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

Proceeding	92067099
Party	Defendant Art Message International and New Art Association dba New Art Examiner
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Date	09/19/2019
Attachments	Guthrie v AMI NAA - Rule 56 Motion 19-0919.pdf(274672 bytes ) Guthrie v AMI NAA - Proposed Order 19-0919.pdf(346679 bytes ) Guthrie v AMI NAA - Memo ISO Rule 56d Motion 19-0919.pdf(593502 bytes ) Guthrie v AMI NAA - Declaration of MVP 19-0919.pdf(358701 bytes ) Exhibit A.pdf(540457 bytes ) Exhibit B.pdf(530671 bytes ) Exhibit C.pdf(530774 bytes ) Exhibit D.pdf(1146752 bytes ) Exhibit E.pdf(1107678 bytes ) Exhibit F.pdf(984770 bytes ) Exhibit G.pdf(3862182 bytes ) Exhibit H.pdf(4545216 bytes ) Exhibit I.pdf(952391 bytes ) Exhibit J.pdf(1683688 bytes )

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

In the Matter of Reg. No. 4,982,329

Derek Guthrie,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067099
	)	
Art Message International and	)	
New Art Association	)	
	)	
Respondents.	)	

**Respondents’ Rule 56(d) Motion**

Under Fed. R. Civ. P. 56(d), 37 C.F.R. § 2.127(e)(1), and TBMP § 528.06, Respondents Art Message International and New Art Association, by and through their attorneys, hereby move the Board for further discovery to respond to the motion for summary judgment filed by Petitioner Derek Guthrie on August 21, 2019. *See* 24–25 TTABVUE. In support of their motion, Respondents submit a contemporaneously filed Memorandum of Law in Support of Respondents’ Rule 56(d) Motion, the Declaration of Mark V.B. Partridge in Support of Respondents’ Rule 56(d) Motion and accompanying Exhibits A through J, and a Proposed Order. As established in the foregoing supporting materials, Respondents cannot effectively oppose Guthrie’s summary judgment motion without first taking discovery.

Relatedly, and in addition to the Rule 56(d) motion, Respondents move for the following relief. In light of the discussed discovery violations and arguments provided in the Memorandum of Law, Respondents move the Board for an order denying Petitioner’s motion for summary judgment and compelling Petitioner to respond to the outstanding discovery requests, while extending the discovery period in order for Respondents to take any additional or follow-up

discovery as necessary. Respondents also move to strike the Vincent Carducci Declaration; alternatively, Respondents move to strike paragraphs 1–5, 12–17, and 19 of the Vincent Carducci Declaration.

Dated: September 19, 2019

Respectfully submitted,

Art Message International &  
New Art Association

By: /s/Mark V.B. Partridge  
Mark V.B. Partridge  
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*Attorneys for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2019, a true and correct copy of the foregoing **Respondents' Rule 56(d) Motion** has been served, via email, on Applicant's attorney of record:

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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	)	
Art Message International and	)	
New Art Association	)	
	)	
Respondents.	)	

**[Proposed] Order Granting Respondents’ Rule 56(d) Motion**

Respondents’ motion for Rule 56(d) discovery is **GRANTED** as follows:

1. Petitioner must respond to all of the Respondents’ outstanding discovery requests that were served on March 13, 2019, fully and without objection within **TWENTY DAYS** of the mailing date of this order; and,
2. The discovery-period deadline is extended **NINETY DAYS** from the mailing date of this order, allowing Respondents to take additional or follow-up discovery, including the depositions of Derek Guthrie and Vincent Carducci.
3. Respondents are allowed to take the deposition of Petitioner, of which the scope will include the responses above to the first sets of interrogatories and documents requests, the declaration submitted in support of the motion for summary judgment, particularly paragraphs 10, 17 through 25, 27, 28, 32, and 33, the exhibits identified in the Declaration of Mark V.B. Partridge, and any responses to any of the follow-up discovery. The deposition may be noticed and taken between 20 – 50 days after Petitioner serves its responses to outstanding discovery requests.

4. The Vincent Carducci Declaration is stricken. [Alternatively: Respondents are allowed to take the deposition of Vincent Carducci, of which the scope will be limited to his declaration, of which paragraphs 1–5, 12–17, and 19 are stricken.]

5. Respondent is allowed **ONE HUNDRED (100) DAYS** from the date that Guthrie’s deposition is completed to file its opposition to Petitioner’s motion for summary judgment.

6. Proceedings otherwise remain suspending pending the disposition of Petitioner’s motion for summary judgment.

Dated: September 19, 2019

Respectfully submitted,

Art Message International &  
New Art Association

By: /s/Mark V.B. Partridge  
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Charles G. Giger  
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*Attorneys for Respondents*

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By:   /s/Charles G. Giger    
Charles G. Giger  
*Attorney for Respondents*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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In the Matter of Reg. No. 4,982,329

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v.	)	Cancellation No. 92067099
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Art Message International and	)	
New Art Association	)	
	)	
Respondents.	)	

**Memorandum of Law in Support of Respondents’ Rule 56(d) Motion**

Under Fed. R. Civ. P. 56(d), 37 C.F.R. § 2.127(e)(1), and TBMP § 528.06, Respondents Art Message International and New Art Association submit this Memorandum of Law in Support of its Rule 56(d) Motion. As shown below, and in the accompanying Declaration of Mark V.B. Partridge (“MVP Decl.”) and exhibits, Respondents cannot effectively oppose Petitioner Derek Guthrie’s (“Guthrie”) summary judgment motion without taking further discovery. For the following reasons, the Board should grant Respondents’ Rule 56(d) Motion and provide the requested relief as stated in the Motion and Proposed Order.

**BACKGROUND**

On October 11, 2017, Guthrie instituted this cancellation proceeding against Respondent Art Message International (“AMI”). 1 TTABVUE. Until he voluntarily terminated his association with Respondent, Guthrie was a member of Respondent’s organization. *See* 12 TTABVUE. After motion practice, *see* 8–15 TTABVUE, the parties exchanged initial disclosures, *see* MVP Decl. ¶2, Ex. A.



On March 13, 2019, Respondent served AMI's First Sets of Interrogatories and Document Requests. MVP Decl. ¶¶3–4, Ex. B (document requests) and C (interrogatories). After various extensions, on June 26, Respondent agreed to provide Guthrie a three-week extension to respond to the outstanding discovery requests, resulting in a July 17, 2019 deadline. *See id.* ¶5, Ex. D.<sup>1</sup>

Without ever responding to Respondents' discovery requests, MVP Decl. ¶7, Guthrie filed the motion for summary judgment, 24–25 TTABVUE, attaching documents not produced in discovery and an undisclosed expert witness' declaration.<sup>2</sup> *See* MVP Decl. ¶¶6–7. In light of this August 21, 2019 filing, Respondents reminded Guthrie of his discovery obligations and the lateness of his responses to the discovery requests. MVP Decl. ¶5, Ex. D, p.1 (noting “[a]mong other obligations, TBMP § 408.01 provides that parties have a duty ‘to make a good faith effort to satisfy the discovery needs of its adversary’”). Nonetheless, after back-and-forth responses, Guthrie has not provided any responses to the March 13, 2019 discovery requests. *See id.*

Respondents are faced with a summary judgment motion without having any responses to its discovery requests, without having seen Guthrie's supporting exhibits before, and without having been disclosed the relied-upon expert witness. *See* MVP Decl. ¶¶5–8. Petitioner has withheld his documents and responses without any justification; by filing the motion for summary judgment, Petitioner has prevented Respondents from obtaining information necessary to effectively oppose the motion. *See id.* Without the documents and responses to its discovery requests, and further requested discovery as set forth here, in the motion, and Proposed Order, Respondents do not have access to information that could support its opposition. *Id.*

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<sup>1</sup> After moving to join New Art Association, 19 TTABVUE, Guthrie gave the impression that he intended to file a motion for leave to amend his pleading.

<sup>2</sup> *See* 17–18 TTABVUE (noting that initial disclosures closed on December 2, 2018, and expert disclosures closed on April 1, 2019).

## LEGAL STANDARD

A litigant “should not be ‘railroaded’ by a premature motion for summary judgment.” *Larry Pitt & Assocs., P.C. v. Lundy Law, LLP*, Opp. No. [91210158](#), 2013 TTAB LEXIS 640, \*3-4 (TTAB Oct. 31, 2013) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986)). Indeed, summary judgment must “be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.” *Opryland USA, Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 852 (Fed. Cir. 1992).

“A request for additional discovery under [Rule 56(d)] must be supported by an affidavit showing that the nonmoving party cannot, for reasons stated therein, present by affidavit facts essential to justify its opposition to the motion.” *Wally Yachts N.V. v. Walworth*, Opp. No. [91183793](#), 2010 TTAB LEXIS 495, \*5 (TTAB Sept. 27, 2010) (collecting cases). “[W]hen the discovery is reasonably directed to ‘facts essential to justify the party’s opposition’, ... such discovery must be permitted or summary judgment refused.” *Opryland USA*, 970 F.2d at 852.

## ARGUMENT

### **I. Respondent Cannot Effectively Oppose the Motion for Summary Judgment Without Discovery.**

In its motion for summary judgment, Guthrie relies on *Lyons v. Am. Coll. of Veterinary Sports Med. & Rehab.*, 859 F.3d 1023 (Fed. Cir. 2017),<sup>3</sup> which provides one of the frameworks to assess disputes of trademark ownership. *See* 24 TTABVUE at 7. Under *Lyons*, the question of ownership turns on “(1) the parties’ objective intentions or expectations; (2) who the public associates with the mark; and (3) to whom the public looks to stand behind the quality of goods

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<sup>3</sup> At this point, Respondents do not admit or concede that *Lyons* is controlling here. Given that Petitioner has not responded to any of Respondents’ discovery requests and has raised this theory for the first time in its motion, it would be premature to accept Petitioner’s position at this stage. This highlights Respondents’ need to conduct further discovery on the three *Lyons* factors, in order to effectively oppose Petitioner’s motion.

or services offered under the mark.” *Lyons*, 859 F.3d at 1029 (citations omitted); *see also Devil’s Disciples MC v. Woodard*, 2018 TTAB LEXIS 175, \*20-21 (TTAB May 15, 2018) (using framework “in cases where an individual and organization have either a prior or current relationship, in the absence of a formal agreement governing ownership of the mark, and where both the departing member and the remnant group claim ownership of the mark”).

**A. Without taking discovery from and deposing Guthrie, Respondents cannot effectively oppose the motion.**

In its motion, Guthrie primarily relies on his declaration to support each of the three *Lyons* factors. *See generally*, 24 TTABVUE.

As an initial matter, one undisputed fact should be highlighted in order to put this general dispute in context: “In 2002, after nearly three decades in publication, the NEW ART EXAMINER ceased production.” Guthrie Decl. at ¶10. But absent from Guthrie’s declaration is the entity that ceased the production of the NEW ART EXAMINER. Discovery and a deposition of Guthrie are likely to show that an organization called Chicago New Art Association owned and published the publication and that after Guthrie retired from Chicago New Art Association in 1990, the Chicago New Art Association relinquished ownership and control of the publication to a third party.<sup>4</sup> This fact is material because it shows that Guthrie cannot claim that he ever owned any rights to the NEW ART EXAMINER from 1973 to 2002. Regardless, such trademark rights are abandoned and irrelevant. *See Answer*, 12 TTABVUE 8–10 (raising relevant defenses, including abandonment). More importantly, further discovery into the timeline of ownership and

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<sup>4</sup> *See MVP Decl. Ex. E* (Guthrie noting in 2011 that the “New Art Examiner struggled along in its last ten years under the constant threat of financial foreclosure. ... The publication closed its doors for good in 2002.”), available also at <http://www.theweekbehind.com/2011/11/09/the-new-art-examiner-re-examined/> (last visited Sept. 18, 2019); *see id.* (Guthrie acknowledging that the New Art Examiner was “killed”); *see also MVP Decl. Ex. F* (admitting “The magazine had folded in 1990 when it passed into new hands, after the founding editors, the late Jane Addams Allen and Derek Guthrie, retired to Cornwall with ill health.”), available also at <http://www.newartexaminer.net/editorial-7/> (last visited Sept. 18, 2019).

Guthrie’s involvement (or lack thereof) prior to 2002 is likely to show that Guthrie is not whom the public associates with the mark back then and now (*Lyons* factor 2), and that Guthrie, having been absent since 1990, is not whom the public looks to stand behind the quality of the publication back then and now (*Lyons* factor 3).<sup>5</sup>

Next, discovery is necessary to not only fill, but also to correct, the gaps and timing in Guthrie’s declaration paragraphs 17 through 23. Those statements allege a story that can be paraphrased as follows:

*Guthrie alone worked on the magazine, and then he received assistance from Daniel Nanavati, releasing the first revived issue in or around June 2015. A UK team was incorporated in 2016. Then on top of that already established group, Guthrie later established a Chicago team.*

Instead, discovery will show that a Chicago-based team, of which Guthrie was only a member, came together to relaunch the New Art Examiner. *See* MVP Decl. Ex. G, Vince Carducci’s February 14, 2014 Blog Post (noting in February 2014, “a group [was] formed in Chicago with the intent ... to revive the [magazine]”). This information is material because it goes towards all three *Lyons* factors. Respondents cannot effectively oppose Guthrie’s motion without clarifying the timeline and without showing that a Chicago group came together to form an organization to revive the publication first, not a singular effort by Guthrie alone that started in the United Kingdom.

