

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registrations

Registration No.: 2475235  
For the Mark: STAIND  
Registered on: August 7, 2001

Registration No.: 2459222  
For the Mark: STAIND  
Registered on: June 12, 2001

Registration No.: 2483319  
For the Mark: STAIND  
Registered on: August 28, 2001

Registration No.: 2338763  
For the Mark: STAIND  
Registered on: April 4, 2000

-----X  
JON C. STAINBROOK :  
 :  
 : Cancellation No. \_\_\_\_\_  
 :  
 : Petitioner, :  
 :  
 : v. :  
 :  
 :  
 : TRADEM, INC. :  
 :  
 : Registrant :  
 :  
-----X

BOX TTAB - FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**PETITION TO CANCEL**

**Petitioner:** Jon C. Stainbrook  
1758 Meadowlark Ave.  
Toledo, OH 43614

To the best of petitioner's knowledge, the name and address of the owner of the current registrations is:

Tradem, Inc.  
c/o David Mantel, Esq  
7 West 22nd Street, 4th Floor  
New York, NY 10010

The petitioner believes that he will be damaged by the above identified registrations, and hereby petitions to cancel the same.

The grounds for the cancellation are:

**I. Fraud in the Procurement of the Registrations.**

1. The above identified registrations were obtained through fraud upon the USPTO based upon the registrant citing false dates of first use, and lack of use of the mark for some of the goods and services recited in the applications as of the filing dates of those applications. In some instances there was never any use of the mark on the identified services.

2. Registration number 2475235, for the mark STAIND, in Class 25, was represented to be for "Clothing, namely shirts, T-shirts, jerseys, jackets, wind-resistant jackets, belts, and headwear, namely hats, caps, beanies, and bandanas." Registrant claimed March 1, 1999 as its date of first use in commerce.

3. Upon information and belief, some of these goods were not available for sale until a later date, if at all. Therefore the registrant made false statements with the knowledge that they were false regarding that date of first use of the mark and with respect to the specific goods recited in its application. Based upon this fraud in procurement the registration is void ab initio.

4. Registration number 2459222, for the mark STAIND, in Class 41, was represented to be for “Entertainment services, namely live performances by a musical group, Record production of musical performances; Providing information on musical groups and other music and entertainment subjects via an on-line global computer network.” Registrant claimed a date of first use in commerce of November 30, 1994.

5. Upon information and belief entertainment services were not provided under this mark until February of 1995. One of the band members has admitted in interviews their first “gig” was not until February of 1995 (see Exhibit A attached). Likewise, registrant did not provide “...information on musical groups and other music and entertainment subjects via an on-line global computer network...” under the STAIND mark until long after November of 1994. The domain name <staind.com> was not even in existence until January of 1998 and <staindmusic.com> was not registered until February of 2000 (see Exhibits B and C attached). Therefore the registrant made false statements with the knowledge that they were false regarding use of the mark with respect to the date of first use and the specific services recited in its application. Based upon this fraud in procurement the registration is void ab initio.

6. Registration number 2483319 for the mark STAIND, in Class 16, was represented to be for “Paper goods, namely, posters, stickers, temporary tattoos, decals, and lyric books.” Registrant claimed a date of first use in commerce of April 13, 1999.

7. Upon information and belief posters, stickers, temporary tattoos, decals, and lyric books were not all provided under this mark until after April 13, 1999. Therefore the registrant made false statements with the knowledge they were false regarding use of the mark with respect to the date of first use and the specific services recited in its application. Based upon this fraud in procurement the registration is void ab initio.

8. Registration number 2338763, for the mark STAIND, in Class 9, was represented to be for “Prerecorded audio cassette and cartridge tapes, compact discs and phonograph records all featuring music and entertainment, namely, humor, variety and drama”. Registrant claimed a date of first use in commerce of November 30, 1994.

9. Upon information and belief the registrant released its first CD in 1996 and never used the STAIND mark in commerce for prerecorded audio cassettes, cartridge tapes, compact discs or phonograph records previous to that date. According to an article on Staind-Online.com, “...after a year and a half of steady gigs in Massachusetts, the band scraped together \$2,500, enough to record their first album, *Tormented*. Staind put out *Tormented* on November 29, 1996...” (<http://www.staind-online.com/fband.htm>). Their first album was recently re-released, now available only through <stainddirect.com> (See Exhibit D attached). Additionally, as indicated in the recitation of goods, it appears the mark was not used for phonograph records, humor, variety or drama. Therefore, the registrant made false statements with knowledge they were false regarding use of the mark with respect to the date of first use and the specific goods recited in its application. Based upon this fraud in procurement the registration is void ab initio.

