

TTAB

FAX Transmittal

Date: March 18, 2005

To: Attention: Cheryl Goodman  
United States Patent and Trademark Office  
Trademark and Appeal Board  
PO Box 1451  
Alexandria, VA 22313-1451

From: Phil Millenbah

78258604

Re: Opposition Case Number 91160201 Plancom v. Millenbah

Total number of pages including this page: 22

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Ms. Goodman;

Please call me at 415/ 246-3000 with any questions.

March 18, 2005

United States Patent and Trademark Office  
Trademark and Appeal Board  
Attention: Cheryl Goodman  
PO Box 1451  
Alexandria, VA 22313-1451

Dear Ms. Goodman;

Re: Opposition Case Number 91160201 Plancom v. Millenbah

Attached are the following documents: Certificate of Transmission; a signed copy of my motion to suspend proceedings for civil action; a copy of the original notice of service to USPTO; a copy of the original notice of service to L'estrage; electronic copies of two lawsuits that are pending relative to my ownership interest in Plancom; and your letter dated March 4, 2005. I apologize if the earlier motion came to you unsigned. I don't have court filed copies of the two lawsuits only electronic copies sent to me by my lawyer. If you need filed copies please let me know.

I am sending you this document via fax and will also send a copy to the address above.

Thank you for your generous help in this matter.

Sincerely,



Philip Millenbah

415/ 246-3000  
415/ 491-6014 (fax)

Certificate of Transmission

I hereby certify that this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office on the date show below:

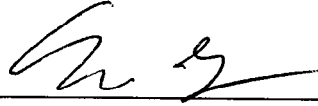
Commissioner of Trademarks  
PO Box 1451  
Alexandria, VA 222-02-3514

Name of Documents: Motion to Suspend Proceedings; Service of Motion to Suspend;  
Millenbah v. Daugherty, Kaelin, et al.; and Millenbah & Co. LLC v. Plancom, Inc.,  
Darrell Daugherty.

Opposition Case Number: 91160201 Plancom v. Millenbah

Date of Transmission: March 19, 2005

Printed Name of Transmitter: Lutzka Zivny

Signature of Transmitter: 

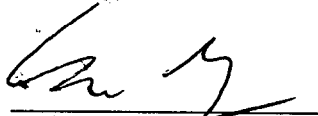
Date of Signing: March 19, 2005

Certificate of Service

The undersigned hereby confirms that a copy of the foregoing documents is being served on the Commissioner of Trademarks by first class mail on this 19<sup>th</sup> day of March, 2005 by placing the same in an envelope and addressed as follows:

Commissioner of Trademarks  
PO Box 1451  
Alexandria, VA 22202-3514

Dated: March 19, 2005

  
Lutzka Zivny

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Applicant,  
PHILIP MILLENBAH  
5604 VALERIAN PLACE NE  
ALBUQUERQUE, NM 87111

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Plancom, Inc.

v.

Millenbah, Philip L.

Opposition Case Number: 91160201

Request for Suspension of Proceedings  
Pursuant to Rule 2.117

Pursuant to Rule 2.117 "Suspension of Proceedings" I respectfully request that the proceedings before the Board relative to the above referenced case be suspended. I currently have a civil case pending against Plancom, Inc. that may have a bearing on this trademark case. One of the underlying elements that will be determined by the litigation are my interests and rights in Plancom, Inc. which of necessity will include the right to the trademark. Because of the civil case may determine the underlying interests and rights in Plancom Inc., there is also the potential for conflicting judgments in these two separate proceedings.

Dated: January 24, 2005

By:



Philip L. Millenbah  
Applicant

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF San Francisco

I am over the age of eighteen (18) and am not a party to the within action.

On January 24, 2005, I served the foregoing document described as

PLAINTIFF'S REQUEST FOR SUSPENSION PENDING LITIGATION

on all interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope as follows:

United States Patent and Trademark Office  
Trademark and Appeal Board  
Attention: Cheryl Goodman  
PO Box 1451  
Alexandria, VA 22313-1451

  X   **(BY MAIL)** as follows: I caused such envelope(s) fully prepaid to be placed in the United States Mail in San Francisco County, California, on the date executed below. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

       **(BY FACSIMILE)**: By transmitting a true and correct copy thereof to


       **(BY NEXT-DAY DELIVERY)**: By causing such envelope to be delivered to the office of the addressee by overnight delivery via Federal Express or by other similar overnight delivery service.

