

ESTTA Tracking number: **ESTTA97449**

Filing date: **09/01/2006**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	New Blue, Inc.		
Entity	Corporation	Citizenship	Illinois
Address	1923 W. Nelson Chicago, IL 60657 UNITED STATES		

Attorney information	Samuel Fifer Sonnenschein Nath & Rosenthal LLP P.O. Box #061080 Wacker Drive Station, Sears Tower Chicago, IL 60606-1080 UNITED STATES sfifer@sonnenschein.com, mrichter@sonnenschein.com, nspears@sonnenschein.com, pmcbride@sonnenschein.com, ttab@sonnenschein.com Phone:312-876-8000
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Registration Subject to Cancellation

Registration No	2663439	Registration date	12/17/2002
Registrant	BRANDON DEPAUL 1121 HARDEE STREET ATLANTA, GA 30307 UNITED STATES		
Goods/Services Subject to Cancellation	Class 041. First Use: 1997/04/20 , First Use In Commerce: 1997/04/20 Goods/Services: Entertainment services, namely, live performances by a musical band, live studio recording sessions by a musical group, special personal appearances, and production of music recordings, shows and videos		

Attachments	TRIPPING BILLIES-2663439-Petition for Cancellation.pdf (17 pages)(630510 bytes)
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Signature	/Mindi M. Richter/
Name	Mindi M. Richter
Date	09/01/2006

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

In The Matter of Trademark Registration No. 2,663,439
Date of Registration: December 17, 2002
Mark: TRIPPING BILLIES

NEW BLUE, INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
BRANDON DEPAUL,)	
)	
Registrant.)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner New Blue, Inc. (“NBI”) believes that it is and will be damaged by Registration No. 2,663,439, and hereby petitions to cancel such registration. As grounds for its Petition for Cancellation, Petitioner alleges that:

1. Petitioner is an Illinois corporation having its principal place of business at 1923 W. Nelson, Chicago, Illinois 60657.
2. Petitioner owns common law rights in the mark TRIPPIN’ BILLIES, which it has used continuously for many years for entertainment services, namely live band performances throughout the United States. Specifically, Petitioner uses the mark TRIPPIN’ BILLIES as the name of a Dave Matthews tribute band, with which Petitioner has established considerable goodwill.
3. Upon information and belief, Brandon DePaul’s (“Registrant”) predecessor in interest, Emma Riley, Inc., filed the application for TRIPPING BILLIES on March 7, 2002 for “entertainment services, namely live performances by a musical band, live studio recording

sessions by a musical group, special personal appearances, and production of music recordings, shows and videos” in Class 41 and was issued a registration on December 17, 2002 (the “Mark”).

4. Upon information and belief, to the extent Registrant has used the Mark, Registrant also uses it for the name of a Dave Matthews tribute band.

5. Upon information and belief, Registrant alleges that the Mark was first used in commerce on March 20, 1997.

6. Upon information and belief, although Registrant may have at one time been part of a band that was previously using the Mark, that band has been defunct for nearly three years and stopped performing under the Mark in early 2003. Accordingly, upon information and belief, there has been a period of time from at least March 2003 to March 2006 where the Mark was not used by Registrant or anyone else.

7. Upon information and belief, a band information website, JamBase, shows that the last performance of Registrant’s former and now-defunct band was on March 19, 2003. (*See* Exh. A.)

8. Upon information and belief, other band information sources dated as early as November 2003 and as late as February 2006 refer to Registrant’s band as “defunct” and thus no longer in existence. (*See* Exh. B.)

9. Upon information and belief, Registrant or someone affiliated with Registrant at one time owned the domain name, <trippingbillies.com>, which was not renewed and became publicly available for sale in 2005. This domain name is now owned by Petitioner.

10. Although Petitioner has searched, it has found no use of the Mark in at least parts of 2003, no use of the Mark anytime in 2004, and no use of the Mark anytime in 2005.

11. For years prior to March 2003 and for the years between March 2003 and March 2006, Petitioner has maintained a constant and geographically-expanding tour schedule under the

name TRIPPIN' BILLIES. Between March 2003 and March 2006, Petitioner has performed, at a minimum, over 150 shows under the name TRIPPIN' BILLIES throughout the country. During that time frame, after which Respondent's band had become defunct, neither Respondent nor anyone else requested that Petitioner cease using the name TRIPPIN' BILLIES.