10. Pursuant to 15 U.S.C. § 1064(3) the registrations were obtained fraudulently because the registrant knew or should have known the dates of first use and recitations of goods and services were false, material representations of fact made in connection with the application. Therefore these registrations should be cancelled and declared void ab initio.

## **II. First use after the filing date.**

11. Petitioner realleges and incorporates herein by reference the paragraphs hereinabove, and all the Exhibits attached and incorporated therein.

12. An application filed under Section 1 (a) of the Trademark Act is void ab initio if the first use of the mark occurs after the filing date of the application. See Justin Industries, Inc. v. D.B. Rosenblatt, Inc., 213 USPQ 968, 974-75 (TTAB 1981).

13. Petitioner states that even if the errors recited above do not constitute fraud, they alternatively render the registrations void ab initio due to the fact the first use of the mark in commerce for the goods or services occurred after the filing date of the application or after the declaration of use as the case may be.

14. Pursuant to 15 U.S.C. §1051(a) registrant's marks should be cancelled.

### **III. Priority and Likelihood of Confusion.**

15. Petitioner realleges and incorporates herein by reference the paragraphs hereinabove, and all the Exhibits attached and incorporated therein.

16. Petitioner began using "THE STAIN" mark on October 1, 1980 for commercial purposes, in commerce, for entertainment services; namely, rendering live vocal and musical performances. Since October 1, 1980 the petitioner has continuously used this mark.

17. Petitioner's first use was years prior to the registrant's use of the confusingly similar mark STAIND.

18. Petitioner sought and received federal registration of THE STAIN mark on March 12, 1993, and the mark was subsequently registered by the USPTO on November 9, 1993 (Serial Number 74367415).

19. On or about January 28, 1999 petitioner assigned THE STAIN mark to 4 Walls Inc. (hereafter STAIND or 4 Walls), a predecessor in interest of the STAIND marks (Exhibit E attached). Concurrent with the assignment 4 Walls Inc. entered into an agreement, which provided a license to petitioner to use THE STAIN mark (see Exhibit F attached).

20. In relevant part the contract provides:

If STAIND shall, at any time hereafter, abandon the use of the Service mark or allow the Service mark to expire, or be otherwise terminated by the United States Patent & Trademark Office, this license shall terminate and THE STAIN may continue to use the Service mark as though the assignment of same of even date had not been made. (see Paragraph 7 c. of Exhibit F).

21. The registrant took several steps to cause the mark to be terminated, be abandoned, be cancelled, or expire.

22. On May 9, 2000 registrant filed a combined Section 8 and Section 15 affidavit stating it had first-hand knowledge THE STAIN mark was still in use in commerce which included purported specimens of use.

23. Registrant had no first-hand knowledge as to whether or not the mark was still in use as it declined to return numerous phone calls from petitioner.

24. Registrant knew or should have known the specimens it filed were fraudulent.

25. The specimen of use filed by registrant are attached as Exhibit G. It refers to a band called "Stain", not THE STAIN. It also says the band is from Cincinnati, Ohio, not Toledo, Ohio where THE STAIN is located.

26. This specimen was the result of 1.1 hours of searching the internet by one of petitioner's attorneys on May 4, 2000 and an additional 2.6 hours on May 8, 2000 (see Bill attached as Exhibit H).

27. Within 10 minutes of searching the internet, the petitioner was able to determine the band referenced in registrant's specimens was no longer in business and never included a member named Jon Stainbrook (see Exhibit I attached). There is no doubt that, within 3.7 hours of searching the internet, registrant's highly skilled attorneys found this same internet page and knew this was not THE STAIN.

28. Upon calling one of the band members from Cincinnati, petitioner verified “Stain” last played May 21, 1999 almost a year before registrant made its claim of current use.

29. Trademark Rule of Practice 2.161 provides a renewal affidavit must be filed by the mark's owner and be accompanied by a verified declaration attesting to the mark's use in commerce. See 37 C.F.R. § 2.161. Registrant knew or should have known through minimal diligence the specimen submitted was fraudulent. Despite this knowledge registrant submitted the bogus specimen to the USPTO.

