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Filing date: **04/30/2010**

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

Proceeding	92049926
Party	Plaintiff Penthouse Digital Media Productions Inc.
Correspondence Address	Floyd A. Mandell, Esq. Katten Muchin Rosenman LLP 525 W. Monroe St. Chicago, IL 60661 UNITED STATES floyd.mandell@kattenlaw.com, lisa.shebar@kattenlaw.com, cathay.smith@kattenlaw.com
Submission	Motion to Reopen
Filer's Name	Cathay Y. N. Smith
Filer's e-mail	floyd.mandell@kattenlaw.com, cathay.smith@kattenlaw.com, lisa.shebar@kattenlaw.com
Signature	/s/
Date	04/30/2010
Attachments	Petitioner's Request to Reopen Proceeding and For Telephone Conference.pdf (52 pages)(2625959 bytes)

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

PENTHOUSE DIGITAL MEDIA PRODUCTIONS INC.,	)	
Petitioner,	)	
v.	)	Cancellation No. 92049926
CLOUDSTREET, INC. d/b/a ROXBURY ENTERTAINMENT,	)	
Registrant.	)	

PETITIONER'S REQUEST TO REOPEN PROCEEDING
AND FOR TELEPHONE CONFERENCE

Petitioner Penthouse Digital Media Productions Inc. ("Petitioner") respectfully requests the Board to resume this proceeding in light of the stay of the U.S. District Court civil action that occasioned the suspension of this proceeding, and respectfully requests a telephone conference to be scheduled with the Interlocutory Attorney in order to resolve certain scheduling issues in this proceeding.

1. On February 19, 2009, the Board suspended this proceeding (the "Cancellation Proceeding") pursuant to the parties' stipulation filed in the U.S. District Court, Central District of California, Civil Action No. CV-08-03872 FMXC (JWJx) (the "Civil Action"). (*See* Docket No. 10.)

2. On April 22, 2010, the District Court ordered the Civil Action stayed in its entirety in order to permit the Board to first resolve this Cancellation Proceeding. The District Court's "Order To Stay Case" is attached hereto as **Exhibit A**.

3. Petitioner's views concerning the scheduling and status of this Cancellation Proceeding, which were filed with the District Court, are attached hereto as **Exhibit B**; and

Registrant's views concerning the scheduling and status of this Cancellation Proceeding, which were filed with the District Court, are attached hereto as **Exhibit C**.

4. From these filings it appears that Petitioner and Registrant agree that: (1) Registrant's reply to Petitioner's counterclaim in the Civil Action should serve as Registrant's responsive pleading in this Cancellation Proceeding, and (2) the discovery period should be closed in this Cancellation Proceeding.

5. Nevertheless, as described in Exhibit B, Petitioner believes that there are issues remaining concerning the status and scheduling of this Cancellation Proceeding and, accordingly, believes the most effective and efficient manner to deal with such issues is a telephone conference with the Interlocutory Attorney and counsel for the parties in order to seek resolution of these issues and to set a scheduling order in this Cancellation Proceeding.

Date: April 30, 2010

Respectfully submitted,

By: Cathay Smith

Floyd A. Mandell
Lisa K. Shebar
Cathay Y. N. Smith
Attorneys for Petitioner
Katten Muchin Rosenman LLP
525 West Monroe Street
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Exhibit A

Penthouse Digital Media Productions Inc. v. Cloudstreet, Inc. d/b/a Roxbury Entertainment, Cancellation No. 92049926

Petitioner's Exhibit

JS-5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:08-cv-03872-JHN-FMOx Date April 22, 2010

Title Roxbury Entertainment v. Penthouse Media Group, Inc. et al

Present: The Honorable JACQUELINE H. NGUYEN

Alicia Mamer	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not present	Not present

Proceedings: ORDER TO STAY CASE (In Chambers)

The Court has read and considered the parties' responses to the Order to Show Cause ("OSC") issued by the Court on March 25, 2010, as to whether the Court should stay this litigation in order to permit the Trademark Trial and Appeal Board ("TTAB") to resolve the cancellation proceedings initiated by Defendants.

The only claims that remain pending in this litigation involve the validity of Plaintiff's trademark registrations, which Defendants seek to cancel. As such, the Court agrees with the parties' determination that a stay is appropriate in this case. However, the Court declines to rule on the evidentiary objections Defendants mention in their responsive briefing, and the Court is not persuaded that it can, or should, attempt to direct the TTAB's handling of substantive or procedural matters presented in connection with Defendants' cancellation claims. Cf., e.g., Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 81-85 (2002) (considering the interpretation and application of a section of the National Association of Securities Dealers ("NASD") Code of Arbitration Procedure and finding that the applicability of the NASD time limit rule presented the type of "procedural" question that "grow[s] out of the dispute and bear[s] on its final disposition," rendering it a matter for the arbitrator, not the court, to decide). Accordingly, the Court hereby ORDERS that this case is STAYED in its entirety in order to permit the TTAB to resolve the cancellation proceedings initiated by Defendants. The Court also ORDERS the parties to meet and confer and to file a joint status report with the Court every 90 days until the stay is lifted by the Court.

IT IS SO ORDERED.

: N/A

Initials of Preparer AM

Exhibit B

Penthouse Digital Media Productions Inc. v. Cloudstreet, Inc. d/b/a Roxbury Entertainment, Cancellation No. 92049926

Petitioner's Exhibit

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David M. Newman (SBN 246351)
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION (Los Angeles)

ROXBURY ENTERTAINMENT, a California corporation, Plaintiff, vs. PENTHOUSE MEDIA GROUP, INC., a Nevada corporation; PENTHOUSE DIGITAL MEDIA PRODUCTIONS, INC., a New York corporation; PULSE DISTRIBUTION, LLC, a California LLC; and DOES 1-10, inclusive, Defendants. AND RELATED COUNTERCLAIM.	CASE NO. 2:08-cv-03872 JHN (FMOx) **DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE RE: STAY OF LITIGATION AND TRANSFER TO TTAB; DECLARATION OF KRISTIN HOLLAND; PROPOSED ORDER**

RESPONSE TO ORDER TO SHOW CAUSE

Defendants hereby respond to the March 25, 2010 Order to Show Cause regarding whether the Court should stay this litigation in order to permit the Trademark Trial and Appeal Board ("TTAB") to first resolve the cancellation proceedings initiated by Defendants.

I. The Court Should Stay This Litigation To Allow The TTAB To First Resolve The Cancellation Proceeding Initiated By Defendants

On April 8, 2010, counsel for the parties met and conferred pursuant to the Court's Order. The parties agreed to a stay of this litigation pending the TTAB resolving the cancellation proceeding initiated by Defendants in the TTAB.[1] (Declaration of Kristin Holland ("Holland Decl."), ¶ 2.)

Accordingly, this Court should exercise its discretion to stay this litigation in order to permit the TTAB to first resolve the cancellation proceeding initiated by Defendants. *See, e.g.*, *Citicasters Co. v. Country Club Communications*, 44 U.S.P.Q. 2d 1223, 1223-24 (C.D. Cal. 1997); *Microchip Technology, Inc. v. Motorola, Inc.*, No. Civ. A. 01-264-JJF, 2002 WL 32332753, at *3 (D. Del. May 28, 2002); *Kemin Industries, Inc. v. Watkins Products, Inc.*, 183 U.S.P.Q. 799 (D. Minn. 1974).

II. Defendants Will Be Prejudiced If The Court Does Not Resolve Certain Discovery Issues Prior To Stay Of This Litigation

Counsel for the parties discussed several additional issues during the April 8, 2010 meet and confer, and further in an April 15, 2010 E-Mail. Defendants believe they would be prejudiced should these issues not be resolved by this Court before a stay is imposed. The parties were not able to reach a consensus on all of these issues. (Holland Decl., ¶¶ 2-3.) In order to prevent prejudice to Defendants, Defendants

[1] The Complaint in this case was dismissed on December 21, 2009, when this Court granted Defendants' motion for summary judgment. (Docket ## 189, 195.) That decision is currently being appealed by Plaintiff. At this time, only Defendants' Counterclaims, Plaintiff's Motion for Summary Judgment, and Defendants' motions for fees, sanctions, and costs (Docket ## 199, 201) remain pending.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION (Los Angeles)

ROXBURY ENTERTAINMENT, a California corporation, Plaintiff, vs. PENTHOUSE MEDIA GROUP, INC., a Nevada corporation; PENTHOUSE DIGITAL MEDIA PRODUCTIONS, INC., a New York corporation; PULSE DISTRIBUTION, LLC, a California LLC; and DOES 1-10, inclusive, Defendants. AND RELATED COUNTERCLAIM.	CASE NO. 2:08-cv-03872 JHN (FMOx) **DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE RE: STAY OF LITIGATION AND TRANSFER TO TTAB; DECLARATION OF KRISTIN HOLLAND; PROPOSED ORDER**

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RESPONSE TO ORDER TO SHOW CAUSE

Defendants hereby respond to the March 25, 2010 Order to Show Cause regarding whether the Court should stay this litigation in order to permit the Trademark Trial and Appeal Board ("TTAB") to first resolve the cancellation proceedings initiated by Defendants.

