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THE NETWORK NETWORK
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11	_____)	Case No. CV98-1349-NM (ANx)
12	Plaintiff,)	
13	vs.)	REPLY TO DEFENDANT'S OPPOSITION
14	CBS, Inc. and Does 1 to 10,)	TO PLAINTIFF'S MOTION FOR
15	Defendants.)	SUMMARY JUDGMENT
16)	
17)	Date: August 16, 1999
18)	Time: 10:00 a.m.
19)	Place: Courtroom 11
20)	312 North Spring Street
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1 I. INTRODUCTION.

2 NASHVILLE's opposition to NETWORK's motion for summary judgment clearly demon-
3 strates that NETWORK is entitled to summary judgment on its declaratory relief action. With respect to
4 NASHVILLE's contention that NETWORK has diluted its trademark, NASHVILLE has failed to provide
5 evidence from which a reasonable trier of fact could conclude that it had a famous trademark in 1989.
6 Indeed, NASHVILLE has not even attempted to do so, and has not contended that it had a famous
7 trademark in 1989. If the Court concludes, as it should do, that dilution law requires that NASHVILLE's
8 mark had been famous in 1989, then NETWORK is entitled to judgment as a matter of law.¹

9 With respect to NETWORK's infringement claim, it fails as a matter of law because
10 NETWORK's and NASHVILLE's services are not even arguably related. Ninth Circuit law clearly requires
11 such relatedness as an absolute pre-condition to an infringement claim.²

12 Finally, NASHVILLE has not even attempted to explain, much less to justify, its lengthy and
13 intentional delay in objecting to NETWORK's registration and use of tnn.com, to NETWORK's substantial
14 prejudice.

15
16 II. A FEW BASIC TENANTS OF TRADEMARK LAW.

17 Incredibly, NASHVILLE continues to insist that NETWORK has been using "its" mark:
18

19 ¹ Plaintiff contends that defendant has not even raised a triable issue of fact regarding whether
20 its trademark was famous in 1994. However, that issue, which is extensively briefed in plaintiff's
21 response to defendant's summary judgment motion, need not be addressed if the Court agrees with
the plaintiff on the applicable law.

22 ² Again, even if plaintiff's goods and services could be considered related, defendant has
23 completely failed to raise any triable issue of fact concerning the likelihood of confusion. De-
24 fendant has not established any possibility (much less likelihood) of initial interest confusion,
25 because plaintiff's and defendant's services are not "similar enough to [NASHVILLE's] that a
26 sizable number of consumers who were originally looking for [NASHVILLE's] product will simply
27 decide to utilize [NETWORK's] offerings instead." *Brookfield Communications, Inc. v. West Coast*
28 *Entertainment Corporation*, 174 F.3d 1036, 1062 (9th Cir. 1999). Defendant has not established
any possibility (much less likelihood) of typical confusion, because no one could reasonably believe
that plaintiff is, or is associated with, a country music and country living cable company.

1 ``Network is not a `trademark holder.' Network has never applied for nor received a trademark."
2 Trademarks are not established or created by applying for or receiving registration of the same.
3 ``Trademark ownership is not acquired by federal or state registration. Ownership rights flow only from
4 prior use, either actual or constructive." 4 McCarthy on Trademarks § 16:18 (West, 1999). ``At
5 common law, ownership of trademark or trade dress rights in the United States is obtained by actual use
6 of a symbol to identify the goods or services of one seller and distinguish them from those offered by
7 others." *Id.* § 16:1.

8 NETWORK has clearly been using the TNN mark as a symbol to identify its services for at
9 least eleven years. As such, it clearly has a trademark, and is using its own trademark, not NASHVILLE's.
10 Of course, NASHVILLE may still try to demonstrate that NETWORK's use of NETWORK's mark infringes
11 or dilutes its own mark. What it may not legally do, however, is establish infringement, dilution or the
12 exclusive right to the use of TNN by virtue of its registration of that mark.

13
14 III. BURDEN OF ESTABLISHING A TRIABLE ISSUE OF FACT.

