

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

2007 SEP 17 PM 3:19

DAVE BRAINARD, an individual,)
)
JUSTIN FAGERHAUG pka DUSTIN)
EVANS, an individual, and)
)
TIM MATHEWS, an individual,)
)
Plaintiffs,)
)
vs.)
)
PHIL VASSAR, an individual,)
)
CRAIG WISEMAN, an individual,)
)
PHYLVESTER MUSIC, INC.,)
a Tennessee Corporation,)
)
BIG LOUD SHIRT INDUSTRIES, L.L.C.,)
a Tennessee Limited Liability Company,)
)
SONY BMG MUSIC ENTERTAINMENT,)
INC., including its divisions RCA LABEL)
GROUP and ARISTA NASHVILLE, a)
Delaware corporation, and)
)
PROCTER & GAMBLE COMPANY, an)
Ohio corporation,)
)
Defendants.)

CIVIL ACTION: 3 07 0929
PROCEEDINGS OF THE

- COMPLAINT FOR:
- 1) Copyright Infringement
 - 2) Common Law Misappropriation
 - 3) Breach of Confidential Relationship
 - 4) Federal Unfair Competition
 - 5) Common Law Unfair Competition
 - 6) Unjust Enrichment
 - 7) Constructive Trust
 - 8) Accounting

DEMAND FOR JURY TRIAL

JUDGE TRAUGER

JURISDICTION

1. Federal question jurisdiction is based on 28 U.S.C. §1331. Defendants are engaged in violations of the Lanham Act 15 U.S.C. §1125(a)(1)(A). The district courts of the United States have exclusive jurisdiction over the claims arising under the Copyright Act of 1976, 17 U.S.C. §101 et seq.

2. This Court has supplemental jurisdiction under 28 U.S.C. §1338(a), 1338(b) & 1367(a), and their amendments to date, for the related claims of unfair trade practices, unfair competition, unjust enrichment, common law misappropriation and for the imposition of an involuntary trust under state law.

VENUE

3. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) & 1400(a). Plaintiffs are informed and believe that Defendants all do business in Tennessee and have committed acts, omissions, torts, violations, and infringements under the United States and state laws complained of herein in this Judicial District, and upon information and belief Defendants are subject to personal jurisdiction in this Judicial District.

THE PARTIES

The Plaintiffs

4. Plaintiff TIM MATHEWS (“MATHEWS”) is a resident of Nashville, Davidson County, Tennessee. MATHEWS is a professional songwriter who has authored and/or co-authored songs recorded by recording artists such as Neal McCoy, Jason Sellers, Lauren Lucas, Jeannie Kendall, Marcel Chagnon and Glenn Cummings.

5. Plaintiff DAVE BRAINARD (“BRAINARD”) is a resident of Nashville, Davidson County,

Tennessee. BRAINARD is a professional musician, producer and songwriter who has authored and/or co-authored songs recorded by recording artists such as Brooks and Dunn, Riccochet, Sammy Kershaw, Kelly Coffee, Neal McCoy, and Glenn Cummings. BRAINARD has also served as a producer on recordings by Dustin Evans and Jamey Johnson. BRAINARD has also performed with artists such as Tebey, Marcel, Glenn Cummings, Anthony Smith, Jessica Andrews and Rebecca Lynn Howard.

6. DUSTIN FAGERHAUG pka DUSTIN EVANS (“EVANS”) is a resident of Nashville, Davidson County, Tennessee. EVANS is a professional musician and songwriter. EVANS has released 5 albums/CDs and performs regularly with his band, “The Good Times,” throughout the Midwest, playing venues such as the Grizzly Rose in Denver and fairs and festivals, including Country Thunder in Arizona and Wisconsin, Country Jam in Colorado, and the Country Stampede in Manhattan, KS. He has major corporate sponsors including U.S. Smokeless Tobacco (Skoal/Copenhagen) and Roper Footwear and Apparel. In addition to playing with his own band, EVANS also performs with Western Underground, the band formerly fronted by Chris Ledoux. EVANS is currently on tour promoting his latest CD release “Good Ole Days to Come” which features a version of the song in dispute in this action.