I. The Court Should Stay This Litigation To Allow The TTAB To First Resolve The Cancellation Proceeding Initiated By Defendants

On April 8, 2010, counsel for the parties met and conferred pursuant to the Court's Order. The parties agreed to a stay of this litigation pending the TTAB resolving the cancellation proceeding initiated by Defendants in the TTAB.[1] (Declaration of Kristin Holland ("Holland Decl."), ¶ 2.)

Accordingly, this Court should exercise its discretion to stay this litigation in order to permit the TTAB to first resolve the cancellation proceeding initiated by Defendants. *See, e.g.*, *Citicasters Co. v. Country Club Communications*, 44 U.S.P.Q. 2d 1223, 1223-24 (C.D. Cal. 1997); *Microchip Technology, Inc. v. Motorola, Inc.*, No. Civ. A. 01-264-JJF, 2002 WL 32332753, at *3 (D. Del. May 28, 2002); *Kemin Industries, Inc. v. Watkins Products, Inc.*, 183 U.S.P.Q. 799 (D. Minn. 1974).

II. Defendants Will Be Prejudiced If The Court Does Not Resolve Certain Discovery Issues Prior To Stay Of This Litigation

Counsel for the parties discussed several additional issues during the April 8, 2010 meet and confer, and further in an April 15, 2010 E-Mail. Defendants believe they would be prejudiced should these issues not be resolved by this Court before a stay is imposed. The parties were not able to reach a consensus on all of these issues. (Holland Decl., ¶¶ 2-3.) In order to prevent prejudice to Defendants, Defendants

[1] The Complaint in this case was dismissed on December 21, 2009, when this Court granted Defendants' motion for summary judgment. (Docket ## 189, 195.) That decision is currently being appealed by Plaintiff. At this time, only Defendants' Counterclaims, Plaintiff's Motion for Summary Judgment, and Defendants' motions for fees, sanctions, and costs (Docket ## 199, 201) remain pending.

respectfully request that the Court consider, and resolve, the following issues before it stays this litigation:

1. Use Of Discovery From This Litigation In The TTAB Cancellation Proceeding.

Discovery is now closed in this litigation. Accordingly, in order to avoid the duplication of efforts concerning discovery of the same factual and legal issues, and to avoid any unnecessary costs and delay, discovery should be closed in the TTAB cancellation proceeding, and the parties should be permitted to use all discovery obtained by them in this litigation, including documents, disclosures, and testimony, in the TTAB cancellation proceeding. Defendants believe that Plaintiff agrees to this position.

2. Defendants Should Be Permitted To Supplement Their Response to Plaintiff's Motion for Summary Judgment.

On October 5, 2009, Plaintiff filed a Motion for Summary Judgment ("MSJ"), and Defendants responded on October 26, 2009. (Docket ## 147, 166.) On November 9, 2009, the Court took Plaintiff's MSJ off calendar. (Docket # 186.) Indeed, if the Court stays this litigation, and if Plaintiff's MSJ is to be decided by the TTAB, Defendants would be prejudiced if they do not have the opportunity to supplement and/or file a new opposition brief with applicable law from the TTAB and the Federal Circuit. The current briefing assumes that the law of the 9th Circuit and of this District controls.

3. Evidence Not Produced During Discovery Should Be Barred

The parties should be barred from presenting any evidence in the TTAB cancellation proceeding that they did not produce by the close of discovery pursuant to a timely request and/or mandated by Rule 26 disclosures in this litigation, including, without limitation, documents, disclosures, and testimony.

For instance, in support of its Motion for Summary Judgment ("MSJ"), and *after* the close of discovery, Plaintiff submitted two declarations: one of Kirk Hallam

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(Plaintiff's principal owner and primary officer and agent, as well as its legal counsel) and one of Paul Supnik (Plaintiff's trademark counsel). (Docket # 147-2.) These declarations were used to purportedly demonstrate that Plaintiff did not engage in fraudulent conduct when it secured three trademark registrations for the mark "Route 66" – an issue at the heart of Defendants' cancellation proceeding in the TTAB, and its Counterclaims in this case.

In opposition to the MSJ, Defendants timely submitted Evidentiary Objections to both declarations. (Docket ## 166-5 and 166-6.) Defendants objected on numerous grounds, including that Plaintiff refused during the discovery period to produce the specific information contained in the two declarations or related information, although it was requested as part of a Fed. R. Civ. P. 36(b) notice and as part of written discovery.[2]

Specifically, Defendants had deposed Mr. Hallam personally, and as a Fed. R. Civ. P. 30(b)(6) witness after Magistrate Judge Olguin ordered him to appear pursuant to a Motion to Compel, filed after he failed to appear at a previously noticed deposition. (Holland Decl., ¶ 7.) Mr. Hallam was questioned regarding the very facts asserted in those declarations. Mr. Hallam *instructed himself* not to answer these questions and refused to provide such information during his deposition on the grounds that it would violate the attorney-client privilege and the attorney work-product doctrine. Mr. Hallam's conduct forced Defendants to file numerous discovery motions (Docket ## 118, 119, 142) to compel Plaintiff to provide this necessary testimony. Those discovery motions, however, have not been resolved. (Holland Decl., ¶¶ 4-12.)

As a result, Defendants were not able to reopen Mr. Hallam's deposition nor were they on notice that Mr. Supnik would be a witness. To date, the Court has not

[2] Defendants also objected to the Declaration of Paul Supnik on the grounds that he had never been identified as a potential witness for Plaintiff in Plaintiff's Initial Rule 26 Disclosure, its discovery responses, or at the deposition of Mr. Hallam. As such, Defendants were not on notice that Mr. Supnik would be a witness and did not depose him.

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ruled on Defendants' Evidentiary Objections (filed concurrently with Defendants' Opposition) because it deferred its ruling on the MSJ. Therefore, despite the fact that Defendants timely objected to the declarations (*see Pfingston v. Ronan Engineering Co.*, 284 F. 3d 999, 1003 (9th Cir. 2002)), and had attempted to compel Mr. Hallam's testimony prior to the discovery cut-off, the issue of whether the declarations are admissible evidence remains unresolved.

Allowing the admission of such untimely "evidence" in the TTAB cancellation proceeding would prejudice Defendants, especially where, as here, Defendants are foreclosed from examining the declarants of such evidence. Indeed, Plaintiff should not be able to refuse to provide information when sought by Defendants during discovery, but then provide it in support of Plaintiff's case in the TTAB cancellation proceeding. Accordingly, Defendants respectfully request that the Court strike Mr. Hallam's and Mr. Supnik's Declarations, and/or bar either party from presenting any evidence in the TTAB cancellation proceeding that they did not produce by the close of discovery pursuant to a timely request and/or mandated by Rule 26 disclosures in this litigation, including, without limitation, documents, disclosures, and testimony.

Alternatively, if the Court declines to do so, Defendants respectfully request that the Court permit Defendants to depose Mr. Hallam and Mr. Supnik on the limited issues relating to the facts contained in their Declarations.[3] Given Mr. Hallam's past

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[3] During the meet and confer, Plaintiff objected to this as a "reopening of discovery" after the discovery deadline has passed. That characterization is incorrect. Defendants do not seek to reopen discovery and do not intend to pursue discovery on any additional facts beyond those that Plaintiff improperly prevented Defendants from obtaining. Defendants seek only to discover facts that Plaintiff improperly prevented them from doing so <u>before the close of discovery</u>. In any event, even if this were an issue regarding the "modification" of the standing discovery schedule in this action, Defendants' predicament clearly establishes "good cause" for the Court to permit Defendants to depose Mr. Hallam and Mr. Supnik on very limited topics relating to their testimony offered in the Declarations. F.R.C.P. 16(b) (Adv. Comm. Notes on 1983 Amendment to Rule 16(b).) While testimony of these witnesses can be obtained by calling them as adverse witnesses during this testimony period, at that stage, it would be after the consideration of a summary judgment motion, and thus, would

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conduct of refusing to respond to questions on the ground of privilege after it is clear that he has opened to door to facts by virtue of his filing self-serving declarations, this Court should retain jurisdiction to enforce any discovery order. This will ensure that Mr. Hallam and Mr. Supnik do not refuse to answer questions directly related to their declarations. Plaintiff should not be allowed to use the attorney-client privilege when it suits its purposes, while affirmatively giving testimony on the identical subject areas.

III. Defendants Believe The Anticipated Duration Of The TTAB Cancellation Proceeding Will Be Approximately 12 Months

The depositions of Mr. Hallam and Mr. Supnik can be completed within two consecutive business days. (Holland Decl., ¶ 13.) Thereafter, absent any extensions of time or motions for summary judgment, a typical TTAB cancellation proceeding lasts 6 ½ months from the day discovery closes to the end of the parties' trial periods when the case is ready for decision. (Holland Decl., ¶ 14.) Additionally, according to the TTAB's website, the TTAB presently renders decisions in proceedings approximately 24 weeks after the case is ready for decision. (Holland Decl., ¶ 14.) Accordingly, if discovery is closed in the TTAB cancellation proceeding, Defendants believe that the TTAB cancellation proceeding will likely last approximately 12 ½ months absent any extensions and/or stays.

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prejudice Defendants unless the declarations are stricken pursuant to the objections on file.

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Accordingly, Defendants agree that the Court should exercise its discretion to stay this litigation in order to permit the TTAB to first resolve the cancellation proceedings.