Further, discovery is necessary to determine Guthrie’s basis for stating that Respondents “understood that the NEW ART EXAMINER was a name and magazine [Guthrie] had created

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<sup>5</sup> *See, supra*, footnote 4; *see also* MVP Decl. Ex. G (Vince Carducci’s February 14, 2014 article indicating and acknowledging that people don’t know about the New Art Examiner publication, and discussing the New Art Examiner publication without initially mentioning Derek Guthrie at all until a February 17, 2014 update—meaning, as an afterthought), available also at <http://motownreviewofart.blogspot.com/2014/02/the-new-art-examiner-critical-field-of.html> (last visited September 16, 2019).

and that they would report to [him].” Guthrie Decl. ¶24. Discovery is necessary to determine how Guthrie has personal knowledge of such matters, including how he would know what others understood. This inquiry is material because it is particularly relevant to the first *Lyons* factor concerning the objective expectations of the parties.

Discovery is necessary to determine whether Guthrie “controlled and financed every issue ....” *Id.* ¶25. Like discussed below with the interrogatories and document requests that Guthrie refused to comply with, Guthrie has not provided any supporting documents showing that he controlled and financed every issue.

Further discovery is necessary to determine what Guthrie alleges to be his “outward facing nature of the role....” *Id.* ¶28. Guthrie, in a conclusory manner, states that “everyone associated [him]” with the publication. *See id.* Guthrie provides no evidence supporting these claims. Respondents cannot effectively oppose these conclusory claims without further discovery. This allegation is relevant to the second and third *Lyons* factors. Without knowing what the “outward facing nature of the role” entailed or what actions were actually taken by Guthrie and when, Respondents cannot effectively oppose it.

Guthrie alleges that he had no prior knowledge of Art Message International’s trademark registration for NEW ART EXAMINER, Reg. 4982329 (registered on June 21, 2016), and that he would never had consented to the registration. *Id.* ¶32. Further discovery, including a discovery deposition of Guthrie, is necessary to effectively oppose Guthrie’s claims that he lacked knowledge about the filing of the trademark application and, to the extent that Guthrie claims his consent was necessary, that he would not have consented to the filing.

Moreover, an intertwined topic that requires further discovery is the dispute that *prompted* the need for the trademark filing.<sup>6</sup> In the January/February 2016 Vol. 30 No. 3 issue, Respondents (and Guthrie who was a part of Respondents) wrote about the dispute:

These legal actions have consumed a great deal of our time during the past year. ... We have taken concrete steps to assume our rightful ownership of the magazine. ... [We] trademarked our exclusive right to the New Art Examiner name and opened a bank account to process business transactions, donations and subscriptions. The first issue with Derek as the acknowledged publisher appeared at Art Expo last September. As 2016 arrives, we are in exciting discussions to acquire editorial offices for the magazine, recruit artists and journalists to contribute to future issues and work on building our funding infrastructure. For the first time we have a UK office.

MVP Decl. Ex. I; *see also id.*, Ex. J.<sup>7</sup> As part of Respondent, Guthrie provided his “Postscript Editorial Comment” on the next page, acknowledging the above passage; in doing so, Guthrie simply “add[ed] a note of clarification to Tom Mullaney’s elegant and restrained report on the more than unfortunate hidden events of the last year.” MVP Decl. Ex. I, p. 2; *see also id.*, Ex. J.<sup>8</sup> In order to effectively oppose Guthrie’s motion, Respondents need discovery on these matters to show that Guthrie both knew of and consented to the filing of the trademark application.

Respondents need to take further discovery on Guthrie’s claim that he “recruited writers and advertisers, sourced content and had final sign off on the content and layout of every issue” and that he “talked with distributors about opportunities to further the circulation of the NEW ART EXAMINER.” Guthrie Decl. ¶27. This is a conclusory claim without any backing evidence.

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<sup>6</sup> *See* MVP Decl. Ex. H, available also at <https://news.wttw.com/2015/10/19/new-art-examiner-struggles-relaunch-after-internal-rift>. (last visited September 18, 2019).

<sup>7</sup> Available also at <http://www.newartexaminer.net/editorial-comment/> and <http://www.newartexaminer.org/assets/vol-30-no-3-e-version.pdf>, p. 4 (both last visited September 13, 2019).

<sup>8</sup> Available also at <http://www.newartexaminer.net/postscript-editorial-comment/> and <http://www.newartexaminer.org/assets/vol-30-no-3-e-version.pdf>, p. 5 (both last visited September 13, 2019).

Respondents need to take further discovery on Guthrie's first use date of June 1, 2015. *See* Guthrie Decl. ¶33; *but see, supra* footnote 6, MVP Decl. Ex. H (discussing the September 2015 publication). Relatedly, Respondents' position is that the specimen submitted to the USPTO for Guthrie's trademark application belongs to Respondent Art Message International, not Guthrie. Further discovery will show that Guthrie was only a part of the whole of an organization that used and developed the NEW ART EXAMINER mark, so any goodwill inured to the organization's benefit. As provided in the specimen, the entity "is a not-for-profit organization[,]” not Guthrie as an individual.<sup>9</sup> Further discovery will confirm this, and it is material because it concerns priority, an issue that could preclude Guthrie's summary judgment motion.

Discovery is necessary to determine whether Guthrie has any U.S.-based use for which trademark rights could develop. As provided above, Guthrie retired from the organization that published the NEW ART EXAMINER in 1990, and regardless, any rights that were developed before 2002 are now abandoned. According to Guthrie, he resided in the United Kingdom when he allegedly released the first new issue in or around June 2015, distributing it in the U.K. and United States. Guthrie Decl. ¶18. Putting aside the fact Respondents' position is that any of these actions were done as part of Respondents' organization, Guthrie only states in a conclusory manner that this June 2015 issue was distributed in the United States in or around June 2015. Discovery is necessary to determine whether the alleged June 2015 issue was, in fact, distributed in the United States (or at all anywhere). *See, supra*, footnote 6, MVP Decl. Ex. H (discussing the September 2015 publication).

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<sup>9</sup> *See* Trademark Application Ser. No. 87630594, October 2, 2017 Specimen Submission, p. 5, available also at <http://tsdr.uspto.gov/documentviewer?caseId=sn87630594&docId=SPE20171005082549#docIndex=15&page=5>.

Discovery is necessary to determine whether Guthrie has any rights in the NEW ART EXAMINER mark. As provided above, Guthrie retired from the Chicago New Art Association, which published the NEW ART EXAMINER in 1990 when ownership and control was relinquish, *see* MVP Decl. Ex. F, and regardless, any rights that were developed before 2002 are now abandoned. Discovery will show that Guthrie’s actions since the “revival” were done when he was a part of Respondent Art Message International.

Discovery will show that after Guthrie voluntarily resigned from Art Message International, he was solely a part of an U.K. organization called The New Art Examiner CIC. In short, further discovery is needed to show that Guthrie, as an individual (which is Petitioner in this case), has never used in commerce the NEW ART EXAMINER mark and thus has no rights in the mark. Such an inquiry is material because without any trademark use in commerce, Guthrie cannot own the NEW ART EXAMINER mark. Discovery is likely to show that at all times, an organization published a magazine under the NEW ART EXAMINER mark, not Guthrie.

**B. The Board should strike the Carducci Declaration in full or part; alternatively, discovery is necessary to learn about Guthrie’s connection to Vincent Carducci and the basis of Carducci’s “expert” opinion.**

In support of his motion, Guthrie adds the declaration of Vincent Carducci, which consists of expert opinion.

1. The Board should strike the Declaration of Vincent Carducci.

As an initial matter, the Board should strike the Carducci Declaration. “The disclosure of planned or possible expert testimony by any party must be made by the expert disclosure deadline, regardless of whether any other party has made such disclosure.” TBMP § 401.03. Here, expert disclosures were due April 1, 2019. *See* 17 TTABVUE. Guthrie, however, did not



provide any expert disclosures to Respondents. MVP Decl. ¶6. Nor was Carducci mentioned in the initial disclosures. *Id.* Respondents first became aware of Carducci on August 21, 2019, due to declaration filed in support of Guthrie’s motion for summary judgment. *Id.*

Although Petitioner does not label the declaration as being provided by an expert, the Vince Carducci declaration contains opinion evidence based on an alleged expertise in “the field of art criticism.” Carducci Decl. ¶1; *see also id.* ¶¶1–5, 15–17, 19 (providing, in effect, expert opinion). Among other matters he bases on his expertise in the field of art criticism, Carducci opines that “Derek Guthrie is inextricably associated with the NEW ART EXAMINER mark and the public associates any publication bearing the NEW ART EXAMINER name as being under the direction and control of Derek Guthrie.” *Id.*; *but see* MVP Decl. Ex. H (Carducci discussing the history of the New Art Examiner, only mentioning Guthrie once as an afterthought).

In light of Guthrie’s attempt to railroad Respondents with this undisclosed expert, the Board should strike the Carducci Declaration. Alternatively, Respondents request that the Board strike the allegations contained in paragraphs 1–5, 12–17, and 19 of the Carducci Declaration.

2. Alternatively, further discovery is necessary to effectively oppose this previously undisclosed expert opinion.

Discovery is necessary to effectively oppose the expert opinion provided by Guthrie’s expert. First, having previously written articles for the publication, Carducci “considers” the pre-2002 New Art Examiner publication the “largest and most influential art magazine to come out of the Midwest.” Carducci Decl. ¶¶8–9. But Carducci does not provide his methodology in coming to such opinion. He does not suggest this undisclosed method of determining what the largest and influential art magazine is nor whether it has been accepted by scholars.

Next, the Carducci declaration provides that Guthrie “contacted [him] directly to ask that [he] author a particular article” and that Guthrie’s request “was very specific as to the type of

criticism he was interest in including in the publication.” *Id.* ¶9. Further, Carducci notes that Guthrie exhibited this conduct towards other writers. *Id.* ¶10. To effectively oppose this, discovery is necessary to show that Carducci has no personal knowledge of how Respondent Art Message International’s organization was conducted from the revival of the NEW ART EXAMINER until Guthrie’s voluntary departure of Respondent’s organization. And Carducci’s subjective experience with Guthrie in the past cannot be determinative of, or be relevant to, the objective expectations of the parties at the beginning of the publication’s revival.

Further discovery is also necessary to show that discussion or excitement among academics does not constitute use in commerce. *See id.* ¶¶12–15. It is also necessary for Respondents to inquire into the methodology used by Carducci to measure excitement among academics and whether such methodology is generally accepted by the experts in the field. *See id.* 12–17. Discovery is necessary to determine what methodology Carducci used to determine that the “art criticism world continues to associate Mr. Guthrie uniquely with the NEW ART EXAMINER mark.” *Id.* ¶16.

In sum, Respondents need to take further discovery on all the expert opinion, as contained in paragraphs 1–5, 12–17, and 19 of the Carducci Declaration, because that expert opinion is material to the second and third *Lyons* factors.<sup>10</sup>

**C. Outstanding discovery requests are relevant to each of the *Lyons* factors.**

1. The parties’ objective expectations

Discovery is necessary to show that the parties’ objective expectations were that Art Message International owned the NEW ART EXAMINER mark, not Guthrie alone. The

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<sup>10</sup> Even if the Board disagrees with Respondents on whether the declaration contains expert opinion, Respondents would still need further discovery to effectively oppose the material facts relevant to the *Lyons* factors.

unanswered discovery requests will show that Guthrie’s objectively manifested expectations contradict his subjective beliefs about ownership of the mark. *See* Interrogatories 1, 4, 14, 15, 18–22, and RFPS 3, 14, 16.

First, Respondents’ position is that Guthrie has never acted alone; instead, he has only been an employee or member of an organization that used the NEW ART EXAMINER mark.

Second, further discovery is necessary to show that before voluntarily disassociating himself from Art Message International, Guthrie never told Respondents that he alone owned the NEW ART EXAMINER trademark.

Third, discovery will likely show that before voluntarily disassociating himself from Art Message International, Guthrie—as part of Art Message International—and other members of Art Message International all agreed and consented to the filing of Trademark Application Ser. No. 86767391, on September 24, 2015. Art Message International, which included Guthrie, filed the application to enforce the mark and protect it from misuse by Laura Frazier. *See* MVP Decl. ¶¶12–14, Ex. H, Ex. I, Ex. J.

