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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN M. "BUCK" ORMSBY, an individual; and
KENT E. MORRILL, an individual; collectively
forming the musical performance group "THE
WAILERS",

Plaintiffs,

vs.

ASTON "FAMILY MAN" BARRETT, individually
and doing business as "THE WAILERS"; AL
ANDERSON, individually and doing business as
"THE WAILERS"; JUNIOR MARVIN,
individually and doing business as "THE
WAILERS"; KEVIN "YVAD" DAVY, individually
and doing business as "THE WAILERS"; KEITH
STERLING, individually and doing business as "THE
WAILERS"; NAMBO ROBINSON, individually
and doing business as "THE WAILERS"; JUNIOR
"CHICO" CHIN, individually and doing business as
"THE WAILERS"; ABONGY BALENGOLA,
individually and doing business as "THE
WAILERS"; ERNEST "DRUMMIE" WILLIAMS,
individually and doing business as "THE
WAILERS"; MARIE DOMINUQUE LUCE,
individually and doing business as "THE
WAILERS"; PASCALE KEMENI KAMGA,
individually and doing business as "THE
WAILERS"; collectively forming the musical
performance group "THE WAILERS"; and John
Does 1-10,

Defendants.

Case No.:

CV7 5305 RBL

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

SEA 16199 SWS

1 Plaintiffs JOHN M. "BUCK" ORMSBY, an individual ("Ormsby"), and KENT E.
2 MORRILL, an individual ("Morrill"), collectively forming the musical performance group "The
3 Wailers" and collectively referred to herein as "Plaintiffs", by their attorneys, CARPELAW PLLC,
4 bring this action for Trademark Infringement, Trademark Dilution, Unfair Competition,
5 Cybersquatting and supplemental claims against defendants ASTON "FAMILY MAN" BARRETT,
6 individually and doing business as "The Wailers" ("Barrett"); AL ANDERSON, individually and
7 doing business as "The Wailers" ("Anderson"); JUNIOR MARVIN, individually and doing
8 business as "The Wailers" ("Marvin"); KEVIN "YVAD" DAVY, individually and doing business
9 as "The Wailers" ("Davy"); KEITH STERLING, individually and doing business as "The Wailers"
10 ("Sterling"); JUNIOR "CHICO" CHIN, individually and doing business as "The Wailers" ("Chin");
11 ABONGY BALENGOLA, individually and doing business as "The Wailers" ("Balengola");
12 ERNEST "DRUMMIE" WILLIAMS, individually and doing business as "The Wailers"
13 ("Williams"); MARIE DOMINUQUE LUCE, individually and doing business as "The Wailers"
14 ("Luce"); and PASCALE KEMENI KAMGA, individually and doing business as "The Wailers"
15 ("Kamga"), collectively forming the musical performance group "The Wailers"; and John Does 1-
16 10, collectively referred to herein as "Defendants", and allege as follows:

17 18 INTRODUCTION

19 1. This is an action in law and equity for Trademark Infringement in violation of the
20 Lanham Act, 15 U.S.C. § 1114(1), for dilution under the Federal Trademark Dilution Act, 15 U.S.C.
21 § 1125(c), for unfair competition under Lanham Act, 15 U.S.C. § 1125(a), for violations of the
22 Anticybersquatting Consumer Protection Act under 15 U.S.C. § 1125(d), and for common law
23 unfair competition. As set forth below, Plaintiffs are the owner of a federal trademark registration
24 for the distinctive and famous service mark WAILERS for use in connection with entertainment
25 services in the nature of a live musical group in International Class 41. Plaintiffs have used the
26 service mark "WAILERS" in interstate commerce in connection with its services continuously since

1 1959.

2
3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over the subject matter of this action pursuant to 28
5 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121. The Court has supplemental jurisdiction over the
6 common law claim under 28 U.S.C. § 1367(a).

7 3. Alternatively, this Court has diversity jurisdiction over FALCON'S claims because
8 the parties are diverse and the claims herein exceed \$75,000, exclusive of attorneys' fees and costs.
9 28 U.S.C. § 1332.

10 4. This Court has personal jurisdiction over Defendants and venue in this District is
11 proper pursuant to 28 U.S.C. §§1331, 1391 and 1400, by virtue of the fact that, upon information
12 and belief, the Defendants: (1) regularly solicit business in this state; (2) regularly solicit business
13 within the United States; and (3) have committed tortious acts within the state by engaging in the
14 activities set forth below in this state and causing injury to Plaintiffs in this state.