Dated: April 19, 2010

KATTEN MUCHIN ROSENMAN LLP

By: s/Kristin L. Holland
Attorneys for Defendants and Counterclaimants

KATTEN MUCHIN ROSENMAN LLP

By: s/Floyd A. Mandell
Attorneys for Defendants and Counterclaimants

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By: s/ Ira P. Rothken
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DECLARATION

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DECLARATION OF KRISTIN HOLLAND

I, Kristin Holland, hereby declare:

1. I am an attorney licensed in all the courts of the State of California and before this Court, and I am a partner at the law firm of Katten Muchin Rosenman LLP, attorneys of record for defendants and counterclaimants Penthouse Media Group Inc., n/k/a FriendFinder Networks Inc., Penthouse Digital Media Productions Inc., and Pulse Distribution, LLC (collectively, "Defendants"). I make this Declaration in support of Defendants' Response to Order to Show Cause.

2. On April 8, 2010, I, along with my colleagues Floyd Mandell and David Newman, met and conferred telephonically with Kirk Hallam, counsel for plaintiff Roxbury Entertainment ("Plaintiff"). A court reporter was present to transcribe the proceeding. As a general matter, the parties agreed to a stay of this action while the matter is transferred to the TTAB.

3. On April 15, 2010, after considering Mr. Hallam's position and wishing to compromise and clarify our position, I further sent an e-mail to Plaintiff's counsel, inviting Plaintiff to agree on certain discovery related issues. A true and correct copy of this e-mail is attached hereto as Exhibit A.

4. One of the issues that was not resolved during the meet and confer was whether the Court should strike Mr. Hallam's and Mr. Supnik's declarations in support of Plaintiff's Motion for Summary Judgment ("MSJ"), or whether Defendants should be able to depose Mr. Hallam and Mr. Supnik regarding the statements they made in their declarations. This requires a brief explanation of the background of Defendants' attempts to depose Plaintiff and ascertain the facts asserted in those declarations.

5. Pursuant to an agreement of the parties in early July, Defendants noticed Plaintiff's 30(b)(6) deposition for July 29, 2009. However, neither Mr. Hallam, nor any witness(es) for Plaintiff, appeared at this deposition, nor did Plaintiff seek a timely protective order.

6. As a result, Defendants filed a Motion to Compel and For Sanctions to force Plaintiff to appear for its deposition and to reimburse Defendants the costs and fees that were needlessly incurred in light of Plaintiff's unilateral "cancellation" of the deposition just 36 hours before is was set to proceed. Just a few days later, Plaintiff filed a Motion for Protective Order in an attempt to avoid having to produce a witness to appear for any deposition, which Defendants opposed.

7. After reviewing the parties' respective motions, Magistrate Judge Olguin issued an "Order re: Discovery Motion" on August 17, 2009. The Order compelled Plaintiff to appear for its 30(b)(6) deposition on August 26, 2009 and to provide substantive testimony. Judge Olguin determined that Plaintiff's purported grounds for refusing to appear were "meritless" and thwarted Defendants' right to discover facts about Plaintiff and Plaintiff's allegations in the Complaint. (Docket # 138.)

8. Among the areas of testimony for which Plaintiff was required to produce a witness pursuant to Fed. R. Civ. P. 30(b)(6) were Plaintiff's "first use and alleged continuous use of the Route 66 Mark," "Plaintiff's acquisition of its claimed rights in the Route 66 Mark," "any and all allegations contained in ... Defendants' First Amended Counterclaim, and Plaintiff's Answer and Affirmative Defenses to Defendants' First Amended Counterclaim," "all facts relating to the federal trademark applications and registrations for the Route 66 Mark," "information relating to any and all alleged motion pictures produced, distributed, sold, marketed, and/or advertised under the Route 66 Mark," "the evidence Plaintiff intends to introduce at trial," "the witnesses Plaintiff intends to call to testify at trial," and "information relating to ownership of the Route 66 Mark." A true and correct copy of the Amended Notice of Deposition of Roxbury Entertainment is attached hereto as Exhibit B.

9. On August 26 and 27, 2009, Mr. Hallam appeared as the sole designated witness for Plaintiff's 30(b)(6) deposition. At the deposition, Mr. Hallam was either unprepared or unwilling to answer questions about basic elements of Plaintiff and Plaintiff's claims; improperly refused to answer questions; failed to produce

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responsive documents; and instructed himself not to answer questions that pertained to factual issues in this action on the grounds of attorney-client privilege and attorney work-product doctrine. This includes questions bearing directly on grounds for canceling Plaintiff's fraudulent trademark registrations.

10. As a result of Mr. Hallam's evasive and non-responsive testimony, Defendants filed a Motion for Sanctions (Docket # 142) seeking to prevent Plaintiff from producing any evidence at trial or otherwise on the numerous topics that Plaintiff failed to provide substantive, factual testimony. The transcript of the 30(b)(6) deposition is attached as an exhibit to that motion, as well as multiple appendices that list all of the unanswered questions for which Mr. Hallam refused to provide any substantive testimony.

11. On October 5, 2009, Plaintiff filed its MSJ. In support of the MSJ, Mr. Supnik submitted an eleven (11) page Declaration purporting to testify to a number of topics related to Plaintiff's trademarks and trademark applications. (Docket # 147-2.) Mr. Supnik was never identified as a potential witness at any stage in the litigation – not in Plaintiff's Initial Disclosures, not in Plaintiff's discovery responses, and not during Plaintiff's 30(b)(6) deposition. Accordingly, Defendants objected to Mr. Supnik's testimony on the grounds that Defendants had been improperly prevented from discovering the very facts that he asserted in his Declaration.

12. Mr. Hallam also submitted a Declaration in support of the MSJ purporting to provide evidence on a wide range of topics. (Docket # 147-2, attached hereto as Exhibit C.) Notably, Mr. Hallam "testifies" to factual matters that he was specifically asked during Plaintiff's 30(b)(6) deposition but for which he refused to provide any substantive answers. For instance, during Mr. Hallam's deposition, Defendants sought information regarding Plaintiff's alleged continuous use of its trademark since 1960. Mr. Hallam hid behind the attorney-client and attorney-work product doctrine. Below is an excerpt from Mr. Hallam's deposition transcript, a true and correct copy of which is attached hereto as Exhibit D.

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Q. Do you have evidence showing continued use of "Route 66" by you or by your predecessors in interest for the last 48 years?

A. Yes.

Q. What is that evidence?

A. That, you're asking me for my opinions and conclusions and knowledge as the litigator handling this case on behalf of Roxbury Entertainment and as counsel for Roxbury Entertainment, I have to assert attorney-client and workplace *[sic]* privileges not to answer.

Remarkably, in support of Plaintiff's MSJ, Mr. Hallam provides extensive testimony regarding the first use, and continuous use, of "Route 66" in paragraphs 9-11 of his Declaration. Thus, on the one hand, he refused to disclose this information on the basis of "privilege" during his deposition, but then freely provides this information in support of Plaintiff's MSJ. Plaintiff should not be able to refuse to provide this information when sought by Defendants during Mr. Hallam's deposition, but then provide it in support of Plaintiff's MSJ or as evidence in support of Plaintiff's case in the TTAB cancellation proceeding.

13. Based on Mr. Hallam's past conduct, Defendants are concerned that any order that Mr. Hallam and Mr. Supnik submit to a deposition may be futile unless this Court retains jurisdiction to ensure compliance with such order. If the witnesses are straightforward and cooperative, their depositions can be completed in less than two business days.

14. I am informed and believe, based upon my review of several TTAB orders scheduling trial dates and conversations with TTAB specialists in my firm, that a typical TTAB proceeding lasts 6 ½ months from the date discovery closes through the end of the parties' trial periods when the case is ready for decision. Furthermore, the TTAB website, located at <http://www.uspto.gov/trademarks/process/

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appeal/guidelines/ttabfaq.jsp>, states that "[p]resently, the TTAB is rendering decisions in proceedings approximately 24 weeks after the case is ready for decision." Accordingly, it is my belief that the TTAB cancellation proceeding will last approximately 12 ½ months absent any extensions of time or motions for summary judgment.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 19th day of April, 2010, at Los Angeles, California.

s/ Kristin Holland

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EXHIBIT A

Newman, David M

From: Holland, Kristin L.
Sent: Thursday, April 15, 2010 10:06 AM
To: 'kmhallam@aol.com'
Cc: Mandell, Floyd A.; Newman, David M
Subject: Roxbury/Penthouse -- Proposed Order Regarding Transfer/Stay of Case
Attachments: Penthouse - Proposed Order on Transfer to TTAB (3).DOC

Kirk,

We attach a proposed order regarding the stay of the case which plan to submit to the Court with our brief on Monday. We invite you to agree to the attached order, or suggest any changes to the order for our consideration on or before Noon tomorrow (12 p.m. on April 16, 2010), as briefs are due on April 19, 2010. You are also welcome to call us if you would prefer to speak with us over the phone.