In light of the foregoing, the following unanswered discovery requests will lead to evidence that will allow Respondents to effectively oppose Guthrie’s motion for summary judgment:

- **Interrogatory 1.** Identify all organizations or entities that Petitioner has been associated with, owned, or been an employee of from January 1, 2013 to the present and each of Petitioner’s title(s) with dates such title is or was held, and identify all persons who made up those current or former organizations or entities.
- **Interrogatory 4.** Describe in detail how and when Petitioner first became aware of AMI’s use of the trademark NEW ART EXAMINER for an art criticism journal in commerce, and the person most knowledgeable about that awareness.
- **Interrogatory 14.** Identify all positions, with corresponding dates, that You held as part of the Chicago New Art Association.
- **Interrogatory 15.** Describe in detail how You “began making plans to revive” the Contested Mark from 2009 to the present, as alleged in Petition, Paragraph No. 4, and

identify all Persons involved, including any titles, roles, the nature of the involvement, and dates of involvement.

- **Interrogatory 18.** Describe in detail the circumstances, and identify the dates, when You first acquired knowledge of the USPTO trademark application that AMI filed on September 24, 2015, as alleged in Petition, Paragraph No. 9.
- **Interrogatory 19.** Identify and describe all W-2s and 1099s that You have filed since 2009, including, but not limited to, W-2s relating to Employer Identification No. 46-2154346.
- **Interrogatory 20.** Identify and describe all funding that You have contributed to AMI, since 2009.
- **Interrogatory 21.** Identify the dates that Petitioner was involved with AMI, including any titles that Petitioner had while involved with AMI.
- **Interrogatory 22.** Describe in detail how and when Petitioner resigned, quit, or otherwise disassociated himself from AMI, including the reasons for doing so.
- **RFP3.** All documents which relate or refer to AMI, including but not limited to any documents you purport give Petitioner the right to use the Contested Mark, any discussion of AMI's rights in the Registered Mark, and any discussion of reviving the NEW ART EXAMINER publication.
- **RFP14.** All documents which relate or refer to AMI, including but not limited to any documents: (i) referring or relating to Tom Mullaney, Michel Segard, and Thomas Feldhacker; and/or, (ii) prepared by Guthrie's agents, including but not limited to those documents prepared by Daniel Nanavati and Annie Markovich on Guthrie's behalf or request.
- **RFP16.** All financial records that Petitioner maintains demonstrates Petitioner's control of the Contested Mark. See Guthrie's Initial Disclosures.

MVP Decl. ¶¶3-4, 8, Ex. B, Ex. C.

2. Who the public associates with the mark.

The next factor considers who the public associates with the mark. In *Lyons*, the Federal Circuit considered the extent of marketing efforts, whether the parties had employees, and whether the services were offered under the mark. *See Lyons*, 859 F.3d at 1031.

In his motion, Guthrie makes three distinct arguments. Respondents discuss each argument in turn. In doing so, Respondents easily dispose of Guthrie's first two arguments, but show that further discovery is necessary to effectively oppose Guthrie's third argument.

First, as discussed above, any trademark rights developed from Chicago New Art Association's use of the NEW ART EXAMINER mark from 1973 to 2002 is, and has been,

abandoned. Accordingly, Guthrie's attempt to reach back to the outdated and irrelevant third-party use is legally and factually irrelevant.

Second, Guthrie argues that "over 13 years NEW ART EXAMINER ceased publication, there were many calls for Mr. Guthrie, specifically, to relaunch the publication." Dkt. 24 at 9. And, on top of these vague calls for relaunch, Guthrie cites articles "reflect[ing] upon Mr. Guthrie's contributions to the publication." *Id.* at 10. The Federal Circuit, however, has held that "an applicant's preparations to use a mark in commerce are insufficient to constitute use in commerce." *Aycock Eng'g, Inc. v. Airflite, Inc.*, 560 F.3d 1350, 1360 (Fed. Cir. 2009). Moreover, vague calls for relaunch cannot satisfy use in commerce, either. *See id.*

Third, Guthrie maintains that he "continued in his public-facing role, further strengthening the public's association of him with the NEW ART EXAMINER." 24 TTABVue 10. To the extent having a "public-facing role" is a relevant inquiry, discovery is necessary to discern what this alleged role entailed and what Guthrie did in this so-called public-facing role.

In addition to the topics of which require further discovery requests as identified above, Respondents need Guthrie to respond to the following discovery requests, which are relevant to the second *Lyons* factor. Particularly, the following discovery requests will lead to the disclosure of relevant facts and will raise a dispute of material fact:

- **RFP5.** All documents concerning any instance of confusion, mistake, or deception, actual or hearsay, which has or may have occurred between AMI or use of the Registered Mark, and Guthrie or Guthrie's use of or association with the Contested Mark.
- **RFP6.** Documents sufficient to identify the amount of money Guthrie has spent or plans to spend for each type of advertising, marketing or promotion Guthrie has made or intends to make for the goods offered under the Contested Mark.
- **RFP7.** Documents sufficient to identify Guthrie's monthly dollar and unit volumes of sales separately for the goods offered under the Contested Mark.
- **RFP17.** All documents and correspondence that Petitioner has in regards to the following statement as provided in its initial disclosures: "Documents and correspondence with third parties indicating Petitioner's priority in use of the mark NEW ART EXAMINER over Registrant."

- **Interrogatory 1.** Identify all organizations or entities that Petitioner has been associated with, owned, or been an employee of from January 1, 2013 to the present and each of Petitioner’s title(s) with dates such title is or was held, and identify all persons who made up those current or former organizations or entities.
- **Interrogatory 4.** Describe in detail how and when Petitioner first became aware of AMI’s use of the trademark NEW ART EXAMINER for an art criticism journal in commerce, and the person most knowledgeable about that awareness.
- **Interrogatory 7.** State (a) the geographic area or areas in the United States in which Guthrie markets, has marketed, or plans to market goods bearing the Contested Mark; and (b) the channel or channels of trade through which Petitioner markets, has marketed, or plans to market goods bearing the Contested Mark.
- **Interrogatory 14.** Identify all positions, with corresponding dates, that You held as part of the Chicago New Art Association.

MVP Decl. ¶¶3–4, 8, Ex. B, Ex. C.

3. To whom the public looks to stand behind the quality of goods or services offered under the mark.

The next consideration is to whom the public looks to stand behind the quality of the product bearing the mark.

In its motion, Guthrie primarily relies on a declaration provided by Carducci, a witness not included in Guthrie’s expert disclosures, nor its initial disclosures. Guthrie disguises Carducci’s involvement in Chicago New Art Association as if it were current. Having first learned about Carducci from the motion for summary judgment, Respondents need to take discovery regarding Carducci’s involvement, as discussed above. Discovery will likely show that Carducci’s involvement with Guthrie is outdated, showing that he did not participate or was a part of the relaunch of the NEW ART EXAMINER. *See* Interrogatory 1 (“Identify all organizations or entities that Petitioner has been associated with, owned, or been an employee of from January 1, 2013 to the present and each of Petitioner’s title(s) with dates such title is or was held, and identify all persons who made up those current or former organizations or entities.”).

Moreover, Interrogatory 9 is relevant to this inquiry. Interrogatory 9 provides, “State by month the dollar and unit amount of sales that Petitioner has made of goods bearing the Contested Mark since the first date of sale in the U.S. of goods bearing the Contested Mark.”

## **II. Conclusion**

For the foregoing reasons, the Board should grant Respondents’ Rule 56(d) motion, permitting Respondents to take further discovery as set forth in the Motion and Proposed Order. Additionally, in light of the discovery violations<sup>11</sup> and Respondents’ arguments in support of this Rule 56(d) motion, the Board should deny Petitioner’s motion for summary judgment and issue an order compelling Petitioner to respond to the outstanding discovery requests, while extending the discovery period in order for Respondents to take any necessary follow-up discovery. Moreover, Respondents request that the Board issue an order compelling Petitioner to respond to the outstanding discovery requests. Lastly, for the reasons discussed above, the Board should strike the Carducci Declaration; alternatively, Respondents request that the Carducci Declaration be stricken as to paragraphs 1–5, 12–17, and 19.

Dated: September 19, 2019

Respectfully submitted,

Art Message International &  
New Art Association

By: /s/Mark V.B. Partridge  
Mark V.B. Partridge  
Charles G. Giger  
Partridge Partners, P.C.  
321 North Clark, Suite 720  
Chicago, Illinois 60654  
(312) 634-9500

*Attorneys for Respondents*

---

<sup>11</sup> Under 37 C.F.R. § 2.120(h)(2) and TBMP § 527.01(b), Respondents further request in the alternative that the Board dismiss with prejudice the cancellation petition as a sanction because Guthrie “(1) has failed to respond [to the discovery requests]; and (2) has informed [Respondents] that no response will be made.” *See* MVP Decl. Ex. D.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2019, a true and correct copy of the foregoing **Memorandum of Law in Support of Respondents' Rule 56(d) Motion** has been served, via email, on Applicant's attorney of record:

Douglas N. Masters  
LOEB & LOEB LLP  
321 N CLARK STREET SUITE 2300  
CHICAGO, IL 60654  
UNITED STATES

[chdocket@loeb.com](mailto:chdocket@loeb.com), [dmasters@loeb.com](mailto:dmasters@loeb.com), [coneill@loeb.com](mailto:coneill@loeb.com),  
[avanleer@loeb.com](mailto:avanleer@loeb.com), [sperry@loeb.com](mailto:sperry@loeb.com)

By: /s/Charles G. Giger  
Charles G. Giger  
*Attorney for Respondents*



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

In the Matter of Reg. No. 4982329

Derek Guthrie,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067099
	)	
Art Message International and	)	
New Art Association	)	
	)	
Respondents.	)	

**DECLARATION OF MARK V.B. PARTRIDGE  
IN SUPPORT OF RESPONDENTS' RULE 56(d) MOTION**

I, Mark V.B. Partridge, declare as follows:

1. I am an Illinois-licensed attorney and an attorney for Respondents Art Message International and New Art Association, in the above-referenced cancellation proceeding. I submit this declaration and attached exhibits in support of Respondents' Rule 56(d) motion. I have personal knowledge of the matters in this declaration, except where I indicate that I have information and believe such information to be true.

2. Attached as **Exhibit A** is a true and correct copy of Petitioner Derek Guthrie's Rule 2.120 Initial Disclosures, dated December 3, 2018.

3. Attached as **Exhibit B** is a true and correct copy of Respondent Art Message International's First Set of Requests For Production of Documents and Things to Petitioner Derek Guthrie, which was served on counsel for Petitioner via email on March 13, 2019.

4. Attached as **Exhibit C** is a true and correct copy of Respondent Art Message International's First Set of Interrogatories to Petitioner Derek Guthrie, which was served on counsel for Petitioner via email on March 13, 2019.

5. Attached as **Exhibit D** is a true and correct copy of an email chain between the attorneys for Respondent and Petitioner. On August 21, 2019, we asked for Petitioner's responses to the discovery requests served on March 13, 2019, which "[a]fter various extensions, ... [had] a July 17, 2019 deadline." Exhibit D, p. 3. Petitioner has not provided those responses. Exhibit D, p. 1.

6. I first learned of Vincent Carducci on August 21, 2019, when Petitioner served his declaration as part of the motion for summary judgment. *See* 24 TTABVUE 22. Carducci was not included in Guthrie's initial disclosures. *See, supra*, Exhibit A. Guthrie did not serve expert disclosures, which were due on April 1, 2019. *See* 20 TTABVUE.

7. As of the date of this declaration, Petitioner has not responded to any of the discovery requests served by Respondents.

8. For the reasons stated here, in the memorandum of law and motion, Respondents require further discovery, including responses to the discovery requests, to effectively oppose Petitioner's motion for summary judgment.

9. Attached as **Exhibit E** is a true and correct copy of an article by Derek Guthrie entitled *The New Art Examiner Re-examined*, obtained on September 13, 2019, and available also at <http://www.theweekbehind.com/2011/11/09/the-new-art-examiner-re-examined/>.

10. Attached as **Exhibit F** is a true and correct copy of an editorial by Derek Guthrie entitled *Editorial*, obtained on September 18, 2019, and available also at <http://www.newartexaminer.net/editorial-7/>.

11. Attached as **Exhibit G** is a true and correct copy of a blog post authored by Vincent Carducci, entitled *The New Art Examiner: A Critical Field of Dreams*, obtained on September 13, 2019, and available also at <<http://motownreviewofart.blogspot.com/2014/02/the-new-art-examiner-critical-field-of.html>>.

12. Attached as **Exhibit H** is a true and correct copy of an October 19, 2015 WTTW article entitled *New Art Examiner Struggles with Relaunch After Internal Rift*, obtained on September 18, 2019, and available also at <<https://news.wttw.com/2015/10/19/new-art-examiner-struggles-relaunch-after-internal-rift>>.

13. Attached as **Exhibit I** is a true and correct copy of an excerpt of the January/February 2016 edition of the New Art Examiner, Vol. 30 no. 3 (E-Version), pages 4 and 5. A full copy of which can also be obtained at <<http://www.newartexaminer.org/assets/vol-30-no-3-e-version.pdf>>.

