

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

JOE J. ALFARO, JR.

OPPOSITION NO. 91 155 188

OPPOSER

Vs.

GUY A. HOFFMANN

APPLICATION NO. 781 10344


APPLICANT

**APPLICANT'S RESPONSE TO OPPOSER'S (1) MOTION TO EXTEND
TIME FOR OPPOSER TO SUBMIT WRITTEN QUESTIONS AND (2) MOTION
TO TAKE TESTIMONY BY ORAL EXAMINATION.**

BRIEF

**THIS CASE IS PRESENTLY IN THE TRIAL PERIOD. THE OPPOSER ON
FEBRUARY 24, 2005 CONDUCTED 4 ORAL DEPOSITIONS. THE 30
DAY TESTIMONY PERIOD FOR APPLICANT CLOSES ON APRIL 27, 2005.
ON MARCH 29, 2005, APPLICANT SERVED A NOTICE-TAKING OF
DEPOSITION ON WRITTEN QUESTIONS PURSUANT TO 37CFR SECTION
2.124 AND WRITTEN QUESTIONS TO OPPOSER. ON APRIL 13, 2005,
APPLICANT FILED HIS RESPONSES TO WRITTEN QUESTIONS-SEE
EXHIBIT B ATTACHED, COPIES OF WHICH WERE SERVED ON OPPOSER
AND THE BOARD BY FIRST CLASS MAIL. OPPOSER'S 15 DAY
REBUTTAL TESTIMONY PERIOD CLOSES JUNE 11, 2005. ON APRIL 15,
2005, OPPOSER FILED THE INSTANT MOTIONS PRIOR TO THE RECEIPT
OF APPLICANT'S RESPONSES.**

**AS MY ENCLOSED DECLARATION INDICATES THE DECISION TO USE A
DEPOSITION UPON WRITTEN QUESTIONS WAS FOR ECONOMIC
REASONS, NAMELY APPLICANT'S INABILITY TO PAY FOR AN ORAL
DEPOSITION RATHER THAN TO DEPRIVE OPPOSER OF THE
OPPORTUNITY OF LIVE CROSS-EXAMINATION. PAULSON REPORTING
SERVICE USED BY OPPOSER FOR THE DEPOSITIONS ADVISED ME THAT
A 3 HOUR DEPOSITION WOULD COST ABOUT \$800. APPLICANT
CANNOT AFFORD THAT.**


04-27-2005

OPPOSER CITES FEED FLAVORS,INC. V. KEMIN INDUSTRIES,INC. 209 USPQ 589(TTAB 1980) FOR THE PROPOSITION THAT HE HAS DEMONSTRATED "GOOD CAUSE" FOR HAVING APPLICANT DEPOSED BY ORAL EXAMINATION. A CAREFUL READING OF THAT CASE INDICATES THE CONTRARY. IN FEED FLAVORS,INC,SUPRA, RESPONDENT OBJECTED TO PETITIONER USING A DEPOSITION UPON WRITTEN QUESTIONS OF JERRY RICHARDSON UPON GROUNDS,INTER ALIA,THAT PETITIONER WISHES TO PROTECT ITS OWN EMPLOYEES FROM FULL CROSS-EXAMINATION,THAT DEPONENTS LIVE IN THE SAME AREA AS COUNSEL FOR PETITIONER AND THAT THESE DEPOSITIONS ARE BEING TAKEN DURING PETITIONER'S PERIOD,THUS PRECLUDING THE POSSIBILITY THAT RESPONDENT COULD CALL THESE WITNESSES DURING RESPONDENT'S TESTIMONY PERIOD;AND THAT IF PETITIONER IS NOT REQUIRED TO TAKE THEIR DEPOSITIONS ORALLY,PETITIONERS WILL BE ABLE TO EFFECTIVELY CLOSE OFF THESE WITNESSES FROM ANY ORAL CROSS EXAMINATION. PAGE 590