Kristin

KRISTIN L. HOLLAND
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EXHIBIT B

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION (Los Angeles)

ROXBURY ENTERTAINMENT, a California corporation, Plaintiff, vs. PENTHOUSE MEDIA GROUP INC., n.k.a. FriendFinder Network Inc., a Nevada corporation; PENTHOUSE DIGITAL MEDIA PRODUCTIONS INC., a New York corporation; PULSE DISTRIBUTION, LLC, a California LLC; and DOES 1-10, inclusive, Defendants. AND RELATED COUNTERCLAIM.	CASE NO. 2:08-CV-03872 FMC (JWJx) **AMENDED NOTICE OF DEPOSITION OF ROXBURY ENTERTAINMENT** DATE: July 29, 2009 TIME: 9:00 a.m. PLACE: Katten Muchin Rosenman LLP 2029 Century Park East Suite 2600 Los Angeles, CA 90067-3012

6. Products and/or services created, produced, engineered, marketed, advertised, promoted, distributed, sold and/or offered for sale, by, for or on behalf of Plaintiff, for, under, on or in connection with the Route 66 Mark (collectively, "Plaintiff's ROUTE 66 Products/Services").

7. Investigations, surveys, studies, market research or other analyses regarding (a) the familiarity of consumers with Plaintiff and/or the Route 66 Mark; (b) the respective services, products and/or marks of Plaintiff or Defendants; (c) any confusion or likelihood of confusion resulting from Defendants' activities as alleged in the Complaint; and/or (c) Defendants' activities as alleged in the Complaint.

8. Advertising, promotion and marketing of the Route 66 Mark and/or Plaintiff's ROUTE 66 Products/Services, including the dollar amounts expended by Plaintiff or on behalf of Plaintiff on such advertising, promotion and marketing.

9. Distribution and/or sale and/or attempted distribution and/or sales of goods and/or services by Plaintiff under the Route 66 Mark.

10. The demographic characteristics of the consumer group to which Plaintiff's ROUTE 66 Products/Services are sold, advertised, marketed and/or promoted and any evidence supporting such.

11. Communications with customers, licensees, consumers, potential customers, licenses and/or consumers regarding the Route 66 Mark, Plaintiff's Route 66 Products/Services, and/or Defendants.

12. Grants, licenses, permissions, agreements and/or assignments obtained and/or issued by Plaintiff, and any negotiations thereof, with respect to the Route 66 Mark and/or Plaintiff's ROUTE 66 Products/Services, including, without limitation, Plaintiff's claimed acquisition of rights, assignments to it, consideration paid, and each predecessor's claims to title.

13. Any instances of actual confusion and/or reverse confusion among members of the relevant public regarding any possible relationship between Plaintiff

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and Defendants or the respective services, products or marks of Plaintiff and Defendants.

14. Opinions, advice, reports, studies, facts, or information about Defendants' activities as alleged in the Complaint.

15. Past, present or future business plans for the creation, dissemination, distribution, marketing, advertisement, promotion, sale and/or offering for sale of Plaintiff's ROUTE 66 Products/Services.

16. Cease and desist demands, objections, lawsuits, and/or proceedings against third parties involving the Route 66 Mark and/or Plaintiff's ROUTE 66 Products/Services, other than this action.

17. Any investigation by Plaintiff into third parties' use of the Route 66 Mark.

18. The action, if any, Plaintiff has taken to stop any person from using a mark that Plaintiff claims, or has claimed, is confusingly similar to the Route 66 Mark.

19. Plaintiff's awareness and first awareness of Defendants' and/or Defendants' use of any word or mark that Plaintiff contends infringes its alleged rights in the Route 66 Mark.

20. All monetary relief Plaintiff seeks in this action, including the computation of each item of monetary relief Plaintiff seeks and the basis of each such computation.

21. Plaintiff's document retention policy.

22. Plaintiff's decision to bring this lawsuit.

23. The location, custody, and identity of the documents requested in Defendants' First and Second Set of Document Requests.

24. Any and all search reports or opinions relating to use of the term "ROUTE 66" alone or as part of a trade name, trademark or service mark in connection with Plaintiff's business at any time.

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25. Communications of any kind with any third party using "ROUTE 66" as part of a trade name, trademark, or service mark.

26. Any and all allegations contained in the Complaint, proposed Amended Complaint, Defendants' Answer and Affirmative Defenses, Defendants' Amended Answer, Affirmative Defenses, and Counterclaim, Defendants' First Amended Counterclaim, and Plaintiff's Answer and Affirmative Defenses to Defendants' First Amended Counterclaim.

27. Plaintiff's responses to the First Set of Requests for Admission propounded by Defendants.

28. Knowledge of any or all third party uses of "Route 66" in connection with entertainment products or services.

29. All facts relating to the federal trademark applications and registrations for the Route 66 Mark, including, without limitation, information relating to the specimens of use submitted to the United States Patent and Trademark Office.

30. Information relating to any and all alleged motion pictures produced, distributed, sold, marketed, and/or advertised under the Route 66 Mark.

31. Information or documents in which any or all of the defendants in this action are referenced and/or mentioned.

32. Information or documents relating to any communications with any third party, including, without limitation, the press, concerning this lawsuit and/or concerning Defendants.

33. Information, documents, or communications relating to Plaintiff's efforts to purchase the *Penthouse: Route 66* film and/or any other product or service offered by any of the defendants in this action.

34. Information or documents relating to Plaintiff's claim that its Route 66 Mark is famous among members of the general public and/or has acquired a secondary meaning.

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35. Information, documents, or communications relating to any press releases issued and/or authorized by Plaintiff and/or any licensee of Plaintiff regarding Plaintiff, the Route 66 Mark and/or Plaintiff's ROUTE 66 Products/Services.

36. Plaintiff's responses to the Interrogatories propounded by Defendants.

37. The channels of distribution of Plaintiff's ROUTE 66 Products/Services.

38. The corporate structure of Plaintiff.

39. The officers and directors of Plaintiff.

40. The evidence Plaintiff intends to introduce at trial.

41. The witnesses Plaintiff intends to call to testify at trial.

42. The relationship between Plaintiff and Cloudstreet.

43. The job duties and responsibilities of Kirk Hallam as an officer of Plaintiff.

44. Information relating to any exhibition at the Fort Lauderdale Film Festival of film(s) entitled "Route 66".

45. Information relating to ownership of the Route 66 Mark.

46. Any evidence that any of Defendants' activities have tarnished the Route 66 Mark.

47. Customer complaints of Plaintiff.

Dated: July 21, 2009

KATTEN MUCHIN ROSENMAN LLP

By: K. Holland

Kristin L. Holland

Attorneys for Defendants and Counterclaimants

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Katten Muchin Rosenman, 2029 Century Park East, Suite 2600, Los Angeles, CA 90067-3012. On July 21, 2009, I served the within documents:

AMENDED NOTICE OF DEPOSITION OF ROXBURY ENTERTAINMENT

X **BY FACSIMILE** - I sent such document from facsimile machine 310.788.4471 on July 21, 2009. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine 310.788.4471 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

BY U.S. MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, addressed as set forth below.

X **BY ELECTRONIC MAIL** – by transmitting electronically to the parties at the email address indicated below. To the best of my knowledge the transmission was reported as complete and I did not receive a notice of failure of receipt of each such document

Kirk M. Hallam, Esq.
Law Offices of Kirk M. Hallam
201Wilshire Boulevard, 2nd Floor
Santa Monica, CA 90401
Email: kmhallam@aol.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prep aid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on July 21, 2009, at Los Angeles, California.

Kathy Cornejo
KATHY CORNEJO

EXHIBIT C

DECLARATION OF KIRK M. HALLAM

I, Kirk M. Hallam, declare as follows:

1. I am an attorney licensed to practice before all the courts in the State of California. I am a sole practitioner and am counsel of record for plaintiff Roxbury Entertainment ("Roxbury" or "Plaintiff"). I have personal knowledge of the following facts. If called to testify under oath, I could and would competently testify to those facts of my own personal knowledge.

2. I am the President and Co-Founder of Roxbury Entertainment, and the person who principally communicated with Paul Supnik on behalf of Roxbury Entertainment during Mr. Supnik's preparation of Roxbury's filings with the Patent and Trademark Office ("the PTO") for registration of Roxbury's trademarks in "Route 66."

3. Due to my lack of any experience with the filing and processing of applications for trademark registration with the PTO, I retained Mr. Supnik on behalf of Roxbury sometime in 2005 to handle trademark applications for Route 66. Throughout the process of applying for and obtaining Trademark Registrations for Roxbury in Route 66, I relied upon Mr. Supnik's extensive knowledge and expertise in preparing and pursuing such trademark registrations, since I knew Mr. Supnik to be a very experienced and knowledgeable trademark lawyer who previously had handled trademark applications for other of my clients.

4. From April or May of 2005, when Roxbury first retained Mr. Supnik to prepare and file its applications for the Route 66 Trademark Registrations, through the issuance of those Trademark Registrations in January and September of 2007, I provided Mr. Supnik with the best and most accurate information that I had or could obtain to assist him in preparing and processing those applications. I was not at al personally knowledgeable with respect to the intricate and esoteric procedures and

terminology involved in applying for trademark registrations. For that, I relied exclusively on Mr. Supnik.

5. I have reviewed Defendants' First Amended Counterclaim for Cancellation of Roxbury's DVD/Videocassette Registration based on fraud, and I am not aware of any false or misleading statements or information which was provided to the PTO either by Roxbury or Mr. Supnik in connection with that application. I certainly never provided any false statements or information in that regard, nor am I aware of any false or fraudulent statements being made to the PTO by Mr. Supnik or Roxbury. (A true and correct copy of Defendants' First Amended Counterclaims is attached hereto as Exhibit A.)