14. Attached as **Exhibit J** is a compilation of true and correct copies of <<http://www.newartexaminer.net/editorial-comment/>> and <<http://www.newartexaminer.net/postscript-editorial-comment/>>, both obtained on September 13, 2019.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of September, 2019.

By: /s/Mark V.B. Partridge  
Mark V.B. Partridge

# EXHIBIT A

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

In the Matter of Registration No. 4,982,329 – NEW ART EXAMINER

Derek Guthrie,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067099
	)	
Art Message International	)	
	)	
Registrant.	)	

**PETITIONER DEREK GUTHRIE’S  
RULE 2.120 INITIAL DISCLOSURES**

Pursuant to Rule 2.120 of the Trademark Rules of Practice, Derek Guthrie (“Petitioner”), provides his initial disclosures in this proceeding as follows:

**I. Introductory Statement**

The following disclosures are based upon the information reasonably available to Petitioner as of this date. Petitioner’s disclosures represent a good faith effort to identify information and documents he may use to support claims and defenses, as required by Rule 2.120. By making these disclosures, Petitioner does not represent that he is identifying every document, tangible thing or witness possibly relevant to this action.

Moreover, Petitioner has not completed its investigation of this action, has not completed discovery, and has not completed trial preparation. Petitioner reserves the right to supplement as provided by the Trademark Rules of Practice.

## II. Initial Disclosures

### *Witnesses*

Petitioner identifies the following individual(s) likely to have discoverable information

Petitioner may use to support his claims or defenses, unless solely for impeachment.

Name	Contact Information	Subjects
Derek Guthrie Daniel Nanavati Annie Markovich	c/o Doug Masters Loeb & Loeb LLP 321 N. Clark St., Suite 2300 Chicago, IL 60654	<ul style="list-style-type: none"><li>• Idea for, naming of, creation of, and running of the NEW ART EXAMINER</li><li>• Petitioner's unique association with and ownership of the trademark NEW ART EXAMINER</li><li>• Petitioner's relationship with Registrant in relation to the NEW ART EXAMINER</li><li>• Petitioner's financial and editorial control over the NEW ART EXAMINER</li></ul>
Michel Segard Tom Mullaney Thomas Feldhacker	Unknown	<ul style="list-style-type: none"><li>• Circumstances surrounding application to register NEW ART EXAMINER, Reg. No. 4982329</li><li>• Relationship with Petitioner and decision to work on NEW ART EXAMINER with Petitioner</li><li>• History and formation of Art Message International</li></ul>

### ***Documents and Things***

The following describes, by category, the documents and things in Petitioner's possession, custody or control, of which Petitioner is currently aware and which Petitioner may use to support his claims or defenses, other than solely for impeachment.

- A. Representative examples of uses by Petitioner of NEW ART EXAMINER in commerce.
- B. Financial records demonstrating Petitioner's control of NEW ART EXAMINER.
- C. Documents and correspondence with third parties indicating Petitioner's priority in use of the mark NEW ART EXAMINER over Registrant.

### ***Computation of Damages***

Monetary damages are not applicable to this proceeding.

### ***Insurance Agreements***

Petitioner is not aware of any insurance agreements applicable to this proceeding.

Dated: December 3, 2018

LOEB & LOEB LLP

By: /s/ Douglas N. Masters  
Douglas N. Masters  
Elisabeth K. O'Neill  
321 N. Clark Street, Suite 2300  
Chicago, IL 60654  
Telephone: 312-464-3100  
Email: [dmasters@loeb.com](mailto:dmasters@loeb.com),  
[oneill@loeb.com](mailto:oneill@loeb.com)

*Attorneys for Petitioner*  
*Derek Guthrie*

**CERTIFICATE OF SERVICE**

I, Elisabeth K. O'Neill, hereby certify that a copy of **PETITIONER DEREK GUTHRIE'S RULE 2.120 INITIAL DISCLOSURES** has been served upon:

Mark V.B. Partridge  
Charlie G. Giger  
Partridge Partners  
321 North Clark Street, Suite 720  
Chicago, Illinois 60654  
[mark@partridgepartnerspc.com](mailto:mark@partridgepartnerspc.com)  
[charlie@partridgepartnerspc.com](mailto:charlie@partridgepartnerspc.com)

via email on this 3rd day of December, 2018.

\_\_\_\_\_  
/Elisabeth K. O'Neill/



# EXHIBIT B

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

In the Matter of Reg. No. 4,982,329

Derek Guthrie,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067099
	)	
Art Message International,	)	
	)	
Respondent.	)	

**RESPONDENT ART MESSAGE INTERNATIONAL’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO PETITIONER DEREK GUTHRIE**

Under Fed. R. Civ. P. 26 and 34 and 37 C.F.R. § 2.120, Respondent Art Message International (“Respondent” or “AMI”) requests that Petitioner Derek Guthrie (“Petitioner” or “Guthrie”) within thirty (30) days after the service of these requests, produce to AMI’s attorney, Mark V.B. Partridge, c/o Partridge Partners, P.C., located at 321 N. Clark St., Suite 720, Chicago, IL 60654, copies of the documents described herein and a written response to these requests, subject to the following definitions and instructions:

**Definitions And Instructions**

A. “You,” “Your,” “Petitioner,” or “Guthrie” means Petitioner Derek Guthrie, including any fictitious or assumed name under which, or entity through which, he has done business, including any predecessor in interest, subsidiary or related organization of any of them, and the partners, officers, directors, employees, agents and representatives of each.

B. “Respondent,” “AMI,” or “Registrant” means Respondent Art Message International, including any fictitious or assumed name under which, or entity through which, it has done business, including any predecessor in interest, subsidiary or related organization of

any of them, and the partners, officers, directors, employees, agents and representatives of each.

C. “Registered Mark” means the trademark registered with the United States Patent and Trademark Office (“USPTO”) as Reg. No. 4,982,329.

D. If a privilege is relied upon in declining to provide any information or document in response to an interrogatory or a part thereof, identify the nature of the privilege and:

- a. For documents, provide the following: (a) the type of document; (b) the general subject matter of the document; (c) the date of the document; and (d) such other information as is sufficient to identify each document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other; and
- b. For oral communications, provide the following: (a) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (b) the date and place of communication; and (c) the general subject matter of the communication.

E. “Person” means and includes any corporation, division, agency or other entity, as well as an individual.

F. “Contested Mark” means any rights, including the ownership of Application Serial No. 87630594 and any common law rights, that Guthrie claims to have in the mark NEW ART EXAMINER.

G. Whenever an interrogatory inquires about the name or identity of a person and that person is an individual, the information requested includes:

- a. The person’s full name;
- b. The person’s employer;
- c. The person’s position or title; and
- d. The person’s last known address and telephone number.

H. Whenever an interrogatory inquires about the name or identity of a person and the

person is a corporation, division, agency or other entity, the information requested includes the full name and current address of said corporation, division, agency or other entity.

I. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the interrogatory all responses which might otherwise be construed to be outside its scope.

J. The singular shall always include the plural and the present tense shall always include the past tense, and vice versa.

K. “Interrogatories” means Respondent Art Message International’s First Set of Interrogatories to Petitioner Derek Guthrie.

L. “Petition” means Petition for Cancellation, filed by You, on October 11, 2017.

M. “Proceeding” means Cancellation Proceeding No. 92067099, before the Trademark Trial and Appeal Board.

N. “Date” means the exact day of the month, the month, and the year. If only an approximate date is known or available, state and indicate that the date provided is an approximate date.

O. “Documents” includes but is not limited to all writings, correspondence, books, memoranda, invoices, contracts, purchase orders, receipts, pamphlets, publications, studies, catalogs, periodicals, labels, packaging, displays, pamphlets, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, circulars, price lists, advertisements, layouts, tear sheets, magnetic recording tapes, microfilm and other storage means by which information is retained in retrievable form, and all other materials whether printed, typewritten, handwritten, recorded, or reproduced by any process.

P. If you cannot fully respond to a document request after a reasonable investigation,

you should state the answer to the extent that you can, stating the information that you can and/or cannot provide, along with the efforts made to obtain the requested information.

Q. These document requests seek production as of the date of response and, as to those document requests addressed to matters falling within Fed. R. Civ. P. 26(e)(1) and (2), shall be deemed to be continuing, thus requiring Guthrie to serve upon AMI further responses promptly after Guthrie has acquired additional information relating to these document requests in any way.

R. If you consider any of the document requests or portions of any document requests objectionable, respond to the document requests to the extent to which you have no objection and separately state the portion of the document requests to which you have an objection, the evidentiary or any other basis for that objection, and the specific grounds for your objection.

### **Document Requests**

1. Documents sufficient to evidence each manner in which Petitioner uses, has used, and plans to use the Contested Mark.

2. Documents which relate or refer to Petitioner's selection and adoption of, and intent to use in commerce, the Contested Mark.

3. All documents which relate or refer to AMI, including but not limited to any documents you purport give Petitioner the right to use the Contested Mark, any discussion of AMI's rights in the Registered Mark, and any discussion of reviving the NEW ART EXAMINER publication.

4. All documents which show meeting minutes for board meetings for any entity or organization involved with the Contested Mark that Guthrie has been involved with from

January 1, 2013 to the present.

5. All documents concerning any instance of confusion, mistake, or deception, actual or hearsay, which has or may have occurred between AMI or use of the Registered Mark, and Guthrie or Guthrie's use of or association with the Contested Mark.

6. Documents sufficient to identify the amount of money Guthrie has spent or plans to spend for each type of advertising, marketing or promotion Guthrie has made or intends to make for the goods offered under the Contested Mark.

7. Documents sufficient to identify Guthrie's monthly dollar and unit volumes of sales separately for the goods offered under the Contested Mark.

8. A representative specimen of each logo, cover, or display Guthrie has used or plans to use in connection with the Contested Mark, including the specimen of first use submitted to the USPTO.

9. Documents which relate or refer the use by or association with AMI of the Registered Mark for an art criticism journal in commerce in the United States.

10. Documents which reveal the channels of trade and territorial areas in the United States where Guthrie has marketed or plans to market goods in connection with the Contested Mark.

11. All documents which constitute or relate or refer to any assignment, license, or other transfer of any rights to or from Guthrie in the Contested Mark.

12. All documents that relate or refer to Guthrie's application to register the Contested Mark in the USPTO or elsewhere.

13. All documents that relate to or refer to Guthrie's policy with respect to retention, storage and destruction of documents and business records.

14. All documents which relate or refer to AMI, including but not limited to any documents: (i) referring or relating to Tom Mullaney, Michel Segard, and Thomas Feldhacker; and/or, (ii) prepared by Guthrie's agents, including but not limited to those documents prepared by Daniel Nanavati and Annie Markovich on Guthrie's behalf or request.

15. All documents which relate or refer to Guthrie's resignation, departure, or separation from AMI.

16. All financial records that Petitioner maintains demonstrates Petitioner's control of the Contested Mark. See Guthrie's Initial Disclosures.

17. All documents and correspondence that Petitioner has in regards to the following statement as provided in its initial disclosures: "Documents and correspondence with third parties indicating Petitioner's priority in use of the mark NEW ART EXAMINER over Registrant."

18. All documents referred to or relied upon to prepare Guthrie's answers to Respondent's First Set of Interrogatories or containing information requested by Respondent's First Set of Interrogatories.

Dated: March 13, 2019

Respectfully submitted,  
PARTRIDGE PARTNERS, P.C.

By: /s/Mark V. B. Partridge

Mark V.B. Partridge  
Charles G. Giger  
321 North Clark Street, Suite 720  
Chicago, IL 60654  
(312) 634-9501

*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of March, 2019, I caused a copy of the foregoing RESPONDENT ART MESSAGE INTERNATIONAL'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO PETITIONER DEREK GUTHRIE to be sent to counsel for Petitioner via email.

/s/ Mark V.B. Partridge  
Mark V.B. Partridge

*Attorney for Respondent*

Douglas N. Masters  
Elisabeth K. O'Neill  
321 North Clark St., Suite 2300  
Chicago, Illinois 60610  
Telephone: (312) 464-3100  
Facsimile: (312) 464-3111  
[dmasters@loeb.com](mailto:dmasters@loeb.com)  
[oneill@loeb.com](mailto:oneill@loeb.com)



# EXHIBIT C

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

In the Matter of Reg. No. 4,982,329

Derek Guthrie,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067099
	)	
Art Message International,	)	
	)	
Respondent.	)	

**RESPONDENT ART MESSAGE INTERNATIONAL’S FIRST SET OF  
INTERROGATORIES TO PETITIONER DEREK GUTHRIE**

Under Fed. R. Civ. P. 26 and 33, and 37 C.F.R. § 2.120, Respondent Art Message International (“Respondent,” “Registrant,” or “AMI”) requests that Petitioner Derek Guthrie (“Guthrie”), within thirty (30) days, answer the interrogatories under oath, subject to the following definitions and instructions:

**Definitions And Instructions**

A. “You,” “Your,” “Petitioner,” or “Guthrie” means Petitioner Derek Guthrie, including any fictitious or assumed name under which, or entity through which, he has done business, including any predecessor in interest, subsidiary or related organization of any of them, and the partners, officers, directors, employees, agents and representatives of each.

