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Reply to Baltimore Office

October 20, 2014

Lotfy Nathan
The Red Gap Film Group, LLC
194 S. 2nd Street, Floor 3
Brooklyn, NY 11211

Dan Berger
David Laub
Oscilloscope, Inc. d/b/a Oscilloscope Laboratories
511 Canal Street, #5E
New York, NY 10013

Re: "12 O'Clock Boys"

Gentlemen:

I represent Taje Monbo [REDACTED] who own the copyright in the motion picture entitled "12 O'Clock Boyz." My clients registered their copyright on August 24, 2001 (Reg. No. PAu 002610236). I understand that Oscilloscope, Inc. d/b/a Oscilloscope Laboratories ("Oscilloscope") is the distributor of the film entitled "12 O'Clock Boys," and that the film was produced, and is owned, by The Red Gap Film Group, LLC ("Red Gap").

"12 O'Clock Boyz" is a legendary motion picture that was released in 2001, documenting the exploits of young African-American dirt bike riders in Baltimore, Maryland. The title of the film is a phrase coined by Mr. Monbo to describe the way in which riders would elevate the front of their bikes and ride only on the back wheels until their bikes would be perpendicular to the road or in the "12 O'Clock" position. Mr. Monbo subsequently released the second in a series of 12 O'Clock Boyz films titled "The Paparazzi Edition."

When my clients learned that Oscilloscope had released a film titled "12 O'Clock Boys," they watched it and were surprised to find that the film not only is a documentary about Baltimore dirt bike riders who tilt their bikes into the "12 O'Clock" position, but that the film contains significant excerpts and clips from their original "12 O'Clock Boyz" motion picture. At about seventeen minutes into "The 12 O'Clock Boys," the original title from my clients' film appears on screen:

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“12 O’Clock Boyz, Inc.
presents
The Official 12 O’Clock Boyz.”

The title is followed by 15 to 20 excerpts copied from the original film. These clips include shots of PeeWee, Nephew Fred, Weedy, Shorty and Silly as well as scenes of bike-riding exploits, interviews with riders and other commentators, a scene of dirt bikes being washed and even the shot of a young woman being spanked on the backside as she walks away. My clients were not advised that any of these 15 or 20 clips from their film were being used in “12 O’Clock Boys” and did not give permission for their use.

The use of film segments from “12 O’Clock Boyz” (the “Copyrighted Work”) in “12 O’Clock Boys” is an infringement of my clients exclusive rights under 17 U.S.C. § 106 to reproduce the Copyrighted Work and to prepare derivative works based upon the Copyrighted Work. The release and distribution of “12 O’Clock Boys” containing clips from “12 O’Clock Boyz” infringes my clients’ exclusive rights to distribute copies of the Copyrighted Work and to perform the Copyrighted Work publicly. The remedies available to my clients for these infringements include their actual damages and any additional profits made by Red Gap and Oscilloscope or statutory damages up to \$150,000 as well as injunctive relief, attorneys’ fees and costs.

Mr. Monbo is not only the copyright owner of “12 O’Clock Boyz,” but he also appeared in the film as an actor. At least two of the segments taken from his motion picture that are shown in “12 O’Clock Boys” feature Mr. Monbo being interviewed. He did not grant permission, nor has he been compensated, for the use of his image and likeness in “12 O’Clock Boys.”

The use of the phrase “12 O’Clock Boys” as the title of the Red Gap film constitutes trademark infringement and unfair competition under the Lanham Act. Although trademark rights may not attach to the title of a single creative work, in this case “12 O’Clock Boyz” has been used as the title of an ongoing series of creative works evidenced by the release of a second 12 O’Clock Boyz film, and the phrase has acquired secondary meaning. In addition, the mark has been used by my clients in connection with the sale of sound recordings and clothing. Moreover, the use of the clip “12 O’Clock Boyz, Inc. presents The Official 12 O’Clock Boyz” in the Red Gap film creates the false impression that there is an endorsement by my clients of the new Red Gap film or an affiliation between the original film and the Red Gap film.

Red Gap did not clear, or license the rights to, any of the clips from my clients’ film before using them in “12 O’Clock Boys” despite the fact that an online search of the Copyright Office database shows that “12 O’Clock Boyz” was registered in 2001, and that my clients are the copyright owners. The right to use the title “12 O’Clock Boys,” and to use the images of Mr. Monbo, were similarly not obtained before the release of “12 O’Clock Boys.” Mr. Monbo [REDACTED] nevertheless would like to reach an amicable resolution in this matter. They would be

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willing to agree to appropriate compensation and proper attribution for the use of their title and clips and for the use of Mr. Monbo's image.

A fair and reasonable license fee under all of the circumstances is [REDACTED] of any and all gross revenue derived from domestic and foreign exploitation of "12 O'Clock Boys" including theatrical performances, home market performances and all other forms of electronic transmission from the date of release in perpetuity. In addition, for all future uses of "12 O'Clock Boys," we would expect the film to include appropriate credits for the original film and for Mr. Monbo's appearance. If these deal points are acceptable, please send me a detailed accounting of gross receipts to date and the draft of an agreement providing for future payments.

Thank you for your prompt attention to this matter.

Very truly yours,

[REDACTED]

[REDACTED]
cc: Taje Monbo
[REDACTED]