  X   **(STATE)** I declare under penalty of perjury that the above is true and correct.

Executed on January 24, 2005, at San Francisco, California.

Lucie Zivny

Name-Printed



Signature

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF San Francisco

3 I am over the age of eighteen (18) and am not a party to the within action,

4 On January 24, 2005, I served the foregoing document described as:

5 PLAINTIFF'S REQUEST FOR SUSPENSION PENDING LITIGATION

6 on all interested parties in this action by placing a true and correct copy thereof enclosed in a  
7 sealed envelope as follows:

8 John L' Estrange, Jr.  
9 WRIGHT & L'ESTRANGE  
701 "B" Street, Suite 1550  
San Diego, CA 92101  
10 Facsimile No.: 619.231.6710

11  
12  X  (BY MAIL) as follows: I caused such envelope(s) fully prepaid to be placed in the  
13 United States Mail in San Francisco County, California, on the date executed below. I am  
14 aware that on motion of the party served, service is presumed invalid if postal cancellation  
date or postage meter date is more than one day after date of deposit for mailing in the  
affidavit.

15      (BY FACSIMILE): By transmitting a true and correct copy thereof to:

16  
17      (BY NEXT-DAY DELIVERY): By causing such envelope to be delivered to the office  
18 of the addressee by overnight delivery via Federal Express or by other similar overnight  
delivery service.

19  X  (STATE) I declare under penalty of perjury that the above is true and correct.

20 Executed on January 24, 2005, at San Francisco, California.

21  
22 Lucie Zivny

23 Name-Printed

  
Signature

1 GREGORY M. BURKE (Bar No.: 188891)

2 **BURKE ~ MOLINA**  
A Professional Law Corporation

3 1590 South Coast Highway  
4 Suite 7  
5 Laguna Beach, California 92651-3256  
6 telephone (949) 622-5567  
7 facsimile (949) 497-3945

8 Plaintiff,  
9 PHILIP MILLENBAH

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ORANGE, CENTRAL DIVISION

12 PHILIP MILLENBAH,

13 Plaintiff,

14 vs.

15 GEORGE H. KAELIN, III, an Individual;  
16 ENDEMAN, LINCOLN, TUREK &  
17 HEATER, a California Limited Liability  
18 Partnership; DARRELL DAUGHERTY, an  
19 Individual; MARY VIVANCO, an Individual;  
and DOES 1 through 20, inclusive,

20 Defendants.

Case Number:

COMPLAINT FOR DAMAGES BASED  
UPON LEGAL MALPRACTICE; BREACH  
OF FIDUCIARY DUTY; NEGLIGENT  
MISREPRESENTATION; FRAUD; AND  
CIVIL CONSPIRACY.

*[Jury Trial Demanded]*

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23  
24  
25 COMES NOW Plaintiff, Philip Millenbah, and for his claims and causes of actions,

26 states:

27 /////  
28 /////  
29

I.

FACTS GENERAL TO ALL CAUSES OF ACTION

1  
2  
3 1. Plaintiff, PHILIP MILLENBAH (*sometime referred to as* "Plaintiff" or  
4 "MILLENBAH"), is an individual and at all times mentioned herein was, and is, a resident of  
5 the County of San Francisco, State of California.

6 2. Plaintiff is informed and believes, and on that basis alleges, that Defendant,  
7 GEORGE H. KAELIN (*hereinafter referred to as* "Defendant," or "KAELIN"), is an individual  
8 and at all times mentioned herein was, and is, a resident of the County of San Diego, State of  
9 California.

10 3. Plaintiff is informed and believes, and on that basis alleges, that Defendant,  
11 ENDEMAN, LINCOLN, TUREK & HEATER (*hereinafter referred to as* "Defendant" or  
12 "ELTH"), is a Limited Liability Partnership, formed and operating under the laws of the State  
13 of California, with its principle place of business located in the County of San Diego, State of  
14 California.

15 4. Plaintiff is informed and believes, and on that basis alleges, that Defendant,  
16 DARRELL DAUGHERTY (*hereinafter referred to as* "Defendant" or "DAUGHERTY"), is an  
17 individual and at all times mentioned herein was, and is, a resident of the County of San  
18 Francisco, State of California.