12. Upon information and belief, in March 2006, Respondent adopted the name TRIPPING BILLIES for a newly formed band, in large part to unfairly capitalize on the goodwill and popularity of Petitioner's band, TRIPPIN' BILLIES. Since March 2006, Petitioner has experienced multiple instances of actual confusion between its TRIPPIN' BILLIES mark and Registrant's use of the Mark. For example, various venues have mistakenly thought they booked Petitioner's band when they in fact booked Registrant's band. In one instance a nightclub owner in Georgia falsely believed he had booked Petitioner's band (rather than Respondent's band) and only realized the confusion when he contacted Petitioner about a load-in time. Some of Petitioner's venues also have received telephone calls from Registrant in an effort to stop them from booking Petitioner's band.

13. Upon information and belief, in August 2006, Respondent acquired the Mark from a predecessor owner.

COUNT I:
ABANDONMENT THROUGH NON-USE OF THE MARK

14. Petitioner repeats and realleges Paragraphs 1-13 as though fully stated herein.

15. Upon information and belief, Registrant and the former owners of the Mark ceased any use there may have been of the Mark early in 2003, and Registrant did not begin using the Mark again until March 2006.

16. Upon information and belief, Registrant has abandoned all rights it may have had in the TRIPPING BILLIES Mark and in the Registration by not using the Mark in the United States in connection with the services listed in the Registration.

17. Registrant's nonuse of the Mark in United States commerce for at least three years is prima facie evidence of abandonment of the Registration under § 45 of the Lanham Act, 15 U.S.C. § 1127.

18. Registrant's nonuse of the Mark in United States commerce is grounds for cancellation of the Registration under § 14 of the Lanham Act, 15 U.S.C. § 1064.

19. Since Registrant has not been using the Mark in United States commerce, the Mark has no capacity as a source indicator of Registrant's services.

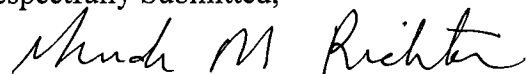
WHEREFORE, Petitioner, New Blue, Inc., believes and alleges that it is and will be damaged by the continued registration of the TRIPPING BILLIES Mark, and therefore prays that:

- a. the Petition for Cancellation herein be granted in favor of Petitioner; and
- b. Registration No. 2,663,439 be cancelled.

New Blue, Inc. hereby appoints Samuel Fifer, Natalie J. Spears, Mindi M. Richter and SONNENSCHNEN NATH & ROSENTHAL LLP, P.O. Box #061080, Wacker Drive Station, Sears Tower, Chicago, IL 60606-1080, as its representative upon whom notices and process in proceedings affecting this proceeding may be served.

Dated: September 1, 2006

Respectfully Submitted,



One of Attorneys for New Blue, Inc.

Samuel Fifer
Natalie J. Spears
Mindi M. Richter
SONNENSCHNEN NATH & ROSENTHAL LLP
P.O. Box #061080
Wacker Drive Station
Sears Tower
Chicago, Illinois 60606-1080
(312) 876-8000

14507484

EXHIBIT A



GO SEE LIVE MUSIC

JamBase Tickets :: JamBase Rhapsody

Home :: Shows :: Articles :: MyJamBase :: Goo

BAND: VENUE: CITY: State

FROM: TO: SHOW NEARBY CITIES Clear

Tripping Billies

:: OFFICIAL BAND WEBSITE :: ADD TO FAVORITES ::

1/1/2001 to 1/1/2005

HOME	SHOWS	LINKS	BIO	FANS
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99 EVENTS

