatics.com](#)

**ITT Tech - Official Site**  
Tech-Oriented Degree Programs. Education for the Future.  
[www.ITT-Tech.edu](#)

**Free Online Radio**  
Listen to Free Streaming Internet Radio Now with the Radio Toolbar  
[www.RadioRage.com](#)

**Watch Live Football**  
Turn Your Computer into a TV! Watch Football Games Online.  
[www.BringMeSports.com](#) [AdChoices](#)

**Featured** [◀](#) [▶](#)

Firefox File Edit View History Bookmarks Tools Window Help Thu 17:35:40 PM (43%)

Ustream.Tv

http://www.ustream.tv/metrics/recorded

Mara411 cPanel® 11 Stick

Project Wonderful - Forgotten ... Net@dress Email - dizzyworld... Ustream.Tv

**Jazzyburns**  
Crowds: 2

**Jump to Your Channel**

[Go To Channel](#) ▾

or [create another channel](#).

---

Overview

Premium Services

Channel

Account

Metrics

Analytics Console

**Recorded & Highlights**

Crowd

Events

Find Shows to Watch

Crowds

---

Find Your Friends on Ustream

Find friends >

**USTREAM** PRO BROADCASTING

Take control of your broadcast!

Remove Ads

YOUR LOGO Custom Branding

HD HD Streams

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**Metrics**

Collected statistics of your channels, recorded and highlighted videos, Crowd members, and events. Metrics may take 24-48 hours to be fully processed.

**Top videos & highlights**

Video Title	Views
Dizzy TV - 4. 23. 2008. 01:32:36 GMT-0400	59
Dizzy TV - Jazzyburns 2	47

Firefox File Edit View History Bookmarks Tools Window Help Thu 17:32:14 PM (44%)

Jazzyburns @ Ustream.TV - . Free .TV shows, LIVE Video Chat Rooms.

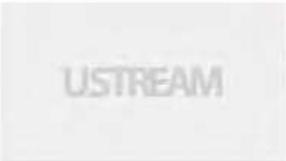
http://www.ustream.tv/user/Jazzyburns dizzy tv

Mara411 cPanel@ 11 Stick

Project Wonderful - Forgotten ... Net@ddress Email - dizzyworld... Jazzyburns @ Ustream.TV - . Fr...

Dizzy TV has been broadcasting cutting edge video art and electronic music since 1998. Originally started... [More](#)

November 3, 2008 at 12:35pm • [delete](#)

 Jazzyburns created a video on **Dizzy TV**  
**Dizzy TV - 10. 30. 2008. 20:15:44 GMT-0700**  
October 30, 2008 at 8:15pm • [delete](#)

 Jazzyburns created a video on **Dizzy TV**  
**Dizzy TV - 10. 30. 2008. 20:08:18 GMT-0700**  
October 30, 2008 at 8:08pm • [delete](#)

Jazzyburns just joined an event of **Dizzy TV**  
August 20, 2008 at 11:52am • [delete](#)

Jazzyburns created an event on **Dizzy TV**  
August 20, 2008 at 11:52am • [delete](#)

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Done

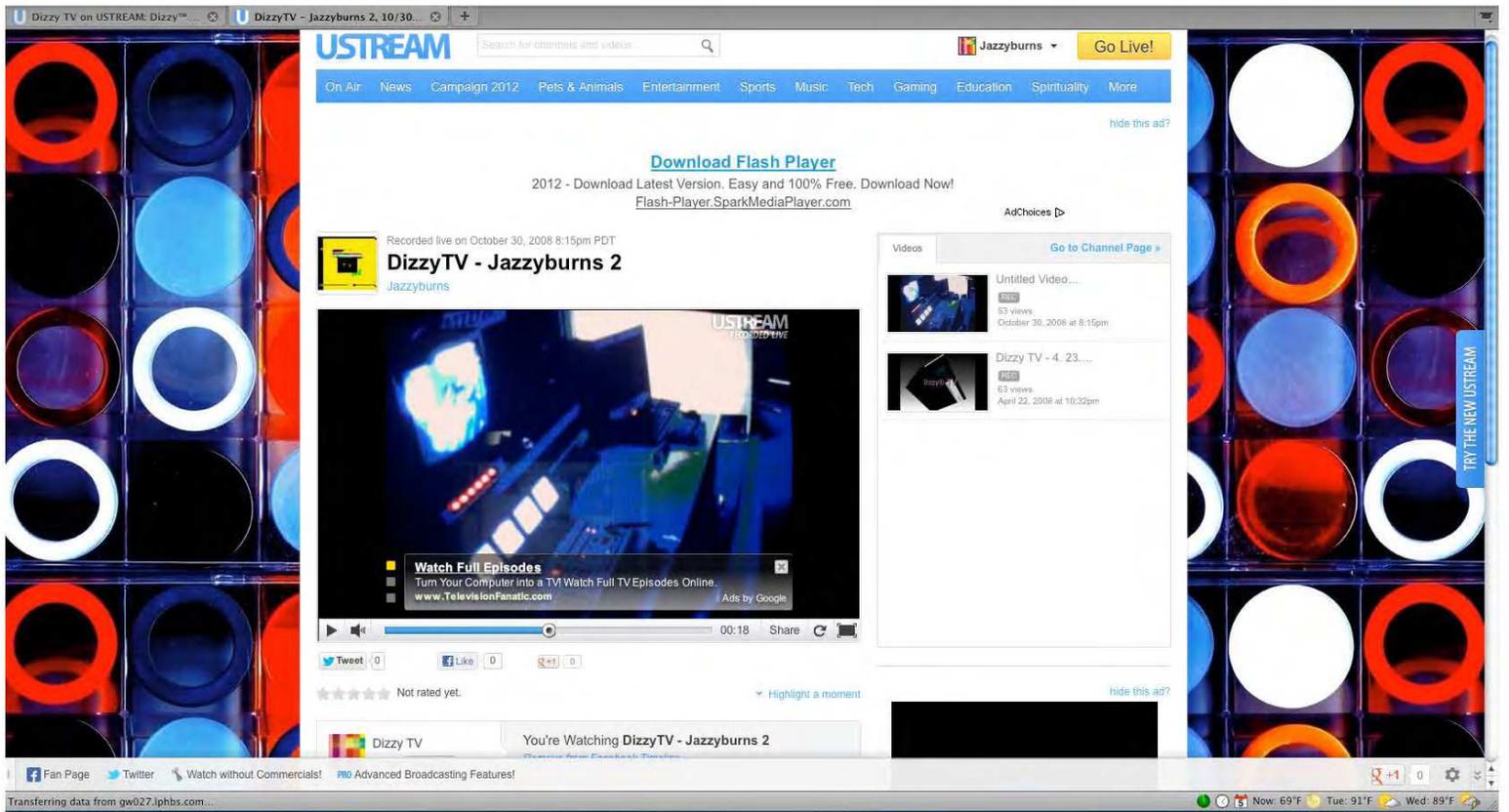


Exhibit A

### Dizzy TV \*live\* June 2008

beautardy [Subscribe](#) 8 videos



This video is public.

