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

Proceeding	92052150
Party	Defendant Patrick Gilles
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Date	07/19/2011
Attachments	Opposition to Summary Judgment.pdf (15 pages)(723060 bytes) Opposition to Summary Judgment - Exhibit 1.pdf (12 pages)(509544 bytes) Opposition to Summary Judgment - Exhibit 2.pdf (23 pages)(4267581 bytes) Opposition to Summary Judgment - Exhibit 3.pdf (3 pages)(121493 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3691948
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant.	:	

**OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND/OR
MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW, the Registrant, Patrick Gilles (hereinafter "Registrant"), by and through counsel, The Trademark Company, PLLC, and files the instant Opposition to Petitioner's Motion for Summary Judgment and/or Motion on the Pleadings. For the reasons and on the grounds more fully set forth below Registrant respectfully requests that the Board deny Petitioner's alternatively plead motion.

STATEMENT OF THE CASE

1. On or about March 1, 2010 Petitioner instituted the instant Cancellation Proceeding alleging, *inter alia*, that Registrant, a former member of Petitioner and/or Petitioner's claimed band Wonderbread 5, had left the band, relinquished any and all rights to the name Wonderbread 5 via contract, and had subsequently fraudulently procured the instant registration of the mark before the U.S. Patent and Trademark Office (hereinafter "Office"). *See generally* *Petition for Cancellation* filed March 1, 2010.

2. On or about April 8, 2010 Petitioner, by counsel, filed his *Answer and Grounds of Defense* denying the salient allegations contained in the *Petition for Cancellation*. *See Answer and Grounds of Defense* filed April 8, 2010.

3. On or about May 11, 2010 the discovery period in this matter opened. *See Scheduling Order* dated March 2, 2010.

4. Due to the complexities of the allegations in the instant matter, including prior civil litigation between the Registrant and the Petitioner which is not of record in the instant matter, Registrant submitted highly specific Interrogatories and Requests for Production of Documents to Petitioner on or about July 12, 2010.

5. Petitioner had thirty-five (35) days to respond to Registrant's discovery requests or until August 16, 2010.

6. In lieu of participating in the discovery process, however, on or about July 30, 2010 Petitioner filed the instant Motion seeking judgment, as a matter of law, upon many of the subjects sought to be discovered in Registrant's July 12, 2010 discovery to Petitioner.

7. On or about July 30, 2010 Petitioner Wonderbread 5 (hereinafter "Petitioner") filed the instant Motion for Summary Judgment and/or Motion on the Pleadings (hereinafter "Motion") seeking to have the Board enter judgment as a matter of law in the instant proceedings.

8. Petitioner's claims in the instant matter upon which it seeks summary judgment can effectively be distilled down to the following claims:

- a. Petitioner has used the trademark WONDERBREAD 5 in connection with live performances by a music band since prior to the time Registrant contends he first used the same trademark for the same services on the grounds that Registrant's only use of the disputed trademark came by and through his membership in Petitioner and that departing members of a band do not take with them rights in the band's trademark name;
- b. Registrant retains no rights in the trademark WONDERBREAD 5 because he relinquished all interest in the mark to the Petitioner as part of a settlement of a prior lawsuit filed in San Francisco Superior Court; and
- c. Registrant committed fraud upon the Office in the registration of the instant mark by submitting a signed declaration in support of his application stating that he knew of no other person or entity that had the right to use the mark apart from the Registrant.

9. On or about April 8, 2010 Petitioner, by counsel, filed his *Answer and Grounds of Defense* denying the salient allegations contained in the Petition for Cancellation. *See Answer and Grounds of Defense* filed April 8, 2010.

10. On or about May 11, 2010 the discovery period in this matter opened. *See Scheduling Order* dated March 2, 2010.

11. Due to the complexities of the allegations in the instant matter, including prior civil litigation between the Registrant and the Petitioner which is not of record in the instant matter, Registrant submitted highly specific Interrogatories and Requests for Production of Documents to Petitioner on or

about July 12, 2010. *See Registrant's First Set of Interrogatories and Registrant's First Set of Requests for Production of Documents* attached as Exhibits A and B.

12. Registrant had thirty-five (35) days to respond to Petitioner's discovery requests or until August 16, 2010.

13. However, on or about July 30, 2010 Petitioner filed the instant Motion for Summary Judgment seeking judgment, as a matter of law, upon many of the subjects contained in Registrant's July 12, 2010 discovery to Petitioner.

14. In response, Registrant moved the Board for a Rule 56(f) Motion to require Petitioner to respond to Registrant's discovery prior to having Registrant respond to Petitioner's Motion for Summary Judgment.

15. The Board granted the Registrant's motion, in part, and ordered Petitioner to respond to Registrant's pertinent discovery requests.

16. On or about June 20, 2011 Petitioner supplied its diminutive responses continuing to frustrate the Board's order often omitting pertinent information in its responses stating, in lieu of complete answers, things such as "Registrant is fully aware of and/or has access to information concerning such uses" and "As the plaintiff in that action, Registrant is fully aware of and/or has access to information concerning the claims and defenses asserted in the action." *See* Petitioner's Responses to Registrant's First Set of Interrogatories Nos. 3, 10, Exhibit 1.

17. Moreover, in response to the Board's order compelling complete responses to various requests for production of documents Petitioner produced a sum total of eighteen (18) pages of documents to "comply" with the Boards order. Exhibit 2.

18. Notwithstanding these continuing obstructionist tactics, Registrant is confident that even in consideration of Petitioner's questionable litigation tactics it now has sufficient evidence to respond to the Motion at hand.

ARGUMENT

In deciding a motion for summary judgment, the function of the Board is not to try issues of fact, but to determine instead if there are any genuine issues of material fact to be tried. TBMP π 528.01. *See also Dyneer Corp. v. Automotive Products plc*, 37 USPQ 1251, 1254 (TTAB 1995); *University Chapter 500-129 Book Store v. University of Wisconsin Board of Regents*, 33 USPQ2d 1385, 1389 (TTAB 1994). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist; and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party. TBMP π 528.01.

I. Petitioner's Contradictory Statements Concerning the Members and Existence of a General Partnership Create Genuine Issues of Material Fact as to the Ownership of the Trademark at Issue

As a threshold issue, Petitioner's motion for summary judgment must be denied insofar as Petitioner's own pleadings indicate that there is confusion as to who Petitioner even alleges should be the true owner of the Trademark.

In the Petition to Cancel Petitioner contends that it is "a decade-plus old musical group named WONDERBREAD 5, based in the San Francisco Bay Area, and comprised of the following members: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams and Michael Taylor." Petition for Cancellation, π 1. Petitioner further alleges "*Petitioner* has performed and continues to perform under the name WONDERBREAD 5 *for over ten years*, and during that time, has developed a substantial client and fan base." (*emphasis added*) *Id.* at π 3.

Although on the very face of the Petition for Cancellation Petitioner claims that Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams and Michael Taylor make up the

Petitioner and have performed under the subject trademark name for more than a decade in responding, only under the Board's order, to a list of all members of the Petitioner, past and present, Petitioner acknowledged the following:

Registrant, November 1996 to March 2009

Jeffrey Fletcher, November 1996 to present

John McDill, November 1996 to present

Thomas Rickard, November 1996 to present

Christopher Adams, approximately June 1997 to present

Michael Taylor, July 2009 to present

Petition for Cancellation, π π 1, 3. *See also* Petitioner's Responses to Registrant's First Set of Interrogatories Nos. 12, Exhibit 1.

The questions that naturally stem from this inconsistency are:

1. Is the Petitioner contending that it is a decades-old group? If so how can this be the case if at least one of its members joined only a few years ago (Christopher Adams)?
2. In the alternative, is the Petitioner contending that it is a decades-old group with certain replacement members that have replaced original members? If so, what rights, if any does the Petitioner contend has been acquired and/or taken by original members of the group that have departed and/or granted to new members that have joined and does the now Petitioner have any writings to evidence these rights?

At its core this matter involves ownership of the subject trademark as between the Registrant and the Petitioner or, at a minimum, the founding members of the band Wonderbread 5 some of whom still play for the Petitioner and one of which is the Registrant. Petitioner contends that Registrant was a former member of the band who left or was otherwise discharged therefrom and as a result Petitioner retains all rights to the trademark.

Petitioner, however, has offered no evidence of its current membership and how it contends current replacement members in conjunction with a few original members are entitled to ownership of the intellectual property as a matter of right as opposed to the Registrant.

In a case where priority and band membership may be instrumental in the decision should we not hold the Petitioner to providing more accurate and forthright information concerning the band's composition especially where priority of use is alleged to be a significant issue in the matter? Petitioner would like the Board to merely assume that its current composition is entitled to priority of use over Registrant because it is composed of one or two replacement members it wrongfully implies have been performing together for decades with a few original members of the band. If the Petitioner contends they are, in fact, made up of a composition of original and replacement members versus an original members claim is that not relevant to the decision at hand?

Prior to requesting that the Board grant a motion for summary judgment on the issue of priority of use as between two entities, Petitioner and Registrant, should not the Petitioner, at a minimum, be required to provide a true and accurate picture to the Board of its members, the dates that they joined, and what, if any rights Petitioner contends its current members retain in regard to the trademark at issue vis-à-vis any partnership or otherwise before we can determine whether they have, as a group, priority of use over an original member of the band?

It is submitted that due to this inconsistency alone the motion for summary judgment should be denied.

II. Genuine Issues of Material Fact Exist as to the Ownership of the Trademark As Registrant did not Voluntarily Leave the Band and Acted as a Manager Thereof During his Lon Tenure Leading the Group

Petitioner relies heavily on what it deems to be the settled law that departing members of a band take with them no rights in the band's intellectual property. Petitioner's reliance upon the body of law is misplaced.

Petitioner primarily relies upon *Robi vs. Reed*, 173 F.3d 736 (9th Cir. 1999) to support its position that Registrant was not entitled to any of the intellectual property assets of the band upon his forced exit. *Robi* involved conflicting claims over the rights to the use of the trademark name "The Platters" by individuals associated with the group. *Id.* at 737.