30. The registrant filed a verified renewal application stating the registered mark was in use on May 9, 2000. The registrant attached a specimen, which it claimed showed the mark as it was used on May 9, 2000. In fact the registrant knew or should have known its specimen did not show use of the mark as registered and the specimen was not in use.

31. Registrant has thus knowingly attempted to mislead the USPTO so as to fraudulently achieve a registration as contemplated in 15 U.S.C. § 1064(3). This fraud in the maintenance of the mark rendered it void ab initio or alternatively void on the date the false affidavit and bogus specimen were submitted.

32. Registrant did not file the 10 year Section 8 declaration or Section 9 renewal, and as a result, the registration for THE STAIN was cancelled on August 14, 2004.

33. Pursuant to paragraph 7c of the license agreement THE STAIN may continue to use the service mark as though the assignment had not been made. Prior to the assignment, petitioner had the right to exclude others from confusingly similar uses based upon petitioner's rights arising from common law and registration of THE STAIN. To this end, petitioner has sought to register THE STAIN and the application is pending (Ser. No. 78496465).

34. Petitioner therefore has trademark rights in THE STAIN. Use of STAIND by registrant is confusingly similar based upon the identical goods and services provided in the same commercial channels and the similarity of the marks.

35. Registrant's attorney has even admitted STAIND could not have been legally registered without ownership of THE STAIN mark (see Exhibit J attached).

36. Petitioner therefore asserts the registrant's marks consist of or comprise marks, which so resemble THE STAIN mark that it is likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive. Therefore, registrant's mark should be cancelled pursuant to 15 U.S.C. § 1052(d).

37. Petitioner will be irreparably harmed and financially damaged by the registrant's marks, because he is the first user of THE STAIN for similar services and he believes registrant's marks will be cited against his pending application as grounds for refusal. Consumers are likely to be confused as to the source or origin of the goods or services provided, and any use of STAIND, especially for identical services, will dilute the distinctive qualities of petitioner's mark.

38. For the foregoing reasons, petitioner respectfully requests cancellation of Trademark Registration Nos. 2475235, 2459222, 2483319, and 2338763 for the mark STAIND.



Respectfully submitted,

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Anthony J. DeGidio (OH #0069064)  
Attorney for Petitioner  
3738 Treelawn Dr.  
Toledo, Ohio 43614  
Phone No: (419) 382-9590  
Fax No: (419) 382-9592  
Email:tony@cyberlawyer.com

Enclosures

#### CERTIFICATE OF MAILING

I hereby certify this correspondence is being deposited with the United States Postal Service with sufficient postage as Priority Mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on October 8, 2004. Copies of this filing have been sent with sufficient postage as Priority Mail in envelopes addressed to registrant and its attorney at the following addresses:

Tradem, Inc.  
C/O David Mantel, Esq.  
7 West 22nd Street, 4th Floor  
New York, NY 10010

Brad D. Rose  
Pryor Cashman Sherman & Flynn LLP  
410 Park Avenue  
New York NY 10022

Monica Petraglia Mccabe  
Piper, Marbury, Rudnick & Wolfe LLP  
1251 Avenue of the Americas  
New York, New York  
10020-1104

Dated: October 8, 2004

By: \_\_\_\_\_

FEE: Pursuant to 37 CFR 2.6(a)(17), a required fee of \$1200.00 is being made simultaneously with the filing of this petition.

MAY.

> YEAH. TIME FOR A NEW ONE, RIGHT?

> Rick: THAT ONE HAS BEEN OUT FOR A LONG, LONG TIME. IT'S ACTUALLY-- IS IT YOUR NINTH ANNIVERSARY THIS MONTH SINCE YOUR FIRST PERFORMANCE, YOUR FIRST GIG?

> YEAH, ACTUALLY, IT IS.

> Rick: FEBRUARY OF '95?

> '95, THAT'S EXACTLY RIGHT.

> Rick: I DON'T KNOW WHAT DAY IT WAS.

> WE STARTED PRACTICING THE END OF '94, LIKE OCTOBER, NOVEMBER TIME, I THINK.

> I COULDN'T HAVE TOLD YOU THAT.

