

STATEMENT OF

JON BAUMAN
FORMERLY OF THE GROUP "SHA NA NA"

BEFORE THE

SUBCOMMITTEE ON COURTS & INTELLECTUAL
PROPERTY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 1565, THE
"TRADEMARK AMENDMENTS ACT OF 1999"

MAY 5, 1999

Mr. Chairman, Ranking Member Berman, members of the Subcommittee, distinguished fellow panelists:

Thank you for the opportunity to speak to you today. I don't intend to address a particular piece of legislation, but rather to discuss a dire situation facing many of our most treasured musical pioneers-- the legendary performers who created the uniquely American art form known as Rock 'n' Roll.

These pioneers, many of them members of the Rock 'n' Roll Hall of Fame, are being systematically stripped of their identity, their ability to compete in a fair marketplace, the credit for their life's work and often their life's savings because they are not being afforded adequate protection for the names which they made famous.

For instance, Carl Gardner, lead singer of The Coasters, who holds registered Trademark No. 2,146,911 and has performed uninterrupted under the name The Coasters for almost 45 years, played only 19 concert dates last year (not including a remarkable pro bono performance of "Charlie Brown" featuring Chairman Coble). By contrast with Carl Gardner's 19 concerts, a group of impostors from New York City, according to our conservative estimate, played over 250 dates calling themselves The Coasters last year-- defrauding the public, devaluing the market, violating Carl Gardner's trademark and draining his financial resources in efforts to stop them while the impostor groups suffered no real consequences.

The Lanham Act of 1946 is unrealistic in addressing this problem and has insufficient teeth. Unscrupulous individuals have discovered that this kind of crime really does pay. Even a meritless claim to a famous name can tie up the real artists in litigation for years defending their own identities. The most troublesome promoter of impostor groups has been known to boast that he had no objection to litigation because by the time a given case was resolved he'd have made millions of dollars in concert fees!

Frequently the real artists, already fiscal victims of managers and record companies in the so-called good old days, don't have sufficient resources to protect themselves legally and, like Carl Gardner, have great difficulty finding a lawyer without those resources. By contrast, the ruthless promoters regard litigation as just another cost of doing business. Remember, you don't have to pay impostors very much to perform, so you can undercut the real artists' price and still have plenty of profit left to earmark for dragging out the legal process, thus buying more time to book more shows to generate more money.

Herb Reed of The Platters-- the only surviving functioning member of the group which sang "My Prayer" and "Only You"-- has spent over a half-million dollars to establish his trademark rights. But even his clear ownership of the mark hasn't stopped the impostors. He'll have to spend hundreds of thousands more to enforce his mark-- finding attorneys to litigate against shows going on in all 50 states and many foreign countries. Herb Reed doesn't have the deep pockets of an IBM or a Coca-Cola. Artists like Herb need a real deterrent-- a proactive, not retroactive, means of intervention to discourage the phony shows before they happen. Treble damages and mandatory attorney's fees, such as have been legislated in the case of violations of the Olympic Committee symbol, might make our adversaries think twice and give people like Herb Reed the wherewithal to hire an attorney to seek injunctive relief and obtain damages. We ask you to help us devise the most powerful means possible to thwart the people Herb Reed ironically calls "The Great Pretenders", after the Platters' most famous record.

There is an obvious consumer fraud and false advertising aspect to this problem as well. We recognize that this may fall outside the aegis of this Subcommittee, but, while respecting the issue of jurisdiction, we would welcome any wise counsel you might provide us.

For instance, from a consumer point of view, here's a case that hits close to home. Just last week, a wonderful charity here in Washington called Best Friends was victimized in its annual fundraiser. Washington luminaries including Colin Powell and Tim Russert were defrauded to the tune of at least \$150 a plate to see a group of Platters with no Platters in it, Drifters-less Drifters and Marvelettes sans Marvelettes. There can be no reasonable expectation that the general public, including the Best Friends board members and attendees, would recognize this deception. You see, impostor groups rely on the fact that the names and the songs of these groups are famous, but the names and faces of the individuals are not. As in many shows we've seen, a generous audience may have given these impostors a standing ovation the other night-- not necessarily for their performance that evening, but in recognition of a body of work over a lifetime-- someone else's work over someone else's lifetime! I've watched fans come to shows carrying Coasters albums they've cherished for 40 years, just to unknowingly have them defiled by the autograph of a phony. I've heard impostors say "Here's one we recorded back in '58" when they weren't even born in '58!

Think about this-- Coasters, Drifters and Platters without any Coasters, Drifters or Platters performed at the '92 and '96 Inaugural Balls-- yes, this is equal opportunity bi-partisan consumer fraud! Recently, a so-called Coasters-Drifters-Platters package played Las Vegas for weeks while simultaneously the same package played Atlantic City. I've personally seen the same performer be a Drifter one night and change his spangly suit to become a Coaster the next. Surely, the American consumer deserves better than this.

These multiple shows in different cities on the same night bring us to yet another subject which may be outside this committee's jurisdiction-- but, again we would greatly value your input. This is the issue of franchising. In our unique live performance industry, the people are the product. Whereas it is positive for the public for most businesses which produce tangible products to be able to franchise, it clearly runs contrary to the interests of the public for multiple Coasters or Platters full of impostors to be performing in different cities at the same time. Generally, the right to franchise a group has been rarely exercised by an artist who is also the trademark holder. The artist's dignity and unwillingness to undercut his own presentation usually controls this. But when third parties with only a financial and impersonal interest lay claim to a mark-- even if the claim is spurious-- they frequently also insist on exercising their so-called right to franchise. Hence the situation in which we counted 17 impostor Platters groups performing coast to coast on the same night!

My friend Chuck Blasko will address our final area of concern-- that in some cases, legitimate original or recording members of famous groups have been denied the right to even refer to themselves as former members of that group. Chuck will speak to the absurdity of these attempts to rewrite history.

For my part, let me conclude by restating that we need better remedies to prevent impostor groups from trading off the life's work of the pioneer groups of rock 'n' roll. Can you imagine what it must feel like to have impostors steal one's identity, undercut one's asking price, appropriate one's life's work, take bows to one's applause? Early rock 'n' roll, the music that spoke of youthful energy and longing, is still beloved by young people today. And aren't we thankful these days for any positive influence on young people we can get? Aren't we thankful for music that spans generations, that families can share? Shouldn't we take care of the national treasures that gave us this gift?

Though often still teenagers at heart, the pioneers of Rock 'n' Roll aren't kids any more. While there's still time, please help them regain their livelihood and their precious dignity.

Thank you.

A handwritten signature in black ink, appearing to read "Jon Bauman". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

Jon Bauman