By way of history, Herb Reed founded The Platters in 1953. *Id.* at 738. Mr. Reed was also the manager and one of the group's original singers along with Joe Jefferson, Alex Hodge, and Cornell Gunther. *Id.* In 1954, Jefferson and Gunther ceased to perform with the group and were replaced by David Lynch and Tony Williams. *Robi*, 173 F.3d at 738. After this new group had recorded several songs, Zola Taylor joined the group. *Id.*

In August or September 1954, Paul Robi began performing with The Platters, having replaced Alex Hodge. *Id.* Around 1957, after the group had achieved commercial success, Paul Robi met and later married plaintiff-appellant Martha Robi. Martha Robi has never performed with the group. Paul Robi severed his relationship with the group in 1965 and never returned. *Id.*

In November of 1988, twenty-three years after departing the band and never returning, Paul Robi executed a written "assignment of trademark" ostensibly transferring to Martha Robi all of his rights in "The Platters" mark. *Robi*, 173 F.3d at 738. The written assignment also purported to transfer the goodwill and business symbolized by this mark. *Id.*

Martha Robi brought this suit against Herb Reed et al., asserting that she has exclusive rights to "The Platters" name. *Robi*, 173 F.3d at 738. Reed counterclaimed, maintaining that he has exclusive rights to the mark as the *founder and manager* of the group. *Id.*

In deciding in Reed's favor, the court reasoned that Paul Robi left the group and never returned to it and, as such, vacated his claim to any rights he may have had. *Robi*, 173 F.3d at 740. As such, the *Robi* case is factually distinguishable from the instant case insofar as

Registrant did not voluntarily leave the Petitioner like Mr. Robi but was forced out of the band. Moreover, Mr. Robi was not a founding member of The Platters but merely a replacement member brought in years after the band had acquired rights in the trademark. Finally, there was no evidence Mr. Robi partook in any managerial responsibilities of the band as opposed to the evidence of record that Registrant substantially managed the band from its formation until his forced departure in 2009.

Registrant was a founding member of the band at issue that used the subject trademark. *See* Affidavit of Petitioner, Exhibit 3. More specifically, Registrant and Petitioner's member Jeffrey Fletcher decided to form the band in 1996. *Id.* The decision to name the band Wonderbread 5 was a group decision resulting from the collaboration of Registrant and Fletcher's suggested alternative names. *Id.*

For the first four years the Registrant permitted, at his own expense, the band to rehearse at his home. *See* Affidavit of Petitioner, Exhibit 3. Four years after the band was founded Registrant formed the band's limited liability corporation with the California Secretary of State with his house operating as the address of record for the corporation. *Id.*

Registrant was in charge of marketing in the nature of purchasing stickers, buttons, and t-shirts to be used in the marketing efforts thereof. *See* Affidavit of Petitioner, Exhibit 3. Registrant secured the Petitioner's first bank account with Registrant and its booking agent as the only signatories on the account. *Id.* Registrant also took care of radio spots and advertising for the Petitioner during his 13 plus years with the band before being forced out in 2009. *Id.*

In short, Registrant and Jeffrey Fletcher of the Petitioner decided to form the band, the trademark at issue was a combination of terms suggested by Registrant and Mr. Fletcher, and thereafter the band exclusively used Registrant's home to practice while Registrant formed the

company behind the band and was the only member of the band to have signatory authority over the bank account of the band. In short, Registrant undertook significant if not the majority of the managerial functions of the band until being forced out in 2009.

In this regard, Registrant's claimed ownership in the trademark at issue is less akin to Mr. Robi's widow's claimed ownership in The Platters stemming from her late husband's replacement, temporary, non-managerial role in The Platters and more akin to the body of law that recognizes that "person who remains continuously involved with the group and is in a position to control the quality of its services retains the right to use of the mark, even when that person is a manager." *Robi*, 173 F.3d at 740 (citing *Rick v. Buchansky*, 609 F. Supp. 1522 (S.D.N.Y. 1985)). Until being forced out of the band Registrant had been that person.

As such, there is a competing body of law that, viewing the role of Registrant as manager of many of the critical functions of the band, would hold that Registrant secured rights in the trademark irrespective of the revolving door of membership of band members in the group.

Of course Petitioner would prefer if they could merely point to *Robi* for the premise that if you're out of the band, you're out of luck in regard to its rights. Unfortunately for Petitioner upon close inspection that is not what *Robi* said. The instant case is far more akin to the facts found in *David Rick vs. Sheldon Buchansky et al*, 609 F. Supp. 1522 (S.D.N.Y. 1985). In *David Rick*, Mr. Rick was an established manager and promoter of modestly successful musical groups when he discovered four young men on a street corner in Brooklyn, singing in the popular "doo-wop" style of the time. *Id.*

From these young men Rick formed the band The Salutations which began performing in 1961. *David Rick*, 609 F. Supp. at 1526. The band's name was soon changed to "Vito and the Salutations." *Id.* Mr. Rick managed the band despite various members coming and going

throughout the 1960s and 1970s. *Id.* at 1527. Despite these turn-overs, the court credited the band's continued ability to book engagements to the management of Mr. Rick. *Id.* Having managed the musical group continuously since 1961, the court reasoned that Mr. Rick was, in a sense, its "longest-playing" member. *Id.*

Mr. Rick filed an application for the service mark "VITO AND THE SALUTATIONS" with the United States Patent and Trademark Office ("U.S. Patent Office"). *David Rick*, 609 F. Supp. at 1528. Mr. Rick's application went unopposed and was granted effective September 15, 1981. *Id.*

Ultimately the band and Mr. Rick's interests diverged and the then-current band members effectively began recording and performing under the name without Mr. Rick. *Id.* at 1529. Lawsuits then were filed fighting over the rights to the trademark "VITO AND THE SALUTATIONS".

In deciding in favor of Mr. Rick, the court required to conducted a highly fact-intensive review of all evidence surrounding not only the initial adoption of the name at issue but also the use thereof as well as control of the name. *David Rick*, 609 F. Supp. at 1530-6. After evaluating voluminous evidence on the points submitted by all parties the court ultimately sided with Mr. Rick. *Id.* at 1542-6.

Comparing the *Robi* case to the *Rick* case it is respectfully submitted that the facts thus far adduced bring this case more under the guise of the *Rick* decision as opposed to *Robi*. As such, just from the limited information due to the abbreviated discovery that has been exchanged we see that genuine issues of material fact exist as to Registrant's:

1. Original membership in what is alleged to be the Petitioner;
2. That Registrant did not voluntarily leave the Petitioner as in *Robi*; and

3. That Registrant was sufficiently involved in the management of the band, the formation of the band, and the selection of the trademark such that under *Rick*, as distinguished from *Robi*, Registrant retains rights in the subject trademark at least sufficient to deny the absence of genuine issues at this juncture.

In that regard, as in *Rick* genuine issues exist in regard to whether Petitioner acquired ownership interests in the subject trademark based upon not only his membership in and performances with the band but also in the course and scope of his managerial capacity as evidenced hereinabove. *See also Opryland USA Inc. v. The Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992) (evidence submitted by nonmovant is to be believed and all justifiable inferences drawn in its favor) In light of the applicable law as set forth by *Rick* it is respectfully submitted that the Board should determine that genuine issues of material fact clearly exist as to the ownership of the trademark at issue and, as such, the instant motion must be denied.

III. Petitioners Have Brought Forth No Evidence as to Why the Principal of Judicial Estoppel due to the San Francisco Case Should Award them Judgment as a Matter of Law

Petitioner next contends that as a part of a settlement of a lawsuit brought by the Registrant against members of the Petitioner in the Superior Court for the State of California, County of San Francisco that Petitioner relinquished all rights to the subject trademark upon settlement of the claims at issue. Again, Petitioner's claims in this regard are factually misplaced.

To prevail on such a motion, Petitioner would need to establish that there is no genuine issue of material fact in regard to:

1. The claims set forth in the law suit;
2. The settlement of the lawsuit; and
3. Any writing evidencing the intent of the parties for the settlement of the same.

Unfortunately for the Petitioner, all three of these critical issues create genuine issues of material fact surrounding the settlement of that case which preclude the grant of a motion for summary judgment at this time.

Upon his wrongful termination from the group Wonderbread 5 Registrant brought suit against several of the members of what is alleged to be the Petitioner for wrongful termination, breach of contract, and other allegations concerning his termination from the band. *See generally* Motion at Exhibit A. Upon examination of the lawsuit, however, none of the claims involved intellectual property rights. *Id.*

To the contrary, the allegations involved allegations of fraud, breach of contract, breaches of the covenants of good faith and loyalty, as well as interference with economic opportunity and the like. *See* Motion at Exhibit A, Claims for Relief I – X. Moreover, the only relief requested by Registrant was for monetary relief. *Id.*

Prior to the civil matter proceeding to court the parties reached an agreement whereby the defendants in the lawsuit compensated Petitioner in the nature of \$30,000.00 to settle the claims in the Superior Court case. However, the terms of the settlement were never reduced to writing.

In short, the Petitioner would like the Board to now find, as a matter of law, that the settlement of the civil lawsuit which never made mention of ownership of the subject trademark and was limited to requests for monetary damages for economic loss somehow transferred rights in the subject trademark even in the absence of any writing supporting this claim.

Registrant, per the attached affidavit, disputes this unsubstantiated allegation. Affidavit of Petitioner, Exhibit 3. In the absence of a writing evidencing the intent of the parties at the time the settlement was reached and where the parties dispute the intent behind the settlement it must be said that genuine issues of material fact truly exist as the reason for this settlement and, as such, based upon the Petitioner's own lack of evidence on this point as evidenced by the lack of any supporting documentation the Board must deny the motion for summary judgment on this ground.

IV. Registrant Did Not Commit Fraud Upon the U.S. Patent and Trademark Office

Petitioner contends that the Registrant committed fraud upon the U.S. Patent and Trademark Office by filing an application for the subject registration when he knew, or should have known, that the Petitioner had superior rights to the trademark at issue. Once again Petitioner has focused upon part of the facts but has neglected to address the relevant facts as they apply to the instant matter.

Fraud is a fact-intensive determination based often upon the subjective intent of the person against whom fraud is alleged. Petitioner is quick to point out that as of the time Registrant filed to register the instant trademark he was aware that (1) he had been forced out of the band; and (2) the band intended to continue use of the subject trademark. Both statements are true.

Petitioner then makes the improper logical leap in stating that by retaining knowledge of (1) and (2) above Registrant committed fraud upon the U.S. Patent and Trademark Office by knowingly filing for protection of the mark when he knew his former band mates would continue to use the same. The critical flawed assumption on the part of the Petitioner is that Registrant must have been wrong in his belief that he owned the mark simply because others were going to continue and use the same.