6. In June or July of 2006, I researched at Mr. Supnik's request the first date when Roxbury's predecessor-in-interest, Sony Pictures Entertainment ("Sony"), had released the Route 66 Television Program on videocassette, and obtained the date of February 28, 1995 from Sony's legal department. I then provided that information to Mr. Supnik who included that date as the "date of first use" in Roxbury's filing for the DVD/Videocassette Registration. I believed then and I believe now that this information was and is correct.

7. At no point did I intend to indicate to the PTO, through Roxbury's filings, that the Route 66 Television Program had been distributed on DVD in 1995, or any other date prior to the actual DVD distribution commencing in 2005. I had never heard any suggestion prior to this litigation that Roxbury was obligated by PTO rules or guidelines to differentiate between the first date of distribution on Videocassette and on DVD, and I have no reason to believe that any of Roxbury's filings in this regard, prepared by Mr. Supnik, contained any false or misleading information regarding the legal term "dates of first use."

8. I also have reviewed Defendants' Second Counterclaim for Cancellation of the TV Program Registration (Ex. A), and I am not aware of any false or misleading statements or information which was provided to the PTO either by

Roxbury or Mr. Supnik in connection with that application. Specifically, I have read Defendants' allegations of fraud on the PTO in relation to the "dates of first use" and "current use in commerce," and although I had no knowledge regarding the meaning of those legal phrases until the filing of Defendants' Counterclaims, I do not believe that either Mr. Supnik or Roxbury in its application or filings for the Television Program Registration made any false or misleading statements to the PTO or the examining attorney.

9. In April or May of 2005, I obtained at Mr. Supnik's request and provided to him the most reliable information I had access to, describing the first dates for broadcast of the 116 episodes of the original Route 66 Television Program. To the best of my knowledge, the Route 66 Television Program originally aired on CBS from 1960-1964. Exhibit 2 to Mr. Supnik's Declaration in support of this Motion for Summary Judgment is a true and correct copy of the document I located and provided to Mr. Supnik with this information.

10. To the best of my knowledge, this information regarding the first use of "Route 66" in connection with the broadcast of the original Television Program was and is entirely accurate, and nothing in the filings which Mr. Supnik prepared on Roxbury's behalf and pertaining to the Television Program Registration is in the least bit false or misleading.

11. I am also aware of Defendants' contention that the Route 66 Television Program was not broadcast between 1964 and 1985, and again in the late 1990's. And although I was never asked to research the issue of any periods of non-use of the Route 66 Mark during the 1960's, 70's, 80's or 90's, I did believe in 2005, when the Television Program Application was submitted, and I believe now, that the Route 66 Television Program aired on local television stations for many years after it was cancelled on CBS, and that it also aired again on national television in the 1980's, and that a remake of the Series was produced and distributed in the 1990's. My knowledge in this regard was based on conversations I had with the original creator

and producer of the Route 66 Television Program, Herbert Leonard, and on information I read on the Internet.

12. In July of 2005, when Mr. Supnik prepared the initial application for Roxbury's filing of the DVD/Videocassette Registration, I was personally involved in Roxbury's efforts to produce a remake of the original Television Program, having been approached by Ford Motor Company's entertainment marketing division, who proposed a corporate sponsorship to produce the Series due to Roxbury's ownership of the Program and its common law trademark in Route 66.

13. Also in July of 2005, I believed that the Route 66 Television Program was still being broadcast by some foreign licensees of Sony, and Sony's licensee for video distribution was continuing to "sell off" its remaining inventory of the Program in the United States.

14. I also have reviewed Defendants' Third Counterclaim for Cancellation of the Motion Picture Registration (Ex. A), and I am not aware of any false or misleading statements or information which was provided to the PTO either by Roxbury or Mr. Supnik in connection with that application. Specifically, I am aware Defendants are alleging that Roxbury or Mr. Supnik made false statements to the PTO regarding the date of "first use" and "actual use" in connection with the Motion Picture Registration. I had no knowledge of any distinction between "a single work" and a "series of works" under the trademark rules until the filing of Defendants' Counterclaim for Cancellation (Ex. A), and I had no knowledge of any false statement being made to the PTO in this regard. Nor do I believe that Mr. Supnik had any intention to mislead the PTO or the examining attorney in describing Roxbury's goods as "motion picture film series featuring action, drama or adventure."

15. I was involved in setting up the public exhibition of multiple episodes of Route 66, edited together as movies, which were publicly exhibited in Ft. Lauderdale, Florida, in 2005, 2006 and again in 2007, based on an idea given to me years earlier by the original creator and producer of Route 66, Herbert Leonard. Although I was

not present during the theatrical exhibition of Roxbury's motion picture film series in Ft. Lauderdale in May of 2007, I understand from my review of photographs taken during this theatrical exhibition, that approximately 30 members of the public attended each showing, and that several episodes of the Route 66 Television Program were shown in this motion picture film series.

16. Sometime during the application process for the Motion Picture Registration, Mr. Supnik asked me whether the Route 66 Television Programs were on film or tape. I informed Mr. Supnik that I knew for a fact that all 116 episodes of Route 66 were shot and maintained on either 16 or 35 millimeter film, because I personally had seen the reels of film which were in Roxbury's constructive possession.

17. I never knowingly or intentionally made any false statement to the PTO or to Mr. Supnik in reviewing and electronically signing Roxbury's applications for its Route 66 Trademark Registrations, and I do not believe that Mr. Supnik knowingly or intentionally ever made any false or fraudulent statements to the PTO or the examining attorney.

18. On April 3, 2009, the Court entered its Order Denying Plaintiff's Motion to Dismiss First Amended Counterclaim and Strike Portions of Amended Answer. (A true and correct copy of that Order is attached hereto as Exhibit B.)

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

Executed this 5th day of October, 2009, at Santa Monica, California.

/s/
KIRK M. HALLAM

EXHIBIT D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION (Los Angeles)

ROXBURY ENTERTAINMENT, a California corporation, Plaintiff, vs. PENTHOUSE MEDIA GROUP INC., n.k.a. FriendFinder Network Inc., a Nevada corporation; PENTHOUSE DIGITAL MEDIA PRODUCTIONS INC., a New York corporation; PULSE DISTRIBUTION, LLC, a California LLC, and DOES 1-10, inclusive, Defendants. AND RELATED COUNTERCLAIM.	Case No. 2:08-CV-03872 FMC (JWJx) Volume 1 (Pages 1-229)

VIDEOTAPED DEPOSITION OF:

KIRK M. HALLAM

WEDNESDAY, AUGUST 26, 2009

10:01 A.M.

REPORTED BY:

SUSAN NELSON

C.S.R. No. 3202

12:13:08 1 And I am entitled under the rules, if you
12:13:16 2 continue to ask questions that have no relevance to
12:13:18 3 this litigation whatsoever and are designed solely to
12:13:23 4 harass me and my client, I am entitled to discontinue
12:13:25 5 this deposition and seek an order of the court, which
12:13:30 6 I will do if you persist.
12:13:32 7 **Q. Again, disagree completely, but I'll move on**
12:13:36 8 **to my next question. And I just want to point out**
12:13:56 9 **that category 38 required you to come today prepared**
12:14:02 10 **to testify about the corporate structure of**
12:14:05 11 **Plaintiff.**
12:14:06 12 **Category 39 requires testimony about the**
12:14:10 13 **officers and directors of Plaintiff.**
12:14:12 14 A. Hm-hm.
12:14:12 15 **Q. And that within both of those categories,**
12:14:16 16 **questions about corporate formalities and other**
12:14:19 17 **issues associated with the corporate structure and**
12:14:22 18 **identity of the plaintiff in this case would -- would**
12:14:23 19 **be well within the bounds of those categories.**
12:14:27 20 **Also, you did not object to this notice.**
12:14:28 21 **You never filed any sort of objection indicating that**
12:14:31 22 **you'd have any reticence to testify about something**
12:14:36 23 **as simple as whether there have been board of**
12:14:40 24 **directors meetings at the company. But I -- I will**
12:14:41 25 **move on.**

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12:14:42 1 A. Yeah. And, please, I think it would be
12:14:44 2 in -- in everyone's best interest because your
12:14:48 3 30(b)(6) notice and its staying -- saying that you
12:14:52 4 wanted to ask questions about corporate structure,
12:14:57 5 corporate structure is what kind of a corporation is
12:14:59 6 it. And the questions about the board of directors,
12:15:03 7 who are on the board -- who's on the board and the
12:15:07 8 shareholders, I answered those questions and those
12:15:08 9 are the only questions that relate to those two
12:15:10 10 categories.
12:15:10 11 But, secondly, merely because you state
12:15:14 12 something in a 30(b)(6) doesn't mean that we're
12:15:16 13 obligated to answer or that I'm obligated to waive
12:15:19 14 attorney-client or work product privilege anymore
12:15:21 15 than our 30(b)(6) notice for your deponents obligates
12:15:26 16 them to waive what they believe are their legitimate
12:15:31 17 privileges and -- and rights not to answer questions.
12:15:34 18 And I've heard --
12:15:37 19 **Q. We disagree. It has been heard.**
12:15:38 20 A. I've heard no -- I've heard no offer of
12:15:41 21 proof or explanation as to what issues that are in
12:15:43 22 your pleadings, your answer or your cross-complaint,
12:15:46 23 this issue relates to. Clearly it isn't, and it's
12:15:50 24 solely for purposes of trying to harass and annoy and
12:15:53 25 intimidate opposing counsel and --

