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Filing date: **03/18/2008**

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

Proceeding	92045795
Party	Defendant Tony Maiden
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Date	03/18/2008
Attachments	080318 Maiden's Opposition to Watson's Motion for Ext of Time.pdf (19 pages) (592018 bytes)

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

In the matter of trademark application Serial No. 76635846
For the mark RUFUS

Andre Fischer, an individual, and Bobby Jan
Watson, an individual

Petitioners,

vs.

Tony Maiden, an individual,

Registrant.

Cancellation No. 92045795

REGISTRANT TONY MAIDEN'S
OPPOSITION TO BOBBY
WATSON'S MOTION FOR AN
EXTENSION OF TIME

**REGISTRANT TONY MAIDEN'S OPPOSITION TO PETITIONER
BOBBY WATSON'S MOTION FOR AN EXTENSION OF TIME**

I. INTRODUCTION

Rather than provide good cause for an extension of time, the recent supplemental "clarification" memorandum filed by Petitioner Bobby Watson only reveals bald misrepresentations by Watson warranting denial of any extension. Good cause simply cannot be founded upon misrepresentations.

More specifically, Watson's principal "clarification" and justification for his needing further time to respond is his claim that his alleged "former" counsel, Thomas Rozsa, was discharged more than year ago, a period in which Watson himself allegedly was not focused on any issues involving the Rufus trademark. (Watson's Supplemental Clarification Memo at 2-3) Watson claims to need additional time to prepare his opposition allegedly because the trademark issues have been out of his thoughts for more than year.

Watson's assertions are, to put it mildly, easily revealed to be

1 misrepresentations such that no extension should be granted. In fact, the Board need
2 look no further than the records of the Patent and Trademark Office to see that
3 Watson's claims of "good cause" lack veracity.

4 First, rather than seeking further time in which to gather sufficient evidence in
5 which to oppose Registrant Tony Maiden's pending Motion for Leave from Default
6 Judgment beyond the nearly 50 days Watson has already had, it appears that Watson's
7 principal motive for further delay is to gain an advantage in a related proceeding
8 pending before the Patent and Trademark Office—a proceeding in which Thomas
9 Rozsa even now represents Watson and his alleged partner, Andre Fischer. Contrary
10 to his present claims, Watson was still being represented by Thomas Rozsa at time
11 Maiden filed and served his Motion for Leave from Default Judgment. Indeed, Rozsa
12 filed papers in this related trademark proceeding as recently as January 10, 2008.

13 Second, it also cannot be said that Watson was caught unawares regarding the
14 trademark issues. Instead, through Rozsa, Watson is actively pursuing the Rufus
15 trademark in as part of the alleged "general partnership" with Andre Fischer. Watson
16 omits any reference to these other proceedings from his "clarification" memorandum.

17 The existence of these other proceedings warrants consolidation of all
18 trademark proceedings in order to address in one proceeding all matters concerning
19 the Rufus trademark, and its rightful owner. To that end, Maiden shortly will file an
20 Opposition to the sound recordings application by Watson and Fischer, and a Petition
21 for Cancellation of the Live Recording Trademark. If not done by the Board itself,
22 Maiden will move for consolidation of all proceedings thereafter.

23 Third, given the foregoing it cannot be said that Watson's recent memorandum
24 clarifies anything other than Watson's liberality with facts. If anything, Watson's
25 "clarification" memorandum only confuses issues by omitting his alleged "partner"
26 Andre Fischer from the present counsel's representation. The intent of Watson's
27 partner is unknown, just as the partnership's status is unknown. The partnership is
28 just another fact omitted by Watson.

1 In short, the “good cause” claimed by Watson simply does not exist. The
2 standing of Watson as an individual to proceed without his partner is further in doubt.
3 What is clear is that Watson should not be granted more time based on the distortions
4 he has already made to the Board.