Unfortunately this is not the case. Registrant remains steadfast that under the *Rick* case as set forth above he is the rightful owner of the trademark. Nevertheless, at this juncture that is not the issue. The issue today is whether genuine issues of material fact exist in regard to whether the Registrant perpetrated fraud upon the U.S. Patent and Trademark Office by and through the instant filing.

Petitioner has brought forth no evidence of Registrant's intent whatsoever. All that they have done is said he got kicked out of the band, knew he was out, and then filed for the mark so he must have had the intend to deceive, the intent to defraud. This assumption is incorrect and caused simply by the same issue that has plagued this matter since day one: Petitioner is attempting to rush this case through without taking the time to develop the facts and submit them to the Board upon proper discovery thereof.

In the absence of concrete facts that establish the subjective intent of the Petitioner at the time of filing to defraud the U.S. Patent and Trademark Office, facts that could be gathered perhaps through discovery, cannot, on this evidence the Board cannot grant the instant motion. *See generally Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993) (question of intent generally unsuitable for disposal by summary judgment); *Copelands' Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d 1295, 1298-99 (Fed. Cir. 1991) (moving party's conclusory statement as to intent insufficient). Genuine issues of material fact absolutely exist in this regard and, as such, the motion must be denied.

CONCLUSION

Examining the record as a whole it is clear that the Petitioner is attempting to rush this matter to verdict in a very complex case of trademark ownership. No matter what theory of prosecution the Petitioner alleges it simply cannot be said that genuine issues of material fact do not exist regarding each such issue.

WHEREFORE due to the existence of genuine issues of material fact it is respectfully submitted that Petitioner's Motion should be denied and this matter permitted to move forward with discover so that the parties may discover actual evidence concerning the facts and circumstances of the allegations Petitioner set forth in its original *Petition for Cancellation*.

Respectfully submitted this 19th day of July, 2011.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3691948
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing motion this 19th day of July, 2011, to
be served, via first class mail, postage prepaid, upon:

Meagan McKinley Ball
Phillips, Erlewine & Given LLP
50 California Street, 35th Floor
San Francisco, CA 94111

/Matthew H. Swyers
Matthew H. Swyers

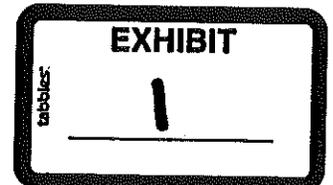
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 3691948 for the Word Mark WONDERBREAD 5
(Registered on October 6, 2009)

_____)	
WONDERBREAD 5,)	
)	
Petitioner,)	Cancellation No. 92052150
)	
v.)	
)	
PATRICK GILLES,)	
)	
Registrant.)	
_____)	

PETITIONER'S RESPONSES TO REGISTRANT'S FIRST SET OF
INTERROGATORIES

Petitioner Wonderbread 5 ("Petitioner") responds as follows to the First Set of
Interrogatories propounded by Registrant Patrick Gilles ("Registrant"):



GENERAL RESPONSE AND OBJECTIONS

Petitioner's responses herein are based on discovery, investigation and information ascertained to date, and on documents which are presently available to and specifically known to Petitioner, and Petitioner reserves the right to amend, delete, modify or expand upon said responses in light of further discovery and investigation.

In responding to these interrogatories, Petitioner is furnishing to Registrant such information as is presently available to Petitioner. Such information may include hearsay and other forms of information which are neither reliable nor admissible in evidence. Petitioner reserves all objections relating to the inadmissibility of evidence, and reserves the right to introduce at trial evidence which is presently unknown to Petitioner and/or is discovered after the date of these responses.

Petitioner objects to each interrogatory to the extent it seeks information which is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. In particular, Petitioner objects to each request to the extent it seeks information concerning the selection and adoption of the Mark. Petitioner objects to each interrogatory to the extent it seeks information which would violate the attorney-client privilege or the work product rule.

Subject to the general and foregoing objections, Petitioner responds to the specific requests as follows:

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 2:

Identify each person who has knowledge of Petitioner's selection and adoption of Petitioner's Claimed Mark and who has knowledge of how it is used and how it is intended to be used.

Response to Interrogatory No. 2:

As authorized by the TTAB's Order of May 20, 2011, Petitioner objects to the interrogatory to the extent it seeks information concerning the selection and adoption of the Mark and is therefore overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that the interrogatory is unduly burdensome in that countless numbers of listeners, audience members, fans, and individuals in the entertainment industry have knowledge of Petitioner's use of the Mark. Subject to the foregoing and general objections, Petitioner responds as follows with respect to those individuals with knowledge of Petitioner's past, current, or future use of the Mark: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams, Michael Taylor, Jay Siegan, Steve Brooks, Registrant, Barry Simons.

Interrogatory No. 3:

Describe in detail all goods and services formerly and currently being offered by Petitioner in conjunction with Petitioner's Claimed Mark, identify the dates on which Petitioner first began such use(s), the geographic areas in which such use occurred, and the individuals who provided those services.

Response to Interrogatory No. 3:

Subject to the foregoing general objections, Petitioner responds as follows: At all times since the formation of the band and its first live performance in November 1996 to the present, Petitioner has used the Mark in connection with live music performances. Such use occurred throughout California, in at least 12 other states, Puerto Rico, Mexico, and Canada. The individuals who provided the live music performances are Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams, Michael Taylor, Steve Brooks, and Registrant.

At various times during Registrant's membership in the band, Petitioner used the Mark in connection with T-shirts, stickers, pins, and temporary tattoos. As the member of Petitioner with primary responsibility for such uses (*see* Complaint at ¶ 34), all of which were on behalf of Petitioner, Registrant is fully aware of and/or has access to information concerning such uses.

At various times between approximately 1999 and approximately 2008, Petitioner also used the Mark in connection with promotional DVDs including video footage of the band. The DVDs were sent to clients and/or prospects throughout the United States, Canada and Mexico. From 1999 to the present, Petitioner has maintained a website featuring active members of the band and using the Mark. At all times since 1999, Christopher Adams has had primary responsibility for maintaining the website, with cooperation and assistance from other active members of the Wonderbread 5 general partnership.

Interrogatory No. 10:

Describe in detail any adversarial proceeding, challenge, or litigation involving Petitioner's Claimed Mark, Registrant's membership in Petitioner, or Registrant's ownership of the mark at issue, including the claims, defenses, and a description of the resolution thereof.

Response to Interrogatory No. 10:

Subject to the foregoing general objections, Petitioner responds as follows: The only adversarial proceeding, challenge, or litigation responsive to this request (other than the instant proceeding) is the action Registrant filed against Petitioner, San Francisco Superior Court Case No. CGC-09-489573, which Registrant dismissed with prejudice. As the plaintiff in that action, Registrant is fully aware of and/or has access to information concerning the claims and defenses asserted in the action, as well as the resolution thereof.

Interrogatory No. 11:

Identify all persons who have knowledge concerning Petitioner's selection, adoption and/or use of Petitioner's Claimed Mark for any products and services and provide a summary of each person's knowledge thereof.

Response to Interrogatory No. 11:

As authorized by the TTAB's Order of May 20, 2011, Petitioner objects to the interrogatory to the extent it seeks information concerning the selection and adoption of the Mark and is therefore overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that the interrogatory is unduly burdensome in that countless numbers of listeners, audience members, fans, and individuals in the entertainment industry have knowledge of Petitioner's use of the Mark. Subject to the foregoing and general objections, Petitioner responds as follows with respect to those individuals with knowledge of Petitioner's past, current, or future use of the Mark: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams, Michael Taylor, Jay Siegan, Steve Brooks, Registrant. With the exception of Jay Siegan, each of the aforementioned individuals has direct knowledge, as a current or former member of the band

Wonderbread 5, of Petitioner's use of the Mark in commerce in connection with live music performances and related goods and services. (See Petitioner's Response to Interrogatory No. 3.) Jay Siegan possesses similar direct knowledge in his capacity as the manager and booking agent for the band and as a member of the Wonderbread 5 general partnership.

Interrogatory No. 12:

Identify all persons or parties, past and present, that are or were members of the band Wonderbread 5, state the dates of their membership in the band and whether said membership was memorialized in any writing, documents or otherwise.

Response to Interrogatory No. 12:

Subject to the foregoing general objections, Petitioner responds as follows: No individual's membership in the band Wonderbread 5 was ever formally memorialized in a written agreement. However, as recognized by Registrant (*see, e.g.*, Complaint, filed June 17, 2009 in San Francisco Superior Court Case No. CGC-09-489573 ("Complaint"), at ¶¶ 100, 101), the members' relationship was governed by an oral agreement or an agreement implied in fact by the members' conduct whereby the band operated as a general partnership, and whereby any and all rights arising out of the members' collective actions (including all intellectual property rights, *e.g.*, rights to the WONDERBREAD 5 Mark) resided with the partnership. (*See also, e.g.*, Complaint at ¶¶ 2, 11, 104, 106, 134.) This oral or implied-in-fact agreement was and is evidenced by documents produced in response to Registrant's First Set of Requests for Production of Documents, served herewith.

All past and present members of the band Wonderbread 5 and the dates of their respective memberships are as follows:

Jeffrey Fletcher, November 1996 to present

John McDill, November 1996 to present

Thomas Rickard, November 1996 to present

Christopher Adams, approximately June 1997 to present

Michael Taylor, July 2009 to present

Steve Brooks, November 1996 to late 1997

Registrant, November 1996 to March 2009

Interrogatory No. 13:

Describe in detail any partnership agreement that existed between Registrant and Petitioner or any other party with regard to the band Wonderbread 5.

Response to Interrogatory No. 13:

Subject to the foregoing general objections, Petitioner responds as follows: Petitioner's partnership agreement was never formally memorialized in writing. However, as recognized by Registrant (*see, e.g.*, Complaint at ¶¶ 100, 101), the members' relationship was governed by an oral agreement or an agreement implied in fact by the members' conduct whereby the band operated as a general partnership, and whereby any and all rights arising out of the members' collective actions (including all intellectual property rights, e.g., rights to the WONDERBREAD 5 Mark) resided with the partnership. (*See also, e.g.*, Complaint at ¶¶ 2, 11, 104, 106, 134.) This oral or implied-in-fact agreement was and is evidenced by documents produced in response to Registrant's First Set of Requests for Production of Documents, served herewith.