19 5. Plaintiff is informed and believes, and on that basis alleges, that Defendant,  
20 MARY VIVANCO (*hereinafter referred to as* "Defendant" or "VIVANCO"), is an individual and  
21 at all times mentioned herein was, and is, a resident of the County of San Francisco, State of  
22 California.

23 6. Plaintiff is unaware of the true names and capacities of the Defendants named  
24 herein as Does 1 through 20 and, therefore, sues those Defendants by such fictitious names  
25 and capacities when they are ascertained. Plaintiff shall seek leave of Court to amend this  
26 Complaint to show the true name and capacities of Does 1 through 20 when their names and  
27 capacities are ascertained. And, since each of the fictitiously-named Defendants is responsible  
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1 in some manner for the occurrences herein alleged, and that Plaintiff's injuries and damages as  
2 herein alleged were proximately caused by said Defendants' acts, such Doe Defendants are in  
3 some manner liable to Plaintiff for the sums claimed due herein.

4 7. Plaintiff is informed and believes and on that basis allege that at all times  
5 mentioned herein, Defendants, and each of them, were, and remain, agents, servants, and  
6 employees of each other, acting in the course and scope of such employment, and within  
7 actual or apparent authority of such agency.

8 8. Furthermore, Plaintiff alleges, on information and belief, that at all times herein  
9 mentioned Defendants, and each of them, (a) were and remain the alter-egos of each other (b)  
10 that Defendants did and still do dominate, influence and control each other (c) there existed  
11 and still exists a unity of ownership between them (d) the individuality and separateness of  
12 each entity was and remains non-existent (e) each such entity was and remains a mere shell and  
13 naked framework which the other Defendants used and still use to conduct their business  
14 affairs (f) that each such entity was and remains inadequately capitalized and, (g) that an  
15 injustice and fraud upon Plaintiff will result if the theoretical separateness of the Defendant  
16 entities is not disregarded and each such Defendant held liable for all relief being sought  
17 herein.

18 9. At all times mentioned herein, Defendants, and each of them, knowingly  
19 conspired, joined and participated with each other in the conduct herein alleged, and that each  
20 such Defendant is therefore liable with each other defendant for the conduct herein alleged  
21 and for the relief being sought herein.

22

23 II.  
24 JURISDICTION AND VENUE

25 10. This complaint sets forth causes of action and seeks damages and equitable  
26 relief within the general jurisdiction of this Court.

27

28

1 11. Venue is asserted against Defendants pursuant to California Code of Civil  
2 Procedure, Section 395.5; Orange County being where the agreement for the partnership was  
3 formed, which is the precursor for all claims.

4  
5 III.

6 FIRST CAUSE OF ACTION FOR LEGAL  
7 MALPRACTICE BASED ON NEGLIGENCE

8 (As Against KAELIN, ELTH, and Does 1 though 20)

9 12. Plaintiff re-alleges Paragraphs 1 through 11, inclusive, as set forth above and  
10 incorporate them herein by this reference.

11 13. The Defendants were hired by MILLENBAH and DAUGHERTY in or about  
12 September of 1999 to represent Plancom and Plancom, Inc. in regard to certain contract issues.

13 14. At all times mentioned herein, the Defendants were aware that (i) Plancom, Inc. is  
14 a California corporation; (ii) Plancom, Inc. was controlled and governed by a partnership –  
15 Plancom – created by oral agreement between MILLENBAH and DAUGHERTY; and (iii)  
16 MILLENBAH was a Director and Managing Principal of Plancom, Inc.

17 15. In addition to the representation of MILLENBAH as a partner of Plancom, and  
18 Director and Managing Principal of Plancom, Inc., the Defendants represented MILLENBAH  
19 through an implied contract, the existence and terms of which were manifested by the conduct of  
20 the Defendants in giving MILLENBAH personal legal advice.

21 16. During the course of the Defendants' legal representation the Defendants failed  
22 to exercise reasonable care and skill and negligently advised MILLENBAH to accept a position  
23 with Metricom, a client of Plancom, Inc. MILLENBAH was informed that accepting the  
24 employment would neither affect his interest in Plancom or Plancom, Inc., nor jeopardize the  
25 business relationship between Plancom, Inc. and its client, Metricom.

26 /////  
27 /////

1           17.    The negligent advice was communicated by the Defendants to MILLENBAH  
2 through DAUGHERTY. As such, the legal advice was foreseeably transmitted to and relied  
3 upon by MILLENBAH, who was the intended beneficiary of the legal advice.

