

ESTTA Tracking number: **ESTTA710755**

Filing date: **11/24/2015**

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

Proceeding	91205896
Party	Plaintiff Beau L. Tardy
Correspondence Address	WENDY PETERSON NOT JUST PATENTS LLC PO BOX 18716 MINNEAPOLIS, MN 55418 UNITED STATES wsp@NJPLS.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Wendy Peterson
Filer's e-mail	wsp@NJPLS.com
Signature	/Wendy Peterson/
Date	11/24/2015
Attachments	Opposer's Second Notice of Reliance.pdf(19764 bytes) Exhibit E Supplemental Disclosure with Exhibit A Sample of DIZZY uses from 2006-2014.pdf(4873247 bytes)

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

v.

Wild Brain Entertainment, Inc., Applicant

OPPOSER'S NOTICE OF RELIANCE

Opposer, pursuant to 37 C.F.R. §§2.120(j) and 2.122, and §§704.03, 704.08 and 704.10 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), hereby notices its reliance on the following attached exhibits and requests that they be made of evidence in support of the Opposition herein.

Exhibit E Updated Supplemental Disclosures from Opposer served on Applicant 12/3/2014 in response to Board order.

Submitted By: /Wendy Peterson/

Date: November 24, 2015

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents

PO Box 18716

Minneapolis, MN 55148

wsp@NJPLS.com

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2015, the foregoing was served on Applicant's correspondents of record by email to:

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

/Wendy Peterson/

**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.

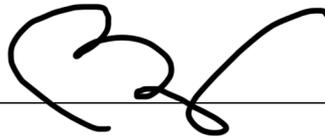
12. In 2012 a Dizzy TV dvd was released. The websites Dizzythecat.com, Dizzytv.com, Dizzyville.com, Dizzyshop.com, Dizzyworldwide.com and Dizzycartoons.com were all maintained and continued to receive traffic. More videos were posted on YouTube and Vimeo and streamed on Ustream.

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

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[®] THE CAT

PRESENTS

DIZZY[®]

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. 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 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

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?

