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

Proceeding	92052150
Party	Plaintiff Wonderbread 5
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**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,)	
)	Cancellation No. 92052150
Petitioner,)	
)	
v.)	
)	
PATRICK GILLES,)	
)	
Registrant.)	
_____)	

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Faced with compelling evidence and authority supporting Petitioners Wonderbread 5's contentions that Petitioner owns and at all times has owned the Mark at issue in this proceeding (the word mark "WONDERBREAD 5"), and that Registrant Patrick Gilles's interest in Petitioner (a general partnership business) was bought out before the Mark was registered, Registrant now engages in a misguided, albeit creative, attempt to revise history. The fatal flaw in Registrant's tale is that it is directly contradicted by *all* of the evidence in the record – including, most damningly, Registrant's own sworn testimony. Registrant's ongoing effort to deceive the Board further evidences his bad faith and fraudulent intent in registering the Mark.

I. PETITIONER HAS STANDING TO SEEK CANCELLATION OF THE MARK

As an initial matter, Registrant's contention that Petitioner lacks standing (RB¹ at 20-23) is meritless. The exact contours of Registrant's argument are difficult to discern. He apparently asserts that because Petitioner's membership has changed slightly over the course of its nearly 18-year history, the partnership as it is currently constituted cannot claim rights in the Mark dating back to its first use in commerce in 1996 and/or that Petitioner has not "sufficiently identified itself" (*id.* at 20) to demonstrate that the current members have rights in the Mark and exactly when and how they acquired such rights.² Of course, he cites no authority supporting his position, because he cannot. *See, e.g.*, Cal. Corps. Code §16203 ("[p]roperty acquired by a partnership is property of the partnership and not of the partners individually") and § 16705 (expressly contemplating "[c]ontinued use of a partnership name ... by partners continuing the

¹ "RB" refers to Registrant's Trial Brief in this action, filed April 30, 2014.

² Though the theory underlying Registrant's standing argument is not well articulated, it appears to turn on Registrant's unsupported factual contention (asserted for the first time in his trial brief) that the Band was a partnership between only Registrant and Jeffrey Fletcher, one of the original Band members. As set forth in detail *infra*, Section II, the overwhelming majority of evidence, including Registrant's own sworn testimony, refutes this contention.

business”); *Kingsmen v. K-Tel Int’l, Ltd.*, 557 F. Supp. 178, 181-82 (S.D.N.Y. 1983)

(unincorporated association of musicians had standing to sue under Lanham Act to enforce rights to band name, despite separation of an original member, where association was known to the public as the “Kingsmen”).

All that is required to demonstrate standing to challenge a trademark registration is to “allege a claim of likelihood of confusion that is plausible and not wholly without merit” (3 McCarthy on Trademarks and Unfair Competition, § 20:14 (citing *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1029, 213 U.S.P.Q. 185 (C.C.P.A. 1982)). This standard is clearly met where, as Petitioner has done here, the party seeking cancellation proves its prior use of a confusingly similar (or, as in this case, the same) mark. TBMP § 309.03(b); *Kohler Co. v. Baldwin Hardware Corp.*, 82 U.S.P.Q.2d 1100, 1106 (TTAB 2007). *See also, e.g., Grand Canyon West Ranch, LLC v. Hualapai Tribe*, 88 U.S.P.Q.2d 1501, 1502 (TTAB 2008) (standing established where opposer presents testimony concerning prior use of identical mark) and *id.* (“Thus, the registration of applicant’s mark could impact opposer’s ability to register or to continue to use [the mark]. Therefore, opposer has established a real interest in this proceeding.”).³

Contrary to Registrant’s representation, Petitioner has provided proof of the identities of each of its members and of each member’s tenure in the partnership. In 1996 Jeffrey Fletcher approached Registrant with the idea of forming a band, and they subsequently formed a partnership with three other musicians, John McDill, Thomas Rickard, and Steve Brooks.

³ With respect to the registration of the Mark at issue here impacting Petitioner’s ability to register or continue to use the Mark, see Registrant’s discovery deposition, taken May 9, 2013, at 135:15-22 (Registrant intends to demand payment for Petitioner’s use of the Mark upon conclusion of these proceedings).

(8/11/09 Depo.,⁴ 41:22-42:10, 46:15-18; Rickard,⁵ 10:22-12:12.) In 1997, original member Brooks decided to leave the Band to spend more time with his family. (Brooks, 13:21-25; Rickard, 9:14-21.) At Fletcher’s suggestion, Brooks was replaced by Adams. (8/11/09 Depo., 54:1-8, 19-20.) Thereafter, the Band’s membership did not change until Registrant was terminated from the Band in March 2009 and was replaced by Michael Taylor. (Rickard, 10:12-21; 8/11/09 Depo., 54:23-55:3.) Although not a member of the Band, manager Jay Siegan became a partner in Petitioner in approximately 1999. (8/11/09 Depo., 10:1-11, 80:11-82:4; Siegan, 9:18-11:2.)

That Registrant now disputes Petitioner’s account of the multiple-member partnership is immaterial. Far from being an “intermeddler” lacking standing (*see Lipton Industs., supra*, 670 F.2d at 1029-30), the Band as it is currently composed has been publicly performing under the name “Wonderbread 5” since March 2009 and together with Jay Siegan has been doing business under that name. (RB at 19.) Registrant has not used the Mark in commerce at all since his dissociation from the Band in March 2009 and has never used it independently of the Band partnership. (5/9/13 Depo.,⁶ 91-94.) Thus, there is no question that Petitioner has provided evidence that it was a senior user of the Mark sufficient to confer standing. *Quicksilver v. ESPN, Inc.*, 584 F. Supp. 2d 219, 230-31 (S.D.N.Y. 2004).

⁴ “8/11/09 Depo.” refers to the Deposition of Patrick Gilles (*i.e.*, Registrant) taken in discovery in San Francisco Superior Case No. GCG-09-489573. The 8/11/09 Depo. appears in the record in this proceeding as Exhibit 1 to Petitioner’s First Set of Requests for Admissions.

⁵ Citations to transcripts designated solely by a last name (e.g., “Rickard,” “Brooks,” “Siegan”) refer to the Testimony Deposition in this action of the witness with the surname indicated.

⁶ “5/9/13 Depo.” refers to the Discovery Deposition of Registrant.

II. NO EVIDENCE SUPPORTS REGISTRANT’S ASSERTION THAT THE BAND WAS OWNED BY A TWO-MEMBER PARTNERSHIP

Registrant’s brief relies heavily on Registrant’s newly adopted theory that he owns the Mark by virtue of his “two-man,” “50-50 partnership” with Jeffrey Fletcher. (*E.g.*, RB at 10-11, 23-26.) This version of events is invented from whole cloth and is directly, and emphatically, contradicted by Registrant’s own testimony, documentary evidence, and the testimony of every other witness.

Contrary to Registrant’s unsupported assertion that he “repeatedly” indicated he and Mr. Fletcher were partners, and the only partners (RB at 22), this newfound story rests *entirely* on two vague questions and answers during Registrant’s trial testimony:⁷

Q: So you mentioned – if I may interject, so you mentioned that the first night you and Jeff discussed the band. Now, what is your opinion as to when, if at all, did a partnership form in regard to the band?

A: Well, definition of “partnership,” I don’t know how deep the legal boundaries go or what the definition is, but I would say it was that night. We came – it was one of those wonderful experiences where you’re sitting with someone and you’re riffing back and forth and the idea crystalized so quickly and so, sort of, pristine and clean. And we both were on the same page of our vision.

...

Q: And you and Jeff, that night, formed the agreement that would allow you to have the Wonderbread 5?

A: I have to confess that that was the moment in time that any idea of this was formulated and crystalized. And as I was saying, two days later we were talking about getting band members. And, you know, for those two days, my

⁷ As set forth in detail in Appendix A to Petitioner’s Main Brief of the Case and in Appendix 1 hereto, Petitioner objects to, and has moved to strike, Registrant’s trial testimony. Petitioner cites to the testimony herein only to respond to Registrant’s arguments and does not waive any objection by so doing.

head was spinning on the opportunities and I got more and more excited about it and committed to the idea. ...

(12/11/13 Tr.,⁸ 19:22-20:8, 20:18-21.) That’s it, the entire underpinning of Registrant’s case. His trial testimony includes no further discussion of the nature of the purported partnership or agreement. *All* of Registrant’s trial testimony concerning “partners” and “partnership” is compiled as Appendix 2 hereto. Conspicuously absent from that testimony is any evidence concerning the legal rights, if any, arising from that undefined relationship born of “riffing,” whether the other permanent members of the Band became partners, etc. Registrant’s assertion that his “testimony set[] forth his partnership agreement with Mr. Fletcher” (RB at 39) is wishful thinking.⁹

Even more troubling is that, to the extent the above-quoted testimony can be characterized as evidence that the Band operated as an equal, “2-man partnership,” such evidence is flatly contradicted by Registrant’s own sworn testimony taken on two other occasions – making his repeated assertion that the evidence of the purported two-man partnership is “unchallenged” and “uncontroverted” (*e.g.*, RB at 25, 45) particularly galling.