The Defendants

7. Upon information and belief, and at all times relevant herein, defendant SONY BMG MUSIC ENTERTAINMENT, INC. (“SONY BMG”) is a corporation, organized and existing under the laws of Delaware, with offices located at 550 Madison Avenue, New York, New York. Plaintiffs are informed and believe that SONY BMG does business and maintains offices in Nashville, Tennessee.

8. Upon information and belief, and at all times relevant herein, defendant PROCTER & GAMBLE COMPANY (“P&G”) is a corporation organized and existing under the laws of the state of Ohio, with offices located at Cincinnati, Ohio. Plaintiffs are informed and believe that P&G does business worldwide, including in Nashville, Tennessee.

9. Upon information and belief, and at all times relevant herein, defendant PHIL VASSAR (“VASSAR”) is an individual who is a professional singer, songwriter and recording artist whose recordings are produced and distributed by Defendant SONY BMG through its divisions, RCA LABEL GROUP and ARISTA NASHVILLE. Plaintiffs are informed and believe that VASSAR is a resident of Tennessee.

10. Upon information and belief, and at all times relevant herein, defendant CRAIG WISEMAN (“WISEMAN”) is an individual who is a professional songwriter. Plaintiffs are informed and believe that WISEMAN is a resident of Tennessee.

11. Upon information and belief, and at all times relevant herein, defendant PHYLVESTER MUSIC, INC. (“PHYLVESTER”) is a Tennessee corporation with its principal place of business located at 913 18th Avenue South, Nashville, Tennessee. Plaintiffs are informed and believe that PHYLVESTER is a music publishing company owned and/or controlled by Defendant VASSAR and through which VASSAR has done the acts, and received at least some of the benefits, complained of herein.

12. Upon information and belief, and at all times relevant herein, defendant BIG LOUD SHIRT INDUSTRIES, L.L.C. (“BIG LOUD SHIRT”) is a Tennessee limited liability company with its principal place of business located at 1105 17th Avenue South, Nashville, Tennessee. Plaintiffs are informed and believe that BIG LOUD SHIRT is a music publishing company owned and/or

controlled by Defendant WISEMAN and through which WISEMAN has done the acts, and received at least some of the benefits, complained of herein.

13. Plaintiffs are informed and believe that the acts and omissions of each corporate, partnership, or limited liability defendant were done with the express or implied authorization, ratification, or approval of the managing director, or officers, or directors, or shareholders, or general partners, or managing member, or members, as applicable, of that entity.

FACTUAL BACKGROUND

14. In October of 2003, Plaintiffs jointly created a musical composition (i.e., song) entitled “Good Ol’ Days to Come” (the “Plaintiffs’ Work”), which is comprised of both words and music and with each Plaintiff contributing original expression to such composition. Plaintiffs continued to work on the song and recorded a version of Plaintiffs’ Work in January of 2004 featuring Dustin Evans on vocals (the “demo”).

15. On or about January 22, 2004, Plaintiffs’ representatives began “pitching” the Plaintiffs’ Work by presenting the demo recording to various artists and/or artist representatives for their consideration to be recorded for commercial exploitation by a nationally prominent artist.

16. On or about February 6, 2004, the demo version of “Good Ol’ Days to Come” was presented to representatives of Phil Vassar with the implied understanding (according to standard music publishing industry practice) that no use would be made of the submitted song absent the agreement of, and compensation to, Plaintiffs.

17. Plaintiffs are informed and believe and thereupon allege that the demo of Plaintiffs’ song “Good Ol’ Days to Come,” or a copy thereof, was heard by VASSAR and/or WISEMAN for consideration as a song to be recorded by VASSAR and commercially released as part of

VASSAR's next album which was then being recorded with the financial support and under the direction of Defendant SONY BMG.

18. Plaintiffs are further informed and believe that representatives of SONY BMG also heard Plaintiffs' Work, were aware of and even facilitated VASSAR's and/or WISEMAN's listening to Plaintiffs' Work, and that all acts of VASSAR and WISEMAN alleged herein were done with the encouragement, support, knowledge and actual or tacit approval of SONY BMG.

19. On or about February 11, 2004, Plaintiffs' representatives were advised by a representative of SONY BMG division, RCA Label Group, that VASSAR had "passed" on recording Plaintiffs' Work.

20. Plaintiffs subsequently authorized Dustin Evans to record Plaintiffs' Work which was released on the Dustin Evans CD of the same title on or about July, 2004.