Exhibit A

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

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

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

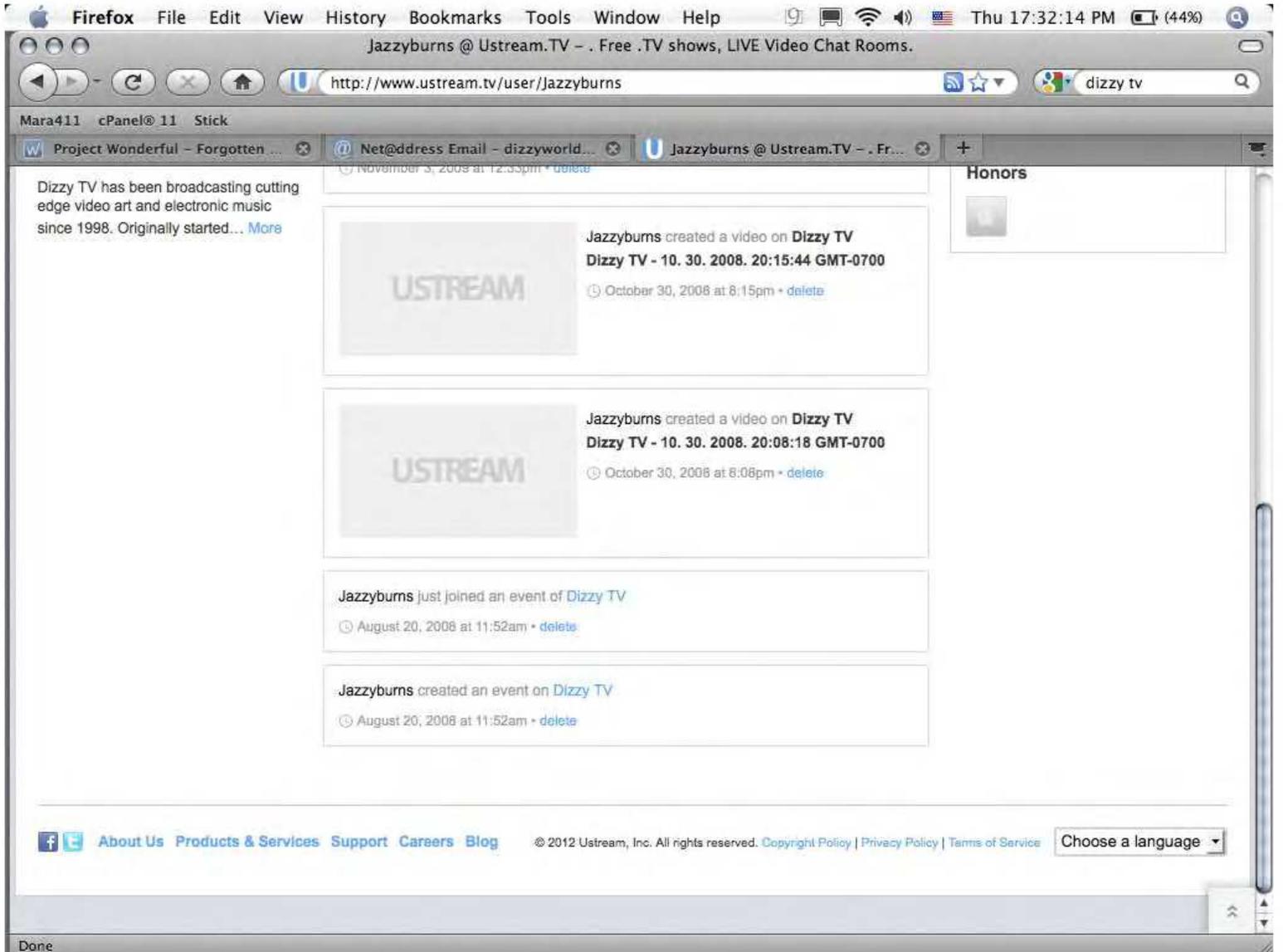


Exhibit A

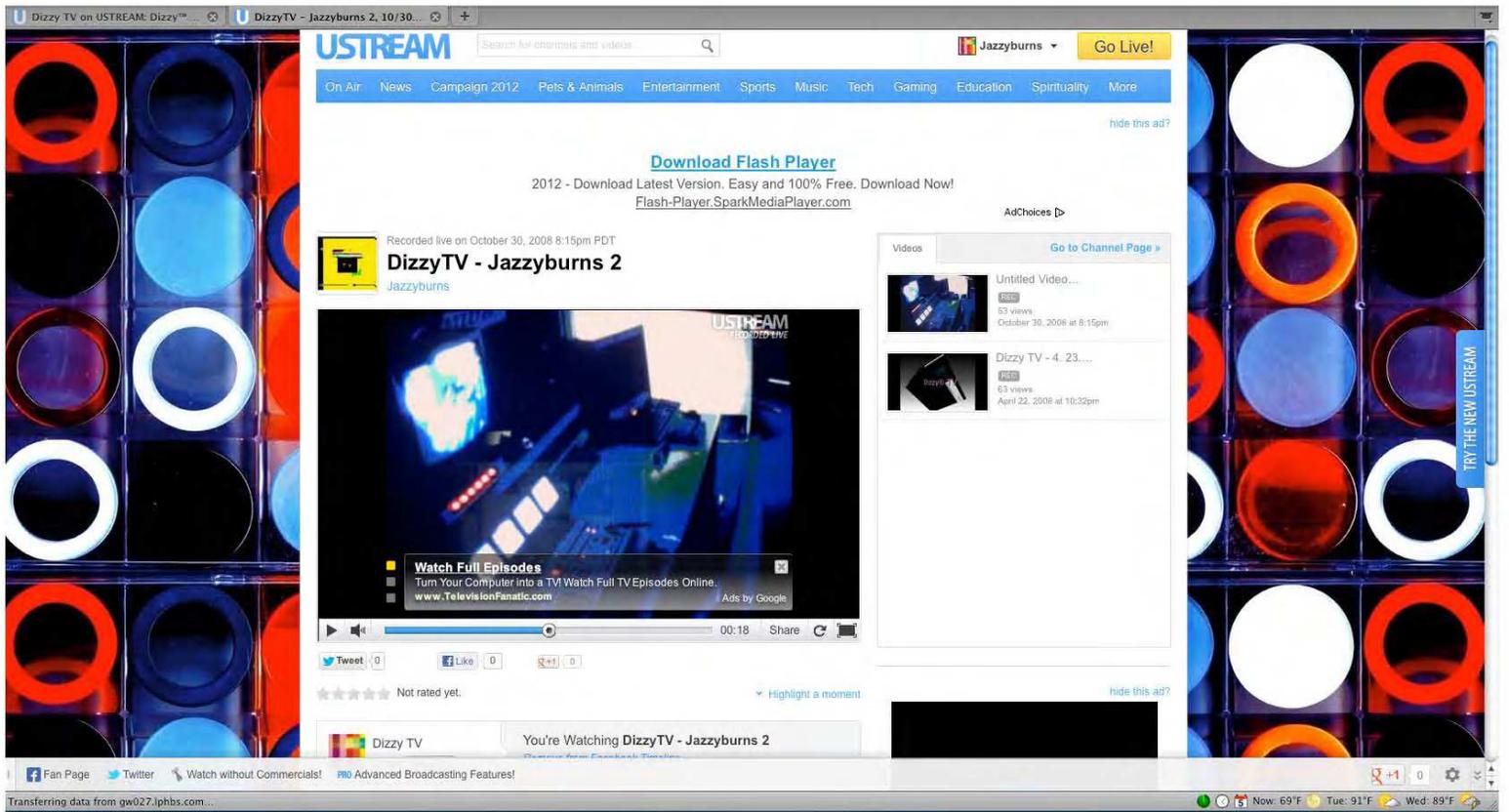


Exhibit A

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

- 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 to watch other pre-recorded shows)

Missing Plugin



*** Exclusively on DIZZY® TV! ***



All materials are property of Oopazz® Recordings and Aquarium Creative Agency, Corp. No video, audio, graphic representation, reproduction or retransmission of these materials may be distributed in any form whatsoever without express written permission from the officers of Oopazz Recordings and Aquarium Creative Agency, Corp. Copyright © 2008 Oopazz Recordings™ and Aquarium Creative Agency, Corp.