Interrogatory No. 14:

Identify all persons or parties, past and present, that were part of any partnership agreement with regard to the band Wonderbread 5.

Response to Interrogatory No. 14:

Subject to the foregoing general objections, Petitioner responds as follows: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams, Michael Taylor, Steve Brooks, Registrant, Jay Siegan.

Interrogatory No. 16:

Identify any persons or parties present during the conception and/or selection of the band name "Wonderbread 5," including, but not limited to, how the name was created, how the name was chosen to be the name of the band, the names of the band members at the time of the selection of the name and who Petitioner contends owned or controlled the name at the time of its adoption.

Response to Interrogatory No. 16:

As authorized by the TTAB's Order of May 20, 2011, Petitioner objects to the interrogatory to the extent it seeks information concerning the selection and adoption of the Mark and is therefore overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and general objections, Petitioner responds as follows with respect to the ownership of the Mark at the time of its adoption: Petitioner owned the name "Wonderbread 5" at the time it adopted that name and at all times since.

Interrogatory No. 19:

Describe in detail any agreement regarding ownership of the rights of the mark
WONDERBREAD 5.

Response to Interrogatory No. 19:

Subject to the foregoing general objections, Petitioner responds as follows: At all times, as a matter of law and consistent with the understanding of the members of the band, the Mark has been owned by the band and not by any individual member. Independent of his membership in the band, Registrant has never owned the Mark, and any right Registrant had to use or control the use of the Mark was extinguished upon his departure from the band Wonderbread 5. Documents evidencing Registrant's release of all interest in, and claims against, the band Wonderbread 5 have been produced in response to Registrant's First Set of Requests for Production of Documents.

Interrogatory No. 20:

Identify those individuals or the entity you contend owns the subject mark
WONDERBREAD 5 from the date of first use to the present specifically indicating the original owner(s) or entity [sic] of the mark, any changes in ownership which have occurred, and who or what entity you contend currently owns the mark and why.

Response to Interrogatory No. 20:

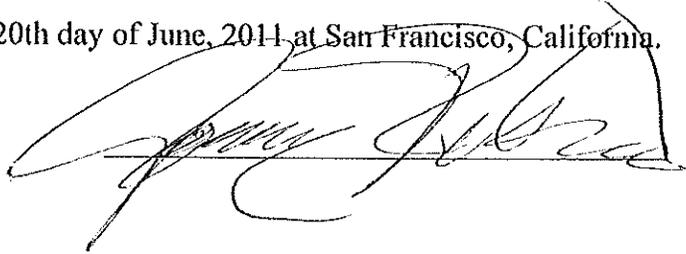
Subject to the foregoing general objections, Petitioner responds as follows: At all times from the first use of the Mark in November 1996 to the present, the Mark has been owned by Petitioner, Wonderbread 5, a California general partnership. (*See, e.g.*, Complaint at ¶¶ 2, 11, 100, 101, 104, 106, 134.) Petitioner began using the Mark in commerce in November 1996 in connection with live music performances and has continued its exclusive use of the Mark at all

VERIFICATION

Tommy Rickard declares:

I am a member of the Wonderbread 5 general partnership. I am authorized to make this verification on behalf of Wonderbread 5, the Petitioner in this action. I have read **PETITIONER'S RESPONSES TO REGISTRANT'S FIRST SET OF INTERROGATORIES** and know the contents thereof. I have personal knowledge that the contents of the responses are true, except as to the matters which are herein stated upon information or belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed the 20th day of June, 2011, at San Francisco, California.

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

1 PROOF OF SERVICE

2 I declare that I am over the age of eighteen and not a party to this action. My business
3 address is Phillips, Erlewine & Given LLP, 50 California Street, 35th Floor, San Francisco,
4 California 94111, which is located in the City and County of San Francisco where the service
5 described below took place.

6 On the date below, at my place of business at San Francisco, California, a copy of the
7 following document(s):

8 **PETITIONER'S RESPONSES TO REGISTRANTS FIRST SET OF REQUETS FOR
9 PRODUCTION OF DOCUMENTS**

10 **BATES DOCUMENTS WB5001-018**

11 **PETITIONERS' RESPONSES TO REGISTRANTS FIRST SET OF
12 INTERROGATORIES**

13 was addressed to:

14 Matthew H. Swyers, Esq.
15 The Trademark Company
16 344 Maple Avenue West, Suite 151
17 Vienna, VA 22180

18 BY FIRST CLASS MAIL: I placed the above documents in a sealed envelope for deposit
19 in the United States Postal Service, with first class postage fully prepaid, and that
20 envelope was placed for collection and mailing on that date following ordinary business
21 practices as indicated above.

22 BY FACSIMILE TRANSMISSION: I transmitted the above documents by facsimile
23 transmission to the FAX telephone number listed for each party above and obtained
24 confirmation of complete transmittal thereof.

25 BY CAUSING PERSONAL SERVICE: I placed the above documents in a sealed
26 envelope. I caused such envelope(s) to be handed to our messenger service to be
27 delivered as indicated above.

28 BY OVERNIGHT EXPRESS: I placed the above documents in a sealed envelope. I
caused such envelope(s) to be delivered to the above address(es) by overnight express.

BY PERSONAL SERVICE: I placed the above documents in a sealed envelope. I
delivered each of said envelopes by hand to the person(s) listed above.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on June 20, 2011 at San Francisco, California.


Roemary A. Comisky Culiver

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

In re Registration No. 3691948 for the Word Mark WONDERBREAD 5
(Registered on October 6, 2009)

WONDERBREAD 5,

Petitioner,

v.

PATRICK GILLES,

Registrant.

Cancellation No. 92052150

PETITIONER'S RESPONSES TO REGISTRANT'S FIRST SET OF REQUESTS FOR

PRODUCTION OF DOCUMENTS

Petitioner Wonderbread 5 ("Petitioner") responds as follows to the First Set of Requests for Production of Documents propounded by Registrant Patrick Gilles ("Registrant"):



GENERAL RESPONSE AND OBJECTIONS

Petitioner's responses herein are based on discovery, investigation and information ascertained to date, and on documents which are presently available to and specifically known to Petitioner, and Petitioner reserves the right to amend, delete, modify or expand upon said responses in light of further discovery and investigation.

In responding to these requests, Petitioner is furnishing to defendant such information as is presently available to Petitioner. Such information may include hearsay and other forms of information which are neither reliable nor admissible in evidence. Petitioner reserves all objections relating to the inadmissibility of evidence, and reserves the right to introduce at trial evidence which is presently unknown to Petitioner and/or is discovered after the date of these responses.

Petitioner objects to each request to the extent it seeks information which is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. In particular, Petitioner objects to each request to the extent it seeks information concerning the selection and adoption of the Mark. Petitioner objects to each request to the extent it seeks information which would violate the attorney-client privilege or the work product rule.

Subject to the general and foregoing objections, Petitioner responds to the specific requests as follows:

SPECIFIC RESPONSES AND OBJECTIONS

Request No. 6:

A copy of any document purporting to convey, sell, and/or release Registrant's ownership and control of Registrant's Mark WONDERBREAD 5 to any party, entity, or otherwise.

Response to Request No. 6:

Subject to the foregoing general objections, Petitioner responds as follows: Independent of his membership in the band Wonderbread 5 (“WB5”), Registrant has never owned the Mark, and any right Registrant had to use or control the use of the Mark was extinguished upon his departure from WB5. All non-privileged documents pertaining to Registrant’s release of all interest in, and claims against, Petitioner will be produced, except for those that have already been filed in this action as Exhibits to the Petition and/or Exhibits to Counsel Declarations.

Request No. 12:

Any and all Documents evidencing that the band Wonderbread 5 operated as a general partnership as claimed in the Petition to Cancel.

Response to Request No. 12:

Subject to the foregoing general objections, Petitioner responds as follows: All non-privileged, responsive documents in Petitioner’s possession, custody or control will be produced, except for those that have already been filed in this action as Exhibits to the Petition and/or Exhibits to Counsel Declarations.

Request No. 14:

Any and all Documents pertaining to the ownership of Wonderbread 5’s intellectual property.

Response to Request No. 14:

As expressly authorized by the TTAB’s Order of May 20, 2011, Petitioner objects that the Request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence, to the extent it seeks information pertaining to the ownership of intellectual property other than the Mark. Subject to the foregoing and general objections, Petitioner responds as

follows: All non-privileged, responsive documents in Petitioner's possession, custody or control will be produced, except for those that have already been filed in this action as Exhibits to the Petition and/or Exhibits to Counsel Declarations.

Dated: June 20, 2011

PHILLIPS, ERLEWINE & GIVEN LLP

By: /s/ Cari A. Cohorn
David M. Given
Cari A. Cohorn
Phillips, Erlewine & Given LLP
50 California Street, 35th Floor
San Francisco, CA 94111
Telephone: (415) 398-0900
Facsimile: (415) 398-0911
Email: dmg@phillaw.com
cac@phillaw.com
Attorneys for Petitioner

1 PROOF OF SERVICE

2 I declare that I am over the age of eighteen and not a party to this action. My business
3 address is Phillips, Erlewine & Given LLP, 50 California Street, 35th Floor, San Francisco,
4 California 94111, which is located in the City and County of San Francisco where the service
5 described below took place.

6 On the date below, at my place of business at San Francisco, California, a copy of the
7 following document(s):

8 **PETITIONER'S RESPONSES TO REGISTRANTS FIRST SET OF REQUETS FOR
9 PRODUCTION OF DOCUMENTS**

10 **BATES DOCUMENTS WB5001-018**

11 **PETITIONERS' RESPONSES TO REGISTRANTS FIRST SET OF
12 INTERROGATORIES**

13 was addressed to:

14 Matthew H. Swyers, Esq.
15 The Trademark Company
16 344 Maple Avenue West, Suite 151
17 Vienna, VA 22180

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19 in the United States Postal Service, with first class postage fully prepaid, and that
20 envelope was placed for collection and mailing on that date following ordinary business
21 practices as indicated above.

