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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.
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Submission	Plaintiff's Notice of Reliance
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Signature	/Sarah S. Brooks/
Date	06/11/2019
Attachments	Petitioners Amended First Notice of Reliance.pdf(603597 bytes)

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

The Marshall Tucker Band, Inc.,)	Cancellation No.: 92065794
)	Registration Nos. 4616427 and 4616428
Petitioner,)	Mark: THE MARSHALL TUCKER BAND
)	
v.)	
)	
M T Industries, Inc.,)	AMENDED NOTICE OF
)	RELIANCE
)	
Respondent.)	
)	
)	
)	
_____)	

PETITIONER’S AMENDED FIRST NOTICE OF RELIANCE

Petitioner The Marshall Tucker Band, Inc. (“MTB”), by and through undersigned counsel, pursuant to TBMP Chapter §§704, files this Amended Notice of Reliance:

Petitioner relies on this Notice of Reliance to support this cancellation proceeding and to admit the Respondent’s supplemental responses to Petitioner’s first set of interrogatories served on November 27, 2018. These responses contain Respondent’s contentions regarding ownership of and right to register the word mark and logo “The Marshall Tucker Band,” as well as contentions relating to the signing of the Declaration contained in the M.T. Industries, Inc. trademark applications, which is the basis for Petitioner’s fraud claim.

Dated: June 11, 2019

Respectfully submitted,

 /s/ Sarah S. Brooks
Sarah S. Brooks, Esq.

Attorney for Petitioner
Venable LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITIONER'S AMENDED FIRST NOTICE OF RELIANCE** was served upon Registrant's counsel, Richard L. Albert, by forwarding said copy on June 11, 2019, via email to rick@albertlawoffices.com.

/s/ Sarah S. Brooks Date: June 11, 2019

Name: Sarah S. Brooks

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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The Marshall Tucker Band, Inc.,)	Cancellation No.: 92065794
)	Registration Nos.: 4616427, 4616428
Petitioner,)	
)	Mark:
v.)	THE MARSHALL TUCKER BAND
)	
M T Industries, Inc.,)	
)	
Registrant.)	
)	
)	
)	
)	

**REGISTRANT’S SECOND SUPPLEMENTED AND AMENDED RESPONSE TO
PETITIONER’S FIRST SET OF INTERROGATORIES TO REGISTRANT M T
INDUSTRIES, INC.**

M T Industries, Inc. (“MTI” or “Registrant”), through undersigned counsel, responds to the First Set of Interrogatories to Registrant M T Industries, Inc. (the “Rogs”) propounded by petitioner, The Marshall Tucker Band, Inc. (“MTB” or “Petitioner”) as follows:

GENERAL RESPONSES AND OBJECTIONS

The General Responses and Objections apply to each of Registrant's Specific Responses to the Interrogatories, 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. Registrant objects to each Interrogatory insofar as it seeks to impose obligations that exceed those imposed by the Federal Rules of Civil Procedure.
2. Registrant objects to each Interrogatory insofar as it seeks information subject to the attorney-client privilege, the work product doctrine, and any other recognized privilege or

confidentiality doctrine. All responses are subject to this objection, without prejudice or waiver thereof. Inadvertent responses containing privileged information shall not constitute the waiver of any privilege.

3. Registrant objects to each Interrogatory to the extent it seeks information that has been provided by other discovery means, or may be provided by less burdensome and more suitable means.

4. Registrant objects that these Interrogatories, including but not limited to Interrogatory No. 16, contain multiple subparts which exceeding 25 interrogatories as permitted by FRCP 33(a)(1). (see, i.e. *Safeco of America v. Rawstron* (CD CA 1998) 181 FRD 441, 445; *Miller v. Holzman* (D DC 2006) 240 FRD 1, 3).

5. Registrant '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, Registrant reserves the right (but assumes no duty beyond the requirements of law) to amend or further supplement the following Specific Answers based on any further investigation and discovery in this case, or analysis of documents, records or facts by its counsel. Registrant further reserves the right to introduce at trial any and all evidence.