Like Add to Share

4 views

Published on Sep 8, 2012 by beautardy

Dizzy TV featuring VJ-DJ Jazzy Bum's \*live\*. Originally aired on Princeton TV, June 3, 2008.

0 likes, 0 dislikes

Show more

All Comments (0)

see all

Respond to this video

LABOR DAY SAVINGS SHOP NOW AND SAVE

More from beautardy's activity

- Dizzy TV (2 videos)
- Magic Machine© by beautardy (81 views)
- Nickelodeon Compilation by beautardy (1,668 views)

#### Suggestions

- Calvin Klein Underwear by calvinklein (4,865,274 views) Ad
- اروع فيديو في العالم بترككم مع رقصات بركانية by aazdang04 (15,806 views)
- Third Eye Blind - Misfits by charlesaurus (204,099 views)
- Dizzy Gillespie quintet Live in studio's tv 1960 by renato16able (694 views)

# DIZZY.TV

Watch Dizzy® TV *\*live\**!

Featuring original mix tracks by Jazzy Bum's. Go to the Jazzy Bum's myspace page!

Missing Plugin



To watch *\*live\** broadcast click on arrow in middle of screen.

(If arrow is not active this means the broadcast is not live. Go to [Ustream.tv/channel/dizzy-tv](http://Ustream.tv/channel/dizzy-tv) to watch other pre-recorded shows)

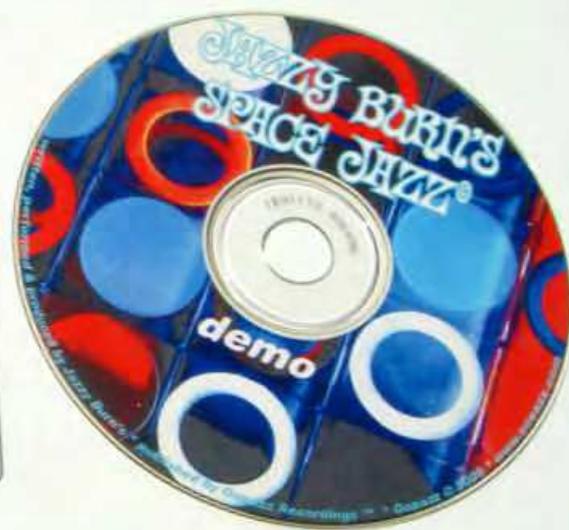
Missing Plugin



\*\*\* Exclusively on DIZZY® TV! \*\*\*



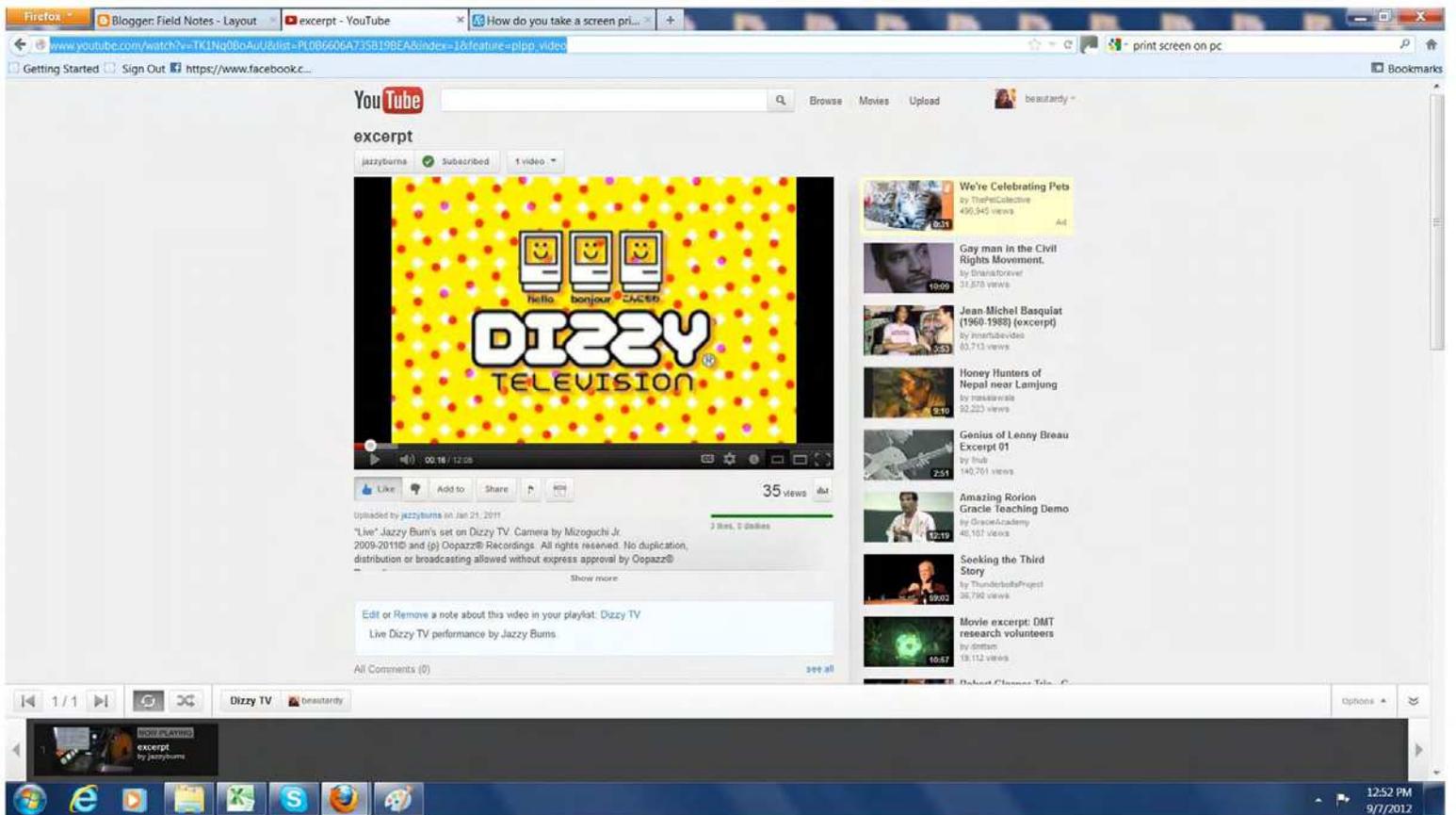
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**Exhibit A**



**Exhibit A**



Ustream.Tv

http://www.ustream.tv/popular/c/Dizzy-TV/0#\_=\_

Net@ddress Email StatCounter Dizzy® TV Jazzy Burn's Atomik » Login ICECUBES Beau Tardy Website Twitter Sign in to Yahoo! SoundCloud cPanel Login Untitled Document

Start Stumbling...