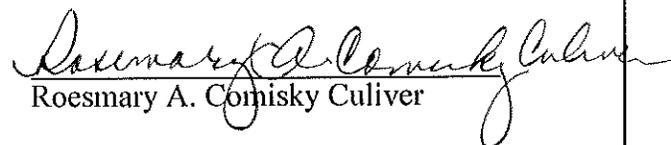
22 BY FACSIMILE TRANSMISSION: I transmitted the above documents by facsimile
23 transmission to the FAX telephone number listed for each party above and obtained
24 confirmation of complete transmittal thereof.

25 BY CAUSING PERSONAL SERVICE: I placed the above documents in a sealed
26 envelope. I caused such envelope(s) to be handed to our messenger service to be
27 delivered as indicated above.

28 BY OVERNIGHT EXPRESS: I placed the above documents in a sealed envelope. I
caused such envelope(s) to be delivered to the above address(es) by overnight express.

BY PERSONAL SERVICE: I placed the above documents in a sealed envelope. I
delivered each of said envelopes by hand to the person(s) listed above.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on June 20, 2011 at San Francisco, California.


Roesmary A. Comisky Culiver

AGREEMENT FOR THE PERFORMANCE OF MUSICAL ENTERTAINMENT

Shella Groves ("Purchaser") and Jay Slegan for Wonderbread 6 ("Artist") entered into this Agreement for a live musical performance by Wonderbread 6 ("Artist") at The Presidio Golden Gate Club ("Venue") located at 135 Fisher Loop, San Francisco, CA under the following terms and conditions:

DATE:	Saturday, February 2, 2008	LOAD IN:	To Be Determined
SHOWS:	Up to 180 minutes music w/ break(s)	SOUND CHECK:	To Be Determined
TIMES:	7:00 pm - 11:00 pm	BACKLINE:	Provided by Artist
PRICE:	N/A	PA/ENGINEER/LIGHTS:	Provided by Artist
ATTENDEES:	250	BAND GUESTS:	N/A

COMPENSATION: Six Thousand Dollars (\$ 6,000.00) guaranteed

\$2500 rec'd 5/18/07 #5704

- PAYMENT TERMS:** A non-refundable deposit of Three Thousand Dollars (\$ 3,000.00) is due by Thursday, May 4th, 2007 payable to JAY SIEGAN PRESENTS CLIENT TRUST. The remaining balance is due one week prior to event date (Friday, January 25, 2008), and made payable to JAY SIEGAN PRESENTS CLIENT TRUST.
- PERMITS AND LICENSES:** Purchaser shall be responsible for obtaining any and all permits and licenses required for the performance under applicable local laws and regulations.
- TAXES:** Purchaser shall pay and hold Artist harmless of and from any and all taxes, fees, dues and the like related to the engagement hereunder and the sums payable to Artist shall be free of such taxes, fees, dues and the like.
- CANCELLATION:** Purchaser may cancel any performance prevented by fire, casualty, strike, or any other act of God not within the Purchaser's control (hereinafter "Force Majeure Events"), by written notice no later than one hundred twenty (120) days before the scheduled performance date. In the event of a cancellation by Purchaser less than one hundred twenty (120) days before the scheduled performance date and/or for reasons other than a Force Majeure Event, Purchaser shall pay a cancellation fee of 100% of the Artist's fee. Artist may cancel any performance prevented by illness, accident, riot, strikes, epidemic, or any other condition beyond the control of Artist. If Artist has received a deposit for said performance, Artist will refund said deposit within ten (10) days of cancellation by Artist.
- OVERTIME:** Any performance time requested by Purchaser in addition to that enumerated above shall be at the rate of one third (1/3) of the fee set out above per set.
- STAGE SIZE:** PURCHASER will provide ARTIST with a safe and professional stage / designated floor space no smaller than 16 feet wide by 12 feet deep.
- ELECTRICAL:** PURCHASER will provide 4 (four) 20-amp circuits located on or close (within 20 feet) to stage/performance area. Notwithstanding anything to the contrary contained herein, ARTIST shall not be responsible for charges relating to the provision of electricity, including without limitation electrician's charges and/or any charges paid to union personnel for supervising or participating in the provision of sound and light equipment.
- DRESSING ROOM / HOSPITALITY:** PURCHASER shall provide one clean well-lit private dressing room close to the stage that is able to fit at least 7 people with a mirror, chairs, electrical outlets, access to a bathroom near by, and 1 clean plastic covered garbage can. This dressing room shall be reserved exclusively for the ARTIST and the only additional people allowed in the room must be cleared by Artist or Artist's Manager. Please have hot meals, 1 of which shall be vegetarian (NO FRY FOOD) and beverages (1 case non-carbonated water, 6 Cokes, 1 case Coors Light) prepared for 7 people (6 band members, 2 crew members). Food buy out option is available at \$ 35 / per person plus beverages. For diets payable prior to event date.
- LIABILITY / ARBITRATION:** This contract shall be interpreted according to the laws of the State of California. The parties hereto agree to submit to the Judicial Arbitration and Mediation Society ("JAMS") for binding arbitration any dispute arising out of the performance or interpretation of the terms of this Agreement. Said arbitration shall be conducted in accordance with the rules of JAMS and shall be held in San Francisco, California. The award of the arbitrator can be enforced by any court with proper jurisdiction.
- MISCELLANEOUS:** This Agreement sets forth the entire understanding between the parties relating to the subject matter hereto and cannot be changed, modified or terminated unless there is a writing signed to that extent signed by both Purchaser and Artist. The undersigned Purchaser's representative acknowledges that they have the authority to enter into this Agreement on behalf of the Purchaser and can bind Purchaser to the terms and conditions of the Agreement.
- SIGNATURES:** Please date, sign and fax back to (415) 447-4230. Contract must be executed and returned by Thursday May 4th, 2007 or contract becomes null and void of effect of Jay Slegan Presents.

Shella Groves
 Signatory for Purchaser(s)
 Shella Groves

Jay Slegan
 Signatory for Artist(s)
 Jay Slegan
 Jay Slegan Presents
 TAX ID:

FROM : FAX NO. : 7077651935 May. 04 2007 03:33PM PT



AGREEMENT FOR THE PERFORMANCE OF MUSICAL ENTERTAINMENT

George Gosling of Table Top Productions ("Purchaser") and Jay Siegen for Wonderbread 8 ("Artist") entered into this Agreement for a live musical performance by Wonderbread 8 ("Artist") at The Powerhouse Pub ("Venue") located at 614 Sutter St., Folsom, CA under the following terms and conditions:

DATE:	Friday, January 4 th 2008	LOAD IN:	6:30 pm
SHOWS:	3 x 45 minute sets	SOUND CHECK:	7:00 pm
TIME:	Starting at 8:30 pm	BACKLINE:	Provided by Artist
PRICE:	\$ 18.00	PA/ENGINEER/LIGHTS:	Provided by Purchaser
ATTENDEES:	To Be Determined	BAND QUESTS:	20

COMPENSATION: Four Thousand Five Hundred Dollars (\$ 4,500.00) plus 3 double rooms the night of performance

1. **PAYMENT TERMS:** The balance is due on the evening of performance, upon completion of the performance.
2. **PERMITS AND LICENSES:** Purchaser shall be responsible for obtaining any and all permits and licenses and certificates of insurance required for the performance under applicable local laws and regulations.
3. **CANCELLATION:** Purchaser may cancel any performance prevented by fire, casualty, strike, or any other act of God not within the Purchaser's control (hereinafter "Force Majeure Events"), by written notice no later than one hundred twenty (120) days before the scheduled performance date. In the event of a cancellation by Purchaser less than one hundred twenty (120) days before the scheduled performance date and/or for reasons other than a Force Majeure Event, Purchaser shall pay a cancellation fee of 100% of the Artist's fee. Artist may cancel any performance prevented by illness, accident, riot, strike, epidemic, or any other condition beyond the control of Artist. If Artist has received a deposit for said performance, Artist will refund said deposit within ten (10) days of cancellation by Artist.
4. **OVERTIME:** Any performance time requested by Purchaser in addition to that enumerated above shall be at the rate of one third (1/3) of the fee set out above per set.
5. **STAGE SIZE:** PURCHASER will provide ARTIST with a safe and professional stage no smaller than 20 feet wide by 20 feet deep with a drum riser 8 feet wide by 8 feet deep.
6. **ELECTRICAL:** PURCHASER will provide 4 (four) 20-amp circuits located on or close (within 20 feet) to stage/performance area. Notwithstanding anything to the contrary contained herein, ARTIST shall not be responsible for charges relating to the provision of electricity, including without limitation electrician's charges and/or any charges paid to union personnel for supervising or participating in the provision of sound and light equipment.
7. **DRESSING ROOM / HOSPITALITY:** PURCHASER shall provide one clean well-lit private dressing room close to the stage that is able to fit at least 18 people with a mirror, chairs and at least four electrical outlets, access to a private toilet and shower that is lockable, and 1 clean plastic covered garbage can. This dressing room shall be reserved exclusively for the ARTIST and the only additional people allowed in the room must be cleared by Artist or Artist's Manager. Please have hot meals prepared for 8 people.
8. **LIABILITY / ARBITRATION:** This contract shall be interpreted according to the laws of the State of California. The parties irrevocably agree to submit to the Judicial Arbitration and Mediation Society ("JAMS") for binding arbitration any dispute arising out of the performance or interpretation of the terms of this Agreement. Said arbitration shall be conducted in accordance with the rules of JAMS and shall be held in San Francisco, California. The award of the arbitrators can be enforced by any court with proper jurisdiction.
9. **MISCELLANEOUS:** This Agreement sets forth the entire understanding between the parties relating to the subject matter hereto and cannot be changed, modified or terminated unless there is a writing signed by both Purchaser and Artist. The undersigned Purchaser's representative acknowledges that they have the authority to enter into this Agreement on behalf of the Purchaser and can bind Purchaser to the terms and conditions of the Agreement.
10. **SIGNATURES:** Please date, sign and fax back to (415) 447-4230. Contract must be executed and returned by Friday, August 17th 2007 or contract becomes null and void at option of Jay Siegen Presents.

