

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

WARNER BROS. ENTERTAINMENT INC. :
 :
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 Petitioner :
 :
 v. : Canc. No. 92043813
 :
 :
 THE KAPLAN TRUST :
 :
 :
 Registrant :

**PETITIONER'S MOTION FOR SUMMARY JUDGMENT
AND MOTION TO SUSPEND**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure Petitioner Warner Bros. Entertainment Inc. ("Warner"), by its attorneys, hereby renews its motion for summary judgment sustaining Cancellation No. 92043813 on the grounds that: (1) Kaplan's registration for THE BOWERY BOYS is likely to cause confusion, mistake, or deception as to source, sponsorship, or affiliation; and (2) Registration 2,761,675 was obtained fraudulently because Kaplan never sold any services, and the specimen submitted by Kaplan was actually for a Warner product.

Warner also moves, pursuant to Rule 2.127(d), 37 CFR § 2.127(d), that the Board suspend this proceeding pending determination of its Motion for Summary Judgment.

The undisputed facts and arguments supporting this Motion are set forth in the attached Memorandum in Support of Petitioner's Motion for Summary Judgment. The Motion is also based on the attached Declaration of Janet Kobrin (Exhibit A); excerpts from the August 31, 2005 deposition transcript of Jeffrey Kaplan (Exhibit B); excerpts from the October 13, 2006 deposition transcript of Jeffrey Kaplan (Exhibit C); and a side by side comparison of the

specimen filed by Kaplan with its application and a Warner video box (Exhibit D).

WARNER BROS. ENTERTAINMENT INC.

By  _____

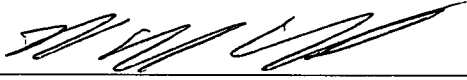
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Dated: February 26, 2007

Attorneys for Opposer

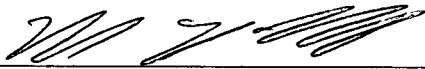
CERTIFICATE OF MAILING

It is hereby certified that the attached *Petitioner's Motion For Summary Judgment And Motion To Suspend and Supporting Memorandum with Exhibits* (Canc. No. 92043813) is being deposited with the U.S. Postal Service addressed to the Hon. Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313, marked first class mail, postage prepaid, on February 26, 2007.



CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing *Petitioner's Motion For Summary Judgment* has been served on February 26, 2007, by first class mail, postage prepaid upon Applicant's counsel Peter Valori of Damian & Valori LLP at 1000 Brickell Avenue, Suite 1020 Miami, Florida 33131.



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**MEMORANDUM IN SUPPORT OF OPPOSER'S MOTION
FOR SUMMARY JUDGMENT AND MOTION TO SUSPEND**

I. INTRODUCTION

Opposer Warner Bros. Entertainment Inc. ("Warner") owns all right, title and interest in and to the mark THE BOWERY BOYS. Warner or its predecessors in interest has used THE BOWERY BOYS Mark continuously for nearly sixty (60) years in connection with a series of movies, television programs, and videos.

On December 13, 2001, The Kaplan Trust ("Kaplan") filed an application to register the identical mark THE BOWERY BOYS, and obtained Registration 2,761,675 for "entertainment services, namely production and distribution of motion pictures; entertainment services, in the nature of an on-going television programs in the field of comedy; distribution of television programs for others." Kaplan never had any affiliation or connection with the creators of THE BOWERY BOYS series, nor can it show that it ever had any basis for claiming rights in the mark. Despite Kaplan's claim that it has been using THE BOWERY BOYS for over twenty years, Kaplan conceded in discovery that it has no evidence that it has ever used the mark. Moreover, at most, Kaplan only sold unauthorized copies of recorded VHS or DVD versions of Warner's copyrighted motion pictures. Kaplan never provided any of the services listed in the

registration, never provided any entertainment services, and never distributed any television programs. The specimen submitted by Kaplan in support of the application for registration was merely an altered copy of the package for one of Warner's VHS cassettes for the THE BOWERY BOYS series.

Warner has petitioned to cancel Kaplan's registration, and summary judgment should be granted on the grounds that (1) Kaplan's registration for THE BOWERY BOYS is likely to cause confusion, mistake, or deception as to source, sponsorship, or affiliation; and (2) Registration 2,761,675 was obtained fraudulently because Kaplan never sold any services, and the specimen submitted by Kaplan was actually for a Warner product.

II. UNDISPUTED FACTS

A. WARNER' PRIOR RIGHTS IN THE BOWERY BOYS MARK

Since 1946, Warner and its predecessors in interest have continuously used the mark THE BOWERY BOYS in connection with the advertisement, sale, production, manufacture and distribution of entertainment related goods and services under the mark THE BOWERY BOYS. Warner owns the copyright in a series for forty-eight (48) motion pictures (hereinafter referred to as the "Bowery Boys Collection") produced for theatrical distribution and also released in the form of television programs and pre-recorded video tapes. *See* Exhibit A, Declaration of Janet Kobrin (Kobrin Dec.) at 5.

From January 12, 1946 through August 23, 1953, the first 31 motion pictures in the Bowery Boys Collection were copyrighted by Monogram Pictures Corporation. *Id.* at ¶ 5. On September 12, 1953, the Board of Directors of Monogram Pictures Corporation adopted resolutions setting forth amendments to the certificate of incorporation. *Id.* at ¶ 6. One such amendment included a name change from Monogram Pictures Corporation to Allied Artists Pictures Corporation. *Id.* at ¶ 6. Thereafter, the amendment to the certificate of incorporation

was filed with the Secretary of State of Delaware. Kobrin Dec. at ¶ 6.

From October 19, 1953 through January 14, 1958, the remaining 17 motion pictures in the Bowery Boys Collection were copyrighted in the name of Allied Artists Pictures Corporation. *Id.* at ¶ 7. On December 28, 1961 Seven Arts Associated Corp., and its subsidiaries, entered into a Purchase Agreement with Allied Artists Pictures Corporation pursuant to which Seven Arts acquired all right, title and interest in and to the Bowery Boys Collection. *Id.* at ¶ 8. On March 14, 1962, an Assignment of Copyrights was executed by Allied Artists Pictures Corporation in favor of Seven Arts Associated Corp. for the Bowery Boys Collection. *Id.* at ¶ 9. On July 14, 1967, Seven Arts Associated Corp. purchased the assets of Warner Bros. Pictures Inc. and subsequently Seven Arts Associated Corp. changed its name to Warner Bros. – Seven Arts, Inc. Kobrin Dec. at ¶ 10. On November 24, 1969, Warner Bros. – Seven Arts, Inc. changed its name to Warner Bros., Inc. On December 4, 1969 Warner Bros., Inc. changed its name to Warner Bros. Inc. *Id.* at ¶ 10. The copyrights for the first six motion pictures in the Bowery Boys Collection were renewed in the name of Allied Artists Pictures Corporation. *Id.* at ¶ 11. On November 4, 1974, an Assignment of Copyright for the renewals of the first six films in the Bowery Boys Collection (SPOOK BUSTERS, BOWERY BOMBSHELL, IN FAST COMPANY, LIVE WIRES, MR. HEX and HARD BOILED MAHONEY) was executed by Allied in favor of Warner Bros. Inc. and the assignment was recorded in the Copyright Office on November 4, 1974 in Volume 1526, Pages 133 and 134. *Id.* at ¶ 12. From August 12, 1974 through March 3, 1986, the copyrights for the remaining forty-two (42) motion pictures in the Bowery Boys Collection were renewed in the name of Warner Bros. Inc. Kobrin Dec. at ¶ 13.

On June 30, 1992, Warner Communications Inc. assigned all of its filmed entertainment

assets in existence after January 1, 1950 to Time Warner Entertainment Company, L.P. *Id.* at ¶ 14. Subsequently, Warner Bros. Inc. assigned all of its filmed entertainment assets including but not limited to the Bowery Boys Collection to Time Warner Entertainment Company, L.P. *Id.* at ¶ 15. Such assignment was duly recorded with the Copyright Office on July 1, 1992 in Volume 2901, pages 665-999. *Id.* at ¶ 15. Subsequently, Time Warner Entertainment Company, L.P. established a Warner Bros. division, into which the assets of Warner Bros. Inc. were filtered. Kobrin Dec. at ¶ 15. On December 3, 2002, Warner Communications Inc. formed Warner Bros. Entertainment Inc. *Id.* at ¶ 16. On March 31, 2003 Time Warner Entertainment Company, L.P. assigned all of its filmed entertainment assets, including but not limited to the Bowery Boys Collection, to Warner Communications Inc. *Id.* at ¶ 17. This assignment was duly recorded in the Copyright Office on March 31, 2003 in Volume 3492, pages 133-215. *Id.* at ¶ 17. Simultaneously, Warner Communications Inc. assigned all of its right, title and interest to all of its motion pictures to Petitioner Warner Bros. Entertainment Inc. Kobrin Dec. at ¶ 17. This assignment was duly recorded in the Copyright office on March 31, 2003 in Volume 3492, pages 216-298. *Id.* at ¶ 17. All United States Copyrights for the Bowery Boys Collection are subsisting and valid.

Warner and its predecessors distributed the Bowery Boys Collection under the mark THE BOWERY BOYS for theatrical release, and have licensed the programming rights to numerous television and cable stations in the United States for the films in the Bowery Boys Collection from 1946 through 2001. *Id.* at ¶ 20, Ex. 2. In 1992, Warner released to the public six (6) of the films from the Bowery Boys Collection on video cassette, including the film “Ghost Chasers.” These video cassettes were all sold under the mark THE BOWERY BOYS and are available in retail stores today. Kobrin Dec. at ¶ 21, Ex. 3.

