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

Proceeding	92065794
Party	Plaintiff The Marshall Tucker Band, Inc.
Correspondence Address	SARAH S BROOKS VENABLE LLP 2049 CENTURY PARK EAST, SUITE 2300 LOS ANGELES, CA 90067 UNITED STATES ssbrooks@venable.com, hedmonds@venable.com 310-229-9900
Submission	Other Motions/Papers
Filer's Name	Sarah S. Brooks
Filer's email	ssbrooks@venable.com, asharon@venable.com, hedmonds@venable.com
Signature	/Sarah S. Brooks/
Date	05/20/2019
Attachments	Kraus Decl with Exhibit A.pdf(1145412 bytes)

I, Kenneth Kraus, declare as follows:

1. I am an attorney duly authorized to practice law in the State of California. I am a partner at the law firm of Loeb & Loeb LLP located in Los Angeles, CA and if called as a witness I could and would testify competently to the facts stated herein. I submit this declaration in support of the Marshall Tucker Band Inc.'s petition to cancel Registration No. 4616427 and Registration No. 4616428 that were submitted by Registrant M.T. Industries. Inc.
2. In 1998, I was an attorney at the law firm of Manatt Phelps Phillips in Nashville, Tennessee and represented M.T. Industries, Inc. ("MTI") in connection with MTI's ownership of the master recordings of, and the recording copyrights in, the musical compositions that were written by members of Marshall Tucker Band.
3. Around October 1998 I was asked by Ron Rainey of Ron Rainey Management who represented Doug Gray to advise whether Marshall Tucker Band, Inc. ("MTB") could release a "Live" LP. This "Live" LP was to be a compilation of previously unreleased recordings from the Marshall Tucker Band's "Live" shows (pre-1984).
4. I was never asked to comment on whether MTI owned the name the "Marshall Tucker Band" nor if MTB owned the name the "Marshall Tucker Band." I was not asked to comment on any trademark issues and I did not comment on any trademark issues.
5. Around October 23, 1998, I provided my opinion on whether MTB could release a "Live" LP in a letter in which I advised that I had reviewed the February 22, 1984 agreement (the "1984 Agreement") between Doug Gray and Jerry Eubanks on the one hand and the other members of the band on the other hand, and advised that MTI had retained the rights to all previously unreleased masters. I thus advised that MTB did not have the rights to masters

recorded by the Band prior to the agreement date, even if they were previously unreleased.

(Attached hereto as Exhibit A is my October 23, 1998 letter).

6. In making this statement, I did not comment on trademark rights but rather was commenting on issues of copyright.

7. I understand that Registrant MTI identified in its interrogatory responses that my October 23, 1998 letter provided the basis for their filing of Registration No. 4616427 and Registration No. 4616428. However, as I stated above, I made no comments on trademark rights in that letter.

8. In fact, in my view, the language in the 1984 Agreement granting MTI the "right to use" the name is typical language used in the music industry that would grant the owner of the master sound recordings a license to use the name, but it does not grant any ownership interest in the name.

9. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on:

March 21, 2019


Kenneth Kraus

EXHIBIT A

M A N A T T
P H E L P S
P H I L L I P S

ATTORNEYS AT LAW

Kenneth L. Kraus
Direct Dial: (615) 327-2744
Internet: kkraus@manatt.com

October 23, 1998

Ron Rainey
Ron Rainey Management
315 South Beverly Drive
Suite 201
Beverly Hills, CA 90212

Re: Marshall Tucker "Live" LP

Dear Ron:

Further to your comment the other day concerning the ownership of the proposed "Live" LP masters, you should note the following:

1. In the agreement between Doug and Jerry, on the one hand, and the other members of the group, on the other, pursuant to which Doug and Jerry acquired ownership of the Marshall Tucker Band, Inc. ("MTB."), it clearly states in paragraph 4 that "anything to the contrary notwithstanding, M.T. Industries, Inc. ("MTI") shall have the right to use, and to permit others to use, the Name in connection with all previously released masters of the band and all other recordings made prior to the date hereof (other than Doug's Record)." (Please see copy attached.) Clearly it was everyone's intention that M.T. Industries, Inc. would be retaining the rights to all previously unreleased masters. It would certainly be inconsistent for MTI to retain the rights to use the Name with those masters and yet have MTB owning those masters with no rights to use the Name in connection with their exploitation.

2. It is my understanding (confirmed by Paul) that The Marshall Tucker Band, Inc. was a corporation solely set up to handle the band's touring activities and all of their other activities (including recording services) were to be outside that corporation. This is a common practice since you don't want to subject masters and other valuable group assets to possible "road" liabilities.

3. I am not aware of any employment agreements between the members of the band and MTB that would transfer to that corporation the results and proceeds of the members' recording services.

4. Some of these masters were recorded prior to the incorporation of either MTI or MTB and thus there would have to exist an assignment of these masters to MTB for it to own them. I am not aware of any such assignment.

MANATT, PHELPS & PHILLIPS, LLP

1233 17th Avenue South, Nashville, Tennessee 37212-2801 • 615-327-2600 • FAX 615-327-2044

Los Angeles • Washington, D.C. • Nashville

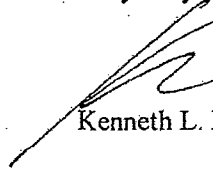
MANATT, PHELPS & PHILLIPS, LLP

October 23, 1998

Page 2

If you have any further thoughts on this matter, please let me know.

Very truly yours,



Kenneth L. Kraus

KLK/mw

cc: 10/23/98

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DECLARATION OF KENNETH KRAUS IN SUPPORT OF THE MARSHALL TUCKER BAND INC.'S PETITION FOR CANCELLATION** was served upon Registrant's counsel, Richard L. Albert, by forwarding said copy on May 13, 2019, via email to rick@albertlawoffices.com.

/s/ Sarah S. Brooks Date: May 20, 2019

Name: Sarah S. Brooks