George Gosling
 Signature of Purchaser(s)
 George Gosling
 Table Top Productions

Jay Siegen
 Signature for Artist(s)
 Jay Siegen
 Jay Siegen Presents
 TAX ID: *



AGREEMENT FOR THE PERFORMANCE OF MUSICAL ENTERTAINMENT

Kristee Andrade for The Sonoma County Volunteer Center ("Purchaser") and Jay Siegan for Wonder Bread 3 ("Artist") entered into this Agreement for a live musical performance by Wonder Bread 3 ("Artist") at Grace Pavilion ("Venue") located in Santa Rosa, CA under the following terms and conditions:

DATE:	Saturday, February 23, 2008	LOAD IN:	To Be Determined
SHOWS:	Up to 180 minutes music w/ break(s)	SOUND CHECK:	To Be Determined
TIMES:	Evening Hours TBD	BACKLINE:	Provided by Artist
PRICE:	N/A	PA/ENGINEER/LIGHTS:	Provided by Purchaser
ATTENDEES:	600	BAND GUESTS:	N/A

COMPENSATION: Four Thousand Dollars (\$ 4,000.00)

1. PAYMENT TERMS: A non-refundable deposit of Two Thousand Dollars (\$ 2,000.00) is due by Monday, October 18, 2007 payable to JAY SIEGAN PRESENTS CLIENT TRUST. The remaining balance is due Friday, February 15, 2008, and made payable to JAY SIEGAN PRESENTS CLIENT TRUST. 22

2. PERMITS AND LICENSES: Purchaser shall be responsible for obtaining any and all permits, insurance certificates and licenses required for the performance under applicable local laws and regulations.

3. TAXES: Purchaser shall pay and hold Artist harmless of and from any and all performance taxes, fees, dues and the like related to the engagement hereunder and the sums payable to Artist shall be free of such taxes, fees, dues and the like. However, the parties expressly agree that the ARTIST is responsible for all federal and state income taxes on the monies paid by PURCHASER to ARTIST.

4. CANCELLATION: Purchaser may cancel any performance prevented by fire, casualty, strike, or any other act of God not within the Purchaser's control (hereinafter "Force Majeure Event"), by written notice no later than sixty (60) days before the scheduled performance date. In the event of a cancellation by Purchaser less than sixty (60) days before the scheduled performance date and/or for reasons other than a Force Majeure Event, Purchaser shall pay a cancellation fee of 100% of the Artist's fee. Artist may cancel any performance prevented by illness, accident, riot, strike, epidemic, or any other condition beyond the control of Artist. If Artist has received a deposit for said performance, Artist will refund said deposit within ten (10) days of cancellation by Artist.

5. OVERTIME: Any performance time (up to 80 minutes / one full set) requested by Purchaser in addition to that enumerated above shall be at the rate of one third (1/3) of the fee set out above per set.

6. STAGE SIZE: PURCHASER will provide ARTIST with a safe and professional stage no smaller than 20 feet wide by 20 feet deep with a drum riser 8 feet wide by 8 feet deep

7. ELECTRICAL: PURCHASER will provide 4 (four) 20-amp circuits located on or close (within 20 feet) to stage/performance area. Notwithstanding anything to the contrary contained herein, ARTIST shall not be responsible for charges relating to the provision of electricity, including without limitation electrician's charges and/or any charges paid to union personnel for supervising or participating in the provision of sound and light equipment.

8. DRESSING ROOM / HOSPITALITY: PURCHASER shall provide one clean well-lit private dressing room close to the stage that is able to fit at least 8 people with a mirror, chairs, electrical outlets, access to a private toilet that is lockable, and 1 clean plastic covered garbage can. This dressing room shall be reserved exclusively for the ARTIST and the only additional people allowed in the room must be cleared by Artist or Artist's Manager. Please have hot meals, 1 of which shall be vegetarian (NO FAST FOOD) and beverages (1 case non-carbonated water, 2 Cokes, 1 case Gatorade) prepared for 8 people (5 band members, 1 crew member). Food buy out option is available at \$ 38 / per person plus beverages. Per diem payable prior to event date.

9. LIABILITY / ARBITRATION: This contract shall be interpreted according to the laws of the State of California. The parties irrevocably agree to submit to the Judicial Arbitration and Mediation Society ("JAMS") for binding arbitration any dispute arising out of the performance or interpretation of the terms of this Agreement. Said arbitration shall be conducted in accordance with the rules of JAMS and shall be held in San Francisco, California. The award of the arbitrator can be enforced by any court with proper jurisdiction.

10. TRADEMARK: Performer shall not use client's name, logo, marks, photos and correspondence or otherwise identify client without first obtaining express written consent. This includes publishing client on public client list or using excerpts of client communication or photos of client event as testimonial for performer.

11. MISCELLANEOUS: This Agreement sets forth the entire understanding between the parties relating to the subject matter hereof and cannot be changed, modified or terminated unless there is a writing signed to that extent signed by both Purchaser and Artist. The undersigned Purchaser's representative acknowledges that they have the authority to enter into this Agreement on behalf of the Purchaser and can bind Purchaser to the terms and conditions of the Agreement.

12. SIGNATURES: Please date, sign and fax back to (415) 447-4230. Contract must be executed and returned by Monday, October 18, 2007 or contract becomes null and void at option of Jay Siegan Presents.

Kristee Andrade
 Signatory for Purchaser(s)
 Kristee Andrade

Jay Siegan
 Signatory for Artist(s)
 Jay Siegan
 Jay Siegan Presents
 TAX ID:

From: Barry Simons <barry@yourmusiclawyer.com>
Subject: Wonderbread 5
Date: March 12, 2009 9:07:25 PM PDT
To: Patrick Gilles <patrickgilles@yahoo.com>
Cc: jeffreyafletcher@me.com, jmcDill@mac.com, tommy@tommyrickard.com, chlp@wonderbread5.com, jay@jaysleganpresents.com

Dear Pat:

I have been asked to contact you on behalf of Jeffrey Fletcher, Thomas Rickard, Christopher Adams, and John McDill, the members of the musical group professionally known as the "Wonderbread 5" (hereinafter referred to as "Artist"). This email is in furtherance to the verbal communication between you and Christopher Adams on behalf of the band on Monday March 9th, 2009.

It is with great regret that the other members of Artist have decided unanimously that you shall no longer be a member. It has taken a long time to reach, and they are greatly saddened by this very difficult decision. They feel that notwithstanding considerable efforts by everyone to improve communications with you, including through professional mediation and other means, the relationship between you and the other members has been strained to the point that it has become irreconcilable.

Please be advised that Artist shall continue to perform and conduct business under the name "Wonderbread 5", that you shall relinquish all rights in the partnership business, and shall no longer be entitled to any and all future proceeds from Artist's live performance engagements and any other business activities.

Notwithstanding the foregoing, Artist will promptly forward to you a check in the amount of Five Thousand Dollars (\$5000) as a gesture of good faith, and as thanks for your hard work and dedication to the band. We hope this will help alleviate some financial distress which may result from your dismissal.

They request that you please refrain from attending their shows in order to provide for a smooth transition, and to avoid any conflict. They will agree to remove your name and likeness from Artist's website and any promotional materials as soon as possible (with the exception of their video, which was produced and owned by the band)

Lastly, the members of the band requested that I convey to you that they wish you the best in the future. They are willing to keep open, friendly lines of communication via e-mail, but that Jeffrey, Thomas, Christopher, John and Jay all be copied on any such communications.

This letter is without waiver or prejudice of any all rights at law or in equity, and all of such rights and remedies are hereby expressly reserved.

Thank you very much for your cooperation regarding this matter.

Barry Simons

Law Office of Barry Simons

The Wroan Law Firm, Inc.
A Professional Law Corporation
5155 W. Rosecrans Avenue, Suite 229
Los Angeles, CA 90250
Telephone (310) 973-4291
Facsimile (310) 973-4287

March 30, 2009

Mr. Barry Simons
Law Office of Barry Simons
1655 Polk Street, Suite 2
San Francisco, CA 94109

SENT VIA U.S. CERTIFIED MAIL AND EMAIL

Re: Patrick Gilles/Wonderbread 5

Dear Mr. Simons:

Our office has been retained to represent Mr. Gilles with respect to his interest in the performing musical group entitled Wonderbread5 ("the Partnership"). Please direct any and all future correspondence regarding Mr. Gilles to my attention.

This letter is to acknowledge receipt of your email letter to Mr. Gilles dated March 12, 2009.

Wonderbread5 is a general partnership within the meaning of California Corporations Code 16202. All further statutory references will be to the applicable code. Please consider this letter as formal demand for all books and records of the Partnership pursuant to 16403(b).

Your attempt to disassociate Mr. Gilles from the Partnership is improper and is, by this letter, formally rejected. If the Partnership desires to disassociate Mr. Gilles it must do so by unanimous agreement and in compliance with the buyout requirements of 16701 and specifically, of course, subsection (g) which provides:

"The payment or tender required by subdivision (e) or (f) shall be accompanied by all of the following:

- (1) A statement of partnership assets and liabilities as of the date of dissociation.
- (2) The latest available partnership balance sheet and income statement, if any.
- (3) An explanation of how the estimated amount of the payment was calculated."

Additionally, if there is an agreement reached for the buyout of Mr. Gilles' interest in the Partnership, then the Partnership is required to file a statement of disassociation with the

Secretary of State's Office under 16704. Furthermore, the Partnership must provide an indemnification to Mr. Gilles pursuant to 16701(d).

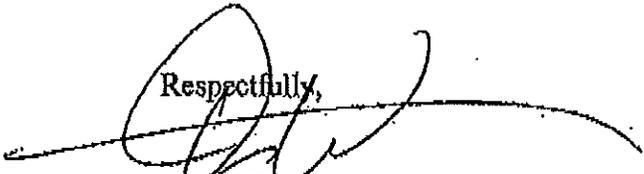
Because the Partnership is a going concern and time is of the essence, I invite you to meet and confer with me regarding the terms and conditions of Mr. Gilles disassociation as soon as possible. We can discuss the terms and conditions under which Mr. Gilles would be agreeable to a disassociation as well as for a valuation and accounting of the Partnership business. In the meantime, we respectfully request that the business affairs of the Partnership be conducted in accordance with section 16404 and that each individual partner be mindful of his fiduciary obligations detailed therein.

If we do not hear from you within fifteen (15) days of the date of this letter we will presume that the Partnership and each individual partner is unwilling to resolve these matters amicably and we will pursue all available remedies and causes of action and the Partnership as well as each individual partner may be held liable for costs and attorneys fees pursuant to 16701(i).