In addition, Warner is currently in the process of collecting original negatives and/or earliest possible preprint materials to the forty-eight (48) titles in the Bowery Boys Collection to maximize the best possible picture and sound quality of the films and Warner intends to create a compilation of the films for release to the public on DVD. *Id.* at ¶ 22.

B. KAPLAN'S REGISTRATION OF THE IDENTICAL MARK

Notwithstanding Warner's prior rights in its mark, Kaplan fraudulently obtained Registration No. 2,761,675 for the mark THE BOWERY BOYS for "entertainment services, namely, production and distribution of motion pictures; entertainment services, in the nature of on-going television programs in the field of comedy; distribution of television programs for others." Kaplan has admitted that it had full knowledge of Warner's prior rights in the mark THE BOWERY BOYS. *See* Exhibit B, August 31, 2005 Deposition of Jeff Kaplan ("Kaplan I Dep.") at 102. And Kaplan failed to provide any explanation as to how it claims to have obtained title to the mark.

Kaplan admitted that it has **no documents** showing any use of the mark THE BOWERY BOYS. *See* Exhibit C, October 13, 2006 Deposition of Jeff Kaplan ("Kaplan II Dep.") at 12-25. Indeed, although Kaplan claims a date of first use in 1983, Kaplan admitted that there are no documents showing use in any year from 1983 to the present.

Even if use could be shown, any such alleged use of THE BOWERY BOYS mark by Kaplan would entail the unlawful copying of movies sold under Warner's mark THE BOWERY BOYS and their conversion to "homemade DVD's." Kaplan I Dep. at 130-31.

Kaplan fraudulently obtained the registration of its alleged mark by deliberately submitting a fabricated specimen that was obtained from a video cassette made and distributed by Warner or its related companies. The specimen attached by Kaplan with its application, described as a "label on videocassette," is a copy of the videocassette box used on Warner's

videocassette for the movie *Ghost Chasers* (one of the movies in the BOWERY BOYS series, originally released in 1951). Kobrin Dec. at ¶ 23. Kaplan claimed at his deposition that the image used in the specimen was from a lobby card purchased by Kaplan. Kaplan I Dep. at 103-105, 107. Not surprisingly, however, Kaplan has not produced the lobby card containing the image used and, in fact, has produced no documents showing use of the specimen. Further, Warner is not aware of any lobby card for the movie *Ghost Chasers* depicting the scene shown in the specimen. Kobrin Dec. at ¶ 23. Rather, the image shown was selected by Warner for the cover of its videocassette box for *Ghost Chasers*. Id.

Thus, Kaplan's claims in its application as to the use of the Warner packaging are materially false representations, that were false at the time when made and are still false today.

III. ARGUMENT

A. WARNER IS ENTITLED TO SUMMARY JUDGMENT BECAUSE THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT

Rule 56 of the Federal Rules of Civil Procedure provides for entry of summary judgment when there "is no genuine issue as to any material fact," and where the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Conroy v. Reebok Int'l, Ltd.*, 14 F.3d 1570 (Fed. Cir. 1984).

In this case, there are no issues of material fact on the following issues: (1) Warner owns the copyright in the Bowery Boys Collection of movies; (2) these movies were created by Warner's predecessor in interest; (3) THE BOWERY BOYS trademark has been used by Warner in connection with the sale and distribution of a series of motion pictures; (4) THE BOWERY BOYS trademark has been used continuously by Warner and its predecessors for sixty (60) years through theatrical releases, television and cable distribution, and sales of videocassettes; (5) Kaplan claims no role in creating the series of movies sold under the title THE BOWERY

BOYS; (6) Kaplan admitted that it has no documents that prove it ever used of THE BOWERY BOYS as a trademark in connection with sale of any goods; (7) the specimen of use claimed by Kaplan in applying to register THE BOWERY BOYS was a video cassette box created and used by Warner for its BOWERY BOYS Collection; (8) the marks at issue are identical; (9) the goods and services listed in Kaplan's registration are virtually identical to those on which Warner uses its THE BOWERY BOYS Mark; (10) the parties use identical channels of trade and potentially sell to the same consumers; (11) Kaplan had prior knowledge of Warner's THE BOWERY BOYS Mark before it adopted and filed its application.

There is no genuine issue as to Warner's prior rights, and the likelihood of confusion factors weigh in Warner's favor. Because Kaplan cannot prove that it ever used the registered mark, Warner is entitled to summary judgment.

B. WARNER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE ISSUE OF LIKELIHOOD OF CONFUSION

1. Warner Has Prior Rights In THE BOWERY BOYS Mark

An application to register a mark must be denied if there is a likelihood of confusion with a mark or trade name previously used in the United States and not abandoned. 15 U.S.C. § 1052(d). It is undisputed, and admitted, that Warner has prior rights in its Mark THE BOWERY BOYS, and thus Warner has the right to exclude others from using confusingly similar marks on related goods and services.

Warner's mark was first used in connection with the advertising and sale of motion pictures and entertainment services at least as early as 1946. THE BOWERY BOYS Mark was used by Warner and its predecessors continuously since then in connection with a series of movies shown in theaters and on television, and on video tapes sold in a variety of retail outlets. Videocassettes from the 1992 release of films from the Bowery Boys Collection are still

available in stores today. Further, Warner is currently in the process of collecting original negatives and/or earliest possible preprint materials to the forty-eight (48) titles in the Bowery Boys Collection and intends to create a compilation of the films for release to the public on DVD under the mark THE BOWERY BOYS.

On August 24, 2006, the Board issued an order sanctioning Kaplan whereby Kaplan may prove first use and continuing use by documentary evidence only. At a subsequent deposition of Kaplan, Kaplan admitted that it has **no documents** showing any use of the mark THE BOWERY BOYS. *See* Ex. C. Indeed, although Kaplan claims a date of first use of 1983, Kaplan admitted that there are no documents showing use of its alleged mark in any year from 1983 to the present. Because Kaplan cannot prove any use of THE BOWERY BOYS Mark, Warner indisputably has priority. *See Royal Hawaiian Perfumes, Ltd. v. Diamond Head Prods. of Hawaii, Inc.*, 204 U.S.P.Q. 144, 147 (TTAB 1979), *citing J.C. Hall Co. v. Hallmark Cards, Inc.*, 144 U.S.P.Q. 435, 437 (CCPA 1965).

2. The Marks at issue Are Identical and Create A Likelihood of Confusion, Mistake or Deception

Because priority is not an issue, the Board need only determine whether Kaplan's mark THE BOWERY BOYS, if used as a mark with the services listed in the registration, would create a likelihood of confusion with Warner's identical mark THE BOWERY BOYS. *Warner Inc. v. Road Runner Car Wash, Inc.*, 189 USPQ 430, 432 (TTAB 1976). A finding of likelihood of confusion here is inescapable when this issue is analyzed under the *DuPont* factors. *In re E.I. DuPont DeNemours & Co.*, 177 USPQ 563, 567 (CCPA 1973). Though all the *DuPont* factors may be considered, the most relevant in this proceeding are: (1) the similarity of the marks; (2) the identical nature of the services; (3) the similarity of the trade channels; and (4) Kaplan's

intent to trade on the goodwill of Warner's BOWERY BOYS Mark. *In re E.I. DuPont DeNemours & Co.*, 177 USPQ at 567; *Cunningham*, 55 USPQ2d at 1844.

3. Likelihood Of Confusion Is Inevitable Because The Marks Are Identical

Likelihood of confusion is exacerbated by the fact that the parties' marks are identical. The identity of the marks at issue weighs heavily in favor of a finding of likelihood of confusion.

4. Likelihood Of Confusion Is High Because The Services Are Identical

To find a likelihood of confusion, the services need only be "related in some manner." *Time Warner*, 65 USPQ2d at 1661. However, it is well accepted that when the goods and services are identical or closely related, the degree of similarity in the marks necessary to find a likelihood of confusion declines. *In re L.C. Licensing, Inc.*, 49 USPQ2d 1379, 1379 (TTAB 1998). Here, the services are identical. Kaplan obviously intends to use the BOWERY BOYS mark with services identical to those sold by Warner and this weighs heavily in favor of finding a likelihood of confusion.

5. Likelihood Of Confusion Is Inevitable Because The Parties Services Will Be Sold To The Same Consumers And Through The Same Channels of Trade

Kaplan's description of goods contains no limitation on channels of trade. When goods and services are the same, they must be deemed to travel in the same channels of trade, be purchased by the same consumers, and potentially be viewed in close proximity to each other. *In re L.C. Licensing, Inc.*, 49 USPQ2d 1379, 1379 (TTAB 1998). As the services here are identical or closely related, this same presumption must apply. The parties' use of the same channels of trade to target similar consumers weighs heavily in favor of finding a likelihood of confusion. Where the services, channels of trade, and marks are all very similar, as in this proceeding, these factors can be dispositive. *Weiss Assoc. Inc.*, 14 USPQ2d 1840, 1842 (TTAB 1990).