6. Without waiving any of the foregoing general objections, and specifically subject thereto, Registrants further respond as follows:

SUPPLEMENTED AND AMENDED RESPONSES

INTERROGATORY NO. 1:

Identify and describe all facts and documents supporting the statement in the MTI Mark

Applications that “the applicant [is] the owner of the trademark/service mark sought to be registered.”

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 1

Registrant claims ownership of the trademark/service mark as used on the classifications of products and services described in the MTI Mark Applications because Registrant uses and has used the marks “The Marshall Tucker Band” and “Marshall Tucker Band” in interstate commerce in connection with its exploitation of music recording masters for decades that it owned as early as 1981, and in connection with music goods such as record albums and other services as of February, 1978 (D-1173-1175; D-1226-1258; D35-58), as such use was memorialized in the 1984 Letter Agreement made between the original Marshall Tucker Band member musicians whose performances were embodied on those masters, Petitioner, and Registrant. (D-223-225). Documents produced as D-1 to D-1327 support Registrant’s claim of its trademark/service mark ownership derived from its unimpeded and continuous use of the marks in connection with the music recordings made by the original Marshall Tucker musicians which Registrant exclusively owns. These documents evidence Registrant’s, its predecessors in interest’s, and its licensees’ use of the marks on music recording-based goods and marketing materials produced in diverse media and commercial services related to those music recordings, as described in the MTI Mark Applications, These uses were under Registrant’s oversight and control as of when Registrant was formed as a corporation in 1978, with Registrant’s licensing of such rights commencing soon thereafter. During the decades of Registrant’s control and use of the marks for public commerce, objections were never raised by any person or entity connected to such use until the present dispute was initiated by Petitioner and its owner, Doug Gray. Both Petitioner and Doug Gray

signed the aforementioned 1984 Letter agreement, and were aware of Registrant's use of the marks even before 1984, and rather than object, confirmed in the 1984 document that Registrant had the right to use the mark in connection with music recordings, as the individuals who created Registrant as a corporation, and who each signed the 1984 Letter agreement, had agreed amongst themselves when they formed Registrant.

Registrant's predecessor-in-interest's uses of the mark began about 1973, when Capricorn Records/No Exit Music began releasing record albums to the public identified by the marks. (D-76-80, D-41-63, D-1184-1191). Registrant's predecessors-in-interest included the individual musicians who signed the aforementioned 1984 Letter Agreement, who in written contracts signed in 1972 each agreed Capricorn Records and No Exit Music would use the name "Marshall Tucker Band" in perpetuity on record albums it recorded and manufactured for public consumption (D-76-80, D-41-63). Registrant on or about May 7, 1981 purchased those record album recording masters along with any rights Capricorn Records and No Exit had acquired appurtenant to the manufacture of those masters and distribution of the resulting music recordings, including and not limited to the right to duplicate, market and sell those albums, and all accrued trademark and copyright rights arising from Capricorn/No Exit's agreements, packaging, marketing and distribution. (D-134; D131-133; D-126-130; D-115 to 122; D-123-125; D-142-145; D-146; D-159-163). Those same individual musicians who contracted with Capricorn Records and No Exit Music also created Registrant MTI on February 9, 1978, as MTI's original directors and stockholders, to oversee Capricorn Records and No Exit's manufacture and exploitation of the recordings as well as other music they jointly recorded, and to license and manage and cause the commercial release their recorded music performances by using and licensing the designation "The Marshall Tucker Band," and

to collect royalties from such commercial exploitation of those performances. (D-1173-1175). While many of the individual shareholders sold their interests in MTI over the years, for decades ever since Registrant MTI was formed in 1978, Registrant has continued to have the right and authority to license, manage, and cause the commercial release and distribution of all music bearing the name “The Marshall Tucker Band” recorded made by those original Marshall Tucker Band musicians until when they disbanded in 1984, as shown in the 1984 Letter Agreement (D-232-234), and to collect royalties from such commercial exploitation of those performances as the exclusive rights holder of the music master recordings. (range D-1 to D-1327).