4           18.    The legal advice given MILLENBAH to accept the position at Metricom was not  
5 only negligent, but was part of a plan to oust MILLENBAH from the company he founded and  
6 built. MILLENBAH justifiably relied upon the advice, accepted the position with Metricom, and  
7 as a consequence thereof, was surreptitiously ejected from the Board of Directors for Plancom,  
8 Inc., and lost the interest he held in the company. MILLENBAH discovered the facts giving rise  
9 to his claims at a mediation held on or about May 13, 2003.

10           19.    The Defendants later represented Plancom, Inc., and DAUGHERTY in an action  
11 filed by MILLENBAH against the company and individual defendants. During the litigation the  
12 Defendants stated on the record that by accepting the position at Metricom, MILLENBAH was  
13 actively competing with Plancom, Inc. and through such action he had abandoned any interest he  
14 held in Plancom, Inc.

15           20.    As a direct and proximate cause of the negligent conduct described above,  
16 MILLENBAH has lost substantial benefits with the company he founded and built including,  
17 but not limited to, partnership payments, stocks, stock options, profits, and other fringe  
18 benefits in an amount in excess of the jurisdictional threshold of this Court, the precise  
19 amount will be proven at trial.  
20

21                                 IV.

22                     SECOND CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

23                     (As Against KAELIN, ELTH, and Does 1 though 20)

24           21.    Plaintiff re-alleges Paragraphs 1 through 20, inclusive, as set forth above and  
25 incorporate them herein by this reference.

26           22.    By virtue of the attorney-client relationship that existed between Defendants and  
27 MILLENBAH, whether as a partner of Plancom, and Director and Managing Principal of  
28

1 Plancom, Inc., or implied by conduct, Defendants owed to MILLENBAH a fiduciary duty.

2 23. In advising MILLENBAH to accept the position at Metricom the Defendants  
3 failed to disclose the areas of potential conflict between the legal interests of Plancom, Inc. and  
4 the interests of MILLENBAH and further failed to advise MILLENBAH of the possibility and  
5 desirability of seeking independent legal advice.

6 24. As a direct and proximate result of the Defendants' dual representation and  
7 breach of the duty of care and of fiduciary duties MILLENBAH has lost substantial benefits  
8 with the company he founded and built including, but not limited to, partnership payments,  
9 stocks, stock options, profits, and other fringe benefits in an amount in excess of the  
10 jurisdictional threshold of this Court, the precise amount will be proven at trial.

11  
12 V.

13 THIRD CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

14 (As Against KAELIN, ELTH, and Does 1 though 20)

15 25. Plaintiff re-alleges Paragraphs 1 through 24, inclusive, as set forth above and  
16 incorporate them herein by this reference.

17 26. The legal advice given by the Defendants to Plancom, Inc. or DAUGHERTY  
18 (MILLENBAH could accept the employment offer from Metricom without adversely affecting  
19 his interest in Plancom or Plancom, Inc.) was specifically intended for MILLENBAH.

20 27. MILLENBAH justifiably relied on such advice given the confidence reposed in  
21 the Defendants as legal counsel and in consequence thereof, MILLENBAH was forced out of  
22 the company he founded and built under the guise that he abandoned his interest in the company  
23 by accepting employment adverse to the company.

24 28. MILLENBAH accepted the position only on the advice of Defendants and would  
25 not have so acted without such advice.

26 29. As a direct and proximate cause of the negligent misrepresentation described  
27 above, MILLENBAH has lost substantial benefits with the company he founded and built  
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1 including, but not limited to, partnership payments, stocks, stock options, profits, and other  
2 fringe benefits in an amount in excess of the jurisdictional threshold of this Court, the precise  
3 amount will be proven at trial.

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5 VI.

6 FOURTH CAUSE OF ACTION FOR FRAUD

7 (As Against KAELIN, ELTH, and Does 1 though 20)

8 30. Plaintiff re-alleges Paragraphs 1 through 29, inclusive, as set forth above and  
9 incorporate them herein by this reference.

10 31. In advising MILLENBAH to accept the position at Metricom the Defendants  
11 failed to disclose the areas of potential conflict between the legal interests of Plancom, Inc. and  
12 the interests of MILLENBAH and further failed to advise MILLENBAH of the possibility and  
13 desirability of seeking independent legal advice.