⁸ “12/11/13 Tr.” refers to the trial testimony of Patrick Gilles (*i.e.*, Registrant) in this proceeding.

⁹ Registrant urges the Board to draw sweeping conclusions adverse to Petitioner based on the fact that Fletcher did not testify to refute what Registrant characterizes as his “very direct and clear position as to his rights in the name” (*see* RB at 22-23, 25-26, 39-40). But Registrant’s position in his brief trial testimony concerning this alleged two-man partnership is far from direct, particularly in light of Registrant’s previous unambiguous (albeit false) testimony that none of the other Band members shared ownership of the Band and that when he referred to the other members as “partners” he meant only “mates” or “bros,” not owners of the enterprise (*e.g.*, 5/9/13 Depo., 43:3-15, 185:2-11). *See infra*, Section VI.C.

A. Registrant’s Current Story Contradicts His 2009 Complaint and Testimony

In 2009, when Registrant sued Petitioner for a buyout of his share of the partnership business (see, e.g., 8/11/09 Depo, 149:10-21; Complaint¹⁰ at ¶¶85, 91, 120-136), his account differed dramatically from the one he now asks the Board to believe:

Q: So you’ve alleged in your complaint that the band operated as a partnership, correct?

A: Correct.

Q: And what was the nature of that partnership?

A: It was a live music traveling stage performance, unique stage performance, with five unique members under character names matching the Jackson 5, playing unique – uniquely produced compilation, identifiable to the Wonderbread 5.

...

Q: Who were the members of the partnership?

A: Thomas Rickard, Jeffrey Fletcher, John McDill, Patrick Gilles, and Chip Adams, a portion to his time [sic] served after Stevenson Brooks left.

(8/11/09 Depo., 83:3-20.)

Notably, each of Registrant’s claims arising out of California’s Uniform Partnership Act of 1994 (Cal. Corps. Code §§ 16100 *et seq.*) – which authorizes a partner to sue “the partnership or another partner” to enforce his rights with respect to the partnership business” (Cal. Corps. Code § 16405(b) – was asserted against Fletcher, McDill, Rickard, Adams, Taylor,¹¹ Siegan, and

¹⁰ “Complaint” refers to the complaint Registrant filed in *Gilles v. Fletcher, et al.*, San Francisco Superior Case No. GCG-09-489573 on June 17, 2009. The Complaint appears in the record in this proceeding as Exhibit 2 to Registrant’s Discovery Deposition, taken May 9, 2013.

¹¹ Further dispelling any notion that only Fletcher and Registrant were partners, Registrant’s Complaint alleges that Fletcher, McDill, Rickard, Adams, Siegan, and the general partnership collectively violated the California Corporations Code section 16401 by “admit[ing] a new member” – Taylor – “to the partnership business without the consent of [Registrant].” (Complaint, ¶ 122; *see also id.* at ¶¶ 82-84.)

Wonderbread 5. (*See also, e.g., 5/9/13 Depo., Ex. 10 at p. 2 (referring to “the Partnership as well as each individual partner”).*) Clearly, Registrant did not contend in 2009 that the Band was owned by only two partners.

Registrant’s trial testimony concerning purported evidence of the two-man partnership is likewise irreconcilable with his testimony in the state-court litigation. For instance, in an attempt to bolster the fairy tale that Registrant and Fletcher alone owned the Band, Registrant testified during his trial period that during a single conversation on the first night they discussed forming a band, Registrant and Fletcher “had formulated the vision of the band. It would be a five-piece band, because it was going to be Jackson 5, so there would be five of us. ... We also agreed and came up with that we would wear over-the-top ‘70s outfits. And we would also wear wigs. *All this had been formulated on that first night.*” (12/11/13 Tr., 18:6-15, emphasis added).

Yet in 2009, Registrant testified that “when Tom Rickard and John McDill and Stevenson entered the picture, that’s really when the idea came together about these Afros and outfits and Jackson 5, and we all took on the persona of each Jackson 5 member. [¶] *So it wasn’t my idea; it wasn’t Jeff’s idea.* The culmination of what is – what became – what came to be known within a year of what the Wonderbread 5 is, which is relatively the same as what it is now, was the culmination really of the *five minds put together at the beginning* of this strange experiment.” (8/11/09 at 44:19-45:5 (emphasis added).)

Likewise, Registrant now claims that “when Mr. Siegan became the booking agent for the band further evidence of the dual partnership between Mr. Gilles and Mr. Fletcher manifested. For instance, when there was a problem with bookings or other personal matters Mr. Siegan would contact only Mr. Gilles or Mr. Fletcher. Mr. Gilles and Mr. Fletcher were Mr. Siegan’s contacts as they controlled the band.” (RB at 24-25, internal citations omitted.)

Registrant's account five years ago was different: According to the Complaint (at ¶ 54), "[Tommy] Rickard acted as the *single point of contact to Siegan*" for the Band. Registrant further testified in 2009 that "Thomas Rickard [was] ... the principal contact with Jay Siegan for the band, the conduit... So that was Tommy's job." (8/11/09 Depo., 84:22-85:3; *see also* Siegan, 22:14-18.) Registrant confirmed during his discovery deposition in this action that this description of Rickard's duties is accurate. (5/9/13 Depo., 187:5-188:21.)

B. Registrant's Discovery Deposition is At Odds With Both His Current Story and the Position he Took in 2009

Yet another version of events emerged during Registrant's discovery deposition – one that cannot be reconciled with either the position he took in his 2009 lawsuit or with the yarn his trial brief spins. During discovery, he denied that the Band was a partnership at all and claimed to be the *sole owner* of the Band and its Mark. (*See, e.g.*, 5/9/13 Depo., 40:5-8, 43:3-15, 56:4-57:2, 121:25-122:16, 124-125, 146:17-147:18.) He asserted that the other musicians who performed as Wonderbread 5 – *including Fletcher* – were merely independent contractors. (*E.g., id.* at 23:18-24:15, 37:12-38:2, 43:3-15, 61:16-24, 73:10-16). Petitioner, obviously, disputes this version of events and cites it here solely to emphasize Registrant's lack of credibility and continuing efforts to deceive the Board. Registrant's trial brief fails to acknowledge, must less explain, the irreconcilable contradictions in his ever-evolving story.

C. Overwhelming Evidence Shows that Petitioner is, and Always Has Been, a Multiple-Member Partnership

As noted above, both Registrant's Complaint and his testimony in his state-court action attest that each member of the Band was a partner in Petitioner's business. *All* of the documentary evidence and testimony adduced in this action (other than Registrant's self-serving and incredible testimony) in these proceedings is in accord. The partners all understood that the

business was a partnership; they were working together on an endeavor intended to make a profit. (*E.g.*, Rickard, 10:22-11:12; Siegan, 10:23-11:2, 12:7-22.) That concerted action is sufficient under California law to create a general partnership, despite the absence of an express partnership agreement. Cal. Corps. Code § 16202; *Holmes v. Lerner*, 74 Cal.App.4th 442, 457 n. 18 (1999) (“parties to a partnership need only possess the general intent to engage in the acts that constitute a partnership rather than the specific intent to be partners”).

The Band members, and later Siegan, shared profits and losses equally (*e.g.*, Tr. 31:16-25; Rickard, 11:19-12:12, 29:12-30:19; Brooks, 10:25-11:23) and made decisions democratically (Rickard, 12:18-14:5, Siegan, 9:25-10:12), further evidencing the group’s status as a partnership. Cal. Corps. Code § 16202(c)(3) (“[a] person who receives a share of the profits of a business is presumed to be a partner in the business”); *Holmes, supra*, 74 Cal.App.4th at 456 (1999) (citing *Kersch v. Taber*, 67 Cal.App.2d 499, 504 (1945) (“the existence of a partnership is evidenced by the right of the respective parties to participate in profits and losses and in the management and control of the business”)).

III. THE CASES REGISTRANT CITES ARE INAPPOSITE, AND ON-POINT AUTHORITY SUCH AS *ROBI*, *DEEP PURPLE*, AND *BOOGIE KINGS* CONTROLS

Although far from clear from Registrant’s trial brief, his apparent purpose in characterizing the Band as a two-man partnership is to allow him to rely on a handful of cases from the 1800s holding that when a partnership *dissolves*, each of the former partners retains the right to use the partnership’s trademark. (*See* RB at 25.) Yet Registrant’s account of a two-man partnership is pure fiction, and these cases do not apply because the actual partnership continued performing and doing business under the name Wonderbread 5.

The case Registrant primarily relies on (*see* RB at 25, 28), *Menendez v. Holt*, 128 U.S. 514 (1888), supports Petitioner’s position, to the extent it is applicable at all, and to the extent it

remains good law. *See* 2 McCarthy on Trademarks §16:43-44 (“[r]eliance on the validity of *Menendez* and its progeny seems misplaced...”). The *Menendez* court stated, in pertinent part:

It may be that where a firm is dissolved and ceases to exist under the old name, each of the former partners would be allowed to obtain ‘his share’ in the good-will, so far as that might consist in the use of trade-marks, by continuing such use, in the absence of stipulation to the contrary; but when a partner retires from a firm, assenting to or acquiescing in the retention by the other partners of possession of the old place of business, and the future conduct of the business by them under the old name, the good-will remains with the latter as of course.