> I JUST REMEMBER BECAUSE I GRADUATED COLLEGE THAT YEAR, AND THAT'S WHEN WE STARTED, RIGHT AFTER THAT.

> Rick: I GUESS I COULD SAY HAPPY ANNIVERSARY THEN.

> ABSOLUTELY.

> Rick: IT'S NOT TEN, YET, BUT NINE. IT'S AN ANNIVERSARY.

> WHAT DID YOU GET US?

> Rick: YOU KNOW WHAT? THAT'S THE THING I WASN'T PREPARED FOR, RIGHT THERE.

> IT'S ALL ABOUT THE GIFTS.

> Rick: I'M SORRY. IT IS. YOU'RE RIGHT. SEE, I GOT SOMETHING FOR NICKELBACK. I'M SORRY, GUYS.

> THANKS, DUDE.

> Rick: IT'S JUST BECAUSE THEY GOT ME SOMETHING WHEN THEY CAME ON THE SHOW.

> YOU DIDN'T GET OUR GIFT?

> Rick: YOU GUYS SENT SOMETHING?

> OF COURSE.

> YEAH, WE DID.

> Rick: DID ANYONE SEE THAT STAINED GIFT FOR ME? WHAT WAS IT BY THE WAY?

> I FORGET.

> Rick: (Laughing) YOU'VE BEEN HAVING-- NOT RECENTLY, BUT PROBLEMS WITH YOUR VOCAL CHORDS BEFORE THIS TOUR STARTED.

> IT WAS ACTUALLY THE FIRST TIME I'VE EVER HAD A PROBLEM LIKE THAT. SO IT WAS A LITTLE NERVE-RACKING.

> Rick: HOW DID YOU GET OVER ALL THAT? HOW DID YOU GET THROUGH

Stainbrook v. Tradem  
Inc., Cancellation  
No. \_\_\_\_\_

Stainbrook Exhibit A

New! Expiring Domain Names List.

WHOIS SEARCH RESULTS

WHOIS RECORD FOR

staind.com



Certified Offer Service - Make an offer on this domain
Backorder - Try to get this name when it becomes available
Private Registration - Make personal information for this domain private
Similar Names - See suggested alternatives for this domain

Registrant:

Disc Shapers LLC (256412840)
PO Box 155
Feeding Hills, MA 01030
US
Phone: 999 999 9999
Fax: 999 999 9999

Make this info private

Domain Name: STAIND.COM

Administrative Contact :

The Firm (H10714-OR)
bpatterson@firmentertainment.net
9465 Wilshire Blvd 6th Floor
Beverly Hills, CA 90212
US
Phone: 310-860-8288
Fax: 310-860-8100

Technical Contact :

Services,
(SD4520-ORG)
web-dns@AOL.NET
AOL
22110 Pacific Blvd.
Dulles, VA 20166
US
Phone: 999 999 9999
Fax: 999 999 9999

Record expires on 12-Jan-2008
Record created on 13-Jan-1998
Database last updated on 07-Jul-2004

Domain servers in listed order:

Manage DNS

DNS01.WMG-IS.COM
DNS02.WMG-IS.COM

64.236.242.167
64.236.242.168

BUY THE AVAILABLE EXT FOR THIS DOMAIN NAME

- staind
staind
staind
staind
staind
staind
staind
staind
staind



SEARCH AGAIN

Enter a search term:

Search input field

e.g. networksolutions.c

Search by:

- Domain Name
NIC Handle
IP Address



Is the name you want here



Stainbrook v. Tradem Inc., Cancellation No. \_\_\_\_\_

Stainbrook Exhibit B



## WHOIS SEARCH RESULTS

### WHOIS RECORD FOR

# staindmusic.com



- [Certified Offer Service - Make an offer on this domain](#)
- [Backorder - Try to get this name when it becomes available](#)
- [Private Registration - Make personal information for this domain private](#)
- [Similar Names - See suggested alternatives for this domain](#)

**Registrant:**

Elektra Records ([288098350](#))  
 75 Rockefeller Plz  
 NY, NY 10019  
 US  
 Phone: 999 999 9999  
 Fax: 999 999 9999

[Make this info private](#)

**Domain Name:** STAINDMUSIC.COM

**Administrative Contact :**

Elektra Entertainment,  
 ([WE6191-ORG](#))  
 webmaster@ELEKTRA.COM  
 75 ROCKEFELLER PLZ  
 NEW YORK, NY 10019-6908  
 US  
 Phone: 212-275-4000  
 Fax: 123 123 1234

