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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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Submission	Motion for Summary Judgment  <b>Yes</b> , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction.  The deadline for pretrial disclosures for the first testimony period as originally set or reset: <b>11/15/2020</b>
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Signature	/Charles G. Giger/
Date	11/10/2020
Attachments	Guthrie v AMI NAA - Motion for Summary Judgment 20-1110.pdf(283252 bytes ) Guthrie v AMI NAA - Memo ISO MSJ 20-1110.pdf(596982 bytes ) Guthrie v AMI NAA - CGG Decl ISO MSJ 20-1110.pdf(272197 bytes ) Exhibit 1.pdf(3308335 bytes ) Exhibit 2.pdf(433006 bytes ) Exhibit 3.pdf(47835 bytes ) Exhibit 4.pdf(4787055 bytes ) Exhibit 5.pdf(3060843 bytes ) Exhibit 6.pdf(29069 bytes ) Exhibit 7.pdf(33217 bytes ) Exhibit 8.pdf(149723 bytes ) Exhibit 9.pdf(600221 bytes ) Exhibit 10.pdf(73122 bytes )

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

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

**RESPONDENTS' MOTION FOR SUMMARY JUDGMENT**

Under Fed. R. Civ. P. 56, Trademark Rule 2.127, and TBMP § 528, Respondents Art Message International and New Art Association (“Respondent” or “Registrant”), by and through their attorneys, respectfully move this Board for entry of summary judgment on Petitioner Derek Guthrie’s (“Petitioner” or “Guthrie”) petition to cancel in Respondents’ favor, on the basis: (1) that Petitioner cannot establish standing; (2) that, alternatively, Petitioner cannot establish priority; and, (3) that, further in the alternative, Petitioner cannot establish ownership under *Lyons v. Am. Coll. of Veterinary Sports Med. & Rehab.*, 859 F.3d 1023, 1029 (Fed. Cir. 2017). In support of their motion, Respondents submit a contemporaneously filed Memorandum of Law in Support of Respondents’ Motion for Summary Judgment, and Declaration of Charles G. Giger with accompanying Exhibits 1 through 10. As detailed in these supporting materials, the undisputed facts show that Petitioner cannot establish standing, priority, or ownership; instead, the undisputed facts show that Respondent is the rightful owner of the NEW ART EXAMINER trademark registration. Accordingly, the Board should grant this motion for summary judgment in Respondents’ favor.

Dated: November 10, 2020

Respectfully submitted,

PARTRIDGE PARTNERS, P.C.

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Art Message International and  
New Art Association*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on November 10, 2020, a copy of the foregoing Respondents' Motion for Summary Judgment has been served, via email, on Petitioner's attorney of record:

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

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

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS’  
MOTION FOR SUMMARY JUDGMENT**

Under Fed. R. Civ. P. 56 and TBMP § 528, Respondents Art Message International and New Art Association (“Respondent” or “Registrant”) move for entry of summary judgment in its favor on Petitioner Derek Guthrie’s (“Petitioner” or “Guthrie”) petition to cancel Respondent’s registration for NEW ART EXAMINER, Reg. No. 4982329. For the following reasons, Respondents respectfully request that the Board grant this motion.

**Introduction**

In 2015, Respondent revived the NEW ART EXAMINER publication. In reviving the NEW ART EXAMINER mark, Respondent chose Petitioner to serve as the publisher; over a decade ago, Petitioner served as publisher for Chicago New Art Association, which is the defunct, nonparty organization that abandoned the trademark in 2002. *See* 27 TTABVUE 16, 27. In 2017, Petitioner voluntarily terminated his service as publisher for Respondent’s revived NEW ART EXAMINER publication. From 2015 to the present, Respondent has continued its use of the NEW ART EXAMINER mark. After parting ways, however, Petitioner joined nonparty New Art Gazette CIC, a United Kingdom-based corporation that—in fall 2017—began issuing a competing NEW ART EXAMINER publication.

In October 2017, Petitioner, not New Art Gazette CIC, initiated this cancellation proceeding. Respondents move for summary judgment on three independent and alternative grounds.

First, Petitioner lacks standing. To maintain standing in a cancellation proceeding, a petitioner must prove by evidence two elements: an interest within the zone of interests protected by the statute; and, an injury to a commercial interest in sales or business reputation proximately caused by the respondent. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). Petitioner in his individual capacity does not engage in commercial activity, and he only serves as a publisher for a later-formed nonparty entity. Because Petitioner's interests are too marginally related to the statute's purpose, Petitioner fails to prove that he comes within the zone of interests under § 1064. Moreover, because the undisputed facts show that his interests are too remote, Petitioner fails to prove that his injury was proximately caused by Respondents. Because Petitioner cannot prove by evidence either element – “zone of interests” or “proximate causation”, Petitioner lacks standing.

Second, Petitioner cannot establish priority. In a cancellation proceeding, a petitioner bears the burden of proving its claim of acquisition of prior proprietary rights in the NEW ART EXAMINER mark. Petitioner—in his individual capacity—cannot produce any competent or admissible evidence to establish a proprietary interest acquired through use of the NEW ART EXAMINER mark, prior to Respondent's constructive use date. Because Petitioner cannot produce admissible evidence to support a claim of priority, Respondents' motion should be granted on the issue of priority. Moreover, the undisputed facts show that Petitioner cannot prove priority.

Third, Petitioner fails on each factor under *Lyons v. Am. Coll. of Veterinary Sports Med. & Rehab.*, 859 F.3d 1023 (Fed. Cir. 2017). As part of Respondent's revival efforts of the NEW ART

EXAMINER publication, Respondent chose Petitioner to serve as Respondent's publisher; the undisputed facts show that the trademark's revival was objectively a group effort. Additionally, every NEW ART EXAMINER publication provided that a not-for-profit organization was behind the publication. In light of this, the public looks to Respondent to stand behind the consistency and quality of the NEW ART EXAMINER publication. Because Petitioner cannot create a genuine dispute of material fact as to any of the *Lyons* factors, Petitioner fails to show he is the owner of the NEW ART EXAMINER mark.

As shown here, and as explained in further detail below, the Board should grant Respondents' motion for summary judgment.

### **Respondents' Statement of Undisputed Facts ("RSUF")**

1. Respondent New Art Association and its predecessor, Art Message International, are Illinois not-for-profit organizations. Declaration of Charles G. Giger ("CGG Decl."), Ex. 1 (USPTO's TDSR record for U.S. Reg. No. 4982329); 8 TTABVUE 7.

2. Respondent first used the NEW ART EXAMINER mark approximately Summer 2015, in connection with printed periodicals in the field of art criticism and reportage, namely an art criticism journal. CGG Decl., Ex. 2 (Resp't Answers to Interrogs. Nos. 2–3).

3. Respondent selected the mark because the mark was available for use and was an apt name for Respondent's publication; the mark had previously been used by a nonparty, Chicago New Art Association, for printed periodicals but had been abandoned in 2002. CGG Decl., Ex. 2 (Resp't Answer to Interrog. No. 4).

4. On September 24, 2015, Respondent filed an application to register NEW ART EXAMINER as a trademark for "[p]rinted periodicals in the field of art criticism and reportage[.]"

claiming September 1, 2015, as the date of first use in commerce. CGG Decl., Ex. 1 (USPTO's TDSR record for U.S. Reg. No. 4982329). The mark registered on June 21, 2016. *Id.*

5. Respondent issued the NEW ART EXAMINER publication, Volume 30 No. 3 on January/February 2016. CGG Decl., Ex. 5 (RFA No. 8, Ex. B); CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 8).

6. In the Volume 30 No. 3 on January/February 2016 publication, Tom Mullaney authored the writing "Editorial Comment", detailing the history of the revival of the NEW ART EXAMINER publication. A nonparty attempted to take over the publication, but with the help of Lawyers for the Creative Arts, Respondent took "concrete steps to assume [their] rightful ownership of the magazine." Further, the Mullaney account provided,

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 [Petitioner] 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.

CGG Decl., Ex. 5 (RFA No. 8, Ex. B); CGG Decl., Ex. 6 (Pet'r Resp. RFA, Nos. 8–11); *see also* 27 TTABVUE 74–75.

7. In the same publication on the next page, Petitioner authored the writing titled "Postscript Editorial Comment", in which Petitioner refers to Tom Mullaney's "Editorial Comment" as an "elegant and restrained report ...." CGG Decl., Ex. 5 (RFA No. 8, Ex. B); CGG Decl., Ex. 6 (Pet'r Resp. RFA, Nos. 8–11); *see also* 27 TTABVUE 74–75.

8. Petitioner is an individual, not a "not-for-profit organization." CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 12).

9. Petitioner has no legal documents relating or referring to any assignment, license, or other transfer of any rights to or from himself in the NEW ART EXAMINER mark. CGG Decl., Ex. 3 (Pet'r Resp. RFP, No. 11).

10. Petitioner is now, and has been associated since at least as early as January 27, 2016, with the New Art Gazette CIC. CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 4). The New Art Gazette CIC is a UK company that "publish[es] a journal of art criticism ...." CGG Decl., Ex. 5 (RFA No. 3, Ex. A); CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 3).

11. Assuming that he was using the mark in the first place, in 2017, Petitioner ceased using the NEW ART EXAMINER mark in the United States. CGG Decl., Ex. 4 (Pet'r Answer to Interrog. No. 2).

12. On October 2, 2017, Petitioner filed a *used-based* application to register NEW ART EXAMINER as a trademark for "[p]rinted periodicals of art and cultural criticism ...." *See* U.S. Ser. No. 87630594; 1 TTABVUE 1.

13. With this application, Petitioner submitted a specimen that provides "The New Art Examiner is a not-for-profit organization ...." U.S. Ser. No. 87630594; CGG Decl., Ex. 10 (Pet'r Resp. to Deficiency Letter), *modifying*, CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 13).

14. In fact, since June 1, 2015, every NEW ART EXAMINER publication, for which Petitioner served as a publisher, has stated that "The New Art Examiner is a not-for-profit organization ...." CGG Decl., Ex. 10 (Pet'r Resp. to Deficiency Letter), *modifying*, CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 15);

15. During June 1, 2015, and November 15, 2015, Petitioner did not offer for sale, nor make available for PDF download, printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, on any website. CGG Decl. Ex. 6 (Pet'r Resp. RFA Nos. 5–6, 17–18);

CGG Decl., Ex. 10 (Pet'r Resp. to Deficiency Letter), *modifying*, CGG Decl., Ex. 6 (Pet'r Resp. RFA, Nos. 5).

16. Petitioner has no documentary evidence showing that any publications of the NEW ART EXAMINER were, in fact, distributed in the United States, between June 1, 2015, and August 31, 2015. CGG Decl. Ex. 6 (Pet'r Resp. RFA Nos. 5–6); CGG Decl., Ex. 10 (Pet'r Resp. to Deficiency Letter), *modifying*, CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 5).

17. Moreover, no website between June 1, 2015, and November 15, 2015, offered for sale printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark. CGG Decl. Ex. 6 (Pet'r Resp. RFA Nos. 5–6, 17); CGG Decl., Ex. 10 (Pet'r Resp. to Deficiency Letter), *modifying*, CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 5).

18. Nor did any website make periodicals of art and cultural criticism under the NEW ART EXAMINER mark, available for download as PDFs. CGG Decl. Ex. 6 (Pet'r Resp. RFA Nos. 5–6, 18); CGG Decl., Ex. 10 (Pet'r Resp. to Deficiency Letter), *modifying*, CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 5).

19. All of the printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark issued between the dates of June 1, 2015, and the date of publication for Vol 31 No. 4, March/April 2017, stated that the NEW ART EXAMINER was a “not-for-profit organization.” CGG Decl., Ex. 6 (Pet'r Resp. RFA, No. 14).

### **Legal Standard**

“Summary judgment is appropriate where the movant has established that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Lens.com, Inc. v. 1-800 Contacts, Inc.*, 686 F.3d 1376, 1378 (Fed. Cir. 2012) (citation omitted). The movant’s burden “may be discharged by showing that there is an absence of evidence

to support the nonmoving party's case." *Person's Co. v. Christman*, 900 F.2d 1565, 1571 (Fed. Cir. 1990); see *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1563 (Fed. Cir. 1987); see also Fed. R. Civ. P. 56(c)(2) (allowing a movant to support factual positions by showing that "an adverse party cannot produce admissible evidence to support the fact"). On the other hand, the nonmovant "must do more than merely raise some doubt as to the existence of a fact; evidence must be forthcoming from the nonmovant which would be sufficient to require submission to the jury of the dispute over the fact." *Copelands' Enters. v. CNV, Inc.*, 945 F.2d 1563, 1566 (Fed. Cir. 1991) (citation omitted).

### **Argument**

#### **I. The Board should grant Respondents' motion because the undisputed facts show that Petitioner cannot prove standing as a matter of law.**

In order to establish standing under § 1064, a petitioner must satisfy two requirements: "zone of interests" and "proximate causation." *Corcamore, LLC v. SFM, LLC*, No. 2019-1526, \_\_ F.3d \_\_, 2020 U.S. App. LEXIS 33803, at \*15-16 (Fed. Cir. Oct. 27, 2020); see *id.* (holding that *Lexmark Int'l, Inc.*, 572 U.S. at 118, applies to cancellation proceedings).<sup>1</sup> Here, the undisputed facts show that Petitioner lacks standing for two independent reasons: first, Petitioner cannot prove that he falls with the "zone of interests" protected by § 1064; and, second, Petitioner cannot prove that the harm alleged has a sufficiently close connection to the conduct the statute prohibits. As shown below, because Petitioner cannot prove either requirement of standing, the Board should grant Respondents' motion for summary judgment.

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<sup>1</sup> See also *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 2020 TTAB LEXIS 269, \*15-16 (TTAB 2020) ("Standing is a threshold issue that must be proven by the plaintiff in every inter partes case."). The standing requirement prevents mere intermeddlers from interjecting oneself into the affairs of another. See *Cent. Garden & Pet Co. v. Doskocil Mfg. Co.*, 108 USPQ2d 1134, 1139 (TTAB 2013) (noting that a petitioner must prove "that it is not a mere intermeddler").

**A. Petitioner lacks standing because the undisputed facts show that he does not come within the zone of interests under § 1064.**

Petitioner fails to prove he comes within the “zone of interests” under § 1064. To come within the “zone of interests”, a petitioner must allege and ultimately prove “an injury to a commercial interest in reputation or sales.” *Corcamore, LLC*, 2020 U.S. App. LEXIS 33803, at \*11 (quoting *Lexmark Int’l, Inc.*, 572 U.S. at 131–132); *see also Lexmark Int’l, Inc.*, 572 U.S. at 140 (holding that while the cause of action under the Lanham Act was adequately pleaded, plaintiff still had to “ultimately prove ... an injury to a commercial interest in sales or business reputation proximately caused” by defendant). Petitioner cannot satisfy his summary-judgment burden for the following reasons:

*First*, Petitioner has no evidence, and thus cannot prove, that he suffered an injury to a commercial interest in sales or business reputation. *See Corcamore, LLC*, 2020 U.S. App. LEXIS 33803, at \*11. In maintaining that Petitioner has no evidence on this point, Respondents satisfy their summary-judgment burden. Because Petitioner has no evidence to show he suffered an injury to a commercial interest in sales or business reputation, Petitioner lacks standing to bring an action under § 1064.

*Second*, the undisputed facts show that Petitioner cannot prove he suffered a requisite, cognizable commercial injury. Petitioner is an individual, not a “not-for-profit organization.” RSUF ¶8. But Petitioner brought this cancellation action in his individual capacity. *See 1 TTABVUE*. The argument here is not that an individual is incapable of proving a requisite commercial injury; instead, it is that Petitioner—in his individual capacity—does not engage in activity that is capable of suffering a commercial injury. *See RSUF* ¶14. By himself, Petitioner does not use or own the NEW ART EXAMINER mark. *See RSUF* ¶¶8–12. Petitioner cannot produce any admissible evidence to show otherwise. *See id.* Petitioner only serves as the publisher



for the UK-based NEW ART EXAMINER publication owned by the later-formed New Art Gazette CIC. *See* RSUF ¶¶8–12. Given Petitioner’s lack of use, sale, advertising, and trademark ownership, Petitioner cannot “establish[] a *direct* commercial interest.” *Brooklyn Brewery Corp.*, 2020 TTAB LEXIS 269, \*16 (emphasis added). Petitioner’s case, if anything, is about the hypothetical, speculative commercial injury to a junior-user nonparty that does not use the mark in the United States. *See* RSUF ¶¶8–11, 14. Petitioner’s “marginally related” interests as publisher for a nonparty show that he is not authorized to maintain a cancellation proceeding. *See Corcamore, LLC*, 2020 U.S. App. LEXIS 33803, at \*16 (quoting *Lexmark*, 572 U.S. at 130).

Because the undisputed facts establish that Petitioner cannot prove he suffered an injury to a commercial interest, he does not come within the zone of interests under § 1064 and therefore lacks standing. Accordingly, the Board should grant Respondents’ motion for summary judgment on the basis that Petitioner lacks standing.

**B. Petitioner lacks standing because any commercial suffered by Petitioner was not proximately caused by Respondents.**

Petitioner cannot withstand Respondents’ motion for summary judgment on the issue of standing’s proximate-cause requirement, for two independent reasons: first, Petitioner has no evidence to satisfy “proximate causation”; and second, any belief of damage is unreasonable.

*First*, assuming that Petitioner has evidence of a cognizable commercial injury under *Lexmark*, Petitioner has no evidence that Respondents proximately caused Petitioner’s injury. *See Corcamore, LLC*, 2020 U.S. App. LEXIS 33803, at \*15-16; *see also Lexmark Int’l, Inc.*, 572 U.S. at 140 (party “cannot obtain relief without *evidence* of injury proximately caused by” opposing party). As explained above, the undisputed facts establish that in his individual capacity, Petitioner does not use or own the NEW ART EXAMINER mark. *See* RSUF ¶¶8–12. At best, Petitioner serves only as a publisher for a third party that is not before the Board. *See* 1 TTABVUE. Because

any commercial injury here is “too remote” to be cognizable under § 1064, the undisputed facts show that Petitioner cannot prove by evidence the “proximate causation” requirement. *See Corcamore, LLC*, 2020 U.S. App. LEXIS 33803, at \*18 (citation omitted).

*Second*, the undisputed facts show that any belief of damage is *unreasonable*. *See id.*, at \*17 (“a party that demonstrates a *reasonable belief* of damage by the registration of a trademark demonstrates proximate causation within the context of § 1064” (emphasis added)). Petitioner, in his individual capacity, does not have any commercial interest in the mark; he is only a publisher for a nonparty organization. *See* RSUF ¶¶8–14. Petitioner improperly filed a use-based application October 2, 2017, without actually using the NEW ART EXAMINER mark. *See* RSUF ¶¶11–12. Petitioner admits that he ceased his use of the NEW ART EXAMINER mark in the United States in 2017. RSUF ¶11.

The Federal Circuit’s decision in *Australian Therapeutic Supplies PTY. Ltd.* is instructive. *See Australian Therapeutic Supplies PTY. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1375 (Fed. Cir. 2020) (citation omitted).<sup>2</sup> There, the petitioner not only had two applications “blocked,” but also proved it had sold and advertised products in the United States. *Id.* at 1375–76. The court reasoned that in light of the petitioner’s sales and advertising, coupled with its pending trademark application, the petitioner demonstrated a reasonable belief of damage (and a real interest). *Id.* at 1376.

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<sup>2</sup> In *Australian Therapeutic Supplies PTY. Ltd.*, the court acknowledged that a petitioner’s “blocked” application *may* satisfy the requirement of having a reasonable belief of damage. 965 F.3d at 1375. But the decision shows that a “blocked” application does not automatically satisfy the standing requirements. *See id.* at 1375–76. A “blocked” application, alone, cannot be the minimum, especially under *Lexmark*; if that were the case (which it is not), then it would make the standing requirement superfluous. Standing would simply be a matter of whether an individual is capable of covering a filing fee for a trademark application. Congress did not intend for the bar to be this low.

Unlike the petitioner in *Australian Therapeutic Supplies PTY. Ltd.*, here Petitioner admits that in 2017, he stopped using the NEW ART EXAMINER mark in the United States. *See* RSUF ¶¶8–12. As an individual, Petitioner does not engage in commercial activity; he serves as a publisher for a third-party organization. *See id.* In short, it is unreasonable for an individual, who serves as a publisher of a foreign-corporation’s UK-based publication, to believe he will suffer *direct* damage under these circumstances. *See id.* Accordingly, Petitioner’s lack of use, sales, and advertising, coupled with his improperly filed trademark application, show that any belief of damage is unreasonable. *See id.*

For the foregoing reasons, the undisputed facts show that Petitioner lacks standing. Petitioner has no evidence that Respondents proximately caused Petitioner’s injury, and Petitioner’s belief of damage is *unreasonable*. Respondents’ motion should be granted on the issue of standing.

## **II. Alternatively, the Board should grant Respondents’ motion because Petitioner cannot establish priority.**

### **A. Relevant Legal Framework**

To establish priority, a petitioner must show proprietary rights in the mark ....” *Herbko Int’l v. Kappa Books*, 308 F.3d 1156, 1162 (Fed. Cir. 2002) (citation omitted). Priority “goes to the party which made first use of its mark on the relevant goods.” *Cent. Garden & Pet Co. v. Dorskil Mfg. Co.*, 108 USPQ2d 1134, 1139 (TTAB 2013). Such prior use must be sufficient enough “to create an association in the minds of the purchasing public between the mark and the petitioner’s goods.” *Herbko Int’l*, 308 F.3d at 1162 (citation omitted). “Use of a mark on the goods includes use in the ordinary course of trade, such as the sale or transport in commerce of goods bearing the mark.” *Cent. Garden & Pet Co.*, 108 USPQ2d at 1139. “The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the

applicant or registrant; a date of use of a mark must be established by *competent evidence*.” *Id.* (citing Trademark Rule § 2.122(b)(2)) (emphasis added); *see also Aviate, LLC v. Zinser*, 2020 TTAB LEXIS 411, \*15 (TTAB Aug. 27, 2020) (“priority date must be established by competent evidence”).

**B. Petitioner cannot establish priority.**

The Board should grant Respondents’ motion for summary judgment because Petitioner cannot establish priority, *i.e.*, sufficient use of the NEW ART EXAMINER mark prior to September 24, 2015. On September 24, 2015, Respondent filed as application to register NEW ART EXAMINER as a trademark for “Printed periodicals in the field of art criticism and reportage” in International Class 16, claiming September 1, 2015, as the date of first use in commerce. RSUF ¶12. Respondent’s constructive use date is September 24, 2015. *See* 15 U.S.C. § 1057(c). Moreover, having matured to registration, this trademark registration is *prima facie* evidence of the Respondent’s ownership of the mark and exclusive right to use the mark in commerce. *See* 15 U.S.C. § 1115. And this registration provides constructive notice of the claim of ownership. *See* 15 U.S.C. § 1072.

For the following reasons, Petitioner has neither admissible nor competent evidence establishing use prior to September 24, 2015.

*First*, Petitioner’s application is neither competent evidence, *see* Trademark Rule § 2.122(b)(2), nor evidence sufficient to create a genuine dispute of material fact as to priority. *See Copelands’ Enters.*, 945 F.2d at 1566. On October 2, 2017, Petitioner filed a *use-based* application to register NEW ART EXAMINER as a trademark for “Printed periodicals of art and cultural criticism” in Class 16, alleging June 1, 2015, as the date of first use. *See* 1 TTABVUE 4; RSUF ¶12. But this allegation is not competent evidence. *Cent. Garden & Pet Co.*, 108 USPQ2d at 1139.

Accordingly, Petitioner cannot rely on an improperly filed application's alleged date of first use because it is not "competent evidence." *See Cent. Garden & Pet Co.*, 108 USPQ2d at 1139

*Second*, the specimen submitted with Petitioner's trademark application is neither competent nor admissible evidence. This specimen provides that "The New Art Examiner is a not-for-profit organization ...." RSUF ¶13. But Petitioner is an individual, not a "not-for-profit organization." RSUF ¶8. The specimen therefore does not show Petitioner's use of the mark. *See id.* Moreover, the purported date on the specimen is neither competent nor admissible evidence. The alleged date is hearsay, especially when Petitioner admits that he has no evidence that the specimen was in fact distributed. *See* RSUF ¶¶15–19. Because the specimen does not show Petitioner's use of the NEW ART EXAMINER mark, the specimen is not competent evidence for purposes of establishing priority.

*Third*, Petitioner has no evidence, nor will be able to produce any admissible evidence, of any other use of the NEW ART EXAMINER mark for "Printed periodicals of art and cultural criticism" in Class 16. *See* RSUF ¶¶8–19. Petitioner admits that he has no evidence showing that any publications of the NEW ART EXAMINER were, in fact, distributed in the United States, between June 1, 2015, and August 31, 2015. RSUF ¶¶16–18. During this time period, Petitioner also admits that no website made available, distributed, or offered for sale publications, whether printed or not, under the NEW ART EXAMINER mark. RSUF ¶¶15–18. As show by these undisputed facts, Petitioner has no evidence, either competent or admissible, that is capable of establishing priority. *See* RSUF ¶¶8–19.

In light of the undisputed facts, and given that Petitioner cannot produce any admissible evidence to establish priority, the Board should grant Petitioner's motion for summary judgment. *See Copelands' Enters.*, 945 F.2d at 1566 (nonmovant "must do more than merely raise some

doubt as to the existence of a fact”); *see also Cent. Garden & Pet Co.*, 108 USPQ2d at 1145 (“While a party may establish priority by oral testimony alone, testimony which is uncertain or inconsistent is insufficient.”).

**III. Further in the alternative, the Board should grant Respondents’ motion because there is no genuine dispute as to any material facts regarding the *Lyons* factors.**

Either of the first two issues should resolve this case. Moreover, because the previous two issues are threshold issues, Respondents respectfully request that the Board fully address those issues prior to an application of *Lyons*, if necessary. With that said, *Lyons* is a separate and independent ground on which the Board should grant Respondents’ motion for summary judgment.

In *Lyons*, the Federal Circuit found no error in the Board’s consideration of “three main factors” for assessing “ownership disputes surrounding service marks as between a departing member and the remnant group: (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 or services offered under the mark.” *Lyons*, 859 F.3d at 1029. Here, Petitioner asserts that this is the legal framework that dictates the outcome of the case. *See* 24 TTABVue 8 (relying on *Lyons*). Assuming *arguendo* that this is the correct legal framework that should be applied in this case (and for purposes of this motion), the undisputed facts show that Respondent is entitled to judgment as a matter of law.

**A. There is no genuine dispute as to the parties’ objective intentions or expectations.**

For the following reasons, the undisputed facts show that the parties’ objective intentions or expectations were that Respondent would own the mark, not Petitioner.

1. Petitioner cannot produce admissible evidence to support that the parties' objective intentions or expectations were that Petitioner would own the NEW ART EXAMINER mark.

Petitioner has no evidence showing that the parties' objective intentions or expectations were that Petitioner would own the NEW ART EXAMINER trademark. By pointing out that Petitioner has no evidence of the parties' objective intentions or expectations, Respondent satisfies its burden in moving for summary judgment. *See Person's Co.*, 900 F.2d at 1571. Accordingly, the Board should find that the undisputed facts show that the parties' objective intentions or expectations were that the Respondent would own the mark, not Petitioner.

2. Petitioner's subjective beliefs are insufficient and fail to create a genuine dispute of material fact as to the parties' objective intentions or expectations.

The only evidence that Petitioner may put forth amounts to subjective beliefs. But one's subjective beliefs about ownership of the mark are insufficient as a matter of law. *See Lyons*, 859 F.3d at 1030. For example, Petitioner asserts that "[Respondent Art Message International] was provided to [him] as a vehicle through which to publish his NEW ART EXAMINER ...." CGG Decl., Ex. 7 (Pet'r Resp. RFP, No. 7); *see also* CGG Decl., Ex. 4 (Pet'r Answer to Interrog. No. 21). But this is a subjective belief that fails to create a genuine dispute of material fact. *See id.* Moreover, this subjective belief is not supported by either objective or admissible evidence. *See id.* Petitioner confuses his role as publisher with ownership of the trademark. In sum, Petitioner has no objective evidence, and thus fails to satisfy the demands of *Lyons* as a matter of law.

3. The objective evidence shows that the parties intended for Respondent to own the NEW ART EXAMINER mark, not Petitioner alone.

Contrary to Petitioner's subjective beliefs, the undisputed facts show that the parties intended that Respondent would own the NEW ART EXAMINER mark. Significantly, *every*

single *NEW ART EXAMINER* publication since June 1, 2015, stated that “The New Art Examiner is a not-for-profit organization”. RSUF ¶¶13–14, 19. This is undisputed.

The most telling undisputed evidence is Tom Mullaney’s account of the NEW ART EXAMINER revival in his “Editorial Comment”. RSUF ¶¶6–7. On top of every single issue stating that the “The New Art Examiner is a not-for-profit organization”, Mullaney’s use of “we”, not “Petitioner”, shows that the parties saw themselves as an organization. *See id.*; *see also* RSUF ¶¶13–14, 19. Indeed, “We ... trademarked our exclusive right to the New Art Examiner name and opened a bank account to process business transactions, donations and subscriptions.” *Id.* Petitioner described this as an “elegant and restrained report ....” *See* RSUF ¶¶6–7. Mullaney’s account, along with Petitioner’s adoption of it, illustrates how the parties thought of themselves as a “we”, not Petitioner alone. *See id.*; *see also* RSUF ¶¶13–14, 19.

For the foregoing reasons, the Board should find that the undisputed facts show that the first factor weighs in favor of Respondent.

**B. There is no genuine dispute that the public associates Respondent with the mark.**

1. Petitioner has no admissible evidence showing that the public associates the NEW ART EXAMINER mark with anyone other than Respondent.

Petitioner has no evidence showing that the public associates anyone other than Respondent with the NEW ART EXAMINER mark. Because Petitioner lacks evidence to support his case, Respondent satisfies its summary-judgment burden. *See Person’s Co.*, 900 F.2d at 1571.

2. Mere, conclusory preparations do not constitute use in commerce.

“The aphorism ‘No trade, no trademark’ is well established in the law. ... That is, trademark rights are not secured by the mere conception of an idea of using a word, name or design on a product [or service].” *Devgel Prods., LLC v. KDIM Entm’t, Inc.*, 2019 TTAB LEXIS 377,



\*19-20 (TTAB Oct. 11, 2019) (citations omitted). Early preparations to use a mark do not constitute use in commerce. *See Aycock Engineering, Inc. v. Airflite, Inc.*, 560 F.3d 1350, 1360 (Fed. Cir. 2009) (holding that “an applicant’s preparations to use a mark in commerce are insufficient to constitute use in commerce”); *see also Am. College of Veterinary Sports Med. & Rehab. v. Lyons*, 2016 TTAB LEXIS 113, \*52-53 (TTAB March 17, 2016).

Here, any actions taken by Petitioner prior to any association with Respondent fail to constitute use of the mark in commerce. First, any pre-2002 goodwill inured to the Chicago New Art Association. RSUF ¶3. Any goodwill associated with the Chicago New Art Association’s use of the NEW ART EXAMINER mark has been long abandoned. *See id.* Moreover, Petitioner claims that Chicago New Art Association is irrelevant to the issues of this proceeding. CGG Decl., Ex. 4 (Pet’r Answer to Interrog. No. 14).

Second, Petitioner admits that he did not make any sales of printed periodicals under the NEW ART EXAMINER mark between June 1, 2015 and August 31, 2015. RSUF ¶¶15–19. Petitioner admits that he has no evidence of distributing any either. RSUF ¶¶15–19. Accordingly, it is undisputed that none of Petitioner’s actions constitute use of the mark for purposes of creating an association in the minds of the purchasing public between Petitioner and the mark. *See Lyons*, 859 F.3d at 1030.

3. The public associates Respondent with the NEW ART EXAMINER mark.

The undisputed facts show that the public associates Respondent with the NEW ART EXAMINER mark, not Petitioner. First, Respondent has been continuously using the NEW ART EXAMINER mark since 2015. *See* RSUF ¶¶2–6. Since then, every NEW ART EXAMINER publication has provided that an organization is behind the publication. *See* RSUF ¶14.

Second, Petitioner admits that since June 1, 2015, every NEW ART EXAMINER publication has provided that “The New Art Examiner is a not-for-profit organization”. RSUF ¶14; *see also* RSUF ¶8. In other words, the public sees that the NEW ART EXAMINER publication is the effort of an organization, Respondent, not Petitioner alone. *See* RSUF ¶¶13–14, 19, 8; *see also Devgel Prods., LLC v. KDIM Entm’t, Inc.*, 2019 TTAB LEXIS 377, \*32 (TTAB Oct. 11, 2019) (finding that how matters are presented to the public relate to the second *Lyons* factor).

Third, in 2017, Petitioner ceased using the NEW ART EXAMINER mark in the United States; it has been three years now since Petitioner has stopped using the mark in commerce. RSUF ¶11. Given Petitioner’s absence for three years, the public has no reason to associate the NEW ART EXAMINER mark with anyone other than Respondent. *See* RSUF ¶11; *see also* RSUF ¶14.

For the foregoing reasons<sup>3</sup>, the Board should find that there is no genuine dispute of material fact that the second factor weighs in favor of Respondent’s ownership.

**C. There is no genuine dispute that the public looks to Respondent to stand behind the quality and consistency of the NEW ART EXAMINER publication.**

1. Petitioner has no admissible evidence showing that the public looks to anyone other than Respondent to stand behind the quality and consistency of the NEW ART EXAMINER publication.

Petitioner has no evidence supporting his conclusory assertion that the public looks to anyone other than Respondent to stand behind the consistency and quality of the NEW ART EXAMINER publication. Because Petitioner lacks evidence to support its case, Respondent satisfies its summary-judgment burden. *See Person’s Co.*, 900 F.2d at 1571.

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<sup>3</sup> *See infra*, Section III(C)(3) that combines the discussion of the Vincent Carducci declaration as it relates to the second and third factors of *Lyons*.

2. The undisputed facts demonstrate that the public looks to Respondent to stand behind the quality and consistency of the NEW ART EXAMINER publication.

The undisputed facts show that the third *Lyons*' factor favors Respondent. First, Petitioner admits that since June 1, 2015, every NEW ART EXAMINER publication has provided that "The New Art Examiner is a not-for-profit organization". RSUF ¶¶14, 19. Second, in 2017, Petitioner ceased using the NEW ART EXAMINER mark in the United States. RSUF ¶11. Accordingly, the undisputed facts show that the public looks to Respondent to stand behind the quality and consistency of the NEW ART EXAMINER publication.

3. The Vincent Carducci report fails to create a genuine dispute of material fact as to the third factor (as well as second factor).

Petitioner will attempt to manufacture a dispute of fact as to the second and third factors of *Lyons* by relying on Vincent Carducci. *See* 29 TTABVUE at 12–28 ("Carducci evidence"); *see also* 24 TTABVUE. However, any reliance on the Carducci evidence would be unavailing because it cannot be presented in a form that would be inadmissible in evidence. *See* Fed. R. Evid. 702; *see also* Fed. R. Civ. P. 56(c)(4); Fed. R. Civ. P. 56(c)(2) (permitted a party to object that material cited in support or dispute cannot be presented in a form that would be admissible in evidence).

The Board "acts as a gatekeeper and determines the admissibility of expert testimony and the qualifications of expert witnesses and has broad discretion in determining whether to admit or exclude expert testimony." *Kohler Co. v. Honda Giken Kogyo K.K.*, 125 USPQ2d 1468, 1480 (TTAB 2017); *see also RTX Sci., Inc. v. Nu-Calgon Wholesaler, Inc.*, 106 USPQ2d 1492, 1494 (TTAB 2013) (citation omitted) (noting that "expert testimony is expensive and typically not utilized in Board proceedings"). "Expert testimony that is based upon 'subjective belief' or 'unsupported speculation' is excluded." *Corporacion Habanos, S.A. v. Guantanamera Cigars Co.*, 102 USPQ2d 1085, 1095 (TTAB 2012). "[E]xpert testimony [is] unreliable when an expert

chooses to utilize h[is] own unique methodology rather than the proper analysis which is well-known and respected.” *Id.*

Here, the Carducci evidence shows that Carducci fails to qualify as an expert. Carducci is purportedly an expert in art and cultural criticism. *See* 29 TTABVUE 13. He is not an expert on consumer perception. *See Corporacion Habanos, S.A.*, 102 USPQ2d at 1096 (sustaining objection to expert testimony on consumer perception where no methodology used). Because Carducci fails to qualify as an expert, his expert opinion is inadmissible and thus fails to create a genuine dispute of material fact as to the second and third *Lyons* factors.

Moreover, no discernable methodology is applied by Carducci in arriving at his conclusions. *See Corporacion Habanos, S.A.*, 102 USPQ2d at 1095 (rejecting evidence because no generally accepted technique was used). In forming his opinions, Carducci claims he relied on “issues of the NEW ART EXAMER as well as his own interactions with [Petitioner] and with other members of the relevant public ....” 29 TTABVUE 15. In *Corporacion*, the Board determined that even assuming that “conversations with customers and other tobaccoists over an unspecified time period constitute a ‘technique’ under *Daubert*[.]” the expert report was unreliable. *Id.* at 1096; *see also Kohler Co. v. Honda Giken Kogyo K.K.*, 125 USPQ2d 1468, 1482 (TTAB 2017); *see id.* (collecting cases). Like the purported expert testimony in *Corporacion*, the Carducci evidence is unreliable and inadmissible. Such inadmissible evidence fails to create a genuine dispute of material fact as to the second and third factors. And Petitioner admits that without the Carducci evidence, Petitioner “will be unable to satisfy the *Lyons* standard.” 28 TTABVUE 11.

Because Petitioner cannot produce admissible evidence to support the second or third factors under *Lyons*, see Fed. R. Civ. P. 56(c)(1)(B), the Board should grant Respondents' motion for summary judgment on the ownership issue under *Lyons*.

#### **IV. Conclusion**

For the foregoing reasons, the Board should grant Respondents' Motion for Summary Judgment. The undisputed facts show that there are three independent and alternative bases to grant Respondents' motion for summary judgment. First, Petitioner lacks standing because he cannot prove by evidence that he falls within the "zone of interests" or that he suffered a cognizable injury to a commercial interest proximately caused by Respondents. Second, Petitioner cannot establish priority because he cannot produce any competent or admissible evidence showing he was the first to use the NEW ART EXAMINER trademark. Third, Petitioner fails on each *Lyons* factor. Accordingly, Respondents respectfully request that the Board enter summary judgment in Respondents' favor.

Dated: November 10, 2020

Respectfully submitted,

PARTRIDGE PARTNERS, P.C.

By: /s/Charles G. Giger  
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*Attorneys for Respondents  
Art Message International and  
New Art Association*

**Certificate of Service**

I hereby certify that on November 10, 2020, a true and correct copy of the foregoing Memorandum of Law in Support of Respondents' Motion for Summary Judgment has been served, via email, on Applicant's attorney of record:

Douglas N. Masters  
LOEB & LOEB LLP  
321 N CLARK STREET SUITE 2300  
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UNITED STATES  
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By: /s/Charles G. Giger  
Charles G. Giger  
Attorney for Respondents

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

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

**DECLARATION OF CHARLES G. GIGER**

I, Charles G. Giger, declare as follows:

1. I am an Illinois-licensed attorney and an associate at the law firm Partridge Partners, P.C. I am a member in good standing of the Illinois bar. 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. I submit this declaration in support of Respondents' Motion for Summary Judgment.

2. Attached as **Exhibit 1** is a true and correct copy of the United States Patent and Trademark Office's Trademark Status & Document Retrieval record for NEW ART EXAMINER, U.S. Registration Number 4982329, as reflected on October 14, 2020.

3. Attached as **Exhibit 2** is a true and correct copy of Respondent Art Message International's Answers to Applicant's First Set of Interrogatories to Respondent, dated March 28, 2019.

4. Attached as **Exhibit 3** is a true and correct copy of Petitioner's Responses to Art Message International's First Set of Requests for Production of Documents and Things, dated June 29, 2020.

5. Attached as **Exhibit 4** is a true and correct copy of Petitioner's Responses to Art Message International's First Set of Interrogatories, dated June 29, 2020.

6. Attached as **Exhibit 5** is a true and correct copy of Respondents' First Set of Requests for Admissions to Petitioner Derek Guthrie, dated July 29, 2020.

7. Attached as **Exhibit 6** is a true and correct copy of Petitioner's Responses to Art Message International's Request for Admissions, dated August 28, 2020.

8. Attached as **Exhibit 7** is a true and correct copy of Petitioner's Responses to Art Message International's Second Set of Requests for Production of Document and Things, dated August 28, 2020.

9. Attached as **Exhibit 8** is a true and correct copy of Petitioner's Responses to Art Message International's Second Set of Interrogatories, dated August 28, 2020, but as served with verification on August 31, 2020.

10. Attached as **Exhibit 9** is a true and correct copy of Respondents' Deficiency Letter sent to Petitioner's counsel, dated September 18, 2020.

11. Attached as **Exhibit 10** is a true and correct copy of Petitioner's response to Respondents' Deficiency Letter, dated October 2, 2020.

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

Executed this 10th day of November, 2020, in Chicago, Illinois.

By: /s/Charles G. Giger  
Charles G. Giger



# EXHIBIT 1

**Generated on:** This page was generated by TSDR on 2020-10-14 15:38:41 EDT

**Mark:** NEW ART EXAMINER

NEW ART EXAMINER

**US Serial Number:** 86767391

**Application Filing Date:** Sep. 24, 2015

**US Registration Number:** 4982329

**Registration Date:** Jun. 21, 2016

**Filed as TEAS Plus:** Yes

**Currently TEAS Plus:** Yes

**Register:** Principal

**Mark Type:** Trademark

**TM5 Common Status Descriptor:**



LIVE/REGISTRATION/Cancellation/Invalidation Pending

This trademark application has been registered with the Office, but it is currently undergoing a challenge which may result in its removal from the registry.