**THIS BOARD CONCLUDED:
"WHAT CONSTITUTES GOOD CAUSE SO AS TO WARRANT REQUIRING A DEPOSITION TO BE TAKEN ORALLY MUST BE DETERMINED ON A CASE BY CASE BASIS,UPON CONSIDERATION OF THE PARTICULAR FACTS AND CIRCUMSTANCES IN EACH SITUATION. THE ARGUMENT MOST OFTEN ADVANCED BY ONE WHOSE OPPONENT WANTS TO TAKE A DEPOSITION UNDER RULE 2.124IS THAT THE ADVANTAGE OF BEING ABLE TO CONFRONT A WITNESS ON CROSS EXAMINATION IS LOST"**

PAGE 591

THIS BOARD FOUND THAT GOOD CAUSE HAS BEEN SHOWN IN VIEW OF THE FACT THAT THESE WITNESSES ARE BEING DEPOSED FOR THE FIRST TIME DURING PETITIONER'S REBUTTAL PERIOD,THUS PRECLUDING ANY POSSIBILITY THAT SAID DEPONENTS COULD BE DEPOSED ORALLY BY RESPONDENT,IT WOULD BE UNJUST FOR RESPONDENT TO BE DEPRIVED OF THE VALUABLE AID OF CONFRONTING THE WITNESSES BY WAY OF ORAL CROSS EXAMINATION. IBID

UNLIKE THE FACTS IN THE ABOVE CASE,OPPOSER'S REBUTTAL PERIOD REMAINS OPEN TO JUNE 11,2005.OPPOSER CAN TAKE APPLICANT'S DEPOSITION IN HIS REBUTTAL PERIOD AND EXERCISE HIS RIGHT TO LIVE CROSS EXAMINATION.DENYING HIS MOTION WILL NOT DENY HIM THE RIGHT TO LIVE CROSS EXAMINATION.

SEE CENTURY 21 REAL ESTATE CORP. V CENTURY LIFE OF AMERICA 15USPQ2D1079(TTAB 1990) WHERE THIS BOARD FOUND "GOOD CAUSE" FOR AN ORAL DEPOSITION WHERE AN EXPERT WITNESS IS BEING DEPOSED FOR THE FIRST TIME DURING OPPOSER'S REBUTTAL TESTIMONY PERIOD,PRECLUDING ANY POSSIBILITY THAT HE COULD BE DEPOSED ORALLY BY APPLICANT.

THE ANALOGY OF THE 2 CITED CASES FROM THIS BOARD TO THE INSTANT CASE IS OBVIOUS..GOOD CAUSE IS NOT SHOWN WHERE A PARTY HAS AN OPPORTUNITY IN THE REBUTTAL PERIOD TO CONDUCT A DEPOSITION UPON ORAL EXAMINATION OF ITS OPPONENT WHO HAS USED A DEPOSITION UPON WRITTEN QUESTIONS.

AS FAR AS THE "MYSTERY PACKAGE" OPPOSER ALLUDES TO IN HIS BRIEF REGARDING QUESTIONS 41-49, IT IS RESPECTFULLY REQUESTED THAT THIS BOARD PROVIDE TO BOTH SIDES COPIES OF THE PACKAGE AND ITS CONTENTS EXPEDITIOUSLY.

APPLICANT FILED HIS APPLICATION MORE THAN 3 YEARS AGO. AFTER TESTIMONY IS TAKEN AND BRIEFS SUBMITTED,THIS BOARD WILL DECIDE WHETHER TO GRANT THE MARK "'SUPER FREAKS FUNKY DISCO REVUE" TO APPLICANT. NOT PERMITTING APPLICANT TO USE A DEPOSITION UPON WRITTEN QUESTIONS AS AUTHORIZED BY THIS BOARD'S RULES WILL EFFECTIVELY DENY HIM THE OPPORTUNITY TO PRESENT EVIDENCE ON HIS BEHALF BECAUSE OF FINANCIAL HARDSHIP.