5 But in the end, no matter how much time Watson is given, no amount of time
6 will overcome one simple fact: Watson is nothing more than an x-band member who
7 legally has no right to the Rufus trademark. No great deal of time is required to deal
8 with that fact.

9 **II. WATSON’S CLAIM OF “GOOD CAUSE” CONSISTS OF A**
10 **MISREPRESENTATION TO GAIN A TACTICAL ADVANTAGE**

11 Although Watson claims here that his former counsel in this proceeding long
12 ago left the service of Watson (intimating that this occurred more than a year ago),
13 Watson’s supposed “former counsel” is actively representing him in related
14 proceedings seeking to obtain the trademark for Rufus for Watson and Watson’s
15 purported partner, Andre Fischer. Like Watson, Fischer is nothing more than a former
16 member of the band Rufus, neither of whom is entitled to continue to perform as
17 Rufus. (*See* Maiden Motion for Leave from Default Judgment at 11-14 regarding
18 dismissal of Fischer and Watson from Rufus, and 12 n. 5 citing numerous cases
19 rejecting x-band members’ effort to use name of band)

20 As the records of the Patent and Trademark office reveal, Rozsa was not
21 discharged by Watson. To the contrary, less than three weeks before Maiden filed his
22 Motion for Leave from Default, Watson’s alleged “former” counsel appeared before
23 the Patent and Trademark Office on January 10, 2008, in the role of Watson’s attorney
24 pressing Watson’s and Fischer’s “partnership’s” claim to the Rufus trademark.

25 More specifically, as part of a purported partnership with another former
26 member of the band Rufus (Andre Fischer), Watson not only sought to cancel the
27 trademark issued to Maiden that is the subject of this proceeding, but separately
28 sought to obtain the trademark for sound recording Serial No. 76635846 (docket no.

1 40060.003), and the trademark for live recording Serial No. 76635787 (Registration
2 No. 3,337,645). In both proceedings, as they were originally in this proceeding,
3 Watson and Fischer’s “general partnership” was represented by Thomas Rozsa as
4 their counsel.

5 As the files of both of these proceedings reveal, only after a cancellation was
6 issued in this proceeding concerning Maiden’s own Rufus trademark (based on
7 nothing more than Maiden’s outdated mailing address and returned notice to Maiden
8 as undeliverable mail) did these other proceedings progress to the point where a
9 trademark was issued to Watson and Fischer for live performances, and the
10 application for sound recordings published for opposition on March 11, 2008.

11 Far from having no involvement with Watson for more than a year as is stated
12 in Watson’s Supplemental Clarification, Rozsa has quite active on behalf of Watson.
13 even as late as January, 2008. Attached hereto as Exhibit A is copy of the January 10,
14 2008, filing with the Patent and Trademark Office by Rozsa in which he purports to
15 continue to represent Watson and Fischer. It was based on this filing of supposedly
16 Watson’s “former” counsel that the Watson and Fischer “partnership’s” sound
17 recording trademark application was published for opposition on March 11, 2008.
18 Any opposition must be filed by April 10, 2008, indicating why Watson wishes to
19 delay this proceeding.

20 Thus, rather than an attorney discharged more than a year ago, Rozsa was in
21 fact representing Watson less than three weeks before Maiden filed his Motion for
22 Leave from Default in late January 2008. Furthermore, Rozsa remains Watson’s
23 attorney of record in both related trademark proceedings even today. What’s more,
24 Watson’s active pursuit of the Rufus trademark for his own benefit puts the lie to his
25 present counsel’s claim that Watson hasn’t thought about trademark issues for more
26 than a year.