**Status:** A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

**Status Date:** Oct. 10, 2018

**Publication Date:** Apr. 05, 2016

## Mark Information

**Mark Literal Elements:** NEW ART EXAMINER

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

**Disclaimer:** "NEW ART"

## Goods and Services

### Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Printed periodicals in the field of art criticism and reportage

**International Class(es):** 016 - Primary Class

**U.S Class(es):** 002, 005, 022, 023, 029, 037, 038, 050

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Sep. 01, 2015

**Use in Commerce:** Sep. 01, 2015

## Basis Information (Case Level)

**Filed Use:** Yes

**Currently Use:** Yes

**Filed ITU:** No

**Currently ITU:** No

**Filed 44D:** No

**Currently 44E:** No

**Filed 44E:** No

**Currently 66A:** No

**Filed 66A:** No

**Currently No Basis:** No

**Filed No Basis:** No

## Current Owner(s) Information

**Owner Name:** Art Message International

**Owner Address:** 5555 N. Sheridan Road, Apt. 1415A  
Chicago, ILLINOIS UNITED STATES 60640

**Legal Entity Type:** non-profit corporation

**State or Country** ILLINOIS  
**Where Organized:**

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** MARK V B PARTRIDGE

**Attorney Primary Email Address:** [TM@partridgepartnerspc.com](mailto:TM@partridgepartnerspc.com)

**Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** MARK V B PARTRIDGE  
PARTRIDGE PARTNERS PC  
321 N CLARK STREET SUITE 720  
CHICAGO, ILLINOIS UNITED STATES 60654

**Phone:** 312- 634-9501

**Fax:** 312-832-4700

**Correspondent e-mail:** [mark@partridgepartnerspc.com](mailto:mark@partridgepartnerspc.com) [daniel@partridgepartnerspc.com](mailto:daniel@partridgepartnerspc.com) [spippin@partridgepartnerspc.com](mailto:spippin@partridgepartnerspc.com) [nchapman@partridgepartnerspc.com](mailto:nchapman@partridgepartnerspc.com) [charlie@partridgepartnerspc.com](mailto:charlie@partridgepartnerspc.com) [tm@partridgepartnerspc.com](mailto:tm@partridgepartnerspc.com)

**Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Jul. 30, 2020	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Jul. 30, 2020	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 30, 2020	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Jul. 30, 2020	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jul. 30, 2020	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jul. 30, 2020	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
May 01, 2019	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 10, 2018	REINSTATED	67099
Jun. 14, 2018	PETITION TO DIRECTOR - DISMISSED	71999
Jun. 04, 2018	ASSIGNED TO PETITION STAFF	71999
May 12, 2018	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 12, 2018	TEAS PETITION TO DIRECTOR RECEIVED	1111
Mar. 13, 2018	CANCELLED SECTION 18-TOTAL	
Mar. 13, 2018	CANCELLATION TERMINATED NO. 999999	67099
Jan. 31, 2018	CANCELLATION GRANTED NO. 999999	67099
Oct. 17, 2017	CANCELLATION INSTITUTED NO. 999999	67099
Jun. 21, 2016	REGISTERED-PRINCIPAL REGISTER	
Apr. 05, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 05, 2016	PUBLISHED FOR OPPOSITION	
Mar. 16, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 02, 2016	LAW OFFICE PUBLICATION REVIEW COMPLETED	74221
Feb. 20, 2016	ASSIGNED TO LIE	74221
Jan. 20, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 20, 2016	EXAMINER'S AMENDMENT ENTERED	88888
Jan. 20, 2016	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jan. 20, 2016	EXAMINERS AMENDMENT E-MAILED	6328
Jan. 20, 2016	EXAMINERS AMENDMENT -WRITTEN	83705

Jan. 12, 2016 ASSIGNED TO EXAMINER  
Sep. 30, 2015 NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM  
Sep. 28, 2015 NEW APPLICATION ENTERED IN TRAM

83705

## TM Staff and Location Information

### TM Staff Information - None

#### File Location

**Current Location:** PETITIONS OFFICE

**Date in Location:** Jun. 14, 2018

## Assignment Abstract Of Title Information

### Summary

**Total Assignments:** 1

**Registrant:** Art Message International

### Assignment 1 of 1

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Reel/Frame:** [6626/0493](#)

**Pages:** 2

**Date Recorded:** Apr. 18, 2019

**Supporting Documents:** [assignment-tm-6626-0493.pdf](#)

#### Assignor

**Name:** [ART MESSAGE INTERNATIONAL](#)

**Execution Date:** Apr. 16, 2019

**Legal Entity Type:** NON-PROFIT CORPORATION

**State or Country Where Organized:** ILLINOIS

#### Assignee

**Name:** [NEW ART ASSOCIATION](#)

**Legal Entity Type:** NON-PROFIT CORPORATION

**State or Country Where Organized:** ILLINOIS

**Address:** 5542 N PAULINA ST #2  
CHICAGO, ILLINOIS 60640

**DBA, AKA, TA, Formerly:** DBA NEW ART EXAMINER

#### Correspondent

**Correspondent Name:** MARK V.B. PARTRIDGE

**Correspondent Address:** 321 N CLARK ST STE 720  
CHICAGO, IL 60654

### Domestic Representative - Not Found

## Proceedings

### Summary

**Number of Proceedings:** 1

### Type of Proceeding: Cancellation

**Proceeding Number:** [92067099](#)

**Filing Date:** Oct 11, 2017

**Status:** Pending

**Status Date:** Jun 08, 2020

**Interlocutory Attorney:** JENNIFER ELGIN

#### Defendant

**Name:** Art Message International and New Art Association dba New Art Examiner

**Correspondent Address:** MARK V B PARTRIDGE  
PARTRIDGE PARTNERS PC  
321 N CLARK STREET SUITE 720  
CHICAGO IL UNITED STATES , 60654

Correspondent e-mail: [mark@partridgepartnerspc.com](mailto:mark@partridgepartnerspc.com) , [daniel@partridgepartnerspc.com](mailto:daniel@partridgepartnerspc.com) , [spippin@partridgepartnerspc.com](mailto:spippin@partridgepartnerspc.com) , [nchapman@partridgepartnerspc.com](mailto:nchapman@partridgepartnerspc.com) , [charlie@partridgepartnerspc.com](mailto:charlie@partridgepartnerspc.com) , [tm@partridgepartnerspc.com](mailto:tm@partridgepartnerspc.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
NEW ART EXAMINER	Cancellation Pending	<a href="#">86767391</a>	<a href="#">4982329</a>
<b>Plaintiff(s)</b>			

**Name:** Derek Guthrie

**Correspondent** DOUGLAS N MASTERS

**Address:** LOEB & LOEB LLP

321 N CLARK STREET SUITE 2300

CHICAGO IL UNITED STATES , 60654

**Correspondent e-mail:** [tmlit@loeb.com](mailto:tmlit@loeb.com) , [dmasters@loeb.com](mailto:dmasters@loeb.com) , [elloneill@loeb.com](mailto:elloneill@loeb.com) , [sperry@loeb.com](mailto:sperry@loeb.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
NEW ART EXAMINER	Report Completed Suspension Check - Case Still Suspended	<a href="#">87630594</a>	

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Oct 11, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Oct 17, 2017	Nov 26, 2017
3	PENDING, INSTITUTED	Oct 17, 2017	
4	NOTICE OF DEFAULT	Dec 06, 2017	
5	BD DECISION: GRANTED	Jan 31, 2018	
6	COMMR ORDER CANCELLING REG	Mar 13, 2018	
7	TERMINATED	Mar 13, 2018	
8	MOT FOR RELIEF FROM ENTRY OF DEFAULT JUDGMENT	May 12, 2018	
9	P OPP/RESP TO MOTION	May 31, 2018	
10	D REPLY IN SUPPORT OF MOTION	Jun 20, 2018	
11	RESPONSE DUE	Sep 06, 2018	
12	ANSWER	Sep 20, 2018	
13	D RESP TO BD ORDER/INQUIRY	Sep 20, 2018	
14	PROCEEDINGS RESUMED	Oct 04, 2018	
15	COMM ORDER REINSTATING REGISTRATION	Oct 10, 2018	
16	D CHANGE OF CORRESP ADDRESS	Feb 26, 2019	
17	P MOT FOR EXT W/ CONSENT	Apr 02, 2019	
18	EXTENSION OF TIME GRANTED	Apr 02, 2019	
19	P MOT TO JOIN/SUBSTITUTE PARTY	Jun 20, 2019	
20	P MOT FOR EXT W/ CONSENT	Jun 25, 2019	
21	EXTENSION OF TIME GRANTED	Jul 02, 2019	
22	D UNDELIVERABLE MAIL	Jul 15, 2019	
23	D CHANGE OF CORRESP ADDRESS	Jul 17, 2019	
24	P MOT FOR SUMMARY JUDGMENT	Aug 21, 2019	
25	P MOT FOR SUMMARY JUDGMENT	Aug 21, 2019	
26	SUSP PEND DISP OF OUTSTNDNG MOT	Aug 23, 2019	
27	MOT FOR DISCOVERY AFTER MSJ - FRCP 56	Sep 19, 2019	
28	P OPP/RESP TO MOTION	Oct 09, 2019	
29	P MOT FOR LEAVE TO FILE EXPERT DISCLOSURE	Oct 09, 2019	
30	D REPLY IN SUPPORT OF MOTION	Oct 29, 2019	
31	D OPP/RESP TO MOTION	Oct 29, 2019	
32	P REPLY IN SUPPORT OF MOTION	Nov 18, 2019	
33	P CHANGE OF CORRESP ADDRESS	Nov 18, 2019	
34	PROCEEDINGS RESUMED	Jun 08, 2020	
35	D MOT FOR EXT W/ CONSENT	Sep 24, 2020	

## Change Address or Representation Form

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86767391
<b>REGISTRATION NUMBER</b>	4982329
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 102
<b>MARK SECTION</b>	
<b>MARK</b>	NEW ART EXAMINER (standard characters, see <a href="https://tmng-al.uspto.gov/resting2/api/img/86767391/large">https://tmng-al.uspto.gov/resting2/api/img/86767391/large</a> )
<b>OWNER SECTION(current)</b>	
<b>NAME</b>	Art Message International
<b>MAILING ADDRESS</b>	5637 South Dorchester Avenue
<b>CITY</b>	Chicago
<b>STATE</b>	Illinois
<b>STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY</b>	United States
<b>ZIP/POSTAL CODE</b>	60637
<b>ATTORNEY SECTION(current)</b>	
<b>NAME</b>	Charles R. Mandly, Jr.
<b>ATTORNEY BAR MEMBERSHIP NUMBER</b>	NOT SPECIFIED
<b>YEAR OF ADMISSION</b>	NOT SPECIFIED
<b>U.S. STATE/ COMMONWEALTH/ TERRITORY</b>	NOT SPECIFIED
<b>FIRM NAME</b>	PARTRIDGE PARTNERS PC
<b>STREET</b>	321 N CLARK STREET SUITE 720
<b>CITY</b>	CHICAGO
<b>STATE</b>	Illinois
<b>STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY</b>	United States
<b>POSTAL/ZIP CODE</b>	60654
<b>PHONE</b>	312-832-4500
<b>FAX</b>	312-832-4700
<b>EMAIL</b>	PTOMailChicago@foley.com
<b>DOCKET/REFERENCE NUMBER(S)</b>	Mark Partrid
<b>CORRESPONDENCE SECTION(current)</b>	
<b>NAME</b>	MARK V B PARTRIDGE
<b>PRIMARY EMAIL ADDRESS FOR</b>	

CORRESPONDENCE	mark@partridgepartnerspc.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	spippin@partridgepartnerspc.com; nchapman@partridgepartnerspc.com
DOCKET/REFERENCE NUMBER(S)	Mark Partrid
<b>OWNER SECTION(proposed)</b>	
STATEMENT TEXT	By submission of this request, the undersigned requests that the following be made of record for the owner/holder:
NAME	Art Message International
MAILING ADDRESS	5555 N. Sheridan Road, Apt. 1415A
CITY	Chicago
STATE	Illinois
STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
ZIP/POSTAL CODE	60640
EMAIL	XXXX
<b>STATEMENT OF THE REASON FOR REPLACEMENT</b>	
New attorney was hired.	
<b>ATTORNEY SECTION (proposed)</b>	
STATEMENT TEXT	By submission of this request, the undersigned confirms that (1) representation is ongoing and (2) that the individual listed below should now be identified as the attorney of record:
NAME	Mark V.B. Partridge
ATTORNEY BAR MEMBERSHIP NUMBER	XXX
YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
FIRM NAME	PARTRIDGE PARTNERS PC
STREET	321 N CLARK STREET SUITE 500
CITY	CHICAGO
STATE	Illinois
STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
POSTAL/ZIP CODE	60654
PHONE	312-832-4500
FAX	312-832-4700
EMAIL	TM@partridgepartnerspc.com
<b>CORRESPONDENCE SECTION (proposed)</b>	
NAME	Mark V.B. Partridge
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	TM@partridgepartnerspc.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	mark@partridgepartnerspc.com
<b>SIGNATURE SECTION</b>	

<b>SIGNATURE</b>	/Mark V.B. Partridge/
<b>SIGNATORY NAME</b>	Mark V.B. Partridge
<b>SIGNATORY DATE</b>	07/30/2020
<b>SIGNATORY POSITION</b>	Attorney of record, Illinois bar member
<b>SIGNATORY PHONE NUMBER</b>	312-634-9501
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Thu Jul 30 13:02:46 ET 2020
<b>TEAS STAMP</b>	USPTO/CAR-XX.XXX.XX.XX-20 200730130246954570-867673 91-7401de8dace934f851132d 93352d097e1c0a330b8c52f62 f37dcea526761587aa0-N/A-N /A-20200730130127239833

---



## Change Address or Representation Form

To the Commissioner for Trademarks:

**MARK:** NEW ART EXAMINER (standard characters, see [https://tmng-al.uspto.gov/resting2/api/img/8676739\\_1/large](https://tmng-al.uspto.gov/resting2/api/img/8676739_1/large))  
**SERIAL NUMBER:** 86767391  
**REGISTRATION NUMBER:** 4982329

**Owner Section (Current) :**

Art Message International  
5637 South Dorchester Avenue  
Chicago, Illinois 60637  
United States

**Attorney Section (Current):**

Charles R. Mandly, Jr. of PARTRIDGE PARTNERS PC  
is located at  
321 N CLARK STREET SUITE 720  
CHICAGO, Illinois 60654  
United States  
312-832-4500  
312-832-4700  
Email Address: PTOMailChicago@foley.com  
Docket Reference Number(s): Mark Partrid.

**Correspondence Section (Current):**

MARK V B PARTRIDGE  
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE: mark@partridgepartnerspc.com  
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): spippin@partridgepartnerspc.com; nchapman@partridgepartnerspc.com  
Docket Reference Number(s): Mark Partrid

By submission of this request, the undersigned requests that the following be made of record for the owner/holder:

**Owner Section (proposed):**

Art Message International  
5555 N. Sheridan Road, Apt. 1415A  
Chicago, Illinois 60640  
United States  
XXXX

**STATEMENT OF THE REASON FOR REPLACEMENT**

New attorney was hired.

By submission of this request, the undersigned confirms that (1) representation is ongoing and (2) that the individual listed below should now be identified as the attorney of record:

**Attorney Section (proposed):**

Mark V.B. Partridge of PARTRIDGE PARTNERS PC  
XX bar, admitted in XXXX, bar membership no. XXX, is located at  
321 N CLARK STREET SUITE 500  
CHICAGO, Illinois 60654  
United States  
312-832-4500  
312-832-4700

TM@partridgepartnerspc.com

Mark V.B. Partridge submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

**Correspondence Section (proposed):**

Mark V.B. Partridge

PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE: TM@partridgepartnerspc.com

SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): mark@partridgepartnerspc.com

Signature: /Mark V.B. Partridge/ Date: 07/30/2020

Signatory's Name: Mark V.B. Partridge

Signatory's Position: Attorney of record, Illinois bar member

Signatory's Phone Number: 312-634-9501

Serial Number: 86767391

Internet Transmission Date: Thu Jul 30 13:02:46 ET 2020

TEAS Stamp: USPTO/CAR-XX.XXX.XX.XX-20200730130246954

570-86767391-7401de8dace934f851132d93352

d097e1c0a330b8c52f62f37dcea526761587aa0-

N/A-N/A-20200730130127239833

October 10, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

---

*Derek Guthrie*

*v.*

*Art Message International*

---

Cancellation No. 92067099

---

Douglas N. Masters of Loeb & Loeb LLP for Derek Guthrie.

Mark V. B. Partridge of Partridge Partners PC for Art Message International.

---

Whereas, on January 31, 2018 the Trademark Trial and Appeal Board entered judgment against Respondent;

Whereas, on March 13, 2018, Respondent's Registration No. 4982329 was cancelled;

Whereas, on May 12, 2018, Respondent filed a motion for relief from the final judgment;

Whereas, on October 4, 2018, the Trademark Trial and Appeal Board granted Respondent's motion for relief from final judgment.

It is ordered that the March 13, 2018 order canceling Respondent's registration is hereby set aside and Registration No. 4982329 is in full force and effect as of its original registration date.

UNITED STATES PATENT AND TRADEMARK OFFICE

U. S. APPLICATION  
SERIAL NUMBER:  
86/767391

**\*4982329\***

U. S. REGISTRATION  
NUMBER: 4,982,329

**CORRESPONDENCE  
ADDRESS:**

Mark Partridge  
Partridge Partners PC  
Suite 720  
321 North Clark Street  
CHICAGO IL 60654

**RETURN ADDRESS:**

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

**MARK:**  
NEW ART EXAMINER

**ISSUE/MAILING  
DATE:**  
June 14, 2018

**APPLICANT/REGISTRANT**

:  
Art Message International

**CORRESPONDENT'S  
REFERENCE/DOCKET  
NO:**

Mark Partridge

**CORRESPONDENT'S  
EMAIL ADDRESS:**

mark@partridgepartnerspc.com

**DECISION ON PETITION TO DIRECTOR**

Dear Mr. Partridge:

This letter acknowledges receipt of Art Message International's (petitioner's) May 12, 2018 petition to the Director of the United States Patent and Trademark Office (Director) requesting reinstatement of the above-identified trademark registration. The petition is DISMISSED.

A review of the records for the above registration indicates that the Trademark Trial and Appeal Board (Board) issued a decision on January 31, 2018 granting default judgment in Cancellation No.92067099. Accordingly, the registration was cancelled on March 13, 2018. Petitioner filed a motion for relief from entry of the default judgment with the Board and the instant petition on May 12, 2018.

*Petitioner's Motion is pending with the Board*

If, in a cancellation proceeding, a petition to the Director is filed concurrently with a Fed. R. Civ. P. 60(b) motion to the Board for relief from judgment, and the petition and motion seek the same relief and require review of the same set of facts, the Board will rule first upon the motion for relief from judgment. If the Board grants the motion, the Director, as a ministerial act, will reinstate the subject registration. *Trademark Trial and Appeal Board Manual of Procedure* (TBMP) §544.

As noted above, petitioner filed a motion to set aside the default judgment with the Board on May 12, 2018. The motion and the petition claim that no notice of the cancellation proceedings was received by petitioner. As such, the Board is the proper party to determine whether the default judgment should be set aside and the registration reinstated. If petitioner's motion is granted, the Director will reinstate the registration. TBMP §544.

*Review of Final Decision of Board, not appropriate on Petition*

In addition, should the Board deny the motion to reinstate the registration, consideration of that ruling by the Director on petition would not be appropriate. The Director may invoke supervisory authority in appropriate circumstances. 35 U.S.C. §2 and 37 C.F.R. §2.146(a)(3). However, the Director may only review a decision by the Board where the decision concerns *matters of procedure, and does not put an end to the litigation* before the Board. *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888 (C.C.P.A. 1980); *Miss Nude Florida, Inc. v. Drost*, 198 USPQ 485 (Comm'r Pats. 1977); *Scovill Manufacturing Co. v. Stocko Metallwarenfabriken Henkels und Sohn KG*, 191 USPQ 124 (Comm'r Pats. 1976); *Outdoor Sports Industries, Inc. v. Joseph & Feiss Co.*, 177 USPQ 533 (Comm'r Pats. 1973); TBMP §905; *Trademark Manual of Examining Procedure* (TMEP) §1704.

In the present case, the decision at issue is a default judgment. The Board's January 31, 2018 order was a final disposition of Cancellation No. 92067099. Because it is a final decision that puts an end to the litigation before the Board, neither that decision nor a decision on the pending motion to reopen the cancellation proceeding, may be reviewed by petition to the Director. They are not proper subject matter for petition.

The petition is DISMISSED. The petition fee will be refunded in due course. See TMEP §405.04.

Sincerely,

/Dawnmarie D. Sanok/  
Attorney Advisor  
Office of the Deputy Commissioner  
for Trademark Examination Policy  
dawn-marie.sanok@uspto.gov  
571-272-9577 (O)

For general and other useful information about trademarks, you are encouraged to visit the USPTO web site at <http://www.uspto.gov/main/trademarks.htm>.

## 2.146 Petition to the Director

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86767391
REGISTRATION NUMBER	4982329
MARK SECTION	
MARK	<a href="https://tmng-al.uspto.gov/resting2/api/img/86767391/large">https://tmng-al.uspto.gov/resting2/api/img/86767391/large</a>
LITERAL ELEMENT	NEW ART EXAMINER
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.

### FORM TEXT

#### In the Matter of Reg. No. 4,982,329: NEW ART EXAMINER

Pursuant to TMEP Rule 1712.021, Respondent Petitions for Reinstatement of the Cancelled Registration, NEW ART EXAMINER, Reg. 4,982,329, which was cancelled on March 13, 2018.

Petitioner, Art Message International, requests that the Commissioner reinstate the registration identified, which was cancelled due to a default judgment in a cancellation proceeding. Petitioner has moved the Board to Set Aside the Default Judgment entered December 6, 2017, due to lack of notice. As more fully set forth in the attached motion filed with the TTAB and the supporting Declaration of Tom Mullaney submitted herewith, there is good cause to reinstate the Trademark Registration because Respondent's failure to answer was the result of mistake, surprise or inadvertence due to the fact that it did not receive notice of this proceeding until after its trademark registration had been cancelled.

Respectfully Submitted,

Mark Partridge

Partridge Partners PC

Suite 720

321 Clark Street

Chicago, IL

606054

312-634-9501

mark@partridgepartnerspc.com.

<b>ATTACHMENT(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">Resp_New_Art_Examiner_Motion_Vacate_Judgment_18-0512_201841211437641.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (5 pages)	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0002.jpg</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0003.jpg</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0004.jpg</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0005.jpg</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0006.jpg</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">Declaration_Tom_Mullaney_18-0511_201841211455297.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (3 pages)	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0007.jpg</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0008.jpg</a>
	<a href="#">\\TICRS\EXPORT17\IMAGEOUT17\867\673\86767391\xml6\PDR0009.jpg</a>
<b>PAYMENT SECTION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>PETITION FEE</b>	100
<b>TOTAL FEES DUE</b>	100
<b>SIGNATURE SECTION</b>	
<b>DECLARATION SIGNATURE</b>	/Mark Partridge/
<b>SIGNATORY'S NAME</b>	Mark Partridge
<b>SIGNATORY'S POSITION</b>	Attorney of Record, Illinois Bar
<b>SIGNATORY'S PHONE NUMBER</b>	312-634-9501
<b>DATE SIGNED</b>	05/12/2018
<b>SUBMISSION SIGNATURE</b>	/Mark Partridge/
<b>SIGNATORY'S NAME</b>	Mark Partridge
<b>SIGNATORY'S POSITION</b>	Attorney of Record, Illinois Bar
<b>SIGNATORY'S PHONE NUMBER</b>	312-634-9501
<b>DATE SIGNED</b>	05/12/2018
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Sat May 12 13:22:21 EDT 2018
<b>TEAS STAMP</b>	USPTO/PDR-XX.XXX.XXX.XX-2 0180512132221847357-49823 29-20180512124709263697-C C-6746-201805121247092636 97

## 2.146 Petition to the Director

### To the Commissioner for Trademarks:

The following is submitted for registration number. **4982329**

#### FORM INFORMATION

##### In the Matter of Reg. No. 4,982,329: NEW ART EXAMINER

**Pursuant to TMEP Rule 1712.021, Respondent Petitions for Reinstatement of the Cancelled Registration, NEW ART EXAMINER, Reg. 4,982,329, which was cancelled on March 13, 2018.**

Petitioner, Art Message International, requests that the Commissioner reinstate the registration identified, which was cancelled due to a default judgment in a cancellation proceeding. Petitioner has moved the Board to Set Aside the Default Judgment entered December 6, 2017, due to lack of notice. As more fully set forth in the attached motion filed with the TTAB and the supporting Declaration of Tom Mullaney submitted herewith, there is good cause to reinstate the Trademark Registration because Respondent's failure to answer was the result of mistake, surprise or inadvertence due to the fact that it did not receive notice of this proceeding until after its trademark registration had been cancelled.

Respectfully Submitted,

Mark Partridge

Partridge Partners PC

Suite 720

321 Clark Street

Chicago, IL

606054

312-634-9501

mark@partridgepartnerspc.com.

#### FORM FILE NAME(S)

##### Original PDF file:

[Resp New Art Examiner Motion Vacate Judgment 18-0512 201841211437641.pdf](#)

Converted PDF file(s) (5 pages)

[Attachments-1](#)

[Attachments-2](#)

[Attachments-3](#)

[Attachments-4](#)

[Attachments-5](#)

##### Original PDF file:

[Declaration Tom Mullaney 18-0511 201841211455297.pdf](#)

Converted PDF file(s) (3 pages)

[Attachments-1](#)

[Attachments-2](#)

[Attachments-3](#)



The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the petitioner's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the petitioner in this matter: (1) the petitioner has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the petitioner has filed a power of attorney appointing him/her in this matter; or (4) the petitioner's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

**FEE(S)**

Fee(s) in the amount of \$100 is being submitted.

**SIGNATURE(S)**

**Declaration Signature**

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application, submission, or any registration resulting therefrom, declares that the facts set forth above are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Signature: /Mark Partridge/ Date: 05/12/2018

Signatory's Name: Mark Partridge

Signatory's Position: Attorney of Record, Illinois Bar

Signatory's Phone Number: 312-634-9501

**Submission Signature**

Signature: /Mark Partridge/ Date: 05/12/2018

Signatory's Name: Mark Partridge

Signatory's Position: Attorney of Record, Illinois Bar

Signatory's Phone Number: 312-634-9501

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the petitioner's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the petitioner in this matter: (1) the petitioner has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the petitioner has filed a power of attorney appointing him/her in this matter; or (4) the petitioner's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

RAM Sale Number: 6746

RAM Accounting Date: 05/14/2018

Serial Number: 86767391

Internet Transmission Date: Sat May 12 13:22:21 EDT 2018

TEAS Stamp: USPTO/PDR-XX.XXX.XXX.XX-2018051213222184

7357-4982329-20180512124709263697-CC-674

6-20180512124709263697

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

**In the Matter of Reg. No. 4,982,329: NEW ART EXAMINER**

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

**RESPONDENT'S MOTION TO SET ASIDE JUDGMENT  
AND PETITION TO REINSTATE REGISTRATION**

Pursuant to F.R.Civ.P 60(b) and TBMP Rule 312.03, Respondent, Art Message International, moves the Board to Set Aside the Default Judgment entered December 6, 2017, due to lack of notice. As more fully set forth below and in the supporting Declaration of Tom Mullaney submitted herewith, there is good cause to set aside the default judgment because Respondent's failure to Answer is the result of mistake, surprise or inadvertence due to the fact that it did not receive notice of this proceeding until after its trademark registration had been cancelled.

Pursuant to TMEP Rule 1712.021, Respondent also Petitions for Reinstatement of the Cancelled Registration, NEW ART EXAMINER, Reg. 4,982,329, which was cancelled on March 13, 2018.

The request is being filed both as a Motion to Set Aside with the Board and as a Petition to Reinstate with the Commissioner, on May 14, 2018, within the time limit proscribed by the relevant rules.

In support of its Motion and Petition, Respondent states:

1. Art Message International is the registrant of Registration Number 4,982,329 for the trademark NEW ART EXAMINER, issued June 21, 2016.

2. Tom Mullaney is the Managing Editor of the New Art Examiner. Mr. Mullaney is the signatory for the application filed for that trademark on September 24, 2015, by Respondent's former attorney Charles R. Mandly, Jr. Mr. Mandly retired from the practice of law in 2016.

3. The address listed in the registration record for Art Message International is 5637 South Dorchester Avenue, Chicago Illinois, 60637. That was the address for the Registrant at the time of the application and has continuously been the Registrant's address to date.

4. Recently, after March 13, 2018, Respondent learned that the registration for the trademark NEW ART EXAMINER was cancelled on March 13, 2018, as a result of a default judgment entered in this cancellation proceeding.

5. Respondent did not receive notice from the United States Patent and Trademark Office or opposing counsel of the Petition for Cancellation, Notice of Trial Dates, Notice of Default, Board Decision or Order of Cancellation.

6. Respondent also received no notice of these matters from its prior attorney, Mr. Mandly, who was retired at the time, or from his former law firm.

7. Art Message International would not have defaulted in the Cancellation Proceeding if it had received timely notice of the dispute. Respondent continues to use the trademark NEW ART EXAMINER and considers it a very valuable asset of our organization. Respondent was surprised to learn of the proceeding and cancellation after the fact because it received no prior notice of these matters.

8. Art Message International's failure to make a timely response to the Petition for

Cancellation was inadvertent due to lack of notice and constitutes good cause to reinstate the Registration cancelled on March 13, 2018, and to Vacate the Default Judgment entered on December 6, 2017.

9. F.R.Civ.P. 60(b) provides for relief from judgment for mistake, inadvertence, surprise, or excusable neglect. TBMP Rule 312.03 similarly allows the Board to set aside default judgment. The factors considered in determining a motion to vacate a default judgment for failure to answer the complaint are (1) whether the plaintiff will be prejudiced, (2) whether the default was willful, and (3) whether the defendant has a meritorious defense to the action. Here, these factors favor the relief requested by Respondent. Plaintiff suffers no prejudice from being required to prove its claim on the merits. The default was not willful, and instead was caused by the lack of notice received by Respondent. Respondent has meritorious defenses to this action as shown by the fact that has continuously used the trademark at issue for many years prior to the claim filed by the Plaintiff.

10. TMEP Rule 1712 provides for relief from a cancelled registration. Relief is appropriate here because there is no evidence that the USPTO sent notice to Respondent at the address listed in the registration record and no actual or constructive notice was received.

11. WHEREFORE, Respondent's has shown good cause to set aside judgment and reinstate its cancelled registration, and therefore asks that the Board issue an order setting aside the default judgment and that the Commissioner issue an order reinstating Registration No. 4,982,329.

Respectfully submitted,

DATED: May 12, 2018

By: /s/Mark V. B. Partridge

PARTRIDGE PARTNERS PC  
Mark V.B. Partridge  
Daniel L. Rogna  
321 North Clark Street, Ste. 720  
Chicago, IL 60654  
(312) 634-9501

*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of May, 2018, I caused a copy of this motion to be sent to counsel for plaintiff via email as stated below.

/s/ 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  
[chdocket@loeb.com](mailto:chdocket@loeb.com)  
[dmasters@loeb.com](mailto:dmasters@loeb.com)  
[elloneill@loeb.com](mailto:elloneill@loeb.com)  
[ccastro@loeb.com](mailto:ccastro@loeb.com)

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

**In the Matter of Reg. No. 4,982,329: NEW ART EXAMINER**

**DECLARATION OF TOM MULLANEY IN SUPPORT OF PETITION TO REINSTATE  
AND MOTION TO VACATE DEFAULT JUDGMENT**

1. I, Tom Mullaney, am the Managing Editor of the New Art Examiner published by Art Message International, a non-profit Illinois corporation, and have personal knowledge of the matters stated below.

2. Art Message International is the registrant of Registration Number 4,982,329 for the trademark NEW ART EXAMINER, issued June 21, 2016.

3. I am the signatory for the application filed for that trademark on September 24, 2015, by my former attorney Charles R. Mandly, Jr. Mr. Mandly retired from the practice of law in 2016.

4. The address listed in the registration record for Art Message International is 5637 South Dorchester Avenue, Chicago Illinois, 60637, which is also my home address. That was the address for the Registrant at the time of the application and has continuously been the Registrant's address to date.

5. Recently, I learned that the registration for the trademark NEW ART EXAMINER was cancelled on March 13, 2018, as a result of a default judgment entered in a cancellation proceeding named *Derek Guthrie v. Art Message International*, Cancellation No. 92067099,

6. I did not receive notice from the United States Patent and Trademark Office or opposing counsel of the Petition for Cancellation, Notice of Trial Dates, Notice of Default, Board Decision or Order of Cancellation.

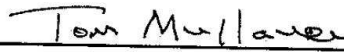
7. I also received no notice of these matters from my prior attorney, Mr. Mandly, who was retired at the time, or from his former law firm.

8. Art Message International would not have defaulted in the Cancellation Proceeding if it had received timely notice of the dispute. We continue to use the trademark NEW ART EXAMINER and consider it a very valuable asset of our organization. We were surprised to learn of the proceeding and cancellation after the fact because we received no prior notice of these matters.

9. Art Message International's failure to make a timely response to the Petition for Cancellation was inadvertent due to lack of notice and constitutes good cause to reinstate the Registration cancelled on March 13, 2018, and to vacate the Default Judgment entered on December 6, 2017.

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

Executed this 11<sup>th</sup> day of May, 2018, at Chicago, Illinois.

  
\_\_\_\_\_

Tom Mulloney  
Managing Editor  
New Art Examiner



### CERTIFICATE OF SERVICE

I hereby certify that on **February 8, 2018**, a true and correct copy of the foregoing **DECLARATION OF ALEXIS E. PAYNE IN SUPPORT OF PLAINTIFF WHITEHALL'S MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL** was served electronically filed and served via the Court's ECF system. In addition, I certify that these materials were served via e-mail on:

Bryan P. Sugar ([Bryan.Sugar@lewisbrisbois.com](mailto:Bryan.Sugar@lewisbrisbois.com))  
Thomas Kidde ([Thomas.Kidde@lewisbrisbois.com](mailto:Thomas.Kidde@lewisbrisbois.com))  
Mary A. Smigielski ([Mary.Smigielski@lewisbrisbois.com](mailto:Mary.Smigielski@lewisbrisbois.com)) LEWIS, BRISBOIS,  
BISGAARD & SMITH  
550 West Adams Street, Suite 300  
Chicago, IL 60661

/s/Alexis E. Payne

Alexis E. Payne

## Change Of Correspondence Address

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86767391
<b>REGISTRATION NUMBER</b>	4982329
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 102
<b>MARK SECTION</b>	
<b>MARK</b>	NEW ART EXAMINER (see, <a href="https://tmng-al.uspto.gov/resting2/api/img/86767391/large">https://tmng-al.uspto.gov/resting2/api/img/86767391/large</a> )
<b>CORRESPONDENCE SECTION (current)</b>	
<b>ORIGINAL ADDRESS</b>	ART MESSAGE INTERNATIONAL 5637 SOUTH DORCHESTER AVE CHICAGO Illinois 60637 US 312-832-4500 312-832-4700 PTOMailChicago@foley.com;cmandly@foley.com;jolsen@foley.com
<b>NEW CORRESPONDENCE ADDRESS</b>	
<b>NEW ADDRESS</b>	Partridge Partners PC Suite 720 321 North Clark Street CHICAGO Illinois United States 60654 312-634-9501 312-832-4700 mark@partridgepartnerspc.com; spippin@partridgepartnerspc.com; nchapman@partridgepartnerspc.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	YES
<b>INDIVIDUAL ATTORNEY DOCKET/REFERENCE NUMBER</b>	Mark Partrid
<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/Mark Partridge/
<b>SIGNATORY NAME</b>	Mark Partridge
<b>SIGNATORY DATE</b>	05/12/2018
<b>SIGNATORY POSITION</b>	Attorney of Record, Illinois bar member
<b>SIGNATORY PHONE NUMBER</b>	312-634-9501
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Sat May 12 12:56:43 EDT 2018

**TEAS STAMP**

USPTO/CCA-XX.XX.XX.XX-201  
80512125643392510-8676739  
1-6102d49adcd8cdd741ac1cc  
05d829617ec6aca6118e2139f  
7549a5366cb45e43e-N/A-N/A  
-20180512124806347400

mc

U. S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Derek Guthrie

v.

Art Message International

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Cancellation No. 92067099

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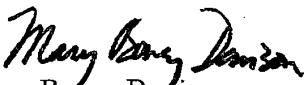
Douglas N. Masters of Loeb & Loeb LLP for Derek Guthrie.

Art Message International, pro se.

---

The petition of Derek Guthrie having been granted on January 31, 2017,  
Registration No. 4982329 is hereby cancelled.

MAF 13 2018

  
Mary Boney Denison  
Commissioner for Trademarks

# United States of America

United States Patent and Trademark Office

## NEW ART EXAMINER

**Reg. No. 4,982,329**

**Registered June 21, 2016**

**Int. Cl.: 16**

**TRADEMARK**

**PRINCIPAL REGISTER**

ART MESSAGE INTERNATIONAL (ILLINOIS NON-PROFIT CORPORATION)  
5637 SOUTH DORCHESTER AVENUE  
CHICAGO, IL 60637

FOR: PRINTED PERIODICALS IN THE FIELD OF ART CRITICISM AND REPORTAGE, IN  
CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 9-1-2015; IN COMMERCE 9-1-2015.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NEW ART", APART FROM  
THE MARK AS SHOWN.

SER. NO. 86-767,391, FILED 9-24-2015.

JANET LEE, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

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**From:** TMOOfficialNotices@USPTO.GOV  
**Sent:** Tuesday, April 5, 2016 00:50 AM  
**To:** PTOMailChicago@foley.com  
**Cc:** cmandly@foley.com ; jolsen@foley.com  
**Subject:** Official USPTO Notice of Publication Confirmation: U.S. Trademark SN 86767391: NEW ART EXAMINER

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### **TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION**

**U.S. Serial Number:** 86767391  
**Mark:** NEW ART EXAMINER  
**International Class(es):** 016  
**Owner:** Art Message International  
**Docket/Reference Number:**

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Apr 05, 2016.

#### **To Review the Mark in the TMOG:**

Click on the following link or paste the URL into an internet browser: <https://tmog.uspto.gov/#issueDate=2016-04-05&serialNumber=86767391>

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. If any information is incorrect due to USPTO error, the applicant should immediately email the requested correction to [TMPostPubQuery@uspto.gov](mailto:TMPostPubQuery@uspto.gov). For applicant corrections or amendments after publication, please file a post publication amendment using the form available at <http://teasroa.uspto.gov/ppa/>. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

#### **Significance of Publication for Opposition:**

- \* Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a certificate of registration should issue.

To check the status of the application, go to [http://tsdr.uspto.gov/#caseNumber=86767391&caseType=SERIAL\\_NO&searchType=statusSearch](http://tsdr.uspto.gov/#caseNumber=86767391&caseType=SERIAL_NO&searchType=statusSearch) or contact the Trademark Assistance Center at 1-800-786-9199. Please check the status of the application at least every three (3) months after the application filing date.

To view this notice and other documents for this application on-line, go to [http://tsdr.uspto.gov/#caseNumber=86767391&caseType=SERIAL\\_NO&searchType=documentSearch](http://tsdr.uspto.gov/#caseNumber=86767391&caseType=SERIAL_NO&searchType=documentSearch). NOTE: This notice will only become available on-line the next business day after receipt of this e-mail.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
[www.uspto.gov](http://www.uspto.gov)

Mar 16, 2016

## NOTICE OF PUBLICATION

- |                                     |   |
|-------------------------------------|---|
| 1. Serial No.:<br>86-767,391        | 2. Mark:<br>NEW ART EXAMINER<br>(STANDARD CHARACTER MARK) |
| 3. International Class(es):<br>16   |   |
| 4. Publication Date:<br>Apr 5, 2016 | 5. Applicant:<br>Art Message International                |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the *Official Gazette* on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the *Official Gazette* containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: 202-512-1800

By direction of the Commissioner.

---

### Email Address(es):

PTOMailChicago@foley.com  
cmandly@foley.com  
jolsen@foley.com



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**From:** TMOOfficialNotices@USPTO.GOV  
**Sent:** Wednesday, March 16, 2016 03:57 AM  
**To:** PTOMailChicago@foley.com  
**Cc:** cmandly@foley.com ; jolsen@foley.com  
**Subject:** Official USPTO Notification of Notice of Publication: U.S. Trademark SN 86767391: NEW ART EXAMINER

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NOTIFICATION OF "NOTICE OF PUBLICATION"

Your trademark application (Serial No. 86767391) is scheduled to publish in the *Official Gazette* on Apr 5, 2016 . To preview the Notice of Publication, go to <http://tdr.uspto.gov/search.action?sn=86767391>. If you have difficulty accessing the Notice of Publication, contact [TDR@uspto.gov](mailto:TDR@uspto.gov).

**PLEASE NOTE:**

1. The Notice of Publication may not be immediately available but will be viewable within 24 hours of this e-mail notification.
2. You will receive a second e-mail on the actual "Publication Date," which will include a link to the issue of the *Official Gazette* in which the mark has published.

Do NOT hit "Reply" to this e-mail notification. If you have any questions about the content of the Notice of Publication, contact [TMPostPubQuery@uspto.gov](mailto:TMPostPubQuery@uspto.gov).

**Trademark Snap Shot Publication & Issue Review Stylesheet**  
(Table presents the data on Publication & Issue Review Complete)

**OVERVIEW**

SERIAL NUMBER	86767391	FILING DATE	09/24/2015
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	LEE, JANET H	L.O. ASSIGNED	102

**PUB INFORMATION**

RUN DATE	03/03/2016		
PUB DATE	04/05/2016		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	03/02/2016		
LITERAL MARK ELEMENT	NEW ART EXAMINER		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	NEW ART EXAMINER
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

**CURRENT OWNER INFORMATION**

PARTY TYPE	10-ORIGINAL APPLICANT
------------	-----------------------

NAME	Art Message International
ADDRESS	5637 South Dorchester Avenue Chicago, IL 60637
ENTITY	99-non-profit corporation
CITIZENSHIP	Illinois

### GOODS AND SERVICES

INTERNATIONAL CLASS	016
DESCRIPTION TEXT	Printed periodicals in the field of art criticism and reportage

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	016	FIRST USE DATE	09/01/2015	FIRST USE IN COMMERCE DATE	09/01/2015	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
DISCLAIMER W/PREDETER TXT	"NEW ART"

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
03/02/2016	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	010
02/20/2016	ALIE	A	ASSIGNED TO LIE	009
01/20/2016	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	008
01/20/2016	XAEC	I	EXAMINER'S AMENDMENT ENTERED	007
01/20/2016	GNEN	O	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	006
01/20/2016	GNEA	F	EXAMINERS AMENDMENT E-MAILED	005
01/20/2016	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	004
01/12/2016	DOCK	D	ASSIGNED TO EXAMINER	003
09/30/2015	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/28/2015	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Charles R. Mandly, Jr.
CORRESPONDENCE ADDRESS	CHARLES R. MANDLY, JR. Foley & Lardner Llp 321 N Clark St Ste 2800 Chicago, IL 60654-5313
DOMESTIC REPRESENTATIVE	NONE

# NEW ART EXAMINER

**Trademark Snap Shot Publication Stylesheet**  
(Table presents the data on Publication Approval)

**OVERVIEW**

SERIAL NUMBER	86767391	FILING DATE	09/24/2015
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	LEE, JANET H	L.O. ASSIGNED	102

**PUB INFORMATION**

RUN DATE	01/21/2016		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATION		
STATUS DATE	01/20/2016		
LITERAL MARK ELEMENT	NEW ART EXAMINER		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	NEW ART EXAMINER
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

**CURRENT OWNER INFORMATION**

PARTY TYPE	10-ORIGINAL APPLICANT
------------	-----------------------

NAME	Art Message International
ADDRESS	5637 South Dorchester Avenue Chicago, IL 60637
ENTITY	99-non-profit corporation
CITIZENSHIP	Illinois

### GOODS AND SERVICES

INTERNATIONAL CLASS	016
DESCRIPTION TEXT	Printed periodicals in the field of art criticism and reportage

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	016	FIRST USE DATE	09/01/2015	FIRST USE IN COMMERCE DATE	09/01/2015	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
DISCLAIMER W/PREDETER TXT	"NEW ART"

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
01/20/2016	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	008
01/20/2016	XAEC	I	EXAMINER'S AMENDMENT ENTERED	007
01/20/2016	GNEN	O	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	006
01/20/2016	GNEA	F	EXAMINERS AMENDMENT E-MAILED	005
01/20/2016	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	004
01/12/2016	DOCK	D	ASSIGNED TO EXAMINER	003
09/30/2015	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/28/2015	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Charles R. Mandly, Jr.
CORRESPONDENCE ADDRESS	CHARLES R. MANDLY, JR. Foley & Lardner Llp 321 N Clark St Ste 2800 Chicago, IL 60654-5313
DOMESTIC REPRESENTATIVE	NONE

# NEW ART EXAMINER

**Trademark Snap Shot Amendment & Mail Processing Stylesheet**  
(Table presents the data on Amendment & Mail Processing Complete)

**OVERVIEW**

SERIAL NUMBER	86767391	FILING DATE	09/24/2015
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	LEE, JANET H	L.O. ASSIGNED	102

**PUB INFORMATION**

RUN DATE	01/21/2016		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATION		
STATUS DATE	01/20/2016		
LITERAL MARK ELEMENT	NEW ART EXAMINER		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	NEW ART EXAMINER
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

**CURRENT OWNER INFORMATION**

PARTY TYPE	10-ORIGINAL APPLICANT
------------	-----------------------



NAME	Art Message International
ADDRESS	5637 South Dorchester Avenue Chicago, IL 60637
ENTITY	99-non-profit corporation
CITIZENSHIP	Illinois

### GOODS AND SERVICES

INTERNATIONAL CLASS	016
DESCRIPTION TEXT	Printed periodicals in the field of art criticism and reportage

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	016	FIRST USE DATE	09/01/2015	FIRST USE IN COMMERCE DATE	09/01/2015	CLASS STATUS	6-ACTIVE
---------------------	-----	----------------	------------	----------------------------	------------	--------------	----------

### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
DISCLAIMER W/PREDETER TXT	"NEW ART"

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
01/20/2016	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	008
01/20/2016	XAEC	I	EXAMINER'S AMENDMENT ENTERED	007
01/20/2016	GNEN	O	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	006
01/20/2016	GNEA	F	EXAMINERS AMENDMENT E-MAILED	005
01/20/2016	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	004
01/12/2016	DOCK	D	ASSIGNED TO EXAMINER	003
09/30/2015	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/28/2015	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Charles R. Mandly, Jr.
CORRESPONDENCE ADDRESS	CHARLES R. MANDLY, JR. Foley & Lardner Llp 321 N Clark St Ste 2800 Chicago, IL 60654-5313
DOMESTIC REPRESENTATIVE	NONE

# NEW ART EXAMINER

**To:** Art Message International ([PTOMailChicago@foley.com](mailto:PTOMailChicago@foley.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86767391 - NEW ART EXAMINER - N/A  
**Sent:** 1/20/2016 9:30:23 AM  
**Sent As:** ECOM102@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 86767391

**MARK:** NEW ART EXAMINER

**\*86767391\***

**CORRESPONDENT ADDRESS:**

CHARLES R. MANDLY, JR.

Foley & Lardner LLP

321 N Clark St Ste 2800

Chicago, IL 60654-5313

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

**APPLICANT:** Art Message International

**CORRESPONDENT'S REFERENCE/DOCKET NO :**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

[PTOMailChicago@foley.com](mailto:PTOMailChicago@foley.com)

**EXAMINER'S AMENDMENT**

**ISSUE/MAILING DATE:** 1/20/2016

**DATABASE SEARCH:** The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

**APPLICATION HAS BEEN AMENDED:** In accordance with the authorization granted by Charles R. Mandly on January 19, 2015, the trademark examining attorney has amended the application as indicated below. Please advise the undersigned immediately of any objections. Otherwise, no response is necessary. TMEP §707. Any amendments to the identification of goods and/or services may clarify or limit the goods and/or services, but may not add to or broaden the scope of the goods and/or services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*

**Disclaimer**

The following disclaimer statement is added to the record:

No claim is made to the exclusive right to use “NEW ART” apart from the mark as shown.

*See* 15 U.S.C. §1056(a); TMEP §§1213, 1213.08(a)(i).

/Janet H. Lee/  
Examining Attorney  
Law Office 102  
Phone: (571) 272-1053  
janet.lee@uspto.gov

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

**To:** Art Message International ([PTOMailChicago@foley.com](mailto:PTOMailChicago@foley.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86767391 - NEW ART EXAMINER - N/A  
**Sent:** 1/20/2016 9:30:24 AM  
**Sent As:** ECOM102@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**IMPORTANT NOTICE REGARDING YOUR**  
**U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED  
ON **1/20/2016** FOR U.S. APPLICATION SERIAL NO.86767391

Please follow the instructions below:

**(1) TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

**(2) QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).

**WARNING**

**PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION:** Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see [http://www.uspto.gov/trademarks/solicitation\\_warnings.jsp](http://www.uspto.gov/trademarks/solicitation_warnings.jsp).

