

Court file no.

94-CQ-52699

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

RANDY BACHMAN

PLAINTIFF

- and -

BTO, THE MUSIC GROUP U.S./ CAN., ROBIN KENDALL BACHMAN,
CHARLES FREDERICK TURNER, BLAIR M. THORNTON,
RANDY MURRAY, JOHN DOE and ROBERT TUSTIN

DEFENDANTS

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

John Doe
PLAINTIFF
Aug 16 94
A
PROCESSED
ONLINE

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 16 1994

Issued By: J. J. Jhandradat
Local Registrar

TO:
The Music Group U.S./Can.
1002 Danforth Avenue
Toronto, Ontario
M4J 5C7

ONTARIO COURT (GENERAL DIVISION)
COUR DE L'ONTARIO (DIVISION GÉNÉRALE)
145 QUEEN ST., WEST
TORONTO, ONTARIO
M5H 2N9

AND TO:
BTO
c/o 3831-156th Street
Surrey, B.C.
V3S 4N7

AND TO:
Robin Kendall Bachman
3831-156th Street
Surrey, B.C.
V3S 4N7

AND TO:
Charles Frederick Turner
106 Aldershot
Winnipeg, Manitoba
R3P 0E1

AND TO:
Blair M. Thornton
3530 West 2nd Avenue
Vancouver, B.C.
V6R 1J4

AND TO:
Robert Tustin
1002 Danforth Avenue
Toronto, Ontario
M4J 5CT

AND TO:
Randy Murray
1373 Jarvis Street
Prince George, B.C.
V2M 4J3

AND TO:
John Doe

Address of court office:
145 Queen Street West
Toronto, Ontario

CLAIM

1. The Plaintiff claims:

- (i) damages against all of the defendants for passing off and appropriation of personality in the amount of \$2,000,000.00;
- (ii) damages against the defendant, Robin Bachman, for injurious falsehood, libel and slander in the amount of \$500,000.00;
- (iii) special damages against the defendant, Robin Bachman, in the amount of \$250,000.00;
- (iv) punitive, exemplary and aggravated damages in the amount of \$250,000.00;
- (v) an interlocutory and permanent injunction restraining the defendants from use or exploitation of the name "Randy Bachman", "Randy Bauchman", or any likeness thereof for any touring, marketing or promotional purpose;
- (vi) an interlocutory and permanent injunction restraining the defendants from use or exploitation of the name "Randy", standing alone in conjunction with BTO for any touring, marketing or promotional purpose;
- (vii) an accounting with respect to all profits earned from touring dates where the name "Randy Bauchman", "Randy" or any likeness thereof was used;
- (viii) pre-judgment and post-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c.43, as amended;
- (ix) service of the Statement of Claim outside of Ontario in accordance with Rule 17.02 of the Rules of Civil Procedure;
- (x) his costs of this action on a solicitor and client basis; and
- (xi) such further and other relief as this Honourable Court deems just.

2. The Plaintiff, Randy Bachman (hereinafter referred to as "Randy Bachman"), is an individual resident in the Municipality of Surrey in the Province of British Columbia.

3. The Defendant, BTO, is a Canadian musical recording group.

4. The Defendant, The Music Group U.S./Can. (hereinafter referred to as "The Company"), is a corporation incorporated pursuant to the laws of Ontario which carries on business in the City of Toronto in the Municipality of Metropolitan Toronto. The Company is a business agent acting on behalf of BTO and its' members.

5. The Defendant, Robin Kendall Bachman (hereinafter referred to as "Robin"), is an individual resident in the Municipality of Surrey in the Province of British Columbia. Robin is a member of BTO.

6. The Defendant, Charles Frederick Turner (hereinafter referred to as "Turner"), is an individual resident in the City of Winnipeg in the Province of Manitoba. Turner is a member of BTO.

7. The Defendant, Blair M. Thornton (hereinafter referred to as "Thornton"), is an individual resident in the Municipality of West Vancouver in the Province of British Columbia. Thornton is a member of BTO.