6. Likelihood Of Confusion May Be Presumed In View Of Kaplan's Prior Knowledge Of THE BOWERY BOYS Mark

Kaplan makes no effort to deny direct copying and prior knowledge of Warner's THE BOWERY BOYS Mark. In such cases, "[w]hen one party knowingly adopts a mark similar to another's, reviewing courts presume that the defendant will accomplish its purpose, and that the public will be deceived." *Acad. of Motion Picture Arts and Sciences v. Creative House Promotions, Inc.*, 19 USPQ2d 1491, 1499 (9th Cir. 1991). Therefore, likelihood of confusion in such cases may be presumed. *Id.* Applicants freely concede that they were aware of the BOWERY BOYS Mark before using the identical mark. Thus, Kaplan's intent to trade on Warner's goodwill and to deceive the public may be presumed, and this alone mandates a finding of likelihood of confusion.

7. Doubts As To Likelihood Of Confusion Must Be Resolved In Favor Of WARNER

The factors discussed above provide ample justification for finding a likelihood of confusion. If there are any doubts, they must be resolved in favor of the senior user (in this case Warner). *Nina Ricci*, 889 F.2d at 1074; *Squirtco v. Tomy Corp.*, 216 USPQ 937, 939 (Fed. Cir. 1983).

In sum, Warner has priority with regard to THE BOWERY BOYS Mark; the marks are identical; the goods and services are identical; the trade channels are identical; and Kaplan's intent to trade on Warner's goodwill may be presumed. All of these key *DuPont* factors heavily favor Warner.

C. WARNER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE KAPLAN COMMITTED FRAUD IN THE PROCUREMENT OF THE REGISTRATION

Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application.

Torres v. Torresella, 808 F.2d 46, 48 (Fed. Cir. 1986).

[a]n application for registration of a trademark is required to exercise uncompromising candor in his communications with the United States Patent and Trademark Office, lest any registration he obtains will be [sic] invalid and/or unenforceable. He must not only refrain from making false representations to the United States Patent and Trademark Office, but he must make full disclosure of all facts to his knowledge which might bear in any way on the Office ' s decision to grant the registration sought.

Orient Express Trading Co. Ltd. v. Federal Dept. Stores, Inc., 2 U.S.P.Q.2d 1106, 1117 (S.D.N.Y. 1987) (quoting *T.A.D. Avanti, Inc. v. Phone-Mate, Inc.*, 199 U.S.P.Q. 648, 6545-56 (C.D. Cal. 1978)) (changes in original). Moreover, proof of specific intent to commit fraud is not required, rather, fraud occurs when an applicant such as Kaplan makes a false material misrepresentation that the applicant knew or should have known was false. *General Car & Truck Leasing Sys., Inc. v. General Rent-A-Car, Inc.*, 17 U.S.P.Q.2d 1398 (S.D. Fla. 1990).

The Board has cancelled registrations when fraudulent specimens are submitted in support of a registration. See *Torres*, 808 F.2d at 48. The undisputed evidence clearly shows that Kaplan submitted a fabricated specimen in support of its registration, a copy of a videocassette box for Warner's movie *Ghost Chasers*. This is one of The Bowery Boys Collection movies sold under THE BOWERY BOYS Mark by Warner. Thus, while it shows use of the mark by Warner, it provides no evidence of use by Kaplan.

Attached as Exhibit D is a side by side comparison of Kaplan's specimen (which is contained in the PTO file fore the registration), and Warner's videocassette box for *Ghost*

Chasers (which is part of Exhibit 3 to the Kobrin declaration). A side by side review clearly demonstrates that Kaplan simply took a photograph of Warner's videocassette box and submitted it as its own specimen. The following elements are identical in both:

- Picture (a scene from the movie);
- Title *Ghost Chasers*, including identical color and font;
- Trademark THE BOWERY BOYS in upper left corner, including identical color and font; and
- The words "Classic Uncut Feature-Film Comedy!" across the bottom.

In fact, the only difference between the Kaplan specimen and Warner's videocassette box is that Kaplan appears to have attempted to remove the image of Leo Gorcey from the top left corner. However, although the outline of Mr. Gorcey's picture is still visible in Kaplan's specimen. (Gorcey was one of the stars in THE BOWERY BOYS series of movies).

Kaplan claimed at his deposition that the image used in the specimen was from a lobby card purchased by Kaplan. Kaplan I Dep. at 103-105, 107. Not surprisingly, Kaplan never produced any such lobby card in response to discovery requests. In fact, it produced no documents showing use of any specimen. Further, Warner is not aware of any lobby card for the movie *Ghost Chasers* depicting the scene shown in the specimen. Kobrin Dec. at ¶ 23. Rather, the image shown was selected by Warner for the cover of its videocassette box for *Ghost Chasers*. Id.

Because Kaplan's specimen is obviously copied from one of Warner's videocassette boxes, it is obvious that Kaplan had no right to rely on it as a specimen. Moreover, because Kaplan has produced no documents showing that it ever used the mark in any way prior to the filing of its application, Kaplan had no valid basis for claiming rights in the mark. Even if

Kaplan had produced a lobby card in response to discovery requests, Kaplan would have no right to use such a card in connection with any services of its own. At any rate, because Kaplan could not prove that the mark was ever used in connection with any services, it never had any valid basis for claiming rights in the mark. By submitting this specimen as its own, and claiming that it showed use of its alleged mark, Kaplan knowingly made a false, material representation of fact in connection with its application. Warner is therefore entitled to judgment as a matter of law and Kaplan's registration should be cancelled on the grounds that it was procured by fraud.

IV. CONCLUSION

For the foregoing reasons, the Motion for Summary Judgment should be granted and the Petition to cancel should be granted.

Respectfully submitted,

WARNER BROS. ENTERTAINMENT INC.

By 

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Dated: February 26, 2007

Attorneys for Opposer

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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DECLARATION OF JANET A. KOBRIN

I, Janet A. Kobrin, under penalty of perjury, hereby state and attest as follows:

1. I am submitting this Declaration in support of Petitioner's Cancellation Proceeding Number 920483813 pertaining to Registration Number 2,761,675.

2. I am Vice President, Intellectual Property Counsel for Warner Bros. Entertainment Inc. ("Warner"). I have been employed by Warner for over 8 years in the Intellectual Property Department. In this position I have been responsible for the protection of the intellectual property owned by Warner, including filmed entertainment. Warner owns a library of more than 6,600 feature films, including, *Casablanca*, *Rebel Without A Cause*, and *The Music Man*, among others.

3. I am familiar with the history and chain of title for forty-eight (48) motion pictures featuring THE BOWERY BOYS ("Bowery boys Collection") that are included in Warner's motion picture library through personal knowledge and through a review of the records of Warner kept in the ordinary course of business.

4. Since 1929, Warner has produced and distributed hundreds of motion picture properties. Over the years, a series of mergers and acquisitions have led Warner to acquire a diverse collection of motion pictures properties and television programs, including the forty-eight (48) films of the Bowery Boys Collection through a Purchase Agreement dated December 28, 1961 between Seven Arts Associated Corp., and Allied Artists Pictures

Corporation. Each of the film titles in The Bowery Boys Collection are listed in Exhibit 1 in chronological order.

5. From January 12, 1946 through August 23, 1953, the first 31 motion pictures in the Bowery Boys Collection were copyrighted in the name of Monogram Pictures Corporation.

6. On September 12, 1953, the Board of Directors of Monogram Pictures Corporation duly held a meeting whereby resolutions were duly adopted setting forth two proposed amendments to the certificate of incorporation. One of such amendments included a name change from Monogram Pictures Corporation to Allied Artists Pictures Corporation. Thereafter, the amendment to the certificate of incorporation was filed with the Secretary of State of Delaware.

7. From October 19, 1953 through January 14, 1958, the remaining 17 motion pictures in the Bowery Boys Collection were copyrighted in the name of Allied Artists Pictures Corporation

8. On December 28, 1961 Seven Arts Associated Corp., and its subsidiaries (Buyer) entered into a Purchase Agreement with Allied Artists Pictures Corporation (Seller) for all right, title and interest in and to the Bowery Boys Collection.

9. An Assignment of Copyrights for the Bowery Boys Collection dated March 14, 1962, executed by Allied Artists Pictures Corporation in favor of Seven Arts

10. On July 14, 1967, Seven Arts Associated Corp. purchased the assets of Warner Bros. Pictures Inc. and subsequently Seven Arts Associated Corp. changed its name to Warner Bros. - Seven Arts, Inc. On November 24, 1969, Warner Bros.-Seven Arts, Inc. changed its name to Warner Bros., Inc. On December 4, 1969 Warner Bros., Inc. changed its name to Warner Bros. Inc.

11. From August 10, 1973 through May 31, 1974, the copyrights for the first 6 motion pictures in the Bowery Boys Collection were renewed in the name of Allied Artists Pictures Corporation.

12. On November 4, 1974, an Assignment of Copyright for the renewals of

the first six films in the Bowery Boys Collection (SPOOK BUSTERS, BOWERY BOMBSHELL, IN FAST COMPANY, LIVE WIRES, MR. HEX and HARD BOILED MAHONEY) were assigned to Warner Bros. Inc. and recorded in the Copyright Office on November 4, 1974 in Volume 1526, Pages 133 and 134.

13. From August 12, 1974 through March 3, 1986, the copyrights for the remaining 42 motion pictures in the Bowery Boys Collection were renewed in the name of Warner Bros. Inc.

14. On June 30, 1992, Warner Communications Inc. assigned all of its filmed entertainment assets in existence after January 1, 1950 to Time Warner Entertainment Company, L.P.

15. On June 30, 1992, Warner Bros. Inc. assigned all of its filmed entertainment assets including but not limited to the Bowery Boys Collection to Time Warner Entertainment Company, L.P. Such assignment was duly recorded with the Copyright Office on July 1, 1992 in Volume 2901, pages 665-999. Subsequently, Time Warner Entertainment Company, L.P. established a Warner Bros. division, into which the assets of Warner Bros. Inc. were filtered.