# NOTE TO THE FILE

SERIAL NUMBER: 86767391

DATE: 01/20/2016

NAME: jlee6

## NOTE:

### Searched:

☒ Google  
☐ Lexis/Nexis  
☒ OneLook  
☐ Wikipedia  
☐ Acronym Finder  
☐ Other:

### Discussed ID with:

☐ Senior Atty  
☐ Managing Atty  
  
☐ Protest evidence reviewed

### Checked:

☐ Geographic significance  
☐ Surname  
☐ Translation  
☐ ID with ID/CLASS mailbox

### Discussed Geo. Sig. with:

☐ Senior Atty  
☐ Managing Atty

☐ Checked list of approved Canadian attorneys and agents

### Discussed file with

#### Attorney/Applicant via:

☐ phone  
☐ email  
  
☐ Left message with Attorney/Applicant

☐ Requested Law Library search for:  
☒ Issued Examiner's Amendment and entered changes in TRADEUPS

☐ **PRINT** ☐ **DO NOT PRINT**  
☐ Description of the mark  
☐ Translation statement  
  
☐ Negative translation statement  
☐ Consent of living individual  
  
☐ Changed TRADEUPS to:  
  
☐ OTHER:

☐ Added design code in TRADEUPS  
  
☐ Re-imaged standard character drawing  
  
☐ Contacted TM MADRID ID/CLASS about misclassified definite ID

\*\*\* User:jlee6 \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:02	"new art examiner"[BI,TI] not "dead"[LD]
02	55460	N/A	0	0	0:02	(*new* or *nu* or *noo* or *n{"iy"}{"ou":2}*)[BI,TI] not "dead"[LD]
03	59208	N/A	0	0	0:02	*art*[BI,TI] not "dead"[LD]
04	413	N/A	0	0	0:02	*{"xscz"}am{"iy"}n*[BI,TI] not "dead"[LD]
05	1100	0	1100	1050	0:01	2 and 3
06	12	0	12	1	0:01	2 and 4
07	9	0	9	8	0:01	3 and 4
08	2	0	2	1	0:01	5 and 4

Session started 1/12/2016 10:10:14 PM

Session finished 1/12/2016 10:22:33 PM

Total search duration 0 minutes 12 seconds

Session duration 12 minutes 19 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICSRS as Serial Number: 86767391

# NEW ART EXAMINER



# NEW ART examiner

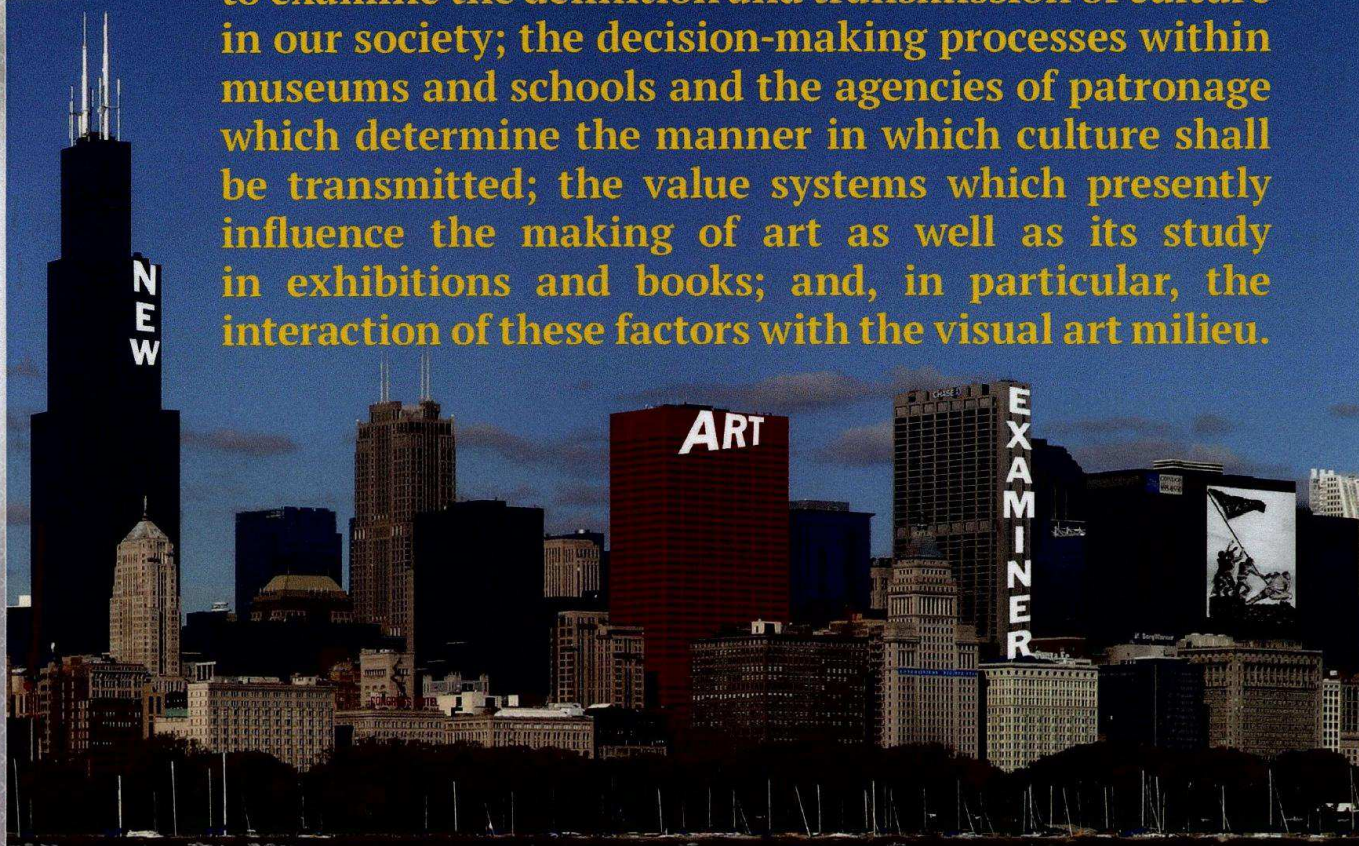
The Independent Voice of the Visual Arts

**'The Independent Voice of the Visual Arts'**

Volume 30 No.1

September 1<sup>st</sup> 2015 \$6 / £4 / €5.80

Since 1973 the New Art Examiner's purpose has been 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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further thoughts by historian  
Roland Gurney



## Trademark/Service Mark Application, Principal Register

### TEAS Plus Application

Serial Number: 86767391

Filing Date: 09/24/2015

**NOTE:** Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
*MARK	<a href="#">NEW ART EXAMINER</a>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	NEW ART EXAMINER
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Art Message International
*STREET	5637 South Dorchester Avenue
*CITY	Chicago
*STATE (Required for U.S. applicants)	Illinois
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants)	60637
<b>LEGAL ENTITY INFORMATION</b>	
*TYPE	non-profit corporation
* STATE/COUNTRY WHERE LEGALLY ORGANIZED	Illinois
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
* INTERNATIONAL CLASS	016
*IDENTIFICATION	Printed periodicals in the field of <b>art criticism and reportage</b>
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/01/2015
FIRST USE IN COMMERCE DATE	At least as early as 09/01/2015

<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">SPE0-20487401-20150923152934891759_.specimen.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\867\673\86767391\xml1\FTK0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	Photocopy of publication showing use of the mark
<b>ADDITIONAL STATEMENTS INFORMATION</b>	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Charles R. Mandly, Jr.
<b>FIRM NAME</b>	Foley & Lardner LLP
<b>STREET</b>	321 North Clark Street, Suite 2800
<b>CITY</b>	Chicago
<b>STATE</b>	Illinois
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	60654
<b>PHONE</b>	312-832-4500
<b>FAX</b>	312-832-4700
<b>EMAIL ADDRESS</b>	PTOMailChicago@foley.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Craig S. Fochler; Diane G. Elder; Jami A. Gekas; David A. Copland; Jaclyne D. Wallace; Aaron Weinzierl; Jason A. Berta; Spencer R. Montei; Alexandra B. Johnson
<b>CORRESPONDENCE INFORMATION</b>	
*NAME	Charles R. Mandly, Jr.
<b>FIRM NAME</b>	Foley & Lardner LLP
*STREET	321 North Clark Street, Suite 2800
*CITY	Chicago
*STATE (Required for U.S. applicants)	Illinois
*COUNTRY	United States
*ZIP/POSTAL CODE	60654
<b>PHONE</b>	312-832-4500
<b>FAX</b>	312-832-4700
*EMAIL ADDRESS	PTOMailChicago@foley.com;cmandly@foley.com;jolsen@foley.com

* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Plus
NUMBER OF CLASSES	1
FEE PER CLASS	225
* TOTAL FEE PAID	225
SIGNATURE INFORMATION	
* SIGNATURE	/Tom Mullaney/
* SIGNATORY'S NAME	Tom Mullaney
* SIGNATORY'S POSITION	United States Editor & Registered Agent
SIGNATORY'S PHONE NUMBER	312-532-8267
* DATE SIGNED	09/24/2015

---

## Trademark/Service Mark Application, Principal Register

### TEAS Plus Application

**Serial Number: 86767391**

**Filing Date: 09/24/2015**

#### To the Commissioner for Trademarks:

**MARK:** NEW ART EXAMINER (Standard Characters, see [mark](#))

The literal element of the mark consists of NEW ART EXAMINER.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Art Message International, a non-profit corporation legally organized under the laws of Illinois, having an address of  
5637 South Dorchester Avenue  
Chicago, Illinois 60637  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

#### For specific filing basis information for each item, you must view the display within the Input Table.

International Class 016: Printed periodicals in the field of art criticism and reportage

Use in Commerce: The applicant is using the mark in commerce on or in connection with the identified goods/services. The applicant attaches, or will later submit, one specimen as a JPG/PDF image file showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, regardless of whether the mark itself is in the standard character format or is a stylized or design mark. The specimen image file may be in color, and the image must be in color if color is being claimed as a feature of the mark.

In International Class 016, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 09/01/2015, and first used in commerce at least as early as 09/01/2015, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Photocopy of publication showing use of the mark.

#### Original PDF file:

[SPE0-20487401-20150923152934891759\\_ .specimen.pdf](#)

#### Converted PDF file(s) (1 page)

[Specimen File1](#)

#### The applicant's current Attorney Information:

Charles R. Mandly, Jr. and Craig S. Fochler; Diane G. Elder; Jami A. Gekas; David A. Copland; Jaclyne D. Wallace; Aaron Weinzierl; Jason A. Berta; Spencer R. Monte; Alexandra B. Johnson of Foley & Lardner LLP  
321 North Clark Street, Suite 2800  
Chicago, Illinois 60654  
United States

#### The applicant's current Correspondence Information:

Charles R. Mandly, Jr.  
Foley & Lardner LLP  
321 North Clark Street, Suite 2800  
Chicago, Illinois 60654  
312-832-4500(phone)  
312-832-4700(fax)

PTOMailChicago@foley.com;cmantly@foley.com;jolsen@foley.com (authorized)

**E-mail Authorization:** I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$225 has been submitted with the application, representing payment for 1 class(es).

#### **Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature: /Tom Mullaney/ Date Signed: 09/24/2015

Signatory's Name: Tom Mullaney

Signatory's Position: United States Editor & Registered Agent

RAM Sale Number: 86767391

RAM Accounting Date: 09/25/2015

Serial Number: 86767391

Internet Transmission Date: Thu Sep 24 14:49:12 EDT 2015

TEAS Stamp: USPTO/FTK-XXX.XX.XX.X-201509241449122447

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C-1688-20150923154754551680

# NEW ART EXAMINER



# NEW ART examiner

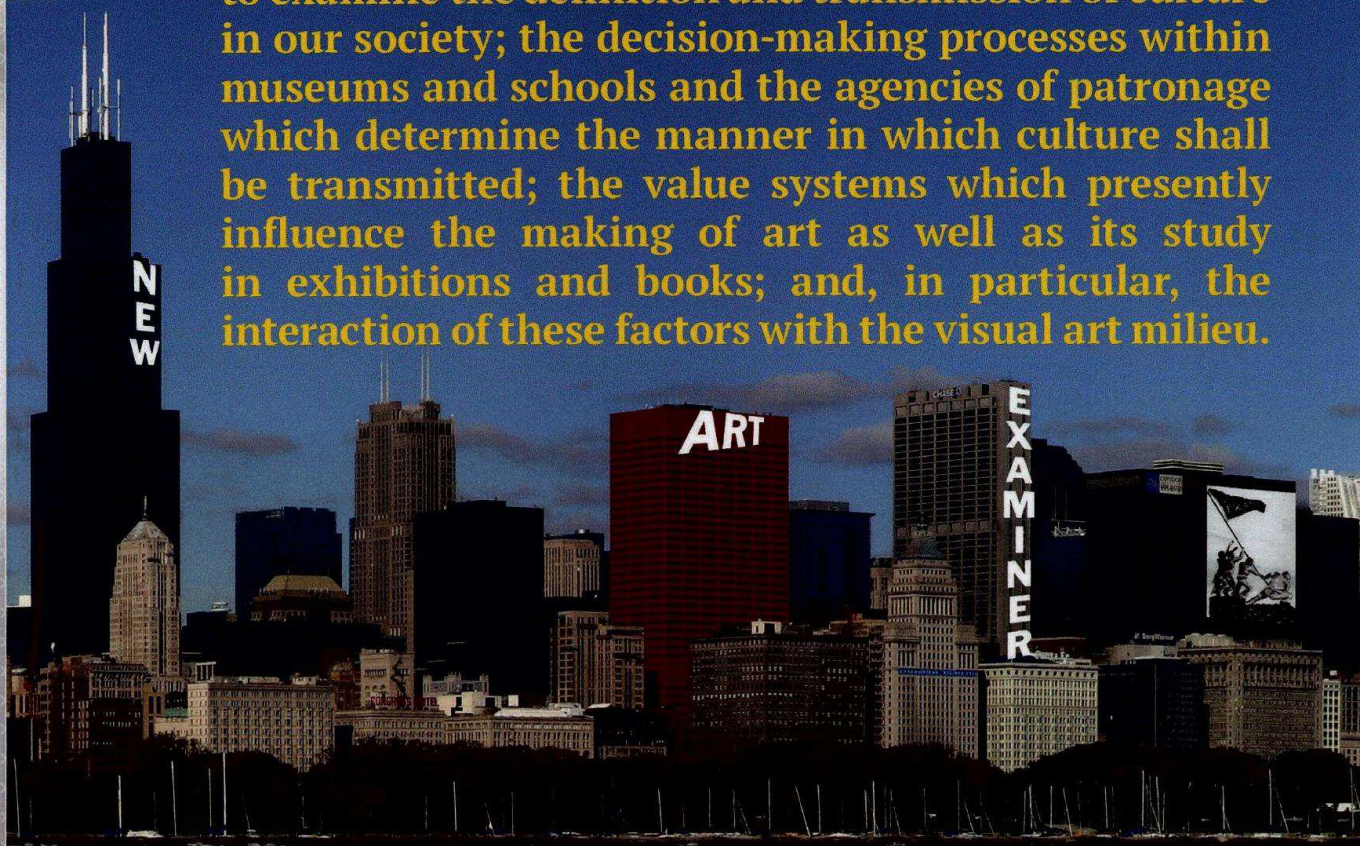
The Independent Voice of the Visual Arts

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Roland Gurney



## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

ETAS ID: TM519846

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Art Message International		04/16/2019	Non-Profit Corporation: Illinois
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	New Art Association		
<b>Doing Business As:</b>	New Art Examiner		
<b>Street Address:</b>	5542 N PAULINA ST #2		
<b>City:</b>	Chicago		
<b>State/Country:</b>	ILLINOIS		
<b>Postal Code:</b>	60640		
<b>Entity Type:</b>	Non-Profit Corporation: ILLINOIS		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4982329	NEW ART EXAMINER	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	3122757503		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	312-634-9500		
<b>Email:</b>	tm@partridgepartnerspc.com		
<b>Correspondent Name:</b>	Mark V.B. Partridge		
<b>Address Line 1:</b>	321 N CLARK ST STE 720		
<b>Address Line 4:</b>	CHICAGO, ILLINOIS 60654		
<b>NAME OF SUBMITTER:</b>	Mark V.B. Partridge		
<b>SIGNATURE:</b>	/Mark V.B. Partridge/		
<b>DATE SIGNED:</b>	04/18/2019		
<b>Total Attachments: 1</b>			
source=AMI to NAA Trademark Assignment (Signed)#page1.tif			

OP \$40.00 4982329

### Trademark Assignment

This Assignment ("Assignment") is entered into and made effective as of April 16, 2019 ("Effective Date"), between **Art Message International**, a not-for-profit organized under the laws of Illinois, located at 5542 N. Paulina St. #2, Chicago, Illinois ("Assignor"), and **New Art Association**, a not-for-profit organized under the laws of Illinois, located at 5542 N. Paulina St. #2, Chicago, Illinois ("Assignee"), a successor of Assignor's business.

Whereas, Assignor owns the trademark NEW ART EXAMINER (the "Mark") in connection with the following goods: "Printed periodicals in the field of art criticism and reportage"; and

Whereas, Assignor owns a federal registration for the Mark on the Principal Register of the United States Patent and Trademark Office in connection with the goods and services identified therein, Registration No. 4982329, registered on June 21, 2016 (the "Registration"); and

Whereas, Assignor desires to convey, transfer, assign, deliver, and contribute to Assignee all of its right, title, and interest in and to the Mark and the above-reference Registration; and

Whereas, Assignee desires to acquire the Mark and the above-referenced Registration;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, effective as of the Effective Date, Assignor hereby sells, assigns, and transfers to Assignee all right, title, and interest in and to the Mark, together with the goodwill of the business symbolized by the Mark and the Registration thereof, together with all claims for damages by reason of past infringement of said Mark and Registration, with the right to sue for and collect the same for its own use and behalf, and for the use and behalf of its successors, assigns or other legal representatives.

IN WITNESS WHEREOF the Assignor and Assignee have executed this Assignment as of the date identified herein.

**Art Message International**

By: Michel Ségard  
Name: Michel Ségard

Title: Treasurer

Date: 4/16/19

**New Art Association**

By: Michel Ségard  
Name: Michel Ségard

Title: Treasurer

Date: 4/16/19

# EXHIBIT 2



reserves the right to alter, amend, or supplement certain facts or information set forth in the following responses.

B. Respondent reserves the right to produce evidence of any subsequently discovered fact or facts, to alter or amend its objections and responses set forth herein, and otherwise to assert factual and legal contentions as additional facts are ascertained, analyses are made, and legal research is completed.

C. Nothing contained in any response to any interrogatory shall be construed as an admission by Respondent relative to the existence or nonexistence of any information or documents, and no such response shall be construed as an admission respecting relevance or admissibility of any information or document or the truth or accuracy of any statement or characterization contained in any interrogatory.

D. Respondent will make reasonable efforts to respond to each interrogatory to the extent that no objection is made, as Petitioner understands and interprets the interrogatory. If Respondent subsequently asserts any interpretation of an interrogatory that differs from Respondent's interpretation, Respondent reserves the right to supplement its objections and response.

E. Respondent objects to Petitioner's "Definitions and Instructions" of Petitioner's First Set of Interrogatories to Registrant and Petitioner's First Requests for Production of Documents to the extent that they exceed Respondent's duties under the Federal Rules of Civil Procedures, Trademark Rules, and all other relevant authorities. Respondent specifically objects to Petitioner's definition of "Petitioner," to the extent it encompasses entities other than Guthrie as an individual.

F. Respondent objects to each interrogatory to the extent that it purports to impose obligations greater than those imposed by the Federal Rules of Civil Procedure, Trademark Rules, and all other relevant authorities.

G. To the extent that any evidentiary objections may be applicable, Respondent raises all applicable evidentiary objections and reserves the right to raise those evidentiary objections at any time.

H. Respondent objects to each and every interrogatory to the extent that it seeks production of documents or information that are subject to attorney-client privilege, work product doctrine, or other applicable protections.

I. Respondent objects to these interrogatories to the extent they purport to require or require the creation of documents not already in existence.

J. Respondent objects to these interrogatories to the extent that they seek information that is irrelevant and immaterial and are unreasonably cumulative, not reasonably calculated to lead to the discovery of admissible evidence, overly broad, unduly burdensome, vague and/or ambiguous, and beyond the scope of discovery under the applicable rules.

K. Respondent objects to these interrogatories to the extent that they seek information not in the possession, custody, or control of Respondent nor is readily obtainable on the grounds that such interrogatories are overly broad and unduly burdensome, and/or constitute annoyance, harassment, and oppression. Subject to and without waiving any general or specific objections, Respondent will use reasonable diligence to provide responsive information or documents within its possession, custody, or control.

L. Respondent objects to undertaking an effort to obtain responsive information from persons and/or entities whose information may be more properly obtained under subpoena from

another entity. Respondent will undertake to produce responsive information, as further described below, that is located within its possession, custody, or control.

M. Respondent objects to each and every interrogatory to the extent that it seeks information prematurely.

N. Respondent objects to the extent that these interrogatories seek disclosure of proprietary documents and things that contain and/or constitute confidential information. Respondent is unwilling to publicly release proprietary information or documents, including information or documents contained in confidential matters, when disclosure of this information and/or documents would adversely affect Respondent's current and/or future business. Therefore, Respondent will provide such information and materials upon entry of a suitable Protective Order.

O. Respondent reserves the right to interpose other objections, both general and specific, that may be applicable.

P. Respondent will make reasonable efforts to respond to each interrogatory to the extent that no objection is made, as Respondent understands and interprets the interrogatory. If Petitioner subsequently asserts any interpretation of any interrogatory that different from Respondent's, Respondent reserves the right to supplement its objections and response.

Q. Respondent objects to each interrogatory that is not proportional as defined under the Rules of Civil Procedure.

R. Respondent does not concede relevancy, admissibility, or materiality of the subject matter of any individual interrogatory herein.

Subject to the foregoing objections, Respondent provides the answers below.

## **ANSWERS AND OBJECTIONS TO INTERROGATORIES**

1. Identify all persons who make up the current and former members of Art Message International from January 1, 2013 to the present and each person's title with dates such title is/was held.

### **ANSWER:**

Respondent incorporates here as applicable its General Objections. Subject to and without waiving the foregoing objections, Respondent provides the following:

- Present
  - Michael Ramstedt, President, 2017 – Present
  - Michael Maddox, Secretary, 2017 – Present
  - Michel Segard, Treasurer, 2017 – Present
- Former
  - Thomas Feldhacker, Treasurer, 2016 – 2016
  - Derek Guthrie, 2014 – 2016
  - Annie Markovich, 2013 – 2016
  - Arlene Rakoncay, 2013 – 2013
  - Diane Thodos, 2013 – 2013

2. Describe each manner in which Registrant uses, has used, or plans to use the AMI NEW ART EXAMINER Mark in commerce.

### **ANSWER:**

Respondent incorporates here as applicable its General Objections. Respondent objects to Interrogatory No. 2 because “each manner” is overbroad and vague. Moreover, Interrogatory No. 2 is overbroad by lack of a distinct time period. In failing to qualify a time period, Interrogatory No. 2 is indefinite as it includes future plans not yet knowable to Respondent.



Subject to and without waiving the foregoing objections, Respondent states that it uses its Registered Mark in connection with printed periodicals in the field of art criticism and reportage, namely an art criticism journal.

3. Describe the manner and identify the date of Registrant's first use in commerce in the United States of the AMI NEW ART EXAMINER Mark.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Subject to and without waiving the foregoing objections, Respondent states: Approximately Summer 2015 in connection with printed periodicals in the field of art criticism and reportage, namely an art criticism journal.

4. Describe in detail your reasons for the selection, adoption, and creation of the AMI NEW ART EXAMINER Mark.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Further, Respondent objects to Interrogatory No. 4 because it contains language that is ambiguous and vague. The term "reasons" is undefined and ultimately indefinite. Respondent understands Interrogatory No. 4 as if it were calling for the main or primary reason for the selection, adoption, and creation of the mark.

Subject to and without waiving the foregoing objections, Respondent answers that it selected the mark because the mark was available for use and was an apt name for Respondent's publication. The mark had previously been used by a nonparty, Chicago New Art Association, for printed periodicals in the field of art criticism and reportage, namely an art criticism journal, but had been abandoned through nonuse since 2002..

5. Describe in detail how and when Registrant first became aware of Guthrie's use of the trademark NEW ART EXAMINER for an art criticism journal both in commerce and outside of the United States, and the person most knowledgeable about that awareness.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Respondent objects to Interrogatory No. 5 on multiple grounds. First, "[o]utside of the United States" is irrelevant and ambiguous. Second, Interrogatory No. 5 calls for a legal conclusion. Third, Interrogatory No. 5 is also premature.

Subject to and without waiving the foregoing objections, Respondent states that Guthrie, as a former Board member of Respondent, participated in Respondent's use of the NEW ART EXAMINER mark, from approximately 2015 through 2016. Respondent first became aware of Guthrie's use of the NEW ART EXAMINER for an art criticism journal around May 2017, after Guthrie resigned from Respondent and returned to the United Kingdom. Michél Segard and Tom Mullaney are most knowledgeable about that awareness.

6. Identify any uses in commerce of the trademark NEW ART EXAMINER of which Registrant was aware before applying to register the AMI NEW ART EXAMINER Mark with the USPTO.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Respondent objects to Interrogatory No. 6 on the grounds of vagueness and ambiguity. Specifically, Interrogatory No. 6 does not specify a period of time. In light of the foregoing objections, Respondent states that it understands Interrogatory No. 6 as calling for awareness of those actual "uses in commerce" of

the NEW ART EXAMINER mark in the period of time leading up to, and shortly before, applying to register the now Registered Mark with the USPTO.

Subject to and without waiving the foregoing objections, Respondent answers that: Respondent, at that time, was not aware of any other entity making actual use of, or having the right to use, the NEW ART EXAMINER mark in commerce leading up to and shortly before applying to register the Registered Mark. Further, Respondent was aware that Chicago New Art Association previously used the NEW ART EXAMINER mark, but abandoned such use in 2002.

7. 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 Registrant or use of the AMI NEW ART EXAMINER Mark, and Guthrie or Guthrie's use of or association with the NEW ART EXAMINER, including but not limited to, any instance in which a reader, potential reader, or other person believed or may have believed Registrant's use of the AMI NEW ART EXAMINER Mark was authorized, sponsored, or approved by Guthrie.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Subject to and without waiving the foregoing objections, Respondent states that duplicate names have cause substantial confusion with advertisers who have on occasion submitted material to the wrong journal; and subscribers, who have indicated they subscribed to one journal when they were actually subscribed to the other. Respondent will produce any non-privileged, relevant documents within its custody, possession, or control.

8. State (a) the geographic area or areas in the United States in which Registrant markets, has marketed, or plans to market goods bearing the AMI NEW ART EXAMINER Mark;

and (b) the channel or channels of trade through which Registrant markets, has marketed, or plans to market goods bearing the AMI NEW ART EXAMINER Mark.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Subject to and without waiving the foregoing objections, Respondent states the following: (a) the United States, particularly, Illinois; and, (b) bookstores, the website at <newartexaminer.org>, and Facebook.

9. State the amount of money Registrant has spent or plans to spend for each type of advertising or promotion Registrant has made or intends to make in connection with the AMI NEW ART EXAMINER Mark.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Subject to and without waiving the foregoing objections, Respondent spends \$100 per issue on Facebook advertising.

10. State by month the dollar and unit amount of sales that Registrant has made of goods bearing the AMI NEW ART EXAMINER Mark since the first date of sale in the U.S. of goods bearing the AMI NEW ART EXAMINER Mark.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Subject to and without waiving the foregoing objections, Respondent provides the following: after a reasonable investigation, Respondent determined that records from 2015 and 2016 are unavailable. Currently, Respondent has 43 subscribers at \$55/year and has sold paper copies at \$8 per copy.

11. Identify the printer of the goods bearing the AMI NEW ART EXAMINER Mark.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Interrogatory No. 11 is not relevant to any claim or defense in this proceeding, and the information requested is being requested for an improper purpose, such as harassment, and is beyond the scope of this proceeding.

12. Identify the persons most knowledgeable concerning Registrant's present use of NEW ART EXAMINER.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Subject to and without waiving the foregoing objections, Respondent states the following:

- Michel Ségard, Editor in Chief
- Tom Mullaney, Managing Editor
- Michael Ramstedt, Board Chair

13. Identify the persons most knowledgeable concerning Registrant's future plans to use NEW ART EXAMINER.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Respondent objects to Interrogatory No. 13 because the phrasing "most knowledgeable" is vague and ambiguous. Subject to and without waiving the foregoing objections, Respondent states the following:

- Michel Ségard, Editor in Chief
- Tom Mullaney, Managing Editor
- Michael Ramstedt, Board Chair

14. Identify the persons most knowledgeable concerning the facts which support Registrant's denial of any allegation in the Petition to Cancel and Registrant's Affirmative Defenses, as well as the facts as to which each has knowledge.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Respondent objects to Interrogatory No. 13 because the phrasing “most knowledgeable” is vague and ambiguous. Subject to and without waiving the foregoing objections, Respondent states the following: Michel Ségard and Tom Mullaney.

15. Describe Registrant’s policy with respect to the retention, storage and destruction of documents and business records.

**ANSWER:**

Respondent incorporates here as applicable its General Objections. Respondent objects to Interrogatory No. 15 on the ground that it is not relevant to any claims or defenses. Subject to and without waiving any objections, paper records are kept at the Respondent’s office and electronic records are stored and backed up electronically.

Dated: March 28, 2019

As to objections only,  
PARTRIDGE PARTNERS PC

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  
Art Message International*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing RESPONDENT ART MESSAGE INTERNATIONAL'S ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES TO RESPONDENT was served on March 28, 2019, by email, on counsel for Petitioner at: [dmasters@loeb.com](mailto:dmasters@loeb.com), [coneill@loeb.com](mailto:coneill@loeb.com), [chdocket@loeb.com](mailto:chdocket@loeb.com).

Date: March 28, 2019

By: /s/Mark V.B. Partridge  
Mark V.B. Partridge  
*Attorney for Respondent*  
*Art Message International*

# EXHIBIT 3



**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 and	)	
New Art Association d/b/a	)	
New Art Examiner	)	
	)	
Registrant.	)	

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

In accordance with Rule 34 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Petitioner Derek Guthrie (“Guthrie”) hereby responds and objects to Registrant Art Message International’s (“AMI”) First Set of Requests for Production of Documents and Things (collectively, the “Requests” and each a “Request”), as follows:

**GENERAL OBJECTIONS**

The following General Objections apply to and are incorporated into each individual response herein, whether or not expressly incorporated by reference or repeated in such response.

1. Guthrie objects to each Request to the extent that it: (a) seeks documents or things that are subject to the attorney-client privilege, work-product doctrine, common interest privilege, or other applicable legal privileges; (b) is vague, ambiguous, repetitive, duplicative, overbroad or unduly burdensome; (c) seeks documents or things that are not reasonably accessible to Guthrie, or are not within Guthrie’s possession, custody or control; (d) seeks documents or things that are already in AMI’s possession, or are equally or more readily accessible to AMI than to Guthrie; or

(e) purports to impose upon Guthrie an obligation beyond the requirements of the Federal Rules of Civil Procedure or the Trademark Trial and Appeal Board (“TTAB”) Rules.

2. Guthrie objects to AMI’s prefatory definitions and instructions to the extent that they purport to impose upon Guthrie an obligation beyond the requirements of the Federal Rules of Civil Procedure or the TTAB Rules.

3. Guthrie objects to the definition of “Guthrie,” “Petitioner,” “You” and “Your” in Paragraph A of the “Definitions and Instructions” as overbroad, unduly burdensome, unreasonable and oppressive with respect to its inclusion of “entity through which, [Guthrie] 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.” These Responses are provided solely on behalf of Guthrie as an individual.

4. Guthrie objects to the definition of “Contested Mark” to refer to Guthrie’s rights in the NEW ART EXAMINER because AMI’s use and registration of the NEW ART EXAMINER mark is what is contested in this cancellation proceeding. Notwithstanding, Guthrie will use AMI’s defined term herein.

5. Guthrie objects to the Requests to the extent that they seek information that is not relevant or material to the claims or defenses in this proceeding and is not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

6. Guthrie objects to the Requests to the extent that they do not contain a reasonable time frame and/or are unlimited as to time.

7. Guthrie’s failure to object to a Request on a particular ground shall not be construed as a waiver of his rights to object on that ground, or any additional ground, at any time.

8. Guthrie's responses to the Requests set forth herein shall not constitute a waiver of Guthrie's objections to any other discovery requests served in this action.

9. Guthrie's responses to the Requests are made expressly without waiving or intending to waive, but rather preserving and intending to preserve, all objections as to the relevance, competence, materiality or admissibility of the documents or information provided.

10. Guthrie reserves the right to supplement, modify or withdraw his responses to any of the Requests at any time on the basis of information or documents he later discovers or otherwise.

#### **SPECIFIC OBJECTIONS TO DOCUMENT REQUESTS**

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

#### **RESPONSE:**

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 1.

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

#### **RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overbroad, unduly burdensome, vague and ambiguous to the extent it may be asking for "all" such documents and is not temporally limited. Guthrie also objects to this Request as seeking documents protected from disclosure by the attorney-client privilege or attorney work-product doctrine.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 2.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overbroad and unduly burdensome to the extent it may be asking for "all" documents generally relating to AMI and is not temporally limited. Guthrie also objects to this Request to the extent it presumes Guthrie's right to use the "Contested Mark" or the reviving of the NEW ART EXAMINER is connected to AMI. Guthrie also objects to this Request because it seeks documents not relevant to the issues in this cancellation proceeding. Guthrie also objects to this Request as seeking documents protected from disclosure by the attorney-client privilege or attorney work-product doctrine. Guthrie also objects to this Request as duplicative of Requests Nos. 9 and 14.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 3 that relate or refer to (i) AMI's use of or rights to the NEW ART EXAMINER mark or (ii) AMI's role in Guthrie's reviving of the NEW ART EXAMINER.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as vague and ambiguous insofar as it refers to documents “which show meeting minutes” and “any entity or organization involved with the Contested Mark.” Guthrie also objects to this Request as overly broad and unduly burdensome to the extent it may be asking for “all” such documents and that it seeks documents not relevant to the issues in this cancellation proceeding. Guthrie also objects to this Request as seeking documents already within AMI’s possession or control.

Subject to, and without waiver of Guthrie’s objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 4 that relate to Guthrie’s NEW ART EXAMINER organization.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as seeking documents protected from disclosure by the attorney-client privilege or attorney work-product doctrine.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 5.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overly broad and unduly burdensome to the extent it is not temporally limited. Guthrie also objects to this Request as seeking information not relevant to this proceeding insofar as it seeks information pertaining to any future advertising, marketing or promotion. Guthrie also objects to this Request to the extent it seeks information already within AMI's possession.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 6.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overly broad and unduly burdensome to the extent it is not temporally limited. Guthrie also

objects to this Request as seeking commercially sensitive information without a suitable protective order.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie states that he is not aware of any such documents.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overly broad and unduly burdensome to the extent it is not temporally limited. Guthrie also objects to this Request to the extent it seeks information already within AMI's possession.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 8.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as vague and ambiguous insofar as it refers to documents "which relate or refer the use by or association with AMI of the Registered Mark." Guthrie also objects to this Request as overly broad and unduly burdensome to the extent it is not temporally limited. Guthrie also objects to

this Request to the extent it seeks information already within AMI's possession. Guthrie also objects to this Request as duplicative of Requests Nos. 3 and 14.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 9.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overly broad and unduly burdensome to the extent it is not temporally limited. Guthrie also objects to this Request as seeking documents protected from disclosure by the attorney-client privilege or attorney work-product doctrine.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 10.

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.

**RESPONSE:**

Subject to, and without waiver of Guthrie's objections, Guthrie states that he is not aware of any such documents.



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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overly broad and unduly burdensome to the extent it is not temporally limited. Guthrie also objects to this Request as seeking documents protected from disclosure by the attorney-client privilege or attorney work-product doctrine. Guthrie also objects to this Request as seeking documents that are obtainable from another source, including the publically available USPTO database.

Subject to, and without waiver of Guthrie's objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 12.

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

**RESPONSE:**

Subject to, and without waiver of Guthrie's objections, Guthrie states that he is not aware of any such documents.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overbroad and unduly burdensome to the extent it may be asking for “all” documents generally relating to AMI and is not temporally limited. Guthrie also objects to this Request because it seeks documents not relevant to the issues in this cancellation proceeding. Guthrie also objects to this Request as seeking documents protected from disclosure by the attorney-client privilege or attorney work-product doctrine. Guthrie also objects to this Request as duplicative of Request Nos. 3 and 9.

Subject to, and without waiver of Guthrie’s objections and to the extent they exist, Guthrie is producing those responsive, relevant, non-privileged documents in response to Request No. 14 that relate or refer to (i) AMI’s use of or rights to the NEW ART EXAMINER mark or (ii) AMI’s role in Guthrie’s reviving of the NEW ART EXAMINER.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request to the extent it presumes that Guthrie was ever a member or otherwise a part of AMI.

Subject to, and without waiver of Guthrie’s objections, Guthrie states that he is not aware of any such documents.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as overbroad, unduly burdensome, vague and ambiguous to the extent it calls for “all financial records.” Guthrie also objects to AMI’s use of “Contested Mark.”

Subject to the entry of a suitable protective order, and without waiver of Guthrie’s objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 16.

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.”

**RESPONSE:**

Subject to, and without waiver of Guthrie’s objections and to the extent they exist, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 17.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Request as seeking documents protected from disclosure by the attorney-client privilege or attorney work-product doctrine.

Subject to, and without waiver of Guthrie's objections and to the extent they exist,  
Guthrie will produce responsive, relevant, non-privileged documents in response to Request No.  
18.

Dated: June 29, 2020

LOEB & LOEB LLP

By: /s/ Douglas N. Masters  
Douglas N. Masters  
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*Attorneys for Petitioner  
Derek Guthrie*

**CERTIFICATE OF SERVICE**

I, Sarah Levitan Perry, hereby certify that a copy of the foregoing **PETITIONER’S  
RESPONSES TO ART MESSAGE INTERNATIONAL’S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS** was 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)

this 29th day of June, 2020, via email.

/s/ Sarah Levitan Perry

# EXHIBIT 4

**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 and	)	
New Art Association d/b/a	)	
New Art Examiner	)	
	)	
Registrant.	)	

**PETITIONER’S RESPONSES TO ART MESSAGE INTERNATIONAL’S FIRST SET  
OF INTERROGATORIES**

In accordance with Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Petitioner Derek Guthrie (“Guthrie”), hereby responds and objects to Registrant Art Message International’s (“AMI”) First Set of Interrogatories (collectively, the “Interrogatories,” and each an Interrogatory), as follows:

**GENERAL OBJECTIONS**

The following General Objections apply to and are incorporated into each individual response herein, whether or not expressly incorporated by reference or repeated in such response.

1. Guthrie objects to each Interrogatory to the extent that it seeks information beyond the scope permitted by the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board (“TTAB”) Rules or applicable case law, or request information that Guthrie has already provided in his Rule 2.120 Initial Disclosures.

2. Guthrie objects to the definition of “Guthrie,” “Petitioner,” “You” and “Your” in Paragraph A of the “Definitions and Instructions” as overbroad, unduly burdensome, unreasonable

and oppressive with respect to its inclusion of “entity through which [Guthrie] 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.” These Responses are provided solely on behalf of Guthrie as an individual.

3. Guthrie objects to the definition of “Contested Mark” to refer to Guthrie’s rights in the NEW ART EXAMINER because AMI’s use and registration of the NEW ART EXAMINER mark is what is contested in this cancellation proceeding. Notwithstanding, Guthrie will use AMI’s defined term herein.

4. Guthrie objects to each Interrogatory to the extent that it is not a more practical method of obtaining the information sought than a request for production or deposition.

5. Guthrie objects to each Interrogatory as duplicative, to the extent that Registrant has sought the same information through requests for production.

6. Guthrie objects to the Interrogatories to the extent that they seek information that is not relevant or material to the claims or defenses in this proceeding and is not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

7. Guthrie objects to the Interrogatories to the extent that they do not contain a reasonable time frame and/or are unlimited as to time.

8. Guthrie objects to each Interrogatory to the extent that it calls for the disclosure of information that was prepared in anticipation of litigation, constitutes trial preparation materials, attorney work product, discloses the mental impressions, conclusions, opinions or legal theories of any attorneys or other representatives of Guthrie, contains privileged attorney-client communications, or is otherwise protected from disclosure under applicable privileges, laws or rules. Guthrie hereby claims such privileges and protections to the extent implicated by each



Interrogatory and excludes privileged and protected information from its responses to the Interrogatories. Any disclosure of such information is inadvertent and is not intended to waive those privileges or protections.

9. Guthrie objects to each Interrogatory to the extent that it assumes facts that are in dispute and/or legal conclusions in describing the information requested.

10. Guthrie's failure to object to an Interrogatory on a particular ground shall not be construed as a waiver of his rights to object on that ground, or any additional ground, at any time.

11. Guthrie's responses to the Interrogatories set forth herein shall not constitute a waiver of Guthrie's objections to any other discovery requests served in this action.

12. Guthrie's responses to the Interrogatories are made expressly without waiving or intending to waive, but rather preserving and intending to preserve, all objections as to the relevance, competence, materiality or admissibility of the documents or information provided.

13. Guthrie reserves the right to supplement, modify or withdraw his responses to any of the Interrogatories at any time on the basis of information or documents he later discovers or otherwise.

### **RESPONSES TO 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.

#### **RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably

calculated to lead to the discovery of admissible evidence. Guthrie also objects to this Interrogatory as overbroad and unduly burdensome. The only issues in this proceeding are the ownership of and priority of use in the NEW ART EXAMINER mark. Guthrie's association with any entities, without respect to whether they relate in any way to the NEW ART EXAMINER mark has no bearing on these issues.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as its use of the term "manner." Guthrie also objects to this Interrogatory as seeking information protected from disclosure by the attorney-client privilege or attorney work-product doctrine.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that from October 1973-June 2002 he used the NEW ART EXAMINER mark for an art and cultural criticism magazine in the United States. Starting in or around 2009, Guthrie began preparations to again use the NEW ART EXAMINER mark for an art and cultural criticism magazine in the United Kingdom and the United States and did so beginning on or around June 1, 2015. Upon learning of AMI's registration of the NEW ART EXAMINER mark in 2017, Guthrie ceased using the NEW ART EXAMINER mark in the United States but continued to publish under the NEW ART EXAMINER mark in the United Kingdom. Guthrie intends to use the mark in the United States again for an art and cultural criticism magazine should this proceeding result in the cancellation of AMI's Registered Mark.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as its use of the term "manner." Guthrie further objects to Interrogatory No. 3 as duplicative of Interrogatory No. 2. See response to Interrogatory No. 2.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as it pertains to "AMI's use of the trademark."

Subject to, and without waiver of Guthrie's objections, Guthrie responds that individuals associated with AMI assisted Guthrie with his relaunching of the NEW ART EXAMINER publication in 2015. While assisting Guthrie, and without his knowledge or consent, those individuals filed a trademark application with the USPTO and submitted the logo designed by Guthrie as their specimen. Guthrie did not learn of AMI's registration until engaging lawyers to assist him with his dispute with AMI over the direction of and control over the NEW ART EXAMINER publication.



AMI did not use the NEW ART EXAMINER mark independently of Guthrie until mid-2017, and when it did so, used the mark without Guthrie's consent.

Guthrie is the person most knowledgeable on this topic.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as its use of the phrase "any uses in commerce."

Subject to, and without waiver of Guthrie's objections, Guthrie responds that before filing application No. 87/630,594, he was aware of his prior use of the NEW ART EXAMINER mark from 1973-2002. Guthrie was also aware of his use of NEW ART EXAMINER mark with AMI's participation in his use from 2015 through mid-2017. Guthrie was also aware of AMI's unauthorized use of the mark after he ceased working with AMI, without Guthrie's permission.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. Guthrie also objects to this Interrogatory on the grounds that there is a more practical method of obtaining the information sought such as through a document request or deposition.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that Daniel Nanavati and Pendery Weekes are aware of at least one instance of confusion involving the Rhona Hoffman Gallery in Chicago. In January 2018, Rhona Hoffman Gallery ordered advertising in the March 2018 issue of Guthrie's NEW ART EXAMINER, published in the United Kingdom. After providing Guthrie's publication with the advertisement for inclusion in his NEW ART EXAMINER, and after Guthrie's publication issued an invoice for the advertising, the Gallery withdrew its advertisement, indicating that it had intended to advertise with the NEW ART EXAMINER published in Chicago. Even though Guthrie's publication confirmed it published its NEW ART EXAMINER in Chicago, the Gallery refused to pay for the advertising.

Daniel Nanavati is also aware of an instance in which AMI's NEW ART EXAMINER was tagged in a Facebook post authored by Darren Jones and published in Guthrie's NEW ART EXAMINER.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome and is not temporally limited.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that the publication bearing the NEW ART EXAMINER mark was distributed in the Midwest and predominantly in Chicago, though it was also marketed in Washington, D.C. The publication was marketed through word of mouth, art-related conferences and conventions, academic lectures and public speaking engagements, as well as online and through social media. Guthrie also participated in radio interviews. The publication was also promoted for purchase in Chicago at the Chicago Hilton, Asmus Contemporary, Corbett vs. Dempsey, Firecat Project, Printworks, 57th Street, Martha Mae Art FootSteps, and with Kavi Gupta and Linda Warren.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome and is not temporally limited. Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that no advertising was purchased for the publication bearing the NEW ART EXAMINER mark.



However, Guthrie covered the costs of all marketing efforts for the publication, including travel and entertaining expenses, as well as the costs of creating and printing the publication itself (see response to Interrogatory No. 20).

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome and is not temporally limited. Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that he cannot provide a breakdown of sales as requested. Guthrie first offered goods bearing the NEW ART EXAMINER mark for sale in 1973. However, with respect to the more recent iteration of Guthrie's NEW ART EXAMINER, issues of the publication were offered for sale for \$6.00 at the locations identified in response to Interrogatory No. 7. Each of those locations would receive roughly five copies of each issue of the publication and retain \$1.00 for each copy sold. In mid-2017, the bank account associated with the publication and located in the United States contained roughly \$1,000 which was attributable to advertising, sales and a few small donations.