8. The Defendant, Randy Murray (hereinafter referred to as "Murray"), is an individual resident in the Municipality of Prince George in the Province of British Columbia. Murray is a member of BTO.

9. The Defendant, John Doe, is the member of BTO who has taken the identity of "Randy Bauchman".

10. The Defendant, Robert Tustin, is an individual resident in the City of Toronto in the Province of Ontario. Robert Tustin is the president of the Company.

11. Randy Bachman is a well-known Canadian musical recording artist. He has been involved in the Canadian music recording industry since 1962. Randy Bachman has founded and been a member of the Canadian music recording groups "The Guess Who", "Bachman-Turner Overdrive/BTO", "Brave Belt", "Ironhorse" and "Union".

12. Randy Bachman has collaborated with numerous other well-known musical recording artists in the course of his music career including Neil Young, Burton Cummings, Margo Timmins ("Cowboy Junkies"), Gordon Lightfoot, Anne Murray, Carl Wilson ("Beach Boys") and Sammy Hagar ("Van Halen"). Randy Bachman has more recently recorded as a solo artist.

13. Randy Bachman has recorded four albums as a member of "The Guess Who"; two albums as a member of "Ironhorse"; one album as a member of "Chad Allen & The Expressions"; one album as a member of "Union"; two albums as a member of "Brave Belt"; eight albums as a member of "Bachman-Turner Overdrive/BTO" and three albums as a solo artist. In excess of 20,000,000 units of these albums have been sold worldwide.

14. Randy Bachman has written, co-written and recorded numerous hit recordings including "Lookin Out For #1", "Takin' Care of Business", "(She's Come) Undun", "You Ain't Seen Nothing Yet", "These Eyes" and "American Woman".

15. Randy Bachman has toured as a musical recording artist extensively throughout Canada, the United States, Europe and Asia.

16. Randy Bachman has been the subject of thousands of articles, reviews and profiles as well as a biography.

17. Randy Bachman is in consequence a well-known, recognizable and highly respected name in the music recording industry.

18. By reason of his long and extensive involvement in the Canadian music recording industry, the "Bachman" name is identified exclusively with Randy Bachman in the minds of the Canadian public.

19. In or about October, 1972, Randy Bachman formed the musical recording group known as "Bachman-Turner Overdrive" or "BTO" along with Tim Bachman and the Defendants Robin and Turner.

20. The Defendant Thornton joined "Bachman-Turner Overdrive" or "BTO" in or about 1974.

21. From or about 1973 to May, 1977 Randy Bachman toured and recorded as a member of "Bachman-Turner Overdrive" and "BTO".
22. From or about 1984 to 1986 and again from 1989 to late 1991, Randy Bachman toured and recorded with BTO. The Defendant, Murray, became a member of BTO for a period of time in 1987.
23. The Defendant, Murray, joined BTO for a second time in early 1992 and has toured with the Defendants Robin, Turner and Thornton as BTO since that time.
24. Randy Bachman has not recorded or toured with "Bachman-Turner Overdrive" or "BTO" since late 1991. Randy Bachman is no longer a member of BTO.
25. By reason of his being a founding member of BTO/Bachman-Turner Overdrive, and by reason of his long and extensive involvement in the Canadian music recording industry, the name "Randy", when used alone in conjunction with "BTO", is identified exclusively with Randy Bachman in the minds of the public.
26. In or about April, 1994, the Company circulated a "Special Short Notice Touring Date" that identified the "Attraction" as "BTO with Randy Bauchman".
27. The "Special Short Notice Touring Date" created by the Company was based on promotional literature distributed by Artists International Management, Inc. ("AIM") based in Boca Raton, Florida. AIM is the agent of BTO.

28. The literature distributed by AIM featured the BTO logo and contained the words "Get Ready To Rock with C.F., Blair, Robin and Randy - BTO!!!!!!"