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




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





BAND(S)	DATE	VENUE	LOCATION	
■ Tripping Billies	01/05/01 FRI	The Traif	Buffalo, NY	
■ Tripping Billies	01/13/01 SAT	Forward Hall Concert Club	Erie, PA	
■ Tripping Billies	01/19/01 FRI	The Metro	Utica, NY	
■ Tripping Billies	01/26/01 FRI	Water Street Music Hall	Rochester, NY	
■ Tripping Billies	02/02/01 FRI	The Haunt	Ithaca, NY	
■ Tripping Billies	04/14/01 SAT	Recher Theatre	Towson, MD	
■ Tripping Billies	05/24/01 THU	Colorado Brewery & Music Hall	Danbury, CT	
■ Ben and Aubrey	05/26/01 SAT	Lion's Den	New York, NY	
■ Tripping Billies				
■ freebeerandchicken	07/05/01 THU	Manhattan Square Park	Rochester, NY	
■ The Samples				
■ Tripping Billies				
Fleet Party in the Park--Manhattan Square				
■ Tripping Billies	07/14/01 SAT	Joe's Lounge / Tap Room	Hudson, NY	






■ Tripping Billies	07/19/01 THU	Bob's Grille	Bridgewater, MA	
■ Tripping Billies	07/20/01 FRI	JR's	Cranston, RI	
■ Tripping Billies	07/21/01 SAT	125 Riverside Drive	East Hartford, CT	
■ Tripping Billies	07/22/01 SUN	Geraldine's	West Springfield, MA	
■ Tripping Billies	07/26/01 THU	Caribou Club	Syracuse, NY	
■ Red Light District	07/27/01 FRI	Harborfest	Oswego, NY	
■ Tim Herron Corporation				
■ Tripping Billies				
Main Stage				
■ Tripping Billies	07/28/01 SAT	Harborfest	Oswego, NY	
■ Tripping Billies	08/11/01 SAT	Water Street Music Hall	Rochester, NY	
■ Tripping Billies	08/16/01 THU	Varsity Club	Youngstown, OH	
■ Tripping Billies	08/17/01 FRI	Stone Crab Inn	Belle Vernon, PA	
■ Tripping Billies	08/30/01 THU	The Fat Cat	Springfield, MA	
■ Tripping Billies	08/31/01 FRI	Whistle's	Scranton, PA	
■ Tripping Billies	09/01/01 SAT	Milestones	Rochester, NY	
■ Tripping Billies	09/07/01 FRI	Sand Bar	Sodus Point, NY	
■ Tripping Billies	09/08/01 SAT	The Haunt	Ithaca, NY	
■ Tripping Billies	09/09/01 SUN	Highland Bowl	Rochester, NY	
■ Tripping Billies	09/14/01 FRI	Empire Club	Binghamton, NY	
■ Tripping Billies	09/15/01 SAT	Recher Theatre	Towson, MD	
■ Tripping Billies	09/19/01 WED	Jillian's	Rochester, NY	
■ Tripping Billies	09/20/01 THU	Velvet Underground	Syracuse, NY	




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■ Tripping Billies	09/22/01 SAT	Lion's Den	New York, NY	  
■ Tripping Billies	09/26/01 WED	University of Florida	Gainesville, FL	  
■ Tripping Billies	09/28/01 FRI	Rays Downtown Blues Club	West Palm Beach, FL	  
■ Tripping Billies	09/29/01 SAT	Freez	Ft Lauderdale, FL	  
■ Mr.Nimbus	10/18/01 THU	Club Laga	Pittsburgh, PA	  
■ Tripping Billies				
■ Tripping Billies	10/20/01 SAT	Grand Valley State University	Grand Rapids, MI	  
■ Tripping Billies	10/26/01 FRI	Milestones	Rochester, NY	  
■ Tripping Billies	11/02/01 FRI	The Haunt	Ithaca, NY	  
■ Tripping Billies	11/09/01 FRI	Lion's Den	New York, NY	  
■ Tripping Billies	11/10/01 SAT	Recher Theatre	Towson, MD	  
■ Tripping Billies	11/13/01 TUE	Potbelly's	Tallahassee, FL	  
■ Tripping Billies	11/14/01 WED	Pantana Bob's	Raleigh, NC	  
■ Tripping Billies	11/15/01 THU	Pantana Bob's	Chapel Hill, NC	  
■ Tripping Billies	11/16/01 FRI	University of Maryland	College Park, MD	  
■ Tripping Billies	11/17/01 SAT	Peasants	Greenville, NC	  
■ Tripping Billies	11/23/01 FRI	Empire Club	Binghamton, NY	  
■ Tripping Billies	11/29/01 THU	The Fat Cat	Springfield, MA	  
■ Clarias	11/30/01 FRI	Harpers Ferry	Allston, MA	  
■ Tripping Billies				
■ Tripping Billies	12/01/01 SAT	St. Paul School	Concord, NH	  
■ Tripping Billies	12/06/01 THU	Third Rail	Cortland, NY	  
■ Tripping Billies	12/07/01 FRI	Club Caroline	Saratoga Springs, NY	 