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

**RESPONSE:**

Subject to, and without waiver of Guthrie's objections, Guthrie responds that the persons most knowledgeable concerning his use of the NEW ART EXAMINER mark include Guthrie, Daniel Nanavati, Allan Jirikowic and Annie Markovich.

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

**RESPONSE:**

Subject to, and without waiver of Guthrie's objections, Guthrie responds that the persons most knowledgeable concerning his future plans to use the NEW ART EXAMINER mark include Guthrie, Daniel Nanavati, Allan Jirikowic and Annie Markovich.

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

**RESPONSE:**

Subject to, and without waiver of Guthrie's objections, Guthrie responds that the persons most knowledgeable concerning the facts which support his allegations in the Petition include Guthrie, Daniel Nanavati, Allan Jirikowic and Annie Markovich.

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



**RESPONSE:**

Subject to, and without waiver of Guthrie's objections, Guthrie responds that as an individual with a personal email account, he has no policies with respect to retention, storage and destruction of documents, though he has refrained from any destruction of documents since the conversations about commencing this Cancellation proceeding began.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The only issues in this proceeding are the ownership of and priority of use in the NEW ART EXAMINER mark as of 2015. During the relevant time period, Guthrie was not associated with 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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Guthrie also objects to this Interrogatory as overbroad and unduly burdensome.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that in 2009 he embarked on a small lecture tour, during which calls began for the renewed publication of the periodical bearing the NEW ART EXAMINER mark. During this lecture tour, Guthrie was introduced to Laura Frazier, a teacher and artist who indicated she wanted to assist Guthrie in bringing the publication back. The Zhou brothers, artists in Chicago, also joined the effort to republish the NEW ART EXAMINER. Only one issue was published by this group, bearing the name the NEW ART EXAMINER Now in 2014 before a dispute arose between the parties. No further publications were made.

Sometime during this period, Guthrie, with the assistance of Annie Markovitz and Tom Mullaney, spoke with De Paul University about reviving the NEW ART EXAMINER as well. These discussions occurred over the course of eighteen months but were ultimately abandoned after faculty at the University wanted to peer review all articles that would be included in the publication.

Sometime around 2014, Guthrie met Daniel Nanavati in England. Nanavati began to assist Guthrie in a separate publication effort, based in the U.K. with distribution in the United States. Nanavati assisted with the design of the publication as well as the arrangements for the publishing of the magazine in print and digitally while Guthrie focused his efforts on sourcing content. Tom Mullaney assisted in Guthrie and Nanavati's efforts from Chicago.

In addition, Guthrie identifies the following individuals and entities as those with knowledge of Guthrie's plans to revive the NEW ART EXAMINER publication:

- Derek Guthrie
- Daniel Nanavati
- Allan Jirikowic

- Annie Markovich
- Diane Thodos
- Laura Frazier
- ShanZuo Zhou
- DaHuang Zhou
- DePaul University
- Tom Mullaney
- Tom Feldhacker
- Michael Ramstedt
- Michel Segard

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory as vague and ambiguous insofar as its use of “in which and how You published.”

Subject to, and without waiver of Guthrie’s objections, Guthrie responds that in or around 2013, Guthrie began work on the first new issue of the NEW ART EXAMINER. Guthrie was assisted in this endeavor by Daniel Nanavati, an owner of FootSteps Press, a digital publishing company in the United Kingdom. Nanavati assisted Guthrie in updating the design of the publication and arranging for the publishing of the magazine in print and digitally before stepping into an editor role. Tom Mullaney assisted in their effort from Chicago.



Guthrie remained in control of the magazine's contents, its tone and circulation, and coordinated with potential contributors to the publication. In or around June 2015, Guthrie's first new issue of the magazine was released featuring the logo that Guthrie had designed for the previous run of the publication. The issue was published digitally in the United Kingdom and was printed in the United Kingdom for distribution in the United Kingdom and the United States.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of Guthrie's objections, Guthrie identifies the following speaking engagements and participation in NEW ART EXAMINER related events:

- A Fall 2008 lecture on NEW ART EXAMINER at Chicago Cultural Center entitled "Defilement: A Story of the Art World"
- A 2008 lecture about art criticism and NEW ART EXAMINER at Western Carolina State University
- A 2008 lecture about art criticism and NEW ART EXAMINER at Tennessee State University
- In 2009 Guthrie's artwork was exhibited at the Finlandia University Art Gallery in Michigan
- A September 14, 2009 lecture at Michigan Technological University

- Participation in 2011 publication of *The Essential New Art Examiner*
- Participation in 2012 *Re-Examining the New Art Examiner Symposium* at Northern Illinois University
- Speaker at Evanston Art Center in “On Chicago Art Criticism: A Panel Discussion” on April 15, 2012
- Presenter at *Wide Eyed Reading* after-party event to the College Art Association Annual Conference in Chicago on February 14, 2014
- Speaker at Hull House, Chicago on the History of the NEW ART EXAMINER on February 20, 2014
- Speaker at Penwith Gallery on April 8, 2016
- Speaker at the American University Museum on “The Myth of the New Art Examiner” in fall 2016
- Speaker at DC Arts Center on the History of the NEW ART EXAMINER on September 25, 2019

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that there is a more practical method of obtaining the information sought such as through a document request or deposition. Guthrie also objects to this Interrogatory as duplicative of Interrogatory No. 4. See response to Interrogatory No. 4.

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.

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The only issues in this proceeding are the ownership of and priority of use in the NEW ART EXAMINER mark. Guthrie's income has no bearing on these issues.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory to the extent that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to, and without waiver of Guthrie's objections, Guthrie states that he covered all costs related to the NEW ART EXAMINER publication, to which AMI was connected, until mid-2017, with the exception of the revenues received through advertisements in the publication. Guthrie believes the total funds contributed are in excess of £30,000.

These funds have been spent on efforts to print the publication and distribute them in Chicago, including costs associated with travel for those contributing to the publication and entertaining those that were pursued for contributions to the publication.

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



**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it presumes an affiliation by Guthrie with AMI, which is contested. Guthrie also objects to this Interrogatory as seeking information that is already within AMI's possession.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that he initially became aware of AMI in or around 2015. At the time, it was a 501(c)(3) organization formed by a relative of Diane Thodos, Guthrie's acquaintance. AMI was provided to Guthrie as a vehicle through which to publish his NEW ART EXAMINER, which he controlled from the United Kingdom, in the United States. Guthrie held no position or title at AMI and the organization was intended to assist him in his publication efforts.

Guthrie has since been made aware that he was identified as AMI's President in filings related to the organization, but Guthrie never accepted or consented to this title.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it presumes an affiliation by Guthrie with AMI, which is contested. Guthrie also objects to this Interrogatory as seeking information that is already within AMI's possession.

Subject to, and without waiver of Guthrie's objections, Guthrie responds that he was never associated with AMI. However, Guthrie stopped working with the individuals who are now

associated with AMI, Michel Segard, Michael Ranstedt, Tom Feldhacker and Tom Mullaney in or around March 2017, after they challenged Guthrie's control of the publication and refused to publish the NEW ART EXAMINER according to Guthrie's direction.

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

**RESPONSE:**

In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory as premature as Guthrie has not yet determined all experts it will rely upon for purposes of this Proceeding. Subject to, and without waiver of Guthrie's objections, Guthrie may rely upon the expert opinion of Vincent Carducci, Dean of Undergraduate Studies at the College for Creative Studies. Should Guthrie decide to rely upon any additional experts, Guthrie will supplement this response.

Dated: Chicago, Illinois  
June 29, 2020

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),  
[eonell@loeb.com](mailto:eonell@loeb.com)

Sarah Levitan Perry  
345 Park Avenue  
New York, NY 10154  
Telephone: 212-407-4191  
Email: [sperry@loeb.com](mailto:sperry@loeb.com)

*Attorneys for Petitioner  
Derek Guthrie*



### **VERIFICATION**

I, Derek Guthrie, declare as follows:

I am the Petitioner in this action. I have read the foregoing PETITIONER'S RESPONSES TO ART MESSAGE INTERNATIONAL'S FIRST SET OF INTERROGATORIES and know the contents thereof and the same are true to the best of my knowledge or upon my information and belief.

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

Executed on this 27th day of June, 2020 in Cornwall, United Kingdom.



---

Derek Guthrie

**CERTIFICATE OF SERVICE**

I, Sarah Levitan Perry, hereby certify that a copy of the foregoing **PETITIONER'S  
RESPONSES TO ART MESSAGE INTERNATIONAL'S FIRST SET OF  
INTERROGATORIES** was 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)

this 29th day of June, 2020, via email.

/s/ Sarah Levitan Perry

# EXHIBIT 5

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

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

**RESPONDENTS' FIRST SET OF REQUESTS FOR ADMISSIONS  
TO PETITIONER DEREK GUTHRIE**

Under Fed. R. Civ. P. 36 and 37 C.F.R. § 2.120, Respondents Art Message International and New Art Association (“Respondent” or “Registrant”) request that Petitioner Derek Guthrie (“Guthrie”), within thirty (30) days after the service of these requests, admit the following:

**Requests<sup>1</sup>**

1. Admit that, for purposes of this proceeding, Petitioner is not claiming trademark rights in the NEW ART EXAMINER prior to June 1, 2015.
2. Admit that Petitioner personally did not publish nor distribute any “[p]rinted periodicals of art and cultural criticism” under the NEW ART EXAMINER mark between 2003 and May 31, 2015.
3. Admit to the authenticity of the documents in the filing history for the New Art Gazette CIC, Company number 09973640, on the Companies House website, which are attached in a compilation as **Exhibit A.**<sup>2</sup>

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<sup>1</sup> The Instructions and Definitions set forth in Respondents’ previous discovery requests are incorporated by reference.

<sup>2</sup> For ease of reference, see <https://beta.companieshouse.gov.uk/company/09973640/filing-history> (last accessed July 29, 2020).

4. Admit that since at least as early as January 27, 2016, the New Art Gazette CIC has published printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark.

5. Admit that Petitioner, in his capacity as an individual, has not made any sales of printed periodicals of art and cultural criticism offered under the NEW ART EXAMINER mark, between June 1, 2015 and August 31, 2015.

6. Admit that Petitioner, in his capacity as an individual, has no documentary evidence showing that any publications of the NEW ART EXAMINER were, in fact, distributed in the United States, between June 1, 2015 and August 31, 2015.

7. Admit that since June 1, 2015, Vincent Carducci has not had any involvement with Petitioner in regard to Petitioner's use of the NEW ART EXAMINER mark, for printed periodicals of art and cultural criticism.

8. Admit that the document attached as **Exhibit B** is a true and correct copy of the NEW ART EXAMINER publication, Vol. 30 No. 3, January/February 2016.

9. Admit that Petitioner authored the writing titled "Postscript Editorial Comment" located on page 5 of **Exhibit B**.

10. Admit that in Petitioner's writing titled "Postscript Editorial Comment", the first sentence, particularly, "Tom Mullaney's elegant and restrained report ...", refers to the writing titled, "Editorial Comment", by Tom Mullaney, as found on page 4 of **Exhibit B**.

11. Admit that before authoring the writing titled "Postscript Editorial Comment," Petitioner reviewed the writing titled "Editorial Comment", by Tom Mullaney, as found on page 4 of **Exhibit B**.

12. Admit that Petitioner, in his capacity as an individual, is not a not-for-profit organization.

13. Admit that the [specimen](#) submitted with Petitioner's October 2, 2017 trademark application, [U.S. Ser. No. 87630594](#), provides therein that "The New Art Examiner is a not-for-profit organization."

14. Admit that all of the printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark issued between the dates of June 1, 2015, and the date of publication for Vol 31 No. 4, March/April 2017, stated that the NEW ART EXAMINER was a "not-for-profit organization."

15. Admit that since June 1, 2015, every printed periodical of art and cultural criticism under the NEW ART EXAMINER mark, for which Petitioner has served as Publisher, has stated that "The New Art Examiner is a not-for-profit organization."

16. Admit that in 2015 Petitioner received emails from Charles Mandly about the NEW ART EXAMINER trademark.

17. Admit that the newartexaminer.net website between June 1, 2015, and November 15, 2015, did not offer for sale printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark.

18. Admit that between June 1, 2015, and November 15, 2015, the newartexaminer.net website did not make periodicals of art and cultural criticism under the NEW ART EXAMINER mark, available for download as PDFs from the website.

19. Admit that Petitioner has no documentary evidence supporting the following statement made, in part, in response to Interrogatory 21 in Petitioner's Responses to Art Message International's First Set of Interrogatories, served on June 29, 2020: "At the time, it was a 501(c)(3) organization formed by a relative of Diane Thodos, Guthrie's acquaintance. AMI was provided to

Guthrie as a vehicle through which to publish his NEW ART EXAMINER, which he controlled from the United Kingdom, in the United States.”

20. Admit that Petitioner has no documentary evidence from 2015 through 2016 that show Petitioner asserting to either Respondent that Petitioner owned the NEW ART EXAMINER mark for printed periodicals of art and cultural criticism.

Dated: July 29, 2020

PARTRIDGE PARTNERS, P.C.

By: /s/Mark V.B. Partridge  
Mark V.B. Partridge  
Charles G. Giger  
321 N. Clark St., Suite 500  
Chicago, IL 60654  
312-634-9501  
[mark@partridgepartnerspc.com](mailto:mark@partridgepartnerspc.com)  
[charlie@partridgepartnerspc.com](mailto:charlie@partridgepartnerspc.com)

*Attorneys for Respondents  
Art Message International and  
New Art Association*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on July 29, 2020, a copy of the foregoing Respondents' First Set of Requests for Admissions to Petitioner Derek Guthrie 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  
[tmlit@loeb.com](mailto:tmlit@loeb.com), [dmasters@loeb.com](mailto:dmasters@loeb.com),  
[ecneill@loeb.com](mailto:ecneill@loeb.com), [sperry@loeb.com](mailto:sperry@loeb.com)

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



# EXHIBIT A



**FILE COPY**

**CERTIFICATE OF INCORPORATION  
OF A  
COMMUNITY INTEREST COMPANY**

Company Number **9973640**

The Registrar of Companies for England and Wales, hereby certifies that:

**THE NEW ART EXAMINER CIC**

is this day incorporated under the Companies Act 2006 as a Community Interest Company; is a private company, that the company is limited by guarantee; and the situation of the registered office is in England and Wales



**\*N09973640P\***

Given at Companies House on **27th January 2016**.



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

IN01

Application to register a company



Companies House

A fee is payable with this form  
Please see 'How to pay' on the last page

☒ **What this form is for**  
You may use this form to register a  
private or public company

☐ **What this form is for**  
You can use this form to register a  
limited liability partnership, please see the guidance booklet GP1 at  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

TUESDAY



A16

\*A4YXH4WH\*

19/01/2016

#427

COMPANIES HOUSE

For more information, please  
go to our website at  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

Part 1

Company details

A1

Company name

To check if a company name is available use our WebCheck service and select  
the 'Company Name Availability Search' option

[www.companieshouse.gov.uk/info](http://www.companieshouse.gov.uk/info)

Please show the proposed company name below

Proposed company  
name in full ①

The New Art Examiner CIC

For official use

9973640

→ Filling in this form

Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

① Duplicate names

Duplicate names are not permitted  
A list of registered names can  
be found on our website. There  
are various rules that may affect  
your choice of name. More  
information on this is available in  
our guidance booklet GP1 at  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

A2

Company name restrictions ②

Please tick the box only if the proposed company name contains sensitive  
or restricted words or expressions that require you to seek comments of a  
government department or other specified body

☐ I confirm that the proposed company name contains sensitive or restricted  
words or expressions and that approval, where appropriate, has been  
sought of a government department or other specified body and I attach a  
copy of their response

② Company name restrictions

A list of sensitive or restricted  
words or expressions that require  
consent can be found in our  
guidance booklet GP1 at  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

A3

Exemption from name ending with 'Limited' or 'Cyfyngedig' ③

Please tick the box if you wish to apply for exemption from the requirement to  
have the name ending with 'Limited', 'Cyfyngedig' or permitted alternative

☐ I confirm that the above proposed company meets the conditions for  
exemption from the requirement to have a name ending with 'Limited',  
'Cyfyngedig' or permitted alternative

③ Name ending exemption

Only private companies that are  
limited by guarantee and meet other  
specific requirements or private  
companies that are charities are  
eligible to apply for this. For more  
details, please go to our website  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

A4

Company type ④

Please tick the box that describes the proposed company type and members'  
liability (only one box must be ticked)

- ☐ Public limited by shares  
☐ Private limited by shares  
☒ Private limited by guarantee  
☐ Private unlimited with share capital  
☐ Private unlimited without share capital

④ Company type

If you are unsure of your company's  
type, please go to our website  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

# IN01

## Application to register a company

**A5****Situation of registered office ①**

Please tick the appropriate box below that describes the situation of the proposed registered office (only one box must be ticked)

- ☒ England and Wales  
☐ Wales  
☐ Scotland  
☐ Northern Ireland

**① Registered office**

Every company must have a registered office and this is the address to which the Registrar will send correspondence

For England and Wales companies, the address must be in England or Wales

For Welsh, Scottish or Northern Ireland companies, the address must be in Wales, Scotland or Northern Ireland respectively

**A6****Registered office address ①**

Please give the registered office address of your company

Building name/number Rosehill Cottage

Street Rosehill

Altarnun

Post town Launceston

County/Region Cornwall

Postcode P L 1 5 7 R L

**① Registered office address**

You must ensure that the address shown in this section is consistent with the situation indicated in section A5

You must provide an address in England or Wales for companies to be registered in England and Wales

You must provide an address in Wales, Scotland or Northern Ireland for companies to be registered in Wales, Scotland or Northern Ireland respectively

**A7****Articles of association ①**

Please choose one option only and tick one box only

Option 1

I wish to adopt one of the following model articles in its entirety Please tick only one box

- ☐ Private limited by shares  
☐ Private limited by guarantee  
☐ Public company

Option 2

I wish to adopt the following model articles with additional and/or amended provisions I attach a copy of the additional and/or amended provision(s) Please tick only one box

- ☐ Private limited by shares  
☐ Private limited by guarantee  
☐ Public company

Option 3

☒ I wish to adopt entirely bespoke articles I attach a copy of the bespoke articles to this application

① For details of which company type can adopt which model articles, please go to our website [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

**A8****Restricted company articles ①**

Please tick the box below if the company's articles are restricted

☐**① Restricted company articles**

Restricted company articles are those containing provision for entrenchment For more details, please go to our website [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

IN01

Application to register a company

**Part 2****Proposed officers**

For private companies the appointment of a secretary is optional, however, if you do decide to appoint a company secretary you must provide the relevant details. Public companies are required to appoint at least one secretary.

Private companies must appoint at least one director who is an individual. Public companies must appoint at least two directors, one of which must be an individual.

For a secretary who is an individual, go to Section B1, For a corporate secretary, go to Section C1, For a director who is an individual, go to Section D1, For a corporate director, go to Section E1.

**Secretary****B1****Secretary appointments ①**

Please use this section to list all the secretary appointments taken on formation.  
For a corporate secretary, complete Sections C1-C4.

Title*	Editor
Full forename(s)	Daniel
Surname	Nanavati
Former name(s) ②	

**① Corporate appointments**

For corporate secretary appointments, please complete section C1-C4 instead of section B.

**Additional appointments**

If you wish to appoint more than one secretary, please use the 'Secretary appointments' continuation page.

**② Former name(s)**

Please provide any previous names (including maiden or married names) which have been used for business purposes in the last 20 years.

**B2****Secretary's service address ①**

Building name/number	Rosehill Cottage
Street	Rosehill
	Altarnun
Post town	Launceston
County/Region	Cornwall
Postcode	P L 1 5 7 R L
Country	UK

**① Service address**

This is the address that will appear on the public record. This does not have to be your usual residential address.

Please state 'The Company's Registered Office' if your service address will be recorded in the proposed company's register of secretaries as the company's registered office.

If you provide your residential address here it will appear on the public record.

# IN01

## Application to register a company

### Corporate secretary

<b>C1</b>	<b>Corporate secretary appointments ①</b>	
	Please use this section to list all the corporate secretary appointments taken on formation	
Name of corporate body/firm		<b>① Additional appointments</b> If you wish to appoint more than one corporate secretary, please use the 'Corporate secretary appointments' continuation page  <b>Registered or principal address</b> This is the address that will appear on the public record. This address must be a physical location for the delivery of documents. It cannot be a PO box number (unless contained within a full address), DX number or LP (Legal Post in Scotland) number
Building name/number		
Street		
Post town		
County/Region		
Postcode	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
Country		
<b>C2</b>	<b>Location of the registry of the corporate body or firm</b>	
	Is the corporate secretary registered within the European Economic Area (EEA)? → Yes Complete <b>Section C3 only</b> → No Complete <b>Section C4 only</b>	
<b>C3</b>	<b>EEA companies ②</b>	
	Please give details of the register where the company file is kept (including the relevant state) and the registration number in that register	
Where the company/firm is registered ③	Rosehill, Rosehill Altarnun Launceston, Cornwall PL157RL	<b>② EEA</b> A full list of countries of the EEA can be found in our guidance <a href="http://www.gov.uk/companieshouse">www.gov.uk/companieshouse</a>  <b>③</b> This is the register mentioned in Article 3 of the First Company Law Directive (68/151/EEC)
Registration number		
<b>C4</b>	<b>Non-EEA companies</b>	
	Please give details of the legal form of the corporate body or firm and the law by which it is governed. If applicable, please also give details of the register in which it is entered (including the state) and its registration number in that register	
Legal form of the corporate body or firm		<b>④ Non-EEA</b> Where you have provided details of the register (including state) where the company or firm is registered, you must also provide its number in that register
Governing law		
If applicable, where the company/firm is registered ④		
Registration number		

# IN01

## Application to register a company

### Director

**D1**

#### Director appointments <sup>①</sup>

Please use this section to list all the director appointments taken on formation  
For a corporate director, complete Sections E1-E4

Title*	Publisher
Full forename(s)	Derek
Surname	Guthrie
Former name(s) <sup>②</sup>	
Country/State of residence <sup>③</sup>	UK
Nationality	British
Month/year of birth <sup>④</sup>	X X <sup>m</sup> 0 <sup>m</sup> 8 <sup>y</sup> 1 <sup>y</sup> 9 <sup>y</sup> 3 <sup>y</sup> 6
Business occupation (if any) <sup>⑤</sup>	Publisher/artist

#### ① Appointments

Private companies must appoint at least one director who is an individual. Public companies must appoint at least two directors, one of which must be an individual.

#### ② Former name(s)

Please provide any previous names (including maiden or married names) which have been used for business purposes in the last 20 years.

#### ③ Country/State of residence

This is in respect of your usual residential address as stated in section D4.

#### ④ Month and year of birth

Please provide month and year only.

#### ⑤ Business occupation

If you have a business occupation, please enter here. If you do not, please leave blank.

#### Additional appointments

If you wish to appoint more than one director, please use the 'Director appointments' continuation page.

**D2**

#### Director's service address <sup>①</sup>

Please complete the service address below. You must also fill in the director's usual residential address in Section D4.

Building name/number	Rosehill Cottage
Street	Rosehill
	Altarnun
Post town	Launceston
County/Region	Cornwall
Postcode	P L 1 5 7 R L
Country	UK

#### ① Service address

This is the address that will appear on the public record. This does not have to be your usual residential address.

Please state 'The Company's Registered Office' if your service address will be recorded in the proposed company's register of directors as the company's registered office.

If you provide your residential address here it will appear on the public record.

IN01

Application to register a company

**Director****D1****Director appointments ①**

Please use this section to list all the director appointments taken on formation  
For a corporate director, complete Sections E1-E4

Title*	MR
Full forename(s)	Daniel
Surname	Nanavati
Former name(s) ②	
Country/State of residence ③	UK/CORNWALL
Nationality	BRITISH
Month/year of birth ④	X X m0 m1 y1 y9 y6 y0
Business occupation (if any) ⑤	Publisher/writer

**① Appointments**

Private companies must appoint at least one director who is an individual. Public companies must appoint at least two directors, one of which must be an individual.

**② Former name(s)**

Please provide any previous names (including maiden or married names) which have been used for business purposes in the last 20 years.

**③ Country/State of residence**

This is in respect of your usual residential address as stated in section D4.

**④ Month and year of birth**

Please provide month and year only.

**⑤ Business occupation**

If you have a business occupation, please enter here. If you do not, please leave blank.

**Additional appointments**

If you wish to appoint more than one director please use the 'Director appointments' continuation page.

**D2****Director's service address ⑥**

Please complete the service address below. You must also fill in the director's usual residential address in Section D4.

Building name/number	Rosehill Cottage
Street	Rosehill
Post town	Altarnun
County/Region	Cornwall
Postcode	P L 1 5 7 R L
Country	UK

**⑥ Service address**

This is the address that will appear on the public record. This does not have to be your usual residential address.

Please state 'The Company's Registered Office' if your service address will be recorded in the proposed company's register of directors as the company's registered office.

If you provide your residential address here it will appear on the public record.



# IN01

Application to register a company

## Corporate director

<b>E1</b>	<b>Corporate director appointments <sup>①</sup></b>	<b>① Additional appointments</b> If you wish to appoint more than one corporate director, please use the 'Corporate director appointments' continuation page  <b>Registered or principal address</b> This is the address that will appear on the public record. This address must be a physical location for the delivery of documents. It cannot be a PO box number (unless contained within a full address), DX number or LP (Legal Post in Scotland) number.
	Please use this section to list all the corporate directors taken on formation	
Name of corporate body or firm		
Building name/number		
Street		
Post town		
County/Region		
Postcode		
Country		

<b>E2</b>	<b>Location of the registry of the corporate body or firm</b>
	Is the corporate director registered within the European Economic Area (EEA)? → Yes Complete <b>Section E3 only</b> → No Complete <b>Section E4 only</b>

<b>E3</b>	<b>EEA companies <sup>②</sup></b>	<b>② EEA</b> A full list of countries of the EEA can be found in our guidance <a href="http://www.gov.uk/companieshouse">www.gov.uk/companieshouse</a>  <b>③</b> This is the register mentioned in Article 3 of the First Company Law Directive (68/151/EEC)
	Please give details of the register where the company file is kept (including the relevant state) and the registration number in that register	
Where the company/firm is registered <sup>③</sup>		
Registration number		

<b>E4</b>	<b>Non-EEA companies</b>	<b>④ Non-EEA</b> Where you have provided details of the register (including state) where the company or firm is registered, you must also provide its number in that register.
	Please give details of the legal form of the corporate body or firm and the law by which it is governed. If applicable, please also give details of the register in which it is entered (including the state) and its registration number in that register	
Legal form of the corporate body or firm		
Governing law		
If applicable, where the company/firm is registered <sup>④</sup>		
If applicable, the registration number		

IN01

Application to register a company

**Part 3****Statement of capital**

Does your company have share capital?

→ Yes Complete the sections below

→ No Go to **Part 4 (Statement of guarantee)****F1****Share capital in pound sterling (£)**

Please complete the table below to show each class of shares held in pound sterling

If all your issued capital is in sterling, only complete **Section F1** and then go to **Section F4**

Class of shares (E g Ordinary/Preference etc)	Amount paid up on each share ❶	Amount (if any) unpaid on each share ❶	Number of shares ❷	Aggregate nominal value ❸
				£
				£
				£
				£
<b>Totals</b>				£

**F2****Share capital in other currencies**

Please complete the table below to show any class of shares held in other currencies

Please complete a separate table for each currency

Currency				
Class of shares (E g Ordinary/Preference etc)	Amount paid up on each share ❶	Amount (if any) unpaid on each share ❶	Number of shares ❷	Aggregate nominal value ❸
<b>Totals</b>				

Currency				
Class of shares (E g Ordinary/Preference etc)	Amount paid up on each share ❶	Amount (if any) unpaid on each share ❶	Number of shares ❷	Aggregate nominal value ❸
<b>Totals</b>				

**F3****Totals**

Please give the total number of shares and total aggregate nominal value of issued share capital

Total number of shares

Total aggregate  
nominal value ❸

❸ Total aggregate nominal value  
Please list total aggregate values in  
different currencies separately for  
example £100 + €100 + \$10 etc

❶ Including both the nominal value and any  
share premium❷ Number of shares issued multiplied by  
nominal value of each share

❸ Total number of issued shares in this class

**Continuation Pages**Please use a Statement of Capital continuation  
page if necessary

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Application to register a company

**F4**

**Statement of capital** (Prescribed particulars of rights attached to shares)

Please give the prescribed particulars of rights attached to shares for each class of share shown in the statement of capital share tables in **Sections F1 and F2**

Class of share

Prescribed particulars

1

**1 Prescribed particulars of rights attached to shares**

The particulars are

- a particulars of any voting rights, including rights that arise only in certain circumstances,
- b particulars of any rights, as respects dividends, to participate in a distribution,
- c particulars of any rights, as respects capital, to participate in a distribution (including on winding up), and
- d whether the shares are to be redeemed or are liable to be redeemed at the option of the company or the shareholder

A separate table must be used for each class of share

**Continuation pages**

Please use the next page or a 'Statement of Capital (Prescribed particulars of rights attached to shares)' continuation page if necessary

# IN01

## Application to register a company

Class of share		
Prescribed particulars ❶		<p><b>❶ Prescribed particulars of rights attached to shares</b></p> <p>The particulars are</p> <ul style="list-style-type: none"> <li>a particulars of any voting rights, including rights that arise only in certain circumstances,</li> <li>b particulars of any rights, as respects dividends, to participate in a distribution,</li> <li>c particulars of any rights, as respects capital, to participate in a distribution (including on winding up), and</li> <li>d whether the shares are to be redeemed or are liable to be redeemed at the option of the company or the shareholder and any terms or conditions relating to redemption of these shares</li> </ul> <p>A separate table must be used for each class of share</p> <p><b>Continuation pages</b></p> <p>Please use a 'Statement of capital (Prescribed particulars of rights attached to shares)' continuation page if necessary</p>

# IN01

## Application to register a company

**F5**

### Initial shareholdings

This section should only be completed by companies incorporating with share capital

Please complete the details below for each subscriber

The addresses will appear on the public record. These do not need to be the subscribers' usual residential address

#### Initial shareholdings

Please list the company's subscribers in alphabetical order

Please use an 'Initial shareholdings' continuation page if necessary

Subscriber's details	Class of share	Number of shares	Currency	Nominal value of each share	Amount (if any) unpaid	Amount paid
Name						
Address						
Name						
Address						
Name						
Address						
Name						
Address						
Name						
Address						

IN01

Application to register a company

## Part 4 Statement of guarantee

Is your company limited by guarantee?

→ Yes Complete the sections below

→ No Go to Part 6 (Statement of compliance)

**G1**

### Subscribers

Please complete this section if you are a subscriber of a company limited by guarantee. The following statement is being made by each and every person named below

I confirm that if the company is wound up while I am a member, or within one year after I cease to be a member, I will contribute to the assets of the company by such amount as may be required for

- payment of debts and liabilities of the company contracted before I cease to be a member,
- payment of costs, charges and expenses of winding up, and,
- adjustment of the rights of the contributors among ourselves, not exceeding the specified amount below

#### 1 Name

Please use capital letters

#### 2 Address

The addresses in this section will appear on the public record. They do not have to be the subscribers' usual residential address

#### 3 Amount guaranteed

Any valid currency is permitted

#### Continuation pages

Please use a 'Subscribers' continuation page if necessary

#### Subscriber's details

Forename(s) 1	Derek
Surname 1	Guthrie
Address 2	Bejew Cottage, St Buryan, Penzance
Postcode	T R 1 9 6 E E
Amount guaranteed 3	100

#### Subscriber's details

Forename(s) 1	Daniel
Surname 1	Nanavati
Address 2	Rosehill, Rosehill Altarnun, Launceston, Cornwall
Postcode	P L 1 5 7 R L
Amount guaranteed 3	100

#### Subscriber's details

Forename(s) 1	
Surname 1	
Address 2	
Postcode	
Amount guaranteed 3	

# IN01

## Application to register a company

### Subscriber's details

Forename(s) ❶	
Surname ❶	
Address ❷	
Postcode	
Amount guaranteed ❸	

### Subscriber's details

Forename(s) ❶	
Surname ❶	
Address ❷	
Postcode	
Amount guaranteed ❸	

### Subscriber's details

Forename(s) ❶	
Surname ❶	
Address ❷	
Postcode	
Amount guaranteed ❸	

### Subscriber's details

Forename(s) ❶	
Surname ❶	
Address ❷	
Pos.code	
Amount guaranteed ❸	

### Subscriber's details

Forename(s) ❶	
Surname ❶	
Address ❷	
Postcode	
Amount guaranteed ❸	

#### ❶ Name

Please use capital letters.

#### ❷ Address

The addresses in this section will appear on the public record. They do not have to be the subscribers' usual residential address.

#### ❸ Amount guaranteed

Any valid currency is permitted.

#### Continuation pages

Please use a 'Subscribers' continuation page if necessary.

IN01

Application to register a company

**Part 5****Consent to act****H1****Consent statement**

Please tick the box to confirm consent

- ☒ The subscribers confirm that each of the persons named as a director or secretary has consented to act in that capacity

**Part 6****Statement of compliance**

This section must be completed by all companies

Is the application by an agent on behalf of all the subscribers?

- No Go to Section I1 (Statement of compliance delivered by the subscribers)
- Yes Go to Section I2 (Statement of compliance delivered by an agent)


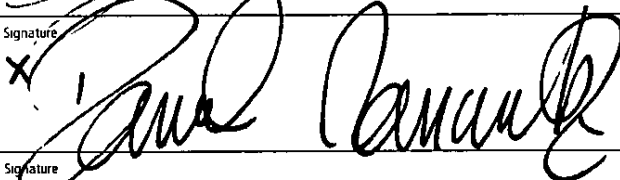
**H1****Statement of compliance delivered by the subscribers <sup>1</sup>**

Please complete this section if the application is not delivered by an agent for the subscribers of the memorandum of association

I confirm that the requirements of the Companies Act 2006 as to registration have been complied with

**1 Statement of compliance delivered by the subscribers**  
Every subscriber to the memorandum of association must sign the statement of compliance

**Continuation pages**  
Please use a 'Statement of compliance delivered by the subscribers' continuation page if more subscribers need to sign

Subscriber's signature	Signature X 	X
Subscriber's signature	Signature X 	X
Subscriber's signature	Signature X	X
Subscriber's signature	Signature X	X
Subscriber's signature	Signature X	X
Subscriber's signature	Signature X	X



IN01

Application to register a company

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**Statement of compliance delivered by an agent**

Please complete this section if this application is delivered by an agent for the subscribers to the memorandum of association

Agent's name

Building name/number

Street

Post town

County/Region

Postcode

Country

I confirm that the requirements of the Companies Act 2006 as to registration have been complied with

Agent's signature

Signature

X

X

# IN01

## Application to register a company



### Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name	Daniel Nanavati
Company name	New Art Examiner CIC
Address	Rosehill
Post town	Altarnun
County/Region	Cornwall
Postcode	P L 1 5 7 R L
Country	UK
DX	
Telephone	01566 86143



### Certificate

We will send your certificate to the presenter's address (shown above) or if indicated to another address shown below.

- ☐ At the registered office address (Given in Section A6)  
☐ At the agent's address (Given in Section I2)



### Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ You have checked that the proposed company name is available as well as the various rules that may affect your choice of name. More information can be found in guidance on our website.
- ☐ If the name of the company is the same as one already on the register as permitted by The Company LLP and Business (Names and Trading Disclosures) Regulations 2015, please attach consent.
- ☐ You have used the correct appointment sections.
- ☐ Any addresses given must be a physical location. They cannot be a PO Box number (unless part of a full service address), DX or LP (Legal Post in Scotland) number.
- ☐ The document has been signed, where indicated.
- ☐ All relevant attachments have been included.
- ☐ You have enclosed the Memorandum of Association.
- ☐ You have enclosed the correct fee.



### Important information

Please note that all information on this form will appear on the public record, apart from information relating to usual residential addresses and day of birth.



### How to pay

A fee is payable on this form.

Make cheques or postal orders payable to 'Companies House'. For information on fees, go to [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse).



### Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below.

**For companies registered in England and Wales**

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**

The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**

The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 NR Belfast 1

**Section 243 exemption**

If you are applying for, or have been granted a section 243 exemption, please post this whole form to the different postal address below.

The Registrar of Companies, PO Box 4082,  
Cardiff, CF14 3WE



### Further information

For further information, please see the guidance notes on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk).

This form is available in an alternative format. Please visit the forms page on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse).

The Companies Act 2006

Community Interest Company Limited by Guarantee<sup>1</sup>

---

**Memorandum of Association**

**of**

**NEW ART EXAMINER CiC**

---

**The Companies Act 2006**  
**Community Interest Company Limited by Guarantee**  
**Memorandum of Association "**  
**of**  
**NEW ART EXAMINER CiC**

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a member of the Company

---

*Name of each subscriber"*  
*subscriber*

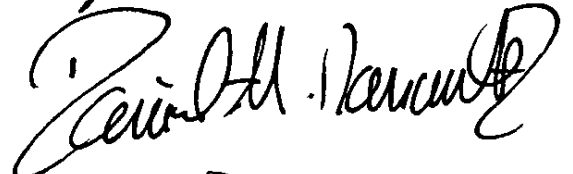
*Authentication by each*

---

Derek Guthrie



Daniel H Nanavati



Jan Phethean

Jan Phethean

Roland Gurney



---

Dated [17<sup>th</sup> December 2015]

The Companies Act 2006

Community Interest Company Limited by Guarantee

---

**NEW ART EXAMINER CiC**

---

**Articles of Association<sup>1</sup>**

**of**

**NEW ART EXAMINER CiC**

---

(CIC Limited by Guarantee, Schedule 1, Small Membership)

**The Companies Act 2006**  
**Community Interest Company Limited by Guarantee**

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**The Companies Act 2006**

**Articles of Association**

**of**

**[NEW ART EXAMINER] [Community Interest Company]**

**INTERPRETATION**

**1. Defined Terms**

2 The interpretation of these Articles is governed by the provisions set out in the Schedule at the end of the Articles

**3. COMMUNITY INTEREST COMPANY AND ASSET LOCK**

**4. Community Interest Company**

5 The Company is to be a community interest company

**6 Asset Lock<sup>2</sup>**

6 1 The Company shall not transfer any of its assets other than for full consideration

6 2 Provided the conditions in Article 3 3 are satisfied, Article 3 1 shall not apply to

(a) the transfer of assets to any specified asset-locked body, or (with the consent of the Regulator) to any other asset-locked body, and

(b) the transfer of assets made for the benefit of the community other than by way of a transfer of assets into an asset-locked body

6 3 The conditions are that the transfer of assets must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the memorandum and Articles of the Company

6 4 If

6 4 1 the Company is wound up under the Insolvency Act 1986, and

6 4 2 all its liabilities have been satisfied

any residual assets shall be given or transferred to the asset-locked body specified in Article 3 5 below

6 5 For the purposes of this Article 3, the following asset-locked body is specified as a potential recipient of the Company's assets under Articles 3 2 and 3 4

Name [The Society of Vincent DePaul, Chicago] ]

(Please note that a community interest company cannot nominate itself as the asset locked body It also cannot nominate a non-asset locked body An asset locked body

is defined as a CIC or charity, a permitted industrial and provident society or non-UK based equivalent )

Charity Registration Number (if applicable) [EIN no 35-2338110]

Company Registration Number (if applicable) []

Registered Office [1 E. Jackson, Chicago, IL 60604 ]<sup>3</sup>

**7. Not for profit**

8 The Company is not established or conducted for private gain any surplus or assets are used principally for the benefit of the community

**OBJECTS, POWERS AND LIMITATION OF LIABILITY**

**9 Objects<sup>4</sup>**

The objects of the Company are to carry on activities which benefit the community and in particular (without limitation) to [ ]

**10. Powers**

11 To further its objects the Company may do all such lawful things as may further the Company's objects and, in particular, but, without limitation, may borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds

**12 Liability of members<sup>5</sup>**

The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the Company in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member, for

12 1 payment of the Company's debts and liabilities contracted before he or she ceases to be a member,

12 2 payment of the costs, charges and expenses of winding up, and

12 3 adjustment of the rights of the contributories among themselves

**DIRECTORS**

**DIRECTORS' POWERS AND RESPONSIBILITIES<sup>6</sup>**

**13. Directors' general authority**

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company

**14. Members' reserve power**



14 1 The members may, by special resolution, direct the Directors to take, or refrain from taking, specific action

14 2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution

14 3 **Chair**

The Directors may appoint one of their number to be the chair of the Directors for such term of office as they determine and may at any time remove him or her from office

15 **Directors may delegate<sup>7</sup>**

15 1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles or the implementation of their decisions or day to day management of the affairs of the Company

15 1 1 to such person or committee,

15 1 2 by such means (including by power of attorney),

15 1 3 to such an extent,

15 1 4 in relation to such matters or territories, and

15 1 5 on such terms and conditions,

as they think fit

15 2 If the Directors so specify, any such delegation of this power may authorise further delegation of the Directors' powers by any person to whom they are delegated

15 3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions

## **DECISION-MAKING BY DIRECTORS**

16 **Directors to take decisions collectively<sup>8</sup>**

Any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 20 [In the event of the Company having only one Director, a majority decision is made when that single Director makes a decision ]

17. **Calling a Directors' meeting**

17 1 Two Directors may (and the Secretary, if any, must at the request of two Directors) call a Directors' meeting

17 2 A Directors' meeting must be called by at least seven Clear Days' notice unless either

- 17 2 1 all the Directors agree, or
- 17 2 2 urgent circumstances require shorter notice
- 17 3 Notice of Directors' meetings must be given to each Director
- 17 4 Every notice calling a Directors' meeting must specify
  - 17 4 1 the place, day and time of the meeting, and
  - 17 4 2 if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting
- 17 5 Notice of Directors' meetings need not be in Writing
- 17 6 Notice of Directors' meetings may be sent by Electronic Means to an Address provided by the Director for the purpose
- 17 7 **Participation in Directors' meetings**
- 17 8 Subject to the Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when
  - 17 8 1 the meeting has been called and takes place in accordance with the Articles, and
  - 17 8 2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting
- 17 9 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other<sup>9</sup>
- 17 10 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is
- 18 **Quorum for Directors' meetings<sup>10</sup>**
- 18 1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting
- 18 2 The quorum for Directors' meetings may be fixed from time to time by a decision of the Directors, but it must never be less than two, and unless otherwise fixed it is [two]
- 18 3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision
  - 18 3 1 to appoint further Directors, or
  - 18 3 2 to call a general meeting so as to enable the members to appoint further Directors

### **18 3 3 Chairing of Directors' meetings**

The Chair, if any, or in his or her absence another Director nominated by the Directors present shall preside as chair of each Directors' meeting

### **19 Decision-making at meetings <sup>11</sup>**

19 1 Questions arising at a Directors' meeting shall be decided by a majority of votes

19 2 In all proceedings of Directors each Director must not have more than one vote <sup>12</sup>

19 3 In case of an equality of votes, the Chair shall have a second or casting vote

### **20 Decisions without a meeting <sup>13</sup>**

20 1 The Directors may take a unanimous decision without a Directors' meeting in accordance with this Article by indicating to each other by any means, including without limitation by Electronic Means, that they share a common view on a matter. Such a decision may, but need not, take the form of a resolution in Writing, copies of which have been signed by each Director or to which each Director has otherwise indicated agreement in Writing.

20 2 A decision which is made in accordance with Article 20.1 shall be as valid and effectual as if it had been passed at a meeting duly convened and held, provided the following conditions are complied with:

20 2 1 approval from each Director must be received by one person being either such person as all the Directors have nominated in advance for that purpose or such other person as volunteers if necessary ("the Recipient"), which person may, for the avoidance of doubt, be one of the Directors,

20 2 2 following receipt of responses from all of the Directors, the Recipient must communicate to all of the Directors by any means whether the resolution has been formally approved by the Directors in accordance with this Article 20 2,

20 2 3 the date of the decision shall be the date of the communication from the Recipient confirming formal approval,

20 2 4 the Recipient must prepare a minute of the decision in accordance with Article 29

### **21 Conflicts of interest <sup>14</sup>**

21 1 Whenever a Director finds himself or herself in a situation that is reasonably likely to give rise to a Conflict of Interest, he or she must declare his or her interest to the Directors unless, or except to the extent that, the other Directors are or ought reasonably to be aware of it already.

21 2 If any question arises as to whether a Director has a Conflict of Interest, the question shall be decided by a majority decision of the other Directors.