Dizzy TV Ustream.Tv Dizzy TV on USTREAM: Dizzy™ ...

**USTREAM** BETA

Jazzyburns



1/1 LIVE

### Dizzy TV

by Jazzyburns

Like 0 Remove from Facebook Timeline



**HIGHLIGHT** 00:52

Extra cheesy Pizza Museum opens



01:06

I lava you



**HIGHLIGHT** 00:25

Life's a bitch and then you die —



**HIGHLIGHT** 05:11

Competitive poodle styling



**LIVE**

Time to get creative



00:23

Polo is huge here!



**HIGHLIGHT** 02:48

Ooh. Ahh.



**HIGHLIGHT** 61:07

Pretentious art highlight of the day



**HIGHLIGHT** 00:33

The most adorable of the deadly sins



**POPULAR** 00:42

Does Mark Zuckerberg still write Facebook code?

excerpt

jazzyburns + Subscribe 1 video



Like Add to Share

43 views

Uploaded by jazzyburns on Jan 21, 2011

\*Live\* Jazzy Burn's set on Dizzy TV. Camera by Mizoguchi Jr. 2009-2011© and (p) Oopazz® Recordings. All rights reserved. No duplication, distribution or broadcasting allowed without express approval by Oopazz® Recordings.

Category:

Music

License:

Standard YouTube License

Show less

All Comments (0)

see all

More from jazzyburns's activity

- Dizzy TV \*live\* June 2008**  
by beautyardy  
8 views  
20:46
- Moldover's Jamboxes**  
by moldover  
11,921 views  
7:27
- excerpt**  
by jazzyburns  
43 views  
12:05

Suggestions

- Red Dawn - Opens Nov 21st**  
by RedDawnFilm  
473,373 views  
2:34
- Gay man in the Civil Rights Movement.**  
by Brianisforever  
32,009 views  
10:09
- The loss of Stevie Ray Vaughan**  
by VirtuaCory  
474,369 views  
6:35
- Genius of Lenny Breau Excerpt 01**  
by fnub  
149,012 views  
2:51
- Seeking the Third Story**  
by ThunderboltProject

Jazzy Burn's

http://jazzyburns.bandcamp.com/

Jazzy Burn's

# oopazzz<sup>®</sup>

## Space Jazz<sup>©</sup>

by Jazzy Burn's

Get With It "Live" 00:00 / 06:31

**Digital Album**  
 Immediate download of 7-track album in your choice of MP3 320, FLAC, or just about any other format you could possibly desire.  
**Buy Now \$1.99 USD** or more

Share / Embed ▾

- ▶ 1. Get With It "Live" 06:31
- ▶ 2. Work 03:49
- ▶ 3. New York City "live" 16:39
- ▶ 4. TV'S Red Piano Mix 04:33
- ▶ 5. Radio Tuvalu 10:47
- ▶ 6. Chasin' The Bump 02:47
- ▶ 7. Zahedan 11:22

*As heard on Dizzy TV! This CD features some of the great Space Jazz<sup>©</sup> tracks by Jazzy Bum's played live on Dizzy TV.*

released 23 May 2012

tags: electronic electro jazztronica spacejazz triphop New York

© all rights reserved

feeds for this album, this artist



Tweet Like 2



Jazzy Burn's is a mix of jazz, electro and funky beats. Jack Dangers of Meat Beat Manifesto selected a Jazzy Bum's track in ... more