					
■ Tripping Billies	12/08/01 SAT	The State Theatre	Falls Church, VA	  	
■ Tripping Billies	12/14/01 FRI	Woodlands Inn	Wilkes Barre, PA	  	
■ Tripping Billies	12/15/01 SAT	Planet 505	Syracuse, NY	  	
■ Tripping Billies	12/22/01 SAT	The Tralf	Buffalo, NY	  	
■ Tripping Billies	12/25/01 TUE	Milestones	Rochester, NY	  	
■ Tripping Billies	12/28/01 FRI	Empire Club	Binghamton, NY	  	
■ Tripping Billies	01/17/02 THU	The Fat Cat	Springfield, MA	  	
■ Tripping Billies	01/18/02 FRI	Harpers Ferry	Allston, MA	  	
■ Tripping Billies	01/19/02 SAT	Lion's Den	New York, NY	  	
■ Tripping Billies	02/01/02 FRI	Empire Club	Binghamton, NY	  	
■ Tripping Billies	02/03/02 SUN	The College of William and Mary	Williamsburg, VA	  	
■ Tripping Billies	02/09/02 SAT	The Pour House Music Hall	Raleigh, NC	  	
awsome dave matthews band tribute!!!!					
■ Tripping Billies	02/14/02 THU	Potbelly's	Tallahassee, FL	  	
■ Tripping Billies	02/20/02 WED	The Crowbar	State College, PA	  	
■ Tripping Billies	02/23/02 SAT	Milestones	Rochester, NY	  	
■ Tripping Billies	03/14/02 THU	The Fat Cat	Springfield, MA	  	
■ Tripping Billies	03/15/02 FRI	Harpers Ferry	Allston, MA	  	
■ Barbuda	03/16/02 SAT	Lion's Den	New York, NY	  	
■ Tripping Billies				  	
■ Tripping Billies	03/29/02 FRI	Empire Club	Binghamton, NY	  	




■ Doctor Pocket	04/06/02 SAT	Milestones	Rochester, NY	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	04/09/02 TUE	Wintson's Bar and Grille	Fairmont, WV	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	04/10/02 WED	Alley Katz	Richmond, VA	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	04/18/02 THU	Potbelly's	Tallahassee, FL	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	04/19/02 FRI	Newport Music Hall	Columbus, OH	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	04/27/02 SAT	Wells College	Aurora, NY	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	05/04/02 SAT	Lion's Den	New York, NY	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	05/24/02 FRI	The Tralf	Buffalo, NY	  
■ Tripping Billies				SAVE SEND INFO
■ Cupajo	07/13/02 SAT	Lion's Den	New York, NY	  
■ Tripping Billies				SAVE SEND INFO
■ Troop 47				
214 Sullivan Street New York , NY 12\$ ticket charge				
■ Tripping Billies	07/26/02 FRI	The Attic	Pittsburgh, PA	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	09/25/02 WED	Lion's Den	New York, NY	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	10/03/02 THU	Lincoln Theatre	Raleigh, NC	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	10/12/02 SAT	The Tralf	Buffalo, NY	  
■ Tripping Billies				SAVE SEND INFO
■ Tripping Billies	12/28/02 SAT	Sticky Fingerz Chicken Shack	Little Rock, AR	  
■ Tripping Billies				SAVE SEND INFO
www.thetrippingbillies.com				
■ Tripping Billies	12/29/02 SUN	3rd & Lindsley	Nashville, TN	  
■ Tripping Billies				SAVE SEND INFO
THETrippingbillies.com				
■ Tripping Billies	12/31/02 TUE	Mickeys	Clive, IA	  
■ Tripping Billies				SAVE SEND INFO
Do Not get left outside like last time - CALL EARLY				
■ Tripping Billies	01/02/03 THU	32 Bleu	Colorado Springs, CO	  
■ Tripping Billies				SAVE SEND INFO
Do not wait - call the club now!!!!				




