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Filing date: **06/15/2012**

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

| | |
|------------------------|---|
| Proceeding | 92052150 |
| Party | Defendant Patrick Gilles AKA Wonderbread 5 and/or Wonderbread Five |
| Correspondence Address | MATTHEW H. SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST, SUITE 151 VIENNA, VA 22180 UNITED STATES mswyers@TheTrademarkCompany.com |
| Submission | Opposition/Response to Motion |
| Filer's Name | Matthew H. Swyers |
| Filer's e-mail | mswyers@TheTrademarkCompany.com |
| Signature | /Matthew H. Swyers/ |
| Date | 06/15/2012 |
| Attachments | Opposition to Motion for Sanctions - Exhibits 1 - 5.pdf (54 pages)(5370494 bytes) Opposition to Motion for Sanctions.pdf (12 pages)(556518 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 PETITIONER’S MOTION FOR SANCTIONS /
CROSS-MOTION FOR SANCTIONS AND/OR MOTION TO COMPEL**

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 Sanctions* further filing his *Cross-Motion for Sanctions* and/or *Motion to Compel* in reply. For the reasons and on the grounds more fully set forth below, Registrant respectfully requests that the Board deny *Petitioner’s Motion for Sanctions* and Registrant’s *Cross-Motion for Sanctions* but grant Registrant’s *Motion to Compel* full and complete answers to Registrant’s discovery and/or in the alternative grant both Petitioner’s and Registrant’s motions for sanctions.

STATEMENT OF THE CASE

As a result of petitioner’s previous unsuccessful *Motion for Summary Judgment* as well as its unsuccessful *Opposition to Registrant’s Motion for Rule 56(f) Discovery* the Board is already well familiar with this matter. However, as Petitioner now, somewhat ironically, contends that “Registrant Has Engaged in a Pattern of Evasion Without Justification”, a full recitation of the facts follows. *See Petitioner’s Motion for Sanctions*, p. 4.

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 a *Motion for Summary Judgment* 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. *See Motion for Summary Judgment* dated July 30, 2010.

7. In response, Registrant filed its *Motion for Rule 56(f) Discovery* seeking an order from the Board, prior to a ruling on Petitioner’s *Motion for Summary Judgment*, for Petitioner to answer specific questions posed to it in Registrant’s Interrogatories and Requests for Production of Documents to Petitioner on or about July 12, 2010.

8. Petitioner opposed Registrant’s *Motion for Rule 56(f) Discovery* on September 22, 2010.

9. On May 20, 2011 the Board granted, in part, and denied, in part Registrant’s *Motion for Rule 56(f) Discovery* ordering Petitioner to provide substantive responses to specifically enumerated interrogatories and requests for production of documents prior to the Registrant being required to respond to Petitioner’s *Motion for Summary Judgment*. *See Order* dated May 20, 2011.

10. Specifically, Petitioner was required to respond to “Interrogatory Nos. 2, 3, 10-14, 16, 19 and 20 and Document Request Nos. 6, 12 and 14” within 30 days of the order. *See Order* dated May 20, 2011 at p. 11.

11. Once under order of the Board, only then did Petitioner submit responses to interrogatories 2, 3, 10-14, 16, 19 and 20 and document request nos. 6, 12 and 14. *See Exhibits 4 and 5.* Of note, Petitioner did not provide answers or responses to any other discovery requests save for those ordered by the Board. *Id.*

12. Thereafter, on July 19, 2011 Registrant was able to submit its *Opposition to Petitioner’s Motion for Summary Judgment.*

13. On March 13, 2012 the Board denied Petitioner’s *Motion for Summary Judgment.* *See Order* dated March 13, 2012.

14. Thereafter, on March 29, 2012 the undersigned, Registrant’s counsel, sent the attached letter to Petitioner’s counsel in a good faith effort to encourage and establish a deadline for the remainder of Petitioner’s now severely overdue responses to Registrant’s original discovery submitted on July 12, 2010 which were not responded to or addressed in the Board’s May 20, 2011 *Order.* *See Exhibit 1. See generally Order* dated May 20, 2011 at p. 11.

15. Of note, Registrant’s counsel’s letter of March 29, 2012 to Petitioner’s counsel is conspicuously absent from *Petitioner’s Motion for Sanctions* and its exhibits (*emphasis added*). *See Petitioner’s Motion for Sanctions.*

16. On April 5, 2012, one week following Registrant’s counsel’s letter of March 29, 2012, Petitioner, after having received said letter, noted the deposition of the Registrant for April 20, 2012 without first responding to Registrant’s counsel’s good faith effort to have Petitioner comply with their now severely delinquent discovery obligations.