15 NASHVILLE's contention that a moving party cannot meet its burden of showing the
16 absence of a material issue of fact without taking depositions is not only incorrect, but the contention is
17 not even close to being supported by the cases which NASHVILLE cites. *Morris v. Parke, Davis & Co.*, 667
18 F. Supp 1332, 1344-1345 (C.D. Cal. 1987) holds only ``It is not enough to move for summary judgment
19 without supporting the motion in any way or with a conclusionary assertion that the plaintiff has no
20 evidence to prove his case." *Ditkof v. Owens - Illinois, Inc.*, 114 F.R.D. 104 (E.D. Mich. 1987) is
21 illustrative of the proper rule. In that case, a wrongful death action, the defendants moved for summary
22 judgment on the ground that the plaintiff had no evidence linking a particular asbestos product or
23 manufacturer with the decedent's injuries. *Id.* at 106. The plaintiff had identified a witness who would
24 testify on that issue and defendants had failed to depose him. The witness in that case was a third-party
25 witness with critical testimony which could not be ascertained through interrogatories or requests to
26 produce. The court found that the moving party had not met its burden of demonstrating the absence of
27
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1 a triable issue of fact in that particular situation because it had not deposed that critical third-party
2 witness.³ In contrast, NASHVILLE has not identified any witnesses who possess critical information
3 bearing on this motion who have not been deposed, much less any critical witnesses whose information
4 was incapable of being ascertained through the extensive interrogatories and document productions
5 which occurred in this case.

6
7 IV. TIME FOR TESTING FAMOUSNESS.

8 As it did in its summary judgment motion, NASHVILLE has failed to support its contention
9 that the famousness of its mark should be tested in 1994 with a single authority. As established in
10 NETWORK's response to NASHVILLE's summary judgment motion, the statutory language, legislative
11 history, trademark authorities, and caselaw all are clearly to the contrary. NASHVILLE's attempt to tease
12 support for its position from *Teletech Customer Care Management v. Tele-Tech Company, Inc.*, 977 F.
13 Supp. 1407 (C.D. Ca. 1997) is unavailing. That case can be made to support NASHVILLE only by
14 mischaracterizing the date of the defendant's first use of the mark in question (which was "tele-tech,"
15 not "teletech"). In fact, the case is entirely consistent with NETWORK's position, in that famousness was
16 tested at the time that the defendant first used the "tele-tech" mark.

17 Indeed, even a case relied upon by NASHVILLE, *Johnson Publishing Company, Inc. v.*
18 *Willitts Design International*, 1998 U.S. Dist. Lexis 9264 (N.D. Ill. 1998)⁴ holds that in order to prevail in
19 a dilution claim, a complaining party must show that "its mark was famous prior to defendant's first use
20 of defendant's mark."

21 There appears to be only one reason why defendant would ask this Court to ignore the
22

23 ³ Neither the *Morris* nor the *Ditkof* court even remotely ruled that a moving party must
24 always depose all witnesses who possess relevant information.

25 ⁴ NASHVILLE relies upon this case for the admittedly correct proposition that some third-
26 party use will not always defeat a claim of fame. It is only required that the "the mark must be in
27 **substantially exclusive use.**" 1987 Trademark Review Commission Report, 77 Trademark Rep.
28 375, 461 (1987).

1 statutory language, legislative history, trademark authorities, and the unanimous holding of the cases.
2 That is because, if famousness is tested at the time of NETWORK's first use of its mark, then NASHVILLE
3 does not even arguably have a claim for trademark infringement.
4

5 V. MISCELLANEOUS OTHER CONTENTIONS CONCERNING DILUTION.

6 In response to NETWORK's contention that fifteen years has generally been held an
7 insufficient time for a mark to be famous, NASHVILLE counters with two cases. The first, *Teletech*
8 *Customer Care Management v. Tele-Tech Company, Inc., supra*, held that a mark used for fifteen years
9 was most likely famous. Defendant, however, fails to demonstrate any facts from which a trier of fact
10 could conclude that there was any promotion of the TNN mark to the general public before 1988.⁵ That
11 leaves only one year to become famous if 1989 is the testing year, and six years in which to become
12 famous if 1994 is the testing year.