WHILE THIS BOARD IS A FEDERAL TRIBUNAL AND NOT A FEDERAL COURT, CONGRESS MANY YEARS AGO PASSED 28 USC 1915 TO PROVIDE ACCESS TO THE FEDERAL COURT FOR THOSE PERSONS ECONOMICALLY UNABLE TO INVOKE ITS PROTECTION. SEE CARTER V. TELETRON,INC. 452F.SUPP.939,943(S.D.TEXAS 1976).

WHILE APPLICANT IS NOT CLAIMING INDIGENCY,REQUIRING HIM TO HAVE HIS DEPOSITION UPON ORAL EXAMINATION AT HIS OWN EXPENSE WOULD FORCE HIM TO CONTRIBUTE HIS LAST DOLLAR OR RENDER HIMSELF DESTITUTE TO PROSECUTE HIS CLAIM. SEE ADKINS V.E.I.DUPONT DE NEMOURS & Co.335US331,337,69SCT 85,88,93LED43(1948)..APPLICANT ASKS THIS BOARD TO CONSIDER ECONOMIC HARDSHIP IN DETERMINING GOOD CAUSE.

CONCLUSION

OPPOSER HAS NOT SHOWN GOOD CAUSE REQUIRED BY 37CFR SECTION 2.123(A)(1) FOR 2 REASONS:

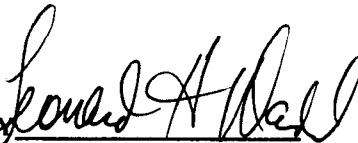
(1) APPLICANT'S INABILITY TO PAY FOR A DEPOSITION ON ORAL EXAMINATION IS ONE OF THE "PARTICULAR FACTS AND CIRCUMSTANCES" IN THIS SITUATION.

(2) OPPOSER WILL NOT BE DEPRIVED OF HIS OPPORTUNITY TO LIVE CROSS EXAMINATION OF THE APPLICANT BECAUSE THIS MAY BE ACCOMPLISHED DURING THE REBUTTAL PERIOD CLOSING JUNE 11, 2005.

OPPOSER'S MOTION TO EXTEND TIME FOR OPPOSER TO SUBMIT WRITTEN QUESTIONS PENDING THIS BOARD'S RULING ON OPPOSER'S MOTION TO TAKE TESTIMONY OF APPLICANT BY ORAL EXAMINATION IS UNOPPOSED BY APPLICANT AND OUGHT BE GRANTED,

OPPOSER'S MOTION TO ORDER THAT THE TESTIMONY OF APPLICANT, GUY A. HOFFMANN BE TAKEN BY ORAL EXAMINATION, RATHER THAN BY WRITTEN QUESTIONS SHOULD BE DENIED.

DATED: APRIL 24, 2005

By 

**LEONARD H. MANDEL, ESQ.
ATTORNEY FOR APPLICANT,
GUY A. HOFFMANN
3034 N. 151ST LANE
GOODYEAR, AZ. 85338
TELEPHONE (623) 935-3519**

DECLARATION OF LEONARD H. MANDEL

I, LEONARD H. MANDEL DECLARE UNDER PENALTY OF PERJURY:

I AM AN ATTORNEY AND ACTIVE MEMBER OF THE BARS OF CALIFORNIA AND ARIZONA AND ATTORNEY FOR APPLICANT, GUY A. HOFFMANN. GUY A. HOFFMANN IS MY STEPSON AND HAS BEEN SINCE I MARRIED HIS MOTHER, MAY L. MANDEL ON DECEMBER 23, 1973 WHEN GUY WAS 9 YEARS OLD. I AM REPRESENTING HIM PRO BONO. I AM IN FREQUENT CONTACT WITH HIM BOTH IN PERSON AND BY TELEPHONE. AS SUCH, I AM FAMILIAR WITH HIS FINANCIAL STATUS. THE DEPOSITION ON WRITTEN QUESTIONS WAS CHOSEN TO OBTAIN HIS TESTIMONY FOR THE TRIAL BECAUSE OF ECONOMIC REASONS, NAMELY THE SMALLER COSTS COMPARED TO HIRING A CERTIFIED COURT REPORTER. ON APRIL 18, 2005 I TELEPHONED PAULSON REPORTING SERVICE IN SAN DIEGO, CA, THE COMPANY THAT OPPOSER USED FOR THE DEPOSITIONS ON FEBRUARY 24, 2005. DEBBY IN ADMINISTRATION AT PAULSON REPORTING SERVICE STATED THAT IT WOULD COST APPROXIMATELY \$800 FOR A 3 HOUR DEPOSITION AT THEIR CURRENT BILLING RATES. MR. HOFFMANN IS UNABLE TO PAY FOR A DEPOSITION ON ORAL EXAMINATION. PRIOR TO FILING THIS RESPONSE TO OPPOSER'S MOTIONS, I TELEPHONED ATTORNEY RICHARD A. CLEGG AND PROPOSED THAT I WOULD AGREE TO AN ORAL EXAMINATION OF MR. HOFFMANN IF OPPOSER PAID FOR IT. I FURTHER STATED TO MR CLEGG THAT THIS STIPULATION WOULD MAKE THESE MOTIONS MOOT AND REQUESTED THAT HE SPEAK TO MR. ALFARO ABOUT THIS PROPOSAL. I CALLED MR. CLEGG THE NEXT DAY. MR CLEGG STATED MR ALFARO WOULD NOT AGREE TO PAY FOR AN ORAL EXAMINATION OF MR. HOFFMANN AS I PROPOSED AND WE WOULD "GO AHEAD WITH THE MOTION"..


LEONARD H. MANDEL

**DATED: APRIL 24, 2005
GOODYEAR, ARIZONA
(MARICOPA COUNTY)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON APRIL 25, 2005. A TRUE AND CORRECT COPY OF APPLICANT'S RESPONSE TO OPPOSER'S MOTIONS TO EXTEND TIME FOR OPPOSER TO SUBMIT WRITTEN QUESTIONS AND TO TAKE TESTIMONY OF APPLICANT BY ORAL EXAMINATION WITH ACCOMPANYING BRIEF, EXHIBIT B, APPLICANT'S RESPONSES TO THE WRITTEN QUESTIONS AND DECLARATION OF LEONARD H. MANDEL WERE SERVED ON OPPOSER'S COUNSEL, VIA FIRST CLASS MAIL, POSTAGE PREPAID AT THE FOLLOWING ADDRESS:

**RICHARD A. CLEGG, ESQ.
SELTZER, CAPLAN, MCMAHON, VITEK
A LAW CORPORATION
750 B STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101**

I FURTHER CERTIFY THAT THE DOCUMENTS REFERRED TO AS ENCLOSED HEREIN IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL, ON THIS DATE, APRIL 25, 2005 IN AN ENVELOPE ADDRESSED TO COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VA 22313-1451.

DATED: APRIL 25 2005


LEONARD H. MANDEL

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

3
4
5 In the matter of trademark application Serial No. 78110344

6 Filed on: February 22, 2002

7 For the mark "Superfreaks Funky Disco Revue"

8 Published in the Office Gazette on December 17, 2002

9
10 Joe J. Alfaro, Jr.

Opposition No. 91155188

11 v.

12 Guy A. Hoffmann

RESPONSES OF GUY A. HOFFMANN
TO DEPOSITION ON WRITTEN
QUESTIONS (37CFR, Section 2.12 4,
FRCP 31(A))

13
14 COMES NOW, GUY A. HOFFMANN, and responds to the Deposition on
15 Written Questions pursuant to 37CFR, Section 2.124, FRCP 31(A).

16 Guy A. Hoffmann (hereinafter referred to as "Hoffmann") states that discovery is
17 continuing in this matter and Hoffmann reserves the right to amend these Responses
18 upon the discovery of further relevant information.

19 1. What is your name and residence?