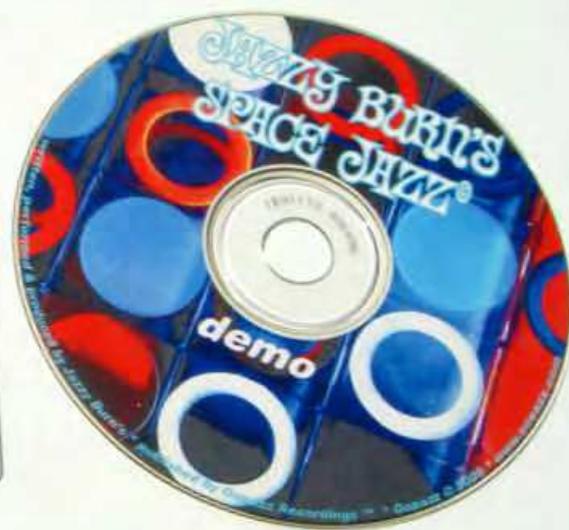


Exhibit A



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



Dizzy TV

by Jazzyburns

Like 0 Remove from Facebook Timeline

 <p>HIGHLIGHT 00:52</p> <p>Extra cheesy Pizza Museum opens</p>	 <p>01:06</p> <p>I lava you</p>
 <p>HIGHLIGHT 00:25</p> <p>Life's a bitch and then you die —</p>	 <p>HIGHLIGHT 05:11</p> <p>Competitive poodle styling</p>
 <p>LIVE</p> <p>Time to get creative</p>	 <p>00:23</p> <p>Polo is huge here!</p>
 <p>HIGHLIGHT 02:48</p> <p>Ooh. Ahh.</p>	 <p>HIGHLIGHT 61:07</p> <p>Pretentious art highlight of the day</p>
 <p>HIGHLIGHT 00:33</p> <p>The most adorable of the deadly sins</p>	 <p>POPULAR 00:42</p> <p>Does Mark Zuckerberg still write Facebook code?</p>

