

EXHIBIT

A

SETTLEMENT AGREEMENT

1. Effective Date

This agreement ("Agreement") is to be effective as of the date of the last signature to the Agreement.

2. Parties

The parties to this Agreement are:

2.1 Reed Elsevier Inc., through its Reed Business Information division, a Massachusetts corporation with a place of business at 275 Washington Street, Newton, Massachusetts 02458.

2.2 Reed Elsevier Properties Inc., a Delaware corporation with a place of business at 1105 N. Market Street, Wilmington, Delaware 19801.

2.3 The aforementioned parties identified in Paragraphs 2.1 and 2.2 shall be collectively referred to as "Reed Elsevier."

2.4 Joseph P. Escalante ("Escalante"), an individual who is a citizen of the United States and who has a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

2.5 Joseph P. Escalante, Warren Fitzgerald and David Quackenbush, individuals and United States citizens who collectively do business under the name "The Vandals" (these three individuals, as necessary, will be collectively referred to as the "Members"), having a place of business at 920 N. Citrus Avenue, Hollywood, California 90038. Josh Freese is an independent contractor hired by the Vandals and will be dealt with under a separate agreement.

2.6 Kung Fu Records, Inc. ("Kung Fu"), a Nevada corporation having a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

2.7 The aforementioned parties identified in Paragraphs 2.4 through 2.6, other than "Josh Freese," shall hereinafter collectively be referred to as "Vandals."

3. Background

3.1 On September 13, 2004, Reed Elsevier filed Civil Action No. CV04-7584 PA ("the Action") against Vandals in the United States District Court for the Central District of California, alleging trademark infringement, trademark dilution, use of a false designation of origin, unfair competition, unjust enrichment and trademark counterfeiting under the Lanham Act and California law, based on Vandals' activities relating to the offer and sale of products and services under marks (the "Subject Marks") incorporating the uniquely stylized graphics of the VARIETY, DAILY VARIETY and Flying V logo marks of Reed Elsevier.

3.2 Reed Elsevier Inc., through its Reed Business Information division, operates, owns and publishes the century old *Variety*® magazine and related *Variety* branded print and electronic information concerning the entertainment industry. Reed Elsevier owns the marks VARIETY, VARIETY (Stylized), DAILY VARIETY, DAILY VARIETY (Stylized) and the Flying V logo, among others (the "VARIETY Marks"). The list of the VARIETY Marks and copies of the registrations and application details are attached to this Agreement as Exhibit A.

3.3 Reed Elsevier and Vandals now desire and have agreed to compromise and settle any and all claims they may have against each other relating to the offer, promotion and sale of products and services by Vandals under the Subject Marks upon the terms provided in this Agreement. Reed Elsevier and Vandals recognize that the covenants herein constitute good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged.

4. Vandals' Acknowledgements and Obligations

4.1 Vandals agree to execute, contemporaneously with execution of this Agreement, through their counsel and Escalante, the Consent Judgment and Permanent Injunction, in the form as attached as Exhibit B, and to be bound by that Consent

Judgment and Permanent Injunction as if they each signed the Consent Judgment and Permanent Injunction.

4.2 Vandals acknowledge and represent that they have provided Reed Elsevier with accurate and complete information relating to their production, distribution and sale of products and services under the Subject Marks - those Vandals marks encompassing the graphics for Reed Elsevier's VARIETY mark, the graphics for Reed Elsevier's Flying V logo mark and/or the graphical presentation of the Reed Elsevier DAILY VARIETY (Stylized) mark (hereafter these graphical logos of Reed Elsevier are referred to as the "Images at Issue").

4.3 Vandals represent that they have ceased to distribute any products or promotional materials within their control which carry the Subject Marks and further agree that they will not in the future use, promote, display or distribute, or cause others to use, promote, display or distribute any products or promotional materials which incorporate the Images at Issue. Reed Elsevier acknowledges that Vandals do not have control over products and promotional materials already in the stream of commerce as of the date of this Agreement or which are created by third parties, such as concert promoters unrelated to Defendants, without the assistance or knowledge of Vandals.

4.4 Vandals agree immediately to amend or change, if they have not already done so, any and all web sites and other digital or electronic images, and the like within their control to cease use of the Subject Marks and Vandals agree not to use the Subject Marks or the Images at Issue in the future in any such media, or in any other media.

4.5 Vandals agree immediately to have the artwork and graphics changed for their Hollywood Potato Chip CD/album to artwork and graphics not using the Subject Marks or the Images at Issue, or any artwork or graphics which are confusingly similar to the Images at Issue. Notwithstanding the foregoing, products in the stream of commerce, meaning, for purposes of this Agreement, products beyond the control of the Defendants, shall be handled pursuant to Paragraph 4.8.

4.6 Vandals agree that all products, collateral merchandise and other materials (including but not limited to albums, CDs, posters, hats, other clothing, pins, badges and

publicity materials) within their control which carry any of the Subject Marks, and which cannot have the Subject Marks removed or eliminated from such products or materials, will be immediately destroyed and that Vandals will provide Reed Elsevier with an affidavit within five (5) business days of the effective date of this Agreement confirming that such products and materials have been destroyed.

4.7 Vandals agree to cooperate with Reed Elsevier, when and where requested by Reed Elsevier, to take reasonable steps to cause any third party uses of references to Vandals or to Vandals' products which incorporate the Subject Marks or the Images at Issue to be stopped or appropriately altered, such efforts to include but not necessarily be limited to requesting web site owners and operators to cease displaying the Subject Marks or Images at Issue and providing them with replacement creative material. The communication to be sent by Vandals to such web site owners and operators will be subject to review and approval by Reed Elsevier.

4.8 Vandals agree to have appropriately sized labels/stickers prepared carrying the designation "The Vandals" in graphics not including the Images at Issue, or graphics which are confusingly similar to the Images at Issue, which Vandals will then send to the distributors of the Hollywood Potato Chip album/CD with a request that the stickers be affixed to all Hollywood Potato Chip CD discs and CD jewel cases or albums in a manner to obscure the appearance of the Subject Marks. The letter to be sent by Vandals to its distributors will be subject to review and approval by Reed Elsevier. Reed Elsevier agrees that Vandals shall not be considered in violation of this Agreement or of the Consent Judgment and Permanent Injunction if distributors do not comply with the request, so long as Vandals have done nothing to encourage or abet non-cooperation by the distributors.

4.9 Vandals agree that they will make no future use, in any unprotected commercial context, of the Subject Marks or the Images at Issue, nor of any simulation of the VARIETY Marks, or of any of the other Reed Elsevier marks as identified in Exhibit C.

4.10 Vandals agree to keep confidential the terms of this Agreement and that they will issue no statements or commentary on the Agreement or the dispute between the

parties, other than that the dispute has been resolved, without prior written approval from Reed Elsevier on the statements or commentary to be issued.

4.11 Vandals acknowledge the ownership and rights of Reed Elsevier in the VARIETY Marks and the Images at Issue for the goods and services covered in Reed Elsevier's registrations and applications for the VARIETY Marks, and including the validity and enforceability of such marks, including for Reed Elsevier's U.S. Trademark Registration Nos. 1,350,618, 1,640,471, 2,476,922 and 2,827,395 and U.S. Trademark Application Serial No. 76/610,855.

4.12 Vandals agree not to otherwise violate or challenge, or assist others in violating or challenging, Reed Elsevier's rights in the VARIETY Marks, including those incorporating the Images at Issue.

4.13 Vandals agree to pay Reed Elsevier, by certified check, or by a cashier's check, the sum of two thousand five hundred dollars (\$2,500) within ten (10) business days of the effective date of this Agreement.

4.14 Vandals agree that if there is ever a breach of this Agreement alleged by Reed Elsevier, which breach cannot be promptly remedied to the satisfaction of Reed Elsevier through negotiation with Vandals, either a state or federal court sitting in Wilmington, Delaware will have both subject matter and personal jurisdiction over the breach issue, and Vandals specifically agree to consent to personal jurisdiction before such courts if Reed Elsevier elects to proceed in such courts. The cure period will be thirty (30) days from written notice of the breach. Reed Elsevier, at its sole discretion, may also opt to proceed before a court in the Central District of California, or in any other court where appropriate subject matter and personal jurisdiction over Vandals can be shown.