21. A version of Plaintiffs' Work, entitled "Good Ol' Days," also appears on the Big Glenn Cummings debut CD entitled "Big Glenn Cummings" which was released on or about October, 2004. The copyright on this version of Plaintiffs' song was registered on March 24, 2005 under registration number PA-1-160-845 (the registration, submitted by Zomba Enterprises, erroneously lists the published date as March 17, 2005).

22. Plaintiffs are informed and believe that Defendants VASSAR and WISEMAN, while VASSAR was working on recording an album (which recordings were being paid for and produced by, for and under the direction of SONY BMG) used Plaintiffs' Work to create an unauthorized derivative work entitled "Good Ole Days" (the "Infringing Work").

23. The Infringing Work is substantially similar to Plaintiffs' Work. The Infringing Work's similarities include, without limitation, portions of music and lyrics, and overall theme, mood,

pace, and total concept and feel.

24. The Infringing Work was included as part of VASSAR's third album, a phonorecord entitled "Shaken Not Stirred," which was commercially released by SONY BMG and has since been continually reproduced and distributed in the United States since on or about September 28, 2004.

25. Plaintiffs first became aware of the Infringing Work sometime in late 2004, after the release of Defendant VASSAR'S "Shaken Not Stirred" CD.

26. The Infringing Work was also commercially released by SONY BMG as a "single" phonorecord in or around June of 2005, has since been continually reproduced and distributed as a "single" phonorecord and has also received widespread public performance in the form of radio airplay throughout the United States.

27. Plaintiffs are informed and believe, and based thereon allege, that the Infringing Work has also been distributed digitally and publicly performed and duplicated through such online music services as iTunes, Yahoo Music, and AOL Music, among others.

28. Plaintiffs are informed and believe, and based thereon allege, that the Infringing Work has also been synchronized as part of a music video which has received widespread distribution and public performance and/or duplication in the form of airplay on various music and other television channels as well as over the Internet through such services as Rhapsody, iTunes, Yahoo Music, and AOL Music, among others.

29. Plaintiffs are informed and believe, and based thereon allege, that the Infringing Work was also used as part of a cross-promotion sponsorship with Defendant P&G involving the over-the-counter heartburn medication known as "Prilosec OTC," specifically including, but not limited

to, the Infringing Work being synchronized and used as part of a television commercial promoting “Prilosec OTC.” The “Good Ole Days” Prilosec OTC commercial has received widespread distribution and public performance over both broadcast and cable television channels throughout the United States.

30. Plaintiffs are informed and believe, and based thereon allege, that VASSAR has publicly performed the Infringing Work as part of his live performances since at least as early as September 2004, including appearances on The Tonight Show with Jay Leno on or about July 21, 2005 (including at least one repeat broadcast), Fox Network’s December 31, 2005, New Year’s Eve coverage, as well as other television shows and live concerts.

31. Plaintiffs are informed and believe, and based thereon allege, that the Infringing Work has also been reproduced and distributed for sale in the form of a “ringtone” (i.e., a portion of a sound recording used to alert a phone owner of an incoming call).

32. Defendants have not, at any time, requested any appropriate licenses allowing them to reproduce, create a derivative work, distribute, publicly perform or otherwise use Plaintiffs’ Work in any manner and no such licenses have been issued by Plaintiffs to Defendants.

33. Defendants have directly, contributorily and/or vicariously infringed, and continue to willfully infringe, on Plaintiffs’ exclusive rights in Plaintiffs’ Work, as set forth in section 106 of the Copyright Act of 1976, 17 U.S.C. § 106.

COUNT I

COPYRIGHT INFRINGEMENT

BY ALL PLAINTIFFS

AGAINST ALL DEFENDANTS

34. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 as set forth herein.

35. Plaintiffs have been and continue to be joint authors and joint owners of all rights, title, and interest in and to the copyright in their song “Good Ol’ Days to Come,” except for the portion of such rights owned by Plaintiff BRAINARD’S publishing company. Plaintiffs have complied with the relevant provisions of 17 U.S.C. §101 et seq. (including without limitation, by applying for copyright registration), and secured the exclusive rights and privileges in and to the copyright of their song “Good Ol’ Days to Come.”