- Tripping Billies 01/03/03 FRI Levelz Steamboat Springs, CO   




THIS WILL SELL OUT - TB 1st time in Steamboat Springs - DO NOT BE Disappointed - Call the club early for Tix.
- Tripping Billies 01/04/03 SAT Sherpa & Yeti's Breckenridge, CO   




SNOW WILL MELT - This will Sell out - More of the "Lookin' for Lewis & CLark Winter 2003 Tour"
- Tripping Billies 01/07/03 TUE 8150 Club Vail, CO   




To the best club in VAIL - Yes IT WILL SELL OUT - Get Tix early
- Tripping Billies 01/08/03 WED The Summit Durango, CO   




THIS WILL SELL OUT - DO NOT WAIT - Get Tix VERY early
- Grasshoppah 01/09/03 THU The Starlight Fort Collins, CO   




■ Tripping Billies
- Tripping Billies 01/10/03 FRI Boulder Theater Boulder, CO   




Part of the "Lookin' for Lewis & CLark Winter Tour 2003"
- Tripping Billies 01/13/03 MON The Zephyr Salt Lake City, UT   

Yes, it will Sell OuT - GET TIX EARLY
- Tripping Billies 01/15/03 WED Grand Emporium Kansas City, MO   

Prediction: Another SELL OUT - DO NOT BE Disappointed - Call the club now!!!
- Tripping Billies 02/03/03 MON House of Blues Cambridge, MA   

Lokkin' for Lewis and Clark comes east!!!! - CALL THE HOB NOW - Both nights will sell out
- Tripping Billies 02/04/03 TUE House of Blues Cambridge, MA   

Lokkin' for Lewis and Clark tour comes EAST -
- Tripping Billies 02/07/03 FRI BarrelHouse Brewing Co. Cincinnati, OH   

THIS WILL SELL OUT - Call the club now!!!!
- Tripping Billies 03/19/03 WED The Living Room Providence, RI   

99 EVENTS

Be sure to check the band and venue official websites to confirm info!

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EXHIBIT B

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- EVENTS** ★

- BOOKINGS** ★

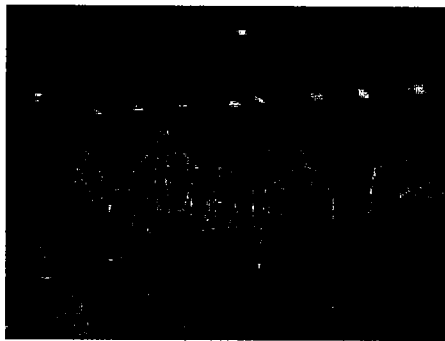
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- CONTACT** ★

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Booking Information

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Sample Set List

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DMTB - Dave Matthews Tribute Band

Ryan Clifford (Vocals/Guitars) - Born and raised in Buffalo, NY, Clifford brings the look and aura of the DMB frontman to the spotlight every night. Gaining experience through two years of playing with an acoustic Dave Matthews and Tim Reynolds tribute "A Jimi Thing", Clifford took his skills to "The Dreaming Tree" in November of 2001. The WNY based DMB Tribute hit the road and gave Clifford much needed experience in a touring situation. He was recruited to the DMTB mainly for his character onstage and remarkable likeness to the vocals and presence of Dave Matthews.