17. Registrant's counsel was out of the country on a scheduled vacation during the weeks of April 2nd and April 9th.

18. By email dated April 9, 2012, Petitioner's counsel acknowledged receipt of Registrant's counsel's March 29, 2012 letter further preemptively themselves cancelling or requesting to modify the deposition noted for April 20, 2012 due to the unavailability of facilities at their office for that day and time. *See* Email from Petitioner's Counsel to Registrant's Counsel dated April 9, 2012 at 2:42 p.m. attached as Exhibit B to *Petitioner's Motion for Sanctions*.

19. Upon his return to the office Registrant's counsel contacted Petitioner's counsel to discuss the outstanding discovery issues including, but not limited to, the deposition of the Registrant as well as the Petitioner's now long overdue discovery responses.

20. During the conversation it was decided that (1) Registrant's deposition would be re-noted, by agreement, for a date in the future and (2) Petitioner's counsel would determine what additional discovery responses they needed to provide to Registrant's original discovery issued on July 12, 2010.

21. Both of these decisions were memorialized by Petitioner's counsel in her email dated April 19, 2012. *See* Petitioner's counsel's email to Registrant's counsel dated April 19, 2012 at 3:17 p.m. attached as Exhibit E to *Petitioner's Motion for Sanctions*.

22. However, as is now the established pattern in this case, Petitioner's counsel forgot that she had agreed or otherwise decided to ignore that she was to finally provide full responses to Registrant's discovery submitted in 2010 and, on April 30, 2012, re-noted Registrant's deposition for May 16, 2012 without further consideration, comment, or acknowledgment of her past-due discovery obligations. *Petitioner's Motion for Sanctions*, Exhibit G.

23. Upon receiving the *Amended Notice of Deposition of Patrick Gilles* Registrant's counsel sent an additional email to Petitioner's counsel, again in an ongoing good faith effort to resolve the discovery dispute in this matter. *Petitioner's Motion for Sanctions*, Exhibit H.

24. In response, Petitioner's counsel, returned to their established pattern of not providing any discovery to Registrant in the absence of an Order from the Board. More specifically Petitioner's counsel changed their documented position in the matter that had confirmed that she would "look into" and get back to our office concerning their outstanding discovery and then we would discuss the date of the deposition and the outstanding discovery, prior to moving forward with either. *Petitioner's Motion for Sanctions*, Exhibit E, I.

25. In reply, Registrant's counsel confirmed that Registrant would be made available for deposition, but that all parties needed to recall we were attempting first to resolve a longstanding discovery blockade on the part of the Petitioner and Petitioner had simply not responded to our good faith requests for answers on the subject instead attempt to, once again, move the case forward in a one-sided manner. *Petitioner's Motion for Sanctions*, Exhibit J.

26. On May 18, 2012 the issues all appeared to be resolved. On that day Petitioner's counsel emailed Registrant's counsel stating that they would provide full answers and requests for production of documents to the interrogatories and request for production of documents issued by Registrant on July 12, 2010. *Petitioner's Motion for Sanctions*, Exhibit K.

27. In that regard, Registrant's counsel waited for complete responses to be received and then intended on rescheduling the deposition of the Registrant as well as scheduling depositions of the various alleged members of the Petitioner in this matter.

28. As of the filing of this response on June 15, 2012 Registrant's counsel certifies that no additional responses or documents have been received from Petitioner.

29. Rather, the only communication from the Petitioner so received was the instant motion filed on or about May 22, 2012.

ARGUMENT

As Petitioner does not allege any order of the Board to have been violated Petitioner's request for sanctions in the nature of termination of the matter or "severe evidentiary sanctions" are governed by 37 CFR § 2.120(g), TBMP § 527.01(b). The basis for this motion is simply that Registrant has "twice failed to appear for depositions." *Petitioner's Motion for Sanctions*, p. 4.

As the Board is aware, if a party fails attend the party's or person's discovery deposition, after being served with proper notice, or fails to provide any response to a set of interrogatories or to a set of requests for production of documents and things, and such party or the party's attorney or other authorized representative informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order, as specified in paragraph (g)(1) of this section.

I. Registrant has Not "Twice" Refused to Appear at a Discovery Deposition.

In the instant case, as the record makes clear, Petitioner has misrepresented the facts and circumstances of this matter to the Board. Admittedly, the Registrant's deposition has been noted twice. *Petitioner's Motion for Sanctions*, Exhibits A and G. However, prior to the first date noted in the original *Notice of Deposition*, namely April 20, 2012, counsel for Petitioner had already, herself, stated that the deposition would not be able to move forward on that day as "no conference rooms are available at our office on that date." *Petitioner's Motion for Sanctions*, Exhibit B.