16. On December 3, 2002, Warner Communications Inc. formed Warner Bros. Entertainment Inc.

17. On March 31, 2003 Time Warner Entertainment Company, L.P. assigned all of its filmed entertainment assets, including but not limited to the Bowery Boys Collection, to Warner Communications Inc. Such assignment was duly recorded in the Copyright Office on March 31, 2003 in Volume 3492, pages 133-215. Simultaneously, Warner Communications Inc. assigned all of its right, title and interest to all of its motion pictures to Warner Bros. Entertainment Inc. Such assignment was duly recorded in the Copyright office on March 31, 2003 in Volume 3492, pages 216-298.

18. Currently, Warner Bros. Entertainment Inc. owns all right title and interest in and to the forty-eight titles in the Bowery Boys under valid and subsisting copyrights.

19. Since 1946, Warner and its predecessors in interest have continuously used the mark THE BOWERY BOYS in connection with the advertisement, sale, production, manufacture and distribution of entertainment related goods and services under the mark THE BOWERY BOYS for the forty-eight (48) motion pictures in the Bowery Boys Collection, which were produced for theatrical distribution, television programs and pre-recorded video tapes.

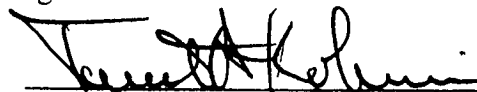
20. Warner and its predecessors have distributed the Bowery Boys Collection under the mark THE BOWERY BOYS for theatrical release, and have licensed the programming rights to numerous television and cable stations in the United States for the films in the Bowery Boys Collection from 1946 through 2001. Television Distribution Lists for THE BOWERY BOYS movies are attached as Exhibit 2.

21. In 1992, Warner released to the public six (6) of the films from the Bowery Boys Collection on video cassette, including the film "Ghost Chasers." These films were released under the mark THE BOWERY BOYS and are still available in stores today. Photographs of the packaging for these videocassettes are attached as Exhibit 3.

22. Warner is in the process of collecting original negatives and/or earliest possible preprint materials to the forty-eight titles in the Bowery Boys Collection to maximize the best possible picture and sound quality of the films and intends to create a compilation of the films for release to the public on DVD.

23. I reviewed the specimen submitted by Kaplan in connection with Registration Number 2,761,675 and it appears to be a photograph of Warner's videocassette box for the Movie *Ghost Chasers*, which was part of the 1992 release by Warner of THE BOWERY BOYS movies. I am aware that Kaplan claims that the specimen was a picture of lobby card purchased by Kaplan. However, Warner has reviewed the lobby cards for *Ghost Chasers* in its archives and there are none that match Kaplan's specimen

I declare pursuant to 28 U.S.C. § 1746 and under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Janet A. Kobrin", written over a horizontal line.

Janet A. Kobrin

February 26, 2007

KOBRIN EXHIBIT 1

SCHEDULE "A"

48 PICTURES - THE BOWERY BOYS

ANGEL'S ALLEY
ANGELS IN DISGUISE
BLONDE DYNAMITE
BLUES BUSTERS
BOWERY BATTALION
BOWERY BOMBSHELL
BOWERY BOYS
BOWERY BOYS MEET MONSTERS
BOWERY BUCKAROOS
BOWERY TO BAGDAD
CLIPPED WINGS
CRASHING LAS VEGAS
CRAZY OVER HORSES
DIG THAT URANIUM
FEUDIN' FOOLS
FIGHTING FOOLS
FIGHTING TROUBLE
GHOST CHASER
HARD BOILED MAHONEY
HERE COME THE MARINES
HIGH SOCIETY
HOLD THAT BABY
HOLD THAT HYPNOTIST
HOLD THAT LINE
HOT SHOTS
IN FAST COMPANY
IN THE MONEY
JAIL BUSTERS
JALOPY
JINX MONEY
JUNGLE GENTS
LET'S GO NAVY
LIVE WIRES
LOOKING FOR DANGER
LOOSE IN LONDON
LUCKY LOSERS
MASTER MINDS
MR HEX
NEWS HOUNDS
NO HOLDS BARRED
PARIS PLAYBOYS
PRIVATE EYES
SMUGGLER'S COVE
SPOOK BUSTERS
SPOOK CHASERS
SPY CHASERS
TRIPLE TROUBLE
TROUBLE MAKERS
UP IN SMOKE

1. STATION has elected to obtain one (1) sixteen millimeter (16mm) print of each of the Pictures for use on a library basis pursuant to the provisions of Paragraph (f) of Article THIRD of the General Terms and Conditions of this Agreement. Payment for each said print shall be made by STATION to WARNER as delivered.

WB 0293

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KOBRIN EXHIBIT 2

LICENSES FOR THE BOWERY BOYS

Title	Client	Start Date	End Date
Bowery Boys: Angel's Alley	FAM	1/1/97	3/31/99
Bowery Boys: Angel's Alley	TURNER	4/1/99	10/31/99
Bowery Boys: Angels in Disguise	FAM	1/1/97	3/31/99
Bowery Boys: Angels in Disguise	TURNER	4/1/99	10/31/99
Bowery Boys: Blonde Dynamite	FAM	1/1/97	3/31/99
Bowery Boys: Blonde Dynamite	TURNER	4/1/99	10/31/99
Bowery Boys: Blues Busters	A&E	9/1/92	8/31/94
Bowery Boys: Blues Busters	FAM	1/1/97	3/31/99
Bowery Boys: Blues Busters	TURNER	4/1/99	10/31/99
Bowery Boys: Bowery Battalion	A&E	9/1/92	8/31/94
Bowery Boys: Bowery Battalion	FAM	1/1/97	3/31/99
Bowery Boys: Bowery Battalion	TURNER	4/1/99	10/31/99
Bowery Boys: Bowery Bombshell	A&E	9/1/92	8/31/94
Bowery Boys: Bowery Bombshell	FAM	1/1/97	3/31/99
Bowery Boys: Bowery Bombshell	TURNER	4/1/99	10/31/99
Bowery Boys: Bowery Boys Meet the Monsters	A&E	9/1/92	8/31/94
Bowery Boys: Bowery Boys Meet the Monsters	FAM	1/1/97	3/31/99
Bowery Boys: Bowery Boys Meet the Monsters	TURNER	4/1/99	10/31/99
Bowery Boys: Bowery Buckaroos	FAM	1/1/97	3/31/99
Bowery Boys: Bowery Buckaroos	TURNER	4/1/99	10/31/99
Bowery Boys: Bowery to Baghdad	FAM	1/1/97	3/31/99
Bowery Boys: Bowery to Baghdad	TURNER	4/1/99	10/31/99
Bowery Boys: Clipped Wings	FAM	1/1/97	3/31/99
Bowery Boys: Clipped Wings	TURNER	4/1/99	10/31/99
Bowery Boys: Crashing Las Vegas	FAM	1/1/97	3/31/99
Bowery Boys: Crashing Las Vegas	TURNER	4/1/99	10/31/99
Bowery Boys: Crazy Over Horses	FAM	1/1/97	3/31/99
Bowery Boys: Crazy Over Horses	TURNER	4/1/99	10/31/99
Bowery Boys: Dig that Uranium	FAM	1/1/97	3/31/99
Bowery Boys: Dig that Uranium	TURNER	4/1/99	10/31/99
Bowery Boys: Feudin' Fools	FAM	1/1/97	3/31/99
Bowery Boys: Feudin' Fools	TURNER	4/1/99	10/31/99
Bowery Boys: Fighting Fools	FAM	1/1/97	3/31/99
Bowery Boys: Fighting Fools	TURNER	4/1/99	10/31/99
Bowery Boys: Fighting Trouble	FAM	1/1/97	3/31/99
Bowery Boys: Fighting Trouble	TURNER	4/1/99	10/31/99
Bowery Boys: Ghost Chasers	FAM	1/1/97	3/31/99
Bowery Boys: Ghost Chasers	TURNER	4/1/99	10/31/99
Bowery Boys: Hard Boiled Mahoney	A&E	9/1/92	8/31/94
Bowery Boys: Hard Boiled Mahoney	FAM	1/1/97	3/31/99
Bowery Boys: Hard Boiled Mahoney	TURNER	4/1/99	10/31/99
Bowery Boys: Here Come the Marines	FAM	1/1/97	3/31/99
Bowery Boys: Here Come the Marines	TURNER	4/1/99	10/31/99
Bowery Boys: High Society	A&E	9/1/92	8/31/94
Bowery Boys: High Society	FAM	1/1/97	3/31/99
Bowery Boys: High Society	TURNER	4/1/99	10/31/99
Bowery Boys: Hold that Baby!	FAM	1/1/97	3/31/99
Bowery Boys: Hold that Baby!	TURNER	4/1/99	10/31/99
Bowery Boys: Hold that Hypnotist	FAM	1/1/97	3/31/99
Bowery Boys: Hold that Hypnotist	TURNER	4/1/99	10/31/99
Bowery Boys: Hold that Line	FAM	1/1/97	3/31/99

WB 0290

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LICENSES FOR THE BOWERY BOYS