The documents D-1 to D-1327 evidences Registrant MTI’s status as beneficiary and manager derived from the continuous use of the name “The Marshall Tucker Band” on music recordings from record albums released beginning in 1973, all bearing the registered marks. Beginning after Registrant was created in 1978, Registrant in addition to using the marks on services and exploitation of products it owned or created itself, acted as licensor of rights to use the marks in connection with record albums, singles, music recordings, CD’s, videos, and digital streaming manufactured from those masters. For example, MTI collected royalties. (D-665-667; D-667-669; D-670-672). MTI issued licenses (i.e., D-480-484; D-450, 451-457; D-1112-1125; D-501, 502-513; D-514-515; D-516, 517-521; D-533-538; D-574-578). The only objections raised from any source was Petitioner’s objection recently raised to support the filing of its unsuccessful federal lawsuit against MTI (D-1313), and repeated again in these cancellation proceedings.

INTERROGATORY NO. 2:

Identify and describe all facts and documents supporting the statement in the MTI Mark

Applications that “the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 04/00/1973.”

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 2

The original band members, individual musicians Toy Caldwell, Tommy Caldwell, George McCorkle, H. Douglas Gray, Jerry Eubanks, and Paul T. Riddle, began using the name “The Marshall Tucker Band” (the “Name”) as their collective professional name in connection with their joint music performances before they jointly created Registrant MTI in 1978, and around the time they signed contracts with Capricorn Records and No Exit Music, described below. (*See, i.e.* Petition for Cancellation). These individual band members agreed in 1972 that Capricorn Records and No Exit Music would exclusively use the band name “Marshall Tucker” as a designation of their recorded combined musical performances as a band on record albums and other distribution of recordings in perpetuity, creating trademark rights. (D-76-80, D-41-63). The music master recordings, record packaging, and contract rights with performers on those recordings which were created by Capricorn Records and No Exit Music pursuant to its agreement with those individual band members were purchased by Registrant for its exclusive, unencumbered use through Capricorn Records’ and No Exit Music’s bankruptcy sale on or about May 7, 1981 (D-134; D131-133; D-126-130; D-115 to 122; D-123-125; D-142-145; D-146; D-159-163).

In April, 1973 Capricorn Records released the first LP record album marked “The Marshall Tucker Band” to the public. (D-1184). Subsequent albums were recorded by Capricorn/No Exit of the band members, which were commercially released to the public by Capricorn marked “The Marshall Tucker Band.” (D-1178-1191). Capricorn Records created the logo name “The Marshall Tucker Band” and used that logo as a trademark on packaging for

the record album entitled “Carolina Dreams,” (D-1178-1183; D-1189) which was publicly released in 1977. Capricorn’s copyright ownership rights in the logo, as credited on the record album packaging, was included in Registrant’s May 7, 1981 purchase of Capricorn and No Exit’s assets. The record albums recorded and released by Capricorn Records and No Exit Music were very successful, and many were certified as Gold Record by the RIAA.

(https://www.riaa.com/gold-platinum/?tab_active=default-award&se=marshall+Tucker)

These same six musicians formed Registrant MTI in 1978 as its shareholders and directors to do all things necessary to further its involvement in the music recording business, including without limitation, to license, own, manage, market, and produce their intellectual property rights in songs and recordings using, and to permit others to use, the name “The Marshall Tucker Band” and “Marshall Tucker Band” in connection with those songs and recordings. (D-1173-1175). For decades Registrant pursued that mandate by using the Name in commerce in connection with music recordings that were made of the performances of its founding members. (range D-1 to D-1327)

As such Capricorn/No Exit and the individual band members were Registrant’s predecessors in interest to its use continuous of the mark on music recordings on a variety of media at least as early as 04/00/1973.

INTERROGATORY NO. 3:

Identify and describe all facts and documents supporting the statement in the MTI Mark Applications that to the best of its knowledge, “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[.]”

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 3

Registrant believes, to the best of its knowledge, that "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" because 1) it never received a complaint that its use of the mark deceived anyone or confused anyone, 2) it never made a mistake and affixed the mark to the wrong goods or services, and 3) Petitioner's claims that Registrant's use of the marks were infringing or diluting the mark, brought in Federal Court, was dismissed with prejudice.