Finally, this letter is sent without waiver of our rights to challenge your representation of the Partnership visa vie Mr. Gilles in further instances due to your prior relationship as counsel for Mr. Gilles in separate matters.

I look forward to hearing from you and receipt of the above referenced records in a timely fashion.

Respectfully,



Douglas B. Wroan

The Wroan Law Firm, Inc.
A Professional Law Corporation
5155 W. Rosecrans Avenue, Suite 229
Los Angeles, CA 90250
Telephone (310) 973-4291
Facsimile (310) 973-4287

April 20, 2009

Mr. Barry Simons
Law Office of Barry Simons
1655 Polk Street, Suite 2
San Francisco, CA 94109

SENT VIA FACSIMILE AND U.S. MAIL

Re: Patrick Gilles/Wonderbread 5 (the "Partnership")

Dear Mr. Simons:

We are in receipt of your email dated April 2, 2009 in response for our request for the books and records of the Partnership of Wonderbread5 pursuant to Corporations Code 16403(b).

I have tried to reach you by telephone several times and have not heard back from you. The singular record of scheduled upcoming performance dates that you produced is inadequate and is not sufficient to conduct a thorough analysis of the value of my client's partnership interest in Wonderbread5.

As you know Mr. Gilles is entitled to all the books and records of the Partnership business including those records kept by Mr. Jay Siegan. Without these records it is extremely difficult to establish a fair market value for the business and, accordingly, Mr. Gilles interest therein. Because your clients' have not agreed and indeed appear to be unwilling to retain a separate independent business valuation we are likely to have differences over the fair value of the business.

Having said that and because we do desire to resolve this matter amicably without the need for litigation, we are prepared to accept the following as a buyout of Mr. Gilles interest in accordance with 16701.

First, in contrast to your opinion, we believe there is significant value in the Partnership business. Wonderbread5 is a performance artist band that has been around for nearly 14 years. Over time the Partnership has created and developed a unique and proprietary stage routine that has enabled the band to earn a great deal of customer good will and lasting viability. Additionally, the Partnership has other assets including its service mark name, email marketing lists, website etc. The band is also unique in that most, if not all, of its members are interchangeable and thus,

unlike some performance acts, the Partnership is able to exist and produce income beyond the years of its founders.

Second, Mr. Gilles net income from the business for the years 2006-2008 was \$78,446.00; \$61,727.00 and \$59,308.00 respectively. Presumably the business has grossed approximately \$470,676.00, \$370,362.00 and \$355,848.00 during those same periods. The average of the last three (3) years earnings would be \$66,493.66.

Using a conservative valuation multiple of 5 times the average earnings of the past 3 years, Mr. Gilles interest is worth \$332,468.30.

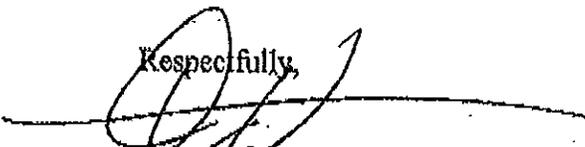
Please consider this a formal demand for payment of in the amount of \$332,468.30. If your clients are unable to make this payment immediately, then we are willing to discuss a payment plan that would allow for payments to be made to Mr. Gilles over time, with interest, of course. In addition to the buy out payment, we will want a formal disassociation agreement to be executed wherein Mr. Gilles is provided the requisite indemnities as required pursuant to Corporations Code 16701(d).

If we do not hear from you within 30 days from the date of this letter we will assume your clients have no intention of resolving this dispute without litigation. If we are forced to file a claim for damages against your clients and Mr. Siegen, then the Partnership as well as each individual partner may be held liable for costs and attorneys fees pursuant to 16701(i).

In the meantime, again, we respectfully request that the business affairs of the Partnership including the withholding of amounts due by Mr. Siegen on Mr. Gilles' behalf be conducted in accordance with section 16404 and that each individual partner be mindful of his fiduciary obligations detailed therein.

Finally, this letter is an offer in compromise and as such is governed by California Evidence Code 1152.

Respectfully,


Douglas B. Wroan

PHILLIPS, ERLEWINE & GIVEN LLP

ATTORNEYS AT LAW
50 CALIFORNIA STREET, 35TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 398-0900
FAX (415) 398-0011
WWW.PHELLOW.COM

DAVID M. GIVEN
dmg@phillaw.com

August 25, 2009

BY FAX AND U.S. MAIL

Douglas B. Wroan, Esq.
The Wroan Law Firm, Inc.
5155 West Rosecrans Avenue, Suite 229
Los Angeles, CA 90250

Re: Gilles v. Wonderbread S, et al
S.F. Superior Court Case No. CGC-09-489573

Dear Mr. Wroan:

We were recently made aware that certain of your pre-litigation correspondence went unanswered. Your client subsequently filed suit. Having completed the first day of your client's deposition, we wish to provide a response to that correspondence as well as our analysis on the subject of your client's claims against WONDERBREAD S and the other defendants in the above case.

I. Band Books and Records

Our clients have always been and remain ready, willing and able to cooperate with you and your client concerning any accounting or other financial information you might want to review relating to band activity. As you are no doubt aware, the band members never formalized the status of the band as a business entity. Further, at all relevant times the band's performance income ran through Jay Siegan Presents ("JSP").

Accordingly, there are no band books or records *per se*—no tax returns or bank ledgers or accounts for any band-related entity, no articles of organization or incorporation for any such entity, and no written partnership or operating agreement pertaining to such entity. While your client apparently organized a limited liability company to conduct the band's merchandise business, as your client testified to at deposition, that entity had no real operational role and was suspended shortly after its

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formation. In the event, you should have all of the information on the LLC since we saw these documents for the first time when your client produced them at his deposition.

The band's financial history should be adequately reflected in the 1099s your client received throughout his tenure in the band. In fact, you used that data in your April 20, 2009 letter to calculate your client's share of the supposed "value" of the band's business as a going concern. (Some of your figures were in error because they reflected income from your client's business venture in partnership with Jay Siegan at the Red Devil Lounge in San Francisco.) Your client acknowledged at his deposition that he had no reason whatsoever to distrust JSP, and we can presume that this information is accurate and complete.

JSP does have in its possession some band-related material. This material consists primarily of contracts relating to live performances. You are welcome to examine it at JSP's office during normal business hours. Further, if you can formulate a request with greater specificity than "all books and records" of the band, we will endeavor to make any other pertinent documents to the extent they can be located available to you and your client with all deliberate speed.

2. The Gilles Complaint

Putting the subject of disclosure aside, the claims stated in your client's complaint are completely without merit. For the reasons that follow, we demand that your client immediately dismiss his lawsuit. This lawsuit is a continuation of Patrick Gilles' malicious and unlawful threats and actions directed at members of WONDEREREA'D'S.

The facts reveal Mr. Gilles as a former, deeply disgruntled band member who, over the years, succeeded in alienating every other member of the band, as well as his former business partner and the band's agent and manager, Mr. Siegan. His conduct led directly to his dismissal as a band member.

The incidents of inappropriate and hostile behavior are legion. We will not review them all in detail here. However, one 2005 incident in particular had a direct effect on the band's ability to function. When confronted about that incident, your client lashed out at the other band members, calling them "a bunch of cocksuckers"—following which your client did not speak to any other band member for almost a year. During that year, Mr.

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Gilles exhibited additional dysfunctional behavior, including the assault and battery of an audience member (a minor) during a band performance in Benicra.

Such incidents continued even after a band mediation in May 2006. They affected every one of the primary duties your client owed to the other band members—he was absent for rehearsals, he did not learn new songs, he did not participate in distributions of performance monies at the end of the night, he did not participate in client meet and greets, he did not wear the required band outfits, his on-stage demeanor was lacking, he failed to communicate, he was rude and insulting to other band members, he acted irresponsibly and unprofessionally in front of clients and fans.

One marker of your client's utter denial and inability to face up to the consequences of his behavior is that according to his deposition testimony he was completely unaware that the other members called the May 2006 mediation to address their collective issues with him—that he had become the fulcrum of the band's problems. That mediation was the other band members' best effort to try to resolve these problems in a constructive and positive way.

Unfortunately, your client's "inappropriate, unprofessional and unacceptable" behavior (as the manager of one venue where the band played later called it) continued unabated, risking the band's long-standing business relationships and reputation—not to mention liability exposure to third parties. This conduct unbecoming had a materially adverse effect on the band's business; bookings became more difficult and clients and fans complained.

This led to a February 2009 performance where Mr. Gilles failed to show up with the right band outfit, yelled at other members of the band during the band's performance and refused to engage the audience, staring down at the floor or toward the side of the stage all night. Even then, the other band members agreed to a "cooling out" period, and did not meet to consider Mr. Gilles' future in the band until about a week later.

The other band members, having considered the damage your client was doing, resolved then to ask him to leave the band. Your client had so conducted himself toward the band and its other members that it became extremely difficult, if not impossible, to carry on the business of the band in a practical, economical or businesslike manner. (The foregoing is admitted in your client's pleading when he speaks [beginning at page 12-21 of the complaint] of the "resentment and anger that began to creep into the band." It is

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also reflected in an October 2008 email from Mr. Gilles to the rest of the band). His various refusals in connection with band business had caused the band loss.

Given Mr. Gilles' behavior, together with the antagonistic feelings that Mr. Gilles engendered—and that he has admitted existed between him and the other band members—they had every right to ask him to leave. Based on his contemporaneous email with the other members of the band, their decision to ask him to leave did not come as a surprise. That decision was unanimous.

If the legal theory that the other band members owed your client a fiduciary duty in the execution of these duties is correct, then the converse is also true. Suffice it to say that your client's complaint puts at issue the reasons why the other band members asked him to cease performing with them, and we intend to explore those reasons should discovery in this case continue.

Fearing that Mr. Gilles might try to sabotage the band or one of its live performances should he be given notice (something he later threatened to do), the other band members determined to ask him to cease performing with them immediately. As a gesture of good faith, however, they paid him his estimated share of live performance income for the next two months. Mr. Gilles accepted and cashed the check.

Notwithstanding the foregoing, Mr. Gilles made a series of statements indicating his malicious intent in pursuing the course of conduct culminating in the filing of his lawsuit. According to Mr. Siegan, Mr. Gilles threatened "to make these guys hurt" and expressed the determination "to make this [presumably, the conclusion of his role as a member of the band] painful." He told one member of the band that he intended to "kill you guys" and threatened to do physical violence on more than one occasion, saying that he would "kill him, his whole wife and his little tagget kids" when speaking about another band member.