14 32. Defendants performed the acts herein alleged with the intent to deceive and  
15 defraud MILLENBAH. The Defendants further concealed from MILLENBAH the intention of  
16 DAUGHERTY to wrongfully exclude MILLENBAH from the partnership and his interest in  
17 the company. The Defendants participated in the scheme to defraud MILLENBAH in exchange  
18 for an interest in Plancom, Inc.

19 33. At the time these failures to disclose and suppressions of fact occurred  
20 MILLENBAH was ignorant of the existence of the facts that defendant suppressed and failed to  
21 disclose. If MILLENBAH had been aware of the existence of the facts not disclosed by  
22 Defendants, MILLENBAH would not have jeopardizing his interest in Plancom, Inc. by  
23 accepted the position at Metricom.

24 34. As a direct and proximate result of the Defendants' dual representation and  
25 breach of the duty of care and of fiduciary duties MILLENBAH has lost substantial benefits  
26 with the company he founded and built including, but not limited to, partnership payments,  
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1 stocks, stock options, profits, and other fringe benefits in an amount in excess of the  
2 jurisdictional threshold of this Court, the precise amount will be proven at trial.

3 35. Furthermore, the conduct of the Defendants as described herein was fraudulent  
4 thereby entitling MILLENBAH to an award of punitive damages against Defendants, and  
5 each of them, in an amount appropriate to punish and deter such future conduct.

6  
7 VII.

8 FIFTH CAUSE OF ACTION FOR CONSPIRACY

9 (As Against KAELIN, ELTH, DAUGHERTY, VIVANCO and Does 1 through 20)

10 36. Plaintiff re-alleges Paragraphs 1 through 35, inclusive, as set forth above and  
11 incorporate them herein by this reference.

12 37. The Defendants, and each of them, knowingly and willfully conspired and agreed  
13 among themselves to force MILLENBAH out of the partnership and the company.

14 38. In furtherance of the conspiracy, the Defendants advised and recommended that  
15 MILLENBAH accept the position at Metricom "to learn information about Metricom;" the truth  
16 of the matter is that the Defendants planned, and agreed amongst themselves in advance, to use  
17 MILLENBAH's decision to accept the employment as a basis for claiming that said action  
18 constituted an implied abandonment of any and all interest MILLENBAH had in the partnership  
19 or company.

20 39. KAELIN and ELTH participated in the scheme to defraud MILLENBAH in  
21 exchange for an interest in Plancom, Inc.

22 40. As a direct and proximate result of the Defendants' wrongful acts,  
23 MILLENBAH has lost substantial benefits with the company he founded and built including,  
24 but not limited to, partnership payments, stocks, stock options, profits, and other fringe  
25 benefits in an amount in excess of the jurisdictional threshold of this Court, the precise  
26 amount will be proven at trial.

1           41. Furthermore, the conduct of the Defendants as described herein was fraudulent  
2 thereby entitling MILLENBAH to an award of punitive damages against Defendants, and  
3 each of them, in an amount appropriate to punish and deter such future conduct.

4  
5   VIII.

6   PRAYER

7           WHEREFORE, Plaintiffs pray judgment against Defendants, and each of  
8 them, as follows:

- 9                               1. For actual damages in an amount according to proof;  
10                              2. Compensatory damages in an amount according to proof;  
11                              3. Costs of suit incurred;  
12                              4. For Exemplary Damages on the Fourth and Fifth Cause of Action to  
13 punish and deter similar conduct;  
14                              5. For any further relief the court deems proper.

15  
16 Dated: May 11, 2004

17  
18 By: \_\_\_\_\_  
19 Gregory Burke, Esq., for Plaintiff  
20 PHILIP MILLENBAH

1 GREGORY M. BURKE (Bar No.: 188891)

2 **BURKE ~ MOLINA**  
A Professional Law Corporation

3 1590 South Coast Highway  
Suite 7  
4 Laguna Beach, California 92651-3256  
5 telephone (949) 622-5567  
6 facsimile (949) 497-3945

6 Plaintiff,  
7 PHILIP MILLENBAH

8  
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN DIEGO, JUSTICE CENTER  
11

12  
13 MILLENBAH & CO., LLC,

14 Plaintiff,

15 vs.