Registrant owns the music master recordings from which it makes or licenses the manufacture of goods bearing the marks, and unless such use is licensed or permitted by Registrant MTI, no other person or entity is able to use the trademark/service mark which was subject of its applications on those same goods and services as Registrant, *i.e.* the masters and recordings which were made prior to February 22, 1984. After that date, the original band members who formed Registrant disbanded, and never recorded together again. Registrant purchased the music master recordings, including copyright thereto and other appurtenant intellectual property rights, on or about May 7, 1981 (D-134; D131-133; D-126-130; D-115 to 122; D-123-125; D-142-145; D-146; D-159-163). In Petitioner's applications for USPTO trademark registration of the Name "The Marshall Tucker Band" or "Marshall Tucker Band," filed by Petitioner on September 5, 2014 (after Registrant's applications were filed on December 6, 2013 and published July 24, 2014), with full and actual knowledge of Registrant MTI's continuing decades-long use of the marks in commerce, Petitioner attests in the application declarations signed by its attorney Ellen Cheek, that Registrant's use of its mark on

goods or services was not likely to cause confusion, or to cause mistake, or to deceive. (D-1314-1320; D-1321-1327).

Registrant's belief that its use of the marks did not deceive or cause confusion or mistake was supported by the absence of any objections or complaints during its decades of use of the marks in commerce. Registrant's belief that its use of the marks was non-infringing and legally proper, and its unencumbered use of the marks in connection with music recordings was intended by Petitioner, was supported by the 1984 Letter Agreement, signed by Petitioner, which recognized and affirmed Registrant's right to use of the name "The Marshall Tucker Band" for Registrant's own use in connection with music recordings, while limiting use of the mark by the other parties to that Agreement. (D-223-225). Petitioner unsuccessfully tested its theory that Registrant's use of the mark might cause confusion or deception to the public by alleging trademark infringement and trademark dilution against Registrant in the lawsuit it filed in U.S. District Court, District of South Carolina case no. 7:16-cv-00420-MGL, which claims were dismissed with prejudice by the Court. (see, complaint and judgment in that action; D-1308-1312; D-1313). Even after the 1984 Letter Agreement was signed by Petitioner and individually by Petitioner's sole owner, Mr. Gray, Mr. Gray continued to be a member of Registrant MTI's board of directors and a part owner of the company, and until recently, knew of but never objected to Registrant's use of the marks. (*see*, Deposition of Douglas Gray, June 12, 2018.)

INTERROGATORY NO. 4:

State whether MTI claims the exclusive right to use the Name in connection with the description of goods and/or services identified in the MTI Mark Applications.

a. If so, state the date and manner in which MTI gained such right, and identify

and describe all facts and documents supporting same.

b. If not, state the origin and scope of any usage right claimed by MTI, and identify and describe all facts and documents supporting same.

c. If not, identify any usage right not claimed by MTI, and identify and describe all facts and documents supporting same.

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 4

Registrant objects that this interrogatory contains discrete subparts amounting to individual interrogatories. Registrant does not claim that Registrant has the exclusive right to use the Name “The Marshall Tucker Band” or “Marshall Tucker Band” for all purposes or uses, but claims it has the exclusive right to use the name in connection with its music recording masters because no other person has the right to make copies or derivative works from those music recordings without Registrant’s permission.

Registrant claims ownership of the trademark/service mark as used on the classifications of products and services described in the MTI Mark Applications because Registrant uses and has used the marks “The Marshall Tucker Band” and “Marshall Tucker Band” in interstate commerce in connection with its exploitation of music recording masters for decades that it owned as early as 1981, and in connection with music goods such as record albums and other services as of February, 1978 (D-1173-1175; D-1226-1258; D35-58), as such use was memorialized in the 1984 Letter Agreement made between the original Marshall Tucker Band member musicians whose performances were embodied on those masters, Petitioner, and Registrant. (D-223-225). Documents produced as D-1 to D-1327 support Registrant’s claim of its trademark/service mark ownership derived from its unimpeded and continuous use of the marks in connection with the music recordings made by the original

