

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

In the matter of Trademark and Service Mark Registration
2,885,485 for the mark "RUFUS", registered on September 21, 2004
75136806

Andre Fischer, an individual,)
and Bobby Jan Watson,)
an individual,)
Petitioners,)
v.)
Tony Maiden, an individual,)
Registrant.)

Cancellation No.:

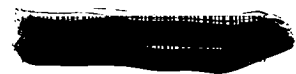
05/10/2006 GTHOMAS2 00000025 2885485
01 FC:6401 600.00 DP

COMMISSIONER FOR TRADEMARKS
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION FOR CANCELLATION

Andre Fischer, an individual, whose principal residence address is 13754 Erwin Street, Valley Glen, California 91401, and Bobby Jan Watson, an individual whose principal residence address is 1148 West 2nd Street, San Pedro, California 90731, who have formed a California general partnership (hereafter jointly "Petitioners") believe that they will be damaged by Registration No. 2,885,485 of Tony Maiden (hereafter "Tony Maiden") as it relates to musical sound recordings on phonograph, compact disk and tape in International Class 9 and entertainment, namely, live performances by a musical band in International Class 41; hereby petition to cancel the registration of the mark "RUFUS" for these products and services.

ROZSA LAW GROUP PC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990



1 As grounds therefor, Petitioners allege that:

2 1. The original group was formed in Chicago and called "The American Breed"
3 which consisted of Charles Colbert Jr., Al Ciner, Gary Luizo and Leo Graziano. They
4 were a very popular touring and club band, the band recorded a national hit called "Bend
5 Me Shape Me" in the late sixties and performed national concert tours. The band was
6 frequently seen on Dick Clark's American Bandstand. The group reformed in 1969 and
7 changed their name to "Ask Rufus", but the majority of the time the word "Ask" was
8 dropped.
9

10
11 2. The following year, 1970 the group signed a new recording contract with Epic
12 Records. Their first and only album for Epic was released in 1971 and was titled "Havana
13 Moon," their first single was "Brand New Day" produced by Sandy Linzer. The personnel
14 consisted of co-leader Charles Colbert Jr., Al Ciner co-leader, Leo Graziano, Jimmy Stella,
15 Paulette Me Williams, Kevin Murphy and Willy Weeks. The groups manager was Chicago
16 lawyer Barry Fox and their public relations representative was Mr. Gary Stromberg of the firm
17 Gibson and Stromberg in Los Angeles. Between 1971 and 1972 Willy Weeks and jimmy
18 Stella exited the band and were replaced by Dennis Belfield and Ron Stockert.
19

20
21 3. Andre Fischer was made a member by Charles Colbert Jr. late in 1972 replacing
22 retiring member Leo Graziano. In early 1973 Andre Fischer scouted and recruited vocalist
23 Yvette Stevens /aka/Chaka Khan to replace retiring vocalist Paulette Me Williams. The band
24 was no longer managed by attorney Barry Fox. Band leader Charles Colbert Jr. became
25 temporary manager of the group helping to orchestrate a new recording contract for Rufus
26 with ABC Dunhill Records in Los Angeles. The band signed a new contract in early 1973,
27
28

1 and released their first ABC album titled "RUFUS" in 1973. The members were Al Ciner,
2 Andre Fischer, Dennis Belfield, Ron Stockert, Kevin Murphy, Chaka Khan and Charles
3 Colbert as member/advisor. The first singles were "Who's Ever Thrilling You Is Killing Me"
4 and "Maybe My Baby Done Made Some Other Plans" which had moderate success at radio
5 and generated a successful mini tour.
6

7
8
9 4. The second album for ABC Dunhill was recorded in late 1973 and released in
10 1974 and titled "Rags To Rufus" which featured the exact same personnel from the 1973
11 "RUFUS" album. By 1974 all members except Charles Colbert Jr. had moved to Los
12 Angeles from Chicago. After the release of the first single "Tell Me Something Good" group
13 members Ron Stockert, Al Ciner and Dennis Belfield officially quit the band in mid 1974.
14 This left Andre Fischer, Chaka Khan, Kevin Murphy and member advisor Charles Colbert as
15 remaining members. The second album "Rags To Rufus" earned a gold album and a gold
16 single for "Tell Me Something Good," which also earned the group their first Grammy
17 Award, there were also additional radio hits from the same album, "You Got The Love,"
18 "Right Street Wrong Direction" and "Smoking Room."
19
20