Menendez, 128 U.S. at 522.

Attempting to mold the facts of this case to fit those in *Menendez* and the other Nineteenth Century cases he cites, Registrant all but ignoring the numerous authorities cited in Petitioner’s Main Brief (“PMB;” *see* pp. 17-18) for the rule that upon a member’s departure from a band, the trademark remains with the band and does not transfer to the leaving member. The only such authority that Registrant even attempts to distinguish is *Robi v. Reed*, 173 F.3d 736 (9th Cir. 1999). In so doing, however, Registrant misrepresents the court’s rationale in that case. (RB at 27.)

Specifically, Registrant asserts the court found that the departing band member retained no rights in the band name “because (1) he was not an original member of the band and (2) he effectively departed the band voluntarily ...” (RB at 27) *Neither* of these factors significantly influenced the court’s reasoning. *See Robi*, 173 F.3d at 739-40. Rather, the court relied on numerous precedents holding that “members of a group do not retain rights to use the group’s name when they leave the group.” *Id.* Although the court acknowledged that in 1999 Reed was “the only surviving member of the five singers who originally began with the group in 1953,” that was only one factor among many that the court considered in finding that “as between Reed and Paul and Martha Robi, Reed is the person who has maintained continuity with the group and

has been in a position to control the quality of its services.” *Id.* at 740. Here Registrant has never been in a better position than the other partners to control the Band’s quality – and has had no such control since before he filed the registration application.

Furthermore, nowhere in the *Robi* opinion does the court analyze whether Robi’s departure from the band was voluntary, or what (if any) impact the voluntariness of the departure may have had on the determination of whether Robi retained any rights to the band name. It seems illogical to characterize Robi’s departure from the band, precipitated by his conviction for felony drug possession and subsequent imprisonment (*Robi*, 173 F.3d at 138), as “voluntary.” In any event, Registrant cites no authority creating an exception to the general rule that a departing member retains no rights to a band name where the departing member is removed by the other band members, and Petitioner is aware of none. *See, e.g., Kingsmen, supra*, 557 F. Supp. 178 (no discussion of reasons for or circumstances surrounding departure); *Giammarese v. Delfino*, 197 U.S.P.Q. 162, 163 (N.D. Ill. 1977) (same).

IV. REGISTRANT’S OWNERSHIP INTEREST IN THE BAND – INCLUDING ANY INTEREST IN THE MARK -- WAS BOUGHT OUT TO SETTLE THE STATE-COURT ACTION

Even assuming *arguendo* that Registrant’s newly fabricated tale of a two-man partnership is correct (which it is not), or that he otherwise somehow retained rights to the Mark after leaving the Band (which he did not), his state-court Complaint, contemporaneous communications to and from his counsel in the state-court action, and Registrant’s own testimony make unmistakably clear that any interest in the Mark was bought out in settlement of the state-court action.

The Complaint sought remedies for Registrant’s alleged wrongful dissociation from Petitioner’s partnership business. (*See, e.g., Complaint*, ¶¶ 85, 88, 91, 96, 134.) Although Registrant asserted several claims based on a variety of legal theories, the clearest statement of the relief sought appears in the “NINTH CLAIM OF RELIEF – VIOLATION OF STATUTE

California Corporation Code Section 16701” (Complaint, p. 28.) Section 16701 provides in pertinent part that “[i]f a partner is dissociated from a partnership, the partnership shall cause the dissociated partner’s interest in the partnership to be purchased...” Accordingly, Registrant alleged that Petitioner and its members “violated California Corporations Code Section 16701 because they wrongfully excluded and disassociated [sic] [Registrant] from the partnership business with [sic] purchasing the [Registrant’s] partnership interest...” (Complaint, ¶ 134.)

Communications by and with Registrant’s counsel contemporaneous with the state-court action confirm the gravamen of the dispute. For instance, counsel asserted that “Wonderbread 5 is a general partnership within the meaning of California Corporations Code 16202. 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 ... If the Partnership desires to disassociate Mr. Gilles it must do so by unanimous agreement and in compliance with the buyout requirements of 16701...” (5/9/13 Depo., Ex. 9.) Likewise, he stated in a demand letter that “there is significant value in the Partnership business ... *including its service mark name*, email marketing lists, website, etc.” (5/9/13 Depo., Ex. 10.) Thus, the settlement was intended to dispose of “all of [Registrant’s] claims” against Petitioner and its members and to “pay for [Registrant’s] ‘interest’ in the Band.” (5/9/13 Depo., Ex. 4.)

Registrant himself has confirmed that the state-court action sought the buyout of his interest in the partnership business, *including any rights he may have had in the Band name*. For example, he acknowledged that he demanded payment for “the entire settlement of my part owner [sic] of the partnership.” (8/11/09 Depo., 148:14-149:21.) When questioned about the issues in the state-court action during his discovery deposition in this proceeding, Registrant stated that the lawsuit involved his allegation that the band “clearly [is] going to continue,

without permission, using the name Wonderbread 5,” which registrant claimed to own. (5/9/13 Depo., 185:22-186:18; *see also id.* at 106:12-18 (Complaint addressed right to use the Mark).) Finally, while discussing the basis of his lawsuit, Registrant testified that the other partners “had an obligation to buy my business from me, pay me out, and take ownership of the business...” (*Id.* at 117:4-6.)

Registrant’s self-serving and unsupported protestations that the state-court action sought only “lost wages” (*see, e.g.*, RB at 5, 18-19) cannot overcome this compelling evidence. Moreover, that the Complaint did not expressly mention the Mark and that Registrant did not execute a written release in connection with the settlement are of no moment. By his own admission, the settlement represented a buyout of Registrant’s share of the business. As a matter of law, any rights Registrant had in the Mark necessarily were transferred along with his ownership interest in the business itself. In *Iskenderian v. Iskenderian*, 144 Cal.App.4th 1162, 1169-70 (2006), the court expressly rejected the contention that an assignment of an interest in a business did not also convey the assignor’s rights in the trademark where the document effecting the assignment did not mention the trademark. The court held that “[a] person’s interest in a business she owns necessarily includes the good will of the business, and it is well settled that a trademark is merely a symbol of good will. ... To suggest that [the transfer of an ownership interest in a restaurant] did not include the good will in the restaurant – and necessarily the trademark that symbolizes that good will – is contrary to both common sense and the law.”¹²

¹² *See also* 3 Callmann on Unfair Competition, Trademarks and Monopolies § 20:63 (trademark “will follow an assignment of the goodwill and pass under a general conveyance of all the assets and effects of a business, *even though it is not specifically designated in the assignment*”) (emphasis added).

V. PETITIONER HAS ADDUCED AMPLE EVIDENCE OF REGISTRANT'S FRAUD ON THE PTO

Registrant does not attempt to refute or explain any of the evidence Petitioner submits in support of its fraud claim (*see* PMB at 25-26). Nor does he distinguish, or even acknowledge, precedent finding that a registration was fraudulently obtained on facts almost identical to those present here, particularly *HEC Enterprises Ltd. v. Deep Purple, Inc.*, 213 U.S.P.Q. 991, 992-95 (C.D. Cal. 1980) (former band members fraudulently obtained registration by attesting no other party had right to use band name despite knowing remaining band members continued using name).¹³

Given Registrant's unfounded assertion that "Petitioner has brought forth no evidence of Registrant's fraudulent intent whatsoever," the evidence bears repeating here. As the Board knows, "because direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence." *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.* 537 F.3d 1357, 1366 (Fed. Cir. 2008). The circumstantial evidence of Registrant's fraudulent intent here – *none of which he denies* – is compelling.

Registrant harbored animosity toward the other Band members and wanted to harm them. Even before Registrant was terminated from Petitioner, he resented and even hated the other members of the Band and, at times, refused to speak to them. (Siegan, 25:25-26:2; Rickard, 47:5-13, 48:8-15.) After his termination, he was "frantic," "angry," and "vengeful," he threatened the other Band members' and their families with violence, and stated his intention to

¹³ *HEC Enterprises* is distinguishable from the instant case *only* in that Petitioner's showing of fraud here is even stronger than in that case. Here, unlike the former band members in *HEC Enterprises*, Registrant was not using the Mark in commerce at all at the time he submitted his application, a fact he unquestionably knew. *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 U.S.P.Q.2d 1483 (Fed. Cir. 1986) (fraud found where affidavit stated mark was in use on three products when it was only in use on one).

ruin the Band members' lives. (Siegan, at 33:13-24, 34:10-35:6, 41:2-9; Rickard, 96:6-24.) He applied to register the Mark just two days after being terminated by Petitioner. (Complaint, ¶¶ 78, 79; Registration Application.)

Registrant falsely stated in the application that he was using the Mark in commerce on March 12, 2009. By his own admission, he has not at any time since March 9, 2009 (before the application was filed) used the mark. (5/9/13 Depo., 91-92; 93:9-94:10¹⁴.) Because the applicant for registration under section 1(a) must actually be using the mark in connection with the goods or services indicated on the application, and because statements concerning such use are material, this knowingly false statement by Registrant is strong evidence of fraud. *See, e.g., Hachette Filipacchi Presse v. Elle Belle, LLC*, 85 U.S.P.Q.2d 1090 (T.T.A.B. 2007); *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 U.S.P.Q.2d 1483 (Fed. Cir. 1986).