Of note, although subsequent emails place some ambiguity as to whether the deposition could actually have moved forward on that date due to Petitioner's counsel's facilities thereafter becoming available, there is no dispute that given the pending the resolution of other discovery

issues both counsel agreed to reschedule Registrant's deposition after they had conferred again regarding outstanding discovery due to the Registrant. *Petitioner's Motion for Sanctions*, Exhibit E (Email from Cari A. Cohorn to mswyers@TheTrademarkCompany.com dated April 19, 2012 3:17 p.m.).

As such, there is no dispute that Petitioner's counsel has misrepresented this first critical fact to the Board for their motion, namely, the first deposition was taken off either by Petitioner's counsel herself or by agreement of both counsel but in no manner can it be said that the Registrant refused to appear for the same as Petitioner's own records clearly indicate.

In regard to the second noted deposition, as is also clear from the record there were ongoing discussion concerning Petitioner's obligations to respond to Registrant's discovery submitted in 2010 (*emphasis added*). At some point between April 19, 2012 (*See* email from Cari A. Cohorn to mswyers@TheTrademarkCompany.com date April 19, 2012 3:17 p.m.) and April 30, 2012, the date of the *Amended Notice of Deposition of Patrick Gilles*, Petitioner's counsel decided or forgot that ongoing discussions were occurring in good faith concerning Petitioner's outstanding discovery and Petitioner, once again rather than participating in discovery, ignored previous and documented conversations concerning their own obligation and re-noted the deposition of Mr. Gilles. *Petitioner's Motion for Sanctions*, Exhibits E and G.

Thereafter, in a continuing effort to have Petitioner to comply with their obligations Registrant's counsel continued to attempt to resolve the issues in lieu of having to burden the Board with a motion to compel. *Petitioner's Motion for Sanctions*, Exhibits H and J. To this end, on May 18, 2012 Petitioner's counsel finally agreed to provide responses to Registrant's nearly two-year-old discovery requests. *Petitioner's Motion for Sanctions*, Exhibit K. In her email counsel for Petitioner stated that the same would be provided by May 31, 2012. *Id.*

Presumptively, this was to resolve the outstanding discovery dispute so that the parties could then schedule the discovery depositions of all relevant parties. However, rather than providing any discovery responses, as required by the rules of court, Petitioner filed the instant motion instead. Further of note, despite stating that responses would be provided by May 31, 2012 to the outstanding discovery, no such responses have been received.

Applying 37 CFR § 2.120(g), TBMP § 527.01(b) to the case at hand, Registrant has not “twice” refused to attend a deposition. The initial deposition was noted and then spontaneously moved and/or agreed to be moved by the parties due to the Petitioner’s counsel’s office’s unavailability and/or during the pendency of discussions to have answers to Registrant’s discovery submitted in 2010 responded to. The second deposition was then noted ignoring the counsels’ previous discussions and Petitioner’s counsel’s promise to provide and/or “look into” providing responses to Registrant’s discovery from 2010. When Petitioner emailed Registrant’s counsel stating such responses would be provided by May 31, 2012 it was assumed that Petitioner’s counsel had returned to the original agreement that discovery would be provided and then depositions scheduled.

At no time did the Registrant refuse to be deposed. To the contrary, Registrant has consistently attempted to work with Petitioner’s counsel to move the discovery of this matter forward. However, in lieu, once again, of participating bilaterally in discovery the Petitioner’s counsel has seen fit to file yet another motion upon suspect facts which do not support the relief requested.

In conclusion, the facts of this matter simply do not support the draconian sanctions requested. Substantial evidence supports the fact that the Registrant never failed to attend a deposition but rather the depositions were rescheduled and/or called off by agreement of the

parties. At worst, the first was clearly called off by agreement of the parties with the second being placed in limbo during the pendency of other good faith discussions concerning discovery obligations. But again, at no point did the Registrant refuse to be deposed. As such, sanctions under 37 CFR § 2.120(g), TBMP § 527.01(b) are simply not warranted.

II. If Evidentiary Sanctions Are Warranted, They Are Warranted Bilaterally.

Of note, 37 CFR § 2.120(g), TBMP § 527.01(b) does not simply apply to attendance at a discovery deposition. It applies equally to responses to written discovery as well.