4.15 Vandals agree that they will not assist or encourage another entity or individual to take any action which would be precluded under this Agreement for Vandals acting directly.

5. Mutual Releases, Breach

5.1 Each party ("the releasing party") fully and finally releases, discharges, and covenants not to sue the other party ("the released party") as well as the released party's parent and subsidiary companies, affiliates, officers, directors, managers, employees, agents, attorneys, successors, assigns, and legal representatives, for and from all claims, demands, causes of action, suits, liabilities, obligations, losses, damages, costs, expenses, and any other monetary or other form of relief of whatsoever kind or nature, whether in law or in equity, which the releasing party may have against them, individually or jointly, which relate to the subject matter of this Agreement, namely, the Subject Marks, and which arose from activities occurring prior to the effective date of this Agreement, or activities thereafter which are in compliance with this Agreement.

5.2 In the event Vandals breach this Agreement, Reed Elsevier shall be entitled, separate and apart from its rights under the Consent Judgment and Permanent Injunction to be entered by the Court, including liquidated damages in the amount of \$50,000, to preliminary and permanent injunctive relief and an award of its attorney fees incurred in enforcing this Agreement.

6. Miscellaneous Provisions

6.1 This Agreement is binding on the parties to the Agreement, as well as their principals, companies controlled by their principals, affiliates, successors and assigns.

6.2 This Agreement may not be waived, amended or modified except by the written agreement of all parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and supersedes any and all prior and contemporaneous promises, representations and agreements, oral or written.

6.3 Any provision of this Agreement which may be deemed invalid or unenforceable by a court of competent jurisdiction shall in no way invalidate or render unenforceable the remainder of this Agreement, which shall remain in full force and effect.

6.4 The failure or delay of a party at any time to enforce performance of this Agreement shall not be construed as a waiver of the right of such party to enforce performance of this Agreement at any subsequent time.


6.5 THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED FOR ALL PURPOSES UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE AND FEDERAL LAW.

6.6 This Agreement is executed by the parties in multiple originals, each of which is deemed an original for all purposes.


6.7 The parties acknowledge that they have thoroughly reviewed and discussed all aspects of this Agreement with their attorneys, that they have carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily entering into this Agreement.

6.8 This Agreement reflects the parties' mutual understandings, and the language of this Agreement shall not be construed either against or in favor of either party.


Reed Elsevier Inc.

By: 
Name: Julie Goldweitz
Title: Vice President
Date: 12-10-04


Joseph P. Escalante

By: 
Date: 11-30-04

Reed Elsevier Properties Inc.

By: 
Name: RENEE SIMONTON
Title: PRESIDENT
Date: 12/9/04

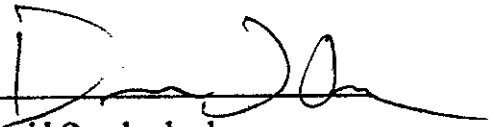
The Vandals

By: 
Name: Joseph P. Escalante
Date: 11-30-04

By: 

Name: Warren Fitzgerald

Date: 11-30-07

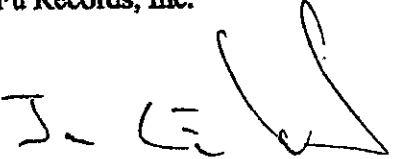
By: 

Name: David Ouackenbush

Date: 11-30-07

~~Josh Freese~~
By: _____
Date: _____

Kung Fu Records, Inc.

By: 

Name: Joseph P. Escalante

Title: President





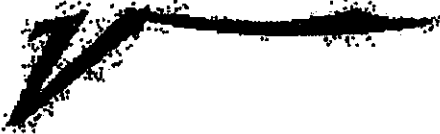

Date:  11-30-07

Exhibit A
Variety Marks

<u>Mark/Design</u>	<u>U.S. Registration/Serial No.</u>
VARIETY	2,113,971 2,299,316 2,417,890
VARIETY.COM	2,251,363
VARIETY EXTRA	2,398,913 2,444,331
	1,350,618 2,295,074 2,476,922
	1,640,471
	2,827,395
	76/610,855
	Common Law

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102 and 107

Reg. No. 2,113,971

United States Patent and Trademark Office

Registered Nov. 18, 1997

**SERVICE MARK
PRINCIPAL REGISTER**

VARIETY

**REED ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 N. MARKET STREET, SUITE 912
WILMINGTON, DE 19801**

**FOR: ORGANIZING AND CONDUCTING
TRADE SHOWS AND EXHIBITIONS IN THE
FIELD OF MOTION PICTURE, TELEVISION
AND VIDEO PRODUCTION, FINANCING, DIS-
TRIBUTION, PROGRAMMING, LICENSING,
TECHNOLOGY, AND MULTIMEDIA ENTER-
TAINMENT, IN CLASS 35 (U.S. CLS. 100, 101
AND 102).**

**FIRST USE 4-24-1996; IN COMMERCE
4-24-1996.**

**FOR: ORGANIZING AND CONDUCTING
CONFERENCES IN THE FIELD OF MOTION
PICTURE, TELEVISION AND VIDEO PRO-
DUCTION, FINANCING, DISTRIBUTION, PRO-
GRAMMING, LICENSING, TECHNOLOGY,
AND MULTIMEDIA ENTERTAINMENT, IN
CLASS 41 (U.S. CLS. 100, 101 AND 107).**

**FIRST USE 4-24-1996; IN COMMERCE
4-24-1996.**

**OWNER OF U.S. REG. NOS. 1,350,681 AND
1,640,471**

SER. NO. 75-185,491, FILED 10-22-1996.

R. M. FEELEY, EXAMINING ATTORNEY



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Typed Drawing

Word Mark VARIETY

Goods and Services IC 009. US 021 023 026 036 038. G & S: pre-recorded CD ROMs featuring information relating to the entertainment industry. FIRST USE: 19960500. FIRST USE IN COMMERCE: 19960500

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75400536

Filing Date December 5, 1997

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition September 21, 1999

Registration Number 2299316

Registration Date December 14, 1999

Owner (REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE
1105 North Market Street Wilmington DELAWARE 19801

Attorney of Record SUSAN M MUCHMORE

Prior Registrations 1350618;2113971

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead

Indicator

LIVE

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Typed Drawing

Word Mark VARIETY

Goods and Services IC 041. US 100 101 107. G & S: COMPUTER SERVICES, NAMELY, PROVIDING ON LINE NEWS DIRECTED TO THE ENTERTAINMENT INDUSTRY VIA A GLOBAL COMPUTER NETWORK. FIRST USE: 19980100. FIRST USE IN COMMERCE: 19980100

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75404877

Filing Date December 10, 1997

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition October 26, 1999

Registration Number 2417890

Registration Date January 2, 2001

Owner (REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street Wilmington DELAWARE 19801

Prior Registrations 1640471;2113971

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead

Indicator **LIVE**

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Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,251,363

United States Patent and Trademark Office

Registered June 8, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

VARIETY.COM

**REED ELSEVIER PROPERTIES, INC. (DELA-
WARE CORPORATION)
1105 NORTH MARKET STREET
WILMINGTON, DE 19801**

**FOR: COMPUTER SERVICES, NAMELY,
PROVIDING AN ON-LINE MAGAZINE IN THE
FIELD OF NEWS AND INFORMATION IN THE**

**ENTERTAINMENT INDUSTRY, IN CLASS 42
(U.S. CLS. 100 AND 101).**

**FIRST USE 1-5-1998; IN COMMERCE
1-5-1998.**

SER. NO. 75-464,542, FILED 4-8-1998.