SoundCloud  
 Facebook  
 YouTube

discography

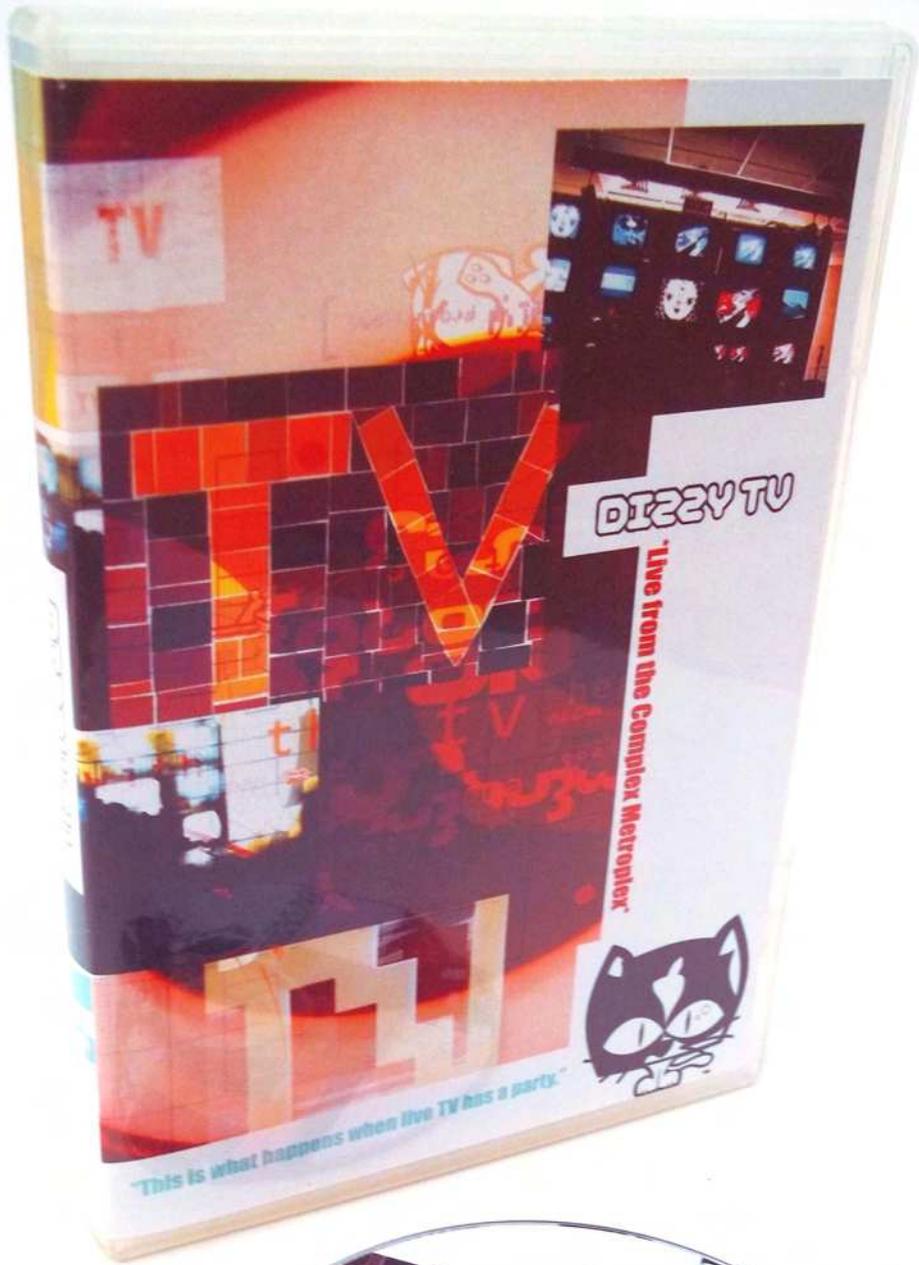


Space Jazz<sup>©</sup>  
 May 2012



Colorbars  
 Sep 2011





**Exhibit A**

DIZZY THE CAT



2014 © Beau Fardy

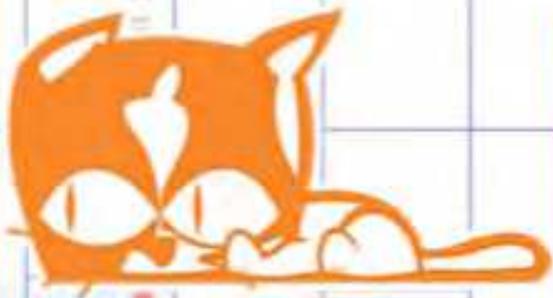


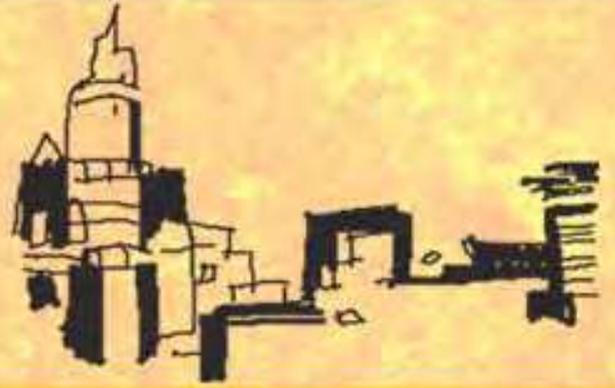
Exhibit A



Exhibit A

# "Mr. Bird"

main character



2014 © Beau Tardy



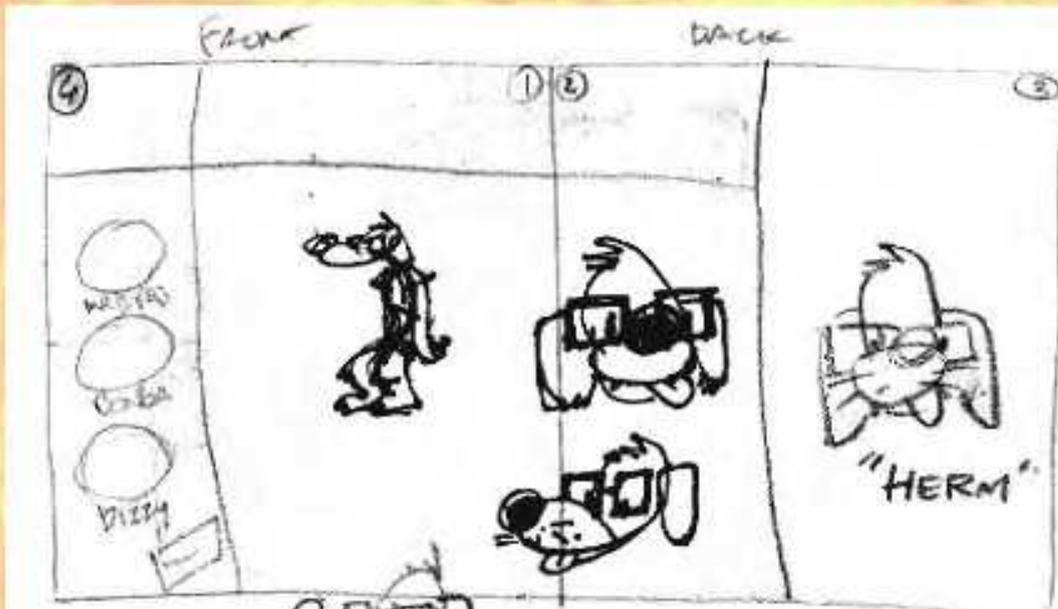
Exhibit A

**"Fifi"  
Mr. Bird's  
girlfriend**

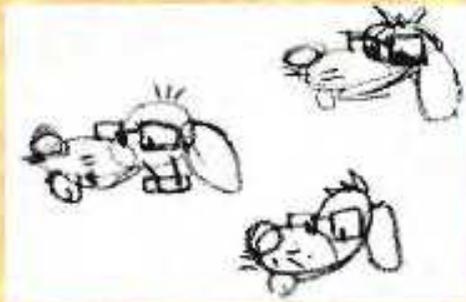


**'FIFI'**





**"HERM"  
the  
drummer**



# "MO" the mysterious masked bass player



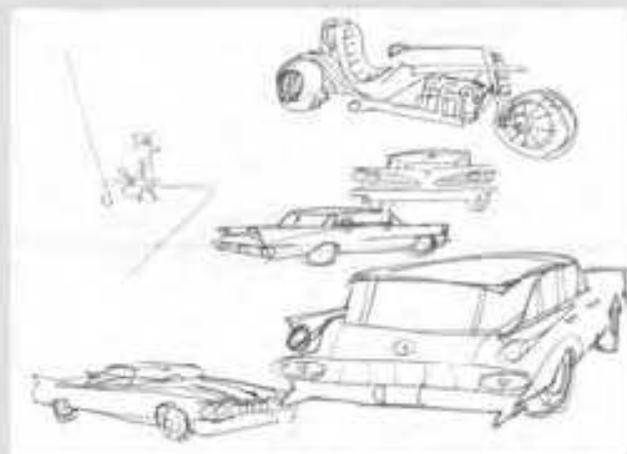
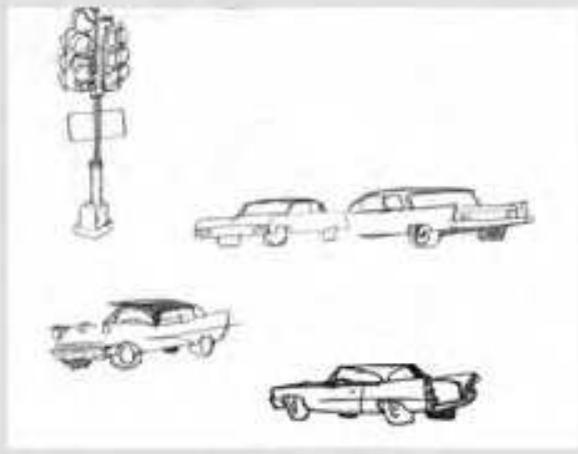
2014 © Beau Tardy



Exhibit A



**Mr. Bird drawings**



**Exhibit A**

# DIZZY COMICS

February 2014



Dear Friends, here it is, the brand new Dizzy Comics! Featuring all your favorite comics: ICECUBE, URBAN JUNGLE, ZOMBIE BOY, THE AMAZING JIM CORN and so much more to come! You can only get them here or at [www.dizzycomics.com](http://www.dizzycomics.com). If your paper doesn't carry Dizzy Comics, ask them to! Tell us what you think at [www.dizzycomics.com](http://www.dizzycomics.com)!



ACROSS:  
1. Full  
2. Surprised  
3. Scared

DOWN:  
1. Wonder  
2. Digit  
3. Sheep



WORD! ANSWERS:  
ACROSS:  
1. SHEEP  
2. DIGIT  
3. FULL

DOWN:  
1. WONDER  
2. WAVE  
3. NODD

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Shamrock's  