In the instant case there is little dispute that the Petitioner has failed to respond completely to Registrant's discovery. Specifically, on July 12, 2010 Registrant submitted *Registrant's First Set of Interrogatories to Petitioner and Registrant's First Requests for Production of Documents to Petitioner*. See Exhibits 2 and 3. By order of the Board following Registrant's *Rule 56(f) Motion for Discovery* Petitioner was required to respond to interrogatories 2, 3, 10-14, 16, 19 and 20 and document request nos. 6, 12 and 14. Although Petitioner did comply with the Board's Order in that regard (Exhibits 4 and 5), following the Board's denial of their *Motion for Summary Judgment* they have failed, despite repeated requests by Registrant's counsel, to provide answers to interrogatories 1, 4-9, 15, and 17-18 as well as documents responsive to requests for documents nos. 1-5, 7-11, and 13 despite agreeing to do so by May 31, 2012.

In that regard, although Registrant does not believe that such is warranted, should the Board decide that evidentiary sanctions should be levied as requested by Petitioner then the Registrant respectfully requests that mirror evidentiary sanctions be ordered against the Petitioner for their failure to provide answers to interrogatories 1, 4-9, 15, and 17-18 as well as documents responsive to requests for documents nos. 1-5, 7-11, and 13.

III. Petitioner Should be Ordered to Provide Discovery to Registrant.

Finally, and in the alternative, based upon the history of this case it is respectfully requested that the most appropriate order to be entered by the Board is a simple Order requiring that Petitioner finally satisfy its obligations under the rules of discovery and answer interrogatories and requests for production of documents which were submitted to them nearly two years ago. *See* Exhibits 2 and 3. Specifically, given the above-history of this matter, the motions involved, and the facts as supported by the emails attached to Petitioner's *Motion for Sanctions* as well as Exhibit 1 to this pleading, Registrant respectfully moves the Board for an order compelling Petitioner to respond to *Registrant's First Set of Interrogatories to Petitioner*, nos. 1, 4-9, 15, and 17-18, and *Registrant's First Requests for Production of Documents to Petitioner*, nos. 1-5, 7-11, and 13 pursuant to TBMP § 523 *et seq.*

Petitioner is clearly in violation of their obligations to respond to the same and is severely delinquent in doing so. Moreover, given their now repeated pattern of filing motions to avoid simply responding to discovery (e.g., *Motion for Summary Judgment* in lieu of responding to the discovery at issue (denied); *Opposition to Rule 56(f) Motion for Discovery* (denied)) it is Registrant's hope that the Board recognize this pattern on the part of the Petitioner and issue an order compelling them to comply with their discovery obligations once and for all rather than to reward such obstructionist tactics which needlessly burden this tribunal with motion after motion.

CONCLUSION

WHEREFORE in consideration of the totality of the facts and circumstances of this matter it is respectfully requested that the Board enter an Order denying Petitioner's *Motion for Sanctions* as well as denying Registrant's cross motion for sanctions. Rather, it is requested that

a simple Order compelling Registrant to finally respond fully to Registrant's discovery as set forth above is in order.

But in the alternative, if the Board believes that sanctions are warranted it is respectfully requested that based upon the facts and circumstances of this case they be levied bilaterally against both parties as set forth above. However, Registrant's position remains that the more appropriate Order which will remedy this matter is simply an order compelling full responses to Registrant's discovery submitted to Petitioner on or about July 12, 2012.

Respectfully submitted this 15th day of June, 2012.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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Vienna, VA 22180
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Facsimile (270) 477-4574
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Attorney for Registrant Patrick Gilles



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March 29, 2012

VIA CERTIFIED MAIL

David M. Given, Esq.
Phillips Erlewine & Given LLP
50 California Street, 35th Floor
San Francisco, CA 94111

RE: Wonderbread 5 vs. Patrick Gilles
Trademark Trial and Appeal Board
Cancellation No. 92052150

Dear Mr. Given:

Please accept this correspondence as our initial good faith effort to resolve a discovery dispute in this matter pursuant to TBMP § 523 *et seq.* as well as other matters related to the prosecution of this case.

As you may recall, at the onset of this case Mr. Gilles, by and through our office, submitted *Interrogatories* and *Requests for Production of Documents* to Wonderbread 5 pursuant to the applicable rules of the Board. Rather than answer our discovery, your office responded by filing a *Motion for Summary Judgment*. Our office, in turn, filed a Rule 56 Motion seeking to have your client respond to certain discovery requests prior to responding to your motion. The Board agreed with our position and on May 20, 2012 issued an order instructing your client to serve responses to our client's Interrogatory Nos. 2, 3, 10-14, 16, 19 and 20 and Document Request Nos. 6, 12 and 14 prior to considering your Motion for Summary Judgment.

Following your office's submission of the same, your client's Motion for Summary Judgment was fully briefed and opposed and, as you are also aware, decided in our client's favor on March 13, 2012. In this regard, I note that under this Order the period for discovery to close is now set for June 22, 2012. In this regard, more than two weeks have now elapsed since the issuance of this Order and we have yet to hear from your office as to when it will respond to the past-due discovery in this matter.



