

3. I also have released two CD “sound libraries,” including, in 2001, one entitled *Breakz from the Nu Skool* (“*Breakz*”). In contrast to the body of work described in the preceding paragraph, which I consider highly creative and original, the tracks on *Breakz* are not meant to be listened to as musical works in their own right, and *Breakz* has never been marketed toward the music-purchasing public. Rather, *Breakz* is a library of hundreds of separate sounds, with each track consisting of a drum loop – that is, a short drum pattern “looped,” or identically repeated, two to four times. *Breakz* is used only by other musicians and producers, who incorporate one or more of the tracks found on the CD as tempo or background for their own musical works. In their own right, the individual tracks on *Breakz* are not music; nor are they compositions or songs.

4. One of the tracks on *Breakz* is a basic drum loop called *Aparthenonia*. I am informed that the plaintiffs in this litigation have alleged that *Aparthenonia* was incorporated into a commercial for the drug Celebrex. I also am informed that the plaintiffs have alleged that the commercial infringes on a copyrighted work by plaintiffs known as “*Bust Dat Groove Without Ride*” (“*BTG*”), from a sample CD entitled “*Funky Drummer, Volume II*.”

5. I independently created *Aparthenonia*, and all the tracks on *Breakz*, using software applications, drum machines, and a computer. *Aparthenonia* is a programmed beat, with the percussion elements originating from an off-the-shelf music generation computer program known as Propellerhead Reason. I mixed and equalized the elements of *Aparthenonia* on my own in Logic Audio

6. *Aparthenonia* is not a recording of any other work and contains no “sampling” of any other sound recording. In particular, *Aparthenonia* is not a recording of, or in any way based on, *BTG*. Prior to this litigation, I had never heard of Ralph Vargas or Bland-Ricky Roberts (the

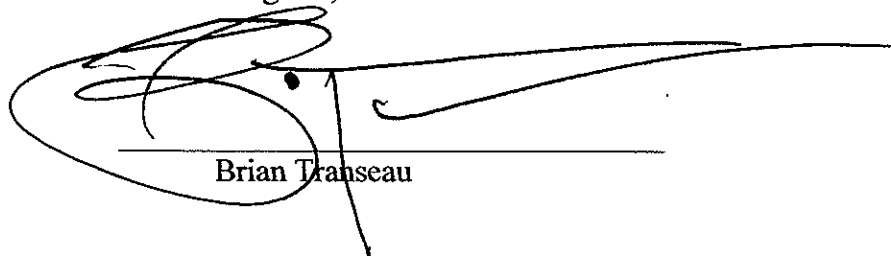
named plaintiffs in this action), or JBR Music Group. Prior to this litigation, I had never heard of, listened to, or possessed a copy of *BTG* or *Funky Drummer, Volume II*. I have no knowledge that these works were even in circulation at the time *Aparthenonia* was created, and in fact I have reason to suspect they are not readily available: I and my representatives attempted to locate a copy of these works when plaintiffs initiated this litigation, and were unable to do so despite a diligent search. In any case, I certainly had no awareness of or access to *BTG* or *Funky Drummer, Volume II* when I created *Aparthenonia*.

7. *Aparthenonia* consists of a common drum beat that is a standard in popular music, and that is among the first drum beats taught to beginning drummers. The pattern, combination of percussion elements, and rhythms in *Aparthenonia* can be found in thousands of musical works, dating back decades.

8. I do not understand how the plaintiffs, or anyone, could claim to “own” a simple drum loop such as *BTG*, or to have the right to exclude other musicians from using or “composing” similar beats. Such a claim is the equivalent of asserting the exclusive right to sing the lyrics, “baby I love you” – it would place a basic building block for popular music off limits to other musicians.

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

Executed this 28th day of June 2005 at Los Angeles, California.



Brian Transeau