21 3 Whenever a matter is to be discussed at a meeting or decided in accordance with Article 18 and a Director has a Conflict of Interest in respect of that matter then, subject to Article 20, he or she must

21 3 1 remain only for such part of the meeting as in the view of the other Directors is necessary to inform the debate,

21 3 2 not be counted in the quorum for that part of the meeting, and

21 3 3 withdraw during the vote and have no vote on the matter

21 4 When a Director has a Conflict of Interest which he or she has declared to the Directors, he or she shall not be in breach of his or her duties to the Company by withholding confidential information from the Company if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her

21 5 **Directors' power to authorise a conflict of interest**

21 6 The Directors have power to authorise a Director to be in a position of Conflict of Interest provided

21 6 1 in relation to the decision to authorise a Conflict of Interest, the conflicted Director must comply with Article 19 3,

21 6 2 in authorising a Conflict of Interest, the Directors can decide the manner in which the Conflict of Interest may be dealt with and, for the avoidance of doubt, they can decide that the Director with a Conflict of Interest can participate in a vote on the matter and can be counted in the quorum,

21 6 3 the decision to authorise a Conflict of Interest can impose such terms as the Directors think fit and is subject always to their right to vary or terminate the authorisation

21 7 If a matter, or office, employment or position, has been authorised by the Directors in accordance with Article 21 6 then, even if he or she has been authorised to remain at the meeting by the other Directors, the Director may absent himself or herself from meetings of the Directors at which anything relating to that matter, or that office, employment or position, will or may be discussed

21 8 A Director shall not be accountable to the Company for any benefit which he or she derives from any matter, or from any office, employment or position, which has been authorised by the Directors in accordance with Article 21 6 (subject to any limits or conditions to which such approval was subject)

21 9 **Register of Directors' interests**

The Directors shall cause a register of Directors' interests to be kept A Director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared

## **APPOINTMENT AND RETIREMENT OF DIRECTORS<sup>15</sup>**

### **22. Methods of appointing Directors**

- 22 1 Those persons notified to the Registrar of Companies as the first Directors of the Company shall be the first Directors
- 22 2 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director by a decision of the Directors

### **23 Termination of Director's appointment<sup>16</sup>**

A person ceases to be a Director as soon as

- (a) that person ceases to be a Director by virtue of any provision of the Companies Act 2006, or is prohibited from being a Director by law,
- (b) a bankruptcy order is made against that person, or an order is made against that person in individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy,
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts,
- (d) notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms (but only if at least two Directors will remain in office when such resignation has taken effect), or
- (e) the Director fails to attend three consecutive meetings of the Directors and the Directors resolve that the Director be removed for this reason
- (f) the Director ceases to be a member

### **24 Directors' remuneration<sup>17</sup>**

- 24 1 Directors may undertake any services for the Company that the Directors decide
- 24 2 Directors are entitled to such remuneration as the Directors determine
- (a) for their services to the Company as Directors, and
  - (b) for any other service which they undertake for the Company
- 24 3 Subject to the Articles, a Director's remuneration may
- (a) take any form; and
  - (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director

24 4 Unless the Directors decide otherwise, Directors' remuneration accrues from day to day

24 5 Unless the Directors decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested

#### 24 6 **Directors' expenses**

24 7 The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at

- (a) meetings of Directors or committees of Directors,
- (b) general meetings, or
- (c) separate meetings of any class of members or of the holders of any debentures of the Company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company

### **MEMBERS<sup>18</sup>**

#### **BECOMING AND CEASING TO BE A MEMBER<sup>19</sup>**

##### 25 **Becoming a member<sup>20</sup>**

25 1 The subscribers to the Memorandum are the first members of the Company

25 2 Such other persons as are admitted to membership in accordance with the Articles shall be members of the Company

25 3 Each member of the company shall be a Director

25 4 No person shall be admitted a member of the Company unless he or she is approved by the Directors

25 5 Every person who wishes to become a member shall deliver to the company an application for membership in such form (and containing such information) as the Directors require and executed by him or her

##### 26 **Termination of membership<sup>21</sup>**

26 1 Membership is not transferable to anyone else

26 2 Membership is terminated if

26 2 1 the member dies or ceases to exist,

26 2 2 otherwise in accordance with the Articles, or

26 2 3 a member ceases to be a Director

## **DECISION MAKING BY MEMBERS**

### **27 Members' meetings<sup>22</sup>**

27 1 The Directors may call a general meeting at any time

27 2 General meetings must be held in accordance with the provisions regarding such meetings in the Companies Acts <sup>23</sup>

27 3 A person who is not a member of the Company shall not have any right to vote at a general meeting of the Company, but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the Company's debentures <sup>24</sup>

27 4 Article 28 3 shall not prevent a person who is a proxy for a member or a duly authorised representative of a member from voting at a general meeting of the Company

### **27 5 Written resolutions**

27 6 Subject to Article 27 8, a written resolution of the Company passed in accordance with this Article 29 shall have effect as if passed by the Company in general meeting:

27 6 1 A written resolution is passed as an ordinary resolution if it is passed by a simple majority of the total voting rights of eligible members

27 6 2 A written resolution is passed as a special resolution if it is passed by members representing not less than 75% of the total voting rights of eligible members  
A written resolution is not a special resolution unless it states that it was proposed as a special resolution

27 7 In relation to a resolution proposed as a written resolution of the Company the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution

27 8 A members' resolution under the Companies Acts removing a Director or an auditor before the expiration of his or her term of office may not be passed as a written resolution

27 9 A copy of the written resolution must be sent to every member together with a statement informing the member how to signify their agreement to the resolution and the date by which the resolution must be passed if it is not to lapse Communications in relation to written notices shall be sent to the Company's auditors in accordance with the Companies Acts

27 10 A member signifies their agreement to a proposed written resolution when the Company receives from him or her an authenticated Document identifying the resolution to which it relates and indicating his or her agreement to the resolution

27 10 1 If the Document is sent to the Company in Hard Copy Form, it is authenticated if it bears the member's signature

27 10 2 If the Document is sent to the Company by Electronic Means, it is authenticated [if it bears the member's signature] or [if the identity of the member is confirmed in a manner agreed by the Directors] or [if it is accompanied by a statement of the identity of the member and the Company has no reason to doubt the truth of that statement] or [if it is from an email Address notified by the member to the Company for the purposes of receiving Documents or information by Electronic Means]

27 11 A written resolution is passed when the required majority of eligible members have signified their agreement to it

27 12 A proposed written resolution lapses if it is not passed within 28 days beginning with the circulation date

## **ADMINISTRATIVE ARRANGEMENTS AND MISCELLANEOUS**

### **28. Means of communication to be used**

28 1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company

28 2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being

28.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within an agreed time of their being sent, and for the agreed time to be less than 48 hours

### **28 4 Irregularities**

The proceedings at any meeting or on the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including any accidental omission to give or any non-receipt of notice) or any want of qualification in any of the persons present or voting or by reason of any business being considered which is not referred to in the notice unless a provision of the Companies Acts specifies that such informality, irregularity or want of qualification shall invalidate it

### **29. Minutes**

29 1 The Directors must cause minutes to be made in books kept for the purpose

29 1 1 of all appointments of officers made by the Directors,

29 1 2 of all resolutions of the Company and of the Directors (including, without limitation, decisions of the Directors made without a meeting), and



29 1 3 of all proceedings at meetings of the Company and of the Directors, and of committees of Directors, including the names of the Directors present at each such meeting,

and any such minute, if purported to be signed (or in the case of minutes of Directors' meetings signed or authenticated) by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, shall, as against any member or Director of the Company, be sufficient evidence of the proceedings

29 2 The minutes must be kept for at least ten years from the date of the meeting, resolution or decision

### 30 **Records and accounts**<sup>25</sup>

The Directors shall comply with the requirements of the Companies Acts as to maintaining a members' register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies and the Regulator of

30 1 annual reports,

30 2 annual returns, and

30 3 annual statements of account

30 4 Except as provided by law or authorised by the Directors or an ordinary resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or Documents merely by virtue of being a member

### 30 5 **Indemnity**

30 6 Subject to Article 34 2, a relevant Director of the Company or an associated company may be indemnified out of the Company's assets against

(a) any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company,

(b) any liability incurred by that Director in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006), and

(c) any other liability incurred by that Director as an officer of the Company or an associated company

30 7 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law

30 8 In this Article

<http://demo.apple.com/WebObjects/Glossary/ShowArticle/ahed.1814931175>  
(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

(b) a “relevant Director” means any Director or former Director of the Company or an associated company

**(c) Insurance**

30 9 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Director in respect of any relevant loss

30 10 In this Article

(a) a “relevant Director” means any Director or former Director of the Company or an associated company,

(b) a “relevant loss” means any loss or liability which has been or may be incurred by a relevant Director in connection with that Director’s duties or powers in relation to the Company, any associated company or any pension fund or employees’ share scheme of the company or associated company, and

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate

**(d) Exclusion of model articles**

The relevant model articles for a company limited by guarantee are hereby expressly excluded

## SCHEDULE

### INTERPRETATION

#### Defined terms

- 1 In the Articles, unless the context requires otherwise, the following terms shall have the following meanings

Term	Meaning
1 1 “Address”	includes a number or address used for the purposes of sending or receiving Documents by Electronic Means,
1 2 “Articles”	the Company’s articles of association,
1 3 “asset-locked body”	means (i) a community interest company, a charity <sup>26</sup> or a Permitted Industrial and Provident Society, or (ii) a body established outside the United Kingdom that is equivalent to any of those,
1 4 “bankruptcy”	includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy,
1 5 “Chair”	has the meaning given in Article 10,
1 6 “Circulation Date”	in relation to a written resolution, has the meaning given to it in the Companies Acts,
1 7 “Clear Days”	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect,
1 8 “community”	is to be construed in accordance with accordance with Section 35(5) of the Company’s (Audit) Investigations and Community Enterprise) Act 2004,
1 9 “Companies Acts”	means the Companies Acts (as defined in Section 2 of the Companies Act 2006), in so far as they apply to the Company,
1 10 “Company”	[New Art Examiner] [C I C ],
1 11 “Conflict of Interest”	any direct or indirect interest of a Director (whether personal, by virtue of a duty of loyalty to another organisation or otherwise) that conflicts, or might conflict with the interests of the Company,
1 12 “Director”	a director of the Company, and includes any

	person occupying the position of director, by whatever name called,
1 13 <b>“Document”</b>	includes, unless otherwise indicated, any document sent or supplied in Electronic Form,
1 14 <b>“Electronic Form” and “Electronic Means”</b>	have the meanings respectively given to them in Section 1168 of the Companies Act 2006,
1 15 <b>“Hard Copy Form”</b>	has the meaning given to it in the Companies Act 2006,
1 16 <b>“Memorandum”</b>	the Company’s memorandum of association,
1 17 <b>“participate”</b>	in relation to a Directors’ meeting, has the meaning given in Article 177,
1 18 <b>“Permitted Industrial and Provident Society”</b>	an industrial and provident society which has a restriction on the use of its assets in accordance with Regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 or Regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006,
1 19 <b>“the Regulator”</b>	means the Regulator of Community Interest Companies,
1 20 <b>“Secretary”</b>	the secretary of the Company (if any),
1 21 <b>“specified”</b>	means specified in the memorandum or articles of association of the Company for the purposes of this paragraph,
1 22 <b>“subsidiary”</b>	has the meaning given in section 1159 of the Companies Act 2006,
1 23 <b>“transfer”</b>	includes every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or right over, any property, and
1 24 <b>“Writing”</b>	the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise

- 2 **Subject to clause 3** of this Schedule, any reference in the Articles to an enactment includes a reference to that enactment as re-enacted or amended from time to time and to any subordinate legislation made under it

- 3 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Acts as in force on the date when these Articles become binding on the Company

On articles of association generally, see [Part 5] of the Regulator's information and guidance notes. If you are an existing company wishing to become a community interest company, there is no need to adopt completely new articles, but you must comply with the requirements of the Community Interest Company Regulations 2005 (as amended) (the Regulations<sup>2</sup>) by including the provisions set out in Schedule 1 to the Regulations in the articles of your company.

<sup>2</sup> See [Part 6] of the Regulator's information and guidance notes. Inclusion of the provisions contained in article 3.1 to 3.3 is mandatory, reflecting sub-paragraphs (1) to (3) of paragraph 1 of Schedule 1 to the Regulations.

<sup>3</sup> See regulation 23 of the Regulations and [Parts 6 and 10] of the Regulator's information and guidance notes. If the company does not specify that the remaining residual assets are to be transferred to a particular Asset Locked Body, an appropriate recipient will be chosen by the Regulator, in consultation with the company's directors and members.

<sup>4</sup> On the specification of the company's objects, see [Part 5] of the Regulator's information and guidance notes.

<sup>5</sup> On limited liability, see [Part 3] of the Regulator's information and guidance notes. On guarantees generally see [Chapter 3.2] of the Regulator's information and guidance notes.

<sup>6</sup> Note that although this model constitution assumes that all Directors are Members and all Members are Directors, and the Directors are given wide powers, under the Articles (and company law more generally) there are still some decisions which Members must make as Members (either in general meeting under the Companies Act 2006 (article 28.2), or by written resolution in accordance with article 29). [See in general the Companies House guidance booklet, 'Resolutions' (available online at <http://www.companieshouse.gov.uk/about/gbhtml/gba7.shtml>)]

<sup>7</sup> Article 11 permits the Directors to delegate any of their functions. Delegation may take the form of, for instance, the Directors giving a managing director general authority to run the company's day to day business, or responsibility for specific matters being delegated to particular directors (e.g. financial matters to a finance director), or it may be equally appropriate to delegate matters to persons other than Directors. In all cases, it is important to remember that delegation does not absolve Directors of their general duties towards the company and their overall responsibility for its management. This means that, amongst other things, Directors must be satisfied that those to whom responsibilities are delegated are competent to carry them out.

<sup>8</sup> Article 12 states that the Directors must make decisions by majority at a meeting in accordance with article 14, or unanimously if taken in accordance with article 18.

<sup>9</sup> Article 14.2 is designed to facilitate the taking of decisions by the directors communicating via telephone or video conference calls. Note the requirement to keep a written record of meetings and decisions (article 32).

<sup>10</sup> The quorum may be fixed in absolute terms (e.g. "two Directors") or as a proportion of the total number of Directors (e.g. "one third of the total number of Directors"). You may even wish to stipulate that particular named Directors, or Directors representing particular stakeholder interests, must be present to constitute a quorum.

<sup>11</sup> Article 17 reflects paragraph 4 of Schedule 1 to the Regulations, which is required to be included in the articles of all community interest companies.

<sup>12</sup> You may wish to include a provision which gives the chair of the board a casting vote. This will enable the directors to resolve any deadlock at board level.

<sup>13</sup> Article 18 is designed to facilitate the taking of decisions by directors following discussions in the form of, for example, email exchanges copied to all the directors. Note the requirements as to recording the decision in articles 18.2 and 32.

<sup>14</sup> The provisions in articles 19 and 20 reflect the position under the Companies Act 2006. However, it is recommended that, as a matter of good practice, all actual and potential conflicts of interest are disclosed in writing or at a meeting, as the case may be.

<sup>15</sup> Private companies are obliged to have at least one director. Provisions can be inserted into the articles providing for a minimum number of directors. Where the company has just one director, that director must be a natural person. Article 12 notes that, where there is only one director, a majority decision is reached when that director makes a decision. In the case of a single director, the quorum provisions (article 15) will need to be amended accordingly.

<sup>16</sup> The board of directors cannot remove a director other than in accordance with the provisions in article 23 and the Companies Act 2006.

<sup>17</sup> See the guidance on directors' remuneration in [Part 9] of the Regulator's information and guidance notes.

<sup>18</sup> See section 112 of the Companies Act 2006. A company's members are (i) the subscribers to its memorandum, and (ii) every other person who agrees to become a member of the company and whose name is entered in its register of members.

<sup>19</sup> There is no need for all those who wish to become Members to subscribe to the Memorandum on incorporation, they can become Members and be entered in the register of Members after the company has been formed. However, since this model constitution assumes that all Members are also Directors, all Members will also have to be validly appointed.

as Directors under article 22

<sup>20</sup> Inclusion of the provisions in article 26 (other than 26 3) is mandatory and reflects paragraphs 2(1)-(4) of Schedule 1 to the Regulations [Directors should ensure that the information to be included on an application form includes all the information which will be required to fill in Companies House Form [288a] on the appointment of the new Member as a Director (see <http://www.companieshouse.gov.uk/forms/generalForms/288A.pdf>) ] Article 26 3 provides that the Directors are also members of the company

<sup>21</sup> Inclusion of the provisions of article 27 1 and 27 2 1 – 27 2 2 (reflecting sub-paragraphs (5) and (6) of paragraph 2 of Schedule 1 to the Regulations), is mandatory

<sup>22</sup> The Companies Act 2006 has removed the need for private companies to hold annual general meetings and therefore these Articles follow suit, however, if you wish, you can insert an additional provision which obliges the company to hold annual general meetings

<sup>23</sup> Article 28 2 provides that general meetings must be held in accordance with the provisions of the Companies Act 2006 You may insert additional provisions that specify how many Members are required to be present to hold a valid general meeting The quorum may be fixed in absolute terms (e g “four Members’ ) or as a proportion of the total number of Members (e g “three quarters of the Members from time to time”) You may even wish to stipulate that particular named Members, or Members representing particular stakeholder interests, must be present to constitute a quorum In any event, it is recommended that the quorum should never be less than half of the total number of Members

<sup>24</sup> Inclusion of the provisions of article 28 3 (reflecting paragraph 3(1) of Schedule 1 to the Regulations) is mandatory

<sup>25</sup> See the Companies House guidance booklet, “Accounts and Accounting Reference Dates” (available online at <http://www.companies-house.gov.uk/about/gbhtml/gba3.shtml>) ] On the annual community interest company report, see [Part 8] of the Regulator’s information and guidance notes

<sup>26</sup> Section 1(1) of the Charities Act 2006 defines ‘charity’ as an institution which “is established for charitable purposes only, and fails to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities ”

# CIC 36

## Declarations on Formation of a Community Interest Company<sup>1</sup>

*Please  
complete in  
typescript,  
or in bold  
black  
capitals.*

**Company Name in full**

New Art Examiner CIC

Community Interest Company

### **SECTION A: COMMUNITY INTEREST STATEMENT – beneficiaries**

1. We, the undersigned, declare that the company will carry on its activities for the benefit of the community, or a section of the community<sup>2</sup>. [Insert a short description of the community, or section of the community, which it is intended that the company will benefit below ]<sup>3</sup>

*The company's activities will provide benefit to art writers, artists, art professionals, art students, art librarians, university and college art faculties, in Cornwall and beyond through publishing a magazine of art criticism.*

**COMPANY NAME**

New Art Examiner CIC



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## SECTION B: Community Interest Statement – Activities & Related Benefit

Please indicate how it is proposed that the company's activities will benefit the community, or a section of the community. Please provide as much detail as possible to enable the CIC Regulator to make an informed decision about whether your proposed company is eligible to become a community interest company. It would be useful if you were to explain how you think your company will be different from a commercial company providing similar services or products for individual or personal gain.

<b>Activities</b> (Tell us here what the company is being set up to do)	<b>How will the activity benefit the community?</b> (The community will benefit by )
Publishing	Every issue of the New Art Examiner will employ writers and graphic artists based in Cornwall and surrounds. Carrying advertising for exhibitions and events run by and for by local artists. It will include articles by experts and reviews of exhibitions and books to inform.
If the company makes any surplus it will be used for Investing in the New Art Examiner to expand its circulation and those contributing.	

(Please continue on separate sheet if necessary )

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**COMPANY NAME**

New Art Examiner CiC

**SECTION C:**

We, the undersigned, declare that the company in respect of which this application is made will not be.

- (a) a political party;
- (b) a political campaigning organisation; or
- (c) a subsidiary of a political party or of a political campaigning organisation.<sup>4</sup>

**SECTION D:**

Each person who will be a first director of the company must sign the declarations.

Signed	DEREK GUTHRIE	Date	11/2015
Signed	DANIEL NAMAVATI	Date	11/2015
Signed		Date	
Signed		Date	
Signed		Date	
Signed		Date	
Signed		Date	
Signed		Date	
Signed		Date	

**CHECKLIST****Have the first directors sign the CIC36?**

This form must be accompanied by the following documents:

- (a) Memorandum of Association
- (b) Articles of Association, which comply with requirements imposed by section 32 of the Act and Part 3 of the Regulations or which are otherwise appropriate in connection with becoming a community interest company
- (c) Form IN01- you need to indicate that the proposed company is adopting bespoke articles.
- (d) Any completed continuation sheets
- (e) A cheque for £35 made payable to Companies House

You do not have to give any contact information in the box opposite but if you do, it will help the Registrar of Companies to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record

	Tel
DX Number	DX Exchange

**When you have completed and signed the form, please send it to the Registrar of Companies at:**

*For companies registered in England and Wales:* Companies House, Crown Way, Cardiff, CF14 3UZ  
DX 33050 Cardiff

*For companies registered in Scotland:* Companies House, 4<sup>th</sup> Floor, Edinburgh Quay 2, 139  
Fountainbridge, EH3 9FF DX 235 Edinburgh

*For companies registered in Northern Ireland:* Companies House, 2nd Floor, The Linenhall, 32-38  
Linenhall Street, Belfast, BT2 8BG

**NOTES**

This form will be placed on the public record. Any information relevant to the application that you do not wish to appear on the public record, should be described in a separate letter addressed to the CIC Regulator and delivered to the Registrar of Companies with the other documents.

<sup>1</sup> The community interest test is referred to in section 35 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 and is expanded upon in regulations 3, 4 & 5 of the Regulations.

<sup>2</sup> E.g. "the residents of Oldtown" or "those suffering from XYZ disease".

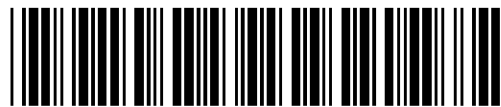
<sup>3</sup> A company is not eligible to be formed as a community interest company if it will be an "excluded company". If you are not sure whether the company which you wish to form falls into any of these categories, you should refer to the definitions of the terms "political party", "political campaigning organisation" and "subsidiary" (and of the related terms "election", "governmental authority", "public authority" and "referendum") in Regulation 2 of the Regulations before completing this form.



Confirmation Statement

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



X5Z1IH5M

Received for filing in Electronic Format on the: **28/01/2017**

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**

Confirmation **26/01/2017**

Statement date:

Sic Codes: **58190**

Principal activity description: **Other publishing activities**

# Persons with Significant Control (PSC)

## PSC notifications

### Notification Details

Date that person became **26/05/2016**  
registrable:

Name: **PUBLISHER DEREK DEREK**

Service address recorded as Company's registered office

Country/State Usually **ENGLAND**  
Resident:

Date of Birth: **\*\*/05/1936**

Nationality: **BRITISH**

### Nature of control

The person has the right to exercise, or actually exercises, significant influence or control over the company.

## **Confirmation Statement**

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor



Registration number: 09973640

# The New Art Examiner CIC

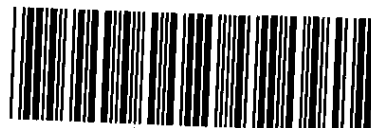
(A company limited by guarantee)

Annual Report and Unaudited Financial Statements

for the Period from 27 January 2016 to 31 January 2017

Bennett Jones & Co  
Unit 22  
Callywith Gate Ind. Estate  
Launceston Road  
Bodmin  
Cornwall  
PL31 2RQ

FRIDAY



\*A6KD3BRL\*

A08

01/12/2017

#467

COMPANIES HOUSE

**The New Art Examiner CIC**

**Contents**

Company Information	1
Accountants' Report	2
Profit and Loss Account	3
Balance Sheet	4 to 5
Notes to the Financial Statements	4

## **The New Art Examiner CIC**

### **Company Information**

<b>Directors</b>	Daniel Nanavati Derek Guthrie
<b>Company secretary</b>	Daniel Nanavati
<b>Registered office</b>	Rosehill Cottage Rosehill Altarun Launceston Cornwall PL15 7RL
<b>Accountants</b>	Bennett Jones & Co Unit 22 Callywith Gate Ind. Estate Launceston Road Bodmin Cornwall PL31 2RQ

**Chartered Accountants' Report to the Board of Directors on the Preparation of the  
Unaudited Statutory Accounts of  
The New Art Examiner CIC  
for the Period Ended 31 January 2017**

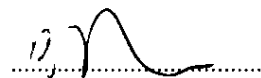
In order to assist you to fulfil your duties under the Companies Act 2006, we have prepared for your approval the accounts of The New Art Examiner CIC for the period ended 31 January 2017 as set out on pages 3 to 5 from the company's accounting records and from information and explanations you have given us.

As a practising member firm of the Institute of Chartered Accountants in England and Wales (ICAEW), we are subject to its ethical and other professional requirements which are detailed at <http://www.icaew.com/en/members/regulations-standards-and-guidance/>.

This report is made solely to the Board of Directors of The New Art Examiner CIC, as a body, in accordance with the terms of our engagement letter. Our work has been undertaken solely to prepare for your approval the accounts of The New Art Examiner CIC and state those matters that we have agreed to state to the Board of Directors of The New Art Examiner CIC, as a body, in this report in accordance with ICAEW Technical Release 07/16 AAF. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than The New Art Examiner CIC and its Board of Directors as a body for our work or for this report.

It is your duty to ensure that The New Art Examiner CIC has kept adequate accounting records and to prepare statutory accounts that give a true and fair view of the assets, liabilities, financial position and loss of The New Art Examiner CIC. You consider that The New Art Examiner CIC is exempt from the statutory audit requirement for the period.

We have not been instructed to carry out an audit or a review of the accounts of The New Art Examiner CIC. For this reason, we have not verified the accuracy or completeness of the accounting records or information and explanations you have given to us and we do not, therefore, express any opinion on the statutory accounts.



Bennett Jones & Co  
Unit 22  
Callywith Gate Ind. Estate  
Launceston Road  
Bodmin  
Cornwall  
PL31 2RQ

13 November 2017

**The New Art Examiner CIC**

**Profit and Loss Account for the Period from 27 January 2016 to 31 January 2017**

	2017 £
Turnover	781
Cost of raw materials and consumables	(1,120)
Other charges	<u>(1,156)</u>
Deficit for the period	<u><u>(1,495)</u></u>

**The New Art Examiner CIC**  
**(Registration number: 09973640)**  
**Balance Sheet as at 31 January 2017**

	2017 £
Creditors: Amounts falling due within one year	(1,015)
Accruals and deferred income	<u>(480)</u>
	<u>(1,495)</u>
Capital and reserves	<u>(1,495)</u>

**1 General information**

The company is a company limited by guarantee, incorporated in England, and consequently does not have share capital. Each of the members is liable to contribute an amount not exceeding £1 towards the assets of the company in the event of liquidation.

The address of its registered office is:

Rosehill Cottage

Rosehill

Altarun

Launceston

Cornwall

PL15 7RL

These financial statements were authorised for issue by the Board on 13 November 2017.

**Basis of preparation**

The financial statements have been prepared under the historical cost convention and in accordance with FRS 105 'The Financial Reporting Standard applicable to the Micro-entities Regime'.

These financial statements have been prepared in accordance with the micro-entity provisions of the Companies Act 2006 and delivered in accordance with the provisions applicable to companies subject to the small companies regime.

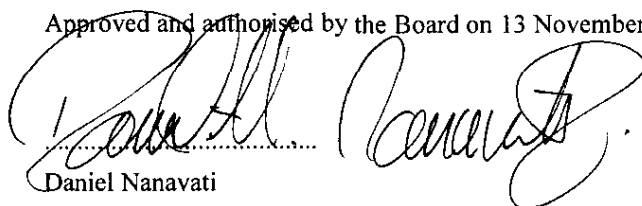
For the financial period ending 31 January 2017 the company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Directors' responsibilities:

- The members have not required the company to obtain an audit of its accounts for the period in question in accordance with section 476; and
- The directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.

**The New Art Examiner CIC**  
**(Registration number: 09973640)**  
**Balance Sheet as at 31 January 2017**

Approved and authorised by the Board on 13 November 2017 and signed on its behalf by:

A handwritten signature in black ink, appearing to read 'Daniel Nanavati', is written over a dotted line.

Daniel Nanavati

Company secretary and director

# CIC 34

## Community Interest Company Report

**For official use**  
*(Please leave blank)*

--

*Please  
complete in  
typescript, or  
in bold black  
capitals.*

**Company Name in  
full**

New Art Examiner CIC

**Company Number**

9973640

**Year Ending**

20016-20017



This template illustrates what the Regulator of Community Interest Companies considers to be best practice for completing a simplified community interest company report. All such reports must be delivered in accordance with section 34 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 and contain the information required by Part 7 of the Community Interest Company Regulations 2005. For further guidance see chapter 8 of the Regulator's guidance notes and the alternate example provided for a more complex company with more detailed notes.

OCIB A Filing Fee of £45 is payable when the report is submitted to the Regulator.  
Postage order payable to Companies House.

#### **PART 1 - GENERAL DESCRIPTION OF THE COMPANY'S ACTIVITIES AND IMPACT**

In the space provided below, please insert a general account of the company's activities in the financial year to which the report relates, including a description of how they have benefited the community.

The New Art Examiner CiC publishes The New Art Examiner every two months. 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.

It works with community organisations and educational institutes to teach critical thinking and writing.

*(If applicable, please just state "A social audit report covering these points is attached").*

***(Please continue on separate continuation sheet if necessary.)***

**PART 2 – CONSULTATION WITH STAKEHOLDERS** – Please indicate who the company's stakeholders are; how the stakeholders have been consulted and what action, if any, has the company taken in response to feedback from its consultations? If there has been no consultation, this should be made clear.

The company's stakeholders are the Associates who convene every month and act like Trustees. The wider artistic community, subscribers to the magazine and readers

We run a web page to increase readership where all articles may be read free of charge and all comments are published to promote conversation and dialogue.

We also publish all letters to the editor unedited.

*(If applicable, please just state "A social audit report covering these points is attached").*

**PART 3 – DIRECTORS' REMUNERATION** – if you have provided full details in your accounts you need not reproduce it here. Please clearly identify the information within the accounts and confirm that, "There were no other transactions or arrangements in connection with the remuneration of directors, or compensation for director's loss of office, which require to be disclosed" (See example with full notes). If no remuneration was received you must state that "no remuneration was received" below.

The aggregate amount of emoluments paid to or receivable by directors in respect of qualifying services was zero.

There were no other transactions or arrangements in connection with the remuneration of directors, or compensation for director's loss of office, which require to be disclosed.

**PART 4 – TRANSFERS OF ASSETS OTHER THAN FOR FULL CONSIDERATION** – Please insert full details of any transfers of assets other than for full consideration e.g. Donations to outside bodies. If this does not apply you must state that "no transfer of assets other than for full consideration has been made" below.

No transfer of assets other than for full consideration has been made

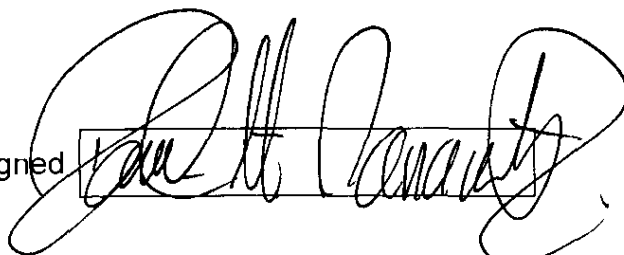
*(Please continue on separate continuation sheet if necessary )*

**(N.B. Please enclose a cheque for £15 payable to Companies House)**

## PART 5 – SIGNATORY

The original report must be signed by a director or secretary of the company

Signed



Date

02/10/17

Office held (delete as appropriate) ~~Director~~/Secretary

You do not have to give any contact information in the box opposite but if you do, it will help the Registrar of Companies to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

Daniel Nanavati

Rosehill

Altarnun

Launceston, Cornwall

Tel 01566 86143

DX Number

DX Exchange

**When you have completed and signed the form, please attach it to the accounts and send both forms by post to the Registrar of Companies at:**

*For companies registered in England and Wales:* Companies House, Crown Way, Cardiff, CF14 3UZ  
DX 33050 Cardiff

*For companies registered in Scotland:* Companies House, 4<sup>th</sup> Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP – 4 Edinburgh 2

*For companies registered in Northern Ireland:* Companies House, 2nd Floor, The Linenhall, 32-38 Linenhall Street, Belfast, BT2 8BG

*Please send the accounts to the Registrar of Companies*

*(NB Please enclose a cheque for £15 payable to Companies House)*



Companies House

**CS01** (ef)

**Confirmation Statement**

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



Received for filing in Electronic Format on the: **28/01/2018**

X6YKV63U

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**

Confirmation **26/01/2018**

Statement date:

## **Confirmation Statement**

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor



## Change of Registered Office Address

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



Received for filing in Electronic Format on the: **23/08/2018**

X7CYRGL7

### New Address Details

New Address: **THE OLD STUDIO BARLEY SPLATT  
PANTERS BRIDGE  
MOUNT  
CORNWALL  
UNITED KINGDOM  
PL30 4DP**

#### Please Note:

The change in the Registered Office does not take effect until the Registrar has registered this form. For 14 days, beginning with the date that a change of Registered Office is registered, a person may validly serve any documentation on the company at its previous Registered Office.

### Authorisation

#### Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Liquidator, Administrator, Administrative Receiver, Receiver, Receiver Manager, Charity Commission Receiver and Manager, CIC Manager, Judicial Factor.



## Change of Particulars for Director

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



Received for filing in Electronic Format on the: **23/08/2018**

X7CYRSVD

### Details Prior to Change

Original name: **DAIEL NANA VATI**

Date of Birth: **\*\*/01/1960**

### New Details

Date of Change: **23/08/2018**

New Name: **DANIEL NANA VATI**

New Service Address: **THE OLD STUDIO BARLEY SPLATT PANTERS BRIDGE MOUNT  
CORNWALL  
UNITED KINGDOM PL30 4DP**



## **Authorisation**

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Administrator, Administrative Receiver, Receiver, Receiver manager, Charity Commission Receiver and Manager, CIC Manager, Judicial Factor



## Change of Particulars for Secretary

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



Received for filing in Electronic Format on the: **23/08/2018**

X7CYRWBV

### Details Prior to Change

Original name: **DANIEL NANVATI**

### New Details

Date of Change: **23/08/2018**

New Service Address: **THE OLD STUDIO BARLEY SPLATT PANTERS BRIDGE MOUNT  
CORNWALL  
UNITED KINGDOM PL30 4DP**

### Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Administrator, Administrative Receiver, Receiver, Receiver manager, Charity Commission Receiver and Manager, CIC Manager, Judicial Factor

Registration number: 09973640

# The New Art Examiner CIC

(A company limited by guarantee)

Annual Report and Unaudited Financial Statements

for the Year Ended 31 January 2018

Bennett Jones & Co  
Unit 22  
Callywith Gate Ind. Estate  
Launceston Road  
Bodmin  
Cornwall  
PL31 2RQ

WEDNESDAY



A16 \*A7HP79Z4\* #241  
31/10/2018  
COMPANIES HOUSE

# **The New Art Examiner CIC**

## **Contents**

<i>Company Information</i>	1
Accountants' Report	2
Profit and Loss Account	3
Balance Sheet	4 to 5
Notes to the Financial Statements	4

## **The New Art Examiner CIC**

### **Company Information**

<b>Directors</b>	Daniel Nanavati Derek Guthrie
<b>Company secretary</b>	Daniel Nanavati
<b>Registered office</b>	The Old Studio Barley Splatt Panthers Bridge Mount PL30 4DP
<b>Accountants</b>	Bennett Jones & Co Unit 22 Callywith Gate Ind. Estate Launceston Road Bodmin Cornwall PL31 2RQ

**Chartered Accountants' Report to the Board of Directors on the Preparation of the  
Unaudited Statutory Accounts of  
The New Art Examiner CIC  
for the Year Ended 31 January 2018**

In order to assist you to fulfil your duties under the Companies Act 2006, we have prepared for your approval the accounts of The New Art Examiner CIC for the year ended 31 January 2018 as set out on pages 3 to 5 from the company's accounting records and from information and explanations you have given us.

As a practising member firm of the Institute of Chartered Accountants in England and Wales (ICAEW), we are subject to its ethical and other professional requirements which are detailed at <http://www.icaew.com/en/members/regulations-standards-and-guidance/>.

This report is made solely to the Board of Directors of The New Art Examiner CIC, as a body, in accordance with the terms of our engagement letter. Our work has been undertaken solely to prepare for your approval the accounts of The New Art Examiner CIC and state those matters that we have agreed to state to the Board of Directors of The New Art Examiner CIC, as a body, in this report in accordance with ICAEW Technical Release 07/16 AAF. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than The New Art Examiner CIC and its Board of Directors as a body for our work or for this report.

It is your duty to ensure that The New Art Examiner CIC has kept adequate accounting records and to prepare statutory accounts that give a true and fair view of the assets, liabilities, financial position and loss of The New Art Examiner CIC. You consider that The New Art Examiner CIC is exempt from the statutory audit requirement for the year.

We have not been instructed to carry out an audit or a review of the accounts of The New Art Examiner CIC. For this reason, we have not verified the accuracy or completeness of the accounting records or information and explanations you have given to us and we do not, therefore, express any opinion on the statutory accounts.

.....  
Bennett Jones & Co  
Unit 22  
Callywith Gate Ind. Estate  
Launceston Road  
Bodmin  
Cornwall  
PL31 2RQ  
8 October 2018

# **The New Art Examiner CIC**

## **Profit and Loss Account for the Year Ended 31 January 2018**

	<b>2018</b>	<b>2017</b>
	<b>£</b>	<b>£</b>
Turnover	1,622	781
Cost of raw materials and consumables	(2,728)	(1,120)
Other charges	<u>(1,349)</u>	<u>(1,156)</u>
Deficit for the year	<u><u>(2,455)</u></u>	<u><u>(1,495)</u></u>

**The New Art Examiner CIC**  
**(Registration number: 09973640)**  
**Balance Sheet as at 31 January 2018**

	2018 £	2017 £
Current assets	403	-
Creditors: Amounts falling due within one year	<u>(3,753)</u>	<u>(1,015)</u>
Total assets less current liabilities	(3,350)	(1,015)
Accruals and deferred income	<u>(600)</u>	<u>(480)</u>
	<u>(3,950)</u>	<u>(1,495)</u>
Capital and reserves	<u>(3,950)</u>	<u>(1,495)</u>

**1 General information**

The company is a company limited by guarantee, incorporated in England, and consequently does not have share capital. Each of the members is liable to contribute an amount not exceeding £1 towards the assets of the company in the event of liquidation.

The address of its registered office is:

The Old Studio  
Barley Splatt  
Panthers Bridge  
Mount  
PL30 4DP

These financial statements were authorised for issue by the Board on 8 October 2018.

**Basis of preparation**

The financial statements have been prepared under the historical cost convention and in accordance with FRS 105 'The Financial Reporting Standard applicable to the Micro-entities Regime'.

**2 Staff numbers**

The average number of persons employed by the company (including directors) during the year, was 2 (2017 - 2).

These financial statements have been prepared in accordance with the micro-entity provisions of the Companies Act 2006 and delivered in accordance with the provisions applicable to companies subject to the small companies regime.

For the financial year ending 31 January 2018 the company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

**Directors' responsibilities:**

- The members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476; and
- The directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.



**The New Art Examiner CIC**  
**(Registration number: 09973640)**  
**Balance Sheet as at 31 January 2018**

Approved and authorised by the Board on 8 October 2018 and signed on its behalf by:



Daniel Nanavati  
Company secretary and director

300228/15.

**CIC 34****Community Interest Company Report**

**For official use**  
(Please leave blank)

*Please  
complete in  
typescript, or  
in bold black  
capitals.*

**Company Name in  
full**

New Art Examiner CiC

**Company Number**

9973640

**Year Ending**

31 January 2018

**Please ensure the company name is consistent with the company name entered on the accounts.**

This template illustrates what the Regulator of Community Interest Companies considers to be best practice for completing a simplified community interest company report. All such reports must be delivered in accordance with section 34 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 and contain the information required by Part 7 of the Community Interest Company Regulations 2005. For further guidance see chapter 8 of the Regulator's guidance notes and the alternate example provided for a more complex company with more detailed notes.

**(N.B. A Filing Fee of £15 is payable on this document. Please enclose a cheque or postal order payable to Companies House)**

**PART 1 - GENERAL DESCRIPTION OF THE COMPANY'S ACTIVITIES AND IMPACT**

In the space provided below, please insert a general account of the company's activities in the financial year to which the report relates, including a description of how they have benefited the community.

Publishing a journal of art criticism

*(If applicable, please just state "A social audit report covering these points is attached").*

*(Please continue on separate continuation sheet if necessary.)*

**PART 2 – CONSULTATION WITH STAKEHOLDERS** – Please indicate who the company's stakeholders are; how the stakeholders have been consulted and what action, if any, has the company taken in response to feedback from its consultations? If there has been no consultation, this should be made clear.

Directors have oversight of operations and budget.

*(If applicable, please just state "A social audit report covering these points is attached").*

**PART 3 – DIRECTORS' REMUNERATION** – if you have provided full details in your accounts you need not reproduce it here. Please clearly identify the information within the accounts and confirm that, "There were no other transactions or arrangements in connection with the remuneration of directors, or compensation for director's loss of office, which require to be disclosed" (See example with full notes). If no remuneration was received you must state that "no remuneration was received" below.

No remuneration was received

**PART 4 – TRANSFERS OF ASSETS OTHER THAN FOR FULL CONSIDERATION** – Please insert full details of any transfers of assets other than for full consideration e.g. Donations to outside bodies. If this does not apply you must state that "no transfer of assets other than for full consideration has been made" below.

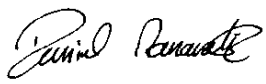
no transfer of assets other than for full consideration has been made

*(Please continue on separate continuation sheet if necessary.)*

## PART 5 – SIGNATORY

The original report must be signed by a director or secretary of the company

Signed



Date

28<sup>th</sup> October  
2018

Office held (delete as appropriate) Director/Secretary

You do not have to give any contact information in the box opposite but if you do, it will help the Registrar of Companies to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

Secretary	
Tel	
DX Number	DX Exchange

**When you have completed and signed the form, please attach it to the accounts and send both forms by post to the Registrar of Companies at:**

*For companies registered in England and Wales:* Companies House, Crown Way, Cardiff, CF14 3UZ  
DX 33050 Cardiff

*For companies registered in Scotland:* Companies House, 4<sup>th</sup> Floor, Edinburgh Quay 2, 139  
Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP – 4 Edinburgh 2

*For companies registered in Northern Ireland:* Companies House, 2nd Floor, The Linenhall, 32-38  
Linenhall Street, Belfast, BT2 8BG

The accounts and CIC34 **cannot** be filed online

**(N.B. Please enclose a cheque for £15 payable to Companies House)**

NM01

Notice of change of name by resolution



Companies House

A fee is payable with this form.  
Please see 'How to pay' on the last page.

✓ What this form is for

You may use this form to give notice  
of an unconditional change of name  
by the company members.

X What this form is NOT

You cannot use this form  
notice of a conditional change of name.

SATURDAY



A21 \*A8ØF8CTC\* #341  
02/03/2019  
COMPANIES HOUSE

1 Company details

Company number

09973640

Existing company  
name in full

NEW ART EXAMINER C.C

→ Filling in this form

Please complete in typescript or in  
bold black capitals.

All fields are mandatory unless  
specified or indicated by \*

2 Proposed name

To check if a company name is available use our WebCheck service and select  
the 'Company Name Availability Search' option:

[www.companieshouse.gov.uk/info](http://www.companieshouse.gov.uk/info)

The above company resolved to change the company name to:

Proposed name \*

NEW ART GAZETTE C.C

Please note that the Registrar cannot change the company name until a copy of  
the resolution has been received.

① Sensitive words and  
duplicate names

If the proposed name contains  
sensitive or restricted words or  
expressions you must provide form  
NM06 'Request to seek comments  
of government department or other  
specified body on change of name'  
and the appropriate supporting  
information before the name can be  
changed.

Duplicate names are not permitted.  
A list of registered names can  
be found on our website. There  
are various rules that may affect  
your choice of name. More  
information on this is available in  
our guidance booklet GP1 at:  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

3 Signature

I am signing this form on behalf of the company.

Signature

Signature

X 

X

This form may be signed by:  
Director, Secretary, Person authorised, Liquidator, Administrator,  
Administrative receiver, Receiver, Receiver manager, Charity commission receiver  
and manager, CIC manager.

② Societas Europaea

If the form is being filed on behalf  
of a Societas Europaea (SE) please  
delete 'director' and insert details  
of which organ of the SE the person  
signing has membership.

③ Person authorised

Under either section 270 or 274 of  
the Companies Act 2006.

NM01

Notice of change of name by resolution



**Presenter information**

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name **DANIEL NANAVATI**

Company name

Address **THE OLD STUDIO**

**BARLEY SPLOTT**

**PATRICK BRIDGE**

Post town **BODMIN**

County/Region **CORNWALL**

Postcode **PL31 4DP**

Country **UK**

DX

Telephone **01208 821656**



**Checklist**

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register.
- ☐ You have given the proposed name in section 2.
- ☐ You have checked that the proposed company name is available as well as the various rules that may affect your choice of name. More information can be found in guidance on our website.
- ☐ You have attached a copy of the resolution unless previously filed.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.



**Important information**

**Please note that all information on this form will appear on the public record.**



**How to pay**

**A fee of £10 is payable to Companies House in respect of a notice of change of name by resolution.**

Make cheques or postal orders payable to 'Companies House'.



**Where to send**

**You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below:**

**For companies registered in England and Wales:**

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**For companies registered in Scotland:**

The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post).

**For companies registered in Northern Ireland:**

The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG.  
DX 481 N.R. Belfast 1.



**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



**Notice of ceasing to be a person  
with significant control (PSC)**

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



Received for filing in Electronic Format on the: **27/03/2019**

X825BOPL

---

## Cessation Details

Date ceased: **25/01/2019**

Name: **DEREK DEREK**

---

## Register entry date

Register entry date **25/01/2019**

---

## Authorisation

Authenticated

This form was authorised by one of the following:

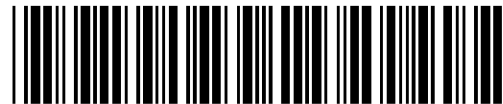
Director, Secretary, Person Authorised, Liquidator, Administrator, Administrative Receiver, Receiver, Receiver manager, Charity Commission Receiver and Manager, CIC Manager, Judicial Factor.



**Notification of Person with  
Significant Control (PSC) statement**

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



Received for filing in Electronic Format on the: **28/03/2019**

X82801YI

---

## PSC Statement

Register entry date **25/01/2019**

The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company.