16 PLANCOM, INC., a California Corporation;  
17 DARRELL DAUGHERTY, an Individual;  
and DOES 1 through 20, inclusive,

18 Defendants.  
19

Case Number:

COMPLAINT FOR DAMAGES BASED  
ON BREACH OF ORAL CONTRACT  
AND ACCOUNTING.

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25 COMES NOW Plaintiff, MILLENBAH & CO., and for its claims for damages hereby  
26 alleges:  
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I.

FACTS GENERAL TO ALL CLAIMS

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3 1. Plaintiff, MILLENBAH & CO., LLC, ("MILLENBAH & CO.") is, and at all  
4 time herein mentioned was, a Limited Liability Company, organized and existing under the  
5 laws of New Mexico, with its principal place of business located in Albuquerque, New Mexico,  
6 authorized to conduct business in California.

7 2. Defendant, PLANCOM, INC. ("PLANCOM") is, and at all times herein  
8 mentioned was, a corporation, organized and existing under the laws of California, with its  
9 principal place of business in San Diego County, California.

10 3. Defendant, DARRELL DAUGHERTY ("DAUGHERTY"), is an individual  
11 and at all times mentioned herein was a resident of San Diego County, California.

12 4. Plaintiff is ignorant of the true names and capacities of defendants sued herein  
13 as DOES 1-20, inclusive and therefore sues these defendants by such fictitious names. Plaintiff  
14 will amend this complaint to allege their true names and capacities when ascertained.

15 5. Plaintiff is informed, believes and thereon alleges Defendant PLANCOM is,  
16 and at all times herein mentioned was, a mere shell and sham without capital, assets, stock, or  
17 stockholders. Defendant PLANCOM was conceived, intended, and used by defendant  
18 DAUGHERTY as a device to avoid individual liability and for the purpose of substituting a  
19 financially insolvent corporation in the place of himself. Furthermore, Defendant  
20 PLANCOM is, and at all times herein mentioned was, so inadequately capitalized that,  
21 compared with the business to be done by the defendant and the risks of loss, its capitalization  
22 was trifling. There is such unity of interest and ownership that the separate personalities of  
23 defendant PLANCOM and its sole shareholder, defendant DAUGHERTY, no longer exist  
24 and if the acts complained herein are treated as those of the corporation alone, an inequitable  
25 result will follow.

26 6. This action is subject to the provisions of Civil Code or Section 395(b) of the  
27 Code of Civil Procedure.  
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II.

FIRST CAUSE OF ACTION FOR BREACH OF ORAL CONTRACT  
[AS AGAINST ALL DEFENDANTS]

7. Plaintiff incorporates paragraphs 1 through 6 as if alleged in full herein.

8. In or about July of 1995, Phillip Millenbah entered into an oral agreement with defendant DAUGHERTY to share equally the net profits received on all wireless and site development contracts obtained by the partnership formed between Phillip Millenbah and defendant DAUGHERTY.

9. At that time Phillip Millenbah had been doing business as Plancom pursuant to and in accordance with the fictitious business statement filed. Phillip Millenbah and defendant DAUGHERTY later agreed to form a corporation for tax reasons. On or about April 8, 1996, PLANCOM was incorporated. PLANCOM assumed the obligations of the partnership and agreed to pay Phillip Millenbah fifty-percent (50%) of the net revenues received on the wireless and site development contracts assigned to PLANCOM; contracts PLANCOM would not have received without the efforts, personal relationships and professional expertise of Phillip Millenbah.

10. The agreement between Phillip Millenbah and defendant PLANCOM was later assigned to MILLENBAH & CO. on or about July 15, 1998. The assignment was acknowledged and agreed to by PLANCOM by and through defendant DAUGHERTY, its President and CEO, and subsequent payments on the agreement were made to MILLENBAH & CO.

11. Defendant DAUGHERTY surreptitiously issued all stock to himself, but upon being discovered agreed to issue 50% of the outstanding shares to Phillip Millenbah. The shares were never formally issued and defendant DAUGHERTY deceitfully ousted Phillip Millenbah from the corporation in or about January of 2002.

1 12. Shortly after defendant DAUGHERTY ousted Phillip Millenbah, PLANCOM  
2 ceased making payments to MILLENBAH & CO. on the contracts, thus breaching the oral  
3 agreement.

4 13. MILLENBAH & CO. has performed all conditions, covenants, and promises  
5 required on its part to be performed in accordance with the terms and conditions of the  
6 agreement except where prevented by the acts of the defendants.

