

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, ROBERT TUSTIN**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS,
BTO, ROBIN KENDALL BACHMAN,
CHARLES FREDERICK TURNER,
BLAIR M. THORNTON and RANDY MURRAY**

1. Except as hereafter stated, these defendants, BTO, Robin Kendall Bachman ("Robin Bachman"), Charles Frederick Turner ("Fred Turner"), Blair M. Thornton ("Blair Thornton") and Randy Murray (collectively referred to herein as "BTO"), admit the facts alleged in paragraphs 5, 6, 8, 11, 12, 14, 15, 16, 17, 23, 24 and 28 of the Amended Statement of Claim.

2. BTO denies the allegations contained in paragraphs 2, 3, 4, 7, 9, 13, 18, 19, 20, 21, 22, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46 and 47 of the Amended Statement of Claim.

3. BTO has no knowledge of the allegations contained in paragraph 10 of the Amended Statement of Claim.

4. BTO denies the allegation contained in paragraph 4 of the Amended Statement of Claim which states that the defendant, the Music Group U.S./Can. ("the Music Group"), is a business agent acting on behalf of BTO. BTO states that the Music Group is an independent promoter and is not subject to BTO's direction or control. In the alternative, if this Court finds that the Music Group is or was BTO's agent, BTO states that the Music Group is bound by the express provisions outlined in paragraph 11 below with respect to any promotion of BTO. In the further alternative, if any harm or damage has been suffered by Randy Bachman, which is denied, as a result of the Music Group's actions, BTO states that the Music Group acted without the knowledge, consent, authority or sanction, whether express or implied, of BTO. In any event, BTO states that it has not received any benefit as a result of any action taken by the Music Group in relation to BTO.

5. With respect to the allegation contained in paragraph 9 of the Amended Statement of Claim, BTO denies that there are any members of BTO other than the defendants, Robin Bachman, Fred Turner, Blair Thornton and Randy Murray. BTO further states that no member of BTO has ever assumed, or attempted to assume, the identity of Randy Bachman or "Randy Bauchman".

6. Except as stated in paragraph 7 below, BTO admits the allegations contained in paragraphs 12, 13, 14, 15, 16 and 17 of the Amended Statement of Claim. However, BTO states that BTO, Robin Bachman, Fred Turner, Blair Thornton and Randy Murray have also collaborated with numerous other well-known musical recording artists in the course of their careers, including, *inter alia*, Bryan Adams,

Little Richard, Jeff Healy, Anne Murray, Michael Bolton, Jim Vallance and Ann Peebles. BTO further states that BTO, Robin Bachman, Fred Turner, Blair Thornton and Randy Murray have also recorded numerous albums, written, co-written and recorded numerous hit recordings, toured extensively, been the subject of numerous articles, reviews and profiles, including a biography, and as a consequence, are well-known and recognizable in the music recording industry.

7. BTO has no knowledge of the allegation that Randy Bachman has sold in excess of 20,000,000 units worldwide. BTO has no knowledge as to whether Randy Bachman is a highly respected name in the music recording industry.

8. With respect to the allegations contained in paragraph 18 of the Amended Statement of Claim, BTO denies that the "Bachman" name is identified exclusively with Randy Bachman in the minds of the Canadian public. On the contrary, BTO states that the "Bachman" name is identified, *inter alia*, with at least the following:

- (i) Robin Bachman, in his own right, as a founding member of the former "Bachman-Turner Overdrive" and as a present member of "BTO";
- (ii) Randy Bachman, as a member of the former "Bachman-Turner Overdrive" and as a former member of "BTO";
- (iii) Tim Bachman, in his own right, as a member of the former "Bachman-Turner Overdrive" and as a former member of "BTO";

- (iv) Bachman-Turner Overdrive, of which Robin Bachman, Randy Bachman, Tim Bachman and Fred Turner, *inter alia*, were all founding members, of which Blair Thornton was a member of beginning in 1974, and of which Randy Murray was a member;
- (v) BTO; and,
- (vi) all other music groups, projects, performances, etc. to which Robin Bachman, Randy Bachman, Tim Bachman, Bachman-Turner Overdrive or BTO have belonged or in which they have participated.

