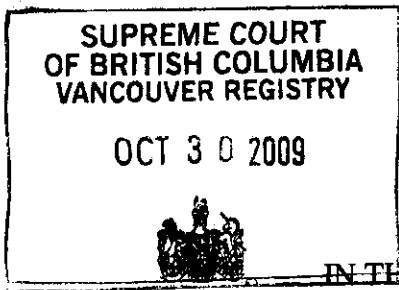


S-097979



NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BLAIR M. THORNTON and ROBIN KENDALL BACHMAN

PLAINTIFFS

AND:

RANDY BACHMAN, CHARLES FREDERICK TURNER,
RANBACH MUSIC LTD. and RANDY BACHMAN, INC.

DEFENDANTS

WRIT OF SUMMONS

Name and Address of each Plaintiff

Blair M. Thornton and Robin Kendall Bachman
c/o Lang Michener LLP
1500-1055 West Georgia Street
Vancouver, B.C., V6E 4N7

Name and Address of each Defendant

Randy Bachman
325 Rainbow Road
Saltspring Island, B.C., V8K 2M4

Charles Frederick Turner
2 Mount Royal Crescent
Winnipeg, MB R3J 2M9

Ranbach Music Ltd.
P.O. Box 10424, Pacific Centre
1300-777 Dunsmuir Street
Vancouver, B.C., V7Y 1K2

Randy Bachman, Inc.
805 Dupont Street, Suite 6
Bellingham, Washington, USA
98226

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendant(s):

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND the claim made against you, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff's address for delivery which is set out in this writ, and
- (b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ served on a person outside British Columbia, the time for appearance by that person, after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

1. The address for the registry is:

The Law Courts
800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

2. The Plaintiffs' ADDRESS FOR DELIVERY is:

LANG MICHENER LLP
Barristers and Solicitors
1500 – 1055 West Georgia Street
P.O. Box 11117
Vancouver, British Columbia
V6E 4N7
Telephone: (604) 689-9111
Attention: Michael P. Katzalay

Fax number for delivery (if any): (604) 685-7084

3. The name and office address of the plaintiff's solicitor is:

Same as address for delivery.

The Plaintiff claims the right to serve this Writ of Summons and Statement of Claim on the Defendants Charles Frederick Turner and Randy Bachman, Inc. outside of the province of British Columbia on the grounds that this action involves the following circumstances:

(a) it is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property;

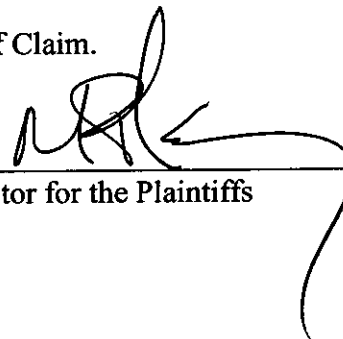
(e)(ii) it concerns contractual obligations, and by its express terms, the contract is governed by the law of British Columbia;

(h) it concerns business carried out in British Columbia; and

(i)(ii) it involves a claim for an injunction ordering a party to do or refrain from doing anything in relation to property in British Columbia that is immovable or movable property.

The plaintiffs' claim is set out in the attached Statement of Claim.

Dated October 30, 2009


Solicitor for the Plaintiffs

STATEMENT OF CLAIM

The Parties

1. The Plaintiff Blair M. Thornton is a professional musician and businessman. He resides at 2489 West 21st Avenue, Vancouver, British Columbia.
2. The Plaintiff Robin Kendall Bachman is a professional musician and businessman. He resides at 3831 – 156th Street, Surrey, British Columbia.
3. The Defendant Randy Bachman is a professional musician and businessman. He resides at 325 Rainbow Road, Saltspring Island, British Columbia.
4. The Defendant Charles Frederick Turner (“Fred Turner”) is a professional musician and businessman. His current residence is 2 Mount Royal Crescent, Winnipeg, Manitoba.
5. The Defendant Ranbach Music Ltd. (“Ranbach”) is a company incorporated pursuant to the laws of British Columbia. It has a registered and records office located at P.O. Box 10424, Pacific Centre, Suite 1300-777 Dunsmuir Street, Vancouver, British Columbia.
6. The Defendant Randy Bachman, Inc. (“Bachman Inc.”) is a company incorporated pursuant to the laws of the state of Washington, U.S.A. It has an address for delivery in the state of Washington located at 805 Dupont Street, Suite 6, Bellingham.
7. The Defendant Randy Bachman is a director and the President and Secretary of the Defendant Ranbach. He is also the President of the Defendant Bachman Inc.
8. In the early 1970s, the Plaintiffs and the Defendants Randy Bachman and Fred Turner were members of a Canadian musical group known as both “Bachman-Turner Overdrive” and “BTO” (“Bachman-Turner Overdrive/BTO”). The group enjoyed considerable international success and has sold millions of recordings worldwide. Much as “Coca Cola” is synonymous in the world with “Coke”, so too is “Bachman-Turner Overdrive” with “BTO”.