The other members—who had not only tolerated your client but made every effort to salvage the relationship and keep him in the band—sought to dissuade him from this path, and to defuse his suspicion that they had somehow conspired all along against him. Given his erratic behavior and threats, however, they resolved not to speak to him again. The next communication was from an attorney.

Douglas B. Wroan, Esq.

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Your firm's involvement in the instant lawsuit is a continuation of your client's intended and unlawful course of conduct. This includes a demand for payment of over \$300,000 to release his "claims"—an amount that approximates what the band typically grosses in one year, and that requires the active participation of five musicians. Even your client conceded at his deposition that someone would have to substitute for him on guitar at the band's live performances, *and that this musician would have to be paid*. In point of fact, the history of the band is that when someone substituted for a band member at a live performance, they were often paid *the full pro-rata share from the pay for that performance*; indeed, when your client tried to change that arrangement, as he testified at deposition, his chosen substitute declined to perform.

Following this extortionate demand, your firm filed a complaint designed to harass and embarrass the other members of the band. This lawsuit, together with the demands made in your March 30th and April 20th letters, make explicit your client's intention to damage the other band members and their reputation as well as to cause them to incur unnecessary fees. On the thinnest pretext, the lawsuit accuses the other band members of fraud. Somehow, this fraud consists, according to the complaint (at paragraph 96), of "unjustly" removing or excluding your client from the band. But by the very nature of the at-will partnership your client alleges existed, the other band members could cease performing with Mr. Giles for any reason—or no reason at all.

We urge your firm and your client to reconsider this course of conduct. The filed lawsuit is a blatant violation of C.C.P. § 128.7. Rest assured that, should the band, Mr. Siegan and Mr. Taylor be forced to vindicate themselves in a court of law, they will not hesitate to seek reparations for the cost of defense—not to mention any harm to the band's or JSP's reputation—arising from this malicious and frivolous lawsuit.

3. Accounting Matters

Whether Mr. Giles is guilty of conduct detrimental to the band, any band partnership which included him as a member is effectively over. For whatever reason, there has unquestionably been a change in the relation of the parties caused by Mr. Giles ceasing to be associated in the carrying on—as distinguished from the winding up—of the band's business.

Notwithstanding your client's bloated 10-count, 37-page complaint, the only real issue between the parties is one for an accounting. There is abundant statutory and case

Douglas B. Wroan, Esq.
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Page 6

law to the effect that, assuming a band partnership did in fact exist, the other band members may elect to remove Mr. Gilles, paying him or securing payment by bond of the value of his interest in the partnership, *less any damage caused by him*.

We believe there is no value in this interest, assuming it even exists.

First, there are no intellectual property or other assets subsisting in the band. There are no recordings, no musical compositions, and no merchandise rights to speak of. (We are advised that none of the backing tracks currently used by the band feature Mr. Gilles' recorded performance. Further, the band has endeavored to remove anything from its website and promotional material featuring Mr. Gilles' name and likeness, in any event, there is no value in what few, if any, uses remain.) The band owns no equipment. It retained no earnings and maintained no bank accounts. The members did not have any capital accounts reflecting monies owed to them by the band. All of the band's income, consisting exclusively of proceeds from live performances, flowed through ISP—to be paid out in full on a pro rata basis following each performance. Under accepted principles of trademark law, upon Mr. Gilles' departure, the rights in and to the band's name (and any associated logo) remained with the other band members or the band partnership. *Robis v. Reed*, 173 F.3d 736, 740 (9th Cir. 1999).

Second, there was an understanding among the band members that if someone left the band they would not be entitled to a payment approximating the "value" of the band's good will. This was the case with Steve Brooks, who left the band before Mr. Gilles did. The band (including Mr. Gilles) offered no such payment to him. It is also in keeping with music industry custom and practice. We are confident that the overwhelming majority of expert opinion on this subject will be that in all or virtually all of the band agreements devised by counsel and the parties themselves, a leaving member agrees to give up any claim to good will, including any right to a portion of live performances occurring after his departure from the band. This is confirmed in all of the leading music industry treatises we have consulted.

Third, as previously noted, Mr. Gilles' departure meant that some other guitarist has had to play with the band at its live performances. Throughout most of the 13-year history of the band, any substitute was typically paid an amount equal to that paid the band members performing that night. That practice serves as an acknowledgment that any "good will" associated with the live performance income has little or no value—the

Douglas B. Wroan, Esq.
August 25, 2009
Page 7

actual performance by the individual musician, contracted for by the client (and booked by ISP), embodies the true value to the band's continuation as WONDERBREAD S.

Equitable principles apply in determining the rights of the parties to an action for an accounting between partners. For all the reasons stated above, we believe your client comes to his action with unclean hands. Regardless, even his accounting claim has no real merit or value—and would, in any event, be offset in whole or substantial part by the damage he has done to the band's business, as well as the payment he has already received.

Our clients are open to our engaging in dialogue with you to review the facts and circumstances here, as well as the methodology you proffered regarding the alleged value of Mr. Gilles' "partnership" interest. (It fails on several levels, which we will discuss with you.) However, be advised that their patience with Mr. Gilles' course of conduct is nearing an end. They have been dragged into a lawsuit bearing all the markers of vindictiveness and spite. If forced to do so, they will fight this lawsuit to the end, and will not hesitate to seek recovery from your firm and Mr. Gilles upon its conclusion.

Nothing contained herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Please let us hear from you before the end of the week should you wish to discuss any of the above.

Very truly yours,



David M. Given

DMG:hs

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DAVID M. GIVEN
dmgiven@peglaw.com

September 15, 2009

Douglas B. Wroan, Esq.
The Wroan Law Firm, Inc.
4135 West Rosecrans Avenue, Suite 229
Los Angeles, CA 90280

Re: Gilles v. Wonderbread S, et al.
S.F. Superior Court Case No. CGC-09-489573

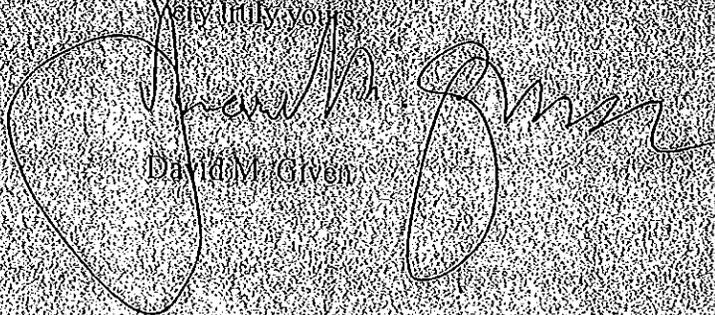
Dear Mr. Wroan:

I understand our clients' Offer of Compromise has reached you.

To the extent Corporations Code § 16701 applies to this case, this letter shall serve as the band's offer to pay for your client's interest in the band. The band is ready, willing and able to pay this amount forthwith in settlement of all your client's claims and subject to dismissal of your client's legal action with prejudice.

Our August 25th letter, together with the enclosed, serves as an explanation of how the amount contained in the Offer of Compromise was reached. As previously discussed, the band has no assets or (known) liabilities (and therefore no liquidation value), and no balance sheet or income statement is available. Notwithstanding the enclosed, the band disputes, it owes your client anything and reserves all rights on this subject, including without limitation on any damages incurred by it as a result of your client's actions.

Very truly yours,


David M. Given

DMG:ls
Encl.

GILLES V. WONDERBREAD'S
S.P. Superior Court Case No. CGC 09-489573

C.G.P. 8998 Offer of Compromise

Data

Gilles Annual WBS Gross Income
(per 1099s - rounded to nearest dollar)

2004 - \$51,754

2005 - \$57,755

2006 - \$68,787

2007 - \$56,904

2008 - \$59,308

Average = \$58,902

Assumptions

Multiplier = 1

Replacement Allocation Reduction = 1/3

Value of Share before Setoffs = \$38,875

Setoffs

Severance Payment Received = (\$5,000)

Pro Rata Share of Transaction Costs to Band = (\$4,000 est.)

Damages to Band Caused by Gilles = TBD

Total Est. Value

Rounded to \$30,000

END



INVOICE

Page 1 of 1
 Number: 6921979

Billing Contact Make You Money Chris Adams 1029 Second St. #5 Novato, CA 94945 USA			Remittance Address Network Solutions, Inc. PO Box 17305 Baltimore, MD 21297-0525		
Phone: 4154855505			Account Number:		
Fax:		Status: PAID			
Date Due: 20-Jun-1999				Source: OPS	
		Net Due:			
Item #	Quant.	Units	Description	Unit Price	Total
1	2.0000	YR	Domain registration (prepay or wholesale) WONDERBREAD5.COM Coverage: 03-May-1999 to 03-May-2001	\$35.00	\$70.00

7. I was the only one authorized to act on behalf of the band's LLC with the state,

8. I was in charge of marketing the band in the nature of purchasing stickers, buttons, and t-shirts.

9. I also shot over forty (40) promotional videos for the band in an effort to drive the band's name recognition and bookings.

10. I secured the bands first bank account and was the exclusive member of the band with signatory access to the band's bank account.

11. I also took care of radio spots and advertising for the Petitioner during my 13 plus years with the band before being forced out in 2009.

12. In short, I undertook significant if not the majority of the managerial functions of the band from 1996 until being forced out in 2009.

13. The California civil case settlement was for lost wages incurred as a result of not receiving income from lost work due to being kicked out of the band.

14. I never intended to deceive the U.S. Patent and Trademark Office when I filed for the subject trademark application. I believed then as I do today that I am the rightful owner of the trademark.


Patrick Gilles

7/18/11
Date

COUNTY OF Main

STATE OF CALIFORNIA

BEFORE ME, the undersigned authority, this 18th day of July 2011, personally appeared Mr. Patrick Gilles, who after being first duly sworn, states that he is the person who provided the information above and that the information provided herein is true and correct, and who is personally known to me or who has produced Ca. Drivers license as identification and who did take an oath.

Notary Public: Lisa A. Walmsmith (signature)

Notary Public: Lisa A. Walmsmith (Typed/Printed name of Notary Public)

Commission No. 1769134

My Commission Expires: Sept. 30, 2011