20 **RESPONSE TO QUESTION 1:**

21 Guy A. Hoffmann, 25563 Pelion Road, Menifee, CA 92584

22 2. Describe the circumstances under which you first met Mr. Alfaro, indicating the date
23 and location.

24 **RESPONSE TO QUESTION 2:**

25 Approximately 21 to 22 years ago when I was 18 or 19 years old, I met Mr. Alfaro while
26 performing in local music groups.

27 ///

EXHIBIT B

28 ///

1 3. Are you a professional musician?

2 **RESPONSE TO QUESTION 3:**

3 I have played professionally or semi-professionally as a musician.

4 4. How long have you been a professional musician?

5 **RESPONSE TO QUESTION 4:**

6 Over ten years.

7 5. Which musical instrument do you play?

8 **RESPONSE TO QUESTION 5:**

9 Bass guitar.

10 6. Besides playing a musical instrument, do you do anything else in your musical
11 performances?

12 **RESPONSE TO QUESTION 6:**

13 Lead vocals, show master of ceremony, comedy, dance and acting.

14 7. Do you wear a costume in your performance? Describe the costume.

15 **RESPONSE TO QUESTION 7:**

16 Yes, For the Disco Show I wear an afro wig and suit. For the lounge act I wear a
17 suit. All show costumes vary.

18 8. Do you use a stage name? How long have you used it?

19 **RESPONSE TO QUESTION 8:**

20 Disco Show: Boots Reed; Lounge act: Mr. Guy. Show names and personas
21 vary.

22 9. When did you first discuss performing as a musician with Mr. Alfaro?

23 **RESPONSE TO QUESTION 9:**

24 For Superfreaks, discussion of our disco show began directly after Mr. Alfaro's
25 dismissal from his previous employer's band, "The Groove Line" which was between six
26 months to one year prior to our first performance together on October 15, 1999 in San
27 Francisco, California at the Metro Room, Olympic Spa.

28

1 10. Describe the initial conversation between you and Mr. Alfaro regarding performing
2 with him.

3 **RESPONSE TO QUESTION 10:**

4 I told Mr. Alfaro that I would run the band, we will split the profits. Mr. Alfaro
5 verbally agreed to this.

6 11. State the date, place and location of your first musical performance with Mr. Alfaro.

7 **RESPONSE TO QUESTION 11:**

8 October 15, 1999, Metro Room, Olympic Spa, San Francisco, A

9 12. What name did Mr. Alfaro use for this musical group on your first performance?

10 **RESPONSE TO QUESTION 12:**

11 Mr. Alfaro booked the band as "Groovie Knights."

12 13. Were there any posters or writings indicating the name of this group on your first
13 performance with Mr. Alfaro?

14 **RESPONSE TO QUESTION 13:**

15 Yes.

16 14. If the above answer is in the affirmative, where did you see these posters or writings?

17 **RESPONSE TO QUESTION 14:**

18 Posters were on easels at the place of the performance indicated in Response to
19 Question 11.

20 15. Do you presently have any of these posters or writings? If so, would you attach any
21 of these to your answers?

22 **RESPONSE TO QUESTION 15:**

23 Yes, it is attached as an enclosure to this answer. It was originally affixed with
24 another flier that was used as backing for another city club activity which is also attached
25 as an enclosure.

26 16. After your initial performance with Mr. Alfaro, did you discuss changing the name
27 of the musical group? If the answer is in the affirmative, please state in detail the
28 conversation between you and Mr. Alfaro regarding changing the musical group's name.

1 State the approximate date of this conversation between you and Mr. Alfaro. Was the
2 conversation face-to-face or by telephone?

3 **RESPONSE TO QUESTION 16:**

4 Yes, after using "Groovie Knights" for our initial gig, I stated that a new name
5 should be chosen soon as "Groovie Knights" was an obvious, deliberate stab in the back
6 to Mr. Alfaro's previous employer's bands "Groove Line" and "Boogie Knights." I
7 further stated to Mr. Alfaro that it was a silly name and a better name was needed. I
8 suggested the name "SUPERFREAKS" and Mr. Alfaro agreed to change the name to
9 "SUPERFREAKS" as I suggested. This conversation took place shortly after the
10 October 15, 1999 performance in San Francisco and was face to face with Mr. Alfaro.

