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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, asharon@venable.com, hedmonds@venable.com 310-229-9900
Submission	Plaintiff's Notice of Reliance
Filer's Name	Sarah S. Brooks
Filer's email	ssbrooks@venable.com, hedmonds@venable.com, asharon@venable.com
Signature	/Sarah S. Brooks/
Date	06/10/2019
Attachments	Petitioners Fourth Notice of Reliance.pdf(1087759 bytes)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITIONER'S FOURTH NOTICE OF RELIANCE** was served upon Registrant's counsel, Richard L. Albert, by forwarding said copy on June 10, 2019, via email to rick@albertlawoffices.com.

/s/ Sarah S. Brooks Date: June 10, 2019

Name: Sarah S. Brooks

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

The Marshall Tucker Band, Inc. and Doug Gray,)	Civil Action No.: 7:16-cv-00420-MGL
)	
Plaintiffs,)	DEFENDANT'S RESPONSE TO
)	PLAINTIFFS' FIRST REQUESTS
v.)	FOR ADMISSION TO DEFENDANT
)	M T INDUSTRIES, INC.
M T Industries, Inc. and Ron Rainey,)	
)	
Defendants.)	
)	
)	
)	

M T Industries, Inc. ("MTI" or "Defendant"), through undersigned counsel, responds to the First Requests for Admission to Defendant M T Industries, Inc. (the "RFAs") propounded by plaintiffs, The Marshall Tucker Band, Inc. ("MTB") and Doug Gray ("Gray", collectively "Plaintiffs"), as follows:

GENERAL RESPONSES AND OBJECTIONS

The General Responses and Objections apply to each of Defendant's Specific Responses to the Requests for Admission, and the Specific Responses set forth below shall not be deemed a waiver, either in whole or in part, of any of these General Responses and Objections:

1. Defendant 's discovery, investigation and analysis in this matter are ongoing and continuing. Relevant documents have not yet been produced, and the depositions of persons who may have knowledge relevant to the issues in this lawsuit have not yet been taken and/or completed. Accordingly, Defendant reserves the right (but assumes no duty beyond the requirements of law) to amend or further supplement the following Specific Responses based on

Exhibit 9
R. Rainey
12/5/16
reporter: nikki roy
CSR No. 3052

any further investigation and discovery in this case, or analysis of documents, records or facts by its counsel. Defendant further reserves the right to introduce at trial any and all evidence.

2. Nothing in Defendant 's Specific Responses to the Requests for Admission shall be construed as, or considered to be, final or exhaustive, nor shall these General Responses and Objections, or the following Specific Responses, prejudice Defendant in relation to further discovery, research, analysis, or presentation of evidence at trial.

3. These General Responses and Objections apply to each of the Specific Responses below, whether or not referred to in any specific response provided, and the Specific Responses set forth are not a waiver, in whole or in part, of any of these General Responses and Objections.

Without waiving any objections, Defendant will attempt in good faith to provide responses to the Requests for Admission to the extent reasonably practicable under the circumstances, and based upon information known or reasonably available to Defendant at this early stage or by the review by Defendant and its counsel of the records, documents and facts in this matter.

SPECIFIC RESPONSES

REQUEST NO. 1

Admit that MTI signed the Declaration accompanying the MTI Mark Applications.

RESPONSE TO REQUEST NO. 1

Defendant objects that the declaration statement set forth as its definition "R" of the RFAs was not the declaration on MTI's applications for trademark registration. The true and correct DECLARATION is as follows:

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C.

Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Michael P. Martin/ Date Signed: 12/06/2013
Signatory's Name: Michael P. Martin
Signatory's Position: Attorney of Record- California State Bar Member

Defendant admits that Defendant signed the DECLARATION.

REQUEST NO. 2

Admit that in signing the Declaration, MTI declared itself to be the "owner of the [Name]."

