

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MIKE PORTNOY,

Plaintiff,

-against-

JOHN PETRUCCI, JOHN MYUNG, JAMES
LaBRIE, JORDAN RUDESS, YTSE JAMS,
INC. and INFINITIY TOURS, INC.,

Defendants.
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Index No. _____

Plaintiff designates
New York County as
the place of trial

The basis of the venue
is the residence of
Defendant Ytse Jams, Inc.


**SUMMONS
WITH NOTICE**

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to serve a notice of appearance on the
plaintiff's attorneys within 20 days after service of this summons, exclusive of the day of service
(or within 30 days after service is complete if this summons is not personally delivered to you
within the State of New York); and in case of your failure to appear, judgment will be taken
against you by default for the relief demanded below.

Dated: New York, New York
April 19, 2011

PROSKAUER ROSE LLP

By: 

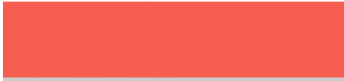
Charles B. Ortner
Michael T. Mervis

11 Times Square
New York, NY 10036
Tel: (212) 969-3000
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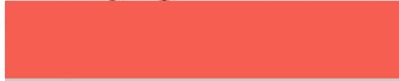
Attorneys for Plaintiff

Defendants' Addresses:

John Petrucci



John Myung



Jordan Rudess



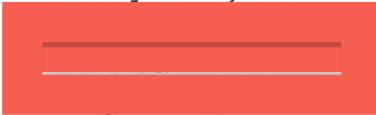
Kevin James Labrie



Ytse Jams, Inc.



Infinity Tours, Inc.



NOTICE

The nature of the action is:

Plaintiff is one of the founding members of a rock band (the “Band”) and one of the founding and current shareholders of the defendant corporations. Defendants Petrucci and Myung are the other founding members of the Band and the other founding and current shareholders of the defendant corporations. The individual defendants claim to be the current members of the Band.

In breach of contract and breach of fiduciary duty, defendants:

- (1) Have wrongfully excluded plaintiff from the Band;
- (2) Are wrongfully using the name of the Band in connection with the individual defendants’ recording of an album, without the participation or consent of plaintiff;
and
- (3) Are wrongfully using the name of the Band in connection with the promotion of live performances by the individual defendants, without the participation or consent of plaintiff.

The relief sought is:

1. A judicial declaration that defendants may not use the name of the Band (including in connection with the making of recordings and the promotion of live performances) without plaintiff’s consent;
2. An injunction restraining defendants from using the name of the Band (including in connection with the making of recordings and the promotion of live performances) without plaintiff’s consent; and

3. An award of damages in an amount to be determined at trial.

Upon your failure to timely appear, judgment will be taken against you by default for the declaratory and injunctive relief sought herein, an amount of damages to be determined (together with interest thereon), and the costs and disbursements of this action.