B. “Respondent,” “AMI,” or “Registrant” means Respondent Art Message International, including any fictitious or assumed name under which, or entity through which, it has done business, including any predecessor in interest, subsidiary or related organization of any of them, and the partners, officers, directors, employees, agents and representatives of each.

C. “Registered Mark” means the trademark registered with the United States Patent

and Trademark Office (“USPTO”) as Reg. No. 4,982,329.

D. If a privilege is relied upon in declining to provide any information or document in response to an interrogatory or a part thereof, identify the nature of the privilege and:

1. For documents, provide the following: (a) the type of document; (b) the general subject matter of the document; (c) the date of the document; and (d) such other information as is sufficient to identify each document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other; and
2. For oral communications, provide the following: (a) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (b) the date and place of communication; and (c) the general subject matter of the communication.

E. “Person” means and includes any corporation, division, agency or other entity, as well as an individual.

F. “Contested Mark” means any rights, including the ownership of Application Serial No. 87630594 and any common law rights, that Guthrie claims to have in the mark NEW ART EXAMINER.

G. Whenever an interrogatory inquires about the name or identity of a person and that person is an individual, the information requested includes:

1. The person’s full name;
2. The person’s employer;
3. The person’s position or title; and
4. The person’s last known address and telephone number.

H. Whenever an interrogatory inquires about the name or identity of a person and the person is a corporation, division, agency or other entity, the information requested includes the full name and current address of said corporation, division, agency or other entity.

I. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the interrogatory all responses which might otherwise be construed to be outside its scope.

J. The singular shall always include the plural and the present tense shall always include the past tense, and vice versa.

K. “Document Request” means Respondent Art Message International’s First Set of Request for Production to Petitioner Derek Guthrie.

L. “Petition” means Petition for Cancellation, filed by You, on October 11, 2017.

M. “Proceeding” means Cancellation Proceeding No. 92067099, before the Trademark Trial and Appeal Board.

N. “Date” means the exact day of the month, the month, and the year. If only an approximate date is known or available, state and indicate that the date provided is an approximate date.

O. If you cannot fully answer an interrogatory after a reasonable investigation, you should state the answer to the extent that you can, stating the information that you can and/or cannot provide, along with the efforts made to obtain the requested information.

P. These interrogatories seek answers as of the date of response and, as to those interrogatories addressed to matters falling within Fed. R. Civ. P. 26(e)(1) and (2), shall be deemed to be continuing, thus requiring Guthrie to serve upon AMI further responses promptly after Guthrie has acquired additional information relating to these interrogatories in any way.

Q. If you consider any of the interrogatories or portions of any interrogatories objectionable, answer the interrogatory to the extent to which you have no objection and separately state the portion of the interrogatory to which you have an objection, the evidentiary

or any other basis for that objection, and the specific grounds for your objection.

### **Interrogatories**

1. Identify all organizations or entities that Petitioner has been associated with, owned, or been an employee of from January 1, 2013 to the present and each of Petitioner's title(s) with dates such title is or was held, and identify all persons who made up those current or former organizations or entities.

2. Describe each manner in which Petitioner uses, has used, or plans to use the Contested Mark in commerce.

3. Describe the manner and identify the date of Petitioner's first use in commerce in the United States of the Contested Mark.

4. Describe in detail how and when Petitioner first became aware of AMI's use of the trademark NEW ART EXAMINER for an art criticism journal in commerce, and the person most knowledgeable about that awareness.

5. Identify any uses in commerce of the trademark NEW ART EXAMINER of which Petitioner was aware before filing an application for the Contested Mark with the USPTO.

6. Describe in detail the date of the occurrence and the identity of each person with knowledge of the occurrence, each instance or possible instance of actual confusion, mistake, deception, or association of any kind, actual or hearsay, between AMI or use of the Registered Mark, and Petitioner or Petitioner's use of or association with the Contested Mark, including but not limited to, any instance in which a reader, potential reader, or other person believed or may have believed Petitioner's use of the Contested Mark was authorized, sponsored, or approved by AMI.

7. State (a) the geographic area or areas in the United States in which Guthrie

markets, has marketed, or plans to market goods bearing the Contested Mark; and (b) the channel or channels of trade through which Petitioner markets, has marketed, or plans to market goods bearing the Contested Mark.

8. State the amount of money Petitioner has spent or plans to spend for each type of advertising or promotion Petitioner has made or intends to make in connection with the Contested Mark.

9. State by month the dollar and unit amount of sales that Petitioner has made of goods bearing the Contested Mark since the first date of sale in the U.S. of goods bearing the Contested Mark.

10. Identify the persons most knowledgeable concerning Petitioner's present use of the Contested Mark.

11. Identify the persons most knowledgeable concerning Petitioner's future plans to use the Contested Mark.

12. Identify the persons most knowledgeable concerning the facts which support Petitioner's allegations in the Petition.

13. Describe Petitioner's policy with respect to the retention, storage and destruction of documents and business records, including emails.

14. Identify all positions, with corresponding dates, that You held as part of the Chicago New Art Association.

15. Describe in detail how You "began making plans to revive" the Contested Mark from 2009 to the present, as alleged in Petition, Paragraph No. 4, and identify all Persons involved, including any titles, roles, the nature of the involvement, and dates of involvement.

16. Describe in detail and identify the circumstances, including identifying any other

Persons involved, in which and how You published the June 2015 issue, as alleged in Petition, Paragraph No. 5.

17. Describe in detail all “lectures” and “other engagements,” as alleged in the Petition, Paragraph No. 8, that You have been involved with in connection with the Contested Mark, since 2009.

18. Describe in detail the circumstances, and identify the dates, when You first acquired knowledge of the USPTO trademark application that AMI filed on September 24, 2015, as alleged in Petition, Paragraph No. 9.

19. Identify and describe all W-2s and 1099s that You have filed since 2009, including, but not limited to, W-2s relating to Employer Identification No. 46-2154346.

20. Identify and describe all funding that You have contributed to AMI, since 2009.

21. Identify the dates that Petitioner was involved with AMI, including any titles that Petitioner had while involved with AMI.

22. Describe in detail how and when Petitioner resigned, quit, or otherwise disassociated himself from AMI, including the reasons for doing so.

23. Identify any expert witnesses that Petitioner intends to rely on for purposes of this Proceeding.

Dated: March 13, 2019

Respectfully submitted,  
PARTIRDGE PARTNERS, P.C.

By: /s/Mark V. B. Partridge

Mark V.B. Partridge  
Charles G. Giger  
321 North Clark Street, Suite 720  
Chicago, IL 60654  
(312) 634-9501

*Attorneys for Respondent*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of March, 2019, I caused a copy of the foregoing RESPONDENT ART MESSAGE INTERNATIONAL'S FIRST SET OF INTERROGATORIES TO PETITIONER DEREK GUTHRIE to be sent to counsel for Petitioner via email.

/s/ Mark V.B. Partridge  
Mark V.B. Partridge

*Attorney for Respondent*

Douglas N. Masters  
Elisabeth K. O'Neill  
321 North Clark St., Suite 2300  
Chicago, Illinois 60610  
Telephone: (312) 464-3100  
Facsimile: (312) 464-3111\_  
[dmasters@loeb.com](mailto:dmasters@loeb.com)  
[oneill@loeb.com](mailto:oneill@loeb.com)

# EXHIBIT D

## Charlie Giger

---

**From:** Douglas Masters <dmasters@loeb.com>  
**Sent:** Tuesday, September 03, 2019 3:01 PM  
**To:** Charlie Giger; Libby O'Neill; Sarah Levitan Perry; Ashley Van Leer  
**Cc:** Mark Partridge  
**Subject:** RE: Guthrie v AMI, NAA - Discovery Responses

Hi Charlie

We disagree with your position to we have waived any objections or are required to respond to the prior discovery requests following our Rule 56 motion. If you are agreeable not to maintain or assert that we have waived our objections, however, we will agree to provide discovery responses to the previously served discovery before you respond to the summary judgment motion.

Doug

---

**From:** Charlie Giger <Charlie@PartridgePartnersPC.com>  
**Sent:** Friday, August 23, 2019 11:51 AM  
**To:** Douglas Masters <dmasters@loeb.com>; Libby O'Neill <eoneill@loeb.com>; Sarah Levitan Perry <sperry@loeb.com>; Ashley Van Leer <avanleer@loeb.com>  
**Cc:** Mark Partridge <mark@partridgepartnerspc.com>  
**Subject:** RE: Guthrie v AMI, NAA - Discovery Responses

Doug,

We disagree with your position. Among other obligations, TBMP § 408.01 provides that parties have a duty “to make a good faith effort to satisfy the discovery needs of its adversary ....” Here, we cooperated with you, granting several extensions to respond to our discovery requests that were served on March 13, 2019. The obligation to make a good faith effort to provide us the discovery responses precedes any filing of a motion for summary judgment or any discovery ordered by the Board under Rule 56(d). To avoid a potentially unnecessary Rule 56(d) motion, we ask you to provide the responses to our discovery requests that were due on July 17, 2019, the deadline of which was before the filing of the motion for summary judgment. Thank you.

Sincerely,

Charlie G. Giger  
Associate Attorney  
**PARTRIDGE | PARTNERS**  
312-376-8185

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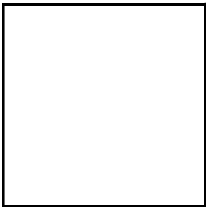
**From:** Douglas Masters <[dmasters@loeb.com](mailto:dmasters@loeb.com)>  
**Sent:** Wednesday, August 21, 2019 6:12 PM  
**To:** Charlie Giger <[Charlie@PartridgePartnersPC.com](mailto:Charlie@PartridgePartnersPC.com)>; Libby O'Neill <[elloneill@loeb.com](mailto:elloneill@loeb.com)>; Sarah Levitan Perry <[sperry@loeb.com](mailto:sperry@loeb.com)>; Ashley Van Leer <[avanleer@loeb.com](mailto:avanleer@loeb.com)>  
**Cc:** Mark Partridge <[mark@partridgepartnerspc.com](mailto:mark@partridgepartnerspc.com)>  
**Subject:** RE: Guthrie v AMI, NAA - Discovery Responses

Hi Charlie

We do not agree that our client has waived his objections to discovery but now that Respondent has moved for summary judgment, we will provide any discovery ordered in accordance with Rule 56.

Doug

**Douglas Masters**  
*Managing Partner, Chicago Office*



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**From:** Charlie Giger <[Charlie@PartridgePartnersPC.com](mailto:Charlie@PartridgePartnersPC.com)>  
**Sent:** Wednesday, August 21, 2019 3:39 PM  
**To:** Douglas Masters <[dmasters@loeb.com](mailto:dmasters@loeb.com)>; Libby O'Neill <[elloneill@loeb.com](mailto:elloneill@loeb.com)>; Sarah Levitan Perry <[sperry@loeb.com](mailto:sperry@loeb.com)>; Ashley Van Leer <[avanleer@loeb.com](mailto:avanleer@loeb.com)>  
**Cc:** Mark Partridge <[mark@partridgepartnerspc.com](mailto:mark@partridgepartnerspc.com)>  
**Subject:** Re: Guthrie v AMI, NAA - Discovery Responses

Doug,

On March 13, 2019, we served AMI's First Sets of Interrogatories and Document Requests. After various extensions, on June 26, we agreed to provide a three-week extension, resulting in a July 17, 2019 deadline. We have not received responses to the document requests or the interrogatories, and thus your responses are over a month late. As a result, any objection to the discovery on the merits is deemed waived. If we do not receive the discovery responses by Friday, August 30, 2019, we will have to move to compel. We look forward to your response.

Sincerely,

Charlie G. Giger  
Associate Attorney  
**PARTRIDGE | PARTNERS**  
321 North Clark Street, Suite 720  
Chicago, Illinois 60654  
312-376-8185  
[partridge.partners](http://partridge.partners)

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# EXHIBIT E

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## The New Art Examiner Re-examined



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By Derek Guthrie

I came to Chicago from London just a few months after the '68 riots to take a position as an art instructor at Chicago State College. The 60's were in full swing. American life seemed dynamic and exciting, a roller coaster ride from the troughs of racism and anti-war sentiment to the heights of Utopian thinking, and art in America reflected all the twists and turns of this fast-paced culture.



I met my future wife Jane Addams Allen at Chicago State. She was the grand niece of the famous Chicago social worker Jane Addams, but like me, her perspective on the country was shaped by living many years in Europe.

Jane and I shared a passion for visual art. We were both painters, and our search for new aesthetic adventures soon took us to a college art association conference at the Hilton in Chicago. One of the keynote speakers was Leon Golub, the artist of conscience who spoke intensely of his concern over repression, racism and sexism in America. That intensity was spreading through the art world; and Edward Fry, then the curator of the Guggenheim Museum (later fired for putting up a show of slum properties owned by some museum donors) decided to form a splinter group called The New Art Association.