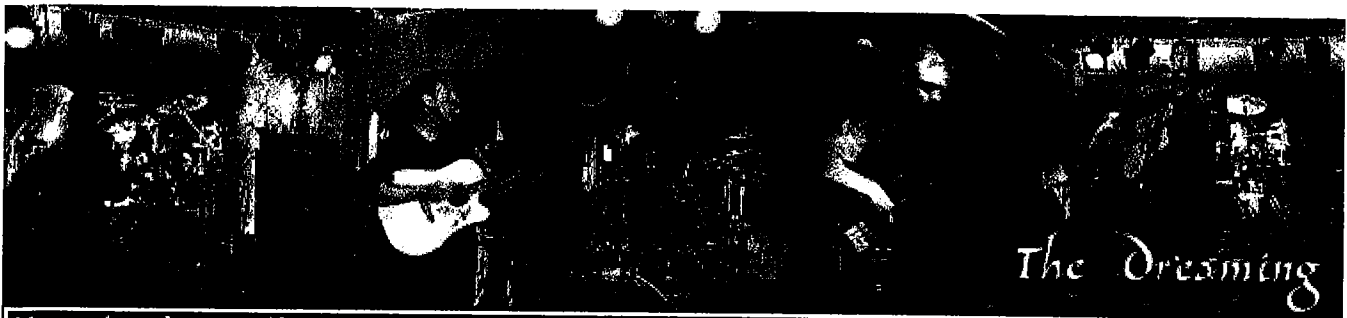
Jason Genero (Violins/Vocals) - Another alum from the band "The Dreaming Tree" Genero also brings his playing ability to the tribute scene, but going all out. Genero will be found playing the exact same model violin as Boyd Tinsley, and it seems some nights that he brings the same physique to the stage as well. An avid weightlifter, Genero also enjoyed his time on the road with "The Dreaming Tree" and is looking to elevate the crowd every night with remarkable soloing and stage presence.

Dan Mark (Saxophones, Flute, Vocals) - Coming from Rochester, NY, Dan Mark has years of national and international touring experience with the band Nik & the Nice Guys. In his travels Mark has gotten to visit Hawaii, Panama, the Caribbean (in a cruise ship!), along with many other of America's beautiful destinations. In addition to the travelling, there is an ace musician behind it all. Proficient on all four of the horns played by Leroi Moore, as well as the flute AND tin whistle, Mark brings not only a perfect musical replication to the table, but also brings something Moore (of the DMB) doesn't....stage energy. Probably one of the funnest guys to watch on stage, he's sure to bring a smile to the faces of the crowd each night.

Christian Schenk (Bass Guitars) - Christian hails from Webster, NY, a suburb of Rochester. Upon graduating from Berklee School of Music in 2000, Schenk took on a full-time position with the now defunct DMB cover band "The Tripping Billies". Schenk toured the country for three years with the Billies, before moving onto a teaching career. Also of interest should be Christian's original project "Stealing Andy" - a 4-piece rock band who is currently turning heads in Rochester, NY...you will shortly hear that name again and again.

Maurice Wilson (Drums/Percussion/Vocals) - Coming all the way from Milwaukee, WI, Wilson actually made his move to Buffalo to perform with a promising Jazz trio, or so he thought. The guitarist skipped town, and he has found the DMTB, we all thank the heavens for that. Maurice brings Carter's raw energy to the table every night, along with his knack for wowing the crowd with the flashy antics that made Beauford famous. Wilson keeps the band solid, and will be the backbone for this group for years to come.

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Schmoozen Entertainment - 200 S. Elm St, ste 234 - Greensboro, NC 27401 - 336.803.4547
Designed and Developed by new element designs - Winston-Salem, NC



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Online Users: 0 Members, 2 Guests

The Dreaming Tree
[Who Is The Dreaming Tree?](#) [Back Home](#)

Ryan Clifford (Vocals, Acoustic Guitars)
Ryan joined The Dreaming Tree after a successful stint with an acoustic Dave Matthews tribute act in Buffalo, NY. Ryan has on been strumming the guitar for about three and a half years, ye having been a long time fan of the Dave Matthews Band, Matthews' difficult strumming techniques came naturally to him. Ryan has attended over 15 shows over the past 5 years, listing 7.29.02 in Saratoga Springs, NY as his best show to date. Ryan's original work is influenced heavily by Dave Matthews, Howie D: John Mayer, Paul Simon, David Gray, and Coldplay. He lists his favorite bands as DMB, Counting Crows, O.A.R., The Beatles, Barenaked Ladies, Tragically Hip and Dashboard Confessional, enjoys most all solo acoustic singer/songwriters.



Eric Ostberg (Violins, Vocals)
Eric joined The Dreaming Tree in December 2002 after a couple years with the now defunct Tripping Billies. Classically trained c

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