MARY CRAWFORD, EXAMINING ATTORNEY



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Typed Drawing

Word Mark VARIETY EXTRA

Goods and Services IC 041. US 100 101 107. G & S: Providing online entertainment industry information to entertainment industry executives, namely, box office information; television and film production charts; and reviews of films, television shows, theater, and music.
FIRST USE: 19980112. FIRST USE IN COMMERCE: 19980112

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75402809

Filing Date December 10, 1997

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition August 8, 2000

Registration Number 2398913

Registration Date October 31, 2000

Owner (REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street Wilmington DELAWARE 19801

Attorney of Record SUSAN M MUCHMORE

Prior Registrations 1350618;1640471;2113971

Type of Mark SERVICE MARK

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Typed Drawing

Word Mark	VARIETY EXTRA
Goods and Services	IC 041. US 100 101 107. G & S: computer services, namely, providing online news articles in the field of entertainment. FIRST USE: 19980112. FIRST USE IN COMMERCE: 19980112
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75979586
Filing Date	December 10, 1997
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 23, 2001
Registration Number	2444331
Registration Date	April 17, 2001
Owner	(REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street Wilmington DELAWARE 19801
Attorney of Record	SUSAN M MUCHMORE
Prior Registrations	1350618;1640471;2113971
Type of Mark Register	SERVICE MARK PRINCIPAL

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Int. Cl.: 16

Prior U.S. Cl.: 38

Reg. No. 1,350,618

United States Patent and Trademark Office

Registered July 23, 1985

**TRADEMARK
PRINCIPAL REGISTER**

VARIETY

VARIETY, INC. (NEW YORK CORPORATION)
154 WEST 46TH STREET
NEW YORK, NY 10036

FIRST USE 12-0-1905; IN COMMERCE
12-0-1905.

SER. NO. 519,633, FILED 1-28-1985.

FOR: WEEKLY NEWSPAPER, IN CLASS 16
(U.S. CL. 38).

AMOS T. MATTHEWS, JR., EXAMINING AT-
TORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,295,074

United States Patent and Trademark Office

Registered Nov. 30, 1999

**TRADEMARK
PRINCIPAL REGISTER**

VARIETY

**READ ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 NORTH MARKET STREET
WILMINGTON, DE 19801**

**FOR: PRE-RECORDED CD ROMS FEATUR-
ING INFORMATION RELATING TO THE EN-
TERTAINMENT INDUSTRY, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).**

**FIRST USE 5-0-1996; IN COMMERCE
5-0-1996.
OWNER OF U.S. REG. NOS. 1,350,618 AND
2,113,971.**

SER. NO. 75-400,530, FILED 12-5-1997.

**PRISCILLA MILTON, EXAMINING ATTOR-
NEY**

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,476,922

Registered Aug. 14, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

VARIETY

REED ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 NORTH MARKET STREET
WILMINGTON, DE 19801

FOR: COMPUTER SERVICES, NAMELY, PRO-
VIDING ACCESS TO ON-LINE INTERACTIVE
DATA BASES IN THE FIELD OF ENTERTAIN-
MENT, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 1-0-1998; IN COMMERCE 1-0-1998.

OWNER OF U.S. REG. NOS. 1,640,471 AND
2,113,971.

SER. NO. 75-402,891, FILED 12-10-1997.

PRISCILLA MILTON, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office
Amended

Reg. No. 1,640,471

Registered Apr. 9, 1991

OG Date Apr. 28, 1992

TRADEMARK
PRINCIPAL REGISTER

DAILY VARIETY

REED PROPERTIES INC. (DELAWARE
CORPORATION)
SUITE 1221
1105 N. MARKET STREET
WILMINGTON, DE 19801, ASSIGNEE OF
VARIETY, INC. (NEW YORK CORPO-
RATION) NEW YORK, NY

OWNER OF U.S. REG. NO. 1,350,618.

NO CLAIM IS MADE TO THE EXCLU-
SIVE RIGHT TO USE "DAILY", APART
FROM THE MARK AS SHOWN.

FOR: DAILY TRADE NEWSPAPER,
IN CLASS 16 (U.S. CL. 38).
FIRST USE 9-6-1933; IN COMMERCE
9-6-1933.

SER. NO. 74-065,444, FILED 6-4-1990.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Apr. 28, 1992.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,827,395

United States Patent and Trademark Office

Registered Mar. 30, 2004

**TRADEMARK
PRINCIPAL REGISTER**



**REED ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 N. MARKET STREET, 9TH FLOOR
WILMINGTON, DE 19801**

**FOR: PUBLICATIONS, NAMELY MAGAZINES
AND MAGAZINES SUPPLEMENTS RELATING
THE ENTERTAINMENT INDUSTRY AND TO CE-**

**LEBRITIES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37,
38 AND 50).**

FIRST USE 3-0-2003; IN COMMERCE 3-0-2003.

SER. NO. 76-499,888, FILED 3-24-2003.

M. E. BODSON, EXAMINING ATTORNEY



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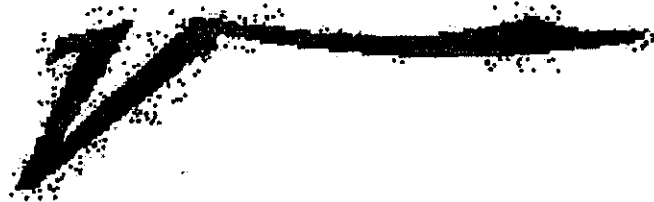
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Word Mark V

Goods and Services IC 016. US 002 005 022-023 029 037 038 050. G & S: PUBLICATIONS, NAMELY, DAILY AND WEEKLY NEWSPAPERS, MAGAZINES AND MAGAZINES SUPPLEMENTS RELATING THE ENTERTAINMENT INDUSTRY AND TO CELEBRITIES. FIRST USE: 19051200. FIRST USE IN COMMERCE: 19051200

IC 041. US 100 101 107. G & S: COMPUTER SERVICES, NAMELY, PROVIDING ACCESS TO ON-LINE INTERACTIVE DATA BASES IN THE FIELD OF ENTERTAINMENT. FIRST USE: 19980100. FIRST USE IN COMMERCE: 19980100

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 76610855

Filing Date September 10, 2004

Current Filing Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street, 5th Floor Wilmington DELAWARE 19801

Attorney of Record J. Paul Williamson

Prior Registrations 1350618;1640471;2295074;2471584;2476922;2827395;AND OTHERS

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

[P.T.O. Home](#) [TRADEMARK](#) [T.E.S.E. Home](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [Special Ops](#) [TOP](#) [HELP](#)

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Exhibit B
Consent Judgment and Permanent Injunction

Sarah Silbert (SBN 198594)
Fulbright & Jaworski L.L.P.
865 South Figueroa
Twenty-Ninth Floor
Los Angeles, California 90017-2571
Phone: 213-892-9200
Fax: 213-680-4518

J. Paul Williamson
Tara Vold
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, NW
Washington, DC 20004-2623
Phone: 202-662-0200
Fax: 202-662-4643

ATTORNEYS FOR PLAINTIFFS
REED ELSEVIER INC., Through Its
REED BUSINESS INFORMATION
Division, and REED ELSEVIER
PROPERTIES INC.

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

REED ELSEVIER INC., through its
REED BUSINESS INFORMATION
Division, and REED ELSEVIER
PROPERTIES INC.

Plaintiffs,

v.

Joseph P. Escalante; Joseph P. Escalante, Josh
Freese, Warren Fitzgerald and David
Quackenbush, d/b/a The Vandals; Kung Fu
Records, Inc.

Defendants.

**CIVIL ACTION NO.: CV04-
7584 PA(Ex)**

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

The parties having agreed to the entry of this Consent Judgment and Permanent Injunction finally disposing of this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction of this cause of action for trademark infringement, trademark dilution, use of a false designation of origin, unfair competition, unjust enrichment and trademark counterfeiting, 15 U.S.C. § 1121 and § 28 U.S.C., §§ 1331, 1338(a) and 1338(b).

2. Plaintiff, Reed Elsevier Inc., is a Massachusetts corporation having a place of business at 275 Washington St., Newton, Massachusetts 02458.

3. Plaintiff Reed Elsevier Properties Inc., is a Delaware corporation having a place of business at 1105 N. Market Street, Wilmington, Delaware 19801.

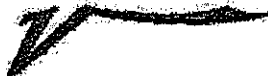
4. Plaintiff Reed Elsevier Inc., through its Reed Business Information division, offers publications and on-line information in the field of news and information in the entertainment industry, including for the music industry, in interstate commerce, under the marks VARIETY and DAILY VARIETY, and under a Flying V logo.

5. Plaintiff Reed Elsevier Properties Inc. is the owner of the trademark and service marks VARIETY, DAILY VARIETY and the Flying V logo (the "VARIETY Marks") used in connection with publications and on-line information in the field of news and information in the entertainment industry, including for the music industry. Plaintiff Reed Elsevier Inc., through its Reed Business Information division, is the licensee of Plaintiff Reed Elsevier Properties Inc. for use of the VARIETY Marks.

