

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RALPH VARGAS AND BLAND RICKY
ROBERTS,

Plaintiffs,

v.

PFIZER INC., PUBLICIS, INC., FLUID MUSIC,
EAST WEST COMMUNICATIONS, INC., AND
BRIAN TRANSEAU P/K/A "BT",

Defendants.

04 CV 9772 (WHP)
ECF CASE

DECLARATION OF BRIAN TRANSEAU

I, BRIAN TRANSEAU, declare as follows:

1. I am a defendant in the above-captioned litigation. I make this declaration based on my personal knowledge of the facts set forth herein. I am over 18 years of age, and if called upon to testify, I could and would testify competently to the matters stated herein.
2. On November 16, 2006, I recreated from scratch my drum track *Aparthenonia*, which is the subject of this lawsuit, in the manner described as follows.
3. A videographer, two witnesses (Brian Baughn and Wonseok Choi) and my attorney (Julie Ahrens) were present during the recreation of *Aparthenonia*.
4. Every part of the recreation was witnessed by the two witnesses and the videographer. I did not take any steps in recreating *Aparthenonia* outside of the presence of these two witnesses or off of the video record. Accordingly, the video record of my recreation of *Aparthenonia* is a full, complete and accurate depiction of all steps taken in recreating the drum track.
5. I used the following hardware and software to recreate *Aparthenonia*: (a) an Apple G4 computer, which is the closest computer I have to the G3 I used to make the original *Aparthenonia* (The G3 computer on which I originally created *Aparthenonia* remains at the offices of my attorneys for inspection by Plaintiffs. I have not altered that computer in any way since locating it and providing it to my attorneys in August, 2006.); (b) Propellerhead Reason 1.0, the same version of the software that I used to create the original *Aparthenonia*; and (c) Logic Audio software, which I also used to create the original *Aparthenonia*.
6. The G4 computer did not have any music or drum files loaded on it before I began my recreation of *Aparthenonia*. The only sounds on the computer were the sound libraries contained in the software Reason 1.0.

7. The process I undertook to recreate *Aparthenonia* may be viewed on the video record and I summarize that process below.

8. First, I accessed the stock drum sounds available in the library of the Propellerhead Reason 1.0 software and digitally processed them to recreate *Aparthenonia*. Specifically, from the Propellerhead Reason 1.0 library, I opened and used the following sound files to program the beat:

- Bd2_TRENT.wav
- Bd2_SOLESIDE.wav
- SUPAFUNKY.wav
- Hh_RAREST.wav
- Hh2_RITEHERE.wav
- Hh2_ARTEFACT.wav
- Sd2_ONE_2.wav
- Sd_BRICKS.wav

9. After recreating the track in the Propellerhead Reason 1.0 software, I then saved the file on the G4 computer. I then pulled that file containing the recreation into the Logic Audio software and performed additional editing and processing steps to finish the *Aparthenonia* recreation track. I then saved that file to the G4 computer with the file name “BT New Aparthenonia.”

10. After I had recreated *Aparthenonia* to the best of my ability from memory, I then, and only then, loaded the original *Aparthenonia*, from *Breakz from the Nu Skool*, Disc B, onto the computer so that I could compare my recreation with the original. Upon comparing the two separate tracks in Logic Audio, I was able further fine-tune the recreated track to make it even more of an exact match to the original *Aparthenonia*. I also performed the same time correction to the recreated track that I had performed on the original. I saved that file to the G4 computer with the file name “Nu Aparthenonia Final w –TC.”

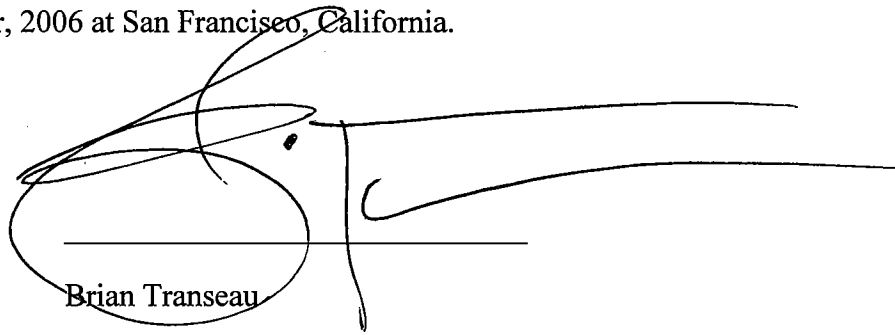
11. It is important to note that during this final fine-tuning process, I did not import any elements from the original *Aparthenonia* or from any other source, into the recreated *Aparthenonia*.

12. Moreover, no version of Plaintiffs’ work, *Bust Dat Groove (w/o ride)* was present in any format on the computer or used in any way in recreating *Aparthenonia*—not even for comparison purposes. Likewise, I did not use any sampled music or drumming in recreating *Aparthenonia*. I only used the sounds available with the Reason 1.0 software. As is apparent on the video, I did not have or use a turntable or any sampling equipment when I recreated *Aparthenonia*.

13. After I finished my recreation, I inserted a blank compact disc into the disc drive of the G4 computer and copied the recreated *Aparthenonia* files onto that disc. Using red ink, I labeled the compact disc “BT New Aparthenonia 11/16/2006” and handed it to my attorney, Julie Ahrens.

I declare under penalty of perjury under the laws of the United States of America that the above statement is true and correct to the best of my recollection.

Executed this 27 day of November, 2006 at San Francisco, California.



Brian Transeau