Marshall Tucker musicians which Registrant exclusively owns. These documents evidence Registrant's, its predecessors in interest's, and its licensees' use of the marks on music recording-based goods and marketing materials produced in diverse media and commercial services related to those music recordings, as described in the MTI Mark Applications. These uses were under Registrant's oversight and control as of when Registrant was formed as a corporation in 1978, with Registrant's licensing of such rights commencing soon thereafter. During the decades of Registrant's control and use of the marks for public commerce, objections were never raised by any person or entity connected to such use until the present dispute was initiated by Petitioner and its owner, Doug Gray. Both Petitioner and Doug Gray signed the aforementioned 1984 Letter agreement, and were aware of Registrant's use of the marks even before 1984, and rather than object, confirmed in the 1984 document that Registrant had the right to use the mark in connection with music recordings, as the individuals who created Registrant as a corporation, and who each signed the 1984 Letter agreement, had agreed amongst themselves when they formed Registrant.

Registrant's predecessor-in-interest's uses of the mark began about 1973, when Capricorn Records/No Exit Music began releasing record albums to the public identified by the marks. (D-76-80, D-41-63, D-1184-1191). Registrant's predecessors-in-interest included the individual musicians who signed the aforementioned 1984 Letter Agreement, who in written contracts signed in 1972 each agreed Capricorn Records and No Exit Music would use the name "Marshall Tucker Band" in perpetuity on record albums it recorded and manufactured for public consumption (D-76-80, D-41-63). Registrant on or about May 7, 1981 purchased those records album recording masters along with any rights Capricorn Records and No Exit had acquired appurtenant to the manufacture of those masters and distribution of the resulting

music recordings, including and not limited to the right to duplicate, market and sell those albums, and all accrued trademark and copyright rights arising from Capricorn/No Exit's agreements, marketing and distribution. (D-134; D131-133; D-126-130; D-115 to 122; D-123-125; D-142-145; D-146; D-159-163). Those same individual musicians who contracted with Capricorn Records and No Exit Music also created Registrant MTI on February 9, 1978, as MTI's original directors and stockholders, to oversee Capricorn Records and No Exit's manufacture and exploitation of the recordings as well as other music they jointly recorded, and to license and manage and cause the commercial release their recorded music performances by using and licensing the designation "The Marshall Tucker Band," and to collect royalties from such commercial exploitation of those performances. (D-1173-1175). While many of the individual shareholders sold their interests in MTI over the years, for decades ever since Registrant MTI was formed in 1978, Registrant has continued to have the right and authority to license, manage, and cause the commercial release and distribution of all music bearing the name "The Marshall Tucker Band" recorded made by those original Marshall Tucker Band musicians until when they disbanded in 1984, as shown in the 1984 Letter Agreement (D-232-234), and to collect royalties from such commercial exploitation of those performances as the exclusive rights holder of the music master recordings. (range D-1 to D-1327).

The documents D-1 to D-1327 evidences Registrant MTI's status as beneficiary and manager derived from the continuous use of the name "The Marshall Tucker Band" on music recordings from record albums released beginning in 1973, all bearing the registered marks. Beginning after Registrant was created in 1978, Registrant in addition to using the marks on services and exploitation of products it owned or created itself, acted as licensor of rights to

use the marks in connection with record albums, singles, music recordings, CD's, videos, and digital streaming manufactured from those masters. For example, MTI collected royalties. (D-665-667; D-667-669; D-670-672). MTI issued licenses (i.e., D-480-484; D-450, 451-457; D-1112-1125; D-501, 502-513; D-514-515; D-516, 517-521; D-533-538; D-574-578). The only objections raised from any source was Petitioner's objection recently raised to support the filing of its unsuccessful federal lawsuit against MTI (D-1313), and repeated again in these cancellation proceedings.