6. Plaintiff Reed Elsevier Properties Inc. is the owner of: United States Trademark Registration No. 1,350,618 for VARIETY, covering a weekly newspaper; United States Service Mark Registration No. 1,640,471 for DAILY VARIETY for a daily trade newspaper; United States Registration No. 2,476,922

for VARIETY for computer services, namely providing access to on-line interactive databases in the field of entertainment; and United States Trademark Registration No. 2,827,395 for VLIFE for publications, namely magazines and magazine supplements relating to the entertainment industry and to celebrities. Plaintiff Reed Elsevier Properties Inc. is also the owner of United States Trademark Application Serial. No. 76/610,855 for the "Flying V Logo" for publications, namely daily and weekly newspapers, magazines, and magazine supplements relating to the entertainment industry and to celebrities, and computer services, namely providing access to on-line interactive databases in the field of entertainment. The aforementioned registrations were duly and legally issued and are valid and subsisting.

7. The Plaintiffs' VARIETY Marks as generally used, appear as follows:

The word "VARIETY" is written in a bold, italicized, serif font. The letters are closely spaced and have a slightly distressed or textured appearance.The word "DAILY" is written in a small, bold, sans-serif font inside a rectangular box. To the right of this box, the word "VARIETY" is written in the same bold, italicized, serif font as in the first logo.A stylized, bold, italicized letter "V" with a horizontal line extending to the right from its top-right corner, resembling a wing or a tail.

8. Defendant Joseph P. Escalante is a U.S. citizen having a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

9. Defendants Joseph P. Escalante, Josh Freese, Warren Fitzgerald and David Quackenbush, doing business as "The Vandals," are each U.S. citizens and have a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

10. Defendant Kung Fu Records, Inc. is a Nevada corporation having a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

11. The aforementioned defendants identified in Paragraphs 8-10 shall hereinafter collectively be referred to as "Defendants."

12. Defendants acknowledge having adopted and used graphics for their band name "The Vandals" which incorporate graphics from the VARIETY Marks, and in particular in connection with their album/CD entitled "Hollywood Potato Chip." The graphical presentation of "The Vandals" at issue is as follows:



13. Defendants acknowledge having used a portion of the Plaintiffs' VARIETY mark on an album entitled "Gone With the Wind Sampler."

14. Defendants represent that they do not have within their control any "Gone With the Wind Sampler" albums/CDs, nor any other products or materials carrying the VARIETY mark as depicted on that album/CD cover.

15. Defendants represent that they have accurately and completely identified to Plaintiffs' counsel all information relating to the products and materials carrying the graphics for the mark "The Vandals" which incorporated the graphics from the Plaintiffs' VARIETY Marks.

16. The Defendants' represent that they wish to conclude this proceeding, although without any specific acknowledgement of wrongdoing, and therefore agree to the entry of this Consent Judgment and Permanent Injunction.

17. Defendants and their parent organizations, subsidiary organizations, related companies (by commonality of ownership), officers, agents, servants, employees, attorneys and all those in active concert or participation with any of them who receive actual notice of this Consent Judgment and Permanent Injunction, by personal service or otherwise, are hereby enjoined from using and/or offering for sale and/or promoting for sale on or after November 15, 2004, products or materials bearing any of the Plaintiffs' VARIETY Marks or any of the graphics used for the VARIETY Marks as reflected above in Paragraph 7, or using any other colorable imitation or other designation confusingly similar to Plaintiffs'

VARIETY Marks or the graphics used for the VARIETY Marks, either alone or in combination with any other words, names or symbols, as marks, tradenames, style designations or otherwise, on or in connection, or in relation to the sale or offer for sale of any products or services. This injunction does not extend to distributors and promoters of Defendants' albums/CDs with respect to the future sales of any albums/CDs bearing the VARIETY Marks and any of the graphics for the VARIETY Marks if those albums/CDs were in the possession of such distributors and promoters as of November 15, 2004 and if Defendants no longer have control over such albums/CDs.

18. Defendants are hereby ordered to alter appropriately or destroy any and all products and materials within their control and all displays, labels, signs, circulars, packages, wrappers, receptacles, advertisements, sales aids, and other matter in their possession or under their control as of November 1, 2004, which bear or depict the mark VARIETY, or any portion of the VARIETY mark, or which bear or depict "The Vandals" where the graphics of the VARIETY Marks have been used.

19. Defendants are hereby ordered to execute and deliver up to the Plaintiffs' counsel an affidavit acknowledging that Defendants have complied with this Consent Judgment and Permanent Injunction within thirty (30) days of the entry of this Consent Judgment and Permanent Injunction.

20. Defendants agree that if they are found to be in violation of the terms of this Consent Judgment and Permanent Injunction, they will be liable for liquidated damages to Plaintiffs, in the amount of fifty-thousand dollars (\$50,000). This liability will be separate and apart from, and in addition to any other damages which Plaintiffs may be able to establish.

21. Each party shall pay its own costs and attorneys' fees in this matter.

22. This Court shall retain jurisdiction of this matter as may be necessary to enforce this Consent Judgment and Permanent Injunction.

Done at Los Angeles, California this ___ day of November, 2004.

United States District Judge

Approved as to form and substance:

John C. Rawls (SBN 106567)
FULBRIGHT & JAWORSKI L.L.P.
865 South Figueroa
Twenty-Ninth Floor
Los Angeles, California 90017-2571
Phone: 213-892-9200
Fax: 213-680-4518

DATED: _____

J. Paul Williamson
FULBRIGHT & JAWORSKI L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.662.4545
202.662.4643 (fax)

ATTORNEYS FOR PLAINTIFFS


DATED: _____



Joseph P. Escalante
920 N. Citrus Avenue
Hollywood, California 90038

DEFENDANT

DATED: 11-30-04



Stephen F. Ross, Esq.
932 Ninth Street, No. 8
Santa Monica, California 90403
310.393.7752
310.943.2135 (fax)

ATTORNEY FOR
DEFENDANTS

DATED: 11/30/04

Exhibit C
Reed Elsevier Marks



BURST OF KNOWLEDGE LOGO
BUTTERWORTHS
COURTLINK
ELSEVIER
FULLAUTHORITY
HARCOURT
IT'S HOW YOU KNOW
JURISOFT
LAW ON DISC
LEXIS
LEXISNEXIS
MARTINDALE
MARTINDALE-HUBBELL
MATTHEW BENDER
MICHIE
NEXIS
PEOPLEWISE
QUICKLAW
REED
REED BUSINESS INFORMATION
REED ELSEVIER
REED EXHIBITIONS
REED EXPO
RISKWISE
SHEPARD'S
SHEPARDIZE
THE POWER TO WIN

By: _____

Name: Warren Fitzgerald

Date: _____

By: _____

Name: David Quackenbush

Date: _____

~~Josh Freese~~ SR, by authority of Vachels,
Escalante, Kung Fu Records
By: _____
Date: _____
RS 12/9/04
12/10/04

Kung Fu Records, Inc.

By: _____

Name: Joseph P. Escalante

Title: President

Date: _____

EXHIBIT

B

SETTLEMENT AGREEMENT

1. Effective Date

This agreement ("Agreement") is to be effective as of the date of the last signature to the Agreement.

2. Parties

The parties to this Agreement are:

2.1 Reed Elsevier Inc., through its Reed Business Information division, a Massachusetts corporation with a place of business at 275 Washington Street, Newton, Massachusetts 02458.

2.2 Reed Elsevier Properties Inc., a Delaware corporation with a place of business at 1105 N. Market Street, Wilmington, Delaware 19801.

2.3 The aforementioned parties identified in Paragraphs 2.1 and 2.2 shall be collectively referred to as "Reed Elsevier."

2.4 Josh Freese ("Freese"), an individual who is a citizen of the United States and who resides at 3720 Falcon Avenue, Long Beach, California 90807. Freese is an independent contractor hired by the Vandals.

3. Background

3.1 On September 13, 2004, Reed Elsevier filed Civil Action No. CV04-7584 PA ("the Action") against Freese, among others, in the United States District Court for the Central District of California, alleging trademark infringement, trademark dilution, use of a false designation of origin, unfair competition, unjust enrichment and trademark counterfeiting under the Lanham Act and California law, based on the activities of the group "The Vandals," hereafter simply "Vandals," with which group Freese plays and tours, such activities relating to the offer and sale of products and services under marks (the "Subject Marks") incorporating the uniquely stylized graphics of the VARIETY, DAILY VARIETY and Flying V logo marks of Reed Elsevier.