As such, please provide to our office complete and full responses to our client's original discovery no later than **April 5, 2012** or contact my office to explain and discuss why such cannot be accomplished in said time.

Additionally, please accept this correspondence as *notice* of our client's continuing claim against his former band mates, your clients, for violations of our client's intellectual property rights including, but not limited to, use of our client's registered trademark, misappropriation of our client's likeness in advertising still being utilized by the band, as well as false advertising concerning both the trademark at issue as well as confusion created as to whether Mr. Gilles is still performing with your clients.

Now that a court has ruled on your clients' primary theory in this matter and, very clearly, rejected the same, I respectfully suggest that your clients reconsider their stance in this matter and be willing to revisit the possibility of resolving this case on a more global level once and for all.

Thank you for your time and attention to this matter. I look forward to the pleasure of your reply at your earliest convenience.

Very truly yours,

/Matthew H. Swyers/

/mhs/



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

In the matter of Trademark Registration No. 3,691,948,
For the mark WONDERBREAD 5,

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

REGISTRANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

TO: Wonderbread 5, c/o David M. Given, Phillips, Erlewine & Given LLP, 50
 California Street, 35th Floor, San Francisco, CA 94111.

FROM: Matthew H. Swyers, Esq., The Trademark Company, PLLC, 344 Maple Avenue
 West, Suite 151, Vienna, VA 22180.

COMES NOW Registrant, Patrick Gilles (hereinafter "Registrant"), by and through counsel, The Trademark Company, PLLC, in accordance with the applicable Federal Rules of Civil Procedure and the TBMP, and propounds the following interrogatories upon Wonderbread 5 (hereinafter "Petitioner") to be answered within the time provided by the applicable rules of court.

DEFINITIONS

A. The term "Registrant" shall mean Patrick Gilles, and/or any present or former servant, agent, attorney or other representative acting on his behalf.

B. The term "**Petitioner**" shall mean **Wonderbread 5** and any present or former licensee, officer, director, employee, servant, agent, attorney or other representative acting on its



behalf, and shall include predecessors or successors either within the United States or a foreign country.

C. The term “trademark” or “mark” includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

D. The term “in the U.S.” shall mean use in interstate and/or intrastate commerce in the United States.

E. The term “Registrant’s Mark” refers to the mark WONDERBREAD 5 as identified in U.S. Trademark Registration No. 3,691,948.

F. The term “Petitioner’s Claimed Mark” refers to the term WONDERBREAD 5 as claimed to be a mark by Petitioner in the subject of the Petition to Cancel.

G. The term “you” shall mean the party or person to whom these interrogatories are propounded, all agents, employess, servants, attorneys, and all other representatives, and persons over whom the person or party to whom these interrogatories are propounded has the right to or does control or direct and activities.

H. The phrase “legal action” shall mean submission of correspondence to the Registrant or any third party not a party to this proceeding requesting that they cease use of a mark, or institution of any legal proceeding in the United States Patent and Trademark Office, state, or federal court or agency.

I. The term “live” shall mean currently registered with the U.S. Patent and Trademark Office and not dead as it applies to abandoned, cancelled, or successfully opposed trademarks.

J. The term “the band” shall mean the band Wonderbread 5, of which both Registrant and Petitioner were members.

INTERROGATORIES

INTERROGATORY NO. 1: State in detail the nature of the business, operations, and activities conducted by Petitioner.

ANSWER:

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.

ANSWER:

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.

ANSWER:

INTERROGATORY NO. 4: Describes any periods since Petitioner's alleged date of first use, as set forth in the preceding paragraph, during which Petitioner did not make use of Petitioner's Claimed Mark.

ANSWER:

INTERROGATORY NO. 5: With respect to each good and/or service identified in your response to Interrogatory No. 3, state the annual sales in units and dollars from the date of first use of each good and/or service.

ANSWER:

INTERROGATORY NO. 6.: With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the manner in which Petitioner's Claimed Mark is promoted in the United States, including but not limited to the media and mode of any marketing efforts as well as the geographic regions in which said promotions are conducted. Further identify who has been responsible for the promotion of Petitioner's Claimed Mark from the alleged date of first use to the present.

ANSWER:

INTERROGATORY NO. 7: For each medium identified in the preceding interrogatory, state the annual expenditure for advertising and promotion since inception.

ANSWER:

INTERROGATORY NO. 8: Identify the person or persons who, from the date of Petitioner's claimed first use(s) of Petitioner's Claimed Mark to the present, have been responsible for the marketing and/or promotion of Petitioner's goods and services under Petitioner's Claimed Mark indicating the period during which each person was so responsible.