27 One thing is consistent about Watson’s present claims—they exhibit a tactic he
28 has used before. In the past, Watson has shown he will readily claim disinterest in the

1 trademark on the one hand in order to gain some advantage from a party, while
2 simultaneously doing the opposite for his own personal gain. This very tactic by
3 Watson is described in the Motion for Leave from Default, which includes two pieces
4 of correspondence from Watson to Maiden in which Watson claims no interest in the
5 trademark, with Watson even stating that Maiden is free to have the trademark with
6 Watson's blessing. (See Motion for Leave from Default at 20, Tony Maiden Decl.
7 Exh. A, Mitchaelle Maiden Decl. Exh. D, Hettrick Decl. Exh. A—Copies of Watson's
8 correspondence is attached hereto as Exhibit B) Yet, at the same time, Watson along
9 with Fischer was pressing this cancellation proceeding and seeking the trademark for
10 in separate proceedings.

11 Given the foregoing disparity between the actual record and Watson's
12 "clarifications", no extension of time should be afforded to Watson. There was no
13 absence of counsel during the relevant period. There was no unawareness about the
14 Rufus trademark. To the contrary, Watson's alleged "former" counsel was actively
15 working on trademark issues for the Watson-Fischer partnership.

16 **III. FAR FROM "CLARIFYING" MATTERS, WATSON'S**
17 **MEMORANDUM ONLY RAISES ADDITIONAL QUESTIONS, SUCH**
18 **AS THE STATUS OF HIS ALLEGED "PARTNERSHIP" WITH**
ANDRE FISCHER

19 Only one of the purported partners seeking cancellation of Tony Maiden's
20 registration of a trademark for Rufus has stated any opposition to Tony Maiden's
21 pending Motion for Leave from Default Judgment. Watson is only one-half of a
22 purported "general partnership" that initiated this cancellation proceeding. The other
23 half of the partnership, Andre Fischer, goes unmentioned by Watson in his
24 "clarifying" memorandum.

25 It appears from Watson's recent filings in this proceeding that the "partnership"
26 between the two *former* members of Rufus is no more. Watson responded to
27 Maiden's motion on February 15, 2008, individually, and most recently via new
28 counsel representing only him.

1 The partnership's counsel of record, Thomas Rozsa, has not appeared. Fischer
2 has made no appearance before this Board regarding Maiden's Motion for Leave from
3 Default. Fischer has not retained separate counsel or made any appearance on his
4 own. Rozsa has not withdrawn as counsel for the partnership even though service
5 upon him is acknowledged by Watson. Yet, at the same time, Rozsa is pursuing a
6 trademark for the "general partnership" of Fischer and Watson in other proceedings
7 before the Patent and Trademark Office.

8 The apparent evaporation of the claimed partnership between Watson and
9 Fischer, to the extent it ever existed, is just one more source of confusion for the
10 Patent and Trademark Office specifically, and the public generally. The partnership's
11 demise illustrates yet again why Watson or any other former member of Rufus,
12 individually or collectively, have no right to the Rufus trademark. If it were
13 otherwise, ex-members could simply form their own band called "Rufus," which may
14 then break apart only to form several more bands called "Rufus." Anyone with any
15 brief tenure with the band could perform as Rufus even while the remaining members
16 of the band are trying to continue on legitimately performing as Rufus. This is why
17 only the continuing members of a band are permitted to use its name.

18 By comparison, Tony Maiden in collaboration with Kevin Murphy was and
19 remains the only parties entitled to the trademark Rufus. As set forth in greater detail
20 in the Motion for Leave from Default, Kevin Murphy is the founder of the band, and
21 the only member of the band to remain with the band from its inception to the present.
22 Tony Maiden joined in the band in the 1970's and from that point on provided the
23 band with most of its songs, its lead guitar and lead male vocals, responsible for
24 Rufus's signature sound. Maiden is pursuing the Rufus trademark on behalf of
25 himself and as the assignee of Murphy. The contrast between Maiden's claim to the
26 trademark and the on again off again "partnership" of Fischer who was fired from the
27 band in 1976, and Watson who was fired in 2002, is striking.