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12:15:55 1 **Q. It -- it has --**
12:15:56 2 A. -- its client.
12:15:57 3 **Q. -- everything to do with our defenses.**
12:15:59 4 **If the plaintiff lacks standing to pursue**
12:16:02 5 **these claims, it's something we're entitled to**
12:16:04 6 **explore. I don't know why there's a controversy over**
12:16:07 7 **this. But your position is stated and so is mine.**
12:16:09 8 **We can just move on.**
12:16:09 9 A. Where is that raised, that issue, where is
12:16:12 10 it raised? In your -- in your answer or your
12:16:15 11 cross-complaint? It's not.
12:16:17 12 **Q. We don't have to have a -- we don't have to**
12:16:20 13 **reach an agreement right now. You're refusing to**
12:16:22 14 **answer these questions on privilege. The record**
12:16:24 15 **reflects that. And I'll -- I'll move on to my next**
12:16:28 16 **category.**
12:16:28 17 A. And I'm also asking you to explain how it's
12:16:30 18 relevant to the issues that are in the case, that are
12:16:32 19 in the pleadings, and you've not been able to do
12:16:35 20 that.
12:16:35 21 **Q. It's -- it is in the case, and I have, so**
12:16:39 22 **that's my position. I understand you disagree with**
12:16:42 23 **it.**
12:16:43 24 **I forgot to ask one question at the**
12:16:45 25 **beginning that I just want to cover now. Is there**

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12:16:48 1 **any reason why you can't give your best testimony**
12:16:51 2 **today?**
12:16:53 3 A. No.
12:16:53 4 **Q. You're not on any medications or drugs that**
12:16:56 5 **would impact your ability to testify truthfully**
12:16:58 6 **today?**
12:16:59 7 A. No.
12:16:59 8 **Q. Have you watched the Penthouse Route 66 DVD**
12:17:07 9 **from beginning to end?**
12:17:09 10 A. Yes. As painful as it was to see Route 66
12:17:17 11 desecrated in that way.
12:17:19 12 MS. HOLLAND: Move to strike everything
12:17:20 13 after "yes" as nonresponsive.
12:17:43 14 **Q. Are there any other DVDs or videos being**
12:17:45 15 **sold in the United States which contain "Route 66" in**
12:17:49 16 **the title other than Plaintiff's product and other**
12:17:51 17 **than that which is being claimed the defendant sold?**
12:17:54 18 A. That have "Route 66" anywhere in the title?
12:17:56 19 **Q. Yes.**
12:17:57 20 A. Or that are solely titled "Route 66"?
12:17:59 21 **Q. Which contain "Route 66" in the title.**
12:18:05 22 A. I believe that there are, yes.
12:18:09 23 **Q. Do you have evidence showing continued use**
12:18:15 24 **of "Route 66" by you or by your predecessors in**
12:18:18 25 **interest for the last 48 years?**

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12:18:22 1 A. Yes.
12:18:25 2 **Q. What is that evidence?**
12:18:26 3 A. That, you're asking me for my opinions,
12:18:28 4 conclusions and knowledge as the litigator handling
12:18:32 5 this case on behalf of Roxbury Entertainment, and as
12:18:37 6 counsel for Roxbury Entertainment, I have to assert
12:18:40 7 attorney-client and workplace privileges not to
12:18:43 8 answer.
12:18:43 9 **Q. Has the evidence been produced in discovery?**
12:18:46 10 A. What evidence?
12:18:46 11 **Q. The evidence that you say you have showing**
12:18:50 12 **continued use of "Route 66" by you or your**
12:18:52 13 **predecessors in interest for the last 48 years?**
12:18:55 14 A. Any -- any evidence that was called for by
12:18:58 15 Defendants' request for productions or
12:19:01 16 interrogatories on those questions has been produced.
12:19:05 17 You served, I think, over a hundred
12:19:09 18 interrogatories and requests for productions, so I
12:19:10 19 can't remember them all as I sit here or every
12:19:14 20 document that was produced. But if you asked for it
12:19:16 21 in your written discovery and we had it, we provided
12:19:19 22 it.
12:19:19 23 **Q. That wasn't quite my question. You said you**
12:19:26 24 **had evidence showing continued use of "Route 66" for**
12:19:29 25 **the last 48 years. I can represent that it's not in**

12:19:32 1 **the documents that Plaintiff produced, but that it is**
12:19:35 2 **called for by our discovery.**
12:19:37 3 **So I'm asking, has it been produced?**
12:19:40 4 A. We have produced all evidence in our
12:19:42 5 possession or control that related to any
12:19:48 6 interrogatory or request for production that you
12:19:51 7 posed. And if you posed interrogatories or request
12:19:55 8 for production on that question, we provided you with
12:19:58 9 all documentary and other evidence that would respond
12:20:03 10 to your discovery request.
12:20:06 11 **Q. Are you withholding any documents that you**
12:20:11 12 **believe show continued use of "Route 66" for the last**
12:20:15 13 **48 years?**
12:20:15 14 A. No. But, again, I don't know whether you've
12:20:21 15 asked for it, because you've not shown me your
12:20:24 16 interrogatories or requests for production, but we're
12:20:26 17 not withholding anything.
12:20:27 18 I'm going to take a five-minute break, if I
12:20:29 19 may.
12:20:29 20 MS. HOLLAND: Okay. That's fine.
12:20:32 21 THE VIDEOGRAPHER: Going off the record.
12:20:33 22 The time is 12:20 p.m.
12:20:35 23 (Recess taken.)
12:25:03 24 THE VIDEOGRAPHER: Back on the record. The
12:25:05 25 time is 12:25 p.m.

12:25:07 1 BY MS. HOLLAND:
12:25:09 2 **Q. Okay. Before the break we were talking**
12:25:16 3 **about the 48 years of use of the "Route 66" mark.**
12:25:21 4 **Isn't it a fact that after the show was**
12:25:23 5 **cancelled in 1964, the show did not appear on**
12:25:26 6 **television again until 1985?**
12:25:32 7 A. I don't know that to be the case. I don't
12:25:34 8 know, frankly.
12:25:35 9 **Q. Do you have any documents or other evidence**
12:25:41 10 **reflecting use of the "Route 66" mark between 1964**
12:25:45 11 **and 1985?**
12:25:49 12 A. Other than anything that we produced in this
12:25:51 13 litigation, no.
12:25:52 14 **Q. Isn't it true that for several years during**
12:25:57 15 **that period the "Route 66" trademark was not used by**
12:26:00 16 **you or your predecessors in interest?**
12:26:03 17 A. I don't know.
12:26:04 18 MS. HOLLAND: Marking as Exhibit 4 the
12:26:15 19 document entitled "Plaintiff Roxbury Entertainment's
12:26:18 20 Amended Answer and Affirmative Defenses to
12:26:22 21 Defendants' First Amended Counterclaim."
12:26:24 22 (The document referred to was
12:26:42 23 marked as Exhibit 4.)
12:26:42 24 BY MS. HOLLAND:
12:26:43 25 **Q. Okay. Did you prepare this document,**

12:26:45 1 **Mr. Hallam?**
12:26:46 2 A. Yes, I did.
12:26:47 3 **Q. Did anyone assist you in preparing the**
12:26:50 4 **document?**
12:26:52 5 A. Miss Eichhorn.
12:26:52 6 **Q. In the document there are many references t**
12:27:08 7 **Plaintiff is without sufficient information, or**
12:27:12 8 **Plaintiff has on information and belief, et cetera.**
12:27:20 9 **Where did you get the information used to**
12:27:25 10 **draft Exhibit 4?**
12:27:27 11 A. I think you need to be more specific. I --
12:27:30 12 I -- I don't know how to begin answering that kind of
12:27:33 13 a compound question.
12:27:34 14 **Q. Okay. We can go topic by topic.**
12:27:44 15 A. But I can tell you that generally -- well,
12:27:51 16 if you will stipulate that by answering the question
12:27:55 17 in terms of sources that I can recall utilizing in
12:28:01 18 preparing this document does not waive the work
12:28:05 19 product privilege or the attorney-client privilege
12:28:08 20 with respect to any other questions, then I will do
12:28:10 21 my best to answer it.
12:28:12 22 I do think it calls for my work product and
12:28:17 23 perhaps attorney-client communications, but in an
12:28:20 24 effort to expedite things and assist you as best I
12:28:24 25 can, I will try to provide you with information if

17:21:06 1 the last four years.
17:21:08 2 **Q. But when did you have the conversations that**
17:21:10 3 **you're now stating are related to the deposition we**
17:21:13 4 **noticed --**
17:21:14 5 **When, David? On Monday?**
17:21:17 6 A. Oh, prior to that. I think the first
17:21:22 7 conversation I had with Mr. Buehler pertaining to the
17:21:30 8 Penthouse litigation was probably six months ago.
17:21:35 9 Maybe -- probably -- no, I take that back. Probably
17:21:37 10 much earlier than that because we filed the
17:21:39 11 litigation in June of 2008, and I certainly wanted to
17:21:46 12 keep my distributor informed of what we were doing to
17:21:50 13 protect the "Route 66" mark.
17:21:52 14 **Q. So you're refusing to answer the question**
17:22:00 15 **has Roxbury made inquiries to Infinity regarding**
17:22:02 16 **whether consumers have expressed confusion to**
17:22:05 17 **Infinity about the Penthouse DVD?**
17:22:12 18 A. Well, I'm trying to remember whether I've
17:22:14 19 ever asked Mr. Buehler that and if it was in the
17:22:17 20 context of discussing his potential deposition. And,
17:22:22 21 frankly, I don't recall. But Mr. Buehler would be
17:22:38 22 your best witness on that.
17:22:42 23 MS. HOLLAND: It's 5:23. I'm sorry, I went
17:22:44 24 over a few minutes. If you'd like to end now, that's
17:22:47 25 fine with me. We can resume tomorrow at 9:00.