ANSWER:

INTERROGATORY NO. 9: Identify all advertising agencies, public relations agencies or market research agencies that Petitioner has used, participated with or cooperated with in advertising, marketing or promoting the goods/services identified in response to Interrogatory No. 3, and indicate the time period(s) during which such activities were conducted.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

INTERROGATORY NO. 15: Describe in detail the process during which the name of the band "Wonderbread 5" was selected.

ANSWER:

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.

ANSWER:

INTERROGATORY NO. 17: Describe in detail the civil litigation dispute between Registrant and Petitioner, including the details of any settlement agreement between Registrant and Petitioner.

ANSWER:

INTERROGATORY NO. 18: Identify any and all persons and/or parties who signed any settlement agreement for the civil litigation dispute referenced in Interrogatory No. 17.

ANSWER:

INTERROGATORY NO. 19: Describe in detail any agreement regarding ownership of the rights of the mark WONDERBREAD 5.

ANSWER:

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 of the mark, any changes in ownership which have occurred, and who or what entity you contend currently owns the mark and why.

ANSWER:

DATED this 12th day of July, 2010

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Telephone (800) 906-8626 x704
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Attorney for Registrant

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

In the matter of Trademark Registration No. 3,691,948,
For the mark WONDERBREAD 5,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing First Set of Interrogatories to be served on this 12th day of July, 2010 via first-class mail upon the following:

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
The Trademark Trial and Appeal Board

In the matter of Trademark Registration No. 3,691,948,
For the mark WONDERBREAD 5,

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

**REGISTRANT'S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS TO PETITIONER**

TO: Wonderbread 5, c/o David M. Given, Phillips, Erlewine & Given LLP, 50 California Street, 35th Floor, San Francisco, CA 94111.

FROM: Matthew H. Swyers, Esq., The Trademark Company, PLLC, 344 Maple Avenue West, Suite 151, Vienna, VA 22180.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and TBMP §408, Registrant Patrick Gilles (hereinafter "Registrant") requests that Petitioner Wonderbread 5 (hereinafter "Petitioner") produce and permit Registrant to inspect and copy the Documents (as described hereinafter) and things designated below at The Trademark Company, PLLC, 344 Maple Avenue West, Suite 151, Vienna, VA 22180 within the time permitted by the applicable rules.

DEFINITIONS

A. "Documents" includes "things" and is defined in the broadest sense permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice, including without limitation, written documents, audio or video recordings, and computer data together with



printouts of screen displays. "Documents" includes each writing or record not identical to the original.

B. The term "Registrant" shall mean Patrick Gilles, and/or any present or former servant, agent, attorney or other representative acting on his behalf.

C. The term "Petitioner" shall mean Wonderbread 5 and any present or former licensee, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include predecessors or successors either within the United States or a foreign country.

D. "Person(s)" means any individual, firm, partnership, corporation, proprietorship, association, governmental body or any other organization or entity.

E. "Concerning" means relating to, referring to, describing, evidencing or constituting.

F. The term "Petitioner's Claimed Mark" refers to the terms WONDERBREAD 5 as claimed to be a mark by Petitioner in the subject Petition to Cancel.

REQUESTS FOR PRODUCTION

With respect to any Document specified below for which a claim of privilege or work product is made, please indicate the nature of the Document; identify the name, address, occupation, title and business affiliation of the writer, the addressee and all recipients thereof, the general subject matter to which the Document relates, and its date.

The Documents designated for production are the following:

1. All Documents evidencing, referring, or relating to the selection or adoption by Petitioner of Petitioner's Claimed Mark.

RESPONSE:

2. Documents sufficient to identify each Person who participated or was involved in the selection of Petitioner's Claimed Mark, and with respect to each Person so identified, the nature and scope of his or her involvement.

RESPONSE:

3. A copy of San Francisco Superior Court's stamped and dated "Defendant's Answer to Complaint for Damages and Equitable Relief: Constructive Fraud, Case No. CGC-09-487573".

RESPONSE:

4. A copy of San Francisco Superior Court's stamped and dated "Defendant's Offer to Compromise, Case No. CGC-09-487573".

RESPONSE:

5. A copy of San Francisco Superior Court's stamped and dated "Notice of Deposition of Plaintiff Patrick Gilles," Case No. CGC-09-487573".

RESPONSE:

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:

7. A copy of the letter Document from Mr. David M. Given to Douglas B. Wroan dated September 15, 2009 which states in part "as previously discussed, the band has no assets (known), liabilities (and therefore no liquidation value), and no balance sheet or income statement available."