The 1984 Letter Agreement does not grant or suggest that Petitioner or anyone has an "exclusive" right to use the Name "The Marshall Tucker Band" or "Marshall Tucker Band", but rather apportions the use of the name between the parties, including Petitioner, Doug Gray, and Registrant MTI, to which apportionment the parties to the Agreement all consented. (D-223-225). That 1984 document acknowledges that Registrant has the right to use the name which comprises its trademark in connection with those recordings, which it has been doing for many years. (see, i.e. D-82-114; range D1 – D1327). Registrant's continuous, rightful use of the mark for its own benefit gives rise to its common law and federal rights.

INTERROGATORY NO. 5:

State whether any person or entity other than MTI has ever possessed an exclusive right to use the Name. If so:

- a. Identify each person or entity.
- b. State the date and manner in which each right originated.
- c. If applicable, state the date and manner in which each right terminated.
- d. Identify and describe all facts and supporting documents.

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 5

Registrant objects that this interrogatory contains discrete subparts amounting to individual interrogatories. No person or entity ever had an exclusive right to use the Name for all purposes or all uses. However, parties to the 1984 Agreement (D-223-225) consented to not use the Name “The Marshall Tucker Band” or “Marshall Tucker Band” in certain categories of commerce, while the parties, including Petitioner, agreed that Registrant had the right to use the Name in connection with certain music recordings. Petitioner alleges that it has used the Name for public performances in its Petition in these proceedings, and in the Federal lawsuit it unsuccessfully brought against Registrant, U.S. District Court, District of South Carolina case no. 7:16-cv-00420-MGL, which claims were dismissed with prejudice by the Court. (see, complaint and judgment in that action; D-1308-1312; D-1313).

Registrant does not know when or how rights other than its own rights in the use of the marks originated, but the fact that the 1984 Letter Agreement apportions rights to other goods or services among the remaining parties, which does not mean those parties actually exercised those rights.

INTERROGATORY NO. 7:

Identify the date on which MTI first started using the Name in commerce in connection with the goods and/or services described in the MTI Mark Applications.

a. Identify and describe all documents reflecting or supporting same.

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 7

Registrant first used the Name “The Marshall Tucker Band” or “Marshall Tucker Band” on the following goods/services on the following dates:

DIGITAL MEDIA:

Pre-recorded DVDs: First commercially released November 2, 2004, based on

MTI-MTV video license made August 16, 2004 (D-323,324-326)

Downloadable audio: First commercially released in or about 2004, based on June 25, 2003 MTI-MTE-Shout Factory license and Agreement (D-302-312; D-313-322).

Video recordings: First commercially released November 2, 2004, based on MTI-MTV video license made August 16, 2004 (D-323,324-326)

CDs featuring and promoting music: First commercially released in or about 1989, based on MTI-Dominion (K-Tel, AJK Music) CD license agreement made December 30, 1987 (D174-190)

MUSICAL SOUND RECORDINGS: In April, 1973 the first LP record album, marked “The Marshall Tucker Band” was released to the public by Capricorn Records. (D-1184; D-76-80, D-41-63). On February 13, 1978 MTI was formed and began control of those rights granted to Capricorn/No Exit thereafter, subsequently making the first MTI-WB license of musical sound recordings for Phonograph Records using the Name on Nov. 8, 1978 (D-1-34; 1173-1175). Registrant acquired all right title and interest owned by Capricorn/No Exit in the 1973 music recordings, record album artwork and jackets, and rights accrued from its distribution of those goods, including copyright and trademark rights. (D-134; D131-133; D-126-130; D-115 to 122; D-123-125; D-142-145; D-146; D-159-163)

MUSICAL VIDEO RECORDINGS: First commercially released November 2, 2004, based on MTI-MTV video license made August 16, 2004 (D-323,324-326)

PHONOGRAPH RECORDS FEATURING MUSIC: In April, 1973 the first LP record album, marked “The Marshall Tucker Band” was released to the public by

Capricorn Records. (D-1184; D-76-80, D-41-63). On February 13, 1978 Registrant MTI was formed and began control of those rights granted to Capricorn/No Exit thereafter, subsequently making the first MTI-WB license of musical sound recordings for Phonograph Records using the Name on Nov. 8, 1978 (D-1-34; 1173-1175). Registrant acquired all right title and interest owned by Capricorn/No Exit in the 1973 music recordings, record album artwork and jackets, and rights accrued from its distribution of those goods, including copyright and trademark rights. (D-134; D131-133; D-126-130; D-115 to 122; D-123-125; D-142-145; D-146; D-159-163)

INTERROGATORY NO. 8:

Identify each person involved in the decision to file, and/or the filing, of the MTI Mark Applications.