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[®]

Space Jazz[©]

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[©] 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[©]
 May 2012



Colorbars
 Sep 2011



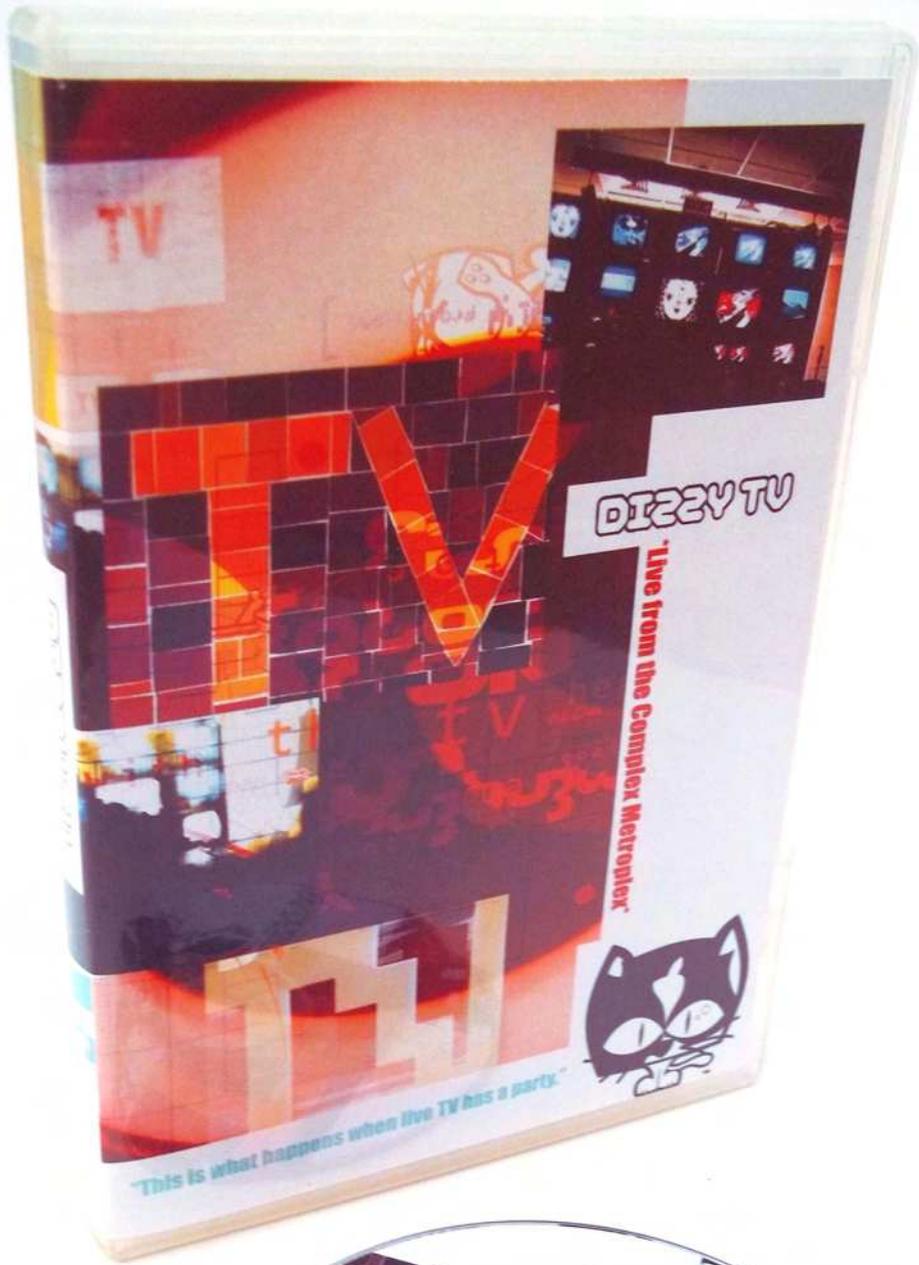


Exhibit A