Title	Client	Start Date	End Date
Bowery Boys: Hold that Line	NFL	4/1/02	9/30/02
Bowery Boys: Hold that Line	TURNER	4/1/99	10/31/99
Bowery Boys: Hot Shots	FAM	1/1/97	3/31/99
Bowery Boys: Hot Shots	TURNER	4/1/99	10/31/99
Bowery Boys: In Fast Company	FAM	1/1/97	3/31/99
Bowery Boys: In Fast Company	TURNER	4/1/99	10/31/99
Bowery Boys: In the Money	A&E	9/1/92	8/31/94
Bowery Boys: In the Money	FAM	1/1/97	3/31/99
Bowery Boys: In the Money	TURNER	4/1/99	10/31/99
Bowery Boys: Jail Busters	FAM	1/1/97	3/31/99
Bowery Boys: Jail Busters	TURNER	4/1/99	10/31/99
Bowery Boys: Jalopy	FAM	1/1/97	3/31/99
Bowery Boys: Jalopy	TURNER	4/1/99	10/31/99
Bowery Boys: Jinx Money	A&E	9/1/92	8/31/94
Bowery Boys: Jinx Money	FAM	1/1/97	3/31/99
Bowery Boys: Jinx Money	TURNER	4/1/99	10/31/99
Bowery Boys: Jungle Gents	FAM	1/1/97	3/31/99
Bowery Boys: Jungle Gents	TURNER	4/1/99	10/31/99
Bowery Boys: Let's Go Navy	A&E	9/1/92	8/31/94
Bowery Boys: Let's Go Navy	FAM	1/1/97	3/31/99
Bowery Boys: Let's Go Navy	TURNER	4/1/99	10/31/99
Bowery Boys: Live Wires	A&E	9/1/92	8/31/94
Bowery Boys: Live Wires	FAM	1/1/97	3/31/99
Bowery Boys: Live Wires	TURNER	4/1/99	10/31/99
Bowery Boys: Looking for Danger	FAM	1/1/97	3/31/99
Bowery Boys: Looking for Danger	TURNER	4/1/99	10/31/99
Bowery Boys: Loose in London	FAM	1/1/97	3/31/99
Bowery Boys: Loose in London	TURNER	4/1/99	10/31/99
Bowery Boys: Lucky Losers	FAM	1/1/97	3/31/99
Bowery Boys: Lucky Losers	TURNER	4/1/99	10/31/99
Bowery Boys: Master Minds	A&E	9/1/92	8/31/94
Bowery Boys: Master Minds	FAM	1/1/97	3/31/99
Bowery Boys: Master Minds	TURNER	4/1/99	10/31/99
Bowery Boys: Mr. Hex	FAM	1/1/97	3/31/99
Bowery Boys: Mr. Hex	TURNER	4/1/99	10/31/99
Bowery Boys: News Hounds	FAM	1/1/97	3/31/99
Bowery Boys: News Hounds	TURNER	4/1/99	10/31/99
Bowery Boys: No Holds Barred	FAM	1/1/97	3/31/99
Bowery Boys: No Holds Barred	TURNER	4/1/99	10/31/99
Bowery Boys: Paris Playboys	FAM	1/1/97	3/31/99
Bowery Boys: Paris Playboys	TURNER	4/1/99	10/31/99
Bowery Boys: Private Eyes	FAM	1/1/97	3/31/99
Bowery Boys: Private Eyes	TURNER	4/1/99	10/31/99
Bowery Boys: Smuggler's Cove	A&E	9/1/92	8/31/94
Bowery Boys: Smuggler's Cove	FAM	1/1/97	3/31/99
Bowery Boys: Smuggler's Cove	TURNER	4/1/99	10/31/99
Bowery Boys: Spook Busters	A&E	9/1/92	8/31/94
Bowery Boys: Spook Busters	FAM	1/1/97	3/31/99
Bowery Boys: Spook Busters	TURNER	4/1/99	10/31/99
Bowery Boys: Spook Chasers	FAM	1/1/97	3/31/99
Bowery Boys: Spook Chasers	TURNER	4/1/99	10/31/99

WB 0291

CONFIDENTIAL

LICENSES FOR THE BOWERY BOYS

Title	Client	Start Date	End Date
Bowery Boys: Spy Chasers	FAM	1/1/97	3/31/99
Bowery Boys: Spy Chasers	TURNER	4/1/99	10/31/99
Bowery Boys: Triple Trouble	FAM	1/1/97	3/31/99
Bowery Boys: Triple Trouble	TURNER	4/1/99	10/31/99
Bowery Boys: Trouble Makers	FAM	1/1/97	3/31/99
Bowery Boys: Trouble Makers	TURNER	4/1/99	10/31/99
Bowery Boys: Up in Smoke	FAM	1/1/97	3/31/99
Bowery Boys: Up in Smoke	TURNER	4/1/99	10/31/99

WB 0292

CONFIDENTIAL

KOBRIN EXHIBIT 3



BOWERY BUCKAROODS



WARNER HOME VIDEO

BOWERY BUCKAROODS



Classic Circuit Features Silly Comedy

WB 0266



ISBN 0-7907-1013-0



WARNER HOME VIDEO

Horace Greeley never intended this!
The Bowery Boys go West.

Saddle up with the Bowery Boys! They broke into the movies as the Dead End Kids in the 1937 classic *Dead End*. Later they formed spinoff groups (with some overlapping of performers) called the East Side Kids and Little Tough Guys. In 1940, they latched onto a hilarious chemistry that sparked 48 movies in 12 years – and a name that would identify all phases of their careers. Leo Gorcey, Huntz Hall and pals became the Bowery Boys.

You can't get there by subway, but that doesn't stop the Boys from going West as *Bowery Buckaroos* (1947). They arrive in Hangman's Hollow to clear Count Bernard Gorcey of a murder (reverse us, *majder* rap and are soon up to their hat brims in a battle of brains vs. brawn. And "brains," as Mahoney Woodcutter notes with his flair for turning words into Mulligan Stew, "happen to be something I am dissipated with."

LEO GORCEY and THE BOWERY BOYS in
"BOWERY BUCKAROOS" A JAN GRIPPO Production
With HUNTZ HALL, BOBBY JORDAN,
GABRIEL DELL, BILLY BENEDICT
Screenplay by EDMOND SEWARD, TIM REAN and FERRY WARNER
Produced by JAN GRIPPO Directed by WILLIAM BEAUDINE

Warner Bros. A Time Warner Company



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WB 0267



HARD BOILED MANHONEY



COMEDY

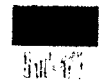


WARNER HOME VIDEO

HARD BOILED MANHONEY



1974
WARNER BROS.



WB 0281

COMEDY

COMEDY

ISBN 0 7907 1076 5



"We always get our man. Even if it's a woman."



WARNER HOME VIDEO

The Bowery Boys are on the case! They broke into the movies as the Dead End Kids in the 1930s classic *Dead End*. Later they formed spinoff groups (with some overlapping of performers) called the Four Side Kids and Little Tough Guys. In 1946, they latched onto a hilarious chemistry that spanned 48 movies in 12 years - and a name that would identify all phases of their careers. Leo Gorcey, Huntz Hall and pals became the Bowery Boys.

They try to make a killing in the defective - oops, *detective* - business in 1947's *Hard Boiled Mahoney*. Boiled so hard he's cracked, Slip (Gorcey) gun-does with the gang through a comic case of murder and a missing dance. They're without a clue, which doesn't stop them, not even when they become unlikely pundits on a stump the experts radio quite slow. So what's the answer? The answer is elementary, but maybe the boys were absent from school that day!

LEO GORCEY and THE BOWERY BOYS in
"HARD BOILED MAHONEY" A JAN GRIPPO Production
With HUNTZ HALL BOBBY JORDAN GABRIEL DELL
BETTY COMPTON TEAL & LORING
Original Screenplay by CYRIL ENFIELD Produced by JAN GRIPPO
Directed by WILLIAM BEAUDINE

Warner Bros. A Time Warner Company

HARD BOILED MAHONEY



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1997
WARNER



790710765

NOT RATED



WB 0282

LEO GORCEY
and
The Bowery Boys

Wings



Classic Uncut Feature Film Comedy!

WB 0460

COMEDY



ISBN 0-7907-1074-9



They're
plane crazy!

Take off with the Bowery Boys! They broke into the movies as the Dead End Kids in the 1937 classic *Dead End*. Later they formed spinoff groups (with some overlapping of performers) called the East Side Kids and Little Tough Guys. In 1946, they latched onto a hilarious chemistry that sparked 48 movies in 12 years - and a name that would identify all phases of their careers. Leo Gorcey, Huntz Hall and pals became the Bowery Boys.

In 1953's *Clipped Wings*, Slip (Gorcey) and correspondence school pilot Sach (Hall) go to an air base to help a pal out...but find themselves *in* when they mistakenly sign enlistment forms. Can the Air Force turn these dodos into eagles? The guys may be airborne airheads, but just watch them find a way to ground a spy network that's infiltrated the base. "*Clipped Wings* is the Bowery Boys at their funniest" (David Hayes and Brent Walker, *The Films of the Bowery Boys: A Pictorial History of the Dead End Kids*).

LEO GORCEY and THE BOWERY BOYS in
"CLIPPED WINGS" Featuring HUNTZ HALL.
With JUNE VINCENT RENIE RIANO ANNE KIMBELL
Screenplay by CHARLES R. MARION and FRED WOOD ULLIMAN
Story by CHARLES R. MARION
Produced by BEN SCHWALB Directed by EDWARD BERNDS

Warner Bros. A Time Warner Company



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The above video works of this title have been certified with Dolby type II sound reduction.

NOT RATED

WB 0461

LEO GORCEY
and
The Bowery Boys

GHOST CHASERS



Classic Uncut Feature-Film Comedy!