3.2 Reed Elsevier Inc., through its Reed Business Information division, operates, owns and publishes the century old *Variety*® magazine and related *Variety* branded print and electronic information concerning the entertainment industry. Reed Elsevier owns the marks VARIETY, VARIETY (Stylized), DAILY VARIETY, DAILY VARIETY (Stylized) and the Flying V logo, among others (the "VARIETY Marks"). The list of the VARIETY Marks and copies of the registrations and application details are attached to this Agreement as Exhibit A.

3.3 Reed Elsevier and Freese now desire and have agreed to compromise and settle any and all claims they may have against each other relating to the offer, promotion and sale of products and services by Vandals and/or Freese under the Subject Marks upon the terms provided in this Agreement. Reed Elsevier and Freese recognize that the covenants herein constitute good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged.

4. Freese's Acknowledgements and Obligations

4.1 Freese acknowledges his awareness of the impending entry of a Consent Judgment and Permanent Injunction against Vandals, Joe Escalante and Kung Fu Records.

4.2 Freese acknowledges and represents that insofar as he is aware, Vandals have provided Reed Elsevier with accurate and complete information relating to the production, distribution and sale of products and services under the Subject Marks - those Vandals marks encompassing the graphics for Reed Elsevier's VARIETY mark, the graphics for Reed Elsevier's Flying V logo mark and/or the graphical presentation of the Reed Elsevier DAILY VARIETY (Stylized) mark (hereafter these graphical logos of Reed Elsevier are referred to as the "Images at Issue").

4.3 Freese represents that he, and the Vandals insofar as he is aware, have ceased to distribute any products or promotional materials within their respective controls which carry the Subject Marks and further agrees that he will not in the future use, promote, display or distribute, or cause others to use, promote, display or distribute any products or promotional materials which incorporate the Images at Issue. Reed Elsevier

acknowledges that Freese does not have control over products and promotional materials already in the stream of commerce as of the date of this Agreement or which are created by third parties, such as concert promoters unrelated to Freese or Vandals or Kung Fu Records Inc., without the assistance or knowledge of Freese.

4.4 Freese agrees not to use the Subject Marks or the Images at Issue in the future at any website or on other digital or electronic media, or in any other media.

4.5 Freese agrees that all products, collateral merchandise and other materials (including but not limited to albums, CDs, posters, hats, other clothing, pins, badges and publicity materials) within his control which carry any of the Subject Marks, and which cannot have the Subject Marks removed or eliminated from such products or materials, will be immediately destroyed and that Freese will provide Reed Elsevier with an affidavit within five (5) business days of the effective date of this Agreement confirming that such products and materials have been destroyed.

4.6 Freese agrees to cooperate with Reed Elsevier, when and where requested by Reed Elsevier, to take reasonable steps to cause any third party uses of references to Freese or Freese products which incorporate the Subject Marks or the Images at Issue to be stopped or appropriately altered, such efforts to include but not necessarily be limited to requesting web site owners and operators to cease displaying the Subject Marks or Images at Issue and providing them with replacement creative material. The communication to be sent by Freese to such web site owners and operators will be subject to review and approval by Reed Elsevier.

4.7 Freese agrees that he will make no future use, in any unprotected commercial context, of the Subject Marks or the Images at Issue, nor of any simulation of the VARIETY Marks, or of any of the other Reed Elsevier marks as identified in Exhibit B.

4.8 Freese agrees to keep confidential the terms of this Agreement and the terms of the agreement reached with Vandals, and that he will issue no statements or commentary on the Agreement, the agreement with the Vandals or on the dispute

between the parties, other than that the dispute has been resolved, without prior written approval from Reed Elsevier on the statements or commentary to be issued.

4.9 Freese acknowledges the ownership and rights of Reed Elsevier in the VARIETY Marks and the Images at Issue for the goods and services covered in Reed Elsevier's registrations and applications for the VARIETY Marks, and including the validity and enforceability of such marks, including for Reed Elsevier's U.S. Trademark Registration Nos. 1,350,618, 1,640,471, 2,476,922 and 2,827,395 and U.S. Trademark Application Serial No. 76/610,855.

4.10 Freese agrees not to otherwise violate or challenge, or assist others in violating or challenging, Reed Elsevier's rights in the VARIETY Marks, including those incorporating the Images at Issue.

4.11 Freese agrees that if there is ever a breach of this Agreement alleged by Reed Elsevier, which breach cannot be promptly remedied to the satisfaction of Reed Elsevier through negotiation with Freese, either a state or federal court sitting in Wilmington, Delaware will have both subject matter and personal jurisdiction over the breach issue, and Freese specifically agree to consent to personal jurisdiction before such courts if Reed Elsevier elects to proceed in such courts. The cure period will be thirty (30) days from written notice of the breach. Reed Elsevier, at its sole discretion, may also opt to proceed before a court in the Central District of California, or in any other court where appropriate subject matter and personal jurisdiction over Freese can be shown.

4.12 Freese agrees that he will not assist or encourage another entity or individual to take any action which would be precluded under this Agreement for Freese acting directly.

5. Reed Elsevier's Obligations

5.1 Within ten (10) business days of the effective date of this Agreement, Reed Elsevier will file a dismissal, without prejudice, of its Complaint against Freese.

6. Mutual Releases, Breach

6.1 Each party ("the releasing party") fully and finally releases, discharges, and covenants not to sue the other party ("the released party") as well as the released party's parent and subsidiary companies, affiliates, officers, directors, managers, employees, agents, attorneys, successors, assigns, and legal representatives, for and from all claims, demands, causes of action, suits, liabilities, obligations, losses, damages, costs, expenses, and any other monetary or other form of relief of whatsoever kind or nature, whether in law or in equity, which the releasing party may have against them, individually or jointly, which relate to the subject matter of this Agreement, namely, the Subject Marks, and which arose from activities occurring prior to the effective date of this Agreement, or activities thereafter which are in compliance with this Agreement.

6.2 In the event Freese breaches this Agreement, Reed Elsevier shall be entitled, separate and apart from any other rights or remedies available to it, to liquidated damages in the amount of \$50,000, to preliminary and permanent injunctive relief and an award of its attorneys' fees incurred in enforcing this Agreement.

7. Miscellaneous Provisions

7.1 This Agreement is binding on the parties to the Agreement, as well as their principals, companies controlled by their principals, affiliates, successors and assigns.

7.2 This Agreement may not be waived, amended or modified except by the written agreement of all parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and supersedes any and all prior and contemporaneous promises, representations and agreements, oral or written.

7.3 Any provision of this Agreement which may be deemed invalid or unenforceable by a court of competent jurisdiction shall in no way invalidate or render unenforceable the remainder of this Agreement, which shall remain in full force and effect.

7.4 The failure or delay of a party at any time to enforce performance of this Agreement shall not be construed as a waiver of the right of such party to enforce performance of this Agreement at any subsequent time.

7.5 THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED FOR ALL PURPOSES UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE AND FEDERAL LAW.

7.6 This Agreement is executed by the parties in multiple originals, each of which is deemed an original for all purposes.

7.7 The parties acknowledge that they have thoroughly reviewed and discussed all aspects of this Agreement with their attorneys, that they have carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily entering into this Agreement.

7.8 This Agreement reflects the parties' mutual understandings, and the language of this Agreement shall not be construed either against or in favor of either party.

Reed Elsevier Inc.

Josh Freese




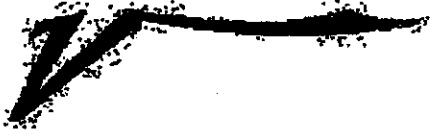

By: [Signature]
Name: Julie Goldweitz
Title: Vice President
Date: 12/10/04

By: [Signature]
Date: 12.3.04

Reed Elsevier Properties Inc.