36. Without obtaining permission from the copyright owners or paying any compensation to the copyright owners, Defendants have created an unauthorized derivative work from Plaintiffs’ Work, and have been and are continuing to reproduce and distribute copies thereof both individually, as well as part of the VASSAR CD entitled “Shaken Not Stirred” and also as part of the Prilosec OTC commercials and publicity campaign.

37. Defendants’ conduct violates the exclusive rights belonging to Plaintiffs as owners of the copyright in their song under 17 U.S.C. § 106.

38. Based upon information and belief, Plaintiffs allege that, as a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs have been damaged and Defendants have realized and are continuing to realize substantial profits and other benefits that belong to Plaintiffs.

Accordingly, Plaintiffs seek an award of damages and costs pursuant to 17 U.S.C. §§ 504 and 505 and disgorgement of Defendants’ profits as well as punitive damages due to the willful nature of the infringement.

39. Defendants’ infringing conduct has also caused and is continuing to cause substantial and

irreparable injury and damage to Plaintiffs in an amount not capable of determination, and, unless restrained, will cause further irreparable injury, leaving the Plaintiffs with no adequate remedy at law.

40. On information and belief, Defendants have willfully engaged in, and continue to willfully engaging in, the acts complained of herein with oppression, fraud, and malice, and in conscious disregard of Plaintiffs' rights. Plaintiffs are, therefore, entitled to the maximum damages allowable by law.

COUNT II

COMMON LAW MISAPPROPRIATION

BY ALL PLAINTIFFS

AGAINST ALL DEFENDANTS EXCEPT P&G

41. Plaintiffs repeat and reassert the allegations contained in paragraphs 1 through 40 set forth herein.

42. Plaintiffs invested substantial time and energy into their work of creating songs, including the song constituting Plaintiffs' Work. At no cost to themselves, and contrary to the understanding of the parties, Defendants have used Plaintiffs' Work to create the Infringing Work without Plaintiffs' authorization or compensation to the Plaintiffs and Plaintiffs have been damaged by such conduct of Defendants.

43. Plaintiffs are informed and believe, and based thereon allege, that all of Defendants' actions were willful and were done with knowing intent to deny to Plaintiffs their rights and to deprive Plaintiffs of the benefits following from the use of the Plaintiffs' Work submitted to Defendants. Alternatively, Defendants' acts were done with reckless disregard for Plaintiffs' rights.

44. As a result, Defendants' actions in using Plaintiffs' Work to create their Infringing Work contrary to the understanding of the parties constitutes common law misappropriation and entitles Plaintiffs to an injunction together with an award of compensatory and punitive damages against the Defendants in an amount to be determined at trial.

COUNT III

BREACH OF CONFIDENTIAL RELATIONSHIP

BY ALL PLAINTIFFS

AGAINST ALL DEFENDANTS EXCEPT P&G

45. Plaintiffs repeat and reassert the allegations contained in paragraphs 1 through 44 as set forth herein.

46. Plaintiffs invested substantial time and energy into their work of creating songs, including Plaintiffs' Work. Plaintiffs submitted Plaintiffs' Work to the Defendants for consideration for commercial use, and with the understanding that no use would be made of Plaintiffs' Work without permission and compensation being paid to Plaintiffs. Defendants knew and were aware from the express and/or implied understandings and from the circumstances attending the submission of Plaintiffs' Work that Plaintiffs conditioned their submission on the agreement of Defendants that Plaintiffs were to approve and be paid for any use of their work. Plaintiffs are informed and believe, and based thereon allege, that Defendants voluntarily accepted the submission of Plaintiffs' Work knowing the conditions on which it was tendered.

47. Plaintiffs are informed and believe, and based thereon allege, that all of Defendants' actions were willful and were done with knowing intent to deny to Plaintiffs their rights and to deprive Plaintiffs of the benefits from the submitted Plaintiffs' Work. Alternatively, Plaintiffs are

informed and believe, and based thereon allege, that Defendants' acts were done with reckless disregard for Plaintiffs' rights.

48. As a result, Defendants' actions in using Plaintiffs' Work to create,, sell and otherwise commercially exploit their Infringing Work contrary to the understanding of the parties constitutes a breach of a confidential relationship and entitles Plaintiffs to an injunction together with an award of compensatory and punitive damages against the Defendants in an amount to be determined at trial.