WB 0462

COMEDY

ISBN 0-7907-1075-7



0 85391 24333 5



They'll save
the last trance
for you!

Hocus-pocus, the Bowery Boys are in focus! They broke into the movies as the Dead End Kids in the 1937 classic *Dead End*. Later they formed spinoff groups (with some overlapping of performers) called the East Side Kids and Little Tough Guys. In 1946, they latched onto a hilarious chemistry that sparked 38 movies in 12 years - and a name that would identify all phases of their careers. Leo Gorcey, Huntz Hall and pals became the Bowery Boys.

Their antics are spirited in 1951's *Ghost Chasers*. Hoping to expose the bamboozling of Margo the Medium, Slip (Gorcey) persuades malt shop owner Louie (Bernard Gorcey) to visit her by hailing her as "the greatest medium that ever mediated. She could bring Nero back from the grave and make him play bebop on his fiddle." Louie goes, the gang follows and the fun cuts loose. Margo may be fake, but a genuine ghost does appear. Good thing it's on the Boys' side when a hypnotic spell freezes them in their tracks!

LEO GORCEY and THE BOWERY BOYS in
"GHOST CHASERS" A JAN GRIPPO Production
With HUNTZ HALL LLOYD CORRIGAN LELA BLISS
Screenplay by CHARLES R. MARION
Additional Dialogue by BERT LAWRENCE
Produced by JAN GRIPPO Directed by WILLIAM BEAUDINE

Warner Bros.  A Time Warner Company



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NOT RATED

WB 0463

LEO GORCEY
and
The Bowery Boys

SPOOK BUSTERS



Classic Uncut Feature-Film Comedy!

WB 0464

LEO GORCEM
The Bowery Boys

Blues Busters



Classic Uncut Feature-Film Comedy!

WB 0466

COMEDY

ISBN 0-7907-1072-2



The Boys confront a "smirk of fate."

Swing with the Bowery Boys! They broke into the movies as the Dead End Kids in the 1937 classic *Dead End*. Later they formed spinoff groups (with some overlapping of performers) called the East Side Kids and Little Tough Guys. In 1946, they latched onto a hilarious chemistry that sparked 48 movies in 12 years - and a name that would identify all phases of their careers. Leo Gorcey, Huntz Hall and pals became the Bowery Boys.

In *Blues Busters* (1950), Sach (Hall) emerges from a tonsillectomy with a silk-smooth crooning voice, so the Boys open a nightspot to showcase his pipes. The paying customers come. And so does trouble. A rival proprietor wants to shut the Boys down and Sach becomes (what else?) the yo-yo between the competing clubs. The Boys triumph - but in an era when the movies feared the market inroads of that new-fangled box in peoples' homes, it's a triumph resulting in "da woist thing since television."

LEO GORCEY AND THE BOWERY BOYS IN
"BLUES BUSTERS" A JAN GRIPPO PRODUCTION
WITH HUNTZ HALL ADELE JERGENS GABRIEL DELL
SCREENPLAY BY CHARLES R. MARION
ADDITIONAL DIALOGUE BY BERT LAWRENCE
PRODUCED BY JAN GRIPPO DIRECTED BY WILLIAM BEAUDINE

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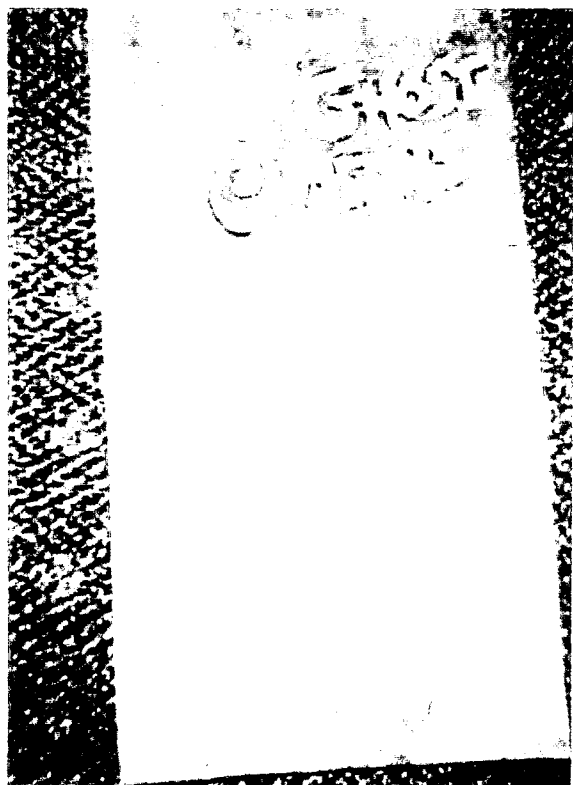
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The words "No. 1" on this tape have been replaced with "Copy" type marks to reduce

NOT RATED

WB 0467

SPECIMEN SUBMITTED BY KAPLAN
TO THE PTO



WARNER'S VIDEOCASSTTE
BOX

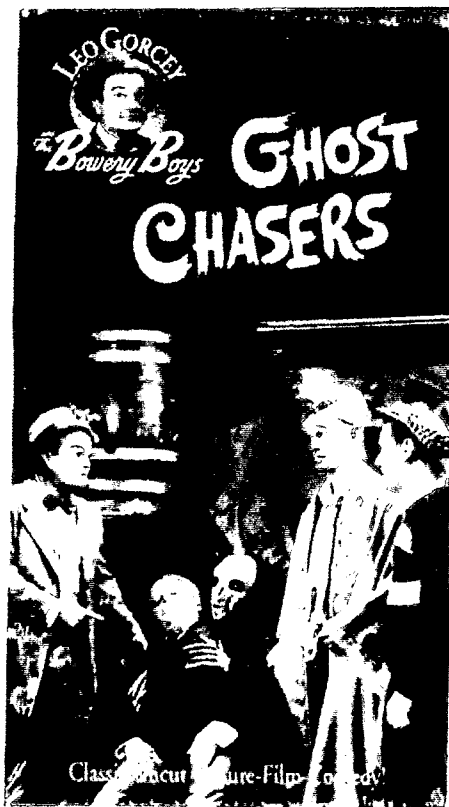


EXHIBIT B

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

CANCELLATION NO. 92043813

WARNER BROTHERS ENTERTAINMENT,
INC.,

Petitioner,

ORIGINAL

vs.

THE KAPLAN TRUST,

Registrant.

-----/

Fort Lauderdale, Florida
August 31st, 2005
11:00 o'clock a.m.

DEPOSITION

OF

JEFFREY KAPLAN

JOB NO. M-752482
Reported By:
Evan A. Ferguson, RPR
Notary Public, State of Florida
Esquire Deposition Services
Fort Lauderdale Office
Phone 954-331-4400

1 Q Are they entertainment services, namely
2 production and distribution of motion pictures;
3 entertainment services, in the nature of an ongoing
4 television programs in the field of comedy; distribution
5 of television programs for others; do you see that?

6 A Yes.

7 Q Is that your currently your services with the
8 Bowery Boys?

9 A Yes.

10 Q Describe your production of motion pictures
11 under the trademark Bowery Boys.

12 MR. VALORI: What was the question, I'm sorry?

13 BY MR. LOUGHLIN:

14 Q Describe your production of motion pictures as
15 you have done under the trademark Bowery Boys.

16 A Production would be manufacturing of the disk.

17 Q Of the DVDs?

18 A DVD, yes.

19 Q How do you manufacture DVDs?

20 A I have masters of the films, they are public
21 domain, and I have a machine that can duplicate it.

22 Q By masters what do you mean?

23 A Masters of the Live Wires, all the different
24 movies that are in public domain. The Leo Gorcey and
25 Huntz Hall movies.

1 Q The specimen itself is not actually being
2 used?

3 MR. VALORI: Object to form.

4 THE WITNESS: The words the Bowery Boys are
5 used.

6 BY MR. LOUGHLIN:

7 Q Never mind the word the Bowery Boys, the
8 specimen has to show use -- Strike that.

9 Did Warner Brothers ever sell any VHS tapes of
10 Bowery Boys movies?

11 A Warner Brothers had a release in 1992, I
12 believe it was, of six of the public domain films, only
13 six of them.

14 Q Did you purchase any of them?

15 A Did I personally, no.

16 (BY Mr. Loughlin)

17 MR. LOUGHLIN: Mark this as an exhibit,
18 please, this is 8.

19 (Whereupon, the above referred to document
20 was marked as Petitioner's Exhibit No. 8.)

21 BY MR. LOUGHLIN:

22 Q Shown you what has been marked as Exhibit 8,
23 ask you if you have ever seen it before.

24 A I have seen this in the paperwork that
25 Warner's attorneys filled out on their motions that I

1 received. I believe this was attached in one of the
2 document exhibits.

3 Q But you have never purchased a video that is
4 depicted, the box?

5 A I never purchased this.

6 Q Going back to your lobby card, where did you
7 get it?

8 A Lobby cards are available on the Internet,
9 there are thousands available. They are all on public
10 domain.

11 Q And they were used when the movies were in the
12 theaters, correct?

13 A Yes, this one I believe is a monogram, it's a
14 monogram lobby card, 1951.

15 Q So you think this was actually -- I just want
16 to clarify, it's your position this was used, the
17 specimen was used in the theaters?

18 A Well, the main parts of it were used. It
19 seems there might have been some adaptations here for
20 example.

21 Q For what purpose?

22 A Because basically it's a public domain, so I
23 removed Leo Gorcery and used this specimen because it was
24 a public domain, which I can use.