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17:22:47 1 THE WITNESS: Okay. That's fine.
17:22:47 2 I will give these back to you.
17:22:54 3 THE REPORTER: Thank you so much.
17:22:54 4 THE VIDEOGRAPHER: This concludes Volume 1
17:22:55 5 of the deposition of Kirk Hallam. The number of
17:22:57 6 tapes used was four.
17:22:58 7 The original videotapes will be retained by
17:23:00 8 Merrill Legal Solutions at 20750 Ventura Boulevard,
17:23:04 9 Woodland Hills, California.
17:23:04 10 Going off the record. The time is 5:23 p.m.
17:23:49 11 (Whereupon, at 5:23 P.M., the
17:23:49 12 deposition of KIRK M. HALLAM was
13 adjourned.)
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1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.
3
4
5 I, KIRK M. HALLAM, hereby declare under the
6 penalties of perjury of the laws of the United States
7 that the foregoing is true and correct.
8 Executed this _____ day of
9 _____, 2009, at
10 _____, California.
11
12
13 _____
14 KIRK M. HALLAM
15
16
17
18
19
20
21
22
23
24
25

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1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.
3 I, SUSAN NELSON, C.S.R. 3202, in and for the
4 State of California, do hereby certify:
5 That, prior to being examined, the witness named
6 in the foregoing deposition was by me duly sworn to
7 testify the truth, the whole truth and nothing but
8 the truth;
9 That said deposition was taken down by me
10 stenographically at the time and place therein named,
11 and thereafter transcribed via computer-aided
12 transcription under my direction, and the same is a
13 true, correct and complete transcript of said
14 proceedings;
15 Before completion of the deposition, review of
16 the transcript [ ] was [ ] was not requested. If
17 requested, any changes made by the deponent (and
18 provided to the reporter) during the period allowed
19 are appended hereto.
20 I further certify that I am not interested in
21 the event of the action.
22 Witness my hand this 1st day of September, 2009.
23
24 _____
Susan Nelson, C.S.R. No. 3202
Certified Shorthand Reporter
25 State of California

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Exhibit C

Penthouse Digital Media Productions Inc. v. Cloudstreet, Inc. d/b/a Roxbury Entertainment, Cancellation No. 92049926

Petitioner's Exhibit

KIRK M. HALLAM (SBN 108975)
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Attorney for Plaintiff and Counter-Defendant
ROXBURY ENTERTAINMENT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROXBURY ENTERTAINMENT, a California corporation, Plaintiff, vs. PENTHOUSE MEDIA GROUP, INC., a Nevada corporation; PENTHOUSE DIGITAL MEDIA PRODUCTIONS, INC., a New York corporation; PULSE DISTRIBUTION LLC, a California LLC; and DOES 1 -10, inclusive, Defendants. AND RELATED COUNTERCLAIMS	Case No. CV-08-03872 JHN (FMOx) PLAINTIFF'S BRIEF RE ORDER TO SHOW CAUSE WHY DEFENDANTS' COUNTERCLAIMS SHOULD NOT BE REFERRED TO THE TTAB FOR RESOLUTION; PROPOSED ORDER THEREON

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Pursuant to the Court's March 25, 2010 Order, Plaintiff Roxbury Entertainment ("Plaintiff") submits this brief regarding Defendants' and the Court's suggestion that Defendants' counterclaims be referred to the TTAB for resolution, and these counterclaims be stayed pending the outcome of those proceedings.

I. THE COURT SHOULD REFER THE COUNTERCLAIMS TO THE TTAB WITHOUT RULING ON ANY OF THE LEGAL, FACTUAL OR EVIDENTIARY ISSUES RELATED THERETO

After meeting and conferring in an effort to resolve these issues between themselves, Plaintiff and Defendants have agreed that this Court should in fact refer the counterclaims for cancellation of Plaintiff's Route 66 Registered Trademarks back to the TTAB (where they originally were filed) along with Plaintiff's pending motion for summary judgment, for resolution of all the factual and legal issues raised thereby.

Plaintiff and Defendants do not agree, however, on the terms of such referral, since Defendants are insisting that this Court first resolve Defendants' evidentiary objections to certain of the evidence proffered by Plaintiff last October in support of its Motion for Summary Judgment, and even suggesting the need to reopen discovery and reconsider those discovery issues of Defendants' choosing. Such an approach by this Court, amounting to a one-sided, piece-meal ruling on the evidentiary issues raised in response to Plaintiff's pending Motion for Summary Judgment, or a reopening of those discovery disputes on which Defendants would like to take belated discovery six months after the close of all discovery, would be manifestly unfair to Plaintiff, and would permit Defendant to gain an unfair advantage from this stay.

Were the Court instead to issue the Order in the form proposed by Plaintiff and attached hereto, referring the counterclaims to the TTAB for resolution pursuant to the Board's rules and procedures, this action by the Court would cause no prejudice, and

would provide no advantage, to either Plaintiff or Defendants, leaving each in the same position as they were last October when discovery concluded and the Motion for Summary Judgment was fully briefed and ready for resolution by the Court. Plaintiff's position in this regard is simple: either the Court should refer the counterclaims to the TTAB without ruling on any of its related issues, or the Court should retain the counterclaims and rule on Plaintiff's pending Motion for Summary Judgment and ***all*** of the factual and legal issues raised by the Motion and the supporting and opposing papers.

II. PIECEMEAL CONSIDERATION OF THE EVIDENTIARY OBJECTIONS RAISED BY DEFENDANTS IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION WOULD UNFAIRLY PREJUDICE PLAINTIFF AND PREVENT A FULL AND COMPLETE RESOLUTION OF ALL ISSUES IN ONE PROCEEDING

This Court's Order of March 25, 2010 noted that Defendants in a footnote to their Opposition to Plaintiff's Motion for Summary Judgment suggested sua sponte that referral of Defendants' counterclaims to the TTAB would be appropriate. The Court asked the parties, therefore, to Show Cause "why this Court should not exercise its discretion to permit Defendants' counterclaims for cancellation to proceed before the TTAB." Specifically, the Court asked the parties to address in their briefing "(a) the anticipated duration of the TTAB proceedings and (b) the effect or prejudice, if any, that the timing of the TTAB proceedings may have on the parties if the Court were to stay this action pending TTAB's adjudication of the cancellation issues," ordering the parties to meet and confer on these questions not later than April 12, 2010.

Instead of addressing these issues in the meeting of counsel, however, Defendants instead sought to convert the Court's order into an opportunity for a

belated discussion of discovery disputes more than 6 months after the close of discovery, asserting that this meeting of counsel was a "discovery conference" under Rule 34, and insisting on a court reporter's transcription of the conference. Yet Plaintiff's counsel refused then, and refuses now, to accept Defendants' invitation to relitigate discovery disputes more than six months after the close of discovery, and in the absence of a timely discovery motion or even a request for an extension of the discovery cutoff. Counsel were not asked by this Court to discuss any of the evidentiary, factual or legal issues raised by Defendants' counterclaims or Plaintiff's pending Motion for Summary Judgment.

Suffice to say, Plaintiff has its own list of discovery grievances, evidentiary and procedural objections, including, to name just one, defense counsel Kristin Holland's blatant violation of Judge Johnson's last order in this case which clearly compelled Defendants' counsel to submit a declaration verifying as an officer of the Court the completeness and accuracy of Defendants' court-ordered supplemental discovery responses. Were discovery to be reopened, and additional discovery motions to be permitted, Plaintiff would file its own motions on this and a variety of other issues. Nowhere in the Court's OSC, however, was there an invitation to relitigate discovery or evidentiary issues. Instead, Plaintiff will address the issues on which the Court ***did*** ask for briefing.

III. NO REASON EXISTS FOR THE COURT NOT TO EXERCISE ITS DISCRETION TO REFER DEFENDANTS' COUNTERCLAIMS BACK TO THE TTAB FOR RESOLUTION

At this juncture in the proceedings, neither side in this litigation would suffer any prejudice from the referral of the Defendants' retaliatory cancellation claims back to the TTAB for resolution, and to the Federal Circuit for any appeal thereof. Defendants originally filed their cancellation claims with the TTAB, and again

suggested in their Opposition to Plaintiff's Summary Judgment Motion that such referral back to the TTAB would be appropriate, making no mention of any prejudice from such a referral. Defendants' suggestion now that this referral would be appropriate ***only*** if the Court first were to rule on some of the evidentiary issues raised by Defendants in their Opposition to Plaintiff's Summary Judgment, is an overt attempt to extract from the Court one-sided concessions for Defendants as a condition of this referral, advantages which Defendants otherwise do not enjoy in the current posture of the case.