By: [Signature]
Name: RENEE SIMONSON
Title: PRESIDENT
Date: 12/9/04

Exhibit A
Variety Marks

<u>Mark/Design</u>	<u>U.S. Registration/Serial No.</u>
VARIETY	2,113,971 2,299,316 2,417,890
VARIETY.COM	2,251,363
VARIETY EXTRA	2,398,913 2,444,331
	1,350,618 2,295,074 2,476,922
	1,640,471
	2,827,395
	76/610,855
	Common Law

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102 and 107

Reg. No. 2,113,971

United States Patent and Trademark Office

Registered Nov. 18, 1997

**SERVICE MARK
PRINCIPAL REGISTER**

VARIETY

**REED ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 N. MARKET STREET, SUITE 912
WILMINGTON, DE 19801**

**FOR: ORGANIZING AND CONDUCTING
TRADE SHOWS AND EXHIBITIONS IN THE
FIELD OF MOTION PICTURE, TELEVISION
AND VIDEO PRODUCTION, FINANCING, DIS-
TRIBUTION, PROGRAMMING, LICENSING,
TECHNOLOGY, AND MULTIMEDIA ENTER-
TAINMENT, IN CLASS 35 (U.S. CLS. 100, 101
AND 102).**

**FIRST USE 4-24-1996; IN COMMERCE
4-24-1996.**

**FOR: ORGANIZING AND CONDUCTING
CONFERENCES IN THE FIELD OF MOTION
PICTURE, TELEVISION AND VIDEO PRO-
DUCTION, FINANCING, DISTRIBUTION, PRO-
GRAMMING, LICENSING, TECHNOLOGY,
AND MULTIMEDIA ENTERTAINMENT, IN
CLASS 41 (U.S. CLS. 100, 101 AND 107).**

**FIRST USE 4-24-1996; IN COMMERCE
4-24-1996.**

**OWNER OF U.S. REG. NOS. 1,350,681 AND
1,640,471**

SER. NO. 75-185,491, FILED 10-22-1996.

R. M. FEELEY, EXAMINING ATTORNEY


UNITED STATES PATENT AND TRADEMARK OFFICE

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Final Status
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Typed Drawing

Word Mark	VARIETY
Goods and Services	IC 009. US 021 023 026 036 038. G & S: pre-recorded CD ROMs featuring information relating to the entertainment industry. FIRST USE: 19960500. FIRST USE IN COMMERCE: 19960500
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75400536
Filing Date	December 5, 1997
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	September 21, 1999
Registration Number	2299316
Registration Date	December 14, 1999
Owner	(REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street Wilmington DELAWARE 19801
Attorney of Record	SUSAN M MUCHMORE
Prior Registrations	1350618;2113971
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead	

Indicator **LIVE**

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Typed Drawing

Word Mark	VARIETY
Goods and Services	IC 041. US 100 101 107. G & S: COMPUTER SERVICES, NAMELY, PROVIDING ON LINE NEWS DIRECTED TO THE ENTERTAINMENT INDUSTRY VIA A GLOBAL COMPUTER NETWORK. FIRST USE: 19980100. FIRST USE IN COMMERCE: 19980100
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75404877
Filing Date	December 10, 1997
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	October 26, 1999
Registration Number	2417890
Registration Date	January 2, 2001
Owner	(REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street Wilmington DELAWARE 19801
Prior Registrations	1640471;2113971
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead	

Indicator **LIVE**

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Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,251,363

United States Patent and Trademark Office

Registered June 8, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

VARIETY.COM

**REED ELSEVIER PROPERTIES, INC. (DELA-
WARE CORPORATION)
1105 NORTH MARKET STREET
WILMINGTON, DE 19801**

**FOR: COMPUTER SERVICES, NAMELY,
PROVIDING AN ON-LINE MAGAZINE IN THE
FIELD OF NEWS AND INFORMATION IN THE**

**ENTERTAINMENT INDUSTRY, IN CLASS 42
(U.S. CLS. 100 AND 101).**

**FIRST USE 1-5-1998; IN COMMERCE
1-5-1998.**

SER. NO. 75-464,542, FILED 4-8-1998.

MARY CRAWFORD, EXAMINING ATTORNEY



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Typed Drawing

Word Mark VARIETY EXTRA
Goods and Services IC 041. US 100 101 107. G & S: Providing online entertainment industry information to entertainment industry executives, namely, box office information; television and film production charts; and reviews of films, television shows, theater, and music.
 FIRST USE: 19980112. FIRST USE IN COMMERCE: 19980112

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75402809

Filing Date December 10, 1997

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition August 8, 2000

Registration Number 2398913

Registration Date October 31, 2000

Owner (REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street Wilmington DELAWARE 19801

Attorney of Record SUSAN M MUCHMORE

Prior Registrations 1350618;1640471;2113971

Type of Mark SERVICE MARK

Register **PRINCIPAL**
Live/Dead
Indicator **LIVE**

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Typed Drawing

Word Mark	VARIETY EXTRA
Goods and Services	IC 041. US 100 101 107. G & S: computer services, namely, providing online news articles in the field of entertainment. FIRST USE: 19980112. FIRST USE IN COMMERCE: 19980112
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75979586
Filing Date	December 10, 1997
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 23, 2001
Registration Number	2444331
Registration Date	April 17, 2001
Owner	(REGISTRANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street Wilmington DELAWARE 19801
Attorney of Record	SUSAN M MUCHMORE
Prior Registrations	1350618;1640471;2113971
Type of Mark Register	SERVICE MARK PRINCIPAL

Int. Cl.: 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,350,618

Registered July 23, 1985

**TRADEMARK
PRINCIPAL REGISTER**

VARIETY

**VARIETY, INC. (NEW YORK CORPORATION)
154 WEST 46TH STREET
NEW YORK, NY 10036**

**FIRST USE 12-0-1905; IN COMMERCE
12-0-1905.**

SER. NO. 519,633, FILED 1-28-1985.

**FOR: WEEKLY NEWSPAPER, IN CLASS 16
(U.S. CL. 38).**

**AMOS T. MATTHEWS, JR., EXAMINING AT-
TORNEY**

**Live/Dead
Indicator**

LIVE

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Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,476,922

United States Patent and Trademark Office

Registered Aug. 14, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

VARIETY

**REED ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 NORTH MARKET STREET
WILMINGTON, DE 19801**

**FOR: COMPUTER SERVICES, NAMELY, PRO-
VIDING ACCESS TO ON-LINE INTERACTIVE
DATA BASES IN THE FIELD OF ENTERTAIN-
MENT, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).**

FIRST USE 1-0-1998; IN COMMERCE 1-0-1998.

**OWNER OF U.S. REG. NOS. 1,640,471 AND
2,113,971.**

SER. NO. 75-402,891, FILED 12-10-1997.

PRISCILLA MILTON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,295,074

United States Patent and Trademark Office

Registered Nov. 30, 1999

**TRADEMARK
PRINCIPAL REGISTER**

VARIETY

**READ ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 NORTH MARKET STREET
WILMINGTON, DE 19801**

**FOR: PRE-RECORDED CD ROMS FEATUR-
ING INFORMATION RELATING TO THE EN-
TERTAINMENT INDUSTRY, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).**

**FIRST USE 5-0-1996. IN COMMERCE
5-0-1996.
OWNER OF U.S. REG. NOS. 1,350,618 AND
2,113,971.**

SER. NO. 75-400,530, FILED 12-5-1997.

**PRISCILLA MILTON, EXAMINING ATTOR-
NEY**

Int. Cl.: 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office
Amended

Reg. No. 1,640,471
Registered Apr. 9, 1991
OG Date Apr. 28, 1992

TRADEMARK
PRINCIPAL REGISTER

DAILY VARIETY

REED PROPERTIES INC. (DELAWARE
CORPORATION)
SUITE 1221
1105 N. MARKET STREET
WILMINGTON, DE 19801, ASSIGNEE OF
VARIETY, INC. (NEW YORK CORPO-
RATION) NEW YORK, NY

OWNER OF U.S. REG. NO. 1,330,618.

NO CLAIM IS MADE TO THE EXCLU-
SIVE RIGHT TO USE "DAILY", APART
FROM THE MARK AS SHOWN.

FOR: DAILY TRADE NEWSPAPER,
IN CLASS 16 (U.S. CL. 38).
FIRST USE 9-6-1933; IN COMMERCE
9-6-1933.

SER. NO. 74-065,444, FILED 6-4-1990.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Apr. 28, 1992.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,827,395

United States Patent and Trademark Office

Registered Mar. 30, 2004

**TRADEMARK
PRINCIPAL REGISTER**



**REED ELSEVIER PROPERTIES INC. (DELA-
WARE CORPORATION)
1105 N. MARKET STREET, 9TH FLOOR
WILMINGTON, DE 19801**

**LEBRITIES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37,
38 AND 50).**

FIRST USE 3-0-2003; IN COMMERCE 3-0-2003.