11 17. If the name of the musical group was changed to "SUPERFREAKS", state the date,
12 place and location of the first performance in which you participated in that name.

13 **RESPONSE TO QUESTION 17:**

14 The name was changed to "SUPERFREAKS" per my suggestion and the first
15 performance as "SUPERFREAKS" was on New Year's Eve 2000 at Tijuana's in Irvine,
16 California.

17 18. Before working as a musician with the "SUPERFREAKS", did you work in a
18 different endeavor of employment? What was that? How long had you worked in that
19 field?

20 **RESPONSE TO QUESTION 18:**

21 Besides entertainment, I worked in construction for over 15 years.

22 19. Did you tell Mr. Alfaro about leaving your prior employment to work with him and
23 others in the musical group?

24 **RESPONSE TO QUESTION 19:**

25 Yes. The decision was mine. Mr. Alfaro encouraged me to leave working in
26 construction to procure early musical shows and work.

27 20. What exactly did Mr. Alfaro say in response?

28 ///

1 **RESPONSE TO QUESTION 20:**

2 Mr. Alfaro encouraged me to leave working in construction to procure early
3 musical shows and work.

4 21. Did you ask Mr. Alfaro about a written contract regarding performing in the musical
5 group?

6 **RESPONSE TO QUESTION 21:**

7 Yes. I frequently asked Mr. Alfaro about signing a written contract regarding the
8 terms for performing with the "SUPERFREAKS".

9 22. What was Mr. Alfaro's response to your request for a written contract?

10 **RESPONSE TO QUESTION 22:**

11 Mr. Alfaro expressed his reluctance to sign a written contract and never did sign
12 one.

13 23. Did you and Mr. Alfaro make a verbal agreement as to your remuneration for
14 performing with him as a musician? State the complete terms of the verbal agreement.

15 **RESPONSE TO QUESTION 23:**

16 Yes. The verbal agreement was as follows: I would split 50%-50% all fees I
17 obtained from booking "gigs" with Mr. Alfaro thus striking an agreement of partnership
18 in booking and managing the band and the same additional fees for subsequent
19 "SUPERFREAKS" performances. If 20% commission was obtained for a performance,
20 Mr. Alfaro would receive 10% regardless of whether he participated in the "gig" or not.

21 24. Did you book any "gigs" (performances) while working with Mr. Alfaro and the
22 "SUPERFREAKS"?

23 **RESPONSE TO QUESTION 24:**

24 Yes.

25 25. Approximately how many gigs did you book while working with Mr. Alfaro and the
26 "SUPERFREAKS"?

27 ///

28 ///

1 **RESPONSE TO QUESTION 25:**

2 Over 75% of all work was procured by myself while performing and working in
3 the "SUPERFREAKS". I booked in excess of 100 gigs.

4 26. What were the first and last dates of the gigs you booked for the "SUPERFREAKS"
5 while working with Mr. Alfaro?

6 **RESPONSE TO QUESTION 26:**

7 The first gig was a video shoot in November, 1999 at "Fogertys" in Escondido,
8 CA. The last gig was in November, 2001 at "Godfathers" in Chino, California.

9 27. State the amount of money you received as your share of all the gigs you booked for
10 the "SUPERFREAKS".

11 **RESPONSE TO QUESTION 27:**

12 Amounts varied and the arrangements were as stated in Response to Question 23.

13 28. While booking gigs for the "SUPERFREAKS", did you spend any money of yours to
14 book these gigs? If so, state for what the money was expended and the amounts spent.

15 **RESPONSE TO QUESTION 28:**

16 Yes. I spent large sums of money to procure and secure business for the
17 "SUPERFREAKS". Some of many large and regular expenditures were \$100+ monthly
18 telephone bills, gas for travel, meeting with customers, tape, cd's, and media for
19 promotion, postage for contacting customers, weekly "fog juice" for fog machine used in
20 performances and for "props" used in performances.