5TH ANNUAL  
**SAINT PATRICK'S DAY EXTRAVAGANZA**  
3.17.14  
FUN, GIDDY GREAT LIVES  
228 West 1st St. Humble TX  
[www.Shamrock's.com](http://www.Shamrock's.com)

Exhibit A



# DIZZY COMICS

February 2014



Dear Friends, here it is, the brand new Dizzy Comics! Featuring all your favorite comics: ICECUBES, URBAN JUNGLE, ZOMBIE BOY, THE AMAZING JIM CORN and so much more to come! You can only get them here or at [www.dizzycomics.com](http://www.dizzycomics.com). If your paper doesn't carry Dizzy Comics, ask them to! Tell us what you think at [www.dizzycomics.com](http://www.dizzycomics.com)!

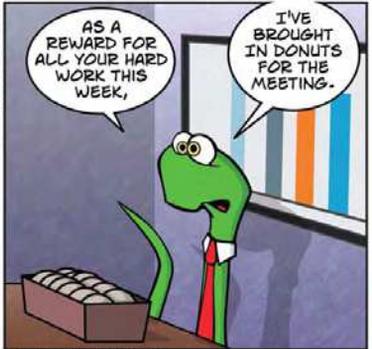
WORD: 1. 2. 3.

2. #

3.

ACROSS:  
1. Full  
2. Surprised  
3. Scared

DOWN:  
1. Wonder  
2. Digit  
3. (She)ep



ICECUBES the book! Get yours!

[www.dizzycomics.com](http://www.dizzycomics.com)

WORD! ANSWERS:

ACROSS: 1. ATE 2. WOV 3. EEE

DOWN: 1. AWE 2. TOE 3. EWE

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**Exhibit A**

- What to Watch
- My Channel
- My Subscriptions 1
- History
- Watch Later 29
- Purchases 1

PLAYLISTS

- Favorites
- Made by Beau Tardy
- Dizzy TV**  
Jazzy Burns
- Dizzy TV
- Liked videos

SUBSCRIPTIONS

- Jazzy Burns
- CritterGuitari
- CartoonHangover 2
- deadmau5
- MachineryNoise
- Instant TV Channel
- exaltron 1
- sirsparklejet
- DudeThatLogo
- homestarrunnerdotcom
- Mara109
- CamTwist