Defendants chose for tactical reasons not to take the deposition of Plaintiff's trademark lawyer, Paul Supnik, despite knowing full well that Mr. Supnik was the attorney preparing, filing and administering Plaintiff's applications for registration of its Route 66 marks, and that he was the ***only*** person responsible for ***all*** of Plaintiff's communications with the PTO examining attorney, the purported factual basis for all of Defendants' retaliatory counterclaims. Any suggestion by Defendants now that they were unaware of Mr. Supnik's essential and material testimony in regard to their counterclaims (on which Defendants' bear the heavy burden to prove Mr. Supnik's allegedly fraudulent intent) is absolute rubbish, as Plaintiff easily would demonstrate were this issue properly before the Court.

Defendants' counsel, experts in trademark cancellation matters, not only obtained at the inception of the case all of the filings prepared and filed by Mr. Supnik with the PTO (even quoting some of them in their counterclaims), but repeatedly referenced and disparaged Mr. Supnik in discovery conferences with Plaintiff's counsel, derogatorily referring to Mr. Supnik as Plaintiff's "purported trademark counsel." But when Defendants refused to make their own general counsel (Mr. Bressler) available for any questioning regarding his "factual" statements, Defendants made the tactical decision not to depose Mr. Supnik, apparently for fear of being caught in an inconsistent legal position regarding the right to depose legal counsel, thereby exposing Mr. Bressler to interrogation.

Similarly, Defendants' suggestion that Plaintiff's sole litigation counsel, Kirk Hallam, should be ordered by this Court to submit to further deposition testimony in this case, 7 months after the two days and two hundred and twenty-nine pages of his deposition testimony, is equally preposterous and one-sided. Over this two day/14 hour deposition, Plaintiff's counsel answered literally hundreds of questions calling for his personal knowledge of facts or events related to Plaintiff's claims and Defendants' counterclaims. Only where Hallam genuinely felt that his opposing counsel was asking for his legal conclusions and opinions, rather than his knowledge of factual events, did he respond with an assertion of privilege. An example of just two of the hundreds of factual questions on which Mr. Hallam provided his full and complete testimony, without assertion of privilege, is the following which appears at pages 94-97 of his deposition transcript:

> "Q: Do you recall what year was provided to the trademark office associated with Plaintiff's first use of the "Route 66" trademark on DVDs?
>
> A: I believe that the classification is not limited to DVDs. It's DVD and VHS and other formats. I believe that the date that was submitted to the PTO for the class of goods as the date of first use was sometime in 1995.
>
> Q: And isn't it true that Plaintiff didn't use the "Route 66" trademark on DVDs until 2005?
>
> A: That we did not? Or Roxbury Entertainment?
>
> Q: Correct.
>
> A: I think that's correct."

In response to the countless questions on which Plaintiff's counsel was asked for factual narratives, rather than his assessment of the evidence or his legal opinions,

Hallam provided his full and complete recollection of the facts, without objection or assertion of privilege, such as his testimony which appears on pages 157 through 170 of his deposition transcript, beginning with the following question and answer:

> "Q: What efforts has Roxbury Entertainment undertaken to develop its own 'Route 66 film and television program?
>
> A: Hm. That question definitely calls for a narrative. And I will try to give it to you in synopsis form, but it's something that I have been personally involved in for I guess seven, eight years on behalf of Roxbury Entertainment. We have expended an enormous amount of time and money seeking to develop a script for a feature film based on Route 66, the television program, or at least loosely based on that. [Hallam's answers and follow up questions and answers continuing for 13 pages without objection]."

Only where Defendants' counsel insisted on asking questions clearly calling for counsel's legal conclusions and opinions did Hallam assert the appropriate objections and refuse to answer the questions. For example, the following question and answer appear at page page 179 through 180 of the Hallam deposition transcript:

> "Q: Did Roxbury own all right, title and interest in and to the "Route 66" trademark in 2004?
>
> A: Well, you're clearly asking me for a legal conclusion. And because I am the litigation counsel in this case, and I'm also an ongoing lawyer for Roxbury Entertainment, I cannot opine on that legal question you just asked me without disclosing my work product and attorney-client privileged communications...

> As you know, ownership of a trademark, there [are] various elements to it. There's ownership of registrations. There's ownerships that accrue by virtue of secondary meaning. And ownership is in itself a legal question."

The Court obviously cannot and should not rule on any of the specific assertions of privilege, or any of the evidentiary issues raised by Defendants in Opposition to the Summary Judgment Motion, without considering all of the questions and answers one by one, and all in the context of the entire deposition transcript, and in the context of the entire Motion for Summary Judgment and all of the supporting and opposing papers. In addition, this Court simply could not make such isolated and belated discovery or evidentiary rulings in the undisputed absence here of: (1) a timely motion for discovery, or even a timely motion for an extension of discovery (2) a full and complete consideration of all of the legal and factual issues involved in such a discovery dispute (3) an opportunity by Plaintiff to brief each of the relevant issues, and (4) an equal opportunity being afforded to Plaintiff to take additional discovery or seek judicial relief with respect to numerous deficiencies in Defendants' discovery responses.

Moreover, Defendants' suggested "piecemeal" approach to the resolution of evidentiary or legal issues pertaining to Plaintiff's Motion for Summary Judgment (asking this Court to rule on some issues but leaving the remainder of the issues for the TTAB) unfairly would deprive Plaintiff of a simultaneous determination by one tribunal on all evidentiary, factual and legal issues raised in connection with the Summary Judgment Motion, including issues raised by Plaintiff pertaining to bad faith and improper conduct by Defendants' counsel in prosecution of their retaliatory cancellation counterclaims. Just to name a few: (1) Defendants' counsel in their counterclaims and again in their Opposition to Plaintiff's Motion repeatedly quoted a rule from the Trademark Manual of Examining Procedure in arguing that Plaintiff

defrauded the PTO, ***but purposely omitted from that quote the language of the rule which explicitly approved Mr. Supnik's method of completing the application***, (2) Defendants falsely asserted that purported "abandonment" of a mark prior to the date of registration was a legal basis for cancellation of that registration, despite clear and unambiguous authority to the contrary, (3) Defendants astonishingly argued that recent Federal Circuit authority on the standards of proof for cancellation claims based on fraud was ***irrelevant*** in the district courts.

Simply put, Defendants cannot be allowed to gain an advantage from the Court's referral of this matter to the TTAB, and the Court's Order should be a neutral one which refrains from making or suggesting any rulings on evidentiary or discovery matters, and leaves such matters for determination by the TTAB, as set forth in the form of the Proposed Order which is attached hereto.

IV. THE ANTICIPATED DURATION OF THE CANCELLATION PROCEEDINGS AND THE LACK OF ANY PREJUDICE BY VIRTUE OF THAT TIMING

At this juncture in the proceedings, with extensive discovery having been conducted and the parties' respective positions have been fully briefed, the time required for resolution of Defendants' cancellation claims by the TTAB should be a matter of months, not years. In fact, other than Defendants' insistence on raising discovery or evidentiary issues for this Court to resolve, counsel for Plaintiff and Defendants have agreed in principle to expedite the procedures for resolution of the matter before the TTAB, as outlined in the provisions of Plaintiff's Proposed Order.

And, since Plaintiff's trademark infringement and dilution claims against Defendants are on appeal to the Ninth Circuit for the next 2 years or more, the necessity for a simultaneous determination of the counterclaims is far less apparent than it was when Defendants' originally sought to bifurcate the determination of those

issues by filing their cancellation counterclaims with the PTO. Consequently, Plaintiff agrees with Defendants that no prejudice would result from the Court's referral of the counterclaims to the TTAB and a stay of the cancellation counterclaims pending the TTAB's determination of those issues. Further, since an appeal to the Federal Circuit Court of Appeals undoubtedly will result from any ruling by the TTAB in this regard, reference of the matter to the TTAB and the Federal Circuit most likely will result in a more expedited final determination, and the elimination of any need by this Court or the Ninth Circuit to revisit these counterclaims.

Plaintiff respectfully requests, therefore, that the Court enter its form of the Proposed Order, and immediately refer Defendants' counterclaims to the TTAB for a determination of all issues related thereto.

Dated: April 19, 2010

Respectfully submitted,

By: /s/ KIRK M. HALLAM

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Facsimile: (310) 393-4662

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

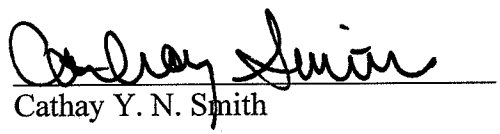
PENTHOUSE DIGITAL MEDIA PRODUCTIONS INC.,	)	
Petitioner,	)	
v.	)	Cancellation No. 92049926
CLOUDSTREET, INC. d/b/a ROXBURY ENTERTAINMENT,	)	
Registrant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2010, I caused a true and correct copy of the foregoing to be served upon:

Mr. Paul D. Supnik
9401 Wilshire Boulevard, Suite 1012
Beverly Hills, CA 90212

via First Class Mail, postage prepaid.



Cathay Y. N. Smith