RESPONSE:

8. A copy of San Francisco's Superior Court's stamped and dated copy of the "Offer to Compromise CA CORPORATION CODE 16701 (G) (1) (2) (3) (4)," Case No. CGC-09-487573.

RESPONSE:

9. All Documents pertaining to Wonderbread 5's advertising and marketing materials posted online or distributed by Petitioner after October 22, 2009, including but not limited to hand bills, flyers, posters, and guitar picks containing Registrant's photo image, video image, phone number, or address.

RESPONSE:

10. The Document sent electronically by David M. Given to Douglas Wroan on Thursday, October 1, 2009 at 4:46pm which states in part “I do not want to put the client to the expense of spending the appearance fees. I believe we can transact the remainder of this matter without the formality of filing the 998 with the court.”

RESPONSE:

11. Any and all Documents evidencing actual confusion as noted in the Petition to Cancel when Petitioner claims, “the Band received many calls and emails from fans and clients inquiring as to why Registrant appeared to be operating under the Wonderbread 5 name.”

RESPONSE:

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

RESPONSE:

13. Any and all Documents pertaining to the creation and/or selection of the band name Wonderbread 5.

RESPONSE:

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

RESPONSE:

DATED this 12th day of July, 2010

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Telephone (800) 906-8626 x704

Facsimile (270) 477-4574

mswyers@TheTrademarkCompany.com

Attorney for Registrant

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

In the matter of Trademark Registration No. 3,691,948,
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 Request for Production of Documents to be served on this 12th day of July, 2010 via first-class mail upon the following:

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,

v.

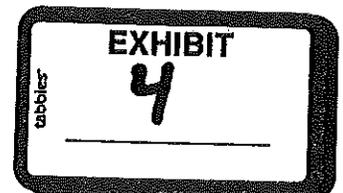
PATRICK GILLES,

Registrant.

Cancellation No. 92052150

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:

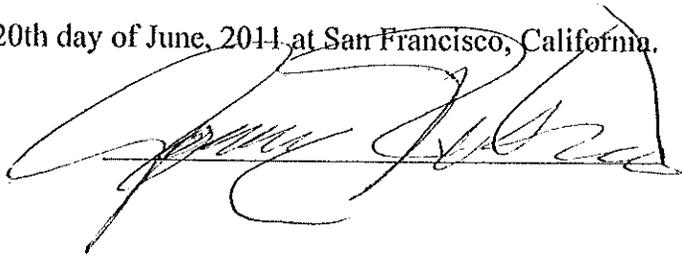
Subject to the foregoing general objections, Petitioner responds as follows: At all times from the first use of the Mark in November 1996 to the present, the Mark has been owned by Petitioner, Wonderbread 5, a California general partnership. (*See, e.g.*, Complaint at ¶¶ 2, 11, 100, 101, 104, 106, 134.) 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 stylized and cursive.

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.

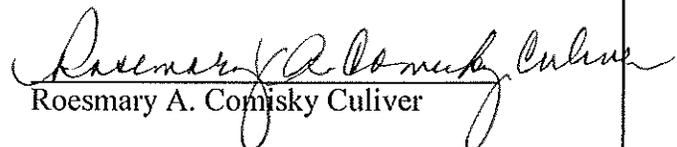
22 BY FACSIMILE TRANSMISSION: I transmitted the above documents by facsimile
23 transmission to the FAX telephone number listed for each party above and obtained
24 confirmation of complete transmittal thereof.

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.


Roesmary 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

AGREEMENT FOR THE PERFORMANCE OF MUSICAL ENTERTAINMENT

Sholla Groves ("Purchaser") and Jay Slegan for Wonderbread 5 ("Artist") entered into this Agreement for a live musical performance by Wonderbread 5 ("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 160 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

1. 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.

2. 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.

3. 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.

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 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.

5. 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.

6. 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.

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 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 FAST 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 \$ 36 / per person plus beverage. 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 arbitrators can be enforced by any court with proper jurisdiction.

10. 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.

10. SIGNATURES: Please date, sign and fax back to (415) 447-4250. Contract must be executed and returned by Thursday May 4th, 2007 or contract becomes null and void of effect of Jay Slegan Presents.

[Signature]
 Signatory for Purchaser(s)
 Sholla Groves

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

FROM : FAX NO. : 7077651935 May. 04 2007 03:33PM P1



AGREEMENT FOR THE PERFORMANCE OF MUSICAL ENTERTAINMENT

George Goelling of Table Top Productions ("Purchaser") and Jay Siegan 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 Butler 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 |
| TIMES: | Starting at 9:30 pm | BACKLINE: | Provided by Artist |
| PRICE: | \$ 15.00 | 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

- PAYMENT TERMS:** The balance is due on the evening of performance, upon completion of the performance.
- 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.
- 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 no smaller than 20 feet wide by 20 feet deep with a drum riser 6 feet wide by 8 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 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.
- 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.
- 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 Friday, August 17th 2007 or contract becomes null and void at option of Jay Siegan Presents.