**FOR: PUBLICATIONS, NAMELY MAGAZINES
AND MAGAZINES SUPPLEMENTS RELATING
THE ENTERTAINMENT INDUSTRY AND TO CE-**

SER. NO. 76-499,888, FILED 3-24-2003.

M. E. BODSON, EXAMINING ATTORNEY



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Word Mark V

Goods and Services

IC 016. US 002 005 022 023 029 037 038 050. G & S: PUBLICATIONS, NAMELY, DAILY AND WEEKLY NEWSPAPERS, MAGAZINES AND MAGAZINES SUPPLEMENTS RELATING THE ENTERTAINMENT INDUSTRY AND TO CELEBRITIES. FIRST USE: 19051200. FIRST USE IN COMMERCE: 19051200

IC 041. US 100 101 107. G & S: COMPUTER SERVICES, NAMELY, PROVIDING ACCESS TO ON-LINE INTERACTIVE DATA BASES IN THE FIELD OF ENTERTAINMENT. FIRST USE: 19980100. FIRST USE IN COMMERCE: 19980100

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number

76610855

Filing Date

September 10, 2004

Current Filing Basis

1A

Original Filing Basis

1A

Owner

(APPLICANT) Reed Elsevier Properties Inc. CORPORATION DELAWARE 1105 North Market Street, 5th Floor Wilmington DELAWARE 19801

Attorney of Record J. Paul Williamson
Prior Registrations 1350618;1640471;2295074;2471584;2476922;2827395;AND OTHERS
Type of Mark TRADEMARK, SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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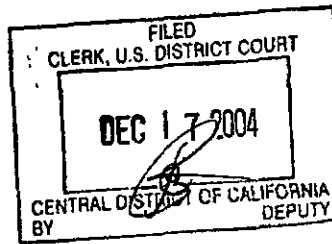
Exhibit G
Reed Elsevier Marks

BURST OF KNOWLEDGE LOGO
BUTTERWORTHS
COURTLINK
ELSEVIER
FULLAUTHORITY
HARCOURT
IT'S HOW YOU KNOW
JURISOFT
LAW ON DISC
LEXIS
LEXISNEXIS
MARTINDALE
MARTINDALE-HUBBELL
MATTHEW BENDER
MICHIE
NEXIS
PEOPLEWISE
QUICKLAW
REED
REED BUSINESS INFORMATION
REED ELSEVIER
REED EXHIBITIONS
REED EXPO
RISKWISE
SHEPARD'S
SHEPARDIZE
THE POWER TO WIN

EXHIBIT

C

John C. Rawls (SBN 106567)
Sarah Silbert (SBN 198594)
Fulbright & Jaworski L.L.P.
865 South Figueroa
Twenty-Ninth Floor
Los Angeles, California 90017-2571
Phone: 213-892-9200
Fax: 213-680-4518



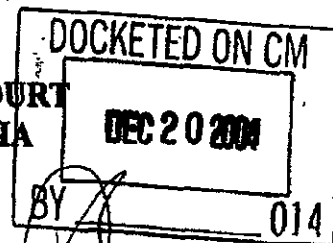
SCANNED

J. Paul Williamson
Tara Vold
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, NW
Washington, DC 20004-2623
Phone: 202-662-0200
Fax: 202-662-4643

Priority
Send
Enter
Closed
JLS/JJS
JS-2/JJS-3
Scan Only

ATTORNEYS FOR PLAINTIFFS
REED ELSEVIER INC., Through Its
REED BUSINESS INFORMATION
Division, and REED ELSEVIER
PROPERTIES INC.

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION



REED ELSEVIER INC., through its
REED BUSINESS INFORMATION
Division, and REED ELSEVIER
PROPERTIES INC.

Plaintiffs,

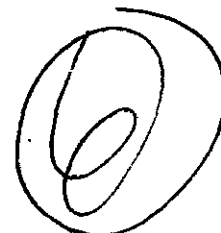
v.

Joseph P. Escalante; Joseph P. Escalante,
Warren Fitzgerald and David Quackenbush,
d/b/a The Vandals; Kung Fu Records, Inc.

Defendants.

CIVIL ACTION NO.: CV04-
7584 PA(Ex)

CONSENT JUDGMENT AND
PERMANENT INJUNCTION



SCANNED

The parties having agreed to the entry of this Consent Judgment and Permanent Injunction finally disposing of this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction of this cause of action for trademark infringement, trademark dilution, use of a false designation of origin, unfair competition, unjust enrichment and trademark counterfeiting, 15 U.S.C. § 1121 and § 28 U.S.C., §§ 1331, 1338(a) and 1338(b).

2. Plaintiff, Reed Elsevier Inc., is a Massachusetts corporation having a place of business at 275 Washington St., Newton, Massachusetts 02458.

3. Plaintiff Reed Elsevier Properties Inc., is a Delaware corporation having a place of business at 1105 N. Market Street, Wilmington, Delaware 19801.

4. Plaintiff Reed Elsevier Inc., through its Reed Business Information division, offers publications and on-line information in the field of news and information in the entertainment industry, including for the music industry, in interstate commerce, under the marks VARIETY and DAILY VARIETY, and under a Flying V logo.

5. Plaintiff Reed Elsevier Properties Inc. is the owner of the trademark and service marks VARIETY, DAILY VARIETY and the Flying V logo (the "VARIETY Marks") used in connection with publications and on-line information in the field of news and information in the entertainment industry, including for the music industry. Plaintiff Reed Elsevier Inc., through its Reed Business Information division, is the licensee of Plaintiff Reed Elsevier Properties Inc. for use of the VARIETY Marks.

6. Plaintiff Reed Elsevier Properties Inc. is the owner of: United States Trademark Registration No. 1,350,618 for VARIETY, covering a weekly newspaper; United States Service Mark Registration No. 1,640,471 for DAILY VARIETY for a daily trade newspaper; United States Registration No. 2,476,922

for VARIETY for computer services, namely providing access to on-line interactive databases in the field of entertainment; and United States Trademark Registration No. 2,827,395 for VLIFE for publications, namely magazines and magazine supplements relating to the entertainment industry and to celebrities. Plaintiff Reed Elsevier Properties Inc. is also the owner of United States Trademark Application Serial. No. 76/610,855 for the "Flying V Logo" for publications, namely daily and weekly newspapers, magazines, and magazine supplements relating to the entertainment industry and to celebrities, and computer services, namely providing access to on-line interactive databases in the field of entertainment. The aforementioned registrations were duly and legally issued and are valid and subsisting.

7. The Plaintiffs' VARIETY Marks as generally used, appear as follows:

The word "VARIETY" is written in a bold, italicized, serif font. The letters are closely spaced, and the overall style is classic and elegant.The word "DAILY" is written in a small, bold, sans-serif font inside a rectangular box. To the right of this box, the word "VARIETY" is written in the same bold, italicized, serif font as in the previous logo.A stylized, bold, italicized letter "V" with a horizontal line extending from the top right of the letter, resembling a wing or a tail.

8. Defendant Joseph P. Escalante is a U.S. citizen having a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

9. Defendants Joseph P. Escalante, Warren Fitzgerald and David Quackenbush, doing business as "The Vandals," are each U.S. citizens and have a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

10. Defendant Kung Fu Records, Inc. is a Nevada corporation having a place of business at 920 N. Citrus Avenue, Hollywood, California 90038.

11. The aforementioned defendants identified in Paragraphs 8-10 shall hereinafter collectively be referred to as "Defendants."

12. Defendants acknowledge having adopted and used graphics for their band name "The Vandals" which incorporate graphics from the VARIETY Marks, and in particular in connection with their album/CD entitled "Hollywood Potato Chip." The graphical presentation of "The Vandals" at issue is as follows:



13. Defendants acknowledge having used a portion of the Plaintiffs' VARIETY mark on an album entitled "Gone With the Wind Sampler."

14. Defendants represent that they do not have within their control any "Gone With the Wind Sampler" albums/CDs, nor any other products or materials carrying the VARIETY mark as depicted on that album/CD cover.