13 Defendant does cite a two-page-long case which can be read to support the proposition
14 that a mark can become famous in two years. *Archdiocese of St. Louis v. Internet Entertainment Group,*
15 *Inc.* 34 F. Supp. 2d 1145 (E.D. Mo. 1999). That case has been withdrawn from the official reporter at
16 the request of the issuing court. In any event, it is impossible from the case to determine whether the
17 court based its decision on the admittedly very, very long-term use of "Papal" by the Roman Catholic
18 Church. Whatever the reason, the issuing court no longer has any confidence in its opinion.

19 NASHVILLE complains that a small percentage of the instances of third-party use of the
20 TNN mark involves foreign firms. However, NASHVILLE supported its contention that its mark was
21 famous by pointing out that it has been registered in some foreign countries. Arguably nothing occurring
22

23 ⁵ NASHVILLE claims that it did too advertise under the TNN mark before 1988, because its
24 issuance of press releases which used TNN as an abbreviation for The Nashville Network
25 constitutes "advertisement." Without getting into a definitional argument with the defendant, it is
26 enough to say that press releases are meant for the press, not for the general public, and that
27 NASHVILLE has failed to submit facts from which a reasonable trier of fact could conclude that its
28 use of the TNN abbreviation in press releases resulted in widespread association of The Nashville
Network with a TNN mark, much less fame.

1 outside of the United States is relevant to fame, but NETWORK certainly has the right to rely upon third-
2 party use outside the United States if NASHVILLE uses registration in some countries outside the United
3 States to demonstrate fame. In any event, the existence of a few foreign firms among the scores of United
4 States firms which use TNN as a mark⁶ hardly weakens the NETWORK's case.

5 NASHVILLE also claims that proof of third-party use is irrelevant unless the context or
6 extent to which the various names have been used are proved. For that proposition, NASHVILLE cites
7 infringement cases,⁷ not dilution cases. In the infringement context, the context and extent of third-
8 party use are extremely relevant to whether the public would likely be confused by the alleged infringer's
9 use of the mark. That is not the case in a dilution case, where to be famous "the mark must be in
10 substantially exclusive use." 1987 Trademark Review Commission Report, *supra*. NETWORK has shown
11 beyond question that NASHVILLE's mark has not been in substantially exclusive use.

12 NASHVILLE makes the same error in contending that lack of an attempt to police com-
13 peting uses is irrelevant to a determination of whether a mark is famous. NASHVILLE cites *Playboy*
14 *Enterprises, Inc. v. Chuckleberry Publishing, Inc.*, 486 F. Supp. 414 (S.D.N.Y. 1980) for this proposition.
15 However, that case was an infringement case. Since use of the mark on unrelated goods is unlikely to
16 confuse the public, the lack of an attempt to preclude such use is irrelevant to whether a use with respect
17

18 ⁶ Contrary to the defendant's unsupported assertion, the plaintiff did establish **current**
19 **commercial use** of TNN by many different companies in the United States through admissible evi-
20 dence, and even provided copies to the court of printouts from Web sites showing such current
21 commercial use of TNN marks. Defendant's complaint that some of these companies do not use the
22 letters TNN in their names is difficult to fathom. If those companies are using a TNN mark, that is
23 clearly third-party use of the mark, regardless of the name of the company using the mark. Indeed,
24 neither plaintiff nor defendant has "TNN" in its company name.

25 ⁷ NASHVILLE cites *Tiffany & Co. v. Classic Motor Carriages, Inc.*, 10 U.S.P.Q. 2d 1835,
26 1840 (2d Cir. 1976) as if it were a dilution case, because the court made reference to the Tiffany
27 mark's being "famous." However, the court actually found that "TIFFANY" is a famous mark **for**
28 **such items as jewelry and silver, and for retail store services for a variety of items** such as
jewelry, silver, crystal, china, gift items and stationery. We reached this determination
notwithstanding the evidence of the adoption of 'TIFFANY' in the legal or trade names of
numerous third parties." Obviously, the court was not dealing with a claim that the mark was
famous within the meaning of the dilution statutes.