- Browse channels
- Manage subscriptions



# Jazzy Burns

Subscribed

- Home
- Videos
- Playlists**
- Channels
- Discussion
- About



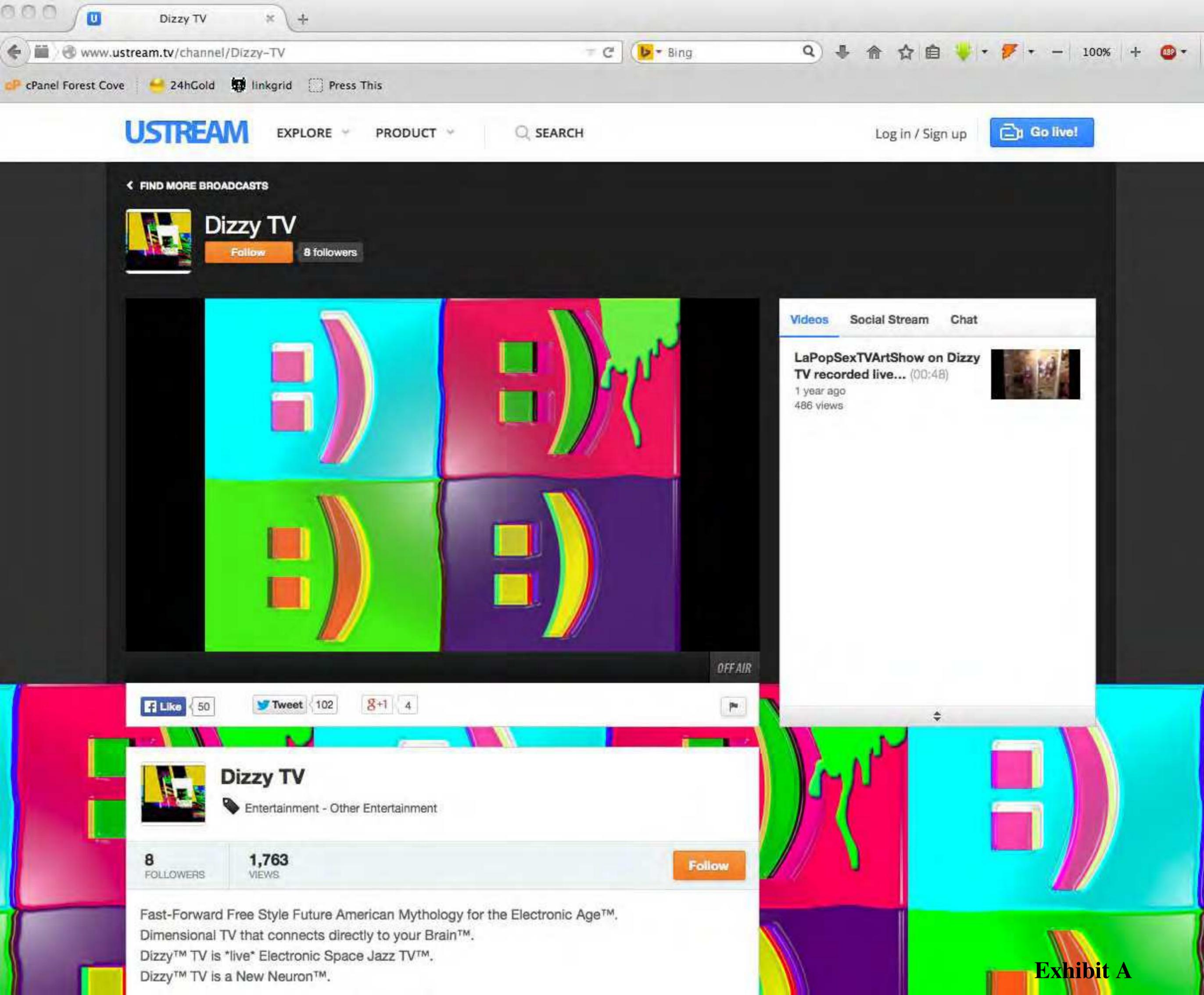
## Dizzy TV

by Jazzy Burns • 7 videos • 79 views • 48 minutes

Dizzy TV started in 1998 in New York City. Originally broadcast on MNN cable access, the live DJ/VJ mix shows were soon streamed over the Internet way before YouTube even existed. Now with YouTube and Vimeo you can enjoy the shows again and watch... more

- Play all
- Share
- Saved

1		Dizzy TV new pilot!	Beau Tardy	14:57
2		Dizzy TV - Spin One 1998.mp4 Old School *live* Dizzy TV	Jazzy Burns	5:18
3		Warper Party Animation	Jazzy Burns	0:11
4		Dizzy TV -Get With It	Jazzy Burns	4:40
5		WatchOut	Jazzy Burns	4:00
6		Jazzy Burn's *live* on Dizzy TV.	Jazzy Burns	12:05
7		\$159	Jazzy Burns	



USTREAM

EXPLORE PRODUCT

SEARCH

Log in / Sign up

Go live!