9. In connection with their involvement in, and dealings with, Bachman-Turner Overdrive/BTO, the Plaintiffs and the Defendants Randy Bachman and Fred Turner entered into various agreements as described below.

The 1977 Agreement

10. In or around 1977, the Defendant Randy Bachman left Bachman-Turner Overdrive/BTO to pursue a solo musical career. The Plaintiffs and the Defendant Turner carried on with the group following his departure.

11. Pursuant to an agreement dated May 1, 1977, between, on the one hand, R.C.B. Ltd. ("R.C.B."), a company owned and/or controlled by the Defendant Randy Bachman, and, on the other hand, the Plaintiffs and the Defendants Randy Bachman and Fred Turner (the "1977 Agreement"), these parties agreed expressly or by implication, *inter alia*, that:

(a) R.C.B. assigned all right, title and interest in and to the name and designation "BTO" to the Plaintiffs and the Defendant Fred Turner;

(b) the name "Bachman-Turner Overdrive" would remain the exclusive property of R.C.B.;

(c) with the exception of the right of the Plaintiffs and the Defendant Fred Turner to collectively use "BTO", the Plaintiffs and the Defendant Randy Bachman and Fred Turner would not use the name "Bachman-Turner Overdrive", or any similar name, variation or derivative, except to designate that they were formerly associated with Bachman-Turner Overdrive, without the consent of the other parties to this agreement; and

(d) R.C.B. would not use the name "Bachman-Turner Overdrive in connection with new recordings made subsequent to May 1, 1977 (the "Non-Utilization Clause").

The 1984 Agreement

12. On or about May 1, 1984, the Plaintiffs and the Defendants Randy Bachman and Fred Turner entered in an agreement with Timothy Bachman, Gary Petersen, R.C.B., Aarson Powers Wier & Associates Ltd. and BTO Productions (the “1984 Agreement”).

13. The 1984 Agreement amended the Non-Utilization Clause in the 1977 Agreement to provide, *inter alia*, that R.C.B. would not be able to use, or authorize the use of, “Bachman-Turner Overdrive” in connection with new recordings and/or live performances without obtaining the prior written consent of the Plaintiffs and the Defendants Randy Bachman and Fred Turner, on such terms and conditions as would be specified by them.

14. Subsequent to the execution of the 1984 Agreement, R.C.B. assigned:

- (a) to the Defendant Bachman, Inc., its rights, title and interest to the name and mark “Bachman-Turner Overdrive” in the United States; and
- (b) to the Defendant Ranbach, its rights, title and interest to the name and mark “Bachman-Turner Overdrive” outside of the United States.

The 2002 Agreement

15. On or about January 25, 2002, the Plaintiffs and the Defendants entered in an agreement with Mystery Box Music, Inc., BTO and Randy Murraray (the “2002 Agreement”).

16. The 2002 Agreement expressly, or by implication, provided that:

- (a) the Defendants Randy Bachman, Ranbach, and Bachman Inc. would not utilize the name “Bachman-Turner Overdrive”, or any similar name, variation or derivative, in connection with recordings or live performances after January 25, 2002; and
- (b) the Defendants Bachman, Inc. and Ranbach, as assignees of R.B.C.’s rights, title and interest in the name and mark “Bachman-Turner Overdrive”, would undertake and agree to the terms and conditions of the 1977 Agreement and 1984 Agreement.

Oral Agreement

17. In addition, or in the alternative, in the course of discussions between the Plaintiffs and the Defendants Randy Bachman and Fred Turner regarding the use of the name “Bachman-Turner Overdrive”, or any similar name, variation or derivative, these parties understood and agreed that the name “Bachman-Turner Overdrive”, or any similar name, variation or derivative, would not be used in connection with recordings or live performances without the consent of the Plaintiffs.

The BTO Agreement

18. At all material times, the Plaintiffs and the Defendant Fred Turner agreed that any use of the name BTO, or any similar name, variation or derivative of BTO, which includes the Similar Names, in connection with live performances or recordings, would not occur without the consent of each of the Plaintiffs and the Defendant Fred Turner (the “BTO Agreement”).