1 to related goods is likely to confuse the public. Accordingly, in an infringement context, all that the
2 complaining party must do is "protect a definable area of primary importance." However, in a dilution
3 context, the complaining party is contending that all other uses of the mark are improper. Furthermore,
4 the very existence of significant other use (even, or maybe especially, with respect to unrelated goods or
5 services) makes it unlikely that the public will associate a mark exclusively with a single source.
6

7 VI. DILUTION UNDER CALIFORNIA LAW.

8 An interesting aspect of NASHVILLE's California dilution argument is the fact that NASH-
9 VILLE simply assumes that California law is the same as Federal law when it suits its purpose, but argues
10 that California law materially differs from Federal law when it suits its purpose. For example,
11 NASHVILLE relies upon *Panavision International L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998) for the
12 proposition (inaccurate even as a statement of Federal law) that use of a famous registered mark as a
13 domain name on the Internet is per-se dilution. *Panavision*, however, was decided exclusively under
14 Federal dilution law. NASHVILLE has not even attempted to demonstrate that California law is the same.
15

16 When it comes to the time at which fame⁸ is tested, NASHVILLE asks this Court to assume
17 that California law would oust a legitimate user of a trademark if the mark of another user subsequently
18 acquires fame. NASHVILLE cites no authority for this proposition, and there is none. As discussed in
19 NETWORK's opening brief, Ninth Circuit cases hold that California dilution law "is subject to the same
20 analysis" as Federal dilution law. *Id.* at 1324. Furthermore, in *Accuride*, the Court concluded that the
21 "parties' concurrent use of [the same] term as a trademark" was sufficient to defeat a claim under
22 California dilution law. *Supra* at 1536.
23

24 NASHVILLE is simply wrong when it argues that NETWORK is requesting that the Court

25 ⁸ NASHVILLE claims that no court has held that fame is required under California dilution
26 law. To the contrary, the Ninth Circuit has held that Section 14330 applies only to "strong, well-
27 recognized marks . . . as exemplified by such famous names as 'Tiffany,' 'Polaroid,' 'Rolls Royce'
28 and 'Kodak.'" *Accuride International, Inc v. Accuride Corporation*, 871 F.2d 1531, 1539 (9th Cir.
1989).

1 read something into the California statute. California Business and Professions Code § 14330 provides
2 only that the likelihood of injury to business reputation or of dilution of the distinctive quality of a mark
3 shall be grounds for injunctive relief notwithstanding the absence of competition between the parties or
4 of confusion as to the source of goods. The Code section does not purport to cover anything other than
5 the issue expressly addressed: the lack of the need to show competition or confusion. Dilution under
6 California law is not a statutory cause of action, but "an offshoot of the equitable considerations
7 inherent in the concept of unfair competition." *Carter-Wallace, Inc. v. Proctor & Gamble, Inc.*, 434 F.2d
8 794, 803 (9th Cir. 1970). Federal law recognizes "the fair and equitable principle that one should not
9 be liable for dilution by the use of a mark which was legal when first used." 4 McCarthy, *supra* at
10 § 24:96. NASHVILLE provides this Court with neither authority nor reasoning supporting its contention
11 that California would view the equitable considerations any differently.

12 NETWORK cites part of a paragraph from *Academy of Motion Pictures Arts and Sciences v.*
13 *Creative House Promotions, Inc.*, 944 F. 2d 1146, 1457 (9th Cir. 1991) for the proposition that the only
14 elements of the cause of action under California law are that business reputation is likely to be injured or
15 that the distinctive quality of the mark is likely to be diluted. A reading of the entire paragraph
16 demonstrates that the Court was not discussing the elements of the cause of action of dilution at all, but
17 only what was required to demonstrate damages or injury. If NASHVILLE's reading were correct, then
18 the complaining party would not need to show that its mark was strong and well-recognized, which
19 NASHVILLE concedes is a required element of dilution under California law.