RESPONSE TO REQUEST NO. 2

Defendant objects that the declaration statement set forth as its definition "R" of the RFAs was not the declaration on MTT's applications for trademark registration. The correct DECLARATION is recited above. Defendant admits that in signing the DECLARATION, MTI declared itself to be the owner of the trademark/service mark "The Marshall Tucker Band" or "Marshall Tucker Band," but denies that the DECLARATION contains a statement that Defendant "owned the [Name]" "The Marshall Tucker Band" or "Marshall Tucker Band" for any other purpose.

REQUEST NO. 3

Admit that in signing the Declaration, MTI declared that it was "entitled to use the [Name] in commerce."

RESPONSE TO REQUEST NO. 3

Defendant objects that the declaration statement set forth as its definition "R" of the RFAs was not the declaration on MTI's applications for trademark registration. The correct DECLARATION is recited above. Defendant admits that in signing the DECLARATION, MTI declared it was entitled to use the mark it was seeking to register, i.e. "The Marshall Tucker Band" or "Marshall Tucker Band" in commerce.

REQUEST NO. 4

Admit that in signing the Declaration, MTI declared that "no other person, firm, corporation, or association has the right to use the [Name] in commerce, either in the identification thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive[.]"

RESPONSE TO REQUEST NO. 4

Defendant objects that the declaration statement set forth as its definition "R" of the RFAs was not the declaration on MTI's applications for trademark registration. The correct DECLARATION is recited above. Defendant admits that in signing the DECLARATION, MTI declared that "no other person, firm, corporation, or association has the right to use the mark (i.e. the trademark "The Marshall Tucker Band" or "Marshall Tucker Band") in commerce, either in the identification thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive[.]"

REQUEST NO. 5

Admit that in submitting the MTI Mark Application for the 4616427 Mark, MTI sought to register trademarks in the Name as to "Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical sound recordings; Musical video recordings; Phonograph records featuring music."

RESPONSE TO REQUEST NO. 5

Admit.

REQUEST NO. 6

Admit that in submitting the MTI Mark Application for the 4616428 Mark, MTI sought to register trademarks in the Name as to "Digital media, namely, pre-recorded DVDs, downloadable audio and video recordings, and CDs featuring and promoting music; Musical recordings; Musical sound recordings; Musical video recordings."

RESPONSE TO REQUEST NO. 6

Admit

REQUEST NO. 7

Admit that the Band was formed in or around 1971.

RESPONSE TO REQUEST NO. 7

Admit

REQUEST NO. 8

Admit that MTB was incorporated in 1974.

RESPONSE TO REQUEST NO. 8

Admit.

REQUEST NO. 9

Admit that MTI was incorporated in 1978.

RESPONSE TO REQUEST NO. 9

Admit.

REQUEST NO. 10

Admit that the original members of the Band created the Name before MTI was formed.

RESPONSE TO REQUEST NO. 10

Deny.

REQUEST NO. 11

Admit that the Band used the Name for music-related purposes before MTI was formed.

RESPONSE TO REQUEST NO. 11

Admit.

REQUEST NO. 12

Admit that MTB used the Name for music-related purposes before MTI was formed.

RESPONSE TO REQUEST NO. 12

Admit

REQUEST NO. 13

Admit that the Band recorded and released albums before MTI was formed.

RESPONSE TO REQUEST NO. 13

Deny. Defendant admits that the Band recorded songs before MTI was formed, some of which were subsequently released in LP album form or as 45 rpm "singles".

REQUEST NO. 14

Admit that the Band recorded and released the Capricorn Masters.

RESPONSE TO REQUEST NO. 14

Defendant admits that the Band recorded the Capricorn Masters, but denies that the Band released the Capricorn Masters.

REQUEST NO. 15

Admit that the Band has recorded albums other than the Capricorn Masters.

RESPONSE TO REQUEST NO. 15

Defendant admits that the Band recorded songs other than the Capricorn Masters which were released to the public in album compilations.