FIND MORE BROADCASTS



Dizzy TV

Follow

8 followers



OFF AIR

Like 50

Tweet 102

+1 4



Dizzy TV

Entertainment - Other Entertainment

8 FOLLOWERS

1,763 VIEWS

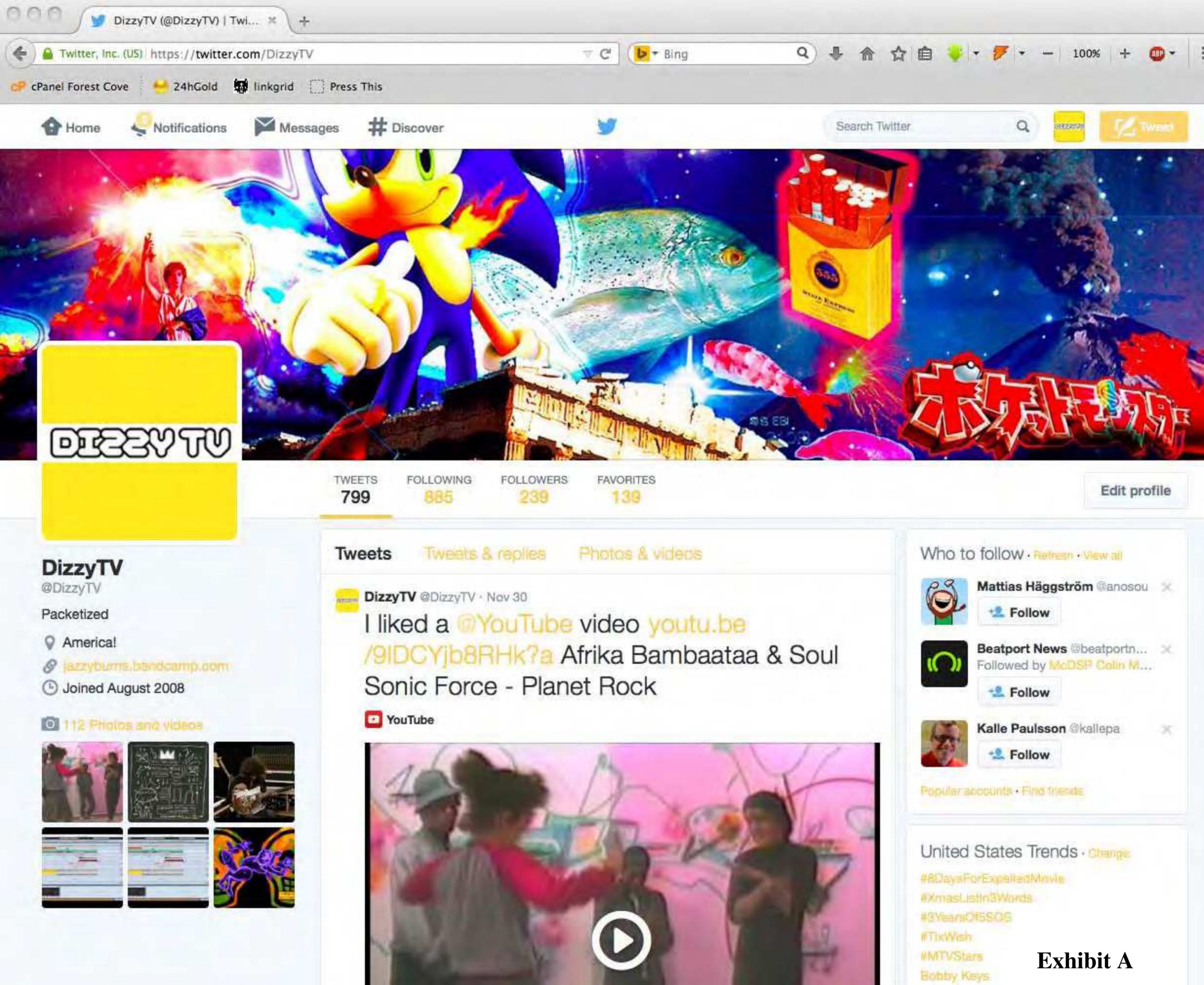
Follow

Fast-Forward Free Style Future American Mythology for the Electronic Age™.  
Dimensional TV that connects directly to your Brain™.  
Dizzy™ TV is \*live\* Electronic Space Jazz TV™.  
Dizzy™ TV is a New Neuron™.

Videos Social Stream Chat

LaPopSexTVArtShow on Dizzy TV recorded live... (00:48)  
1 year ago  
486 views

Exhibit A



TWEETS 799 FOLLOWING 885 FOLLOWERS 239 FAVORITES 139

Edit profile

DizzyTV @DizzyTV Packetized America! jazzyburns.bandcamp.com Joined August 2008

112 Photos and videos



Tweets Tweets & replies Photos & videos

DizzyTV @DizzyTV · Nov 30 I liked a @YouTube videoyoutu.be /9IDCYjb8RHk?a Afrika Bambaataa & Soul Sonic Force - Planet Rock

YouTube



Who to follow · Refresh · View all

- Mattias Häggström @anosou Follow Beatport News @beatportn... Follow Kalle Paulsson @kallepa Follow

Popular accounts · Find friends

United States Trends · Change

- #8DaysForExpelledMinvie #XmasListIn3Words #3YearsOfSSOS #TixWish #MTVStars Bobby Keys

Exhibit A



**twitter @DizzyTV**

**facebook /RayCathode**

**instagram #DizzyTV**

**DizzyTV.com**

SONY



@DizzyTV In orbit now! #DizzyTV #liveTV



DIZZY TV

SONY

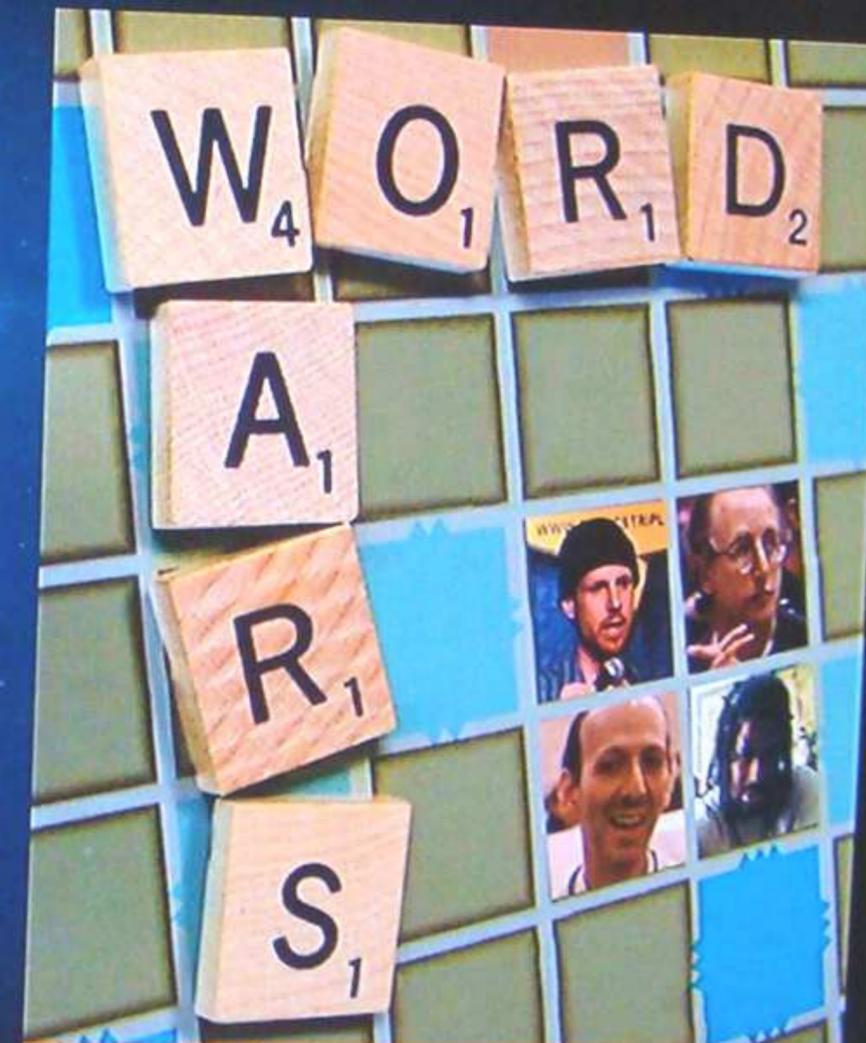
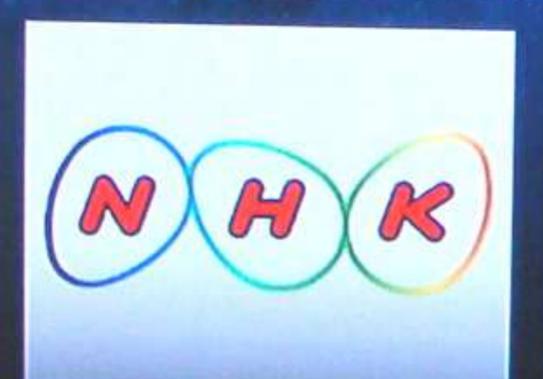
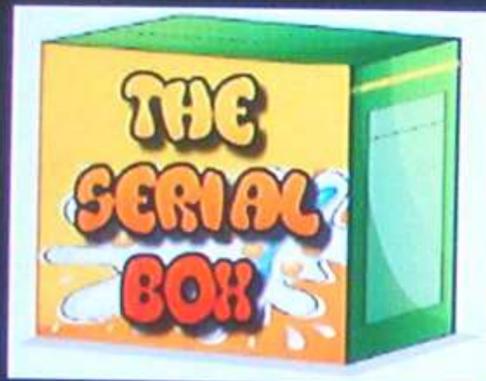
**ROKU**

My Channels

4:00 pm

Options \*

Dizzy TV | 47 of 56 Channels



Watch It Free on  viewster

MyChannel

[www.InstantTvChannel.com](http://www.InstantTvChannel.com)



**Dizzy TV Episode #0 New Pilot**

Fast-Forward Free Style Future American Mythology for the Electronic Age .