COUNT IV
UNFAIR COMPETITION IN VIOLATION OF
THE LANHAM ACT
BY ALL PLAINTIFFS
AGAINST ALL DEFENDANTS

49. Plaintiffs repeat and reassert the allegations contained in paragraphs 1 through 48 as set forth herein.

50. Defendants' actions as set forth herein constitute unfair competition in derogation of 15 U.S.C. § 1125(a) and are designed to trade upon the property created and owned by the Plaintiffs, and to use same by the creation of an unauthorized work based on Plaintiffs' Work without permission or payment to Plaintiffs, and to use the Plaintiffs' Work to promote not only phonorecords containing the Infringing Work, but also the Prilosec OTC heartburn medication.

51. Defendants violated Plaintiffs' rights by: exploiting the Plaintiffs' Work; claiming copyright in the Infringing Work to members of the public who have been and will be confused, mistaken, and deceived regarding the actual authorship, ownership and control of Plaintiffs' intellectual

property, and have been and will assume an endorsement by Plaintiffs of Defendants products and services; using the Infringing Work to advertise and promote the Prilosec OTC heartburn medication without the approval of or compensation to Plaintiffs; failing to use the names of the true authors in connection with Defendants' products and advertising, and; attempting to benefit financially by palming off Plaintiffs' works solely as Defendants' own.

52. Plaintiffs are informed and believe, and based thereon allege, that Defendants' actions were willful and were done with knowing intent to deny to Plaintiffs their rights and to deprive Plaintiffs of the benefits of their intellectual property. Alternatively, Defendants' acts were done with reckless disregard for Plaintiffs' rights.

53. By reason of the foregoing, Plaintiffs are entitled to a permanent injunction, enjoining Defendants from further acts of unfair competition. Additionally, Plaintiffs' are entitled to Defendants' profits, damages incurred by Plaintiffs (up to treble damages due to Defendants' intentional and willful violation), and an award of attorneys fees and costs.

COUNT V

COMMON LAW UNFAIR COMPETITION

BY ALL PLAINTIFFS

AGAINST ALL DEFENDANTS

54. Plaintiffs repeat and reassert the allegations contained in paragraphs 1 through 53 as set forth herein.

55. Defendants' actions as set forth in Count IV above constitute unfair competition in derogation of Tennessee common law and are designed to trade upon the property created and owned by the Plaintiffs, and to use same by the creation of an unauthorized work based on

Plaintiffs' Work without permission or payment to Plaintiffs, and to use Plaintiff's Work to promote not only the album "Shaken Not Stirred," but the Prilosec OTC heartburn medication.

56. By reason of the foregoing, Plaintiffs are entitled to a permanent injunction, enjoining Defendants from further acts of unfair competition. Additionally, Plaintiffs' are entitled to Defendants' profits, damages incurred by Plaintiffs (up to treble damages due to Defendants' intentional and willful violation), and an award of attorneys fees and costs.

COUNT VI

UNJUST ENRICHMENT

BY ALL PLAINTIFFS

AGAINST ALL DEFENDANTS

57. Plaintiffs repeat and reassert the allegations contained in paragraphs 1 through 56 as set forth herein.

58. Defendants obtained benefits as a result of improperly using Plaintiffs' rights and property, which Defendants were not authorized to use, and for which Defendants did not compensate Plaintiffs, and accordingly Defendants were unjustly enriched by the amount of monies they received and will continue to receive from the sale of products containing or derived from the Infringing Work and other use of the Infringing Work, all without the consent of Plaintiffs.

59. The financial and other benefits, such as recognition within and outside of the music industry, which are of a pecuniary interest, and are subject to definitive determination of value, have been wrongfully bestowed upon the Defendants contrary to the rights, title and interests of the Plaintiffs as the originators of the Infringing Work.

60. Plaintiffs seek an order disgorging, and turning over to Plaintiffs, all benefits, including

without limitation, revenues obtained by Defendants through their unlawful and wrongful acts.

COUNT VII

CONSTRUCTIVE TRUST

BY ALL PLAINTIFFS

AGAINST ALL DEFENDANTS

61. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 60 as set forth herein.

62. Defendants have engaged in acts and omissions in detriment to the possessory rights, title and interests of Plaintiffs to their ownership interest and right to profits and other monetary sums payable by virtue of the Infringing Work and for which Plaintiffs are entitled to a constructive trust to be held in their favor.

