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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WBS, INC.,)	Case No. CV16-03495 DDP (JC)
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
Stephen Percy; Artists)	
Worldwide; top Fuel)	[Dkt. 89, 90, 100, 109 and
National, Strong)	114]
Marketing Group, d/b/a)	
Watercraz Marketing)	
Group; Kjirsten Strong,)	
<i>et al.</i>)	
)	
Defendants.)	
)	
_____)	

Presently before the court is Defendant Stephen Percy's Motion for Summary Judgment. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

I. Background

In 1987, Defendant Stephen Percy ("Percy") formed the band now commonly known as "RATT." (Decl. Stephen Percy ¶3.) Percy initially named the band "MICKEY RATT," and started out by playing in local bars and clubs in southern California and Nevada. (Id. at ¶5.)

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1 On January 1, 1980, the band relocated to Los Angeles. (Decl. Turner
2 ¶¶4-5.) At that time, the band consisted of Percy, Chris Hager, John
3 Turner, and Tim Garcia. (Id.) All the band members, with the
4 exception of Tim Garcia, relocated to Los Angeles. (Id.) According
5 to Turner, upon relocating to Los Angeles, Percy decided the band
6 would drop the word "Mickey" from its name and would be renamed
7 "RATT." (Id. at ¶6.) As part of the rebranding process, Percy
8 designed a new logo for the band to be featured on singles. Percy
9 personally paid for "several hundred pressings of each such
10 recording." (Id. at ¶10; Decl. Percy ¶11.) By 1981, Percy had
11 designed, adopted, and commercially used the RATT logo. (Decl.
12 Turner ¶17; Decl. Percy ¶11.)

13
14 During 1981 and 1982, several members joined and departed the
15 band. (Decl. Percy ¶14,16.) By 1983, none of the musicians
16 performing with RATT prior to 1982 remained in the band, with the
17 exception of Percy himself. (Decl. Turner ¶21.) By 1983, RATT was
18 comprised of Percy, Robinson Lantz Crosby ("Crosby"), Warren
19 DeMartini ("DeMartini"), Juan Carlos Croucier ("Croucier"), and
20 Robbert Blotzer ("Blotzer"). (Decl. Percy ¶15.) In early 1984,
21 RATT become nationally known when they released the album "*Out of the*
22 *Cellar.*" (Decl. Majors ¶6.) The album was certified as triple
23 platinum by the Recording Industry Association of America and reached
24 number seven on the Billboard 200. (Id.) The RATT logo was featured
25 on the front cover of the multi-platinum release. (Id. at ¶17.)

26 On June 11, 1985, all five members of the band established the
27 RATT General Partnership ("the Partnership") and memorialized the
28 terms of the partnership in a Partnership Agreement ("the Partnership

1 Agreement".) (Decl. Percy ¶19; Ex. B-10.) Around 1991 or 1992,
2 Crosby was expelled from the Partnership, leaving Percy, Croucier,
3 Demartini, and Blotzer as remaining partners. (Decl. Percy ¶20.)

4 Under Section 7.1 of the Partnership Agreement, no partner had
5 the right to "sell, transfer, assign, mortgage, hypothecate, encumber
6 or otherwise dispose of all or part of his interest in the
7 Partnership without prior unanimous written consent of all of the
8 Partners." (Decl. Percy, Ex. B-10 at 7.1.) The Partnership
9 Agreement provided that, in the event the partnership dissolved,
10 "each of the Partners shall be entitled to receive his Proportionate
11 Share of the revenues received on account of the Partnership from all
12 other sources." (Id. at 10.6.) Section 11.1 of the Partnership
13 Agreement further provided that "[i]n the event of death, permanent
14 disability, [v]oluntary or [i]nvoluntary [w]ithdrawal of a Partner.
15 . . ., the Partnership shall not dissolve or terminate but shall
16 continue without interruption and without any break in continuity."
17 (Id. at 11.1.)

18
19 Around May 1997, Plaintiff WBS, Inc. ("WBS") was formed by three
20 of the four remaining partners: DeMartini, Blotzer, and Percy.
21 Croucier did not participate in the formation of WBS. (Decl. Percy
22 ¶¶17-21.) According to Percy, WBS was formed to handle aspects of
23 the then newly-revived RATT band's touring business, separate and
24 apart from the Partnership. (Id. at ¶¶21-25.) According to Percy,
25 WBS was required to tender 1,000 shares of stock in the WBS
26 Corporation as consideration for his participation in WBS. (Id. at
27 ¶23.) Percy never received the shares, despite numerous requests.