15
16 **PARTIES**

17 5. Plaintiff Ormsby is an individual residing within the State of Washington, having an
18 address and principal place of business in Tacoma, Washington.

19 6. Plaintiff Morrill is an individual residing within the State of Washington, having an
20 address and principal place of business in Tacoma, Washington.

21 7. Upon information and belief, defendant Barrett is an individual that resides in and/or
22 is a citizen of Jamaica. Barrett is the leader of Defendants' group The Wailers and is the groups'
23 bassist.

24 8. Upon information and belief, defendant Anderson is an individual that resides in
25 and/or is a citizen of the United States. Anderson is a guitarist for Defendants' group The Wailers.

26 9. Upon information and belief, defendant Marvin is an individual that resides in and/or

1 is a citizen of Jamaica. Marvin is a guitarist for Defendants' group The Wailers.

2 10. Upon information and belief, defendant Davy is an individual that resides in and/or
3 is a citizen of Jamaica. Davy is the lead singer for Defendants' group The Wailers.

4 11. Upon information and belief, defendant Sterling is an individual that resides in
5 and/or is a citizen of Jamaica. Sterling is the keyboard player for Defendants' group The Wailers.

6 12. Upon information and belief, defendant Robinson is an individual that resides in
7 and/or is a citizen of Jamaica. Robinson is a horn player for Defendants' group The Wailers.

8 13. Upon information and belief, defendant Chin is an individual that resides in and/or is
9 a citizen of Jamaica. Chin is a horn player for Defendants' group The Wailers.

10 14. Upon information and belief, defendant Balengola is an individual that resides in
11 and/or is a citizen of Jamaica. Balengola is the drummer for Defendants' group The Wailers.

12 15. Upon information and belief, defendant Williams is an individual that resides in
13 and/or is a citizen of Jamaica. Williams is the percussionist for Defendants' group The Wailers.

14 16. Upon information and belief, defendant Luce is an individual that resides in and/or is
15 a citizen of Jamaica. Luce is a backing singer for Defendants' group The Wailers.

16 17. Upon information and belief, defendant Kamga is an individual that resides in and/or
17 is a citizen of Jamaica. Kamga is a backing singer for Defendants' group The Wailers.

18
19 **FACTS COMMON TO THE COUNTS**

20 **Plaintiffs' Musical Group The Wailers.**

21 18. Plaintiffs are members of the musical group known throughout the world as "The
22 Wailers."

23 19. For almost fifty years, The Wailers have been one of the most important and
24 influential musical groups in history.

25 20. Plaintiff Morrill has been a member of The Wailers since its beginning in 1959.

26 21. Plaintiff Ormsby joined The Wailers on or about 1960.

1 22. The Wailers have influenced the musical careers of bands such as The Beatles, Jimi
2 Hendrix, The Sonics, the Rolling Stones, and Paul Revere and The Raiders. Most notably, The
3 Wailers' performance of the song "Louie Louie" inspired The Kingsmen of Portland, Oregon to
4 record the same song.

5 23. The Wailers have continued to stage live musical performances as a group to the
6 present day.

7 Defendants' Musical Group The Wailers.

8 24. Defendants are the band members comprising and representing a musical group also
9 known as "The Wailers."

10 25. The original group was formed in Jamaica on or about 1963 by Bob Marley, Peter
11 Tosh, and Bunny Wailer.

12 26. Defendant Barrett was recruited by The Wailers on or about 1969.

13 27. On or about 1974, the original group broke up, and Defendant Barrett and Bob
14 Marley formed the musical group Bob Marley and the Wailers.

15 28. Following the death of Bob Marley in 1981, The Wailers, including Defendant
16 Barrett, continued to stage live musical performances as a group, initially as The Bob Marley
17 Wailers, and eventually simply The Wailers.

18 29. This musical group has continued to stage live musical performances as The Wailers
19 to the present day.

20 30. Defendants are each current members of and/or performers with The Wailers.

21 Plaintiffs' "WAILERS" Trademark

22 31. Plaintiffs have been engaged in the business of performing live music concerts as
23 part of the musical group known as The Wailers since on or before June, 1959.

24 32. Plaintiffs own the following U.S. trademark registrations for the service mark
25 WAILERS, a copy of which is attached hereto as Exhibit A and incorporated herein by reference:

26 (a) Registration No. 2,670,784 on the Principal Register for the service mark

1 WAILERS for use in connection with entertainment services in the nature of a live musical
2 group in International Class 41.