21 29. State the names and locations of places where you booked gigs for the
22 "SUPERFREAKS" while working with Mr. Alfaro.

23 **RESPONSE TO QUESTION 29:**

24 Music City, Huntington Beach and Crazy Horse, Irvine, Ca., Sumo's Bistro,
25 Irvine, Ca; Club Metro, Riverside, Ca; Sevilla's, Riverside, Ca;

26 30. State the first and last date you performed with Mr. Alfaro and the
27 "SUPERFREAKS".

28 ///

1 **RESPONSE TO QUESTION 30:**

2 Please see responses to questions 11 and 26.

3 31. At some point, did Mr. Alfaro prevent you from performing with the
4 "SUPERFREAKS"? How did he do this? What date was that?

5 **RESPONSE TO QUESTION 31:**

6 Yes. I was forcibly "asked" to take two weeks off of the regular two night run at
7 "Crazy Horse" after an unfortunate evening of arguing with other players in the band.
8 What followed was the unfair and unwarranted forcing of myself from the band.

9 32. At the time you left your association with Mr. Alfaro and the "SUPERFREAKS", did
10 you believe he owed you money? Why did you believe he owed you money?

11 **RESPONSE TO QUESTION 32:**

12 Yes. I was unfairly forced from the steady work of playing and my booking
13 commissions were not paid because of my absence.

14 33. Did Mr. Alfaro pay you any money after the time he barred you from performing with
15 the "SUPERFREAKS"?

16 **RESPONSE TO QUESTION 33:**

17 Yes. Mr. Alfaro paid me \$120.00 per week for gigs I booked for several months
18 until the small claim judgment. .

19 34. Did you file a small claims action in Riverside County Superior Court for moneys you
20 believed Mr. Alfaro owed you? State the reasons why you believed Mr. Alfaro owed you
21 money.

22 **RESPONSE TO QUESTION 34:**

23 Yes. Please see Response to Question 32 above.

24 35. Did Mr. Alfaro file a counterclaim in the small claims action against you?

25 **RESPONSE TO QUESTION 35:**

26 Yes.

27 36. Was the judgment for Mr. Alfaro on your claim and for you on his counterclaim? In
28 other words, a split decision?

1 **RESPONSE TO QUESTION 36:**

2 Yes.

3 37. Did the judge in the small claims action ever decide who had the right to use the name
4 "SUPERFREAKS" in a musical performance?

5 **RESPONSE TO QUESTION 37:**

6 No. A small claims court cannot make this decision in California.

7 38. After the termination of your relationship with Mr. Alfaro, did you perform as a
8 musician with others using the name "SUPERFREAKS"? If so, state the dates and
9 locations where you so performed.

10 **RESPONSE TO QUESTION 38:**

11 Yes. Various times in 2002 through 2004.

12 39. Are you still doing musical performances professionally since terminating your
13 relationship with Mr. Alfaro? If so, describe the frequency of these performances and
14 your role in these performances.

15 **RESPONSE TO QUESTION 39:**

16 Yes. I have performed as a bass player and as a singer. I have performed, much
17 more infrequently since unfair termination.

18 40. Do you have any knowledge as to whether Mr. Alfaro and his associates have
19 performed gigs at places you initially booked since your departure from the
20 "SUPERFREAKS"? If you have such knowledge, state what those facts are.

21 **RESPONSE TO QUESTION 40:**

22 Yes. Besides "Crazy Horse" continuing performances, several other venues
23 initially contacted by myself were used as starting points for Mr. Alfaro's business re-
24 establishing of business connections..

25 41. At some time after the musical group's name was changed to "SUPERFREAKS" at
26 your request, did you do something to prove that you originated the name
27 "SUPERFREAKS"?