25 Q Removed from what?

1 copyright registration.

2 BY MR. LOUGHLIN:

3 Q So, again, the lobby card, that would have
4 been used at the time the movie was in the theater,
5 correct?

6 A I am not an expert, but I would presume so,
7 that is why they are called lobby cards.

8 Q What adaptations are you referring to?

9 A My adaptations from the lobby card, I took off
10 Leo Gorcey because my mark is the Bowery Boys, that's
11 why I submitted it as a specimen Bowery Boys. I didn't
12 put in my specimen and design, it just says the Bowery
13 Boys. In my specimen I sent to the patent office it was
14 for the word mark the Bowery Boys, it doesn't say Ghost
15 Chasers or design.

16 Q Where did you purchase the lobby card from?

17 A On the Internet there are thousands available,
18 I don't recall exactly what place I bought it from.

19 Q Do you know when you purchased it?

20 A I have no idea.

21 Q Do you consider yourself knowledgeable about
22 the film industry, Mr. Kaplan?

23 A In what way?

24 Q In general, the way movies are promoted for
25 instance, or sold or promoted?

1 BY MR. LOUGHLIN:

2 Q I'm not talking about a remake.

3 A Well, you didn't mention that.

4 Q Excluding remakes.

5 A Well, a classic is a remake.

6 Q Are most movies in the theaters cut or uncut?

7 A I don't know. I don't know what that means.

8 Q For a movie to be uncut, do you have any idea,
9 you have no idea what that means?

10 A I don't know what that means, no.

11 Q So it's your testimony that you bought a lobby
12 card which had Leo Gorcey and the Bowery Boys up in the
13 top left, right?

14 A I bought dozens of lobby cards over the years.

15 Q And you black it out or magic marker?

16 A Yes, to show the Bowery Boys, which is my
17 trademark, to show as a specimen because I wasn't
18 registering Leo Gorcey, it's the Bowery Boys, not Ghost
19 Chasers, the Bowery Boys.

20 Q You have already testified that you don't use
21 this specimen to advertise your movies?

22 MR. VALORI: Object to form.

23 THE WITNESS: Again, I did change the label at
24 one time, it's in the amendment somewhere, I just
25 don't remember when. This is back in '83, it's

1 the Bowery Boys.

2 Q You manufacture those movies, you manufacture
3 own DVDs; is that correct?

4 A Correct.

5 Q Look at Exhibit 13.

6 A Yes.

7 Q You currently sell the titles Hold That Line,
8 Here Comes The Marines and Feudin' Fools?

9 MR. VALORI: Object to form.

10 THE WITNESS: I'm selling public domain films
11 Hold That Line, Here Comes The Marines and Feudin'
12 Fools under my trademark the Bowery Boys.

13 BY MR. LOUCHLIN:

14 Q You sell those three movies that are titled
15 there you currently sell; is that correct?

16 A These public domain films, yes.

17 Q The films you sell?

18 A Yes.

19 Q 14 is a picture of the DVDs that come in
20 those?

21 A Correct.

22 Q How do you make these pictures on the DVDs?

23 A As I mentioned there is hundreds and hundreds
24 of public domain images on the Internet, lobby cards
25 used by me and dozens of other people selling the exact

1 same items.

2 Q And you put the picture on the DVD in your
3 machine?

4 A Yes, anybody could do that, sure, it's simple.

5 Q Do you have any knowledge of whether movies
6 featuring the Bowery Boys have been shown on TV in the
7 1990's.

8 A 1990's, I have no knowledge of that.

9 Q Did you do any research to determine if they
10 were?

11 A If that was true I would have found it on my
12 research in all the dozens of web-sites and search
13 engines, and my extensive research showed nothing like
14 that.

15 Q So if it were true that may suggest that your
16 research was not as extensive as you thought it was?

17 MR. VALORI: Object to form.

18 THE WITNESS: What was the question?

19 BY MR. LOUGHLIN:

20 Q If it were true that would suggest that your
21 research was not as extensive as you thought it was?

22 MR. VALORI: Object to form, speculation.

23 THE WITNESS: No, my research was very
24 extensive.

25

1 know what their rights are, because I haven't seen a
2 copyright, I haven't seen a trademark. I have seen
3 nothing from Warner about what they own except what they
4 are stating by common law. I haven't seen anything.
5 They haven't shown me anything.

6 Q But you are aware that they sold a series of
7 Bowery Boys VHS tapes throughout the 90's, aren't you?

8 A I am aware that they sold under their
9 trademark Warner Brothers they sold six public domain
10 films, which you have the exhibit there, that is not a
11 trademark.

12 Q What is a trademark?

13 A A trademark is --

14 MR. VALORI: Object to form. Go head.

15 THE WITNESS: A trademark is a source
16 indicator of usage. Continued use is a trademark
17 telling the public who owns it, where it's coming
18 from, it's a source originator.

19 BY MR. LOUGHLIN:

20 Q So you don't believe looking at the Bowery
21 Boys and Warner Brothers on the package, that the Bowery
22 Boys series of films came from Warner Brothers?

23 MR. VALORI: Object to form.

24 THE WITNESS: In my belief if that cover was
25 missing, and an average person picked up a film

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

CANCELLATION NO. 92043813

WARNER BROTHERS ENTERTAINMENT,
INC.,

Petitioner,

vs.

THE KAPLAN TRUST and
THE BOWERY BOYS CORPORATION,

Registrants.

-----/

Miami, Florida
October 13, 2006
11:00 o'clock a.m.

DEPOSITION

OF

JEFFREY KAPLAN

JOB NO. 831417
Reported By:
Evan A. Ferguson, RPR
Notary Public, State of Florida
Esquire Deposition Services
Fort Lauderdale Office
Phone 954-331-4400

ORIGINAL

1 A Yes.

2 Q In 1983 approximately how many films did you
3 sell under the trademark the Bowery Boys?

4 A I don't recall.

5 Q Do you recall the dollar value from any such
6 sales?

7 A No.

8 Q Do you have any documents that would evidence
9 any such sales of films under The Bowery Boys in 1983?

10 A No.

11 Q Do you have any documents that would show the
12 volume of sales for movies sold under The Bowery Boys
13 trademark in 1983?

14 A No.

15 Q Did you do any advertising for films under The
16 Bowery Boys for films in 1983?

17 A Yes.

18 Q What such advertising did you do?

19 A I recall that I used to place adds in video
20 magazines.

21 Q Do you have any documents in your possession
22 relating to any such advertisements?

23 A No.

24 Q Approximately how many films did you sell
25 under the trademark The Bowery Boys in 1984?

1 A I don't recall.

2 Q Do you recall what your dollar volume of sales
3 was in 1984 for films under the trademark The Bowery
4 Boys?

5 A No.

6 Q Do you have any documents in your possession,
7 custody or control related to any sales of films under
8 the trademark the Bowery Boys in 1984?

9 A No.

10 Q Did you do any advertising for films sold
11 under the trademark the Bowery Boys in 1984?

12 A I don't recall.

13 Q Do you have any documents that would show what
14 kind of advertising you did in 1984 for the films under
15 the trademark The Bowery Boys?

16 A No.

17 Q Approximately how many films did you sell
18 under the trademark The Bowery Boys in 1985?

19 A I don't recall.

20 Q Do you recall what the dollar volume of sales
21 were in 1985?

22 A No.

23 Q Do you have any documents that would show -
24 any documents related to your sales of films under the
25 trademark the Bowery Boys in 1985?

1 A No.

2 Q Did you do any advertising for films sold
3 under the trademark The Bowery Boys in 1985?

4 A I don't recall.

5 Q Do you have any documents relating to your
6 advertising of films under the trademark The Bowery Boys
7 in 1985?

8 A No.

9 Q Do you recall how many films you sold under
10 the trademark the Bowery Boys in 1986?

11 A No.

12 Q Do you recall the dollar volume of sales in
13 connection with films under the trademark The Bowery
14 Boys in 1986?

15 A No.

16 Q Do you have any documents relating to your
17 sales of films under the trademark The Bowery Boys in
18 1986?

19 A No.

20 Q Did you do any advertising for any films sold
21 under The Bowery Boys trademark in 1986?

22 A I don't recall.

23 Q Do you have any documents relating to
24 advertising you did for films sold under the trademark
25 The Bowery Boys in 1986?

1 A No.

2 Q Do you recall how many films you sold under
3 the trademark the Bowery Boys in 1987?

4 A No.

5 Q Do you recall the dollar volume of any films
6 you sold under the trademark The Bowery Boys in 1987?

7 A No.

8 Q Did you do any advertising for films sold
9 under the trademark the Bowery Boys in 1987?

10 A I don't recall.

11 Q Do you have any documents in your possession,
12 custody or control relating to advertising you did for
13 films sold under the trademark The Bowery Boys in 1987?

14 A No.

15 Q Do you recall how many films you sold under
16 the trademark The Bowery Boys in 1988?

17 A No.

18 Q Do you recall the dollar volume of sales of
19 films sold under the trademark The Bowery Boys in 1988?

20 A No.

21 Q Did you do any advertising for films sold
22 under the trademark The Bowery Boys in 1988?

23 A I don't recall that.

24 Q Do you have any documents in your possession
25 relating to advertising to films sold under the

1 trademark the Bowery Boys in 1988?

