

444 South Flower Street
Suite 3100
Los Angeles, California 90071

213.623.6546 – Telephone
213.623-6554 – Facsimile



ADLI
LAW GROUP

Drew H. Sherman
Senior Counsel
Co-Head of Entertainment Practice
drew.sherman@adlilaw.com

Decemer 16, 2016

**BY FEDEX
BY ELECTRONIC MAIL**

Troy Blakely and Andrew Buck
APA
405 South Beverly Dr.
Beverly Hills, CA 90212
troyb@apa-agency.com

Re: RATT; WBS v. Croucier, et al

Messrs. Blakely and Buck:

Please be advised this office represents WBS, Inc., the entity which owns the federally registered trademarks and service marks (the “Marks”) for the band RATT (“RATT”).

Infringement of the Marks

It has come to my client’s attention that APA and, specifically, Mr. Buck (“Buck”) have been in the pitching a band called Ratt (“Rat”), to promoters, venues, and other third parties in the live music performance market by using the Marks, without my client’s authorization. Further, it has also come to my client’s attention that Buck has been booking gigs, performances, and entering into contracts for Rat, using the Marks, and, again, without my client’s authorization. I assume that you are not aware, but such actions constitute trademark infringement. This letter is a demand for you and APA to cease such activities so my client is not damaged any further by your actions, and, as a good faith gesture, so that your exposure for damages to my client is limited just to what you have caused thus far.

As you might or might not be aware, trademark infringement is demonstrated by ownership of a valid trademark and the unauthorized use of the trademark in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of goods or services (9th Cir. Model Jury Instructions 15.5 2013; 15 U.S.C. §1114(1)). Further, ownership of a valid trademark is presumed when a plaintiff holds a registration from the United

States Patent and Trademark Office (the “USPTO”) for any such trademark or service mark (15 U.S.C. §1057).

I wrote above that I “assumed” you did not know your actions constituted trademark infringement because taking such action while knowing that the activities constituted trademark infringement would be nothing more than an affront to rationale, logical, and intelligent thinking, and an embracement of stupidity and poor choices. I have not met either of you, but from what I have read and heard, neither of you are ignorant or stupid. Or, have I been misinformed? I ask because knowingly using the Marks without authorization from WBS, based on the assurances of a person claiming to own the Marks but who did not possess the USPTO registrations for the Marks being named as the owner, would be incredibly idiotic, reckless, and ill advised as the consequences of such action are severe.

When a trademark defendant is found to have intentionally infringed a trademark, the trademark laws allow a plaintiff to ask a jury for exemplary damages on top of the consequential damages from the infringement in order to punish the infringer and teach them a lesson, or make an example of them. In fact, proving intentional or willful infringement is not necessary, as the same relief is provided if a defendant is shown to have been “willfully blind” towards the possibility that they could be engaged in wrong doing (if the defendant had an idea that they could be doing something wrong but never looked into it). In both cases, a plaintiff has the option to choose either treble damages under 15 U.S.C. §1117(b) or statutory damages under 15 U.S.C. §1117(c) as their exemplary damages.

Treble damages under 15 U.S.C. §1117(b) means that the plaintiff’s award and judgment against the defendant would be tripled, plus the plaintiff would be awarded attorneys fees, as well as interest on the total amount from the time of the infringement until the total award is paid off. Thus, for example, if your actions have damaged my client in the amount of (or you and your clients illicitly earned) \$1,000,000, under 15 U.S.C. §1117(b), the award, and what you owe WBS, would be \$3,000,000, plus WBS’ attorney’s fees (easily, at least a few hundred thousand dollars), and ten percent (10%) interest on the entire amount from October of this year through whenever the litigation would end.

On the other hand, statutory damages under 15 U.S.C. §1117(c) provides that a jury can award a plaintiff up to \$2,000,000 per mark per type of goods or services sold or offered for sale. As my client owns four trade and service marks with one type of good and service for each of the Marks, your actions would lead to an \$8,000,000 judgment and award against you and APA.

What’s more, my client would be able to wait until the jury decides both damages’ awards under 15 U.S.C. §1117(b) and §1117(c) and then pick between the two awards. Moreover, the damages awards presented in the examples above do not include damages from any other federal or state law claims WBS has against you and APA. As well, those damages awards examples also do not include any punitive damages WBS would ask the jury to hand down (damages to punish state law claims which can increase damages by a factor of 10). All of these different legal remedies would surely be included in any complaint I file for WBS against you and APA. A

judgment and award against you and APA in the tens of millions of dollars is a very real possibility; I have personally been on both sides of the equation.