28 ///

1 **RESPONSE TO QUESTION 41:**

2 Yes. I made a "Poor Man's Copyright". I packaged an audio tape of the
3 "SUPERFREAKS" performance, a logo and documentation regarding the
4 "SUPERFREAKS" in a sealed envelope and mailed the package to myself.

5 42. State what you did to document that you originated the name "SUPERFREAKS" for
6 the musical group.

7 **RESPONSE TO QUESTION 42:**

8 Please see Response to Question 41.

9 43. When did you do this?

10 **RESPONSE TO QUESTION 43:**

11 January 18, 2000.

12 44. Have you kept the package in a sealed condition since then?

13 **RESPONSE TO QUESTION 44:**

14 Yes.

15 45. Where did you keep that package?

16 **RESPONSE TO QUESTION 45:**

17 In my residence in Menifee, CA.

18 46. Have you made any alterations, changes, additions or omissions with regard to the
19 package and its contents since you first sealed it?

20 **RESPONSE TO QUESTION 46:**

21 No.

22 47. Will you attach this sealed package to your answers to these interrogatories?

23 **RESPONSE TO QUESTION 47:**

24 Yes.

25 48. Are you requesting TTAB to open the sealed package, examine the wrapper, post
26 marks and its contents and retain them and consider them as evidence in this case?

27 **RESPONSE TO QUESTION 48:**

28 Yes.

1 49. Are you requesting TTAB to make copies of the aforementioned package and its
2 contents, send them to Mr. Alfaro and your attorney? Do you agree to reimburse TTAB
3 for any expenses of making such copies?

4 **RESPONSE TO QUESTION 49:**

5 Yes.

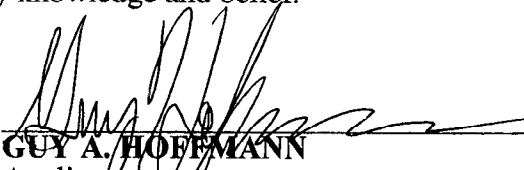
6 50. State in your own words why you should be awarded the service make
7 "SUPERFREAKS" by the USPTO.

8 **RESPONSE TO QUESTION 50:**

9 I originated the name "SUPERFREAKS" which Mr. Alfaro agreed to use for the
10 musical group. Mr. Alfaro did not originate the name "SUPERFREAKS". I was unfairly
11 ousted by Mr. Alfaro from continually performing with the "SUPERFREAKS" and lost
12 moneys from performances I would have done. The name "SUPERFREAKS" was used
13 by Mr. Alfaro and myself after my departure from the group. Mr. Alfaro filed with the
14 Secretary of State of California a registration of the service mark "The Superfreaks" on
15 September 18, 2002. Almost six months after I filed for a service mark on February 22,
16 2002 with the USPTO with Mr. Alfaro's actual knowledge of my prior filing. See
17 deposition of Joe J. Alfaro, Jr. Of February 24, 2005, pages 58-60. This action by Mr.
18 Alfaro indicates a lack of integrity and his "unclean hands" in opposing my request for an
19 application.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct to the best of my knowledge and belief.

22
23 DATED: April 13, 2005


24 **GUY A. HOFFMANN**
25 Applicant
26 25563 Pelion Road
27 Menifee, CA 92584
28 (951) 679-5855

NOTARY ACKNOWLEDGMENT ATTACHED HERETO

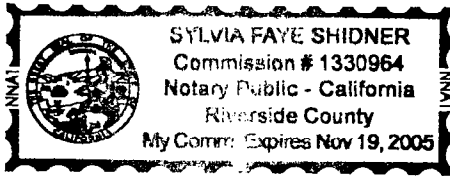
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of RIVERSIDE } ss.

On 04-13-05, before me, Sylvia Faye Shidner,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Guy A. Hoffmann,
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.
Sylvia Faye Shidner
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ANSWERS of Guy A. Hoffmann to Deposition on Written Questions

Document Date: 04-13-05 Number of Pages: 11

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer

Signer's Name: Guy A. Hoffmann

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: Himself

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