20
21 VII. NASHVILLE'S AND NETWORK'S SERVICES ARE NOT RELATED.

22 Contrary to NASHVILLE's contention, NETWORK does not propose that this Court use a
23 "same descriptive properties" test for determining whether services are related, but rather has proposed
24 that the Court utilize the test set forth in *AMF Incorporated v. Sleekcraft Boats*, 599 F.2d 341, 348, N.10
25 (9th Cir. 1979): "Related goods are those products which would be reasonably thought by the buying
26 public to come from the same source if sold under the same mark."

1 Although NASHVILLE purports to advance a similar test, in fact it argues that the services
2 need not be related at all. NASHVILLE cites to a number of cases which allegedly found infringement
3 where the goods and services were entirely unrelated. Many of these cases are dilution or registration
4 cases, which clearly call for application of different principles than does infringement law. A number of
5 other cases relate to goods or services which in fact appear related under the Ninth Circuit test (such as
6 flashlights and locks; communication satellites and computers; vegetable juice and vitamin tablets). None
7 of the cases emanate from the Ninth Circuit nor purport to apply Ninth Circuit law.

8 NASHVILLE then suggests two reasons why its services might be considered related to the
9 services provided by NETWORK. The first is the fact that NASHVILLE licenses the TNN mark on a
10 computer hunting game called TNN Outdoor Pro Hunter. NASHVILLE does not inform the Court when
11 such licensing occurred, and does not even attempt to demonstrate that the buying public has come to
12 associate NASHVILLE with computer-related products as a result of this single, isolated instance of the
13 TNN mark appearing on a computer game.⁹ In fact, the press release attached hereto demonstrates that
14 the game in question began to be sold in November 1998.¹⁰ Assuming that NETWORK's and
15 NASHVILLE's products could be considered related as a result of the sale of this game, the fact that
16 NASHVILLE has recently invaded the area in which NETWORK's mark is used and recognized, suggests
17 that NASHVILLE may be guilty of infringing on NETWORK's mark, not the other way around.

18 A very similar inventive argument concerning relatedness was recently rejected by Judge
19 Kelleher. *Walker v. Mattel, Inc.*, 31 F. Supp. 2d 751 (C.D. Cal. 1998) concerned an allegation that the
20 "Pearl Beach" mark of a commercial illustrator was infringed by "Pearl Beach Barbie." The plaintiff
21 claimed that the goods and services were related because "the themes and concepts communicated
22

23 ⁹ In fact, common sense would suggest that the TNN mark is on the game because of
24 NASHVILLE's association with hunting, not because of its association with computer gaming.

25 ¹⁰ See *Mattel v. MCA Records, Inc.*, 28 F. Supp. 2d 1120, 1147 (C.D. Cal. 1998) holding that a
26 product of the complaining party which was first produced after the alleged infringing party's
27 product went on the market was not relevant to a determination of whether the parties' products are
28 related.

1 through Mattel's product packaging, produced through the efforts of commercial artists and illustrators
2 is an essential component of its doll products." In rejecting that this made the goods and services related,
3 Judge Kelleher pointed out that "this argument has no logical stopping point . . . Plaintiff's argument
4 distorts the test for relatedness beyond all reasonable bounds and will not be adopted by this Court." *Id.*
5 at 759. By focusing on the sale of a single computer game, not even made by NASHVILLE, which went
6 on sale after this suit was filed, to the exclusion of its real business, NASHVILLE likewise "distorts the test
7 for relatedness beyond all reasonable bounds."

8 More important, if the product which is alleged to be related is the one computer game on
9 which NASHVILLE's TNN mark appears, then the eight *Sleekcraft* factors must be applied to *that* alleged
10 infringing use. In fact, after claiming that the parties' products are related by referring to the computer
11 game, NASHVILLE proceeds to ignore the game completely and discuss the *Sleekcraft* factors as if the the
12 alleged infringing use instead related to its country music and living cable programming. For example,
13 the alleged actual confusion¹¹ has nothing at all to do with any confusion as to who licensed the TNN
14 mark for use on a computer game, but individuals who mistakenly accessed NETWORK's Internet site
15 while looking for information relating to NASHVILLE's cable programming.