29. The use of the name "Randy", standing alone in conjunction with BTO, by the defendants in relation to its product, BTO, is likely to cause confusion and has caused confusion with the public in Canada. The defendant's use of the name "Randy", standing alone, in conjunction with "BTO" is calculated to deceive the public as to the quality of product provided by the defendants as well as the membership of the music recording group "BTO".

30. Randy Bachman pleads that the name "Randy", standing alone in conjunction with BTO, has been used and displayed by the defendants with the intention of misleading the public into the belief that Randy Bachman is touring with BTO.

31. At no time did Randy Bachman give his consent to use his name and reputation in such a manner as to suggest that he was touring with BTO.

32. The defendants have deliberately used the name "Randy", standing alone in conjunction with BTO, with the intention of trading on the name of Randy Bachman and to cause confusion in the minds of the public to further their own ends and affect the name and reputation of Randy Bachman.

33. The defendant's use of the name "Randy", standing alone in conjunction with BTO, amounts to the defendants passing off the music recording group "BTO" as including Randy

Bachman. Such action by the defendants is an infringement of the exclusive rights of Randy Bachman.

34. The defendants have directed public attention to themselves in a manner likely to cause confusion with respect to the membership of BTO and the defendants have and continue to pass off "Randy" for Randy Bachman.

35. The Defendants' use of the name "Randy", standing alone in conjunction with BTO, for the purpose of promoting BTO tour dates amounts to an unlawful appropriation of Randy Bachman's personality and is an infringement of the exclusive proprietary right of Randy Bachman to market his personality, image, name and reputation.

36. Randy Bachman has suffered and continues to suffer damages by reason of the Defendants' unlawful conduct by suggesting that he is associated and touring with BTO. Randy Bachman is entitled to damages for these losses and is further entitled to an accounting from the Defendants of all profits earned as a result of the unlawful appropriation of personality and passing off.

37. The Defendants' conduct amounts to a high-handed and callous disregard of Randy Bachman's rights entitling him to an award of punitive damages.

38. In consequence of the Defendants' conduct, Randy Bachman has suffered irreparable harm.

39. In or about July, 1994, the defendant, Robin, caused the following words to be published with respect to Randy Bachman:

"We've sat back. We let him go do his solo career. We wished him well and he called us the Canadian version of Spinal Tap. He belittled us in articles"

"He thinks we shouldn't be working without him"

"He can't believe we're out there working without him. I am the guy. I'm the star. How can they be out there working without me?"

"...The guy will attend the opening of an envelope just to be there so he can say Randy Bachman of, or with, or formerly or whatever, and use that to further his personal career."

41. Robin Bachman made these false and slanderous statements in the presence of the press knowing and intending that they would cause his words to be reproduced in the media.

42. The statements made by Robin were calculated to disparage Randy Bachman in the minds of the public and the statements constitute defamatory statements.

43. These statements were false to the knowledge of Robin and Robin caused the statements to be published maliciously in order to injure the trade and reputation of Randy Bachman.

44. In consequence of Robin's conduct, Randy Bachman has suffered damages including loss of business, profit and goodwill.

45. In consequence of Robin's slander, the reputation and character of Randy Bachman has been injured in the community.
46. Robin's conduct is high-handed and malicious and warrants an award of punitive damages.
47. Randy Bachman pleads and relies upon the provisions of the *Libel & Slander Act* R.S.O. 1990, c.L. 12.
48. Randy Bachman proposes that the trial of this action be conducted in Toronto.

Kevin E. Kemp
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Mississauga, Ontario
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(905) 275-7171

Solicitor for the Plaintiff

Randy Bachman

and

BTO et al.

Court File No. 94-CQ-52699

ONTARIO COURT
(GENERAL DIVISION)
Proceeding Commenced at
Toronto

STATEMENT OF CLAIM

Kevin E. Kemp
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Solicitor for the Plaintiff