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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052230
Party	Plaintiff David Pack
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Submission	Testimony For Plaintiff
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Date	10/19/2011
Attachments	Exhibits to Declaration of Petitioner David Pack (58-60)(Part 9 of 12).pdf ( 24 pages )(1161732 bytes )

*David Pack v. Ambrosia Touring Band*, Cancellation No. 92052230

Petitioner's Exhibits to Declaration of Petitioner David Pack

# **EXHIBIT 58**

COPY

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OF ORIGINAL FILED  
Los Angeles Superior Court

AUG 15 2003

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6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES, SOUTH WEST DISTRICT  
10 825 Maple Avenue, Torrance, California 90503

11 DAVID PACK, individually and as General )  
12 Partner of AMBROSIA, a California General )  
13 Partnership, )  
14 Plaintiff, )  
15 vs. )  
16 BURLEIGH DRUMMOND, JOE PUERTA, )  
17 RICHARD REES, EARTHTONE MUSIC and )  
18 DOES 1-100, Inclusive, )  
Defendants. )

CASE NO.: YC047293  
COMPLAINT FOR PARTNERSHIP  
ACCOUNTING AND PROFITS;  
BREACH OF PARTNERSHIP  
OPPORTUNITY; (CALIFORNIA  
CORPORATIONS CODE §§16404,  
16405); AND FOR TEMPORARY  
RESTRAINING ORDER;  
PRELIMINARY AND PERMANENT  
INJUNCTION AND DAMAGES

19 Plaintiff, DAVID PACK, (hereinafter "Plaintiff") alleges as follows:  
20 1. Plaintiff is, and at all times herein mentioned is an individual residing in the County of  
21 Los Angeles, State of California and was and is a general partner of the California General  
22 Partnership known as AMBROSIA.  
23 2. Defendant, BURLEIGH DRUMMOND is an individual residing in the County of Los  
24 Angeles, State of California and is a co-general partner of the California general partnership  
25 AMBROSIA.  
26 3. Defendant, JOE PUERTA, is an individual residing in the State of Wisconsin and is a  
27 general partner of the California general partnership known as AMBROSIA.  
28

1 4. Defendant, RICHARD REES and EARTHTONE MUSIC are the booking agents for  
2 Defendants DRUMMOND and PUERTA who are promoting these Defendants as the group  
3 AMBROSIA.

4 5. Plaintiff and Defendants DRUMMOND and PUERTA entered into a written partnership  
5 agreement for the purpose of carrying on a business of record production and live performance under  
6 the name AMBROSIA. The principal place of partnership was located in the City of Sherman Oaks,  
7 County of Los Angeles, State of California. The partnership under the name conducted the  
8 aforementioned business from its initial inception in 1971. Said partnership has not been dissolved.

9 6. Since December of 2000, Defendants DRUMMOND and PUERTA continue to carry on  
10 the partnership business, however, there has been no settlement of accounts between Plaintiff and  
11 Defendants.

12 7. Defendants DRUMMOND and PUERTA are in possession of partnership books, assets,  
13 and accounts of the continuing business.

14 8. Plaintiff's entitlement to profits from the operation of the continued operation of the  
15 partnership including the use of the partnership asset name AMBROSIA is unknown to Plaintiff and  
16 cannot be ascertained without an accounting of profits and losses that occurred since December of  
17 2000. The amount of profits of the continuing business that are attributable to Plaintiff is also  
18 unknown to Plaintiff and cannot be determined without an accounting of the continuing business by  
19 Defendants.

20 **FIRST CAUSE OF ACTION**

21 **FOR ACCOUNTING**

22 **(AGAINST ALL DEFENDANTS DRUMMOND AND PUERTA**

23 **AND DOES 1-50 INCLUSIVE)**

24 9. Plaintiff realleges and incorporates by way of reference paragraphs 1 through 8, inclusive,  
25 as though set forth in full at this place.

26 10. Despite demands by Plaintiff to Defendants, Defendants have failed to render an  
27 accounting with the partnership business and the use of the partnership asset name AMBROSIA,  
28

1 from December 2001 to the present.

2 11. Plaintiff is informed and believes and based upon such information and belief alleges  
3 that Defendants and each of them have appropriated the assets of the partnership AMBROSIA by  
4 use of the name AMBROSIA and its publicly promoted themselves as AMBROSIA, in various  
5 media including recording and live performances across the United States.

6 12. Plaintiff is entitled to an accounting of the profits earned by the appropriation of the  
7 partnership asset AMBROSIA from Defendants and each of them.

8 13. Plaintiff, therefore, requests an Order Compelling the Defendants to render an  
9 accounting of the partnership business from December of 2000 to the present and an accounting to  
10 continue business from that date.

11 **SECOND CAUSE OF ACTION**

12 **FOR MISAPPROPRIATION OF PARTNERSHIP ASSETS**

13 (AS TO DEFENDANTS PUERTA AND DRUMMOND AND DOES 1-50 INCLUSIVE)

14 14. Plaintiff realleges and incorporates by way of reference paragraphs 1 through 13,  
15 inclusive, as though set forth in full at this place.

16 15. The substantial asset of the partnership AMBROSIA is the name AMBROSIA. The  
17 partnership has, substantially due to the efforts of Plaintiff, DAVID PACK, has written, produced,  
18 recorded and performed numerous songs and has obtained a secondary meaning in the industry as  
19 a well known group.

20 16. In or around December of 2000, Defendants DRUMMOND and PUERTA started to  
21 promote themselves as AMBROSIA to the exclusion of DAVID PACK. They booked performances  
22 for themselves at various locations throughout the United States generating revenue and profits from  
23 that operation. DAVID PACK did not participate in those performances by his own choice, but also  
24 objected and continues to object to the use of that name AMBROSIA for promotion of this "new  
25 group", the DRUMMOND PUERTA band.

26 17. Since December of 2000, DRUMMOND and PUERTA have promoted themselves as  
27 AMBROSIA to the exclusion of DAVID PACK and have advertised themselves as the group  
28

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