16 Second, NASHVILLE contends that the services are related because "consumers expect to
17 find a well-known company by typing its trademark as a domain name," citing the *Panavision* case, *supra*
18 *at* 1327. *Panavision* was a dilution case. The court did not discuss relatedness of goods or services, and
19 had no occasion to do so. In fact, the specific contention made by NASHVILLE has already been rejected
20 by another Court: "The fact that the parties both advertise their respective services on the Internet may
21 be a factor tending to show confusion, but it does not make the goods related. The Internet is a
22 communications medium. It is not itself a product or a service." *Bally Total Fitness v. Faber*, 29 F. Supp.
23 2d 1161, 1163 (C.D. Cal. 1998).¹²

24 _____
25 ¹¹ "[B]efuddlement is part of the human condition. No matter how clear the markings, no
26 matter how different the names, no matter how distinctive the bottles, some confusion is
inevitable." *Reed-Union v. Trurtle Wax, Inc.*, 77 F.3d 909, 912 (7th Cir. 1996).

27 ¹² Contrary to NASHVILLE'S characterization, the *Bally* Court did not determine whether
28

1 At heart, NASHVILLE's argument is that the relatedness factor has no independent meaning
2 at all. But as shown in NETWORK's opening brief, and in its opposition to NETWORK's motion for
3 summary judgment, the Ninth Circuit and district courts cited therein have in fact treated "relatedness"
4 as a separate test to be applied before determining whether or not the *Sleekcraft* factors should be
5 considered. In addition to the cases already cited, the Ninth Circuit case of *Murray v. Cable Nat'l*
6 *Broadcasting Co.*, 86 F.3d 858 (9th Cir. 1996) is illustrative.

7 In *Murray*, the Ninth Circuit considered the dismissal on the pleadings of a trademark
8 infringement action. The services at issue were " 'man-on-the-street' consumer surveys" and "talk-
9 show television programming to cable television viewers." The court held that as a matter of law these
10 services were unrelated, and that the lower court properly dismissed the claim. *Id.* at 861.¹³ In *J.B.*
11 *Williams Co. v. Le ContEe Cosmetics, Inc.*, 523 F.2d 187, 190-93 (9th Cir. 1975), the court held that
12 where nature of the parties' services is undisputed, relatedness is a matter of law. Here, NASHVILLE has
13 agreed that there is no material issue of fact concerning the nature of NETWORK's business (see
14 NASHVILLE's Statement of Genuine Issues #3 & #4, both undisputed facts) nor of NASHVILLE's business
15 (see NASHVILLE's Statement of Genuine Issues #10, likewise undisputed).

16
17
18
19 (..continued)

20 "Bally Sucks" was related to the Bally health club, but rather compared Web page design with
21 management of health clubs and determined that they were unrelated: "The Court finds that the
22 goods here are not related. Web page design is a service based on computer literacy and design
23 skills. This service is far removed from the business of managing health clubs." *Id.* Nor does this
24 case concern a situation in which a party has appropriated another's trademark as a domain name.
NETWORK utilizes its own mark, not NASHVILLE'S. *See, e.g., Avery Dennison Corp. v.*
Sumpton, 999 F. Supp. 1337 (C.D. Cal. 1998) ("This is not a case involving a dispute over a
domain name between persons or entities that have previously used the name to identify themselves
or their products").

25 ¹³ The plaintiff in that case conceded that the parties did not even share customers, although it
26 is almost certain that some of the plaintiff's customers were, by pure coincidence, viewers of the
27 CNBC cable programming. *Id.*

1 VIII. LACHES.

2 NETWORK contests NASHVILLE's contention that NASHVILLE's delay in objecting to the
3 registration of tnn.com should be measured from March 1995¹⁴ rather than January 1994. NASHVILLE
4 argues that NETWORK's registration of the tnn.com domain name amounted to a substantial and per-se
5 dilution of its trademark. The fact that NASHVILLE was so uninterested in this substantial and per-se
6 dilution that NASHVILLE did not even bother to check on the registration hardly excuses their delay in
7 making an objection.