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

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



AGREEMENT FOR THE PERFORMANCE OF MUSICAL ENTERTAINMENT

Kristee Andreda 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 |
| TIME: | Evening Hours TBD | BACKLINE: | Provided by Artist |
| PRICE: | N/A | PA/ENGINEER/LIGHTS: | Provided by Purchaser |
| ATTENDEES: | 000 | 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 Events"), 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, 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.

5. OVERTIME: Any performance time (up to 60 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, 8 Cokes, 1 case Gator Light) prepared for 8 people (5 band members, 1 crew member). Food buy out option is available at \$ 38 / per person plus beverages. Per diems 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 effect 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 Andreda
 Signatory for Purchaser(s)
 Kristee Andreda

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: jeffreyaletcher@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).

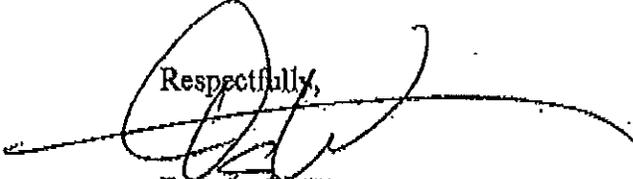
Because the Partnership is a going concern and time is of the essence, I invite you to meet and confer with me regarding the terms and conditions of Mr. Gilles disassociation as soon as possible. We can discuss the terms and conditions under which Mr. Gilles would be agreeable to a disassociation as 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. Rosécrans 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.

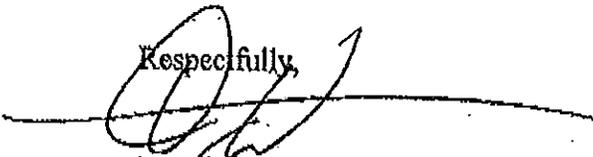
Please consider this a formal demand for payment of in the amount of \$332,468.30. If your clients are unable to make this payment immediately, then we are willing to discuss a payment plan that would allow for payments to be made to Mr. Gilles over time, with interest, of course. In addition to the 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, BREWINE & GIVEN LLP

ATTORNEYS AT LAW
50 CALIFORNIA STREET, 35TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 398-0000
FAX (415) 398-0011
WWW.PHILLIPSLAW.COM

DAVID M. CIVIL
dhc@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 5, et al.
S.F. Superior Court Case No. CC-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 5 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

Douglas B. Wroan, Esq.

August 25, 2009

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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 Giles 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 Giles' malicious and unlawful threats and actions directed at members of WONDERBREAD.

The facts reveal Mr. Giles 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.

Douglas B. Wilson, Esq.

August 25, 2009

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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 Benicia.

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

Douglas B. Wroan, Esq.

August 25, 2009

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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.

Heating 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 mm, his whorewife and his little taggot 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 his 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.

August 25, 2009

Page 5

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. Gilles 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 ISP's reputation—arising from this malicious and frivolous lawsuit.

3. Accounting Matters

Whether Mr. Gilles 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. Gilles 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.

August 25, 2009

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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. *Robly 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 5.

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

PHILLIPS, ERLEWINE & GIVEN LLP

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SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 398-6960
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DAVID M. GIVEN
dmg@phillipsere.com

September 15, 2009

Douglas B. Wroan, Esq.
The Wroan Law Firm, Inc.
3105 West Rosecrans Avenue, Suite 229
Los Angeles, CA 90250

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

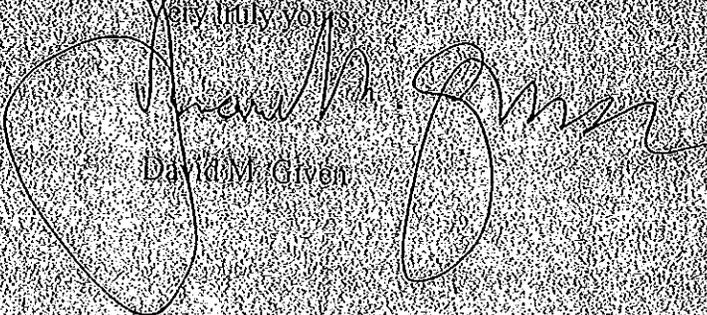
Dear Mr. Wroan:

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:hs
Enc.

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

C.C.P. 8998 Offer of Compromise

Data

Giles 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 Giles = TBD

Total Est. Value

Rounded to \$30,000

-BND-



NETWORK
SOLUTIONS

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 |