## Dizzy TV Episode #0 New Pilot

play

menu

### RAY CATHODE

Pilote episode of the new Dizzy TV. Featuring Bobby Tank, Flosstradamus, Jeremy Ellis and much more. Tune-in to live episodes at [www.DizzyTV.com](http://www.DizzyTV.com) and follow on Twitter @DizzyTV.

2014

MUSIC · ART

Now available on Roku! Add Dizzy TV as a private channel with the code: dizzytv.



SHARE ↗

Dizzy TV

USTREAM

OFF AIR

Live streaming by Ustream

Watch Dizzy TV live on Ustream!

PLAYLIST Dizzy TV



Watch the new Dizzy TV pilot on Youtube.

M B F P G+1 +3 including You

cd baby  
DISCOVER MUSIC

color bars

BUY THE ALBUM

Tweets

Follow

 **DizzyTV** @DizzyTV 30 Nov  
I liked a @YouTube video [youtu.be/9IDCYjb8RHk?a](https://youtu.be/9IDCYjb8RHk?a) Afrika Bambaataa & Soul Sonic Force - Planet Rock

Show Media

 **DizzyTV** @DizzyTV 30 Nov  
I liked a @YouTube video [youtu.be/9I56Klxh\\_os?a](https://youtu.be/9I56Klxh_os?a) Beat Bop - Rammellzee + K-Rob

Show Media

 **DizzyTV** @DizzyTV 18 Nov  
Toy Train ID 2 h264 SDTV QT w:filters: [youtu.be/BxSqzAFSUTg?a](https://youtu.be/BxSqzAFSUTg?a) via @YouTube

Show Media

 **DizzyTV** @DizzyTV 18 Nov  
Some old anims I did for Nicktoons. [youtu.be/FyFkAhwSZ2g?a](https://youtu.be/FyFkAhwSZ2g?a)

 **DizzyTV** @DizzyTV 17 Nov

Tweet to @DizzyTV

View on Instagram

bit A

# Domains

 Organize									
 Nameservers									
 Forward									
 Lock									
 Contacts									
 Update									
 Renew									
 Monetize									
 More									
Domain Search <input type="text"/> 									
All Domains (37) <span style="float: right;"><a href="#">Edit columns ▾</a></span>									
<input checked="" type="checkbox"/>	Domain Name	Expires	Status	Auto-Renew	Lock	Privacy	Certified Do...		
<input type="checkbox"/>	<a href="#">DIZZYCARTOONS.COM</a>	9/21/2015	Active		<input checked="" type="checkbox"/>				
<input type="checkbox"/>	<a href="#">DIZZYCOMICS.COM</a>	5/5/2015	Active		<input checked="" type="checkbox"/>				
<input type="checkbox"/>	<a href="#">DIZZYSHOP.COM</a>	10/19/2015	Active		<input checked="" type="checkbox"/>				
<input type="checkbox"/>	<a href="#">DIZZYTHECAT.COM</a>	1/5/2015	Active	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
<input type="checkbox"/>	<a href="#">DIZZYTV.COM</a>	6/7/2015	Active		<input checked="" type="checkbox"/>				
<input type="checkbox"/>	<a href="#">DIZZYVILLE.COM</a>	9/10/2015	Active		<input checked="" type="checkbox"/>				
<input type="checkbox"/>	<a href="#">DIZZYWORLDWIDE.COM</a>	6/18/2015	Active		<input checked="" type="checkbox"/>				

**New Names, New Opportunities**

100s of new domains are coming -- from .MENU & .SHOP, to .NYC, .LAWYER, & .CLUB  
Easily find the ones that will get you noticed online.

[Learn more](#)



### TV\*5 tévé-cinque • Album

buy share bc

by Jazzy Burn's featuring remix of Jack Danger's track Wild



1. Cowboys & Indians !

00:00 / 08:25



## Dizzy TV

*Dizzy TV is new TV for the post-TV age. Dizzy TV is \*live\* Electronic Space Jazz. Fast-Forward Free Style Future American Mythology for the Electronic Age™. Dimensional TV that connects directly to your Brain™. Dizzy TV is a New Neuron™.*

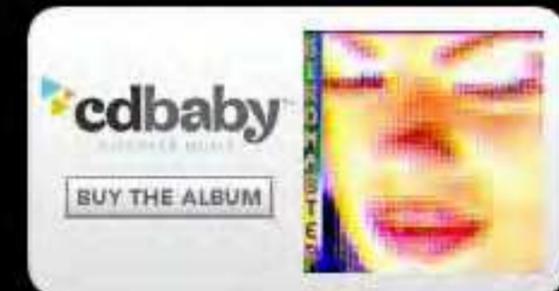


Now available on Roku! Add Dizzy TV as a private channel with the code: dizzytv.



SHARE ↗

Get these Jazzy Burn's songs at CDBaby!



### Tweets

Follow

DizzyTV  
@DizzyTV

30 Nov

I liked a @YouTube video  
[youtu.be/9IDCYjb8RHk?](https://youtu.be/9IDCYjb8RHk?) Afrika  
Bambaataa & Soul Sonic Force -  
Planet Rock

Show Media



Page

Activity

Settings

Build Audience

Help



Dizzy-TV TV Channel

Follow Share

Timeline About Photos Instagram feed More

THIS WEEK

0 Page Likes

UNREAD

0 Notifications

0 Messages

Recent 2013

PEOPLE

17 likes



Reach a new milestone

100 Likes

Promote Page

Invite your friends to like Dizzy-TV

- Stephan Donche
- Emily Provosty

See All Friends

ABOUT

Status Photo / Video Event, Milestone +

What have you been up to?

Dizzy-TV September 17

Dizzy TV now on Roku! If you have a Roku box, go to www.roku.com and add private channel. Code: dizzytv Free and awesome!



Boost Post

Exhibit A