## **Authorisation**

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Administrator, Administrative Receiver, Receiver, Receiver manager, Charity Commission Receiver and Manager, CIC Manager, Judicial Factor



Companies House

**CS01** (ef)

**Confirmation Statement**

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**



X828095D

Received for filing in Electronic Format on the: **28/03/2019**

Company Name: **THE NEW ART EXAMINER CIC**

Company Number: **09973640**

Confirmation **26/01/2019**

Statement date:

## **Confirmation Statement**

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor



11TH FEBRUARY 2019 2pm

### EXTRAORDINARY GENERAL MEETING

Attending:

Derek Guthrie, Publisher  
Annie Markovich, Editor  
Al Jirikowic, Editor  
Nancy Schreiber, Editor US  
Daniel Nanavati, Editor UK

It is hereby resolved that the New Art Examiner CiC, co. no 9973640, change its name to New Art Gazette CiC with immediate effect.

Passed Unanimously

signed

A large, stylized handwritten signature in black ink, which appears to read "Daniel M. Nanavati".

Daniel Nanavati  
Company Secretary





**FILE COPY**

**CERTIFICATE OF INCORPORATION  
ON CHANGE OF NAME OF A COMMUNITY INTEREST  
COMPANY**

Company Number **9973640**

The Registrar of Companies for England and Wales hereby certifies that  
under the Companies Act 2006:

**THE NEW ART EXAMINER CIC**

having changed its name; is now a Community Interest Company; and is  
incorporated under the name of:

**NEW ART GAZETTE CIC**

Given at Companies House on **11th April 2019**



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

Registration number: 09973640

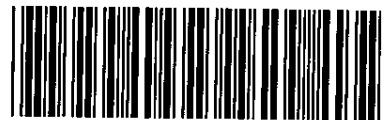
# New Art Gazette CIC

Annual Report and Unaudited Financial Statements

for the Year Ended 31 January 2019

Bennett Jones & Co  
Unit 22  
Callywith Gate Ind. Estate  
Launceston Road  
Bodmin  
Cornwall  
PL31 2RQ

SATURDAY



\*A8JB1LYQ\*

A11 30/11/2019 #247  
COMPANIES HOUSE

# **New Art Gazette CIC**

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Profit and Loss Account	3
Balance Sheet	4 to 5
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## **New Art Gazette CIC**

### **Company Information**

<b>Directors</b>	Daniel Nanavati Derek Guthrie
<b>Company secretary</b>	Daniel Nanavati
<b>Registered office</b>	The Old Studio Barley Splatt Panthers Bridge Mount PL30 4DP
<b>Accountants</b>	Bennett Jones & Co Unit 22 Callywith Gate Ind. Estate Launceston Road Bodmin Cornwall PL31 2RQ

**Chartered Accountants' Report to the Board of Directors on the Preparation of the  
Unaudited Statutory Accounts of  
New Art Gazette CIC  
for the Year Ended 31 January 2019**


In order to assist you to fulfil your duties under the Companies Act 2006, we have prepared for your approval the accounts of New Art Gazette CIC for the year ended 31 January 2019 as set out on pages 3 to 5 from the company's accounting records and from information and explanations you have given us.

As a practising member firm of the Institute of Chartered Accountants in England and Wales (ICAEW), we are subject to its ethical and other professional requirements which are detailed at <http://www.icaew.com/en/members/regulations-standards-and-guidance/>.

This report is made solely to the Board of Directors of New Art Gazette CIC, as a body, in accordance with the terms of our engagement letter. Our work has been undertaken solely to prepare for your approval the accounts of New Art Gazette CIC and state those matters that we have agreed to state to the Board of Directors of New Art Gazette CIC, as a body, in this report in accordance with ICAEW Technical Release 07/16 AAF. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than New Art Gazette CIC and its Board of Directors as a body for our work or for this report.

It is your duty to ensure that New Art Gazette CIC has kept adequate accounting records and to prepare statutory accounts that give a true and fair view of the assets, liabilities, financial position and loss of New Art Gazette CIC. You consider that New Art Gazette CIC is exempt from the statutory audit requirement for the year.

We have not been instructed to carry out an audit or a review of the accounts of New Art Gazette CIC. For this reason, we have not verified the accuracy or completeness of the accounting records or information and explanations you have given to us and we do not, therefore, express any opinion on the statutory accounts.



Bennett Jones & Co  
Unit 22  
Callywith Gate Ind. Estate  
Launceston Road  
Bodmin  
Cornwall  
PL31 2RQ  
Date: 21.10.19

## **New Art Gazette CIC**

### **Profit and Loss Account for the Year Ended 31 January 2019**

	<b>2019</b>	<b>2018</b>
	<b>£</b>	<b>£</b>
Turnover	1,329	1,622
Cost of raw materials and consumables	(2,462)	(2,728)
Other charges	<u>(630)</u>	<u>(1,349)</u>
Loss for the year	<u><u>(1,763)</u></u>	<u><u>(2,455)</u></u>

## New Art Gazette CIC

(Registration number: 09973640)  
Balance Sheet as at 31 January 2019

	2019 £	2018 £
Current assets	90	403
Creditors: Amounts falling due within one year	<u>(4,603)</u>	<u>(3,753)</u>
Total assets less current liabilities	(4,513)	(3,350)
Accruals and deferred income	<u>(1,200)</u>	<u>(600)</u>
	<u>(5,713)</u>	<u>(3,950)</u>
Capital and reserves	<u>(5,713)</u>	<u>(3,950)</u>

### 1 General information

The company is a private company limited by share capital, incorporated in England.

The address of its registered office is:

The Old Studio  
Barley Splatt  
Panthers Bridge  
Mount  
PL30 4DP

Authorised for issue date

### Basis of preparation

The financial statements have been prepared under the historical cost convention and in accordance with FRS 105 'The Financial Reporting Standard applicable to the Micro-entities Regime'.

### 2 Staff numbers

The average number of persons employed by the company (including directors) during the year, was 2 (2018 - 2).

These financial statements have been prepared in accordance with the micro-entity provisions of the Companies Act 2006 and delivered in accordance with the provisions applicable to companies subject to the small companies regime.

For the financial year ending 31 January 2019 the company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Directors' responsibilities:

- The members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476; and
- The directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.

New Art Gazette CIC

(Registration number: 09973640)  
Balance Sheet as at 31 January 2019

Approved and authorised by the Board on <sup>28<sup>th</sup></sup> 10/19 and signed on its behalf by:

.....  
Daniel Manavati  
Company secretary and director

300233/15

**CIC 34****Community Interest Company Report**For official use  
(Please leave blank)Please  
complete in  
typescript, or  
in bold black  
capitals.Company Name in  
full

New Art Gazette CIC

Company Number

09973640

Year Ending

31.01.2019

Please ensure the company name is consistent with the company name entered on the accounts.

This template illustrates what the Regulator of Community Interest Companies considers to be best practice for completing a simplified community interest company report. All such reports must be delivered in accordance with section 34 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 and contain the information required by Part 7 of the Community Interest Company Regulations 2005. For further guidance see chapter 8 of the Regulator's guidance notes and the alternate example provided for a more complex company with more detailed notes.

(N.B. A Filing Fee of £15 is payable on this document. Please enclose a cheque or postal order payable to Companies House)

**PART 1 - GENERAL DESCRIPTION OF THE COMPANY'S ACTIVITIES AND IMPACT**

In the space provided below, please insert a general account of the company's activities in the financial year to which the report relates, including a description of how they have benefited the community.

PUBLISHING A JOURNAL OF ART CRITICISM  
ORGANISING WRITERS GROUPS TO TEACH CRITICAL  
WRITING

(If applicable, please just state "A social audit report covering these points is attached").

(Please continue on separate continuation sheet if necessary)

**PART 2 – CONSULTATION WITH STAKEHOLDERS** – Please indicate who the company's stakeholders are; how the stakeholders have been consulted and what action, if any, has the company taken in response to feedback from its consultations? If there has been no consultation, this should be made clear.

DIRECTORS HAVE OVERSIGHT OF ALL MATTERS,  
OPERATIONS AND BUDGET

*(If applicable, please just state "A social audit report covering these points is attached").*

**PART 3 – DIRECTORS' REMUNERATION** – if you have provided full details in your accounts you need not reproduce it here. Please clearly identify the information within the accounts and confirm that, "There were no other transactions or arrangements in connection with the remuneration of directors, or compensation for director's loss of office, which require to be disclosed" (See example with full notes). If no remuneration was received you must state that "no remuneration was received" below.

NO REMUNERATION WAS RECEIVED

**PART 4 – TRANSFERS OF ASSETS OTHER THAN FOR FULL CONSIDERATION** – Please insert full details of any transfers of assets other than for full consideration e.g. Donations to outside bodies. If this does not apply you must state that "no transfer of assets other than for full consideration has been made" below.

NO TRANSFER OF ASSETS OTHER THAN FOR FULL  
CONSIDERATION HAS BEEN MADE


*(Please continue on separate continuation sheet if necessary.)*

## PART 5 – SIGNATORY

**The original report must be signed by a director or secretary of the company**

You do not have to give any contact information in the box opposite but if you do, it will help the Registrar of Companies to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

Signed

  
Office held (delete as appropriate)

Date

21<sup>st</sup> 10-2019

Office held (delete as appropriate) Director/Secretary

Tel	
DX Number	DX Exchange

**When you have completed and signed the form, please attach it to the accounts and send both forms by post to the Registrar of Companies at:**

*For companies registered in England and Wales:* Companies House, Crown Way, Cardiff, CF14 3UZ  
DX 33050 Cardiff

*For companies registered in Scotland:* Companies House, 4<sup>th</sup> Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP – 4 Edinburgh 2

*For companies registered in Northern Ireland:* Companies House, 2nd Floor, The Linenhall, 32-38 Linenhall Street, Belfast, BT2 8BG

The accounts and CIC34 **cannot** be filed online

**(N.B. Please enclose a cheque for £15 payable to Companies House)**





Companies House

**CS01** (ef)

**Confirmation Statement**

Company Name: **NEW ART GAZETTE CIC**

Company Number: **09973640**



Received for filing in Electronic Format on the: **26/01/2020**

X8XGTJQX

Company Name: **NEW ART GAZETTE CIC**

Company Number: **09973640**

Confirmation **26/01/2020**

Statement date:

## **Confirmation Statement**

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor

# EXHIBIT B

**I'm Looking  
For An Artist  
To Tell Me  
Who I Am.**



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by John Stepping

Royal Academy of Art Curating  
by Richard Sharland

The Englishness of English Art  
by Derek Guthrie

**FEATURES:**

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Derek Guthrie, Publisher and  
Daniel Nanavati UK Editor

The Improbability of Love -  
Hannah Rosthchild reviewed  
by Dr Angeline Morrison

The Modern Flâneur  
by Anna Nakova



**The New Art Examiner is the product of the thinking and life-long contribution of Jane Addams Allen. We thank you in her name for reading her independent journal of art criticism.**

**If you have an interest in our venture, please consult Google, also Art Cornwall, for an interview with the publisher, Derek Guthrie, a painter who keeps his art practice private.**

**The New Art Examiner has a long history of producing quality and independent art criticism. Chicago and Cornwall, as any art scene, needs writers to keep a professional eye on art activity. Otherwise, insider trading will determine success in this troubled art world.**

**You can participate directly by sending letters to the editor which are published unedited.**

**All editions include the digital issue sent via e-mail.**

Available from the following outlets in Cornwall:

Belgrave Gallery, St Ives, Camelford Art Gallery, Camelford, Exchange Gallery, Penzance  
Falmouth Art Gallery, Falmouth, Millennium Gallery, St Ives, Penlee House, Penzance  
Redwing Gallery, Penzance, Tate, St Ives, Terre Verte Gallery, Altarnun,  
Tremenheere Sculpture Park, Penzance

Subscription rates 6 issues print and digital:

UK	£39.50	postage incl.
Europe	€45	postage incl.
USA	\$48	postage incl.
Rest of World	\$78	postage incl.

Queries: [subscribe@newartexaminer.net](mailto:subscribe@newartexaminer.net)

Please send cheques made payable to New Art Examiner with your name and address to:

**UK Office: The Editor, Rosehill, Altarnun, Cornwall. PL15 7RL. UK**

**US Office: Managing Editor, 13213 S. Commercial Avenue, Chicago, Illinois 60633. USA.**

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All cartoon or graphic images welcome. The subject must be on the state of the visual art culture or the personalities involved.

## LETTERS

### Editor,

I read your print magazine in college. They were different from the art magazines at the time. Jed Perl, my teacher I believe wrote for them at the time. The articles were difficult and I had to read them several times to understand. It was art writing on a different level, thought provoking. When I moved I didn't take the issues with me. Sorry otherwise I would have sent them.

**Lisa Petker Mintz,  
New York**

### Editor

Hi - I used to write for the New Art Examiner

in the 1980s. Glad to see it's still alive after all these years!

Stay inspired!

**Tullio DeSantis  
San Fransisco**

### Hi New Art,

Congratulations on creating your new Page, New Art Examiner. Get started with these tips: Build your Page Add important info to your Page so that people can learn about you and what you do. Connect with people. Invite friends, email contacts and customers to like your Page. Engage your audience Post quality content that will encourage people to like, comment or share with their friends.

**Thanks, The Facebook Team**



# 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 through 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.

A letter appeared in the 'New Art Examiner Now' from Michael Zhou, director of the Zhou B Art Center, saying he was looking forward to the future of the NAEN "...under the leadership of Laura Frazier.". Michael Zhou would not return phone calls or emails. I was

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.

# CAN YOU HELP?

## Advertising Rates 2016

### GREY-SCALE:

FULL PAGE Inside front cover	£375
Inside back cover	£295
FULL PAGE	£225
HALF PAGE portrait/landscape	£120
QUARTER PAGE landscape (editorial page)	£45
QUARTER PAGE portrait/landscape	£35
EIGHTH PAGE landscape (editorial page)	£25
£20 (other pages)	
EIGHTH PAGE BOX	£25
TWELFTH PAGE 'Tweet' (suggested for artists and others)	£12

CLASSIFIEDS & PERSONALS £.03 per word

Colour prices the same. Please specify your preference.

All charges are free of VAT (an EU only tax)

All charges are fixed to January 2016.

For US rates please inquire.

Facebook £100 month  
advert@newartexamniner.net

**Janet Koplos has recently been awarded an Andy Warhol Grant to research the history of the New Art Examiner.**

**She is looking for original material dealing with the Examiner - letters, journal / diary entries, photographs and the like from 1973 to 2002.**

**Contact:**

**[janetkoplos@gmail.com](mailto:janetkoplos@gmail.com)**

**or by snail mail at:**

**987 Como Blvd. E.,**

**St. Paul,**

**MN 55103.**

Dear Artist make your girlfriend or boyfriend happy, and the New Art Examiner, send a few love words which will cost no more than £10 a box or tell the local art critic / curator what you think of them or write a letter for free to the Editor.

# New Art Examiner

Derek Guthrie, Publisher and co-founder

Tom Mullaney, US Editor  
[useditor@newartexaminer.net](mailto:useditor@newartexaminer.net)

Annie Markovich, US Managing Editor  
[annie.markovich@newartexaminer.net](mailto:annie.markovich@newartexaminer.net)

Daniel Nanavati, UK Editor  
[ukeditor@newartexaminer.net](mailto:ukeditor@newartexaminer.net)

Roland Gurney, Treasurer

Contributing Editors  
 John Link, Michigan  
 David Houston, Georgia  
 Donald Kuspit, New York  
 George Care, UK  
 Frank Corrigan, Oxfordshire

**WEBSITE:**  
[www.newartexaminer.net](http://www.newartexaminer.net)

UK Cartoons  
 John Dunbar Kilburn  
 Jonathon Xavier Coudrille

Distributor, Capital Books

Cover Image:  
 Princess B by Jonathon Xavier Coudrille  
 from Love Death & Bad Behaviour published  
 2015.

Would you like to write for  
 the New Art Examiner?  
[contributor@newartexaminer.net](mailto:contributor@newartexaminer.net)

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**US Office:**  
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 USA.

**Inquiries:**  
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[contributor@newartexaminer.net](mailto:contributor@newartexaminer.net)  
[subscribe@newartexaminer.net](mailto:subscribe@newartexaminer.net)

All Letters to the editor are  
 printed without editing.  
[letters@newartexaminer.net](mailto:letters@newartexaminer.net)

## Regionalism: an Ideal Gone Sour

Daniel Nanavati

Regionalism evolves from the tribe that has not moved into, or has moved out of, the City. The innate human tendency to concentrate on the immediate surrounds to the expulsion or exclusion of all else. This becomes one's safety net.

When it was founded in the Chicago of '73 the New Art Examiner knew it could not be regional. When the standard front page header was changed in the 90ies to 'The Voice of Mid West Art' thousands stooped subscribing. It had to be both regional and international. Not just to be in some way balanced or fair because this practice gives it authority and makes it more interesting.

One of the problems facing artists around the world is their inability to care or have interest in art production in the next town. To be enclosed in their own safety net, in love with their own sensibility, finessed to such a high degree that one can cease to care what is being created in the in the next town or next valley to the detriment of one's own practice.

The international art market thrive on this narrowness because it long ceased to care about community and when community turns its back in the Art World, there is no measure left by which art world and/or the regional community can talk to each other. It is, in its own tribal way, a tribe now defined by the bank balance, looking for new work from Art Colleges and academia training not to be in the community.

So the community and the Art World have leaned to ignore each other and the avant-garde Art Market ignores the community. The NAE cannot and does not in theory wish to ignore the many forces in the Art World. We attempt to bridge both, we comment upon both we have writers from both broad tribes and little tribes who naturally share their own symbolic order.

This is why the NAE is mythic. ■

# ART OF IDENTITY



*Remedios Varo*

There have been a number of discussions I have come across, recently, about this term 'privilege' (or really, the privilege theory) and also about class, and both, to a degree, in relationship with art. Before getting into these debates, I wanted to quote some extracts from a piece on Art and Class, written by Ben Davis. But even before I do that, I wanted to put this discussion, the discussion of art, culture, and U.S. society, capitalist society, in the proper light. (see [link](#).)

The US is a nation which recently implemented a drastic cut in food stamps. This is a nation where almost fifty million people go to bed hungry and of that number probably over a quarter are children. There has been a drastic spike in people and families that meet the criteria for 'food insecurity'. And yet, there are now laws in several cities, including New York and Los Angeles, making it illegal to distribute food to the hungry. Ponder that a moment.

The reason for this, of course, are property

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values. That is capitalism. This is not the neatest segue to the topic of art, although, in a sense, perhaps its more logical than one thinks.

**1.0** Class is an issue of fundamental importance for art

**1.1** Inasmuch as art is part of and not independent from society, and society is marked by class divisions, these will also affect the functioning and character of the sphere of the visual arts

**1.2** Since different classes have different interests, and "art" is affected by these different interests, art has different values depending on from which class standpoint it is approached

**1.3** Understanding art means understanding class relations outside the sphere of the visual arts and how they affect that sphere, as well as understanding class relations within the sphere of the visual arts itself

**1.4** In general, the idea of the "art world" serves as a way to deflect consideration of both these sets of relations

**1.5** The notion of an "art world" implies a sphere that is separate or set aside from the issues of the non-art world (and so separates it from class issues outside that sphere)

**1.6** The notion of an "art world" also visualizes the sphere of the visual arts not as a set of conflicting interests, but as a harmonious confluence of professionals with a common interest: "art" (and so denies class relations within that sphere)."

I think it is hard to argue with any of this, although I am sure there are people who will. The problem with Davis' piece, and I don't



really find many problems with it overall, but one issue is the idea that, as he says:

*“Middle class” in this context does not indicate income level. It indicates a mode of relating to labor and means of production. “Middle class” here indicates having an individual, self-directed relationship to production, rather than administering and maximizing the profit produced by the labor of others (capitalist class), or selling abstract labor power (working class)*

*3.2 The position of the professional artist is archetypically middle-class in relation to labor: the dream of being an artist is the dream of making a living off the products of one’s own mental or physical labor while fully being able to control and identify with that labor*

*3.3 The specific characteristic of the visual arts sphere, therefore, is that it is a sphere in which ruling-class ideology dominates, and yet it is allowed to have an unusually middle-class*

*Art has no purpose. All its  
potentials are attached to its  
autonomy.*

*character (in fact, it is definitionally middle class—the “art world” is defined as the sphere which trades in individual products of creativity rather than mass-produced creativity).”*

My personal experience is that very few artists I know, either in visual arts, or theatre, or even with young filmmakers, ever dream of making a living from what they create. I remember I was shocked the first time someone paid me for one of my plays. Everyone might ‘dream’ about it, sure, but nobody I know expects it. Everyone I know recognizes those dreams as closer to fantasy. You have to live in very special circumstances to make money from the making of art.

Davis is aware of this, though:

*“The second contradiction is internal to the middle-class definition of “art” itself, which is split between notions of art as profession and as vocation, and therefore comes into contradiction with itself at every moment where what an artist wants to express comes into contradiction with the demands of making a living...”*

Davis is focusing on, primarily, the visual

fine arts. But he raises fascinating questions. I think part of the problem with some of his answers is that he doesn’t fully explore the areas of creative self expression, or even collective self expression, that cannot be adequately explained by a Marxist theory of labor value. Let me quote Davis one more time:

*“7.0 Art criticism, to be relevant, should be based on an analysis of the actual situation of art, and the different values at play, which are related to different class forces [this point simply draws the conclusion, for criticism, of 1.9]*

*7.1 Art criticism is itself a middle-class discipline, based on norms of individual intellectual expression; since relevant art criticism involves analysis of the actual class situation of art, it involves transcending purely subjective, individual, professional opinion*

*7.2 However, transcending purely subjective” criticism does not imply the “objectivity” of art criticism that imposes a philosophical or political program on art; this sort of scholastic art criticism equally implies a middle-class perspective (often one based in the academy), insofar as it advances a purely abstract, intellectual program, and fails to address the actual material situation of the visual arts (e.g. simply insisting that art “be political” without concretely analyzing for whom or to what ends “political art” is directed actually reinforces the framework of individualistic, professional*



*Reading Woman  
Elinger Pieter Janssens*

expression)."

This is both right, and not right. Art has no purpose. Its radical potential, or emancipatory potential, is attached to its autonomy. And why is art criticism a middle class discipline? I suppose Davis means "professional art critic", meaning one who is paid. But very few good criticism or cultural analysis is paid work. I don't get paid, god knows. Assuming I am any good in writing about culture. But the issue here is really about the "meaning" of art. Of all art. The meanings of culture. And the problem with all this (and to his credit Davis suggests he is well aware of this) is that it ends up being impossible to justify this artificial set of categories that places this thing called "art" as separate from drawing breath to keep alive. There are certainly conventional middle class definitions of art, and these are usually the ones taught in schools, and I worry Davis doesn't quite understand this. And there are the countless old debates about (for example) 'is cooking an art'? Probably at some point one does have to at least partially demarcate an area of cultural production that is separate from, say, cooking. Good cooking can be artistic, but it's not art. Why is it not art? The answer is because culture might include food preparation, but eating does not trigger that mimetic process of engagement by which an individual, and perhaps even a group, a collective, a society even, awakens and questions the world around it. Food, I don't think anyway, can be allegorical.

Davis is correct that art never has just one meaning. It is not only, however, because of class differences, but also because of historical perspectives. And more significantly, it is art's very purposelessness that grants it a liberatory capacity. Art's autonomy is in the creation of something without purpose or social function. It is in precisely in the mimesis of the alienated untruth of capitalist society, of a system of social domination, that a dialectical relationship is established. Adorno believed only in the negation of synthesis could artwork step outside the commodity form...even if only partially. The point here is art is not about message. It is also important to note, per Adorno, that artworks have a double character, they are both autonomous and social fact (or

*Effective art criticism implies having a dynamic analysis of how specific aesthetic values are related to the present balance of class forces, and making a judgment with regard to what factors are playing the most crucial role at any given moment with any given work.*

commodity, often). None of this is to say that class is not vitally important in discussions of culture and it is in this way that Davis makes some very important points. Art is always working with the materials of society. In that sense, the double character is inescapable.

Davis writes:

*"To state that every contemporary work of art will by definition be a product of contemporary society, and thus bear the marks of the contradictions of its actual material situation, does not imply that all art can be reduced to the same problem. Effective art criticism implies having a dynamic analysis of how specific aesthetic values are related to the present balance of class forces, and making a judgment with regard to what factors are playing the most crucial role at any given moment with any given work."*

This is quite correct. I wrote last posting that different classes, different histories, will approach artworks from different perspectives. The difficulty for the left, it seems to me, is in remembering the problems of autonomy, and of mimesis. In a sense, the bare minimum required of an artwork is that the audience might find enough there to provide a mimetic process. From that process comes a self examination, a reclamation of the individual's own story, and a social re-narration.

Now, again, Davis writes mostly about the visual arts. In Shakespeare's time people

spoke of going to “hear” a play. Audio, or audience. For TV, you have viewers. The rise of visual privilege (that word again) has informed the reception to art and narrative. The failure to listen. Text becomes ignored. It is simply, often, literally not heard. What is SEEN however is rarely ignored. When I suggested that Hollywood cares little for text, I was only stating the obvious. If one cared about text, about the spoken word, one would never have formula at all. McKee and Blake Snyder wouldn't have carved careers out of jotting down the kitsch formulae of the culture industry.

*In reality most people have come to see daily life AS a movie.*

In one obvious way, the inclusion of class is pertinent to the stuff cranked out by big studios and major networks. It goes without saying that the economic realities of film and TV play a considerable role in how these films need to be evaluated. The trap in this is, however, that a monolithic judgment is inadequate to the subject. There is a wide spectrum of circumstances and history behind, say, every five million dollar film. The fact that a film costing five million dollars is considered, officially, ‘low budget’ speaks volumes all by itself. As one goes up the budgetary ladder, the narrower those circumstances become. A eighty million dollar film, or rather every eighty million dollar film, is likely going to more resemble other eighty million dollar films than not. This is a risk averse industry. Conversely, every micro budget film, say of five hundred thousand dollars, probably is the product of comparatively unique factors in its development and making. The movie industry today is predicated on a monopoly of distribution. The big chain cineplex franchises are locked into showing the product that the studios give them to show. This is the equivalent of Pepsi buying up shelf space at the local supermarket. There are plenty of independent soft drink makers, but the big chain stores won't sell them, because Pepsi or Coke has bought up the shelf space. There are a lot of interesting small budget

films made today, and the technology behind film making continues to allow for films to be shot and edited and scored for a fraction of the cost of twenty years ago. But say, in theatre, as a first example, this problem is not so obvious. Theatre doesn't make the same amount of money as film or TV. The audience is a fraction of that which goes to see movies. In New York, the self appointed center of theatre (sigh), there are dozens of small theatres putting up new work, and even, on occasion, older plays, but these spaces are a contested area. By which I mean, small theatres devoted to theatre art, to new work usually, are appealing to a very tiny audience base. A good part of that audience are other people involved in the making of theatre. In terms of media, they are simply ignored. There are several results to this reality. One result is that many small spaces choose to pander (what they perceive as pandering) to this minuscule target audience. They do cabaret, or comedy sketch evenings, or satire of some sort. They do a lot of “one character” (i.e. cost effective) productions, and they promote what they do as ‘fun’ and ‘entertaining’. Another tactic is to “develop” new work with the intention of getting this play picked up by a larger theatre, usually a “mid size” house. The entire psychic structure for small theatre exists largely in the shadow of the ordained big theatre or regional theatre system. The work of contemporary playwrights is mostly middle brow conformist ‘message’ oriented and non threatening material. At least those desiring financial help from the larger theatres and theatre institutions, which means often, University theatre organizations. Grants have all but disappeared, so the economics of an art form like theatre is faced with harsh realities. You cant make money doing theatre unless you are



*Buster Keaton in The General*



locked into the system. And the system today, judging from the work on Broadway, or more relevantly, to mid size theatres, is stunningly forgettable. And it is forgettable in very particular ways. It is the work of writers, often, who sustain themselves writing for TV, and it is work that cannot allow any possibility for offending those financial assets.

Now, the class perception of big studio film as opposed to regional or mid size theatres, differs greatly. I think so pervasive is the influence, across the culture, of film and TV, that the educated twenty percent that self identifies as interested in art, is going to see theatre according to the aesthetic norm of studio film and TV. There has also been a rather profound conditioning over the last thirty years that has had the result of making

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the experience of attending a play a very problematic experience for most. The working class perception is based on an aesthetics of populist solidarity. Since art in general is taught as frivolous, and since most educated in public schools have had no arts education at all, the approach to theatre is shaped by a perception of failure. Its failed to be as good as TV. I hasten to add, my experience has often been that the very 'least' educated, the most completely outside the educational apparatus, are the most perceptive and deepest audience for theatre. In the same way the San Quentin audience for Beckett was almost preternaturally attentive and insightful.

The ideological backdrop is both recognized, I think, generally speaking, by all classes, but it is not really understood. Or, rather, I think with few exceptions that audiences in the U.S. tend to automatically distance film reality from daily reality. At least abstractly. In reality most people have

come to see daily life **as** a movie. The deep attachment fans develop for their favorite shows would is perhaps more acute in that layer of the working class that isn't on the verge of catastrophe. Identification requires a degree of leisure security.

Davis writes:

*"8.6 Contemporary art suffers from a narrow audience, and access to art education is largely (and increasingly) determined by income-level and privilege; art education should be defended and made universal (this point itself involves a critique of the notion that art is a luxury)"*

*8.7 There is no reason why the immense quantity of artistic talent that currently exists, unable to find purchase within the cramped confines of the professional "art world," could not be put to work generalizing art education, thereby providing itself with a future audience*

*8.8 This kind of common identity could form the basis for organizing artists as something more than individual agents, each working on a separate project; it therefore would also lay the foundation for a more organically political character for contemporary art*

*8.9 Creative expression needs to be redefined: It should not be thought of as a privilege, but as a basic human need. Because creative expression is a basic human need, it should be treated as a right to which everyone is entitled."*

Now, again, this is basically correct, and its about visual arts per se. The problem is that because arts are no longer taught, or taught badly, there is the difficulty of finding radical arts instructors. The community level programs I know of have almost always retained a linkage and psychological dependence on the very institutions that have marginalized them to begin with. What I often call the "bad community arts center mural" phenomenon. Arts at this level becomes, understandably, an exercise in solidarity. Criticism is seen as elitist, and hostile. The result is bad art. And this is exactly what the ruling class is happy to have happen. Solidarity, shaped by bad teachers who learned from bad institutional teachers, and a distrust of rigor (also a product of conditioning) and a basic default approach that has no awareness of the actual roles culture and the arts can play in shaping all thought, but specifically political thought.



A bad play about the Zapatistas is still a bad play. And a bad play, a regressive conformist structured play negates the radical potential.

A bad mural is still a bad mural, and there is a colonialist dimension to this entire phenomenon. The paternalistic liberal (white) institutional funders, and educators, patronize the underclass by applauding junk work, because, after all, it's all they can be expected to create. So that if a working class woman playwright that resembled, say, a Sarah Kane, came along, her chances of being supported would be next to zero. If a young woman playwright came along writing a kitsch coming of age "naturalistic" play, her chances would be far greater to gain support and backing. The only future for change at this level is to absolutely sever all linkage

*For the underclass, those  
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Community itself is gone.*

with the establishment system of patronage. This is, needless to say, risky and difficult. The loss of the avant garde has left a gaping hole at the community level, culturally.

There has also occurred, over the last thirty years, a coinciding impulse toward identity based movements. This runs alongside the balkanizing of aesthetic sub communities that colonize various mediums. So in theatre, in poetry, in prose, in painting and dance, one can find, without much effort, the various mafias that staked out their territories. The white establishment, mostly liberal, have served to reinforce these practices, and again for the same reason, that this is a way to silence genuinely radical voices. If one favors message narratives, or message based realism, the result is that writers and painters are going to instinctively look for the support they need by catering to the messages

most favored at that moment. Liberal condescension. Again, a bad anti racist play or short film is still a bad play or film. And more importantly, the intended message ends up its opposite. This was clear sixty years ago, as Marcuse and others pointed out. And because of this privileging of theme and message, and the idea of art as communication, the majority of young writers look no further than their officially sanctioned form of suffering (I've not noted a lot of Latino playwrights, say, writing plays about Ancient Japanese feudalism, etc.). It is an arts culture of identity victim-hood, narratives of identity suffering. The reality is that a deeper layer of suffering would emerge from that play on Japanese feudalism — or whatever — then occurs with plays of direct confession and biography. And here we can bring the discussion back to the whole 'privilege' debate. One of the problems with the privilege debate is that it contains its own contradiction; a purported anti hierarchical theory for social change goes out and creates new hierarchies of suffering, and sort of forgets who the victimizer is. I often feel the beneficiary of the privilege debate is the Justice and prison system.

Of course some people are drastically more targeted by police (black teenage men for example) but the white working poor are targets, too, and more to the point, they are not the police. The police as the organ of the ruling class property owners are the problem. So privilege is a useful term and important topic even, but it must be examined. And it must be examined from within some sort of deeper class analysis. And it is here that one has to be careful not to confuse the intersectionality hissy fits of white male leftists, with insisting on class. And I am insisting on a rather qualified definition of class. There is a lot of recent sort of white racism surfacing as part of the attack on intersectionality. Now, intersectionality was born of Kimberle Crenshaw's analysis that black women were being written out of certain narratives. It reconfigured discourse about oppression. In a sense, its like those world maps that always had the United States in the center and northern hemisphere given more scope....when in reality the world looks very different if the southern hemisphere is privileged (sic) and if Asia were centered,

or the Mercator projection that distorts and increases size as one moves away from the equator. {<http://www.petersmap.com/>}.

That is what correctives like intersectionality were doing in principle. Today, intersectionality is used as shorthand for multiculturalism in a sense...code for "blacks are so resentful". Today, privilege is being debated in a way, by all sides, that obscures the actual victimizer. The police, the justice system and the courts and legal apparatus. Now, privilege certainly plays a role in the new University educated left. For most of this debate seems to be written in the prose of the University.

I think instinctively I am coming to be suspicious of a prose so tortured and a syntax so unnatural that, really, self parody is too kind a description. Additionally, I am reminded of the trans community, which my son worked with twelve or so years ago. These were people who had to be their own advocates. And they were. It is a tad ironic to see trans sex workers suddenly have such cache within the new left. I hope the point I am making is that an awful large chunk of the leftist writing I read today is the work of those in the business of NOT wanting change. They now have a vested interest in defending their small-ish citadels of influence in various publications (some mainstream even) where they can play the role of honorary leftist voice. Revolution would change that. The white male racial coding, which seems to use "privilege", and "intersectional" as part of the latest version of "PC gone mad" tropes in



*Paris, France*

media, are simply resorting to old white male rights. However, the petulance and invective of many University educated feminists, the entire check your privilege order, is difficult for anyone to react to positively. Listening rarely happens when someone is ordering you to do so. And this authoritarianism and puritanism is deeply ingrained in the U.S. It is there in the UK as well, and in fact may be one of those borrowed stylistic presentations that travel the other way across the Atlantic. Russell Brand's appearance on the BBC has certainly engendered a lot of commentary. Brad Evans and Julian Reid commented on this class issue in their piece on the Brand attacks..

"So how does one authenticate as being from below? What qualities do you need to possess in order to qualify as a valid member of this inverted vanguard? What does one need to renounce about oneself before being able to speak with an authentic voice? Are there degrees for instance of "belowness" that create levels of subaltern verification? Does this invalidate the voices of all white men, especially those who garner a public profile? Does this preclude ourselves who, although from working-class backgrounds, now find ourselves part of well-established academic institutions? Indeed, does having a presence in the corporate media world necessarily disqualify the quality of the criticism and the political intervention?"

Evans and Reid touch on the contradiction I have pointed out before. The contempt for the underclass runs up against a romanticizing and near fetishizing of the underclass as the repository of "authenticity". There is a curious erotic frisson connected to the perception of this 'other', the usually invisible underclass. It is worth pointing out that again, these contradictions seem to take place in a highly gendered way. The male underclass is usually the object of fetishizing, not the underclass woman. But here the question is very relevant, what does class mean in terms of legitimacy?

The question is, will Brand use his wealth as an activist, or just fuck off to the South Pacific or Cote D'Azur for his next vacation? Malcolm X. said, don't beat up people for their past if they are changing. Remember when you didn't know certain things. Don't forget people

can wake up. And this is exactly my problem with the puritanism of the Laurie Penny and Natasha Lennard pieces on Brand.

\*side note: Lennard (left) and Perry (right) are both English, and oddly, seem to be working the same “look”. I draw no conclusions from this. I don't think.

A note on class: this is a big topic and one much argued. At the end of Vol.2 of Capital, Marx asked “What makes wage laborers, capitalists, and landowners the three great social classes?” He left only an unfinished answer for the work was never completed. “At first glance—the identity of revenues and sources of revenues. There are three great social groups whose numbers, the individuals forming them, live on wages, profit, and ground rent, respectively, on the realization of their labor-power, their capital, and their landed property”. The direct operating control of the means of production is what separates, say, lawyers and other professionals from owners of industry. Still, it's good to think in terms of class interests. What this ends up suggesting, for our purposes here, is that there are ideological classes as well as economic, and they on occasion overlap. But as Big Bill Haywood said, there are only two kinds of people in the world, those who work and those who don't. My point here, echoing Marx, is ‘Who is the enemy’? Who is working FOR the man, and who is being oppressed by the man.

Privilege and class. Class is not homogeneous. There are ideological differences and material and psychological differences. So yes, in the U.S. where class consciousness has been erased, it is important to promote class awareness, but not as if there weren't divisions within each class. But again, I cannot but keep returning to the role of academia in all these debates (if that's what they are). There is a subtle confusion here about identity, and it has to do with how life in the Spectacle, in a world of hyper branded hyperrealism, it is difficult to tweeze apart self branding from “identity”. The reflexive mental actions that constitute ‘shopping’ are hard to suppress.

I suspect the embrace of ‘identity’ has

a good deal of progressive or even radical aspects, but clearly it is also fraught with pitfalls, with owning the brand you shopped for. Identity shopping is pretty much the daily pastime of most youth in Western society. It was for me. Even into my twenties I can remember trying on points of view, playing with that voice, that appearance, the drives and movements of unfamiliar roles and appearances... and opinions. For the underclass, those without University education, the problems of learning are compounded. Community and traditional teachers are gone. Community itself is gone. For the underclass, the poor or all races, the struggle to find authentic guidance, to

*the confusion of intellectual roles, or finding one's way politically, is far more complex for the poor. Just as a basic fact.*

verify suspicions, or explain intellectual fraud, must be sorted out on one's own. The exceptional degree of assistance that colleges and University provides, at least the elite schools, cannot be over emphasized. This is directly connected to class. I remember not knowing what a bank account was until I was over eighteen. I didn't come from a place that used banks. Cash baby. I remember the embarrassment of not knowing. And I feel often, reading the prose stylings of graduate poli-sci majors, a subliminal sense of superiority. I have noted this blind spot before among the educated (expensively educated). So, the confusion of intellectual roles, or finding one's way politically, is far more complex for the poor. Just as a basic fact. Hence my distrust of anyone bullying people for past mistakes. Testing out new models of identity isn't bad per se, it seems more like a natural process of maturation. And it is here, again, where I feel an awful lot of leftist critique on all sides has tended toward a pathologizing of everyday life. Again, not for the victimizer, but among the victims.



Divisions need to be examined. Class however doesn't go away because you make a lot of money. One can adopt ruling class values, but the ruling class can smell your background. These are things that need to be clarified. Oprah comes from a very impoverished background. She has managed to absorb ruling class values, largely, but she can never really become one. Russell Brand is a millionaire and dates rich odious women, but the upper class will never tolerate him. And now his spouting of leftist politics ensures he will remain a target for hectoring and moralizing lectures. Attending the right schools, knowing the right code words, knowing the right people, the right family interrelationships, and on and on. The accumulative portrait is what makes up class. One can be broke, and still be a member of the ruling class (they will help you out anyway). One can become rich and still be a pretender to the upper class.

Now, to return this to art; the problem is that the approach to narrative and film from an audience that has lost the capacity to hear or respond mimetically, has meant a reliance on simplistic notions of message. And this is because of not just training, but because of the literal inability to hear the text. Good writing goes largely unrecognized these days. A script as good as *The Hustler*, by Robert Rosen, is experienced as just a movie about pool players and revenge. Or about a quest for individual excellence or some other chestnut. Or is a reflection of Rosen's own guilt for snitching. And that's partly true, but in fact it's a film about love under a repressive system of domination, about identity, and more, about redemption. Failure is success sometimes. Loneliness of *The Long Distance*



*Jigsaw*

Runner is another example. You must lose to win. In both of these cases, the metaphoric meaning is clearly lodged in the secondary level of the script. But when I

screened the Richardson at the film school, I was surprised at the inability of students to hear what was going on. Or in films like *Shout* (Skolomowski), or *Losey's Accident* (screenplay by Pinter), where the sub text of the sub text is operative. Where the surface seems oddly disjointed. Not just disjointed, but surreal. The tendency is to think it is a sub genre of fantasy.

But of course, for narrative, it goes even deeper. It is literally the language speaking itself. I used to tell writing classes, the character comes out of the dialogue, not the dialogue out of the character. This is primary. Words conjure, they speak, and finally a performative body emerges that can recite those words. Ah!! A play!

The recent Greek language film, *Dogtooth* (Kynodontos), by director Yorgos Lanthimos is a singular exercise in dismantling satire. Is it satiric? The text, in translation, is literally unnerving. The violence of the film is visceral, and yet... is it satiric? Ironic?

Is this in any way a naturalistic film? There is no correct answer.

*"Among the dangers faced by new art, the worst is the absence of danger."*

Class awareness is probably what is missing, or the first of many things that are missing, in how the mass audience reads films like *Thor*, or *Dark Knight*, or TV shows featuring cops.

There are poetics to dialogue, if we stick to theatre here to conclude. One can read an opening scene from one of Kane's plays, or the opening page of any Pinter play, or Beckett. What you don't hear is as important as what you hear.

Here is the opening of 448:Psychosis ...

(A very long silence.)

– But you have friends.

(A long silence.)

You have a lot of friends.

What do you offer your friends to make them so supportive?

(A long silence.)

What do you offer your friends to make them so supportive?

(A long silence.)

What do you offer?

(Silence.)

a consolidated consciousness resides in a darkened banquet hall near the ceiling of a mind whose floor shifts as ten thousand cockroaches when a shaft of light enters as all thoughts unite in an instant of accord body no longer expellent as the cockroaches comprise a truth which no one ever utters I had a night in which everything was revealed to me.

How can I speak again?

the broken hermaphrodite who trusted herself alone finds the room in reality teeming and begs never to wake from the nightmare

and they were all there

every last one of them

and they knew my name

as I scuttled like a beetle along the backs of their chairs

Remember the light and believe the light

An instant of clarity before eternal night  
don't let me forget.

One is not really sure who is speaking. Productions since Kane's death have let directors decide. So how does that work? The answer is that with Sarah Kane, by the time she wrote this, her last play, the poetics were everything. There are no more "characters", there are no more sets, no more locations. There is only text. Spoken aloud. And from out of that comes something that is theatre, it is a form of thought, a form of knowledge and it is mysterious.

A playwright such as Michel De Ghelderode, whose work has never really found its place on world stages, is a case in point. Neglected, semi forgotten, and yet, there are few writers for theatre who possessed such a clarity of hallucination. A great many of De Ghelderode's plays have yet to be translated into English. He wrote a lot of short pieces, he wrote marionette plays, and he wrote rituals for the theatre. That is what he did. Is he naturalistic? No. But what is he? I don't know, honestly.

The point is that work that actually disrupts the facade of the bourgeois "real", without resorting to innovation, or novelty, or to

fantasy or to the manufacturing of the "weird" affect; these are, at least for theatre, the most forgotten of playwrights. They are forgotten, largely, for they resist the creating of profit. My few suspicions about Kane have to do with her posthumous popularity. Now, all things are

relative, and she is by no means what one would describe as popular, and yet... her work is regularly produced. Is this good or bad? It is neither probably, and perhaps it is just too early to pass final judgment.

DeGhelderode was a major artist of the theatre, who remains too unfriendly, too prickly, and too opaque, finally. We don't yet know what to do with Michel DeGhelderode.

If you can find any of his plays in English, and likely that will mean either Vol. 1 or Vol.2 of "Seven Plays", published around 1960, I would say snatch it up. Most of his work is out of print, and I suspect these old translations (by George Hauger, and very good, really) are the only ones that exist. Fame is a strange ghost that haunts some with affection, and others with malice.

I am not ever really sure which is which, however. ■



*17th Travailleurs - Sergeant Indochinois WW1*

John Stepling is a founding member of the Padua Hills Playwrights Festival, a two-time NEA recipient, Rockefeller Fellow in theatre, and PEN-West winner for playwrighting. Taught screenwriting and curated the cinematheque for five years at the Polish National Film School in Lodz, Poland. A collection of his plays was published in 1999 by Sun & Moon Press as *Sea of Cortez and Other Plays*. He is artistic director of the theatre collective Gunfighter Nation.

# SPEAKEASY

*Each issue the New Art Examiner will invite a well-known, or not-so-well-known, art world personality to write a speakeasy essay on a topic of interest – whatever it may be.*



## Carinthia West

Lately, I have been pondering the meaning of the word “faraway”. Partly because a recent move to Cornwall from London induces horrified expressions in both

friends and acquaintances alike “Cornwall” they shriek, using the same tone as Dame Edith Evans once used to great effect in *The Importance of Being Ernest* when using the word “a handbag”? “Cornwaaall?”, they look aghast, following up with “but it’s so faraway!”

Politeness usually refrains me from replying “but you think nothing of flying to New York for the weekend, or tooling up and down the motorway twice a week to the dreary Cotswolds”. I grew up for part of my life, on the Isle of Wight, where the ferries ruled your ease of travel, and you were only as “faraway” as the next storm, whereas if you lived in Scotland the cold mists and freezing fogs could roll in and then you were really faraway.

So, a move to Cornwall late-ish in my life seems a natural way of combining the loves of my life previously embryoed on the Isle of Wight, by combining the sea and visual arts.

