

# Exposé-ing Trademark Concerns in the Entertainment Industry: Who Owns a Band's Name—the Band Members or the Entertainment Company?

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The Eleventh Circuit recently affirmed a ruling from the Southern District of Florida that found members of the 1980s group, Exposé, to be common-law owners of the Exposé mark, despite an ownership claim by the alleged successor of the original entertainment company that had created and financed the group. *Crystal Entertainment & Filmworks, Inc., et al. v. Jurado, Curless, Bruno et al.*, No. 10-11837, 2011 U.S. App. LEXIS 12473 (11th Cir. June 21, 2011). This decision serves as an important reminder to entertainment businesses to register all service marks and trademarks associated with their performing ventures and to actively control those marks in order to avoid losing their rights in the future.

In 1984, Pantera Group Enterprises and Pantera Productions, Inc. formed and financed a three-girl vocal group, Exposé. The original three singers selected for the group did not have much commercial success and their images were not used on the early Exposé album covers. In 1986, however, the defendants in this case, Jeanette Jurado, Ann Curless Weiss, and Gioia Bruno, replaced the original singers and released an album on the Arista Records label that sold over three million copies. While Jurado, Curless and Bruno did not compose the songs, their photos appeared on the album cover and they became known as the face of Exposé. In 1992, Kelly MoneyMaker temporarily replaced Bruno in the group, which caused the group's third album cover to be released with MoneyMaker pictured as a member. Exposé disbanded in 1995 but Arista Records released five Exposé compilation albums which generated sales until 2005.

The plaintiffs in this case, Crystal Entertainment & Filmworks, Inc., and Crystal Entertainment & Filmworks II, Inc. (“Crystal”), argued that they were the successors of Pantera and that when Pantera dissolved in the 1990s, Pantera assigned its purported rights to the Exposé mark to Crystal; however, Crystal could not produce a copy of that assignment agreement. Other written agreements with the group members, though, did indicate that Pantera and Crystal had conceived of, owned and controlled the Exposé mark and that the group members acknowledged that they needed a license to use the mark when they wanted to resume performing as Exposé. In fact, a trademark and licensing agreement executed in 2006 between Crystal and Jurado, Curless and Bruno acknowledged those facts (the “2006 Agreement”). Besides licensing the Exposé mark, the 2006 Agreement also gave Jurado, Curless and Bruno the discretion to decide when Moneymaker would perform as a replacement in the group.

Importantly, neither Pantera nor Crystal had ever registered the Exposé mark. Crystal testified that Pantera had hired an attorney to register the mark in the 1980s, but the attorney had informed it that Exposé “was too common a word to protect.” Although a recording studio owned by one of the Crystal shareholders later applied to register the Exposé mark for clothing and for “entertainment services, namely live performances by a vocal and instrumental group,” that application went abandoned in 1989.

In 2007, the relationship between the group members and Crystal became strained due to Crystal’s failure to promote or schedule any performances for the group. Jurado, Curless and Bruno then sought to register Exposé as a service mark with the U.S. Trademark Office for use in connection with “live musical performances” through their own company, Walking Distance Entertainment, LLC (another defendant in the present litigation). In the summer of 2007, Jurado, Curless and Bruno stopped paying licensing fees to Crystal under the 2006 Agreement, and instead deposited the fees with an escrow agent and continued performing on tour until 2009.

Crystal filed this action against Jurado, Curless, Bruno and other related parties for breach of the 2006 Agreement, and violations of the Lanham Act, the Anti-Cybersquatting Consumer Protection Act and the Florida Deceptive and Unfair Trade Practices Act. After holding a three-day bench trial, the district court found that Crystal had failed to prove that it owned the Exposé mark or that use of the mark by the group members was likely to cause consumer confusion. Jurado, Curless and Bruno were found to be the common-law owners of the Exposé mark because, among other reasons, they had used the mark publicly since 1986, created the goodwill associated with the mark, and were essentially “the product that is denoted by the mark Exposé.” *Id.* at \*24. The court noted that Crystal had not exercised control over the group members, had no discretion over when Moneymaker would perform as a replacement in the group and had not taken an active role in scheduling the group’s performances. Indeed, Crystal’s involvement with the Exposé group had been limited to royalty collection, and the contractual agreements Crystal had relied upon “were not sufficiently public to identify Crystal as the source of the Exposé albums and performances.” *Id.* at \*12. On the basis of this ruling, the district court allowed the group members’ application for federal registration of the Exposé mark to proceed and denied Crystal’s claims for trademark infringement, cybersquatting and unfair practices. The court did find, however, that Jurado, Curless and Bruno had breached the 2006 Agreement, and ordered them to pay Crystal ten percent of the gross income from any live appearances and merchandising.