21
22 5. At this juncture Andre Fischer was given the responsibility of replacing band
23 members, co producing & functioning as co-op band leader. Andre recruited and hired as
24 independent contractors Bobby Watson on bass, Nate Morgan on piano and Tony Maiden on
25 guitar. This new Rufus configuration recorded and released a third ABC Dunhill album
26 entitled "Rufusized" late in 1974. Nate Morgan was fired by Andre Fischer late in 1974 and
27 not replaced until 1976. The Rufusized album earned gold and platinum status with multiple
28

1 hit singles "Stop On By," "Packed My Bags," "I'm A Woman," "Please Pardon Me" and
2 "Once You Get Started." The group hires Robert Ellis Silverstein as their manager, who at
3 that time also managed Ron Wood of the "Rolling Stones," Billy Preston, Meatloaf and actor
4 Lloyd Haynes.

5
6 Fact: By 1973 Charles Colbert Jr. had stopped performing live with the band but had
7 never officially quit or was relieved of his common law ownership of the name Rufus
8 and still advised & consulted the group.
9

10
11 6. In 1975 Rufus releases their forth album "Rufus featuring Chaka Khan" with
12 Andre Fischer, who was functioning as co producer of the band, Chaka Khan, Kevin Murphy
13 and by 1975 independent contractor co producer Bobby Watson and I.C. Tony Maiden were
14 considered group members, but they had not incurred any of the encumbrances of the original
15 group of Andre, Charles, Chaka and Kevin. The album "Rufus featuring Chaka Khan" sells
16 gold with hit singles "Sweet Thing," "Dance with Me," "Fools Paradise" and "Have A Good
17 Time." The group is now very popular and selling many records.
18

19
20 7. Through 1974, 1975 and 1976, the group performed nationally & internationally as
21 an opening act for the Rolling Stones, Stevie Wonder, The Who, Elton John, while also
22 headlining their own shows with such acts as the the Commodores, George Clinton &
23 Parliament Funkadelic, Joe Cocker, La Belle, Ohio Players, Earth Wind & Fire, etc.
24

25 8. Rufus performed on national and International television shows: Bob Hope
26 Special in Central Park, multiple appearances on the Mike Douglas Show, Joey Heatherton
27 Show, Dick Clark's American Bandstand, multiple appearances on Soul Train, variety shows
28

1 in England, Germany, France, Holland and Japan, multiple appearances on In Concert for
2 ABC television, multiple appearances on The Midnight Special NBC-TV, etc.

3
4 9. In late 1976 the fifth ABC Rufus album "Ask Rufus" was recorded and released
5 in early 1977 with members Andre Fischer, Bobby Watson, Chaka Khan, Kevin Murphy,
6 Tony Maiden and newly acquired independent contractor David Wolinski. Produced by
7 Rufus/Andre Fischer and co producer Bobby Watson, the album sells gold and platinum, with
8 hit singles "At Midnight," "Hollywood" and "Everlasting Love." In 1977 Andre Fischer goes
9 on Hiatus.

10
11 10. In 1978 The sixth album for ABC entitled "Street Player" was recorded and
12 released. The personnel was Bobby Watson, Chaka Khan, Kevin Murphy, Tony Maiden and
13 independent contractors David Wolinski and Moon Calhoon. The album went gold with
14 minor success for the single "Stay." There was no significant touring that year.

15
16
17 11. In 1979 the last album for ABC entitled "Numbers" was recorded by Rufus
18 without Chaka Khan and Andre Fischer still on leave. The personnel was Bobby Watson,
19 Tony Maiden, Kevin Murphy and independent contractor David Wolinski, independent
20 contractor Moon Calhoon was replaced by independent contractor John Robinson. The album
21 did not sell nor was there any significant radio airplay for any of the songs from that album
22 and there were no tours to support that album.