**Technical Contact :**

Services, DNS \*\*  
 ([DSE504](#))  
 web-dns@AOL.NET  
 22110 Pacific Blvd.  
 Dulles, VA 20166  
 US  
 Phone: 703-265-4670  
 Fax: 123 123 1234

**Record expires on** 11-Feb-2007  
**Record created on** 11-Feb-2000  
**Database last updated on** 08-Jul-2004

**Domain servers in listed order:**

[Manage DNS](#)

[DNS01.WMG-IS.COM](#)  
[DNS02.WMG-IS.COM](#)

[64.236.242.167](#)  
[64.236.242.168](#)

### BUY THE AVAILABLE EXT FOR THIS DOMAIN NAM

- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic
- staindmusic

### SEARCH AGAIN

Enter a search term:

e.g. networksolutions.c

Search by:

- [Domain Name](#)
- [NIC Handle](#)
- [IP Address](#)

SEARCH

Stainbrook v. Tradem  
 Inc., Cancellation  
 No. \_\_\_\_\_  
 Stainbrook Exhibit C



Find Music and Merchandise from All of Your Favorite Artists

Find Artist



Other Products



Account



Cart



Home



Music  
Apparel  
Accessories  
Collectibles



### Staind Tormented

SKU ADSACD001



CD \$14.99

[ADD TO CART](#) [SAVE TO WISHLIST](#)

Tormented is currently out of stock. Place your order and reserve your copy today. We are expecting new stock to arrive shortly.

Tormented, Staind's 1996 self-released CD, is back due to popular demand! Previously only available in limited quantities in New England, Tormented has been re-released in response to overwhelming demand from fans at Staind.com. This eleven song explosion of Springfield hardcore was on the racks at gigs and local record stores well before Staind was signed to Elektra. None of the music has been altered from its original state, and the only place you can get it is at Staind.com, a part of the ARTISTdirect network!

- Track Listing:
1. Tolerate
  2. Come Again
  3. Break
  4. Painful
  5. Nameless
  6. Mudshovel

Stainbrook v. Tradem Inc., Cancellation No. \_\_\_\_\_

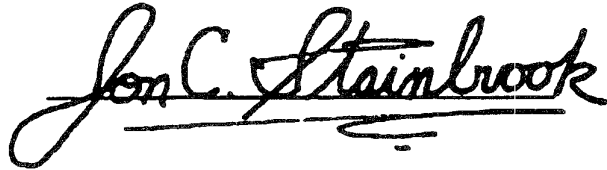
Stainbrook Exhibit D

ASSIGNMENT OF REGISTERED SERVICE MARK

Now, Therefore, in consideration of the sum of Eighteen Thousand Dollars (\$18,000.00) and other good and valuable consideration paid by STAIND to THE STAIN, the receipt of which is hereby acknowledged, JON C. STAINBROOK hereby assigns to FOUR WALLS, INC. all right, title and interest in the United States, and throughout the world, in and to said Service mark together with the goodwill of the business symbolized by said Service mark and registration thereof.

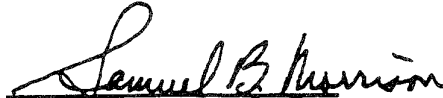
Signed at Toledo, Ohio, this 28<sup>th</sup> day of January, 1999

Jon C. Stainbrook ("THE STAIN")



State of Ohio            )  
                                  )ss:  
County of Lucas        )

On this 28<sup>th</sup> day of January, 1999, personally appeared Jon C. Stainbrook, to me known and known to me to be the assignor above named, and acknowledged that he executed the foregoing Assignment on behalf of himself as said assignor.