19. The 1977 Agreement, 1984 Agreement, 2002 Agreement, Oral Agreement, and BTO Agreement are henceforth referred to below collectively as the “Agreements”.

The BTO Partnership

20. From 1977 until the present, the Plaintiffs and the Defendant Fred Turner have been partners in a partnership known as BTO.

21. In his capacity as a partner of BTO, the Defendant Fred Turner owed the Plaintiffs a duty to:

- (a) act with the utmost fairness and good faith in the business of BTO;
- (b) not carry on any business of the same nature as and competing with that of BTO without the consent of the Plaintiffs; and
- (c) not use the name or business connections of BTO without the consent of the Plaintiffs.

Breach of the Agreements

22. In breach of the 1977 Agreement, 1984 Agreement, 2002 Agreement and Oral Agreement:

(a) the Defendant Ranbach has registered the following names with the U.S. Patent and Trademark Office and Canadian Intellectual Property Office beginning in May 2009:

- (i) BACHMAN-TURNER;
- (ii) B.T.U.;
- (iii) BTUNITED;
- (iv) BACHMAN TURNER UNITED; AND
- (v) BACHMAN TURNER UNION

(collectively the “Similar Names”), which names are similar to, confusing with, or a variation or derivative of, “Bachman-Turner Overdrive” and “BTO”.

(b) the Defendants Ranbach and Bachman Inc., have permitted, acquiesced and/or authorized – or are in the process of permitting, acquiescing, or authorizing – the Defendant Randy Bachman and/or the Defendant Fred Turner to use one or more of the Similar Names in connection with the promotion of live performances and recordings without the prior consent of the Plaintiffs;

(c) the Defendant Randy Bachman and/or the Defendant Fred Turner, have entered into – or are in the process of entering into – contracts with concert promoters, agents, and other third parties in Canada and Europe to perform live performances and make recordings under one or more of the Similar Names, without the consent of the Plaintiffs;

(d) the Defendants Randy Bachman and Fred Turner, are holding themselves out to the public under one or more of the Similar Names in connection with the promotion of live performances and recordings, without the prior consent of the Plaintiffs; and

(e) other actions, the details of which are unknown to the Plaintiffs at this time.

23. In breach of the BTO Agreement and the 2002 Agreement, the Defendant Fred Turner has entered into agreements with one or more of the other Defendants to use one or more of the Similar Names in connection with live performances or recordings, without the consent of the Plaintiffs.

Breach of the BTO Partnership

24. In breach of his duties pursuant to the BTO Partnership, the Defendant Fred Turner has:

- (a) failed to act with the utmost fairness and good faith in the business of BTO. Particulars of this failure include, *inter alia*:
 - (i) conspiring with the Defendant Randy Bachman, the particulars of which are set out below;
 - (ii) breaching the BTO Agreement; and
 - (iii) such other particulars as are provided at trial.
- (b) carried on business of the same nature as and competing with that of BTO without the consent of the Plaintiffs; and
- (c) used the name and/or business connections of BTO without the consent of the Plaintiffs.

Passing Off

25. Since the late 1970s, the Plaintiffs have adopted and used in connection with their services and/or business throughout the world the name "BTO". This name and mark is distinctive and distinguishes the services and/or business of the Plaintiffs from the services and/or business of others, and there is goodwill or a reputation attached to those services and/or business in the minds of the public throughout the world.

26. In holding themselves out to concert promoters, agents and the public as one or more of the Similar Names, as described herein, the Defendants Randy Bachman and Fred Turner have intended to deceive and/or confuse, or are likely to deceive and/or confuse, the public into believing that their services and/or business as one or more of the Similar Names are

the services and/or business of BTO, or that they are otherwise associated or connected with the services and/or business of BTO, when such is not the case.

27. At the time of trial, the Plaintiffs will rely on all instances of actual deception or confusion that have, by then, come to light.

28. By these means the Defendants have:

(a) passed off, or intended to pass off, their services and business as and for the services and/or business of the Plaintiff; and

(b) diverted or procured business and trade from members of the public, which business and trade was rightfully that of the Plaintiff,

thereby causing the Plaintiffs harm and damage, and appropriating to themselves profits which were rightfully profits of the Plaintiffs.

Conspiracy

29. In or around the summer of 2009, the Defendants Randy Bachman and Fred Turner combined or conspired with each other with the intent to make a profit and to injure and cause loss, damage and expense to the Plaintiffs by forming a group named with the name of one or more of the Similar Names, and entering into agreements with concert promoters and agents to perform live performances and make recordings, in breach of the Agreements, under one or more of the Similar Names (the "Conspiracy").