### Follow The Artists

As the first Chicago members, Jane and I were tapped to put out the first regional edition of its art newsletter. Working out of Jane's apartment in Hyde Park, we mimeographed a 4-page newsletter about the growing art scene in Chicago. This was our first taste of publishing, and the reception encouraged us to believe Chicago was ripe for a free and open discourse about all facets of the arts.

Invited to appear before the Illinois Arts Council, Jane argued for a more liberal approach to individual arts grants. The role of an arts council is to follow the artists not lead them, she said, quoting from Lord Maynard Keynes' famous address to the British Arts Council. A few days later, Tom Willis, the arts editor of *The Chicago Tribune* and a great admirer of Keynes, asked Jane and I to become the *Tribune* art critics.

We worked hard uncovering risky new art in Chicago, never missed a deadline, and enjoyed considerable freedom to follow our own tastes. The arrangement lasted for 18 months. Then without the courtesy of an explanation, we were bumped for Alan Artner, a music student who'd shown little interest in art at the time and a safe, if predictable, guide to the Chicago galleries. We apparently were not.

### The New Art Examiner Is Born

But we remained passionate about art criticism so we convinced *Art News* in New York to commission a piece about Chicago artists appearing in the Sao Paulo Biennial. When that story was spiked (it ran instead in *Studio International*), we decided the only way to continue writing was to become our own publishers. So in October 1974, *The New Art Examiner* was born. The cover of the eight-page tabloid carried an editorial titled "Without Fear or Favor."

For the next 28 years, *The New Art Examiner* roiled the art scene in Chicago with sharp opinions, outsider perspectives and not a little controversy. Everyone on the staff was paid equally, about half what they deserved, and equally shared in the brickbats and accolades of our readers.

When we started, Chicago was looked upon as an arts backwater. But for young artists, it was a place to be a big fish in a small pond, and no one really cared where the water's edge lay. I remember Chris Millon's diving board atop the Federal Building downtown and the Ice House show in an old Soo Line railroad storage facility. I remember the first *Art Chicago* exhibition at Navy Pier and venturesome new galleries outside the usual Michigan Avenue corridor like N.A.M.E., Artemesia and the Randolph Street Gallery.

The *New Art Examiner* covered them all with a passion and intelligence that soon gained it a national following. We didn't care whether the art was good or bad. Our editorial policy was to give writers an opportunity to use their reviews as a springboard for intelligent discussion of larger social issues. Whether deserved or not, our reputation was as a renegade in an otherwise staid art community.

Jane and I stayed with the *New Art Examiner* until the mid-eighties when, for health and other reasons, not the least financial, we moved to Washington, D.C. We could see a growing age gap between ourselves and the young writers we commissioned. As outsiders in an increasingly insider's world, we also couldn't find teaching positions here that would allow us to continue mentoring their work.

### A Shift in the Landscape

The art scene has shifted to academia—not only in Chicago but in all the art capitals. Art patrons and their endowments allow art schools to sponsor a variety of new art exhibitions that outsider galleries cannot afford. But the legion of students emerging with BFA and MFA degrees do not necessarily emerge with a professional arts education, especially when it comes to making a living

### Marilyn's Quotes

KR: "My mother refuses to use the cloud. She said, 'What if there's a comet or something?'"



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as an artist. They only come out with a better appreciation of what it takes to make their work commercial.

The inner working of the art world, for instance, remains a mystery to most faculty and certainly most graduates. The inside dealers and collectors on the museum trustee circuit, the curators and art historians at museums foster an environment where art only trickles down, not up. Artists looking for a foothold in the market find themselves climbing a ladder to success stripped of the rungs of appreciative reviews that the *New Art Examiner* used to provide.

Art writing, art criticism and art publishing has once again coalesced in New York, which has regained its status as the epicenter of the art distribution center. But in its prime, "The *New Art Examiner* was the best thing to have happened in the Chicago art scene in the 70's and 80's," as Franz Schulze recently recalled.

#### Independent Thinking Dies Slow

The *New Art Examiner* struggled along in its last ten years under the constant threat of financial foreclosure. In its last days, Lew Manilow, the pre-eminent Chicago art collector, tried to resurrect the publication with a cash infusion. The board appointed an adjunct art professor at the School of the Art Institute graduate, Kathryn Hixon as editor. But the experiment lasted only another 18 months. The publication closed its doors for good in 2002.

Still, The *New Art Examiner* will not go gently into that good night. This November, the Northern Illinois Press will publish an anthology of articles from the magazine in a book called "The Essential New Art Examiner" by Terri Griffin, Kathryn Born and Janet Koplos.

It features timely articles by Fred Camper, Dan Sultan, James Yood, Ann Weins, Jan Estep, Robert Storr, Carol Diehl, Jerry Saltz, and Carol Squiers that resonate even today.

But the debate over what killed *The New Art Examiner* will go on. My own view is that it wasn't one thing, but a change in the art scene itself, a sort of calcifying of the status quo, not unlike the slow transformation of America itself, into a self-satisfied boosterism where independent thinking, running against the grain of people's comfort zone, no longer has a place in American cultural life, much less the art scene.

*Derek Guthrie, now a resident of London, was a co-founder with his wife of The New Art Examiner. You can buy a copy of "The Essential New Art Examiner" on [Amazon.com](#) or read more of his writings at [neotericart.com](#).*



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# EXHIBIT F



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## EDITORIAL

3 Comments 811 Views

Washington, May 2019

This issue of the New Art Examiner acknowledges we made a mistake by attempting to change our name to the New Art Gazette. We were frightened by a lawyer's advice pointing out the possibility of being sued. On second thought, we decided this was unlikely and the publisher would be happy to go to court to defend his long held and obvious intellectual property rights as the co-founder and long-time publisher of the New Art Examiner.

This situation emerged when previous colleagues in Chicago secretly hijacked The New Art Examiner, as they wished to control it and derive a seedy eminence from being seen as the inheritors of its fine and important tradition. The magazine had folded in 1990 when it passed into new hands, after the founding editors, the late Jane Addams Allen and Derek Guthrie, retired to Cornwall with ill health. At that time the NAE was the largest circulated serious art journal printed outside New York.

In 2014 Derek Guthrie approached Daniel Navavati in Cornwall UK, to resurrect the NAE. Without money or support the NAE returned to life, later with the support of previous Chicago colleagues. They attempted to censor copy from the UK which defied the agreement that each team was independent and limited freedom of research newspapers are suffering. The New Art Examiner managed to survive as Daniel Navavati managed the website, www.newartexaminer.net which is showing remarkable response for a specialized art journal with over 280,000 unique visitors since January 2017.

To reclaim our identify we reversed our previous decision, defied the turmoths of Chicago, Michel Segard, Michael Ramstedt, Tom Feldhacker and Tom Mullaney, who made an unethical power grab and in so doing reinforced Chicago's reputation as excessively provincial. The New Art Examiner is proud of its editorial reach which is only possible with volunteer writers who respect the mythic status the NAE has attained. I feel sure that the NAE will continue its progress internationally.

The NAE will continue its policy of print issues with an online copy, all letters to the editor with gratitude. Critical writing in these days of excessive PR, needs a voice that is in short supply and a tolerant outlet. Art and artists have to rise above the demands of money and manufactured status.

Derek Guthrie

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**Conrad Tanner**

Mr. Guthrie, I take my hat off to you and your magazine for standing up for what is right. Yours is one of the few art magazines today that isn't stifling and boring.

0 0 [Reply](#)

09/07/2019 9:23 am

**Derek Guthrie**

Thank You, Conrad. I do not walk alone. Our group which are all volunteer provide the courage, and affection for art that makes the NAE what it is. The Art world, in general, is very dismal; by surviving and publishing without permission we have avoided the shut out that the institutional system imposes. In this art world echoes the political world which is not pretty or inspiring. My dream since Oct 1973 is that artists and writers can revitalize Art discourse.

1 0 [Reply](#)

09/07/2019 4:09 pm

**Conrad Tanner**

I am honoured that you took the time to answer me. Nowhere today do journalists answer their readers. Thank you, Conrad

0 0 [Reply](#)

10/07/2019 1:34 am



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# EXHIBIT G

# Motown Review of Art

A blog about art, culture, and other stuff

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Friday, February 14, 2014

## The New Art Examiner: A Critical Field of Dreams

I was recently invited by [Buzz Spector](#) to present a paper as part of his panel titled "Wide Eyed Reading: The Legacy of the New Art Examiner" at the College Art Association 2014 annual conference in Chicago. For those who don't know (primarily the youngsters), the [New Art Examiner](#) was published mainly out of Chicago from 1973 until June 2002. It is generally acknowledged to be the largest and most influential art magazine to have come out of the Midwest. The panel was prompted by the last year's publication by Northern Illinois University Press of the anthology [The Essential New Art Examiner](#). In addition to Buzz and me, the panel included (in order of speaking) [Richard Siegesmund](#) currently of Northern Illinois University, [Susan Snodgrass](#) of the School of the Art Institute of Chicago, [Paul Krainak](#) of Bradley University in Peoria, Illinois, and [Duncan MacKenzie](#), co-founder of [Bad at Sports](#).

I've known Buzz for decades, due to the [New Art Examiner](#), but also because he showed at Cantor/Lemberg Gallery in Birmingham, then at Revolution in Ferndale. I also reviewed his show at Cranbrook Museum for [New Art Examiner](#) (July/August 1998). Susan and Paul I had known for many years through their writing in the magazine but had never met in person. Although I am not included in the anthology, I was affiliated with the magazine from summer 1984 until its demise. Below is the text of my remarks. I have added hyperlinks to the text to provide some additional context. Also, I presented images of some of my articles along with select covers of the magazine. I've uploaded some of the covers and some of the articles in case anyone wants to read them.

### The New Art Examiner: A Critical Field of Dreams College Art Association, February 12, 2014



Typical accounts of the [New Art Examiner](#) (1973-2002) rightly focus on its role in creating a critical discourse around and legitimacy for the art scene and artists of its home base Chicago. Tony Fitzpatrick, Kerry James Marshall, Wesley Kimler, Kay Rosen, Anne Wilson, and Inigo Mangolo-Ovalle are just a few of the names of those whose work appeared in its pages and who went on to gain larger recognition. And while they had local reputations starting in the 1960s, it can be argued that the [Monster Roster](#), the [Hairy Who](#), and especially [Chicago Imagists](#), such as [Ed Pashke](#), [Roger Brown](#), and [Barbara Rossi](#), garnered national and international attention by the coverage afforded them by the [New Art Examiner](#).

Equally important was its role in expanding visual arts coverage in the whole of the Midwest and beyond with monthly exhibition reviews and features on artists working in Michigan, Indiana, Ohio, Missouri, and elsewhere. The magazine enabled critics, art historians, and other writers to explore topics outside the art centers of New York and Los Angeles, creating a record of activity that would have otherwise gone unnoticed (right.) These writers developed their writing skills, CVs, and reputations, in many cases leading to significant opportunities in arts journalism, academia, museum practice, arts advocacy, etc. Some of those people are sitting on this panel, including me. Others include [Janet Koplos](#), longtime [Art in America](#) editor and



About this blog



**Vince Carducci, publisher**  
Royal Oak, MI, United States

Vince Carducci has written for many publications over the last two-and-a-half decades, ranging from alternative weeklies and webzines to academic journals, anthologies, and encyclopedias. He is Dean of Undergraduate Studies at [College for Creative Studies](#), which according to design guru [Steven Heller](#) is "one of the vanguard art, craft and design schools in the nation, in the surprisingly beautiful city of Detroit." Follow him on Twitter [@cultindustreez](#).

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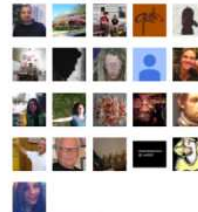
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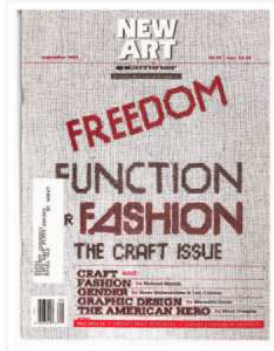


studio crafts historian, [Jim Yood](#), also an advocate of studio craft and Artforum Chicago correspondent, [Henry Giroux](#), one of the major voices of [critical pedagogy](#), [Eleanor Heartney](#), another Art in America senior staff member, [Alice Thorsen](#), now art critic for the [Kansas CityStar](#), [Michelle Grabner](#), co-curator of the 2014 Whitney Biennial, and there are many others we could name.

The magazine also provided a platform for writers with established reputations to publish material they likely would not have had an opportunity to get into print otherwise. [Donald Kuspit](#) wrote several cranky articles for New Art Examiner. [Robert Hughes](#) (below, left) also kvetched about art and money as did [Paul Goldberger](#) on postmodern architecture. On a positive note, [Suzi Gablik](#) published her ideas on [reenchanting art](#) in a precursor to the socially engaged practices that are so prevalent in the contemporary scene.