Notary Public

Stainbrook v. Tradem Inc., Cancellation No. _____  Stainbrook Exhibit E
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LICENSE OF REGISTERED SERVICEMARK

MTM  
Whereas, <sup>MTM</sup>Four Walls, Inc., a corporation organized under the laws of the State of Massachusetts, ("STAIND" hereafter), having its principal office at 7 West 22<sup>nd</sup> Street, Fourth Floor, New York, NY 10010, is using and is the owner of the following Service mark now registered in the United States Patent and Trademark Office, a copy of which registration is attached hereto:

Service Mark	Registration No.	Date of Registration
THE STAIN	1,803,466	November 9, 1989-93

Whereas, Jon C. Stainbrook, an individual residing in Toledo, Ohio, having his principal offices at 2527 Broadway (rear), Toledo, Ohio 43609, ("THE STAIN" hereafter), is desirous of acquiring a license to use said registered Service mark, as hereinafter provided;

THE STAIN is desirous of using said Service Mark for Entertainment Services, namely, rendering live vocal and musical performances, in Class 41, in the States of Ohio, Kentucky, Michigan and Indiana, hereinafter referred to as the "Territory," therefore, in consideration of the mutual covenants of the parties and the sum of Ten Dollars (\$10) herewith paid by THE STAIN to STAIND, the receipt and adequacy of which is hereby acknowledged by said STAIND, the parties hereby agree as follows:

1. License. STAIND grants to THE STAIN the right to use under the common law and under the auspices and privileges provided by the Registration covering the same during the term of this Agreement, and THE STAIN hereby undertakes to use the Service Mark "THE STAIN" in the Territory in connection with the rendition of Entertainment Services, namely rendering live vocal and musical performances in Class 41, the permitted services being hereinafter referred to as the "Services."

2. Quality of Services. THE STAIN shall use the Service Mark "THE STAIN" with the Services rendered by or for the THE STAIN in accordance with the guidance and directions furnished to the THE STAIN by STAIND, or its representatives or agents, from time to time, if any, which shall not require THE STAIN to deviate from his current and prior public performance characteristics.

3. Inspection. THE STAIN will permit duly authorized representatives of the STAIND to inspect the performance premises of THE STAIN where he is using the Service Mark at all reasonable times, for the purpose of ascertaining or determining compliance with Paragraphs 1 and 2 hereof.

4. Use of Service Mark. THE STAIN shall, from time to time, provide STAIND with

Stainbrook v. Tradem  
Inc., Cancellation  
No. \_\_\_\_\_

Stainbrook Exhibit F

samples of literature, brochures, signs and advertising material prepared by the THE STAIN, and THE STAIN shall obtain the approval of STAIND with respect to all such brochures, signs and advertising material bearing the Service Mark prior to the use thereof. When using the Service Mark under this Agreement, THE STAIN undertakes to comply substantially with all laws pertaining to service marks in force at any time in the Territory. This provision includes compliance with marking requirements. THE STAIN shall suitably mark all literature, brochures, signs and other such advertising material so as to distinguish his services from those of STAIND.

5. Extent of License. The right granted in Paragraph 1 hereof shall be nonexclusive and shall not be transferable without STAIND's prior written consent, and STAIND shall have the right to use the Service Mark and to license its use to any other designee in the Territory. The license herein granted shall not be assignable or transferable in any manner whatsoever, nor shall the THE STAIN have the right to grant any sublicenses, except by prior written consent of the STAIND.

6. Indemnity. STAIND assumes no liability to THE STAIN or to third parties with respect to the THE STAIN's use of the mark "THE STAIN", and with respect to the performance characteristics of the Services rendered by the THE STAIN under the Service Mark, and the THE STAIN shall indemnify STAIND against losses incurred to claims of third parties against STAIND involving sale of the THE STAIN's Services.

7. Termination.

a. Except as otherwise provided herein, this Agreement shall remain in full force and effect, but is terminable by STAIND upon not less than thirty (30) days written notice to THE STAIN, but only for good cause shown.

b. If THE STAIN makes any assignments of assets or business for the benefit of creditors, or a trustee or receiver is appointed to conduct its business or affairs, or it is adjudged in any legal proceeding to be either a voluntary or involuntary bankruptcy, then the rights granted herein shall forthwith cease and terminate without prior notice or legal action by STAIND.

c. If STAIND shall, at any time hereafter, abandon the use of the Service mark or allow the registration of the Service mark to expire, or be otherwise terminated by the United States Patent & Trademark Office, this license shall terminate, and THE STAIN may continue to use the Service mark as though the Assignment of same of even date had not been made.