7 14. As a result of defendant's breach of the agreement, MILLENBAH & CO. has  
8 been damage in an amount currently unknown, but in excess of the jurisdictional minimum of  
9 this court, which shall be proven at the time of trial and through an accounting as requested  
10 herein.

11  
12 II.

13 SECOND CAUSE OF ACTION FOR ACCOUNTING

14 [AS AGAINST PLANCOM AND DOES 1 - 20]

15 15. Plaintiff incorporates paragraphs 1 through 14 as if alleged in full herein.

16 16. MILLENBAH & CO. and defendant PLANCOM, by and through the  
17 assignment by Phillip Millenbah to MILLENBAH & CO., agreed to share equally in the net  
18 profits of all wireless and site development contracts. Defendant PLANCOM's obligations  
19 under the agreement included the duty to care for and protect in all particulars the  
20 MILLENBAH & CO.'s financial interests and property in connection with those contracts, to  
21 provide periodic statements of accounts of all moneys and property from the contracts, and to  
22 pay over to MILLENBAH & CO. fifty-percent (50%) of the net profits received from the  
23 contracts.

24 17. Between January 2002 and to the present date, defendant PLANCOM has  
25 received revenues on the aforementioned contracts a portion of which is due MILLENBAH  
26 & CO.

1 18. The amount of money due from defendant PLANCOM to MILLENBAH &  
2 CO. is unknown and cannot be ascertained without an accounting of the receipts and  
3 disbursements from the aforementioned contracts. MILLENBAH & CO. is informed and  
4 believes and thereon alleges that the amount owed, however, exceeds the sum of \$500,000.

5 19. In or about January of 2004, MILLENBAH & CO. demanded that defendant  
6 account for the aforementioned net revenues received on the contracts and pay the amount  
7 found due to MILLENBAH & CO., but defendant PLANCOM has failed and refused, and  
8 continues to fail and refuse, to render the accounting and pay MILLENBAH & CO.

9 20. MILLENBAH & CO. therefore requests an accounting from PLANCOM.  
10

11 WHEREFORE Plaintiff prays judgment against the defendants as follows:

- 12 1. Compensatory damages on the breach of agreement in an amount to be proven  
13 at the time of trial;
- 14 2. For an accounting between plaintiff and defendant;
- 15 3. For payment over to plaintiff of the amount due from defendant as a result of  
16 the accounting, and interest on that amount from and after January 1, 2002;
- 17 4. For costs of suit herein incurred; and
- 18 5. For such other and further relief as the court may deem proper.  
19

20 Dated: January 18, 2005

21 By: \_\_\_\_\_

22 Gregory Burke, Esq., for Plaintiff  
23 MILLENBAH & CO.  
24  
25  
26  
27  
28

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: March 4, 2005

Opposition No. 91160201

PlanCom, Inc

v.

Millenbah, Philip L.

**Cheryl Goodman, Interlocutory Attorney:**

On January 31, 2005 the Board suspended proceedings pending the appointment of new counsel for opposer. On January 25, 2005, opposer filed its substitution of new counsel.<sup>1</sup> On February 2, 2005, opposer filed a request for stay pending decision on applicant's motion to suspend for civil action, and on February 15, 2005, applicant filed his opposition to opposer's motion, requesting that the Board consider its motion to suspend for civil action instead. Applicant provided an unsigned copy of his one page request to suspend for civil action with his response.

Applicant is advised that a signed copy of the motion to suspend for civil action, accompanied by a certificate of service has never been associated with the proceeding file. Additionally, an unstipulated request to suspend for civil

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<sup>1</sup> The Board has updated its records to reflect the correspondence address of new counsel.

action must be accompanied by a copy of the civil complaint.  
See TBMP Section 510.02(a).

In view thereof, applicant is allowed until TWENTY DAYS from the mailing date of this order to provide a signed copy of his motion to suspend for civil action with accompanying certificate of service and certificate of mailing and/or proof of receipt by the Office. The motion should be accompanied by a copy of the civil complaint so that the Board can determine whether it will have a bearing on the proceedings. In the event that these papers are not filed, the Board will proceed to consider the other issues raised by the parties in opposer's motion to stay, filed February 2, 2005, and applicant's response in opposition thereto.

Proceedings remain otherwise suspended.