Why my more spoilt London friends should continue to believe they are the centre of the universe is always a puzzle to me. I was brought up in the Kennedy era Washington DC, post war Germany, and the emerging republic of Austria, but glorious “Swinging London” was still the main centre of my personal universe. But the London I knew in the 60’s, 70’s and 80’s has radically changed from a cosy village where you knew the butcher, the baker and the candlestick maker, to a global centre of commerce and collapsing basements.

Sure the art galleries, museums, theatres and parks remain some of the best in the

world, but no longer can you stroll down the King’s Road and run in to Jimi Hendrix at the Chelsea Antique Market, bump in to Eduardo Paolozzi buying a paper at a local newsagent, Anita Pallemberg in Snappy Snaps or Bob Geldof drinking cappuccinos at the Picasso ... those people or the places have gone, (moved elsewhere in a manner of speaking)... to be replaced by homogenous high street shops. The last bastion of iconoclastic artists is still the Chelsea Arts Club, but the club itself is now surrounded by the expanding properties of mega rich oligarchs or racing car magnates digging out their basements to the fury of locals . All too often now, in London, “faraway” begins to mean the expressions on people’s faces as they tune out the sound of sirens or scraping of scaffolding by listening to techno on their headphones, or madly muttering in to thin air. We are a faraway nation now, never in the present, always somewhere else...

I recently showed my photographic work in Chicago, a city as vibrant and art oriented as any place I’ve ever lived. In between the architectural skyscrapers the streets seem cleaner too (later I discover that side alleys to accommodate the rubbish trucks were cleverly built in to the street grids). It’s a city running with watery canals and blues clubs in equal measure, both indispensable in my eyes to the enjoyment of living. Perhaps the same combination of water and blues could be said of my area of Cornwall, where my new home is a few minutes from a lovely beach, blue is the predominate colour of Lanyon’s paintings or summer skies and the St Ives Blues club was recently voted as the best in Britain. It’s as far away as you can get from the hustle and bustle of city life. Hooray.

No one in Chicago talks about being faraway from anywhere. Americans take airplanes like we take taxis, and when a dear friend of mine



aged 80 traveled up to Chicago from Santa Fe for my opening night, he thought nothing of taking a train that took over 24 hours, and departing back three days later. As a teenager with my parents and later as a young woman I drove all over America, often sleeping in the car, and taking many of the landscape photographs (Monument Valley, The Painted Desert) that form my collection today. Seeing one of my exhibitions, Dennis Hopper once paid me the highest of compliments..." she's a real on the road chick"... nothing seemed faraway then.

Sure, it takes my five hours to train it or drive from London to Cornwall and vice versa (soon to be four and a half when the A30 finally dual carriageways all the way), or three hours door to door if I fly from Newquay, but so what? During that time I get to think, imagine, review, come up with ideas, plan my next exhibition, write, muse on some stunning scenery, listen to the blues or Radio Four, clear my head or fill it up again. As the nights get shorter and the days longer, the sea bluer and the temperature warmer, those same much loved London friends will no

doubt start to call like nightingales in spring "we hear the Tate Gallery is re-opening so we're thinking of coming down to St Ives for the weekend. We'd love to stay with you". Will I hear myself saying as I laze in bed with my book and trace the pattern of the wild geese formation flying down the estuary, "are you sure you want to do that? It's such a long drive and, really, I'm so faraway...." ■

*Carinthia West is a photographer and journalist. Muse magazine wrote "Carinthia was a free spirit, blissfully unaware that she was candidly recording icons and iconic moments of the times" Ronnie Wood of the Rolling Stones commented "Carinthia took pictures while we were getting on with life". Her most recent exhibition 'Visions of a Magic Time' will move to KM Fine Arts Gallery on La Cienega Boulevard, Los Angeles on February 10th, before returning home to the PZ Gallery in Penzance in May or June of 2016. After which she will write her book.*

"The aim of showing my photographs is to give a glimpse of how we lived then. I think of it as an affectionate archive of a more innocent time. It is intended to inspire the young photographer to look around at their world and capture that fleeting moment before life moves on as it always does."

## News Briefs

### 1 Facebook

On 30th November 2015 we created a new Facebook page. By the end of the first week we were running at 120 Friend requests per day. We gained 2138 Friends in two weeks. A sign of the remarkable changes in the art world when the ostracized become mainstream.

### 2 eBay

The New Art Examiner featuring fiber art Robert Heineken Kenneth Josephson issue 2, 2000 on sale on ebay for \$16.99 also 7 issues of Art in America, New Art Examiner, Artnews Rauschenberg sculpture (rare) for \$20.00.

An archive is being created.

### 3 2016

May we wish all our readers a very happy 2016 and hope you will find the interest and the time to write to us, engage with our writers and tell us what is happening in your art practice by sharing your visual experiences.

### 4 Curatorial App

Here's a little something they are chatting about on the web and will probably be tested by all the other Art Magazines, but not us as it is a gimmick.

An App for your phone that personalizes your exhibition space.

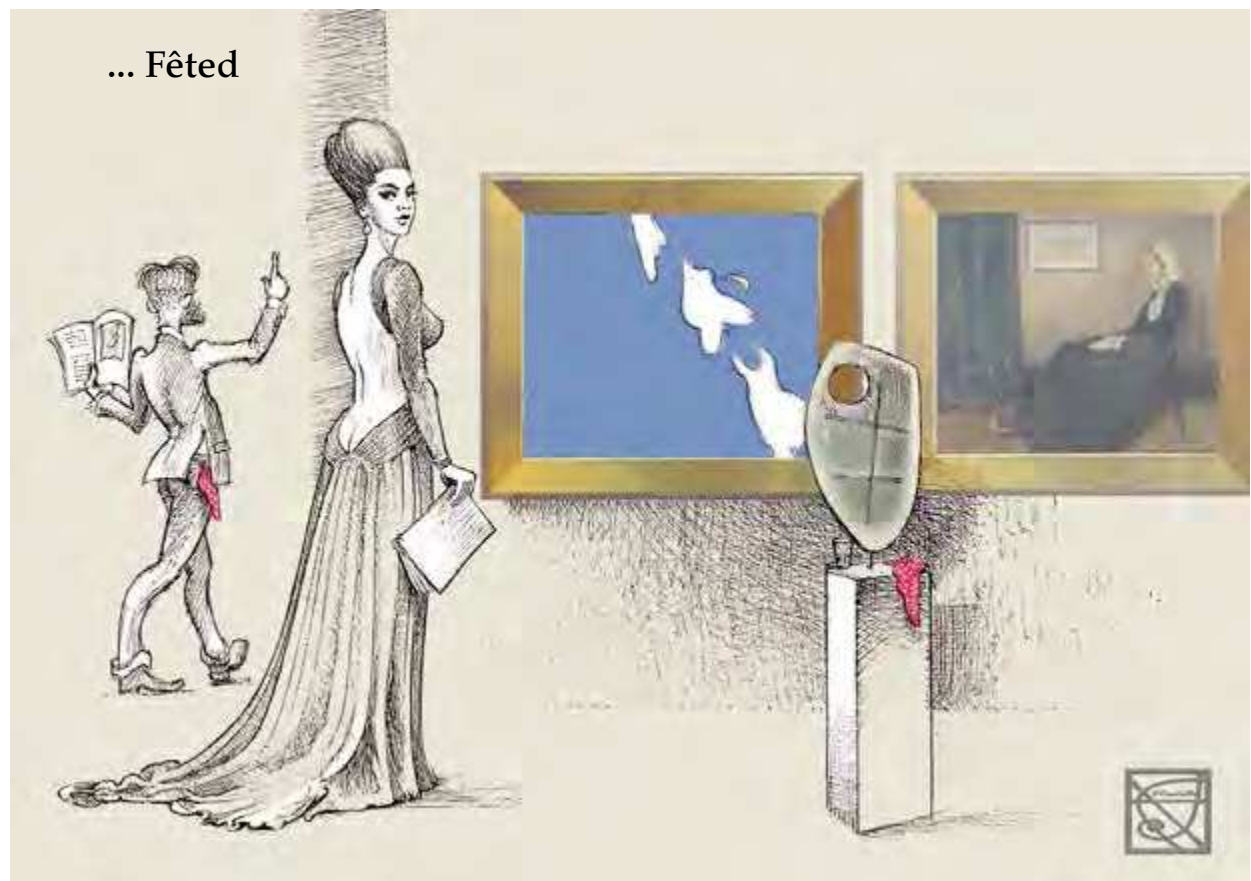
<http://muzeu.ms>

# The Birth of Abstract Impressionism from Cornwall ...



*Jonathon Xavier Coudrille*

## ... Fêted





# The Lost Art of Curating

## *The problem of curating art for block-busters*

Richard Sharland

It struck with magical force, a grove of reconstructed ancient trees bolted into the square, patterning a bare, solid, organic awkwardness against Georgian facades. The unmediated surprise of it invited entry, exploration, touch, curiosity - wonder.

Such was the impact of Ai Weiwei's 'Tree 2009-10, 2015' before I had even stepped inside the Royal Academy to see this autumn's exhibition and before the curators had begun to signal just what it was I should be seeing and admiring; before their attempts to mediate between me and one of the world's most powerful artists; before they edged an excellent exhibition with disappointment.

There had been a similar experience in the same space earlier in the year with Anselm Kiefer's submarines, his piece 'Velimir Khlebnikov: Fates of Nations: The New Theory of War'. They hung in dry glass tanks in the entrance courtyard, rusty threats suspended in time, the image all the more compelling because these metal sharks were somehow armed and potent, while seeming frozen and unexplained. My curiosity was charged, stimulated: only later, off to one side, did I see some information about the piece. The curators had been padding the work with prominently displayed boards of text, pointing out how I should receive, react, respond to what I was looking at. They told me who influenced Anselm, offering definitive insights into what he felt and thought in an unquestioning language of certainty, the voice of authority. My curiosity almost lost its edge: only the scale and raw physicality of the artists' work kept it alive.

Keiffer's art is huge in every sense, some of its effect achieved by dwarfing the viewer, emphasizing the insignificance of our fragile humanity. This exhibition was raw and intimidating - the dark messy scale of it, the



*Ai Weiwei: Tree 2009-10, 2015*

*Photograph © David Parry*

plasticity, the organic wintered colours, the imagery bleached and metallic. When I stood still and absorbed, I felt awe.

For a long while, I sat before 'Black Flakes 2006', a vast winter landscape with stakes in a white land and a book made of lead floating in front of a dark sky. Powered into surrender, I wondered if this was how viewers felt here 170 years ago, confronted by John Martin's sublime canvasses, his tiny figures dwarfed by raging thunder, lightning, inferno and floods. Looking at this mysterious painting, I glimpsed other viewers coming and going, many wearing the instructive headphones that seem to be ever-present in major galleries, watching as they paused briefly, talking, reading the catalogues. A jet plane passed overhead as it came to me how insulated we all are, how temporary the experience of this art, even when it bursts from the wall like an assault. How our visceral reaction to work is deepened when we are not being instructed in its interpretation.

Much of Ai Weiwei's work concerns itself with exposing oppression, corruption and hypocrisy. Works like 'Dropping A Han Dynasty Urn' do not require any interpretation: the three

*I could feel the universality of Ai Weiwei's artistic experience being occluded by the interpretation, by a curatorial focus on the Chinese hero*

images and the title express the action while the artist's posture and the look on his face conjure the complexity of reverence, challenge, gravity and humour that infuses the act with depth and questioning. Constructions like 'Souvenir from Shanghai' convey strength and beauty, their form and materials provocative and emotional: others, like 'Table with Two Legs Up A Wall' are elegant as dancers. Several times I could feel the universality of Ai Weiwei's artistic experience being occluded by the interpretation, by a curatorial focus on the Chinese hero, the work simplistically

'explained', reduced to commodity, art's own inner language dimmed by deliberate explanation.

The curator's words were signposted in large letters on the wall in every room of the exhibition, detailing how much of the work's purpose is to highlight repression in China, failing to hint these issues are universal, that exposing double standards is part of art everywhere, including here in the UK, here in the Academy. Was this curation signposting us away from something the artist was saying? Ai Weiwei's wallpaper of golden CCTV cameras is papered over a whole room was being presented inside a country with one of the highest CCTV camera per head of population ratios in the world. In the same room, the graphic tableau sculpture's of the artist's imprisonment were interpreted within the context of China, without any reference to a wider area of concern, for example, in Guantanamo Bay. I wonder how many more people might make these connections if the repetitive curation was toned down, was less authoritative, more



*Anselm Kiefer: Velimir Khlebnikov: Fates of Nations The New Theory of War*

allusive. How many people, gazing at the information on the walls and perhaps where the voice in their headphones directs them, will notice the last work in the show, a CCTV camera carved in stone looking at them as they descend the stairs after they exit the merchandising area?

I know I am not alone in feeling resistance to the curator's guidance, what David Blazer calls their curationism. He charts and explores the rise of curatorial influence in his 2014 book "Curationism – how curating took over the art world and everything else". Tracing the emergence of curators from performance art in the 1960s and 70s, he examines their evolution from project managers into cultural gatekeepers, not just in art, but in music, fashion, design, travel, information etc. He takes aim at the way the scholarly authority of curators is asserted, identifying a "new feudalism in culture work, in which a select few, dubbed the curatorial class, maintain their illustrious positions," while so many others imitate their ways. In its extreme form, he argues, "the curator is present, the artist is absent".

Art is, of course, an industry and the leading public galleries and museums its major retailers, coerced into surviving on their block-buster exhibitions, a bums-on-seats philosophy that commodifies the work and requires the viewer to become a consumer. The result is a way of being with art that is timorous, cosseted, safe - taking art on a plate rather than going to hunt for it, discovering its complexities first hand. Without stillness. Without curiosity.

Yet, as Blazer explores, this is how the big art institutions expect me to receive my art – presented by 'content farmers' for consumption, repeat business, more revenue. It is packaged for dinner party conversation, bucket lists, corporate hospitality and it fuels quips like Steve Jobs' "creativity is just connecting things".... which is just not so. Creativity is much more skilled, complex and emotive than merely making connections, it is wide and deeply resonant of what it means to be us, to be human. The packaging of curatorial directives suggests art does not challenge, enlighten, evoke or provoke; does not exist to culturally penetrate the armour of the viewer. Ironically, this contradicts the primary object of nearly all Ai Weiwei's work:

NOTES TO MYSELF ON BEGINNING A PAINTING  
BY RICHARD DIEBENKORN

1. ATTEMPT WHAT IS NOT CERTAIN. CERTAINTY MAY OR MAY NOT COME LATER. IT MAY THEN BE A VALUABLE DELUSION.
2. THE PRETTY, INITIAL POSITION WHICH FALLS SHORT OF COMPLETENESS IS NOT TO BE VALUED – EXCEPT AS A STIMULUS FOR FURTHER MOVES.
3. DO SEARCH.
4. USE AND RESPOND TO THE INITIAL FRESH QUALITIES BUT CONSIDER THEM ABSOLUTELY EXPENDABLE.
5. DON'T "DISCOVER" A SUBJECT – OF ANY KIND.
6. SOMEHOW DON'T BE BORED BUT IF YOU MUST, USE IT IN ACTION. USE ITS DESTRUCTIVE POTENTIAL.
7. MISTAKES CAN'T BE ERASED BUT THEY MOVE YOU FROM YOUR PRESENT POSITION.
8. KEEP THINKING ABOUT POLLYANNA.
9. TOLERATE CHAOS.
10. BE CAREFUL ONLY IN A PERVERSE WAY.

attacking dishonesty, deceit, complacency and bureaucracy. Which, of course, we have none of in our UK culture ...

The work of Ai Weiwei and Kieffer is epic, much of it with a forceful energy that defies explanation. Not so with an artist like Richard Diebenkorn, whose emotional energy is colour and form, a quite different subtle personal intelligence. An exhibition of his work at the Royal Academy earlier this year was interpreted much like the Ai Weiwei and Kieffer shows, with the same large print explanations in each room in the same typeface and a catalogue full of the curator's thoughts and analysis. I bristled. Mainly because I had seen Diebenkorn presented quite differently in San Francisco two years earlier. Here the print explanations were small and discreet, my guide a small piece of paper handed to everyone at the ticket barrier - Diebenkorn's '10 rules of painting'. In his own words, he wrote about his approach to his work, each canvas, each piece of paper. This was neither analytical nor patronizing. It wasn't even informative, really - and it didn't tell me how to look or how to see or how to encounter the work. The reverse, in fact: it stripped away preconceptions in the



viewer, creating more likelihood of a face-to-face encounter with colour and form, with movement, observation and emotion. It did not 'arm me with information'. It disarmed me.

"At it's worst" says David Balzer "the power-mongering of curationism creates an intolerable noise, a constant cycle of grasping and display. To escape and conquer this, there must be stillness". These exhibitions do not give us stillness. They give us the large print packaging, room by room, the customers with their headphones on, the curator's noise ever present like a chaperone, making sure none of us get too close to the life and death of it, the sex of it. The endless repetition of themes, theories and messages echo Orwell's doublespeak in 1984, becoming the story, the insulation against the disarming.

Much of Keiffer and Ai Weiwei's work is

so majestic, it lives with this noise, though it might have even greater power amongst stillness. Diebenkorn's work is more affected, dulled by the noise, it seems that the vibrant spontaneity of its creation is more easily infected by too much information. We need that is an education, as the poet W.B. Yeats defined it : "Education is much more a fire lit, than a pail filled". ■

\*The Ai Weiwei, Anselm Keiffer and Richard Diebenkorn exhibitions referred to in this article were staged at London's Royal Academy during 2015.

\*David Blazer's book "Curationism – How curating took over the art world and everything else" is published by Coach House Books (2014) and Pluto Press (2015).

Richard Sharland is an artist and writer who runs a small gallery – Terre Verte – in north Cornwall.

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Reading Corner, Goodreads.

# Can Paedophilia be Art?

Daniel Nanavati

On 13th October 2015 at Hammersmith Magistrates' Court permission was sought by the Metropolitan Police force in London to destroy works by artists in a paedophile investigation which had led to imprisonment. Amongst the artists named were Graham Ovenden, Pierre Louÿs and prints from the photographer Wilhelm von Plüschow.

Following the magistrates permission to destroy these works, a decision now pending an appeal by a barrister representing Graham Ovenden, The Earl of Clancarty tabled a question on 21st October in the House of Lords.

Unlike any others who had commented upon this case I think it would be wise here to describe from the police records some of these images because we can then all argue around what we know and not what we think we know. The seizure list from the Metropolitan Police has entries such as the following:

*PC Tower computer: 2802 indecent images/ pseudo images manipulated within Photoshop browser on this computer. (Exhibit EM/6)*

The comments by the Lord Chief Justice in 2013 trial R v Ovenden describes one image presented in the case as follows:

*Depiction of a girl, naked lying on her back on a bed. Legs apart with an erect adult penis inserted into her vagina. There is semen on her vagina. Legs are held apart by a male adult hand. There is another penis near to and above her head being squeezed by another adult hand. (Image 52)*

Clancarty was seeking to save the works cited by the police from destruction. Rehearsing the usual moral outrage, mention was made in the short debate by Lord Stevenson of Balmacara of D H Lawrence and Lady Chatterley's Lover and Oz Magazine, both of which faced bans in the face of public moral outrage in the last century.

Baroness Bakewell put the liberal position

clearly:

*"My Lords, I endorse what has been said about this matter of principle. The aesthetics of this country and its art cannot be determined by the magistracy. This is an important decision of principle regardless of what is in this collection. The collection does not have to go on display; it simply does not have to be destroyed. Do not forget that the magistracy ordered the seizure of paintings by DH Lawrence which are now collected and are of great value everywhere."*

Finally for the British Government Baroness Shields concluded:

*"I agree that the optics of this are concerning. I think the best route forward is to convene a group and to come up with a creative solution, as the noble Lord suggested, because the Government cannot intervene in the judicial process. We need another route in order to protect and save the art. There are works of art in this collection that relate specifically to individuals and are child sexual abuse images. Noble Lords will agreed that they should definitely be destroyed." (Government record citation: HL Deb, 21 October 2015, c666.)*

This discussion pulls up several points on art, what we consider art, who we consider artists and how Governments work. The last is the easiest to deal with. The House of Lords concluded they had no right to overturn a Magistrates decisions and that a committee would be formed to discuss the general attitude to the destruction of works considered art. The House of Lords was the highest court in the United Kingdom until 2005 and heard appeals from all the lower courts including Magistrate Courts.

The case is going to appeal on the basis that some of the seized works are over 100 years old and were never considered paedophilic by previous generations. Or if they were they have been accepted as part of the canon of photography for the entirety of the past century. We intend following this appeal and writing further. ■

In December 'Assemble' won the Turner Prize. e-Flux ran an article on how this win stuck two fingers up to the post-modern discussion on the uselessness of art.

The New Art Examiner writers and Associates were asked to comment.

*All Images  
pp24-25 with  
grateful thanks to  
Assemble*



*Daniel Nanavati:*

I am tired of people who tell me art is, in the main, useless. You create something for someone else to look at. The more informed amongst us call this sharing an aesthetic, others simple enjoy the 'experience' and on its alter say anything one creates is art. I am also tired of people who say it is worth something and then dance off into some romantic ideal of soul and love of humanity and devotion of self to nature. Or machine.

Art is worth something. When you have an experience or wish to share that experience not only do you share it through what you create, what you create lives as long as the medium does and so your ideas trail through history. The sharing is its point because by sharing each other's ideas we are, as a friend once said to me at Balliol, 'being evolutionary wise'. We learn by and through what others create just as much as we learn about ourselves by what we create.

A poet once said to me you cannot lie in a poem it will show you up immediately. How else can we ever learn but by being honest with each other? This sharing of visual experience develops cultures by evolving our ways of thinking.

That is more than simply useful.



*Jonathon Xavier Coudrille:*

It seems odd that the moment anyone writes about Art a molecular bonding sets in, and clear water becomes an impenetrable mass or, mess. By the time I'd waded through the lovely words I was numb of brain and I had to read the comments below the main thread before I could grasp what it was about.

I think I have it: a group that actually **does** something, and something worthwhile, was awarded the Turner Prize, in contradistinction to the solipsists usually on the shortlists.

That this has happened is down to an inherently evil conservative government (Art folk, however prosperous, are permitted to lean but one way politically) creating a climate in which only things with commercial value have any value. The writer is asking if Art should be inherently useless, and musing or, missing? The fact that useless things like views and flowers and holidays have a profound and beneficial effect upon those engaging with them, something that used to be taken for granted as a function of Art before the present Art Establishment. I do not know if this award will affect the course of Fine Art in these islands; the Turner at it best was more Grande Guignol than Royal Court, and the creeping dullness that has made it a yawn is unlikely to be dispelled at a stroke by something that only a tiny fraction of the populace has noticed. Having seen the miles and miles of obscenely boarded-up housing in a land where people have to sleep on the pavement, I can only applaud 'Assemble' and the fact that they have gained funding via any source at all





*Jonathan Ball:*

Why do we have the Turner Prize? .... to celebrate young contemporary artists and in so doing help breath oxygen into public perception and understanding of Art - the prerequisite of any artistic journey of appreciation leading to the Holy Grail of soul nourishment. ... it matters not that the majority of untutored citizens' engagement with modern art see it as in the name of the great man J M W Turner, but in a minor key.

Just as planting a tree is the most noble of acts so we need high value contemporary creative expression in pursuit of our identity and purpose.... Artists and Architects compete in common cause to unite Aristotle's Four Wisdoms, Science, Art, Philosophy, Religion, harnessing them to the delivery of meaning into our lives ...

In his House for Essex Grayson Perry has shown us a memorable and thought provoking artist as architect pathway to tomorrow

... how interesting that the Turner Prize Judges have followed, in giving this year's prize to architecture ...

What is the relevance of the Turner Prize to you and to me in the here and now? ....

In 1938 Winston Churchill addressed the University of Bristol on the subject of CIVILISATION... 'When civilisation reigns in any country, a wider and less harassed life is afforded to the masses of the people. The traditions of the past are cherished and the inheritance bequeathed to us by former wise and valiant men becomes a rich estate to be enjoyed and used by all ... the central principle of civilisation is the subordination of the ruling authority to the settled customs of the people ...

Moving forward 77 years, hell bent on assault and bringing disunity to the civic condition, the terrorist and the higher reaches of art and architecture have never found pleasure in each other's company.



*Roland Gurney:*

The latest Turner Prize award to Assemble, for a housing project with a dining table & 4 chairs as its centerpiece presumably as an installation, (like the shortlist) was almost predictable, given past form and current trends.

This means that only two painters have won the prize since 1986. During that time the prize has been won by 7 sculptors (all in 1987-94 when the judges were presumably in their 'sculpture' phase) 10 installation builders and 6 video-makers.

Arguably the greatest artist and painter in the post-war period (along with Francis Bacon) and certainly the most commercially successful- I discount Damien Hirst as a painter, whatever his merits as an installationist and maker of diamond-encrusted skulls- Lucien Freud was only shortlisted in 1988 and 1989 and never a winner. So the Turner Prize clearly has form both for exciting controversy (which goes with the territory) and for almost completely neglecting

painting as an artistic practice in terms of its awards.

This to my mind devalues not only contemporary painting and drawing as visual arts but in so doing devalues the prize itself ironically named after one of the greatest artists and painters this country has ever produced.

*Derek Guthrie:*

"Now we all know the world thinks highly of our rock musicians but we don't necessarily know that the world thinks highly of our painters and this kind of publicity and razzmatazz and bit of Miss World type show business excitement seems to me to be no bad thing." (*Alan Bowness, Director, Tate Gallery, BBC radio interview, November 1984*)

This is the original statement by the then director of the Tate Alan Bowness on the awarding of the 1st Turner prize in 1984.

We know what the business community thinks, as we know Donald Trump has cashed in on the Miss World Pageant. 30 years later the question must be asked is the Turner prize a "no bad thing" or a bad thing?

Point of interest when the short list of finalists was publicly released a year or two later the bookies took bets, the Turner Prize went viral. The excitement is now fading as public interest is fading. The issue of public and private patronage is becoming a major issue of cultural consideration. The party may be ending so a new party will be invented.

*Tina Varcoe:*

Morgan Quaintance, writing in Frontpage, is worried that the Turner judges' decision to award the prize to Assemble, an architectural collective, will have 'seriously detrimental ramifications to British contemporary art' by depoliticising it.

Assemble, claims Quaintance, are lacking in critical engagement because they did not verbalise a crisp political response to the government-created housing mess they are working with. Art should be political, he argues, and the reason they did not speak out is because they have not been through an arts education system which promotes criticism of state power and the use of ideology to control the masses.


Quaintance seems to have failed to notice that much arts education is as heavily laden with ideology as any government propaganda. Anyone who has written an undergraduate arts essay in recent decades will be familiar with the question, "Which critical perspective are you using?"

Lecturers with their critical theory readers are as prescriptive as priests with their bibles when it comes to the ways we are allowed to critique the world.

I have sympathy with the idea that art should challenge, but I haven't seen any contemporary art lately that really challenged anything. Much of what is seen as 'radical' is a rehash of old ideas, and I often long for something that makes me think new thoughts. I would argue that there is a radical vacuum at the heart of critical theory and it's time we moved on. So until we come up with something that genuinely DOES challenge the current powers-that-be, maybe doing practical and useful things that improve the world we live in – as Assemble are doing – is the only way forward.

If you have any views or thoughts about the Turner Prize or responses to the thoughts published here write to us.

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DEREK GUTHRIE

ANDREW LANYON

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# THE ENGLISHNESS OF ENGLISH ART

Derek Guthrie

This Exhibition of 82 paintings mostly small is wide selection from the Camberwell

School of Art London 1945 to 1985 originated by Belgrave Galley and shared with The St Society of artists. The exhibition is wide ranging, presenting the contribution of the school, which became through teaching and influence the mainstream of English painting.

Art schools since the era of Impressionists have had a problem as they are expected to professionalize the contemporary artist. Professionalism is a troubled concept simply because the idea is confused with success. The artist founders of modern art, Cezanne, Van Gogh and Gauguin operated outside of the professional academy.

The Academy originally was the codification of the King's Taste and the Visual Forum of the State. The 19th century, the height of Industrialism, in stages ushered in democracy, bringing forth a middle class into social and political prominence. Naturally The Bourgeoisie aspired to a new taste which previously was the activity of the leisured class, who were usually titled landowners. As the art market the binding requirements of the Academy, as the last word in professionalism faded. New criteria became established by the so called 'independents'. In other words the outsiders took over art history.

Class warfare and revolution shaped Western political, social and art history, and still does today. The rhetoric of the art world is not so binary and explicit as it was yesterday but never the less is still operative but now coded. The potency of the attraction of art is there to see, arousing passions of enthusiasm or disgust depending on the aesthetics of the individual.

The shared symbolic order of the 18th and 19th centuries was fundamentally terminated by the horror of the mass

*The shared symbolic order of the 18th and 19th centuries was fundamentally terminated by the horror of the mass slaughter of World War I and chaos of the Russian Revolution.*

slaughter of World War 1 and chaos of the Russian Revolution. The post war recovery watched a new order emerging as technology embedded itself into modern western life. Visual art responded only to be subject again to a repeated version of WW1 this time in the extended theatre of operations of World War 2 and the Atom bomb. Modern Art produced a series of new movements reflecting the increased tempo of the times, and these technology developments.

Cubism before WW1, Dada, Anti-Aesthetic, Futurism, Surrealism, and Constructivism to name the main players. The artist as the poet, writer and musician struggles with the weight of history, the avant-garde was born out of revolutionary thinking glorifying the individual who was seen to be touch with the present.

Continental European painting from Moscow, Vienna, Geneva and Paris before World War1 and afterwards launched the new thinking. Paris produced Cubism. The bourgeoisie were flummoxed. Their confusion brought forth in a new found elitism, for the Outsiders. The tradition of the New settled in and captured Art History. It out paced and replaced the old tradition.

London as a visual art centre was on the sidelines. Though progressive artists keep an eye on artist colleagues in Paris, Vienna and other European cities. This

## 40 Years of Painting Camberwell Students and Teachers 1945 -1985

7-30<sup>th</sup> November 2015

continued...

exhibition 'Camberwell Painting 1945 to 1985', demonstrates how London responded to the innovation of French art approximately half a century later. After the war London, though badly damaged, was not completely flattened and strove to regain the former pre-war decorous stability.

*Ruskin ... essentially regeared  
the course of art history  
and elevated William Turner to  
the status an old master and  
introduced the idea of Modern  
Painters.*

Camberwell and the Slade School, in competition with the Royal Academy School and the Royal College of Art, sought artistic leadership and in so doing formulated and embedded a new painting tradition identified as 'realism', which socially encoded a mild socialism in spirit with the Post War Labour Government that engineered the post War recovery through the welfare state. English visual art culture was either mid wived or fathered with the brilliance of John Ruskin's a genius of the 19th century who coalesced social mores, with other humanities.

He essentially regeared the course of art history and elevated William Turner to the status an old master and introduced the idea of Modern Painters.

Though the small private school of painting founded by Clive Bell, William Coldstream carried forward the concerns of a social consciousness as a required element in the new emerging visual art. With the new and vital difference that Abstract consideration is

an essential element inherited from Cezanne. The obsessive exactitude of illusion and glossy stroked polished surfaces much loved by the Royal Academy was jettisoned along with the urge of decoration. A new form of basic pictorial engineering was introduced and painting acquired a new look.

Camberwell Art School was Incorporated into the University of the Arts in 1968. The politics education of education in particular art education, is a fertile field that cannot be ignored. Certainly a requirement for looking at this exhibition. All art emerges from a context and does not breath in a vacuum.

The founding of Euston Road School, a private initiative in 1939, was the root which became the mainstream of English art during and after the war.

The Bauhaus in Germany trail blazed art education by recognising that industry and architecture shaped and defined modern life. A new aesthetic was born which did not appeal to Hitler's retroactive taste. The Bauhaus, a world leader, was dismantled in 1937. However Bauhaus

fundamentals of  
Art Education  
reached UK

when Sir William Coldstream in 1960, commissioned by the Government to reform and update Art education on the College or University Level Bauhaus methodology was imported which severed the Royal Academy as the authority to be followed.

*Howard Griffin  
by Sir William Coldstream  
1968*





*Earth and Sky 1975. Victor Passmore CBE*

The basic methodology embraced the idea of abstract in the sense that the underlining structure of the pictorial image needed a basic design. Impromptu innovation, and exuberance was avoided. Careful engineering was required which became the modern seal of approved professionalism. Almost puritanical certainly refined and pedestrian, when compared with the Bohemian turbo charged art activity of Paris art that came from intellectuals that resided, and played in informal Cafe Society

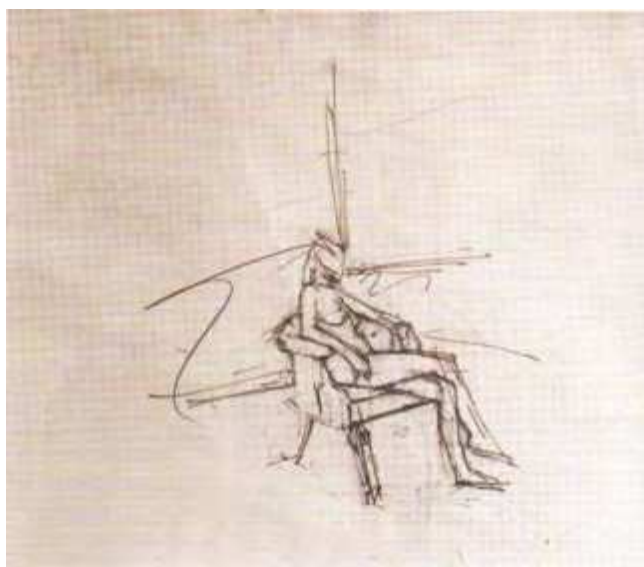
Regional art schools now decided what curriculum to follow, and develop teaching practice to install the avant-garde and to professionalize avant-garde thinking. The Social Sciences replaced literature and history as the new references of choice.

The Coldstream report was the watershed that signified the end of suburban cultural aspiration Encased in the Illusion that Van Gogh's 'Sunflowers' was in advance of trendy

of English taste both traditional and modern. It is broad smörgåsbord of possibilities so broad that much can be discounted as over cooked or pedestrian. The majority of the work, excepting landscape and a few abstract paintings are cosy, interiors, studies of still life (nature morte' as the French would say) apples, oranges, flowers, vases, and other artifacts including female nudes lounging in chairs, all exist within a closed space. Homage to Cezanne is a background consideration and never more so explicit in the portrait of Howard Griffin 1968 by Sir William Coldstream whose presence hangs over this exhibition. Most if not all of the landscapes do not achieve delicacy of paint to function air laded or light filled space.

The other significant work is a lovely drawing by Euan Uglow. This drawing is the sole display featured in Belgrave Gallery window in Fore Street, St.Ives, passed by the legions of tourists with hardly a glance allured from the throng, giving evidence of the plight of art education. Euan Uglow with a full working day 6 or 7 days a week in the studio, produces two or three paintings a year. He is the acknowledged very significant survivor and probably the final Master of this form of English painting. Post Modernist critical thinking and theory linked to the Turner Prize has taken over current art school education, proliferating other forms of art performance. Installation art, photography video suggest to the present generation of students that painting is near obsolete and has little or no relevance or place to current life.

The other great Luminary of the Euston Road School, and later Camberwell, Professor Victor Passmore CBE broke away from Camberwell realism in 1947 moving through lyrical stages of departure and pioneering English abstraction. One of the largest



*Nude Seated in the Studio by Euan Uglow*

taste. The sunflowers became a faded trope. This exhibition raises a pertinent question





*Angie II 2012 by David Helper*

Paintings in the show *Earth and Sky* is an excellent example of his later Abstract work. A number of dark organic shapes clustering to occupy the upper centre of the picture, overlapping two vertical panels adjacent to the sides of the picture plane. Unfortunately the work is cramped by bad hanging to near to neighbouring fussy work, and not enough space to step back. Victor Passmore developed his abstract aesthetic in part by following his mentor Ben Nicholson attraction to the minimal line of geometry and acetic possibilities of structure. He opened up significant expression of modernism, the beauty of deductive geometry promised a new Jerusalem after the War. Victor Passmore collaborated with the designers planners of the new town Peterlee, the Utopian desire of that progressive era. A central monument, The Apollo Pavilion, designed by Passmore became vandalized expressing the citizens' rejection of a perceived brutal and sanitized town centre. Victor Passmore a strong stalwart individual who had served time as a conscientious objector in 1942, stood his ground once more and faced his accusers.

Near by a small painting of a figure entitled 'Footballer' by Robert Medley an echo of Keith Vaughan and even Francis Bacon catches the eye with a simple underscored rendering of a man either jumping, running or falling certainly moving against a delicious green field of negative space.

For this writer the discovery of David Helper was a treat. This small painting 37 X 45 cm titled *Angie II* depicts a concrete

At first glance it gives the impression of the mundane without sparkle or exuberance. Closer examination will see it is a quiet tour de force in that the painting holds an exquisite hidden tension in which only three colours are stretched to the limits to provide a painterly authority without emotive seduction to attract the casual eye.

motorway ramp diagonally cutting across the picture leaving a background view of Post War Block of flats. Graffiti adorns the ramp, green linear triangles with the word *Angie* written in red graffiti on one side. The claustrophobia of modern Urban living is here, or better still the underbelly of town planning. The graffiti of the self-made vox populi of the people drives home a poignant visual essay. David Helper captures or hints at a narrative outside the moment of the picture.

Another gem of choice was the sparse well-considered rendering, carefully observed work of leaf clusters situated on a solidarity branch with plain non-painted natural white



*Branch by Patrick George*

background, Branch by Patrick George. A minimal and very restrained beauty not unlike oriental expression gives a stature to this work.

The cover of this well presented catalogue features a nude lounging on upholstery. This is a prime example of Camberwell Painting. At first glance it gives the impression of the mundane without sparkle or exuberance closer examination will see it is a quiet tour de force in that the painting holds an exquisite hidden tension in which only three colours are stretched to the limits to provide a painterly authority without emotive seduction to attract the casual eye. A mature and well tuned connoisseurship is required to find this well disciplined and introspect artist. Who shuns the normal window dressing of visual seduction.

This Exhibition of 40 years of Painting Camberwell Students and Teachers is trip to the attic, discovering revisiting artifacts of yesterday , and rediscovering old treasures

that still shine today. An insight into English painting in some cases at its best and in many occasions at it is in mannered decline. The issue of painting can be pirated in that Artists no matter their context not only to create but look for authenticating seeking to find inheritance to be gleaned from art history. London had a delayed response to response to Continental 20th century painting. The late delayed response through art education was tempered by English parochial and empirical thinking. The testing of an idea may produce a new idea, or simply cloak and muffle the dynamic.

For this writer the lesson of so called professionalism in Art is revisited. Craft is in simple terms is "how to" technique does not guarantee quality of temperament and original sensibility."Why do" is the more interesting question.

This exhibition is a lesson about the attempt of yesterday to answer this question. The question though, still haunts us today. ■

# USB DRIVES DRIVE ART

Anna Novakov

The attempt to 'find oneself' is a modern development. The 19th century 'flâneur' (a loungeur, or stroller,) mapped the changing Paris cityscape as his way of navigating the world. Artists and writers used what remained of urban and nature walks as fodder for their creative practice. In the 1920s, the Surrealists used automatism as a tool for their art, enabling them to trace their conscious moves with their (seeming) subconscious associations. In this way they formed imagery that wove together layers of awareness. From the late 1950s to the early 1970s the Situationist International (SI) picked up the practice and created elaborate evidence of what they termed *dérives* (drifts). This was their way of placing themselves in a changing urban environment. Guy Debord, a founding member of the SI, described the process as "a mode of experimental behavior linked to the conditions of urban society: a technique of rapid passage through varied ambiances." This was called psychogeography. Joseph Hart described it as "a whole toy box full of playful, inventive strategies for exploring cities... just about anything that takes



*Dead Drop*

pedestrians off their predictable paths and jolts them into a new awareness of the urban landscape.” The results are a layering-together of the body, mind and changing space. Over the past ten years, contemporary artists have moved between the physical and virtual spaces using new forms of mobility as a path towards increased freedom in public space.

Berlin-based artist Aram Bartholl’s current show at the Palais de Tokyo in Paris is part of a multi-year project entitled Dead Drop ([www.deaddrops.com](http://www.deaddrops.com)). This community based installation began in 2010 and involves the embedding of USB drives into walls, which can be used as access points for file sharing. Bartholl’s instructions for engaging in the work are as follows:

How to get your art in the Palais de Tokyo

BRING YOUR ART ON A LAPTOP TO THE GRAND OPENING.

UPLOAD IT TO ONE OF THE 5 DEAD DROPS IN PALAIS DE TOKYO.

TELL EVERYONE YOU HAVE ART IN THE PALAIS DE TOKYO.

These installations pry open new spaces by providing public entrances to exhibition venues (along with their bragging rights) and so circumvent the exhibition process of the modern art world which has become as enclosed as the Academies so well known to the flâneur. They also invite participation by asking viewers to upload materials and to install additional dead drops around the world. The artist gives detailed instructions on the process to the public participants:

How to install a Dead Drop

- Read the Dead Drops manifesto!
- Get a USB flash drive of any size.
- Dismantle the plastic cover. (It has been proven that the stick stays more stable if you leave it on, feel free to experiment!)
- Wrap it in plumber’s tape to seal it off.
- Download the readme.txt and manifesto here ([eng](#), [french](#), [esp](#), [port](#), [russ](#), [dutch](#), [ger](#), [ita](#), [chin](#), [czech](#)), edit authorship/credits/date) and load it on the drive. [more translations are welcome!]
- Use fast-setting concrete to cement the stick

in a crack or hole.

- Make sure to make the wall look nice afterwards, eventually you’ll need some color for touch up.
- Make sure to place it in a way that it can be accessed directly with a laptop. (Not everybody has an extension cable)
- USB ports locations on laptops are different from model to model. The ‘front side’ (2 holes of the plug) points up! Is the left side port and right side port on a laptop accessible?
- Optional you could use epoxy putty to glue the flash drive to other objects.
- Take 3 good pictures! - Overview of the street/place, how does your city look? - Approximate location of your Dead Drop, medium distance. - Close-up! We want to see your Dead Drop!



*visionr: Shu Lea Cheang*

The Dead Drop database creates a map of the expanding project. As a project, Dead Drop offers public access by opening up architecture to be used by virtual exhibition spaces, your laptop or phone. These small access points which may well be on existing galleries, broadens the ways in which artists engage with each other's works and communicate with the public.

Taiwanese artist Shu Lea Cheang engages in social interference through her individual work and collaborative projects with Paper Tiger Television (PTT). PTT, based in New York, started utilizing public access television in 1981 – creating content for video art at its inception. Media activist Dee Dee Halleck, one of the founders of the organization, recognized “It is one thing to critique the mass media and rail against their abuses. It is quite another to create viable alternatives.”



Cheang's recent CrisisRus ([www.crisisrus.laptopsrus.me](http://www.crisisrus.laptopsrus.me)) project is channeled through LaptopsRus (<http://laptopsrus.me>), which facilitates live meetings/ reunions/ performances. The invitation looks for:

*women, including housewives, workers, bakers, artists, writers, performers, filmmakers and all walks of life, to express their own concerns about CRISIS and crisis - the economical CRISIS that's affecting everyone and the personal crisis that zooms large in the current political and social environ.*

By signing on to make postings, you agree your banner messages and network AV streams could be shared, exhibited, performed and distributed in non-commercial creative commons licensing manner. (Shu Lea Cheang)

The project, which was designed with artists Maite Cajaraville (Madrid) and Lucía Egaña Rojas (Chile/ Barcelona) has had performances in France, Norway, England and Germany. Mapping, just as with SI, is also key component to their projects. "At CrisisRus we use a map to locate all participants and their works. The map has been a strong advert for us; we show it at each performance so that the audience knows the location of the videos, images or sounds. They also see the amplitude of the project." The project maps are heavily promoted through social media such as Facebook and Twitter.

CrisisRus creates spaces for personal and public experiences to be exchanged. According to Cheang "the public participation is built in element/ devices in many of my performance and installation works. Through public engagement the work is triggered into activity mode." Video, image and sound streaming from around the world are played before audiences in which performers and viewers form a circle and act out various forms of engagement. Their physical space is a mirror of the seating arrangement in the United Nation – a circle of engagement. "These cross-circuited / open interfaces make public participation accessible while allowing open hacking." (Shu Lea Cheang) The physical and the virtual spaces mix effortlessly. "We do believe both mediums have to be connected and physical meetings have to be done. Both spaces feed back to each

other . . . Our experience is that the physical meetings strengthen the virtual connection (the map database.)" (Maite Cajaraville)

American artist, Ron Hutt's ongoing Axis Mundi/ Open Portals project ([www.ronhutt.info](http://www.ronhutt.info)) flowed from his own nomadic lifestyle. Axis Mundi is the Latin term for "the world center, or the connection between Heaven and Earth. As the celestial pole and geographic pole, it expresses a point of connection between sky and earth where the four compass directions meet." The project is marked with a sign for the four directions consisting of intersecting vertical and horizontal bands.

*"the public participation is built in element/ devices in many of my performance and installation works. Through public engagement the work is triggered into activity mode."*

While travelling Hutt established a system of marking his place when he stopped for brief or extended periods of time. The location's city or landscape is documented virtually and physically through photographs and digital drawings.

The Axis Mundi / Open Portals project utilizes horizontal and vertical panoramic photographs captured while crisscrossing the United States and Europe. I look for places that I can make a stand, find meaning and discover my connection to a unique set of physical and psychological features. Those features function as the provisional center of my personal world -- the Axis Mundi. The art works for this project emerge from the creation of a personal cyber geography and a mythopoetic consciousness derived from the process of digital painting and photography. (Ron Hutt)

The artist then processes that documentation and creates open portals accessible through Quick Response (QR) codes installed at the travel sites. These QR Codes activate work on smart phones. Using a private and highly



Ron\_Hutt\_AM-OP\_Los  
Alamos with QR Code

own enjoyment. These images are offerings/gifts from the artist to the viewers. The downloaded piece also has a QR code that can access another gift. The chain of offerings is endless. (Ron Hutt)

Hutt's offering serves as a memory of the places that were seen and visited in his travels and in the exhibition. Hutt explains "I intend for the image to move from the virtual to the physical world. The process creates a network of viewers who receive the offerings and then pass them on to others. Viewers will also be able to email comments, questions or their own images directly to me. I conceive of this act of giving, receiving and offering as a very participatory and democratic process." They are also ways that the artist gives back to the place and people that inspired the work.