63. Defendants have been unjustly enriched at the expense and severe economic and financial damage to Plaintiffs and will continue to be unjustly enriched as the result of future payments derived from the use of the Infringing Work.

64. The revenues and profits Defendants have acquired from the Infringing Work rightfully belong to Plaintiffs. Defendants are therefore involuntary trustees for the benefit of Plaintiffs of all such profits and revenues.

65. Plaintiffs seek an order disgorging, and turning over to Plaintiffs, all benefits, including revenues obtained by Defendants through their unlawful and wrongful acts.

COUNT VIII

ACCOUNTING

BY ALL PLAINTIFFS

AGAINST ALL DEFENDANTS

66. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 65 set forth herein.

67. As an unauthorized derivative work, at all times relevant herein Plaintiffs were and are the owners of the copyright in the Infringing Work.

68. Plaintiffs are informed and believe that Defendants have received income from the copying, distribution, marketing and sale of the Infringing Work, but have failed to pay to Plaintiffs any of the income received from such copying, distribution, marketing and sale, and have appropriated all of such income to their own use.

69. Plaintiffs are not aware of the full amount received by Defendants and cannot ascertain the amount due and owing to Plaintiffs without an accounting of all income received by Defendants related to all uses of the Infringing Work.

70. Plaintiffs are entitled to an accounting to determine the full amount owed to them by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

1. Finding that Defendants have committed acts of copyright infringement in violation of Title 17 of the United States Code;
2. Enjoining Defendants, their officers, directors, agents, servants, employees, representatives,

attorneys, related companies, successors, assigns, and all persons in active concert with them, during the pendency of this action, and permanently thereafter, from directly or indirectly, publicly performing, publishing, selling, marketing, exploiting and/or otherwise infringing Plaintiffs' copyrights or other rights in any manner;

3. Enjoining Defendants, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all persons in active concert with them, during the pendency of this action, and permanently thereafter, from directly or indirectly, engaging in any act of unfair competition;

4. Directing Defendants to deliver up, to be impounded during the pendency of this action, all copies of the Infringing Work, including without limitation, the "Shaken Not Stirred" CD containing the Infringing Work, in their possession or under their control, and to deliver up for destruction all master recordings, digital or electronic copies, and all other matter comprising or derived from the Infringing Work;

5. Awarding Plaintiffs compensatory damages in an amount to be proven at trial for Defendants' acts of unfair competition, common law misappropriation and breach of confidential relationship;

6. Directing Defendants to account for all gains, profits, and advantages derived by Defendants from the use of Plaintiffs' Work and/or the Infringing Work;

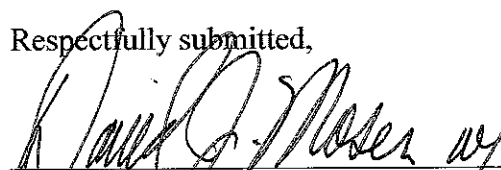
7. Awarding Plaintiffs actual damages for Defendants' copyright infringement in an amount to be determined at trial as well as prejudgment interest and punitive damages due to the willful nature of Defendants' conduct.

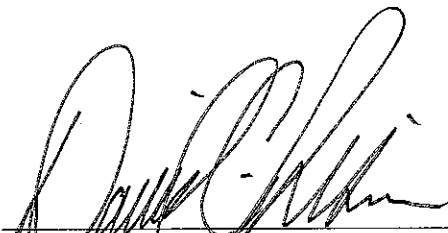
8. Directing Defendants to pay to Plaintiffs all gains, profits, and advantages derived by Defendants from the aforesaid unfair trade practices and unfair competition.

9. Directing Defendants to pay to Plaintiffs the monetary benefit conferred on Defendants by reason of their common law misappropriation and otherwise wrongful use of Plaintiffs' property;
10. Directing Defendants to pay punitive damages for their acts of unfair competition and any other claims for which punitive damages may be awarded;
11. Declaring the Plaintiffs are the owners of the copyright in and to the Infringing Work;
12. Ordering that all copyright registrations for the Infringing Work be transferred into the names of Plaintiffs;
13. Alternatively, ordering that all copyright registrations for the Infringing Work be canceled;
14. Directing Defendants to account to Plaintiffs for income received from the reproduction, distribution, public performance, and any other exploitation of the Infringing Work;
15. Entering an Order converting the unlawful dominion and control of the Defendants over the proceeds credited to their account to a constructive trust in favor of Plaintiffs and appointing each Defendant, in their corporate and individual capacities, as a Trustee with extending fiduciary duties and obligations to Plaintiffs;
16. Directing Defendants to pay Plaintiffs their reasonable attorneys' fees and the costs of this action;
17. Granting Plaintiffs such other and further relief as is just; and
18. That all matters placed at issue be tried by a jury.