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1 (Id.) Instead, Percy states, Demartini and Blotzer expelled him
2 from WBS. (Id.)

3
4 Around February 2001, Percy brought an action against WBS,
5 Blotzer, DeMartini and others in Los Angeles County Superior Court
6 ("Percy State Court Case").¹ Percy alleged he was wrongfully
7 removed as a corporate officer of WBS after being defrauded of his
8 stock interest in the company. (Id. at ¶24.) In the Percy State
9 Court Case, the answering defendants filed a counterclaim, which
10 Percy "materially lost." (Motion at 15.) Percy has appealed the
11 outcome, alleging ineffective assistance of legal counsel. (Id.)
12 The state trial court's judgment did not make any determination
13 regarding the composition of the Partnership or the purported
14 trademark assignment. (RJN, Ex. A-8 at 8.)

15 In 2015, WBS sued Croucier after he began using several RATT
16 trademarks (the "Croucier action").² (Decl. Percy ¶25.) WBS claimed
17 that four RATT-related trademarks, such as the band name, logo and
18 associated trademarks were registered with the United States
19 Trademark and Patent Office ("USTPO") in 1985 and 1986 by the RATT
20 partnership.³ WBS further alleged that on June 2, 1997, "the
21 [trademarks] were assigned through a sale of a partnership along with
22 all assets owned thereby to [WBS]," and that WBS recorded the
23 assignment with the USTPO in 2015. (RJN, Ex. A-3 at ¶4.) WBS
24 maintained that Croucier had been expelled from the Partnership prior
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27 ² Percy v. WBS, Inc., Case No. BC245356.

28 ³ The trademarks at issue were registration numbers 1368245,
1368246, 1383344 and 1383345. The same trademarks are at issue in
this case.

1 to June 1997, and that his authorization to transfer the marks to WBS
2 was therefore not necessary.⁴ (RJN, EX. A-4 at 10.)

3
4 In the Croucier lawsuit, this Court concluded, on cross motions
5 for summary judgment, that there was no evidence that Croucier had
6 been formally expelled from the Partnership prior to the purported
7 assignment of the marks to WBS. Because Croucier never consented to
8 the assignment, as required by the Partnership Agreement, the
9 assignment was invalid. (Id.) Thus, this Court determined, WBS
10 could not show that it had an ownership interest in the marks. (RJN,
11 Ex. A-4 at 12:10-14.)⁵

12 This case, brought by WBS against Percy, is a close analogue of
13 the Croucier action. WBS again alleges that it is the owner of the
14 RATT trademarks, which it obtained via an assignment from the
15 Partnership. WBS alleges that Percy is infringing upon those marks,
16 and brings claims for trademark infringement and dilution, unfair
17 competition, false designation of origin, and intentional and
18 negligent interference of economic relations. (Id. at 6-19.)

19 Percy now moves for summary judgment on all claims. WBS has
20 not substantively opposed Percy's motion.⁶

21 _____
22 ⁴ Also in 2015, DeMartini initiated a shareholder derivative suit
23 ("Derivative Suit") in state court. (RJN, Ex. A-5.) DeMartini sued as
24 an individual/officer and as a shareholder of WBS and named WBS and
Blotzer, as an individual/officer, as Defendants. (Id.) DeMartini
alleged Blotzer improperly usurped his corporate authority over WBS.
(Id.)

25 ⁵ WBS subsequently filed a motion for reconsideration,
26 asserting that Croucier should be estopped from challenging the
validity of the assignment because the Percy State Court Case
judgment. This Court denied WBS' motion.

27 ⁶ Although WBS did file an opposition to Percy's motion, WBS
28 essentially duplicates the argument in its own Motion to Strike
that this court should strike the motion for failure to meet and

(continued...)

1 **II. Legal Standard**

2 Summary judgment is appropriate where the pleadings,
3 depositions, answers to interrogatories, and admissions on file,
4 together with the affidavits, if any, show "that there is no genuine
5 dispute as to any material fact and the movant is entitled to
6 judgment as a matter of law." Fed. R. Civ. P. 56(a). A party seeking
7 summary judgment bears the initial burden of informing the court of
8 the basis for its motion and of identifying those portions of the
9 pleadings and discovery responses that demonstrate the absence of a
10 genuine issue of material fact. See Celotex Corp. v. Catrett, 477
11 U.S. 317, 323 (1986). All reasonable inferences from the evidence
12 must be drawn in favor of the nonmoving party. See Anderson v.
13 Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the moving party
14 does not bear the burden of proof at trial, it is entitled to summary
15 judgment if it can demonstrate that "there is an absence of evidence
16 to support the nonmoving party's case." Celotex, 477 U.S. at 323.