3 33. Plaintiffs' mark has been Registered with the United States Patent and Trademark
4 Office since January 7, 2003.

5 34. Plaintiffs' WAILERS service mark is inherently distinctive to the public and the
6 trade with respect to entertainment services provided by live musical groups.

7 35. Plaintiffs' WAILERS service mark is a famous mark that is widely recognized by the
8 trade and the public, and has built up extensive goodwill.

9 36. As a result of the extensive advertising, marketing, promotion and widespread use of
10 Plaintiffs' WAILERS service mark during the past forty-eight years, (a) the public and the trade
11 have come to recognize WAILERS as exclusively identifying the services of the Plaintiffs and as
12 distinguishing the services of the Plaintiffs' from the services of others, and (b) said service mark
13 has gained secondary meaning and extensive goodwill.

14 Defendants' Infringing Activities

15 37. Defendants, individually and/or collectively, have performed entertainment services
16 in the nature of a live musical group as a musical group called The Wailers since the registration of
17 Plaintiffs' WAILERS mark on January 7, 2003.

18 38. Defendants, individually and/or collectively, currently perform entertainment
19 services in the nature of a live musical group as a musical group called The Wailers.

20 39. Defendants have wrongfully obtained the registration for the Internet domain name
21 "WAILERS.COM" from Network Solutions, Inc.

22 40. Defendants currently use the "WAILERS.COM" domain name in the marketing,
23 promotion and sale on the Internet worldwide, including in the United States, of Defendants'
24 entertainment services in the nature of a live musical group called The Wailers

25 41. Defendants' activities have caused and continue to cause confusion in the industry
26 and amongst the general public concerning the identities of the Defendants' group The Wailers and

1 the Plaintiffs' group The Wailers.

2 42. Defendants' aforesaid acts are intended to, are likely to and actually do blur and
3 erode the distinctiveness of the WAILERS mark and tarnish the reputation of the Plaintiffs and the
4 Plaintiffs' famous WAILERS mark and the Plaintiffs' products and services.

5 43. Defendants aforesaid acts have caused, and will continue to cause irreparable harm
6 to the Plaintiffs and Plaintiffs' WAILERS mark, and to the business and substantial goodwill
7 represented thereby, and said acts and damage will continue unless restrained by this Court.

8 44. Defendants, as members of and/or performers with Defendants' musical group The
9 Wailers, Defendants, are jointly and severally liable for all damage caused to Plaintiffs by any of
10 Defendants' acts alleged herein.

11 45. Plaintiffs have no adequate remedy at law.
12

13 **COUNT I**
14 **(Trademark infringement, 15 U.S.C. § 1114(1))**

15 46. Plaintiffs repeat, reallege and incorporate by reference each and every allegation set
16 forth in paragraphs 1 through 45 above as though fully set forth herein.

17 47. Defendants' use of Plaintiffs' WAILERS mark in commerce as described above is
18 likely to cause confusion, mistake or deception as to the source, sponsorship, affiliation or approval
19 of Defendants' goods and/or services.

20 48. Defendants' use of Plaintiffs' WAILERS mark in commerce as described above has
21 caused and continues to cause irreparable harm to Plaintiffs for which there is no adequate remedy
22 at law.

23 49. Defendants' aforementioned acts constitute willful infringement of Plaintiffs'
24 federally registered trademark for WAILERS in violation of the Lanham Act, 15 U.S.C. § 1114.

25 //

26 /

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request judgment as follows:

3 1. That the Court enter a judgment against the Defendants that Defendants have
4 willfully infringed Plaintiffs' rights in the federally registered trademark referenced herein in
5 violation of 15 U.S.C. § 1114.

6 2. That the court grant a preliminary and permanent injunction restraining Defendants,
7 their officers, directors, principals, agents, servants, employees, successors and assigns, and all
8 individuals acting in concert or participation with them, from using on or in connection with any
9 product or service or the manufacture, importation, exportation, sale, offering for sale, distribution,
10 advertising, promotion, labeling or packaging of any product or service, or for using for any
11 commercial purpose whatsoever: (1) the designation WAILERS; (2) the Internet domain name
12 "WAILERS.COM;" (3) any other designation that is likely to cause dilution of the distinctiveness
13 of the Plaintiffs' trademark or injury to Plaintiffs' business reputation; or (4) any other name, mark
14 or term likely to cause mistake in the mind of the public or to deceive the public into the belief that
15 defendant's business and/or products and/or services are in any way associated with or related to
16 Plaintiffs' or their services.