8 Whether one considers the delay four years, or almost three years, none of the cases cited
9 by the defendant stand for the proposition that a delay of this length cannot support a finding of laches.
10 Rather, the cases emphasize the existence of prejudice as the most important factor. Furthermore, the
11 cases cited by NASHVILLE are, not surprisingly, all infringement cases. With respect to infringement, the
12 public policy of avoiding deception of consumers must be considered. No such consideration applies
13 with respect to a dilution claim. *McCarthy, supra at 24:98.*

14 The evidence of prejudice to NETWORK arising from the delay is overwhelming and sub-
15 stantial. The evidence speaks for itself, so with one exception, NETWORK will not comment on
16 NASHVILLE's unwarranted dismissal of that evidence. NETWORK must object, however, to one blatant
17 misrepresentation by NASHVILLE's attorneys, who claim that all of NETWORK's manuals were printed
18 after NETWORK was put on notice of CBS's objection to its use of tnn.com. Guy Hermann testified only
19 that "these 1,899,368 printed pieces" were printed after NETWORK received NASHVILLE's objection. It
20 is not a coincidence that NASHVILLE does not provide the Court anything from which it can determine
21 what "these 1,899,368 printed pieces" refers to, or in any way associates, the testimony with the printing
22

23 ¹⁴ NASHVILLE's contention that the delay might properly be measured from December 1996
24 fails for two separate reasons. First, Guy Hermann's recollection is that he learned of the existence
25 of NASHVILLE and its use of a TNN mark in 1995. DGH ¶ 7. Second, NETWORK relied upon
26 the absence of any objection to its registration and use of tnn.com by **anyone**. No court has ever
27 held it relevant whether the party claiming laches was specifically aware of the party who belatedly
28 made an objection. Furthermore, to the extent that NETWORK was unaware of NASHVILLE, that
is specifically because NASHVILLE did not make its objections known until December 1997.

1 of "all of Network's manuals." "These 1,899,368 printed pieces" refers to a response to an interrogatory
2 (in exhibit form) which requested information concerning the number of documents printed by
3 NETWORK after receipt of CBS's objection letter. See attached deposition extract and exhibit.
4 NASHVILLE's counsel is well aware that "these 1,899,368 printed pieces" does not refer to "all of
5 Network's manuals" at all.

6
7 IX. CONCLUSION.

8 NASHVILLE has not raised any issues of fact which would preclude this Court from deter-
9 mining that Plaintiff is entitled to judgment as a matter of law. If ever there were a case in which
10 summary judgment is appropriate, this is it.

11
12
13 Respectfully submitted,

14
15 THE LAW OFFICES OF SHARDLOW & VICK
16 ATTORNEYS FOR PLAINTIFF AND
17 COUNTERDEFENDANT

18 DATED: August 2, 1999

19 By: _____
20 Thomas E. Shardlow
21
22
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28

1 PROOF OF SERVICE BY MESSENGER

2
3
4 I, Carol Jarvis, am a resident of the County of Los Angeles, State of California; I am over the
5 age of 18 years and not a party to the within action. My business address is: The Law Offices of
6 Shardlow & Vick, 790 East Colorado Boulevard, 9th Floor, Pasadena, California 91101.

7
8 On August 2, 1999 I served:

9
10 Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment

11
12 on the interested parties in this action by delivering a true copy thereof to Best Plus Messenger Service
13 with instructions to deliver on the date set forth above said document as follows:

14
15 Kelli L. Sager, Esq.
16 Randall Boese, Esq.
17 Davis Wright Tremaine LLP
18 1000 Wilshire Boulevard, Suite 600
19 Los Angeles, California 90017-2463

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court
22 at whose direction the service was made.

23 Executed on August 2, 1999.

24
25 _____
26 Carol Jarvis