Attempting to justify this false statement, Registrant states: “since as early as 2009 when he was forced not to perform with the current line-up of the band ... he has not used the service mark ... [because] he did not want to destroy the good will associated with the WONDERBREAD 5 by offering competing bands under the same [name].” (RB at 43-44 (internal citations omitted).) This *post hoc* rationalization conflicts with Registrant’s repeated sworn statements that he wanted to form multiple bands or “franchises” to perform under the name Wonderbread 5 (5/9/13 Depo., 50:17-51:2, 60:2-14; 8/11/09 Depo., 62:23-63:6, 70:3-7, 74:1-11.).

¹⁴ Registrant has not personally taken any steps to use the Mark in commerce since being terminated by Petitioner (5/9/13 Depo., 87:13-88:2, 89:19-91:11.) He has launched a passive website and registered a MySpace account (*id.*; *see also id.* at 53:18-54:19), but such actions are not use in commerce. *Specht v. Google Inc.*, 758 F. Supp. 2d 570 (N.D. Ill. 2010).

Registrant falsely stated in the application that no one else had the right to use the Mark.

Registrant has *never* used the Mark in commerce independent of Petitioner. (Brooks, 22:24-23:4; 5/9/13 Depo., 87:13-88:2, 89:19-91:1, 93:9-94:10.) Further when he filed the registration application, he knew that Petitioner continued performing and doing business using the Mark, and he acquiesced in such use. (5/9/13 Depo., 134:18-135:14; Complaint, ¶¶ 78, 79, 85.)

Registrant does not dispute these facts, nor does he address case law cited by Petitioner holding that under the circumstances here, an applicant must disclose known use of the mark by others.

E.g., HEC Enterprises, 213 U.S.P.Q. at 992-995 *East West, LLC v. Rahman*, 896 F.Supp.2d 488, 508-09 (E.D. Va. 2012) (applicant committed fraud by failing to disclose actual knowledge of plaintiff's use of mark).¹⁵

Even if one takes an unwarranted leap of faith and assumes that Registrant believed when he applied for registration that he and Fletcher were the sole partners and their partnership had dissolved – leaving each with “a 50% ownership of all assets in the partnership,” including 50% ownership of the Mark (RB at 25-26) – his statement to the PTO that no other party had a right to use the Mark would still have been knowingly false. *Rosso & Mastracco, Inc. v. Giant Food, Inc.*, 720 F.2d 1263, 1266 (Fed. Cir. 1983) (applicant has duty to disclose right of another party to use mark where such right is clearly established); *cf. Taylor v. Bothin*, 23 F.Cas. 734, 735 (D. Cal. 1879) (former partner of dissolved partnership not entitled to individual registration of partnership's mark).

¹⁵ See also James E. Hawes & Amanda V. Dwight, 1 Trademark Registration Practice, § 3:27, p. 3-84-85 (“If the applicant knows of another and prior user of the mark sought to be registered... of course the applicant may not state in the oath or declaration that to the best of its knowledge no other person has a right to use the mark in commerce. ... [I]f the applicant knows of another's prior right to use a mark, yet signs an application seeking exclusive rights to that mark, this may well constitute fraud.”) (internal citations and notes omitted).

Registrant improperly concealed his application during the state-court litigation. If Registrant had genuinely believed when he applied to register the Mark that he had the right to do so, he would have had no reason to conceal his actions. The PTO communicated with Registrant concerning his application by both mail and email in the months immediately preceding his deposition in the 2009 state court action. (*See, e.g.*, Offc. Action Outgoing (June 4, 2009); Offc. Action Outgoing (June 10, 2009); Notice of Publication (July 1, 2009); 5/9/13 Depo., 136:10-139:6.)

In the state-court action, Petitioner served Registrant with document requests that should have resulted in the production of those communications from the PTO (as well as all other documents pertaining to the application) and questioned extensively about his efforts to comply with those requests. (8/11/09 Depo., 10-22.) Registrant withheld those documents and did not inform Petitioner or any of its members that he had filed the application.

When questioned in his discovery deposition in this proceeding about his failure to produce emails from the PTO, Registrant claimed he did not understand the pertinent document request to seek emails. (5/9/13 Depo., 139:7-143:19.) This purported explanation cannot be believed for at least two reasons. First, the request *by its express terms* required Registrant to produce emails. (*Id.* at 139:19-140:3.) Second, in his 2009 deposition, Registrant testified under oath that he searched for responsive emails sent to the email address that the PTO used to communicate with him. (8/11/09 Depo., 11:8-17, 12:14-14:1; Offc. Action Outgoing (June 10, 2009).) Registrant's failure to comply with discovery obligations, particularly in combination with his incredible testimony attempting to explain such failure, is substantial evidence of fraud.

Following the settlement, Registrant did not advise the PTO of Petitioner's rights. Even if Registrant had believed in good faith that he retained rights in the Mark after leaving the Band,

by his own admission, the settlement of his state-court action bought out his entire share of the partnership business (8/11/09 Depo., 148:14-149:21) – which necessarily included a buyout of his interest in the Mark. Thus, even if he believed when he filed the application that he was a rightful owner of the Mark, he unquestionably knew before the registration issued that any ownership interest was extinguished. Registrant’s failure to inform the PTO of this material development further evidences his fraudulent intent. *Mister Leonard v. Jacques Leonard Couture, Inc.*, 23 U.S.P.Q.2d 1064 (T.T.A.B. 1992); *Bart Schwartz International Textiles, Ltd v. F.T.C.*, 289 F.2d 665, 129 U.S.P.Q. 256 (C.C.P.A. 1961). *Cf. Rosso, supra*, 720 F.2d at 1266 (applicant has duty to disclose right of another party to use mark where such right is clearly established, such as through a settlement).

Registrant continues to attempt to deceive the PTO. Registrant’s ongoing efforts to deceive the PTO through his testimony and argument in this proceeding compels the conclusion that he has committed fraud. In *Bart Schwartz International Textiles, Ltd v. F.T.C.*, 289 F.2d 665, 129 U.S.P.Q. 256 (C.C.P.A. 1961), the court found that the registrant knew when he submitted his application that others had the right to use the mark at issue. The court’s holding that the false statement was fraudulent, rather than a misunderstanding or innocent mistake, resulted in large part from the fact that when testifying in the cancellation proceeding, the registrant – like registrant here – “concocted such a fanciful history of how he ‘developed’ the mark that [the court was] unable to give it credence.” *Id.* at 669; *see also id.* at 670 (noting that registrant’s testimony “taxe[d] credulity” and concluding “[w]e are unable to reconcile this fabrication in the testimony here presented with appellant’s protestations of good faith in making the statements on which the registration was based”).

The evidence of Registrant’s fabrication here is far stronger than such evidence in *Bart Schwartz*, as Registrant’s current version of events does more than tax credulity. It flatly contradicts his sworn testimony in a prior proceeding and in his discovery deposition in this action, as well as extensive documentary evidence. *See also Pilates, Inc. v. Current Concepts, Inc.*, 120 F.Supp.2d 286, 313, 57 U.S.P.Q.2d 1174 (S.D.N.Y. 2000) (fraud found where registrant’s testimony concerning ownership of the mark “was evasive and lacked credibility”).

In sum, given the undisputed evidence of Registrant’s knowingly false statements and intent to deceive the PTO, Petitioner has met its burden of proving the Registration was obtained by fraud.

VI. CREDIBILITY AND RELEVANCE¹⁶ OF PETITIONER’S WITNESSES

A. Jay Siegan

Registrant devotes fully 9 pages of his 24-page argument to attacking the credibility of Jay Siegan, the Band’s manager and booking agent, almost exclusively on the grounds that Mr. Siegan purportedly violated California’s Talent Agencies Act (Cal. Lab. Code §§ 1700-1700.47; “TAA”) by serving in this dual role. This entire attack rests on the patently incorrect view that the TAA prohibits an individual from acting both as a booking agent and a manager.

Registrant’s brief fails to cite to any specific provision of the TAA that purportedly “prohibits booking agents from being managers” (RB at 30) – because the TAA does no such thing. To the contrary, section 1700.4 (ironically, the only portion of the TAA Registrant cites)

¹⁶ Registrant attacks the relevance of the testimony of Petitioner’s witnesses Clay Bell and Fraser Lunney. These witnesses were called to rebut claims made by Registrant during his discovery deposition that he was the only “permanent member” of the Band and that all other performers, including substitute musicians such as Bell and Lunney (and apparently his newfound “50-50 partner” Fletcher), had equal rights to the Band’s assets – *i.e.*, no rights whatsoever. Registrant has apparently abandoned this specious position.

expressly provides that licensed agents such as Mr. Siegan are permitted to “counsel or direct artists in the development of their professional careers” – precisely the activities traditionally carried out by managers. *See, e.g.*, Erick Flores, Note, “That’s a Wrap! (Or Is It?)”: The Unanswered Question of Severability Under California’s Talent Agencies Act After *Marathon Entertainment, Inc. v. Blasi*, 97 *Georgetown L.J.* 1333, 1338-41 (2009) (recognizing that TAA allows agents to perform duties of managers and that managers “were expressly left out of the regulatory regime”); Gary E. Devlin, *The Talent Agencies Act: Reconciling the Controversies Surrounding Lawyers, Managers, and Agents Participating in California’s Entertainment Industry*, 28 *Pepperdine L.R.* 381, 384-85 (2001) (noting that, although TAA prohibits managers who are not licensed booking agents from procuring employment for artists, “the agent can, in addition to procurement functions, perform all the duties of a manager without any repercussions”).