23
24 12. In 1979 ABC Dunhill Records, their artists and existing catalog assets were
25 absorbed by MCA Records Inc. In 1979 Rufus recorded and released their first album for
26 MCA Records entitled "MasterJam," The album went gold with one successful single "Do
27 You Love What You Feel." The band toured between 1979 and 1980 to support that release.
28

1 In 1980 Chaka Khan quit the band and signed a solo recording deal with Warner Brothers
2 Records. In 1980 one more Rufus album "Party Till Your Broke" was recorded for MCA-
3 Records without Chaka Khan. That album had no sales or radio airplay, subsequently Rufus's
4 contract was terminated by MCA.
5

6 No Rufus recording or touring activity 1981.
7

8 Fact: Andre Fischer was still on hiatus and never formally, informally or legally quit,
9 retired or otherwise. He was never contacted by or through any group member,
10 manager, attorney, court document, court service, record company, agent or band
11 representative, informing him of any form of termination or disassociation from the
12 band "RUFUS" or its common law trademark "RUFUSiM," of which he also shared
13 with Charles Colbert Jr.
14

15 13. In 1982 Rufus is signed to Warner Brothers Records for two albums. One album
16 is recorded with Chaka Khan entitled "Live At The Savoy" which was a live compilation of
17 past Rufus hits from their Second, third, forth and fifth ABC Dunhill albums, featuring a
18 newly recorded studio single entitled "Ain't Nobody". The single "Ain't Nobody" from "Live
19 At The Savoy" earns a Grammy but only Chaka Khan tours as a solo artist, taking advantage
20 of the success of "Ain't Nobody", but without Rufus. Rufus records and releases a second
21 album for Warner's "Seal In Red," released without Chaka, and with the addition of
22 independent contractor singer Ivan Neville. That album doesn't sell or garner any radio
23 airplay and generated no live tours. The personnel for both albums were: Bobby Watson,
24 Kevin Murphy, Tony Maiden, independent contractor David Wolinski, independent
25 contractor John Robinson, independent contractor Ivan Neville for "Seal In Red" only. For
26 all practical purposes this was the end of Rufus Featuring Chaka Khan.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. In 1983 Rufus; Andre Fischer, with Bobby Watson and Tony Maiden perform club and concert dates as The Bobby Watson Group with guest performers; Helen Lowe, Maxayn Lewis, Wornell Jones, Ivan Neville, Donald Griffen, Michael Paulo and Michael Ruff.

15. In 1984 Rufus; Andre Fischer, Bobby Watson and Tony Maiden, tour California and Japan with Chaka Khan. The tour was billed as "Rufus featuring Chaka Khan," and as "Chaka Khan and Rufus." The tour performed in Los Angeles at the Universal Amphitheater, San Francisco at the Warfield theater, Oakland, Bakersfield, San Jose and multiple concerts dates in Tokyo at the Sun Plaza, "Club Live In," and concerts in Osaka and Nagoya, Japan.

16. Late in 1984, without Chaka Khan, Rufus; Andre Fischer as band leader, Bobby Watson and Tony Maiden and guest musicians, return to Tokyo and perform forty nine concerts dates over a one month period. Every concert billed as "RUFUS," with Charles Colbert Jr. acting as advisor.

17. 1985 there is no recording or live performance activities for "RUFUS." In 1986 there is no recording or live performance activities for "RUFUS." In 1987 there is no recording or live performance activities for "RUFUS." In 1988 there is no recording or live performance activities for "RUFUS." In 1989 there is no recording or live performance activities for "RUFUS." In 1990 there is no recording or live performance activities for "RUFUS." In 1991 there is no recording or live performance activities for "RUFUS." In 1992 there is no recording or live performance activities for "RUFUS." In 1993 there is no recording or live performance activities for "RUFUS." In 1994 there is no recording or live performance activities for

1 "RUFUS." In 1995 there is no recording or live performance activities for
2 "RUFUS." IN 1996 there is no recording or live performance activities for
3 "RUFUS." In 1997 there is no recording or live performance activities for
4 "RUFUS." In 1998 there is no recording or live performance activities for
5 "RUFUS." In 1999 there is no recording or live performance activities for
6 "RUFUS."
7

8
9 18. In February 2000 Chaka Khan and a group calling itself Rufus is filmed and
10 performs the song "Tell Me Something Good" for the Jimi Hendrix Experience Museum
11 Concert, guest musicians mixed with Bobby Watson and Tony Maiden were retired member
12 Kevin Murphy and independent contractors Vinnie Caliuto and Brian Simpson.