Following its original mission as an independent voice of the visual arts, the New Art Examiner also examined issues too often overlooked by the slick art publications coming out of New York. Special issues on studio craft (right) and self-taught and outsider art brought critical attention to forms of cultural production beyond of the conventions of so-called fine art. The magazine also confronted issues often swept under rug in the mainstream art press such as social class, politics, and economics. During the 1980s, the New Art Examiner took a direct stand on the culture wars being waged in Washington and around the country (see image above).

From a sociological perspective, the New Art Examiner constituted a structure for navigating what [Pierre Bourdieu](#) terms the [field of cultural production](#); it was an avenue for amassing social and cultural capital for the ideas under consideration, i.e., language as symbolic power, and the individuals and artifacts being written about, that is, symbolic capital – prestige, honor, and attention – that could sometimes be converted to economic capital in the case of artists or artworks that might become collectable, or the opportunities that might be afforded for career advancement for academics, would-be journalists, and the like. (The pay for writing was a pittance, of course, when it came at all; I only got paid two or three times over nearly 20 years of writing for the magazine and I doubt the total ever came to more than a hundred dollars.)



Within the pages of the New Art Examiner one finds the elements of [Chicago School](#) sociologist [Howard S. Becker's](#) concept of [art worlds](#). Art is a form of collective action, Becker writes, dependent upon a division of labor in establishing what Bourdieu terms the "art habitus" and Becker terms "conventions," i.e., the social rules for categorizing types of art, creative practices, institutional frameworks, and the like; for mobilizing material, social, and cultural resources for production, distribution, and consumption of these things called works of art; concepts called aesthetic theories; and agents known as artists, critics, historians, curators, etc. The categories of integrated professionals, mavericks, folk, and naive artists all get their day in the New Art Examiner's archive.

A major piece of the primary research material of Midwestern art worlds in the last quarter of the twentieth century is contained in the volumes of the New Art Examiner, the surface of which is barely scratched in *The Essential New Art Examiner* anthology.

I'd like to add to the archive by offering myself as a case study. I began subscribing to the New Art Examiner in 1980 when it was still published in the tabloid format. It was the only publication I was aware of at the time that covered art being made in Michigan from a critical perspective as opposed to the journalistic reportage of Detroit's two daily newspapers, the Detroit News and Free Press. There was a short-lived art publication that had existed in Detroit for a couple of years in the mid-1970s that had gone defunct, and the New Art Examiner was a welcome presence to fill the void. Equally important was knowledge that there was a lot of art being made not that far away in Chicago, of course, but also Milwaukee, Kansas City, Cleveland, Nashville, and elsewhere.

A couple of years later, the nonprofit Detroit Focus Gallery got a grant to start a publication of its own and I volunteered to be one of the original writers. The publication was a quarterly (and in truth given its missed deadlines "intermittently" might better describe it) and only 16 pages, so there wasn't much opportunity to engage in dialogue.

My first articles for the New Art Examiner were two short reviews published in the summer 1984. One of a group show of installation work presented by Detroit Focus Gallery was somewhat critical, while the other of a solo exhibition by printmaker [Douglas Semivan](#), who is now chair of the Madonna University art department (and father of redoubtable photographer [Lauren](#)), was much more favorable. In retrospect, both hold up pretty well. Within a matter of months I found myself named a Michigan editor of the New Art Examiner and maintained my affiliation with the magazine pretty much until its demise in mid-2002. From 1996 to 2000, I served as a contributing editor and at one point toward the end of that time had had conversations with [Kathryn Hixson](#) about coming on full-time as publisher as she was scrambling to reconstitute the magazine by moving it up market.

My affiliation with the New Art Examiner was important to establishing my identity as an art writer, helping me to develop the requisite habitus and amass social and cultural capital. Up until mid-2000, I was holding down a day job as a suit in financial services marketing, so the New Art Examiner gave me art world cred. By virtue of my position at the New Art Examiner I was contacted by [Artnews](#) to write reviews from Detroit in 1985. (It helped that the publisher of [Artnews](#) was a friend of then incoming Detroit Institute of Arts director [Sam Sachs II](#). I had a bad interview experience with Sam not long after and the relationship with [Artnews](#) quickly soured. I also have to say that my writing was far too highfalutin for them.)

Quicksand  
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5 hours ago

**Detroit Blogger John**

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Introducing "House Stories"  
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Why is the robin Michigan's state bird?  
3 months ago

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My book of New Art Examiner clips also helped open the door to becoming Detroit correspondent for Artforum in 1989. The editor of Artforum at that time was **Charles Miller**, who was familiar with my work from his time as editor of the Ohio-based Dialogue. Charlie had moved to New York after being denied tenure at The Ohio State University. He was tragically stricken with AIDS and had to leave the magazine in 1992 (he died not long after) and was replaced by Jack Bankowsky, who didn't have much interest in continuing coverage in Detroit, primarily because Artforum had a low subscription base and virtually no advertising coming out of the region. (That was corrected a little while back with University of Michigan History of Art Department Chair **Matthew Biro** now on the beat.)

Finally, the New Art Examiner clips constituted the bulk of the evidence I submitted for acceptance into the Liberal Studies MA program at the New School for Social Research after I decided in July 2000 to walk away from my corporate gig and pursue an encore career in the academy. The position I established primarily as a critic writing for the New Art Examiner was also instrumental in my getting hired as an adjunct at College for Creative Studies when I returned to Detroit in 2006, and I continue to work there today full-time as an administrator, having successfully transitioned into higher education.



The first feature I wrote (above) for the New Art Examiner was on the Detroit art scene, "Detroit: Art and Transmission," published in January 1987. Reacting against the expected role of local booster, I opened with the line, "Detroit is a hick town." I went on to reject the city's regnant school of urban expression in favor of a "lost generation" of conceptual and performance art. I've been a little more insightful on the Cass Corridor since then (see [here](#), [here](#), and [here](#)).



A piece I wrote (above) for the February/March 1992 issue commented on the fiscal woes of the Detroit Institute of Arts with the election of rightwing governor John Engler and subsequent slashing of state aid, which the museum had come to depend on. The article has recently regained relevance in that it charted out the options for the museum, a department of the beleaguered municipal government, predicting its likely privatization, which as a result of the rescue plan in the Detroit bankruptcy, appears to be in the offing.

It hasn't been all piss and vinegar, though.





In summer 1995, the New Art Examiner ran my essay on The Inlander Collection of Great Lakes Regional Painting (above) assembled by sculptor, critic, and folk expert **Michael Hall** and his spouse Pat Glascock. Featuring works by artists working in the Upper Midwest between the two World Wars, The Inlander Collection, named after a journal entry by **Charles Burchfield**, was accessioned en masse a decade later into the Flint Institute of Arts, constituting a major portion of the museum's holdings in this area. As a student in **Vera Zolberg's** Museums and Society class at the New School, I documented the process by which the paintings of The Inlander Collection went from thrift store and tag sale castoff to museum quality art, using Becker's concepts as the theoretical foundation, with myself as a self-identified agent of art world change.

In the November-December 2001 issue, New Art Examiner published "**Peter Williams's Black Humor**" (below), a meditation on the deconstruction of minstrelsy in the work of the Detroit artist Peter Williams. The finishing touches of the essay were being put on literally as the smoke was still billowing across the East River from Ground Zero in the wake of September 11. Living in Brooklyn at the time with my Internet out and unable to get back into Manhattan to use the computers at the New School, I roamed up and down Court Street trying to locate a working fax machine to send the final edits back to Kathryn Hixson, living and breathing the in-press issue's theme of "Fear and Loathing."







The article ended up being cited and its thesis incorporated into the curator's entry for Peter in that spring's catalog for the Whitney Biennial. Peter Williams was the first Detroit-based artist to be included in a Whitney Biennial since the 1970s heyday of the Cass Corridor when [Sam Wagstaff](#) briefly served as the DIA's curator of contemporary art.

The members of this panel and other contributors to the *New Art Examiner* over the years could no doubt relate similar narratives. With the current, severely diminished state of arts coverage in an age of media convergence and consolidation, it's important to ponder how such narratives might now be constructed. In the decade-plus since the *New Art Examiner's* demise, no other venue of its scope has arisen. In the past few years, [Julie Myers](#), an art historian at Eastern Michigan University, has mounted two important exhibitions of Detroit art, one of pioneer African American artist [Charles McGee](#) and another on Detroit's first avant-garde, [the Cass Corridor](#), featuring heavily documented catalogues that draw on primary sources, including the archives of the *New Art Examiner*. Where will historians 20 years hence go for documentation on Detroit and other regional art scenes? The few reviews that get published in the back pages of *Artforum* and *Art in America* aren't enough (although it's good to see them back again), and most of them have had the lifeblood edited out of them.

In Chicago, [Bad at Sports](#) and Paul Klein's [Art Letter](#) are online sources, but they don't extend their reach geographically with the depth and consistency of the *New Art Examiner*. [Hyperallergic](#) and the [Brooklyn Rail](#) bring a refreshing independence to the art scene and make some gestures toward cosmopolitanism, but still have primarily a New York focus. In Detroit, the new online publication = [Mile](#) is providing a much-needed platform for local artists and writers to consider what's happening in the D.

But these efforts, however well and good, don't even begin to address the larger issue of the state of art criticism in general. The in-your-face stance of the *New Art Examiner* is in pretty short supply these days. And this has deeper implications for the current moment.

In his study [The Structural Transformation of the Public Sphere](#), German social philosopher [Jurgen Habermas](#) identifies the emergence of art and literary criticism in the seventeenth and eighteenth centuries as a crucial element in the development of the civil society that underpins democratic consensus building. The ability to think critically, according to Habermas, was honed by the likes of literary critics and thinkers such as Nicolas Boileau-Despreaux, Denis Diderot, Alexander Pope, and Immanuel Kant, which opened up a critical space for the political writings of John Locke, Jean-Jacques Rousseau, Edmund Burke, and Mary Wollstonecraft. One must seriously wonder what the prospects for democracy are without the habit of critical thinking, which the *New Art Examiner*, for one, espoused.

**Update, February 17, 2014:** At the CAA conference it was announced that [Derek Guthrie](#) and [Diane Thodos](#) have gotten together to relaunch the *New Art Examiner*, at this point online with plans to put out a print version. [Click here](#) to view the site.

Posted by [Vince Carducci, publisher](#) at 10:57 AM



Labels: [College Art Association annual conference](#), [New Art Examiner](#), [public sphere](#), [regional criticism](#)

## 6 comments:

**Anonymous** February 15, 2014 at 5:31 AM

"Detroit is a hick town... Detroit 'hicks' can be taken as easily as any. The 'city slickers' in this case were a group of graffiti artists and their impresarios who blew into town." Thank you for explaining, almost 30 years in advance, why Knight gave us Critic Car and other cities got gold dust sprinkled on them to chase after intelligent art criticism.  
--LTD

Reply

▼ Replies

 **Vince Carducci, publisher** February 15, 2014 at 2:22 PM

Thank you for reading. I've always felt myself something of a Cassandra on this stuff. The people from Art Train wrote a letter to the editor on that article, asserting that I missed the story about the significance of the graffiti thing. My response was that I didn't buy it. Anyway, there are pockets here and there. The Infinite Mile folks are doing a pretty good job. Hope they can keep it up.

**Anonymous** February 15, 2014 at 7:01 PM

Thank you for writing with attention to detail and historical links. Today is groundhog day with a sprinkle of temporary autonomous zones supported by philanthropy. Not particularly hopeful. Yet, I abide.  
-- LTD

 **Derek Guthrie** February 17, 2014 at 8:42 PM

Dear Clive, for your caring and in dept response to the *New Art Examiner*, As you know a group has formed in Chicago with the intent eintent to revive the magazine. I hope you can become a part of the revival which would include an active presence from Dthe benefit of you wide ranging awariness of art world culture. We need you. 3 questions for you.  
No 1 what do you think of Chris Hedges?  
No 2 what do you think of Naom Chompsky.  
No 3 What do you think of Buzz demmed me as inappropriate.  
again thank you for contribution.

 **John** May 7, 2015 at 1:12 AM

Inappropriate is good.

[Reply](#)

**Anonymous** October 7, 2015 at 11:40 AM

Volume 30 number 1 is now out as the New Art Examiner republishes.

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## ARTS & ENTERTAINMENT

### New Art Examiner Struggles with Relaunch After Internal Rift

World-renowned Zhou Brothers show support, then pull funding for longtime Chicago arts criticism mag

Chloe Riley | October 19, 2015 8:16 am



New Art Examiner managing editor Annie Markovich at the publication's former office on Ohio Street. (Chloe Riley)

Things look different in the former offices of The New Art Examiner, an arts criticism magazine which local artist and writer Annie Markovich helped run throughout much of its almost 30-year existence. Now a design firm, the typesetting machines have been replaced by a fleet of sleek Macs. A small closet-like space that used to be the Examiner's editorial department has been reborn as a kitchen. Markovich, with red hair and redder glasses, points out the window towards a brown brick building at 237 E. Ontario St., the Museum of Contemporary Art's home in the mid-90s.

"There were galleries here too, several galleries right here in this building. It's changed so much," she says, sighing.