9. BTO denies that the name "Randy" is identified exclusively with Randy Bachman in the minds of the public. With respect to the allegations contained in paragraph 25 of the Amended Statement of Claim, BTO further denies that the name "Randy", when used in conjunction with BTO, is identified exclusively with Randy Bachman in the minds of the public. On the contrary, BTO states that the name "Randy", when used in conjunction with "BTO" as it is presently constituted, is identified with Randy Murray in his own right as a present member of "BTO". This is particularly so in light of the fact that Randy Bachman has not been a member of BTO, toured with BTO, or recorded with BTO since 1991. BTO further states that Randy Bachman has no legal right to associate himself with BTO.

10. With respect to the allegations contained in paragraphs 26 and 27 of the Amended Statement of Claim, BTO denies having any prior involvement or

knowledge of the Music Group's circulation of any materials that identify Randy Bachman or "Randy Bauchman" as being connected with BTO.

11. BTO states that all promotional literature and materials distributed by BTO, Artists International Management, Inc., or any other entity or agent acting on behalf of BTO, make absolutely no mention, whether express or implied, of Randy Bachman. Further, all of BTO's promotional materials and performance contracts, including the literature referred to in paragraph 28 of the Amended Statement of Claim, include the following express provisions:

*******ATTENTION*******

THIS GROUP IS TO BE BILLED AS

B.T.O.

ONLY!!!

NOT B.T.O. REUNION!

NOT BACHMAN TURNER OVERDRIVE!

B.T.O. CONSISTS OF:

ROBIN BACHMAN

C.F. TURNER

BLAIR THORNTON

RANDY MURRAY

ANY VARIATION OF THIS BILLING IS UNACCEPTABLE!

12. With respect to the allegations contained in paragraph 29 of the Amended Statement of Claim, BTO states that it is entitled to use the name

"Randy", in conjunction with BTO, when referring to Randy Murray. BTO denies that the use of the name "Randy" or "Randy Murray", in reference to Randy Murray, is likely to cause confusion or has caused confusion for the public in Canada. BTO further denies that the use of the name "Randy" in relation to Randy Murray is designed to deceive the public as to the quality of product provided by BTO, or as to the membership of the music recording group "BTO".

13. With respect to the allegations contained in paragraphs 30 and 32 of the Amended Statement of Claim, BTO denies that any use of the name "Randy" standing alone by BTO, or any other statements or actions of BTO, have ever been intended to mislead the public into the belief that Randy Bachman is touring or associated with BTO, used for the purpose of trading on the name of Randy Bachman, to cause confusion in the minds of the public, to further BTO's ends, or to effect the name or reputation of Randy Bachman.

14. BTO states that it has never used the name "Randy", standing alone, in reference to Randy Bachman. With respect to the allegations contained in paragraphs 33, 34 and 35 of the Amended Statement of Claim, BTO denies that it has passed off "BTO" as including Randy Bachman, infringed Randy Bachman's personal rights, directed public attention to BTO to cause confusion as to BTO's membership, passed off "Randy" for Randy Bachman, appropriated Randy Bachman's personality to promote tour dates, or made any improper use of Randy Bachman's personality, image, name or reputation.

15. With respect to the allegations contained in paragraphs 39, 41, 42, 43 and 45 of the Amended Statement of Claim, BTO, and particularly Robin Bachman, deny that Robin Bachman has made any false, slanderous, malicious or defamatory

statements with respect to Randy Bachman, or any statement calculated to disparage Randy Bachman. Further, BTO, and particularly Robin Bachman, deny that Robin Bachman has made any statement which has injured the reputation or character of Randy Bachman.

16. With respect to the allegations contained in paragraphs 36, 37, 38, 44 and 46 of the Amended Statement of Claim, BTO, and particularly Robin Bachman, deny that Randy Bachman has suffered any damage, loss, irreparable harm, loss of business, profit or goodwill as alleged, or any damage, loss or harm at all, and put Randy Bachman to the strict proof thereof. BTO, and particularly Robin Bachman, deny that they have ever acted in a high-handed or callous manner toward Randy Bachman, and further deny that Randy Bachman is entitled to an award of punitive damages.

17. In the alternative, the personal defendants, Robin Bachman, Fred Turner, Blair Thornton and Randy Murray, deny that they are personally responsible or liable for any damage, loss, irreparable harm, loss of business, profit or goodwill suffered by Randy Bachman, which is denied. In the further alternative, BTO states that the damages claimed, which are denied, are excessive, indirect and remote and that Randy Bachman has failed to mitigate same.

18. BTO therefore submits that this action be dismissed with costs payable to these defendants on a solicitor and client basis.

September 10, 1994

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