DIZZY THE CAT



2014 © Beau Fardy

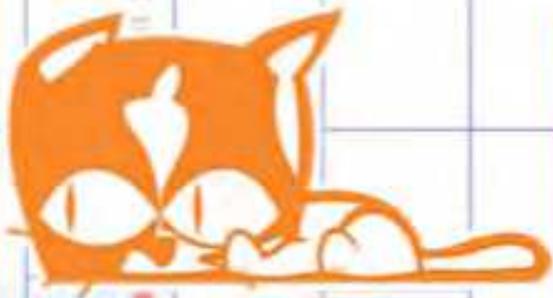


Exhibit A

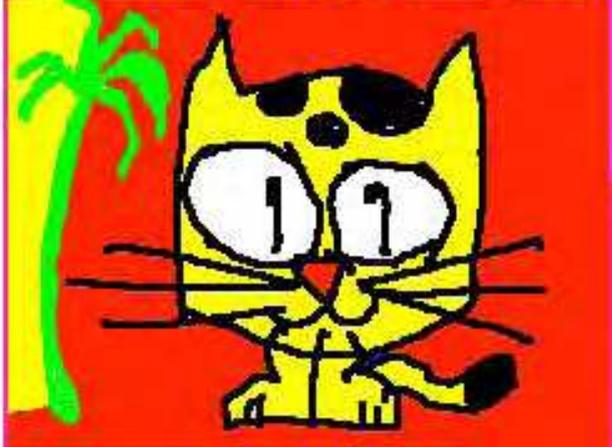


BONGA'S

TAKE HOME



BONGA the 8-bit cat



©2019 BONGA CAT



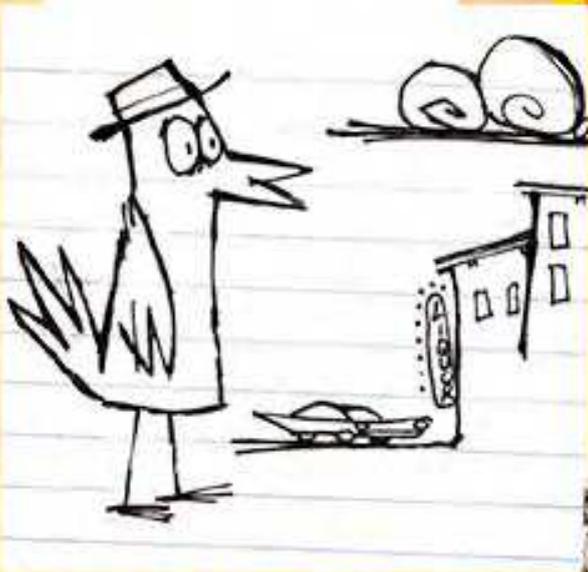
WIPE-OUT



Exhibit A

"Mr. Bird"