13
14 19. On September 1st through October 8th, 2001 Bobby Watson, Tony Maiden,
15 Kevin Murphy, Independent contractors David Wolinski and John Robinson, along with
16 Chaka Khan, participate in a tour with Earth Wind & Fire, billed as Rufus Featuring Chaka
17 Khan reunion.

18
19 20. On June 24th, 2002 Bobby Watson, Tony Maiden, retired member Kevin
20 Murphy and independent contractors David Wolinski, John Robinson and Chaka Khan
21 perform as Rufus Featuring Chaka Khan for a corporate concert for Time Warner Inc. in
22 Burbank CA. Member Andre Fischer was not contacted by any group member or
23 management to participate in said performance, except from fellow member Bobby Watson.

24
25 21. On September 14, 2002 Chaka Khan and a band consisting of Tony Maiden,
26 Kevin Murphy, independent contractor David Wolinski and two members of Chaka Khan's
27 band, performed for a special dinner show for the Congressional Black Caucus in
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Washington D.C. 22. On September 14, 2002 Rufus: Bobby Watson, Andre Fischer, Charles Colbert Jr. with guest vocalist Niki Haris and independent contractor Frank McCombs, Fred Jenkins, Sy Smith and Donna Taylor, performed to a full house of five hundred people at BB Kings Club in Universal City in California.

22. Petitioners allege that since at least as early as September 14, 2002, Petitioners have continuously adopted and used in interstate commerce the service mark "RUFUS" in connection with entertainment services in the nature of live performances by a musical group. Petitioners applied for a federal service mark to protect this mark on April 11, 2005. The application was assigned Serial No. 76/635,787.

23. Petitioners further allege that on April 11, 2005 they applied to register the trademark "RUFUS" in conjunction with sound and film recordings, namely, prerecorded phonograph records, audio tapes, compact disks, videotapes, video cassette tapes, digital and audio tapes, compact video disks, and digital video disks, all featuring musical entertainment based upon a bona fide intent to use in International Class 9. The application was assigned Serial No. 76/635,846.

24. On November 9, 2005, the Trademark Office issued an Office Action rejecting the Applicants' trademark application 76/635,846 based upon Registration 2,885,485. On November 15, 2005, the Trademark Office issued an Office Action rejecting the Applicants' service mark application 76/635,787 based upon prior Registration 2,885,485.

25. Registration 2,885,485 was issued from Application Serial No. 75/136,805

1 filed on July 19, 1996 by Tony Maiden alleging continuous use in interstate commerce
2 from 1973 to the present for both musical sound recordings on phonograph, compact disk
3 and tape in International Class 9 and entertainment, namely, live performances by a
4 musical band in International Class 41.

5
6
7 26. As set forth in Paragraphs 1-21 above, on information and belief, the
8 application filed by Tony Maiden was false for the following reasons:

9 26.01 Tony Maiden never individually performed as Rufus. At most,
10 Tony Maiden was a member of different bands, all of which jointly performed as
11 "RUFUS".

12 26.02 Tony Maiden never had any authorization to individually use the
13 name "RUFUS" and no right to use and register and name "RUFUS" in his own name.

14 26.03 As set forth in Paragraphs 1-21 above, there was no use of the name
15 "RUFUS" at all by anyone from 1985 through 1999 and in fact, Tony Maiden only
16 performed as part of a group on isolated instances in the years 2000, 2001 and 2002. On
17 information and belief, there has been no use of the name "RUFUS" by Tony Maiden for
18 the years 2003, 2004, 2005 and 2006 to date.

19
20
21 27. For the reasons as set forth in Paragraphs 1-21 and Paragraph 26,
22 subparagraphs 26.01 through 26.03 above, Petitioners allege that the application filed by
23 Tony Maiden alleging continuous use in interstate commerce of the trademark and
24 service mark "RUFUS" from 1973 through the present is a fraud on the Trademark
25 Office in that there was no such continuous use from 1973 to the present and any isolated
26 use that was made by Tony Maiden was as part of a group and not as an individual
27 having the right to use and register the name in his own right and capacity.
28

1 28. Petitioners have expended considerable effort and expense in promoting
2 their service mark "RUFUS" for entertainment services in the nature of live
3 performances by a musical group, with the result that the public has come to know, rely
4 upon and recognize the services of Petitioners by such mark. Petitioners have an
5 exceedingly valuable goodwill established in the mark "RUFUS".
6