Attempting to paint Siegan as a liar and/or a scofflaw, Registrant asserts that “[o]n cross-examination, more likely than not having an understanding of the TA, Mr. Siegan quickly backed away from his earlier testimony that he served as both a manager and a booking agent...” (RB at 31.) *But Siegan never testified that he was the Band’s booking agent.*¹⁷ (*See* Siegan, at 9:13-24, 49:13-51:1.) In fact, the word “agent” does not appear in the transcript of Siegan’s testimony until the beginning of cross-examination – when Registrant’s counsel misstated Siegan’s prior testimony. (*Id.* at 47:21-25.) Registrant’s attempt to portray Siegan’s testimony concerning his duties with respect to Petitioner as equivocal is misguided; throughout the

¹⁷ Petitioner’s papers in this proceeding have used the term “booking agent” to describe Siegan’s role, although Siegan typically refers to himself as a “manager,” because he is a licensed talent agent who handles the Band’s bookings (Siegan, 9:13-17, 50:9-11, 53:1-5) and because Registrant typically refers to Siegan as a booking agent (*e.g.*, 5/9/13 Depo, 19:8-9, 44:18-19).

testimony, Siegan consistently stated that he booked engagements for the Band (although he did not refer to himself as a “booking agent”) and served as the Band’s manager. (*Id.* at 9:13-24, 49:13-51:1.)

Registrant accuses Siegan of lying about being the Band’s manager because “in order to strengthen their perceived case the Petitioner needed someone in their ‘group’ other than Mr. Gilles to claim a managerial role for the band.” (RB at 35.) But Petitioner had no reason to lie about this fact, because Siegan was and is the manager (*e.g.*, Rickard, 27:10-22) and because *Registrant* has testified and submitted in court documents that Siegan was the Band’s manager. (8/11/09 Depo., 10:1-11; Complaint, ¶¶ 99, 104.)

Registrant’s final attempt to impugn Siegan’s credibility fares no better. Specifically, Registrant attacks Siegan for inaccurately recalling the circumstances surrounding a “Band bank account” that was used for only a few months *thirteen years ago*, in 2001 (8/11/09 Depo., 60:13-61:13). While Siegan’s recollection was inaccurate,¹⁸ his confusion is largely attributable to misleading questioning by counsel. That is, counsels’ questions addressed whether Registrant “opened” a bank account for the Band and whether he did so with the partners’ authorization. (Siegan, 15:6-16:7.) In fact, no separate bank account was opened; for a few months, Siegan and the Band members deposited funds into an existing bank account held in the name of Wonderbar, LLC, the entity through which Gilles and Siegan owned and operated a nightclub. (Rickard, 17:25-19:12; 5/9/13 Depo., 18:23-20:6, 46:11-13, 47:24-48:23, 145:5-146:16.) Siegan explained

¹⁸ Siegan initially testified that Registrant opened a Band bank account without prior notice to or authorization from the other partners, who felt “bamboozled” upon learning of Registrant’s actions. (Siegan, 15:6-16:7.) Although this testimony was incorrect, Siegan was likely remembering his and his partners’ experiences learning after-the-fact that Registrant had, without notice to or authorization from the other partners, formed a single-member LLC using the Band’s name (Siegan, 17:18-19:6) and registered the Mark (Siegan, 40:16-41:9; Rickard 54:6-24).

the source of his confusion (Siegman, 66:23-67:13, 68:6-72:20). A lapse in recall of a largely irrelevant event that occurred over a dozen years ago, in the face of misleading questions, should have minimal if any impact on the Board's assessment of Siegman's credibility.

B. Tommy Rickard

Registrant's attempts to impeach Tommy Rickard's testimony based on a physical altercation between Rickard and Registrant in 2006 and based on Registrant's assertion that Petitioner is using Registrant's likeness in promotional materials (RB at 38-39) are unavailing. Neither basis undercuts Rickard's testimony.

First, Petitioner acknowledges that Rickard was involved in an altercation with Registrant in June 2006 in which both men pushed each other, and Rickard held Registrant against a wall with Rickard's arm across Registrant's collarbone. (Rickard, 90:19-93:18, 101:17-103:24.) Neither Petitioner nor Rickard seeks to rationalize or minimize this incident; immediately after it occurred, Rickard apologized, took responsibility for his actions, and assured Registrant that nothing similar would ever happen again (Rickard, 92:6-14; 12/11/13 Tr., Ex. 27) – and he kept his word. Although Registrant now portrays the incident as an extremely frightening criminal battery (12/11/13 Tr., 97:24-100:5; RB at 38-40), he continued performing with Rickard for three more years and never considered removing Rickard from the Band (12/11/13 Tr., 137:23-24.) Had he truly “owned” the Band and genuinely feared Rickard, why would he not have fired Rickard? In any event, the fact that Rickard lost his temper on one occasion during the decade in which Rickard and Respondent played in the Band together – three years before the events relevant to this proceeding – should not significantly impact the weight accorded to Rickard's testimony.

The second ground Registrant contends should cause the Board to disregard Rickard's testimony is even less persuasive than the first. Registrant contends Rickard lacks credibility because, according to Registrant, Petitioner uses Registrant's image in its promotional materials. Registrant does not explain how or why such alleged use should be attributed to Rickard. More importantly, though, Rickard testified that Registrant's likeness does not appear in any marketing materials distributed by the Band since Registrant's termination; that Petitioner is unable to which photographs clubs and concert venues use in their advertising and promotional materials; and that when Petitioner has learned that a venue was using an old photograph, it has instructed the venue to discontinue such use. (Rickard, 26:24-27:9; 59; 75:17-28; *see also* Siegan, 90:14-91:4.)

C. Jeff Fletcher

Having settled on a new theory that he and Fletcher were the only partners with any ownership interest in the Band, Registrant seeks to make hay from the fact that Petitioner did not take testimony from Fletcher. (Of course, neither did Registrant.) The Board should not be taken in by this argument.

As detailed above, the testimony upon which Registrant bases his new theory of ownership is extremely vague, mentions "partnership" only in passing, and disclaims any intention to address a partnership in the legal sense of the word. (12/11/13 Tr., 19:22-20:8, 20:18-21.) Further, any contention that Registrant and Fletcher owned the Band as a two-man partnership is directly contradictory to all of the evidence in the record, including Registrant's own admissions. In seeking to explain away the position he took in the 2009 litigation, Registrant testified that when he uses the term "partner," what he really means is "independent contractor," "bro," or "mate." (*E.g.*, 5/9/13 Depo, 185:2-11 ("Now if I use the term partners, it's

almost like using bro or mate. Hey, you're my mate, you're my band mate, you're my member of a band."). *Id.* at 115:6-21 ("[W]e were partners in the sense that these four other individuals [Fletcher, McDill, Rickard, and Adams] at times would play with the Wonderbread 5, so I could be partners with 20 different people for the live performance. But the partnership business... is mine. They're not members, they're contractors." *See also id.* at 194:4-16 (claimed to use the term "partner" interchangeably with the term "independent contractor").)

Given this background, Petitioner could not have anticipated that Registrant would take the position *for the first time in his trial brief* that the Band and the Mark were owned by a two-man partnership. The record in this proceeding contains the testimony of Brooks, one of the Band's original members; Rickard, one of the original members who remains a member today; Siegan, who has been the Band's manager and a partner in Petitioner for approximately 15 years; and testimony of Registrant, an original band member, taken on three separate occasions. Fletcher did not testify because Petitioner reasonably believed that his testimony would have been cumulative of other witnesses. As such, the Board should reject Registrant's invitation to draw sweeping conclusions adverse to Petitioner because Fletcher did not testify. Rather, the Board should be highly skeptical, to say the least, of Registrant's newly concocted tale of a two-man partnership.

CERTIFICATE OF SERVICE

I, Rosemary A. Comisky Culiver, certify that on this 15th day of May, 2014, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and was sent by U.S. Mail to:

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

Dated: May 15, 2014

PHILLIPS, ERLEWINE & GIVEN LLP

By /s/ Rosemary A. Comisky Culiver/
Rosemary A. Comisky Culiver

APPENDIX 1

**APPENDIX 1: PETITIONER’S REPLY RE MOTION TO STRIKE AND
EVIDENTIARY OBJECTIONS**

In Appendix A to Petitioner’s Main Brief on the Case, Petitioner moved pursuant to 37 C.F.R. § 2.123(e) to strike the entirety of Registrant’s Trial Testimony on the grounds that Registrant failed to properly and timely serve pretrial disclosures as required by 37 C.F.R. § 2.121(c).¹ In the alternative, Petitioner moved to strike all exhibits introduced during Registrant’s Trial Testimony, and all testimony concerning those exhibits, on the ground that Registrant failed to provide a general summary or list of the types of documents and things to be introduced as exhibits.