17
18 Once the moving party meets its burden, the burden shifts to the
19 nonmoving party opposing the motion, who must "set forth specific
20 facts showing that there is a genuine issue for trial." Anderson, 477
21 U.S. at 256. Summary judgment is warranted if a party "fails to make
22 a showing sufficient to establish the existence of an element
23 essential to that party's case, and on which that party will bear the
24 burden of proof at trial." Celotex, 477 U.S. at 322. A genuine
25 issue exists if "the evidence is such that a reasonable jury could

26 ⁶(...continued)
27 confer prior to filing. That motion is denied. Percy bears the
28 burden of demonstrating the absence of any genuine issue material
fact. See Cristobal v. Siegel, 26 F.3d 1488, 1494-95 (9th Cir.
1994).

1 return a verdict for the nonmoving party," and material facts are
2 those "that might affect the outcome of the suit under the governing
3 law." Anderson, 477 U.S. at 248. There is no genuine issue of fact
4 "[w]here the record taken as a whole could not lead a rational trier
5 of fact to find for the nonmoving party." Matsushita Elec. Indus.
6 Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

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8 It is not the court's task "to scour the record in search of a
9 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275, 1278
10 (9th Cir.1996). Counsel have an obligation to lay out their support
11 clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031
12 (9th Cir.2001). The court "need not examine the entire file for
13 evidence establishing a genuine issue of fact, where the evidence is
14 not set forth in the opposition papers with adequate references so
15 that it could conveniently be found." Id.

16 **III. Discussion**

17
18 Percy has adequately demonstrated the absence of any genuine
19 issues of material fact. Plaintiff cannot prevail on its trademark
20 infringement-based causes of action without proving that it has an
21 ownership interest in the RATT trademarks. See Rearden LLC v.
22 Rearden Commerce, Inc., 683 F.3d 1190, 1202-3 (9th Cir. 2012). An
23 invalid assignment of a trademark conveys no rights to that mark.
24 See Mr. Donut of America v. Mr. Donut, Inc., 418 F.2d 838, 842 (9th
25 Cir. 1969).

26
27 Plaintiff alleges that it obtained an ownership interest in the
28 trademarks in 1997 when the RATT Partnership assigned the marks to
WBS. Percy has presented uncontroverted evidence, however, that the

1 members of the RATT Partnership did not unanimously consent, either
2 in writing or otherwise, to the assignment of the RATT marks to WBS.⁷
3 Thus, any purported assignment of the marks to WBS was invalid, and
4 conveyed no rights. Because no reasonable trier of fact could
5 conclude that WBS had an ownership interest in the RATT marks,
6 Percy's motion for summary judgment must be granted.^{8 9}

7 **IV. Conclusion**

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9 For the reasons stated above, Defendant's Motion for Summary
10 Judgment is GRANTED.

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18 ⁷ According to Percy, he, Croucier, and DeMartini expelled
19 Blotzer from the Partnership in November, 2016. (Decl. Percy ¶
20 28.) Percy asserts the Partnership authorized him and Defendant
Artists Worldwide, Inc. to use the marks. (Id. at ¶29:4-9.)

21 ⁸ As noted above, Plaintiff has not filed a substantive
22 opposition to Percy's motion, which argued not only that the
23 assignment of the marks to WBS was invalid, but also that any
24 argument to the contrary would be barred by the doctrine of
collateral estoppel and this Court's judgment in the Croucier case.
25 See Hydranautics v. FilmTec Corp., 204 F.3d 880, 885 (9th Cir.
26 2000) (explaining that collateral estoppel may apply when "(1) the
27 issue necessarily decided at the previous proceeding is identical
28 to the one which is sought to be relitigated; (2) the first
proceeding ended with a final judgment on the merits; and (3) the
party against whom collateral estoppel is asserted was a party or
in privity with a party at the first proceeding.")

⁹ The court need not address Percy's contention that he has
obtained the Partnership's authorization to use the marks, nor does
the court take any position on any question of ownership between
Percy and the Partnership or any dispute between the shareholders
of WBS.

1 Based on the Court's ruling the following motion and requests
2 are resolved and deemed moot. Plaintiff's Motion for Leave to Amend
3 Complaint [100], Joint Request for Ruling on Defendants Motion for
4 Summary Judgment [109], and Joint Request for Ruling Plaintiff's
5 Motion to Strike and Defendants' Motion for Summary Judgment [114].

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DATED: March 6, 2018

A handwritten signature in cursive script, reading "Dean D. Pregerson", written in blue ink over a horizontal line.

Hon. Dean D. Pregerson