- a. State the extent of each identified person's involvement in the decision to file and/or the filing of the MTI Mark Applications.
- b. Identify all related documents.

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 8

Ron Rainey, Michael Martin, Ken Krauss, Michael Wilkes.

Ken Krauss reviewed the 1984 Letter Agreement, and advised Ron Rainey by letter on October 23, 1998 that MTI owned exclusive use of the name The Marshall Tucker Band in connection with commercial distribution of the pre-1984 masters and recordings, and specifically, a recording of a live performance by the band made prior to 1984. (D-230-231, D-232-234) Michael Wilkes furnished that copy of the Letter Agreement to Krauss by mail on July 24, 1998. Ron Rainey as Registrant's CEO was aware of the current 1984 use and license of the mark on digital music recordings. (D-222; D-223-225). Michael Martin prepared and

signed the applications for trademark registration, and reviewed the use of the name Marshall Tucker Band on product and services. (Registrant's applications for trademark registration, Serial numbers 86137638, 86137626; D-1015-1034; D445-449).

INTERROGATORY NO. 9:

Identify all licenses, contracts, agreements, or other documents pursuant to which MTI acquired any claimed rights to or interest in the Name.

SUPPLEMENTED AND AMENDED ANSWER TO INTERROGATORY NO. 9

Registrant objects to this interrogatory as way too broad, when asking Registrant to identify "all licenses, contracts, agreements, or other documents pursuant to which MTI acquired any claimed rights to or interest" in the Name "The Marshall Tucker Band" or "Marshall Tucker Band". Registrant's interest in the Name goes beyond its mere trademark rights in a mark derived from placing the mark on goods or services in commerce in connection with song masters and other recordings.

Registrant claims ownership of the trademark/service mark as used on the classifications of products and services described in the MTI Mark Applications because Registrant uses and has used the marks "The Marshall Tucker Band" and "Marshall Tucker Band" in interstate commerce in connection with its exploitation of music recording masters for decades that it owned as early as 1981, and in connection with music goods such as record albums and other services as of February, 1978 (D-1173-1175; D-1226-1258; D35-58), as such use was memorialized in the 1984 Letter Agreement made between the original Marshall Tucker Band member musicians whose performances were embodied on those masters, Petitioner, and Registrant. (D-223-225). Documents produced as D-1 to D-1327 support Registrant's claim of its trademark/service mark ownership derived from its unimpeded and

continuous use of the marks in connection with the music recordings made by the original Marshall Tucker musicians which Registrant exclusively owns. These documents evidence Registrant's, its predecessors in interest's, and its licensees' use of the marks on music recording-based goods and marketing materials produced in diverse media and commercial services related to those music recordings, as described in the MTI Mark Applications. These uses were under Registrant's oversight and control as of when Registrant was formed as a corporation in 1978, with Registrant's licensing of such rights commencing soon thereafter. During the decades of Registrant's control and use of the marks for public commerce, objections were never raised by any person or entity connected to such use until the present dispute was initiated by Petitioner and its owner, Doug Gray. Both Petitioner and Doug Gray signed the aforementioned 1984 Letter agreement, and were aware of Registrant's use of the marks even before 1984, and rather than object, confirmed in the 1984 document that Registrant had the right to use the mark in connection with music recordings, as the individuals who created Registrant as a corporation, and who each signed the 1984 Letter agreement, had agreed amongst themselves when they formed Registrant.