8. Ownership of Service Mark. The THE STAIN acknowledges STAIND's exclusive right, title and interest in and to the Service Mark and any Registration or Amendment that have issued or may issue thereon, and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair part of such right, title and interest. In connection with the use of the Service Mark, THE STAIN shall not in any manner represent that he or it has any ownership in the Service Mark or registrations thereof, and all parties acknowledge that use of the Service Mark shall enure to the benefit of STAIND. On termination

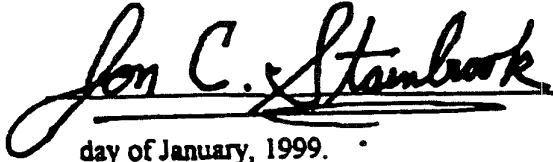


of this Agreement in any manner provided herein, with the exception of that contained in Section 7c. above, the THE STAIN will cease and desist from all use of the Service Mark in any way and will deliver up to the STAIND, or its duly authorized representatives, all material and papers upon which the Service Mark appears, and furthermore, THE STAIN will not at any time adopt or use without the STAIND's prior written consent, any word or Service mark which is likely to be similar to or confusing with the Service Mark.

9. Any notices required or permitted to be given under this Agreement shall be deemed sufficiently given if mailed by registered mail, postage prepaid, addressed to the party to be notified at its address shown below, or at such other address as may be furnished in writing to the notifying party.

Signed at Toledo, Ohio, this 28<sup>th</sup> day of January, 1999.

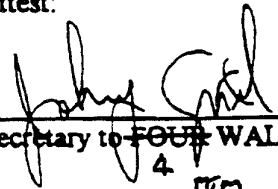
Jon C. Stainbrook ("THE STAIN")

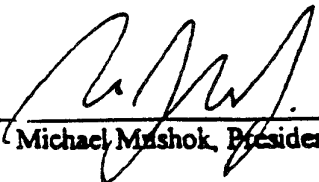


Signed at New York, New York, this \_\_\_\_\_ day of January, 1999.

~~FOUR WALLS, INC. ("STAIND")~~  
4 mm

Attest:

  
Secretary to ~~FOUR~~ WALLS, INC.  
4 mm

By   
Michael Mishok, President

8:\DOCUMENTS\TAD\MA88\DMT.LIC

ROCK  
BAND  
.COM

Unsigned and Indie  
ONLINE CD STORE

FREE Music  
Promotion Tips

IndieBiz.com

bands a-z local news poll search shopping cart

- Acoustic
- Alternative
- Blues
- Christian
- Dance
- Electronica
- Emo
- Experimental
- Folk
- Funk
- Glam/Goth
- Guitar Rock
- Hard Rock
- Heavy Metal
- Hip Hop
- Industrial
- Instrumental
- Jazz
- Modern Rock
- Pop
- Progressive
- Psychedelic
- Punk
- R & B
- Rap
- Reggae
- Rock
- Ska
- Soft Rock
- Swing
- Surf Rock
- Techno
- World Music

### STAIN

Official Web Site:

<http://www.rockband.com/bands/nosite.asp>

**Band Description:** From Cincinnati, Ohio, this alternative rock band has released two CDs of original music.



#### Artist/Labels

stain

Search



Need help finding  
new music?

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ROCK  
BAND

Stainbrook v. Tradem  
Inc., Cancellation  
No. \_\_\_\_\_

Stainbrook Exhibit G



**PIPER  
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4 Walls Inc.  
029383-000001  
Invoice #1040014

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05/04/00	M. McCabe	Telephone conference with L. Flores re: contacting J. Stainbrook's attorney and responses.	.20
05/04/00	L. Flores	Follow-up with deadline to file a Combined Sec. 8 and 15 Affidavit of Use and Incontestability for THE STAIN in Class 41; conduct on-line search for evidence of use of the mark THE STAIN by Jon Stainbrook.	1.10
05/08/00	M. McCabe	Office conference with L. Flores re: information obtained on J. Stainbrook; review of regulation re: submission of specimens; review materials to use as specimens.	.50
05/08/00	L. Flores	Follow-up with deadline to file a Combined Section 8 and 15 Affidavit of Use and Incontestability for the mark THE STAIN (R.N. 1,803,466); conduct further on-line searches for evidence of use of the mark by the client's licensee Jon C. Stainbrook; collect documents; conference with Ms. McCabe regarding same.	2.60
05/09/00	M. McCabe	Telephone conference with Stainbrook's attorney re: submitting specimens; revise submissions to PTO and review specimens; telephone conference with D. Mantel re: same.	.60

\* Legal services in Illinois are provided by Piper Marbury Rudnick & Wolfe, an Illinois general partnership.