30. The sole or predominant purpose of entering into the Conspiracy was to make a profit, directly competing with the Plaintiffs' services and business, and to interfere with and compromise the Plaintiffs' position in the marketplace.

31. The Defendants Randy Bachman and Fred Turner were motivated, among other factors, by a desire and intent to profit from the unlawful activities described herein, and to cause financial loss, damage and expense to the Plaintiffs.

32. The Defendants Randy Bachman and Fred Turner were, at all material times, aware that the unlawful acts described herein would cause significant loss, damage and expense to the Plaintiffs.

33. In furtherance of the Conspiracy, the Defendants Randy Bachman and Fred Turner committed the unlawful acts described herein.

34. The Defendants Randy Bachman and Fred Turner have refused to discontinue, and threaten and intend to repeat and continue, the acts complained of herein.

35. As a result of the acts carried out by the Defendants Randy Bachman and Fred Turner, or one or more of them, as particularized herein, in furtherance of their conspiracy, the Plaintiffs have suffered loss and damage and continue to suffer loss and damage as particularized below.

Damages

36. The Plaintiffs have suffered, and will continue to suffer, damage, loss and expense by reason of the Defendants' breaches of the Agreements, BTO Partnership passing off and Conspiracy. Particulars of the Plaintiffs' damage, loss and expense include, *inter alia*:

- (a) Loss of market share;
- (b) Loss of goodwill, sales and customers;
- (c) Loss of income and profit;
- (d) Damages to relations with customers, promoters, agents and other third parties;
- (e) Damage to reputation;
- (f) Increased marketing costs; and
- (g) Other damages to be proven at trial.

37. The Plaintiffs also claim aggravated damages against the Defendants as a result of the aforementioned breaches of the Agreements, breach of the BTO Partnership, passing off and the Conspiracy. The facts upon which the Plaintiffs rely upon in support of this claim include the

fact that the actions of the Defendants have caused stress, anxiety, humiliation and embarrassment to the Plaintiffs.

38. The Plaintiffs also claim punitive damages against the Defendants as a result of the aforementioned breaches of the Agreements, passing off and the Conspiracy. The facts upon which the Plaintiffs rely upon in support of this claim are the facts of the Conspiracy, and the acts carried out in furtherance of the Conspiracy, as particularized herein.

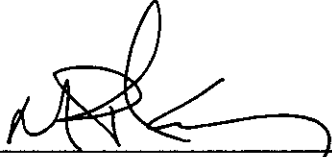
WHEREFORE, the Plaintiffs claim as follows:

- (a) An interim and permanent injunction enjoining and restraining the Defendants Randy Bachman and Fred Turner from using one or more of the Similar Names, or any other similar name, variation or derivative of BTO and/or Bachman-Turner Overdrive, in connection with any new live performances or audio or video recordings of any kind without the prior written consent of the Plaintiffs;
- (b) An interim and permanent injunction enjoining and restraining the Defendants Ranbach and Bachman Inc. from permitting, acquiescing and/or authorizing the Defendants Randy Bachman and Fred Turner to use one or more of the Similar Names, or any similar name, variation or derivative of BTO and/or Bachman-Turner Overdrive, in connection with new live performances and audio or video recordings of any kind without the prior written consent of the Plaintiffs;
- (c) An order that the Defendants deliver up any wares which make reference to one or more of the Similar Names, or any similar name, variation or derivative of BTO and/or Bachman-Turner Overdrive;
- (d) An order that the Defendants disclose and account for all monies, profits and/or other remuneration received, or to be received, on account of the breaches of the Agreements, breach of the BTO Partnership, passing off and the Conspiracy;
- (e) Damages for the breaches of the Agreements, breach of the BTO Partnership, passing off and the Conspiracy.
- (f) Special damages;

- (g) Punitive and aggravated damages;
- (h) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79;
- (i) Special costs;
- (j) Such further and other relief as this Honourable Court may consider just.

Place of trial: Vancouver, B.C.

Dated October 30, 2009



Solicitor for the Plaintiffs

This Statement of Claim is filed and delivered by Michael P. Katzalay of the firm Lang Michener LLP, solicitor for the Plaintiffs, whose place of business and address for delivery is 1500 – 1055 West Georgia Street, P.O. Box 11117, Vancouver, B.C., V6E 4N7, Telephone (604) 689-9111; Fax (604) 685-7084