7
8 29. Petitioners further allege that Tony Maiden and/or Tony Maiden's wife
9 have called several venues over the past several years demanding that they immediately
10 cease and desist from employing the Petitioners to perform as "RUFUS" on the grounds
11 that Tony Maiden is the rightful owner of the trademark "RUFUS". As a result,
12 Petitioners have been very substantially damaged by having several major entertainment
13 concerts as a result of the actions of Tony Maiden and/or his wife.
14

15
16 30. If Tony Maiden is permitted to retain the registration sought to be
17 cancelled, and thereby, the prima facie exclusive right to use in commerce the mark
18 "RUFUS" on very similar products in International Class 9 and very similar services in
19 International Class 41, based upon all the reasons as set forth in this Petition to Cancel,
20 confusion in the trade is likely to result from any concurrent use of Petitioner's mark and
21 that of Tony Maiden, all to the detriment of Petitioners, who have expended
22 consideration sums and effort in promoting their mark.
23

24
25 31. Petitioners allege that at no time in the past four years has Tony Maiden
26 ever used the mark "RUFUS" and at no time during the years 1985 through 1999 did
27 Tony Maiden ever use the mark "RUFUS" and therefore, he has had no continuous use in
28 interstate commerce.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

32. Further, Petitioners allege that Tony Maiden never had the right to use and register the trademark "RUFUS" in his own individual name and that he only performed as part of a group granting him no individual rights to use the name "RUFUS".

33. In the event Tony Maiden should seek to exercise the rights obtained through the registration sought to be cancelled and in fact in the future begins to distribute music or engage in live performances under the mark "RUFUS", purchasers are likely to consider the products and services of Tony Maiden sold in conjunction with the mark "RUFUS" as emanating from Petitioners, resulting in the loss of sales to the Petitioners.

34. Concurrent use of the mark by Tony Maiden and Petitioners may result in irreparable damage to Petitioners' reputation and goodwill, if the products and services sold by Tony Maiden are inferior, since purchasers are likely to attribute the source of Tony Maiden's services to the Petitioners.

35. If Tony Maiden is permitted to retain the registration sought to be cancelled, a cloud will be placed upon Petitioners' title in and to their trademark and service mark "RUFUS" and on the Petitioners' right to enjoy the free and exclusive use thereof in connection with the providing and sale of the products and services under the trademark "RUFUS", all to the great injury of Petitioners.

36. Further, because of the fraudulently obtained registration sought to be cancelled herein by Tony Maiden, Petitioners are precluded from obtaining their own

1 federal registration for their mark "RUFUS", both in conjunction with goods in
2 International Class 9 and services in International Class 41, as discussed in pending
3 Applications 76/635,846 and 76/635,787, all to the great detriment of Petitioners.
4

5
6 WHEREFORE, Petitioners deem that they will be damaged by Registration
7 2,885,485 and petition for cancellation thereof.
8

9 A duplicate Petition for Cancellation is being filed herewith, along with the filing
10 fee required in § 2.6(a)(16) which is \$600.00 since there are two classes sought to be
11 cancelled.
12

13 In the event the Commissioner for Trademarks or the Trademark Trial and Appeal
14 Board should determine that any additional fee is due, then the Commissioner for
15 Trademarks and/or the Trademark Trial and Appeal Board is hereby authorized to charge
16 my Deposit Account No. 18-2222 for any additional fee required.
17
18

19 Respectfully submitted,
20 Andre Fischer and Bobby Jan Watson
A California General Partnership

21 Date: May 31, 2006

22 Thomas I. Rozsa
Thomas I. Rozsa
23 Registration No. 29,210
Attorney for Petitioners
24 18757 Burbank Boulevard
Suite 220
25 Tarzana, California 91356-3346
26 (818) 783-0990
27

28 pet.can.001

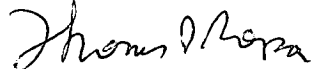
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that two original PETITION FOR CANCELLATION and
CERTIFICATE OF MAILING are being deposited with the United States Postal Service
with sufficient postage as Express Mail, Mail Label No. EV 824163495 US, in an
envelope addressed to:

COMMISSIONER FOR TRADEMARKS
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dated: May 8, 2006



Thomas I. Rozsa
Registration No. 29,210
Attorney For Petitioners

pet.can.001