By receiving the gift, which is currently

accessible through Open Portals at the Pink Art Fair in Seoul, Korea and the St. Mary's Museum of Art in California, the viewer accepts the responsibility of choosing to keep it or give it away to another person. This forms a pseudo-chain, which spreads out from Hutt's initial nomadic impulse to the society as a whole. As an artistic gesture this is both Utopian and Arcadian as it simultaneously looks to the future and to the ancient past where gifts were the most basic of human exchanges. Viewers are finding their place on a map and a timeline. The ancient past and the future Utopia are grounded in a belief in the ultimate 'good' in technological which leads eventually to a greater understanding of oneself.

The meta goal of my artistic process is to sort out and confront questions that arise from the clash of human necessity and new technology as well as the role of art and artists in the creation of compassionate new systems of meaning. Physical space in which art objects exist is engulfed by globally connected digital space and they are both equally real and creative spaces for artistic exploration. (Ron Hutt)

This wave of mapping in its differing forms is at once public and private, collective and individual, physical and virtual. These maps act like liquids easily establishing an understanding between contemporary life and art. Here art and life blend into a mapping of the individual's location in time and space. With ancestral roots in flânerie, automatism and the dérive, new forms of 'cybergeography' enhance our experience of public space and indeed what it manes to be 'public'. They are a contemporary outgrowth of what writer Victor Fournel called a "moving and passionate photograph (undaguerréotype mobile et passionné)" of the urban experience. Importantly these types of installations bypass the gap between artists, audience and institutions. ■

Anna Novakov is a Serbian-American art historian, critic, educator, and curator based at Saint Mary's College of California. As a writer her practice focuses on the dérive, gender and technogeography



# The Improbability of Love

A Novel published by Bloomsbury 2015 by Hannah Rothschild,

Reviewed by Dr Angeline Morrison

*'Art follows power. Just as soldiers hang medals from their uniforms, the rich hang paintings on their walls.'* (p271)

As the first woman to Chair the National Gallery, Hannah Rothschild is well-positioned to write a novel centred around the secret machinations of power in the art world. The dark underbelly of the art world is laid bare in impishly satirical fashion in this surprising book, part chick lit, part thriller and part philosophical inquiry. The title speaks of love, but the overarching theme is the raw urge to possess at all costs.

Everyone wants the lost Watteau study *The Improbability of Love*, imagined by Rothschild. Everyone, that is, except its owner, brokenhearted chef Annie. She buys it in a junk shop on a whim, a gift for a deadbeat date who fails to turn up for the lavish birthday dinner she has prepared. This rejection compounds Annie's recent heartbreak, she finds solace in the mysterious depths of the painting's clouded surface.

Consistently erudite and informed, the author makes the lost painting work as a metaphor for the obsessive drive to acquire. The narrative takes many ambitious turns, the most gripping of which is the sub-plot concerning the large-scale theft by Hitler's notorious 'Art Squad' of valuable paintings belonging to Jewish families. Rothschild provides historical and art historical information with erudition, and her prose can be mouthwatering.

Rothschild's background as a documentary film-maker is very evident here. The narrative is languorous as a movie, the observations beady-eyed and highly focussed, and the scope is huge (spanning two centuries and two continents).

Beguilingly given its own voice, the little painting is full of stories from the private

lives of its rich and famous owners. The strange patois in which it speaks is the result of its travels and the company it has kept. Quite the spoiled pet, the painting despairs of its most recent companions in the junk shop.

The cast of characters is impressive and there's humanity in the prose, a sense that the characters' inner lives are lovingly examined to better examine the full range of human emotion. We see a complex relationship between an active alcoholic and her adult daughter, various love affairs, dysfunction within a powerful art world family whose members seem to have scoured themselves from within of all human empathy, all brought together by the coveted painting.

*'We are all complicit in a dance with power', art historian Abufel tells us, chillingly. Rapper M Power Dub-Box doesn't get the art world at all ('...dumb prices. Dumb people'), but he's still determined to be in on the action when the painting goes to auction.*

It's a study of the dark side of the art world, but also a study of human greed, of the vexing question of value, and of the many things that art has been made to mean. The tacit association of an aesthetic sense with innate human goodness is laid bare and revealed as deeply flawed. '... the Medicis, slave traders, marauding rulers and others [...] understood that art had the power to whitewash reputation'. Except this is something art can never do. *The Improbability of Love* unmasks the improbability of the powers ascribed to painting – the power to heal, to save, to cover over wrongdoings. ■

*Dr. Angeline Morrison is a composer, songwriter and vocalist and Art Historian, she currently lectures at the Open University.*

# Rei Naito

## At the Koyanagi Gallery, Tokyo

Janet Koplos

Rei Naito has always had a light touch—both in the sense of employing light and shadow to create an aura and in the sense of using vulnerable or ephemeral materials. Her U.S. debut in the '90s, in a group show at the New Museum of Contemporary Art in New York City, was a thin, pale tent that viewers could enter one at a time, shoes off. A few years ago she was making tiny gossamer pillows, shown under glass on tall pedestals, bedding for some other-world being.

This recent show continued her fragile assertions. It consisted of white balloons, minuscule carved figures, white paintings, and crumpled magazine pages. The balloons were hung from the ceiling on short strings. Those where one stepped off the elevator to enter the gallery were likely to be overlooked as one's eyes were drawn to the walls. In niches and on small brackets were tiny carved figures, rigid and idol-like, at most 2 inches tall, mostly white and dressed in what seemed to be long-sleeved, mid-calf unarticulated dresses or coats; it was hard to tell if I was seeing legs, trousers or a narrow skirt. These are from her "human" series—her first figurative works—begun following the catastrophic earthquake of 2011 as an act of hope. There were also white paintings, squares of various small sizes. I studied them for some underlying image. The edges seemed whiter than the middles and there might have been a faint network of yellow lines—or was that some biological effect of my eye condition or the hue of the spotlights juxtaposed to the warm white color of the walls?

Most provocative were the magazine pages, a series titled "Face (the joys were greater)." All were black-and-white sheets from high-end women's magazines that were once taped to a wall—tape residue, often yellowed, remained—but had since been crumpled in



frustration, disinterest or rage and some then smoothed out, in regret. Tacked to the wall or hung from a transparent thread, they disclosed only fragments of their subjects: fashionable women, mostly young, objectified. One page had a tiny knit cap attached to a corner, above the model's crumpled face. One page showed a young woman, nude above the waist, wearing a feather crown. A slightly older woman, her dark hair atop her head, had a knit cap near the wrinkled bottom, but here it recalled the curl-texture of a Buddha head. According to gallery information, what links the images is laughter, strangely altered by her treatment of them.

Circling the room, noticing, adding up, I returned to the beginning: two white balloons outside the elevator doors, a crushed-and-smoothed image of a young woman gesturing, a niche framing a balloon lit from above so its whiteness stood out, along with the first carved figure, this one with a knit head or the headcovers which some Japanese place on temple statues of Jizo, protector of children.

Protection, display. Invisibility, purity. Control by garment, by expectation or by artist's actions. And the white paintings? Maybe a blank slate on which to write your own future. The show was an ultimate of subtlety and recessiveness. ■

## A Short Review

### AVIDITY: at Penwith Gallery, St.Ives

The Penwith, which was established after a split with the St Ives Group, is a fitting gallery for 'Avidity', work by St Ives students. They have been taught the philosophy behind the split with the Academy that invented the modern art world. These students are doing what they have seen the previous generation doing with no evolution in ideas.

"The general focus of the work is on the experimental, risk-taking, and openness to contemporary ideas." (Introduction on website)

I have no doubt the same could be said of all the leading artists of the past 700 years across Europe. You could look for something more, for something which says this is human experience and says it in a way that we can all immediately. This is an ensemble of the mantelpiece not the master piece.

Yet there are two artists of the twelve here

that stand out for different reasons.

Jill Holland's ceramics achieve a near impossible resolution. The reconciliation of the possibles of the gesture as experienced in painting from late modernism, integrated on to and with, the traditional forms of pottery. The craft of throwing on the potters wheel collaged with and into the dynamic of thrown paint. The craft verses art debate is a nonsense that has flopped around visual experience discourse for decades, plaguing the dialogue. Jill Holland has faced the issue square on in her practice for her ceramics that at least look as if she understands Leach.

Arran Miles who demonstrates he is trying hard to find his personal sensitivity inside history.

The rest should keep trying. ■

Daniel Nanavati

## Coming in the March issue Volume 30 no.4

**John Berryman** - an Interview with a students of Bernard Leach

**News, reviews and more from Chicago**

**John Stepling** on the 2016 Oscars

**David Houston** surveys the artist community's attitude to contemporary art.

New regular Features:

**TranArtlantic Diary.** **Jonathon Xavier Coudrille**, Helston UK and **David Black**, New York, USA in conversation about the art world.

Book Review '*The Northern School*' by Peter Davies - **Derek Guthrie**

Book review of *Keeping an Eye Open: Essays on Art* by Julian Barnes - **Richard Sharland**



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# EXHIBIT 6

**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 and	)	
New Art Association d/b/a	)	
New Art Examiner	)	
	)	
Registrant.	)	

**PETITIONER’S RESPONSES TO ART MESSAGE INTERNATIONAL’S FIRST SET  
OF INTERROGATORIES**

In accordance with Rule 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, Petitioner Derek Guthrie (“Guthrie”), hereby responds and objects to Registrant Art Message International’s (“AMI”) First Request for Admissions (collectively, the “Requests,” and each a Request), as follows:

1. Admit that, for purposes of this proceeding, Petitioner is not claiming trademark rights in the NEW ART EXAMINER prior to June 1, 2015.

**RESPONSE:** Denied.

2. Admit that Petitioner personally did not publish nor distribute any “[p]rinted periodicals of art and cultural criticism” under the NEW ART EXAMINER mark between 2003 and May 31, 2015.

**RESPONSE:** Denied.

3. Admit to the authenticity of the documents in the filing history for the New Art

Gazette CIC, Company number 09973640, on the Companies House website, which are attached in a compilation as **Exhibit A**.<sup>1</sup>

**RESPONSE:** Admitted.

4. Admit that since at least as early as January 27, 2016, the New Art Gazette CIC has published printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark.

**RESPONSE:** Admitted.

5. Admit that Petitioner, in his capacity as an individual, has not made any sales of printed periodicals of art and cultural criticism offered under the NEW ART EXAMINER mark, between June 1, 2015 and August 31, 2015.

**RESPONSE:** Guthrie objects to this Request as vague and unintelligible and will not provide a response on the basis of this objection.

6. Admit that Petitioner, in his capacity as an individual, has no documentary evidence showing that any publications of the NEW ART EXAMINER were, in fact, distributed in the United States, between June 1, 2015 and August 31, 2015.

**RESPONSE:** Guthrie objects to this Request insofar as the existence or absence of documents is not dispositive of this issue. Notwithstanding the foregoing objection, this Request is admitted.

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<sup>1</sup> For ease of reference, see <https://beta.companieshouse.gov.uk/company/09973640/filing-history> (last accessed July 29, 2020).

7. Admit that since June 1, 2015, Vincent Carducci has not had any involvement with Petitioner in regard to Petitioner's use of the NEW ART EXAMINER mark, for printed periodicals of art and cultural criticism.

**RESPONSE:** Admitted.

8. Admit that the document attached as **Exhibit B** is a true and correct copy of the NEW ART EXAMINER publication, Vol. 30 No. 3, January/February 2016.

**RESPONSE:** Admitted.

9. Admit that Petitioner authored the writing titled "Postscript Editorial Comment" located on page 5 of **Exhibit B**.

**RESPONSE:** Admitted.

10. Admit that in Petitioner's writing titled "Postscript Editorial Comment", the first sentence, particularly, "Tom Mullaney's elegant and restrained report ...", refers to the writing titled, "Editorial Comment", by Tom Mullaney, as found on page 4 of **Exhibit B**.

**RESPONSE:** Admitted.

11. Admit that before authoring the writing titled "Postscript Editorial Comment," Petitioner reviewed the writing titled "Editorial Comment", by Tom Mullaney, as found on page 4 of Exhibit B.

**RESPONSE:** Admitted.



12. Admit that Petitioner, in his capacity as an individual, is not a not-for-profit organization.

**RESPONSE:** Admitted.

13. Admit that the specimen submitted with Petitioner's October 2, 2017 trademark application, U.S. Ser. No. 87630594, provides therein that "The New Art Examiner is a not-for-profit organization."

**RESPONSE:** Denied.

14. Admit that all of the printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark issued between the dates of June 1, 2015, and the date of publication for Vol 31 No. 4, March/April 2017, stated that the NEW ART EXAMINER was a "not-for-profit organization."

**RESPONSE:** Admitted.

15. Admit that since June 1, 2015, every printed periodical of art and cultural criticism under the NEW ART EXAMINER mark, for which Petitioner has served as Publisher, has stated that "The New Art Examiner is a not-for-profit organization."

**RESPONSE:** Denied.

16. Admit that in 2015 Petitioner received emails from Charles Mandly about the NEW ART EXAMINER trademark.

**RESPONSE:** Denied.

17. Admit that the newartexaminer.net website between June 1, 2015, and November 15, 2015, did not offer for sale printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark.

**RESPONSE:** Admitted.

18. Admit that between June 1, 2015, and November 15, 2015, the newartexaminer.net website did not make periodicals of art and cultural criticism under the NEW ART EXAMINER mark, available for download as PDFs from the website.

**RESPONSE:** Guthrie admits that periodicals of art and cultural criticism under the NEW ART EXAMINER mark were not available for download on the newartexaminer.net website, however the website promoted the NEW ART EXAMINER periodicals and provided information to obtain subscriptions.

19. Admit that Petitioner has no documentary evidence supporting the following statement made, in part, in response to Interrogatory 21 in Petitioner's Responses to Art Message International's First Set of Interrogatories, served on June 29, 2020: "At the time, it was a 501(c)(3) organization formed by a relative of Diane Thodos, Guthrie's acquaintance. AMI was provided to Guthrie as a vehicle through which to publish his NEW ART EXAMINER, which he controlled from the United Kingdom, in the United States."

**RESPONSE:** Denied.

20. Admit that Petitioner has no documentary evidence from 2015 through 2016 that show Petitioner asserting to either Respondent that Petitioner owned the NEW ART EXAMINER mark for printed periodicals of art and cultural criticism.

**RESPONSE:** Denied.

Dated: Chicago, Illinois  
August 28, 2020

LOEB & LOEB LLP

By: /s/ Douglas N. Masters  
Douglas N. Masters  
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*Attorneys for Petitioner*  
*Derek Guthrie*

**CERTIFICATE OF SERVICE**

I, Sarah Levitan Perry, hereby certify that a copy of the foregoing **PETITIONER'S  
RESPONSES TO ART MESSAGE INTERNATIONAL'S REQUEST FOR ADMISSIONS**  
was 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)

this 28th day of August, 2020, via email.

/s/ Sarah Levitan Perry

# EXHIBIT 7

1. Guthrie objects to each Request to the extent that it: (a) seeks documents or things that are subject to the attorney-client privilege, work-product doctrine, common interest privilege, or other applicable legal privileges; (b) is vague, ambiguous, repetitive, duplicative, overbroad or unduly burdensome; (c) seeks documents or things that are not reasonably accessible to Guthrie, or are not within Guthrie's possession, custody or control; (d) seeks documents or things that are

already in AMI's possession, or are equally or more readily accessible to AMI than to Guthrie; or (e) purports to impose upon Guthrie an obligation beyond the requirements of the Federal Rules of Civil Procedure or the Trademark Trial and Appeal Board ("TTAB") Rules.

2. Guthrie objects to AMI's prefatory definitions and instructions to the extent that they purport to impose upon Guthrie an obligation beyond the requirements of the Federal Rules of Civil Procedure or the TTAB Rules.

3. Guthrie objects to the definition of "Guthrie," "Petitioner," "You" and "Your" in Paragraph A of the "Definitions and Instructions" as overbroad, unduly burdensome, unreasonable and oppressive with respect to its inclusion of "entity through which, [Guthrie] 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." These Responses are provided solely on behalf of Guthrie as an individual.

4. Guthrie objects to the definition of "Contested Mark" to refer to Guthrie's rights in the NEW ART EXAMINER because AMI's use and registration of the NEW ART EXAMINER mark is what is contested in this cancellation proceeding. Notwithstanding, Guthrie will use AMI's defined term herein.

5. Guthrie objects to the Requests to the extent that they seek information that is not relevant or material to the claims or defenses in this proceeding and are not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

6. Guthrie objects to the Requests to the extent that they do not contain a reasonable time frame and/or are unlimited as to time.

7. Guthrie's failure to object to a Request on a particular ground shall not be construed as a waiver of his rights to object on that ground, or any additional ground, at any time.

8. Guthrie's responses to the Requests set forth herein shall not constitute a waiver of Guthrie's objections to any other discovery requests served in this action.

9. Guthrie's responses to the Requests are made expressly without waiving or intending to waive, but rather preserving and intending to preserve, all objections as to the relevance, competence, materiality or admissibility of the documents or information provided.

10. Guthrie reserves the right to supplement, modify or withdraw his responses to any of the Requests at any time on the basis of information or documents he later discovers or otherwise.

### **SPECIFIC OBJECTIONS TO DOCUMENT REQUESTS**

1. Documents sufficient to identify all of the sales of printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, made by Petitioner, in his capacity as an individual, between June 1, 2015 and August 31, 2015.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request as duplicative of previous discovery demands.

Subject to and without waiving any of his objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-82, and DG0000283-326, as well as his response to Interrogatory No. 9 of AMI's First Set of Interrogatories. Guthrie is also producing responsive, relevant, non-privileged documents in response to Request No. 1.

2. All documents showing that Petitioner, in his capacity as an individual, distributed printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, in the United States, between June 1, 2015, and August 31, 2015.



**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request on the grounds that it is duplicative of Request No. 1. *See* response to Request No. 1.

3. All documents showing Vincent Carducci's involvement with Petitioner in regard to Petitioner's use of the NEW ART EXAMINER mark for printed periodicals of art and cultural criticism.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request to the extent that it seeks documents that would reveal Guthrie's litigation strategy or information that is protected from disclosure by the attorney-client privilege or attorney work-product immunity.

Subject to and without waiving any of his objections, Guthrie is producing responsive, relevant, non-privileged documents in response to Request No. 3.

4. Admit that since June 1, 2015, every printed periodical of art and cultural criticism under the NEW ART EXAMINER mark, for which Petitioner has served as Publisher, has stated that "The New Art Examiner is a not-for-profit organization."

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request on the grounds that it is vague and ambiguous insofar as it is a request for admission rather than a request for the production of documents.

5. All documents from the year 2015, which are from, to, or reference Charles Mandly, in regard to either the NEW ART EXAMINER trademark or the NEW ART EXAMINER trademark application.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request as to the extent it seeks information already within AMI's possession.

Subject to, and without waiver of Guthrie's objections, and after conducting a reasonably diligent search, Guthrie responds that no such documents exist.

6. All documents sufficient to identify that the newartexaminer.net website between June 1, 2015, and November 15, 2015, offered for sale printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, or made available for download as PDFs from that website.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request to the extent it seeks information already within AMI's possession.

Subject to, and without waiver of Guthrie's objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-82, DG0000283-32, as well as <https://www.newartexaminer.net/back-copies/>.

7. All documents that relate or refer to Petitioner's statement that "AMI was provided to Guthrie as a vehicle through which to publish his NEW ART EXAMINER, which he controlled from the United Kingdom, in the United States."

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request to the extent it seeks information already within AMI's possession.

Subject to, and without waiver of Guthrie's objections, and after conducting a reasonably diligent search, Guthrie responds that no such documents exist.

8. All documents from 2015 through 2016 that relate or refer to Petitioner asserting to either Respondent that Petitioner owned the NEW ART EXAMINER mark for printed periodicals of art and cultural criticism.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Request to the extent it seeks information already within AMI's possession.

Subject to, and without waiver of Guthrie's objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-86, DG0000088-89 and DG0000283-326.

Dated: August 28, 2020

LOEB & LOEB LLP

By: /s/ Douglas N. Masters  
Douglas N. Masters  
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*Attorneys for Petitioner  
Derek Guthrie*

**CERTIFICATE OF SERVICE**

I, Sarah Levitan Perry, hereby certify that a copy of the foregoing **PETITIONER’S  
RESPONSES TO ART MESSAGE INTERNATIONAL’S SECOND SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS** was 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)

this 28th day of August, 2020, via email.

/s/ Sarah Levitan Perry

# EXHIBIT 8

**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 and	)	
New Art Association d/b/a	)	
New Art Examiner	)	
	)	
Registrant.	)	

**PETITIONER’S RESPONSES TO ART MESSAGE INTERNATIONAL’S FIRST SET  
OF INTERROGATORIES**

In accordance with Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Petitioner Derek Guthrie (“Guthrie”), hereby responds and objects to Registrant Art Message International’s (“AMI”) Second Set of Interrogatories (collectively, the “Interrogatories,” and each an Interrogatory), as follows:

**GENERAL OBJECTIONS**

The following General Objections apply to and are incorporated into each individual response herein, whether or not expressly incorporated by reference or repeated in such response.

1. Guthrie objects to each Interrogatory to the extent that it seeks information beyond the scope permitted by the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board (“TTAB”) Rules or applicable case law, or request information that Guthrie has already provided in his Rule 2.120 Initial Disclosures.

2. Guthrie objects to the definition of “Guthrie,” “Petitioner,” “You” and “Your” in Paragraph A of the “Definitions and Instructions” as overbroad, unduly burdensome, unreasonable

and oppressive with respect to its inclusion of “entity through which [Guthrie] 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.” These Responses are provided solely on behalf of Guthrie as an individual.

3. Guthrie objects to the definition of “Contested Mark” to refer to Guthrie’s rights in the NEW ART EXAMINER because AMI’s use and registration of the NEW ART EXAMINER mark is what is contested in this cancellation proceeding. Notwithstanding, Guthrie will use AMI’s defined term herein.

4. Guthrie objects to each Interrogatory to the extent that it is not a more practical method of obtaining the information sought than a request for production or deposition.

5. Guthrie objects to each Interrogatory as duplicative, to the extent that Registrant has sought the same information through requests for production.

6. Guthrie objects to the Interrogatories to the extent that they seek information that is not relevant or material to the claims or defenses in this proceeding and is not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

7. Guthrie objects to the Interrogatories to the extent that they do not contain a reasonable time frame and/or are unlimited as to time.

8. Guthrie objects to each Interrogatory to the extent that it calls for the disclosure of information that was prepared in anticipation of litigation, constitutes trial preparation materials, attorney work product, discloses the mental impressions, conclusions, opinions or legal theories of any attorneys or other representatives of Guthrie, contains privileged attorney-client communications, or is otherwise protected from disclosure under applicable privileges, laws or rules. Guthrie hereby claims such privileges and protections to the extent implicated by each

Interrogatory and excludes privileged and protected information from its responses to the Interrogatories. Any disclosure of such information is inadvertent and is not intended to waive those privileges or protections.

9. Guthrie objects to each Interrogatory to the extent that it assumes facts that are in dispute and/or legal conclusions in describing the information requested.

10. Guthrie's failure to object to an Interrogatory on a particular ground shall not be construed as a waiver of his rights to object on that ground, or any additional ground, at any time.

11. Guthrie's responses to the Interrogatories set forth herein shall not constitute a waiver of Guthrie's objections to any other discovery requests served in this action.

12. Guthrie's responses to the Interrogatories are made expressly without waiving or intending to waive, but rather preserving and intending to preserve, all objections as to the relevance, competence, materiality or admissibility of the documents or information provided.

13. Guthrie reserves the right to supplement, modify or withdraw his responses to any of the Interrogatories at any time on the basis of information or documents he later discovers or otherwise.

### **SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES**

1. Identify each sale of printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, made by Petitioner, in his capacity as an individual, between June 1, 2015 and August 31, 2015.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Interrogatory to the extent it seeks information that is already within AMI's possession.



Subject to and without waiving any of his objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-82, and DG0000283-326.

2. Describe in detail Vincent Carducci's involvement with Petitioner in regard to Petitioner's use of the NEW ART EXAMINER mark, for printed periodicals of art and cultural criticism, since June 1, 2015.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Interrogatory to the extent it seeks information that would reveal Guthrie's litigation strategy or information that is protected from disclosure by the attorney-client privilege or attorney work-product immunity.

Subject to and without waiving any of his objections, Guthrie responds that Vincent Carducci has not been involved with Guthrie or his use of the NEW ART EXAMINER mark since June 1, 2015. Guthrie additionally refers AMI to the Declaration of Vincent Carducci previously filed in this proceeding.

3. Identify each printed periodical of art and cultural criticism under the NEW ART EXAMINER mark, for which Petitioner has served as Publisher, since June 1, 2015, that did not include the following statement: "The New Art Examiner is a not-for-profit organization."

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. Guthrie also objects to this Interrogatory to the extent it seeks information that is already within AMI's possession.

Subject to and without waiving any of his objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-104, DG0000106-145 and DG0000283-326.

4. Describe in detail all of Petitioner's communications with Charles Mandly, in 2015.

**RESPONSE:** In addition to incorporating his General Objections, Guthrie objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. Guthrie also objects to this Interrogatory on the grounds that there is a more practical method of obtaining the information sought such as through a document request or deposition. Guthrie also objects to this Interrogatory to the extent it seeks information that is already within AMI's possession.

Subject to and without waiving any of his objections, and after conducting a reasonably diligent search, Guthrie responds that no such documents exist.

Dated: Chicago, Illinois  
August 28, 2020

LOEB & LOEB LLP

By: /s/ Douglas N. Masters  
Douglas N. Masters  
Elisabeth K. O'Neill  
321 N. Clark Street, Suite 2300  
Chicago, IL 60654  
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*Attorneys for Petitioner  
Derek Guthrie*

## **VERIFICATION**

I, Derek Guthrie, declare as follows:

I am the Petitioner in this action. I have read the foregoing PETITIONER'S RESPONSES TO ART MESSAGE INTERNATIONAL'S FIRST SET OF INTERROGATORIES and know the contents thereof and the same are true to the best of my knowledge or upon my information and belief.

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

Executed on this 31st day of August, 2020 in Cornwall, United Kingdom.



---

Derek Guthrie

**CERTIFICATE OF SERVICE**

I, Sarah Levitan Perry, hereby certify that a copy of the foregoing **PETITIONER'S  
RESPONSES TO ART MESSAGE INTERNATIONAL'S SECOND SET OF  
INTERROGATORIES** was 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)

on the 28th day of August, 2020 (without verification) and the 31st day of August, 2020 (with verification), via email.

/s/ Sarah Levitan Perry

# EXHIBIT 9

September 18, 2020

**Via Email**

Douglas N. Masters  
321 N. Clark Street, Suite 2300  
Chicago, IL 60654  
Telephone: 312-464-3100  
Email: [dmasters@loeb.com](mailto:dmasters@loeb.com)  
CC: Elisabeth K. O'Neill  
[elloneill@loeb.com](mailto:elloneill@loeb.com)  
Sarah Levitan Perry  
[sperry@loeb.com](mailto:sperry@loeb.com)

**Re: Derek Guthrie v. Art Message International, New Art Association**

Dear Doug:

This letter is in response to Derek Guthrie's responses to Art Message International and New Art Association's various discovery requests. More specifically, the following:

- Petitioner's Responses to Art Message International's First Set of Requests for Production of Documents and Things, served June 29, 2020
- Petitioner's Responses to Art Message International's First Set of Interrogatories, served on June 29, 2020
- Petitioner's Responses to Art Message International's Request For Admissions, served August 28, 2020
- Petitioner's Responses to Art Message International's Second Set of Interrogatories, served August 28, 2020
- Petitioner's Responses to Art Message International's Second Set of Requests for Production of Documents and Things, served August 28, 2020

We have reviewed the written responses and documents served and have found that there are several deficiencies. Within 10 days, please amend Guthrie's responses to correct the following identified deficiencies, as discussed below.

**Petitioner's Responses to Art Message International's  
First Set of Requests for Production of Documents and Things,  
served June 29, 2020**

We object to the written responses to, and production made pursuant to, Document Requests No. 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 14, 16, 17, and 18. Most of these responses indicate that

documents will be produced “to the extent they exist”. If Guthrie has such documents, the response should say so or not, and the responsive documents should be identified.

**Petitioner’s Responses to Art Message International’s First Set of Interrogatories,  
served on June 29, 2020**

<b>Interrogatory No. 1</b>	
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.	<b><u>RESPONSE:</u></b> In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Guthrie also objects to Interrogatory as overbroad and unduly burdensome. The only issues in this proceeding are the ownership of and priority of use in the NEW ART EXAMINER mark. Guthrie’s association with any entities, without respect to whether they relate in any way to the NEW ART EXAMINER mark has no bearing on these issues.
<b>Respondents’ Objection:</b> Guthrie cannot dictate or limit the scope of the discovery sought by Respondent in this manner. Guthrie cannot preclude Respondents from making their case. Guthrie cannot unilaterally decide what this case’s issues are. This request is proper. The scope is limited to a set period of years. The grounds for objecting are not stated with specificity. Guthrie fails to establish why this request is unduly burdensome.	

<b>Interrogatory No. 14</b>	
14. Identify all positions, with corresponding dates, that You held as part of the Chicago New Art Association.	<b><u>RESPONSE:</u></b> In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The only issues in this proceeding are the ownership of and priority of use in the NEW ART EXAMINER mark as of 2015. During the relevant time period, Guthrie was not associated with the Chicago New Art Association.
<b>Respondents’ Objection:</b> Guthrie cannot dictate or limit the scope of the discovery sought by Respondent in this manner. Guthrie cannot preclude Respondents from making their case. Guthrie cannot unilaterally decide what this case’s issues are. The grounds for objecting are not stated with specificity. This request is proper.	

Interrogatory No. 18	
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.	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the ground that there is more practical method of obtaining the information sought such as through a document request or deposition. Guthrie also objects to this Interrogatory as duplicative of Interrogatory No. 4. See response to Interrogatory No. 4.
<b>Respondents' Objection:</b> Guthrie cannot dictate or limit the type of discovery tool used or the scope of the discovery sought by Respondent. Moreover, the request is not duplicative. Interrogatory No. 4 asks about awareness of the <i>use</i> of the trademark NEW ART EXAMINER. On the other hand, Interrogatory No. 18 asks about the details of the circumstances surrounding when Guthrie first acquired knowledge of the trademark application filed. These are two different requests about two different events.	

Interrogatory No. 19	
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.	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory on the grounds that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The only issues in this proceeding are the ownership of and priority of use in the NEW ART EXAMINER mark. Guthrie's income has no bearing on these issues.
<b>Respondents' Objection:</b> This response is deficient. Guthrie cannot dictate or limit the scope of the discovery sought by Respondent in this manner. Guthrie cannot preclude Respondents from making their case. Guthrie cannot unilaterally decide what this case's issues are. Moreover, the stated "income" issue is a red herring. Such evidence is relevant for many purposes. The W-2s and 1099s are evidence that bears on the first element of the <i>Lyons</i> test. Such evidence may cut against Guthrie's <i>subjective belief</i> that he owned the trademark.	

Interrogatory No. 20	
20. Identify and describe all funding that You have contributed to AMI, since 2009.	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie also objects to this Interrogatory to the extent that it is irrelevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.  Subject to, and without waiver of Guthrie's objections, Guthrie states that he covered all



	<p>costs related to the NEW ART EXAMINER publication, to which AMI was connected, until mid-2017, with the exception of the revenues received through advertisements in the publication Guthrie believes the total funds contributed are in excess of €30,000.</p> <p>These funds have been spent on efforts to print the publication and distribute them in Chicago, including costs associated with travel for those contributing to the publication and entertaining those that were pursued for contributions to the publication.</p>
<p><b>Respondents' Objection:</b> This response is deficient. It fails to specifically identify and describe all funding that Guthrie contributed to AMI, since 2009. Moreover, this interrogatory does not ask about how unidentified funds have been spent. Lastly, this interrogatory is relevant for purposes of the first <i>Lyons</i> factor.</p>	

**Petitioner's Responses to Art Message International's Request For Admissions,  
served August 28, 2020**

<b>Request for Admission No. 5</b>	
5. Admit that Petitioner, in his capacity as an individual, has not made any sales of printed periodicals of art and cultural criticism offered under the NEW ART EXAMINER mark, between June 1, 2015 and August 31, 2015.	<b><u>RESPONSE:</u></b> Guthrie objects to this Request as vague and unintelligible and will not provide a response on the basis of this objection.
<p><b>Respondents' Objection:</b> Guthrie's response is deficient. Regardless of the characterization, an actual response after making a good-faith effort to respond is required. This request asks the following: Between June 1, 2015, and August 31, 2015, did Petitioner make any sales of printed periodicals of art and cultural criticism that were offered under the NEW ART EXAMINER trademark? The request seeks Petitioner to admit that he did not do so.</p>	

<b>Request for Admission No. 13</b>	
13. Admit that the specimen submitted with Petitioner's October 2, 2017 trademark application, U.S. Ser. No. 87630594, provides therein that "The New Art Examiner is a not-for profit organization."	<b><u>RESPONSE:</u></b> Denied.
<p><b>Respondents' Objection:</b> This response is deficient. Consider the request being phrased without the period within the quotes, meaning, "The New Art Examiner is a not-for profit organization".</p>	

<b>Request for Admission No. 15</b>	
15. Admit that since June 1, 2015, every printed periodical of art and cultural criticism	<b><u>RESPONSE:</u></b> Denied.

under the NEW ART EXAMINER mark, for which Petitioner has served as Publisher, has stated that “The New Art Examiner is a not-for-profit organization.”	
<b>Respondents’ Objection:</b> This response is deficient. Consider the request being phrased without the period within the quotes, meaning, “The New Art Examiner is a not-for profit organization”.	

**Petitioner’s Responses to Art Message International’s Second Set of Interrogatories,  
served August 28, 2020**

<b>Second Set, Interrogatory No. 1</b>	
1. Identify each sale of printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, made by Petitioner, in his capacity as an individual, between June 1, 2015 and August 31, 2015.	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie objects to this Interrogatory to the extent it seeks information that is already within AMI’s possession. Subject to and without waiving any of his objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-82, and DG0000283-326.
<b>Respondents’ Objection:</b> This response is deficient and nonresponsive. The interrogatory seeks Guthrie to disclose each <i>sale</i> of a printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, between June 1, 2015 and August 31, 2015. Reference to partial PDF versions of documents does not indicate the existence of any sales during that time period.	

<b>Second Set, Interrogatory No. 4</b>	
4. Describe in detail all of Petitioner’s communications with Charles Mandly, in 2015.	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. Guthrie also objects to this Interrogatory on the grounds that there is a more practical method of obtaining the information sought such as through a document request or deposition. Guthrie also objects to this Interrogatory to the extent it seeks information that is already within AMI’s possession. Subject to and without waiving any of his objections, and after conducting a reasonably diligent search, Guthrie responds that no such documents exist.

**Respondents' Objection:** Petitioner's response deficient. The *interrogatory* asks for a description in detail of all Petitioner's communications with Charles Mandly, in 2015. Moreover, this is not a document request.

**Petitioner's Responses to Art Message International's Second Set of Requests for  
Production of Documents and Things,  
served August 28, 2020**

<b>Second Set, Document Request No. 1</b>	
1. Documents sufficient to identify all of the sales of printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, made by Petitioner, in his capacity as an individual, between June 1, 2015 and August 31, 2015.	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie objects to this Request as duplicative of previous discovery demands. Subject to and without waiving any of his objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-82, and DG0000283-326, as well as his response to Interrogatory No. 9 of AMI's First Set of Interrogatories. Guthrie is also producing responsive, relevant, non-privileged documents in response to Request No. 1.
<b>Respondents' Objection:</b> This response is deficient. No documents produced identify all of the sales of printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, made by Petitioner, in his capacity as an individual, between June 1, 2015 and August 31, 2015.	

<b>Second Set, Document Request No. 2</b>	
2. All documents showing that Petitioner, in his capacity as an individual, distributed printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, in the United States, between June 1, 2015, and August 31, 2015.	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie objects to this Request on the grounds that it is duplicative of Request No. 1. See response to Request No. 1.
<b>Respondents' Objection:</b> This response is deficient. Request No. 1 asks about all sales within a period of time. This request seeks all documents showing Petitioner's actual <i>distribution</i> of printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, in the United States, between June 1, 2015, and August 31, 2015. The response and corresponding production are deficient.	

<b>Second Set, Document Request No. 6</b>	
6. All documents sufficient to identify that the newartexaminer.net website between June 1, 2015, and November 15, 2015, offered for sale printed periodicals of art and cultural criticism under the NEW ART EXAMINER mark, or	<b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie objects to this Request to the extent it seeks information already within AMI's possession.

made available for download as PDFs from that website.	Subject to, and without waiver of Guthrie's objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-82, DG0000283-32, as well as <a href="https://www.newartexaminer.net/back-copies/">https://www.newartexaminer.net/back-copies/</a> .
<b>Respondents' Objection:</b> This written response and corresponding production are deficient. The previously produced documents do not show anything about the website. Moreover, what the website shows <i>now</i> does not prove that between June 1, 2015, and November 15, 2015, the website <i>then</i> offered goods.	

Second Set, Document Request No. 8	
8. All documents from 2015 through 2016 that relate or refer to Petitioner asserting to either Respondent that Petitioner owned the NEW ART EXAMINER mark for printed periodicals of art and cultural criticism.	<p><b>RESPONSE:</b> In addition to incorporating his General Objections, Guthrie objects to this Request to the extent it seeks information already within AMI's possession.</p> <p>Subject to, and without waiver of Guthrie's objections, Guthrie refers AMI to the documents produced in response to the First Set of Requests for Production of Documents and Things bearing Bates numbers DG0000049-57, DG0000081-86, DG0000088-89 and DG0000283-326.</p>
<b>Respondents' Objection:</b> This response is deficient. And the referenced previously produced documents are nonresponsive.	

As requested above, please amend your responses to correct the identified deficiencies within 10 days, on or before September 28, 2020.

We look forward to your response. Thank you.

Sincerely,

/s/Mark V.B. Partridge

Mark V.B. Partridge

[mark@partridgepartnerspc.com](mailto:mark@partridgepartnerspc.com)

Partridge Partners, P.C.

On behalf of Art Message International  
and New Art Association

# EXHIBIT 10



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October 2, 2020

Mark V.B. Partridge  
Partridge Partners P.C.  
321 N. Clark St., Suite 500  
Chicago, IL 60654

Re: Gurthrie v. Art Message International, et al., TTAB Cancellation No. 92067099

Dear Mark:

This letter responds to your September 18, 2020 letter regarding Derek Guthrie's responses to the various discovery requests served by Art Message International ("AMI") and New Art Association (together with AMI, "Respondents"). We respond to each of your contentions in turn below.

**Mr. Guthrie's Responses to Document Requests**

- **Response to First Set of Document Requests:** Respondents have challenged the vast majority of Mr. Guthrie's responses to Respondents' first set of document requests. In those responses, Mr. Guthrie indicated that he would produce documents "to the extent they exist." Mr. Guthrie has undertaken a good faith search and has produced to Respondents all non-privileged documents responsive to the requests to which Mr. Guthrie indicated he would produce materials. If there are responses to which no responsive documents appear to have been produced, it is because no such documents exist in Mr. Guthrie's possession or control. This clarification should obviate any need for a further written response from Mr. Guthrie. Given that Mr. Guthrie served his responses in June, Respondents should be familiar with the contents of Mr. Guthrie's production.
- **Document Request No. 1 (Second Set):** Respondents challenge the adequacy of Mr. Guthrie's production in response to Request No. 1 claiming that Mr. Guthrie has not produced a document which singularly identifies "all of the sales" Mr. Guthrie made of the NEW ART EXAMINER between June 1 - August 31, 2015. No such document has been produced because no such document exists. Moreover, Mr. Guthrie has provided all documentation he possesses pertaining to the particular sales of the NEW ART EXAMINER at issue in this Request.
- **Document Request No. 2 (Second Set):** Respondents contend that Mr. Guthrie improperly cited his response to Request No. 1 in his response to Request No. 2. Mr. Guthrie recognizes the distinction between the two requests, however, Mr. Guthrie does not control or possess any documents that pertain exclusively to distribution, rather than

sales. Thus, no documents were withheld from production on the basis of Mr. Guthrie's objection that this request was duplicative.

- **Document Request No. 6 (Second Set):** Respondents challenge the sufficiency of Mr. Guthrie's production in response to this request, however, Mr. Guthrie has produced all non-privileged documents responsive to his request that are within his possession and control.
- **Document Request No. 8 (Second Set):** As with his response to Request No. 6, Mr. Guthrie has produced all non-privileged documents responsive to his request that are within his possession and control. Moreover, Mr. Guthrie does not agree that the documents cited in his written response are non-responsive.

### **Guthrie's Responses to Interrogatories**

- **Interrogatory No. 1 (First Set):** Respondents argue that Mr. Guthrie cannot "dictate or limit the scope of discovery" or "unilaterally decide what this case's issues are." However, Fed. R. Civ. P. 26(b) mandates that discovery must be "proportional to the needs of the case" considering, among other factors, "the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." See also TBMP § 402.01 ("A party may take discovery as to matters that are relevant to its claims and defenses (i.e., those specifically raised in the pleadings)"). Mr. Guthrie objected to this interrogatory, which seeks a list of all group associations Mr. Guthrie has had regardless of whether they pertain to the use of the NEW ART EXAMINER mark. Such a request goes far beyond the scope of this cancellation proceeding where ownership of the NEW ART EXAMINER mark as between Respondents and Mr. Guthrie is at issue. Accordingly, Mr. Guthrie maintains his objections that this interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad and unduly burdensome and will not provide a response to this interrogatory on the basis of these objections.
- **Interrogatory No. 14 (First Set):** Respondents take issue with Mr. Guthrie's objections to this interrogatory which seeks "all positions, with corresponding dates, that [Mr. Guthrie] held as part of the Chicago New Art Association," without any corresponding time limitation. As Respondents have previously argued, the information that this interrogatory seeks is not relevant to the issues in this proceeding and is overbroad. 27 TTABVue 4, 13-14. Mr. Guthrie will not modify his response to this interrogatory.
- **Interrogatory No. 18 (First Set):** Respondents contend that Mr. Guthrie's response to this interrogatory citing his response to Interrogatory No. 4 is improper. While Interrogatory Nos. 4 and 18 may not be entirely duplicative, the responses do overlap. Indeed, in his response to Interrogatory No. 4, Mr. Guthrie indicated that he did not learn of AMI's USPTO application "until engaging lawyers to assist him with his dispute with AMI over the direction of and control over the NEW ART EXAMINER publication." This provides an adequate response to Interrogatory No. 18 and any further detail would intrude upon Mr. Guthrie's attorney-client privilege.

- **Interrogatory No. 19 (First Set):** Respondents argue, without explanation, that all of Mr. Guthrie's personal financial information from 2009 onward is relevant to the first *Lyons* factor, the parties' objective intentions with respect to ownership of the mark. Mr. Guthrie's income from 2009 onward, a period which predates AMI's involvement with the NEW ART EXAMINER mark, has no bearing on this *Lyons* factor. The TBMP expressly prohibits such "fishing expeditions" and the Board has rejected wholesale requests for personal financial information. TBMP § 402.01; see *Domond v. 37.37, Inc.*, 113 USPQ2d 1264, 1266-67 (TTAB 2015) ("denying indiscriminate requests for financial data" which were neither tailored to the issues of the cancellation nor served to advance this proceeding in a focused and orderly manner). Moreover, to the extent Respondents seek to highlight any purported income Mr. Guthrie received from them, Mr. Guthrie need not provide that information because Respondents already possess such information. See TBMP § 402.02. Accordingly, Mr. Guthrie will not provide a response to this interrogatory.
- **Interrogatory No. 20 (First Set):** Respondents challenge as insufficient Mr. Guthrie's response to this interrogatory in which he sets forth the various financial expenditures he made towards the publication of the NEW ART EXAMINER. Mr. Guthrie did not maintain detailed financial records. Accordingly, Mr. Guthrie is unable to provide any additional detail in response to this interrogatory.
- **Interrogatory No. 1 (Second Set):** Subject to and without waiving any of the objections he asserted in his response, Mr. Guthrie modifies his response to this interrogatory to state that, to the best of his recollection, during the time period set forth in the interrogatory, copies of the NEW ART EXAMINER were distributed free of charge and thus, no sales were made.
- **Interrogatory No. 4 (Second Set):** Subject to and without waiving any of the objections he asserted in his response, Mr. Guthrie modifies his response to this interrogatory to state that he has no recollection of having any conversations with Charles Mandly.

#### **Guthrie's Responses to Requests for Admission ("RFAs")**

- **RFA No. 5:** Because, to the best to Mr. Guthrie's recollection, copies of the NEW ART EXAMINER were distributed free of charge, Mr. Guthrie will now offer a response admitting that no sales of the NEW ART EXAMINER were made in the time period set forth in the RFA.
- **RFA No. 13:** Because Respondents have offered clarification to this RFA, Mr. Guthrie will now offer a response admitting the RFA.
- **RFA No. 15:** Because Respondents have offered clarification to this RFA, Mr. Guthrie will now offer a response admitting the RFA.





Sincerely,

*/s/ Douglas N. Masters*

Douglas N. Masters  
Managing Partner, Chicago Office