28

1 **IV. CONCLUSION**

2 Given the foregoing outlining the absence of good cause, no extension of time
3 should be granted to Watson.

4
5 DATED: March 18, 2008

Respectfully submitted,

6
7 
8 By: _____
Clyde M. Hettrick
Attorneys for Registrant Tony Maiden

9 DICKSTEIN SHAPIRO LLP
10 2049 Century Park East, Suite 700
Los Angeles, CA 90067-3109
11 Telephone: (310) 772-8307
Facsimile: (310) 772-8301
12 hettrickc@dicksteinshapiro.com

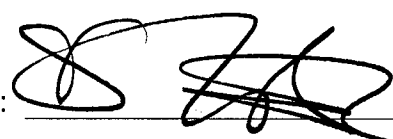
1 **CERTIFICATE OF ELECTRONIC FILING AND SERVICE ON**
2 **PETITIONER'S COUNSEL BY FACSIMILE AND MAIL**

3 I certify that on March 18, 2007, the foregoing REGISTRANT TONY
4 MAIDEN'S OPPOSITION TO BOBBY WATSON'S MOTION FOR AN
5 EXTENSION OF TIME is being electronically filed with the Commissioner for
6 Trademarks via its electronic filing facility.

7 I further certify that the foregoing REGISTRANT TONY MAIDEN'S
8 OPPOSITION TO BOBBY WATSON'S MOTION FOR AN EXTENSION OF
9 TIME is being served by facsimile and first-class mail addressed to:

10 Tiffany A. Parcher
11 Christie, Parker & Hale, LLP
12 P.O. Box 7068
Pasadena, CA 91109-7068
Facsimile: 626-577-8800

13 Dated: March 18, 2008

14
15
16 By: _____

17 Clyde M. Hettrick
18 Dickstein Shapiro LLP
Attorneys for Registrant Tony Maiden

EXHIBIT A

Please place on Upper Right Corner
of Response to Office Action ONLY.

Examining Attorney: IM,JEAN
Serial Number: 76/635846



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket: 40060.003

In the Trademark Application Of:

Applicant:	Andre Fischer and Bobby Jan Watson
For Mark:	RUFUS
Application Serial No:	76/635,846
Filed:	04/11/2005
Trademark Attorney:	Jean H. Im
Law Office:	101
Applicant's Attorney:	Thomas I. Rozsa
Telephone No:	(818) 783-0990
Office Action Date:	June 20, 2006
Today's Date:	January 10, 2008

AMENDMENT

COMMISSIONER FOR TRADEMARKS

P.O. Box 1451

Alexandria, Virginia 22313-1451

SIR:



01-11-2008

U.S. Patent & Trademark Mail Room 01-11-2008

1. The Office Action of June 20, 2006 is hereby acknowledged. This
Amendment is being mailed by Express Mail, Mailing Label No. EM 139378555 US, on

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

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Serial No. 76/635,846
Law Office 101
Trademark Attorney:
Jean H. Im

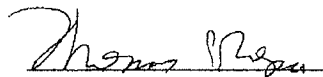
January 10, 2008 and addressed to COMMISSIONER FOR TRADEMARKS, P.O. Box 1451, Alexandria, Virginia 22313-1451. Therefore, this Amendment is timely filed.

2. This application was suspended pending the disposition of Cancellation No. 92045795. On January 29, 2007 the petition to cancel Registration No. 2,885,485 for "RUFUS" was granted by the Trademark Trial and Appeal Board. Attached to this Amendment as **Exhibit 1** is a copy of the communication from the Trademark Trial and Appeal Board cancelling Registration No. 2,885,485.

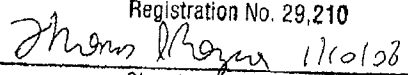
3. Therefore, in view of the cancellation of the prior cited registration, the application for "RUFUS", Serial No. 76/635,846 should be allowed and passage to publication in the official Trademark Gazette is respectfully solicited.