Registrant's predecessor-in-interest's uses of the mark began about 1973, when Capricorn Records/No Exit Music began releasing record albums to the public identified by the marks. (D-76-80, D-41-63, D-1184-1191). Registrant's predecessors-in-interest included the individual musicians who signed the aforementioned 1984 Letter Agreement, who in written contracts signed in 1972 each agreed Capricorn Records and No Exit Music would use the name "Marshall Tucker Band" in perpetuity on record albums it recorded and manufactured for public consumption (D-76-80, D-41-63). Registrant on or about May 7, 1981 purchased those records album recording masters along with any rights Capricorn Records and No Exit

had acquired appurtenant to the manufacture of those masters and distribution of the resulting music recordings, including and not limited to Capricorn's and No Exit's rights in the advertising and packaging used for those albums and a right to duplicate, market and sell those albums, and all accrued trademark and copyright rights arising from Capricorn/No Exit's agreements, marketing and distribution. (D-134; D131-133; D-126-130; D-115 to 122; D-123-125; D-142-145; D-146; D-159-163). Capricorn Records created the logo name "The Marshall Tucker Band" and used that logo as a trademark on packaging for the record album entitled "Carolina Dreams," (D-1178-1183; D-1189) which was publicly released in 1977. Capricorn's copyright ownership rights in the logo, as credited on the record album packaging, was included in Registrant's May 7, 1981 purchase of Capricorn and No Exit's assets.

The same individual musicians who contracted with Capricorn Records and No Exit Music also created Registrant MTI on February 9, 1978, as MTI's original directors and stockholders, to oversee Capricorn Records and No Exit's manufacture and exploitation of the recordings as well as other music they jointly recorded, and to license and manage and cause the commercial release their recorded music performances by using and licensing the designation "The Marshall Tucker Band," and to collect royalties from such commercial exploitation of those performances. (D-1173-1175). While many of the individual shareholders sold their interests in MTI over the years, for decades ever since Registrant MTI was formed in 1978, Registrant has continued to have the right and authority to license, manage, and cause the commercial release and distribution of all music bearing the name "The Marshall Tucker Band" recorded made by those original Marshall Tucker Band musicians until when they disbanded in 1984, as shown in the 1984 Letter Agreement (D-232-234), and to collect royalties from such commercial exploitation of those performances as the exclusive

rights holder of the music master recordings. (range D-1 to D-1327).

The documents D-1 to D-1327 evidences Registrant MTI's status as beneficiary and manager derived from the continuous use of the name "The Marshall Tucker Band" on music recordings from record albums released beginning in 1973, all bearing the registered marks. Beginning after Registrant was created in 1978, Registrant in addition to using the marks on services and exploitation of products it owned or created itself, acted as licensor of rights to use the marks in connection with record albums, singles, music recordings, CD's, videos, and digital streaming manufactured from those masters. For example, MTI collected royalties. (D-665-667; D-667-669; D-670-672). MTI issued licenses (i.e., D-480-484; D-450, 451-457; D-1112-1125; D-501, 502-513; D-514-515; D-516, 517-521; D-533-538; D-574-578). The only objection raised from any source was Petitioner's objection recently raised to support the filing of its unsuccessful federal lawsuit against MTI (D-1313), and repeated again in these cancellation proceedings.

Registrant oversaw the licensing, exploitation and distribution of the goods and services made from music recordings and music masters, and as evidenced by documents D-1 to D-1327, was responsible for and oversaw any new licensing deals of music recordings made by the original Marshall Tucker band members, who were Registrant's founders, shareholders and directors through 1984 when the band dis-banded.

Dated this 27th day of November, 2018

Respectfully submitted,

/Richard L. Albert/

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Attorney for Registrant M T Industries, Inc.

CERTIFICATE OF
SERVICE

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S SECOND SUPPLEMENTED AND AMENDED RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT MT INDUSTRIES, INC. has been served on SARAH S. BROOKS, ESQ. by forwarding said copy via email to: SSBrooks@Venable.com

Signature: /Richard L. Albert/

Date: November 27, 2018

VERIFICATION

I have read the foregoing, REGISTRANT'S SECOND SUPPLEMENTED AND AMENDED RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT M T INDUSTRIES, INC., and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer of M T Industries, Inc., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on November 27, 2018, at Beverly Hills, California.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

RON RAINEY



Signature