WBS v. Croucier, et al.

While I do realize that you probably believe that you had a legitimate, good faith position that the Marks had been taken away from my client and been “given” to Juan Croucier (which is where I assume you received any purported authorization to begin pitching Ratt), your “good faith, legitimate position” falls apart when the facts are examined. A cursory review of the facts and circumstances at hand lead, at the very best, to a conclusion that you willfully blinded yourselves to the fact that you and APA have been infringing and, at worst, you exactly knew that Mr. Croucier did not truly possess any authority over the Marks at the time you commenced your actions and simply entered into a civil conspiracy with Croucier, Warren DeMartini, Stephen Percy, One Management, Rob Hoffman, Artists Worldwide, Atlantic Records, and Road Runner Records to infringe my client’s trademarks, interfere with existing contracts, interfere with prospective contracts, damage the reputation of my client’s principals and their representatives, get venues and promoters to falsely advertise, and unfairly compete in the market.

At some point before you and APA began to pitch Ratt, it is almost assured that you became aware of the lawsuit between WBS and Croucier (the “Lawsuit”). As such, when Croucier, or some representative of Ratt, approached you and APA about representing them, you would have had a fiduciary duty to investigate the status of the Lawsuit to confirm or deny any representations made to you regarding the Marks. It is almost equally assured, that APA retains legal counsel, either in house or outside counsel, and, most likely, someone who works at APA went and graduated from law school. Hence, you and APA had many resources to turn to for advisement as to the status of the Lawsuit and any proposed course of action, along with the risks and consequences of any proposed action, you and APA might take.

Wherever you sought counsel and whomever provided it, any 1L law school student would have able to understand that, though the court adjudicating the Lawsuit had ruled on the parties’ summary judgment motion in favor of Croucier, there was no judgment signed by the court and the USPTO still recognized WBS as the registered owners of the Marks. Further, your advisor would have also explained to you that a ruling on a summary judgment motion does not foreclose the Lawsuit and any rights WBS has in the Marks, given there are motions for reconsideration if the court missed certain facts or law, and that the appeals process is available to WBS, whereby the status quo remains until the appeals have been exhausted. Therefore, your ignorance will not be a reasonable position for you and APA to take and argue when it comes time to face the realities of your choices. We are going to seek compensation for damages a you and APA have caused WBS in terms of current lost revenues and irreparable harm to the overall brand of the Marks.

The claim for damages WBS has against you and APA is actual and not speculative. Almost immediately after Ratt began to be pitched and offered to promoters and venues, WBS had offers withdrawn and executed contracts cancelled. Additionally, APA’s and your actions have caused confusion in the market where we have direct evidence of the confusion. Indeed, no less than three promoters/venues have contacted WBS’ booking agent seeking to finalize performance

contracts for RATT. The problem with these requests to finalize performance contracts is that these promoters/venues, who had done business previously with WBS, had hired Ratt to perform at their venues, not RATT. This type of confusion is the quintessential reason trademark laws were created. APA's and your liability, along with many other parties who will be joining you as defendants if you and them decide not to be accountable for your decisions, is almost guaranteed (as a lawyer, I never guarantee anything but this is the closest I have ever come). But, as discussed above, the damages claim WBS would have against you, APA, and your co-conspirators would not be limited to trademark infringement damages. Rather, WBS' damages claim would include other federal causes of action, as well as state law causes of action, including actions which would allow for punitive damages. With such clear evidence of confusion, obvious intentional infringement among the defendants (including yourselves and APA), and blatant bad faith actions and tactics by all of you, your exposure to the rest of the causes of action and punitive damages is a stark reality that will come sooner, rather than later for you and your co-hurts.

With that said, my suggestion to you is that you heed the demand to cease all actions involving the Marks and Ratt to limit the monies that will be flowing outward from you and APA. If you do not heed such warnings, the repercussions could be felt by you and your family for many years. I invite you to contact me so that we can work out an agreement for damages currently owed my client and your commitment to cease any infringing activities in perpetuity.

One last thing, if you and APA do not heed my warnings and accept my invitation to settle now, in the next few months you might think you hear the faint sounds of a train outside your window, and you might think that every day the sound seems to be growing as if it's getting closer. You're not imagining things. That train, it's a freight train; me. And the train tracks run right through your office and into APA's and your bank accounts. I hope your prepared. Please guide yourselves accordingly.

Very truly yours,

Drew H. Sherman, Esq.

Enclosure