

(“Applicants”), filing as individuals, and both of whom are citizens of the United Kingdom. Agnew lists his address as 5 Maree Place, Crossford, Fife, United Kingdom. McCafferty lists his address as 67 Charles Way, Limekilns, Fife, United Kingdom.

II. OPPOSER’S OWNERSHIP OF AND RIGHT TO USE THE APPLICANTS’ MARK

3. Opposer and Applicants, along with the late Darrell Sweet, are founding members of the musical group NAZARETH. Opposer, Applicants and Sweet mutually selected and built the brand around the famous mark “NAZARETH”, which the Applicants now seek to register. Opposer is a joint owner of the mark “NAZARETH”, including, but not limited to, use of the mark and logo as originally used in audio and video recordings, live performances, and retail merchandising. Opposer is also an equal partner in Nazareth Dufermaline, Ltd., and as such he is entitled to continue to receive twenty-five percent (25%) of all revenue generated by NAZARETH from all live performances, merchandise, licensing and royalties. Therefore, the Opposer has prior rights in the mark “NAZARETH” based on Use at least as early as 1968 and based on Use in Commerce in the United States at least as early as 1971.

III. OPPOSER’S MARK

4. Opposer filed a trademark application for “NAZARETH WITH MANNY CHARLTON” on February 21, 2008, which is the subject of Application Serial No. 77-403,184. The first Use date and the Use in Commerce date are claimed to be October 20, 2007. The application is for “[e]ntertainment services, namely, providing live performances of a musical group; providing a web site featuring musical performances, musical videos, related film clips, photographs and other multimedia materials; song writing services; audio usage.” Opposer acknowledges, as stated in the “Additional

Statements Section” of its application, that Agnew and McCafferty are concurrent users of the mark “NAZARETH.”

IV. APPLICANTS’ MARK

5. Agnew and McCafferty (“Applicants”) filed a trademark application for the mark “NAZARETH” on December 14, 2007. The application is for use of the mark on “musical sound recordings, namely, cd’s and dvd’s; downloadable musical sound recordings,” with a first Use date of November 30, 1971 and a first Use in Commerce date of January 31, 1972. Additionally, the application is for use of the mark in conjunction with “entertainment services, namely, live performances by a musical band.” The first Use date is listed as December 31, 1969, and the first Use in Commerce date is February 29, 1972. The Applicants’ application does not list Opposer as a concurrent user or owner of the “NAZARETH” mark.

6. The Applicants’ application was published for opposition on July 15, 2008.

V. FALSE AND FRAUDULENT PROCUREMENT OF APPLICANTS’ MARK

7. Under 15 U.S.C. § 1120, “[a]ny person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.”

8. An application for trademark registration requires a verified statement in which the verifier must allege that “to the best of the verifier’s knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. §1501 (a)(3)(A); 37 C.F.R. § 2.33(b)(1)). False statements or representations as to

the Applicants' ownership or entitlement to use of the mark in the verified statement may constitute fraudulent registration under the Act. If the verifier knows or believes that another party has the right to use or ownership of the applied for mark but fails to state exceptions to the claim of exclusive use or specify concurrent use of the mark by another as required under 15 U.S.C. § 1501 (a)(3)(7), the verifier has committed fraud in connection with the filing of the Applicants' application and the execution of the verified statement contained therein.

9. At the time that Applicants' application Applicants knew that the Opposer possessed clearly established rights to use and ownership of the "NAZARETH" mark as a founding member of the group, as outlined above.

10. As part of that application, Applicants executed a verified statement declaring that "to the best of [their] knowledge and belief, no other person has the right to use such mark in commerce..." *Id.* Applicants also failed to state exceptions to the claim of exclusive use or to specify Opposer's concurrent use of the mark. 15 U.S.C. § 1501 (a)(3)(D)(i)(ii).

11. Applicants' execution of the verified statement and failure to inform the Trademark Office of the conflicting rights of Opposer, which rights were clearly established in the mark "NAZARETH", in connection with the same services, and known by the Applicants at the time they executed the verified statement constitutes fraud. For the reasons set forth above, Opposer believes that it will be damaged by the registration of the Applicant's "NAZARETH" mark. Thus, the Trademark Trial and Appeal Board must reject the Applicants' application and refuse to register the mark, and this Opposition to Application Serial No. 77-352,119 should be sustained.

Respectfully submitted,

Date: 10.2.08

By: M. Charlton

Manny Charlton

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