2 A No.

3 Q Do you recall how many films you sold under
4 the trademark The Bowery Boys in 1989?

5 A No.

6 Q Do you recall the dollar volume of films you
7 sold under the trademark The Bowery Boys in 1989?

8 A No.

9 Q Do you have any documents relating to sales of
10 films under the trademark The Bowery Boys in 1989?

11 A No.

12 Q Did you do any advertising of films sold under
13 the trademark The Bowery Boys in 1989?

14 A I don't recall.

15 Q Do you have any documents relating to
16 advertising of films you sold under the trademark The
17 Bowery Boys in 1989?

18 A No.

19 Q Do you recall the number of films you sold
20 under the trademark the Bowery Boys in 1990?

21 A No.

22 Q Do you recall the dollar volume of films you
23 sold under the trademark The Bowery Boys in 1990?

24 A No.

25 Q Did you do any advertising of films sold under

1 the trademark The Bowery Boys in 1990?

2 A I don't recall.

3 Q Do you have any documents relating to sales or
4 advertising of films sold under the trademark The Bowery
5 Boys in 1990?

6 A No.

7 Q Do you recall how many films you sold under
8 trademark The Bowery Boys in 1991?

9 A No.

10 Q Do you recall the dollar value of films sold
11 under the trademark The Bowery Boys in 1991?

12 A No.

13 Q Do you have any documents in your possession
14 relating to sales of films under the trademark The
15 Bowery Boys in 1991?

16 A No.

17 Q Did you do any advertising for films sold
18 under the trademark the Bowery Boys in 1991?

19 A I don't recall.

20 Q Do you have any documents relating to the
21 advertising you did for films sold under the trademark
22 The Bowery Boys in 1991?

23 A No.

24 Q Do you recall how many films you sold under
25 the trademark the Bowery Boys in 1992?

1 A No.

2 Q Do you recall the dollar volume of films sold
3 under the trademark The Bowery Boys in 1992?

4 A No.

5 Q Do you have any documents relating to any of
6 your sales of films under the trademark The Bowery Boys
7 in 1992?

8 A No.

9 Q Did you do any advertising for films sold
10 under the trademark the Bowery Boys in 1992?

11 A I don't recall.

12 Q Do you have any documents relating to any
13 advertising you did for films sold under the trademark
14 The Bowery Boys in 1992?

15 A No.

16 Q Do you recall the dollar volume -- strike
17 that. Do you recall how many films you sold under the
18 trademark The Bowery Boys in 1993?

19 A No.

20 Q Do you recall the dollar volume of films sold
21 under the trademark The Bowery Boys in 1993?

22 A No.

23 Q Do you have any documents relating to any of
24 your sales of films under the trademark The Bowery Boys
25 in 1993?

1 A No.

2 Q Did you do any advertising for films under the
3 trademark The Bowery Boys in 1993?

4 A I don't recall.

5 Q Do you have any documents relating to any
6 advertising you did in 1993 related to films sold under
7 the trademark the Bowery Boys?

8 A No.

9 Q Do you recall how many films you sold under
10 the trademark The Bowery Boys in 1994?

11 A No.

12 Q Do you recall what the dollar volume of films
13 sold under the trademark The Bowery Boys was in 1994?

14 A No.

15 Q Do you have any documents relating to your
16 sales of films under the trademark The Bowery Boys in
17 1994?

18 A No.

19 (BY Mr. Valori)

20 MR. VALORI: Do you want to go with same
21 question '95, same question for '96?

22 (BY Mr. Loughlin)

23 MR. LOUGHLIN: Yes, I'm going to keep going to
24 2006. If you want to stipulate to something, we
25 can.

1 MR. VALORI: Yes, well, I mean you could just
2 say - I would be okay if you said same questions
3 and same answers for 19 whatever, yes or no, and if
4 he does have any more substantive or different
5 answer for any one of those years he could point it
6 out, because that would save some time, because it
7 sounds like you are asking the same basically four
8 questions from 1983 through --

9 MR. LOUGHLIN: '94.

10 MR. VALORI: '94.

11 MR. LOUGHLIN: We are halfway there.

12 MR. VALORI: We have got a lot of years to go,
13 so for the sake of the court reporter's fingers.

14 MR. LOUGHLIN: As long as there is no
15 confusion later on, so as long as we are clear on
16 what is being asked and answered.

17 (BY Mr. Loughlin)

18 BY MR. LOUGHLIN:

19 Q Mr. Kaplan, the questions I have been asking
20 you for the years 1983 to 1994, are your answers the
21 same as for 1995?

22 A Yes.

23 Q Are your answers the same as before for 1996?

24 A Yes.

25 Q Are your answers the same for 1997?

1 A Yes.

2 Q Are your answers the same for 1998?

3 A Yes.

4 Q Are your answers the same for 1999?

5 A Yes.

6 Q Are your answers the same for 2000?

7 A Yes.

8 Q Are your answers the same for 2001?

9 A Yes.

10 Q Are your answers the same for 2002?

11 A There might be some difference there.

12 Q Okay. Just for clarity, for the years 1983 to
13 2001 you don't know the number of films you sold under
14 the trademark The Bowery Boys in any of those years?

15 A Correct.

16 Q For the years 1983 to 2001 you don't know the
17 dollar volume of sales of films under the trademark The
18 Bowery Boys in any of those years?

19 A Correct.

20 Q You don't have any documents in your
21 possession relating to sales of films under the
22 trademark the Bowery Boys from the years 1983 to 2001?

23 A Correct.

24 Q Do you recall the number of films you sold
25 under the trademark the Bowery Boys in 2002?

1 A No.

2 Q Do you recall the total volume of sales of
3 films under the trademark The Bowery Boys in 2002?

4 A No.

5 Q Did you do any advertising for films sold
6 under the trademark The Bowery Boys in 2002?

7 A Yes.

8 Q What type of advertising did you do?

9 A EBay.

10 Q What type of advertising did you do on eBay?

11 A Placed adds.

12 Q What kind of adds, pop-up adds?

13 A No, for sale adds, videos for sale.

14 Q Would that be in your own individual store or
15 just individual auctions?

16 A Just under my name.

17 Q Regular auctions or in eBay store?

18 A No, auctions.

19 Q There is a difference.

20 A Yes.

21 Q Do you have any documents in your possession,
22 custody or control relating to sales for advertising of
23 films sold under the trademark The Bowery Boys in 2002?

24 A No.

25 Q Do you recall the number of films you sold

1 under the trademark The Bowery Boys in 2003?

2 A No.

3 Q Do you recall the dollar volume of films sold
4 under the trademark The Bowery Boys in 2003?

5 A No.

6 Q Do you have any documents relating to your
7 sales of films under the trademark The Bowery Boys in
8 2003?

9 A No.

10 Q Did you do any advertising of films under the
11 trademark The Bowery Boys in 2003?

12 A Yes.

13 Q What type of advertising?

14 A EBay.

15 Q And what was the nature of your advertising on
16 eBay in 2003?

17 A 2003, yes, films, I did films.

18 Q Were they auctions, individual auctions?

19 A Auctions.

20 Q Do you have any documents relating to your
21 advertising of films under the trademark the Bowery Boys
22 in 2003?

23 A No.

24 Q Do you recall how many films you sold under
25 the trademark The Bowery Boys in 2004?

1 A No.

2 Q Do you recall the dollar volume of films sold
3 under the trademark The Bowery Boys in 2004?

4 A No.

5 Q Do you have any documents relating to your
6 sales of films under the trademark The Bowery Boys in
7 2004?

8 A No.

9 Q Did you do any advertising for films under the
10 trademark the Bowery Boys in 2004?

11 A Yes.

12 Q What type of advertising did you do?

13 A EBay and a web page.

14 Q What web page was that?

15 A Bowery Boys.com.

16 Q In your advertising on eBay in 2004, was that
17 individual auctions or did you have a store at that
18 time?

19 A Auctions.

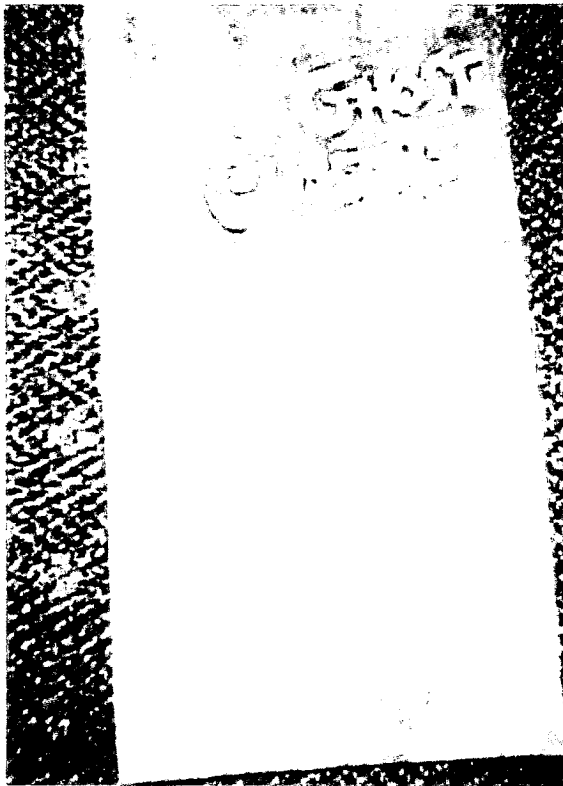
20 Q Do you recall the number of films you sold
21 under the trademark The Bowery Boys in 2005?

22 A No.

23 Q Do you have any documents relating to the
24 number of films you sold under The trademark the Bowery
25 Boys in 2005?

EXHIBIT D

SPECIMEN SUBMITTED BY KAPLAN
TO THE PTO



WARNER'S VIDEOCASSTTE
BOX