main character



2014 © Beau Tardy



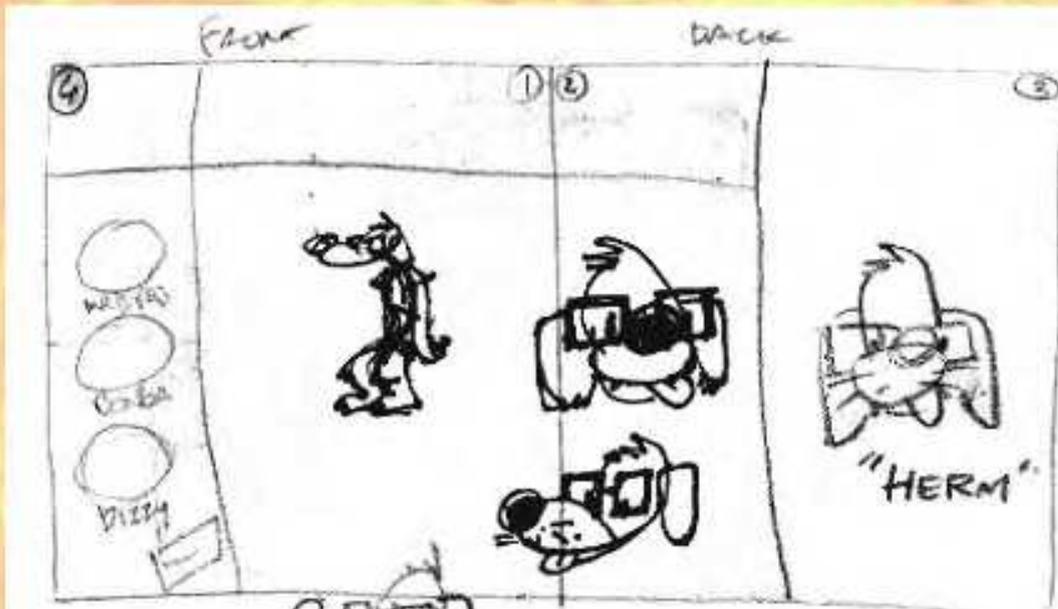
Exhibit A

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

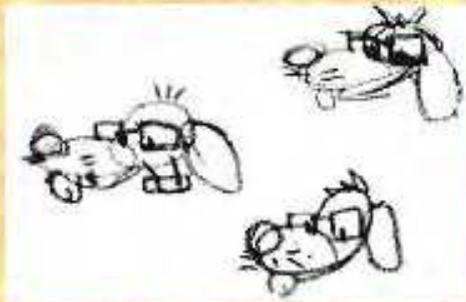


'FIFI'





**"HERM"
the
drummer**



"MO" the mysterious masked bass player



2014 © Beau Tardy



Exhibit A



Mr. Bird drawings

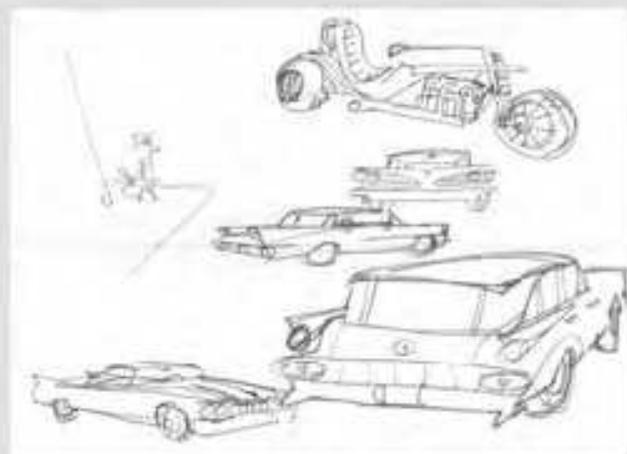
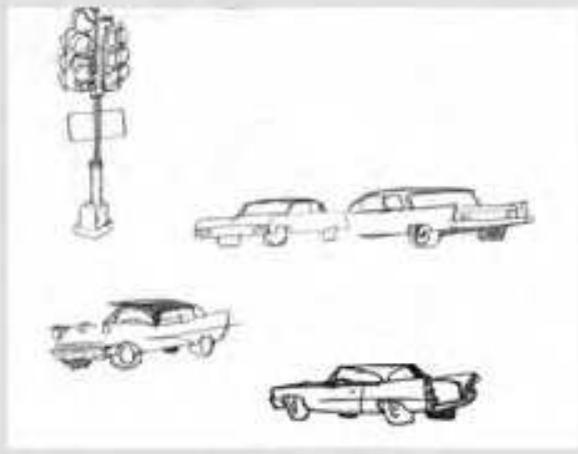


Exhibit A

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
If your paper doesn't carry
Dizzy Comics, ask them to!
Tell us what you think
at www.dizzycomics.com!

WORD
#

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.
All rights reserved. © and ™ 2014



Shamrock's
5TH ANNUAL
SAINT PATRICK'S DAY
EXTRAVAGANZA

SPINNING
DJ
OUTS

3.17.14 Sat. Feb. Fal St

02/18/2014
228 West 1st St. Humble TX
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. If your paper doesn't carry Dizzy Comics, ask them to! Tell us what you think at 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

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