In his Opposition, Registrant does not deny the relevant facts: that Registrant’s disclosures were due November 1, 2013; that Petitioner (through counsel) notified Registrant on November 27, 2013 that no disclosures had been received and objected to the failure to disclose and to any taking of Registrant’s testimony; that on December 2, 2013, Registrant finally emailed a set of disclosures to Petitioner; that those disclosures state that they were mailed on November 1, 2013, but are addressed to an old address for Petitioner’s counsel, to the attention of an attorney who has not been employed by the firm for years;² that the disclosures did not provide a summary or list of the anticipated exhibits; that on December 2, 2013, Petitioner notified Registrant of its objections to the improperly served and inadequate disclosures; that Registrant did not supplement his disclosures or otherwise give Petitioner notice of the exhibits to be introduced during Registrant’s testimony, instead stating only that “Registrant may

¹ Petitioner inadvertently failed to attach Registrant’s disclosures to Appendix A to the Main Brief on the Case. As such, Petitioner attaches a true and correct copy of the disclosures hereto, along with true and correct copies of the email by which the disclosures were served on December 2, 2013 and related correspondence.

² See Dkt. No. 21, Petitioner’s Change of Correspondence Address, filed and served May 31, 2013.

introduce exhibits to be identified in a Notice of Reliance”; and that Petitioner took Registrant’s deposition under protest pursuant to 37 CFR § 2.123(e)(3), reserving its right to move to strike the testimony. *See* Trial Deposition of Patrick Gilles, December 11, 2013, at 36:1-8, 37:9-38:5, 39:16--40:7, 147:5-17, 148:8-18.

Nor does Registrant even attempt justify his failure to make proper and compliant disclosures. Registrant instead suggests that “[i]f counsel needed additional time to prepare and they truly felt prejudiced by these alleged inadequacies an extension would have gladly been agreed to.” (RB at 8.) However, Petitioner has no interest in extending the deadlines in this case, which has been pending for over four years, particularly when Petitioner immediately notified Registrant that his incomplete disclosures clearly violated the rules, and Registrant took no action to correct or supplement them.

Registrant further attempts to brush off its pretrial disclosure requirement by arguing that “Petitioner’s counsel was consulted and agreed to a specific date to hold the deposition of [Registrant].” *Id.* However, a party’s knowledge that a particular witness is highly likely to be called to testify does not obviate the pretrial disclosure requirement or insulate the adverse party from a motion to strike. *Jules Jurgensen/Rhapsody Inc. v. Baumberger*, 91 USPQ2d 1443, 1443-4 (TTAB 2009) (testimony of petitioner’s president stricken because he was not identified in pretrial disclosures, despite importance of the witness to petitioner’s case and respondent’s “full knowledge of the high likelihood that [the witness] would testify”).

As for the exhibits introduced during Registrant’s testimony, Registrant asserts that his failure to properly disclose them should be overlooked because “all of these documents were submitted during discovery.” (RB at 8.) This argument fails for two reasons. First, several of the documents (specifically identified in Appendix A) were *not* produced in discovery. Second,

Registrant cites no authority supporting his apparent (untenable) position that documents produced in discovery need not be disclosed pretrial.

Registrant further argues that some of the documents (though he does not specify which ones) were not produced in discovery because they were needed only to rebut evidence offered during Petitioner's trial period. (RB at 8.) Again, he makes no showing why he contends, incorrectly, that rebuttal evidence is exempt from the pretrial disclosure rule.

Finally, Registrant does not address several of the objections in Appendix A (*e.g.*, objections pursuant to Federal Rule of Evidence 106 that Exhibits 10, 10a, 10b, and 10 are not complete documents; objections that Exhibits 21 and 22 are not relevant). All such objections should therefore be sustained.

Accordingly, Petitioner respectfully requests that the Trial Testimony of Registrant Patrick Gilles be stricken in its entirety, or alternatively that all Exhibits and testimony concerning those exhibits be stricken.

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 PRE-TRIAL DISCLOSURES

Pursuant to 37 CFR §2.121(3) and Rule 26(a) of the Federal Rules of Civil Procedure, Patrick Gilles (“Registrant”) hereby makes the following disclosures (the Disclosures):

A. All of Registrant’s witnesses may be contacted through counsel at The Trademark Company, PLLC. Registrant intends to take testimony from the following individual during its testimony period:¹

1. PATRICK GILLES
240 LOVELL AVENUE
MILL VALLEY, CA 94941

(Topics may include, history and ownership of the WONDERBREAD 5 mark; scope of services offered by Registrant under the Registrant’s Mark; revenue and other financial information related to Registrant’s services offered under Registrant’s Mark; advertising and promotion related to Registrant’s Mark; channels of trade where the services under Registrant’s Mark are offered; dilution and likelihood of confusion)

¹ The identified witness is a party witness (and employee of Registrant), and can be reached through counsel of the Registrant: Matthew H. Swyers, Esq. (800-906-8626 x 100) The Trademark Company, PLLC, 344 Maple Avenue West, PBM 151, Vienna, VA 22180

B. To support its claims, Registrant may introduce exhibits to be identified in a Notice of Reliance.

Respectfully submitted this 1st day of November, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626 x 100

Facsimile (270) 477-4574

mswyers@thetrademarkcompany.com

Counsel for Registrant

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

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

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

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was served by first-class U.S. Mail on this 1st day of November, 2013 to the following:

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

/Matthew H. Swyers/
Matthew H. Swyers

From: Matthew H. Swyers <mswyers@thetrademarkcompany.com>
Sent: Monday, December 02, 2013 5:59 AM
To: Nicholas A. Carlin
Cc: David M. Given; Cari A. Cohorn; Alexander H. Tuzin;
ValerieK@TheTrademarkCompany.com
Subject: RE: Wonderbread 5
Attachments: REGISTRANT'S PRE-TRIAL DISCLOSURES.docx; REGISTRANT'S PRE-TRIAL DISCLOSURES.pdf

Nick:

First, our Pretrial Disclosures were mailed to you on November 1st per the Board's order. I have attached a .pdf copy of the same for your records. I have also attached the original Word document so that you can check "properties" and verify that the document was created on November 1, 2003 corroborating the fact that the same was created and mailed at that time. As such, you may make the objection, however I think it is unfounded. Note, the .pdf copy was created this am so it will show a creation date of today.

Moreover, you act as if it is a surprise that we will be calling Mr. Gilles as a witness and, moreover, that we would like to have done so on December 5, 2013. However, I think you should check with the other counsel in your office prior to putting such thoughts down in writing. Specifically, and in the continuing spirit of cooperation in this case as both of our offices have displayed, on October 29, 2013 our office emailed Alexander Tuzin of your firm to check for your best available dates for Mr. Gilles deposition in early December. Mr. Tuzin emailed us back on that day informing us of your office's availability during this week. On November 4, 2013 we emailed back confirming the December 5, 2013 deposition of Mr. Gilles. I can provide the emails for your records if you would like but Alex should have them as well.

Last week, when preparing to note the same, the issue of where to conduct the deposition arose and, in continuing good faith, I contacted you to see if you would like for us to hold it in your office or arrange for a conference room elsewhere. As such, I was a tad surprised to hear back from you in the manner in which we did given (1) we had set aside the December 5th date by agreement with your office and specifically with Alex Tuzin between October 29 and November 4, (2) that we had provided our pretrial disclosures in a timely manner, and (3) we had simply note noted the deposition for the agreed-upon date due to a simple issue concerning where it would be noted.

Given all of the above, I hope that I have addressed your concerns and that we can move forward with Mr. Gilles deposition. In that regard, rather than moving forward on the 5th as originally planned kindly let me know your availability during December 10th, 11th, or 12th and whether you will agree to host the deposition as well or shall I note it elsewhere.

Thank you,

Matthew H. Swyers

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344 Maple Avenue West, PBM 151
Vienna, VA 22180 USA
Phone (800) 906-8626 x100
Facsimile (270) 477-4574
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The Trademark Company PLLC is a Virginia Professional Limited Liability Company, Matthew H. Swyers, Esq. principal. Principal admitted to practice law in the Commonwealth of Virginia and the District of Columbia. Practice limited to the federal protection of trademarks and copyrights.

From: Nicholas A. Carlin [mailto:NAC@phillaw.com]
Sent: Wednesday, November 27, 2013 3:44 PM
To: 'Matthew H. Swyers'
Cc: David M. Given; Cari A. Cohorn; Alexander H. Tuzin
Subject: Wonderbread 5

Matt,

I received your VM yesterday regarding Mr. Gilles's trial testimony.

As you know, the deadline for your trial disclosures was November 1, 2013. To date we have not received any such disclosures from you regarding witnesses or documents or anything else. Accordingly, we object to the inadequate disclosures and to any attempt to take Mr. Gilles's testimony. Please be advised that if you plan to take his testimony anyway, we will cross-examine him under protest while reserving the right to object to the receipt of the testimony in evidence.

If you do intend to proceed with his testimony despite the foregoing, we would make our conference room available on December 5 as per your request, assuming we receive proper written notice. You didn't indicate a start time, but 10 am would work for us.