REQUEST NO. 16

Admit that MTI has no ownership interest in the Non-Capricorn Masters.

RESPONSE TO REQUEST NO. 16

Deny.

REQUEST NO. 17

Admit that the MTI Mark Applications sought registration of trademarks consisting of the Name to apply to goods and services that include the Capricorn Masters.

RESPONSE TO REQUEST NO. 17

Admit.

REQUEST NO. 18

Admit that the MTI Mark Applications sought registration of trademarks consisting of the Name to apply to goods and services that include the Non-Capricorn Masters.

RESPONSE TO REQUEST NO. 18

Admit.

REQUEST NO. 19

Admit that in signing the Declaration, MTI stated that it was the owner of the Name as to

goods and services that include the Capricorn Masters.

RESPONSE TO REQUEST NO. 19

Defendant objects that the declaration statement set forth as its definition "R" of the RFAs was not the declaration on MTI's applications for trademark registration. The correct DECLARATION is recited above. Defendant denies that in signing the DECLARATION, MTI declared that it owned the Name utilized as its trademark/service mark as to commercial use on goods and services which included the Capricorn Masters, however, Defendant admits it was authorized to use, and in fact used the trademark/service mark in commerce in connection with the Capricorn Masters.

REQUEST NO. 20

Admit that in signing the Declaration, MTI stated that it was the owner of the Name as to goods and services that include the Non-Capricorn Masters.

RESPONSE TO REQUEST NO. 20

Defendant objects that the declaration statement set forth as its definition "R" of the RFAs was not the declaration on MTI's applications for trademark registration. The correct DECLARATION is recited above. Defendant denies that in signing the DECLARATION, MTI declared that it owned the Name utilized as its trademark/service mark as to commercial use on goods and services which included the Non-Capricorn Masters, however, Defendant admits it was authorized to use, and in fact used the trademark/service mark in commerce in connection with the Non-Capricorn Masters.

REQUEST NO. 21

Admit that in submitting the MTI Mark Applications, MTI stated that it was using the Name in commerce.

RESPONSE TO REQUEST NO. 21

Admit.

REQUEST NO. 22

Admit that MTB and MTI are engaged in the music business.

RESPONSE TO REQUEST NO. 22

Admit, but not the same aspects of the music business.

REQUEST NO. 23

Admit that MTI's business is related to the Band.

RESPONSE TO REQUEST NO. 23

Deny. MTI's business would go on unchanged whether or not MTB or the Band exists or not, and its business related to the Declaration and trademark applications was not related to MTB.

REQUEST NO. 24

Admit that MTB's business is related to The Band.

RESPONSE TO REQUEST NO. 24

Admit. But Defendant denies that MTB's business is related to the same Band members that recorded MTI's masters and recordings.

REQUEST NO. 25

Admit that the MTI Mark Applications sought registration of trademarks consisting of the Name for use in the music business.

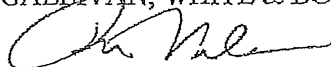
RESPONSE TO REQUEST NO. 25

Defendant denies that MTI sought registration of trademarks consisting of the Name for use in all aspects of the music business, but admits that MTI sought registration of trademarks

consisting of the Name for its limited use of the name in commerce in connection with music recordings.

October 17, 2016

GALLIVAN, WHITE & BOYD, P.A.



Thomas E. Vanderbloemen (Fed. I.D. #9858)
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
(864) 271-9580
(864) 271-7502 FAX
tvanderbloemen@gwblawfirm.com

Law Offices of Richard L. Albert

Richard L. Albert (Cal. Bar No. 204359)
Admitted pro hac vice
Law Offices of Richard L. Albert
4605 Lankershim Blvd., STE 203
North Hollywood, CA 91602
(818) 752-2776 (Phone)
(818) 752-7471 (Fax)
rick@albertlawoffices.com

Attorneys for Defendants M T Industries, Inc. and Ron Rainey