Respectfully submitted,

By:


David J. Moser, Esq., BPR No. 16827
9 Music Square South, #332
Nashville, Tennessee 37203
(615) 498-3006



David C. Risner, Esq., BPR No. 18205
P.O. Box 594
Kingston Springs, Tennessee 37082
(615) 952-2345

Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT

MIDDLE

District of

TENNESSEE

DAVE BRAINARD, an individual, JUSTIN FAGERHAUG pka DUSTIN EVANS, an individual, and TIM MATHEWS, an individual, V.

SUMMONS IN A CIVIL ACTION

PHIL VASSAR, an individual, CRAIG WISEMAN, an individual, PHYLVESTER MUSIC, INC., a Tennessee Corporation, BIG LOUD SHIRT INDUSTRIES, L.L.C., a Tennessee Limited Liability Company, SONY BMG MUSIC ENTERTAINMENT, INC., including its divisions RCA LABEL GROUP and ARISTA NASHVILLE, a Delaware Corporation, and PROCTOR & GAMBLE COMPANY, an Ohio Corporation.

CASE NUMBER: 3:07-0929

JUDGE TRAUGER

TO: (Name and address of Defendant)

Serve via Registered Agent: SONY BMG MUSIC ENTERTAINMENT, INC. c/o The Prentice-Hall Corp. System, I 2908 Poston Avenue Nashville, TN 37203

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

David J. Mosei, Esquire 9 Music Square South Suite 332 Nashville, TN 37203 (615) 498-3006

AND

David C. Risner, Esquire P.O. Box 594 Kingston Springs, TN 37082 (615) 952-2345

an answer to the complaint which is served on you with this summons, within Twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEITH THROCKMORTON

SEP 18 2007

CLERK

DATE

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT

MIDDLE

District of

TENNESSEE

DAVE BRAINARD, an individual,
JUSTIN FAGERHAUG pka DUSTIN EVANS,
an individual, and TIM MATHEWS,
an individual,

SUMMONS IN A CIVIL ACTION

v

PHIL VASSAR, an individual, CRAIG
WISEMAN, an individual, PHYLVESTER
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SONY BMG MUSIC ENTERTAINMENT, INC.,
including its divisions RCA LABEL
GROUP and ARISTA NASHVILLE, a
Delaware Corporation, and PROCTOR &
GAMBLE COMPANY, an Ohio Corporation.

CASE NUMBER:

3 07 0929

JUDGE TRAUGER

TO: (Name and address of Defendant)

Serve via Registered Agent: PROCTOR & GAMBLE COMPANY
c/o CT Corporation System
800 S. Gay Street
Suite 2021
Knoxville, TN 37920

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

David J. Moser, Esquire AND
9 Music Square South
Suite 332
Nashville, TN 37203
(615) 498-3006

David C. Risner, Esquire
P.O. Box 594
Kingston Springs, TN 37082
(615) 952-2345

an answer to the complaint which is served on you with this summons, within Twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEITH THROCKMORTON

SEP 18 2007

CLERK

DATE

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT

MIDDLE

District of

TENNESSEE

DAVE BRAINARD, an individual,
JUSTIN FAGERHAUG pka DUSTIN EVANS,
an individual, and TIM MATHEWS,
an individual,

SUMMONS IN A CIVIL ACTION

v

PHIL VASSAR, an individual, CRAIG
WISEMAN, an individual, PHYLVESTER
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SONY BMG MUSIC ENTERTAINMENT, INC.,
including its divisions RCA LABEL
GROUP and ARISTA NASHVILLE, a
Delaware Corporation, and PROCTOR &
GAMBLE COMPANY, an Ohio Corporation.