Nick

Nicholas A. Carlin
Phillips, Erlewine & Given LLP
50 California Street, 32nd Flr.
San Francisco, CA 94111

v. 415.398.0900
f. 415.398.0911
nac@phillaw.com
www.phillaw.com

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From: Nicholas A. Carlin
Sent: Monday, December 02, 2013 1:08 PM
To: 'Matthew H. Swyers'
Cc: David M. Given; Cari A. Cohorn; Alexander H. Tuzin;
'ValerieK@TheTrademarkCompany.com'
Subject: RE: Wonderbread 5
Attachments: Notice of Change of Firm Address.pdf; Change of Correspondence Address.pdf

Matthew,

I will accept your representation that you mailed the Pretrial Disclosures on the date indicated, however we never received it and it was mailed to our old address, and addressed to an attorney who is no longer with our firm, Meagan McKinley-Ball. Please find attached our Notice of Change of Firm Address and Change of Correspondence Address, both of which were filed with the TTAB and served on you on May 31, 2013, so you have been well aware of these changes for six months. Moreover, our current address has been on every one of our outgoing emails since we moved in May, and you are perfectly aware that Ms. McKinley-Ball is no longer with us since she has not been on your distribution list in recent memory. So we do not consider this to be proper or effective service.

Moreover, if you intend to introduce any exhibits in connection with Mr. Gilles's testimony, your disclosure is entirely inadequate. Pursuant to 37 CFR 2.121(e), you are required to provide "a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness." Simply stating that you "may introduce exhibits to be identified in a Notice of Reliance" is not in compliance with this rule.

Accordingly, we maintain our objections and reserve all rights as set forth in my 11/27 mail.

Regarding scheduling, we are still available on Dec 5, but Dec 11 also works for us. As I said in my 11/27 email, if you do intend to proceed with his testimony despite the foregoing, we would make our conference room available as per your request, assuming we receive proper written notice. You didn't indicate a start time, but 10 am would work for us.

Nick

Nicholas A. Carlin
Phillips, Erlewine & Given LLP
50 California Street, 32nd Flr.
San Francisco, CA 94111

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Sent: Monday, December 02, 2013 5:59 AM

To: Nicholas A. Carlin

Cc: David M. Given; Cari A. Cohorn; Alexander H. Tuzin; ValerieK@TheTrademarkCompany.com

Subject: RE: Wonderbread 5

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Matthew H. Swyers

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Vienna, VA 22180 USA
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Nick

Nicholas A. Carlin
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE

TRADEMARK TRIAL AND APPEAL BOARD

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

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

NOTICE OF CHANGE OF ADDRESS OF FIRM

PLEASE TAKE NOTICE that counsel for Petitioner, Phillips, Erlewine & Given LLP has changed addresses, and their current address is as listed below. The telephone and fax numbers and email addresses remain the same:

Phillips, Erlewine & Given LLP
50 California Street, 32nd Floor
San Francisco, CA 94111

Dated: May 31, 2013

PHILLIPS, ERLEWINE & GIVEN LLP

By: *Cari A. Cohorn*
Cari A. Cohorn
Phillips, Erlewine & Given LLP
50 California Street, 32nd Floor
San Francisco, CA 94111
Telephone: (415) 398-0900
Facsimile: (415) 398-0911
Email: cac@phillaw.com
Attorneys for Petitioner

PROOF OF SERVICE

I declare that I am over the age of eighteen and not a party to this action. My business address is Phillips, Erlewine & Given LLP, 50 California Street, 32nd Floor, San Francisco, California 94111, which is located in the City and County of San Francisco where the service described below took place.

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

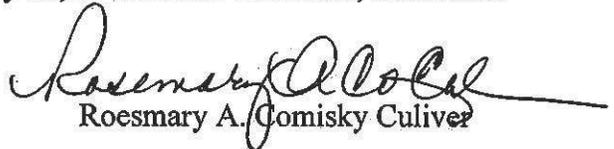
NOTICE OF CHANGE OF FIRM ADDRESS

was addressed to:

Matthew H. Swyers, Esq.
The Trademark Company
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Email: mswyers@thetrademarkcompany.com

- BY U.S. MAIL: I placed the above documents in a sealed envelope for deposit in the United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices.
- BY FACSIMILE TRANSMISSION: I transmitted the above documents by facsimile transmission to the FAX telephone number listed for each party above and obtained confirmation of complete transmittal thereof.
- BY ELECTRONIC TRANSMISSION: I caused the above documents to be electronically transmitted to the parties listed above.
- BY CAUSING PERSONAL SERVICE: I placed the above documents in a sealed envelope. I caused such envelope(s) to be handed to our messenger service to be delivered by hand to the above address(es).
- BY PERSONAL SERVICE: I placed the above documents in a sealed envelope. I delivered each of said envelopes by hand to the above address(es).
- BY OVERNIGHT EXPRESS: I placed the above documents in a sealed envelope. I caused such envelope(s) to be delivered by Federal Express to the above address(es) by overnight express.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 31, 2013 at San Francisco, California.


Roesmary A. Comisky Culiver

ESTTA Tracking number: **ESTTA541113**

Filing date: **05/31/2013**

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

Change of Correspondence Address

Proceeding.	92052150
Plaintiff	Plaintiff Wonderbread 5

Please change the correspondence address for the above party here as follows:

Old Correspondence Address	MEAGAN MCKINLEY-BALL PHILLIPS ERLEWINE & GIVEN LLP 50 CALIFORNIA STREET, 35TH FLOOR SAN FRANCISCO, CA 94111 UNITED STATES mmb@phillaw.com, cac@phillaw.com
New Correspondence Address	Cari A. Cohorn PHILLIPS ERLEWINE & GIVEN LLP 50 CALIFORNIA STREET, 32nd FLOOR SAN FRANCISCO, CA 94111 UNITED STATES cac@phillaw.com

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,
/Cari A. Cohorn/
Cari A. Cohorn
cac@phillaw.com
05/31/2013

APPENDIX 2

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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,

vs.

Cancellation No. 92052150

PATRICK GILLES,

Registrant.

_____/

Trial Deposition of
PATRICK GILLES
Wednesday, December 11th, 2013

**CERTIFIED
COPY**

REPORTED BY: JOAN F. MARTIN, CSR #6036

NOGARA REPORTING SERVICE
5 Third Street, Suite 415
San Francisco, California 94103
(415) 398-1889

1 butcher, and he --

2 Q. If I may interrupt you for one second. The
3 Wonderbread 5 or the Flesh Weapons?

4 A. I'm sorry; the Flesh Weapons. I'm talking
5 about the Flesh Weapons right now.

6 Q. Yeah. Thank you.

7 A. So the drummer of the Flesh Weapons was a
8 union butcher, and he had a family; a wife and three
9 children. And he left the band maybe two years prior
10 to -- maybe in 1994, '95, he left the band. And so we
11 found another drummer named Eric. And we just sort of
12 lost the spark, magic. I don't know what happens with,
13 you know, that kind of thing, but it didn't feel right
14 anymore without that guy in the band.

15 And I remember one night specifically, at the
16 Faultline Jeff had sang with us, and we were talking
17 after and, in a real organic conversation, we had
18 talked about doing just Jackson 5 songs. And it was
19 sort of self-deprecating about how the original songs
20 really didn't do much, but people loved the cover
21 songs, so why don't we just do cover songs only, and
22 even more so.

23 And this is just me and Jeff, nobody else;
24 nobody from the Flesh Weapons or anybody else around.
25 And we came to the conclusion that a Jackson 5 tribute

1 band, just the Jackson 5 songs, were the best songs
2 that we did.

3 And I said, "Well, gosh. I'm not going to be
4 the one to sing those songs. You'd have to sing them."

5 And he said, "Sure. I'll sing them."

6 And so then in that one evening, we had
7 formulated the vision of the band. It would be a
8 five-piece band, because it was going to be Jackson 5,
9 so there would be five of us. And we also determined
10 the configuration would be a lead singer, guitar, bass,
11 drums and keyboards.

12 We also agreed and came up with that we would
13 wear over-the-top '70s outfits. And we would also wear
14 wigs. All this had been formulated on that first
15 night.

16 And so in doing so -- there's sort of two
17 ingredients that every band needs; aside from
18 musicians, you need a rehearsal spot and you need a
19 truck. And it's kind of a running joke, "What do you
20 call a guy who hangs out with musicians? Someone who
21 owns a truck."

22 So I didn't own a truck; Jeff didn't own a
23 truck. But I owned a home, and I got to working on --
24 I told him, "I'll build a rehearsal studio and we can
25 start this band."

1 And Jeff said, "Well, I'll track down some
2 musicians."

3 Now, at that time -- this is all in one night,
4 we talked about this. And then we talked by phone
5 maybe two days later. And we seriously started talking
6 about people we'd play with.

7 And Jeff had said, "Why don't we get Ken from
8 the Flesh Weapons, the bass player?"

9 And I said, "Well, I'd like to really break
10 clean." And then I said, "Well, why don't we get some
11 of the guys from OBGYN?"

12 And -- well, I was going to play guitar. And
13 Jeff said, "Well, I don't want to play drums in the
14 band. I want to be the lead singer."