Respectfully submitted,

Dated: Jan 10, 2008


Thomas I. Rozsa
Registration No. 29,210

Thomas I. Rozsa, Esq.
ROZSA LAW GROUP LC
18757 Burbank Boulevard, Suite 220
Tarzana, California 91356-3346
Telephone: (818) 783-0990
rufus.amn

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451
January 10, 2008
Date of Deposit
Express Mail No. EM 13937855503
THOMAS I. ROZSA
Registration No. 29,210

Signature and Date

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

EXHIBIT 1

mc

RECEIVED
FEB 01 2007

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

Mailed: January 29, 2007

Cancellation No. 92045795

Registration No. 2885485

Andre Fischer and Bobby Jan Watson

v.

MAIDEN, TONY

No appearance having been entered in response to service effected by publication in the Official Gazette, the petition to cancel is granted, and the above-identified registration will be cancelled in due course.

*By the Trademark Trial
and Appeal Board*

U. S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

mc
RECEIVED
FEB 12 2007

Andre Fischer and Bobby Jan Watson

v.

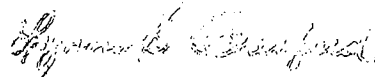
Tony Maiden

Cancellation No. 92045795

Thomas I. Rozsa for Andre Fischer and Bobby Jan Watson.

Tony Maiden, pro se.

The petition of Andre Fischer and Bobby Jan Watson
having been granted on January 29, 2007, Registration No.
2885485 is hereby cancelled.



Lynne G. Beresford
Commissioner for Trademarks

FEB -7 2007

NUFUS

EXHIBIT B

FROM :

PHONE NO. :

Jan. 01 1996 08:35PM P5

Rufus

Page 1 of 1

Hettrick, Clyde

From: Bobby Watson [calidreaming@sbcglobal.net]
Sent: Thursday, December 22, 2005 5:12 PM
To: Hettrick, Clyde
Subject: Rufus

Please don't send me anymore of these letters.
I'm semi-retired from music these days.
I'm not performing in Rufus or any band.
I only play bass in my church (Arise Christian Center) on wednesday
night bible study and sunday morning 2 services at 9:00 AM and 11:00 AM
I am part owner of a honda dealership in Alhambra, and a songwriter &
Publisher.
Check the signatures on the contracts before you send out these type
of letters.
Have your client call me if there is a problem with people using his
trademark, it will save him money!!!!!!
My understanding is he got the trademark illegally anyway. He failed
to notify any of the original members, including myself.

Bobby Watson (310) 514-0341

11/14/2007

FROM :

PHONE NO. :

Jan. 01 1996 08:38PM P2

Hettrick, Clyde

From: JR73@aol.com

Sent: Wednesday, May 03, 2006 4:37 PM

To: calldreaming@sbcglobal.net; MaidenMusic@aol.com

Cc: hawk2006@comcast.net

Subject: Re: Hello

Dear Mitchaelle

I hope this finds you and your family well. I just got a call from Bobby who said that Peter Wolf hooked up with some guys from Google to form a record company. Bobby also said Peter was interested in signing Rufus and Chaka to a deal, with a band that is as close to the last incarnation as possible. So let's cut to the chase. I know how much you dislike Bobby and me, which is unfortunate. I don't dislike you and Tony in any way. I'm having too much fun to hate. I know Bobby doesn't care either. He's pretty much gotten his act together, He's bought into a Honda dealership, which is helping to alleviate his financial problems. I also know you feel you own the name Rufus, a name that has proven

11/14/2007

relatively worthless. I believe Bobby said he made \$10,000 in 3 years. Yippee! So, because Bobby and I feel we'd like to make music with the best band we were ever in, you can have the name. He'll sign off – I'll witness – and you and Tony can have it with no more problems. I never knew what the big deal was anyway. We'd like to make one more record. If Glenn Frey (Eagles) could make up with Don Henley, we can certainly do it. But if you insist on being vindictive, stop going to church because it's hypocritical. I mean that in the most honest sincere way. Forgive and forget. Let's have FUN and do it one more time. We look forward to your response!

Hawk and Bobby and JR