15. Defendants represent that they have accurately and completely identified to Plaintiffs' counsel all information relating to the products and materials carrying the graphics for the mark "The Vandals" which incorporated the graphics from the Plaintiffs' VARIETY Marks.

16. The Defendants' represent that they wish to conclude this proceeding, although without any specific acknowledgement of wrongdoing, and therefore agree to the entry of this Consent Judgment and Permanent Injunction.

17. Defendants and their parent organizations, subsidiary organizations, related companies (by commonality of ownership), officers, agents, servants, employees, attorneys and all those in active concert or participation with any of them who receive actual notice of this Consent Judgment and Permanent Injunction, by personal service or otherwise, are hereby enjoined from using and/or offering for sale and/or promoting for sale on or after November 15, 2004, products or materials bearing any of the Plaintiffs' VARIETY Marks or any of the graphics used for the VARIETY Marks as reflected above in Paragraph 7, or using any other colorable imitation or other designation confusingly similar to Plaintiffs'

VARIETY Marks or the graphics used for the VARIETY Marks, either alone or in combination with any other words, names or symbols, as marks, tradenames, style designations or otherwise, on or in connection, or in relation to the sale or offer for sale of any products or services. This injunction does not extend to distributors and promoters of Defendants' albums/CDs with respect to the future sales of any albums/CDs bearing the VARIETY Marks and any of the graphics for the VARIETY Marks if those albums/CDs were in the possession of such distributors and promoters as of November 15, 2004 and if Defendants no longer have control over such albums/CDs.

18. Defendants are hereby ordered to alter appropriately or destroy any and all products and materials within their control and all displays, labels, signs, circulars, packages, wrappers, receptacles, advertisements, sales aids, and other matter in their possession or under their control as of November 1, 2004, which bear or depict the mark VARIETY, or any portion of the VARIETY mark, or which bear or depict "The Vandals" where the graphics of the VARIETY Marks have been used.


19. Defendants are hereby ordered to execute and deliver up to the Plaintiffs' counsel an affidavit acknowledging that Defendants have complied with this Consent Judgment and Permanent Injunction within thirty (30) days of the entry of this Consent Judgment and Permanent Injunction.

20. Defendants agree that if they are found to be in violation of the terms of this Consent Judgment and Permanent Injunction, they will be liable for liquidated damages to Plaintiffs, in the amount of fifty-thousand dollars (\$50,000). This liability will be separate and apart from, and in addition to any other damages which Plaintiffs may be able to establish.

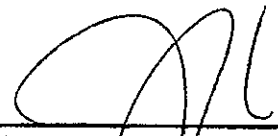
21. Each party shall pay its own costs and attorneys' fees in this matter.


SCANNED

22. This Court shall retain jurisdiction of this matter as may be necessary to enforce this Consent Judgment and Permanent Injunction. Done at Los Angeles, California this 17th day of November, ^{December} 2004.


United States District Judge

Approved as to form and substance:

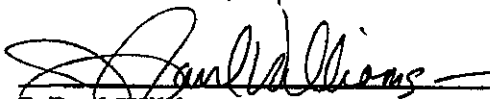

John C. Rawls (SBN 106567)
FULBRIGHT & JAWORSKI L.L.P.
865 South Figueroa
Twenty-Ninth Floor
Los Angeles, California 90017-2571
Phone: 213-892-9200
Fax: 213-680-4518

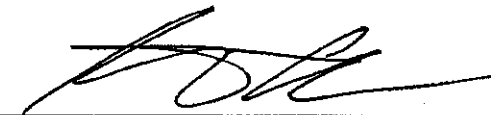

Joseph P. Escalante
920 N. Citrus Avenue
Hollywood, California 90038

DEFENDANT

DATED: 11-30-04

DATED: 12/15/04


J. Paul Williamson
FULBRIGHT & JAWORSKI L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.662.4545
202.662.4643 (fax)


Stephen F. Ross, Esq.
932 Ninth Street, No. 8
Santa Monica, California 90403
310.393.7752
310.943.2135 (fax)

ATTORNEYS FOR PLAINTIFFS

ATTORNEY FOR
DEFENDANTS

DATED: 12-13-04

DATED: 11/30/04

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Fulbright & Jaworski L.L.P., 865 South Figueroa Street, 29th Floor, Los Angeles, California 90017.

On December 15, 2004, I served the foregoing document(s) described as **CONSENT JUDGMENT AND PERMANENT INJUNCTION** on the interested parties in this action as follows:

Stephen F. Ross, Esq.
932 Ninth Street, No. 8
Santa Monica, CA 90403

(By Mail) I am "readily familiar" with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

(By Facsimile) I caused said document to be transmitted electronically to the interested parties at the facsimile numbers as stated above.

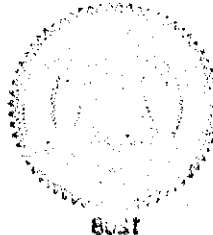
(By Federal Express) – overnight mail on the person listed above.

(Personal Service) I caused the aforementioned document to be personally served on the person listed above.

Executed on **December 15, 2004**, at Los Angeles, California.

(Federal) I declare that I am employed by an attorney admitted to practice before the United States District Court, Central District of California.


Laura Murphy



NOTARY PUBLIC STATE OF CALIFORNIA
COMMISSION NO. 123456789
EXPIRES 12/31/05
LAURA MURPHY
123456789

I hereby attest and certify on 3/9/10
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA


DEPUTY CLERK



1208

EXHIBIT

D

Declaration of Compliance with Consent Judgment and Permanent Injunction

I, JOSEPH ESCALANTE, do hereby declare:

1. I am the owner of Kung Fu Records, Inc. and a member of the Vandals partnership. I make this declaration as an individual, as President of Kung Fu Records, Inc., and as a member of the Vandals Partnership, in compliance with paragraph 19 of the Consent Judgment and Permanent Injunction entered in Central District of California case no CV04-7584 PA(Ex).

2. Kung Fu Records, Inc. and I have complied with the Consent Judgment and Permanent Injunction.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on January 10, 2004, at Los Angeles, California.



Joseph Escalante

Declaration of Compliance with Settlement Agreement

I, Josh Freese, do hereby declare:

1. I make this declaration in compliance with paragraph 4.5 of the Settlement Agreement between Reed Elsevier, Inc., Reed Elsevier Properties, Inc. and myself.

2. Pursuant to the Settlement Agreement, I have destroyed all products, collateral merchandise, and other materials (including but not limited to albums, CDs, posters, hats, other clothing, pins, badges and publicity materials) within my control (*i.e.*, not already in the stream of commerce), and which carry any of the Subject Marks, and which cannot have the Subject Marks removed, covered, or eliminated from such products or materials.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on December 13, 2004, at Los Angeles, California.



Josh Freese

Declaration of Compliance with Settlement Agreement

I, Warren Fitzgerald, do hereby declare:

1. I make this declaration as a member of the Vandals Partnership, in compliance with paragraph 4.6 of the Settlement Agreement between Reed Elsevier, Inc., Reed Elsevier Properties, Inc., Joseph Escalante, the Vandals, and Kung Fu Records, Inc.

2. Pursuant to the Settlement Agreement, I have destroyed all products, collateral merchandise, and other materials (including but not limited to albums, CDs, posters, hats, other clothing, pins, badges and publicity materials) within my control (*i.e.*, not already in the stream of commerce), and which carry any of the Subject Marks, and which cannot have the Subject Marks removed, covered, or eliminated from such products or materials.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on December 13, 2004, at Los Angeles, California.


Warren Fitzgerald

Declaration of Compliance with Settlement Agreement

I, Dave Quackenbush, do hereby declare:

1. I make this declaration as a member of the Vandals Partnership, in compliance with paragraph 4.6 of the Settlement Agreement between Reed Elsevier, Inc., Reed Elsevier Properties, Inc., Joseph Escalante, the Vandals, and Kung Fu Records, Inc.

2. Pursuant to the Settlement Agreement, I have destroyed all products, collateral merchandise, and other materials (including but not limited to albums, CDs, posters, hats, other clothing, pins, badges and publicity materials) within my control (*i.e.*, not already in the stream of commerce), and which carry any of the Subject Marks, and which cannot have the Subject Marks removed, covered, or eliminated from such products or materials.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on December 13, 2004, at Los Angeles, California.



Dave Quackenbush