15 So there was really no one to pull from OBGYN
16 except for the bass player, and the keyboard player,
17 who was Chris Adams.

18 So I said, "Let's just use Chris Adams."

19 And Jeff Fletcher said, "I don't think he can
20 handle the keyboard parts." He's like, "He's not good
21 enough to play piano. This is really hard music."

22 Q. So you mentioned -- if I may interject, so you
23 mentioned that the first night you and Jeff discussed
24 the band. Now, what is your opinion as to when, if at
25 all, did a partnership form in regard to the band?

1 A. Well, definition of "partnership," I don't
2 know how deep the legal boundaries go or what the
3 definition is, but I would say it was that night. We
4 came -- it was one of those wonderful experiences where
5 you're sitting with someone and you're riffing back and
6 forth and the idea crystalized so quickly and so, sort
7 of, pristine and clean. And we both were on the same
8 page of our vision.

9 And we had models for it. There was a band in
10 Los Angeles called Boogie Nights that were doing '70s
11 music and they were wearing '70s clothes with Afros,
12 but they were not a tribute band. And that was the
13 key; we were going to do really difficult music, music
14 that was hard to execute, but people loved it.

15 So I immediately saw, quote/unquote, the legs,
16 the opportunity here. No one was doing a Jackson 5
17 tribute band.

18 Q. And you and Jeff, that night, formed the
19 agreement that would then allow you to have the
20 Wonderbread 5?

21 A. I have to confess that that was the moment in
22 time that any idea of this was formulated and
23 crystalized. And as I was saying, two days later we
24 were talking about getting band members. And, you
25 know, for those two days, my head was spinning on the

1 opportunities and I got more and more excited about it
2 and committed to the idea.

3 And so then I brought the name to Jeff, "White
4 Bread Five," and he said, "I don't know." Like, "I'm
5 not sold on it, but there you go. There's a
6 placeholder."

7 Q. Let me ask you: About how long did you and
8 Mr. Fletcher talk about the concept of this band and
9 assembling other performers for the band before
10 actually getting it together?

11 A. I would say two to three weeks. And by that
12 time he and I had discussed band members, and Jeff had
13 made the phone calls to Stevenson Brooks, John McDill,
14 and Tommy Rickard.

15 Q. Now, why did Jeff contact other performers to
16 come and join you all?

17 A. Well, we divided the duties. We said the
18 first night, you know, if I -- you know, if you can
19 find musicians, I'll build a studio. So it was like a
20 challenge to each other, you know. If you can show
21 good faith on your part, I show good faith on my part;
22 we'll have band. But you have to put -- we have some
23 skin in the game.

24 He made the phone calls, but he and I talked
25 about the people he was going to call before he called.

1 MR. SWYERS: Q. All right. Directing your
2 attention to Exhibit 8 and what's been marked as 8a.

3 Can you look at these and identify these for
4 us, please?

5 A. So 8a is an e-mail from Tracy Lee, who was the
6 owner of NapkinNights, which was a website in the
7 Sacramento area that published photos and promoted
8 bands.

9 And this is to Steve, her partner,
10 correspondence between Steve and myself about securing
11 ad space on NapkinNights' home page.

12 Q. And you were in charge of that?

13 A. Yes. And I'm requesting the invoice and
14 letting him know that I would be paying them.

15 Q. And is this a true and accurate copy of that
16 e-mail?

17 A. Yes, sir.

18 Q. Okay. Specifically on to 8a; tell us what
19 this is.

20 A. This is an e-mail between Jeff and myself
21 where I was asking for an asset from Jeff that he had.
22 You know, no longer producing assets, but he had a
23 library of things that he did before 2005, and I'm
24 asking him for a button.

25 What that means is it's a piece of digital

1 Q. Is this a true and accurate copy of the
2 records that you see before you?

3 A. Yes, sir.

4 Q. Also in reference to -- I'm going to take you
5 back, for a brief moment, back to Exhibit 14.

6 Were these records kept in the ordinary course
7 of business?

8 A. Yes.

9 Q. Okay. Same question for Exhibit 15 and 16 --
10 for exhibits -- were these records also kept in the
11 ordinary course of your business?

12 MS. COHORN: Compound and leading.

13 MR. SWYERS: Establishing -- well, establishing
14 evidentiary basis for these to come in. So I believe
15 we're allowed to lead a little bit in that regard. But
16 anyway . . .

17 Q. Were these business records --

18 A. Yes.

19 Q. Mr. Gilles --

20 A. Yes, sir.

21 Q. -- kept in the ordinary course of the
22 business?

23 A. Yes, sir. I kept these records with my
24 Wonderbread5.com LLC folder.

25 Q. Okay. Speaking of Wonderbread5.com LLC --

1 well, it's an assumption at this juncture, but **did**
2 **there come a time that you organized that entity?**

3 A. Yes.

4 Q. Tell us about that, please.

5 A. Again, I was very interested in business. I
6 was in business graduate school to get my MBA. I saw
7 great potential in the Wonderbread 5 band that I
8 founded, and I thought it could grow even bigger,
9 exponentially, and maybe branch into franchise.

10 And it was my goal to rally support. I
11 offered everybody an opportunity to grow the business,
12 and they all declined. I took it upon myself to
13 continue the venture, and **I created the**
14 **Wonderbread5.com LLC as a general partner.**

15 Q. Did the other -- I'm sorry. Did others know
16 that you doing this?

17 A. All the other performers had been invited and
18 declined. I went ahead and put the legwork in and paid
19 the fees of \$1600 out of my own pocket, not asking for
20 reimbursement, and then started to create the
21 merchandising.

22 As they saw it moving forward, they then asked
23 to be a part of it. That's when the bank account --

24 Q. Let me --

25 A. Okay.

1 to some other performers that performed with
2 Wonderbread 5 over the years.

3 Did there come a time that you became familiar
4 with a gentleman by the name of Fraser Lunney?

5 A. Yes.

6 Q. Tell us about Mr. Lunney.

7 A. He was in a band with Tommy Rickard from maybe
8 2000 to 2005.

9 Q. And did there come a time that he played with
10 Wonderbread 5?

11 A. Yes. He would play bass in the band
12 periodically.

13 Q. Why?

14 A. If John McDill could not perform or did not
15 want to perform and no other -- no other performer was
16 able to do it.

17 Q. Was he ever partner of Wonderbread 5?

18 A. No.

19 Q. Okay. Who is Clay Bell?

20 A. Clay Bell is a guitar player-singer that plays
21 for several of Jay Siegan's other bands, Notorious and
22 Pop Rocks, and I think another band. And he would play
23 guitar if I were unavailable. He would also sing lead
24 vocals if Jeff were unavailable, which he did -- I can
25 remember on one occasion he sang lead vocals in the

1 Wonderbread 5.

2 Q. Was he ever a partner of Wonderbread 5?

3 A. No.

4 Q. Returning to Fraser Lunney for a brief moment,
5 about how often did Mr. Lunney perform with
6 Wonderbread 5?

7 A. Four to eight times a year, maybe more. There
8 were a lot of subs. I can't recall if he was always
9 the bass player that was playing for John.

10 Q. And how about Mr. Bell, how often would he
11 perform with Wonderbread 5?

12 A. Similar. Because he would also play bass for
13 John, he would play guitar for me, or he would sing for
14 Jeff.

15 Q. Okay. Now, I would like to direct your
16 attention -- go back to the mid 2000s.

17 What, if any, friction is going on in the band
18 at that time?

19 A. The mid 2000s, there was friction between Jeff
20 and Tommy and Jeff and myself.

21 Q. Talk about the friction between Jeff and you.
22 What friction was there between you and Mr. Fletcher?

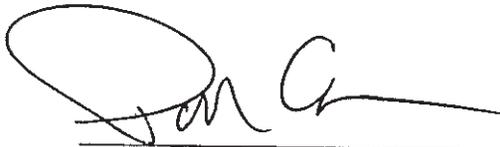
23 A. I was trying to grow the band and make the
24 band more money, and bigger, which required more
25 administrative work and more time put into the band, on

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CERTIFICATE OF WITNESS

---oOo---

I, PATRICK GILLES, hereby declare under penalty of perjury that I have read the foregoing deposition testimony; and that the same is a true and correct transcription of my said testimony except as I have corrected pursuant to my rights under Section 2025 (Q) (1) of the California Code of Civil Procedure.



Signature

1-8-14

Date

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN FRANCISCO)

3 I, JOAN MARTIN, a Certified Shorthand Reporter
4 of the State of California, duly authorized to
5 administer oaths pursuant to Section 8211 of the
6 California Code of Civil Procedure, do hereby certify
7 that

8 PATRICK GILLES,
9 the witness in the foregoing trial deposition, was by
10 me duly sworn to testify the truth, the whole truth and
11 nothing but the truth in the within-entitled cause;
12 that said testimony of said witness was reported by me,
13 a disinterested person, and was thereafter transcribed
14 under my direction into typewriting and is a true and
15 correct transcription of said proceedings.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing deposition and caption named, nor in any way
19 interested in the outcome of the cause named in said
20 caption.

21 Dated the 25th day of December, 2013.

22
23 
24

25 JOAN F. MARTIN
CSR No. 6036 (California)

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