17 3. That the court enter an order directing Defendants to relinquish all rights in the
18 Internet domain name "WAILERS.COM," and to transfer the Internet domain name
19 "WAILERS.COM" to Plaintiffs.

20 4. That the court enter an order directing Defendants to account to Plaintiffs for any and
21 all profits derived by them from their infringing use of the mark WAILERS and from their
22 infringing use of "WAILERS.COM" Internet domain name.

23 5. That the court enter an order awarding Plaintiffs a monetary judgment against
24 Defendants for the maximum damages allowable pursuant to 15 U.S.C. § 1117, 15 U.S.C. § 1125(c)
25 and 15 U.S.C. § 1125(d).

26 6. That the court enter an order trebling the amount of such award on account of

1 Defendants' willful, intentional and bad faith conduct pursuant to 15 U.S.C. § 1117;

2 7. That the court enter an order awarding Plaintiffs their reasonable attorneys' fees,
3 costs and disbursements incurred herein in view of Defendants' intentional and willful
4 infringement, pursuant to 15 U.S.C. § 1117.

5 8. That the Court grant to Plaintiffs such other and additional relief as is just and
6 proper.

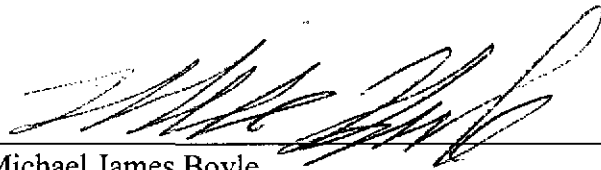
7
8 **JURY DEMAND**

9 The Plaintiffs respectfully demand a trial by jury.

10 DATED this 19th day of June 2007.

11 Respectfully submitted,

12
13 **CARPELAW PLLC**

14 
15 _____
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17 WSBA #37846
18 CarpeLaw PLLC
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20 Seattle, WA 98117-4449
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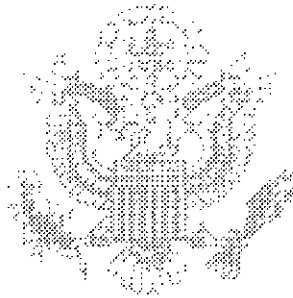
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Attorneys for Plaintiffs

EXHIBIT

A

The United States of America



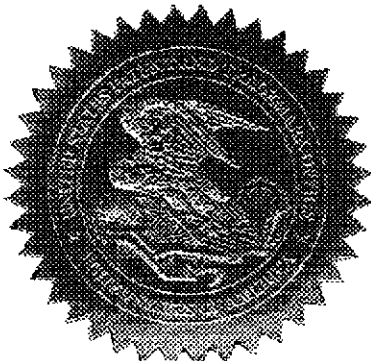
**CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER**

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A handwritten signature in cursive script, appearing to read "James Profane".

Director of the United States Patent and Trademark Office

10

Requirements for Maintaining a Federal Trademark Registration

SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. §1058, upon the expiration of the following time periods:

- i) At the end of 6 years following the date of registration.
- ii) At the end of each successive 10-year period following the date of registration.

Failure to file a proper Section 8 Affidavit at the appropriate time will result in the cancellation of the registration.

SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. §1059, at the end of each successive 10-year period following the date of registration.

Failure to file a proper Application for Renewal at the appropriate time will result in the expiration of the registration.

No further notice or reminder of these requirements will be sent to the Registrant by the Patent and Trademark Office. It is recommended that the Registrant contact the Patent and Trademark Office approximately one year before the expiration of the time periods shown above to determine the requirements and fees for the filings required to maintain the registration.

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,670,784

Registered Jan. 7, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

WAILERS

DANGEL, WILLIAM R. (UNITED STATES INDIVIDUAL)
2315 N. PEARL STREET
TACOMA, WA 98406 AND
MORRILL, KENT E. (UNITED STATES INDIVIDUAL)
2315 N. PEARL STREET
TACOMA, WA 98406 AND
ORMSBY, JOHN M. (UNITED STATES INDIVIDUAL)
2315 N. PEARL STREET
TACOMA, WA 98406

FOR: ENTERTAINMENT SERVICES IN THE NATURE OF A LIVE MUSICAL GROUP, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-3-1959; IN COMMERCE 5-3-1959.

SER. NO. 75-819,757, FILED 10-12-1999.

CAROLYN GRAY, EXAMINING ATTORNEY