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Campfire Crush



wil-o-ee



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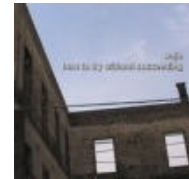
**STAIN** ...the end.

by [Michael DeWees](#)

*After 5 years of faithful rocking, Cincinnati has taken it's toll on yet another original band.*



**CD Reviews**



**Wojo :: How To Try Without Succeeding**

The entity known as 'Stain' was born in May of 1994. Dan Sullivan and drummer Jason Palm, had grown up together, and after they had gotten themselves out of a "...bad schlock rock band", Dan answered an advertisement for a bass player from guitarist Dave Zaidain. Dave contacted Tim Anderson, a singer he knew, and they got together. "From the beginning, everything just seemed to click," says Dave. They played their first gig in September of that year, and since then, Stain has released two CD's; King of Me in 1995 and Scenic View in 1997. In a town where clubs want you to do your best to cover the latest top 40 hits and 'blasts from the past', Stain has had a rather successful career while still maintaining integrity in their music, which isn't a trivial feat.



They were one of the only original bands chosen to perform at the weekly Party in the Park, appearing earlier that same day on channel 19's morning show. They also played at the annual Taste of Cincinnati. Two of their songs, *Alone* and *Vessel*, were featured on the annual 97Xposure compilation CD's. They have opened for major touring acts such as Helmet, Prong, and 24-7 Spyz at Bogart's. Stain also supported many local causes by performing at shows promoting voter registration and numerous benefits for the Free Store Food Bank.



Yet, after all of the shows and all of the exposure, Stain doesn't feel that they were ever really accepted by the local music community. This is the price a lot of bands pay by not succumbing to the pressures of fitting into the 'pop' scene. The fact that their favorite bands were either selling out, or just

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Stainbrook Exhibit I

breaking up only discouraged them. At the point where playing out stopped being enjoyable is where the guys decided that the end was in sight.

Stain's demise comes at the hands of many defeaters. The primary being the Cincinnati scene itself. "The local scene for original music has gone from bad to worse... I mean, we used to play five or six different places, that went to just Sudsy's and Top Cat's , and then just Top Cat's.", says Dan Sullivan.



'Life issues' also played their role, as members dealt with college, financial troubles, and family. They also site their backfiring band vehicle; a Ford van that seemed to be "possessed by the devil". Through all the turmoil though, there is no animosity among the band members. "It is a mutual parting," states Dan. Problems both inside and outside the band never seemed to become resolved.

So what about the futures of the members of Stain? Dan is finishing his degree in Journalism at Northern Kentucky University. Jason plans to become a licensed information systems administrator. Dave is completing his Masters degree in City Planning, and will begin professional employment in June of this year. Tim is starting a family and has vowed to return to the music scene, as do all of the stain members.



**TIM**



**DAN**



**DAVE**



**JASON**

### **THE FINAL GIG!!**

So you are saying to yourself....."Self, I missed Stain live, and I will never have the chance to see them again."

Don't worry. Stain will be performing their FINAL SHOW at TOP CAT'S on FRIDAY, MAY 21st. Be sure to come out and show your support for Stain at this emotional event. Show starts at 10:00 PM, and Stain will be offering T-Shirts and CD's at discounted prices. Opening the show will be [El Gigante](#) and [Occam's Razor](#).

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CHON

February 25, 1999

**BY HAND**

**COPY**

Virgina Haverick, VP/A&R Administration  
Elektra Entertainment Group  
75 Rockefeller Center, 13<sup>th</sup> Floor  
New York, N.Y. 10019

**RE: *Staind* Trademark purchase**

Dear Virginia:

As you know, our client, Staind must purchase the previously registered trademark of "The Stain" in order to legally register its name with the U.S. Trademark office. Pursuant to our recent conversation, enclosed is the W-9 for Jon C. Stainbrook, the seller of the trademark. We have agreed on and Elektra has previously approved of, a purchase price of Eighteen Thousand (\$18,000) Dollars. Please have the check processed, made out to Jon C. Stainbrook and sent to our office at the above address.

Thank you for your help in closing this matter.

Best regards.

Sincerely,



Roslyn Midgett, Esq.

cc: Mike Mushock o/b/o/ *Staind*  
David H. Mantel, Esq.

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