CASE NUMBER:

3 07 0928

JUDGE TRAUGER

TO: (Name and address of Defendant)

Serve via Registered Agent: PHYLVESTER MUSIC, INC.
c/o Charles J. Biederman, Esq.
29 Music Square East
Nashville, TN 37203

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

David J. Moser, Esquire
9 Music Square South
Suite 332
Nashville, TN 37203
(615) 498-3006

AND

David C. Risner, Esquire
P.O. Box 594
Kingston Springs, TN 37082
(615) 952-2345

an answer to the complaint which is served on you with this summons, within Twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEITH THROCKMORTON

SEP 18 2007

CLERK

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(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT

MIDDLE

District of

TENNESSEE

DAVE BRAINARD, an individual,
JUSTIN FAGERHAUG pka DUSTIN EVANS,
an individual, and TIM MATHEWS,
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SUMMONS IN A CIVIL ACTION

v.

PHIL VASSAR, an individual, CRAIG
WISEMAN, an individual, PHYLVESTER
MUSIC, INC., a Tennessee Corporation, CASE NUMBER:
BIG LOUD SHIRT INDUSTRIES, L.L.C., a
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including its divisions RCA LABEL
GROUP and ARISTA NASHVILLE, a
Delaware Corporation, and PROCTOR &
GAMBLE COMPANY, an Ohio Corporation.

3 07 0929

JUDGE TRAUGER

TO: (Name and address of Defendant)

Serve via Registered Agent: BIG LOUD SHIRT INDUSTRIES, L.L.C.
c/o Marc Driskill
1111 16th Avenue South
Nashville, TN 37212

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

David J. Moser, Esquire AND
9 Music Square South
Suite 332
Nashville, TN 37203
(615) 498-3006

David C. Risner, Esquire
P.O. Box 594
Kingston Springs, TN 37082
(615) 952-2345

an answer to the complaint which is served on you with this summons, within Twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEITH THROCKMORTON

SEP 18 2007

CLERK

DATE

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT

MIDDLE

District of

TENNESSEE

DAVE BRAINARD, an individual,
JUSTIN FAGERHAUG pka DUSTIN EVANS,
an individual, and TIM MATHEWS,
an individual,

SUMMONS IN A CIVIL ACTION

PHIL VASSAR, an individual, CRAIG
WISEMAN, an individual, PHYLVESTER
MUSIC, INC., a Tennessee Corporation,
BIG LOUD SHIRT INDUSTRIES, L.L.C., a
Tennessee Limited Liability Company,
SONY BMG MUSIC ENTERTAINMENT, INC.,
including its divisions RCA LABEL
GROUP and ARISTA NASHVILLE, a
Delaware Corporation, and PROCTOR &
GAMBLE COMPANY, an Ohio Corporation.

CASE NUMBER: 3 07 0929

JUDGE TRAUGER

TO: (Name and address of Defendant)

PHIL VASSAR
29 Music Square East
Nashville, TN 37203

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

David J. Moser, Esquire
9 Music Square South
Suite 332
Nashville, TN 37203
(615) 498-3006

AND

David C. Risner, Esquire
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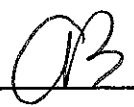
KEITH THROCKMORTON

SEP 18 2007

CLERK

DATE

(By) DEPUTY CLERK



UNITED STATES DISTRICT COURT

MIDDLE

District of

TENNESSEE

DAVE BRAINARD, an individual,
JUSTIN FAGERHAUG pka DUSTIN EVANS,
an individual, and TIM MATHEWS,
an individual,

SUMMONS IN A CIVIL ACTION

v.

PHIL VASSAR, an individual, CRAIG
WISEMAN, an individual, PHYLVESTER
MUSIC, INC., a Tennessee Corporation,
BIG LOUD SHIRT INDUSTRIES, L.L.C., a
Tennessee Limited Liability Company,
SONY BMG MUSIC ENTERTAINMENT, INC.,
including its divisions RCA LABEL
GROUP and ARISTA NASHVILLE, a
Delaware Corporation, and PROCTOR &
GAMBLE COMPANY, an Ohio Corporation.

CASE NUMBER: 3 07 0929

JUDGE TRAUGER

TO: (Name and address of Defendant)

CRAIG WISEMAN
1111 16th Avenue South
Nashville, TN 37212

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

David J. Moser, Esquire
9 Music Square South
Suite 332
Nashville, TN 37203
(615) 498-3006

AND

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