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## WTTW NEWS DAILY BRIEFING

## COMMENTS

The Reparations Debate is Heading to City Council  
19 comments · 18 hours ago





Former home of arts criticism magazine The New Art Examiner, 230 E. Ohio St. (Chloe Riley)

It was 1973 when [The New Art Examiner](#) first debuted with the editorial Without Fear or Favor – a line borrowed from New York Times publisher Adolph S. Ochs. The lack of both favor and fear implied the publication’s dedication to significant arts criticism, something it claimed Chicago sorely lacked. The magazine was originally an effort from then Northwestern art lecturer Derek Guthrie and Jane Addams Allen, the great-grandniece of Chicago social reformer Jane Addams. Both started as Chicago Tribune art critics, but were let go after a very short period in favor of Alan Artner, who would go on to openly criticize The New Art Examiner’s efforts. The magazine folded in 2002.

### THE RELAUNCH



The first edition of The New Art Examiner, October 1973

The Examiner’s rise and fall in many ways parallels the history of Chicago arts funding. As a nonprofit, the publication made its living via subscriptions, ads, and a healthy dose of grant funding from the National Endowment for the Arts and the Illinois Arts Council – money that progressively dried up, even as demand for the Examiner grew. During the publication’s heyday in the 1980s and '90s, the National Endowment for the Arts received upwards of \$175 million in annual funding from Congress. In 1996, six years before the Examiner would fold, that figure was cut almost in half. In 2002, Chicago received some \$16 million in public arts funding – by 2012, that number had dropped to just over \$7 million.

In 2002, Addams Allen, who was living in Cornwall, England, died following complications from cancer. After her death, Guthrie – by this time her husband – stayed on in England. But over the past few years, after the publication of an Examiner retrospective from Northern Illinois University Press and a separate book project, Guthrie said he felt a need to resurrect the arts mag.

Enter the prolific [Zhou Brothers](#). In 2014, the Chinese brothers ShanZuo and DaHuang – widely recognized for their painting and performance art – expressed interest in aiding the New Art Examiner’s relaunch. The brothers, who opened a [Bridgeport gallery](#) in 2004, helped publish the Examiner’s first issue and also lent the group an office space, according to Michael Zhou, ShanZuo’s son and the gallery’s executive director.

“We thought it was the right thing to do because Chicago lacks a voice for the arts. At the time, they were aligned with our vision,” Michael Zhou said.



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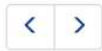
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Artists DaHuang and ShanZuo Zhou.

## VIDEO ARCHIVE

September



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28	29	30				

But soon after the Zhou Brothers' support came through, problems arose. Guthrie, who was still living in Cornwall, said he was cut out of the publishing process on the first issue and he disagreed with the vision of the Examiner's new associate publisher, Chicago-based artist Laura Frazier, who had created a Facebook page for The New Art Examiner and had begun posting articles which Guthrie disapproved of.

The two split and the Zhou Brothers' funding was pulled.

### THE 'NEW' NEW ART EXAMINER – OR – WILL CHICAGOANS CARE ABOUT CORNWALL?

After the split with Frazier – who said she's uncertain as to whether she'll continue her version of the Examiner – Guthrie went on to publish his own issue of the revamped New Art Examiner in September – a 40-page mag with fairly low-quality printing and articles mainly focused on the art scene in Cornwall and London.

Exactly 100 copies of the new New Art Examiner were handed out at Expo Chicago in September, with another 100 printed for distribution in Cornwall. The Examiner's model will still rely on grant money, according to Guthrie, who said he believes Chicagoans will embrace both print and the trans-Atlantic goings-on in England's art scene. Guthrie said his operation plans to publish the mag, which retails for \$6 a pop, about six times a year.



The 'new' New Art Examiner, September 2015

One of the main reasons for the split with Frazier had to do with her intention to run the New Art Examiner as a for-profit publication, according to Guthrie.

"As the art world has become incredibly commercial and global in recent years, [advertising] is the only way many of these publications exist. And then that's a matter of doing favors for the advertisers. And that's why there's no art criticism anymore," he said.

New Art Examiner staff both past and present seem split on the state of things. "It's got sort of a cheap opera thing going on in the background," said former New Examiner managing editor Jim Yood, currently an adjunct professor at the School of the Art Institute of Chicago. "It's a lot of fighting over very, very little and not much has been produced in the meantime. It's had its day and I'm not sure it'll have another day."

But for Annie Markovich, the Examiner's current managing editor, the magazine's social importance trumps its current internal disputes.

"The examiner is starting up again because we feel that people do not have a voice. They are afraid to say what they feel or they don't trust their intuition anymore about what they see," she said. "A lot of what I read today is puffery, everything's nice, oh, this is



good art. And not really getting to the heart of the political surroundings.”



“Mirth & Girth,” David Nelson, 1988.

The New Art Examiner of the '80s and '90s took risks via interviews with artists like David Nelson, whose portrait of former Mayor Harold Washington dressed in a bra and nylons was briefly confiscated by several African-American Chicago aldermen in 1988. Early on, the Examiner also pushed for feminist film and photography criticism and openly mocked the inaccessible academic language other critics used to talk about art.

It's that kind of boundary-pushing which Guthrie says he wants to bring back to Chicago.

“This is the spirit of Jane Addams,” he said. “This idea of integrity is at the core of the New Art Examiner and it's very attractive and you cannot quantify it in money terms. I know it works and we're working on it and it will rise again on that basis.”



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**Tom Mullaney** · 4 years ago

As the editor of the New Art Examiner in Chicago, I take issue with several aspects of Ms. Riley's story. She relied solely on Ms. Markovich's views and made no attempt to contact me for my viewpoint. Next, the internal disputes have been settled. The rifts with Michael Zhou and Laura Frazier are in the past. We are focused on the future and making the magazine better with each issue. New initiatives are underway that should disprove Jim Yood's assessment that we have "had our day". As with any new magazine, we have struggles but the story slant is more negative than the reality.

^ | ▾ · Reply · Share ▾



**John Link** · 4 years ago · edited

Profits are great but they have their effects on how a publication functions. To be free of making a profit is to be free of those effects. Likewise, being a "Chicago" publication adds additional constraints, as does "Cornwall" for that matter. Obviously, the new NAE must be published somewhere, but the test of what the new NAE will be lies in the content it provides, not its location.

^ | ▾ · Reply · Share ▾



**Carolyn Campbell** · 4 years ago · edited

Stay the course Derek! We believe in your vision. If these funders wanted another commercial product then they weren't the right match to begin with. Sorry they betrayed you.

^ | ▾ · Reply · Share ▾



**Derek Guthrie** → Carolyn Campbell · 4 years ago

Thank you Carolyn, John, and Tom Mullaney, The story is welcome but deficient. The NAE will survive and regain its status. as A national?International. Art Journal, that originated and not contained in Cook County. as "The Interdependent voice of the Visual Arts. Simply as it is an ideal which is stronger than money. Creativity is innate as observing children will reveal they do not create for money. They create to explore. The US has lost its Cultural leadership gained after World War 2 burnt out by the Market, Celebrity and Vanity. The NAE allows all to contribute. It is an ideal which I arrived with in Chicago 1969, which matured from association with the late Jane Addams Allen. The Chicago so called Art elite thought it would last for two Weeks. Now we are publishing Vol 30 No 2 and still face that studied indifference. Unfortunatel the power struggle is still with us. as the latest episode with Michael Zhou and Laura Frazier exemplifies. The New Art

Examiner is larger than I and the constipated is a legacy from 'Da Boss' and his successors who cannot think without a power deal going on under the table. ...."you scratch my back and I .....

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# EXHIBIT I

# Editorial Comment

from Tom Mullaney, US Editor

All of us at the New Art Examiner are pleased to offer this January / February 2016 issue of our revived, independent magazine for your reading enjoyment. The future looks bright for Chicago to, once again, have an arts journal that will cover the art world, locally and abroad, with a spirit of inquiry that is, true to our first editorial, without fear or favor.

As we face a new year with optimism, we want to share an account of the heretofore secret struggle that we endured over the past year that blocked our re-emergence until this past September.

In 2014, Derek Guthrie, the co-founder and current publisher of the New Art Examiner (NAE), joined forces with artist Laura Frazier to produce the anticipated inaugural issue of a newly emergent NAE as co-publishers. This issue debuted at Art Expo in September, 2014.

When the issue was printed and handed out at Navy Pier, however, Laura was identified on the masthead as the sole Publisher and Guthrie was named as Editor. Unknown to readers at the time, a falling out had occurred and an editorial coup was instituted.

Ms. Frazier had switched her allegiance to director of the Zhou B Art Center, Michael Zhou, who provided her with funding to print that September issue. They then proceeded to buy the then-dormant 'newartexaminer.com' domain name, created a new Facebook page (NAENow) and represented themselves as NAE's new owners.

Guthrie faced being shut out of his own publication. Guthrie's supporters have been engaged since that time in seeking some reconciliation with Frazier and Zhou. When numerous offers to meet over a six month period were met with stony silence, we contacted Lawyers for the Creative Arts.

LCA has provided us with valuable counsel but they are still seeking to make contact with Frazier. We have sought for her to take down her NAE Now Facebook page, cease

*we have moved on with the same determination and community generated spirit shown in 1973 when Derek Guthrie and Jane Addams Allen first published*

representing herself as the new publisher and to return a large cache of historic Examiner issues that she borrowed to their rightful owner.

These legal actions have consumed a great deal of our time during the past year. Ms. Frazier, who remains unreachable though her LinkedIn page to us, has been pursuing other interests. Mr. Zhou has reportedly withdrawn his financial support of her plan. Meanwhile, we have moved on with the same determination and community-generated spirit shown in 1973 when Derek Guthrie and Jane Addams Allen first published.

We have taken concrete steps to assume our rightful ownership of the magazine. We created the journal's true website, [www.newartexaminer.net](http://www.newartexaminer.net), trademarked our exclusive right to the New Art Examiner name and opened a bank account to process business transactions, donations and subscriptions.

The first issue with Derek as the acknowledged publisher appeared at Art Expo last September. As 2016 arrives, we are in exciting discussions to acquire editorial offices for the magazine, recruit artists and journalists to contribute to future issues and work on building our funding infrastructure. For the first time we have a UK office.

The future is much brighter. We have regained our name and our editorial voice is once again loud and clear. We look forward to having you join us on our journey. ■

# Postscript Editorial Comment

from Derek Guthrie, Publisher

To add a note of clarification to Tom Mullaney's elegant and restrained report on the more than unfortunate hidden events of the last year.

The day of crisis became clear when I was left in my hotel in Rockford on the last day of assembling "The New Art Examiner Now" which was taking place in Zhou B Art Center. Articles of a dubious nature were included of which Laura Frazier knew full well were not suitable given the New Art Examiner's well established and respected rules over conflict of interest.

Previously informal conversation discussion on these issues had taken place with polite disagreement. Also without consultation I was posted on Wikipedia as "Mentor" which made clear a public coup was attempted.

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then requested for money to pay rent for the to be office of the NAEN in the Zhou B Centre. Both Laura and Michael Zhou were fully aware the NAE was not for profit and no budget was in place.. I was told without grace "To put my pocket where my mouth was"

With great sadness I share these simple facts. I retreated to Cornwall UK and found a Colleague Daniel Nanavati who, with generous and creative support with me as Mentor but also publisher, has saved the NAE from oblivion.

This episode proves one important point in our corrupted Art world. That love of art, and love of creativity will survive without the endorsement of parasitic and self-serving patronage. The New Art Examiner sells limited space as Advertising, and sells subscriptions. It has survived on the generosity of present editors and writers.

I ask you dear reader for support as to keep us free as simply we refuse to sell editorial as covert publicity. ■

## STATEMENT OF PURPOSE

The New Art Examiner is a not-for-profit organization whose purpose is to examine the definition and transmission of culture in our society; the decision-making processes within museums and schools and the agencies of patronage which determine the manner in which culture shall be transmitted; the value systems which presently influence the making of art as well as its study in exhibitions and books; and, in particular, the interaction of these factors with the visual art milieu.

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### EDITORIAL COMMENT

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Tom Mullaney, Chicago Editor (retr'd)

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AN ONGOING FORUM WITH THE DCAC GALLERY ONCE A MONTH STARTING IN THE FALL OF 2019 WITH MIDWEEK MEETINGS. **DEREK GUTHRIE**, THE FOUNDER AND PUBLISHER OF THE NEW ART EXAMINER, WILL PRESENT A SHORT HISTORY OF THIS INTERNATIONAL MAGAZINE AND HOW IT HAS CONTINUED TO THRIVE SINCE THE MID '70'S.

WE LOOK FORWARD TO SPECIAL SPEAKERS EVERY MONTH TO HELP ADVANCE AND SUPPORT THE ARTISTS OF WASHINGTON DC AND THE SURROUNDING AREA AND WELCOME ALL TO COME, LISTEN AND PARTICIPATE.

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## POSTSCRIPT EDITORIAL COMMENT

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Derek Guthrie, Publisher

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